

**(2009) 03 MAD CK 0020**

**In the Madras High Court**

**Case No :** Civil Miscellaneous Appeal No. 655 of 2004 and Civil Miscellaneous Petition No. 3374 of 2004

The Branch Manager National Insurance Co. Ltd.

APPELLANT

Vs

C. Sivakumar and R. Mani

RESPONDENT

---

**Date of Decision :** 13-03-2009

**Acts Referred:**

Motor Vehicles Act, 1988 — Section 163A  
Penal Code, 1860 (IPC) — Section 279, 337, 338  
Workmens Compensation Act, 1923 — Section 4(1)

**Citation :** (2009) 03 MAD CK 0020

**Hon'ble Judges :** M. Venugopal, J

**Bench :** Single Bench

**Advocate :** K. Suryanarayan and G. Shanmugam, for the Appellant; T. Papaiah, Dharmarajan and M. Murthy, for the Respondent

---

## **Judgement**

M. Venugopal, J.—The appellant/National Insurance Company has preferred this Civil Miscellaneous Appeal as against the award dated

11/12/2002 passed in M.A.C.T.O.P. No. 175 of 1998 by the Motor Accidents Claims Tribunal ½ Subordinate Judge, Dharmapuri, awarding a

total compensation of Rs. 6,55,315/- (Rupees six lakhs fifty five thousand three hundred and fifteen only) together with interest at 9% p.a., from

the date of filing of the petition till date of payment.

2. Dis-satisfied with the award passed, the appellant/Branch Manager, National Insurance Company Limited, Hosur, Dharmapuri District has

projected the present appeal before this Court.

3. The short facts of the case are as follows:

The first respondent/claimant on 25/6/1997 was travelling as a pillion rider in TVS Suzuki Motor Cycle bearing Registration No. TN29B-7103

and that the said Motor Cycle was driven by one Siva, S/o. Muniyappan of Nallur Village in Marandahalli and when the Motor Cycle was

proceeding near Vattaganampatti diversion road in A. Mallapuram to Palacode Road, the bus bearing Registration No. TN29A-1914 belonging to

the second respondent/first respondent and insured with the appellant/second respondent, was driven by the driver V. Jeyapaul in a rash and

negligent manner at a high speed without following the traffic rules and without sounding the horn dashed against the Motor Cycle and caused the

accident. As a result of impact, the first respondent/claimant and the rider fell down and the wheel of the bus ran over the left hand, which was

crushed. Resultantly, the first respondent/claimant had sustained injuries.

4. The accident had taken place only due to the rash and negligent act of the driver of the bus bearing Registration No. TN29A-1914.

5. The first respondent/claimant was admitted into the Government Hospital at Palacode after initial treatment. Since his condition was serious, he

was taken to St. Johns Medical College Hospital, Bangalore for better treatment on 25/6/1997 itself. He remained as an in-patient till 27/8/1997

and he was advised to come for check-up periodically every week. His left hand was amputated on 25/6/1997. As a result of the accident, the

first respondent/claimant was unable to continue his job in Central Reserve Police Force or he could not do any other alternative duty. He was

always in need of assistants even for his own activities and even for wearing clothes. He was 23 years old and his marriage prospects had been

curtailed and his own future was shattered. He was unable to drive cycle or any vehicle including two wheelers. He was to support his aged

parents and unmarried sister and due to the sudden accident, all the members of the family and dependants were suffering a lot and they had been

subjected to great mental shock and agony. The first respondent/claimant is entitled to claim a sum of Rs. 24,99,750/-, however, he restricted his

claim to an extent of Rs. 15 lakhs only.

6. Since the driver of second respondent/first respondent caused the accident, the second respondent/first respondent was vicariously liable to pay

compensation to the first respondent/claimant. The appellant/second respondent as per policy condition, (the appellant/second respondent) was

bound to indemnify the second respondent/first respondent and both should

jointly and severally liable to pay the compensation claimed by the first respondent/claimant. Hence, the first respondent/claimant prayed for a compensation award of Rs. 15 lakhs together with interest at 15% p.a., from the date of filing of the petition till date of payment with costs.

7. Before the Tribunal, the second respondent/first respondent, being the owner of the offending bus was set ex parte.

8. The appellant/second respondent in its counter inter alia took the pleas that the driver of TVS Suzuki Motor Cycle bearing Registration No.

TN29B-7103 was not having a valid and effective driving licence to drive the Motor Cycle at the time of accident and that the Insurance Company

of the Motor Cycle was not added as a respondent in the claim petition and that the claim petition was to be dismissed for non-joinder of

necessary party and that the first respondent/claimant should prove that he was a Central Reserve Police Force Constable and was working with

the Government of India on a monthly salary of Rs. 3,100/- and that for the first respondent/claimant as pillion rider in the Motor Cycle driven by

driver who was not having a valid driving license and drove the Motor Cycle in Vattaganampatti diversion road, which joins with the main road ½

A.Mallapuram to Palacode in a rash manner without stopping at the main road and without seeing the bus coming in the main road had a turn

towards the main road and hit the back portion of the Motor Cycle against the bus and caused the accident and further that, the first

respondent/claimant alone sustained injury because only the back portion of the Motor Cycle contacted the bus and there was no rash and

negligent driving of the bus by its driver and hence, the appellant/second respondent was not liable to pay any compensation to the first

respondent/claimant and therefore, prayed for dismissal of the claim petition.

9. Before the Tribunal, on the side of the first respondent/claimant, witnesses P.Ws.1 and 2 were examined and Exs.A.1 to A.13 were marked.

On the side of second respondent(owner of the bus) and on the side of appellant/second respondent Insurance Company, no one was examined

as witness and no documents were marked. After contest, on an appreciation of oral and documentary evidence, the Tribunal has granted a total

compensation of Rs. 6,55,315/- along with interest at 9% p.a., from the date of filing of the petition till date of realisation to the first

respondent/claimant, payable by the appellant/second respondent Insurance Company. The Tribunal has determined the lawyers fee at Rs.

13,550/-.

10. The learned Counsel for the appellant/Insurance Company urges that the Tribunal has committed an error in awarding Rs. 6 lakhs under

Disability, Loss of Earning Power and Pain and Suffering without giving the break up details as to the award of compensation in this regard and

further, the Tribunal has found that the first respondent/claimant has not been removed from service as Police Constable, but wrongly awarded the

compensation for future Loss of Earning Power and more over the Tribunal has placed reliance on Ex.A.7 certificate dated 26/11/2002 issued by

the Additional Director of Central Reserve Police Force without there being any oral evidence and has come to the wrong conclusion that the first

respondent/claimant cannot perform his duty as Police Constable and that the Tribunal should not have granted Rs. 15,000/- towards Extra

Nourishment expenses without any documentary proof and on the basis of physical disability at 85% as assessed by P.W.2 the Doctor, the

Tribunal ought not to have granted any compensation under the caption of "Loss of Earning Power" and that the Tribunal has not followed the

procedure envisaged u/s 4(1)(c)(ii) r/w. explanation II of Workmen's Compensation Act, 1923 and Serial No. 5 of Second Schedule u/s 163A of

Motor Vehicles Act, 1988, but it has granted the compensation for future Loss of Earning on the basis of physical disability and in any event, the

award passed by the Tribunal is exorbitant and therefore, prays for allowing the appeal to prevent miscarriage of justice.

11. To establish the plea of negligence, the first respondent/claimant has examined himself as P.W.1 before the Tribunal. In his evidence,

P.W.1/claimant has deposed that on 25/6/1997, the accident has taken place at 4.30 p.m., and that he has been travelling in TVS Suzuki Motor

Cycle from Palacode along with his friend and that his friend Siva has driven the Motor Cycle and that he travelled as a pillion rider and that a bus

coming in their opposite direction, dashed against their Motor Cycle, as a result of which he fell down and the wheel of the bus ran over his left

hand and that he has sustained injury on right leg, forehead, etc., and that he has been admitted in Palacode Government Hospital and after getting

first aid treatment, he has been taken to Bangalore St. Johns Hospital, where his left hand has been removed and for the purpose of healing, the wound in his left hand the flesh in the left leg has been used and a surgery has been performed on his left hand and that in St. Johns Hospital, he has taken treatment for 64 days and as a result of the accident, he has lost his left hand and suffered a permanent disability and that Ex.A.4 is the First Information Report.

12. P.W.2 the Doctor who has given Ex.P.13 disability certificate has assessed the disability of the first respondent/claimant at 85%.

13. A perusal of Ex.P.4 xerox copy of First Information Report shows that the first respondent/claimant's friend Siva who has driven the Motor

Cycle at the time of accident has figured as complainant in the case and the suspected accused is mentioned as Vel Muruga, Driver of the bus

bearing Registration No. TN29A-1914. Further, it transpires from Ex.A.4 the First Information Report that Marandahalli Police, Dharmapuri

Circle in Crime No. 569 of 1997 has registered a criminal case under Sections 279, 337 and 338 of the Indian Penal Code. As a matter of fact,

the evidence of P.W.1/claimant coincides with the averments made by him in Ex.A.4 First Information Report in regard to the manner and mode of

occurrence. To put it differently, the evidence of P.W.1/complainant to the effect that Vel Muruga bus bearing Registration No. TN29A-1914 has

come in fast speed without sounding horn and dashed against his bus remains unassailable and the same is worthy of acceptance and the same is

accepted by this Court. Further more, the fact that

P.W.1/claimant has sustained injuries like fracture of left arm and other lacerated wounds on fore arm, forehead and abrasions of right side of

abdomen, right knee, right shoulder and ultimately has suffered a permanent disability of 85% as per Ex.P.13 disability certificate issued by P.W.2

the Doctor are all not to be disputed on the side of appellant/Insurance Company and the owner of the bus. Surprisingly, the Driver of the

offending Vel Muruga bus bearing Registration No. TN29A-1914 has not been examined as a witness before the Tribunal. Suffice it to point out

for this Court that in view of the clinching evidence of P.W.1/complainant and Ex.A.4 First Information Report and other documentary evidence in

the case, the accident has occurred due to the driving of the offending bus driver

in a fast speed and negligently and that the driver of the said bus is squarely and solely responsible for the accident and the point is answered accordingly.

14. Coming next to the issue of quantum of compensation to be awarded, this Court pertinently points out that the first respondent/claimant as

P.W.1 has inter alia deposed that the wheel of the bus has ran over his left hand when he has fallen down from the Motor Cycle at the time of

accident and later in St.Johns Hospital at Bangalore, his left hand has been amputated and a surgery has been performed on his left hand for the

purpose of the wound in the hand to get heeled and that he has taken treatment at St.Johns Hospital for 64 days and that he has incurred a medical

expense of Rs. 1,50,000/- and that he has bills towards medical treatment to an extent of Rs. 40,000/- and towards Transportation expenses to

St. Johns Hospital, he has expended a sum of Rs. 6,000/-, but he has receipts to the tune of Rs. 3,000/- and at the time of accident, he is aged 23

years and he has been employed in Central Reserve Police Force at Jammu and Kashmir and when he has come on leave, the accident has taken

place and presently, he is employed in Assam and he is employed as assistant for attending his job on a monthly salary of Rs. 2,000/- and now, he

has been kept as Office Assistant and since he has lost his hand, he has been given the memo and that he has not been married and because of the

accident, he has not gone for the job for 17 months and during this period, he has received half salary and that at the time of accident, he has been

getting a monthly salary of Rs. 3,100/- and further that Ex.A.7 is the proceeding of the Office of the Additional Director General, Central Reserve

Police Force NWZ Chandigarh dated 26/11/2001 addressed to the Deputy Inspector General of Police, Central Reserve Police Force,

Chandigarh/Jalandhar, wherein the first respondent/claimant's name is mentioned in Serial No. 3 as "933882949 Ct C.Shiv kumar 84 BN - to

be reviewed after one year and further in the said document, the purpose is mentioned as "examining considering and assessing the suitability of

personnel of this zone for rehabilitation/retention in service" under the provisions of 7/99 and that his leave certificate is Ex.A.9 and that Ex.A.10

(52 in No.) is the medicine chits issued by the Doctors and that Ex.P.11 is the expenses that had spent in Bangalore Hospital amounting to Rs.

35,796/- and the car hire rent receipts for Rs. 2,250/- is Ex.A.12.

15. The main thrust of the appellant/insurance company's contention is that the Tribunal has not discussed in proper perspective as to how it has

awarded a compensation of Rs. 6 lakhs towards Loss of Income, Pain and Suffering and the Permanent Disability and since the first

respondent/claimant has not lost his job as Police Constable, the total award of Rs. 6,55,315/- passed by the Tribunal is on the excessive side.

16. In Ex.A.1, the wound certificate in respect of the first respondent/claimant issued by the Government Hospital, Palacode, the following injuries

are noted:

1. # of left arm ...abrasion 20 cm x 20 cm
2. Lacerated wound over right elbow 20 cm x 20 cm.
3. Contusion over right shoulder 6 cm x 5 cm.
4. Abrasion over right knee 54 x

and the injury Nos.1 and 2 are grievous in nature and that other injuries are simple one. In Ex.A.2 wound certificate dated 27/10/1997 issued by

St. Johns Medical College Hospital, Bangalore in respect of first respondent/claimant, the following injuries are found.

1. Left - Upper Limb - Soft Tissue Injury to Left Upper Limb and Axilla, Compound Fracture of Left Humerus (Above Elbow Amputation With

Wound Debirement Under G.A. On 25/6/1997).

2. Lacerated Wound 5 CM X 2 CM X 2 CM On Volar Aspect or RT Forearm.
3. Lacerated Wound (RT) Cheek, Forehead).
4. Abrasions (RT) Side of Abdomen.

It is to be significantly pointed out that the casualty Medical Officer who issued Ex.A.2 wound certificate has stated that the injuries 1, 2, 3 and 4

are grievous in nature.

17. It is quite evident from Ex.A.3 Case Summary and Discharge Record of St. Johns Medical Hospital, Bangalore that the first

respondent/claimant has been admitted and Ortho I & undergone AE amputation and thereafter, on 1/8 has been transferred Pl. Surgery for care

of his non healing ulcer on (L) UL. stump and that one wound has been healthy, ssttor performed on 7/8, and graft take 90% small raw area over

soft aspect of axilla and for review in plastic surgery out patient Department after one week on Monday/Wednesday/Friday.

18. In the written argument filed on behalf of the appellant before the Tribunal it is inter alia contended that "Loss of Right to Marry" cannot be

attributed to the Driver of the bus and that the multiplier u/s 163A of the Motor Vehicles Act should be applied. However, in the written argument

of the first respondent/claimant (before the tribunal) a categorical stand has been taken that the first respondent/claimant would have been

promoted to higher post if he had not met with the accident and on promotion, suddenly his salary would have been refixed at a higher level and

because of the unfortunate accident, his whole life has been shattered and battered and affected.

19. It is quite apt to point out that the first respondent/claimant has made the following claims under different heads, claiming various amounts,

which runs as follows:

a. Loss of Earnings ... Rs. 12,00,000

b. Partial Loss of Earning

from to ... Rs....

c. Transport to Hospital ... Rs. 6,000

d. Extra nourishment ... Rs. 15,000

e. Damages to clothing and

articles ... Rs. 3,750

f. Others

1. Medical expenses ... Rs. 75,000

2. Loss of expectation

of life Rs. - - -

3. Loss of Consortium

and affection and love Rs. - - -

4. Loss of future earning

potential of the deceased/

injured ... Rs. 2,00,000

5. Funeral expenses ... - - -

g. Compensation for pain and sufferings and mental

agony ... Rs. 2,00,000

h. Compensation for continuing as permanent disability,

if any ... Rs. 5,00,000

i. Compensation for loss of earning power ... Rs. 3,00,000/-

-----

Rs. 24,99,750/-

-----

But the claim is restricted to Rs. 15 lakhs only.

20. It is significant to make a mention that medically disability is physical impairment and inability to perform physical functions normally. Legally,

disability is a permanent injury to body for which the person should or should not be compensated. Generally speaking, the disability can be

divided into three periods.

(i). Temporary total disability is the period in which the affected person is totally unable to work. During this period, he may receive orthopaedic,

ophthalmological, auditory or speech or any other medical treatment.

(ii). Temporary partial disability is that period when recovery has reached the stage of improvement to that individual may begin some kind of

gainful occupation.

(iii). Permanent disability, applies to permanent damage or loss or use of some part/parts of the body after the stage of maximum improvement

from any medical treatment has been recalled and the condition is stationery.

21. This Court recalls the observation of Lord Halsbury LC in (1900) AC 113 which says "That nobody can suggest that you can by any

arithmetical calculation establish what is the exact amount of money which would represent such a thing as the pain and suffering which a person

has undergone by reason of an accident. Moreover, Viscount Dunedin in (1922) 2 AC - 242 has held that "The True method of expression I

think is that in calculating damages, you are to consider what is the pecuniary consideration which will make good to the sufferer, as far as money

can do so, the loss which he has suffered as the natural result of the wrong done to him. Continuing further, Lord Morison in 1970 AC1 has held

that "½To compensate in money for paying and for physically the consequences is invariably difficult by no other process can be devised than that

of making a monetary assessment.

22. Apart from the above, it is to be noted that while awarding a just and fair compensation, the following factors are to be taken note of by a

competent Court of law. They are:

- a. Pain and suffering.
- b. Loss of amounts
- c. Shortened expectation of life
- d. Loss of earning or loss of earning capacity or both and in some cases, medical treatment and other damages.

The other factors will also include like

- i. That injury actually occurred
- ii. That such injury happened because of accident
- iii. That the claimant suffered as a result of injury.
- iv. Nature of disability "½ partial or total
- v. Nature of disability
- vi. That the injured was treated/hospitalised and
- vii. Effect of injury "½ adversity.

23. It is to be borne in mind that every disability will not affect the earning capacity in the considered opinion of this Court.

24. In this connection, it is relevant to point out that the object of the two Acts, viz., the Motor Vehicles Act, 1988 and the Workmen's

Compensation Act, 1923 is in no way different. However, the prime object of both

the Acts is to provide relief of compensation to the victims of accidents. The only difference between the two Acts is that in regard to the Workmens Compensation Act is concerned, it is confined to Workmen as defined under the Act, while the relief mentioned under Chapters X to XII of the Motor Vehicles Act is available to all the victims of accidents involving a motor vehicle. In fact, both the Acts are beneficial and Social Welfare ones, operating in the same field, in the considered opinion of this Court. Therefore, the choice of forum to be adopted by a claimant is left to his wisdom. Resultantly, the only fetter will be that if a claimant has claimed and obtained a compensation under the Workmens Compensation Act, then he cannot file a claim under the Motor Vehicles Act. Likewise, if a claimant has resorted to the remedy under the Motor Vehicles Act, then it is no longer open to him to work out his remedy under the Workmens Compensation Act, 1923. Suffice it to point out that the present claim made by the first respondent/claimant under the Motor Vehicles Act in respect of the accident that has taken place on 25/6/1997 is perfectly maintainable in law for the considered opinion of this Court.

25. As far as the present case is concerned, the first respondent/claimant has suffered a permanent disability of 85% as per Ex.A.13 and in this regard, this Court awards a sum of Rs. 1,70,000/- (calculating at the rate of Rs. 2,000/- for 1% disability). Since the first respondent/claimant's age has been 23, at the time of accident on 25/6/1997 and in lieu of the fact that he has suffered a permanent disability of 85%, towards pain and suffering, this Court awards a sum of Rs. 50,000/- as a fair, just and a prudent compensation. As per Ex.A.11, the first respondent/claimant has incurred an actual expenditure of Rs. 35,797.25 and hence this Court awards a sum of Rs. 35,797/- as a round figure. As per Ex.A.12 taxi rent receipt, the first respondent/claimant has spent a sum of Rs. 2,550/- and hence this Court grants the same.

26. Though the first respondent/claimant in the claim petition has averred that on account of the accident, he suffered a damage to his watch, clothes and lost the cash, in all amounting to Rs. 3,750/-, since there is no mention of the same in Ex.A.4 First Information Report, this Court is not awarding any sum in this regard. Because of the fact that the first respondent/claimant has suffered a permanent disability arising out of the accident

that has taken place on 25/6/1997, his marriage prospects admittedly have been impaired and hence, in this regard, this Court grants a sum of Rs.

15,000/- as an equitable compensation.

27. In view of the fact that the first respondent/claimant has deposed in his evidence as P.W.1 that he has been kept as Office Assistant in his

office and bearing in mind of a crucial fact that he has suffered a permanent disability of 85%, this Court is of the considered view that his future

promotion avenue is very much affected in the long run and therefore, in this regard this Court grants a consolidated sum of Rs. 25,000/- in the

interest of justice (considering the present and future money value, cost of rise in prices, mode of living and prevailing rate of inflation etc.)

28. In view of the categorical evidence of P.W.1/claimant that he has employed an assistant for attending his personal job on a monthly salary of

Rs. 2,000/- and since he has remained as an in-patient for 64 days at St.Johns' Hospital at Bangalore and bearing in mind of the future attendant

assistant, he requires this Court grants a sum of Rs. 15,000/- as a fair sum. Even though the first respondent/claimant has claimed a sum of Rs.

15,000/- towards Extra Nourishment expenses, considering the fact that he has suffered a permanent disability of 85% as per Ex.A.13 and taking

note of the fact that he has remained as an in-patient for 64 days at St.Johns Hospital at Bangalore and notwithstanding the fact that he has not

whispered anything about the nourishment expenses in his evidence, however, this Court grants a sum of Rs. 7,000/- as global nourishment

compensation to secure the ends of justice.

29. Thus, in all, the first respondent/claimant is entitled to receive a total compensation of Rs. 3,20,347/- (Rs.1,70,000/- + Rs. 50,000/- + Rs.

35,797/- + Rs. 2,550/- + Rs. 15,000/- + Rs. 25,000/- + Rs. 15,000/- + Rs. 7,000/-) {Rupees three lakhs twenty thousand three hundred and

forty seven only) together with interest at 9% p.a., from the date of filing of the petition till date of payment payable by the appellant/insurance

Company. The lawyer's fees is fixed at Rs. 6,775/- (Rupees six thousand seven hundred and seventy five only) by this Court. Consequently, the

award of Rs. 6,55,315/- (Rupees six lakhs fifty five thousand three hundred and fifteen only) granted by the Tribunal is on the excessive side and

the point is answered accordingly.

30. The appellant/Insurance Company is given the liberty to receive the amount lying to the credit of M.A.C.T.O.P. No. 175 of 1998 on the file of

the Motor Accidents Claims Tribunal (Sub-Judge), Dharmapuri by filing necessary payment out application as per Civil Rules of Practice.

Likewise, the first respondent/claimant is entitled to receive his share/balance amount if any (less amount already withdrawn) by filing an

appropriate payment out application as per Civil Rules of Practice. However, the excess amount if any received by the first respondent/claimant,

then the option is given to the appellant/Insurance Company to recover the same from the first respondent/claimant by filing a Execution Petition

before the concerned Court straight away, without resorting to the filing of the suit.

31. For the foregoing reasons narrated supra, this Court allows the Civil Miscellaneous Appeal in part and resultantly, the award passed in

M.C.O.P. No. 175 of 1998 by the Motor Accidents Claims Tribunal namely Sub Judge, Dharmapuri stands modified. However, having regard to

the facts and circumstances of the case, the parties are directed to bear their own costs in this appeal. Consequently, the connected Miscellaneous

Petition is closed.