



C.M.A(MD)No.654 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

Reserved on : 31.01.2025

Pronounced on : 26.02.2025

CORAM:

**THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN
AND
THE HONOURABLE MS.JUSTICE R.POORNIMA**

**C.M.A.(MD)No.654 of 2023
&
C.M.P.(MD)No.8456 of 2023
and
Cross.Obj(MD)No.24 of 2023**

C.M.A.(MD)No.654 of 2023

The Managing Director,

Tamil Nadu State Transport Corporation Limited,

Periyamilaguparai,

Trichy – 1.

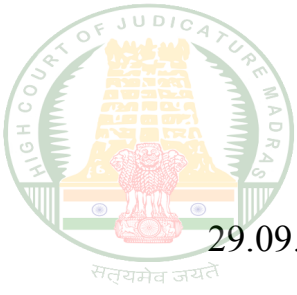
... Appellant/ Respondent

Vs.

Mehathaj Begum

...Respondent / Petitioner

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the
Motor Vehicles Act, 1988, to set aside the fair and decretal order dated



C.M.A(MD)No.654 of 2023

29.09.2021 made in MCOP No.63 of 2020 on the file of Motor Accident

Claims Tribunal, III Additional Subordinate Court, Tiruchirappalli and
allow this Civil Miscellaneous Appeal.

For Appellant : Mr.A.V.B.Krishnakanth

For Respondent : Mr.N.Sudhagar Nagaraj

Cross.Obj(MD)No.24 of 2023

Mehathaj Begum

...Cross Objector / Respondent

Vs.

The Managing Director,

Tamil Nadu State Transport Corporation Limited,

Periyamilaguparai,

Trichy – 1.

... Respondent/ Appellant

PRAYER: Cross Objection filed under Order 41 Rule 22 of Civil
Procedure Code 1908 as amended by Act 104 of 1976, against the fair
and decreetal order dated 29.09.2021 made in MCOP No.63 of 2020 on
the file of Motor Accident Claims Tribunal, III Additional Subordinate
Court, Tiruchirappalli.



WEB COPY



C.M.A(MD)No.654 of 2023

For Cross Objector : Mr.N.Sudhagar Nagaraj

For Respondent : Mr.A.V.B.Krishnakanth

COMMON JUDGMENT

(Judgment of this Court was delivered by **R.POORNIMA, J.**)

The appellant/respondent / Transport Corporation has filed this Civil Miscellaneous Appeal against the fair order and decretal order dated 29.09.2021 passed in M.C.O.P.No.63 of 2020 by the Motor Accident Claims Tribunal, III Additional Subordinate Court, Tiruchirappalli.

The injured claimant has also filed a cross-objection.

2. The brief facts of the petition filed by the claimant before the Tribunal is as follows:

(a) On 16.2.2017 at about 18.35 hours, the petitioner was travelling as a pillion rider in a two-wheeler, Yamaha bearing Registration No.TN 45 BC 3604 which was driven by her father Jeyalani, they were going to Natharsha Mosque (Pallivasal) in Trichy. Her father drove the vehicle with care and caution on the left side, viz., western side of Main Road from South to North, when the vehicle was reaching near



C.M.A(MD)No.654 of 2023

WEB COPY

the Modern Tools shop, the respondent's bus bearing Registration No.TN 45 N 2587, which is a self-insured vehicle driven by its driver in a rash and negligent manner at high speed coming from behind the petitioner's vehicle tried to overtake, and suddenly dashed against the petitioner's two-wheeler.

(b) The petitioner and her father were thrown away from the vehicle and sustained multiple grievous injuries. The petitioner sustained fractures and dislocation in the spinal cord (T12 fracture and T11 and T12 dislocation) and injuries on both hands, both legs and lacerated injuries all over her body. As a result, the petitioner is affected by total Paraplegia.

(c) The accident occurred due to the rash and negligent driving of the driver of the TNSSTC bus against whom a criminal case has been registered under sections 279 and 338 IPC by the Traffic Investigation Wing (North) Police Station in crime No.37/2017, which is pending investigation.

(d) Immediately after the accident, the petitioner was taken



C.M.A(MD)No.654 of 2023

to G.V.N Hospital, Trichy and treated as an inpatient for two days thereafter, taken to Neuro One hospital in Mela Chinthamani, Trichy and admitted as an inpatient for 13 days continuously treated and till date she's taking treatment. An operation was conducted on the petitioner, she had spent more than Rs.10 lakhs towards medical expenditure. The pain and suffering undergone by the petitioner during the remaining span of her life is enormous and excruciating.

(e) Further, she is a B.Com., degree holder and doing an Accountant job and a sum of Rs.25,000/- derived per month. Due to serious injuries and fractures with dislocations of T11 and T12 bones in the spinal cord, the petitioner is affected by total paraplegia, which paralyses the lower portion of the body. Further, she is living in a vegetative condition. She is bedridden and unable to move anywhere. She could not feel the sensation in the lower body. She needs the assistance of a Nurse to carry on the day-to-day affairs of the petitioner. The condition of the petitioner is pathetic, she lost everything except living at the prime of her life. Her suffering cannot be compensated in terms of money. Her future dreams are shattered into pieces. Her marriage proposal was affected due to the accident.



C.M.A(MD)No.654 of 2023

(f) Therefore, estimate her loss of income in a sum of

Rs.50 lakhs as compensation, which is quite modest and highly reasonable, the age, nature of injuries, nature of disability, medical expenditure, and pain suffering to be taken into account. Hence, this petition

3. The brief averments contained in the counter filed by the respondent are as follows:

(i) The respondent Transport Corporation denied the entire allegations in the petition.

(ii) The accident did not happen in the manner as set out in the petition. On 16.02.2017, the respondent bus bearing registration No.TN 45 N 2587 driven by its driver with care and caution, which was a trip from Tiruchirapalli HAPP to Chatram Bus Stand, Trichy. At the place of the accident, the traffic is meant for way direction from South to north for the free flow of traffic. At about 18.35 hours, the respondent's bus proceeded North on the South-North downward gradient of Ramakrishna Theatre over a bridge driven by its driver with all care and caution, at that time, the respondent's driver saw a two-wheeler bearing



C.M.A(MD)No.654 of 2023

registration No.TN 45 BC 3604 driven by its driver with a pillion rider

WEB.COM

ahead of him. When the driver of the two-wheeler gave way, the respondent's driver after sounding the horn and switching on and off his headlights to caution the two-wheeler made his intention to overtake the motorcycle and took the bus to his right, leaving enough space to his left for the motorcycle to proceed. When the respondent's bus was in the process of overtaking the motorcycle, the driver of the motorcycle suddenly applied the break heavily and turned the vehicle to his right at a hectic speed and in a rash and negligent manner to avoid collision with a standing load auto in front of him on the western side of the above road. Due to this the driver of the motorcycle lost his balance, and dashed against the left side of the body of the bus, due to which only the pillion rider fell and was injured. This was how the accident took place. The accident had happened only due to the rash and negligent driving of the petitioner's father. The driver of this respondent is in no way responsible for the accident.

(iii) In any event, the accident had happened only due to composite negligence on the part of the driver of the motorcycle. This respondent reliably learns that the driver of the motorcycle does not



C.M.A(MD)No.654 of 2023

WEB COPY

possess a valid driving license to drive a motorcycle and he does not know how to drive. The petitioner ought to have completed the owner and insurer of the motorcycle, as a proper and necessary party to the proceeding and on this ground alone, the petition has to be dismissed.

(iv) The age, occupation and income of the petitioner are not admitted. The nature of the injury, period of treatment, permanent disability and the expenses incurred towards medical treatment as alleged in the petition are not admitted and the petitioner is put to proof. In any event, the interest claimed by the petitioner is very high and without any basis and the petitioner is entitled to only 6% interest on the award amount. Hence, the petition is liable to be dismissed.

4. On the side of the petitioner, PW1 to P.W.3 was examined and Ex.P1 to Ex.P21 were marked. The medical board issued disability certificate which was marked as Ex.C1. On the side of the respondent, the driver of the respondent bus, namely, Vijayashankar was examined as RW1 and no document was marked.

5. After hearing both sides, the trial Judge awarded



C.M.A(MD)No.654 of 2023

compensation of Rs.29,47,968/- under the following heads :

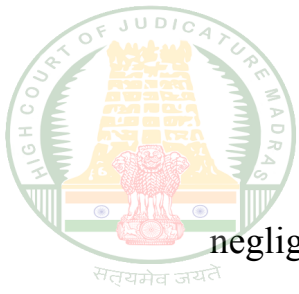
WEB COPY

Permanent disability & loss of income	Rs.18,43,200/-
Pain and sufferings	Rs.2,00,000/-
For lack of convenience and discomfort	Rs.1,30,000/-
Medical expenses	Rs.1,68,768/-
Future Medical expenses	Rs.50,000/-
Extra nourishment	Rs.50,000/-
Travel expenses	Rs.25,000/-
Damages to clothing and articles	Rs.5,000/-
Future loss of income	Rs.1,00,000/-
Attendant expenses	Rs.3,76,000/-
Total	Rs.29,47,968/-

The learned Judge directed the respondent Corporation to pay the entire amount within two months.

6. Aggrieved by the said order, the present Civil Miscellaneous Appeal has been filed by the Transport Corporation who is the respondent before the lower Court against the quantum of compensation with the following among other grounds :

(i) That the accident had occurred only due to rash and



C.M.A(MD)No.654 of 2023

negligent driving of the claimant herself and therefore, the driver of the bus cannot be held responsible.

(ii) That the Tribunal failed to note that the registration of FIR alone is not sufficient to fix the negligence against the driver, but the Tribunal ought to have assessed the negligence independently.

(iii) That the Tribunal failed to note that it is well-settled law that the entire burden of proof lies only with the claimants to prove the negligence by adducing substantial oral or documentary evidence, particularly in a claim under Section 166 of M.V. Act which they have failed to discharge, therefore, the claim petition ought to have dismissed for want of evidence.

(iv) That the Tribunal erred in fixing the income of the claimant at Rs.12,000/- per month in the absence of any oral or documentary evidence either to prove her avocation or her income.

(v) That the fixation of loss of earning capacity at 80%



C.M.A(MD)No.654 of 2023

does not align with the law laid down by the Hon'ble Apex Court in ***Rajkumar Vs. Ajaykumar case*** reported in ***2010 (2) TNMAC 581*** which mandates the Tribunal to independently assess the loss of earning capacity based on the nature of injuries and the impact of the injuries on the employment the award of Rs.2,00,000/- towards pain and suffering Rs. 1,30,000/- towards loss of amenities are excessive and liable to be reduced.

(vi) That the award of Rs.1,00,000/- towards loss of future earnings is liable to be set aside as it is nothing but double compensation since the Tribunal has already awarded a huge sum of Rs.18,43,200/- towards loss of income.

(vii) That the award towards attendant charges is also excessive and liable to be reduced. Hence, prayed to set aside the judgment of the trial Court and allow the Civil Miscellaneous Appeal.

7. Aggrieved with the impugned award, the respondent/petitioner has come out with the cross objection for enhancement of



C.M.A(MD)No.654 of 2023

compensation on the following grounds :

WEB COPY

(a) That the Tribunal erroneously assessed income at Rs.12,000/- per month, despite evidence of a monthly salary of Rs.25,000/-.

(b) That the Hon'ble Apex Court and Madras High Court in various decisions held that 80% disability can be presumed as 100% disability for determining the compensation amount. The trial Court failed to follow the judgments while determining disability compensation.

(c) That the Tribunal failed to consider the Apex Court judgment reported in 2020(4) SCC page 413 Kajal Vs. Jagdish Chand and Others. In this case, the Apex Court determined attender charges as Rs.21,60,000/- for a bedridden 12-year-old female child. Therefore, the attender charges awarded by the Tribunal below are liable to be enhanced.

(d) That the compensation awarded by the Tribunal under the head of future loss of income, nutrition expenses and transport expenses are very low and the same are liable to be enhanced.



C.M.A(MD)No.654 of 2023

Therefore, he prayed to enhance the award amount by modifying the order of the trial Court.

8. The counsel for the respondent/claimant argued that the accident occurred due to the rash and negligent act of the appellant driver and the appellant Corporation is liable to pay the compensation. He further argued that after the accident, the claimant was not able to attend his regular day-to-day activities. After considering the entire evidence, the lower court allowed the compensation and the award was very low and the cross objector spent Rs.10 lakhs towards her medical expenses.

9. He further submitted that the claimant also filed a cross objection seeking further compensation of Rs.10 lakhs. Therefore, he prayed to enhance the award amount by modifying the order of the trial Court.

10. Heard the learned counsel on either side and perused the material available on records.



WEB COPY



C.M.A(MD)No.654 of 2023

11. In this case, the point for consideration is

(i) Whether the accident occurred due to the rash and negligent act of the driver of the respondent or by the petitioner ?

(ii) Whether the quantum of compensation awarded by the trial court is just and proper or liable to be set aside?

12. Ex.P1 is the copy of FIR registered in Crime No.37/2017 by the Traffic Investigation Wing, North Police Station against Thiru. Vijayashankar, who is the driver of the vehicle bearing Registration No.TN 45 N 2587 belonging to the respondent Transport Corporation under Sections 279, 337 IPC for the rash and negligent act of the driver. The complaint was filed by Thiru, Jeyalani, the petitioner in M.C.O.P. No.64 of 2020. On the date of the accident at about 09.00 hours, the statement of the victim was recorded in the hospital by the police. The complainant clearly stated that the driver of the bus drove the vehicle in a rash and negligent manner, without blowing the horn tried to overtake the vehicle and dashed against the two-wheeler. He also clearly stated that both himself and his daughter sustained injuries due to the accident.



C.M.A(MD)No.654 of 2023

13. The appellant contends that the driver of the two-wheeler

suddenly applied the break and turned the vehicle to her right at hectic speed in a rash and negligent manner to avoid collision with a standing load auto in front of her on the western side, dashed against the left side rear body of the bus and sustained injuries. However, the driver of the bus did not lodge any complaint against the petitioner's father for his negligent act. The driver of the bus was examined as RW1. During cross-examination, he admitted that a criminal case was filed against him by the petitioner's father and charge sheet was filed and the case was taken on file by the Judicial Magistrate and the same is pending.

14. If the accident was caused due to the negligent act of the petitioner's father, the first respondent would have immediately complained about them. No Such complaint was lodged, but the police officials filed an FIR against the respondent only for his rash and negligent act.

15. On the side of the petitioner, the petitioner in M.C.O.P.No.64 of 2020 was examined as P.W.1, he had categorically spoken about the manner of the accident, the petitioner in M.C.O.P.No.63



C.M.A(MD)No.654 of 2023

of 2020 was examined as P.W.2, she had also narrated about the accident.

WEB.COM

The petitioner proved the negligence on the part of the respondent driver and therefore, the trial court properly held that the respondent's driver was responsible for the accident as he drove the vehicle in a rash and negligent manner. The respondent neither produced any document nor examined any independent witness to support their case.

16. As far as, M.C.O.P.No.63/2020, the claimant is the pillion rider of the two-wheeler. She stated that she sustained a grievous injury in the accident viz., a bone fracture and dislocation of T11 and T12 in the spinal cord, she was paralysed from the hip and entire region due to the accident. She could not sit, stand or walk. She is in a vegetative condition and unable to move anywhere and undergo complications due to the accident.

17. To prove the same, she has produced the photographs and CD as Ex.P.19, Ex.P.5 the wound certificate issued by G.V.N Hospital shows that the injuries sustained by her are serious. Ex.P6 is the discharge summary of Miss. Mehathaj Begum shows that she was admitted on 16.02.2017 and discharged on 17.02.2017 and diagnosed



WEB COPY

with the T12 compression fracture with paraplegia and she was referred to Neuro One Hospital for further management. Ex.P7 is the discharge summary issued by Neuro One Hospital reveals that Miss. Mehathaj Begum was admitted to the hospital on 17.02.2017 and discharged on 01.03.2017, she was diagnosed with T12 fracture with T11, T12 dislocation causing total paraplegia, T 11 – L1 pedicle screw instrumented stabilization. The discharge summary further shows that surgery was conducted on 21.02.2017, as per the Postoperative Course, it was mentioned that the patient had relief of the spinal pain. There was no change in the paraplegia as expected. The postoperative X-rays showed the appropriate position of the pedicle screw system but only minimal reduction. She was advised to go back to BHEL hospital for continuing nursing care on an air bed, leg physiotherapy, and other relief.

18. Ex.P8 is the medical identity card for the treatment taken in BHEL Hospital, Tiruchirapalli. Ex.P9 is the discharge summary issued by the Gastro Care Hospital for the petitioner, but it is not connected with the treatment for the injuries sustained in the accident but for some other disease. Ex.P10 is the MRI scan report dated 17.2.2017, which is interconnected with Ex.P7. Ex.P11 is the final settlement bill



C.M.A(MD)No.654 of 2023

WEB COPY

issued by the G.B.N. Hospital (P) Limited, Tiruchirappalli shows that a sum of Rs.24,846/- was paid to the above hospital for the petitioner. Ex. P12 is the final settlement bill for the treatment. The petitioner underwent at Gastro Care Hospital which is interconnected with Ex.P9. Ex.P13 vouchers issued by the home nursing totalling 48 numbers. Ex.P14 medical bills, totalling 80 numbers Ex.P21 Prescription, by Gastro Care Hospital. Ex.P16 is the letter of appointment issued by Bright Groups company on 9.6.2010. Ex.P17 is the provisional certificate the B.Com degree issued by Annamalai University of the petitioner, Mehathaj Begum. Ex.P18 is also connected to obtaining a bachelor's degree. Ex. P.20 is the medical bills issued by the original Homeo medical. Ex.P21 is the certificate issued by Indira Clinic to Ms S. Maheshwari, who had worked as a Nursing Attender from 10.03.2017 till date to Miss. Mehathaj Begum.

19. On careful, perusal of the entire record, reveals that the petitioner Miss. Mehathaj Begum met with an accident on 17.02.2017. The said accident occurred due to the rash and negligent act of the driver of the respondent. Therefore, the respondent who is the owner of the vehicle is vicariously liable to pay the compensation.



WEB COPY

20. The age of the petitioner Miss. Mehathaj Begum on the date of the accident was 34 years as per the medical reports. The learned counsel for the appellant does not dispute the age of the petitioner.

21. It is not proved that the petitioner was employed at the time of the accident and derived income, except the job offer letter Ex.P.16, she has not produced any document to support her employment. She has not examined the employer or produced her bank account to show that she was employed by Bright Group of Companies. However, Ex.P17 and Ex.P.18 proved that she is a B.Com., graduate and there is a chance of getting employment. Though she did not produce evidence to prove her employment, however, she possessed the required educational qualification to earn and received an offer letter from a company. It is just and necessary to fix, the notional income, taking into consideration the cost of living, the rise in the essentials and its inflation, and as per the notification No.370142(E) No.26,/2008 (F.No.26,/2008) (No.370/42/3/200 8TPL) dated 13.6.2008 CPDT specified cost of inflation index, and as per the cost of inflation index during the year 2017,/18 is Rs.272 and



C.M.A(MD)No.654 of 2023

the notional income per month is Rs.13,705.42. But the trial Court fixed the income at Rs.12,000/- as notional income. We therefore fix the notional income at Rs.13,705.42.

22. As per *Sarala Verma's* judgment reported in **2011(4) SCC 689**, in para 44, the multiplier to be used should be as mentioned in column(4) of the table by applying Amma Thomas, Trilok, Chandra, and Charlie) which starts within an operative multiplier of 18. The petitioner's age is at the age between 31 to 35, Multiplier 16 is applicable.

23. The learned for the appellant argued that the fixation disability at 80% does not agree with the law, laid down by the Apex Court in *Rajkumar Vs. Ajay Kumar* reported in **2010 (10) TNMAC 581**, which mandates the tribunal to independently assess the loss of earning capacity based on the nature of the injury.

24. The medical bills produced by the petitioner reveals that due to the accident, she sustained serious injuries viz T 12 fracture



C.M.A(MD)No.654 of 2023

with T11-T12 dislocation, causing total paraplegia which means paralysis that affects the lower body, typically affecting both legs. This condition is usually caused by injury or disease affecting the spinal cord, particularly in the mid back, lower back or pelvic regions. Individuals may experience loss of movement, sensation, and function in the affected area. The trial Court records clearly stated that even at the time of recording her statement, she was not able to stand and depose, but she deposed her evidence in the bed, as she was affected by loss of movement in the lower area. In Proof of the same, the petitioner filed Ex.P7, discharge summary issued by Neuro One Hospital. Apart from the above Ex.P5 is the wound certificate issued by G.B.N Hospital, Tiruchirapalli, Senior Civil Surgeon Hospital opined injuries sustained by the victim lady are grievous. Further, the Medical Board of Joint Director of Health Service, Trichy issued a medical certificate on 11.3.2021 and the percentage of disability assessed by the Medical Board is 80%.

25. Apart from the above PW3, one, Maheshwari, a nursing attendant also supported the petitioner's case by stating that she attending the petitioner from the year 2017 to date on a salary basis.



WEB COPY

26. In this regard, we rely upon the judgment reported in ***Rajkumar v. Ajay Kumar reported in 2011 (1) SCC 343***, The Hon'ble Supreme Court sets out certain guidelines to assess compensation for the disablement of the injured by the Motor Accidental Claims Tribunal, in which paragraph Nos.10 and 13 are extracted as follows:

"10. Ascertainment of the effect of the permanent disability on the actual earning capacity involves three steps. The Tribunal has to first ascertain what activities the claimant could carry on despite the permanent disability and what he could not do as a result of the permanent ability (this is also relevant for awarding compensation under the head of loss of amenities of life). The second step is to ascertain his avocation, profession and nature of work before the accident, as well as his age. The third step is to find out whether (i) the claimant is disabled from earning any kind of livelihood, or

(ii) whether despite the permanent disability, the claimant could still effectively carry on the activities and functions, that he was earlier carrying on, or (iii) whether he was prevented or restricted from discharging his previous activities and functions, but could carry on some other or lesser scale of activities



WEB COPY



C.M.A(MD)No.654 of 2023

and functions so that he continues to earn or can continue to earn his livelihood. For example, if the left hand of a claimant is amputated, the permanent physical or functional disability may be assessed around 60%. If the claimant was a driver or a carpenter, the actual loss of earning capacity may virtually be hundred per cent, if he is neither able to drive nor do carpentry. On the other hand, if the claimant was a clerk in government service, the loss of his left hand may not result in loss of employment and he may continue as a clerk as he could perform his clerical functions; in that event, the loss of earning capacity will not be 100% as in the case of a driver or carpenter, nor 60% which is the actual physical disability, but far less. There may not be any need to award any compensation under the head of 'loss of future earnings', if the claimant continues in government service, though he may be awarded compensation under the head of loss of amenities as a consequence of losing his hand. Sometimes the injured claimant may be continued in service, but may not be found suitable for discharging the duties attached to the post or job which he was earlier holding, on account of his disability, and may therefore be shifted to some other suitable but lesser post with lesser emoluments, in which case there should be a limited award under the head of loss of future earning



WEB COPY



C.M.A(MD)No.654 of 2023

capacity, taking note of the reduced earning capacity. It may be noted that when compensation is awarded by treating the loss of future earning capacity as 100% (or even anything more than 50%), the need to award compensation separately under the head of loss of amenities or loss of expectation of life may disappear and as a result, only a token or nominal amount may have to be awarded under the head of loss of amenities or loss of expectation of life, as otherwise there may be duplication in the award of compensation. Be that as it may.

13. We may now summarise the principles discussed above:

(i) All injuries (or permanent disabilities arising from injuries), do not result in loss of earning capacity.

(ii) The percentage of permanent disability concerning the whole body of a person, cannot be assumed to be the percentage of loss of earning capacity. To put it differently, the percentage of loss of earning capacity is not the same as the percentage of permanent disability (except in a few cases, where the Tribunal based on evidence, concludes that the percentage of loss of earning capacity is the same as the percentage of permanent disability).



WEB COPY



C.M.A(MD)No.654 of 2023

(iii) *The doctor who treated an injured claimant or who examined him subsequently to assess the extent of his permanent disability can give evidence only regarding the extent of permanent disability. The loss of earning capacity is something that will have to be assessed by the Tribunal concerning the evidence in its entirety.*

(iv) *The same permanent disability may result in different percentages of loss of earning capacity in different persons, depending upon the nature of profession, occupation or job, age, education and other factors."*

9. A Division Bench of this Court in United India Insurance Co. Ltd., vs. Veluchamy and another reported in I (2006) ACC 416, sets out the parameters as to when the multiplier method can be adopted in the case of injury. Paragraph 11 of the decision reads thus:-

"11. The following principles emerge from the above discussion:

(a) In all cases of injury or permanent disablement 'multiplier method' cannot be mechanically applied to ascertain the future loss of income or earning power.

(b) It depends upon various factors such as nature and extent of disablement, avocation of the



WEB COPY



C.M.A(MD)No.654 of 2023

injured and whether it would affect his employment or earning power, etc. and if so, to what extent?

(c) (1) If there is categorical evidence that because of injury and consequential disability, the injured lost his employment or avocation completely and has to be idle for the rest of his life, in that event loss of income or earnings may be ascertained by applying the 'multiplier method' as provided under the Second Schedule to Motor Vehicles Act, 1988. (2) Even so there is no need to adopt the same period as that of fatal cases as provided under the Schedule. If there is no amputation and if there is evidence to show that there is a likelihood of reduction or improvement in future years, the lesser period may be adopted for ascertainment of loss of income.

(d) Mainly it depends upon the avocation or profession or nature of employment being attended by the injured at the time of the accident."

27. In this case, the medical records proved that the petitioner was prevented from discharging her previous activities and functions she is now in a vegetative condition, she suffered loss of revenue, loss of marriage opportunity, and her future carrier spoiled, due to the accident, she became helpless and dependent after third person for



C.M.A(MD)No.654 of 2023

attending natural calls and other basic needs. Therefore, we hold that the assessment of disability by the Medical Board is proper and the Trial Court properly applied 80% towards permanent disability. There is no interference required, the trial Court also properly applied the percentage for calculating the compensation.

28. As far as future prospects are concerned, the trial Judge fixed Rs.1,00,000/- for the future prospects in the judgement reported in *National Insurance Company Limited vs. Pranay Sethi and Others* reported in *AIR 2017 SC 5157, Para 61* of the judgment concludes that

61. Given the aforesaid analysis, we proceed to record our conclusions:-

(i) The two-judge Bench in Santosh Devi should have been well advised to refer the matter to a larger Bench as it was taking a different view than what has been stated in Sarla Verma, a judgment by a coordinate Bench. This is because a coordinate Bench of the same strength cannot take a contrary view to what has been held by another coordinate Bench.

(ii) As Rajesh has not taken note of the decision in Reshma Kumari, which was delivered at an earlier



WEB COPY



C.M.A(MD)No.654 of 2023

point in time, the decision in Rajesh is not a binding precedent.

(iii) While determining the income, an addition of 50% of the actual salary to the income of the deceased towards future prospects, where the deceased had a permanent job and was below the age of 40 years, should be made. The addition should be 30% if the age of the deceased is between 40 to 50 years. In case the deceased was between the ages of 50 to 60 years, the addition should be 15%. Actual salary should be read as actual salary less tax.

(iv) In case the deceased was self-employed or on a fixed salary, an addition of 40% of the established income should be the warrant where the deceased was below the age of 40 years. An addition of 25% where the deceased was between the ages of 40 to 50 years and 10% where the deceased was between the ages of 50 to 60 years should be regarded as the necessary method of computation. The established income means the income minus the tax component.

(v) For determination of the multiplicand, the deduction for personal and living expenses, the tribunals and the courts shall be guided by paragraphs 30 to 32 of Sarla Verma which we have reproduced hereinbefore.

(vi) The selection of multiplier shall be as



WEB COPY



C.M.A(MD)No.654 of 2023

indicated in the Table in Sarla Verma read with paragraph 42 of that judgment.

(vii) The age of the deceased should be the basis for applying the multiplier.

(viii) Reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses should be Rs. 15,000/-, Rs. 40,000/- and Rs. 15,000/- respectively. The aforesaid amounts should be enhanced at the rate of 10% every three years.”

29. Therefore, for fixation of future prospects in clause (iii), while determining the income, an addition of 40% of the actual salary to the income of the petitioner should be made, in instances where the petitioner was self-employed or on a fixed salary and was below the age of 40 years. In addition, 40% of the established income should be the warrant. If the victim or the deceased was below the age of 40 years. In this case, the victim is below the age of 40 years and for future prospects, 40% be added to the actual salary. Therefore, she is entitled to compensation by fixing the same as notional income 13,705.42 + future prospects at 40% Rs.5,482= Rs.19,187/-. For permanent disability and loss of income is Rs.19,187 x 12 x 16 x 80% = Rs.29,47,123/-.



C.M.A(MD)No.654 of 2023

WEB COPY

30. As far as medical expenditure, the record shows that she has spent a sum of Rs.1,68,768/-, but she also produced medical bills from Gastro Care Hospital, Trichy, but she was treated for some other element for a sum of Rs.65,020/- and therefore, she is not inclined to add the same for medical expenditure.

31. As far as, compensation in other heads viz., pain and suffering Rs.2,00,000/-, For lack of convenience and discomfort Rs.1,30,000/-, Medical expenses Rs.1,03,748/-, future medical expenses Rs.50,000/-, Extra nourishment Rs.50,000/-, nursing Rs.30,500/-, Travel expenses Rs.25,000/-, Damages to clothing and articles Rs.5,000/- Future loss of income Rs.1,00,000/-, Attendant expenses Rs.3,76,000/-, we confirm the award as awarded by the trial Court.

32. Given the above, we modify the award as follows :

Permanent disability & loss of income	Rs.29,47,123/-
Pain and sufferings	Rs.2,00,000/-



WEB COPY



C.M.A(MD)No.654 of 2023

For lack of convenience and discomfort	Rs.1,30,000/-
Medical expenses	Rs.1,03,748/-
Future Medical expenses	Rs.50,000/-
Extra nourishment	Rs.50,000/-
Nursing	Rs.30,500/-
Travel expenses	Rs.25,000/-
Damages to clothing and articles	Rs.5,000/-
Future loss of income	Rs.1,00,000/-
Attendant expenses	Rs.3,76,000/-
Total	Rs.40,17,371/-

33. In the result, the Civil Miscellaneous Appeal is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

34. The Cross objection is partly allowed. The award passed by the trial Court is modified and the Appellant/ Transport Corporation is directed to pay a sum of Rs.40,17,371/- to the respondent/claimant along with interest at the rate of 7.5% per annum from the date of petition till the date of deposit of the amount, less the amount if already deposited to the credit of MCOP.No.63/2020 on the file of the III Additional



C.M.A(MD)No.654 of 2023

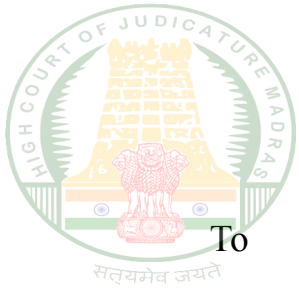
Subordinate Court, Motor Accident Claims Tribunal, Trichy, within four

WEB COPY

weeks from the date of receipt of a copy of this order. On such deposit, the respondent/claimant is permitted to withdraw the same, less the amount already withdrawn, if any, together with proportionate interest and costs, by filing an appropriate petition before the Tribunal. No costs.

(G.R.S., J.) & (R.P., J.)
26.02.2025

Index : Yes / No
Internet : Yes / No
NCC : Yes / No
RM



C.M.A(MD)No.654 of 2023

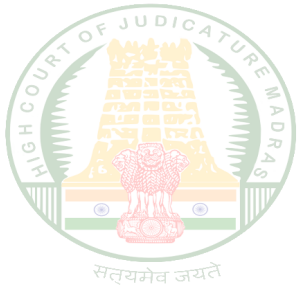
To

WEB COPY

1.The III Additional Sub Court
Motor Accident Claims Tribunal,
Trichy.

Copy to

1.The Section Officer,
ER/VR Section,
Madurai Bench of Madras High Court, Madurai.



WEB COPY



C.M.A(MD)No.654 of 2023

G.R.SWAMINATHAN, J.
AND
R.POORNIMA, J.

RM

Judgment in
C.M.A.(MD)No.654 of 2023

26.02.2025