

IN THE COURT OF THE MOTOR ACCIDENT CLAIMS TRIBUNAL
(SPECIAL SUBORDINATE JUDGE COURT) - ERODE

PRESENT: THIRU. **G.KULASEKARAN**, B.A., LL.M.,

SPECIAL SUBORDINATE JUDGE

Tuesday the 10th day of April - 2018

(Thiruvalluvarandu 2048 – Sri Heyvilambi Varudam – Panguni Thingal 27th day)

M.C.O.P No:01/2018

R. Ravi

----- Petitioner

VS

1. S. Sangameswaran

2. G. Ravichandran

3. United India Insurance Co., Coimbatore

----- Respondents

This petition was coming up for final hearing before me on 9.4.2018 in the presence of Thiru. S. Senthilkumar, Advocate for the petitioner and Thiru. K. Venugopal, Advocate for the 2nd respondent and Smt. A. Nagarathinam, Advocate for the 3rd respondent and the 1st respondent was remained exparte and hearing upon the arguments on both sides and perusing the connected records and having stood over till this day for consideration, this tribunal made the following,

ORDER

Petition u/s 166 of Motor vehicle Act 1988 claiming a compensation of a sum of Rs.2,73,000/- and restricted into Rs.2,00,000/- together with subsequent interest and costs in connection with the injuries sustained by the petitioner in a Motor vehicle accident.

1) The brief averments of the petition is as follows:

On 5.5.2004 at about 6.00 A.M. the petitioner R.Ravi was traveling in the 2nd respondents Maruthi Omni registration No.TN 01 J 8754 as a passenger. The said Maruthi Omni was driven by S. Sangameswaran at Salem to Sankagiri main road near PRM Kalyana Mandabam in a rash and negligent manner at a high speed and without following road rules which made the vehicle up-side down. In the accident, the petitioner sustained injuries. The accident was solely due to the rash and negligent driving of the 1st respondent driver. The petitioner was sustained fracture at his left hand index finger, cut injuries in other fingers, cut

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injuries in left shoulder, left eyebrow, left leg knee and lacerated injuries all over the body. The petitioner was immediately taken to admitted at Sankagiri Goverment hospital. First aid was given and he was referred to Erode Goverment hospital. But the petitioner prefers to get

restricted. Still he is under going treatment. Still he is suffering for her medical treatment, attenders, nutrition and travelling expenses etc., In future also he expext to be spent some more amounts for her further continuous treatment.

The petitioner was aged about 34 years. He was hale and healthy at the time of accident. The petitioner is the only bread winner of his family. The petitioner was doing manner and incharge work at "Team united express Erode Branch" and earn Rs.4,000/- P.M. Now he is unable to work and earn as before because of due to the accidental injury. In the above circumstances the petitioner claim compensation is just and reasonable.

Sankagiri Police have registered a criminal case against the 1st respondent for his rash and negligent driving in FIR No.191/04, u/s 279, 337 and 304(a) of IPC. The 1st respondent is driver, 2nd respondent is owner and 3rd respondent is insurer of the offending vehicle, Maruthi Omni bearing Reg.No.TN 01 J 8754. As the 1st respondent is sole responsible for the accident, the respondents are jointly and severally liable to pay compensation to the petitioner.

2) The 1st respondent was remained exparte from 1.12.2004.

3) The brief averments of the Counter statement filed by the 2nd respondent is as follows;

The petition is false, frivolous, vexatious and unsustainable, not maintainable both in law and on facts. The petitioner is put into strict proof of their income, age, occupation, medical expenses and nature of injuries sustained by him etc., the petitioner is trying to make unjust, enrichment taking advantage of the unfortunate accident. The compensation claimed by the petitioner under various heads is high, excessive, usurious and speculative. The owner of the Maruthi Van TN 01 J 8754 at the time of the accident was the S.V.Kumar as per the delivery

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note issued by him on 6.6.2002 to the 2nd respondent. On the date of accident, 2nd respondent is not the real owner. Hence, S.V.Kumar is a necessary party in this case. The 1st respondent Driver S. Sangameswaran is not employed under the 2nd respondent. He is only an employee under the said S.V.Kumar. The 2nd respondent does not admit the accident and the grievous and multiple injuries of R.Ravi in the said accident. Hence, 2nd respondent is not liable to pay any compensation as he is not real the owner of the vehicle at the time of the accident. Hence, the 2nd respondent is unnecessary party to the above proceedings and the real owner S.V.Kumar is a necessary party to the above case. The compensation is claimed under various heads in column No.21 in para (a) to (h) are baseless and highly excessive. Hence, this respondent is not liable to pay any compensation to the petitioner. Therefore, 2nd respondent prays for dismissal of the petition with cost.

4) The brief averments of the Counter statement filed by the 3rd respondent is as follows;

insurance policy No.170201/31/03/12408 with the commencement of risk on 11.2.2004 to 10.2.2004 was insured in favour of G. Ravichandran, 4/25 & Ganesh Illam, Vasantha Nagar, Vedachandur, Dindigul District. The Insurance Policy contains a specific class the policy covers use of the vehicle s for any purpose other than a) hire or reward etc. According to the petition, the petitioner and some others has travelled as a passengers in the Omni maruthi van Reg.No.TN 01 J 8754. Therefore, there is no liability on the part of the insurer to pay any compensation. Since the insurance policy stands in the name of G. Ravichandran and he said have transferred the vehicle S.V. Kumar, the insurer is absolved from liability. The compensation is claimed under various heads in column No.21 in para (a) to (h) are baseless and highly excessive. Hence, this respondent is not liable to pay any compensation to the petitioner. Therefore, 3rd respondent prays for dismissal of the petition with cost.

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5) The following points have arisen for consideration:

- 1) Whether the accident had happened due to the rash and negligent driving of the driver of the Maruthi Omni bearing Reg.No.TN 01 J 8754?
- 2) Whether the petitioner is entitled to any compensation, if any, what is the quantum?
- 3) Who is liable to pay the compensation to the petitioner?

6) On the Petitioner's side, the petitioner was examined as P.W.1 and Ex.P1 to Ex.P8 were marked through him and Mr.Dr.S. Venkatesan was examined as PW2 and Ex.P9 to Ex.P11 were marked through him. On the respondent side, no witness were examined and no documents were marked.

7) Arguments of both side:

The learned counsel for the petitioner argued that the petitioner to sustained grievous injury in the accident on his index finger also suffered with permanant disability of 10%. As per the evidence of PW2 who is the Doctor treated the petitioner immediately after the accident. There is no contra evidence regarding the negligence aspect and medical records, the petitioner was travelled in the Maruthi Omni van only in a friendly manner and not as a passenger who was hired the vehicle. The petitioner and his other friends were travelled in the Omni Van only as a friend of the 1st respondent Sangameswaran who is the driver of the vehicle, which is evident from the statement of the complainant in the First Information report itself. The 3rd respondent who is the insurance company is not denying the insurance coverage of the vehicle, but, admitting the insurance coverage in 2nd para of the counter. Therefore, considering all these aspects prays for reasonable award.

PW2 is very higher side and therefore seeking for the dismissal of the petition.

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8) Point No.1

The petitioner has filed this petition claiming compensation of a sum of Rs.2,73,000/- and restricted into Rs.2,00,000/- in connection with the injuries sustained by him in a road accident on 5.5.2004. The petitioner was examined himself as PW1 and clearly and categorically deposed about the accident and the rash and negligent driving of the 1st respondent and he almost reiterated the narration of the facts as set forth in the petition. EX.P1 is the FIR registered against the driver of the vehicle Maruthi Omni bearing Reg.No.TN 01 J 8754 who is the 1st respondent herein. The Motor Vehicle Inspector's report of the said vehicle was not marked by the petitioner. But, the 3rd respondent did not raise any defence regarding the negligence aspect and mechanical defect of the vehicle. Therefore, the non production of MVI report is not fatal in this case. The First respondent was, even after receipt of notice from the court does not appear before the court and remained exparte throughout without filing counter. In the counter filed by the 3rd respondent who is the insurer of Maruthi Omni bearing Reg.No.TN 01 J 8754 the negligence aspect was not denied, the 3rd respondent denied only the liability part of the insurer as the vehicle was used for hire purpose and the 2nd respondent not transfer in the owner name in the registration certificate. But the 3rd respondent who was permitted to contest the case on all grounds which are available to the insured of the offending vehicle under section 170 of M.V.Act (as per the orders in I.A.404/05 dated 27.6.2005 and I.A.No.212/18 Dated 5.3.2018) has not chosen to examine the 1st respondent who is the driver of the vehicle to contradict the evidence of P.W.1. The rough sketch Ex.P3 and observation mahazar Ex.P2 also marked by the petitioner to substantiate the nature and place of the accident. The driver of the vehicle, who is the 1st respondent was also remained exparte and who is the only person competent to speak about the accident apart from petitioner. First respondent seems to have not challenged the first information report filed against him before the court of law. Admittedly there is no another vehicle was involved in the accident. Petitioner claims that the vehicle in which he was travelled was driven by its driver in a rash and negligent manner and this accident had been occurred. The reading of the First Information report itself shows the negligence of the 1st respondent. In the First

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Information report the informant states as follows; “..... காலை 6.00 மணியளவில் நாங்கள்

revealed the nature of the accident which is occurred only due to the negligence of the driver without involvement of the other vehicle. Therefore, when there is no valid rebuttal evidence on the side of the respondent with respect to negligence aspect and the evidence of P.W.1 remains unchallenged and on the basis of the evidence of P.W.1 and petitioner side exhibits relating to the investigation of the police, this tribunal hold that the accident had happened only because of the rash and negligent driving of the 1st respondent who is the driver of the vehicle Maruthi Omni bearing Reg.No.TN 01 J 8754 involved in the accident and this point is answered accordingly.

9) Point No:2

In injury cases, the claimants are entitled to pecuniary as well as non pecuniary damages. Apex court in Raj Kumar Vs Ajay Kumar 2011 (1) SCC 343 held that compensation awarded must be "just compensation" means to the extent possible Tribunal fully and adequately restore the claimant to the position which he/she was having prior to the accident. The person is not only to be compensated for physical injury, but also for loss which he /she suffered as a result of such injury. Apex court in R.D.Hatangadi Vs Press Control (India) Pvt Ltd (1995) 1 SCC 551 held that pecuniary and non pecuniary compensation to be assessed separately. Pecuniary damages are those which the victim has actually incurred, which are capable of being calculating in terms of money, whereas non pecuniary damages are those which are not capable of being assessed by arithmetical calculation, however no amount of compensation can restore the physical frame of the victim, therefore object to compensate such injury is "so far as money can compensate" because it is impossible to equate money with the human suffering or personal deprivation. To compute compensation involved some guess work,

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some hypothetical considerations, some amount of sympathy linked with the nature of disability caused. In Nagppa Vs Gurdayal Singh 2003 (2) SCC 274 apex court observed that while calculating such damages Tribunal required to have some guess work taking into account the inflation factor.

In the light of aforesaid guidelines and parameters, this Tribunal has to assess the compensation to be awarded to the claimant/petitioner.

The petitioner has claimed a sum of Rs.2,73,000/- and restricted into Rs.2,00,000/- towards compensation for the injuries sustained by him in the accident.

In this point, the quantum of compensation has to be decided under the following heads as claimed by the petitioner.

- 1) Loss of earning
- 2) Transport expenses
- 3) Extra Nourishment
- 4) Damages to cloth

claims that he was doing Manager and incharge work at "Team united express, Erode branch" from which earned Rs.4,000/- per month. To prove the said fact the petitioner has not filed any documentary evidence to ascertain the income of the petitioner. According to the Apex Court decision in - Ramachandrappa V.Manager, Royal Sundaram Alliance Insurance Company Ltd., 2011 (2) TN MAC 190 (SC) : 2011 (13) SCC 236, When there is no proof for monthly income, employment and educational qualification, the income of the petitioner can be safely fixed at Rs.4,500/- per month at the probability of getting at least a minimum of Rs.150/- per day even if petitioner is a daily coolie. This accident was occurred in the year 2004. Therefore the petitioner's monthly income was taken as Rs.3,000/- per month. The petitioner claims that immediately after the accident the petitioner was taken to Government hospital, Erode and after first aid treatment and there after shifted to Sundar hospital, Erode and treated as 15 days. But, the petitioner has not filed any discharge summary or other treatment particulars except the wound certificate and medical bills. In the wound certificate Ex.P4 it was

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mentioned that inpatient treatment from 5.5.2004 to 11.5.2004 for grievous injuries sustained by him. Therefore naturally, he may lost his income for the period of one month. Accordingly, the petitioner is entitled to get a sum of Rs.3,000/- under this head.

2) TRANSPORT EXPENSES:

Under this head, the petitioner has claimed a compensation of Rs.5,000/-. The petitioner was residing at No.224, Thiru.Vi.Ka. Street, Municipal colony, Erode at the time of accident. The accident took place at Salem to Sankagiri main road near PRM Kalyana Mandabam, Sankagiri. Petitioner was treated as inpatient for the grievous injuries sustained by him. But no document regarding transport expenses was filed by the petitioner. However, on considering the distance of residential place of the petitioner and place of accident and place of taking treatments, nature of injury and duration of treatment, this tribunal decides that the petitioner is entitled to get a sum of Rs.1,000/- as compensation under this head.

3) EXTRA NOURISHMENT:

Under this head, the petitioner has claimed a compensation of Rs.10,000/-. In the instant case, the petitioner was sustained grievous injuries. The petitioner claims that immediately after the accident the petitioner was taken to Government hospital, Erode and after first aid treatment and there after shifted to Sundar hospital, Erode and treated as 15 days. But, the petitioner has not filed any discharge summary or other treatment particulars except the wound certificate and medical bills. In the wound certificate Ex.P4 it was mentioned that inpatient treatment from 5.5.2004 to 11.5.2004 for grievous injuries sustained by him. For quick

The petitioner has claimed Rs.200/- under this head. But there is no document or evidence were produced by the petitioner to prove the damages. Considering the mode of Accident and nature of injuries, this tribunal decides that the petitioner is entitled Rs.200/- towards damages to clothing only.

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5) DOCTOR FEES, MEDICINE, ETC.,:

Under this head the petitioner claims Rs.50,000/- towards Doctor fees, medicine etc., The petitioner claims that immediately after the accident the petitioner was taken to Government hospital, Erode and after first aid treatment and there after shifted to Sundar hospital, Erode and treated as 15 days. But, the petitioner has not filed any discharge summary or other treatment particulars except the wound certificate and medical bills. In the wound certificate Ex.P4 it was mentioned that inpatient treatment from 5.5.2004 to 11.5.2004 for grievous injuries sustained by him. Due to the accident, as per the wound certificate Ex.P4 the petitioner sustained injuries such as; 1) Contusion near left eye. 2) Contusion over the left shoulder 3) Abrasion 2 x 1 cm over the dorsum of left finger. X-ray – Left finger fracture neck of 2nd metatarsal and the Doctor opined that injury No.1 and 2 is simple and injury No.3 is grievous in nature.

To prove the medical expenses spent by him the petitioner has filed the following documents in connection with medical expenses apart from the wound certificate and medical prescriptions.

Ex.No.	Hospital Name	Amount Rs.
Ex.P5	Sri Raja Medcal bills and Sindhu medical bill	2,021-00
Ex.P11	X-ray bill	400-00
	Total	2,421-00

The 3rd respondent have raised serious objection regarding the veracity of the medical bills during the cross examination of PW1. The bills are all stands in the name of the petitioner. The petitioner also filed the medical prescriptions as Ex.P6 series. Considering the nature of injury, period and mode of treatment, no serious suspicion arise in the genuineness of the bills. Therefore, the petitioner is entitled to a sum of Rs.2,421/- towards medical expenses and rounded of Rs.2,400/- under this head towards compensation for medical expenses.

1 cm over the dorsum of left finger. X-ray – Left finger fracture neck of 2nd metatarsal and the Doctor opined that injury No.1 and 2 is simple and injury No.3 is grievous in nature.

The Doctor who examined the petitioner for the purpose of assessing disability and who is also treated the petitioner immediately after the accident was examined as PW2 and who assessed 10% of permanent disability to the petitioner.

There can be no yard stick fixed to impart compensation for pain & sufferings, however, having regard to the circumstances detailed above and in view of the facts that the petitioner is having the entire life before him, it can be safely presumed that living each day, itself is an experience of pain & sufferings for him as he has been made to undergo not only physical pain but mental agony and frustration as well as emotional turmoil caused by incessant trauma and uncertainty of his recovery. Though, there can be no measurement for assessing the pain & sufferings undergone by a victim of accident, yet in view of the celebrated judgment of R.D.Hattangadi Versus Pest Control (India) (P) Ltd., (1995) 1 SCC 551, in which the Hon'ble Supreme Court apart from having acknowledged the need of granting compensation to the accident victims on pecuniary grounds, has laid down the guidelines for due compensation on account of non-pecuniary heads as well. The award for accident victims for having undergone trauma due to pain & sufferings received in the accident, is now well recognized. The relevant observations of the judgment are detailed herein below:

"Broadly speaking while fixing an amount of compensation payable to a victim of an accident, the damages have to be assessed separately as pecuniary damages and special damages. Pecuniary damages are those which the victim has actually incurred and which are capable of being calculated in terms of money; whereas non-pecuniary damages are those which are incapable of being assessed by arithmetical calculations. In order to appreciate two concepts pecuniary damages may include expenses incurred by the claimant; (i) medical attendance; (ii) loss of earning of profit up to the date of trial; (iii) other material loss. So far non-pecuniary damages

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are concerned, they may include (i) damages for mental and physical shock, pain and suffering, already suffered or likely to be suffered in future; (ii) damages to compensate for the loss of amenities of life which may include a variety of matters i.e. on account of injury the claimant may not be able to walk, run or sit; (iii) damages for the loss of expectation of life, i.e., on account of injury the normal longevity of the person concerned is shortened; (iv) inconvenience, hardship, discomfort, disappointment, frustration and mental stress in life."

Though, there is no yard-stick fixed to assess the pain & sufferings undergone, having regard to the severity of the injuries, age of the petitioner, period of treatment and the nature of loss of amenity suffered by him due to restriction of movement in left hand wrist and mal

disability and Rs.75,000/- towards compensation for loss of earning power.

As per the reported Judgement of our Hon'ble Supreme Court reported in 2017 (2) TN MAC 465 (SC) it is held that the award of pecuniary part for physical disability and for future loss of earning is certainly a duplication and what is to be compensated is only the loss on account of disability. In this case also the petitioner is entitled for the loss of earning power and therefore in view of the reported Judgement of our Hon'ble Supreme Court this tribunal concludes that this petitioner is not entitled separate amount of compensation under the head of disability.

The Doctor who examined the petitioner for the purpose of assessing disability and who is also the treated the petitioner immediately after the accident was examined as PW2 who deposed that, while examining the petitioner by taking x-ray he found that the left hand finger of the petitioner found mal-united and in a curved position. Therefore, it is difficult for the petitioner to ride the two wheeler and catch the things with using left hand and lifting heavy objects by using left hand. The left hand wrist movements also found restricted. Therefore, the Doctor assessed 10% of permanent disability to the petitioner.

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The disability certificate issued by the PW2 Mr. Dr.S.Venkatesan, is marked as EX.P9 and X-ray is marked as Ex.P10. The doctor has deposed that he treated the petitioner immediately after the accident and from the medical records and treatment details and he has ascertained the disabilities. Except the suggestion that the disability certificate was issued with the intention to help the petitioner and the disability assessed was excessive and if the petitioner would follow the instruction of the Doctor, the petitioner's fractured finger bone may not have mal-united, which also denied by PW2, nothing has been elucidated from PW2. No oral evidence also let in by the respondent's side either to contradict or to disprove the disability assessed and fixed by the qualified doctor. However the disability certificate is calculated by including the pain and sufferings and the disability assessed is for particular part.

As per the amendment made in the persons with disabilities rules in December 2009 the Government of India amended the rules and thereby enable simplified and decentralized procedure for issuance of disability certificate. The amended rules replace "Medical Board" by "Medical Authorities" to be notified by the appropriate Government. Pursuant to the amendment to the above rules, guidelines were issued to state Governments in February 2010 to effect suitable changes in their rules and notify the Medical Authority. In the guidelines, multi-tier Medical Authorities have been suggested so that in respect of obvious disabilities, the disability certificate can be issued at the level of Primary Health Centres (PHCs), Community

Nadu persons with disabilities (equal opportunities, protection of rights and full participation) Rules 2002 were amended as per the Government of India notification dated 30.12.2009 as per the G.O. (Ms) No.21 dated 17.6.2011 Welfare of differently abled persons department. The petitioner in this petition also not willing to appear before the medical board and the

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petitioner wants to examine the **private Doctor who treated the petitioner, regarding the disability**. The respondents also did not adduce any evidence to establish their plea that the disability certificate was fake or that the assessment made by PW2 was not correct and that the petitioner could continue to do the work with same degree of efficiency as he was doing prior to the accident as held by our Hon'ble Supreme Court in a Judgement reported in 2012 ACJ 1459.

Petitioner's income was fixed as Rs.3,000/- per month.

Assessment of Functional Disability:

It may be observed that in certain cases permanent disability may not impact the earning capacity of the injured/victim and in such cases the victim may not be entitled to compensation towards loss of earning capacity on account of disability. However, in other cases even on account of less permanent disability, an injured may be completely incapacitated to carry out his vocation and as such the functional disability may be more than the actual disability suffered by the injured/victim. Hon'ble Supreme Court of India has elucidated with an example that if the left hand of claimant, who is driver by profession is amputated, the actual loss of earning capacity may be virtually 100%.

The observations of the Hon'ble Supreme Court in the case of Raj Kumar Vs. Ajay Kumar, reported in 2011 (1) SCC page 343, whereby the methodology for determining the functional disability has been discussed in paragraphs 13 and 14 are as follows:

"13. Ascertainment of the effect of the permanent disability on the actual earning capacity involves three steps. The Tribunal has to first ascertain what activities the claimant could carry on in spite of the permanent disability and what he could not do as a result of the permanent disability (this is also relevant for awarding compensation under the head of loss of amenities of life). The second step is to ascertain his avocation, profession and nature of work before the accident, as also his age. The third step is to find out whether (i) the claimant is totally disabled from earning any kind of livelihood, or (ii) whether in spite of the permanent disability, the claimant could still effectively carry on the activities and functions, which he was earlier carrying on, or (iii) whether he was prevented or restricted from discharging his previous activities and functions, but could carry on some other or lesser scale of activities and functions so that he continues to earn or can continue to earn his livelihood.

claimant was a clerk in government service, the loss of his left hand may not result in loss of employment and he may still be continued as a clerk as he could perform his clerical function; and in that event the loss of earning capacity will not be 100% as in the case of a driver or carpenter, nor 60% which is the actual physical disability, but far less. In fact, there may not be any need to award any compensation under the head of 'loss of future earnings', if the claimant continues in government service, though he may be awarded compensation under the head of loss of amenities as a consequence of losing his hand. Sometimes the injured claimant may be continued in service, but may not found suitable for discharging the duties attached to the post or job which he was earlier holding, on account of his disability, and may therefore, be shifted to some other suitable but lesser post with lesser emoluments, in which case there should be a limited award under the head of loss of future earning capacity, taking note of the reduced earning capacity.

Due to the injuries sustained in the accident the petitioner claims that he is unable to do any work and in particular not able to Manager and incharge work as before the accident.

The learned counsel for the respondent argued that the disability suffered by the petitioner will not in any way affecting the earning capacity of the petitioner and therefore multiplier method of calculation need not be applied for this case. In the Judgement reported in 2017 (1) TN MAC Page – 410 our Hon'ble Supreme Court on 2.2.2017 was pleased held as follows;

IN THE SUPRME COURT OF INDIA

Sandeep Khanuja

---- Appellant

Vs

Atul Dande & another

---- Respondents

Para – 12 - We may observe at the outset that it is now a settled principle, repeatedly stated and restated time and again by this Court, that in awarding compensation the multiplier method is logically sound and legally well established. This method, known as 'principle of multiplier', has been evolved to quantify the loss of income as a result of death or permanent disability suffered in an accident.

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Recognition to this principle was given for the first time in the year 1966 in the case of Municipal Corporation of Delhi v. Subhagwanti & Ors.[1] Again, in Madhya Pradesh State Road Transport Corporation, Bairagarh, Bhopal v. Sudhakar & Ors.[2], the Court referred to an English decision while emphasising the import of this principle in the following manner:

4. A method of assessing damages, usually followed in England, as appears from Mallet v. McMonagle[3], is to calculate the net pecuniary loss upon an annual basis and to arrive at the total award by multiplying the figure assessed as the amount of the annual dependency by a number of year's purchase that is the number of years the benefit was expected to last, taking

multiplier method involves the ascertainment of the loss of dependency or the multiplicand having regard to the circumstances of the case and capitalising the multiplicand by an appropriate multiplier. The choice of the multiplier is determined by the age of the deceased or that of the claimant, as the case may be. In injury cases, the description of the nature of injury and the permanent disablement are the relevant factors and it has to be seen as to what would be the impact of such injury/disablement on the earning capacity of the injured. This Court, in the case of U.P. State Road Transport Corporation & Ors. v. Trilok Chandra & Ors.[4] justified the application of multiplier method in the following manner:

13. It was rightly clarified that there should be no departure from the multiplier method on the ground that Section 110-B, Motor Vehicles Act, 1939 (corresponding to the present provision of Section 168, Motor Vehicles Act, 1988) envisaged payment of just compensation since the multiplier method is the accepted method for determining and ensuring payment of just compensation and is expected to bring uniformity and certainty of the awards made all over the country.

The multiplier system is, thus, based on the doctrine of equity, equality and necessity. A departure therefrom is to be done only in rare and exceptional cases.

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As per the reported Judgement of our Hon'ble High Court, Madras reported in 2009 (2) TN MAC page 336 in para – 14 and 22 it is held as follows;

Para 14 - The purpose of production of a disability certificate was only for assessment of the percentage of Disability. The Tribunal was not bound to accept the Disability Certificate as a gospel truth. The Disability Certificate has to be proved like any other document in the manner known to law. The burden of proof is always on the claimant to prove the disability. The extent of proof required for proving the Disability Certificate depends upon the facts of a given case. In case the Disability Certificate was issued by the Medical Officer, who had the benefit of treating the injured, such Medical Officer would be in a better position to tender evidence with reference to the injury sustained by the claimant, treatment given, extent of permanent disability as well as the loss of earning capacity. However, in cases, wherein certificates were issued by the Medical Officers other than the Doctor, who treated the injured, the evidence of such Medical Officers require strict scrutiny. However, it cannot be said that such certificates are inadmissible in evidence. The evidence so tendered by the Doctors, who had no opportunity to treat the injured, should be convincing and it should be based on accepted norms. It is only the standard of proof which would differ.

Para – 22 – The correctness of the Disability Certificate is a matter to be gone into by the learned claims Tribunal. While arriving at a conclusion as to whether the claimant has sustained the Disability as found mentioned in the Disability Certificate, the claims Tribunal was expected to consider the injuries as per the Wound Certificate as well as the case sheets produced on the side of the claimant, the details furnished in the Disability Certificate as well as the evidence of the Doctor, who had issued the Disability Certificate. The Tribunal was entitled to have a critical analysis of the

prescriptions with the disability certificate Ex.P9 issued by the Private Doctor who treated the petitioner immediately after the accident and considering the guidelines mentioned in the Gazette notification issued by the Ministry of Social Justice and Empowerment Government of India dated 13.6.2001 and mode of treatment underwent by the petitioner, considering the above evidence and avocation of the petitioner (Manager and incharge work), this tribunal conclude that the injuries would cause hardship and would decrease his earning power considerably. And he is also afflicted with other ailments as reflected in the discharge

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summary, the permanent disability has considerably impacted the earning capacity of the petitioner in his work and he may not be able to perform the work with full efficiency as before the accident. In view of above, the functional disability is taken as 5%.

Therefore, this tribunal feels that this is a fit case to calculate the loss of income by using Multiplier method. The petitioner is aged about 37 years at the time of accident as per Ex.P7 Aadhaar card.

The age of petitioner is accordingly considered as 37 years, at the time of accident for purpose of applying the relevant multiplier. In view of the law laid down in Sarla Verma & Ors. v/s Delhi Transport Corporation 2009, ACJ 1298, the relevant multiplier of 15 is applicable for the purpose of assessment of compensation in the present case.

With regard to good future prospects of injured (self employed) 40% of addition of income towards future prospects can be added and made for the purpose of calculation of compensation as per the Judgement of our Hon'ble Supreme Court reported in 2017 (2) TN MAC Page – 609.

The petitioner's monthly income was fixed as Rs.3,000/-.

The compensation is accordingly assessed towards loss of earning capacity at Rs.37,800/-

Rs.3,000/- (monthly income) + Rs.1200/- (40% as future prospectus) = Rs.4200/ x 12 (months) X 5% (functional disability) X 15 (applicable multiplier according to age) which comes Rs.37,800/-.

Headings			Amount in Rs.
1)	Loss of Income	-	3,000-00
2)	Transport expenses	-	1,000-00
3)	Extra nourishment	-	2,000-00
4)	Damages for clothes and Articles	-	200-00
5)	Medical Expenses	-	2,400-00
6)	Pain and Sufferings	-	25,000-00
7)	Disability and Loss of earning Power		37,800-00

Rs.71,400/-, (Rupees Seventy one thousand and four hundred only) towards compensation for the injury sustained by the petitioner and this point is answered accordingly.

10) Point No.3

Considering the facts and circumstances and evidence available in this case, this tribunal while answering point No.1 has decided that the negligence of the driver of the Maruthi Omni bearing Reg.No.TN 01 J 8754 is reason for the accident. The petitioner claims that the 1st respondent is driver and the 2nd respondent is owner of the offending vehicle and the 3rd respondent is the insurer of the offending vehicle. The 3rd respondent is not denying the insurance coverage of the offending vehicle as on the date of the accident in their counter. But, raised a specific defence regarding the liability and mentioned as follows; *“that the insurance policy No.170201/31/03/12408 with the commencement of risk on 11.2.2004 to 10.2.2004 was insured in favour of G. Ravichandran, 4/25 & Ganesh Illam, Vasantha Nagar, Vedachandur, Dindigul District. The Insurance Policy contains a specific class the policy covers use of the vehicle s for any purpose other than a) hire or reward etc. According to the petition, the petitioner and some others has travelled as a passengers in the Omni maruthi van Reg.No.TN 01 J 8754. Therefore, there is no liability on the part of the insurer to pay any compensation. Since the insurance policy stands in the name of G. Ravichandran and he said have transferred the vehicle S.V. Kumar, the insurer is absolved from liability”*. Therefore, this tribunal for the purpose of properly ascertain the liability, direct the 3rd respondent to produce the copy of the policy whether this is comprehensive or act policy to fix the liability. The counsel for the petitioner also issued a notice to the respondents 2 and 3 for cost production of the policy. But, the respondents 2 and 3 did not come forward to produce the insurance policy. Therefore, this tribunal is conclude to pass order from the available evidence.

From the reading of the counter filed by the 3rd respondent it is revealed that the policy issued by the 3rd respondent in favour of 2nd respondent is valid and was in live on the date of accident. The 3rd respondent did not adduced any evidence to substantiate the defence raised in their counter regarding the liability to pay compensation to the petitioner as mentioned in the

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counter. Moreover, the statement of the informant which is available in the First Information report which is earliest document after the accident shows the relationship of the passengers travelled in the vehicle with the driver. The First Information report it was mentioned as follows; “நான் மற்றும் எனது நண்பர்கள் வினோத்துமார், மகேந்திரன், ரவி, பிரகாஷ் ஆகிய நாங்கள் எங்கள் நண்பர் சங்கர் என்கிற சங்கமேமஸ்வரன் என்பவரது ஆம்னி வேண் டி.என்.01 ஜே 8754 வண்டியில்” Therefore, this tribunal conclude that the petitioner and others were

subsequently did not adduced any evidence to substantiate his defence. Therefore, the 3rd respondent insurance company being the insurer of the offending vehicle Maruthi Omni bearing Reg.No.TN 01 J 8754 driven by the 1st respondent and owned by the 2nd respondent, the 3rd respondent insurance company is liable to compensate the petitioner and this point is answered accordingly.

11) In the result, this petition is allowed in part with proportionate cost and the petitioner is awarded compensation of a sum of Rs.71,400/-, (Rupees Seventy one thousand and four hundred only) together with interest at the rate of 7.5% per annum from the date of the petition till date of deposit, less the period of default if any, payable by the 3rd respondent on behalf of the 2nd respondent and the 3rd respondent is directed to deposit the award amount to the credit of the “MACT” Special Subordinate Judge, which is the Bank Account of this claim Tribunal specially being maintained for this purpose at State Bank of India town branch Erode – 638 011, **Account No.35981547810 and IFSC Code – SBIN0007897 directly by NEFT (or) RTGS mode** and the 3rd respondent insurance company is directed to submit a letter to this claim Tribunal enclosing a copy of the Bank advise in prescribed format as directed by the Hon'ble High Court in the Judgement reported in 2016 (3) CTC page 128, after serving a copy of the advice to the petitioner within two months from today and on such deposit, after

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necessary application by the petitioner and by the order of this Tribunal, the award amount with accrued interest and cost to be transferred to the Bank Account of the petitioner R. Ravi being maintained Axis bank Ltd., Erode – 638 011, **Account No.118010100127325 and IFSC Code – UTIB0000118** directly from the Tribunal's MACT Bank Account and considering the quantum of the award, the petitioner is permitted to withdraw this amount as per his convenient, excess court fee paid by the petitioner if any is ordered to be returned to the petitioner and the petitioner's Counsel fee is fixed as **Rs.2640/-** (Rupees Two thousand six hundred and forty only).

This order is directly dictated to the steno typist by me and directly typed by her in a computer and corrected and pronounced by me in a open court, this the 10th day of April 2018.

Special Subordinate Judge,
Special Subordinate Court
(to deal with M.C.O.P. cases)
Erode.

List of witnesses

PW 1. R. Ravi (claimant)

SL.NO	Date	Particulars	Nature
Ex.P1	5.5.2004	F.I.R.	Attested copy
Ex.P2	5.5.2004	Observation Mahazer	Attested copy
Ex.P3	5.5.2004	Rough sketch	Attested copy
Ex.P4	5.5.2004	Wound certificate	Attested copy
Ex.P5	--	Medical bills ..21..	Original
Ex.P6	--	Medical prescriptions	Original
Ex.P7	--	Aadhaar card	Attested copy
Ex.P8	--	Bank pass book	Attested copy
Ex.P9	5.2.2018	Disability certificate	Original
Ex.P10	--	X-ray	Original
Ex.P11	5.2.2018	X- ray bill	Original

Respondents side:-

-- Nil --

Spl.S.J
Erode.

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FAIR ORDER
MCOP No.01/2018
10.4.2018
Spl. Sub.Court, Erode

IN THE COURT OF THE MOTOR ACCIDENT CLAIMS TRIBUNAL
(SPECIAL SUBORDINATE JUDGE COURT) - ERODE
PRESENT: THIRU. **G.KULASEKARAN**, B.A., LL.M.,

SPECIAL SUBORDINATE JUDGE

Tuesday the 10th day of April - 2018

(Thiruvalluvarandu 2048 – Sri Heyvilambi Varudam – Panguni Thingal 27th day)

M.C.O.P No:01/2018

R.Ravi aged about 34 years son of Ranganathan Residing at 224, thiru-vi-ka street,
Municipal colony Erode. ----- Petitioner

VS

1. S. Sangameswaran, age not known S/o. Saravanan, Radhakrishnan veethi, Periya valasu, veerappan palayam, Erode.
 2. G. Ravichandran, age not know, S/o. Ganesh, 4/25, ganesh illam vasantha nagar, Vedachandur, Dindigul District.
 3. United India Insurance Co., Ltd., No. 448 A, Dr. Nanjappa road Coimbatore - 18.
- Respondents

This petition was coming up for final hearing before me on 9.4.2018 in the presence of Thiru. S. Senthilkumar, Advocate for the petitioner and Thiru. K. Venugopal, Advocate for the 2nd respondent and Smt. A. Nagarathinam, Advocate for the 3rd respondent and the 1st respondent was remained exparte and hearing upon the arguments on both sides and perusing the connected records and having stood over till this day for consideration, this tribunal made the following,

Petition filed on 2.8.2004 u/s 166 of Motor vehicle Act 1988 claiming a compensation of a sum of Rs.2,73,000/- and restricted into Rs.2,00,000/- together with subsequent interest and costs in connection with the injuries sustained by the petitioner in a Motor vehicle accident.

AWARD

- 1 That this petition is allowed in part with proportionate cost.
- 2 The petitioner is awarded compensation of a sum of Rs.71,400/-, (Rupees Seventy one thousand and four hundred only) together with interest at the rate of 7.5% per annum from the date of the petition till date of deposit, less the period of default if any, payable by the 3rd respondent on behalf of the 2nd respondent.
- 3 The 3rd respondent is directed to deposit the award amount to the credit of the “MACT” Special Subordinate Judge, which is the Bank Account of this claim Tribunal specially being maintained for this purpose at State Bank of India town branch Erode – 638 011. **Account**

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- 5 On such deposit, after necessary application by the petitioner and by the order of this Tribunal, the award amount with accrued interest and cost to be transferred to the Bank Account of the petitioner R. Ravi being maintained Axis bank Ltd., Erode – 638 011, **Account No.118010100127325 and IFSC Code – UTIB0000118** directly from the Tribunal's MACT Bank Account and considering the quantum of the award, the petitioner is permitted to withdraw this amount as per his convenient.
- 6 Excess court fee paid by the petitioner if any is ordered to be returned to the petitioner.
- 7 The petitioner's Counsel fee is fixed as **Rs.2640/-** (Rupees Two thousand six hundred and forty only).
- 8 That the respondents be and hereby is also directed to pay a sum of **Rs.3,040/-** being the cost of this petition to the petitioner.

Details of cost list

	Petitioner side (Allowed Cost)Rs.	Respondent side R1 to R3
Stamp on petition	230-00	-
Stamp on Vakkalath	5-00	-
Stamp on Batta Memo	105-00	-
Preparation of batta memo	20-00	-
Stamp for documents	40-00	-
Advocate fees	2,640-00	-
Proportionate cost	3,040-00	Nil
(Cost list not filed)		

Given under my hand and the seal of this Court this the 10th day of March 2018.

Special Subordinate Judge,
(to deal with M.C.O.P. cases)
Erode.

AWARD
MCOP No.01/2018
10.4.2018
Spl. Sub.Court, Erode