THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:30.04.2015

CORAM:
THE HONOURABLE MS.JUSTICE V.M.VELUMANI

CMA.(MD)Nos.126 & 127 of 2013

C.M.A.(MD)No.126 of 2013

Parvathi : Appellant/Petitioner

Vs.

1.Tamil Nadu State Transport Corporation,
rep. by its Managing Director,
Coimbatore at Erode,
37, Mettupalayam Road,
Coimbatore.

2.E.Pasupathy : Respondents/Respondents
(Exparte beforeTribunal)

Appeal filed under Section 173 of Motor Vehicles Act 1988, challenging the judgment and decree dated 01.07.2011 made in M.C.O.P.No.280 of 2010 on the file of the Motor Accident Claims Tribunal (District Court) Karur.

C.M.A.(MD)No.127 of 2013

K.Sangeetha : Appellant/Petitioner

Vs.

1.Tamil Nadu State Transport Corporation,
rep. by its Managing Director,
Coimbatore at Erode,
37, Mettupalayam Road,
Coimbatore.

2.E.Pasupathy : Respondents/Respondents
(Exparte before Tribunal)

Appeal filed under Section 173 of Motor Vehicles Act 1988, challenging the judgment and decree dated 01.07.2011 made in M.C.O.P.Nos.281 of 2010 on the file of the Motor Accident Claims Tribunal (District Court) Karur.

For Appellant in Both Appeals : Mr.P.Ganapathi Subramanian
For R1 in Both Appeals : Mr.M.K.Sekar
For R2 in Both Appeals : Mr.T.Selvakumaran

COMMON JUDGMENT

The issue involved in both the CMA is one and the same and hence the same were heard together and a common judgment is passed.

2. Challenging the judgment, dated 01.07.2011, made in MCOP Nos.280 and 281 of 2010, on the file of the Motor Accident Claims Tribunal

(District Court), Karur, the claimants have filed these Civil Miscellaneous Appeal.

3. According to the claimants, on 12.12.2009, while they were travelling in an Auto Rickshaw, bearing Registration No.TCY-6124, belonging to the second respondent from Karur to Trichy, met with an accident, at 6.30 p.m. near Goundampalayam Higher Secondary School, due to rash and negligent driving of the driver of the bus belonging to the first respondent. They were taken to G.C.Hospital, Karur, after taking initial treatment, they were referred to Kovai Medical Center and Hospital Limited, Coimbatore. The appellant in C.M.A.No.126 of 2013 took treatment from 13.12.2009 to 04.01.2010, for 23 days, as inpatient. Again, she was admitted in the same Hospital on 12.01.2010, for removal of ETN of Right tibia and discharged from the hospital on 17.01.2010.

4. The appellant has stated that she had spent Rs.10,00,000/- towards medical expenses and she is in need of Rs.5,00,000/-, for future medical expenses. She is aged 46 years at the time of accident and she is a graduate and house wife. By taking tuition, she earned 5,000/- per month. But, after the accident, she suffered permanent disability. Therefore, she claimed Rs.35,00,000/-, as compensation, for the injuries suffered by her.

5. The appellant, in C.M.A(MD).No.127 of 2013 due to the accident, sustained hip injury and injuries all over the body, Blunt injuries and degloving all over body. She underwent several operations. The appellant was initially admitted in G.C.Hospital, Karur. Then, she was referred to Kovai Medical Center Hospital, Coimbatore. The appellant had taken treatment as inpatient from 13.12.2009 to 10.02.2010 and again from 15.06.2010 to 19.06.2010. The appellant had undergone 6 surgeries. She spent Rs.10,00,000/- towards medical expenses. She requires Rs.3,00,000/-, for future medical expenses. The appellant was doing B.Tech (I.T) at the time of accident. After the accident, she could not sit for a longtime. She is unable to do her daily routine works. The movement of the legs are crippled and thereby, suffered permanent disability, due to deformity and scars on her body. The appellant lost her happiness and also lost one semester. She could not write the examination. Therefore, she claimed compensation of Rs.30,00,000/-.

6. The first respondent filed a counter affidavit before the Tribunal denying various averments made by the appellants. The first respondent denied that the accident had taken place due to the rash and negligent driving of the driver of the first respondent's vehicle. The driver of the first respondent had driven a bus, bearing registration No.TN-33-N-2386 from Coimbatore to Trichirapalli, with due care and caution. The bus left the Coimbatore at 3.15 P.M. and the accident had taken place by 6.15 p.m., When the bus was coming near MAM Ramasamy High School near Puliyur, the second respondent's Auto Rickshaw bearing registration No.TCY 6124, came in the opposite direction in a rash and negligent manner. The driver of the first respondent's bus on seeing the Auto Rickshaw tried to avoid the accident, but due to negligence of driver of second respondent, the accident had taken place. The police has lodged the FIR against the driver of the first respondent without proper enquiry. The driver of second respondent had no valid driving licence at the time of accident. Further, in the auto rickshaw, two persons alone are permitted to travel. Whereas, at the time of accident, more than two persons travelled in the auto. As a result of which, the accident had taken place. The first respondent has stated that the appellants must prove their age, occupation and income, as claimed in the petitions. The petitions are

not maintainable for non-jointer of parties i.e., driver of the bus. For the above reasons, they prayed for dismissal of the claim petition.

7. Before the Tribunal, one of the petitioners in claim petition in M.C.O.P.No.280 of 2010 was examined, as P.W.1. The appellant in C.M.A.No.126 of 2013, was examined as P.W.2. The appellant in C.M.A.No.127 of 2013 was examined as P.W.3 and Dr.Selvaraj was examined as P.W.4. On the side of the appellants, Exhibits P1 to P51 were marked. On the side of the first respondent, the driver of the bus was examined as R.W.1 and no document was marked. The second respondent remained ex-parte.

8. The Tribunal considering Ex.P1, certified copy of the FIR, Exs.P4 and P5, Motor Vehicle Inspector's reports of the bus and auto rickshaw came to the conclusion that the accident took place only due to the rash and negligent driving by the driver of first respondent.

9.The Tribunal taking into consideration the facts of the case, held that the multiplier method could be proper method to arrive at quantum of compensation. The appellant in C.M.A.No.126 of 2013, is a house wife and P.W.4 doctor has stated in Ex.P.48 that the appellant sustained 62% of permanent disability. Her right leg, Chest expansion and right shoulder movement are restricted. The appellant due to thorax injury, has to be careful and has to take utmost care and caution to avoid infection. The tribunal has fixed notional income at Rs.3,500/- per month. The appellant was aged 46 years at the time of accident. Therefore, multiplier '13' was applied to arrive at a compensation of Rs.5,46,000/- (3,500 x 12 x 13) towards loss of income. The appellant has spent Rs.8,33,587/- towards medical expenses. She availed medical aid through Star Health Insurance Scheme for a sum of Rs.4,50,000/-. Therefore, a sum of Rs.3,85,000/- was awarded towards medical expenses, after deducting Rs.4,50,000/- availed from Star Health Insurance. For pain and suffering, Rs.50,000/- was awarded. For transportation and nutrition, Rs.20,000/- was awarded. Since multiplier method is adopted, future medical expenses was not awarded. Thus, the Tribunal awarded total compensation of Rs.10,01,000/- and rejected the claim of appellant for future medical expenses on the ground that multiplier method is adopted. Aggrieved against the said award, the appellant has filed the present appeal.

10. The appellant in C.M.A.No.127 of 2013 is a B.Tech (I.T) student. P.W.4 Doctor has stated in Ex.P.50 that the appellant sustained 52% of permanent disability. Her movements are restricted. The appellant was 21 years at the time of accident and multiplier 18 was adopted. The appellant was an Engineering Student at the time of accident. Therefore, notional income of Rs.4,000/- was fixed and by adopting the multiplier of 18, the Tribunal awarded a sum of Rs.8,64,000/- (4,000 x 12 x 18) as loss of income, after deducting 1/3, awarded a sum of Rs.5,76,000/- towards loss of earning capacity.

11. The appellant was taking part in extra curricular activities and to prove the same, she filed certificate Ex.P44 & Ex.P45. The Tribunal has awarded a sum of Rs.1,00,000/- towards pain and suffering and a sum of Rs.9,25,000/- towards transportation and medical expenses. Totally, a sum of Rs.15,01,000/- was awarded as compensation. Aggrieved against the said order, the appellant has filed the appeal in C.M.A.No.127 of 2013.

12. Heard the learned counsel appearing for the petitioner and the respondents.

13. The learned counsel for the appellant contended that the Tribunal did not consider the nature of injuries suffered by the appellant and well settled principle with regard to awarding compensation, as per the

judgment of the Hon'ble Apex Court and this Court.

The counsel for the appellant relied on the following judgements:-

i)2014(1) TNMAC 6 (DB) (B.Karthik Raja vs. New India Assurance Co.Ltd.,)

"13. In Raj Kumar v.Ajay Kumar and another, 2010(2) TN MAC 581(SC): 2011 (1) SCC 343: 2011 ACJ 1, it was held that the Tribunal/Courts should adopt Multiplier method only if there is permanent disablement with respect to the whole body. Considering the steps in deciding the permanent disability and also the quantum of loss of future earning capacity, the Honourable Supreme Court held as under:

"12. Therefore, the Tribunal has to first decide whether there is any permanent disability and, if so, the extent of such permanent disability. This means that the Tribunal should consider and decide with reference to the evidence:

(I) Whether the disablement is permanent or temporary:

(ii) if the disablement is permanent, whether it is permanent total disablement or permanent partial disablement;

(iii) if the disablement percentage is expressed with reference to any specific limb, then the effect of such disablement of the limb on the functioning of the entire body, that is, the permanent disability suffered by the person."

If the Tribunal concludes that there is no permanent disability then there is no question of proceeding further and determining the Loss of Future Earning Capacity. But if the Tribunal concludes that there is permanent disability then it will proceed to ascertain its extent. After the Tribunal ascertains the actual extent of permanent disability of the Claimant based on the medical evidence, it has to determine whether such permanent disability has affected or will affect his earning capacity.

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

The same principle was reiterated in the case of Govind Yadav v. New India Insurance Company Limited, 2011(2) TNMAC 661 (SC): 2011 (10) SCC 683 2012 ACJ 28, and Laxman v. Divisional Manager, Oriental Insurance Company Limited and another, 2012(1) TNMAC 28 (SC) 2011 (1) SCC 756; 2012 ACJ 191. "

ii) 2014(2) TNMAC 6 (SC) (V.Mekala v. M.Malathi & another)

"17. The fact that the Appellant was a brilliant student at the time of the accident should also be taken into consideration while awarding Compensation to her. Therefore, taking Rs.6,000/- as monthly notional income by the Tribunal for the purpose of awarding Compensation under this head is too meager an amount. The learned Counsel appearing for the Respondent No.2 contended that the Appellant can still finish her education and find employment and therefore, there is no necessity to enhance the amount of Compensation under the head of 'Loss of Income' and 'future prospects'. It is pertinent to reiterate here that the Claimant/Appellant has undergone and undergoing substantial pain and suffering due to the accident which has rendered both her legs dysfunctional. This has reduced the scope of her future prospects including her marriage substantially. Moreover, a tort feasor is not entitled to dictate the terms of the Claimants-Appellants career as has been held by the Karnataka High Court in the case of K.Narsimha Murthy v. The Manager, Oriental Insurance Co. Ltd., and anr., 2004 ILR Kar. 2471.

18.Further, it has been held in the case of Reshma Kumari (supra), that certain relevant factors should be taken into consideration while awarding Compensation under the head of future prospect of income. The relevant paragraph read as under;

"27.The Question as to the methodology required to be applied for determination of Compensation as regards prospective Loss of Future Earnings, however, as far as possible should be based on certain principles. A person may have a bright future prospect; he might have become eligible to promotion immediately; there might have been chances of an immediate pay revision, whereas in another the nature of employment was such that he might not have continued in service; his chance of promotion, having regard to the nature of employment may be distant or remote. It is, therefore, difficult for any court to lay down rigid tests which should be applied in all situations. There are divergent views. In some cases it has been suggested that some sort of hypotheses or guess work may be inevitable. That may be so."

19.Therefore, in the light of the principles laid down in the aforesaid case, it would be just and proper for this Court, and keeping in mind her past results we take Rs.10,000/- as her monthly notional income for computation of just and reasonable Compensation under the head of Loss of Income. Further, the High Court has failed to take into consideration the future prospects of income based on the principles laid down by this Court in catena of cases referred to supra. Therefore, the Appellant is justified in seeking for re-enhancement under this head as well and we hold that the Claimant-Appellant is entitled to 50% increase under this head as per the principle laid down by this Court in the case of Santosh Devi (supra). "

2013(2) TN MAC 76 (SC) (G.Ravindranath @ R.Chowdary vs. E.Srinivas & another)

10. We have heard learned Counsel for the parties and

carefully perused the record. It is settled law that compensation in personal injury cases should be determined under the following heads:

Pecuniary damages (Special damages)

(I) Expenses relating to Treatment, Hospitalisation, Medicines, Transportation, Nourishing Food and Miscellaneous Expenditure.

(ii) Loss of Earnings (and other gains), which the injured would have made had he not been injured, comprising:

(a) Loss of earning during the period of treatment;

(b) Loss of future earnings on account of Permanent Disability.

(iii) Future Medical Expenses.

Non-Pecuniary damages (General damages)

(iv) Damages for Pain, Suffering and Trauma as a consequence of the injuries.

(v) Loss of Amenities (and/or Loss of Prospects of Marriage).

(vi) Loss of Expectation of Life (shortening of normal longevity).

14. In Kavita v. Deepak, 2012(2) TN MAC 362 (SC); 2012 (8) SCC 604, the Court referred to earlier precedents and held:

Ïn the light of the principles laid down in the aforementioned cases, it is suffice to say that in determining the quantum of compensation payable to the victims of accident, who are disabled either permanently or temporarily, efforts should always be made to award adequate compensation not only for the physical injury and treatment, but also for the loss of earning and inability to lead a normal life and enjoy amenities, which would have been enjoyed but for the disability caused due to the accident. The amount awarded under the head of Loss of Earning Capacity are distinct and do not overlap with the amount awarded for Pain, Suffering and Loss of Enjoyment of Life or the amount awarded for Medical Expenses".

20. In our view, the Appellant is entitled to Rs.2,20,000/- towards the Expenses incurred in the Treatment including Hospitalization Charges, Mess and Lodging Charges, Transportation, etc. For Future Medical Expenses including Hospitalization, Medicines, Attendant Charges, etc., the Appellant is entitled to Rs.6 lakhs. For Pain, Suffering and Trauma, the Appellant is entitled to a sum of Rs.3 lakhs. For Loss of Amenities and Prospects of Marriage, the Appellant is entitled to Rs.4 lakhs. For Loss of Expectation of life and Loss of Future Earning, the Appellant is entitled to a sum of Rs.5 lakhs. In the result, the Appeal is allowed, the impugned judgment is set aside and it is held that the Appellant is entitled to Total Compensation of Rs.20,20,000/- (Rupees Twenty lakhs twenty thousand only) with interest at the rate of 6% per annum from the date of filing the Claim Petition till the date of actual payment."

2009(1) TNMAC 671 (DB) (National Insurance Co. Ltd., v. Minor Deepika & ors. (DB)

7. There was no evidence that the deceased-mother was also a partner in the firm. Therefore, the Tribunal relying on Lata Wadhwa and Others v. State of Bihar and Others, 2001 ACJ 1735,

where the Supreme Court held that Notional Income of Rs.3,000/- should be awarded for house wives, fixed Rs.3,500/- as monthly income. The monetary quantification of the work done by the women at hom is something that has not been really assessed.

11. The role of a housewife includes managing budgets, co-ordinating activities, balancing accounts, helping children with education, managing help at home, nursing care, etc. One formula that has been arrived at determines the value of the housewife as, Value of housewife=husband's income-wife's income + value of husband's household services, which means the wife's value will increase inversely proportionate to the extent of participation by the husband in the household duties. The Australian Family Property Law provides in matrimonial matters, for instance, one has to factor in "the contribution made by a party to the marriage to the welfare of the family constituted by the parties to the marriage and any children of the marriage, including any contribution made in the capacity of a homemaker or parent".

14.Therefore, even assuming that there was no documentary evidence in the present case to show that the deceased Uma Gajalakshmi was working as a partner, we will accept the evidence of her father-in-law (P.W.1) that she was assisting her husband at work and taking into account the Notional Income of a Housewife, we confirm the monthly income of Rs.3,500/- fixed by the Tribunal. This can be justified by adopting the partnership method and assessing her salary as half her husband's salary, which would be Rs.2,750/- and notionally adding Rs.750/- to the value of her support to her husband at work. While quantifying the pecuniary loss, we normally deduct some amount towards personal expenses. But in this peculiar case, where the child had lost both her parents and has to be taken care of by the ageing grandparents, we will not deduct any amount towards personal expenses and we will take the entire sum of Rs.3,500/- as the loss suffered by the minor Deepika because she has lost her mother. We will multiply this by 12 to get the annual income and again by 17, which is the proper multiplier. Then we will get Rs.7,14,000/-. The amounts awarded viz., Rs.20,000/-, Rs.10,000/- and Rs.10,000/- under the heads of loss of love and affection, Loss of Expectation of Life and Funeral Expenses, remain unchanged. Therefore, the Total Compensation comes to Rs.7,54,000/- which is rounded off to Rs.7,60,000/-.

2010(2) Tn MAC 129(SC) (Arun Kumar Agrawal and another vs. National Insurance Company and others)

23. In India the Courts have recognised that the contribution made by the wife to the house is invaluable and cannot be computed in terms of money. The gratuitous services rendered by wife with true love and affection to the children and her husband and managing the household affairs cannot be equated with the services rendered by others. A wife/mother does not work by the clock. She is in the constant attendance of the family throughout the day and night unless she is employed and is required to attend the employer's work for particular hours. She takes care of all the requirements of husband and children including cooking of food, washing of clothes, etc. She teaches small children and provides invaluable

guidance to them for their future life. A housekeeper or maidservant can do the household work, such as cooking food, washing clothes and utensils, keeping the house clean, etc., but she can never be a substitute for a wife/mother who renders selfless service to her husband and children.

33.Reverting to the facts of this case, we find that while in his deposition, Appellant NO.1 had categorically stated that the deceased was earning Rs.50,000/- per annum by paintings and handicrafts, the Respondents did not lead any evidence to controvert the same. Notwithstanding this, the Tribunal and the High Court altogether ignored the income of the deceased. The Tribunal did advert to the Second Schedule of the Act and observed that the income of the deceased could be assessed at Rs.5,000/- per month (Rs.60,000/- per annum) because the income of her spouse was Rs.15,416/- per month and then held that after making deduction, the total loss of dependency could be Rs.6 lacs. However without any tangible reason, the Tribunal decided to reduce the amount of compensation by observing that the deceased was actually non-earning member and the amount of compensation would be too much. The High Court went a step further and dismissed the Appeal by erroneously presuming that neither of the claimants was dependent upon the deceased and the services rendered by her could be estimated as Rs.1250/- per month.

2014(1) TNMAC 657 (DB) (R.Harish v. G.Divakaran)

13. It is to be noted that the Compensation for Loss of Earning Power/capacity has to be determined based on various aspects including the permanent injury/disability. It cannot be disputed that apart from the fact that the Permanent Disability affects the earning capacity of the person concerned undoubtedly, one has to forego the other personal comforts and even for normal avocation, they have to depend on others. In the case on hand, as per Ex.P13- Disability Certificate, the Claimant had sustained 80% disability since his right hand got amputated upto his shoulder level, as a result of which, the Claimant was unable to do his day-to-day work at his tender age and he not only physically but also mentally suffers throughout his life by cursing his fate and it is obvious that his future movement also curtailed due to his amputation as he cannot ride any vehicle and it is reported that due to this, he lost his education also.

14. Considering the fact that the Claimant was 18 years at the time of occurrence of the accident, applying the principle of Sarla Verma v.Delhi Transport Corporation, 2009(2) TN MAC1 (SC) 2009 ACJ 1298 (SC), we are of the view that for calculating the amount of Compensation, the Multiplier (16) adopted by the Tribunal is erroneous and it should be 18. The Tribunal has fixed the monthly income of the Claimant at Rs.12,000/- based on the fact that the Claimant was an Engineering Student and after completion of his studies, there would be every likelihood of earning Rs.40,000/- per month. We agree with the view of the Tribunal in fixing the monthly income of the Claimant at Rs.12,000/-. The issue regarding calculation of future prospects came up before the Hon'ble Supreme Court, in Syed Sadiq and

others v. Divisional Manager, United India Insurance Co. Ltd., 2014(1) TN MAC 459 (SC); 2014 ACJ 627, wherein, having followed the decision in Santhosh Devi v. National Insurance Co. Ltd., 2012 ACJ 1428 (SC) and on considering that the Claimant therein was aged 24 years, who suffered permanent functional disability at 85% the Hon'ble Supreme Court has held that the Claimant is entitled to 50% increment in the future prospects.

16. As regards Compensation awarded by the Tribunal under the heads of "Pain and Suffering"and "Loss of Marital Prospects"are concerned, considering the nature of the injury sustained by the Claimant, we are of the view that the Compensation awarded by the Tribunal at Rs.1,00,000/- and Rs.2,00,000/- appears to be on lower side and they require to be enhanced in view of the decision in G.Ravindranath v. E.Srinivas and another, 2013 (2) TNMAC 76 (SC) 2013 ACJ 2131. In the said decision, the Hon'ble Supreme Court has granted Rs.4,00,000/- towards Loss of Amenities of Life and Prospects of Marriage and Rs.2,00,000/- towards Pain and Suffering to the Claimant therein, who was a 19 years old student studying in PUC second year and sustained grievous injuries. Accordingly, the Claimant is entitled to Rs.4,00,000/- towards Loss of Amenities of life and Prospects of Marriage and Rs.3,00,000/- towards Pain and Suffering.

2014(1) TN MAC 459 (SC) (Syed Sadiq. Etc. vs. Divisional Manager, United India Insurance Co. Ltd.)

8.The Appellant/Claimant in his Appeal further claimed that he had been earning Rs.10,000/- p.m. By doing vegetable vending work. The High Court however, considered the loss of income at Rs.3,500/- p.m. Considering that the Claimant did not produce any document to establish his loss of income. It is difficult for us to convince ourselves as to how a labour involved in an unorganized sector doing his own business in expected to produce documents to prove his monthly income.

10. Further, it is evident from the material evidence on record that the Appellant/Claimant was 24 years old at the time of occurrence of the accident. It is also established on record that he was earning his livelihood by vending vegetables. The issue regarding calculation of prospective increment of income in the future of self-employed people, came up in Santhosh Devi v. National Insurance Co.Limited, 2012 (2) TN MAC 1 (SC) 2012 (6) SCC 421.

Therefore, considering that the Appellant/Claimant was self employed and was 24 years of age, we hold that he is entitled to 50% increment in the future prospect of income based upon the principle laid down in the Santhosh Devi case (supra).

22. Further, the Appellant/Claimant has claimed that he has been earning Rs.5,000/- p.m. By working as a cleaner of the Lorry. The Tribunal assessed his monthly income at Rs.3,000/-. The High Court, considering his age and his profession as a cleaner, assessed his income at Rs.3,500/-. However, based on the Karnataka State Minimum Wages Rule 2012-2013, the Appellant/Claimant is entitled to Rs.4,246/- per month. Since, no written record of his income could be produced before the Court, we take his income, as per Revised Minimum Wages Rule at

Rs.4,246/- rounding it off as Rs.4,300/- per month. Further, an amount of Rs.700/- can be added as daily barter charges. Therefore, his monthly income amounts to Rs.5,000/-.

14.The learned counsel for the appellant prayed for enhancement as per the above judgments.

15. Per contra, the learned counsel for the first respondent contended that the Tribunal did not consider the materials on record properly, and the amount awarded is on the higher side and it is not just and proper compensation. The notional income fixed by the Tribunal is without any basis and contrary to well settled judicial pronouncement.

16.The learned counsel for the first respondent contended that the amount of compensation has to be reduced and CMA has to be dismissed with suitable reduction in the compensation amount.

17.I have carefully perused all the materials on record and the impugned order, the judgements relied on by the counsel for the appellant and the arguments of the learned counsel for the appellant and the first respondent.

18.The first respondent has not filed any appeal or cross-objection, challenging the finding with regard to accident and finding of negligence and compensation awarded. Hence, the only issue to be decided is whether the appellants are entitled to enhancement of compensation.

19. From the judgments relied on by the learned counsel for the appellant, it is seen that the following principles emerge

a) In case of injury suffered in non-fatal accident, the Percentage of disability is whether permanent or not.

b) In most of the cases, multiplier method must be applied taking into consideration the percentage of disability.

c) Loss of earning capacity will not be in certain cases equal to the percentage of disability, loss of earning capacity may be less than percentage of disability.

d) The claimants, who are working in un-organised sector, are doing business may not be in a position to produce documents to substantiate their claim with regard to quantum of income. The courts in such cases must fix notional income taking into consideration the nature of work and circumstances of the case.

e)The housewife, home maker is entitled to notional income, being fixed on par with other persons employed or doing business.

f)Income either notional or actual can be enhanced upto 50% as per the Judgements of the Hon'ble Apex Court, as future prospects.

g) Reasonable amount has to be granted, for loss of amenities, pain and suffering and loss of marrital prospects and enjoyment of life.

The contention of the learned counsel for the appellant has considerable force, for enhancement of compensation. In view of the judgment of the Hon'ble Apex Court and this Court, I am inclined to enhance the compensation awarded to the appellants by Tribunal.

<u>20. C.M.A.No.126 of 2013:</u>

The appellant is a housewife. She is a graduate and she was taking private tuitions and was earning Rs.5,000/- per month. Due to accident, she suffered the following injuries.

a) Swelling, tenderness, abnormal mobility in the right leg.

b) Chest injury.

c) Traumatic Aortic dissection with pseudonymous involving the descending thoracic aorta.

d) Displaced fracture, body of right scapula extending into the medical lateral borders and interior angle.

e) Lacerated would in right eyebrow region extending upto the eye.

f) Deep abrasions over the right arm.

21. From Ex.P.21 and Ex.P.22, it is seen that the appellant underwent number of surgeries. She has examined the doctor and proved the injuries suffered by her and percentage of permanent disability suffered by her. She cannot do her daily routine work on her own. She has to use walker even now. The percentage of permanent disability is 62%. She was aged 46 years at the time of accident.

22.Before the Tribunal, the appellant did not produce any document to prove her claim that she was earning Rs.5,000/- by taking private tuition. The Tribunal based on the judgement reported in 2009(1) TNMAC 671(DB) (National Insurance Co. Ltd., v. Minor Deepika & ors.(DB) fixed the notional income at Rs.3,500/- and applying multiplier of 13, awarded a sum of Rs.5,46,000/-, as loss of earning capacity.

23.The learned counsel for the first respondent contended that the Tribunal failed to take into consideration, the percentage of permanent disability and hence, the sum arrived at by the Tribunal is not correct. This contention of the learned counsel for the first respondent is well founded. But, the Tribunal erred in fixing the notional income at Rs.3,500/- per month.

24.From the judgements relied on by the learned counsel for the appellant, it is seen that the Courts have fixed notional income upto Rs.6,000/-, even when the claimants failed to produce any document or oral evidence to substantiate the claim of income. The Courts have also granted 30% to 50% enhancement towards future prospects.

25.In the present case, there is no reason to disbelieve the statement of the appellant that she was earning Rs.5,000/- before the accident. Further, due to her disability, she is not able to do her work independently and is depending on others to do her routine work. In the circumstances, she has lost her income as well as the chance of future prospects and she is entitled to 20% enhancement towards future prospects. The appellant is entitled to compensation for loss of earning capacity as follows:-

6,000/- x 12 x 13 x 62/100= 5,80,320/-

26.The appellant was treated, as inpatient from 12.12.2009 to 4.1.2010 and from 12.1.2010 to 17.1.2010. She underwent many surgeries.

27.Even after taking treatment, she is suffering due to the accident. The Tribunal has awarded a sum of Rs.50,000/- towards pain and suffering. This is a meager amount. A sum of Rs.1,00,000/- is granted for pain and suffering. For transportation and extra nourishment a sum of Rs.25,000/- is granted. The Tribunal has not awarded any amount towards attendant expenses and loss of amenities and comforts. As stated above, the appellant underwent many surgeries and unable to do her own routine work independently. Therefore, a sum of Rs.30,000/- is awarded as attendant expenses. For loss of amenities and comforts, a sum of Rs.50,000/- is awarded.

28.In the result, the compensation awarded by the Tribunal is modified as follows:-

S. No.	Description	Amount awarded by Tribunal	Amount awarded by this Court	Award confirmed or enhanced or granted
1.	Loss of earning capacity	Rs.5,46,000	Rs.5,80,320	enhanced
2.	Pain and suffering	Rs. 50,000	Rs.1,00,000	Enhanced
3.	Transport and nutrition	Rs. 20,000	Rs. 25,000	enhanced
4.	Attendant Expenses	Rs. Nil	Rs. 30,000	granted
5.	Loss of amenities and comforts	Rs. Nil	Rs. 50,000	granted
6.	For medical expenses	Rs.3,85,000	Rs.3,85,000	confirmed
	Total	Rs.10,01,000	Rs.11,70,320	

Though the actual medical expenses incurred by the claimants, is Rs.8,33,587/-, the Tribunal after deducting a sum of Rs.4,50,000/-, which the claimants are entitled to from the Star Health Insurance Scheme, awarded a sum of Rs.3,83,587/- towards medical expenses, which is rounded off to Rs.3,85,000/- by the Tribunal.

29.C.M.A(MD)No.127 of 2013:

The appellant was second year B.Tech (I.T) Student at the time of accident. Due to accident, she suffered following injuries.

a) Head Injury- Lacerated wound over the occipital scalp 7 x 3 c.m bone deep. C.T.showed linear fracture of occipital bone left side expending to the base which overlying soft tissue haematoma.

b) Chest injury- C.T.showed fracture ribs 7 to 10 right lateral aspect, fracture 8th rib right posterior aspect. Displaced fracture posterior aspect of left 10th rib with B/L haemothorax.

c)Swelling, deformity right arm with lacerated wound posteriorly 2 x 2 cm. Fracture shaft of humerus right side of mid distal end.

d.Blunt injury abdomen-CT showed TV liver laceration multiple pelvic injury. Laceration of spleen with haemo peritoneum.

e.Public injury-Laceration with degloving 15 x 10 cm. Lateral aspect of right upper thigh C.T. Fracture public ramie and Schiller over both sides. Fracture left sacral ala. Fracture right transverse processer 4 to 5 vertebra.

30.The appellant marked photographs as Ex.P.43 to show the injuries suffered by her. The Tribunal also had an opportunity to see the appellant and noted down some of the deformities. The appellant suffered scares on the left side of her body and her body was deformed at several places. The Tribunal seeing the appellant in person observed that cute younger girl with fair complexion, lost her beauty and characteristic of youth. The petitioner has to live with permanent deformity through out her life. The Doctor, who was examined as P.W.4 marked Ex.P.50 disability certificate. P.W.4 assessed disability at 52%.

31.The appellant was an Engineering student. Due to the accident, she has lost her opportunity to get Government job as an Engineer. Her mobility has been restricted. Normally, in the campus interview itself, students get job with monthly income from Rs.10,000/- to Rs.40,000/-. The Tribunal fixed notional income of the appellant at Rs.4,000/- per month. It is a very low amount. Further, the Tribunal did not award any amount towards future prospects. Following the judgements referred to above, wherein the monthly income of engineering students, had been fixed minimum of Rs.15,000/- and 50% enhancement, for future prospects, I fix the monthly income of the appellant notionally at Rs.5,000/- with 50% enhancement, for future prospects. Therefore, the appellant's monthly income is notionally fixed at Rs.7,500/- per month including future prospects for calculating the amount of compensation under the heading loss of earning capacity. The Tribunal has correctly applied the multiplier method. Therefore, the appellant is entitled to compensation under the heading loss of earning power as follows:-

7,500 x 12 x 18 x 52/100 = 8,42,400/-

The appellant was treated as Inpatient from 12.12.2009 from the date of accident till 10.02.2010 and again from 15.06.2010 to 19.06.2010. The appellant had underwent number of surgeries. Her body has been deformed in several places with scars on the left side of her body. The Tribunal had not awarded any amount towards attendant expenses. A sum of Rs.30,000/- is awarded under this head. For extra nourishment, Rs.25,000/- is awarded.

32.The Tribunal had noted that the appellant had suffered scars on the left side of her body and her body has been deformed at several places and the appellant had lost her beauty and characteristic of youth. Inspite of the same, the Tribunal failed to consider that marital prospects and loss of amenities and enjoyment of life. The appellant is entitled to compensation of Rs.2,00,000/- under this head.

33.The appellant is entitled to get the compensation on the following heads.

S. No.	Description	Amount awarded by Tribunal	Amount awarded by this Court	Award confirmed or enhanced or granted
1.	Loss of earning capacity	Rs.5,76,000/-	Rs.8,42,400/-	enhanced
2.	Pain and suffering	Rs.1,00,000/-	Rs. 1,00,000/-	confirmed
3.	Transport and medical expenses	Rs.9,25,000/-	Rs. 9,25,000/-	confirmed
4.	Attendant Expenses	Rs. Nil	Rs. 30,000/-	awarded
5.	Loss of amenities and marital prospects	Rs. Nil	Rs. 2,00,000/-	awarded
6.				
	Total	Rs.16,01,000	Rs.20,97,400/-	enhanced

A perusal of the award made by the Tribunal would reveal that there is a typographical error in calculating the total amount. The Tribunal awarded a sum of Rs.5,76,000/- for loss of income and Rs.1,00,000/- for Pain and suffering and Rs.9,25,000/- for Transportation and Medical expenses. The Total amount would be Rs.16,01,000/-, but the Tribunal wrongly mentioned as Rs.15,01,000/-.

34. In the result, these Civil Miscellaneous Appeals are allowed and the compensation of the tribunal is modified as stated above.

35. In view of the allowing of the appeal, the first respondent/Transport Corporation is directed to deposit the amount of Rs.11,70,320/- and Rs.20,97,400/-, now fixed by this Court, respectively, in C.M.A.Nos.126 and 127 of 2013 with interest @ 7.5% p.a. from the date of petition till the date of deposit to the credit of Claim petition. The first respondent/ Transport Corporation is directed to deposit the amount, now determined by this Court within a period of eight weeks from the date of receipt of a copy of this order. On such deposit is being made, the claimant is permitted to withdraw the entire amount with proportionate accrued interest and costs, by making necessary application before the Tribunal. No costs.

Sd/-
Assistant Registrar

/True Copy/

Sub Assistant Registrar

am
To
The Motor Accident Claims
Tribunal (District Court) Karur.

GJM/AN/MP/22.9.15-14P-2C

CMA.(MD)Nos.126 & 127 of 2013
30.04.2015