

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.04.2018

CORAM:

THE HONOURABLE Dr. JUSTICE S.VIMALA

AND

THE HONOURABLE Mrs.JUSTICE S.RAMATHILAGAM

C.M.A. NO. 2520 OF 2013

AND

C.M.P. NO. 19056 OF 2017

Mohan Kumar

...1<sup>st</sup> Appellant

Mythili

... 2<sup>nd</sup> Appellant (Suo Motu  
Impleaded)

versus

1. K.N.Narayanasamy

2. The New India Assurance Co. Ltd.,  
Tirupattur, Vellore District.

... Respondents

Prayer : This Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the award dated 30.10.2012 passed in M.A.C.T.O.P.No.603 of 2007 on the file of the Motor Accident Claims Tribunal, Subordinate Judge, Tirupattur.

For Appellant : Mr.R.Ezilarasan

For Respondents : Mr.P.Kandasamy for R2  
R1 No Appearance

JUDGMENT

DR. S.VIMALA, J.

We sleep safely at night because rough men  
stand ready to visit violence on those who would  
harm us.

- Winston Churchill

2. The disillusioned man, who burnt his midnight oil in guarding our Nation at the borders, by doing yeomen service round the clock, has become the faceless and motionless claimant on account of the injuries he suffered in the accident that happened on 11.11.2007. The injured was serving the Nation by rendering service as Havildar, Drill Instructor. At the age of 34 years, the pivotal point of his career, the accident intervened, thus robbing himself and his family of his monthly earning in a sum of Rs.20,000/-. The gruesome accident occurred when the claimant, who is now immobile, was travelling in the vehicle belonging to the 1<sup>st</sup> respondent and insured with the 2<sup>nd</sup>

respondent. The accident occurred on account of the vehicle hitting against a tree in which the ever agile disciplined individual, suffered crush injuries, thereby rendering him a paraplegic.

3. Immediately after the accident, the claimant was administered first aid at Tiruppattur Hospital, from where he was shifted to the Christian Medical College & Hospital, Vellore, where treatment was given for a period of two days and thereafter, he was shifted to Ramachandra Medical College and Hospital, where he was under treatment as an in-patient for a period of ten days, i.e., from 12.11.2007 to 22.11.2007. Later, the claimant was admitted to the Military Hospital, Pune, where he underwent continuous treatment for a period of one year eight months and ten days. However, fate had other ideas, which ultimately stalled his recovery, thereby, rendering him to a vegetative state, which was on account of the injuries he suffered in the accident, which are detailed hereunder:-

1. Compression burst fracture D12 with complete paraplegia.
2. LF Fort Fracture Type III
3. Fracture clavicle (Rt) life long.

4. The records reveal that while the Military Hospital certified the disablement as 100%, however, the hospital at Krishnagiri had certified the disablement at 90%. Based upon the oral and documentary evidence, the Tribunal has quantified the compensation at Rs.4,57,137/- under the following break up details:-

|                      |   |               |
|----------------------|---|---------------|
| Loss of earnings     | - | Rs. 75,000/-  |
| Medical Bills        | - | Rs.1,22,137/- |
| Transportation       | - | Rs. 15,000/-  |
| Extra nourishment    | - | Rs. 15,000/-  |
| Pain and sufferings  | - | Rs. 50,000/-  |
| Permanent disability | - | Rs.1,80,000/- |
|                      |   | -----         |
| Total                | - | Rs.4,57,137/- |
|                      |   | -----         |

Aggrieved over the inadequacy of compensation, the claimant has filed this appeal.

5. The injured has filed a claim petition on the ground of negligence on the part of the offending vehicle. The right to get damages/compensation on account of lack of or failure on the part of the tort feisor to take proper care while driving the vehicle is the backbone of motor accident jurisprudence. In the present case, the claimant is down with paraplegia, whereby the most active of professional is made to lie in bed forever.

6. At this juncture, it would be appropriate to outline the nature of permanent disability suffered and the basic principles that govern the award of just and reasonable compensation. In the case of Ward - Vs - James ((1965) 1 AII ER 563) three principles have been enunciated for awarding compensation in personal injury cases, which, for better clarity is quoted hereunder :-

"First, assessability: In cases of grave injury, where the body is wrecked or the brain destroyed, it is very difficult to assess a fair compensation in money, so difficult that the award must basically be a conventional figure, derived from experience or from awards in comparable cases.

Secondly, uniformity: There should be some measure of uniformity in awards so that similar decisions are given in similar cases; otherwise there will be great dissatisfaction in the community, and much criticism of the administration of justice.

Thirdly, predictability: Parties should be able to predict with some measure of accuracy the sum which is likely to be awarded in a particular case, for by this means cases can be settled peaceably and not brought to court, a thing very much to the public good."

7. In M.Ayyappan vs. Moktar Singh, (1969 ACJ 439) it has been held that, the word 'compensation' is a more comprehensive term and the claim, for compensation includes a claim for damages.

8. Speaking about the heads of compensation in personal injury cases, the Hon'ble Supreme Court in (R.D.Hattangadi vs. Pest Control (India) Pvt. Ltd., 1995 ACJ 366) held as follows:

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

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

9. In the case of Philips vs. South Western Railway Company ((1874) Q.B.D. 406), it was held that compensation to be given is once and for all.

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

11. What would be a just and reasonable award keeping in mind the injuries sustained by the claimant, with more reference to the mobility of the claimant. The award passed in a comparable case gives some guidelines for assessing the compensation in difficult circumstances.

2012 (8) SCC 605 (Kavita vs. Deepak & Ors.)

This is a case where compensation of Rs.34,38,747/- has been awarded under the following break-up details:

|                                                        |   |                |
|--------------------------------------------------------|---|----------------|
| Medical treatment                                      | - | Rs. 7,76,480/- |
| Medical expenses                                       | - | Rs. 50,000/-   |
| Attendant charges for 25 years                         | - | Rs. 6,00,000/- |
| (Rs.2,000/- p.m. x 12 x 25)                            |   |                |
| Future medical expenses for physiotherapy for 25 years |   |                |
| (Rs.3,000/- p.m. x 12 x 25)                            | - | Rs. 9,00,000/- |
| Loss of earning during the period of treatment         |   |                |
| (Rs.2,000/- x 12 x 6)                                  | - | Rs. 1,45,067/- |
| Loss of future earnings on account of disability       | - | Rs. 3,67,200/- |
| Physical and mental pains                              | - | Rs. 3,00,000/- |
| Loss of amenities and                                  |   |                |
| Loss of expectation of life                            | - | Rs. 3,00,000/- |
|                                                        |   | -----          |
| Total                                                  | - | Rs.34,38,747/- |
|                                                        |   | -----          |

In the above case, the claimant was awarded a sum of Rs.9,00,000/= (Rs.3,000/- x 12 x 25) towards future medical expenses, viz., physiotherapy; attendant charges have been awarded at the rate of Rs.2,000/- p.m. for 25 years, i.e. Rs.6,00,000/-.

12. However, in Rajasthan State Road Transport Corporation vs. Alexix Sonier & Anr. (2015 17 SC 758) following Sanjay Verma's case, cost of attendant charges for attending on the claimant, who had suffered permanent disablement has been quantified at Rs.10,00,000/- along with interest at 6% p.a.

13. Keeping in mind the above ratio as the determinant factor in comparable cases of this nature, this Court is fastened with the task of quantifying the compensation that is payable to the claimant, more so keeping in mind the fact the avocation of the claimant and the physical condition of the claimant as it would have been before the accident compared with the present condition of the claimant.

14. Before proceeding with the contentions advanced by the learned counsel on either side, it would be just and proper to note the persons, who are dependent on the claimant as also his service records. The claimant is survived by his wife, D.Mythili and his son Abishek, besides his father and mother. The claimant had been invalidated out of service with effect from 25.09.2010 under Rule 13 of the Army Rules. A perusal of the service record of the claimant reveals that his character has been assessed as exemplary.

15. The main contention raised by the learned counsel for the appellant is that if not for this case where adoption of multiplier method is justified, the Court cannot see any other case, where the adoption of multiplier method would be just and fitting. The learned counsel for the appellant took us through the evidence, oral and documentary, and the condition of the claimant, who, once an agile and physically fit individual, is at present leading a life in a vegetative state. The learned counsel also pointed out that the claimant has totally lost all the sensations below the umbilical cord. This not only denies him of the pleasures which a normal human being would get, but also deprives him of the carnal pleasures that are associated with matrimony.

16. However, the above submission of the learned counsel for the appellant/claimant is countered by the learned counsel for the 2<sup>nd</sup> respondent/insurance company by contending the documentary evidence, which have been filed to substantiate the avocation as well as the discharge of the claimant as also the benefits received by the claimant on discharge from the services of the Army are prone to doubt, as the genuineness of the

documents are questionable. It is the further submission of the learned counsel for the 2<sup>nd</sup> respondent/insurance company that proper evidence have not been placed to substantiate the disability and that the disability has not been assessed by the Army Medical Board and, in such circumstances, the adoption of multiplier method is not permissible. Further, the disability has not been assessed by the Medical Board and, therefore, the disability assessed at 100% cannot be sustained. It is the further submission of the learned counsel for the 2<sup>nd</sup> respondent/insurance company that though injury is said to have been caused to the spine, paralysis is the consequence that follows and, therefore, no compensation could be awarded towards pain and suffering, as paralysis disables the claimant from realising the pain. It is the further submission of the learned counsel for the 2<sup>nd</sup> respondent/insurance company that severance of marital life has not been established by adducing proof and, therefore, compensation towards loss of consortium and loss of enjoyment of amenities are not sustainable. Written submissions in this regard has been filed by the learned counsel for the 2<sup>nd</sup> respondent/insurance company, which this Court has looked into.

17. Though very many contentions have been advanced by the learned counsel for the appellant/claimant supporting the plea for enhancement of compensation and by the learned counsel for the 2<sup>nd</sup> respondent/insurance company contradicting the stand of the appellant for enhancement, it is to be pointed out that it is not disputed that the appellant/claimant is a paraplegic.

18. Paraplegia is an impairment in motor or sensory function of the lower extremities. Individuals with paraplegia can range in their level of disability, requiring treatments to vary from case to case. From a rehabilitation standpoint, the most important factor is to gain as much functionality and independence back as possible. In the case on hand, it has been assessed by the Army Hospital, as is found in the evidence, that the claimant/appellant is 100% disabled, which effectively means that his motor or sensory function has fallen to zero. Therefore, when the disability has been assessed by the Army Hospital at 100%, the contention of the 2<sup>nd</sup> respondent/insurance company that the claimant has not been assessed by the Army Medical Board cannot be sustained, more so in view of the fact that on assessment of the disability, the claimant/appellant has been discharged from service, as is evident from the service registers.

19. The further contention of the 2<sup>nd</sup> respondent/insurance company doubting the veracity of the documents relating to the service of the appellant in the Army cannot be sustained for the simple reason that the nature and standard of proof required in motor accident cases is not the same as is required under criminal or civil procedures/prosecutions. If at all, the 2<sup>nd</sup>

respondent/insurance company had any doubt, it could very well have let in evidence to disprove those documents. No evidence having been let in by the 2<sup>nd</sup> respondent/insurance company before the Tribunal, the stand taken before this Court doubting the veracity of the documents is not sustainable and, accordingly, the same is rejected.

20. Coming to the main issue relating to the condition of the claimant and the injuries that have a bearing on the mobility and future life of the claimant, it is pertinent to point out that not only the claimant is deprived of his carnal pleasures arising out of matrimony, but equally the spouse is also denied of the carnal pleasures on account of the claimant being pushed to the vegetative stage, in that he has become a paraplegic. In such a scenario, the role of the spouse increases manifold; not only she acts as his guardian, but also has to adorn the role of a mother, a servant, an attender and what not. The physical and mental trauma that the spouse would be subjected to on account of the claimant being pushed to a vegetative state, that too at a very young age, since the age of the claimant itself on the date of occurrence was just 34 years. While being difficult to fathom, the stress and strain that the spouse would be subjected to is beyond comprehension and cannot be expressed with words.

21. The claim for compensation under the Motor Vehicles Act, being a benevolent legislation, this Court, vested with inherent powers in the award of compensation, deems it fit and proper that it should also invoke the jurisdiction under the Social Welfare Legislation for awarding appropriate compensation to the wife of the claimant, who has been put not only to the pressures of taking care of the claimant, who has been pushed to a vegetative state, but also deprived of the pleasures that a person of the said age would be looking forward to, but has been pushed to a stage where she needs to render yeomen services to the claimant just like Nalayini rendered to Rishi Maudgalya.

22. Top recapitulate the verse of the Great Poet Thiruvalluvar in his much adored composition Thirukkural --

bja;tk; bjhHhms; bfhGed; bjhGbjGths;

bga;badg; bga;a[k; kiH/

- Thirukkural Verse 55.

(Meaning:

Her spouse before God who adores

Is like rain that at request pours)

23. Normally, cost of attendant is awarded only for the purpose of taking care of the injured till he is able to look after himself. The inability to take care during the period of hospitalisation and post hospitalisation for a specified period of time is generally the norm while awarding compensation

towards attendant charges. However, only in cases where the injured is in a paraplegic condition, there is total inability on the part of the injured to take care of himself for an undefined period and in such cases, the Court has to take into consideration the necessity for award of just and reasonable compensation.

24. In the case on hand, the spouse of the claimant/injured, as better-half is imposed upon to partake the character of attendant and do the needful to the husband. If not for the wife, an able help has to be inducted to take care of the needs of the claimant/injured. Whatever the mode of assistance that could be provided to the claimant/injured as attendant, the said person cannot step into the shoes of the spouse while rendering utmost care and attention. None else than the spouse would be more concerned about the welfare of her husband than other individuals, who would only be doing their work in lieu of monetary compensation. The spouse has to sacrifice her entire life towards attending to the claimant and taking care of his every needs. Even in case of death of a person, the surviving spouse could be given compensation towards loss of consortium and the bearability of death would be more better than seeing the better-half dying while living in front of her eyes.

25. Useful reference with regard to the necessity for award of consortium can be had from the observations of the Hon'ble Supreme Court in (2013) 9 SCC 54 (Rajesh and others vs. Rajbir Singh and others), wherein, the Supreme Court has dwelled into the necessity for award of consortium, even in cases of disablement, which reads thus:-

"17. .... In legal parlance, 'Consortium' is the right of the spouse to the company, care, help, comfort, guidance, society, solace, affection and sexual relations with his or her mate. That non-pecuniary head of damages has not been properly understood by our Courts. The loss of companionship, love, care and protection, etc., the spouse is entitled to get, has to be compensated appropriately. The concept of non-pecuniary damage for loss of consortium is one of the major heads of award of compensation in other parts of the world more particularly in the United States of America, Australia, etc. English Courts have also recognized the right of a spouse to get compensation even during the period of temporary disablement."

26. In the above circumstances, keeping in mind the ratio laid down in the above decision, with more particular reference

to the decision in Rajesh's case (supra) and the necessity to award a just and reasonable compensation not only to the claimant towards cost of attendant charges, but also keeping in mind the fact that both the claimant and his spouse, viz., the injured and his wife are deprived of their conjugal relationship even when alive, which is more cruel than bearing the pain of death, more so keeping in mind the fact that the claimant himself is aged only 34 years on the date of the accident, compensating them for all the worldly pleasures that they would be missing on account of this gruesome accident, which has totally invalidated the claimant, this Court feels that both the claimant and his spouse needs to be compensated, which alone could be deemed as substantial justice for a cause. The tentacles of judicial activism needs to reach and alleviate the sufferings of the persons, who seek justice at the hands of this Court. The case on hand is a classic example where the case not only evokes judicial sympathy, but also compassion. This Court, in the facts and circumstances of the case, taking note of the necessity of the spouse to act as attendant over and above her normal duties as caretaker of the household and also the loss that she would be suffering on account of the total invalidation of the claimant at the young age of 34 years, this Court deems it fit and proper that both the claimant as well as the spouse needs to be compensated. This Court, considering the trauma that the claimant would have to undergo due to his paraplegic status, the loss he would suffer on all counts, and the necessity to have an attendant at all times for an undefined period, more so throughout his life, this Court feels that a sum of Rs.6,00,000/- towards attendant charges, a sum of Rs.75,000/= towards loss of enjoyment of amenities, a sum of Rs.50,000/- towards extra nourishment, a sum of Rs.1,00,000/- towards future medical expenses, a sum of Rs.,50,000/- towards transportation and a sum of Rs.50,000/- towards loss of consortium would be a just and reasonable compensation.

27. Further, this Court keeping in mind the stresses and strains that the wife would have to endure for the rest of her life in taking care of her husband/the injured claimant and also taking note of the age of the wife, this Court feels that it is time to disprove the age old saying "j1;L';fs; jpwf;fg;gLk;.nfS';;;;fs; bfhLf;fg;gLk;", and on a pragmatic approach feels that it is the primal duty of this Court to compensate the spouse for the utmost hardship that she would have to endure for the rest of her life in not only taking care of the claimant, but also putting aside all her pleasures and joy for which the spouse needs to be compensated adequately for the loss she is due to suffer. Accordingly, while suo motu impleading the spouse, Mythili, as the 2<sup>nd</sup> appellant in this appeal, this Court awards a consolidated sum of Rs.5,00,000/- along with interest at 6% p.a. from the date of filing of the appeal till date of deposit as compensation to the 2<sup>nd</sup> appellant/Mythili towards Pain

& Mental Suffering, Trauma, Loss of Amenities & Comfort and loss of consortium as quantifying any compensation separately under each and every head would be nothing but demeaning the services that the wife would be rendering to her husband and the sufferings she would have to endure for rendering the service. Further, the above compensation is awarded by this Court, to the spouse, in the fond hope that the same would linger in the mind of the wife and instill upon her the necessity to show compassion towards the claimant and would wipe any thought of her leaving the suffering partner in lurch.

28. Yet another contention advanced by the learned counsel for the appellant is that the Tribunal without understanding the value of life has chosen to award a sum of Rs.1,80,000/- towards permanent disablement quantifying compensation at Rs.2,000/- per percentage in respect of 90% disablement. It is the submission of the learned counsel for the appellant that when the disablement is said to be 90%, the Tribunal ought to have adopted multiplier method. Rather the use of percentage method is per se bad and, therefore, the same requires to be enhanced by adopting multiplier method.

29. What are the necessities that are enforced upon for the purpose of adopting multiplier method and whether the case of the claimant in the present case warrants adoption of multiplier method is the moot question that falls for consideration before this Court.

30. It has been time and again reiterated that in awarding compensation the multiplier method is logically sound and legally well established. This method, known as "principle of multiplier", has been evolved to quantify the loss of income as a result of death or permanent disability suffered in an accident.

31. The Supreme Court in Sandeep Khanuja - Vs - Atul Dande (2017 (3) SCC 351), taking into consideration the principle as it stood evolved in 1966 through Subhawanti's case (1966 (3) SCR 649) and the path that it has taken over the years, has highlighted the aspects which needs to be taken into consideration while adopting multiplier method for quantification of compensation as a result of death or permanent disability. For better clarity, the relevant portion of the decision is extracted hereunder:-

"11. We may observe at the outset that it is now a settled principle, repeatedly stated and restated time and again by this Court, that in awarding compensation the multiplier method is logically sound and legally well established. This method, known as "principle of multiplier", has been evolved to quantify the loss of income

as a result of death or permanent disability suffered in an accident. Recognition to this principle was given for the first time in the year 1966 in MCD v. Subhagwanti [MCD v. Subhagwanti, (1966) 3 SCR 649 : AIR 1966 SC 1750]. Again, in M.P. SRTC v. Sudhakar [M.P. SRTC v. Sudhakar, (1977) 3 SCC 64], the Court referred to an English decision while emphasising the import of this principle in the following manner: (Sudhakar case [M.P. SRTC v. Sudhakar, (1977) 3 SCC 64], SCC p. 67, para 4)

"4. A method of assessing damages, usually followed in England, as appears from Mallet v. McMonagle [Mallet v. McMonagle, 1969 ACJ 312 : 1970 AC 166 : (1969) 2 WLR 767 (HL)], is to calculate the net pecuniary loss upon an annual basis and to "arrive at the total award by multiplying the figure assessed as the amount of the annual "dependency" by a number of "year's purchase"" (AC p. 175), that is, the number of years the benefit was expected to last, taking into consideration the imponderable factors in fixing either the multiplier or the multiplicand."

12. While applying the multiplier method, future prospects on advancement in life and career are taken into consideration. In a proceeding under Section 166 of the Act relating to death of the victim, multiplier method is applied after taking into consideration the loss of income to the family of the deceased that resulted due to the said demise. Thus, the multiplier method involves the ascertainment of the loss of dependency or the multiplicand having regard to the circumstances of the case and capitalising the multiplicand by an appropriate multiplier. The choice of the multiplier is determined by the age of the deceased or that of the claimant, as the case may be. In injury cases, the description of the nature of injury and the permanent disablement are the relevant factors and it has to be seen as to what would be the impact of such injury/disablement on the earning capacity of the injured. This Court, in U.P. SRTC v. Trilok Chandra [U.P. SRTC v. Trilok Chandra, (1996) 4 SCC 362] justified the application of multiplier method in the following manner: (SCC p. 369, para 13)

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

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

13. In the last few years, law in this aspect has been straightened by this Court by removing certain cobwebs that had been created because of some divergent views on certain aspects. It is not even necessary to refer to all these cases. We find that the principle of determination of compensation in the case of permanent/partial disablement has been exhaustively dealt with after referring to the relevant case law on the subject in Raj Kumar v. Ajay Kumar [Raj Kumar v. Ajay Kumar, (2011) 1 SCC 343 : (2011) 1 SCC (Civ) 164 : (2011) 1 SCC (Cri) 1161] in the following words: (SCC pp. 348-50, paras 8-11)

"Assessment of future loss of earnings due to permanent disability

8. Disability refers to any restriction or lack of ability to perform an activity in the manner considered normal for a human being. Permanent disability refers to the residuary incapacity or loss of use of some part of the body, found existing at the end of the period of treatment and recuperation, after achieving the maximum bodily improvement or recovery which is likely to remain for the remainder life of the injured. Temporary disability refers to the incapacity or loss of use of some part of the body on account of the injury, which will cease to exist at the end of the period of treatment and recuperation. Permanent disability can be either partial or total. Partial permanent disability refers to a person's inability to perform all the duties

and bodily functions that he could perform before the accident, though he is able to perform some of them and is still able to engage in some gainful activity. Total permanent disability refers to a person's inability to perform any avocation or employment related activities as a result of the accident. The permanent disabilities that may arise from motor accident injuries, are of a much wider range when compared to the physical disabilities which are enumerated in the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 ("the Disabilities Act", for short). But if any of the disabilities enumerated in Section 2(i) of the Disabilities Act are the result of injuries sustained in a motor accident, they can be permanent disabilities for the purpose of claiming compensation.

9. The percentage of permanent disability is expressed by the doctors with reference to the whole body, or more often than not, with reference to a particular limb. When a disability certificate states that the injured has suffered permanent disability to an extent of 45% of the left lower limb, it is not the same as 45% permanent disability with reference to the whole body. The extent of disability of a limb (or part of the body) expressed in terms of a percentage of the total functions of that limb, obviously cannot be assumed to be the extent of disability of the whole body. If there is 60% permanent disability of the right hand and 80% permanent disability of left leg, it does not mean that the extent of permanent disability with reference to the whole body is 140% (that is 80% plus 60%). If different parts of the body have suffered different percentages of disabilities, the sum total thereof expressed in terms of the permanent disability with reference to the whole body cannot obviously exceed 100%.

10. Where the claimant suffers a permanent disability as a result of injuries, the assessment of compensation under the head of loss of future earnings would depend upon the effect and impact of such permanent disability on his earning capacity. The Tribunal should not mechanically apply the

percentage of permanent disability as the percentage of economic loss or loss of earning capacity. In most of the cases, the percentage of economic loss, that is, the percentage of loss of earning capacity, arising from a permanent disability will be different from the percentage of permanent disability. Some Tribunals wrongly assume that in all cases, a particular extent (percentage) of permanent disability would result in a corresponding loss of earning capacity, and consequently, if the evidence produced shows 45% as the permanent disability, will hold that there is 45% loss of future earning capacity. In most of the cases, equating the extent (percentage) of loss of earning capacity to the extent (percentage) of permanent disability will result in award of either too low or too high a compensation.

11. What requires to be assessed by the Tribunal is the effect of the permanent disability on the earning capacity of the injured; and after assessing the loss of earning capacity in terms of a percentage of the income, it has to be quantified in terms of money, to arrive at the future loss of earnings (by applying the standard multiplier method used to determine loss of dependency). We may however note that in some cases, on appreciation of evidence and assessment, the Tribunal may find that the percentage of loss of earning capacity as a result of the permanent disability, is approximately the same as the percentage of permanent disability in which case, of course, the Tribunal will adopt the said percentage for determination of compensation."

14. The crucial factor which has to be taken into consideration, thus, is to assess as to whether the permanent disability has any adverse effect on the earning capacity of the injured. In this sense, MACT approached the issue in the right direction by taking into consideration the aforesaid test. However, we feel that the conclusion of MACT, on the application of the aforesaid test, is erroneous. A very myopic view is taken by MACT in taking the view that 70% permanent disability suffered by the appellant

would not impact the earning capacity of the appellant. MACT thought that since the appellant is a Chartered Accountant, he is supposed to do sitting work and, therefore, his working capacity is not impaired. Such a conclusion was justified if the appellant was in the employment where job requirement could be to do sitting/table work and receive monthly salary for the said work. An important feature and aspect which is ignored by MACT is that the appellant is a professional Chartered Accountant. To do this work efficiently and in order to augment his income, a Chartered Accountant is supposed to move around as well. If a Chartered Accountant is doing taxation work, he has to appear before the assessing authorities and appellate authorities under the Income Tax Act, as a Chartered Accountant is allowed to practice up to Income Tax Appellate Tribunal. Many times Chartered Accountants are supposed to visit their clients as well. In case a Chartered Accountant is primarily doing audit work, he is not only required to visit his clients but various authorities as well. There are many statutory functions under various statutes which the Chartered Accountants perform. Free movement is involved for performance of such functions. A person who is engaged and cannot freely move to attend to his duties may not be able to match the earning in comparison with the one who is healthy and bodily abled. Movements of the appellant have been restricted to a large extent and that too at a young age. Though the High Court recognised this, it did not go forward to apply the principle of multiplier. We are of the opinion that in a case like this and having regard to the injuries suffered by the appellant, there is a definite loss of earning capacity and it calls for grant of compensation with the adoption of multiplier method, as held by this Court in *Yadava Kumar v. National Insurance Co. Ltd.* [*Yadava Kumar v. National Insurance Co. Ltd.*, (2010) 10 SCC 341 : (2010) 4 SCC (Civ) 168 : (2010) 3 SCC (Cri) 1285] :

"9. We do not intend to review in detail state of authorities in relation to assessment of all damages for personal injury. Suffice it to say that the basis of assessment of all damages for personal injury is compensation. The whole idea is to put the claimant in the same position as he was insofar as money can. Perfect compensation is

hardly possible but one has to keep in mind that the victim has done no wrong; he has suffered at the hands of the wrongdoer and the court must take care to give him full and fair compensation for that he had suffered.

10. In some cases for personal injury, the claim could be in respect of lifetime's earnings lost because, though he will live, he cannot earn his living. In others, the claim may be made for partial loss of earnings. Each case has to be considered in the light of its own facts and at the end, one must ask whether the sum awarded is a fair and reasonable sum. The conventional basis of assessing compensation in personal injury cases—and that is now recognised mode as to the proper measure of compensation—is taking an appropriate multiplier of an appropriate multiplicand." [Ed.: As observed in *Arvind Kumar Mishra v. New India Assurance Co. Ltd.*, (2010) 10 SCC 254, pp. 256-57, paras 9-10.]"

Therefore, this is a fit case where adoption of multiplier method would only result in complete and substantial justice to the claimant.

32. In the case on hand, it is not in dispute that the claimant is totally paralyzed and is immobile. While the Army Hospital has assessed the disability at 100%, the hospital at Krishnagiri has assessed the disability at 90%. Be it 90% or 100%, the disability is totally functional disability, which would render the claimant immobile for the rest of his life. The medical records placed before the Court describes the plight of the claimant and the sufferings he has to endure throughout his life on account of the injuries sustained by him in the accident.

33. The medical records reveal that except carrying external bags for collection of urine and motion, the whole body is totally not functional and the claimant cannot do any job. The once active soldier and his vision in life has been blown to smithereens due to the above accident and the injuries sustained therefrom. The Military Hospital has rightly assessed the disablement at 100%. When a person, such as the claimant, an active person before the accident, when totally and completely disabled to do the job he was doing and more so burdened with the mental strain that for the rest of his life he has to depend on others even for discharging his day-to-day activities, the visualisation of the grim scenario should have weighed more in the mind of the Tribunal while quantifying compensation towards

loss of earning capacity. This is all the more important when the injured had been fondly discharging his duty of defending the country by working not only in high risk places, but even where habitation is scarce and presently, due to the cruel hands of fate, is now at the mercy of persons to take care of him even for routine his day-to-day chores. The Tribunal ought to have considered all the above aspects in proper perspective while quantifying compensation towards loss of earning capacity.

34. From a perusal of the records it is evident that not only the claimant has suffered the accident, but has been pushed to a vegetative state. It is therefore crystal clear that the claimant would not be in a position to earn any more in his life. Not only the claimant who has suffered the loss, equally so the family of the claimant has also lost the earnings of the breadwinner of the family and is put to great hardship. Therefore, it is incumbent on this Court to see to it that the compensation granted is consciously just and reasonable and not for mere word sake to be termed as just and reasonable.

35. From the documents filed in support of the earnings of the claimant, it is evident that the claimant was drawing a monthly salary is Rs.20,065/-. It is further evident from the records that on account of continuous treatment, leading to no good results, the functional disability having been assessed at 100%, the claimant has been discharged from service and is receiving a pension of Rs.7,150/- per month. The age of the claimant is 34 years as is evident from the documents available on record. Therefore, the proper multiplier to be adopted is 16.

36. The learned counsel for the respondent would point out that the pension that is received by the injured has to be deducted from the salary and balance portion alone has to be taken into account for the purpose of computation of compensation towards loss of earning capacity.

37. Though such a contention is advanced, the said contention deserves to be rejected even at the threshold. The pension received by the claimant is not a profit, nor could it be stated to be a earning. It is a gratuitous act of the employer recognizing the services rendered by the claimant to the organization. As has been observed by the Supreme Court, pension is not a bounty and it is an acknowledgement of the services of the employee to the employer. The claimant, who is supposed to receive the pension on attaining the age of superannuation has been made to receive the pension, that too a paltry sum, at a very young age of 34. The pension received cannot be in any way said to be a part of the salary, as salary is a monetary compensation paid by the employer for the work done by the employee while in service, while pension is paid for

not discharging any work, but for the work already discharged and is a more in the nature of recognition of the work discharged. Therefore, this Court is of the considered opinion that the amount of pension received by the claimant is not deductible from the amount fixed by this Court under the head monthly salary.

38. The materials available on record categorically reveal that the claimant was earning a monthly salary of 20.065/=. In such circumstances, this Court, while fixing the monthly salary at Rs.20,000/=:, taking into consideration the future prospective increase in income of the claimant over a period of time, fixes 50% towards the future prospective increase in income and, accordingly, fix the monthly salary at Rs.30,000/=: . Adopting multiplier of 16, the compensation towards loss of earning capacity is quantified at Rs.57,60,000/- (Rs.30,000/- x 12 x 16) .

39. Considering the nature of injury, period of treatment and the nature of disablement, more particularly the mobility of the claimant, the necessity for help for the claimant in discharging the day-to-day activities and the loss suffered by the claimant not only in his marital life, but also the loss the suffered by the spouse due to the claimant being pushed to a vegetative state, this Court is of the considered opinion that the compensation awarded under various heads not only requires to be restructured but appropriate enhancement also has to be made, wherever necessary. Accordingly, this Court quantifies the compensation payable under the various heads as noted below :-

| Head                           | By the Tribunal                                 | By this Court |
|--------------------------------|-------------------------------------------------|---------------|
| Loss of earning capacity       | 2,55,000.00<br>(Rs.75,000/- +<br>Rs.1,80,000/-) | 57,60,000.00  |
| Transport Expenses             | 15,000.00                                       | 50,000.00     |
| Extra nourishment              | 15,000.00                                       | 50,000.00     |
| Pain and sufferings            | 50,000.00                                       | 75,000.00     |
| Future Medical Expenses        | --                                              | 1,00,000.00   |
| Medical Bills                  | 1,22,137.00                                     | 1,22,137.00   |
| Loss of enjoyment of amenities | --                                              | 75,000.00     |
| Attendant Charges              | --                                              | 6,00,000.00   |

| Head                                                                                                               | By the Tribunal | By this Court   |
|--------------------------------------------------------------------------------------------------------------------|-----------------|-----------------|
| Loss of Consortium to Husband                                                                                      |                 | 50,000.00       |
| Pain & Mental Suffering, Trauma, Loss of Amenities & Comfort, Loss of Consortium to wife/2 <sup>nd</sup> appellant | --              | 5,00,000.00     |
| Total                                                                                                              | Rs.4,57,137.00  | Rs.73,82,137.00 |

40. For the reasons aforesaid, this Appeal is allowed enhancing the compensation from Rs.4,57,137/- to Rs.73,82,137/-. Of the amount of Rs.73,82,137/=, interest at 7.5% p.a. will be payable on an amount of Rs.68,82,137/= and interest at 6% will be payable on the amount of Rs.5,00,000/= which is awarded towards loss of consortium to the spouse. The interest at 7.5% on Rs.68,82,137/= shall be payable from the date of petition till the date of deposit, while interest at 6% p.a. on Rs.5,00,000/-, which is awarded as consortium to the spouse shall be payable from the date of filing of the appeal till date of deposit. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

41. The 2<sup>nd</sup> respondent/insurance company is directed to deposit the enhanced award amount along with interests as quantified by this Court above and costs, if any, awarded by the Tribunal, less the amount, if any, already deposited, to the credit of the claim petition, within a period of six weeks from the date of receipt of a copy of this order.

42. Further, this Court, keeping in mind the age of the son of the claimant and the duty of the claimant towards his son, feels that the future studies of the son of the claimant needs to be taken care of. Accordingly, this Court directs that on the deposit of the award amount of Rs.68,82,137/=-, the Tribunal is directed to invest 75% from the amount of Rs.68,82,137/= along with interest in an interest bearing account in any one of the nationalized banks and the claimant/authorized representative of the claimant is permitted to withdraw the interest that accrue on such deposit once in three months for the purpose of taking proper care of the claimant. The Tribunal is directed to transfer the balance 25% of the award amount directly to the bank account of the claimant through RTGS within a period of two weeks from the date of deposit of the award amount by the 2<sup>nd</sup> respondent/insurance company. The Tribunal is

further directed to transfer the amount of Rs.5,00,000/- along with interest, directly to the bank account of the newly impleaded 2<sup>nd</sup> appellant/Mythili through RTGS, within a period of two weeks from the date of deposit as made by the insurance company.

43. As stated above, the duty of this Court is to render substantial justice to the claimant, in that, the claimant includes his family as well. Since the injured claimant is not in a position to take any decision on account of the physical illness, exercising parens patriae jurisdiction, this Court directs that as and when the son of the claimant pursues his higher education, the education expenses shall be paid out by the Tribunal from and out of the investment made directly to the college/institution in which the son of the claimant pursues his studies on production of necessary proof, which would have been the dream of the claimant, and this Court feels that it is high time that the Court honour those who may have woken to know the battle's grim tomorrow yet equally whose youth was broken by living death of pain and sorrow which this Court could visualise through the eyes of the claimant.

44. Before parting with the case, it is to be highlighted that the fundamental mistake committed by the Presiding Officer of the Tribunal has resulted in the award, which is grossly inadequate. It is further evident from the award that the circumstances in which multiplier method is to be adopted has not been understood by few Judicial Officers. It is high time that necessary training is imparted to the Judicial Officers, so that the litigant public is not put to undue stress and delay and they must be able to reap the benefit of the benevolent legislation in time. Therefore, Registry is directed to mark a copy of this order to the Director, Tamil Nadu State Judicial Academy, Chennai, for necessary follow up action.

45. When the injured/claimant offered protection and, thereby, respect to Mother India, as one of its sincere child, it is the imperative duty that the law of the nation must also respect the petitioner.

Sd/-

Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

GLN

To

1. The Motor Accident Claims Tribunal  
(Subordinate Judge), Tirupattur.

2. The Section Officer  
V.R. Section, High Court  
Madras. (+2 copies)

3. The Director  
Tamil Nadu State Judicial Academy  
Chennai

+1 cc to M/s.R.Ezhilarasan Advocate sr 25847 dt 11/05/2018

C.M.A. NO.2520 OF 2013

mg(co)  
aa23/04/2018



WEB COPY