

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 10.12.2015

CORAM

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
AND
THE HONOURABLE MR.JUSTICE G.CHOCKALINGAM

C.M.A.Nos.3618 TO 3620 OF 2013 & 1283 OF 2015

1.S.Sevagi

2.K.Sampathraj ... Appellant in C.M.A.No3618/2013/
Claimant

S.Divya ... Appellant in C.M.A.No.3619/2013/
Claimant

S.Sevagi ... Appellant in C.M.A.No.3620/2013/
Claimant

-vs-

State Express Transport Corporation Ltd.,
rep.by its Managing Director,
Chennai-600 002.

(Now operating from
Chennai Mofussil Bus Terminus,
Koyambedu, Chennai-600 107)

... Respondent in C.M.A.Nos.3618,3619 &
3620/2013/Respondent

C.M.A.No.1283/2015 :

State Express Transport Corporation Ltd.,
rep.by its Managing Director,
Chennai-600 002.

... Appellant/Respondent

-vs-

1. S.Sevagi

2. K.Sampathraj ... Respondents/Claimants

C.M.A.No.3618 of 2013 is filed against the common
judgment and decree, dated 28.06.2013, made in M.C.O.P.No.4171
of 2008, on the file of Motor Accident Claims Tribunal, (Chief
Judge, Court of Small Causes), Chennai.

C.M.A.No.3619 of 2013 is filed against the common judgment and decree, dated 28.06.2013, made in M.C.O.P.No.4172 of 2008, on the file of Motor Accident Claims Tribunal, (Chief Judge, Court of Small Causes), Chennai.

C.M.A.No.3620 of 2013 is filed against the common judgment and decree, dated 28.06.2013, made in M.C.O.P.No.4173 of 2008, on the file of Motor Accident Claims Tribunal, (Chief Judge, Court of Small Causes), Chennai.

C.M.A.No.1283 of 2015 is filed against the common judgment and decree, dated 28.06.2013, made in M.C.O.P.No.4171 of 2008, on the file of Motor Accident Claims Tribunal, (Chief Judge, Court of Small Causes), Chennai.

For appellants in
C.M.A.Nos.3618 to 3620/2013 &
respondents in C.M.A.No.
1283/2015 : Mr.S.Gangaram Prasad

For respondent in C.M.A.Nos.
3618 to 3620/2013 &
appellant in C.M.A.No.
1283/2015 : Mr.K.S.Suresh

COMMON JUDGMENT

Arising out of an accident, dated 09.09.2008, involving a State Express Transport Corporation bus, bearing registration No.TN-01-N-7080, one of the passengers died. Two others were injured. Legal representatives/parents of the deceased S.Lavanya, have filed M.C.O.P.No.4171 of 2008 on the file of Motor Accident Claims Tribunal-cum-Chief Judge, Court of Small Causes, Chennai. In the claim petition, they have submitted that on 09.09.2008, when the bus was proceeding on GST Road, near Vinayagar temple, due to the rash and negligent driving of the bus, by its driver, the bus dashed against a tree, causing the death of their daughter, aged about 25 years. According to them, she earned Rs.18,000/- per month as a Tax Assistant in Income-Tax Department, Chennai. In this regard, a case in Crime No.496 of 2008, has been registered against the driver of the bus, by the Inspector of Plice, B-6 Maraimalainagar Police Station, Kancheepuram District. They claimed compensation under various heads.

2. S.Divya, aged about 23 years, and said to have completed Inter/ICWA was a passenger in the bus. According to her, she sustained grievous injuries - fracture post wall left acetabulum, fracture of right inferior pubic rami,

fracture of left medial malleolus and bruises and lacerations all over the body. It is her contention that she suffered disablement. She has contended that at the time of accident, she was employed as a Clerk in an Auditor's office. Claiming a compensation of Rs.6,00,000/-, she has filed M.C.O.P.No.4172 of 2008 on the file of the same Tribunal.

3. Yet another passenger, S.Sevagi, aged about 52 years, claiming to be self-employed as a Tailor, and contending further that she had suffered injuries, compound fracture of both bones in the left leg and other injuries, underwent surgery, disabled, on account of the same, has filed M.C.O.P.No.4173 of 2008, on the file of the very same Tribunal.

4. State Express Transport Corporation, in its counter affidavit, denied the manner of accident. According to the Corporation, on 09.09.2008, about 05.20 hours, the bus was proceeding on GST Road near Maraimalainagar from Velankanni to Chennai and; at that time, a lorry attempted to overtake the bus; the bus was cornered to the extreme left side of the road, and, thus, the bus dashed against a tree. The Corporation further submitted that its driver was not responsible for the accident, but the same was due to the careless and negligent driving of the lorry. Thus, they denied negligence on the part of the bus driver and blamed the lorry driver. Without prejudice to the above, they disputed the compensation claimed under various heads. As all the three claim petitions arose out of the same accident, they were taken up together and joint evidence was adduced.

5. P.W.1 is the father of the deceased S.Lavanya. P.W.2 is her mother and claimant in M.C.O.P.No.4173 of 2008. P.W.3 is the eye-witness. P.W.1, father, has deposed that, at the time of accident, the deceased was aged about 25 years and, as a Tax Assistant, in Income-Tax Department, earned Rs.18,000/- per month. P.Ws.2 and 3, eye-witnesses, have deposed that when they were travelling in the bus, bearing registration No.TN-01-N-7080, along with the deceased Lavanya, near Vinayagar temple, Kancheepuram District, the bus, was driven in a rash and negligent manner by its driver and dashed against a tree, resulting in injuries to some of the passengers and Lavanya, who sustained fatal injuries, died on the spot. To prove that P.Ws.2 and 3 travelled in the vehicle on the fateful day, besides adducing oral evidence, they have marked Ex.P-5, Journey Tickets. That apart, they have marked Ex.P-1, Copy of FIR; Ex.P-2, Copy of Post-Mortem Certificate, Ex.P-3, Death Certificate; Ex.P-4-Legal Heirship Certificate; Ex.P-5, Journey Tickets; Ex.P-6- Copy of the Transfer Certificate; Ex.P-7-Copy of Degree Certificate; Ex.P-8-Copy of appointment order of the deceased Lavanya; Exs.P-9 & P-10 - Copy of SSIC Certificates; Exs.P-11, P-14 and P-15 -Discharge

Summaries; Ex.P-16- Letter from the Manager, Canara Bank; Ex.P-17 X-rays; Ex.P-18-Discharge Summary; Ex.P-19-Discharge Summary; Ex.P-20-Copy of letter of Manager, Canara Bank; Ex.P-21- Copy of Transfer Certificate; Ex.P-22-Copy of ICWA Intermediate Certificate; Ex.P-23-X-rays; Ex.P-24-Disability Certificate of Sevagi; Ex.P-25-X-rays; Ex.P-26-Disability Certificate of Divya; Ex.P-27-X-rays; Ex.P-28-Authorisation Letter and Ex.P-29- Employment and Pay particulars of deceased. The Corporation has not adduced any oral or documentary evidence.

6. Evaluating the oral and documentary evidence, adduced by the injured/legal representatives of the deceased, the Claims Tribunal has fixed negligence on the driver of the Corporation bus, and, having regard to the death of Lavanya, Tax Assistant in Income-Tax Department, Chennai, and the case of the injured, quantified the compensation.

7. In the case of M.C.O.P.No.4171 of 2008, filed by the parents of the deceased Lavanya, the Claims Tribunal has awarded compensation of Rs.12,61,327/- as hereunder :

Sl.No	Head	Claim in Rs.	Award in Rs.
1	Transport to hospital	5,000/-	Nil
2	Clothing and Articles	2,000/-	Nil
3	Transportation of Body & Funeral expenses	20,000/-	10,000/-
4	Loss of Pecuniary benefits on account of the death of the deceased inclusive of future prospects	32,23,000/-	12,51,327/-
5	Loss to Estate	50,000/-	Nil
6	Loss of Expectation of Life	1,00,000/-	Nil
7	Loss of Love and Affection & Mental Agony	1,00,000/-	Nil
	TOTAL	35,00,000/-	12,61,327/-

8. As regards the compensation claimed by S.Divya, the injured in M.C.O.P.No.4172 of 2008, the details of the claim and award by the Claims Tribunal are as follows :

Sl.No	Head	Claim in Rs.	Award in Rs.
1	Loss of Earning from 09.09.2008 to 09.11.2008 (3 months)	24,000/-	Nil

Sl.No .	Head	Claim in Rs.	Award in Rs.
2	Transport to Hospital	15,000/-	5,000/-
3	Extra Nourishment	15,000/-	5,000/-
4	Damages to Clothing and Articles	2,000/-	Nil
5	Medical Expenses	60,000/-	Nil
6	Mental agony to the petitioner and to her family members	25,000/-	Nil
7	Loss of amenities of life and chance of marriage bleak	50,000/-	Nil
8	Loss of Expectation of Life	25,000/-	Nil
9	Pain and Suffering	50,000/-	15,000/-
10	Permanent Disability	2,00,000/-	50,000/-
11	Loss of Earning Power	1,34,000/-	Nil
	TOTAL	6,00,000/-	75,000/-

9. As regards the claim made by S.Sevagi, the injured in M.C.O.P.No.4173 of 2008, the details are as follows :

Sl.No .	Head	Claim in Rs.	Award in Rs.
1	Loss of Earning from 09.09.2008 to 09.11.2008 (3 months)	18,000/-	Nil
2	Transport to Hospital	15,000/-	5,000/-
3	Extra Nourishment	15,000/-	5,000/-
4	Damages to Clothing and Articles	2,000/-	Nil
5	Medical Expenses	75,000/-	Nil
6	Mental agony to the petitioner and to her family members	50,000/-	Nil
7	Loss of amenities of life	50,000/-	Nil
8	Loss of Expectation of Life	25,000/-	Nil
9	Pain and Suffering	50,000/-	15,000/-

Sl.No	Head	Claim in Rs.	Award in Rs.
10	Permanent Disability	1,75,000/-	45,000/-
11	Loss of Earning Power	1,00,000/-	Nil
	TOTAL	6,00,000/-	70,000/-

10. Being aggrieved by the finding fixing negligence on the driver of the Corporation bus and the quantum of compensation awarded to the injured/legal representatives of the deceased, the Corporation has filed C.M.A.Nos.1283 of 2015.

11. Earlier, when the appeals in C.M.A.Nos.1866 and 1867 of 2015, filed by the Corporation came up for hearing, taking note of the fact that the compensation awarded to the injured in M.C.O.P.No.4172 and 4173 of 2008 respectively, was less, we dismissed the same on 06.08.2015. We delinked the present C.M.A.No.1283 of 2015 filed against the judgment and decree in M.C.O.P.No.4171 of 2008, filed by the legal representatives of the deceased Lavanya. C.M.A.No.3618 of 2013, filed by the legal representatives of the deceased and C.M.A.Nos.3619 and 3620 of 2013, filed by the injured, for enhancement of compensation, were directed to be tagged.

12. Assailing the finding, fixing negligence on the driver of the Corporation bus, bearing registration No.TN-01-N-7080, Mr.K.S.Suresh, learned counsel for the Corporation, submitted that the Tribunal has failed to consider that there was no negligence on the part of the driver of the bus. According to him, it was the lorry driver while overtaking the bus, cornered the latter to the left side of the road, which resulted in the bus dashing against a tree. He further submitted that the accident was unavoidable and there was no negligence. He further contended that when P.Ws.2 and 3 are mother and sister of the deceased, their evidence ought not to have been accepted by the Claims Tribunal, while arriving at the finding, recording negligence.

13. On the quantum of compensation, learned counsel for the Corporation submitted that the Claims Tribunal has erred in fixing the age of the deceased as 25 years. He further submitted that the Tribunal has erred in determining the income of the deceased as Rs.14,044/-, on the basis of Ex.P-29, without examining the author of the document. He also submitted that the Claims Tribunal has erred in adding 50% to the income of the deceased, instead of 30%, as per the existing norms.

14. Per contra, Mr.S.Gangaram Prasad, learned counsel for the injured/legal representatives of the deceased, submitted that the injured/deceased were passengers in the bus, and, due to the rash and negligent driving of the bus driver, the accident occurred. He also submitted that though the Corporation has projected a case as if the accident occurred due to the rash and negligent driving of the lorry by its driver, when he attempted to overtake the bus, no evidence to that effect was adduced. He further submitted that, after analysing the oral and documentary evidence, the Claims Tribunal has rightly come to the conclusion that the driver of the bus alone was negligent, in causing the accident.

15. In so far as the quantum of compensation awarded to the legal representatives of the deceased Lavanya is concerned, it is the case of the learned counsel for the claimants that there was no dispute that at the time of accident, the deceased was a Tax Assistant in Income-Tax Department. Though the Tribunal had taken on record Ex.P-29-Service Extract of the deceased Lavanya (as per the records available in Income-Tax Department, Chennai), the Tribunal failed to fix the monthly income of the deceased as Rs.16,763/-, taking note of the fact that a sum of Rs.5029/-, was paid as salary for the month of September, 2008 (for 9 days till the date of her death). He further submitted that addition of 50% under the head 'future prospects' is correct, as per the judgments of the Courts.

16. It is also his contention that as per the entry in Ex.P-29, the deceased was born on 03.11.1983 and, at the time of death, when the deceased was aged 24 years and 10 months, the Claims Tribunal ought to have applied '18' multiplier, for the purpose of computing the loss of contribution to the family.

17. Taking this Court through the award, Mr.S.Gangaram Prasad, learned counsel for the legal representatives of the deceased further submitted that the compensation of Rs.10,000/- awarded under the head 'funeral expenses' is less. He also pointed out that the Tribunal has not awarded any reasonable compensation under the heads 'transportation ' and 'damage to clothes and articles'.

18. As regards the claims for enhancement of compensation to S.Divya, the injured, and the appellant in C.M.A.No.3619 of 2013 (MCOP No.4172 of 2008) , learned counsel, submitted that though the injured sustained grievous injuries - fracture post wall left acetabulum, fracture of right inferior pubic rami, fracture of left medial malleolus bruises and lacerations all over the body, underwent surgery and, thereafter, treated for a considerable period and also found to have suffered 50%

disability, the Claims Tribunal has awarded a meagre compensation of just Rs.75,000/-. He also submitted that compensation claimed under various heads has not even been considered by the Tribunal. He further submitted that though a sum of Rs.46083/- was expended towards medical expenses, for the period between 10.09.2008 and 15.09.2008, only Rs.22332/- has been awarded for medical expenses and the balance amount of Rs.23751/- has not been ordered by the Claims Tribunal. Accordingly, he sought for enhancement of compensation.

19. In so far as the claim for enhancement made by S.Sevagi, injured and appellant in C.M.A.No.3620 of 2013 (MCOP No.4173 of 2008), it is the contention of the learned counsel, that considering the nature of injuries, compound fracture of both bones in the left leg, bruises and lacerations all over the body, and surgery underwent by the claimant, the Claims Tribunal ought to have awarded a reasonable compensation, instead, awarded a meagre sum of Rs.70000/- only. He also submitted that the Claims Tribunal ought to have awarded the entire medical expenses, spent by the injured. Thus, in all the appeals, enhancement is sought for.

20. Heard the learned counsel for the parties and perused the material available on record.

21. Manner of accident is spoken to by P.W.1, father of the deceased S.Lavanya. Though P.Ws.2 and 3, mother and sister of the deceased respectively, said to have travelled in the bus have adduced evidence, as to the manner of accident, contentions have been made by the Corporation that they are interested witnesses and, therefore, the Claims Tribunal ought to have rejected their testimony and consequently, prayed to reverse the finding, fixing negligence on the driver of the bus. We are not inclined to accept the above said contention, for the reason that the test to be applied in a motor accident claim case for arriving at the finding of negligence is preponderance of probability and not strict proof of evidence, as required in a criminal case. The said principle is explained by the Hon'ble Apex Court in Jacob Mathew v. State of Punjab, reported in 2005 (4) CTC 540, at Paragraphs 13 to 17, wherein, the Hon'ble Apex Court has explained the difference between a tort and crime, as follows:

"13. The moral culpability of recklessness is not located in a desire to cause harm. It resides in the proximity of the reckless state of mind to the state of mind present when there is an intention to cause harm. There is, in other words, a disregard for the possible consequences. The consequences entailed in the risk may not be wanted, and indeed the actor may hope that they do not occur, but this hope nevertheless fails to inhibit the taking of the

risk. Certain types of violation, called optimizing violations, may be motivated by thrill-seeking. These are clearly reckless.

14. In order to hold the existence of criminal rashness or criminal negligence it shall have to be found out that the rashness was of such a degree as to amount to taking a hazard knowing that the hazard was of such a degree that injury was most likely imminent. The element of criminality is introduced by the accused having run the risk of doing such an act with recklessness and indifference to the consequences. Lord Atkin in his speech in *Andrews v. Director of Public Prosecutions*, [1937] A.C. 576, stated,

"Simple lack of care such as will constitute civil liability is not enough; for purposes of the criminal law there are degrees of negligence; and a very high degree of negligence is required to be proved before the felony is established."

Thus, a clear distinction exists between "simple lack of care" incurring civil liability and "very high degree of negligence" which is required in criminal cases. Lord Porter said in his speech in the same case-

"A higher degree of negligence has always been demanded in order to establish a criminal offence than is sufficient to create civil liability. (Charlesworth & Percy, *ibid*, Para 1.13)

15. The fore-quoted statement of law in *Andrews* has been noted with approval by this Court in *Syad Akbar v. State of Karnataka* (1980) 1 SCC 30. The Supreme Court has dealt with and pointed out with reasons the distinction between negligence in civil law and in criminal law. Their Lordships have opined that there is a marked difference as to the effect of evidence, viz. the proof, in civil and criminal proceedings. In civil proceedings, a mere preponderance of probability is sufficient, and the defendant is not necessarily entitled to the benefit of every reasonable doubt; but in criminal proceedings, the persuasion of guilt must amount to such a moral certainty as convinces the mind of the Court, as a reasonable man, beyond all reasonable doubt. Where negligence is an essential ingredient of the offence, the negligence to be established by the prosecution must be culpable or gross and not the

negligence merely based upon an error of judgment.

16. Law laid down by Straight, J. in the case Reg v. Idu Beg (1881) 3 All. 776, has been held good in cases and noticed in Bhalchandra Waman Pathe v. State of Maharashtra 1968 Mh.L.J. 423, a three-Judge Bench decision of this Court. It has been held that while negligence is an omission to do something which a reasonable man, guided upon those considerations which ordinarily regulate the conduct of human affairs, would do, or doing something which a prudent and reasonable man would not do; criminal negligence is the gross and culpable neglect or failure to exercise that reasonable and proper care and precaution to guard against injury either to the public generally or to an individual in particular, which having regard to all the circumstances out of which the charge has arisen, it was the imperative duty of the accused person to have adopted.

17. In our opinion, the factor of grossness or degree does assume significance while drawing distinction in negligence actionable in tort and negligence punishable as a crime. To be latter, the negligence has to be gross or of a very high degree."

22. In a decision in Union of India v. Saraswathi Debnath reported in 1995 ACJ 980, High Court of Gauhati has held in Paragraph 6 as follows:

"The law is well settled that in a claim under the Motor Vehicles Act, the evidence should not be scrutinised in a manner as is done in a civil suit or a criminal case. In a civil case the rule is preponderance of probability and in a criminal case the rule is proof beyond reasonable doubt. It is not necessary to consider these niceties in a matter of accident claim case inasmuch as it is summary enquiry. If there is some evidence to arrive at the finding that itself is sufficient. No nicety, doubt or suspicion should weigh with the Claims Tribunal in deciding a motor accident claim case."

23. In Bimla Devi & Ors. Vs. Himachal RTC reported in 2009 (13) SCC 530, the Hon'ble Supreme Court held as follows:

"It was necessary to be borne in mind that strict proof of an accident caused by a particular bus in a particular manner may not be possible to

be done by the claimants. The claimants were merely to establish their case on the touchstone of preponderance of probability. The standard of proof beyond reasonable doubt could not have been applied. For the said purpose, the High Court should have taken into consideration the respective stories set forth by both the parties."

24. When the passengers, who sustained injuries, have adduced evidence regarding the manner of accident, the same cannot be rejected, merely because they are related to the deceased. Needless to state that it is always open to the Corporation to cross-examine them and elicit materials in favour of the Corporation or against the claimants, as the case may be. As regards the manner of accident, the best person to speak about the same would be the passenger in the vehicle.

25. Yet another factor to be taken note of is that a case in Crime No.496 of 2008 on the file of D-6 Maraimalainagar Police Station, Kancheepuram District, has been registered against the driver of the Corporation bus, and he has not chosen to appear before the Claims Tribunal to adduce oral evidence. Rash and negligent driving is a personal act. Non-examination of the driver of the bus, would certainly lead to an adverse inference against him. Useful reference can be made to a few decisions.

(i) In *New India Assurance Co. Ltd., v. Debajani Sahu* reported in I (2002) ACC 103 (Ori.), the Orissa High Court held that,

"8. In the present case, the Claims Tribunal found about the negligence of the bus driver on the basis of the evidence of the P.Ws. It is contended that P.W. 2 himself being the driver employed by the deceased was a highly interested witness and his evidence cannot be accepted as reliable. There is no dispute in the fact that the accident was caused involving the scooter and the bus. Even assuming that the evidence of P.W. 2 is not accepted, still then the doctrine of *res ipsa loquitur* is applicable. In such a situation, the owner of the bus should have examined the driver of the bus to explain the circumstances under which the accident occurred, as the other person involved in the accident having died cannot speak from the grave to explain the circumstances under which the accident had taken place. Of course, the bus owner has remained *ex-parte*, but no attempt was made by the Insurance Company which was contesting the case even on merit (whether justifiably or not is immaterial), chosen to adduce any evidence to rebut the

evidence of P.W. 2, not has bothered to summon the bus driver to explain the circumstances under which the accident took place. In such a case, an adverse inference can be drawn against the owner/Insurance Company for not examining the bus driver who would have been the best witness to explain the circumstance under which the accident occurred. In such view of the matter, the finding of the Tribunal on the question of negligence cannot be assailed and the contention in this regard raised by the Counsel for the appellant cannot be accepted."

(ii) In *Sitabai v. Ishak Hussain* reported in I (2001) ACC 761 (DB), the Madhya Pradesh High Court, at Paragraph 5, held as follows:

"5. In this case, the claimants could not examine any eyewitness of the accident. It was difficult for the claimants to search an eyewitness as the claimants were not present on the spot at the time of accident. This difficulty is avoided by applying the maxim *res ipsa loquitur*. Their Lordships of the Supreme Court in case of *Puspabai Purshottam Udeshi v. Ranjit Ginning and Pressing Co.*, reported in 1977 ACJ 343 (SC), observed:

"The normal rule is that it is for the plaintiff to prove negligence but as in some cases considerable hardship is caused to the plaintiff as the true cause of the accident is not known to him but is solely within the knowledge of the defendant who caused it, the plaintiff can prove the accident but cannot prove how it happened to establish negligence on the part of the defendant. This hardship is sought to be avoided by applying the principle of *res ipsa loquitur*. The general purport of the words *res ipsa loquitur* is that the accident 'speaks for itself or tells its own story. There are cases in which the accident speaks for itself so that it is sufficient for the plaintiff to prove the accident and nothing more. It will then be for the defendant to establish that the accident happened due to some other cause than his own negligence. Where the maxim is applied the burden is on the defendant to show either that in fact he was not negligent or that the accident might more probably have happened in a manner which did not connote negligence on his part. For the application of the principle it must be shown that the car was under the management of the defendant and that the accident is such as in ordinary course of things does not happen if those

who had the management used proper care."

In this case, the respondent No. 1 was driving the vehicle which left the road and dashed against a tree. In view of this maxim, the burden shifts on the respondent No. 1 to prove that he was not negligent. It was in the special knowledge of respondent No. 1 as to how the vehicle left the road and came down and struck against a tree. The respondent No. 1 did not examine himself. Under such circumstances, adverse inference that he drove the vehicle in a rash and negligent manner as a result of which this accident occurred, shall be drawn against him. The learned Tribunal committed error in not applying this maxim. We hold that the accident occurred due to rash and negligent driving of the vehicle by respondent No. 1."

(iii) In Beni Bai & others v. A. Salim & another reported in II (1999) ACC 408 (DB) (M.P.), the Madhya Pradesh High Court, held as follows:

"In the circumstances, for non-examination of the material witnesses particularly the driver and the conductor, who had the first hand knowledge of the manner in which the accident occurred, necessarily an adverse inference has to be drawn against the respondents. For want of evidence on behalf of the respondents, the plea raised in defence cannot be said to be established. On the other hand, the appellants have examined Atmaram, A.W.1. who was at the spot, who stated that at the bus stop when the passengers were getting down from the bus, the driver without seeing that the passengers have got down or not, started the bus and there one boy came under the wheel of the bus. From the circumstances, it cannot be inferred that the deceased might have jumped from the running bus. Hence it was the duty of the driver and conductor to have taken care to see whether passengers have got down from the bus or not, then only the driver could have started the bus. As the driver and conductor have failed in their duties to take care, we hold that the accident occurred due to negligence of the driver of the city bus. This Court in similar circumstances where the same type of defence was taken, has observed that it is the driver of the passenger bus who has to take care that the passengers who wish to get down from the bus have got down and then to start the bus. But that care was not taken. Therefore, it was held that the accident was caused because of the negligence of the driver and conductor."

26. It is the well settled law that proceedings before the Claims Tribunal are summary in nature and it is suffice to consider, whether there is any preponderance of probability, as to the manner of accident, as detailed in the claim petition. Strict proof of evidence is not required.

27. Thus, from a cumulative assessment of oral and documentary evidence adduced by the injured/legal representatives of the deceased, in the absence of any rebuttal evidence and testing finding with reference to the principles of preponderance of probability, negligence fixed on the driver of the Corporation bus cannot be said to be perverse or is it a case of no evidence.

28. On the quantum of compensation awarded in M.C.O.P.No.4171 of 2008 to the legal representatives of the deceased, objected to by the Corporation, and on the contra, appealed to this Court, for enhancement, let us consider the contents of Ex.P-29, the Service Extract of the deceased, S.Lavanya (as per the records available in the Office of the Commissioner of Income-Tax, Chennai). In Column No.5, Last Gross Monthly Salary, drawn, inclusive of all allowances with break-up, the Administrative Officer, Office of the Commissioner of Income-Tax, Chennai, has recorded as follows :

"Rs.5029/-, being the salary, for the month of September,2008, for 9 days till the date of her death. The break-up figures are as follows :

B.P.: Rs.2373 - @ Rs.7810/- p.m.

G.P.: Rs.720/- @ Rs.2400/- p.m.

HRA:Rs.919/- (30% of BP+GP)

D.A.:Rs.490 - (16% of BP+GP)

T.A.:Rs.557/- (Rs.1600 + DA 16%) "

29. As rightly contended by Mr.S.Gangaram Prasad, learned counsel for the injured/legal representatives of the deceased, taking into consideration the entries in Ex.P-29, Service Record, the Claims Tribunal ought to have fixed the monthly income of the deceased as Rs.16713/-. Though Mr.K.S.Suresh, learned counsel for the Corporation, submitted that the Claims Tribunal ought to have added only 30% under the head 'future prospects' and not 50%, in the light of the decisions of the Hon'ble Apex Court in Santhosh Devi v. National Insurance Co.Ltd., reported in 2012 AIR SCW 2892, and, Rajesh and Others v. Rajbir Singh and Others, reported in 2013 (9) SCC 54, this Court is not inclined to accept the said contentions.

30. The deceased had a permanent job, as Tax Assistant, in Income-Tax Department. In the light of the above decisions, addition of 50% under the head 'future prospects',

as explained in Sarla Verma v. Delhi Transport Corporation, reported in 2009 (2) TN MAC 1 (SC), is correct, and the contentions to the contra are not tenable. Thus, fixing the monthly income as Rs.16763/-, 50% of the same works out to Rs.8381.50 ps. Income to be taken for the purpose of computing the loss of dependency to the family is Rs.16763/- + 8381.50 (future prospects), equivalent to Rs.25144.50 ps. The annual income works out to Rs.25144.50 ps x 12 = Rs.3,01,734/-. The annual income exceeds the ceiling limit. Therefore, as per the decisions of the Hon'ble Apex Court in Shyamwati Sharma v. Karam Singh reported in 2010 (12) SCC 378 and Manasvi Jain v. Delhi Transport Corporation reported in 2014 (1) TNMAC 647, income tax has to be deducted. During the relevant period of time, 10% has to be deducted towards income tax. It works out to Rs.30,173.40 ps. Thus, the income arrived at, for computing the loss of dependency is, Rs.2,71,560.60 ps., per annum. The deceased was aged 24 years and 10 months. Having regard to the age of the parents, the Tribunal has applied '11' multiplier, which is erroneous. Though the learned counsel for the Corporation contended that multiplier adopted by the Tribunal is correct, we are not inclined to accept the same. As the deceased was aged within 25 years, the Tribunal ought to have applied '18' multiplier, for the purpose of computing the loss of contribution to the family.

31. As the deceased was spinster, as per Sarla Verma's case, cited supra, 50% of the deduction has to be made towards the personal and living expenses. Thus, after reworking, the compensation under the head 'loss of dependency' amounts to Rs.24,44,045.40/- (Rs.271560.60/2 x 18).

32. A sum of Rs.5,000/- and Rs.2,000/- has been claimed under the heads 'transportation' and 'damages to clothes and articles'. But, the Tribunal has not awarded any compensation under the said heads. Considering the year of accident, a sum of Rs.5,000/- for transportation and Rs.1,000/- for damages to clothes and articles would be reasonable, and the same is, accordingly, awarded. Though a sum of Rs.20,000/- has been claimed towards funeral expenses, the Tribunal has awarded only Rs.10,000/-, under the said head.

33. The Hon'ble Supreme Court in Rajesh's case, cited above, at paragraph 18, has held as follows :

"18. We may also take judicial notice of the fact that the Tribunals have been quite frugal with regard to award of compensation under the head 'funeral expenses'. The 'price index', it is a fact has gone up in that regard also. The head 'funeral expenses' does not mean the fee paid in the crematorium or fee paid for the use of space in the

cemetery. There are many other expenses in connection with funeral and, if the deceased is a follower of any particular religion, there are several religious practices and conventions pursuant to death in a family. All those are quite expensive. Therefore, we are of the view that it will be just, fair and equitable, under the head of "funeral expenses", in the absence of evidence to the contrary for higher expenses, to award at least an amount of Rs.25,000/-."

34. Following the above judgment, a sum of Rs.25,000/- is awarded under the head 'funeral expenses'. A sum of Rs.1,00,000/- awarded under the head 'loss of love and affection' to the parents is sustained. The total compensation works out to Rs.25,80,045.40 ps, which is rounded off to Rs.25,80,045/-, and the same is apportioned as under :

Loss of dependency	-	Rs.24,44,045/-
Transportation	-	Rs. 5,000/-
Damages to clothes and articles-	Rs.	1,000/-
Funeral expenses	-	Rs. 25,000/-
Loss of Estate	-	Rs. 5,000/-
Loss of love and affection	-	Rs. 1,00,000/-

TOTAL	-	Rs.25,80,045/-

Thus, the enhanced compensation is Rs.13,18,718/-.

35. As regards enhancement sought for in C.M.A.No.3619 of 2013 (M.C.O.P.No.4172 of 2008), it is the case of the injured Divya that she sustained grievous injuries - fracture post wall left acetabulum, fracture of right inferior pubic rami, fracture of left medial malleolus and bruises and lacerations all over the body.

36. Material on record discloses that she was given first aid in Government Hospital, Chengalpattu, and, thereafter, treated in Ayisha Hospitals Private Limited, Chennai, between 10.09.2008 and 15.09.2008; during which period, a surgery has been performed. To prove the nature of injuries and surgery, she has marked Exs.P-19, Discharge Summary, issued by Aysha Hospitals Limited. P.W.4, Doctor, who examined the injured, has also adduced evidence, supporting the version of the injured, as regards the nature of injuries and functional difficulties, experienced by her. He has assessed the disablement as 55%. However, the Claims Tribunal has fixed the same as 50%. The Tribunal has awarded Rs.50,000/- for disability, at Rs.1000/- per percentage. Rs.15,000/- towards pain and suffering, Rs.5,000/- for transportation and

Rs.5,000/- under the head extra nourishment are claimed. Grievous injuries and period of treatment, are proved. Considering the fact that the respondent has sustained fracture post wall left acetabulum, fracture of right inferior pubic rami, fracture of left medial malleolus and bruises and lacerations all over the body, compensation of Rs.15,000/-, awarded under the head 'pain and suffering', is less. She has been hospitalised for six days between 10.09.2008 and 15.09.2008. Surgery has been done in her left leg for internal fixation. Considering the gravity of the injuries, she would have experienced severe pain and suffering at the time of accident, during the period of hospitalisation, and thereafter. Pain is one, which is experienced momentarily, but it may continue even for a longer period, depending upon the gravity and situs of the injury, whereas, suffering is loss of happiness, on account of the same. Pain has no difference between Rich and Raff. In the light of the above discussion, this Court deems it fit to enhance the compensation under the head 'pain and suffering' to Rs.50,000/-.

37. The Tribunal has fixed disability as 50%. The injured has deposed that she finds it difficult to walk long distance, stand for long time, lift heavy objects, climb stairs, and squat on the floor. During the trial, she has also deposed that the internal fixation on the left leg has to be removed. P.W.4, doctor, has supported her case. With 50% functional disablement, there would be loss of amenities. Loss of amenities, as per the Full Bench decision of this Court in Cholan Roadways Corporation Ltd., Kumbakonnam vs. Ahmed Thambi and others, reported in 2006 (4) CTC 433, is as follows:

"deprivation of the ordinary experiences and enjoyment of life and includes loss of the ability to walk or see, loss of a limb or its use, loss of congenial employment, loss of pride and pleasure in one's work, loss of marriage prospects and loss of sexual function".

38. In the light of the above discussion and the decision stated supra, this Court is inclined to award Rs.50,000/-, under the head 'loss of amenities'. Though the injured has claimed, that, at the time of accident, she was working as a Clerk in an Auditor's Company, there is no proof of employment and earning. Therefore, this Court is not inclined to award any compensation for loss of earning during the period of treatment and future.

39. Though Mr.S.Gangaram Prasad, learned counsel for the appellant/claimant in C.M.A.No.3619 of 2013, submitted that the Claims Tribunal ought to have awarded the entire medical expenditure of Rs.46,083/- incurred for the period between 10.09.2008 and 15.09.2008, this Court is not inclined to

accept the said contention, for the reason that the Claims Tribunal has awarded a sum of Rs.22,332/-, for which, there was proof. Inasmuch as there was no proof for the remaining period, the Claims Tribunal had not granted reimbursement of the entire claim under the head 'medical expenses'. The decision of the Tribunal, in this regard, cannot be said to be faulty. As regards the claim for the balance medical expenses, we wish to extract a few decisions.

40. In *Helen C. Rebello v. Maharashtra State Road Transport Corporation* reported in 1999 ACJ 10 (SC), the Hon'ble Supreme Court observed as follows:

"Thus, it would not include that which Claimant receives on account of other form of deaths, which he would have received even apart from accidental death. Thus, such pecuniary advantage would have no correlation to the accidental death for which compensation is computed. Any amount received or receivable not only on account of the accidental death but that would have come to the Claimant even otherwise, could not be construed to be the "pecuniary advantage", liable for deduction. However, where the employer insures his employee, as against injury or death arising out of an accident, any amount received out of such insurance on the happening of such incidence may be an amount liable for deduction. However, our legislature has taken note of such contingency, through the Proviso of Section 95. Under it, the liability of the Insurer is excluded in respect of injury or death, arising out of, in the course of employment of an employee."

41. In *United India Insurance Co. Ltd., v. Patricia Jean Mahajan* reported in 2002 ACJ 1441, the Hon'ble Apex Court observed as follows:

"From the above passage, it is clear that the deductions are admissible from the amount of compensation in case the claimant receives the benefit as a consequence of injuries sustained, which otherwise he would not have been entitled to."

42. In *Cholamandalam MS General Insurance Co. Ltd., v. A.Saravanan* reported in 2013 ACJ 1437, Hon'ble Mr. Justice R.Subbiah, a learned single Judge of this Court has considered, as to whether, the claimant, who suffered injuries, incurred medical expenses, reimbursed by Star Health Insurance, under Medi-Claim Policy, is entitled to claim the said amount, once again from the appellant-Insurance Company therein, insurer of the tortfeasor. After considering the

decisions of the Apex Court in Helan C. Rebello's case (cited supra) and Patricia Jean Mahajan's case (cited supra) and a decision of the Bombay High Court in Vrajesh Navnitlal Desai v. K.Bagyam reported in 2006 ACJ 65 (Bombay), at Paragraph 8, held as follows:

"At this stage, it would be appropriate to refer the decision relied on by the 1st Respondent, namely, Helen C. Rebello and others v. Maharashtra State Road Transport Corporation and another, 1999 ACJ 10: 1999 (1) LW 208. On going through the said judgment, I find that in that case, Life Insurance Policy was taken. So far as the Life Insurance Policy is concerned, the amount could be received either by insured after the maturity or by his heirs after his death, which may be accidental or otherwise, on account of the contract, for which the insured contributed in the form of premium. But, in the instant case, it is only a Medi-Claim Policy, which is valid for a particular period and on expiry of period, automatically the Policy lapses and any amount received out of such Insurance is liable to be deducted. Further, the said Policy covers only for a specific purpose, namely, reimbursing the amount spent by the victim towards his Medical Treatment. Once the amount is reimbursed, the Claimant is not entitled to get the same under the name of compensation because it would amount to double compensation."

At Paragraph 10, the learned single Judge of this Court has further held as follows:

"10. The principle enunciated in the said decision is a fitting answer to the issue involved in this Appeal that in case the Claimant receives the benefit, as a consequence of injuries sustained, then he is not entitled for the same as compensation once again. But it does not cover the cases where the amount of payment received is not dependent upon the injury sustained on meeting with the accident. Therefore, in my considered opinion, the case relied by the learned Counsel for the 1st Respondent, which was rendered based on the LIC Policy, cannot be made applicable to the facts of the case. So far as LIC Policy is concerned, the Policy holder is entitled for the payment of entire premium on maturity or the heirs are entitled for the payment in the event of his death. The payment under the Life Insurance Policy does not depend upon the injury sustained in meeting with the accident. On the other hand, as far as the Medi-Claim Policy is concerned, the amount is

payable to the Claimant when he sustained injuries in an accident. Hence, the compensation for the injuries sustained by him under the head "Medical Treatment" cannot be granted."

43. In *New India Assurance Co. Ltd. v. Manish Gupta* reported in 2013 ACJ 2478, on reference, a Hon'ble Division Bench of Karnataka High Court, has been called upon, to decide, as to whether, the amount received in the Medi-Claim Policy, should be deducted from compensation, claimed under medical expenses, incurred by the injured. While considering the issue, as to whether, the compensation claimed and reimbursed by the insurer, under the Medi-Claim Policy and whether, such benefits should be set-off against the financial loss, alleged to have been suffered, on account of the injuries and treatment, the Hon'ble Division Bench considered the principles of law, applied by the English Courts, decided in *British Transport Commissioner v. Gourley* reported in 1955 (3) All E.R. 796 and *Hussain v. New Taplow Paper Mills Ltd.*, reported in 1988(1) All.E.R 541 and referred to the decision of the Apex Court in *Helen C.Rebello and others v. Maharashtra State Road Transport Corporation and Another* reported in 1999 ACJ 10 and the earlier Hon'ble Division Bench of Karnataka High Court in *Harkhu Bhai v. Jiyaram* reported in 2005 ACJ 1332 and at Paragraph 22 of the judgment, held as follows:

"22. In the case on hand, the facts are almost similar. It is not in dispute that in all the claim petitions, the claimants had taken the Mediclaim policies and they have claimed the amount under the policy. We are of the view that the question of the claimants claiming compensation in the claim petitions, which is filed under the Act for the amount expended by them for the treatment, certainly cannot be granted. The medical expenses as observed, is classified as a pecuniary loss. Pecuniary loss in its context means that the actual amount, which is expended by the claimant for treatment. If the said amount has been paid by the insurer under the Mediclaim policy, the question of the claimant claiming the very same amount for the very same purpose, which is inclusive of the expenses, which are incurred by him for hospitalization and for his treatment does not arise. Undoubtedly, if the amount, which is received by the claimant under the Mediclaim policy falls short of the actual expenses expended by him, it is always open for him to claim the difference of amount spent from the Tribunal. But however, he cannot claim compensation under both the Mediclaim policy as well as the claim petition filed under the Act. The decision of the Apex Court in *Hellen C.Rebello's* case was in respect of the Life Insurance Policy and not in respect of a

Mediclaim policy and therefore the said decision is distinguishable."

It is also worthwhile to extract few paragraphs from Manish Gupta's case (cited supra), as follows:

"10. When considering whether an item should be set off, it helps to go back to basic principles. Damages for financial loss are assessed so as to give compensation for the actual loss in money which the claimant has sustained or will sustain. In the case of British Transport Commissioner V/s. Gourley reported in 1955 (3) All E.R. 796 has observed thus:

"The basic principle, so far as loss of earnings and out of pocket expenses are concerned, is that the injured person should be placed in the same financial position so far as can be done by an award of money as he would have been had the accident not happened..."

11. The second question arises when, because of the accident, the claimant would receive some benefit, which he would not otherwise have received. There is no such universal rule that all such benefits should be set-off as against financial loss. Prima facie, it has been said, such a benefit should be taken into account to arrive at the total loss, but there are number of exceptions.

.....

16. A learned Single Judge of this Court in the case of Binup Kumar R. V/s. Prabhakar H.G. and another reported in 2010 ACJ 2742 was of the view that the claimants cannot get the benefit both under the Mediclaim policy as well as under the Act. The learned Single Judge has also drawn an analogy in the case of a Government Servant inasmuch as whatever the amount a Government Servant gets reimbursed from his employer, the said amount will be deducted from out of the total amount arrived at by the Tribunal and the balance will have to be paid to him. On the same lines, whatever the amount the claimant gets from any scheme like Mediclaim etc., the said amount will have to be deducted from the actual amount payable to the claimant.

In Manish Gupta's case (cited supra), the Hon'ble Division Bench of the Karnataka High Court, also considered that if the claimant had already received compensation for the damages from his vehicle insurer, caused to the vehicle, whether it would be open to the claimant to once again claim the same amount from the tortfeasor and consequently, his insurer. It is also worthwhile to extract few paragraphs from Manish Gupta's case (cited supra), as follows:

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<https://hcservices.ecourts.gov.in/hcservices/>In similar, if not identical

circumstances, a Division Bench of this Court in the case of Karnataka State Road Transport Corporation V/S. Anantharam Singh reported in ILR 1996 KAR 1088 has observed that once a claim is satisfied with respect to the damages caused to the car by the insurer, the question of the owner of the car claiming damages as against the tort-feasor before the Claims Tribunal does not arise inasmuch as the cost of repair having been already recovered through the insurer, the claimant or the owner of the car cannot claim compensation under the claim petition filed under the Act. It is useful to extract the observations made by the Division Bench, which would read as under:

"In the above state of evidence, we find no justification for the Tribunal to award a compensation of Rs.50,754.50 to the respondent herein. It is not the case of the respondent that he had incurred any expenses towards the repair charges of the damaged car, nor it is his case that he had suffered any loss on account of the sale of the damaged car to any person. On the other hand, it appears to be a case where the Insurance Company, with whom the car had been insured at the time of the accident, had settled the entire claim of the deceased owner of the car as well as the liability of the Bank, with whom the car had been hypothecated for the loan borrowed by the deceased. There is also a positive admission by P.W.1 himself that the case was taken over by the Insurer itself and that he had never become the R.C. Holder of the car. That being so, we are unable to sustain the Award made by the Tribunal in favour of the present respondent."

21. In fact an identical question fell for consideration before another Division Bench of this Court in the case of Harkhu Bhai and others V/s. Jiaram and others reported in 2005 ACJ 1332 wherein two trucks were involved in an accident causing damage to the property. A claim petition was lodged under Section 166 of the Motor Vehicles Act. The Division Bench observed that when the owner of the Truck received compensation in full and final settlement of his claim from the Insurance Company, the question of he claiming compensation for an identical relief under the Act in a claim petition does not arise. It is useful to extract the observations made by this Court:

It is not in dispute that the vehicle owned by the claimant in M.V.C. No.3 of 1990 had suffered extensive damage on account of the collision but it is also admitted that the vehicle being insured with one of (sic.) the other insurance companies, the

damage was assessed and paid. The order passed by the Tribunal further shows that the payment was received by the claimant in full and final settlement of his claim without any reservation or demur. In the absence of any material to show that the claim paid by the other insurance company represented a part only of the total damage, the Tribunal was justified in rejecting the claim for any further payment."

On the contention that in Helen C.Rebello's case, the Hon'ble Supreme Court has held that there should not be any deduction of compensation, when the deceased had received amounts under LIC, distinguishing the Apex Court's decision, the Hon'ble Division Bench of Karnataka High Court, held as follows:

"The Apex Court has emphatically observed that the amount received by the claimants under the Life Insurance Policy is not at all deductible. Undoubtedly, the deceased therein had taken a Life Insurance Company Policy to which the deceased had contributed substantially every year, which is more popularly called as premium. Any amount, which is received or receivable by the claimants is only on account of the accidental death but that would have come to the claimant even otherwise, could not be construed to be the 'pecuniary advantage' liable for deduction."

It is also worthwhile to extract Paragraph 18 in Manish Gupta's case (cited supra), where the Hon'ble Division Bench of Karnataka High Court, has set out the tests to be applied for determining the 'pecuniary advantage', which has to be deducted from the amount of compensation in a case of death, as follows:

"18. The tests to be applied for determining the 'pecuniary advantage' which has to be deducted from the amount of compensation in a case of death are:

(1) Onus is on the insurer to establish that some pecuniary benefit or reasonable expectation of pecuniary benefit to the claimants, is resulting from the death of the deceased.

(2) Damages to be awarded to the claimants are compensatory and not punitive. Therefore, the test that no advantage should accrue to the wrong-doer would not be applicable.

(3) Where death has merely accelerated the receipt of benefits, which the claimants would have, in any case, received at some future date in such cases pecuniary benefits come to the claimants not by reason of the death. The pecuniary advantage received by the claimants is the advantage gained by acceleration of their interest.

(4) Benefits received from the employer, in some cases may be held to come to the claimants by reason of death. But, if the benefits are shown to have been received merely out of consideration for these claimants, e.g., contributions by co-workers to relieve the needs of the claimants, then such benefits cannot be held to have been received merely by reason of death of the deceased.

(5) Lastly, if there is any doubt as to whether the balancing principle extends to any class of benefit not covered by any binding authority, the doubt has to be resolved in favour of the claimants inasmuch as in such a case the defendant must be held to have failed to discharge the burden placed on him to justify such deduction."

At Paragraph 20, the Karnataka High Court further held that indeed, an injured person cannot claim benefit out of his own misfortune and therefore, he cannot claim medical expenses under the Mediclaim policy and also claim damages in the nature of amount expended for medical treatment under the claim petition, which is filed under the Motor Vehicles Act.

44. In *National Insurance Company Limited v. Deepmala Goel*, reported in 2013 ACJ 2382, after considering a catena of decisions, at Paragraphs 3 to 6, held as follows:

".....So far as the law laid down in the matter of *United India Insurance Co. Ltd., v. Patricia Jean Mahajan*(supra), is concerned, Apex Court has observed that claimant is not entitled to claim compensation which the claimant receives the benefit as a consequence of injuries sustained, which otherwise he would not have been entitled to. This position of law was not existing before the Hon'ble Division Bench while delivering the judgment in the matter of *Madhya Pradesh State Road Trans. Corpn., v. Priyank* [2000 ACJ 701 (MP)]. No doubt the amount of medical expenses has been received by the appellant under an agreement of insurance for which appellant has paid the premium. This amount of medical expenses is otherwise not available to the appellant. In the circumstances appellant is at the most entitled for the amount of premium which was paid by the appellant for mediclaim policy. In the opinion of this Court learned Tribunal committed no error in deducting a sum of Rs. 29,000/- on account of medical expenses."

4. In *Jaswant Kaur Sethi v. Tamal Das*, MANU/DE/3841/2009, *Udam Singh Sethi v. Tamal Das*, MANU/DE/3842/2009 and *Bajaj Allianz General Insurance Co. Ltd., v. Ganpat Rai Sehgal*,

MAC.APP.No.191/2000 decided on 3rd January, 2012, this Court following the judgment of the Supreme Court in Patricia Jean Mahajan (supra) held that the claimant is not entitled to medical expenditure reimbursed under the medi-claim policy.

5. Following the judgment of the Supreme Court in the case of United India Insurance Company Limited (Supra) followed by the Madhya Pradesh High Court in Jitendra (Supra) and this Court in Jaswant Kaur Sethi (supra), Udam Singh Sethi (supra) and Bajaj Allianz General Insurance Co. Ltd. (supra), it is held that respondent No.1 is not entitled to the amount of `64,139/- received by her under the medi- claim policy.

6. The learned counsel for respondent No.1 submits that the Claims Tribunal has awarded interest @ 6% per annum. However, the appropriate rate of interest in terms of the judgment of the Supreme Court in the case of Municipal Corporation of Delhi v. Association of Victims of Uphaar Tragedy & Ors., AIR 2012 SC 100 is 9% per annum. The rate of interest awarded by the Claims Tribunal is enhanced from 6% per annum to 9% per annum. Respondent No.1 shall be entitled to adjust the enhanced interest by virtue of this judgment before making the refund of the excess amount."

45. In National Insurance Co. Ltd., v. R.K.Jain reported in 2013 ACJ 2609, the question that came up for consideration before a learned single Judge of the Delhi High Court was whether, the amount received under the personal insurance is deductible from the amount awardable under the Motor Vehicles Act. After considering the decision in Helen C.Rebello's case (cited supra) and other decisions, the Delhi High Court held that the claimant is not entitled to receive both.

46. In National Insurance Company Limited v. C.Ramesh Babu and another reported in 2014 ACJ 1674, this Court (The Hon'ble Mr. Justice C.T.Selvam) held as follows:

"The reimbursement of medical expenses is pursuant to an independent contract entered into between the claimant and the insurance Company. Settlement of a claim thereunder can have no bearing on the right of the claimant to seek compensation towards medical expenses in a claim under the Motor Vehicles Act. In saying so we would follow Helen C. Rebello v. Maharashtra State Road Trans. Corpn., 1999 ACJ 10 (SC)."

reimbursed, has to be set off, while estimating the actual monetary loss and consequently, the ultimate quantum of compensation. Even in Helen Rebello's case (cited supra), the Hon'ble Supreme Court has observed that where the employer insures his employee, as against injury or death arising out of an accident, any amount received out of such insurance on the happening of such incidence may be an amount liable for deduction. Thus, even in Helen Rebello's case (cited supra), a distinction between Life Insurance Policy and other Insurance Policy, taken by the employer for his employee, has been taken note of. When the injured has already been reimbursed by the employer of his son for the medical expenses incurred, can it be still contended that there was a pecuniary loss? Can it be claimed from the insurer of the offending vehicle, as if it was spent by him? and thus there was a monetary loss to be compensated? In the light of the above discussion, we are of the considered view that the claimant/injured is entitled only to the amount spent and suffered as monetary loss.

48. Award of Rs.5,000/- under the head 'transportation' is sustained. Considering the nature of injuries, surgery and treatment, compensation awarded under the head extra-nourishment is slightly modified as Rs.10,000/-. During the period of hospitalisation, he would have required the assistance of an attendant and hence, a sum of Rs.5,000/- is awarded. Thus, after reworking, the total compensation, due and payable to the injured/appellant in C.M.A.No.3619 of 2013 is Rs.2,22,000/- and the same is apportioned as hereunder:

50% Permanent Disability -	Rs.1,00,000/-
	(Rs.2,000/- per percentage)
Pain and Suffering -	Rs. 50,000/-
Loss of amenities -	Rs. 50,000/-
Transportation -	Rs. 5,000/-
Extra-nourishment -	Rs. 10,000/-
Attendant Charges -	Rs. 5,000/-
Damage to clothes -	Rs. 2,000/-

Total -	Rs. 2,22,000/-

Thus, the enhanced compensation is Rs.1,47,000/-.

49. As regards the claim for enhancement in C.M.A.No.3620 of 201, (MCOP No.4173 of 2008), though the injured S.Sevagi has claimed that her family had lost the services as housewife, and, earning as a Tailor, on account of disablement, assessed at 45% by the Tribunal and sought for compensation under both the heads, loss of earning during the period of treatment and loss of future earning, this Court is not inclined to award any compensation under the above said heads. Avocation and earning are not proved. Her services to the family could be utilised, but not lost. The appellant has claimed a sum of Rs.98,226/- under the head 'medical

expenses', said to have been incurred for the period between 10.09.2008 and 19.09.2008 = Rs.58914/- and for the period between 15.12.2008 and 19.12.2008 = Rs.39312/-. In so far as the first period is concerned, the Tribunal has awarded Rs.29,295/-, and for the second spell, Rs.24,562/-, has been awarded, totalling to Rs.53,857/-. The compensation awarded by the Tribunal is duly supported by bills and records. Thus, when proof of actual expenditure was shown, medical expenses has been awarded. The claim for the remaining amount cannot be considered, for the reason that her husband, K.Sampath Raj, employed in Canara Bank, Abhiramapuram Branch, Chennai, had availed the benefit from his employer.

50. There was a compound fracture of both bones in the left legs, bruises and lacerations and minor injuries. She has been hospitalised between 10.09.2008 and 19.09.2008 (for ten days), duly supported by Exs.P-11, P-14 and P-15, Discharge Summaries. Though the doctor has assessed the disability as 50%, having regard to his oral testimony and crossexamination that there would be a variation of 5% in the matter of assessment, the Tribunal has fixed the same as 45% and awarded Rs.45,000/-, as disability compensation (Rs.1,000/- per percentage). Considering the period of accident, this Court is inclined to award Rs.90,000/- as disability compensation (Rs.2,000/- per percentage).

51. At the time of accident, the injured was aged about 52 years. She has sustained compound fracture of both bones in the left leg, assessed to have suffered 45% disablement. The Tribunal has awarded Rs.15,000/-, for pain and suffering. In the light of the discussion on the aspect of pain and suffering in the foregoing paragraphs, the compensation awarded under the head 'pain and suffering' requires enhancement, and it is enhanced to Rs.50,000/-.

52. There is no award under the head 'loss of amenities'. Considering the difficulties experienced by her on account of the extent of disablement, there should be a sum, awarded under the head 'loss of amenities' also, which has been explained in the foregoing paragraphs. Therefore, a sum of Rs.40,000/- is awarded under the said head. After reworking, the quantum of compensation due and payable to the appellant in C.M.A.No.3620 of 2013 (MCOP No.4173 of 2008) is Rs.2,01,000/- and it is apportioned as hereunder :

45% Permanent Disability -	Rs.	90,000/-
(Rs.2,000/- per percentage)		
Pain and Suffering	-	Rs. 50,000/-
Loss of amenities	-	Rs. 40,000/-
Transportation	-	Rs. 5,000/-
Extra-nourishment	-	Rs. 10,000/-
Attendant Charges	-	Rs. 5,000/-
Damages to clothes	-	Rs. 1,000/-

TOTAL	-	Rs.2,01,000/-
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Thus, the enhanced compensation is Rs.1,31,000/-.

53. In the light of the above discussion and decisions, we are of the view that the State Express Transport Corporation, Chennai, has not made out any case, for reversal of the finding of negligence, fixed on the driver of its bus, bearing registration No.TN-01-N-7080, and there is no case for reduction of compensation. On the contra, injured/legal representatives of the deceased have substantiated their claim for revision/enhancement of compensation under the heads stated supra.

54. Record of proceedings shows that on 06.08.2015, Mr.K.S.Suresh, learned counsel for the Transport Corporation, submitted that the entire award amount with proportionate accrued interest and costs, awarded to the legal representatives of the deceased/injured would be deposited on or before 12.08.2015, which, we hope, would have been complied with, by now. If not, the Corporation is directed to deposit the same along with the balance/enhanced amount of Rs.13,18,718/- to the credit of M.C.O.P.No.4171 of 2008, on the file of Motor Accident Claims Tribunal-cum-Chief Judge, Court of Small Causes, Chennai, within a period of six weeks from the date of receipt of a copy of this order. In so far as the case of the injured is concerned, the Transport Corporation is directed to deposit the enhanced compensation of Rs.1,47,000/- and Rs.1,31,000/- respectively, with interest at the rate of 7.5% per annum, from the date of claim till deposit, to the credit of M.C.O.P.Nos.4172 and 4173 of 2008, on the file of Motor Accident Claims Tribunal-cum-Chief Judge, Court of Small Causes, Chennai, within the same time. On such deposit, the injured/legal representatives of the deceased are permitted to withdraw the amount, by making necessary application before the Tribunal.

55. C.M.A.No.1283 of 2015, filed by the Transport Corporation is dismissed. C.M.A.Nos.3618 to 3620 of 2013, filed by the injured/legal representatives of the deceased, are allowed, to the extent indicated. No costs. Consequently, the connected M.P.No.1 of 2015 in C.M.A.No.1283 of 2015 is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

dixit/skm

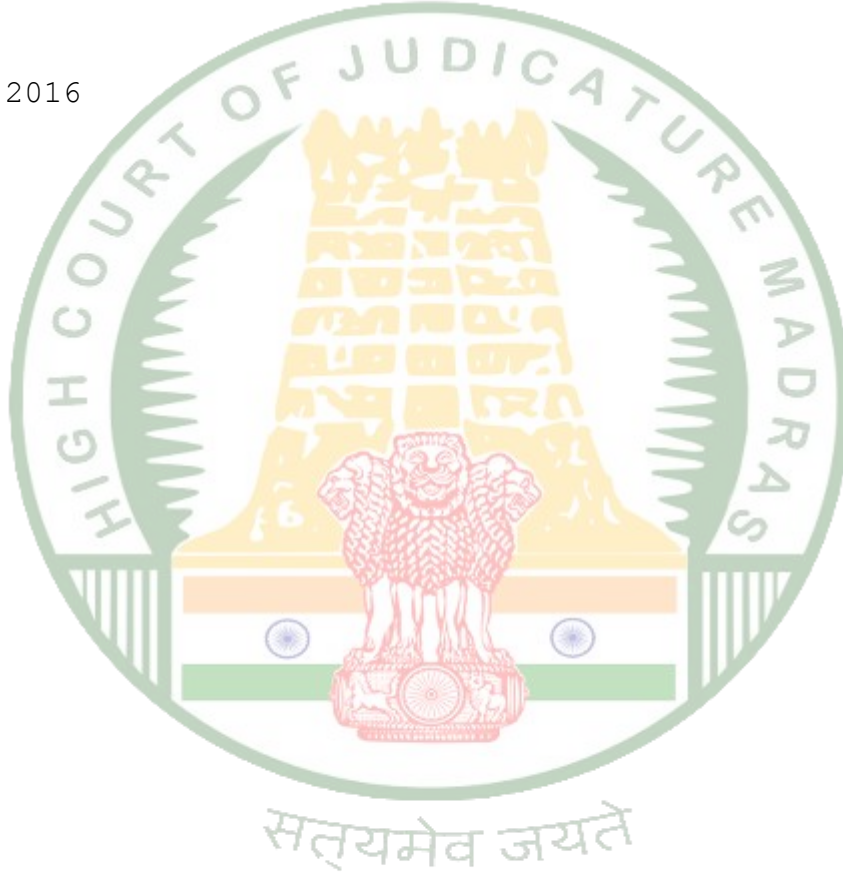
To
The Motor Accident Claims Tribunal-
cum-Chief Judge, Court of Small Causes,
Chennai.

Copy to:
The Section Officer,
VR Section, High Court, Madras.

+3 ccs to Mr.S.Gangaram Prasad, Advocate, sr.66494 to 66496

C.M.A.No.3618 to 3620/2013 & 1283/2015

ksj co
kra 11.02.2016



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