IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21 .12.2018

CORAM:

THE HON'BLE Dr. JUSTICE S.VIMALA

Civil Miscellaneous Appeal No.2748 of 2017

1. Nadhiya
2. Minor Praveen
3. Minor Hemavathi ... Appellants/Claimants

(Minors are represented by their mother 1st appellant)

..vs..

1. Manavalan
2. The Divisional Manager,
New I ndia Assurance Co. Ltd.,
Vellore Division, Vellore. .... Respondents

(1st respondent remained ex parte before the Tribunal)

Appeal filed under Section 173 of Motor Vehicles Act 1988, against the Judgment and Decree dated 10.11.2016 in M.C.O.P.No.89 of 2015 on the file of the Motor Vehicle Accident Claims Tribunal (in the Court of Subordinate Judge), Ranipet, Vellore District.

For Appellants : Mr.E.Kannadasan

For R-2 : Mr.K.Padmanaban

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the claimants complaining that the compensation awarded is inadequate and that it is the duty of the Tribunal to have awarded compensation, which is 'just'.

2.1. The 25 years old wife, 3½ years old son and 2½ years old daughter were the claimants before the Claims Tribunal, claiming compensation in respect of death of one Vetriganesan, who died in an accident that took place on 21.01.2015. They claimed compensation of Rs.40,00,000/- on the plea that the deceased was the owner cum driver of the lorry, earning a sum of Rs.15,000/- per month, and hence, there is substantial loss of income apart from loss of guidance and support.

2.2. The claim was disputed by the Insurance Company on the ground that there is no documentary proof for the income and therefore, the claim made is not reasonable.

2.3. The Claims Tribunal, on a perusal of the oral and documentary evidence, has awarded a sum of Rs.8,60,000/- under the following breakup details:-

Head	Amount / Rs.
Loss of dependency	7,20,000.00
Loss of consortium	50,000.00
Loss of love and affection	75,000.00
Loss to estate	5,000.00
Funeral expenses	10,000.00
Total	8,60,000.00

2.4. While calculating the loss of dependency, the Tribunal has fixed the monthly income at Rs.6,000/- and deducting 1/3rd towards personal expenses and adopting the multiplier of '15' has quantified the loss of dependency at Rs.7,20,000/-.

2.5. The Insurance Company disputed the claim on the ground that there is no documentary proof for the income and therefore, the claim made is not reasonable. It is not always possible to produce evidence for the income earned especially for the people who are in unorganized sector. This necessitates finding a way to find out the income of the deceased/injured.

3. The proof of income by production of evidence is difficult and not possible, in some cases, for all those persons who are under a legal liability to prove the same. This difficulty is more for those who are self-employed, those who are employed in unorganized sector, those who are employed on daily wage basis, etc., Just because there is no proof for income, can it be concluded that they have no income at all. If there is no income, how did they survive or how do they maintain the sustenance level. The fact of existence is apparent on their mere presence. The presence and the growth leading to the continued existence would go to show that there must have been supply of energy for the growth.

3.1. When a person exists, the implication is that some amount of energy has gone inside them, i.e., the fair necessities of life is made available to them or they make available to themselves by some means or other. Below this minimum level, human-beings are bound to perish. When they did not perish and they are available, by their physical presence, how do we account for their existence without income. The implication is that from the income spent, one can infer the existence of income. What is the scientific method to do that.

3.2. It is painful to see many judgments of the Tribunal giving a finding that, there is no proof for income and therefore, the compensation awarded should be meagre. Those who already suffer on account of their poverty or vulnerability are made to suffer. To eradicate this evil, this Court wanted to place a scientific method on record, so that the suffering mass would get some solace in the form of just compensation.

3.3. The committee consisting of an expert in the field of law and economy was constituted to look into those issues and the committee has submitted its report.

4. In the first instance, the report submitted by advocate / law member made the following recommendations.

1. Minimum wages notified or the wages notified by the District Collectors should be the minimum income for any trade / profession / employment and an amount less than the minimum notified should not be accepted even if the person was exploited and had in fact received less than the minimum wages.
2. Variable Dearness Allowance / Dearness Allowance should be added to the wages if already not factored in.
3. Self- assessment should be accepted if there is no major dispute regarding the same.
4. Consumption data including savings, investments, premiums paid etc as discussed above can also be taken into consideration for determination of income.

5. Replacement cost or the cost of hiring such services at market rates should be taken into account while determining the income or value of invisible work of 'unemployed' house wife or elderly at home.

4.1. The above recommendations are generic in nature. These methods can be adopted wherever found suitable and applicable. However, the fourth recommendation concurs with the report of Member Economist. The member Economist in addition to recommending the use of consumption data had suggested way to implement the same with adequate data. It is discussed below.

4.1.1. The report raises a pertinent question -how can the family members survive in the absence of income? This is the question this court raised often to the appellants and respondents in many cases. To survive, the family needs at least a minimum amount of income, which is called subsistence level of income. The introduction part of the report throws more light on this question. It is reproduced below:

"1.2. Lack of evidence doesn't mean that the deceased person didn't have any income. Unless she/he is employed in a productive activity, she/he and family wouldn't have survived this far. They were/ are leading a life at least at subsistence level.

1.3. The subsistence is the state or fact of existing. The oxford dictionary defines subsistence level as 'A standard of living (or wage) that provides only the bare necessities of life' (https://en.oxforddictionaries.com/definition/subsistence_level). Below this level, human being shall perish.

1. 4. Here the observation made in the UNDP's Human Development Report is worth consideration. This report is to measure progress of world countries in the arena of Human development, measured in terms of education, health and standard of living. The progress is measured in a relative sense by comparing the level of achievement of various countries. This needs benchmark at minimum and maximum level. In fixing such a benchmark the following observation was made in the report (P. 216 of Human development report 2010 - Technical note 1. Calculating the Human Development Index)

"The first step is to create sub indices for each dimension. Minimum and maximum values (goalposts) need to be set in order to transform the indicators into indices between 0 and 1. Because the geometric mean is used for aggregation, the maximum value does not affect the relative comparison (in percentage terms) between any two countries or periods of time. The maximum values are set to the actual observed maximum values of the indicators from the countries in the time series, that is, 1980–2010. The minimum values will affect comparisons, so values that can be appropriately conceived of as subsistence values or "natural" zeros are used.Progress is thus measured against minimum levels that a society needs to survive over time. The minimum values are set at 20 years for life expectancy, at 0 years for both education variables and at $163 for per capita gross national income (GNI). The life expectancy minimum is based on long-run historical evidence from Maddison (2010) and Riley (2005). Societies can subsist without formal education, justifying the education minimum. A basic level of income is necessary to ensure survival: $163 is the lowest value attained by any country in recorded history (in Zimbabwe in 2008)...... "(http://hdr.undp.org/sites/default/files/reports/270/hdr_2010_en_complete_reprint.pdf)

1. 5. So to upkeep himself and his family a minimum level of income is necessary. This subsistence level of income needs to be and is being earned by the bread winner of the household. The earning member of the household earns not only for his consumption but also for his dependants."

4.1.2. Emphasis is supplied to the lines:

"Societies can subsist without formal education...................... A basic level of income is necessary to ensure survival". Every surviving family needs to earn a basic level of income. The task is to find out what is that basic or subsistence level of income in India. The report submitted by the member Economist answer this question with reasonable certainty.

The report used Household Consumer Expenditure Surveys (HCES) conducted by National Sample Survey Office (NSSO). As stated in the report these surveys are primary source of data on various indicators of level of living of different strata of the population at National and State levels. This data enables to find out the subsistence level of income.

NSSO conducts quinquennial surveys with larger samples apart from annual survey with smaller samples. The larger sample surveys are more reliable than the smaller one. Hence the report relied on the quinquennial surveys. The consumption data is collected at house hold level and then worked out in terms of per capita. As the family size varies from household to household the consumption data at per capita level is appropriate.

As quoted in the report a detailed description of Household consumer expenditure is given in the chapter Two of Report No 555 of NSSO."

4.1.3. The initial paragraph of the same is reproduced below:

"Household consumer expenditure: The expenditure incurred by a household on domestic consumption during the reference period is the household's consumer expenditure. Expenditure incurred towards productive enterprises of households is excluded from household consumer expenditure. Also excluded are expenditure on purchase and construction of residential land and building, interest payments, insurance premium payments, payments of fines and penalties, and expenditure on gambling including lottery tickets. Money given as remittance, charity, gift, etc. is not consumer expenditure. However, self-consumed produce of own farm or other household enterprise is valued and included in household consumer expenditure. So are goods and services received as payment in kind orfree from employer, such as accommodation and medical care, and travelling allowance excluding allowance for business trips."

4.1.4. From the above description it is evident that the household consumption expenditure leaves out much expenditure. It covers only the following expenditures:

(i) food, pan (betel leaves), tobacco, intoxicants and fuel &light

(ii)Clothing and footwear and

(iii)Miscellaneous goods and services and durable articles.

4.1.5. To collect the consumption expenditure data, the respondents are requested to recall and report the volume of consumption during a particular period say a week or month. This period is called Reference period or Recall period.

4.1.6. There are three kind of Reference period or Recall period. The Report No 555 of NSSO summarised MPCEs based on different recall periods in page no 9 as follows:

"2.3.4 Uniform Reference Period MPCE (or $MPCE_{URP}$): This is the measure of MPCE obtained by the NSS consumer expenditure survey (CES) when household consumer expenditure on each item is recorded for a reference period of "last 30 days" (preceding the date of survey).

2.3.5 Mixed Reference Period MPCE (or $MPCE_{MRP}$) This is the measure of MPCE obtained by the CES when household consumer expenditure on items of clothing and bedding, footwear, education, institutional medical care, and durable goods is recorded for a reference period of "last 365 days", and expenditure on all other items is recorded with a reference period of "last 30 days".

2.3.6 Modified Mixed Reference Period MPCE (or $MPCE_{MMRP}$) This is the measure of MPCE obtained by the CES when household consumer expenditure on edible oil, egg, fish and meat, vegetables, fruits, spices, beverages, refreshments, processed food, pan, tobacco and intoxicants is recorded for a reference period of "last 7 days", and for all other items, the reference periods used are the same as in case of Mixed Reference Period MPCE ($MPCE_{MRP}$)."

4.1.7. The quinquennial surveys once in five years organise the house hold consumption data, fractile class wise for Rural and Urban areas separately.

4.1.8. The fractile classes' wise average $MPCE_{URP}$ for various rounds is tabulated in Table 5 of the report of expert committee. It is reproduced below:

4.1.9. Table 5: Fractile classes' wise average $MPCE_{URP}$ for various rounds:

Round		43rd (1987-88)		50th (1993-94)		55th (1999-00)		61st (2004-05)		68th (2011- 2012)	
Sl no	Fractile classes	Rural	Urban	Rural	Urban	Rural	Urban	Rural	Urban	Rural	Urban
1	0-5 %	54	75	100	133	161	221	202	281	446	618
2	5-10 %	73	101	131	176	210	290	257	370	564	796
3	10 -20 %	88	122	153	211	247	351	300	444	663	978
4	20 -30 %	103	147	178	248	288	426	346	535	774	1192
5	30 -40 %	117	173	200	287	329	498	392	628	876	1401
6	40 -50 %	133	200	222	332	366	578	436	732	977	1632
7	50 -60 %	149	234	249	381	414	678	488	861	1100	1907
8	60 -70 %	170	280	282	448	467	793	550	1019	1249	2246
9	70 -80 %	196	344	325	543	541	955	631	1231	1452	2730
10	80 -90 %	243	440	398	698	673	1216	784	1600	1786	3563
11	90 -95 %	321	594	500	923	864	1615	1014	2165	2292	4994
12	95 – 100 %	623	1216	872	1643	1618	3324	1979	4253	4526	10279
All		158	251	281	458	473	822	566	1056	1279	2399
	Reference Periods	URP		URP		URP		URP		URP	

Source: NSS Report Nos: 372, 508 and 555.

Note: For 55th (1999-00) round URP based MPCE is not available. Only MRP based MPCE is available. For the purpose of making all the rounds comparable the URP based MPCE was estimated. For this the ratio of $MPCE_{URP}$ to $MPCE_{MRP}$ for the 61st (2004-05) round was worked out for which both are available and the same was applied to 55th (1999-00) round.

4.2. The above data is available only for the years in which quinquennial survey was conducted. But for the purpose at hand, data is necessary for every year. Hence, it was interpolated using the Compound Annual Growth Rate (CAGR) by the member Economist. For the data subsequent to the year 2011-12 it was extrapolated using the CAGR for the period 2004-05 to 2011-12. Such a table for rural area was annexed as Annexure A and for Urban Area as Annexure B to his report. The same is annexed here. 4.2.1. Among the 12 fractile classes the lowest level of consumption is at 0-5 % Fractile class. It shows without which the human being cannot survive in India.

4.2.2. This being the lowest fractile, the member Economist stated that this cannot be treated as subsistence level of consumption. He pointed many shortcomings of this consumption expenditure data for the purpose at hand. It is reproduced below.

“2.23.But this cannot be fixed as the subsistence level of consumption as it is underestimated consumption expenditure. The reasons and logical arguments are below:

a. As stated in the Concepts and definition of NSS Reports it covers only few items. At the cost of recapsulation of relevant extract from Report No.555 is resorted to:

“2.1.2 Household consumer expenditure: The expenditure incurred by a household on domestic consumption during the reference period is the household's consumer expenditure. Expenditure incurred towards productive enterprises of households is excluded from household consumer expenditure. Also excluded are expenditure on purchase and construction of residential land and building, interest payments, insurance premium payments, payments of fines and penalties, and expenditure on gambling including lottery tickets. Money given as remittance, charity, gift, etc. is not consumer expenditure. However, self-consumed produce of own farm or other household enterprise is valued and included in household consumer expenditure. So are goods and services received as payment in kind or free from employer, such as accommodation and medical care, and travelling allowance excluding allowance for business trips.”

4.2.3. From the above it is very much clear that the Consumption Expenditure Survey (CES) do not cover all expenditures which are made at household level.

b. Not only some expenditure is left out but financial and nonfinancial savings are left out, asset creation is also left out. It is not in conformity with the economic principle: income is equal to consumption and savings:

Income = Consumption + Savings

Y = C+S

7.2.4. As savings are used for investments that is for asset creation this formulae can be rewritten as

Income = Consumption + Investment.

7.2.5. The asset formation may follow saving or saving can follow asset creation. In the former case savings are made and assets are created either through purchase or through construction or fabrication using the saved amount. In the latter case assets are created through borrowed money and are repaid in instalments. It is also a saving. It is to be noted in India, the households saving contribute 59% of Gross savings of the country in the year 2015- 16. Domestic Sector savings is Rs 26215.31 Billion (Source: RBI handbook of statistics on the Indian Economy, RBI 2016-17). The estimated population of India in the year 2015 is 1.282 Billion (http://statisticstimes.com/population/population-of-india.php). The per capita annual saving is Rs 20,448. Per month it comes to Rs 1,704. To this extent of savings the income is under captured in consumption survey of NSS. It is to be noted that the fractile wise data in this regard is not available.

c. The above estimates are based on URP method as the data is available only for this method for most of the rounds. This ensures comparability. But URP method under-capture theMPCE compared to MRP and MMRP. The following tables show the ratio of URP as a percentage of MRP and MMRP.

Table 7: Ratio of average $MPCE_{URP}$ / average $MPCE_{MRP}$ for 2004-05 at 1993-94 price

Fractile classes	Rural			Urban		
	URP	MRP	Ratio of URP/MRP	URP	MRP	Ratio of URP/MRP
0-5 %	114	137	83	141	164	86
5-10 %	145	169	86	186	210	89
10 -20 %	169	193	88	223	248	90
20 -30 %	195	220	89	269	294	91
30 -40 %	221	245	90	316	342	92
40 -50 %	246	271	91	368	396	93
50 -60 %	275	299	92	433	461	94
60 -70 %	310	333	93	512	545	94
70 -80 %	359	380	94	619	657	94
80 -90 %	442	455	97	804	854	94
90 -95 %	572	569	101	1088	1144	95
95 -100%	1116	938	119	2137	1985	108
all	319	331	96	531	555	96

Table 8: Ratio of average $MPCE_{URP}$ / average $MPCE_{MRP}$and average $MPCE_{URP}$ /average $MPCEM_{MRP}$for2011-12 at current price

	RURAL					URBAN				
Fractile classes	URP	MRP	MMRP	Ratio of URP/MRP	Ratio of URP/MMRP	URP	MRP	MMRP	Ratio of URP/MRP	Ratio of URP/MMRP
0-5 %	446	476	521	94	86	618	652	700	95	88
5-10 %	564	597	666	94	85	796	840	909	95	88
10 -20 %	663	700	783	95	85	978	1030	1118	95	87
20 -30 %	774	809	905	96	86	1192	1252	1363	95	87
30 -40 %	876	909	1018	96	86	1401	1481	1625	95	86
40 -50 %	977	1016	1136	96	86	1632	1728	1888	94	86
50 -60 %	1100	1140	1266	96	87	1907	2018	2180	94	87
60 -70 %	1249	1292	1427	97	88	2246	2377	2548	94	88
70 -80 %	1452	1497	1645	97	88	2730	2887	3063	95	89
80 -90 %	1786	1823	2007	98	89	3563	3751	3893	95	92
90 -95 %	2292	2333	2556	98	90	4994	5268	5350	95	93
95 - 100 %	4526	3965	4481	114	101	10279	9732	10282	106	100
all	1279	1287	1429	99	90	2399	2477	2630	97	91

7.3. From the above table, it is very much clear that URP under-capture the consumption expenditure at the lower fractiles.

d. The consumption expenditure based on NSSO’s Household level CES is always lower than Private Final Consumption Expenditure (PFCE) estimated by National Account Statistics (NAS), the method used for calculation of National Income. The following table gives the divergence in estimates of aggregate consumption expenditure between NAS and NSS.

Table 9: Divergence in estimates of aggregate consumption expenditure between NAS and NSS

Year (NSS)	NSS Reference	NAS Base	Aggregate consumption expenditure at currrent prices (in Rs Cr.)		Difference in %
			NSS	NAS	
1993-94	URP	1993-94	355770	574772	-38.10
1999-00	URP	1993-94	716391	1271556	-43.66
1999-00	URP	1999-00	716391	1257541	-43.03
2004-05	URP	1999-00	931415	1873729	-50.29
2004-05	MRP	1999-00	966393	1873729	-48.42

Source:C. Ravi and M. Venkatanarayana (2011), "Estimating NAS consistent Poverty and Inequality from NSS Data", Draft Paper presented at Annual Conference of Indian Association Income and Wealth Research (IAIWR) held at Centre for Economic and Social Studies, Hyderabad during 11-12 February, 2011.

7.3.1. The same kind of estimate was done by Sanjay Kumar and N. K Sharma (Sanjay Kumar and Sharma. N. K (2007), "Divergence between the estimates of consumption expenditure in the National Account and the NSS A perspective on NSS data" The Journal of Income and Wealth, Vol 29, No 2, July – December 2007.). The difference estimated by them almost match with the above estimates. Sanjay Kumar and N.K Sharma reviewed various literatures analysing reason for the difference between these two estimates. They observed as follows:

"Hence, what actually is the cause behind the gap has thus remained in the realm of assumptions, conjectures and possibilities-many of which end up contradicting many others. It must therefore be appreciated that the gap between the two data sets remains largely unattributable to the alleged causes like coverage in NSS on agriculture year basis, implicitprices, omission of cooked meals etc. The actual causes must be found somewhere else."

7.3.2. At the same time considering the growing divergence year after year and slow growth in consumption compared GDP growth they concluded that the NSS data consumption is underestimated. They observed "That lately, the economy has been growing at a higher pace cannot be ignored (though there may be pettifogging regarding its exact magnitude of growth). At the same time, NSS consumer surveys appear to show a very mild growth in the consumption; which is not readily acceptable since then it has to be inferred that either there has been no such growth as reflected by NAS or alternatively, that most of the economic benefits of higher growth have been utilised for saving/capital formation purposes-consumption growing at a relatively sluggish pace."

7.3.3. The fractile-wise divergence as estimated by Ravi and Venkatnarayana (2011). The divergence was found to be in the range of 25 to 50 % for Rural and 40 to 95 % for urban.

e.The compensation fixed on the basis of income/expenditure of bread winner, who was lost doesn't consider the opportunity cost of the children/siblings who may have to forego their career and become the bread winner of the family. Had the bread winner been alive, the children would have attended school and redeemed their family from poverty. The loss of bread winner forfeits this opportunity.

f.High sex ratio: The sex ratio of lower income households is higher than the upper income groups. It shows the female dependency is higher. The female dependency demands more savings towards sridhan, an essential part of Indian culture. It is not captured in NSS CESs.

g. A careful reading of Annexure A and B shows that the growth of consumption expenditure is high in the lower fractiles. The rural consumption expenditure of lowest fractile class was Rs 100 in 1993 - 94 and Rs 153 for 10-20 fractile class. This level of Rs 153 was grossed by the lowest fractile in the year 1999-00. Though there was a sluggish growth in the period 1999-00 to 2004-05 it attained a faster pace thereafter.

h.The average MPCE of Tamil Nadu is higher than all India average MPCE. For illustrative purpose the comparison of average $MPCE_{MMRP}$ of all India and Tamil Nadu is tabulated below:

Table 10.Average $MPCE_{MMRP}$ in different fractile classes of $MPCE_{MMRP}$: All India and Tamil Nadufor2011-12 at current price

Fractile classes	Rural		Ratio	Urban		Ratio
	All India	Tamil Nadu		All India	Tamil Nadu	
0-5 %	521	587	113	701	832	119
5-10 %	666	766	115	909	1051	116
10 -20 %	783	915	117	1118	1242	111
20 -30 %	905	1087	120	1363	1485	109
30 -40 %	1018	1241	122	1625	1737	107
40 -50 %	1136	1380	121	1888	1957	104
50 -60 %	1266	1522	120	2180	2221	102
60 -70 %	1427	1711	120	2548	2601	102
70 -80 %	1645	1972	120	3063	3078	100
80 -90 %	2007	2445	122	3893	3865	99
90 -95 %	2556	3170	124	5350	5224	98
95 - 100 %	4481	4786	107	10282	8959	87
All	1430	1693	118	2630	2622	100

2.24. Considering these factors it shall be appropriate to fix the subsistence/minimum level of compensation at the fourth fractile class i.e.20-30 %.”

7.4. The member economist points out that the NSSO's Consumption expenditure survey under captures the consumption expenditure due to various factors- recall period, less coverage of number of expenditure items and non consideration of saving and investments etc,. Hence, he recommends fixing the subsistence/minimum level of compensation at the fourth fractile class i.e.20-30 %. By his recommendation in the year 2011-12 Monthly Per Capita consumption Expenditure is Rs 774 for Rural area. It comes to Rs 25 per day. The same in the Year 2017-18 is Rs. 1,490 per month and Rs 48.06 per day. This is very low.

7.5. This court finds that the member economist is niggardly in his recommendation.He himself points out that the NSSO's Consumption expenditure survey under captures the consumption expenditure substantially. Hence, the court is inclined to fix the subsistence level of compensation at 6th fractile class i.e.40-50 %. This is fixed after considering the fact that the probability of accident victims may not be high so as to she/he is only from the family having subsistence level of income.

7.6. The amount of compensation in the cases of fatal accidents depends on the family size, the year of accident and the age of victim. The report suggests indexing the compensation using consumer price index to compensate the loss in value of money between the year of petition and the year of award. The formula for indexed compensation is as follows:

Indexed Compensation = Amount of compensation X Consumer Price Index of preceding year of award / Consumer Price Index of year of petition seeking compensation

7.7. For Rural area it suggests to use Consumer Price Index for Agricultural Labourer and for urban area Consumer Price Index for Industrial workers.

7.8. The definition of Rural and Urban area is given in the Annexure G to the report. It is reproduced below:-

"Annexure G: Extract of the definition of Rural and urban Areas taken from Concepts and Definitions Used in NSS, Golden Jubilee Publication, National Sample Survey Organisation, Department of Statistics, New Delhi

2.1.6. RURAL AND URBAN AREAS

The rural and urban areas of the country are taken as adopted in the latest population census for which the required information is available with the Survey Design and Research Division of the NSSO. The lists of census villages as published in the Primary

Census Abstracts (PCA) constitute the rural areas, and the lists of cities, towns, cantonments, non-municipal urban areas and notified areas constitute the urban areas.

2.1.6.1 URBAN AREA

The urban area of the country was defined in 1971 census as follow:

(a) all places with a Municipality, Corporation or Cantonment and places notified as town area
(b) all other places which satisfied the following criteria:
(i) a minimum population of 5000,
(ii) at least 75 percent of the male working population are non-agriculturists, and
(iii) a density of population of at least 1000 per sq. mile (390 per sq. km.).

However, there are urban areas which do not possess all the above characteristics uniformly. Certain areas were treated as urban on the basis of their possessing distinct urban characteristics, overall importance and contribution to the urban economy of the region.

The definition of urban area in 1961 Census was practically the same as in 1971 Census except that an area with at least 75 percent of total (and not male only as in 1971 Census) working population dependent on non-agricultural pursuits and fulfilling other criteria mentioned in paragraph above was treated as urban.

The definitions of urban area adopted for 1981 and 1991 Censuses were the same as those for 1971 Census; but in 1991 Census, a density of at least 400 persons per sq. km. Was the criteria instead of b (iii) given above.

2.1.6.2 RURAL AREA

The rural sector covers areas other than the urban areas. The rural areas are composed of whole villages as well as part villages. A village includes all its hamlets. When part of a revenue hamlet is treated as urban area, the rural part of the revenue hamlet is termed as part village. Some rural areas may be urbanised and some urban areas may be declared as rural during inter-census periods. If any sample village is found to have been urbanised after the latest census, it is first investigated whether the urban frame (as prepared in the latest Urban Frame Survey of NSS) of the town with which the village has been merged includes that village or not. If the town frame contains that village then no rural survey is conducted in that village. Otherwise, the village is surveyed in the usual manner although it has become an urban area; because, if the village is not surveyed it will be left out from both rural and urban areas. However, in case a town or part of a town is found to have been converted into rural area, then also it is surveyed and considered as an urban area since the rural frame does not contain any part of that town. Such cases, however, are extremely rare.

Note: The definition of Urban adopted in 1991 census was continued for 2001 and 2011 also."

7.9. It also calls for adjustment for the consumption expenditure of lost person from the computed compensation.The MVA made it mandatory to reduce 1/3rd of the amount. However the report suggests that it should be reduced based on the family size. If the family size is 5 the reduction should be restricted to 1/5th, if the family size is 4 the reduction should be restricted to 1/4th and so on. The reason is that the consumption expenditure here used is Monthly Per Capita Consumption Expenditure. Hence if one person is lost only the consumption attributable to that single person alone should be adjusted on a per capita basis.

7.10. To administer the above recommendation the member Economist provided compensation charts for Rural and Urban area separately vide Annexure E and F respectively. These charts are modified. Instead of consumption expenditure of 4th fractile consumption of 6th fractile is used. They are reproduced below.

Rural Compensation Chart

Round	Year	MPCE of 40-50 % fractile	Agricultural Labourers (Base: 1986-87 = 100) General index
1	2	3	4
43rd	1987-88	133	136
	1988-89	145	163
	1989-90	158	127
	1990-91	172	136
	1991-92	187	163
	1992-93	204	183
50th	1993-94	222	189
	1994-95	241	212
	1995-96	262	237
	1996-97	285	256

	1997-98	310	264
	1998-99	337	293
55th	1999-00	366	306
	2000-01	379	305
	2001-02	393	309
	2002-03	407	319
	2003-04	421	331
61st	2004-05	436	340
	2005-06	489	353
	2006-07	549	380
	2007-08	616	409
	2008-09	691	450
	2009-10	776	513
	2010-11	871	564
68th	2011-12	977	611
Extrapolated at CAGR between 2004-05 to 2011-12 as the data is not available for this period	2012-13	1096	672
	2013-14	1230	750
	2014-15	1381	800
	2015-16	1501	835
	2016-17	1684	870
	2017-18	1890	889

Note: The MPCE for the accidents happened prior to the year 1987-88 shall be taken as the MPCE of the year 1987-88.

Urban Compensation Chart			
Round	Year	MPCE of 40-50% fractile	Industrial workers (Base : 1982=100) General Index
1	2	3	4
43rd	1987-88	200	149
	1988-89	218	163
	1989-90	237	173
	1990-91	258	193
	1991-92	280	219
	1992-93	305	240

50th	1993-94	332	258
	1994-95	364	284
	1995-96	399	313
	1996-97	438	342
	1997-98	480	366
	1998-99	527	414
55th	1999-00	578	428
	2000-01	606	444
	2001-02	635	463
	2002-03	666	482
	2003-04	698	500
61st	2004-05	732	520
	2005-06	821	542
	2006-07	920	579
	2007-08	1032	616
	2008-09	1157	671
	2009-10	1298	754
	2010-11	1455	833
68th	2011-12	1632	903
Extrapolated at CAGR between 2004-05 to 2011-12	2012-13	1830	995
	2013-14	2052	1093
	2014-15	2301	1162
	2015-16	2580	1227
	2016-17	2894	1278
	2017-18	3245	1317

Note: The MPCE for the accidents happened prior to the year 1987-88 shall be taken as the MPCE of the year 1987-88.

The step wise calculation is illustrated by taking the current case as an example.

Stepwise calculation: An illustration

Step 1: Identification of year of petition in Column 2

Step 2: Identification of MPCE in Column 3. It is Monthly Per Capita Expenditure.

Step 3: Multiply MPCE indentified in step 2 by number of family members. It is Monthly Household Expenditure.

Step 4: Multiply Monthly Household expenditure arrived by step 3 by number 12. It is Annual Household Expenditure.

Step 5: Multiply Annual Household expenditure arrived in step 4 by the multiplier applicable to the age of deceased. It is amount of compensation.

Step 6: Multiply annual Household expenditure arrived by step 5 by CPI (AL) of precedingyear to the year of award identified from column 4 above and divide by CPI (AL) of year petition identified from column 4 above. It is amount of indexed compensation.

Step 7: Divide the compensation arrived by step 6 by the family size i.e number of persons of the family at the time of accident. It is amount to be adjusted for deceased.

Step 8: From indexed compensation arrived in step 6 deduct amount to be adjusted for deceased arrived in step 7. It is indexed adjusted amount of compensation.

Current case as an Example:

The year of accident and petition: 2014-15

Place of Domicile of Victim's family: Rural

Age of victim: 35 - 40 years

Family Size: 4

Multiplier: 17

Year of award = 2018-19

The preceding year to the year of award = 2017-18

Step 1: Identified year of accident/petition: 2014-15

Step 2: Monthly Per capita expenditure identified from column 3 is Rs 1381

Step 3: Monthly Household expenditure is 1381 * 4 = 5,524

Step 4: Annual Household expenditure is 5,524 * 12 = Rs 66,288.

Step 5: Amount of compensation is 66,288* 17 = Rs 11,26,896

Step 6: Amount of indexed compensation 11,26,896* 889/800 = Rs 12,52,263

Step 7: Amount to be adjusted for deceased 12,52,263/4 = Rs 3,13,065

Step 8: Indexed adjusted amount of compensation 12,52,263-3,13,065 = Rs 9,39,197

7.15. The court is inclined to include future prospects and other general damages to the above amount for the reason given later. It is calculated below:

Head	Amount / Rs.
Loss of dependency with future prospects	13,14,875.00
Loss of consortium	40,000.00
Transportation	10,000.00
Loss to estate	15,000.00
Funeral expenses	25,000.00
Total	14,04,875.00

7.16. The amount of Rs.14,04,875/- would have been the compensation in the absence of evidence for income. However, in this case, case specific claim and finding needs to be taken into account.

8. The learned counsel appearing for the claimants submitted that the income fixed is very low, especially when the deceased was the owner cum driver of a lorry which is proved through Ex.P-5-driving licence and Ex.P-4-R.C.Book.

9. The learned counsel appearing for the second respondent submitted that R.C.Book cannot be relied upon, as it is only a Photo Copy; the Tribunal did not rely upon Ex.R-4-R.C.Book, on the ground that the type and other connected details of the vehicle are not mentioned in the R.C.Book and that the R.T.O. is not examined.

10. Whether this finding by the Tribunal has to be accepted is the issue to be considered.

1. It is relevant to point out that the most interested person to dispute the ownership of the vehicle is the Insurance Company. The Insurance Company submitted in the counter that the petitioners are put to strict proof regarding the validity of R.C.Book, F.C., driving licence, etc., During cross-examination, it is not suggested that the deceased was not the owner of the vehicle. When a photo copy is filed, probably, the original might have been with the financier. An opportunity might have been given to the claimants to produce the original, in case the Tribunal has entertained the doubt regarding the authenticity of the document. However, to save time, this Court called for records from the Office of the RTO, Redhills, Chennai. Records were produced only on 30.08.2018. From the perusal of the records, it is evident that the lorry originally belonged to one K.G.Bhaskar sundaram and later, it has been transferred in the name of the Vetriganesan, on and from 13.03.2014. After the death of Vetriganesan it has been transferred in the name of the first claimant-Nadhiya. As

on the date of accident, namely, 21.02.2015, the owner of the lorry is the deceased-Vetriganesan.

2.

11.1. The vehicle is a Tipper. The details of the vehicle are as follows: Vehicle class: Multi Axle GOODS vehicle:203; No of Cylinders: 6; Horse Power: 160; Manufacturer: 004: Ashok Leyland Ltd; Manufacture Year/Month: 2010/2; Laden/unladen weight: 25000/9700; The vehicle of above type certainly would yield Rs 15000 per month.

12. The contention of the learned counsel appearing for the claimants is that the future prospects ought to have been taken into account, when the deceased was aged only 38; the Tribunal considered the judgment in 2016 TN MAC 539 (DB) (New India Assurance Co. Ltd., and others v. R.Vijaya and others) but has given a finding that the said decision is not applicable to the facts of the case.

13. The Tribunal is not correct in giving a finding that the future prospects are not applicable to the facts of the case. The Tribunal should have considered future prospects at least at 40%.

14. In view of foregoing reasonings, taking the monthly income at Rs.15,000/- and deducting 1/4th towards the personal expenses, adopting multiplier of 15 and adding 40% towards future prospective increase in income, the compensation for loss of dependency should be fixed at Rs.28,35,000/- (Rs.15,000/- - (¼) x 12 x 15 + 40%).

15. In view of the latest Supreme Court decisions, the amount awarded towards loss of love and affection and loss to estate will not arise and some amount has to be awarded towards transportation and slight modification needed in the amount awarded towards funeral expenses. Thus, the award passed by the Tribunal has to be restructured and the breakup details of the award of compensation reads thus:-

Head	Amount / Rs.
Loss of dependency	28,35,000.00
Loss of consortium	40,000.00
Transportation	10,000.00
Loss to estate	15,000.00
Funeral expenses	25,000.00
Total	29,25,000.00

16. In the result, the award is enhanced from Rs.8,60,000/- to Rs.29,25,000/- and this enhanced amount of compensation shall be deposited by the second respondent / Insurance Company, less

the amount already deposited, if any, along with interest at 7.5% per annum, from the date of petition till the date of deposit, within a period of eight weeks from the date of receipt of a copy of this judgment. The claimants are not entitled to the interest for the default period. On such deposit being made, the first claimant / first appellant is entitled to a sum of Rs.11,25,000/- and the claimants 2 and 3 / appellants 2 and 3 are entitled to a sum of Rs.9,00,000/- each, totalling to Rs.18,00,000/- (along with their proportionate interest). The Tribunal shall transfer the compensation award amount of the first claimant / first appellant to her Savings Bank Account, through RTGS. Since claimants 2 and 3 / appellants 2 and 3 are minors, their share of compensation shall be deposited in a fixed deposit in any nationalized bank till they attain majority. The interest accrued thereon shall be withdrawn by the guardian of respondents 2 and 3, once in three months, directly from the Bank and shall be utilized for the welfare of the minors. The excess court fee shall be paid by the claimants / appellants before receiving the copy of this judgment.

17. In all other cases, where there is no proof for income the above compensation chart holds good. At the same time, if the claimants/appellants can prove with evidence that they were incurring family expenditure more than the amount prescribed in the compensation chart, it needs to be considered and taken as income. This is based on the economic principle Income = Expenditure + Saving (or) Investment.

18. Before moving further it is necessary to discuss the improved life expectancy of Indians since enactment of Motor Vehicle Act 1988.A report prepared under the India State-level Disease Burden Initiative, a joint project between the Indian Council of Medical Research (ICMR), the Public Health Foundation of India (PHFI), and the Institute for Health Metrics and Evaluation (IHME), in collaboration with the Ministry of Health and Family Welfare was published in the journal Lancet in the year 2017. This report made into news in many national dailies. It says life expectancy at birth in the country improved significantly during 1990 to 2016 — from 59.7 years and 58.3 years for females and males respectively in 1990 to 70.3 years for females and 66.9 years for males in 2016.

19. This improved life expectancy means more years of working and more earnings. This necessitates increase in the multiplier used to calculate compensation as per Second Schedule to MVA 1988. It is time for the Central Government to amend the second schedule to the Motor Vehicles Act having regard to the increase in the life expectancy of the indian population.

20. The report submitted by Member (Economist) and Member (Law) shall form part of the judgment.

21. In the result, the Civil Miscellaneous Appeal is allowed. No costs.

* Xerox copy of the Report submitted by Member (Economist) and Member (Law) is enclosed herewith.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

To

1. The Motor Accidents Claims Tribunal
   (Subordinate Judge)
   Ranipet,
   Vellore District.

2. The Section Officer, V.R.Section, Madras High Court,
   Chennai 104.

+1cc to M/s.E.Kannadasan, Advocate sr.89822
+1cc to Mr.K.Padmanaban, Advocate sr.89751

C.M.A.No.2748 of 2017

kj(co)
nr 14/06/2019