

C.M.A.(MD) No. 880 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED : 28.01.2025

CORAM:

THE HONOURABLE Mrs.JUSTICE R.KALAIMATHI

C.M.A.(MD) No. 880 of 2023

Puvaneshwari

... Appellant

VS.

1.Thiruvelmurugan

2.The Divisional Manager,
New India Assurance Company Limited,
80 feet Road, Ellis Nagar,
Madurai – 625 010.

... Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, against the order dated 28.11.2022 in M.C.O.P. No. 1438 of 2019 on the file of the Motor Accident Claims Tribunal / Special Sub Judge, Madurai.

For Appellant : Mr. K. Kumaravel

1st Respondent : set ex-parte

For 2nd Respondent : Ms. P. Malini



C.M.A.(MD) No. 880 of 2023

J U D G M E N T

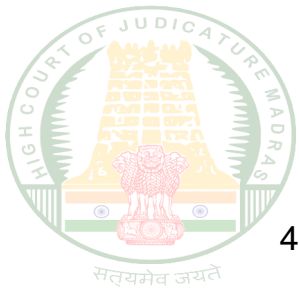
WEB COPY

This Civil Miscellaneous Appeal has been preferred by the appellant / claimant against the award dated 28.11.2022 made in M.C.O.P. No. 1438 of 2019 by the Motor Accident Claims Tribunal / Special Sub Judge, Madurai for enhancement of compensation.

2. Heard the learned counsel for the appellant and the learned counsel for the second respondent / Insurance Company and perused the relevant records.

3. Upon consideration, the Tribunal has passed an award for a sum of Rs.6,85,300/-. The breakup details have been given hereunder: -

Sl. No.	Description	Amount awarded by Tribunal
1	For Partial permanent disability (6000x60) 60% x Rs.6,000/-	Rs.3,60,000/-
2	For Loss of Income (Rs.7000 x 4 months)	Rs. 28,000/-
3	For Pain and sufferings	Rs. 20,000/-
4	For Extra nourishment	Rs. 5,000/-
5	For Medical expenses	Rs.2,42,500/-
6	For Attender charges	Rs. 10,800/-
7	For Loss of amenities	Rs. 10,000/-
8	For Transport expenses	Rs. 9,000/-
	Total	Rs.6,85,300/-



C.M.A.(MD) No. 880 of 2023

4. Learned counsel for the appellant would strenuously contend that as the appellant was doing milk vending business, because of the injuries suffered on account of the accident, she is not in a position to do the business as she did before. It is his further argument that the Medical Board, Madurai has assessed the disability of the appellant at 60% and the Tribunal has adopted percentage method and not adopted multiplier method is totally incorrect and the amounts awarded under all other heads are not sufficient, taking into account of the injuries suffered by the appellant.

5. Per contra, the learned counsel for the second respondent / Insurance Company would vehemently argue that considering the age, avocation and the injuries suffered by the appellant herein, the amounts awarded by the Tribunal is reasonable and acceptable and hence, it needs no interference.

6. The manner in which accident occurred is not in dispute. Due to the accident, the appellant suffered degloving of dorsum of right hand, loss of extensor Tendon of index and middle finger, subluxation of PIP middle finger, carpometacarpal joint subluxation. Soon after the accident, she was admitted at Srivatsav Healthcare Raksha Hospitals, Madurai as an in-



C.M.A.(MD) No. 880 of 2023

patient on 07.02.2019 and discharged on 19.02.2019 as per the Discharge

Summary - Ex.P3.

WEB COPY

7. Due to the accident, the appellant had lost her right thumb. Thumb is the vital part of the human hand. It is also relevant to note that thumb plays vital role in the formation of grip. Because of the said amputation, the appellant cannot hold or lift any object. When a person loses part of his hand, it will have devastating effect upon his life.

8. As per Ex.P12 / Discharge Summary, issued by the same Hospital, it appears that the appellant was admitted on 20.03.2019 as an in-patient, in connection with the above said injuries and got discharged on 02.04.2019. On 21.03.2019, she had undergone surgery in the right hand where wound debridement was done with K wire fixation and skin grafting surgery was also done. Besides, the amputation of right thumb, she had loss of extensor Tendon of index and middle finger, subluxation of PIP middle finger, carpometacarpal joint subluxation. Besides the loss of right thumb, she had sustained serious injuries on index and middle finger also.

9. Ex.P6 is the series of photos of the right hand of the appellant herein. As regards the avocation of the appellant, it has been stated that she was doing milk vending business and because of the above said



C.M.A.(MD) No. 880 of 2023

injuries, she is not in a position to continue her business as she did before.

No document is filed and marked to prove her avocation such as bank statement, membership card issued by the milk society (Private or Government) etc. It is the evidence of P.W.1 that she was earning Rs.500 per day through milk vending business. The date of accident is 07.02.2019.

10. It is pertinent to note that even when a person is not working, loss of right thumb will have a serious effect on the personal life. Therefore, after the accident, due to the effects of the above said injuries, the appellant would definitely find it difficult to do her routine works and certainly in her avocation.

11. The Hon'ble Supreme Court has given elaborate guidelines invoking of multiplier method in injury cases in **Raj Kumar v. Ajay Kumar** reported in **[(2011) 1 SCC 343]**. The principles which are summarised by the Apex Court in the said case is given hereunder:

“(i) All injuries (or permanent disabilities arising from injuries), do not result in loss of earning capacity.

(ii) The percentage of permanent disability with reference to the whole body of a person, cannot be assumed to be the percentage of loss of earning capacity. To put it differently, the percentage of loss of earning capacity is not



WEB COPY



C.M.A.(MD) No. 880 of 2023

the same as the percentage of permanent disability (except in a few cases, where the Tribunal on the basis of evidence, concludes that percentage of loss of earning capacity is the same as percentage of permanent disability).

(iii) The doctor who treated an injured-claimant or who examined him subsequently to assess the extent of his permanent disability can give evidence only in regard the extent of permanent disability. The loss of earning capacity is something that will have to be assessed by the Tribunal with reference to the evidence in entirety.

(iv) The same permanent disability may result in different percentages of loss of earning capacity in different persons, depending upon the nature of profession, occupation or job, age, education and other factors.”

12. Her disability is assessed at 60% by the Regional Medical Board, Government Rajaji Hospital, Madurai. The appellant was doing milk vending business and after the accident, she has to engage some other person in order to help her due to the loss of right thumb. Her functional disability / economic disability is fixed at 55% for the whole body. This Court deems fit to adopt multiplier method to asses the loss of future income.

13. It is the evidence of P.W.1 / claimant that she was doing milk vending business and earning a sum of Rs.15,000/- per month (Rs.500/- per day). As per her medical records, her age is fixed at 54/ 2019.



C.M.A.(MD) No. 880 of 2023

WEB COPY

14. In the absence of documents to substantiate her income, however her income is safely fixed at Rs.12,000/-. As per the law laid down by the Hon'ble Supreme Court in ***National Insurance Co. Ltd., v. Pranay Sethi and others*** reported in ***2017 (2) TN MAC 609 (SC)***, the details of future prospects while computing the income has been standardised for the age group of persons between 50-60 years, 10% has to be added for future prospects.

15. Based on the afore stated particulars, the loss of future income is computed as follows: -

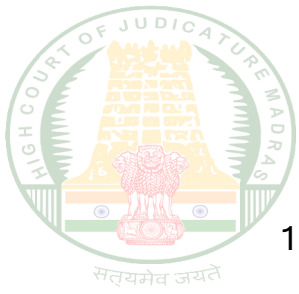
$$\text{Rs.12,000/-} + 10\% \times 11\text{m} \times 12 \times 55\% = \text{Rs.9,58,320/-}$$

16. Once the multiplier method is invoked for computing the loss of future income, then the appellant is not entitled for the loss of income during treatment period. In consideration of the above said details, for pain and sufferings, an amount of Rs.20,000/- is granted in addition to the amount already granted by the Tribunal. For extra nourishment, an amount of Rs.10,000/- is granted in addition to the amount already granted by the Tribunal. The compensation awarded by the Tribunal is reworked and tabulated below: -



Sl. No.	Description	Amount awarded by Tribunal	Amount awarded by this Court	Award confirmed or enhanced or granted or reduced
1	Partial permanent disability (6000x60)	Rs.3,60,000/-	Rs.9,58,320/- (Loss of Income)	Enhanced
2	Loss of Income (7000x4)	Rs. 28,000/-	Nil (Loss of income during treatment period)	Rejected
3	Pain and sufferings	Rs. 20,000/-	Rs. 40,000/-	Enhanced
4	Extra nourishment	Rs. 5,000/-	Rs. 15,000/-	Enhanced
5	Medical expenses	Rs.2,42,500/-	Rs. 2,42,500/-	Confirmed
6	Attender charges	Rs. 10,800/-	Rs. 10,800/-	Confirmed
7	Loss of amenities	Rs. 10,000/-	Rs. 10,000/-	Confirmed
8	Transport expenses	Rs. 9,000/-	Rs. 9,000/-	Confirmed
	Total	Rs.6,85,300/-	Rs.12,85,620/-	
	Rounded off to		Rs.12,85,700/-	

17. Thus, the compensation awarded by the Tribunal is enhanced from **Rs.6,85,300/-** to **Rs.12,85,700/-** which would carry interest at the rate of 7.5% per annum.



C.M.A.(MD) No. 880 of 2023

18. In the result,

WEB COPY

(i) The Civil Miscellaneous Appeal is partly allowed. No costs.

(ii) The compensation awarded by the Tribunal is enhanced from **Rs.**

6,85,300/- to Rs.12,85,700/-.

(iii) The 2nd respondent / Insurance Company is directed to deposit the enhanced compensation amount i.e., **Rs.12,85,700/-** (less the amount already deposited if any) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit to the credit of M.C.O.P.No.1438 of 2019, on the file of the Motor Accident Claims Tribunal / Special Sub Judge, Madurai, within a period of eight weeks from the date of receipt of a copy of this Judgment.

(iv) On such deposit being made, the appellant / claimant is at liberty to withdraw the same with interest and costs, less the amount if any already withdrawn, by making necessary cheque application before the Tribunal. The appellant/claimant is directed to pay the Court fee for the enhanced compensation amount, if required. The Tribunal below shall disburse the enhanced amount upon production of the certified copy showing proof of payment of Court fee by the claimants.

28.01.2025

Index : Yes/No
AT



WEB COPY



C.M.A.(MD) No. 880 of 2023

R.KALAIMATHI, J.

AT

To:

- 1.The Motor Accident Claims Tribunal / Special Sub Judge,
Madurai.
2. The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.

C.M.A.(MD) No. 880 of 2023

28.01.2025