

(2013) 03 MAD CK 0008

In the Madras High Court

Case No : C.M.A. No. 1097 of 2013 and M.P. No. 1 of 2013

Managing Director, Metropolitan Transport Corporation Ltd.

APPELLANT

Vs

Ramarao

RESPONDENT

Date of Decision : 25-03-2013

Acts Referred:

Citation : (2013) 3 ACC 241 : (2013) 5 MLJ 715

Hon'ble Judges : S. Manikumar, J

Bench : Single Bench

Advocate : S.S. Swaminathan, for the Appellant;

Judgement

S. Manikumar, J.—Being aggrieved by the finding, regarding negligence and the quantum of compensation of Rs. 1,00,000/-, awarded to a

73 years old man, who sustained a grievous injury in the right leg, which resulted in amputation below knee, Metropolitan Transport Corporation,

Chennai, has preferred this appeal, with a delay of 992 days in representation. Delay in representation is condoned. Registry is directed to number

the appeal. Considering the passage of time, the appeal itself is taken up the hearing and disposed of, at the admission stage itself. At the time,

when the matter came up for hearing, taking note of a recent decision in Govind Yadav Vs. The New India Insurance Company Limited, wherein,

the Supreme Court has awarded a compensation of Rs. 1,00,000/- under the head, pain and suffering, to a person, whose leg has been amputated

and considering the similarity in the facts and circumstances of the case, Mr. S.S. Swaminathan, learned counsel for the appellant-Transport

Corporation, was directed to explain, as to how, a decision is being taken by the Transport Corporation to file appeals, arising out of the awards

passed by Claims Tribunal.

2. In response to the same, he submitted that sometimes, when legal opinion is offered by the panel lawyers, giving a categorical opinion that the

appeal need not be preferred on the finding, regarding the finding recorded by Tribunals, on negligence or quantum of compensation, the Inter

Departmental, Motor Accident Claims Committee (in short called as ""MCOP Committee"") would take a different view and consequently, an

appeal would be filed or when the MCOP Committee, accepts the opinion of the panel counsel, the matter would be placed before the next

Committee, called as Finance Committee and as per the opinion of the said Committee, appropriate action would be taken by the respective

Transport Corporation. In the case on hand, he submitted that he had not offered any opinion. In the light of the submissions, this Court directed

the Managing Director of the appellant-Transport Corporation, Chennai, to appear and explain the process involved, in filing of an appeal and as

to how a decision is taken by the Corporation before filing an appeal. In the mean time, in the interest of the Corporation, to avoid further interest

on the quantum of compensation, awarded by the Tribunal, the Transport Corporation was directed to deposit the entire award amount with

proportionate accrued interest and costs, to the credit of M.C.O.P. No. 713 of 2007, on the file of the Motor Accident Claims Tribunal cum Fast

Track Court II, Poonamallee.

3. The Managing Director of the Transport Corporation has appeared in person and explained the process involved in filing the appeal.

4. On the basis of the materials, Mr. S.S. Swaminathan, Learned Counsel for the appellant-Transport Corporation submitted that if an award is

passed against the Corporation, legal opinion is sought for from the local counsel, who handled the case. If required, a further opinion would be

obtained from the panel counsel in High Court, Madras. Thereafter, the matter would be placed before the MCOP Committee or in otherwords,

the appeal committee, with the details of the accident, finding on negligence, injuries, extent of disablement assessed by the Doctor, result of the

claim, along with the quantum of compensation.

5. Thereafter, the matter would be placed before the Finance Committee, which includes the Managing Director of the concerned Transport

Corporation, who is a party to the claim petition and other members of the Committee. As per the procedure, the Finance Committee would

consider the proposals of MCOP Committee, regarding the accident claims, examine the awards passed by the Motor Accident Claims Tribunal

or by the High Court, as the case may be. If the Finance Committee decides to file an appeal, appropriate steps would be taken to prefer an

appeal and thereafter, the cause papers would be entrusted to a panel advocate, High Court, Madras, with instructions to file an appeal.

6. According to Mr. S.S. Swaminathan, the appeal on hand pertains to Metropolitan Transport Corporation Ltd., Chennai and the Managing

Director of the Metropolitan Transport Corporation, Chennai cannot suo-motu take a decision to prefer an appeal or not and the ultimate decision

rests only with the Finance Committee. He also submitted that whenever awards are passed by various Claims Tribunals, individual cases are not

sent to the Finance Committee. After getting the legal opinion from the local counsel and thereafter, from the Panel Counsel in the High Court, if

required, and after due deliberation and review by the departmental MCOP Committee, proposals would be sent to the Finance Committee,

seeking for its opinion, as to the further course of action to be taken, as to whether, the award passed by the Tribunal should be settled or an

appeal should be preferred. Accordingly, in the case on hand, the internal MCOP Committee of the Metropolitan Transport Corporation, at the

initial stage convened a meeting on 18.8.2010, wherein, 121 cases were reviewed in detail and after recording its views, in each case, proposals

were sent to the Finance Committee, for its approval.

7. He further submitted that, in the case on hand, the 71st Finance Committee has decided to challenge the finding, regarding negligence fixed on

the driver of the Corporation bus and hence, the entire cause papers were entrusted to the panel counsel, High Court, Madras. According to him,

as the procedure involves different stages, in most of the cases, there is every likelihood of delay in filing the appeals. According to him, the two

stages of review by the internal MCOP Committee and the Finance Committee, at the higher level, are only to check and monitor any lapse, on the

part of the authorities and keeping in mind, the financial loss, incurred by the Transport Corporations, on account of the awards in the Motor

Accident Claims. He therefore, submitted that though in the present appeal, in the light of the recent decision of the Supreme Court in Govind

Yadav v. New India Assurance Company Ltd. (supra), the appellant-Transport Corporation may not have a strong case on the quantum of

compensation, yet, there are points to be canvassed on the aspect of negligence.

8. As large number of cases, involving the Transport Corporations, both Metropolitan and State Transport, are pending in the Tribunals and when

many awards are challenged belatedly and when the legal representatives of the deceased/injured, are not promptly compensated, it results in

hardship to the family members, who have lost their kith and kin in the accident, and in the light of the observations of the Supreme Court in Jai

Prakash Vs. National Insurance Co. Ltd. and Others, this Court deems it fit to consider, as to whether, the decisions taken by the above

Committees, reflect proper consideration to the facts of each case and law, and whether the higher Committee assign any proper reasons, to file

appeals. At this juncture, this Court deems it fit to extract few passages from Jai Prakash v. National Insurance Company Ltd. (supra), as to how,

the Supreme Court perceived the agony and hardship, caused to the bereaved family or to the injured persons,

7. The third problem relates to the procedural delays in adjudication/settlement of claims by Motor Accidents Claims Tribunals (for short

"Tribunals") and consequential hardship to the victims and their families. In cases where the accident victim dies, the family-usually the widow and

children-loses its sole bread winner and are virtually driven to the streets. Many a time, the widow and children are forced to take up

unaccustomed manual labour for their survival, the children foregoing their education. Payment of compensation without delay will help them to

sustain themselves and pick up the threads to live with dignity.

8. Most of the accident victims (who are injured) are not able to access quality medical treatment for want of funds, as their earning capacity is

either permanently lost or is put on hold on account of the injuries. They get the compensation only after the treatment and after a contested trial.

Many a time lack of treatment or inadequate treatment for want of funds, itself converts what could have been a temporary disability into

permanent disability for the victim, thereby increasing the compensation

payable. The Insurance Companies know full well that timely payment of compensation or timely better treatment of the victims can ultimately reduce the quantum of compensation payable by them. The insurance companies also know that they will have to ultimately reimburse the cost of medical treatment of the accident victim with interest. But still they fail to extend timely aid to the injured victims, but wait for the injured to file a claim petition, after completing the treatment at his own cost.

9. The Legislature tried to reduce the period of pendency of claim cases and quicken the process of determination of compensation by making two significant changes in the Act, by Amendment Act 54 of 1994, making it mandatory for registration of a motor accident claim within one month of receipt of first information of the accident, without the claimants having to file a claim petition. Sub-section (6) of Section 158 of the Act provides:

As soon as any information regarding any accident involving death or bodily injury to any person is recorded or report under this section is

completed by a police officer, the officer-in-charge of the police station shall forward a copy of the same within thirty days from the date of

recording of information or, as the case may be, on completion of such report to the Claims Tribunal having jurisdiction and a copy thereof to the

concerned insurer, and where a copy is made available to the owner, he shall also within thirty days of receipt of such report, forward the same to

such Claims Tribunal and insurer". Sub-section (4) of Section 166 of the Act reads thus:

The Claims Tribunal shall treat any report of accidents forwarded to it under sub-section (6) of Section 158 as an application for compensation

under this Act

10. Rule 150 of Central Motor Vehicle Rules, 1989 prescribes the form (No. 54) of the Police Report required to be submitted u/s 158(6) of the

Act.

11. This Court in General Insurance Council and Others Vs. State of Andhra Pradesh and Others, emphasised the need for implementing the

aforsaid provisions. This Court directed:

It is, therefore, directed that all the State Governments and the Union Territories shall instruct all police officers concerned about the need to

comply with the requirement of Section 158(6) keeping in view the requirement

indicated in Rule 150 and in Form 54, Central Motor Vehicles

Rules, 1989. Periodical checking shall be done by the Inspector General of Police concerned to ensure that the requirements are being complied

with. In case there is non-compliance, appropriate action shall be taken against the erring officials. The Department of Road Transport and

Highways shall make periodical verification to ensure that action is being taken and in case of any deviation immediately bring the same to the

notice of the State Governments/Union Territories concerned so that necessary action can be taken against the officials concerned.

12. But unfortunately neither the police nor the Motor Accidents Claims Tribunals have made any effort to implement these mandatory provisions

of the Act. If these provisions are faithfully and effectively implemented, it will be possible for the victims of accident and/or their families to get

compensation, in a span of few months. There is, therefore, an urgent need for the concerned police authorities and Tribunals to follow the

mandate of these provisions.

Problem (iv)

13. Courts have always been concerned that the full compensation amount does not reach and benefit the victims and their families, particularly

those who are uneducated, ignorant, or not worldly-wise. Unless there are built-in safeguards they may be deprived of the benefit of compensation

which may be the sole source of their future sustenance. This Court has time and again insisted upon measures to ensure that the compensation

amount is appropriately invested and protected and not frittered away owing to ignorance, illiteracy and susceptibility to exploitation. (See Union

Carbide Corporation, etc., etc. Vs. Union of India, etc. etc., and General Manager, Kerala State Road Transport Corporation, Trivandrum Vs.

Mrs. Susamma Thomas and others, But in spite of the directions in these cases, the position continues to be far from unsatisfactory and in many

cases unscrupulous relatives, agents and touts are taking away a big chunk of the compensation, by ingenious methods.

9. Material placed before this Court shows that earlier, as per the revised delegation of powers issued by the Government, vide Letter No.

59/CHO/2004 of the Chairman's Office, Transport Department, dated 3.4.2003, award exceeding Rs. 30,000/- in respect of injury cases and

Rs. 50,000/- in respect of fatal cases, there must be a specific approval by the Finance Committee. Further, as per the delegation of the Financial

powers issued by the Government, vide Letter No. 120/CHO/2004, Chairman's Office, Transport Department, dated 21.5.2005, settlement of

claims above Rs. 2,00,000/- and upto Rs. 5,00,000/-, the decision of the Finance Committee must be placed before the Board, for information

and record. In the case of settlement of claims above Rs. 5 Lakhs, the recommendation of the Finance Committee should be placed in the Board

of the Corporation for approval. The Board, vide Resolution No. 31, dated 31.3.2003, has delegated certain powers to MCOP Committee, to

take decisions in the matter approval of awards, passed in accident claims cases.

10. Materials placed before this Court further shows that vide letter No. 120/Ch O/2004, dated 28.4.2006, of the Secretary to Government and

Chairman, Transport Department, Fort St. George, Chennai, power has been conferred on the Managing Directors to remit the award amount

(based on Conditional Stay/on receipt of attachment order passed on the EP), without again, referring such cases to the Finance

Committee/Board, considering the fact that the amount is remitted only under protest. Paragraphs 2 and 3 of the said letter, delegating the powers

to the Managing Directors to remit the award amount, are reproduced hereunder:

2) When accident claim is placed in the Finance Committee and decision is taken to file Appeal in High Court, the respective Transport

Corporation make arrangement to file appeal in the High Court. In respect of such MCOP appeal cases when the High Court has granted

conditional stay or attachment order is obtained by the petitioner on filing E.P., such cases are again brought to the Finance Committee/Board for

approval and then the award amount is remitted in the Court.

3) This issue was discussed in the recent board Meetings of Transport Corporations and it was agreed and resolved that in such MCOP appeal

cases mentioned in para-2 above the Managing Directors may remit the award amount (based on Conditional Stay/on receipt of attachment order

passed on the EP), without again referring such cases to the Finance Committee/Board, considering the fact that the amount is remitted only under

protest. However, in extraordinary/sensitive cases, the Management shall bring them to the notice/approval of the Finance Committee/Board

whenever necessary.

11. Reading of the letter makes it clear that whenever an accident claim is placed before the Finance Committee, and a decision is taken to file an

appeal, the respective Transport Corporation shall make arrangements to file an appeal to this Court. Thus, it is evident that irrespective of the

merits or demerits of any case, an award above Rs. 2 Lakhs and upto Rs. 5 Lakhs, the decision of the Finance Committee is required, whether to

prefer an appeal or not, which invariably causes delay, in filing the appeals and during the time consumed in collecting the details of the awards,

passed by various Claims Tribunals, where the State Transport Corporation/ Metropolitan Transport Corporation, is a party to the claim petition,

the injured/legal representatives of the deceased are put to inexplicable agony.

12. Judicial notice can be taken that there are several appeals filed in the High Court with a delay in filing the appeals. It is a settled legal position,

at the delay excuse stage, stay of execution of the decree, passed by the Motor Accident Claims Tribunal, will not be granted and in many cases,

the Transport Corporations do not come forward to deposit the award amount, unlike in Workmen's Compensation Act, 1923, deposit of the

award amount, is a condition precedent for filing an appeal.

13. In a given case, where an employee sustains an injury or dies in an accident, involving a Motor Vehicle, there is an option to the claimant/s,

either to prefer a claim under the Motor Vehicles Act, 1988, or to approach the forum constituted under the Employees Compensation Act, 1923,

depending upon the benefit, sought to be obtained by the claimant/s, whether the injured or the legal representatives of the deceased, as the case

may be. If the injured-employee or the legal representatives of the deceased, chooses to make a claim, u/s 3 of the Employee's Compensation

Act, 1923, and obtains an award, against the employer or the Insurance Company, or against both, jointly or severally, the aggrieved party has to

compulsorily deposit the award under the Employees's Compensation Act, 1923 and if the aggrieved party intends to prefer an appeal, the entire

award amount, with proportionate accrued interest, as ordered by the Commissioner under the Employee's Compensation Act, 1923, has to be

deposited within 30 days and only on production of the deposit receipt, an appeal under the Employee's Compensation Act, is maintainable and

entertained by the High Court.

14. But for any reason, if the employee decides to prefer a claim under the Motor Vehicles Act, 1988 and even if he succeeds in the claim and the compensation amount is quantified, the Transport Corporations/Insurance Companies have no statutory obligation to deposit the amount, before filing an appeal. When the appeals are filed with a delay, there cannot be any order of stay of execution of the decree and in such cases, the injured or legal representatives, after fighting in the Tribunals, for a considerable time, either losing their earning capacity or have lost the contribution of the deceased, are put to inexplicable agony, suffering, financial constraint, to prosecute further, by way of an execution. No doubt, the Motor Vehicles Act, 1988, provides for execution, yet in many cases, appeals are filed in the High Court, with a delay and during the pendency of the delay stage, the award amount with interest is not deposited and in rare cases, attachment is ordered.

15. Judicial notice can also be taken that due to poverty or financial constraint, the accident victims or the lawyers, who represent them before the Claims Tribunal, do not even attempt to execute the decrees, as there is a further litigation cost. Section 168(3) of the Motor Vehicles Act, 1988, states that when an award is made under the abovesaid section, the person who is required to pay any amount in terms of such award shall, within thirty days of the date of announcing the award by the Claims Tribunal, deposit the entire amount awarded in such manner as the Claims Tribunal may direct. Section 173(1) of the Act, states that subject to the provisions of sub-section (2), any person aggrieved by an award of a Claims Tribunal may, within ninety days from the date of award, prefer an appeal to this Court. Proviso to the said Section also states that no appeal by the person, who is required to pay any amount in terms of such award shall be entertained by the High Court unless he has deposited with it twenty-five thousand rupees or fifty percent, of the amount so awarded, whichever is less, in the manner directed by this Court.

16. As per Rule 20(1) of the Tamil Nadu Motor Vehicles Accident Claims Tribunal Rules, 1989, the Claims Tribunal, while passing orders, shall record concisely in the judgment, the findings on each of the points framed and the reasons for such findings and make an award specifying the

amount of compensation to be paid by the insurer or the owner in the case of vehicles which are not insured and also the person or persons to

whom compensation shall be paid. Sub-Rules 7 to 12 of Rule 20 of the said Rules, deal with the deposit of amount and disbursement of the

portion thereof, having regard to the illiteracy or semi-illiteracy of the persons, for whom, compensation is awarded. Rules also empower the

Claims Tribunal to pass appropriate orders in writing, permitting withdrawal of amounts, if the same is required for treatment in personal injury

cases. Sub-Rules 2 to 12 of Rule 20 are extracted hereunder:

20, (1) The Claims Tribunal in passing orders, shall record concisely on a judgment the findings on each of the points framed and the reasons for

such findings and make an award specifying the amount of compensation to be paid by the insurer or the owner in the case of vehicles which are

not insured and also the person or persons to whom compensation shall be paid.

(2) Where compensation is awarded to two or more persons, the Claims Tribunal shall also specify the amount payable to each of them:

Provided that notwithstanding anything contained in sub-rules (1) and (2) the record of judgment shall, in respect of claims exceeding five thousand

rupees, contain the evidence which shall either be verbatim or a reasonably complete and full memoranda of testimony explaining the basis of the

compensation, the findings on each such evidence and the reasons for such findings before making an award specifying the amount of

compensation.

(3) The Claims Tribunal shall announce the details of the award in the open Court and shall furnish copies of the judgment as required to be

recorded under sub-rule (1) to the Regional Transport Authority, the Secretary, Regional Transport Authority, the Registering Authority and the

Licensing Authority concerned for taking such action as the authorities consider necessary against the drivers, conductors or owners of the vehicles

involved in the accident. It shall also send a copy of the judgment to the State Transport Authority, Chennai.

(4) When the Claims Tribunal pronounced the judgment and makes the award, it shall also read the operative part of the award in the regional

language understood by the claimant and it shall also be explained to him that he is entitled to the full amount of the compensation which has been

awarded to him and that he is not liable to pay any percentage amount of the compensation to the lawyer who appeared for him, but have only to pay the fee determined by the Claims Tribunal.

(5) The Claims Tribunal shall provide the award reasonable expenses of litigation and fees for the counsel. Such fees shall not be lower than the fees specified in the Schedule of fees prescribed by the Tamil Nadu State Legal Aid and Advice Board from time to time.

(6) The Claims Tribunal shall, within fifteen days from the date of award, issue copy of award and decretal order, if any, for all parties to the claims free of cost.

(7) The Claims Tribunal shall, in the case of minor, order that amount of compensation awarded to such minor be invested in fixed deposits till such minor attains majority. The expenses incurred by the guardian or the next friend may be allowed to be withdrawn by such guardian or the next friend from such deposits before it is deposited.

(8) The Claims Tribunal shall, in the case of illiterate claimants, order that the amount of compensation awarded be invested in fixed deposits for a minimum period of three years but of any amount is required for effecting purchase of any movable or immovable property for improving the income of the claimant, the Claims Tribunal may consider such a request after being satisfied that the amount would be actually spent for the purpose and the demand is not a ruse to withdraw money.

(9) The Claims Tribunal shall, in the case of semi-literate person resort to the procedure for the deposit of award amounts set out in sub-rule (8) unless it is satisfied, for reasons to be recorded in writing that the whole or part of the amount is required for the expansion of any existing business or for the purchase of some property as specified and mentioned in sub-rule (8) in which case the Claims Tribunal shall ensure that the amount is invested for the purpose for which it is prayed for and paid.

(10) The Claims Tribunal may in the case of literate persons also resort to the procedure for deposit of award amounts specified in sub-rule (8) subject to the relaxation specified in sub-rules (8) and (9) if having regard to the age, fiscal background and state of society to which the claimant belongs and such other consideration, the Claims Tribunal in the larger interest of the claimant and with a view to ensuring the safety of the

compensation awarded, thinks it necessary to order.

(11) The Claims Tribunal may, in personal injury cases, if further treatment is necessary, on being satisfied which shall be recorded in writing permit

the withdrawal of such amount as is necessary for the expenses of such treatment.

(12) The Claims Tribunal shall, in the matter of investment of money, have regard to a maximum return by ways of periodical income to the

claimant and make it deposited with public sector undertakings of the State or Central Government which offers higher rate of interests.

17. A combined reading of Section 163-A of the Motor Vehicles Act, read with Rule 20 of the Tamil Nadu Motor Vehicles Accident Claims

Tribunal Rules, 1989, makes it clear that the entire award amount, has to be deposited, within a period of 30 days, from the date of announcing the

award by the Claims Tribunal, in such manner as the Claims Tribunal may direct and under the Rules, the Claims Tribunal is empowered to grant

permission for withdrawal of the amount, if any of the conditions, contained in sub-rules, are satisfied. However, taking shelter u/s 173(1) of the

Motor Vehicles Act, a sum of Rs. 25,000/- alone is being deposited, by the aggrieved person, against whom, an award is passed and appeals are

filed, within 90 days, from the date of award and in many cases, the appeals are filed after the limitation period, Section 173(1) of the Motor

Vehicles Act.

18. As stated supra, in most of the cases, the award amount is not deposited, as per Section 168(3) of the Motor Vehicles Act, causing

inexplicable agony, financial constraint and hardship to the accident victims. Both the Employees Compensation Act, 1923 and the Motor Vehicles

Act, 1988, are beneficial legislations. Rich or Raff, there is no difference in the suffering to the victim, either on account of a road accident or the

accident, arising out of and during the employment. There is no difference, insofar as pain and suffering to the injured or the loss of contribution to

the legal representatives of the deceased. May be the method of computing the quantum of compensation is the only difference.

19. If in a Workmen's Compensation claim, the aggrieved party is statutorily obligated to deposit the entire award amount, with interest, as a

condition precedent, for instance, the employer or the Insurance Company,

against whom, the award is passed by the Commissioner for

Employees Compensation Act, 1923, there is no reason, as to why, the same Insurance Company or the owner of the vehicle, as the case may be,

against whom, the award is passed, either jointly or severally, should not be directed to deposit the entire award amount with costs, into the Claims

Tribunal, as a condition precedent, for filing an appeal, under the Motor Vehicles Act, 1988, also.

20. Though the Ministry of Transport, Union of India, is not a party to the lis, yet having regard to the plight of the injured/legal representatives of

the deceased, as perceived by the Hon"ble Apex Court, this Court is inclined to suggest to the Ministry of Transport, Union of India, to explore

the possibility of making suitable amendments to the Motor Vehicles Act, 1988, so that, victims of the accident will have the security of the award

amounts being deposited in the respective Claims Tribunal, whenever, the aggrieved party chooses to challenge the award passed by the Claims

Tribunal. As the Motor Vehicles Act is a beneficial legislation, in the humble opinion of this Court, the word ""shall"" used in sub-section (3) of

Section 168 in the Motor Vehicles Act, 1988, has to be interpreted and meant as a mandatory provision compared to the proviso to Section 173

of the Motor Vehicles Act, which enables filing of an appeal.

21. The Claims Tribunal, which awards compensation to the accident victims, would not be in a position to order, disbursement of the amount, for

the expenses necessary for the treatment or to the illiterate or semi-illiterate persons. Though the Claims Tribunals, for the purpose of enforcement

of its award, shall have all powers of a Civil Court, in the execution of a decree under the Code of Civil Procedure, 1908, as if the award were a

decree for the payment of money passed by such Court in a civil suit, in the light of the provision in the Employees Compensation Act, 1923,

which makes it obligatory on the part of the aggrieved person, against whom, an award is passed, to deposit the award amount with interest, this

Court is of the view that the Ministry of Transport, Union of India, New Delhi, can explore the possibility of bringing a suitable amendment under

the Motor Vehicles Act, 1988, similar to Employee's Compensation Act, 1923.

22. Reverting back to the case on hand, it could be seen from the materials placed before this Court that after the legal opinion offered by the local

and the panel counsel, High Court, Madras, that the award made in M.C.O.P. No. 713 of 2007, dated 22.1.2009, on the file of the Motor

Accident Claims Tribunal (Additional District Judge, Fast Track Court No. II), Poonamallee, granting compensation of Rs. 1,00,000/-, with

interest, at the rate of 7.5% per annum, to the respondent, who was aged 73 years, at the time of filing of the claim petition and suffered an

amputation in the right leg below knee and other injuries in both legs, the M.C.O.P., Committee, has accepted the opinion offered by the Panel

Counsel.

23. The accident has occurred on 24.2.2002. Though claim was made for Rs. 5 Lakhs, the Tribunal has awarded only Rs. 1 Lakh. At the time of

filing of the claim petition, the claimant was aged 73 years old. He sustained grievous injuries and has been hospitalised for three months, between

24.2.2002 and 9.5.2002. His right leg below knee has been amputated. The Tribunal has taken two years to dispose of the claim petition. The

Claim has culminated into an award on 22.1.2009. The appeal has been filed in the year 2012 and till such time, the award amount has not been

deposited. For nearly 10 years from the date of accident, the poor man has to fight for compensation.

24. Perusal of the materials placed before this Court shows that the MCOP Committee has convened a meeting on 18.8.2010 and out of 121

cases reviewed, in 82 MCOP and CMA cases, the MCOP Committee has proposed to accept the order of the Tribunal and the High Court. In

the remaining 39 MCOP cases, the MCOP Committee has proposed to file an appeal and in order to avoid delay, in filing the appeal, papers have

been entrusted to the Panel Advocates to file appeal, pending approval of the Finance Committee.

25. In the 71st Finance Committee held on 20.9.2010, it has been resolved to file an appeal, on the aspect of negligence. Though in the case on

hand, the MCOP Committee has opined that the award amount is reasonable and suggested that the amount may be deposited into the credit of

M.C.O.P. No. 713 of 2007, on the file of the Motor Accident Claims Tribunal cum Fast Track Court II, Poonamallee and also set out the details

of the compensation under each heads, the Finance Committee has chosen to reject the same and directed the Corporation to file an appeal.

Details of the 71st Finance Committee held on 20.9.2010, shows that no reasons have been assigned to differ from the suggestion offered by the panel counsel or the opinion made by the MCOP Committee.

26. The resolution or the administrative decision taken by the Finance Committee, is an administrative order and it should contain the reasons, as they are the heart beat of any decision.

(i) In *Alexander Machinery (Dudley) Ltd. v. Crabtree* reported in 1974 ICR 120 (NIRC), it was observed:

Reasons are live links between the mind of the decision-taker to the controversy in question and the decision or conclusion arrived at.

(ii) In *Gurdial Singh Fijji Vs. State of Punjab and Others*, the Supreme held as follows:

"Reasons" are the links between the materials on which certain conclusions are based and the actual conclusions.

(iii) In *McDermott International Inc. Vs. Burn Standard Co. Ltd. and Others*, the Supreme Court, at Paragraph 57, held that reason is a ground or motive for a belief or a course of action, a statement in justification or explanation of belief or action.

(iv) In *Steel Authority of India Ltd. Vs. Sales Tax Officer, Rourkela-I Circle and Others*, the Supreme Court held that the appellate order must be a speaking order and well reasoned, otherwise, it is lifeless.

(v) In *East Coast Railway and Another Vs. Mahadev Appa Rao and Others*, the Supreme Court held that,

Reasons must be stated in order or official note contemporaneously maintained.

27. When two learned counsel of the Transport Corporation have offered their opinion to the Transport Corporation that it is not a fit case for

preferring an appeal, which has also been accepted by the Internal Committee, the Finance Committee, which is the ultimate authority, cannot by

one word, discard the opinion or suggestion of the MCOP Committee, without assigning any reasons. As stated supra, during the process involved

in getting the final opinion from the Finance Committee, the injured or the legal representatives of the deceased, are put to inexplicable agony and

resultantly, the Transport Corporation also have to suffer excessive, from the date of claim, due to the belated deposit, if the High Court is inclined

to entertain the appeal.

28. In the light of the decisions, extracted supra, pertaining to administrative action/decision, this Court deems it fit to direct the Secretary to

Government, Transport Department, Fort St. George, Chennai, to formulate specific guidelines or instructions, in the matter of filing appeals and

record reasons, as to why, a challenge to an award should be made, notwithstanding the legal opinion offered. Of course, it is always open to the

aggrieved party to prefer an appeal, notwithstanding the legal opinion offered by the counsel. But at the same time, the Finance Committee should

also consider the plight of the accident victims and direct the concerned Corporations to deposit the award amount with interest, till the Finance

Committee decides to file an appeal or not, so that the Corporation need not waste huge money, on interest. It could be seen that in many cases,

the accrued interest from the date of claim, runs to several thousands and it is a loss to the Corporation.

29. The delay caused in the process, not only affects the interest of the accident victims, but certainly, it has an impact on the financial side of the

Corporations/Government, by incurring huge expenses. Considering the balance of convenience of both parties, this Court is inclined to suggest to

the Secretary to the Government, Transport Department, Fort St. George, Chennai-9, to issue necessary instructions to the Transport

Corporations to deposit the award amount, as per Section 168(3) of the Motor Vehicles Act, within the time stipulated, by the Claims Tribunal

and simultaneously prefer the appeal in the High Court, without any delay.

30. As per letter No. 120/Ch O/2004, dated 28.4.2006, issued by the Secretary to the Government and Chairman, Transport Department, Fort

St. George, Chennai, when a claim is placed before the Finance Committee and until a decision is taken, an appeal could be filed and if it is

entertained, further interest could be avoided. Again, when an appeal is filed, till a decision is taken by the Finance Committee and if, later on, the

Finance Committee decides not to file any appeal, the Transport Corporations can seek for refund of the Court fee paid, on the appeal and in such

an event, the Corporation can avoid payment of substantial interest. Whereas, when the Corporation files an appeal, with a delay, the interest from

the date of claim on the award, till the date of deposit, would be more.

31. Reverting back to the averments made in the claim petition, that on

24.2.2002, about 9.15 p.m., when the respondent/claimant was walking along the road, near Ambattur Estate Bus Stand, a Metropolitan Transport Corporation Bus, bearing Registration No. TN 01 N 2929, which came behind him, in a rash and negligent manner, dashed against him and the wheel ran over his leg, resulting in grievous injuries. His right leg below knee has been amputated. He claimed compensation of Rs. 5 Lakhs.

32. The Transport Corporation has disputed the manner of accident, stating that the bus route No. 71E, bearing Registration No. TN 01N 2929, was proceeding from Kumaran Nagar to Thirunintravur, along MTH road. About 21.35 hours, when the bus was about to stop at Ambattur Estate Bus Stop, the respondent/claimant, due to ignorance and in a hurried manner, tried to board the moving bus, lost his grip, fell down and sustained injuries. According to the Transport Corporation, it was the respondent/claimant, who was negligent in causing the accident. Without prejudice to the same, they also disputed the quantum of compensation claimed under various heads.

33. Before the Claims Tribunal, the respondent/claimant examined himself as P.W. 1 and P.W. 2 is the Doctor, who examined the respondent/claimant, with reference to medical records. Exhibit P-1-FIR, Exhibit P-2-Discharge Summary and Exhibit P-3-Disability Certificate have been marked on the side of the respondent/claimant. On behalf of the appellant-Transport Corporation, the conductor of the bus examined himself as R.W. 1 and no document has been marked.

34. On evaluation of pleadings and evidence, the Tribunal found that the driver of the appellant-Transport Corporation was negligent in causing the accident and quantified the compensation at Rs. 1,00,000/- with interest, at the rate of 7.5% per annum.

35. R.W. 1, Conductor, in his evidence, has deposed that the respondent/claimant has attempted to board the moving bus. The driver has lodged Exhibit P-1-FIR, against the respondent/claimant and that the Police has filed a case in Cr. No. 63 of 2002, under Sections 279 and 337 IPC, on the file of Ambattur Police Station, Ambattur Estate, Chennai.

36. Rash and negligent driving is a personal act of the driver of a vehicle, who caused of the accident. In the case on hand, R.W. 1, conductor alone has been examined on behalf of the transport corporation. When rash and

negligent driving by the driver of the bus owned by the transport corporation is alleged, it is for him to rebut the manner of accident. At best R.W. 1, conductor, can lead only a supportive evidence. But he cannot speak on behalf of the driver, as regards the rash and negligent act of driving. In the absence of any evidence from the driver of the bus, an adverse inference can be drawn against him. Useful reference can be made to few decisions,

(i) In *New India Assurance Co. Ltd. Vs. Debajani Sahu and Others*, the Orissa High Court held that,

8. In the present case, the Claims Tribunal found about the negligence of the bus driver on the basis of the evidence of the P. Ws. It is contended

that P.W. 2 himself being the driver employed by the deceased was a highly interested witness and his evidence cannot be accepted as reliable.

There is no dispute in the fact that the accident was caused involving the scooter and the bus. Even assuming that the evidence of P.W. 2 is not

accepted, still then the doctrine of *res ipsa loquitur* is applicable. In such a situation, the owner of the bus should have examined the driver of the

bus to explain the circumstances under which the accident occurred, as the other person involved in the accident having died cannot speak from

the grave to explain the circumstances under which the accident had taken place. Of course, the bus owner has remained *ex parte*, but no attempt

was made by the Insurance Company which was contesting the case even on merit (whether justifiably or not is immaterial), has not chosen to

adduce any evidence to rebut the evidence of P.W. 2, not has bothered to summon the bus driver to explain the circumstances under which the

accident took place. In such a case, an adverse inference can be drawn against the owner/Insurance Company for not examining the bus driver

who would have been the best witness to explain the circumstance under which the accident occurred. In such view of the matter, the finding of the

Tribunal on the question of negligence cannot be assailed and the contention in this regard raised by the Counsel for the appellant cannot be

accepted.

(ii) In *Sitabai and Others Vs. Ishak Hussain and Another*, , the Madhya Pradesh High Court, at Paragraph 5, held as follows:

5. In this case, the claimants could not examine any eyewitness of the accident.

It was difficult for the claimants to search an eyewitness as the claimants were not present on the spot at the time of accident. This difficulty is avoided by applying the maxim *res ipsa loquitur*. Their Lordships of the Supreme Court in case of *Pushpabai Purshottam Udeshi and Others Vs. Ranjit Ginning and Pressing Co. (P) Ltd. and Another*, observed:

The normal rule is that it is for the plaintiff to prove negligence but as in some cases considerable hardship is caused to the plaintiff as the true cause

of the accident is not known to him but is solely within the knowledge of the defendant who caused it, the plaintiff can prove the accident but

cannot prove how it happened to establish negligence on the part of the defendant. This hardship is sought to be avoided by applying the principle

of *res ipsa loquitur*. The general purport of the words *res ipsa loquitur* is that the accident "speaks for itself or tells its own story. There are cases in

which the accident speaks for itself so that it is sufficient for the plaintiff to prove the accident and nothing more. It will then be for the defendant to

establish that the accident happened due to some other cause than his own negligence. Where the maxim is applied the burden is on the defendant

to show either that in fact he was not negligent or that the accident might more probably have happened in a manner which did not connote

negligence on his part. For the application of the principle it must be shown that the car was under the management of the defendant and that the

accident is such as in ordinary course of things does not happen if those who had the management used proper care.

In this case, the respondent No. 1 was driving the vehicle which left the road and dashed against a tree. In view of this maxim, the burden shifts on

the respondent No. 1 to prove that he was not negligent. It was in the special knowledge of respondent No. 1 as to how the vehicle left the road

and came down and struck against a tree. The respondent No. 1 did not examine himself. Under such circumstances, adverse inference that he

drove the vehicle in a rash and negligent manner as a result of which this accident occurred, shall be drawn against him. The learned Tribunal

committed error in not applying this maxim. We hold that the accident occurred due to rash and negligent driving of the vehicle by respondent No.

1.

(iii) In *Beni Bai and Others Vs. A. Salim and Another*, , the Madhya Pradesh High

Court, held as follows:

In the circumstances, for non-examination of the material witnesses particularly the driver and the conductor, who had the first hand knowledge of

the manner in which the accident occurred, necessarily an adverse inference has to be drawn against the respondents. For want of evidence on

behalf of the respondents, the plea raised in defence cannot be said to be established. On the other hand, the appellants have examined Atmaram,

A.W. 1. who was at the spot, who stated that at the bus stop when the passengers were getting down from the bus, the driver without seeing that

the passengers have got down or not, started the bus and there one boy came under the wheel of the bus. From the circumstances, it cannot be

inferred that the deceased might have jumped from the running bus. Hence it was the duty of the driver and conductor to have taken care to see

whether passengers have got down from the bus or not, then only the driver could have started the bus. As the driver and conductor have failed in

their duties to take care, we hold that the accident occurred due to negligence of the driver of the city bus. This Court in similar circumstances

where the same type of defence was taken, has observed that it is the driver of the passenger bus who has to take care that the passengers who

wish to get down from the bus have got down and then to start the bus. But that care was not taken. Therefore, it was held that the accident was

caused because of the negligence of the driver and conductor.

(iv) In *M. Jaganathan Vs. Pallavan Transport Corporation Ltd.*, a Division Bench of this Court has held that it is the duty of the driver and

conductor to caution the passengers when they attempt to get down, irrespective of the fact whether that place is a bus stop or not. The said

decision is followed in *Tamil Nadu State Transport Corporation (Madurai Division III) Ltd., Nagercoil Vs. Saraswathi and 4 Others*

(v) In *Venkataswami Motor Service v. C.K. Chinnaswamy and Others*, 1998 ACJ 371, this Court held that, it is the fundamental duty of the crew

viz., driver and conductor to see whether any passenger is getting into the bus or getting down from the bus before moving the bus.

37 Admittedly, at the time of accident, the respondent/claimant was aged 73 years. According to him, when he was walking on the road, the bus

hit him from behind and that the wheel ran over his right leg. Whereas, it is a

case of the Transport Corporation that it was the aged man, who attempted to board the moving bus, lost his grip, fell down and sustained injuries. The testimony of R.W. 1, is not supported by any independent witness. Even taking it for granted, that the respondent/claimant attempted to board a moving bus and having regard to his age, R.W. 1, conductor of the bus, ought to have exercised due care and caution and instructed the driver to stop the bus immediately, so as to enable the old man to board the bus. The driver has not been examined.

38 In the light of the decisions, stated supra and having regard to the age of the respondent, this Court is of the view that there is no perversity in the finding recorded by the Claims Tribunal, fixing negligence on the driver of the Transport Corporation bus, who has not been examined by the Corporation. Hence, the same is confirmed.

39. On the quantum of compensation, immediately after the accident, the respondent/claimant has been admitted in Government General Hospital, Chennai and despite treatment, his right leg below knee has been amputated. To prove the nature of injuries and treatment, he has produced

Exhibit P-2-Discharge Summary. That apart, P.W. 2, Doctor, who clinically examined the respondent/claimant, with reference to Exhibit P-2-

Discharge Summary, has also supported the case of amputation and skin grafting.

40. Upon perusal of Exhibit P-2-Discharge Summary, the Claims Tribunal has recorded that the respondent/claimant was hospitalised between

24.2.2002 and 9.5.2002, for nearly three months. Though the respondent claimed himself to be a labourer and earned Rs. 200/- per day, the

Claims Tribunal has not awarded any compensation under the said head. However, considering 50% disability assessed by P.W. 2, Doctor, duly

supported by Exhibit P-3-Disability Certificate, the Claims Tribunal has awarded Rs. 1 Lakh, as Disability Compensation.

41. Considering the nature of injuries, pain and suffering, the Claims Tribunal, though observed that the respondent/claimant is entitled to a

compensation of Rs. 25,000/- towards pain and suffering and further observed that Rs. 15,000/- may be awarded for mental agony, Rs. 5,000/-

for medical expenses, Rs. 2,500/- for transportation and Rs. 2,500/- under the head, Special Diet, without assigning any reasons, has restricted the

award only under the head, disability compensation, when the claim has been

made for Rs. 5,00,000/-.

42. For the overall compensation of Rs. 5 Lakhs claimed, the respondent/claimant has paid a Court fee at Rs. 4,372.50. From the perusal of the

award, it could be seen that the Claims Tribunal has committed a gross irregularity in not awarding a reasonable compensation, under the

abovesaid heads. The Full Bench decision of this Court in Cholan Roadways Corporation Ltd. Vs. Ahmed Thambi and Others, held as follows,

In order to avoid any future confusion and to bring more clarity and transparency in the award of damages, it is necessary that the Tribunal, while

awarding damages, should itemise the award under each of the head namely, pecuniary losses and non-pecuniary losses. In the non-pecuniary

losses and the tribunal shall consider a) pain and suffering b) loss of amenity, c) loss of expectation of life, hardship, mental stress, etc., (d) loss of

prospect of marriage and under the head pecuniary losses, the tribunal shall consider loss of earning capacity and loss of future earnings as one

component apart from medical and other expenses and loss of earning, if any from the date of accident till the date of trial. When loss of earning

capacity is compensated as also the non-pecuniary losses under (a) to (d), permanent disability need not be separately itemised.

43. Amputation below knee in the right leg cannot be disputed. Loss of amenities as per the Full Bench decision of this Court in Cholan Roadways

Corporation Ltd., Kumbakonnam v. Ahmed Thambi and Others (supra), is as follows:

deprivation of the ordinary experiences and enjoyment of life and includes loss of the ability to walk or see, loss of a limb or its use, loss of

congenial employment, loss of pride and pleasure in one's work, loss of marriage prospects and loss of sexual function.

44. Apparently, the Claims Tribunal has failed to award a just and reasonable compensation. Few decisions on the said aspect of "Just and

Reasonable Compensation, are as follows:

(i) In R.D. Hattangadi Vs. M/s. Pest Control (India) Pvt. Ltd. and Others, wherein, the Apex Court held as follows:

In its very nature whenever a Tribunal or a Court is required to fix the amount of compensation in cases of accident, it involves some guess work,

some hypothetical consideration, some amount of sympathy linked with the

nature of disability caused. But all the aforesaid elements have to be viewed with objective standards.

(ii) In *Common Cause, A Registered Society Vs. Union of India and Others*, held as follows:

The object of an award of damages is to give the plaintiff compensation for damage, loss or injury he has suffered. The elements of damage

recognised by law are divisible into two main groups: pecuniary and non-pecuniary. While the pecuniary loss is capable of being arithmetically

worked out, the non-pecuniary loss is not so calculable. Non-pecuniary loss is compensated in terms of money, not as a substitute or replacement

for other money, but as a substitute, what McGregor says, is generally more important than money: it is the best that a Court can do. In *Re: The*

Medianna (1900) A.C. 1300, LORD HALSBURY L.C. observed as under:

How is anybody to measure pain and suffering in moneys counted? Nobody can suggest that you can by arithmetical calculation establish what is

the exact sum of money which would represent such a thing as the pain and suffering which a person has undergone by reason of an accident...But

nevertheless the law recognises that as a topic upon which damages may be given.

(iii) In yet another decision in *The Divisional Controller, KSRTC Vs. Mahadeva Shetty and Another*, the Supreme Court has held that,

Broadly speaking, in the case of death the basis of compensation is loss of pecuniary benefits to the dependents of the deceased which includes

pecuniary benefits to the dependents of the deceased which includes pecuniary loss, expenses etc. and loss to the estate. The object is to mitigate

hardship that has been caused to the legal representatives due to the sudden demise of the deceased in the accident Compensation awarded should

not be inadequate and should neither be unreasonable, excessive, nor deficient. There can be no exact uniform rule for measuring the value of

human life and the measure of damage cannot be arrived at by precise mathematical calculation; but amount recoverable depends on broad facts

and circumstances of each case. It should neither be punitive against whom claim is decreed nor should it be a source of profit for the person in

whose favour it is awarded.

At Paragraph 15 of the said judgment, the Supreme Court has held that,

Measure of damages cannot be arrived at by precise mathematical calculations. It would depend upon the particular facts and circumstances, and

attending peculiar or special features, if any. Every method or mode adopted for assessing compensation has to be considered in the background

of "just" compensation which is the pivotal consideration. Though by use of the expression "which appears to it to be just", a wide discretion is

vested in the Tribunal, the determination has to be rational, to be done by a judicious approach and not the outcome of whims, wild guesses and

arbitrariness, and non-arbitrariness. If it is not so, it cannot be just.

45. In *Govind Yadav v. The New India Insurance Company Limited* (supra), reported in the Supreme Court, has awarded a sum of Rs.

1,50,000/- for loss of amenities and enjoyment of life, in the case of amputation, where disability was assessed at 70%. In the said judgment, the

Apex Court held as follows:

10. The personal sufferings of the survivors and disabled persons are manifold. Some time they can be measured in terms of money but most of the

times it is not possible to do so. If an individual is permanently disabled in an accident, the cost of his medical treatment and care is likely to be very

high. In cases involving total or partial disablement, the term "compensation" used in Section 166 of the Motor Vehicles Act, 1988 (for short, "the

Act") would include not only the expenses incurred for immediate treatment, but also the amount likely to be incurred for future medical

treatment/care necessary for a particular injury or disability caused by an accident. A very large number of people involved in motor accidents are

pedestrians, children, women and illiterate persons. Majority of them cannot, due to sheer ignorance, poverty and other disabilities, engage

competent lawyers for proving negligence of the wrongdoer in adequate measure. The insurance companies with whom the vehicles involved in the

accident are insured usually have battery of lawyers on their panel. They contest the claim petitions by raising all possible technical objections for

ensuring that their clients are either completely absolved or their liabilities minimized. This results in prolonging the proceedings before the Tribunal.

Sometimes the delay and litigation expenses" make the award passed by the Tribunal and even by the High Court (in appeal) meaningless. It is,

therefore, imperative that the officers, who preside over the Motor Accident

Claims Tribunal adopt a proactive approach and ensure that the claims filed under Sections 166 of the Act are disposed of with required urgency and compensation is awarded to the victims of the accident and/or their legal representatives in adequate measure. The amount of compensation in such cases should invariably include pecuniary and non-pecuniary damages. In *R.D. Hattangadi v. Pest Control (India) Private Limited (supra)*, this Court while dealing with a case involving claim of compensation under the Motor Vehicles Act, 1939, referred to the judgment of the Court of Appeal in *Ward v. James* (1965) 1 All ER 563, HALSBURY'S LAWS OF ENGLAND, 4th Edition, Volume 12 (page 446) and observed:

Broadly speaking while fixing an 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 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 for 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.

In the same case, the Court further observed:

In its very nature whenever a tribunal or a Court is required to fix the amount of compensation in cases of accident, it involves some guesswork, some hypothetical consideration, some amount of sympathy linked with the nature of the disability caused. But all the aforesaid elements have to be viewed with objective standards.

11. In *Nizam Institute of Medical Sciences Vs. Prasanth S. Dhananka and Others*,

the three-Judge Bench was dealing with a case arising out of the complaint filed under the Consumer Protection Act, 1986. While enhancing the compensation awarded by the National Consumer Disputes Redressal Commission from Rs. 15 lakhs to Rs. 1 crore, the Bench made the following observations which can appropriately be applied for deciding the petitions filed u/s 166 of the Act:

We must emphasise that the Court has to strike a balance between the inflated and unreasonable demands of a victim and the equally untenable claim of the opposite party saying that nothing is payable. Sympathy for the victim does not, and should not, come in the way of making a correct assessment, but if a case is made out, the Court must not be chary of awarding adequate compensation. The "adequate compensation" that we speak of, must to some extent, be a rule of thumb measure, and as a balance has to be struck, it would be difficult to satisfy all the parties concerned.

At the same time we often find that a person injured in an accident leaves his family in greater distress vis-a-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.

(emphasis supplied)

12. In *Reshma Kumari and Others Vs. Madan Mohan and Another*, this Court reiterated that the compensation awarded under the Act should be just and also identified the factors which should be kept in mind while determining the amount of compensation. The relevant portions of the judgment are extracted below:

The compensation which is required to be determined must be just. While the claimants are required to be compensated for the loss of their dependency, the same should not be considered to be a windfall. Unjust enrichment should be discouraged. This Court cannot also lose sight of

the fact that in given cases, as for example death of the only son to a mother, she can never be compensated in monetary terms. The question as to the methodology required to be applied for determination of compensation as regards prospective loss of future earnings, however, as far as possible should be based on certain principles. A person may have a bright future prospect; he might have become eligible to promotion immediately; there might have been chances of an immediate pay revision, whereas in another (sic situation) the nature of employment was such that he might not have continued in service; his chance of promotion, having regard to the nature of employment may be distant or remote. It is, therefore, difficult for any Court to lay down rigid tests which should be applied in all situations. There are divergent views. In some cases it has been suggested that some sort of hypotheses or guess work may be inevitable. That may be so.

In the Indian context several other factors should be taken into consideration including education of the dependants and the nature of job. In the wake of changed societal conditions and global scenario, future prospects may have to be taken into consideration not only having regard to the status of the employee, his educational qualification; his past performance but also other relevant factors, namely, the higher salaries and perks which are being offered by the private companies these days. In fact while determining the multiplicand this Court in *Oriental Insurance Co. Ltd. v. Jashuben* held that even dearness allowance and perks with regard thereto from which the family would have derived monthly benefit, must be taken into consideration.

One of the incidental issues which has also to be taken into consideration is inflation. Is the practice of taking inflation into consideration wholly incorrect? Unfortunately, unlike other developed countries in India there has been no scientific study. It is expected that with the rising inflation the rate of interest would go up.

In India it does not happen. It, therefore, may be a relevant factor which may be taken into consideration for determining the actual ground reality.

No hard-and-fast rule, however, can be laid down therefor.

(Emphasis supplied)

13. In *Arvind Kumar Mishra Vs. New India Assurance Co. Ltd. and Another*, the

Court considered the plea for enhancement of compensation

made by the appellant, who was a student of final year of engineering and had suffered 70% disablement in a motor accident. After noticing factual

matrix of the case, the Court observed:

We do not intend to review in detail state of authorities in relation to assessment of all damages for personal injury. Suffice it to say that the basis of

assessment of all damages for personal injury is compensation. The whole idea is to put the claimant in the same position as he was insofar as

money can. Perfect compensation is hardly possible but one has to keep in mind that the victim has done no wrong; he has suffered at the hands of

the wrongdoer and the Court must take care to give him full and fair compensation for that he had suffered.

(Emphasis supplied)

14. In *Raj Kumar Vs. Ajay Kumar and Another*, , the Court considered some of the precedents and held:

The provision of the Motor Vehicles Act, 1988 ("the Act" for short) makes it clear that the award must be just, which means that compensation

should, to the extent possible, fully and adequately restore the claimant to the position prior to the accident. The object of awarding damages is to

make good the loss suffered as a result of wrong done as far as money can do so, in a fair, reasonable and equitable manner. The Court or the

Tribunal shall have to assess the damages objectively and exclude from consideration any speculation or fancy, though some conjecture with

reference to the nature of disability and its consequences, is inevitable. A person is not only to be compensated for the physical injury, but also for

the loss which he suffered as a result of such injury. This means that he is to be compensated for his inability to lead a full life, his inability to enjoy

those normal amenities which he would have enjoyed but for the injuries, and his inability to earn as much as he used to earn or could have earned.

The heads under which compensation is awarded in personal injury cases are the following:

Pecuniary damages (Special damages)

(i) Expenses relating to treatment, hospitalisation, medicines, transportation, nourishing food, and miscellaneous expenditure.

(ii) Loss of earnings (and other gains) which the injured would have made had he

not been injured, comprising:

- (a) Loss of earning during the period of treatment;
- (b) Loss of future earnings on account of permanent disability.
- (iii) Future medical expenses.

Non-pecuniary damages (General damages)

- (iv) Damages for pain, suffering and trauma as a consequence of the injuries.
- (v) Loss of amenities (and/or loss of prospects of marriage).
- (vi) Loss of expectation of life (shortening of normal longevity). In routine personal injury cases, compensation will be awarded only under heads (i), (ii)(a) and (iv). It is only in serious cases of injury, where there is specific medical evidence corroborating the evidence of the claimant, that

compensation will be granted under any of the heads (ii)(b), (iii), (v) and (vi) relating to loss of future earnings on account of permanent disability, future medical expenses, loss of amenities (and/or loss of prospects of marriage) and loss of expectation of life.

(Emphasis supplied)

15. In our view, the principles laid down in *Arvind Kumar Mishra v. New Assurance Company Ltd.*, (supra) and *Raj Kumar v. Ajay Kumar*

(supra) must be followed by all the Tribunals and the High Courts in determining the quantum of compensation payable to the victims of accident,

who are disabled either permanently or temporarily. If the victim of the accident suffers permanent disability, then efforts should always be made to

award adequate compensation not only for the physical injury and treatment, but also for the loss of earning and his inability to lead a normal life

and enjoy amenities, which he would have enjoyed but for the disability caused due to the accident.

16. We shall now consider whether the compensation awarded to the appellant is just and reasonable or he is entitled to enhanced compensation

under any of the following heads:

- (i) Loss of earning and other gains due to the amputation of leg.
- (ii) Loss of future earnings on account of permanent disability.
- (iii) Future medical expenses.
- (iv) Compensation for pain, suffering and trauma caused due to the amputation

of leg.

(v) Loss of amenities including loss of the prospects of marriage.

(vi) Loss of expectation of life.

46. Reverting back to Govind Yadav v. New India Assurance Company Ltd. (supra) case, the Apex Court, in case of amputation and considering

the cost of living, cost of artificial limbs, and the expenses likely to be incurred for periodical replacement of the limb, has awarded Rs. 2,00,000/-

to the appellant therein for future treatment. It has also awarded a sum of Rs. 1,50,000/- for pain and suffering and trauma caused due to

amputation of leg. By observing that even if the victims of an accident gets an artificial limb, he will still suffer from different kinds of social stigma

throughout of his life, the Supreme Court further observed that in all such cases, the Tribunals and Courts should make a broad guess for the

purpose of compensation and of the fact that the injured has to live for the rest of his life, with one leg and would not be able to live like a normal

human being and enjoy the life and of the likelihood of reduction in marriage prospects, awarded Rs. 1,50,000/- for loss of amenities and

enjoyment of life.

47. In the present case, the accident has occurred on 24.2.2002, the respondent/claimant suffered grievous injuries. He was hospitalised for three

months. Due to an infection, his right leg below knee has been amputated. He claimed compensation of Rs. 5 Lakhs. The Claims Tribunal has

awarded only Rs. 1 Lakh. In Govind Yadav v. New India Assurance Company Ltd. (supra) case, the Supreme Court has awarded Rs.

1,50,000/- towards pain and suffering, Rs. 1,50,000/- for loss of amenities and Rs. 2,00,000/- towards future medical expenses. The only

difference is that the injured therein was aged 24 years, a cleaner in a Mini bus, whereas, in the case on hand, the injured was aged 73 years, at the

time of accident.

48. On the facts and circumstances of this case, this Court is of the view that it is a fit case, where suo-motu enhancement has to be ordered in the

light of Govind Yadav v. New India Assurance Company Ltd. (supra) case. Reference can be made to following decisions, on suo motu

enhancement,

(i) In National Insurance Co. Ltd. v. M Jayagandhi LNIND 2008 MAD 242 : 2008 (1) TNMAC 177, on the question as whether in the absence

of any Cross Objection, the High Court could suo motu enhance the compensation, by exercising power under Order 41, Rule 33 CPC, this

Court, at Paragraphs 37 and 38, held as follows:

37. The question arising for consideration is whether in the absence of any Cross Objection, the Appellate Court could suo motu enhance the

compensation. The Appellate Court exercising power under Order 41, Rule 33, CPC could enhance the quantum of compensation even without

Cross-Objection. The Courts and Tribunals have a duty to weigh various factors and quantify the amount of compensation which should be just.

Reference could be made to the decision of the Supreme Court in Sheikhpura Transport Co. Ltd. Vs. Northern India Transport Insurance Co., ,

wherein it is held that pecuniary loss to the aggrieved party would depend upon data which cannot be ascertained accurately, but must necessarily

be an estimate or even partly a conjecture. The general principle is that the pecuniary loss can be ascertained only by balancing, on the one hand,

the loss to the Claimants of future pecuniary benefits and on the other any pecuniary advantage which from what-ever sources come to them by

reason of the death, i.e. the balance of loss and gain to a dependant by the death must be ascertained. The determination of the question of

compensation depends on several imponderables. In the assessment of those imponderables, there is likely to be a margin of error. Broadly

speaking, in the case of death, the basis of compensation is loss of pecuniary benefits to the dependants of the deceased which includes pecuniary

loss, expenses, etc. and loss to estate. Object is to mitigate hardship that has been caused to the legal representatives due to sudden demise of the

deceased in the accident. Compensation awarded should not be inadequate and should neither be un-reasonable, excessive nor deficient.

38. Of course, the Claimants who are widow, minor daughter and mother have not filed any Cross-Objection. Even without a Cross-Objection,

questioning the quantum, the Court could suo motu enhance compensation under Order 41, R. 33, CPC. In this context, reference could be made

to The Divisional Controller, Now The General Manager, Karnataka State Road Transport Corporation And Bangalore Transport Service,

Bangalore Vs. J.D. Sigamany And Another, wherein it has been held as follows:

6) I am in general agreement with the basic proposition of law that has been canvassed by the appellant's learned advocate when he points out that

it is a well settled principle that a party who suffers an order or a decree and does not Appeal against it or assail it would normally not be permitted

at the hearing of the Appeal to try and take advantage of the situation by asking for enhancement. The issue is not that but really as to whether this

situation prescribes an absolute and total bar to the Court granting a relief if in the interest of justice such a relief is an absolute must. One has to

view the situation from a rather practical point of view the first of them being with regard to the very poor quality of legal assistance that is usually

available in and around the M.A.C.T. and thereafter, the second aspect of the matter being that the status of the parties and their general condition

themselves may be such that they are unable to agitate the matter further and the third aspect of the matter which is relevant having regard to the

present case, is the possibility of certain further tragic occurrences such as deaths that may have intervened, all of which may contribute to a

situation wherein the Court finds that no Appeal or Cross-Objections have been filed. The essence of doing justice requires that compensation

when awarded has got to be reasonable and fair and it has also got to be adequate having regard to the totality of the circumstances. The hearing

of the Appeal involves a total review of the case and the Appeal is virtually an extension of the proceedings before the lower Court. The law is well

settled with regard to one interesting aspect of the matter, namely, that the Courts do come across a few instances where instead of over-pitching

the case before the Trial Court, a very modest amount is claimed and the Tribunals in these circumstances have been wrongly limiting the relief to

the amount that has been claimed on the ground that even though the party is entitled to something higher, what was asked for is a lower figure.

This Court had occasion to correct these orders and to lay down that the Tribunal is required to pass an order quantifying the compensation

correctly irrespective of what has been claimed on the basis of the principle that it is not the amount that is claimed in that matter, insofar as if the

Court has to the power to award a lesser amount, that it is equally equipped with the power to award a higher amount. It is that principle which

applies with equal force to the Appeal Court and though I do not dispute that a Court would normally not permit a party to ask for enhancement

unless an Appeal or Cross-Objections have been filed but there could be a very small category of cases in which the Court would make an

exception, the reason being that the essence of doing justice requires that a Court will not refuse a relief only because of a technical or a procedural

bar. I need to amplify here that if the technicalities are upheld, the result would be doing injustice insofar as the party will be left with a

compensation lesser than what a fair evaluation entitles the party to. Again, I do not on the basis of the law as enunciated by the Courts in the

decisions set out by me above, subscribe to the view that there exists any bar in the way of this Court exercising such powers. The powers do exist

under Order 41, Rule 33, CPC and more importantly, such powers can certainly be exercised u/s 151, CPC in the interest of justice.

Applying the above decision, in Tamil Nadu State Transport Corporation Vs. Vasantha and Others, Justice Arumuga perumal Adithyan has

enhanced compensation, exercising power under Order 41, Rule 33, CPC and Section 151, CPC.

(ii) In Tamil Nadu State Transport Corporation v. Saroja and Others, reported in LNIND 2008 BMM 215: 2008 (1) TNMAC 352, this Court

has considered the same issue and the said point is answered as follows:

6. On point:

The learned counsel for the respondents/claimants placing reliance on Order XLI, Rule 33 of C.P.C. and the various decisions emerged thereunder

would pray that the compensation might be enhanced even though no cross-objection has been filed by the claimants, whereas the learned counsel

for the appellant-Transport Corporation would cite the decision of the Hon"ble Apex Court in Oriental Insurance Co. Ltd. v. R. Swaminathan and

Others, (2006) 2 ACC 701 (SC), and develop his arguments to the effect that unless there is a cross objection, the question of enhancing the

compensation would not arise. Hence, it is just and necessary to refer to the decision of the Hon"ble Apex Court in Oriental Insurance Co. Ltd. v.

R. Swaminathan and Others (supra). An excerpt from it would run thus:

Apparently the first respondent claimant was satisfied with the Tribunal's Award as he did not file any Appeal there against to the High Court.

Nonetheless, being aggrieved by the Single Judge's judgment, the claimant filed a Letters Patent Appeal before the Division Bench of the High

Court. This Appeal was allowed and by the impugned judgment the High Court has awarded total compensation amounting to Rs. 7,44,000/-

under different heads with a direction for payment of interest at 18% from the date of Petition. The appellant-Insurance Company is aggrieved

thereby and is in Appeal before us.

The issue that arises in this case is, whether the Division Bench of the High Court was justified in increasing the compensation amount beyond the

amount awarded by the Tribunal despite the fact that the Award of the Tribunal was not at all challenged by the claimant. The only reason given by

the Division Bench of the High Court for doing so is:

In this connection, we may observe that we are aware of the fact that we are enhancing the compensation even though the injured has not claimed

it. But, the question is covered by catena of decisions justifying enhancement of compensation even if cases where the injured has not preferred an

Appeal, provided the circumstances of the case warrants the same.

To say the least, this was a very facial way of interfering with the award when no interference was called for. We called upon the learned Counsel

on both sides to show us at least one case (out of the catena of judgments referred to in the impugned judgment) in support of this proposition.

Learned counsel frankly confessed that there was none. On the other hand, the learned Counsel for the appellant drew our attention the judgment

of this Court in Banarsi and Others Vs. Ram Phal, which supports the proposition that in an Appeal filed by the defendant laying challenge to the

grant a smaller relief, the plaintiff as a respondent cannot seek a higher relief if he had not filed an Appeal on his own or had not taken any cross-

objection. In the present Appeal it would appear that the claimant neither Appealed against the award of compensation passed by the Tribunal, nor

filed any cross-objection in the First Appeal filed by the Insurance Company. Thus, we are satisfied that the Division Bench of the High Court

wholly erred in increasing the compensation amount beyond the amount awarded by the Tribunal in the Appeal filed by the Insurance Company.

7. A mere perusal of the excerpt from the said decision would clearly indicate that the Hon''ble Apex Court in that decision has not laid down as a

universal rule of interpretation of Order 41, Rule 33 of C.P.C. Taking into consideration, the method and manner in which the Division Bench of

this Court in the Letters Patent Appeal, without citing adequate reasons and precedents, enhanced the compensation amount to an extent of Rs.

7,44,000/- with 18% interest from that of Rs. 3,00,000/- awarded by the Single Bench of the same Court, the Hon"ble Apex Court found fault

with it.

8. Furthermore, the above excerpt also would reveal that without even relying upon any precedent, the Division Bench of this Court, simply

enhanced the compensation and that too to the extent of double that of what the Single Judge of this Court ordered. It is also clear that when the

Hon"ble Apex Court wanted a precedent in that regard, the learned counsel for the appellant therein cited only the decision of the Hon"ble Apex

Court in *Banarsi v. Ram Phal* (supra). As such, in the peculiar facts and circumstances of that case, the Hon"ble Apex Court felt that the power

under Order 41, Rule 33 of C.P.C. invoked by the High Court and that too in a case where such an enhancement was not at all warranted, looked

askance at it. It is therefore explicit that the Hon"ble Apex Court in the cited decision has not laid down the law that even in a fit case, the High

Court should not invoke Order 41, Rule 33 of C.P.C. in the absence of filing cross Appeal. Furthermore under Order 41, Rule 33, there are

earlier decisions of the Hon"ble Apex Court, which could be cited as under:

(i) *Seema Chawla and Others Vs. Mohinder Singh and Others*, .

(ii) *Mahant Dhangir and Another Vs. Madan Mohan and Others*,

(iii) *Managing Director (Metro), Pallavan Transport Corporation Ltd. Vs. Kalavathy and Others*,

(iv) *The State of Punjab and Others Vs. Bakshish Singh*,

9. The perusal of the aforesaid Judgments of the Hon"ble Apex Court would clearly highlight that without filing cross Appeal, the respondents in

the Appeal could pray for reliefs and that the High Court under Order 41, Rule 33 could grant such reliefs also. This Court in several cases

adhering to the aforesaid decisions of the Hon"ble Apex Court held that under Order 41, Rule 33 of C.P.C., this Court could enhance the

compensation in appropriate cases. An excerpt from the decision of this Court in *Managing Director, Thanthai Periyar Transport Corp.*,

Villupuram Vs. Sundari Ammal and four Others, would run thus:

Unfortunately, in the instant case, there is no cross-objection. Therefore, it would be essential, in this context, to consider whether this Court has

got powers to enhance the amount of compensation, in the event of coming to the conclusion that the award was on the lower side, even though

there is no cross-objection by the claimants.

In Dangir v. Madan Mohan (supra), and M.D., Pallavan Transport Corporation Ltd. v. Kalavathi (supra), it is held that this Court has got power

to enhance the compensation, even though the claimants had not filed any cross-objection against the award seeking for higher compensation, if

this Court finds that the amount awarded by the Tribunal is not just and adequate.

As pointed out by the Apex Court in State of Punjab v. Bakshish Singh (supra), the reading of the provision would make it clear that the Appellate

Court has got wide power to do complete justice between the parties and which enables this Court to pass such decree or order as ought to have

been passed or as the nature of the case may require notwithstanding that the party in whose favour the power is sought to be exercised has not

filed any Appeal or cross-objection.

The Apex Court in Dhangir v. Madan Mohan (supra), by referring Order 41, Rule 33, would make the following observation:

The Appellate Court could exercise the power under Rule 33 even if the Appeal is only against a part of the decree of the lower Court. The

Appellate Court could exercise that power in favour of all or any of the respondents although such respondent may not have filed any Appeal or

objection. The sweep of the power under Rule 33 is wide enough to determine any question not only between the appellant and respondent, but

also between respondent and co-respondents. The Appellate Court could pass any decree or order which ought to have been passed in the

circumstances of the case. The words 'as the case may require' used in Rule 33, Order 41 have been put in wide terms to enable the

Appellate Court to pass any order or decree to meet the ends of Justice. What then should be the constraint? We do not find many, we are giving

any liberal interpretation. The rule itself is liberal enough, the only constraints that we could see may be these: That the parties before the lower

Court should be there before the Appellate Court. The question raised must properly arise out of judgment of the lower Court. If these two

requirements are there, the Appellate Court could consider any objection against any part of the judgment or decree of the lower Court. It is true

that the power of the Appellate Court u/s 33 is discretionary. But, it is a proper exercise of judicial discretion to determine all questions urged in

order to render complete justice between the parties. The Court should not refuse to exercise that discretion on mere technicalities.

10. And then the Division Bench of this Court in the decision in *The Managing Director, Annai Sathya Transport Corporation Ltd., Dharmapuri*

Vs. Janardhanam and 7 others, placing reliance on the decision of the Hon''ble Apex Court held a similar view that without cross Appeal Order

41, Rule 33 of C.P.C. could be invoked in appropriate cases. An excerpt from it would run thus:

At this stage, learned counsel appearing for the respondent/claimants would submit that the Tribunal has awarded interest only from the date of the

Judgment and not from the date of the petition. The learned counsel for the respondents/claimants would submit that even though no Appeal has

been filed by the respondents/claimants or no cross-objections have been filed by them, this Court has discretionary power by virtue of Order 41,

Rule 33 of CPC and also in view of the rulings of the Supreme Court in *Dhangir v. Madan Mohan (supra)*, to grant the proper relief. Of course,

the Apex Court has pointed out in clear and categorical terms and the power conferred under Order 41, Rule 33 on the Appellate Court is

discretionary, and then it must be used in proper case using the judicial discretion to render justice. The Apex Court in *United India Insurance Co.*

Ltd. Vs. Narendra Pandurang Kadam and Others, has clearly laid down that the rate of interest must be awarded from the date of the petition and

not from the date of the Judgment.

11. Over and above that the decision of the Hon''ble Three Judges' Bench of the Hon''ble Apex Court, in *Nagappa Vs. Gurudayal Singh and*

Others, could be cited here. An excerpt from it would run thus:

Firstly, under the provisions of Motor Vehicles Act, 1988 (hereinafter referred to as 'the M.V. Act'), there is no restriction that compensation

could be awarded only up to the amount claimed by the claimant. In an

appropriate case where from the evidence brought on record if

Tribunal/Court considers that claimant is entitled to get more compensation than claimed, the Tribunal may pass such award. Only embargo is-it

should be "just" compensation, that is to say, it should be neither arbitrary, fanciful nor unjustifiable from the evidence. This would be clear by

reference to the relevant provisions of the M.V. Act. Section 166 provides that an application for compensation arising out of an accident involving

the death of, or bodily injury to, persons arising out of the use of motor vehicles, or damages to any property of a third party so arising, or both,

could be made (a) by the person who has sustained the injury; or (b) by the owner of the property; or (c) where death has resulted from the

accident, by all or any of the legal representatives of the deceased; or (d) by any agent duly authorised by the person injured or all or any of the

legal representatives of the deceased, as the case may be. Under the proviso to sub-section (1), all the legal representatives of the deceased who

have not joined as the claimants are to be impleaded as respondents to the application for compensation. Other important part of the said Section

is sub-section (4) which provides that "the Claims Tribunal shall treat any report of accidents forwarded to it under sub-section (6) of Section 158

as an application for compensation under this Act? Hence, Claims Tribunal in appropriate case can treat the report forwarded to it as an

application for compensation even though no such claim is made or no specified amount is claimed.

(iii) In *Tamil Nadu State Transport Corporation v. Pothumponnu C.M.A.* (MD) No. 714 of 2009, dated 5.8.2009, this Court, held as follows:

77. Notice can be issued to the opposite parties/respondents only in case where their rights are going to be affected by way of variation/reduction.

In this case, the claimants are going to be benefited. Hence, no notice is necessary in the appeal. When the Tribunal commits a mistake that too a

material mistake, this Court cannot close its eyes and decide the matter mechanically. When the mistake is noticed by this Court, this Court has got

power to do away with it, even while dismissing the appeal at the admission stage itself. The presence of the respondent is not a must. When there

is a case for admission, the matter can be admitted and notice can be ordered. When there is no case made out for admission, the appeal deserved

to be dismissed. While dismissing, the material irregularity committed by the Tribunal can be set right by awarding suitable amounts to the

respondents without notice to them. The presence of the claimants or absence does not make any difference. Even if they are present and they do

not bring it to the notice of this Court about the irregularity, this Court can always remedy the same suo motu under Order XLI Rule 33 of the

CPC and Section 173 of the Motor Vehicles Act and invoking Articles 227 of the Constitution of India. Moreover, Sections 163 and 166 are

beneficial provisions of the Motor Vehicles Act aimed at consoling and compensating the victims of the accident. This Court's approach should be

humane in nature not whittled down by technicalities. The powers of the Court are wide enough to do complete justice.

49. The respondent/claimant would have experienced severe pain and suffering at the time of accident and during the period of treatment. Pain is

one, which is experienced momentarily, but it may continue even for a longer period, depending upon the gravity and situs of the injury, whereas,

suffering is loss of happiness, on account of the same. Pain has no difference between Rich and Raff.

50. In the light of the decision of the Supreme Court in Govind Yadav v. New India Assurance Company Ltd. (supra) case and considering the

age of the respondent/claimant in the present appeal and the longevity, this Court is inclined to award a sum of Rs. 50,000/- towards pain and

suffering, Rs. 40,000/- towards loss of amenities and Rs. 15,000/- for future medical expenses. Similarly, considering the nature of injuries and the

period of treatment, the injured would have certainly taken the assistance of somebody and therefore, a sum of Rs. 5,000/- is awarded towards

attendant charges. The accident has occurred in the year 2002 and therefore, a sum of Rs. 5,000/- is awarded under the head, transportation. The

respondent/claimant would have taken special diet for the healing of the wound and recovery of general condition, a sum of Rs. 5,000/- is

awarded. Certainly, his clothes would have been damaged, at the time of accident. Hence, a sum of Rs. 500/- is awarded under the said head.

51. Though the respondent/claimant has been treated in Government Hospital and not produced any bills, for incurring medical expenditure, it

could be reasonably presumed that considering the gravity of the injury, the respondent/claimant would have incurred some expenses towards

medicines and in this regard, it is worthwhile to extract the decision of this Court in *Nesamony Transport Corporation Limited Vs. Chenthilathiapan*

and *Another*, wherein, this Court held that if there is evidence to show that the injured was hospitalized, then it could be presumed that the injured

would have incurred considerable medical expenses. Hence, this Court is inclined to award a sum of Rs. 5,000/- under the head, medical expenses.

52. In *R.D. Hattangadi v. Pest Control (India) Pvt. Ltd.* (supra), and the Supreme Court has held in Paragraph 18, is as follows:

18. So far the direction of the High Court regarding payment of interest at the rate of percent over the total amount held to be pay-able to the

appellant is concerned, it is to be modified. The High Court should be clarified that the interest shall not be payable over the amount directed to be

paid to the appellant in respect of future expenditure under different heads. It need not be pointed out that interest is to be paid over the amount

which has become payable on the date of award and not which is to be paid for expenditures to be incurred in future. As such we direct that

appellant shall not be entitled to interest over such amount.

In view of the above principle, the award of Rs. 15,000/- towards future medical expenses shall not carry any interest.

53. In the result, the respondent/claimant is entitled to a compensation of Rs. 2,25,500/-. Except the compensation awarded under the head, future

medical expenses, he is entitled to interest at the rate of 7.5% per annum, from the date of claim, till the date of realisation, under the following

heads,

In the result, the civil miscellaneous appeal is dismissed. The appellant-Transport Corporation is directed to deposit the award amount along with

the enhanced compensation, now determined by this Court, along with the proportionate accrued interests and costs, less the amount already

deposited, to the credit of M.C.O.P. No. 713 of 2007, dated 22.1.2009, on the file of the Motor Accidents Claims Tribunal (Additional District

Judge, Fast Track Court II), Poonamallee, within a period of four weeks from the date of receipt of a copy of this order. No costs. Consequently,

connected Miscellaneous Petition is also closed.