



C.M.A.(MD).No.779 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 27.01.2025

CORAM

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

and

THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

C.M.A.(MD).No.779 of 2023

Muruganandham

... Appellants/Petitioner

Vs.

1.V.Balasubramanian

2.The Regional Manager,

The New India Assurance Company,
CMTS Bhavan, 70 Feet Road, Ellis Nagar,
Madurai Town, City & District-625 016.

... Respondents/Respondents

Prayer:- Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, to enhance the award amount in the decree and judgment dated 13.06.2023 made in M.C.O.P.No.22 of 2020 on the file of the Motor Accident Claims Tribunal, Manamadurai.

For Appellant : Mrs.P.Selvakamatchi

For R1 : Mr.P.Mani Anandh

For R2 : Mr.C.Karthik



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J U D G M E N T

(Judgment of the Court was made by **K.K.RAMAKRISHNAN.J.,**)

The injured claimant in M.C.O.P.No. 22 of 2020 on the file of the MACT, Manamadurai has filed this C.M.A.(MD).No. 779 of 2023 to enhance the compensation.

2.The appellant is yoga master. On 15.03.2020 at 09.45 p.m., after conducting the class in Kamuthi, he proceeded in his two wheeler to reach his residence at Manamadurai in the Rameswaram Madurai Highways Road by keeping extreme left side, near the KST Mahal situated away from Parthipanur Tollgate, and at that time, the 2nd respondent insured TATA ACE van bearing registration No. TN-63-AZ-6954 coming from the south – north side in rash and negligent manner dashed against his bike and hence, he sustained injuries all over the body. The FIR was registered against the driver of the said van. Due to the accident he sustained injuries and admitted in the hospital and his left side of the body became totally paralyzed. In spite of the various treatment, he has not recovered. He filed the petition in M.C.O.P.No. 22 of 2020 on the file of the MACT, Manamadurai claiming compensation of Rs.50,00,000/-. To prove his claim he examined himself as PW1 and marked Ex.P1 to Ex.P23 and



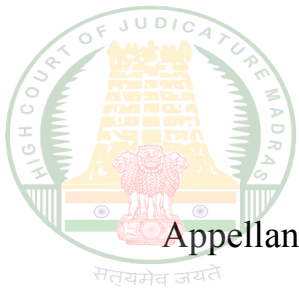
also examined R.W.1 and RW2 and also marked Ex.X1, Ex.X2 and Ex.C1. The

Learned Tribunal Judge considered the evidence of the appellant and fixed negligence on the part of the driver of the 2nd respondent insured the vehicle.

3.The Learned Tribunal Judge was granted Rs.15,37,671/- only by passing the impugned award. Therefore, he filed this appeal to enhance the compensation.

4. The Learned counsel for the appellant made the following submissions:-

4.1. The appellant is a yoga master. Due to the accident, he sustained multiple fracture on his head and fracture on the proximal tibia and radius ankle and hence his left side of the body is completely paralyzed. He cannot move without help of attender. His voice had become feeble and hence, he is not able to speak with others. He also lost his avocation. The medical board also assessed 85.5% of disability. Considering the nature of the disability and his job before the accident and his present position of total paralysation of one side and his bed ridden condition, the Learned Tribunal Judge ought to have applied 100% loss of income. But, the amount was not calculated by applying the multiplier method. It is deserving case to apply the multiplier method.



Appellant is not only the yoga master and also was running the mushroom soup and fruit juice centre. He lost both the income. Therefore, he requested to enhance the compensation.

4.2. The appellant specifically deposed that due to the accident, he is totally paralyzed and he is not able to move without the help of attender and hence, he is going to lead the rest of his life with incalculable pain with the help of others. Therefore, he is entitled to the suitable attendant charges by applying the multiplier method.

4.3. Due to the various injuries, he has been continuously taking treatment and also physiotherapy and the same is to be continued all through his life. He has already lost his father and he has to take care of his unmarried sister and his just born baby and the wife. Due to the accident, the whole family is in peril and his existence has become a waste. Therefore he seeks enhancement of compensation.

4.4. He also stated that the tribunal erroneously taken monthly income of Rs.5000/- to calculate the income of the treatment period and the same has to be increased.



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4.5. The learned Tribunal judge failed to consider the requirement of the continuous future treatment and awarded only Rs.50,000/- for the medical expenditure and the same has to be enhanced.

5. The Learned counsel for insurance company submitted that the medical board assessed the overall disability as 85.5%. The said percentage also given by various doctors. Even one of the doctors of the board affirmatively stated that there is 13% locomotive disability. Hence, the learned trial judge rightly has not applied the multiplier method. Therefore, there is no need to interfere with.

5.1. Merely because appellant sustained injuries, he is not automatically entitled to attendant charges by applying multiplier method. The Hon'ble Supreme Court has applied the multiplier method only in the case of exceptional case. This case does not come under the said category.

5.2. There are no documents to prove the requirement of future medical expenditure and hence, the learned tribunal judge correctly awarded Rs.50,000/- for the future medical expenditure.



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5.3. The Learned Tribunal has considered all aspects and granted just compensation of Rs.15,37,671/- and there is no need to enhance the same.

6. This Court considered the rival submission made by the learned counsel appearing on either side and also perused the materials available on record and the impugned judgment and the precedents relied upon by them.

6.1. Whether the nature of injuries sustained by the appellant in the accident dated 15.03.2020 and the consequential impact upon his life deserves enhanced compensation?

7. The appellant had sustained following injuries in the accident happened on 15.03.2020 due to the rash and negligent driving of the 2nd respondent insured by the vehicle:

7.1. Linear fracture of left parietal bone extending into squamous portion of temporal bone.

7.2. Longitudinal fracture of both petrous temporal bone.

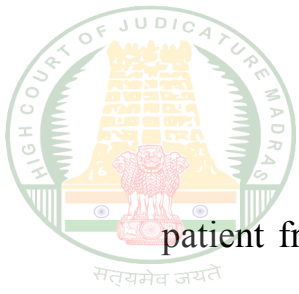
7.3. Linear fracture of right squamous portion of temporal bone extending into right greater and lesser wing of sphenoid, body of sphenoid.

7.4. Comminuted fracture of anterior and posterior lateral wall of right



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- 7.5. Sinus with fracture fragment intruding right maxillary sinus.
 - 7.6. Fracture of bilateral medial and lateral pterygoid plate.
 - 7.7. Communicated fracture of right zygomatic arch.
 - 7.8. Tripod fracture.
 - 7.9. Blow out fracture of inferior wall of right orbit
 - 7.10. Linear undisplaced fracture of root of right orbit.
 - 7.11. Fracture of bony nasal septum noted.
 - 7.12. Fracture of alveolar process of right maxilla.
 - 7.13. Linear fracture of anterior and posterior walls of left maxillary sinus, lateral wall of left orbit.
 - 7.14. Bilateral type III LeFort fracture with significant depression of facial bone on right side.
 - 7.15. Right optic strut fracture.
 - 7.16. Displaced fracture of right angle of mandible extending up to the right coronoid process.
 17. Linear fracture of left parasymphysis menti of mandible.
8. Due to the said injuries, he was admitted in the Madurai Meenakshi Mission Hospital on 15.03.2020. He had taken continuous treatment as in



patient from 15.03.2020 to 19.04.2020. He deposed that even after the period,

he is continuously taking the treatment till date. He had undergone multiple surgeries in the head and also in his leg and other parts. Due to the operation in the brain, he had sustained Neuro Surgical disability and hence, his one side of the body is totally paralyzed. He cannot live without help of the attender. He is also taking continuous treatment in the Live Well Institution of Rehabilitation, Madurai for physiotherapy. At the time of the operation, metal screw and metal plate also were installed in his body and the same is to be removed by operation in future. To consider the said deposition of PW1, this Court perused the entire records submitted by him and there were not disputed by the insurance company. This Court also appreciated the evidence of the doctor. From Exs.P2, P6 and P7, it is clear that he had undergone multiple surgeries in Madurai Meenakshi Mission Private Hospitals as in patient during the period from 15.03.2020 to 19.04.2020. He had nearly undergone more than four surgeries. More particularly, he had undergone major surgery in the brain and in the leg. During the surgery, screws and metal plate have been implanted. The accident happened on 15.03.2020. Immediately, after the accident Covid-19 pandemic restriction was announced. Therefore, he had to take treatment with unbearable pain. Both his attender and himself had undergone many of discomfort. The hospital authorities in spite of the said operation forced him to leave the



hospital. The evidence of the appellant is cogent and the same has been corroborated by various medical records. The insurance company also not disputed the above factual aspect. But, they only contended that on the basis of partial disability certificate the appellant case will not come under the special category to apply the multiplier method. This Court is not inclined to accept the said contention of the learned counsel for the insurance company. The medical board consists of various specialists. The specialist from the ortho department has considered the operation for the “*Proximal Tibia Fracture Radius Ankl Fracture*” and assessed the locomotive disability of that part to the extent of 13%. The specialist from the neuro department has considered the brain injuries and the operation and gave a finding that the appellant suffered Neuro Surifical disability. The facial and dental specialist examined him and assessed his disability to the extent of 22.5%. From the over all assessment, the head of the committee assessed the disability to 85.5%. The percentage of the disability is not the criteria to assess the loss of future earning capacity. From the injuries and the consequential disablement of the appellant, this Court reasonably concluded that his disablement comes under the category of permanent disability. The Hon’ble Supreme Court in the case of ***Rajkumar Vs Ajay Kumar*** reported in ***2011 (1) SCC 343*** had a detailed discussion to assess the loss of future earning capacity on the basis of the disability sustained by the



injured due to the accidental injury and laid the detailed guidelines. From the

consideration of the judgments, it is the duty of this Court to see whether the

injured was prevented or restricted from discharging his previous activities and

functions, but could carry on some other or lesser scale of activities and

functions so that he can continue to earn or can continue to earn his livelihood.

In this case, PW1's evidence is that his one side of the body was totally

paralyzed and he is living with the permanent help of the attender even for his

day to day activities. Before the accident, he was running mushroom soup stall

and fruits juice stall. Apart from that, he was earning as a yoga master. Due to

the above paralysation, he is totally deprived of his avocation. He has no father

and has his only son is mother feeding baby and he has no other relative to

continue the mushroom soup stall and fruits juice stall. Therefore, this Court

can assess the future loss of earning capacity as 100%. Even though, he pleaded

that he was earning more than Rs.50,000/- per month but, no document was

produced. Therefore, this Court fixes the notional income of the appellant as

Rs.15,000/- per month and he was aged about 35 years at the time of the

accident and apply 40% future prospect and calculate the monthly income of

the appellant as Rs.21,000/- and apply the multiplier of 16 as per the ***Sarla***

Verma case and calculate the loss of earning capacity and loss of future income

as follows :

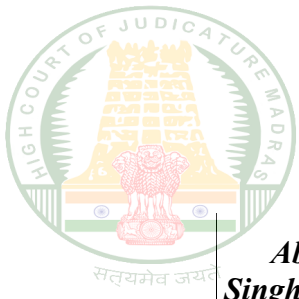


Rs.21,000/- x 12x16 = Rs.40,32,000/-

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9. Normally, the cost of attendant is awarded only for the purpose of taking care of the injured till he is able to look after himself. The inability to take care during the period of hospitalisation and post-hospitalisation for a specified period of time is generally the norm while awarding compensation for attendant charges. However, in exceptional cases as stated below, where the injured is immobile and in case like amputation, paralyzation etc., there is total inability on the part of the injured to take care of himself or herself without aid of attendant's service for an undefined period and in such cases, the court has to take into consideration the necessity for award of just and reasonable compensation by adopting the multiplier method:

Case Laws	Relevant Portions
Kavitha Vs. Deepak reported in 2012 ACJ 2161.	<i>Attendant charges calculated as follows: Rs.2,000/- p.m for 25 years Rs.2,000/-X12X25=Rs.6,00,000/-</i>
Kajal Vs. Jagdish Chand reported in 2020 4 SCC 413.	<i>The multiplier system should be followed not only for determining the compensation on account of loss of income but also for determining the attendant charges, etc. We, therefore, assess the cost of one attendant at Rs. 5,000/- which comes to Rs.1,20,000/- p.a and using the multiplier of 18, it works out to Rs.21,60,000/- for the attendant charges for her entire life. This takes care of all the pecuniary damages.</i>



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**Abhimanyu Partap
Singh Vs. Namita
Sekhon** reported in 2022
8 SCC 489.

As discussed, if we apply the multiplier method and in view of the judgment of Kajal, we accept the rate of attendant charges at Rs.5,000/- p.m for 12 hours, looking to the nature of injuries and disability the claimant is required two attendants at least within 24 hours then the expenses in the head of attendant charges comes to Rs.10,000/- p.m. If we apply the multiplier of 18, the amount comes to Rs.21,60,000/-

9.1.The specific evidence of the appellant is that he sustained injuries and undergone surgery in his brain and therefore, his neuro system has been affected and he sustained Neuro Surifical disability and the same was corroborated by the medical evidence. Apart from that, there was surgery in the leg and also surgery in the face. The cumulative result is that he is paralyzed. He is unable to live without help of the attender. This Court also perused the records and also the disability certificate issued by the board. The board clearly opined that he has suffered Neuro Surfical disability and also due to the surgery to cure the “Proximal Tibia Fracture Radius Ankl Fracture”, his locomotive disability comes around 13%. Apart from that, the appellant deposed before the Court and specifically deposed that one side of his body was paralyzed and he has been doing his daily activities only with the help of others. Hence, this Court finds no doubt about the condition of the appellant. His pleading is supported by documents and therefore, his case squarely comes under the special category as delineated in the following judgment of Supreme Court where the Hon’ble Supreme Court has laid down the law that in deserving the



case multiplier method to be applied to grant the compensation in the category of the attendant charges.

10. Considering the cost for engaging attendant, this Court fixes Rs.3000/- as a monthly cost for attendant charges and the same is calculated for the remaining life period of 65 years. Even though the Hon'ble Supreme Court in the said cases fixed 70 years as life period and calculated the attendant charges, this Court considering the circumstances calculated for 65 years and determine the attendanter charges as follows:-

$$\text{Rs.3000/-} \times 12 \times 30 = \text{Rs.10,80,000/-}.$$

11. The appellant had undergone multiple surgeries and also metal screws and plate also implanted inside the body. The same has to be removed. The injuries sustained by him requires continuous medication and hence, the award of amount granted by the tribunal under the future medical expenditure is abysmally on lower side. Therefore, this Court increased the same from Rs. 50,000/- to Rs.2,25,000/-.

11.1.The Hon'ble Supreme Court, reiterated the requirement of the Motor Vehicle Accident Tribunal and the High Courts to decide the Motor Accident

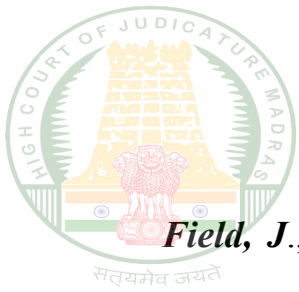


injury cases with more sensitive responsibility that is usually taken in other death cases. Some of the judgments of the Hon'ble Supreme Court and other

Courts in this regard are as follows:

Case Laws	Relevant portions
<i>Nizam's Institute of Medical Sciences v. Prasanth S. Dhananka</i> (2009) 6 SCC 1	<i>"90. At the same time we often find that a person injured in an accident leaves his family in greater distress vis-à-vis a family in a case of death. In the latter case, the initial shock gives way to a feeling of resignation and acceptance, and in time, compels the family to move on. The case of an injured and disabled person is, however, more pitiable and the feeling of hurt, helplessness, despair and often destitution enures every day. The support that is needed by a severely handicapped person comes at an enormous price, physical, financial and emotional, not only on the victim but even more so on his family and attendants and the stress saps their energy and destroys their equanimity."</i>
<i>Shilaben Ashwin Kumar Rana Vs. Bhavin K. Shah and other</i> (2020) 18 SCC 652	<i>cases involving disability are in many respects even more tragic than cases of death, particularly where the disability is of a nature involving a lifelong condition of despair and helplessness.</i>
<i>Divisional Controller, KSRTC v. Mahadeva Shetty and another</i> , 2004 (1) TN MAC 534 (SC) Arijit Pasayat, J.	<i>In case of personal injury the position is different from loss of property. In the later case there is possibility of repair or restoration. But in the case of personal injury, the possibility of repair or restoration is practically non-existent.</i>

The reason behind the above observation of the Hon'ble Supreme Court is that the motor accident claim is one time measurement, not with recurring cause of action as in the case of maintenance claim either for increase or decrease. Therefore, the determination of compensation must be full, adequate and just. The same was observed by the House of lord as earlier in the year 1874 itself in the case of *Phillips v. Western Railway Co.*, reported in *1874 (4) QBD 406*,



Field, J., while emphasizing that damages must be full and adequate, it was

held thus:

*“you cannot put the plaintiff back again into his original position, but you must bring your reasonable common sense to bear, and you must always recollect that this is the only occasion on which compensation can be given. **The plaintiff can never sue again for it. You have, therefore, now to give him compensation once and for all.** He has done no wrong, he has suffered a wrong at the hands of defendants and you must take care to give him full and fair compensation for which he has suffered.”*

emphasize supplied

11.2.The physical frame of the claimant has been shattered and money cannot compensate what has been shattered. No amount of compensation can restore the lost limb of the claimant. There must be determination of the fair compensation and the same has been reiterated by the house of Lord and the Court of appeal and our Apex Court in the following cases:-

11.2.1.Armsworth v. South Easter Railway Co., reported in ***1847 11 Jur.***

758 at 760, it is held as follows:

“Scarcely any sum could compensate a labouring



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man for the loss of a limb, yet you do not in such a case give him enough to maintain him for life... You are not to consider the value of existence as if you were bargaining with annuity office.... I advise you to take a reasonable view of the case and give what you consider fair compensation.”

11.3.In *Fowler v. Grace* [*Fowler v. Grace*, reported in (1970) 114 Sol Jo 193 (CA)] , *Edmund Davies, L.J.* has said that:

‘It is the manifest duty of the Tribunal to give as perfect a sum as was within its power. There are many losses which cannot easily be expressed in terms of money. If a person, in an accident, loses his sight, hearing or smelling faculty or a limb, value of such deprivation cannot be assessed in terms of market value because there is no market value for the personal asset which has been lost in the accident, and there is no easy way of expressing its equivalent in terms of money. ...’

11.4.Lord Reid in *Baker v. Willoughby* [*Baker v. Willoughby*, reported in 1970 AC 467] has said:

‘... A man is not compensated for the physical injury: he is compensated for the loss which he suffers as a result of that injury. His loss is not in having a stiff leg: it is in his inability to lead a full life, his inability to enjoy those



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amenities which depend on freedom of movement and his inability to earn as much as he used to earn or could have earned....”

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

11.6.The Supreme Court held in **R.D. Hattangadi v. Pest Control (India) Pvt. Ltd. And Others**, reported in **(1995) 1 SCC 551**:

“Whenever any amount is determined as the compensation payable or any injuries suffered due to the accident, the object is to compensate such injury so far as money can compensate, because, it is impossible to equate money with the human suffering or personal deprivations. Money cannot renew a broken and shattered physical frame.”

11.7.Malay Kumar Ganguly v. Dr. Sukumar Mukherjee, reported in **(2009) 9 SCC 221 at page 282**

170. Indisputably, grant of compensation involving an accident is within the realm of law of torts. It is based on the principle of restitutio in integrum. The said principle provides that a person



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entitled to damages should, as nearly as possible, get that sum of money which would put him in the same position as he would have been if he had not sustained the wrong.

11.8.In *Rekha Jain v. National Insurance Co. Ltd.*[*Rekha Jain v. National Insurance Co. Ltd.*, reported in (2013) 8 SCC 389, this Court at paragraphs 34-35, 38-39 and 41-43, with regard to the quantum of damages, has held as under:

“34. ... ‘24. In deciding on the quantum of damages to be paid to a person for the personal injuries suffered by him, the court is bound to ascertain all considerations which will make good to the sufferer of the injuries, as far as money can do, the loss which he has suffered as a natural consequence of the wrong done to him.’

(1)In *Nagappa v. Gurudayal Singh*, reported in [2003 ACJ 12](#) (SC):

“(13) ...it is for the Claims Tribunal to determine just compensation from the evidence which is brought on record despite the fact that claimant has not precisely stated the amount of damages of compensation which he is entitled to. If evidence on record justifies passing of such award, the claim cannot be rejected



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solely on the ground that claimant has restricted his claim... ”

(2) *Oriental Insurance Co. Ltd. v. Mohd. Nasir*, reported in 2009 ACJ 2742 (SC):

“(27) Even if no amount is claimed, the Commissioner must determine the amount which is found payable to the workman.

(Emphasis added)

(3) *Ningamma v. United India Insurance Co. Ltd.*, reported in 2009 ACJ 2020 (SC):

“(23) ...it is not necessary in a proceeding under the MVA to go by any rules of pleadings or evidence. Section 166 of the MVA speaks about ‘just compensation’. The court's duty being to award ‘just compensation’, it will try to arrive at the said finding irrespective of the fact as to whether any plea in that behalf was raised by the claimant or not... ”

(Emphasis added)

11.9. In *R.D. Hattangadi v. Pest Control (India) (P) Ltd.*, reported in (1995) 1 SCC 551 at page 555 has held as follows:

“(9) Broadly speaking, while fixing an

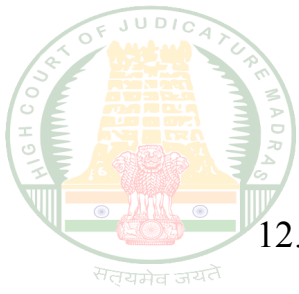


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amount of compensation payable to a victim of an accident, the damages have to be assessed separately as pecuniary damages and special damages. Pecuniary damages are those which the victim has actually incurred and which are capable of being calculated in terms of money; whereas non-pecuniary damages are those which are incapable of being assessed by arithmetical calculations. In order to appreciate two concepts pecuniary damages may include expenses incurred by the claimant : (i) medical attendance; (ii) loss of earning of profit up to the date of trial; (iii) other material loss. So far as non-pecuniary damages are concerned, they may include : (i) damages for mental and physical shock, pain and suffering already suffered or likely to be suffered in future; (ii) damages to compensate towards the loss of amenities of life which may include a variety of matters, i.e., on account of injury the claimant may not be able to walk, run or sit; (iii) damages for the loss of expectation of life, i.e., on account of injury the normal longevity of the person concerned is shortened; (iv) inconvenience, hardship, discomfort, disappointment, frustration and mental stress in life.

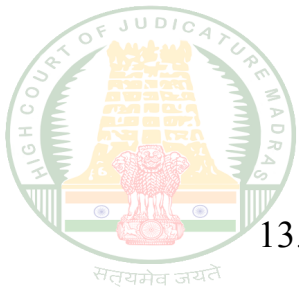


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12.For the foregoing reasons, the compensation awarded by the Tribunal

to the claimants is enhanced as follows:-

<i>Heads</i>	<i>Amount awarded by the Tribunal</i>	<i>Re-quantified amount by this Court</i>	<i>Status</i>
Loss of Medical Expenditure	Rs.9,18,171/-	Rs.9,18,171/-	confirmed
disability	Rs.4,27,500/-	Rs.4,27,500/-	confirmed
loss of income (from 15.03.2020 to 19.04.2020)	Rs.20,000/-	Rs.20,000/-	confirmed
attendant charge	Rs.5,000/-	Rs. 10,80,000/-	enhanced
Pain and Sufferings	Rs.1,00,000/-	Rs.1,00,000/-	confirmed
Transportation expenses	Rs.5,000/-	Rs.5,000/-	Confirmed
Nutrition Foods	Rs.10,000/-	Rs.10,000/-	Confirmed
Goods damages	Rs.2,000/-	Rs.2,000/-	confirmed
Future Medical Expenses	Rs.50,000/-	Rs.2,25,000/-	enhanced
Loss of future income		Rs.40,32,000/-	awarded
Total	Rs.15,37,671/-	Rs.68,19,671/-	Enhanced



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13. In result the appellant is entitled to enhancement of the compensation from Rs. 15,37,671/- to Rs.68,19,671/-.

14. Conclusion:

Accordingly the appeal is partly allowed and the award passed in M.C.O.P.No. 22 of 2020 on the file of the MACT, Manamadurai is enhanced from Rs. 15,37,671/- to Rs.68,19,671/- with interest of 7.5% from the date of the accident. The insurance company is directed to deposit the enhanced compensation within 6 weeks from the date of receipt of the copy of this order. The appellant is directed to pay the remaining Court fee. On such deposit, the appellant is entitled to withdraw the 75% of the enhanced amount and remaining 25% amount is directed to be deposited in the interest bearing account for 10 years and the appellant is entitled to withdraw the accrued interest once every six months. After 10 years, he is at liberty to withdraw the same. There shall be no order as to costs.

[P.V.J.] [K.K.R.K.,J.]
27.01.2025

Index : Yes/No
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To

1. The Motor Accident Claims Tribunal,
Manamadurai.
2. The Section Officer,
VR Section,
Madurai Bench of Madras High Court, Madurai.



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and
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