



WEB COPY

C.M.A. NOS.1902, 2302 AND 2303 OF 2022**IN THE HIGH COURT OF JUDICATURE AT MADRAS****JUDGMENT RESERVED ON : 02 / 01 / 2026****JUDGMENT DELIVERED ON : 09 / 01 / 2026****CORAM:**

THE HONOURABLE MR. JUSTICE N.SATHISH KUMAR
AND
THE HONOURABLE MR. JUSTICE R.SAKTHIVEL

C.M.A.NOS.1902, 2302 AND 2303 OF 2022**AND****C.M.P. NO.13935 OF 2022****IN****C.M.A. NO.1902 OF 2022****C.M.A. NO.1902 OF 2022**

The Divisional Manager
 The Oriental Insurance Company Limited
 No.32/13, Vijayalakshmi Complex,
 Phase – II, Sathuvachari,
 Vellore.

... Appellant /
 2nd Respondent

Versus

1. Periyasamy

... 1st Respondent /
 Petitioner

2. Sundaresan

... 2nd Respondent /
 1st Respondent

Note: Second respondent set *ex-*
parte in the Original Petitions.
 Hence, notice dispensed with.

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor
 Vehicles Act, 1988, praying to set aside the Award and Decree dated April



C.M.A. NOS.1902, 2302 AND 2303 OF 2022

13, 2022 passed in M.C.O.P. No.616 of 2018 on the file of the Motor Accident Claims Tribunal, Tiruvannamalai (In the Court of the Special Sub Court, Tiruvannamalai).

For Appellant : Mr.R.Sivakumar
For Respondent-1 : Ms.M.Malar
For Respondent-2 : Notice dispensed with

C.M.A. NO.2302 OF 2022

Periyasamy ... Appellant /
Petitioner

Versus

1. Sundaresan
2. The Divisional Manager
The Oriental Insurance Company Limited
No.32/13, Vijayalakshmi Complex,
Phase – II, Sathuvachari,
Vellore. ... Respondents /
Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, praying to enhance the compensation awarded to the appellant vide Common Award dated April 13, 2022 passed in M.C.O.P. No.616 of 2018 on the file of the Motor Accident Claims Tribunal, Tiruvannamalai (In the Court of the Special Sub Court, Tiruvannamalai).

For Appellant : Ms.M.Malar
For Respondent-1 : No appearance
For Respondent-2 : Mr.R.Sivakumar



C.M.A. NOS.1902, 2302 AND 2303 OF 2022

C.M.A. NO.2303 OF 2022

Chozhapandiyan

... Appellant /
Petitioner

Verus

1.Sundaresan

2.The Divisional Manager
The Oriental Insurance Company Limited
No.32/13, Vijayalakshmi Complex,
Phase – II, Sathuvachari,
Vellore.

... Respondents /
Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, praying to enhance the compensation awarded to the appellant vide Common Award dated April 13, 2022 passed in M.C.O.P. No.613 of 2018 on the file of the Motor Accident Claims Tribunal, Tiruvannamalai (In the Court of the Special Sub Court, Tiruvannamalai).

For Appellant : Ms.M.Malar
For Respondent-1 : No appearance
For Respondent-2 : Mr.R.Sivakumar

COMMON JUDGMENT

R.SAKTHIVEL, J.

On June 30, 2018 at about 21.30 hours, a father and son duo was



riding their TVS XL Motorcycle bearing Registration No.TN-25-AA-1352, on Tiruvannamalai - Vettavalam Road, to their house at M.G.R.

Nagar. The father's name is Periyasamy and his son's name is Sozhapandiyan. The son was driving the motorcycle and his father was on the pillion seat. While nearing M.G.R.Nagar, the rider of the Bajaj Pulsar Motorcycle bearing Registration No.TN-25-BH-6412 allegedly rode his motorcycle in a rash and negligent manner, and dashed behind the motorcycle in which the duo was travelling, leading to an accident.

2. Consequently, the son - Sozhapandiyan filed M.C.O.P. No.613 of 2018 and his father - Periyasamy (represented by his wife / next friend) filed M.C.O.P. No.616 of 2018, both on the file of 'the Motor Accident Claims Tribunal (Special Sub Court) Tiruvannamalai' ['Tribunal' for short]. In both the Original Petitions, the rider and the insurer of the Bajaj Pulsar Motorcycle bearing Registration No.TN-25-BH-6412 were arrayed as Respondent Nos.1 and 2 respectively.

3. Hereinafter, for the sake of convenience, the parties will be referred to as per their array before the Tribunal in the Motor Accident Claims Original Petition.



CASE OF THE PETITIONERS:

WEB COPY

4. Sum and substance of the case of the petitioners is as follows:

4.1. The petitioners were riding carefully following all the traffic rules and regulations, and the accident occurred solely due to the rash and negligent riding of the first respondent.

4.2. Immediately after the accident, the petitioners were taken to Government Hospital, Tiruvannamalai. From there, petitioner -Periyasamy was referred to Christian Medical College Hospital, Vellore where he obtained treatment as an in-patient for the severe head injuries caused in the accident. He had to undergo a surgery and two of his bones in the head region had to be completely removed. On July 11, 2018, Periyasamy was shifted for further treatment to Trinity Acute Care Hospital, Chennai, where he was admitted as an in-patient till July 30, 2018.

4.3. Due to the accident, the petitioner - Periyasamy sustained multiple fractures on his head and injuries all over the body, and the petitioner - Sozhapandiyan sustained multiple fractures on his right leg, knee & nodes and also sustained injuries all over his body.



4.4. The respondents 1 and 2, being the rider and the insurer of the offending motorcycle respectively, are jointly liable to compensate the petitioners.

4.5. With regard to the accident, a First Information Report (FIR) in Crime No.1105 of 2018 was registered against the first respondent under Sections 279 and 337 of the Indian Penal Code, 1860.

4.6. The medical and transportation expenses of the petitioner - Periyasamy went to the tune of Rs.10,00,000/- and Rs.2,00,000/- was spent towards his nourishment. The accident left a serious impact on his life. The accident affected the cognitive functions of his brain and he has been suffering from bladder and bowel incontinence. As he is not in a state to represent himself, he is represented by his wife/next friend in the Original Petition. He is 100% permanently disabled due to the accident. At the time of accident, he was 55 years old and was working as a Driver in 'Tamil Nadu State Transport Corporation' ['TNSTC'] earning an aggregate sum of Rs.50,000/- per month as salary. Consequent to the accident, he is unable to perform his duties as Driver. Accordingly, the petitioner - Periyasamy represented by his wife / next friend claimed a compensation of Rs.50,00,000/- from the respondents.



4.7. The medical and transportation expenses of the petitioner - Sozhapandiyan (son) went to the tune of Rs.1,00,000/- and Rs.50,000/- was spent on his nourishment. At the time of accident, Sozhapandiyan was 22 years old, a first class graduate in B.E. Mechanical Engineering and was employed as an Engineer and earning a sum of Rs.30,000/-. The accident rendered him unable to perform his day to day activities without the help of others. He also lost his income. Accordingly, he claimed Rs.5,00,000/- as compensation from the respondents 1 and 2.

CASE OF THE RESPONDENTS:

5. That being the case of the petitioners, the respondents 1 and 2 filed their separate counters in both the Original Petitions. Apart from formal denials, the respondents disputed the manner of accident by stating that the accident was caused by the negligence of the petitioner - Sozhapandiyan in turning the vehicle right abruptly without any indication. The second respondent specifically averred that the petitioners were not wearing helmet at the time of accident. Stating so, they prayed to dismiss the Original Petitions.

6. The first respondent remained absent after filing of the counter and did not contest the Original Petitions. Hence he was set *ex-parte*



before the Tribunal.

WEB COPY

TRIBUNAL:

7. The Tribunal tried both the Original Petitions jointly.

8. On the side of the petitioners, P.W.1 to P.W.7 were examined. P.W.1 is the petitioner in M.C.O.P.No.613 of 2018 - Sozhapandiyan (son). P.W.2 is the wife of the petitioner in M.C.O.P.No.616 of 2018 - Periyasamy (father). P.W.3 is a Superintendent at TNSTC. P.W.4 is Doctor Arul Manish from Mahatma Gandhi Medical College and Hospital, Pondicherry. P.W.5 and P.W.6 are Physical Medicine and Rehabilitation Specialists namely Dr.Thangam Yuvaraj and Dr.Raja Kumar respectively. P.W.7 is the Public Relation Officer of aforesaid Trinity Acute Care Hospital. Ex-P.1 to Ex-P.33 along with Ex-C.1 and Ex-C.2 - Disability Certificates issued by Medical Board to the petitioners were marked.

9. On the side of the second respondent, Ex-R.1 - Attendance Particulars of the petitioner - Periyasamy was marked in the cross-examination of P.W.3 - TNSTC Superintendent.

10. After enquiry and hearing both sides, the Tribunal passed a Common Award on April 13, 2022. On the strength of the oral evidence of

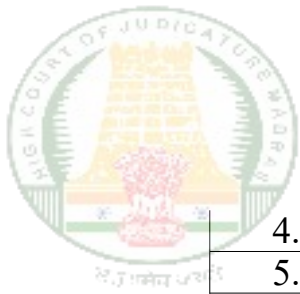


C.M.A. NOS.1902, 2302 AND 2303 OF 2022

P.W.1 & P.W.2, and the documents in Ex-P.1 - FIR, Ex-P.3 - Final Report and Ex-P.4 - Judgment in S.T.C. No.30 of 2019 in Crime No.1105 of 2018, the Tribunal held that the accident occurred due to the rash and negligent riding of the first respondent. It was further held that the offending vehicle was insured with the second respondent at the time of accident. Hence, the second respondent is liable to compensate the petitioners. The Tribunal granted a sum of Rs.2,45,000/- to the petitioner - Sozhapandiyan (son) in M.C.O.P. No.613 of 2018, and Rs.29,80,395/- to the petitioner – Periyasamy (father) in M.C.O.P. No.616 of 2018. The break-up figures are as tabulated below:

Compensation for Sozhapandiyan, the petitioner in M.C.O.P. No.613 of 2022		
Sl.No.	Head	Amount
1.	Loss due to 20% Functional Disability	Rs. 1,00,000/-
2.	Pain and Sufferings	Rs. 35,000/-
3.	Extra Nourishment	Rs. 10,000/-
4.	Attender Charges	Rs. 10,000/-
5.	Loss of income during the treatment period	Rs. 30,000/-
6.	Transportation Expenses	Rs. 10,000/-
7.	Loss of Amenities	Rs. 50,000/-
Total Compensation		Rs. 2,45,000/-

Compensation for Periyasamy, the petitioner in M.C.O.P. No.616 of 2022		
Sl.No.	Head	Amount
1.	Loss due to 30% Functional Disability	Rs. 20,28,298/-
2.	Pain and Sufferings	Rs. 50,000/-
3.	Extra Nourishment	Rs. 25,000/-



C.M.A. NOS.1902, 2302 AND 2303 OF 2022

4.	Medical Expenses	Rs. 7,27,097/-
5.	Attender Charges	Rs. 25,000/-
6.	Transportation Expenses	Rs. 25,000/-
7.	Loss of Amenities	Rs. 1,00,000/-
Total Compensation		Rs. 29,80,395/-

11. Feeling aggrieved by the quantum of compensation awarded vide Common Award, the father / petitioner in M.C.O.P. No.616 of 2018 has preferred C.M.A. No.2302 of 2022, the son / petitioner in M.C.O.P. No.613 of 2018 has preferred C.M.A.No.2303 of 2022.

12. On the other hand, assailing the Common Award in M.C.O.P. No.616 of 2018, the second respondent / insurance company therein has preferred C.M.A. No.1902 of 2022.

13. As these Civil Miscellaneous Appeals are arising out of a Common Award and as joint enquiry was conducted in the Original Petitions, this Court shall dispose of these Civil Miscellaneous Appeals vide this Common Judgment.

ARGUMENTS:

14. Submissions of Ms.M.Malar, the learned Counsel appearing for the Appellants in C.M.A. Nos.2302 and 2303 of 2022 / Petitioners, regarding the petitioner - Periyasamy (father), are as follows:



WEB COPY

- (i) She would submit that Periyasamy was working as a Driver in TNSTC at the time of accident. Due to the severity of the injuries caused by the accident, he is not able to perform his duties as a Driver. Hence, he availed all his leaves and thereafter, retired from service voluntarily on March 16, 2020.
- (ii) She would draw attention of this Court to the oral evidence of P.W.4 to P.W.7 as well as the Medical Records in Ex-P.12 to Ex-P.14, Ex-P.22 to Ex-P.33 and Ex-C.2 - Disability Certificate, and submit that though the Medical Board assessed 30% permanent disability, the severe head injuries suffered in the accident has caused 100% functional disability to Periyasamy.
- (iii) In other words, her submission is that the due to the 30% permanent disability, Periyasamy could not perform his duties as Driver and hence, the Tribunal ought to have taken 100% functional disability.
- (iv) Further Periyasamy was admitted in hospital for more than 34 days as an in-patient and suffered lots of pain and sufferings. The Tribunal failed to consider the same. The Tribunal also failed to consider the nature of injuries. The Tribunal erred in not awarding future medical expenses. Accordingly, she would pray to allow the Civil Miscellaneous Appeal in C.M.A. No.2302 of 2022, dismiss



that in C.M.A. No.1902 of 2022 and enhance the Award amount.

WEB COPY

14.1. Her arguments with regard to the petitioner - Sozhapandiyan (son) are as follows:

- (i) At the time of accident, Sozhapandiyan was 21 Years old and was a first class graduate in B.E. Mechanical Engineering from an autonomous college affiliated to Anna University, Chennai. He was working as an Engineer and earned a sum of Rs.30,000/- per month. But the Tribunal fixed his monthly income at Rs.10,000/- which is on the lower side.
- (ii) Further, the Tribunal failed to consider the fact that Sozhapandiyan suffered severe fracture in his right leg for which an internal fixation was done. Consequently, he cannot perform his day to day functions without the aid of others. Hence, the Tribunal ought to have assessed compensation by applying multiplier method instead of opting for percentage method. Accordingly, she would pray to enhance the compensation awarded in M.C.O.P. No.613 of 2018 by applying multiplier method.

15. On the other hand, Mr.R.Sivakumar, learned Counsel appearing



for the second respondent / insurance company would draw the attention of this Court to Ex-P.1 - F.I.R. and Ex-P.3 - Final Report, and submit that the petitioner - Sozhapandiyan (son) is the informant in Criminal Case. He preferred a complaint before the police in writing that, as he attempted to turn right, the first respondent collided with his motorcycle from behind. Even as per his version of the accident, he is the one who made a turn. While making a turn, he ought to have taken due care but he failed to do so. He turned without using indicators and without checking his rear view mirrors. The rash and negligence on his part could be inferred from Ex-P.1. Further, both the petitioners were not wearing helmet at the time of accident. In these circumstances, the Tribunal ought to have deducted a sum in the compensation for contributory negligence.

15.1. Further, as regards the petitioner - Periyasamy (father) he would submit that the Medical Board assessed 30% disability vide Ex-C.2 - Disability Certificate. Even while assuming the averment that Periyasamy cannot perform his duties as a Driver to be true, TNSSTC had offered alternate employment / role to him. However, Periyasamy on his own volition chose to retire on March 16, 2020. In these circumstances, the Tribunal is not justifiable in employing multiplier method. Instead, the Tribunal ought to have awarded compensation under percentage method.



Hence, the compensation awarded by the Tribunal is excessive and not just. Furthermore, Periyasamy receives monthly pension and had already received terminal benefits from TNSTC. Periyasamy would have attained superannuation in the year 2021 and hence there is no much loss. When there is only one year of service left after voluntary retirement, the Tribunal is not right in awarding future prospects.

15.2. Further, as regards the petitioner - Sozhapandiyan (son), he would submit that the accident occurred on June 30, 2018 and Sozhapandiyan preferred a written complaint in person before the police on July 2, 2018 at 16.30 hours, based on which Ex-P.1 - F.I.R. was registered. The fact that he preferred a complaint himself two days after the accident points to his wellbeing. Hence, he did not suffer any serious injury in the accident. Furthermore, as per Ex-P.5 - Discharge Summary he was admitted in a private hospital on September 28, 2018 for installing an internal fixation in his right leg and he was discharged on October 5, 2018. But, no medical bill or proof of medical expenses have been let in. There is also no sufficient and independent evidence as to the financial loss caused to him due to the injuries. The Tribunal considering the evidence adduced by Sozhapandiyan rightly awarded a sum of Rs.2,45,000/- under various heads and there is no need to interfere with it. There is no need to enhance



the compensation awarded by the Tribunal.

WEB COPY

15.3. Accordingly, he would pray to allow the C.M.A. No.1902 of 2022 and dismiss C.M.A Nos.2302 and 2303 of 2022.

DISCUSSION:

16. This Court has considered both sides' submissions and perused the evidence available on record.

NEGLIGENCE:

17. According to the petitioners, the accident was caused solely due to the rash and negligence on the part of the first respondent. The defence put up by the respondents is that the petitioners abruptly turned right in a negligent manner without using indicators and that led to the accident.

18. In Ex-P.1 - F.I.R. lodged based on the information given by the petitioner - Sozhapandiyan (son), it has been stated that the first respondent dashed the petitioners' motorcycle from behind when they attempted to make a right turn. But in the Original Petitions as well as in the chief affidavit of P.W.1 who is the petitioner - Sozhapandiyan and P.W.2 who is the Wife / Next Friend representing the petitioner -



Periyasamy, the petitioners have consistently maintained a stand that the first respondent rode in a rash and negligent manner and hit the petitioners' motorcycle from behind leading to the accident; there is no mention of them making a right turn. Even while assuming that the accident occurred when the petitioners attempted to turn right, that alone is not sufficient to attribute negligence on their part, that too when in the Original Petitions as well as in the chief affidavit of P.W.1, it is stated that the petitioners rode following all the traffic rules and regulations. They could have made the turn using proper indication and after taking due care.

19. Either ways, the fact remains that the first respondent collided with the petitioners' motorcycle from behind. In this case, Ex-P.3 - Final Report was filed against the first respondent and the Criminal Case with regard to the accident was decided against the first respondent after he admitted to the offence, as it can be seen from the Judgment in Ex-P.4. The burden is on the second respondent to establish that the petitioners were negligent while making the alleged right turn. The second respondent has merely pleaded but has not adduced any evidence in this regard. In the absence of any other evidence or ocular witness, examination of the first respondent to prove the alleged negligence on the part of the petitioners while making the alleged right turn gains significance. In the absence of



any other witness first respondent is the competent person to depose in this regard. The first respondent as stated *supra*, though initially entered appearance and filed counter, was subsequently, called absent and set *ex-parte*. The second respondent did not take any steps to bring the first respondent to the witness box. Further, nothing could be elicited in favour of the respondents from the cross-examination of P.W.1 in this regard. When confronted with the inconsistency with regard to the manner of accident as stated in the F.I.R. and as stated in the Original Petitions, P.W.1 took a firm stand that it was the first respondent who caused the accident by riding in a rash and negligent manner and hitting their motorcycle from behind. As stated *supra*, the minor inconsistency in the F.I.R. is not sufficient to attribute negligence on the petitioners given that the Criminal Case was decided against the first respondent, that the first respondent being the competent person to depose in this regard was not examined and that there is absolutely no other evidence in this regard in favour of respondents. Hence, this Court concludes that the accident occurred due to the rash and negligent riding of the first respondent leading to a rear end collision with the petitioners' motorcycle.

20. The second respondent had set up another defence in their counter that the petitioners were not wearing helmet at the time of accident



and hence they must be mulcted with deduction for contributory negligence. Contributory Negligence can be fixed only when the petitioners had contributed to the cause of accident or to the severity of injuries. If the petitioners were not wearing helmet and that contributed to the severity of the injuries, then they could be held liable for contributory negligence. However, in the first place, there has to be direct or corroborative evidence for such act of contributory negligence i.e., for the petitioners not wearing helmet. Other than the counter averment, there is absolutely no step taken by the second respondent. P.W.1 was not cross-examined in this regard by the second respondent. There is no evidence to show that the petitioners were not wearing helmet. Hence, the petitioners cannot be held liable for contributory negligence.

Quantum of Compensation for the petitioner - Sozhapandiyan in M.C.O.P. No.613 of 2018:

21. According to the petitioner - Sozhapandiyan, he sustained severe injuries in his right leg and he was rushed to Government Hospital, Tiruvannamalai after the accident where he obtained treatment as an in-patient for 10 days. But no treatment particulars, bills, discharge summary or any other medical evidence has been adduced by him to prove the said averment. But, the petitioner was subsequently admitted as an



in-patient from September 25, 2018 to October 5, 2018 in the aforesaid hospital and the same is supported by Ex-P.5 - Discharge Summary. Ex-P.5 further shows that during the said period the Sozhapandiyan underwent a surgery and an internal fixation was installed in his right leg. In Ex-C.1 - Disability Certificate, the Medical Board has assessed Sozhapandiyan's disability at 20%, owing to the grievous injury in the right leg (fracture right leg both bone with internal fixator). It is to be noted that there is no evidence to show that the injury in the right leg of the Sozhapandiyan caused him functional disability. In the absence of evidence for the same, the Tribunal is right in employing the percentage method to calculate compensation for the disability suffered by him. This Court does not find any irregularity or illegality in it.

22. The accident occurred on June 30, 2018. As per Ex-P.7 - Driving Licence, the petitioner - Sozhapandiyan was born on June 03, 1997. On the date of accident he was 21 years old. From Ex-P.6 - Graduation Certificate issued in December 2018, it could be seen that he graduated B.E. Mechanical Engineering Course in first class in May 2018, about one month before the accident. He claims that he was working as an engineer and was earning Rs.30,000/- per month. But he has stated nothing more or particular about his occupation. He has not examined any witness or



adduced any documentary evidence such as bank statement, salary slip, identity card, *etc.*, to prove his alleged employment and income. It was in these circumstances the Tribunal took a notional income of Rs.10,000/-, held that Sozhapandiyan could not have been to work for three months in view of the injuries caused and accordingly awarded Rs.30,000/- as loss of income due to the injury. The same is justifiable. Further, the Tribunal had granted compensation towards Loss of Amenities, Pain and Sufferings, Transportation Expenses, Extra Nourishment and Attender Charges and this Court finds no issue with the same. Hence, the quantum of compensation awarded by the Tribunal in M.C.O.P. No.613 of 2018 is just and reasonable and this Court finds no reason to interfere with the same. **Therefore, Civil Miscellaneous Appeal No.2303 of 2022 is liable to be dismissed as devoid of merits.**

Quantum of Compensation in M.C.O.P. No.616 of 2018 for the petitioner – Periyasamy:

23. Case of the petitioner - Periyasamy is that in the accident he suffered severe and traumatic head injuries which have affected the cognitive functions of his brain. Consequently, he cannot carry out his day-to-day activities on his own much less perform his duties as Driver and



hence, he suffers from 100% functional disability.

WEB COPY

24. The petitioner - Periyasamy obtained treatment from various hospital and the particulars are as tabulated hereunder:

Sl. No.	Hospital Name	Exhibit	Date of Admission	Date of Discharge	Treatment Given	Amount paid
1.	Government Hospital		30.06.2018	30.06.2018	First aid	-
2.	Christian Medical College, Vellore	Ex-P.12 - Discharge Summary	01.07.2018	11.07.2018	Bilateral frontotemporal decompressive craniotomy on 02/07/2018. The temporalis muscle was contused bilaterally more on the left side. There was linear fracture of the left temporal bone. Dura was range before dural opening. There was a thin acute subdural hematoma in the left frontal and temporal region. The left temporal lobe was contused at the temporal pole and posterior part of the superior temporal gyrus. At the end of surgery brain was lax and pulsatile	Rs. 3,26,045.66/-



WEB COPY



C.M.A. NOS.1902, 2302 AND 2303 OF 2022

3.	Trinity Acute Care Hospital	Ex-P.13	11.07.2018	30.07.2018	2 lacerations over the right elbow measuring 2 x 1 x 1 cm each. CT revealed oedema causing effacement of basal cisterns, third ventricle and convexity subarachnoid spaces. Was treated conservatively with Mannitol, hydration, Hypertonic saline, antiepileptics, analgesics and antacids. Repeat CT showed increase in the perilesional edema around the basifrontal and left temporal contusions causing increased mass effect on the left lateral ventricle and midline shift of 1cm to the right. Hence Bilateral fronto temporal decompressive craniotomy was done on 2/7/18. Post operatively he was ventilated on 5/7/18. In view of need for long term airway protection, tracheostomy was done on 6/7/18. Gradually he was weaned off from ventilator. During his stay in ICU, had intermittent high grade fever and started on empirical antibiotics. Urine culture grew E coli, Klebsiella and sputum culture grew Pseudomonas and Klebsiella. Then started on Gentamycin as per culture sensitivity	Doctor Consultation fees- Rs. 26,000/- Medicines- Rs.1,15,512.88/- Total- Rs. 1,41,512.88/-
----	-----------------------------	---------	------------	------------	--	---



WEB COPY



C.M.A. NOS.1902, 2302 AND 2303 OF 2022

4.	Trinity Acute Care Hospital	Ex-P.30	17.09.2018	25.09.2018	The bicronal scalp incision was reopened on the right side, scalp flap raised upto the orbital margin and the skull bone was exposed all around the defect. Titanium mesh was modeled and fixed with screws with periosteum. Hemostasis secured. Suction drain instituted. Scalp wound closed in layers.	Doctor Consultation fees-Rs. 1,49,500/- Medicines- Rs. 96,516.10/- Total- Rs. 2,46,016.10/-
----	-----------------------------	---------	------------	------------	---	---



WEB COPY



C.M.A. NOS.1902, 2302 AND 2303 OF 2022

5.	Mahatma Gandhi Hospital	Ex-P.22	09.01.2019	11.01.2019	Fifty five year old Male Mr.Periyasamy was brought to the OPD six months post trauma with multiple episodes of seizures and difficulty in speech. He had undergone bilateral frontal and temporal decompressive craniectomy for bilateral frontal contusions in June 2018 and bilateral frontal and temporal cranioplasty elsewhere. He was admitted and treated with oral anti-epileptics, analgesics and other supportive measures. His speech problem was evaluated by ENT surgeon and was advised rehabilitative measures. His anti-epileptic drugs were adjusted. Psychiatrist adjusted his anti-depressants. He was discharged with advice to review in Neurosurgery OPD	-
----	-------------------------	---------	------------	------------	---	---



WEB COPY



C.M.A. NOS.1902, 2302 AND 2303 OF 2022

6.	Mahatma Gandhi Hospital	Ex-P.33	02.01.2020	04.01.2020	Fifty five year old Mr.Periyasamy was brought to the OPD with two episodes of seizures. He had undergone bilateral frontal and temporal craniectomy for bilateral frontal contusions in June 2018 and bilateral frontal and temporal cranioplasty elsewhere. He was admitted and treated with oral anti-epileptics, analgesics and other supportive measures. His anti-epileptic drugs were optimised. He had no further episodes of seizures. He was discharged with advice to review in Neurosurgery OPD	-
----	-------------------------	---------	------------	------------	--	---

25. The petitioners' side examined P.W.6 - Dr.Raja Kumar, Associate Professor and Physical Medicine & Rehabilitation Specialist. He is one of the member of the Medical Board constituted to assess the disability of the petitioner - Periyasamy. He deposed that at the time of medical assessment i.e., on February 13, 2019, it was found that Periyasamy's front right side bone and left temporal bone were removed, and that he had suffered fracture in his hands. He further deposed that Periyasamy suffered 25% permanent disability due to the head injury and 5% permanent disability due to the fracture in hands, as per the assessment of the Medical Board vide Ex-C.2 - Disability Certificate . He further



deposed that Periyasamy would not be able to continue his Driver profession in view of the disability.

26. The evidence of P.W.5 - Dr.Thangam Yuvraj who is also a Physical Medicine & Rehabilitation Specialist, corroborates the evidence of P.W.6.

27. P.W.4 - Doctor Arul Manish, Doctor at Mahatma Gandhi Medical College, Pondicherry deposed that Periyasamy was admitted as an in-patient for seizures and psychiatric treatment on January 9, 2019 and was discharged on January 11, 2019. Thereafter, he has been periodically obtaining treatment from his hospital for seizures and psychiatric treatment. Periyasamy had difficulty in identifying people and could not provide appropriate responses to questions. Periyasamy also had speech difficulties. He further deposed that Periyasamy was diagnosed with kidney stone and liver issues. In his professional opinion, all these were caused as a result of the head injury caused in the accident. He opined that Periyasamy would not be able to work as a Driver.

28. From a cumulative reading of the above evidence, this Court is of the considered opinion that though Ex-C.2 - Disability Certificate assessed the petitioner - Periyasamy's disability as 30% permanent disability, he has suffered 100% functional disability. All the expert



witnesses / doctors are of the same opinion that Periyasamy cannot pursue his driver profession in view of the injuries sustained in the accident and its post sequelae. Close reading of P.W.4's evidence would show that the accident has rendered Periyasamy not just unfit for the post of driver, but he cannot even take up any other occupation. P.W.4 has deposed that Periyasamy have speech and psychiatric issues, he is unable to give appropriate response to questions, and he has difficulty in even identifying people. These coupled with the severity of the head injury helps this Court to infer the level of cognitive impairment suffered by the petitioner - Periyasamy. This Court is of the considered opinion that Periyasamy cannot lead a normal life, requires support from others to carry out his day-to-day functions and cannot take up any occupation for his livelihood. Hence, the contentions of the learned Counsel for the insurance company *qua* alternative employment / role offered by TNSSTC are rejected. In these circumstances, the Tribunal is not justifiable in considering the disability of Periyasamy as merely 30% permanent disability. The Tribunal failed to note that the 30% permanent disability has caused him 100% functional disability. Hence, this Court shall re-work the compensation by considering it as 100% functional disability.

29. Periyasamy was employed at TNSSTC as a Driver and voluntarily



retired from service on March 16, 2020. Periyasamy's Pay Slip for June 2018 and December 2019 have been marked as Ex-P.15. Ex-P.15 shows that his last drawn aggregate salary was Rs.52,742/- and that it was in the month of December 2019. Though the accident occurred on June 30, 2018, Periyasamy has received his salary till December, 2019. He has not suffered any loss of income until then. Hence, compensation for loss of income shall be reckoned from December 2019 and not from the date of accident.

30. Further, - Periyasamy's service register has been marked as Ex-P.21. It shows that he was born on March 10, 1963, that he joined service on September 9, 1992, that at the time he last drew his salary i.e., in December 2019, he was aged 56 years and he was serving as a Special Grade Driver, and that his date of superannuation is March 31, 2021. As per the evidence of P.W.3 – TNSTC Superintendent, he is entitled to a sum of Rs.12,821/- as pension after his voluntary retirement as per Special Pension Rules framed by TNSTC.

31. As stated *supra*, Rs.52,742/- is his last drawn salary. As per the Judgment of Hon'ble Supreme Court in ***National Insurance Company Limited -vs- Pranay Sethi***, reported in ***(2017) 16 SCC 680***, any person aged 50 to 60 Years in permanent employment is entitled to 15% future

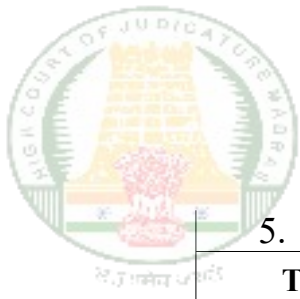


prospects. With 15 % future prospects, the monthly income of the petitioner - Periyasamy would be Rs. 60,653/- and his annual income would be Rs.7,27,836/-. The Income tax slabs for the assessment years 2019-2020 are given below:

For Individuals (Resident or Non-Resident) below 60 Years	
Taxable Income Range (INR)	Tax Rate
Up to Rs.2,50,000	Nil
Rs.2,50,001 to Rs.5,00,000	5% (of amount exceeding Rs.2,50,000)
Rs.5,00,001 to Rs.10,00,000	?12,500 + 20% (of amount exceeding Rs.5,00,000)
Above Rs.10,00,000	?1,12,500 + 30% (of amount exceeding Rs.10,00,000)

32. Calculating the income tax payable by the petitioner - Periyasamy as per the above slabs, he would have had to pay Rs.58,067/- annually. After deducting the income tax payable, the annual income of Periyasamy would be Rs.6,69,769/-. The appropriate multiplier for the age of 56 years is 9 as per the Judgment of Hon'ble Supreme Court in **Sarla Verma -vs- Delhi Transport Corporation**, reported in (2009) 6 SCC 121. With the multiplier of 9, the total compensation under the head of loss of income would be Rs.60,27,921/-. The following table summarizes the calculation of compensation towards loss of income:

Sl.no.	Description	Amount
1.	Monthly Salary	Rs. 52,742/-
2.	Adding Future Prospects- 15%	Rs. 60,653/-
3.	Annual Income (12 months)	Rs. 7,27,836/-
4.	Income Tax Deduction (IT- Rs. 58,067/-)	Rs. 6,69,769/-



C.M.A. NOS.1902, 2302 AND 2303 OF 2022

5.	Applying Multiplier of 9	Rs. 60,27,921/-
	Total Compensation under the head of loss of income	Rs. 60,27,921/-

WEB COPY

33. The Hon'ble Supreme Court in *Maya Singh -vs- Oriental Insurance Company Limited*, reported in *2025 SCC OnLine SC 266* as well as in various other cases, have held that in general split multiplier method is not to be applied unless for special reasons. In this case, as per the evidence of P.W.3 - TNSSTC Superintendent, as per the policy decision of the Government of Tamil Nadu, TNSSTC provides two years extension in service after superannuation, and hence, if not for the accident, the petitioner - Periyasamy would have served till March 31, 2023. This means he had more years of service. Further, perusal of the various medical records available on record shows that Periyasamy was hale and healthy before the accident. He was not suffering from any Blood Pressure issues or Diabetes before the accident as it could be seen from Ex-P.13 – Discharge Summary. This means his chances of income generation post-retirement is remote. In these circumstances, this Court finds no reason to adopt split multiplier method in this case.

34. As regards the contention of learned Counsel for the insurance company regarding monthly pension and other terminal benefits, it is



apposite to cite here the decision of the Hon'ble Supreme Court in ***Lal Dei -vs- Himachal Road Transport***, reported in ***(2007) 8 SCC 319***, wherein the Hon'ble Supreme Court following its decision in ***Helen C. Rebello -vs- Maharashtra SRTC***, reported in ***(1999) 1 SCC 90***, held as follows:

'4. ...The Motor Accidents Claims Tribunal as well as the High Court could not have deducted the amount of family pension given to the family while calculating the dependency of the claimants. In Helen C. Rebello v. Maharashtra SRTC AIR 1998 SC 3191: (1999) 1 SCC 90 this Court has specifically dealt with this question and said that the family pension is earned by an employee for the benefit of his family in the form of his contribution in the service in terms of the service conditions receivable by the heirs after his death. The heirs receive family pension even otherwise than the accidental death. There is no co-relation between the two and therefore, the family pension amount paid to the family cannot be deducted while calculating the compensation awarded to the claimants. In view of this, the appeal is allowed. The order of deduction of the family pension is set aside. Accordingly, the Appellants would be entitled for an amount of Rs. 10,27,000 as compensation with interest at the rate of 9% from the date of the filing of the petition.'

34.1. Further, the Hon'ble Supreme Court in ***Vimal Kanwar -vs- Kishore Dan***, reported in ***(2013) 7 SCC 476***, relying on *Helen's Case* (cited *supra*), held as follows:

'19. The aforesaid issue fell for consideration before this



Court in Helen C. Rebello vs. Maharashtra SRTC (1999) 1 SCC 90. In the said case, this Court held that provident fund, pension, insurance and similarly any cash, bank balance, shares, fixed deposits, etc. are all a “ pecuniary advantage ” receivable by the heirs on account of one ’s death but all these have no correlation with the amount receivable under a statute occasioned only on account of accidental death. Such an amount will not come within the periphery of the Motor Vehicles Act to be termed as “ pecuniary advantage ” liable for deduction. The following was the observation and finding of this Court:

“35. Broadly, we may examine the receipt of the provident fund which is a deferred payment out of the contribution made by an employee during the tenure of his service. Such employee or his heirs are entitled to receive this amount irrespective of the accidental death. This amount is secured, is certain to be received, while the amount under the Motor Vehicles Act is uncertain and is receivable only on the happening of the event, viz., accident, which may not take place at all. Similarly, family pension is also earned by an employee for the benefit of his family in the form of his contribution in the service in terms of the service conditions receivable by the heirs after his death. The heirs receive family pension even otherwise than the accidental death. No correlation between the two. Similarly, life insurance policy is received either by the insured or the heirs of the insured on account of the contract with the insurer, for which the insured contributes in the form of premium. It is receivable even by the insured if he



WEB COPY



C.M.A. NOS.1902, 2302 AND 2303 OF 2022

lives till maturity after paying all the premiums. In the case of death, the insurer indemnifies to pay the sum to the heirs, again in terms of the contract for the premium paid. Again, this amount is receivable by the claimant not on account of any accidental death but otherwise on the insured's death. Death is only a step or contingency in terms of the contract, to receive the amount. Similarly any cash, bank balance, shares, fixed deposits, etc. though are all a pecuniary advantage receivable by the heirs on account of one's death but all these have no co-relation with the amount receivable under a statute occasioned only on account of accidental death. How could such an amount come within the periphery of the Motor Vehicles Act to be termed as “pecuniary advantage” liable for deduction. When we seek the principle of loss and gain, it has to be on a similar and same plane having nexus, inter se, between them and not to which there is no semblance of any co-relation. The insured (the deceased) contributes his own money for which he receives the amount which has no co-relation to the compensation computed as against the tortfeasor for his negligence on account of the accident. As aforesaid, the amount receivable as compensation under the Act is on account of the injury or death without making any contribution towards it, then how can the fruits of an amount received through contributions of the insured be deducted out of the amount receivable under the Motor Vehicles Act. The amount under this Act he receives without any contribution. As we have said, the compensation



WEB COPY



C.M.A. NOS.1902, 2302 AND 2303 OF 2022

payable under the Motor Vehicles Act is statutory while the amount receivable under the life insurance policy is contractual. ” ’

34.2. Furthermore, the Hon'ble Supreme Court in ***Sebastiani Lakra -vs- National Insurance Company Limited***, reported in **(2019) 17 SCC 465** has held as follows:

'14. As far as the amounts of pension and gratuity are concerned, these are paid on account of the service rendered by the deceased to his employer. It is now an established principle of service jurisprudence that pension and gratuity are the property of the deceased. They are more in the nature of deferred wages. The deceased employee works throughout his life expecting that on his retirement he will get substantial amount as pension and gratuity. These amounts are also payable on death, whatever be the cause of death. Therefore, applying the same principles, the said amount cannot be deducted.'

34.3. Thus, the law is well settled that the family pension amount cannot be deducted while computing the compensation payable to the dependents of the deceased. This Court is of the considered view that the same principle is equally applicable to the present case. This is because, had the accident not occurred and had Periyasamy voluntarily retired from service or attained superannuation, he would have been in a position to



generate income through other means while continuing to receive pension.

He could have been employed elsewhere or could have run some business.

In other words, if not for the accident, Periyasamy could have earned money in addition to his pension benefits. Only because of the accident, he lost his entire earning capacity and the compensation awarded towards loss of income is intended to compensate for such loss of earning capacity and therefore, the receipt of pension cannot be treated as an impediment.

34.4. As functional disability of the petitioner - Periyasamy is considered at 100%, there is no need to award compensation under the head of the Loss of Amenities and hence, the same is liable to be removed. In this regard reference may be made to ***Raj Kumar -vs- Ajay Kumar***, reported in ***(2011) 1 SCC 343***, wherein Hon'ble Supreme Court observed as follows:

"15. 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 a duplication in the award of compensation. Be that as it may."



35. The Tribunal has rightly awarded a sum of Rs.7,27,097/- based on the various medical records, bills as well as the evidence of doctors. As regards the compensation under the other heads, they all seem to be just and reasonable in the considered opinion of this Court. Hence, this Court is inclined to confirm them. The compensation payable to the petitioner - Periyasamy can be summarized through the following table:

Compensation for Periyasamy, the petitioner in M.C.O.P. No.616 of 2022		
Sl.no.	Head	Amount
1.	Loss of income	Rs. 60,27,921/-
2.	Pain and Sufferings	Rs. 50,000/-
3.	Extra Nourishment	Rs. 25,000/-
4.	Medical Expenses	Rs. 7,27,097/-
5.	Attender Charges	Rs. 25,000/-
6.	Transportation Expenses	Rs. 25,000/-
Total Compensation		Rs.68,80,018/-

CONCLUSION

36. Resultantly, C.M.A. Nos.1902 and 2303 of 2022 are dismissed, and C.M.A. No.2302 of 2022 is partly allowed in the following manner:

- (i) The compensation awarded in M.C.O.P. No.616 of 2018 is hereby enhanced to Rs.68,80,018/- [Rupees Sixty Eight Lakhs Eighty Thousand and Eighteen only].
- (ii) The second respondent / insurance company is



directed to deposit the enhanced compensation along with 6% interest per annum from the date of Original Petition till realisation, less the amount if any already deposited, within a period of six (6) weeks from the date of receipt of a copy of this Common Judgment, to the credit of M.C.O.P. No.616 of 2018 on the file of the Motor Accident Claims Tribunal (Special Sub Court) Tiruvannamalai.

- (iii) Upon such deposit by the insurance company, the Tribunal shall deposit Rs.25,00,000/- in an interest bearing fixed deposit in a nationalised bank renewable periodically and shall permit withdrawal of the interest accrued thereon every six (6) months. A lump sum portion out of the deposited amount of Rs.25,00,000/- may be disbursed upon the Tribunal's satisfaction of necessity to the petitioner – Periyasamy. The Tribunal shall ensure that the deposited amount of Rs.25,00,000/- and the interest accruing thereon are used only for the welfare of the petitioner - Periyasamy.



WEB COPY



C.M.A. NOS.1902, 2302 AND 2303 OF 2022

(iv) The Tribunal shall disburse the remaining amount in the deposit made by the second respondent / insurance company, to the wife / next friend of the petitioner - Periyasamy.

(v) In all other aspects the Award of the Tribunal holds good.

37. In view of the facts and circumstances of this case, there shall be no order as to costs in all the Civil Miscellaneous Appeals. Connected Civil Miscellaneous Petition is closed.

[N.S.K., J.]

[R.S.V., J.]

09 / 01 / 2026

Index : Yes
Neutral Citation : Yes
Speaking Order : Yes
TK

To

The Motor Accident Claims Tribunal
(Special Sub Court)

Page No.38 of 40



Tiruvannamalai.

WEB COPY



C.M.A. NOS.1902, 2302 AND 2303 OF 2022



WEB COPY



C.M.A. NOS.1902, 2302 AND 2303 OF 2022

N.SATHISH KUMAR, J.

AND

R.SAKTHIVEL, J.

TK

PRE-DELIVERY COMMON JUDGMENT MADE IN
C.M.A.NOS.1902, 2302 AND 2303 OF 2022

09 / 01 / 2026

Page No.40 of 40