



C.M.A(MD)Nos.176 & 822 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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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)Nos.176 & 822 of 2022

C.M.A.(MD)No.176 of 2022

Nazeer Basha ... Appellant/ Petitioner
(Rep. By his wife/Guardian
Sithy Shinosa Banu)

Vs.

1.R.Elavarasan
2.The Branch Manager,
M/s.United India Insurance Company Ltd.,
No.23, E.V.R. Road, Puthur,
Trichy – 17. ...Respondents / Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the fair and decretal order dated 29.01.2021 made in MCOP No.491 of 2017 on the file of Motor



C.M.A(MD)Nos.176 & 822 of 2022

Accident Claims Tribunal, Special Subordinate Court, Tiruchirappalli

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For Appellant : Mr.K.Govindarajan
for Mr.S.Alagusundar

For Respondents : Mr.S.Royce Immanuel – for R2

C.M.A.(MD)No.822 of 2022

The Branch Manager,
M/s.United India Insurance Company Ltd.,
No.23, E.V.R. Road,
Puthur,
Thiruchirapalli – 620 017.

... Appellant / 2nd Respondent

Vs.

1.Nazeer Basha
(Rep. By his wife/Guardian
Sithy Shinosa Banu)

...1st Respondent / Petitioner

2.R.Elavarasan

...2nd Respondent / 1st Respondent

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



C.M.A(MD)Nos.176 & 822 of 2022

29.01.2021 made in MCOP No.491 of 2017 on the file of Motor

Accident Claims Tribunal, Special Subordinate Court, Tiruchirappalli
and allow this Civil Miscellaneous Appeal.

For Appellant : Mr.I. Robert Chandrakumar

For Respondents : Mr.K.Govindarajan – for R1
for Mr.S.Alagusundar

COMMON JUDGMENT

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

The appellant/ Insurance Company has filed the Civil Miscellaneous Appeal in C.M.A(MD)No.822 of 2022 and the claimant has filed C.M.A.(MD)No.176 of 2022 against the fair order and decretal order dated 29.01.2021 passed in M.C.O.P.No.491 of 2017 by the Motor Accident Claims Tribunal, Special Subordinate Court, Tiruchirappalli.

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

(i) On 25.02.2017 at about 900 p.m., the petitioner was standing in the centre median of the road, opposite to Lakshmipuram Bus



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stop in Trichy – Thanjavur Main Road, at that time, the first respondent's Mahindra TUV – 300 bearing Registration No.TN-49-BH-6936 was proceeding in the above said road from West to the East, which was driven by its driver in a rash and negligent manner with hectic and uncontrollable speed without blowing horn and without watching the petitioner, dashed on the petitioner thereby caused the accident. Due to the accident, the petitioner was thrown away and sustained severe head injury, fracture in the right frontal bone with diffuse cerebral oedema, minimal right frontal lobe haemorrhagic contusion significant bifrontal lobe contusion, minimal right frontal lobe SAH, minimal hemispheric, fissure SDH, and severe injury caused in backside head, large lacerated wound over forehead, abrasion over left forearm and both legs and sustained multiple grievous injuries all over the body.

(ii) After the accident, the petitioner was admitted at Retna Global Hospital, Trichy as in patient from 25.02.2017 to 12.4.2017 and now he is taking continuous treatment as outpatient. Nurses are giving physiotherapy treatment and further treatment at home of the petitioner. The petitioner spent more than Rs.8,00,000 towards medical expenses. So far, he has to incur a huge amount for medical expenses.



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(iii) The accident occurred purely due to rash and negligent

driving of the driver of the first respondent's Mahendra TUV 300 bearing Registration No.TN 49 BH 6936 against whom a case has been registered by the Traffic Investigation Wing Police Station in Crime No.50/2017, for the offence under Sections 279 and 337 of IPC.

(iv) In the above accident, the petitioner has sustained total and permanent disability. Due to the severe head injury, fracture in right frontal bone with diffuse cerebral oedema and minimal right frontal lobe haemorrhagic contusion significant bifrontal lobe contusion, minimal right frontal lobe SAH, minimal hemispheric, fissure SDH, and severe injury caused in backside head, the petitioner has a severe headache, giddiness and vomiting often. He lost his memory power and having intermittent head pain and is also unable to concentrate on avocation as before and still he is bedridden. On account of the large lacerated wound over the forehead, sutures were performed. Due to this, the petitioner's face becomes totally deformed. Due to the abrasion over the left forearm and both legs, the petitioner's left hand lost its grasping power and the petitioner is not able to lift and carry any weight and climb on steps and unable to ride any two wheeler vehicle. During the treatment taken in the



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above-mentioned Retna Global Hospital, Trichy, the duty Doctor made a hole in the throat of the petitioner by surgery on 28.02.2017 and insert a tube in the throat, thereby breathing is happened to the petitioner. Now the movement of the petitioner's head is totally restricted. Due to the severe head injury, multiple injuries were caused all over the body, the petitioner has not yet regained his consciousness. Even though he is taking treatment as per the advice of the doctor, the possibility of complete recovery is in question, the petitioner is totally and permanently disabled.

(v) The petitioner further stated that due to accidental injuries and severe head injury, the petitioner could not move from the bed from the date of the accident till date. Moreover, urine and motion were passed by the petitioner through the tube. After discharge from the hospital, the petitioner is bedridden at present, and he has only liquid items through tube by way of his nose. The petitioner has appointed two nurses to give physiotherapy treatment and for dressing to the petitioner at the petitioner's residence, for that he is paying a sum of Rs.1,000/- each as salary, till date he is taking continuing treatment at his home. Now the petitioner could not move his head from right to left and from



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left to right. The petitioner went into a coma stage. The petitioner's mental suffering and pain which cannot be expressed in terms of words and the petitioner has undergone severe and unbearable pain and untold sufferings. The Doctor advised the petitioner that due to severe head injury, the petitioner cannot do his routine work and personal work independently for more than one year.

(vi) The petitioner has two sons, both are studying 9th and 5th standard respectively. The petitioner is the only earning member to his family and with very great difficulty the petitioner had spent a huge amount towards educational expenditure for his minor sons. Due to the accident, the entire proceeding was conducted by the petitioner's wife, who is a guardian of the injured petitioner in this petition. So far he spent a sum of Rs.8,00,000/- towards medical treatment and he has obtained a huge amount from his relatives and neighbours.

(vii) At the time of accident, the petitioner was aged about 40 years and was hale and healthy. Before the accident, he was doing business and earned not less than a sum of Rs.15,000/- per month. Due to the fracture in the head, severe head injury and fracture in the clavicle



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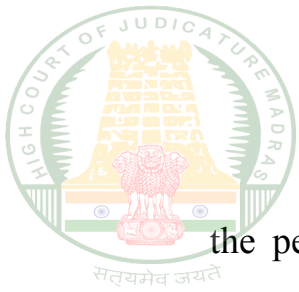
and multiple injuries all over the body, is having undergone severe and unbearable pain and untold sufferings and lost his earning capacity in future and sustained recurring loss of income.

(viii) Due to the inability the wife alone, signed and represented the petitioner. The petitioner estimates the loss in a sum of Rs.1,00,00,000, which is quite modest and reasonable. The first petitioner is owner of the Mahendra TUV 300 bearing Registration No.TN-49-BH-6936 involved in the accident and the second respondent is the insurance company of the first respondent's vehicle. Hence, both the respondents are jointly and severally liable to pay the compensation to the petitioner.

3. The brief averments contained in the counter filed by the 2nd respondent are as follows:

(i) The 2nd respondent denied the age, occupation, employment details, monthly income, nature of injuries, period of treatment, disability, amount claimed, etc.

(ii) The 2nd respondent states that as per the police records



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the petitioner suddenly crossed the road without seeing the oncoming vehicle and was the sole person responsible for the accident. The first respondent drove the vehicle at a minimal speed, adhering to the traffic rules at the time of the accident. It is the petitioner alone, who invited the accident by not adhering the traffic regulations. The accident occurred due to the negligence of the petitioner. The 2nd respondent is not liable to pay compensation to the petitioner.

(iii) About age and income, the petitioner is put to strict proof of the same.

(iv) The claim amount is highly excessive and without any basis. Hence, the petition is liable to be dismissed.

4. On the side of the petitioner, PW1 and P.W.2 was examined and Ex.P1 to Ex.P32 were marked. The Medical Board issued disability certificate which was marked as Ex.C1. On the side of the 2nd respondent, no witness was examined and no document was marked. The first respondent did not appear, called absent and set experts.



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5. After hearing both sides, the trial Judge awarded

compensation of Rs.33,20,200/- under the following heads :

Permanent disability	Rs.20,16,000/-
Pain and sufferings	Rs.1,00,000/-
For lack of convenience and discomfort	Rs.15,000/-
Medical expenses	Rs.11,12,200/-
Future Medical expenses	Rs.25,000/-
Extra nourishment	Rs.15,000/-
Attendant expenses	Rs.20,000/-
Travel expenses	Rs.15,000/-
Damages to clothing	Rs.2,000/-
Total	Rs.33,20,200/-

The learned Judge directed the 2nd respondent Insurance company to pay the entire amount within a period of two months.

6. Aggrieved with the impugned award, the Civil Miscellaneous Appeal in C.M.A.(MD)No.856 of 2021 has been filed by the claimant before the lower Court for enhancement of compensation on the following grounds :

(a) That the Tribunal has failed to consider the oral and documentary evidence available on record in a proper perspective manner.



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(b) That the Tribunal ought to have awarded a sum of

Rs.13,85,157/- instead of Rs.11,12,000/- under the head of Medical expenses which was supported by Exs.P.12 to P.21 & P.30.

(c) That the reason assigned by the Tribunal in reducing the medical expenses that the Physiotherapist was not examined is unsustainable in law and ought to have seen that the bills were produced and the same was not disputed by the respondents herein.

(d) That the Tribunal ought to have taken a sum of Rs.15,000/- as income instead of Rs.8,000/- which was supported by Ex.P.22 and it will shows the petitioner was a businessman.

(e) That the Tribunal ought to have seen that the petitioner had filed his Pan card and he is an assessee and ought to have awarded a sum of Rs. 15,000/- per month.

(f) That the Tribunal ought to have seen that admittedly the petitioner is in coma stage which was supported by Medical Board and



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the report was filed as Ex.C.1 and ought to have awarded a sum of

Rs.10,00,000/- for pain and suffering instead of Rs.1,00,000/-.

(g) That the Tribunal ought to have seen that a coma is a prolonged state of unconsciousness and during coma, a person is unresponsive to their environment and the person is alive and looks like they are sleeping and therefore, the petitioner needs continuous care and medical treatment and therefore, the Tribunal ought to have awarded more amount in the following heads :

- i. Future medical expenses Rs. 10,00,000/-
- ii. Extra Nourishment Rs.1,00,000/-
- iii. Transportation Rs.1,00,000/-

(h) That the Tribunal ought to have awarded a sum of Rs.1,00,000/- for transportation to the hospital and he had taken to Hospital on various occasions.

(i) That the Tribunal ought to have awarded a sum of Rs.1,00,000/- for consortium, since the petitioner is in coma.



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(j) That the Tribunal ought to have seen that the petitioner

need continuous treatment and he has to give treatment regularly and ought to have awarded a sum of Rs.10,00,000/- for future medical expenses.

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

7. Aggrieved by the said order, the Civil Miscellaneous Appeal in C.M.A.(MD)No.822 of 2022 has been filed by the Insurance Company who is the 2nd respondent and before the lower Court against the quantum of compensation with the following among other grounds :

(i) That the Tribunal erroneously fixed the entire negligence against the 1st respondent Car, when the accident happened at the four way.

(ii) That the Tribunal ought to have fixed contributory negligence as against the Claimant, because the occurrence took place in the middle of the National Highway.

(iii) That the Tribunal erroneously awarded an exorbitant sum of Rs. 33,20,200/- as compensation in a case of injury.



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(iv) That the Tribunal erroneously fixed the age of the

Claimant as 40 instead of 41.

(v) That the Tribunal erroneously fixed the multiplier as 15

instead of 14.

(vi) That the Tribunal erroneously added 40% of the monthly

income towards the future prospects instead of 25%.

(vii) It is submitted that no permission under Section 170 of

the Motor Vehicles Act is required by the Appellants to contest the claim

on all grounds as the Appellant was impleaded as a party Respondent in

the above Claim Petition as rendered by the Judgment of Hon'ble

Supreme Court reported in 2012 ACJ 2729.

Hence, prayed to set aside the judgment of the trial Court and

allow the Civil Miscellaneous Appeal.

8. Since the Civil Miscellaneous Appeals arose out of the

judgment in M.C.O.P.No.491 of 2017, issues, facts, evidences and

documents involved in these Civil Miscellaneous Appeals are all one and

the same, they are taken up for hearing together and are disposed of by

this common judgment.



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9. Heard the learned counsel on either side and perused the materials available on record.

10. Now, this court has to decide the following points for consideration :

- (1) Whether the compensation awarded by the Tribunal is on the higher side ?
- (2) Whether the claimant is entitled for enhanced compensation ?

11. Point Nos.1 and 2 :-

Exhibit P1 is the FIR filed in Crime No.50/2017 dated 26.02.2017, by the Traffic Investigation Wing-South Police Station, Trichy, against the driver, Tamilarasan, who is the first respondent's driver for the offence under Section 279 and 337 of IPC. The name of the complainant is Abdul Basheeth, who is the brother of the petitioner. Ex.P2 is the accident register issued by Retna Global Hospital, Trichy to the petitioner, which reveals that he was admitted in the hospital on 25.02.2017, due to Head injury. Ex.P3 is the Motor Vehicle Inspection



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Report was issued by the Motor Vehicle Inspector Grade-I, RTO for vehicle bearing Registration No.TN 49 BH 6936 and the Inspector certified that the accident was not due to any mechanical defect. Ex.P4 is the charge sheet registered in FIR No.50/ 2017 by Sub Inspector of Police, Traffic Investigation Wing-South Police Station, Trichy, against the driver of the first respondent. Ex.P5 is the rough sketch showing the place of the accident. Ex.P7 is the discharge summary issued by Retna Global Hospital reveals that the petitioner was admitted to the hospital on 25.02.2017 and discharged on 12.04.2017, in the column post-operative period, it was mentioned that he was continued on ventilator support. He had a decerebrating response to pain. He was continued on ventilation, his postop CT brain showed reduction in mass effect and visualization of basal cisterns. He was given antibiotics, antioedema measures, nootropics and neutraceuticals. He was nursed in air bed, given regular chest and limb physiotherapy, started on RT feeds. He required tracheostomy and weaning off ventilator support. He remained off ventilator and was shifted to ward for nursing care. He had repeated episodes of autonomic hyperreflexia with decerebrating response during which sedatives were given. His operative site was lax, sutures were removed and wound appeared healthy. Ex.P8 is the discharge summary



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issued by Hannah Joseph Hospital to the petitioner shows that was admitted on 05.11.2017 and discharged on 08.11.2017, in the course in the hospital it was mentioned that 44 years old Mr. Nazer Batcha an old case of RTA with head injury (post craniectomy status) presented to us with lower respiratory tract infection. CT brain revealed encephalomalacia changes in bilateral parasagittal parieto - occipital lobes and bilateral basal ganglionic region. He was planned for re tracheostomy as he had stridor but patient relatives not willing for further management. In view of financial constraints patient's relatives wanted to get discharged and hence patient was discharged at request (against Medical Advice). Ex.P9 is the discharge summary issued by Dr.Shri Ramyaa Multi Speciality Hospital, Trichy shows that he was admitted on 09.11.2017 and discharged on 13.11.2017, course in the hospital, Patient got admitted and treated with inj. Xone and other supportive measures. Hourly Ryle's tube feeding given. Neuro surgeon's opinion obtained. The relatives were explained about the need of surgery procedure, but they are not willing and hence discharged. Ex.P10 and Ex.P11 are X-ray and scan report. Ex.P12 is the medical bill for a sum of Rs.2,44,847/-. Ex.P13 is the medical bill for a sum of Rs.1,86,174/-. Ex.P14 is the medical bills for a sum of Rs.40,546/-. Ex.P15 is the



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medical bills for a sum of Rs.33871/-. Ex.P16 is the medical bill for a

sum of Rs.22,360/-. Ex.P17 is the medical bills for a sum of Rs.32,027/-.

Ex.P18 is the medical bill for a sum of Rs.23,372/-. Ex.P19 is the

medical bill for a sum of Rs.34,430/-. Ex.P20 is a medical bill for a sum

of Rs.5,70,860/-. Ex.P21 is a medical bill for a sum of Rs.7,697/-.

Ex.P22 is the purchase bill from the Garments for his business. Ex.P30

is the medical bill for a sum of Rs.1,59,579/-. Ex.P29 is the discharge

summary issued by Retna Global Hospital shows that he was admitted on

16.07.2018 and discharged on 25.07.2018. Ex.P23 is the photograph of

the petitioner. Ex.P24 is the Doctor certificate issued by the Retna Global

Hospital on 01.06.2017. Ex.C1 is the disability certificate issued by the

Medical Board shows that the petitioner has having 100% of disability.

12. During trial, the petitioner's wife Sithy Shinosha Banu was examined as P.W.1. The Court observed that the petitioner was brought to the Court in an unconscious state. Ex.P24 Doctor certificate shows that the petitioner needs physical support from his family members and is bedridden. Ex.C1 also supported the above certificate by stating that the patient unconscious, post-injury sequelae in post craniotomy status and the percentage of disability is 100%.



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13. The appellant/claimant prayed to enhance the medical expenditure for a sum of Rs.13,85,157/- instead of Rs.11,12,000/-.

14. A Perusal of the medical records shows that the petitioner produced the following bills in support of his claim,

Exs.P12 to Exs.P19 medical bills, Ex.P20 physiotherapy charges, Ex.P21 and Ex.P30 are the bills for oil treatment and other treatment. Out of the claim, the Tribunal allowed 50% of the bills produced for physiotherapist charges and oil treatment by stating that the petitioner failed to examine the concerned person, which seems to be improper. The Medical bills are issued in favour of the petitioner merely because, she has not examined the concerned person, he cannot be refused payment of the bill amount. The total amount arrives at Rs.13,85,157/-, since the bills are made in his name and it is proved by medical records that he was undergoing treatment in various hospitals, we hold that the petitioner is entitled to the entire medical bills produced by him, a sum of Rs.13,85,157/- allowed for medical expenditure.



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15. The learned counsel for the claimant further argued that

the monthly income of the petitioner was taken as Rs.8,000/- which is not proper as the petitioner was doing business and derived a sum of Rs.15,000/- per month. He further stated that Ex.P22 is the bills produced for the purchase of clothes for his business, he also filed a PAN card under Ex.P.26 to show that he is an income tax assessee and hence, the tribunal ought to have awarded a sum of Rs.15,000/- as monthly income.

16. On careful perusal of Ex.P22 series of bills were issued for the year 2017, but the petitioner does not produce a Certificate viz., RC to prove that he is doing business. Ex.P26 is indeed the Pan Card of the petitioner to show that he is an income tax assessee, but he has not produced income tax returns filed by him to show the annual income derived by him. Therefore, the above documents cannot be taken for income proof. The Tribunal fixed the notional income of the injured claimant at Rs.8,000/- per month, we are not agreeable to the same, as the petitioner would be entitled to minimum wages payable to skilled workmen. The minimum wages payable to the skilled labour as on the date of the accident viz., 25.02.2017 is Rs.13,705/- per month. Therefore, we fix a sum of Rs.13,700/- towards monthly income; in



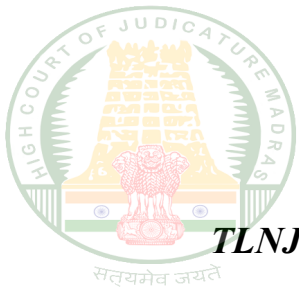
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addition to the salary, 25% to be added when the petitioner was between 40-50 years, a sum of Rs.3,426/-, 25% of his salary added for future prospectus in view of the ratio laid down by the Court in ***National Insurance Company Limited vs. Pranay Sethi and Others*** reported in ***AIR 2017 SC 5157***.

17. The date of birth of the petitioner, as per PAN card is 20.05.1976 at the time of the accident, he was 40 years multiplier to be applied 15. Therefore, his loss of income would be Rs.17,131 x 12 = Rs.2,05,572/-, less tax 10% is Rs.20,557/- = Rs.1,85,015/- x 15 x 100% = Rs.27,75,225/-.

18. The petitioner prays to award a sum of Rs.10 lakhs for pain and suffering instead of Rs.1,00,000/-, by stating that the petitioner is in coma stage. It is true that the petitioner is still in common stage, viz., unconscious and minimal brain activity, he cannot consciously move his limbs or body.

19. The counsel for the claimant relied upon the judgment in ***Ram @ Shoban Ram Vs. Manjunath and another reported in 2018 (3)***



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TLNJ 17 (civil) in which the Court has held as follows :

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“Motor Vehicles Act 1988, Section 173 read with Schedule II - In an road traffic accident the petitioner had got injured and due to injuries in the brain stem gone to the vegetative state as against the claim of Rs. 1,50,00,000/- the tribunal awarded a sum of Rs.87,00,000 under various heads. An appeal challenging the quantum the High Court taking into consideration the earnings of the claimant, the disability of 100 per cent and the pathetic condition of the claimant who have to be dependent for everything in his future has enhanced the compensation under the conventional heads of extra nourishment, Loss of martial life, attender charges, physiotherapy total compensation was enhanced to Rs.95,31,162/- - C.M.A is partly allowed.

20. The Apex court in its judgment relied upon judgement reported in ***Kajal Vs Jagadish Chand and Others*** reported in **2020 4 SCC 413**, in which it was held as under :

“6. It is impossible to equate human suffering and personal deprivation with money. However, this is what the Act enjoins upon the courts to do. The court has to make a judicious attempt to award damages, so as to compensate the claimant for the loss suffered by the victim. On the one hand, the compensation should



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not be assessed very conservatively, but on the other hand, compensation should also not be assessed in so liberal a fashion so as to make it a bounty to the claimant. The court while assessing the compensation should have regard to the degree of deprivation and the loss caused by such deprivation. Such compensation is what is termed as just compensation. The compensation or damages assessed for personal injuries should be substantial to compensate the injured for the deprivation suffered by the injured throughout his/her life. They should not be just token damages.”

xxxxx xxxx xxxx

12. The assessment of damages in personal injury cases raises great difficulties. It is not easy to convert the physical and mental loss into monetary terms. There has to be a measure of calculated guess work and conjecture. An assessment, as best as can, in the circumstances, should be made.

xxxxxx xxxxxx xxxx

27. One factor which must be kept in mind while assessing the compensation in a case like the present one is that the claim can be awarded only once. The claimant cannot come back to court for enhancement of award at a later stage praying that something extra has been spent. Therefore, the courts or the tribunals assessing the compensation in a case of 100%



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disability, especially where there is mental disability also, should take a liberal view of the matter when awarding compensation. While awarding this amount we are not only taking the physical disability but also the mental disability and various other factors. This child will remain bedridden for life. Her mental age will be that of a nine month old child. Effectively, while her body grows, she will remain a small baby. We are dealing with a girl who will physically become a woman but will mentally remain a 9 month old child. This girl will miss out playing with her friends. She cannot communicate; she cannot enjoy the pleasures of life; she cannot even be amused by watching cartoons or films; she will miss out the fun of childhood, the excitement of youth; the pleasures of a marital life; she cannot have children who she can love let alone grandchildren. She will have no pleasure. Her's is a vegetable existence. Therefore, we feel in the peculiar facts and circumstances of the case even after taking a very conservative view of the matter an amount payable for the pain and suffering of this child should be at least Rs.15,00,000/. ”

21. Taking into consideration of the pathetic condition of the petitioner, coupled with the fact that his disability was assessed by the Medical Board at 100% and he is not in a position to move or continue to



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do any profession or job, but he should be confined to bed. As stated by the Apex Court, the determination of damages in personal injury it's not easy, the hardship and suffering cannot be computed in terms of money.

22. Therefore, this Court decided to raise compensation for the pain and suffering to Rs.5,00,000/- instead of Rs.1,00,000/-, and the Tribunal awarded extra nourishment a sum of Rs.15,000/- which is too low, and therefore, we raised the same to Rs.1,00,000/-, as per the medical record, the petitioner has to undergo continuous treatment in future but the Tribunal awarded for future treatment only Rs.25,000/- which is on the lesser side, we raise the same to Rs.8,00,000/- for future medical expenses.

23. The trial Court awarded transportation charges Rs.15,000/-, but the records produced by the petitioner shows that he was taking treatment in various hospitals and the transport charges awarded by the Tribunal is too less. Hence, we awarded a sum of Rs.1,00,000/- for transport charges.



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24. As far as the Civil Miscellaneous Appeal filed by the

Insurance Company is concerned, the learned counsel for the Insurance Company argued that the Tribunal ought to have fixed contributory negligence as against the claimant because the accident took place in the middle of the National Highway and also argued that the award is an exorbitant and the age of the injured has to be fixed instead of 40 as 41, the future prospectus to be taken as 25% instead of 40%.

25. It is not proved that the negligence on the part of petitioner. Rather it is proved that the driver of the first respondent driven the vehicle in a rash and negligent manner and caused the accident. A criminal case was filed against the driver and final charge sheet also filed against him. Therefore, the argument advanced by the Insurance Company it is not sustainable. Further, the age of the petitioner at the time of accident is 40 not 41. The future prospectus is only at 25%, not 40%. There is no ground to allow the Civil Miscellaneous Appeal filed by the insurance company and hence, the same is liable to be dismissed. The point Nos.1 and 2 are answered accordingly.



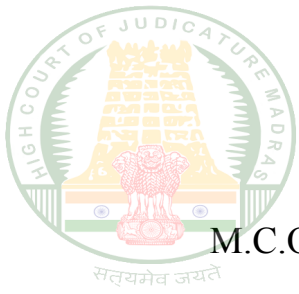
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26. Given the above, we modify the award as follows :

Permanent disability Rs.17,131 x 12 x 15 x 100% = Rs.30,83,580, less tax 10% is Rs.3,08,358/-	Rs.27,75,225/-
Pain and sufferings	Rs.5,00,000/-
For lack of convenience and discomfort	Rs.15,000/-
Medical expenses	Rs.13,85,157/-
Future Medical expenses	Rs.8.00,000/-
Extra nourishment	Rs.1,00,000/-
Attendant expenses	Rs.20,000/-
Travel expenses	Rs.1,00,000/-
Damages to clothing	Rs.2,000/-
Total	Rs.56,97,382/-

27. In the result, the Civil Miscellaneous Appeal in C.M.A.
(MD)No.822 of 2022 is dismissed. No costs.

28. In the result, the Civil Miscellaneous Appeal in C.M.A.
(MD)No.176 of 2022 is allowed. The award passed by the trial Court is
enhanced and the 2nd respondent-Insurance Company is directed to pay a
sum of Rs.56,97,382/- to the appellant/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



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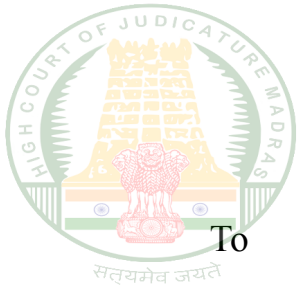
M.C.O.P.No.491/2017 on the file of the Special Subordinate Court,

WEB COPY

Motor Accident Claims Tribunal, Trichy, within four weeks from the date of receipt of a copy of this order. On such deposit, the 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)Nos.176 & 822 of 2022

To

WEB COPY

1.The Special Subordinate Court
Motor Accident Claims Tribunal,
Trichy.

Copy to

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



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C.M.A(MD)Nos.176 & 822 of 2022

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

RM

Common Judgment in
C.M.A.(MD)Nos.176 & 822 of 2022

26.02.2025