

C.M.A(MD)No.363 to 365, 479 & 480 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Dated	28.10.2024
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CORAM:

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN
and
THE HON'BLE MR JUSTICE K.K. RAMAKRISHNAN

C.M.A(MD)Nos.363 to 365, 479 and 480 of 2019
and
C.M.P.(MD).Nos.4512 to 4514 of 2019

C.M.A.(MD).No.363 of 2019:

National Insurance Company Limited
Through its Divisional Manager,
No.37.C, S.N.High Road,
Opposite to Head Post Office,
Tirunelveli.

... Appellant/ 2nd Respondent

Vs.

1.Dhanushkodi Athithan	... 1 st Respondent /Petitioner
2.Madasamy	... 2 nd Respondent/1 st Respondent
3.Anusha Devi	... 3 rd Respondent /3 rd Respondent
4.Akilan	... 4 th Respondent /4 th Respondent



C.M.A(MD)No.363 to 365, 479 & 480 of 2019

PRAYER: Civil Miscellaneous Appeal has been filed under Section 173 of Motor Vehicles Act, 1988 to set aside the fair and Decreetal order made in M.C.O.P.No.207 of 2008 dated 06.01.2018, on the file of the Motor Accident Claims Tribunal, I Additional District and Sessions Court, Tirunelveli.

C.M.A(MD)Nos.363 to 365, 479 and 480 of 2019:

For Appellant : Mr.Murali
in C.M.A(MD).Nos.363 to 365/2019

: Mr.G.Prabhu Rajadurai
in C.M.A(MD).Nos.479 & 480/2019

For Respondents : Mr.G.Prabhu Rajadurai for R1 to R4
in C.M.A.(MD).Nos.363 & 364/2019

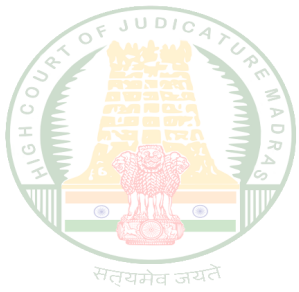
: No appearance for R1 & R3
in C.M.A.(MD).No.365/2019

: Mr.J.S.Murali, for R2
in C.M.A.(MD).No.479 & 480/2019

COMMON JUDGMENT

[Judgment of the Court was made **by K.K.RAMAKRISHNAN.J.**]

Being aggrieved over the award passed by the Motor Accident Claims Tribunal, I Additional District and Sessions Court, Tirunelveli, in M.C.O.P.Nos.207, 318 and 335 of 2008, the Insurance Company has filed these present appeals.



2. The appellant insurance company is the second respondent in

M.C.O.P.Nos.207, 318 and 335 of 2008, on the file of the Motor Accident Claims Tribunal, I Additional District and Sessions Court, Tirunelveli.

3.Facts of the Case:

3.1.The Insurance company filed the appeal challenging the award passed in the MCOP Nos. 207 of 2008, 318 of 2008, 335 of 2008, on the file of the 1st Additional District and Sessions Judge, Tirunelveli/M.A.C.T. Tribunal. The claimants in each case, in the said case also filed CMA challenging the quantum fixed by the learned trial Judge.

3.2.The 1st Respondent before the tribunal namely Madasamy is the owner of the Tavera Vehicle Bearing Registration No.TN-72M-9192. On 5th May 2006, his friend, namely, DhanushKodiAdithan, (former Union Minister for Sports and Youth) borrowed the said vehicle and the said vehicle was allowed to be driven by his daughter, namely, Anusha Devi, who was holding the learner driving licence. While she was driving the vehicle with the assistance of the driver Akilan, namely the claimant in



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the M.C.O.P No.335 of 2008, on the Vayakulam Airport Road, “Anushadevi” without properly following the instructions of the Akilan, jammed on the brakes to avoid the collision against the on coming tanker lorry, due to which the said car capsized and skidded further and rolled thrice upside down and the vehicle finally came to a halt on the southern side of the mud portion. In the result, Indra Devi mother of the said Anusha Devi died and the Dhanushkodi Adithan sustained severe injuries and the driving assistant Akilan also sustained injuries. After the accident, the FIR was registered against the said Anusha Devi and under the said circumstances, the occupant of the vehicle DhanushkodiAdithan filed the MCOP.No.207 of 2008 claiming the compensation of Rs.9,82,50,000/- and also his daughter Anusha Devi, the other legal heirs filed the MCOP number 318 of 2018 claiming compensation as a dependents of the said Indira Devi to the tune of Rs.2,50,00,000/-. The driver Akilan also filed the MCOP number 335 of 2008 claiming compensation of 5,00,000/-.

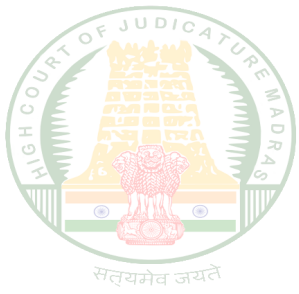
4. In all the three petitions, the Appellant Insurance Company filed the counter denying the liability and also the disputing the income. In the



counter, they specifically took a stand that the accident happened due to the negligent driving of “Anusha Devi” and hence, she was not entitled to claim compensation. Further, Anusha Devi had no valid permanent licence and she was holding only the “learner licence”. Hence, the insurance company is not liable to pay any compensation as there is a violation of the conditions of policy. In the circumstances, they seek for dismissal of the claim petition.

5. To prove the case, the claimants examined three witnesses on their side and marked Exs.P1 to P.26 and on the side of the insurance company they marked Ex.R1 to Ex.R5 and examined R.W.1 to R.W.3.

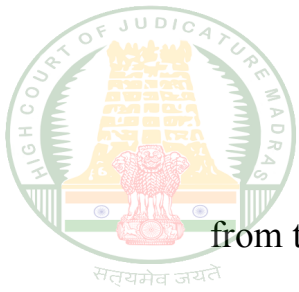
6. The learned trial judge considering the above evidence fixed the negligence on the part of Anusha Devi and also declined to accept the argument of the insurance counsel that the insurance company is not liable on the ground that Anusha Devi was holding the “learner licence only”. Challenging the same, both claimants and insurance company filed these appeals.



7.The learned counsel appearing for the insurance company made the following submission:-

(i)Anusha Devi namely the claimant in the M.C.O.P.Nos. 207 of 2008 and 318 of 2008, was driving the vehicle, only with Learner's licence, not with a valid permanent licence. In the said circumstances, fixing the liability on the insurance company is to be set aside. The learned counsel for the insurance company further submitted that Anusadevi herself caused the accident by her negligence driving and hence the claim petition in 318 of 2008 is not legally maintainable. In the said circumstances, he seeks for exonerating/ discharging the insurance company from the liability.

8. The learned counsel for the claimants submitted that it is well settled principle as per the law laid down by the Hon'ble Supreme Court in **2004 ACJ 1 SwarnsinghVs.United Insurance Company**, that the learner licence is a valid licence and more particularly, in this case Anusha Devi was driving the vehicle as instructed by Akilan who had the proper licence and she was driving the vehicle only as instructed by Akilan and hence, the plea of the insurance company to exonerate them



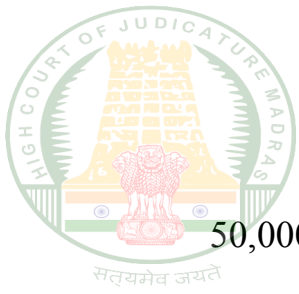
from the liability is not acceptable. The learned counsel further submitted that in the claim petition, she claimed as a dependent of Indra Devi, namely, her mother, but the same is not a ground to disown the liability of the insurance company relating to the other claimants. In the said circumstances, he seeks for the dismissal of the appeals of Insurance Company. So far as the enhancement is concerned, he made the following submissions:

(i)DhanuskodiAthithan is a well known politician. He was elected as M.P., at a young age for three terms and two terms as M.L.A. In the said circumstances, his entire political career and his entire political life is crippled and paralyzed, due to the said tragic accident. Till date he is in immobilized condition and his day to day life has become a hell with agonizing pain, due to the injuries sustained by him. In the said circumstance, the learned trial Judge fixed a meager amount to him as a loss of earning. Apart from that, before entering into politics, he was an active legal practitioner in the legal profession. Even then, the learned trial Judge has not taken into account the continuous successful political career of DhanuskodiAthithan and his income has to be fixed as an advocate having a standing in the Bar. In the said circumstance, the



amount granted by the learned trial Judge is inadequate under the head of the loss of income. Further the learned trial judge has not considered the attendant charges as he is totally immobile and he has to depend on somebody for his daily needs. Hence in this case, as per the Hon'ble Supreme Court's judgment he must be provided with attendant charges for entire life, by calculating multiplier method. Further his future medical expenditure is not considered and also proper amount has not been granted. Further, he seeks for the enhancement of the compensation in all aspects relating to the pain and suffering, loss of comfort, loss of immunity and future medical expenditure and also the attendant charges by calculating in terms of multiplier method.

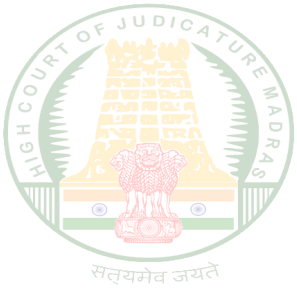
9. The learned counsel further submitted that so far as the enhancement of compensation, in the case of Indiradevi is concerned, he has produced sufficient documents that she was the partner of the gas agency. As per the partnership she is the shareholder of 50%. For which she has produced the income tax receipt. For that also, the learned trial Judge only fixed a sum of Rs.30,000/- per month, which is very low, compared with the documents. He has taken the yearly income as Rs.



50,000/- which is very low. Hence, he seeks for the enhancement of the amount. The learned trial Judge also failed to consider that she was managing the entire family. Hence her loss is to be suitably compensated to the family members.

9.1. Further the learned counsel submitted that in the case of Akilan, even the learned trial judge has not applied the multiplier method and also not granted sufficient amount for permanent disability. The driver after having sustained the injury all over the body, is unable to continue his driving profession. The learned trial Judge has not considered the driver's present health condition and hence the driver deserves enhancement of compensation along considering the above heads.

10. This Court considered the rival submissions made by the learned counsel appearing on either side and perused the materials available on record.



11. In this case, from the above arguments, this Court frames the following points for determination:

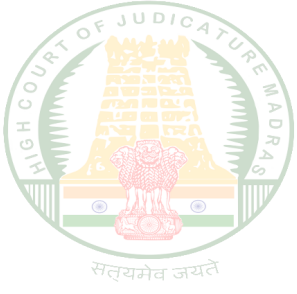
(i) whether the contention of the learned counsel for insurance company, that Anusadevi holding the learner licence is disqualified to drive the vehicle as per M.V.Act and consequentially insurance company must be exonerated from making payment of compensation for the alleged accident caused by “Anusha Devi” is correct or not?

(ii) whether the insurance company is liable to pay the whole compensation even in the case of Anusha Devi driving with learner licence?

(iii) Whether the compensation granted in the M.C.O.P.No.207 of 2008, namely, in the case of DanushkodiAthithan is in accordance with law?

(iv) Whether the compensation granted in M.C.O.P.No.318 of 2008, namely, for the death of Indiradevi is in accordance with law?

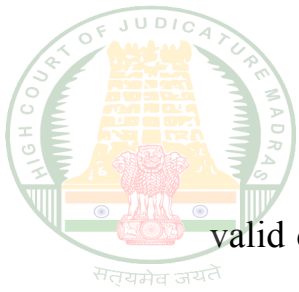
(v) Whether the compensation granted in M.C.O.P.No 335 of 2008 without properly assessing the disability of the driver namely akilan is in accordance with law?



WEB COPY 12. The issue of learner licence:

To decide the issue, this Court is duty bound to cull out the principle laid down by the Hon'ble Supreme Court relating to the learner licence. Apart from the provision contemplated under the Motor Vehicle Act, 1988, as per interpretation given by the Hon'ble Supreme Court, learner licence is a valid licence.

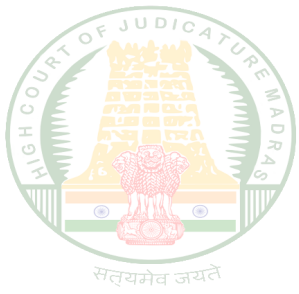
12.1. Further, the learner licence holder also is entitled to drive the vehicle which was admitted by the competent person examined on the side of the road transport authorities. The transport authority who is RW1, appeared before this court and stated that, பழகுனர் ஓட்டுநர் உரிமம் வைத்துள்ள ஒருநபர் வேறு ஒரு ஓட்டுநர் உரிமம் வைத்திருக்கும் நபருடன் வாகனத்தை ஓட்டிச் செல்லலாம் என்றால் சரிதான். From this it is clear that she is entitled to drive the vehicle with the assistance of the valid licence holder. Even as per the testimony of the insurance officer examined as R.W.2, it was permissible and he deposed that பழகுனர் உரிமத்தில் இலகுரக வாகனமும் இருசக்கரவாகனம் ஓட்டலாம் என்று உள்ளது. In the said circumstances, there is no bar to drive the vehicle as instructed by the



valid driving licence holder. In the said circumstances, there is no bar for the said Anushadevi to drive the vehicle as instructed by Akilan. Further, the learner licence is a valid licence. The said principle was affirmed by the Hon'ble Three Judges Bench of the Supreme Court in ***Swarn Singh Vs. United India Insurance Company*** reported in ***2004 ACJ 1***. The Hon'ble Three Member Bench of the Supreme Court has held as follows:

Paragraph No.110. (viii) *If a vehicle at the time of accident was driven by a person having a learner's licence, the insurance companies would be liable to satisfy the decree.*

12.2. From the above law and the facts, this Court without hesitation confirms the finding of the learned trial Judge that the learner licence is a valid licence and the appellant company cannot escape from the liability to pay compensation only on the ground of the said Anusadevi was holding only learner licence. In the said circumstances, this Court fixes the liability upon the insurance company to pay the compensation to the claimants in M.C.O.P.Nos.207, 335 and 318 of 2008. In view of the above finding, this Court fixes the quantum afresh by appreciating the evidence on records.



WEB COPY 13. Compensation in the case of Danushkodi Athithan /

M.C.O.P.No. 207 of 2008:-

13.1. To consider his case of enhancement of compensation, it is relevant to discuss about the injury sustained by him as a result of the accident, treatment already undergone by him and treatment he is undergoing and his present health condition.

13.2. PW4 is the doctor who had given treatment to him immediately after the accident. He noted the following multiple grievous injuries all over the all body:

13.2.1. There are number of ribs fractures on the both side.

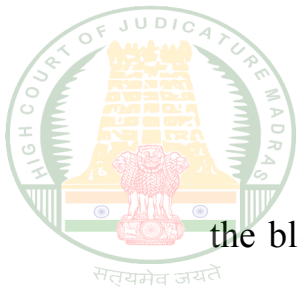
13.2.2. There was fracture on the bone in the right upper arm.

13.2.3. There was complete fracture of pelvis.

13.2.4. There was complete fracture of both legs below the knee.

13.2.5. There was serious lower abdominal injuries internal bleedings.

13.3. Immediately, multiple surgeries were conducted. To remove



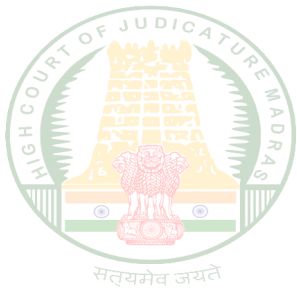
the blood clot in the lower abdomen, a surgery was conducted and right hand also was amputated on the date of admission. Operation was also conducted in the right upper arm. As a result of the injuries in the pelvis, his kidney function was activated artificially. During the course of medical observation, it was also found that he sustained severe head injury and hence his left eye vision was found lost upto 40%. Initially, he took inpatient treatment from 09.08.2006 to 23.10.2006 in the Apollo Hospital. Thereafter he was regularly taking treatment there.

13.4. The injured with his crippled limbs appeared before the court and deposed before the court as P.W.1. He had deposed that he sustained severe injuries all over the body. Due to the head injuries, he lost his vision in left eye completely and the right eye also partially affected and he is almost blind. His both legs are broken below the knee and many surgeries were conducted. Due to the fracture in the head, his facial bone also is severely damaged. The ribs number 3 to 6 on the right side fractured and punctured the lung and also caused breathing problem. Haemorrhage also occurred because of the deep internal wound in the lower abdomen which required operation in the stomach. His right hand,



above the arm was amputated and he is crippled. He underwent multiple surgeries. Till date, he is continuously on medical treatment and under medical care. Due to the above complication, in spite of the best treatment there is no improvement in his condition. He deposed that he can not stand even for a short time without help of others. He can not move an inch without help of others. He is not able to sit continuously due to the fracture in the pelvis. He not only suffered pain and agony in the hospital, and is undergoing constant pain and in agony everyday. He also deposed that he is living only with the help of two helpers one for morning and another for evening at the cost of a monthly salary of Rs.7500/- to each.

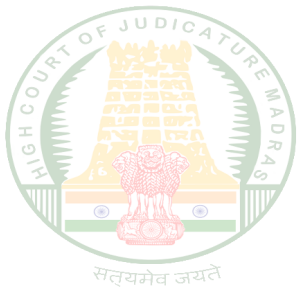
13.5. On behalf of the claimant number of witnesses were examined to speak about his political life and his salary during the period as minister. The witnesses also deposed that after the accident he is unable to come out of his house and his entire political carrier is completely in dark. The witnesses also deposed that his rise from the small post in the congress, to the level of the minister is because of sheer work and his down to earth attitude. If the accident had not happened, he would have still ruled his constituency.



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13.6. PW2 is a doctor examined on the side of the claimant. He also narrated the above injuries and treatments undergone by him and the resultant mental agony and pain and assessed his disability to the extent of 95%. He further stated that he lost his total vision of right eye and has partial vision in left eye.

13.7. From the above evidence it is beyond any doubt that he sustained injuries all over body and he is totally immobile. He lost vision in one eye and the same is irreversible one. Due to the multiple fractures over the legs, his legs have fused together and also become shortened. His right hand was amputated above the arm. His pelvic bone was totally damaged and there is fracture of the ribs on the both side, and multiple operations were performed all over the body and his facial bone also is totally damaged which resulted in disfigurement and his lungs is also affected and due to the said complications, he is not even able to sit for 5 minutes and he is not able to stand even for a short time without the aid of others. Further, he is also not able to walk even in door without help of others. He is managing his daily life only with the help of two persons.



13.8. Now, he is sitting at home all day idle, unable to communicate

with the outside world because of severe damage to the limbs and organs.

He leads a monotonous life without intellectual activity and hence his cognitive function has slowed down. He is unable to participate in social function because he feels alienated and also is under the feeling that people themselves rejected him.

13.9. Due to the injuries and the consequential functional disability, he has not only suffered discomfort but also undergone mental and physical sufferings. He is unable to continue either his legal profession or business. But he is continuously incurring medical expenses and the attendant charges. Due to the injuries and the multiple surgeries, he has been under pain and agony during his hospitalization and he is still undergoing pain and suffering .

13.10. The evidence reveals that at the time of the accident, he was sitting MP and also the union minister for youth and affairs in sports. Before his entry into politics in the year 1985, he was a practicing advocate and had lucrative practice in various district courts. From 1985 onwards, he was two time MLA and MP. He was the one of the prominent



person in the congress party apart from his personal fame in his constituency. Therefore, his entire political career is doomed. Before accident, he used to interact with the people daily and now he is not able to do it as he is confined to bed. His entire life was shattered and he is confined within four walls of the house.

13.11. In the said circumstances, it is relevant to note the following portion observed in the judgment of the this Court reported in **2017 2 TNMAC 480:-**

*I woke up from the surgery minus my left and right leg(s)
With searing pain below my hip as if a powder keg
Exploded deep within my thigh, leaving nothing there
But tissues sewn together, which was more that I could bear...
The pain, so knife-like, so intense has melted with the snow And
now as spring awakens in my chair I slowly go
To the window of my bedroom and the windows of my mind
Wondering if I will be forever so confined...*

—Richard Lackman

8. The above said poetics reveals the unbearable pain every amputee has to undergo. Not only the physical pain, but also the mental pain for having become 'forever confined'—this fact and thought would give perennial



daunting and hunting pain in the mind. Even without any poetic prop, anybody can easily empathise with the cause of the amputees.

13.12.The Hon'ble Supreme Court, reiterated the requirement of the Motor Vehicle Accident Tribunal and the High Courts to decide the Motor Accident injury cases in a more sensitive way than that is usually taken in other death cases. Some of the judgments of the Hon'ble Supreme Court and other Courts in this regard are as follows:

Case Laws	Relevant portions
<i>Nizam's Institute of Medical Sciences v.Prasanth S. Dhananka</i> (2009) 6 SCC 1	<i>"90. At the same time we often find that a person injured in an accident leaves his family in greater distress vis-à-vis a family in a case of death. In the latter case, the initial shock gives way to a feeling of resignation and acceptance, and in time, compels the family to move on. The case of an injured and disabled person is, however, more pitiable and the feeling of hurt, helplessness, despair and often destitution enures every day. The support that is needed by a severely handicapped person comes at an enormous price, physical, financial and emotional, not only on the victim but even more so on his family and attendants and the stress saps their energy and destroys their equanimity."</i>
<i>Shilaben Ashwin Kumar Rana Vs. Bhavin K.Shah and other</i> (2020) 18 SCC 652	<i>cases involving disability are in many respects even more tragic than cases of death, particularly where the disability is of a nature involving a lifelong condition of despair and helplessness.</i>



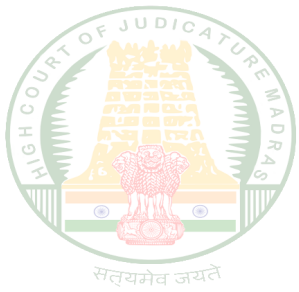
Divisional
Controller,
KSRTC v. Mahadeva
Shetty and another,
2004 (1) TN MAC
534 (SC) Arijit
Pasayat, J.

In case of personal injury the position is different from loss of property. In the later case there is possibility of repair or restoration. But in the case of personal injury, the possibility of repair or restoration is practically non-existent.

The reason behind the above observation of the Hon'ble Supreme Court is that the motor accident claim is one time measurement, not with recurring cause of action as in the case of maintenance claim either for increase or decrease. Therefore, the determination of compensation must be full, adequate and just. The same was observed by the House of lords as early in the year 1874 itself in the case of ***Phillips v. Western Railway Co.***, reported in ***1874 (4) QBD 406, Field, J.***, while emphasizing that damages must be full and adequate, it was held thus:

*“you cannot put the plaintiff back again into his original position, but you must bring your reasonable common sense to bear, and you must always recollect that this is the only occasion on which compensation can be given. **The plaintiff can never sue again for it. You have, therefore, now to give him compensation once and for all.** He has done no wrong, he has suffered a wrong at the hands of defendants and you must take care to give him full and fair compensation for which he has suffered.”*

emphasize supplied



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13.13.The physical frame of the claimant has been shattered and money cannot compensate what has been shattered. No amount of compensation can restore the lost limb of the claimant. There must be determination of the fair compensation and the same has been reiterated by the house of Lords and the Court of appeal and our Apex Court in the following cases:-

Armsworth v. South Easter Railway Co., reported in ***1847 11 Jur.***

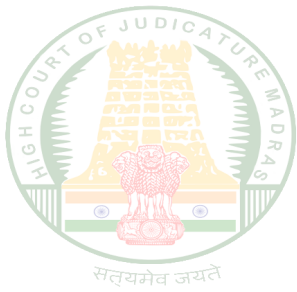
758 at 760, it is held as follows:

“Scarcely any sum could compensate a labouring man for the loss of a limb, yet you do not in such a case give him enough to maintain him for life... You are not to consider the value of existence as if you were bargaining with annuity office.... I advise you to take a reasonable view of the case and give what you consider fair compensation.”

In ***Fowler v. Grace*** [***Fowler v. Grace***, reported in ***(1970) 114 Sol***

Jo 193 (CA)], ***Edmund Davies, L.J.*** has said that:

‘It is the manifest duty of the Tribunal to give as perfect a sum as was within its power. There are many losses which cannot easily be expressed in terms of money. If a person, in an accident, loses his sight, hearing or smelling faculty or a



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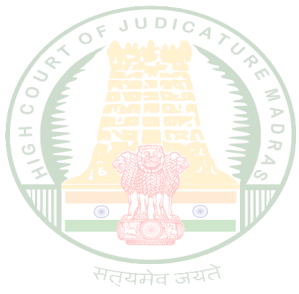
limb, value of such deprivation cannot be assessed in terms of market value because there is no market value for the personal asset which has been lost in the accident, and there is no easy way of expressing its equivalent in terms of money. ...

Lord Reid in ***Baker v. Willoughby*** [***Baker v. Willoughby***, reported in **1970 AC 467** has said:

‘... A man is not compensated for the physical injury: he is compensated for the loss which he suffers as a result of that injury. His loss is not in having a stiff leg: it is in his inability to lead a full life, his inability to enjoy those amenities which depend on freedom of movement and his inability to earn as much as he used to earn or could have earned....’”

Lord Morris of Borth-y-Gest in Perry v. Cleaver, reported in **1969 ACJ 363** (HL, England), said “*to compensate in money for pain and for physical consequences is invariably difficult but...no other process can be devised than that of making a monetary assessment*”.

The Supreme Court held in ***R.D. Hattangadi v. Pest Control (India) Pvt. Ltd. And Others***, reported in **(1995) 1 SCC 551**:



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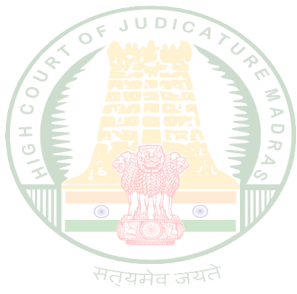
“Whenever any amount is determined as the compensation payable or any injuries suffered due to the accident, the object is to compensate such injury so far as money can compensate, because, it is impossible to equate money with the human suffering or personal deprivations. Money cannot renew a broken and shattered physical frame.”

Malay Kumar Ganguly v. Dr. Sukumar Mukherjee, reported in ***(2009) 9 SCC 221 at page 282***

170. Indisputably, grant of compensation involving an accident is within the realm of law of torts. It is based on the principle of restitutio in integrum. The said principle provides that a person entitled to damages should, as nearly as possible, get that sum of money which would put him in the same position as he would have been if he had not sustained the wrong.

In ***Rekha Jain v. National Insurance Co. Ltd.***[***Rekha Jain v. National Insurance Co. Ltd.***, reported in ***(2013) 8 SCC 389***, this Court at paragraphs 34-35, 38-39 and 41-43, with regard to the quantum of damages, has held as under:

“34. ... ‘24. In deciding on the quantum of damages to be paid to a person for the personal injuries suffered by him,



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the court is bound to ascertain all considerations which will make good to the sufferer of the injuries, as far as money can do, the loss which he has suffered as a natural consequence of the wrong done to him.'

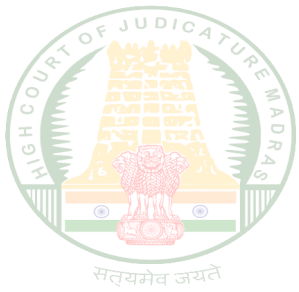
(1) In **Nagappa v. Gurudayal Singh**, reported in [2003 ACJ 12 \(SC\)](#):

“(13) ...it is for the Claims Tribunal to determine just compensation from the evidence which is brought on record despite the fact that claimant has not precisely stated the amount of damages of compensation which he is entitled to. If evidence on record justifies passing of such award, the claim cannot be rejected solely on the ground that claimant has restricted his claim...”

(2) **Oriental Insurance Co. Ltd. v. Mohd. Nasir**, reported in **2009 ACJ 2742 (SC)**:

“(27) Even if no amount is claimed, the Commissioner must determine the amount which is found payable to the workman.

(Emphasis added)



(3) ***Ningamma v. United India Insurance Co. Ltd.***, reported in

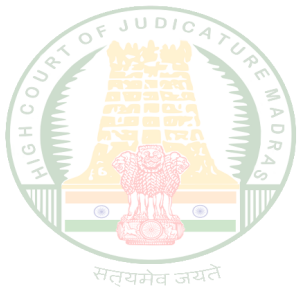
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“(23) ...it is not necessary in a proceeding under the MVA to go by any rules of pleadings or evidence. Section 166 of the MVA speaks about ‘just compensation’. The court's duty being to award ‘just compensation’, it will try to arrive at the said finding irrespective of the fact as to whether any plea in that behalf was raised by the claimant or not... ”

(Emphasis added)

In ***R.D. Hattangadi v. Pest Control (India) (P) Ltd.***, reported in
(1995) 1 SCC 551 at page 555

“(9) 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

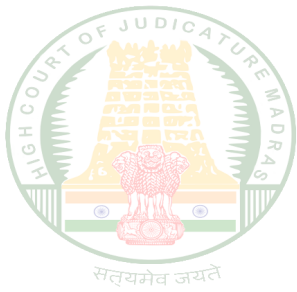


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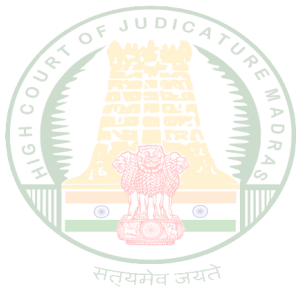
are incapable of being assessed by arithmetical calculations. In order to appreciate two concepts pecuniary damages may include expenses incurred by the claimant namely, (i) medical attendance; (ii) loss of earning of profit up to the date of trial; (iii) other material loss. So far as non-pecuniary damages 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 towards 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.” (Emphasis added)



13.14. By keeping in mind above principles and considering the nature of injuries and the permanent disability and the condition of the claimant, this court is inclined to grant adequate and just compensation by dwelling upon the process of the redetermination of the compensation as a appellate court by exercising power under section 173 of the motor vehicle act under the various heading.

14. Pain and suffering:-

14.1.The injured claimant is entitled to get reasonable amount under the head of pain and suffering for past and future. In this case as already discussed above, P.W.1 sustained grievous injuries all over the body which resulted into multiple surgeries. From the evidence of the two doctors and the evidence of the P.W.1 it is clear that number of complicated surgeries were done and he was taking treatment in the hospital for nearly two months and still he is taking treatment. Therefore, extraordinary circumstances of this case demands to award for pain and suffering for past and future. Therefore this court inclines to award compensation of Rs. 5,00,000/- under the head of pain and suffering.



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14.2. Compensation under the head of discomfort and loss of amenity:

P.W.1 has painfully deposed about his continuous discomfort due to the complication of the surgeries and injuries sustained as a result of the accident. He has developed restless leg syndrome due to the multiple injuries caused in both legs. It is well known theory as per the medical language *phantom limb pain is a more unpleasant pain than the real limb pain*. Apart from that he is placed under the multipronged disadvantageousness. The term “disadvantaged” relates to the injured with the reduced mobility suffering social exclusion etc., Therefore, he is suitably be compensated under the head of future discomfort and the same is estimated on comparison with the injuries and the number of operations as Rs.4,00,000/-.

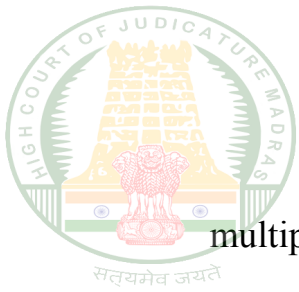
14.3. Compensation under the Head of Attendant charges:

Normally, the cost of attendant is awarded only for the purpose of taking care of the injured till he is able to look after himself. The inability



to take care during the period of hospitalisation and post-hospitalisation for a specified period of time is generally the norm while awarding compensation for attendant charges. However, in exceptional case, where the injured is in a immobile and the case like amputation, there is total inability on the part of the injured to take care of himself for an undefined period and in such cases, the court has to take into consideration the necessity for award of just and reasonable compensation.

14.3.1.The injuries sustained by him and number of surgeries undergone by him and the present physical situation demands the attendant charges to be calculated by applying multiplier method. In this case, P.W.1, deposed that he cannot even stand up and sit even for five minutes and he is living with the help of two persons and he is paying Rs. 7,500/- to each person as a monthly salary. There is no contra evidence on record. The above injuries and the surgeries and his painful life demands the said attendants service. He lost his vision in one eye and he is living with the partial vision of the other eye and due to the complete fracture of pelvis and the fracture in the ribs number 3 to 9 on either side and the



multiple fractures below the knee of both legs and the amputation of the right hand above the arm all justified the stand of the claimant that he is living with only help of the two attendants. He already lost his wife in the accident and hence, there was loss of consortium. All the circumstances, impels this Court to adopt the multiplier method by following the ratio laid down by the Hon'ble Supreme Court:-

14.3.1.(i).In the case of ***Kavitha Vs. Deepak*** reported in ***2012 ACJ 2161.***

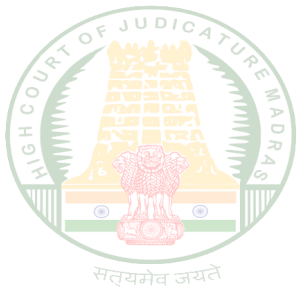
14.3.1.(ii).In the case of ***Sanjay Verma Vs. Haryana Roadways*** reported in ***2014 3 SCC 210.***

14.3.1.(iii).In the case of ***Rajasthan SRTC Vs. Alexix Sonier*** reported in ***2015 17 SCC 758.***

14.3.1.(iv).In the case of ***Kajal Vs. Jagdish Chand*** reported in ***2020 4 SCC 413.***

14.3.1.(v).In the case of ***Kirti Vs. Oriental Insurance Co. Ltd.,*** reported in ***2021 2 SCC 166.***

14.3.1.(vi).In the case of ***Abhimanyu Partap Singh Vs. Namita Sekhon*** reported in ***2022 8 SCC 489.***



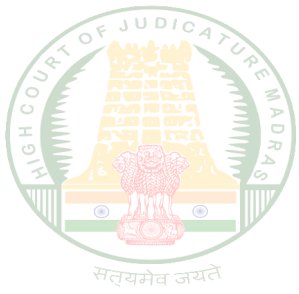
C.M.A(MD)No.363 to 365, 479 & 480 of 2019

As per the evidence of P.W.1, he is regularly paying Rs.15,000/- to

each attendants and hence, he has been incurring Rs.30,000/- as attendant's charges. He is aged about 56 years. He requires the said attendants for remaining part of his life. Considering the above Hon'ble Supreme Court's precedents, this Court inclines to calculate the attendants charges for 20 years and fixes the monthly attendant charges as Rs.5,000/- and determines the attendants charges of Rs.12,00,000/- [5,000 X 12 X 20]

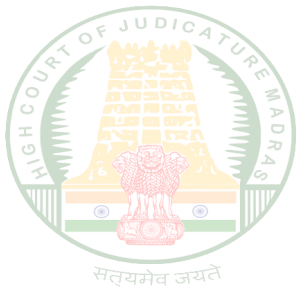
15. Compensation under the head of loss of earning:

The doctor has deposed that P.W.1 suffered 94% permanent disability. He also deposed that his right hand was amputated above the arm. His both legs have grievous injuries and number of surgeries in both legs and his both legs were performed and he is crippled. His physical condition is that due to the injuries in the pelvis, he is immobile. His evidence also is that he is living with aid of two attendants. Therefore, this Court comes to the conclusion that he has lost 100% earning capacity. As per the records, on the date of the accident, he was Union Minister and he was active Politician from 1985 onwards.



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15.1.As per Ex.P26, and other evidence adduced on the side of the injured, his salary and other allowance comes around Rs.22,72,667/- per year. Even before his entry in into politics in the year 1985, he was active practitioner in the various Courts with his bar experience of 14 years. Due to the accidental injuries, from the above discussion of the various facts relating to the health condition, he is not in a position either to re-enter legal profession or earn through the business. In the said circumstances, this Court fixes Rs.85,000/- as a monthly income of P.W.1 as against notional income fixed by the learned Tribunal Judge of Rs.38,500/-. The Hon'ble Supreme Court has reiterated the principle that to arrive the monthly income of either deceased or injured to adopt a guess work and in the event of the sufficient evidence adduced on the side of the claimant, taking the notional income is not a correct procedure. In this case, volumes of records have been produced to prove the monthly income of the injured and witness also were examined and Ex.P26 and other documents also were produced. Therefore, this Court fixes the monthly income of the injured as Rs.85,000/-. Considering the age of P.W.1, this Court adopts multiplier of $[85000 \times 12 \times 9 = 91,80,000/-]$.



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16. Loss of income during the Treatment Period:

The learned Tribunal Judge granted only Rs.15,000/- for the loss of monthly income during the treatment period. P.W.1 deposed that he was the Union Minister at the time of the accident. To prove his monthly salary and other constituency allowance, remuneration as a member of the Parliament Standing Committee, he examined P.W.6 and all the documents relating to the above were marked and the learned Tribunal Judge has also considered it in paragraph No.16 and the same comes around Rs.22,72,667/-. As per the evidence, he took treatment in the hospital and he received the salary upto the re-election. Therefore, this Court fixes the Loss of Income during the treatment period at the rate of Rs.5,96,667/- for the period of 6 months and the same comes around Rs.35,80,002/-.

17. Future Medical Expenditure:

As discussed above and also from the evidence, injured requires the continuous medical treatment. He also has undergone multiple surgeries with insertion of metal plates and screws. His pelvis is totally damaged.



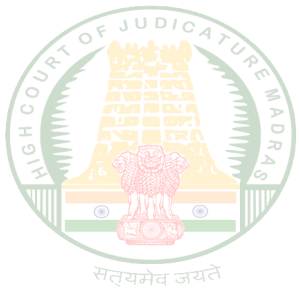
All the above surgeries and the injuries require continuous medical treatment under the medical supervision. Therefore, this Court inclines to grant Rs.5,00,000/- under the head of the future medical expenditure.

18. Compensation under the head of permanent disability:

As per the law laid down by the Hon'ble Supreme Court in *Subbulakshmi Vs. Tamil Nadu State Transport Corporation* reported in *2012 10 SCC 177*, there is no bar to grant compensation under the head of the permanent disability. Therefore, this Court inclines to award 94 X 3,000 = 2,82,000/- for the permanent disability of 94% assessed by the doctor.

19. Transport expenses:

After the accident, P.W.1 was taken to various hospitals including the Appollo Hospital, Chennai. Therefore, the transport expenses awarded by the learned Trial Judge needs enhancement. This Court inclines to enhance Rs.3,000/- to Rs.1,00,000/-.



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19.1.The object of granting compensation as rightly observed by the Hon'ble Thiru.Justice N. Kirubakaran in the judgment in the case of ***Pradeep v. P.V. Mathai***, reported in ***(2012) 2 TN MAC 240 at page 243***

Compensate-Console-Comfort”: What is the principle to be followed in the case of Motor Vehicle claims is “Compensate-Console-Comfort” of.

The tribunal has a duty to follow the above C³ in the case of determination of the Motor Vehicle compensation. Object of the compensation is based on the maxim “restitutio in integrum”.Indisputably, grant of compensation involving an accident is within the realm of law of torts. It is based on the principle of *restitutio in integrum*. The said principle provides that a person entitled to damages should, as nearly as possible, get that sum of money which would put him in the same position as he would have been if he had not sustained the wrong.

19.2.Merely because injured was Union Minister, there is no bar to grant adequate compensation for the accidental injuries sustained by him. Law demands equal treatment to both rich and poor. Both are entitled to

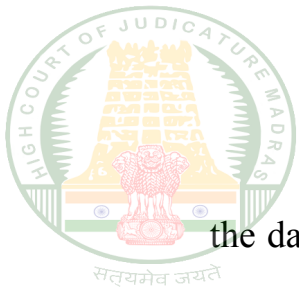


compensation under all the heads irrespective of status. Status is not a ground to disown the liability of the tortfeasors and their statutory obligation is to satisfy the decree of just compensation.

19.3. Therefore, this Court considers the case of the claimant by applying the principle laid down in the various precedents in order to meet the statutory requirement of granting just compensation to place the injured in the same position as far as possible on the principle of *restitutio in integrum*.

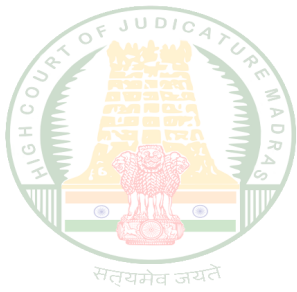
19.4. This Court made a detailed discussion under various heads and decided to give the amount under the head of loss of income by adopting multiplier method. Therefore, this Court need not award the amount under the head of right hand amputation and eye impairment as awarded by the learned trial Judge.

20. In result, considering the nature of injury, period of treatment and the nature of disablement, more particularly the immobility of the claimant, the necessity of help of others for the claimant in discharging



the day-to-day activities and loss suffered by the claimant not only in his marital life, and also a life of a vegetative state, this court is of the considered opinion that the compensation awarded under various heads not only requires to be restructured but appropriate enhancement also has to be made, wherever necessary. Accordingly, this court quantifies compensation payable under the various heads as noted below:

<i>Sl.No.</i>	<i>Heads</i>	<i>Award</i>
1	Loss of Future Income	91,80,000/-
2	Loss of Income during the Treatment Period	38,80,002/-
3	Attendants charges	12,00,000/-
4	Permanent Disability	2,82,000/-
5	Amenity and Discomfort	4,00,000/-
6	Pain and Sufferings	5,00,000/-
7	Future Medical Expenditure	5,00,000/-
8	Extra Nourishment	25,000/-
9	Transport Charges	1,00,000/-
<i>Total</i>		<i>1,60,67,002/-</i>



21. Compensation in the case of the M.C.O.No.318 of 2008

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To prove the income of Indiradevi document Ex.P5, Ex.P6, Ex.P7, Ex.P8 and Ex.P9, Ex.P.10 was marked. From the record it is clear that she was a partner in the gas agency. Further, she was successfully running the business by acting as the partner in the said company. It is the case of the claimant namely P.W.1, that after that her business was not successful.

21.1.Even though the said evidence of P.W.1 was confronted by cross examination, nothing was elicited to disbelieve the same as there was no contra evidence. From the above evidence, the income of the deceased is fixed as 15,000/- per month. In the said circumstances, 25% for future prospect is ordered as per Pranay Sethi case $15,000 \times 25/100 = 3,750/-$. Then monthly income comes around Rs.18,750/- and the multiplier of 16 is to be adopted and $1/3$ is to be deducted. The total loss of income is calculated as follows:

$$18,750 \times 12 \times \frac{2}{3} \times 16 = 24,00,000/-$$

21.2.As per the Pranay Sethi Case, the conventional damages are assessed. The learned Tribunal Judge has failed to give any amount under the head of Love and affection. Therefore, this Court is inclined to award



C.M.A(MD)No.363 to 365, 479 & 480 of 2019

Rs.1,20,000/- under the head of Love and affection for three claimants.

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21.3.In view of the above discussion, the amount is re-determined as follows:

Heads	Amount awarded by the Tribunal	Re-quantified Amount by this Court	Status
Loss of Income	3,44,906/-	24,00,000/-	enhanced
Loss of Estate	15,000/-	15,000/-	confirmed
Consortium	40,000	40,000/-	confirmed
Loss of Love and Affection	----	80,000/- [40,000 X 2]	awarded
Funeral Expenses	15,000/-	15,000/-	confirmed
Total	4,14,906	25,50,000	enhanced

22.Compensation in the case of 335 of 2008:

The driver Akilan has sustained fracture over the right leg and hand. His liability is 37%. P.W.5/doctor also was examined and said that a plate was inserted in his right leg and also the foot. He has also specifically stated that there is a less physical movement and he is unable to sit and fold his leg. Considering the above evidence, the learned Tribunal Judge granted compensation of Rs.2,34,000/- and there was no appeal for enhancement and hence, this Court confirms the award passed



C.M.A(MD)No.363 to 365, 479 & 480 of 2019

by the learned Tribunal Judge in M.C.O.P.No.335 of 2008.

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22.1.In view of the above discussion, the Civil Miscellaneous Appeals in C.M.A.(MD).Nos.363 to 365 of 2019 are liable to be dismissed and the appeal filed by the claimants in C.M.A.(MD).Nos.479 and 480 of 2019 are partly allowed by enhancing the compensation as stated below:

<i>M.C.O.P. Nos.</i>	<i>C.M.A.(MD).No</i>	<i>Tribunal Award</i>	<i>This Court award</i>
207 of 2008	479 of 2019	45,13,080/-	1,60,67,002/-
318 of 2008	480 of 2019	4,14,906	25,50,000/-

23.Accordingly, C.M.A.(MD).Nos.363 to 365 of 2019 are dismissed.

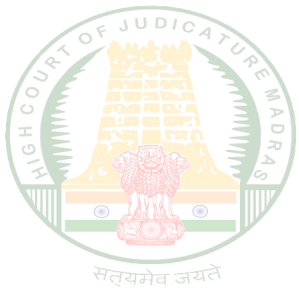
23.1.Accordingly, C.M.A.(MD).No.479 of 2019 is allowed in part and the award passed in M.C.O.P.No.207 of 2008 is enhanced from Rs.45,13,080 to Rs.1,60,67,002/- with interest of 7.5% from the date of filing of the petition in M.C.O.P.No.207 of 2008 and the insurance company is hereby directed to deposit the enhanced award amount along



C.M.A(MD)No.363 to 365, 479 & 480 of 2019

with the interest excluding the amount already deposited within a period of 6 weeks from the date of receipt of a copy of this judgement. There shall be no order as to costs.

23.2. Accordingly, C.M.A.(MD).No.480 of 2019 is allowed in part and the award passed in M.C.O.P.No.318 of 2008 is enhanced from Rs. 4,14,906 to Rs.25,50,000/- with interest of 7.5% from the date of filing of the petition in M.C.O.P.No.318 of 2008 and the insurance company is hereby directed to deposit the enhanced award amount along with the interest excluding the amount already deposited within a period of 6 weeks from the date of receipt of a copy of this judgement. As held by the learned Tribunal Judge, the appellant No.3 is not entitled to any compensation. Appellant No.1 has lost his wife and he sustained grievous injuries and he is living in pitiable condition and hence, he is entitled to receive 80% of the compensation and the second and the fourth appellants are entitled to get 10% each and the same is calculated as follows:



C.M.A(MD)No.363 to 365, 479 & 480 of 2019

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Sl. No.	Claimant	Amount
1	Dhanushkodi Athithan	20,40,000/-
2	Dhanush Magesh	2,55,000/-
3	Dhanesh Athithan	2,55,000/-

On such deposit of the enhanced amount, the appellant Nos.1, 2 and 4 are entitled to receive the same. There shall be no order as to costs.

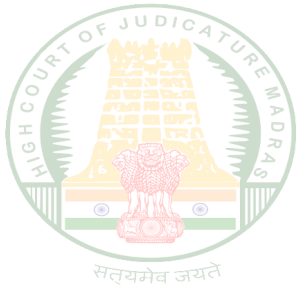
Consequently, connected miscellaneous petitions in all C.M.As., are closed.

(V.B.S.J.,) (K.K.R.K.J.,)
28.10.2024

Index :Yes/No
Internet :Yes/No
sbn

To

- 1.The I Additional District and Sessions Judge,
Motor Accident Claims Tribunal, Tirunelveli.
- 2.The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court, Madurai.



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C.M.A(MD)No.363 to 365, 479 & 480 of 2019

V.BHAVANI SUBBAROYAN.J.,

and

K.K. RAMAKRISHNAN.J.,

sbn

C.M.A(MD)Nos.363 to 365, 479 and 480 of 2019

and

C.M.P.(MD).Nos.4512 to 4514 of 2019

28.10.2024