

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 28.11.2019

DELIVERED ON: 13.03.2020

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.Nos.2337 of 2015 and

M.P.No.1 of 2015,

C.M.A.No.3026 of 2017,

C.M.A.No.4225 of 2019 and C.M.P.No.23885 of 2019 and

C.M.A.No.4323 of 2019 and C.M.P.No.24513 of 2019

C.M.A.No.2337 of 2015:

The Branch Manager
The Oriental Insurance Co.Ltd.,
Branch Office: Subha Govindam Building
2nd Floor, Imperial Road,
Cuddalore-607 002.

..Appellant/2nd Respondent
Vs

1.Minor Giridharan
rep.by his next friend and
mother Lalitha

2.S.Krishnamoorthy

..Respondents/Petitioner/
1st Respondent

C.M.A.No.3026 of 2017:

R.Bakkiyaraj

Vs.

..Appellant /Petitioner

1.L.Imthiyas

2.The Branch Manager,
ICICI Lombard General Insurance Co.Ltd.,
Chhotabhai Centre No.140,
Nungambakkam High Road,
Chennai-600 034.

..Respondents/Respondents

C.M.A.No.4225 of 2019:

M/s.Iffco-Tokio General Insurance Company Ltd.,
'O.K.S. Building' Near B.T. Office,
No.5, College Road, II Cross
Tiruppur.

..Appellant /2nd Respondent

Vs

1.A.Murugesan

2.Murugan

3.The Secretary to Government,
Health and Family Welfare Department,
Fort St.George,
Chennai-600 009.

(R-3 suo motu impleaded vide Court order
dated 08.11.2019 made in CMA No.4225
of 2019).

... Respondents/Petitioner/
1st Respondent

C.M.A.No.4323 of 2019:

The Manager - Claims,
M/s.CHOLAMANDALAM MS General
Insurance Company Limited,
'Dare House', II Floor
No.232, NSC Bose Road,
Chennai-600 001.

..Appellant /2nd Respondent

Vs

1.Sivan
2.G.Senthil

..Respondents/Petitioner/
1st Respondent

C.M.A.No.2337 of 2015 filed under Section 173 of the Motor Vehicles Act against the award and decree dated 19.03.2015 made in MCOP No.3327 of 2013 on the file of the Motor Accidents Claims Tribunal, Special Sub Judge (MACT), Krishnagiri.

C.M.A.No.3026 of 2017 filed under Section 173 of the Motor Vehicles Act against the judgment and decree dated 13.07.2017 made in MCOP No.6511 of 2014 on the file of the Motor Accidents Claims Tribunal (IV Small Causes Court), Chennai.

C.M.A.No.4225 of 2019 filed under Section 173 of the Motor Vehicles Act against the judgment and decree dated 26.04.2019 made in MCOP No.1650 of 2017 on the file of the Motor Accidents Claims Tribunal (II Additional District Court) at Tiruppur.

C.M.A.No.4323 of 2019 filed under Section 173 of the Motor Vehicles Act against the judgment and decree dated 08.07.2019 made in MCOP No.73 of 2018 on the file of the Motor Accidents Claims Tribunal (Additional District Judge) at Hosur.

For Appellant in

C.M.A.No.2337 of 2015 : Mr.S.Arun Kumar

For Respondents in

C.M.A.No.2337 of 2015 : Mr.Mukund Pandiyan for R1
R2 - Not Ready in Notice

For Appellant in
C.M.A.No.3026 of 2017 : Mr.R.Nalliyappan

For Respondents in
C.M.A.No.3026 of 2017 : R1 - Served - No Appearance
Mrs.R.Sree Vidhya for R2

For Appellant in
C.M.A.No.4225 of 2019 : Mr.J.Michael Visuvasam

For respondents in
C.M.A.No.4225 of 2019 : No appearance

For Appellant in
C.M.A.No.4323 of 2019 : Mr.J.Michael Visuvasam
For 1st Respondent : Mr.C.Prabakaran

COMMON JUDGMENT

The facts of the case in C.M.A.No.2337 of 2015 are as follows:

On 17.08.2011 at about 18.55 hours, the first respondent was riding his bicycle on the left side of the Hosur - Krishnagiri NH Road. When he reached opposite to D.K.Swamy School at Keelsomarpettai, the driver of the car bearing Reg.No.PY-01-AQ-3457 belonging to the second respondent and insured with the appellant Insurance Company, came in a rash and negligent manner at high speed and dashed against the first respondent. Due to the impact, the first respondent sustained fracture on his left leg and other multiple injuries all over the body. The injured, represented by his mother, filed a claim petition before the Tribunal, claiming a sum of Rs.7,00,000/- as compensation. Considering the materials and evidence available on record, the Tribunal has awarded a sum of Rs.5,63,424/- with interest at the rate of 6% per annum from the date of petition, as compensation. Challenging the same, the present appeal has been filed by the appellant Insurance Company.

2.The facts of the case in C.M.A.No.3026 of 2017 are that on 24.08.2014 at about 20.00 hours, the appellant / claimant was riding the motorcycle bearing Reg.No.TN-22-BV-2095 along the Thiruneermalai Road near Penni Fast Food Hotel. At that time, the motorcycle bearing Reg.No.TN-22-BS-1659 belonging to the first respondent and insured with the second respondent Insurance Company, came from the opposite direction in a rash and negligent manner and dashed against the appellant. Due to

the impact, the appellant sustained grievous injuries. The injured filed a claim petition before the Tribunal claiming a sum of Rs.8,00,000/- as compensation. Considering the materials and evidence available on record, the Tribunal has awarded a sum of Rs.1,54,200/- with interest at the rate of 7.5% per annum from the date of petition, as compensation. Challenging the same, the present appeal has been filed by the claimant for enhancement of compensation.

3.The facts of the case in C.M.A.No.4225 of 2019 are that on 11.06.2017 at about 19.00 hours, the first respondent was riding the two-wheeler bearing Reg.No.TN-55-X-0181 on the TKT Mill - Ganapathipalayam Road, Tirupur. At that time, another two-wheeler bearing Reg.No.TN-42-B-3985 belonging to the second respondent and insured with the appellant Insurance Company, came from behind in a rash and negligent manner and dashed against the first respondent. Due to the impact, the first respondent sustained grievous injuries and fractures. The first respondent filed a claim petition before the Tribunal claiming a sum of Rs.15,00,000/- before the Tribunal. Considering the materials and evidence available on record, the Tribunal has allowed the claim petition and awarded a sum of Rs.15,00,000/- with interest at the rate of 7.5% per annum from the date of petition, as compensation. Challenging the same, the present appeal has been filed by the appellant Insurance Company.

4.The facts of the case in C.M.A.No.4323 of 2019 are that on 10.11.2017, the first respondent herein was riding his TVS moped bearing Reg.No.TN-24-AE-4604 proceeding from Shoolagiri to Krishnagiri. One Theerthagiri is the pillion rider. When they were proceeding on the Shoolagiri - Krishnagiri Road, the JCB Excavator bearing Reg.No.TN-24-J-8768 belonging to the second respondent and insured with the appellant Insurance Company, came from the opposite direction in a rash and negligent manner and dashed against the moped. Due to the impact, the first respondent sustained grievous injuries. The first respondent filed a claim petition before the Tribunal claiming a sum of Rs.10,00,000/- before the Tribunal. Considering the materials and evidence available on record, the Tribunal has awarded a sum of Rs.9,46,498/- with interest at the rate of 7.5% per annum from the date of petition, as compensation. Challenging the same, the present appeal has been filed by the appellant Insurance Company.

5.The learned counsel for the appellant Insurance Company in C.M.A.No.2337 of 2015 has submitted that the Tribunal has failed to take note that P.W.2-Doctor has not annexed the working sheet and guidelines followed by him along with Ex.P10-

Disability Certificate, to testify the correctness of 50% disability assessed by him. It is also specifically submitted that the Tribunal has erred in relying on the unscientific assessment of P.W.2 to grant a huge and unrealistic amount as compensation.

6.The learned counsel for the first respondent/claimant in C.M.A.No.2337 of 2015 has submitted that the Tribunal has considered the materials and evidence in a proper perspective and has correctly awarded the compensation, which is just, fair and reasonable and hence the same need not be interfered with by this Court.

7.In respect of C.M.A.No.3026 of 2017, notice of motion was issued by this Court as early as 26.10.2017 and thereafter, the matter has been continuously adjourned. The learned counsel for the appellant/ claimant has submitted that the Tribunal ought not to have awarded a meagre sum of Rs.1,54,200/- against the claim of Rs.8,00,000/- for the injuries sustained by the appellant. It is also submitted that due to the injuries the appellant is not able to discharge his day to day affairs and he feels severe pain on the leg and that even though the Doctor fixed the disability of the appellant at 75%, the Tribunal reduced the same to 30%, which is not in accordance with law and not in consonance with the injuries sustained by the injured.

8.The learned counsel for the second respondent Insurance Company in C.M.A.No.3026 of 2017 has submitted that the Tribunal has considered the materials and evidence in a proper perspective and has correctly awarded the compensation, which is just, fair and reasonable and hence the same need not be interfered with by this Court.

9.The learned counsel for the appellant Insurance Company in C.M.A.No.4225 of 2019 has submitted that the Tribunal has failed to consider the fact that there was no continuous treatment record after the initial treatment for 3 days undergone by the first respondent to show that he had suffered disablement consequent to the injuries. It is also submitted that the Medical Board had assessed 58% partial permanent disablement to the first respondent, without any basis. It is further submitted that as per the disability guidelines, only 3% is provided for a case of amputation of the entire ring finger and just 1% for the amputation of the entire little toe, and that if the injuries are insignificant, the Tribunal ought to have adopted 'percentage method' for determining the compensation under the head 'disablement', but the Tribunal had completely gone wrong in adopting 'multiplier method' to

determine the loss of earning capacity, without any reasoning or justification whatsoever.

10. Even though notice has been issued as early as on 08.11.2019 to the respondents, there is no representation for the respondents in C.M.A.No.4225 of 2019.

11. The learned counsel for the appellant in C.M.A.No.4323 of 2019 has submitted that the Tribunal went wrong in determining the age of the first respondent as 45 years, overlooking the date of birth shown as 01.07.1970 in Ex.P6-Driving Licence of the first respondent. The fact remains that he had completed only 47 years and hence the appropriate multiplier that should be adopted is 13 and not 14. It is further submitted that the Tribunal has not considered the materials and evidence in a proper perspective while arriving at the compensation. Furthermore, it is submitted that the Tribunal ought not to have relied upon Ex.P13-Disability Certificate issued by the District Medical Board, Krishnagiri, assessing 40% partial permanent disablement, taking it as gospel truth and that the Tribunal had chosen to adopt the multiplier method to determine loss of earning capacity, without any justifiable reasoning.

12. C.M.A.No.4323 of 2019 has been admitted by this Court on 19.11.2019 and as of now, service has not been effected on the respondents. However since no order prejudicial to the interest of the respondents is going to be passed, this Court is inclined to dispose of this appeal.

13. Heard the learned counsel on either side and perused the materials available on record carefully and meticulously.

14. The submissions of the learned counsel for the Insurance Companies in C.M.A.Nos.2337 of 2015, 4225 and 4323 of 2019, mainly focus on the point that the percentage of disability shown in the disability certificates issued to the claimants therein are high and are not in consonance with the injuries sustained by them. In this connection, reliance has been placed on the judgment of this Court in the case of The Branch Manager, TATA AIG General Insurance Co.Ltd. v. Prabhu reported in 2016(1) TN MAC 609 (DB).

15. This Court has perused the said judgment of this Court in 2016(1) TN MAC 609. Various judgments have been relied upon in the said judgment and one such judgment is in the case of N.Obalaranga v. United India Insurance Co.Ltd., reported in Manu KA 0062/2009, wherein a reference has been made to the Central

Government Circular dated 13.06.2011 for assessment of disability by Medical Boards, in which it is stated that the Ministry of Social Justice and Empowerment, Government of India, has issued a Notification dated 01.06.2001 providing guidelines for evaluation of various disabilities and procedure for certification. This was issued in modification of the guidelines issued earlier in the year 1986 and in view of the provisions of Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995. Four Committees have been set up by the Government of India and the guidelines provide for evaluation of disability and the procedure for certification. The disabilities are classified as (a) Visual impairment; (b) Locomotor/Orthopaedic disability; (c) Speech and Hearing disability; (d) Mental Retardation and (e) Multiple Disabilities. These disabilities are defined and categorised according to the degree or percentage of disability. Minute details as to the manner in which the particular disabilities are to be assessed are provided, which includes ready reckoner tables and formulae for computing the percentage of disability. The authority to issue a Disability Certificate is a Medical Board duly constituted by the Central and State Governments and every such Board must consist of at least three members, of which, at least one member is a Specialist from either the field of Physical Medicine and Rehabilitation or Orthopaedics. This Court has observed in that judgment that need has come to introduce the much needed element of uniformity and consistency in the assessment of disabilities and standardisation in issuance of Certificates of Disability and that if consistency and uniformity can be achieved, then the disputed area would be significantly reduced. This Court has also observed that the main reason for the gross divergence and exaggeration in the assessment of Permanent Disability arises from the twin causes of failure to follow one framework in face for such assessment and the personnel applying his own varied lines to assess the same.

16. After analysing various judgments of this Court and the Hon'ble Supreme Court, this Court has directed the Tribunals to issue a letter to the Medical Board in the District of Tamil Nadu, within whose jurisdiction the claim petition was pending and in case there was no Medical Board in the said District, to the nearest District Medical Board, to examine the injured claimant / victim and issue a Certificate of Disability within such time as may be specified by the Claims Tribunal. It was also directed that the Medical Board(s) shall assess the permanent disability as per the Disability (Permanent Physical Impairment) - Assessment and Certification - Guidelines & Gazette Notification - issued by the Ministry of Social Justice

& Empowerment, Government of India - Regd.No.DL33004/99 (Extraordinary) Part II, Section 1, June, 13, 2001 - published by National Institute for the Orthopaedically Handicapped. It was further directed that the Medical Board shall be at liberty to follow its procedures and practices or conduct tests as they may deem fit and proper for issuance of such Certificates of Disability.

17.It has been held in paragraph-23 of the judgment of this Court reported in 2016(1) TN MAC 609 (DB), as under:

"23.For any and all the above reasons, we hereby deem it fit and proper to issue the following directions:

(i)We hereby direct that in Motor Accidents Claims the Claims Tribunals shall issue a letter to Medical Board in the District of Tamil Nadu, within whose jurisdiction the Claim Petition was pending and in case there was no Medical Board in the said District to the nearest District Medical Board, to examine the injured Claimant / victim and issue a Certificate of Disabilities within such time as may be specified by the Claims Tribunal.

(ii)We hereby direct that the Medical Board/s shall assess the Permanent Disability or lack thereof as per the Disability (Permanent Physical Impairment) - Assessment and Certification - Guidelines & Gazette Notification - issued by Ministry of Social Justice & Empowerment, Government of India - Regd.No.DL33004/99 (Extraordinary) Part II, Section 1, June 13, 2001 - published by National Institute for the Orthopaedically Handicapped.

(iii)We hereby direct that the Medical Board shall be at liberty to follow its procedures and practices or conduct tests as they may deem fit, for issuance of such Certificates of Disability while following the procedure laid down in the Manual above.

(iv)We hereby direct that the Medical Board/s shall be at liberty to charge such fee as may be required from the Insurance Companies or Transport Corporations or such other contesting parties, as the case may be, to pay the same as part of the Costs of the proceedings, to the concerned Medical Board.

(v) We hereby direct that the Claims Tribunal shall, upon receipt of the Certificate of Disability, in sealed cover from the Medical Board/s concerned, shall issue a certified copy of the said Certificate to the contesting parties, on Application.

(vi) We hereby direct that Claims Tribunals shall mark the Certificates of Disability without need for any oral evidence or insisting upon the appearance of Medical Board official or personnel or Doctor, ordinarily, as a matter of course. However, in exceptional cases, this would not preclude the Claims Tribunals, for reasons to be recorded in writing, suo motu or at the request of the contesting parties to direct the author/s of the Certificate/s of Disability, from the Medical Board/s, to appear before the Claims Tribunal to answer clarifications, if any sought for.

(vii) We hereby direct that the above said procedure shall come into force on and from 1.8.2016 and time granted, thereof, shall be utilized by all the stakeholders to arrange for necessary logistics support for smooth conduct of proceedings under the new dispensation.

(viii) We hereby direct that High Court Registry shall issue a Circular on these directions along with the judgment with reasons to be sent to Medical Boards in all Districts of Tamil Nadu through the Registry of the District Courts in Tamil Nadu, as soon as possible.

(ix) We hereby make it clear that it shall be open to all stakeholders including the Registries and Medical Boards concerned, to approach this Court for any clarifications or changes or modifications they envisaged for the better implementation of this new dispensation, intended to serve the cause of the innocent Motor Accidents victims / Claimants, as the case may be and this Court shall be obliged to consider the same in the circumstances of the case."

18. Thereafter, in view of the delay in issuing Disability Certificates by the Medical Boards and the low rate of disposal by Medical Boards, some clarifications were sought for by the Insurance Company and this Court ordered that Medical Boards

will convene at least two times a week and the Disability Certificates will be issued without fail within four weeks from the date of receipt of reference from the Tribunals. This Court has also observed that while directions have been issued to the Tribunals to refer the matter to the Medical Boards, the Tribunals will have to bear in mind that if the witnesses produced by the claimants are credible and the Presiding Officers are satisfied that the matter ought not to be referred to the Medical Boards, then they should proceed in the matter based on the appreciation of the material placed before them. Thus, it was clarified that the directions issued by the Court did not take away the discretion of the Presiding Officer of the Tribunal, in that regard. The said judgment has been reported in 2017 (1) TN MAC 106 (DB) in the case of The Branch Manager, Tata AIG General Insurance Co.Ltd. v. Prabhu (DB).

19.It has been emphasised in the above decisions of this Court that only the issuance of Disability Certificates by the Medical Boards will serve great purpose and by referring the matter to the Medical Board for issuance of Disability Certificates, the practice of the claimants choosing a 'select group of Doctors' which has been termed as 'Stock Witnesses' by the Insurance Companies and Transport Corporations, would be avoided and a systematic proper assessment of disability, would be in place without giving any room for any complaints from the parties.

20.The Hon'ble Supreme Court, in the case of Master Mallikarjun vs. Divisional Manager, National Insurance Co.Ltd. & another, reported in 2013(2) TN MAC 338 (SC), held in paragraph-8 of the judgment as under:

"8.It is unfortunate that both the Tribunal and the High Court have not properly appreciated the medical evidence available in the case. The age of the child and deformities on his body resulting in disability, have not been duly taken note of. As held by this Court in R.D.Hattangadi vs. M/s.Pest Control (India) Pvt. Ltd. and Others, while assessing the non-pecuniary damages, the damages for mental and physical shock, pain and suffering already suffered and that are likely to be suffered, any future damages for the loss of amenities in life like difficulty in running, participation in active sports, etc., damages on account of inconvenience, hardship, discomfort, disappointment, frustration, etc., have to be addressed especially in the case of a child victim. For a child, the best part of his life is yet to come. While

considering the claim by a victim child, it would be unfair and improper to follow the structured formula as per the Second Schedule to the Motor Vehicles Act reasons more than one. The main stress in the formula is on pecuniary damages. For children there is no income. The only indication in the Second Schedule for non-earning persons is to take the notional income as Rs.15,000/- per year. A child cannot be equated to such a non-earning person. Therefore, the compensation is to be worked out under the non-pecuniary heads in addition to the actual amounts incurred for treatment done and/or to be done, transportation, assistance of attendant, etc. The main elements of damage in the case of child victims are the pain, shock, frustration, deprivation of ordinary pleasures and enjoyment associated with healthy and mobile limbs. The compensation awarded should enable the child to acquire something or to develop a lifestyle which will offset to some extent the inconvenience or discomfort arising out of the disability. Appropriate compensation for disability should take care of all the non-pecuniary damages. In other words, apart from this head, there shall only be the claim for the actual expenditure for treatment, attendant, transportation, etc.

.....
12. Though it is difficult to have an accurate assessment of the Compensation in the case of children suffering disability on account of a motor vehicle accident, having regard to the relevant factors, precedents and the approach of various High Courts, we are of the view that the appropriate Compensation on all other heads in addition to the actual expenditure for Treatment, Attendant, etc., should be, if the disability is above 10% and upto 30% of the whole body, Rs.3 lakhs; upto 60%, Rs.4 lakhs; upto 90%, Rs.5 lakhs and above 90%, it should be Rs.6 lakhs. For Permanent Disability upto 10%, it should be Rs.1 lakh, unless there are exceptional circumstances to take different yardstick. In the instant case, the disability is to the tune of 18%. Appellant had a longer period of hospitalization for about two months causing also inconvenience and Loss of Earning to the parents."

21. Coming to the cases on hand, in respect of C.M.A.No.2337 of 2015, it has been put forth on the side of the Insurance Company that P.W.2-Doctor has not annexed the working sheet and guidelines followed by him along with Ex.P10-Disability Certificate, to testify the correctness of 50%

disability assessed by him and that the compensation awarded is unscientific. In respect of C.M.A.No.3026 of 2017, according to the learned counsel for the appellant /claimant, the Tribunal has awarded a very low amount of Rs.1,54,200/- against the claim of Rs.8,00,000/-. The submission of the learned counsel for the claimant is that even though the Doctor fixed the disability of the appellant at 75%, the Tribunal reduced the same to 30%, which is not in accordance with law and not in consonance with the injuries sustained by the injured. In respect of C.M.A.No.4225 of 2019, the submission of the learned counsel for the Insurance Company is that even though there was no continuous treatment record after the initial treatment for 3 days undergone by the first respondent to show that he had suffered disablement consequent to the injuries, the Medical Board had assessed 58% partial permanent disablement to the claimant, without any basis; that the Tribunal ought not to have adopted the multiplier method. In respect of C.M.A.No.4323 of 2019, the submission of the learned counsel for the appellant is that the Tribunal ought not to have adopted the disability certificate issued by the District Medical Board, Krishnagiri, assessing 40% partial permanent disablement, taking it as gospel truth and that the Tribunal ought not to have adopted the multiplier method while determining compensation towards loss of earning capacity.

22. Even though this Court has directed to adopt a proper procedure to weed out all these infirmities in the issuance of Disability Certificates by referring the matters to the Medical Boards, since there were delays in carrying out the same by the Medical Boards, this Court has further clarified that the directions issued by the Court did not take away the discretion of the Presiding Officer of the Tribunal, in this connection. In one of the present cases, viz. C.M.A.No.4225 of 2019, the assessment made by the Medical Board itself is disputed, stating that the Board has assessed 58% partial permanent disablement to the claimant, without any basis. Anyhow, it has to be primarily seen that the issuance of Disability Certificates should not be delayed, as the delay would totally defeat the purposes for which the directions have been issued by this Court to refer the cases to the Medical Board for assessment of disability.

23. The accidents from which these Civil Miscellaneous Appeals have emanated, took place in the years 2011, 2014 and 2017. The Tribunal has relied upon the Disability Certificates issued by the authorities and awarded the compensation amounts. Further, the compensation amounts awarded by the Tribunal in the present cases are just and reasonable. The contention of the appellants in these appeals that the Disability Certificates are

not in consonance with the injuries suffered by the respective injured, cannot be gone into at this stage. There is also no dispute as to the manner in which the accident took place. Hence, the findings rendered by the Tribunals in the respective appeals, as regards negligence and liability are confirmed. In the circumstances, the compensation amounts awarded by the Tribunal in all these cases are confirmed and the Civil Miscellaneous Appeals are dismissed. No costs. Consequently, the connected miscellaneous petitions are closed.

24.The appellant Insurance Company in C.M.A.No.2337 of 2015 is directed to deposit the compensation amount with interest, as ordered by the Tribunal, after deducting the amount if any already deposited, within a period of six weeks from the date of receipt of a copy of this judgment. The first respondent / claimant would have attained majority by now. Hence, on such deposit being made, the first respondent / claimant is permitted to withdraw the same, on making proper application before the Tribunal.

25.The second respondent-Insurance Company in C.M.A.No.3026 of 2017 is directed to deposit the compensation amount with interest, as ordered by the Tribunal, after deducting the amount if any already deposited, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit being made, the appellant / claimant is permitted to withdraw the same, on making proper application before the Tribunal.

26.The appellant Insurance Company in C.M.A.No.4225 of 2019 is directed to deposit the compensation amount with interest, as ordered by the Tribunal, after deducting the amount if any already deposited, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit being made, the first respondent / claimant is permitted to withdraw the same, on making proper application before the Tribunal.

27.The appellant Insurance Company in C.M.A.No.4323 of 2019 is directed to deposit the compensation amount with interest, as ordered by the Tribunal, after deducting the amount if any already deposited, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit being made, the first respondent / claimant is permitted to withdraw the same, on making proper application before the Tribunal.

28.Before parting, it is appropriate to record that the High Courts as well as the Hon'ble Supreme Court, while awarding compensation in the motor accident claims, observed that compensation in personal injury cases must be determined taking

into account the sufferings of the parties as well as the bodily injuries caused leading to permanent disability. This Court, in the cases referred supra, directed the Medical Boards to investigate the same and assess the percentage of disability properly. But, in very many cases, exorbitant compensation amounts have been claimed on the basis of Disability Certificates issued by the Doctors without meeting out the statutory requirements as well as the directions issued by the Medical Boards, where there are no such disabilities actually found out. Such certificates were taken into consideration by the Subordinate Courts and almost in a maximum number of cases, the same are blindly accepted and compensation awarded. At this juncture, it would be apropos to refer to the Notification issued by the Ministry of Social Justice and Empowerment [(Department of Empowerment of Persons with Disabilities (Divyagjan)], Government of India, dated 04.01.2018, in which necessary guidelines have been issued by the Government for assessing / evaluating various types of disabilities. In exercise of powers conferred by Section 56 of the Rights of Persons with Disabilities Act, 2016 (49 of 2016), the Central Government has notified the guidelines for the purpose of assessing the extent of following specified disabilities in a person after having considered the recommendations of the Ministry of Health and Family Welfare as provided in Annexure II namely:

- I. Locomotor disability including cerebral palsy, leprosy cured, dwarfism, acid attack victims and muscular dystrophy;
- II. Blindness and low-vision;
- III. Deaf and hard of hearing and speech and language disability;
- IV. Intellectual disability and specific learning disabilities;
- V. Mental illness;
- VI. Chronic neurological conditions;
- VII. Haemophilia, thalassemia and sickle cell disease; and
- VIII. Multiple disabilities.

29. It has also been mentioned in the Notification dated 04.01.2018 that the said guidelines for the purpose of assessing disabilities at Annexure II shall supersede the guidelines for evaluation of various disabilities and procedure for certification vide Government of India, Ministry of Social Justice and Empowerment Notification Number 16-18/97-NI 1, dated 01.06.2001 and the guidelines for evaluation and assessment of mental illness and procedure of certification vide Government of India, Ministry of Social Justice and Empowerment Notification Number 16-18/97-NI dated 18.02.2002, except as respects things done or omitted to be done before such supersession. Proper

formats have also been prescribed to the authorities for fixing / certifying the disabilities. Form A and Form B provided in Appendix-II are for assessment of upper and lower extremities in terms of the parameters given in Appendix-I and Appendix-III (for orthopaedic disabilities). Though many appendices are formulated under "Multiple Disabilities", this Court deems it fit to extract Appendix IV and Appendix V falling under "Multiple Disabilities" which deal with Indian Disability Evaluation and Assessment Scale (IDEAS) and Screening Tests for screening of carriers of haemoglobinopathies for sickle cell cases, respectively, as under:

"Appendix IV
[see paragraph 23.3 and 25.2]

Indian Disability Evaluation and Assessment Scale
(IDEAS)

Indian Disability Evaluation and Assessment Scale (IDEAS) is a scale for measuring and quantifying disability in mental disorders, to be used for assessment of disability related to mental illness, as given below.

Items -

I. Self Care: Includes taking care of body hygiene, grooming, health including bathing, toileting and dressing, eating and taking care of one's health.

II. Interpersonal Activities (Social Relationships): Includes initiating and maintaining interactions with others in contextual and social appropriate manner.

III. Communication and Understanding: Includes communication and conversation with others by producing and comprehending spoken / written / non-verbal messages.

IV. Work: Three areas are Employment / Housework / Education Measures on any aspect.

1. Performing in Work/Job: Performing in work/employment (paid) employment / self-employment / family concern or otherwise. Measure ability to perform tasks at employment completely and efficiently and in proper time. Includes seeking employment.

2.Performing in Housework: Maintaining household including cooking, caring for other people at home, taking care of belongings etc. Measures ability to take responsibility for and perform household tasks completely and efficiently and in proper time.

3.Performing in school/college: Measures performance education related tasks.

Scores for each item:

0-NO disability (none, absent, negligible)

1-MILD disability (slight, low)

2-MODERATE disability (medium, fair)

3-SEVERE disability (high, extreme)

4-PROFOUND disability (total cannot do)

TOTAL SCORE: Add scores of the above 4 items (self-care, interpersonal activities, communication and understanding and work) and obtain a total score.

Weightage for Duration of illness (DOI):

DOI: < 2 years: score to be added is 1

2-5 years: add 2

6-10 years: add 3

> 10 years: add 4

Global Disability -

Total Disability score + DOI score = Global Disability Score Percentages:

0 No Disability =0%

1-6 Mild Disability =<40%

7-13 Moderate Disability =40 - 70%

14-19 Severe Disability =71-99%

20 Profound Disability =100%

Cut off for welfare measures =40%

Manual for "IDEAS"

In order to score this instrument, information from all possible sources should be obtained. This will include interview of patient, the care given and case notes when available.

I.SELF CARE: This should be regarded as activity guided by social norms and conventions. The broad areas covered are

- a.Maintenance of personal hygiene and physical health
- b.Eating habits
- c.Maintenance of personal belongings and living space.
- d.Does s/he look after himself, wash his clothes regularly, take a bath and brush his teeth?
- e.DOES s/he have regular meals?
- f.Does s/he take food of right quality and quantity?
- g.What about her/his table manners?
- h.Does s/he take care of personal belongings with reasonable standard of cleanliness and orderliness?

0 = No disability: Patient's level and pattern of self-care are normal, within the social cultural and economic context.

1 = Mild: Mild deterioration in self-care and appearance (not bathing, shaving, changing clothes for the occasion as expected). Does not have adverse consequences such as hazards to her/his health. No embarrassment to family.

2 = Moderate: Lack of concern for self-care should be clearly established such as mild deterioration of physical health, obesity, tooth decay & body odours.

3 = Severe: Decline in self-care should be marked in all areas. Patient wearing torn clothes would only wash if made to and would only care if told. Evidence of serious hazards to physical health (Malnutrition, infection, patient unacceptable in public).

4 = Profound: Total or near total lack of self-care (Example: risk to physical survival, needs

feeding, washing, putting on clothes etc., constant supervision necessary).

II. Inter Personal Activities

Includes patient's response to questions, requests and demands of others, activities or regulating emotions, activities of initiating, maintaining and terminating interactions and activities of engaging in physical intimacy.

Guiding Questions

- a. What is her/his behaviour with others?
- b. Is s/he polite?
- c. Does s/he respond to questions?
- d. Is s/he able to regulate verbal and physical aggression?
- e. Is s/he able to act independently in social interactions?
- f. How does s/he behave with strangers?
- g. Is s/he able to maintain friendship?
- h. Does s/he show physical expression of affection and desire?

Scoring

0=No : Patient gets along reasonably well with people, personal relationships. No friction in inter-personal relationships.

1=Mild: Some friction on isolated occasions. Patient known to be nervous or irritable but generally tolerated by others.

2=Moderate: Factual evidence that pattern of response to people is unhealthy. May be seen on more than few occasions. Could isolate herself / himself from others and avoid company.

3=Severe: Behaviour in social situations is undesirable and generalized. Causes serious problems in daily living / or work. Patient is socially ostracized.

4=Profound: Patient in serious and lasting conflict, serious danger to problems of others. Family afraid of potential consequences.

III.Communication and Understanding

Understanding spoken messages as well as written and non-verbal messages and ability to deduce message in order to communicate with others.

I.Questions

- a.Does s/he avoid talking to people?
- b.When people come home what does s/he do?
- c.Does s/he ever visit others?
- d.Is s/he able to start, maintain and end a conversation?
- e.Does s/he understand body language and emotions of others such as smiling, crying, screaming, etc.
- f.Does s/he indulge in reading and writing?
- g.Do you encourage her/him to be more sociable?

Scoring:

0 = No disability: Patient mixes, talks and generally interacts with people as much as can be expected in her / his socio-cultural context. No evidence of avoiding people.

1=Mild: Patient described as uncommunicative or solitary in social situations. Signs of social anxiety might be reported.

2=Moderate: A very narrow range of social contacts, evidence of active avoidance of people on some occasions and interference with performance of social rules causes concern to family.

3=Severe: Evidence of more generalized, active avoidance of contact with people (leave the room when visitors arrive and would not answer the door or phone).

4=Profound: Hardly as any contacts and actively avoids people nearly all the time. Eg: may lock herself/himself inside the room. Verbal communication is nil or a bare minimum.

IV.Work

This includes employment, housework and educational performance. Score only one category in case of an overlap.

Employment:
Guiding Questions

- a. Is s/he employed / unemployed?
- b. If employed, does s/he go to work regularly?
- c. Does s/he like his job and coping well with it?
- d. Can you rely on her / him financially?
- e. If unemployed, does s/he make efforts to find job?

Scoring:

0=No disability: Patient goes to work regularly and output and quality of work performance are within acceptable levels for the job.

1=Mild: Noticeable decline in patient's ability to work, to cope with it and meet the demands of work. May threaten to quit.

2=Moderate: Declining work performance, frequent absences, lack of concern about all this. Financial difficulties foreseen.

3=Severe: Marked decline in work performance, disruptive at work, unwilling to adhere to disciplines of work. Threat of losing his job.

4=Profound: Has been largely absent from work, termination imminent. Unemployed and making no efforts to find jobs.

In similar ways, housewives should be rated on the amount, regularity and efficiency in which tasks in the following areas are completed. Consider the amount of help required completing these. Acquiring daily necessities, making, storing and serving of food, cleaning the house, working with those helping with domestic duties such as maids, cooks etc., looking after possessions and valuable in the house.

Students - Assess a score on performance in school / college, regularity, discipline, interest in future studies, behaviour at the educational institution. Those who had to discontinue education on account of mental disability and unable to continue further, should be given a score of 4.

IDEAS SCORING SHEET

ITEMS	0	1	2	3	4
Self care					
Interpersonal Activities					
Communication & Understanding					
Work					
A.TOTAL SCORE					
B.DOI SCORE					
GLOBAL SCORE (A+B)					

Appendix V
[see Paragraph 31]

Screening tests for screening for carriers of haemoglobinopathies for sickle cell cases

NESTROFT Test (Naked Eye Single Tube Red Cell Osmotic Fragility Test)

DCIP test (Di-Chlorophenol-Indo-Phenol) Solubility Test

NESTROFT TEST

Nestroft Test: For Beta thalassemia trait, this test has a high specificity and sensitivity and is easy to perform. The positive test has to be followed by a confirmatory test Sensitivity of 91-100%, specificity of 85.47%. Positive predictive value of 66% and negative predictive value of 97-100%.

Screening protocols for Hemoglobinopathies in community settings and public health facilities Initial screening (1 and 2)

Test tube based Turbidity tests in Community settings (one or more tube tests may be included depending on prevalence).

NESTROFT (For Thalassemia major)

SOLUBILITY TEST (For HbS) "

30.This Court is of the considered view that issuance of Disability Certificates without meeting out the statutory requirements, will result only in irregularities and inconsistencies and therefore, a proper and uniform method has to be adopted while issuing Disability Certificates, in future, to weed out the same. Accordingly, this Court holds that the Disability Certificates have to be issued by the authorities competent to issue such certificates, only as per the Appendices prescribed in the aforesaid Notification dated 04.01.2018. It would ensure a reasonably safe, accurate and consistent assessment of disability that can be acted upon by all concerned. The formats prescribed under the aforesaid Notification have to be strictly followed so that there would be uniformity, consistency and standardisation in issuance of the same by the authorities.

31.In view of the above, Registry is directed to circulate this order to all the District and Subordinate Courts dealing with Motor Accident Claims so as to scrupulously follow the same for awarding compensation, and to the concerned authorities for issuing necessary directions to the Medical Boards in all the Districts of Tamil Nadu to issue the Disability Certificates as per the formats stipulated in the aforesaid Notification dated 04.01.2018, while assessing the percentage of Permanent Disability of the injured / claimant in the motor accident cases. The District and Subordinate Courts shall accept only such statutory certificates, to fix the percentage of disability. A mere statement for disability shall not be considered for awarding compensation.

Sd/-

Assistant Registrar (C.S.VI)

/True Copy/

Sub Assistant Registrar

To

- 1.The Special Subordinate Judge,
Motor Accidents Claims Tribunal, Krishnagiri.
- 2.The Judge, IV Small Causes Court,
Motor Accidents Claims Tribunal, Chennai.
- 3.The II Additional District Judge,
Motor Accidents Claims Tribunal, Tiruppur.

4.The Additional District Judge,
Motor Accidents Claims Tribunal, Hosur.

Copy to : 1.The Registrar(Judicial),
High Court of Madras, Chennai -104.

2.The Registrar(Judicial),
Madurai Bench of Madras High Court, Madurai.

3.The Court Manager,
High Court of Madras, Chennai -104.

4.The Court Manager,
Madurai Bench of Madras High Court, Madurai.

5.The Section Officer, 'F' Section,
High Court of Madras, Chennai -104.

6.The Section Officer, V.R.Section,
High Court of Madras, Chennai -104.

+1cc to Mr.R.Nalliyappan, Advocate Sr.No.22377
+1cc to Mr.Ma.P.Thangavel, Advocate Sr.No.22867
+1cc to Mr.S.Arun Kumar, Advocate Sr.No.22727
+1cc to Mr.Mukund R.Pandiyan, Advocate Sr.No.23075
+2cc to M/s.J.Michael Visuvasam, Advocate Sr.Nos.22759 & 22759
+1cc to M/s.R.Sreevidhya, Advocate Sr.No.22513

AKM/17.03.2020 /23P-18C/

Judgment made in
C.M.A.Nos.2337 of 2015 and
M.P.No.1 of 2015,
C.M.A.No.3026 of 2017 and
C.M.A.No.4225 of 2019 and
C.M.P.No.23885 of 2019
and
C.M.A.No.4323 of 2019
and C.M.P.No.24513 of 2019

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