



CMA(MD).No.327 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED:28.10.2024

CORAM:

**THE HON'BLE Mrs. JUSTICE V.BHAVANI SUBBAROYAN
AND
THE HON'BLE Mr. JUSTICE K.K.RAMAKRISHNAN**

C.M.A(MD).No.327 of 2023
and
C.M.P.(MD).Nos.3995 and 9755 of 2023
and
Cross.Objection (MD).No.27 of 2023

C.M.A.(MD).No.327 of 2023:

The Divisional Manager,
National Insurance Company Limited,
3, North Veli Street,
Madurai-625 001.

... Appellant/Respondent No.2

Vs.

1.Minor.N.Nishanth
(minor 1st respondent represented by his father
namely V.Nagaraj)

2.Kallal Roadways Firm,
Managing Partner,
V.O.C.Road,
Karaikudi Taluk,
Sivagangai District.

3.General Manager,
Tamil Nadu Transport Corporation,



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Karaikudi.

... Respondents No. 1 to 3

(R2 is set exparte in Tribunal. Notice dispensed with)

Prayer : Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicle Act, 1988, to set aside the award in M.C.O.P.No.613 of 2017, dated 05.08.2022 on the file of the Motor Accidents Claims Tribunal, Special Subordinate Court, Madurai.

For Appellant : Mr.J.S.Murali

For Respondents : Mr.C.Godwin
For R1
Mr.A.V.B.Krishnakanth
For R3

Cross Objection (MD).No.27 of 2023:

Minor.N.Nishanth

Minor represented by his father and
natural guardian V.Nagaraj,
14,Thirumalai Lane,
Mariamman Kovil Street,
Jamropuram Market, Goripalayam,
Madurai-625 002.

... Cross appellant

Vs.



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1.The Divisional Manager,
National Insurance Company Limited
3,North Veli Street,
Madurai-625 001.

2.Kallal Roadway Firm,
Managing Partner,
V.O.C. Road,
Karaikudi Taluk Gene,
Sivagangai District.

3.The General Manager,
Tamil Nadu Transport Corporation,
Karaikudi.

... Respondents.

Prayer : Cross Objection filed under Section under Order 41 Rule 22 of CPC, to modify the award in M.C.O.P.No.613 of 2017, dated 05.08.2022 on the file of the Motor Accidents Claims Tribunal, Special Subordinate Court, Madurai.

For Appellant : Mr.C.Godwin

For Respondents : Mr.J.S.Murali (for R1)

: Mr.A.V.B.Krishnakanth for R3



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ORDER

[Order of the Court was made by **K.K.RAMAKRISHNAN.J.,**]

The insurance company filed this appeal challenging the negligence and quantum passed in M.C.O.P.No.613 of 2017, dated 05.08.2022 by the Motor Accident Claims Tribunal/Special Sub Ordinate Court, Madurai, and the claimant filed objection in Cross Objection (MD).No.27 of 2023 seeking enhancement of the compensation.

2.The injured/Minor claimant namely Minor. N.Nishanth travelled in the insured vehicle/bus bearing Registration No.TN-63 AS-3290. On 02.04.2017 at 11.20 p.m, the injured/Minor Claimant was sitting in the seat near the window, when the bus was proceeding towards Madurai-Melur road near Uthankudi Temple City Hotel. The bus driver drove the vehicle in a rash and negligent manner and dashed against the right side of the Government Bus bearing Registration No.TN-63 N-1594. In the result, the rod jutting out from the Government bus struck the claimant, who was sitting in the window side seat and he sustained fracture in the neck and



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spinal cord. More particularly, injury in C6 and C7 spinal cord and right side chin. Because of that, he was admitted in the hospital and took treatment for many days from 03-04-2017 to 02.06.2017. After partial recovery, he was re-admitted on 2.10.2017 to 04.10.2017 and he is also continuously taking treatment in LIVE WELL Hospital in Poovandi, which is a physiotherapy Hospital. At the time of the admission in the hospital, he underwent many surgeries and also undergone unbearable pain all over the body, due to the surgeries and insertion of the plate in C3 and C7. In the result, he suffered 100% disability. After the accident, he was unable to continue studies and he is in vegetative state and he is suffering from Permanent Loco Motor disability of right haemiplegia. Therefore, he filed the claim petition before the Court below claiming compensation of Rs. 70,00,000/-.

3.The appellant/insurance company filed a counter denying the accident and specifically took a plea that the driver of the Government bus is responsible for the accident and the appellant insured vehicle is not responsible for the accident.



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4.The corporation filed a counter denying the allegation and stated that due to the over speeding of the insured bus, the accident happened. Because of the hitting only, the rod from the corporation bus which was coming from the opposite, came off and caused injury to the claimant/Minor.

5.On the side of the claimants, P.W.1 to P.W.5 were examined and exhibited 38 documents as Ex.P.1 to Ex.P.38 and one Court document namely the permanent disability Certificate was marked as C.O.1. On the side of the private bus, D.W.1 was examined and no document was exhibited.

6.The learned trial Judge, upon considering the evidence both oral and documentary and on hearing arguments of both sides, has passed the impugned award dated 05.08.2017 holding that the accident had occurred only due to the rash and negligent driving of the second respondent and also considered the multiple injuries more particularly, injury in C6 and C7 spinal cord and right side chin, granted compensation of Rs.61,15,700/-



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along with 7.5% interest from the date of filing of the claim petition under the following heads:-

<i>Heads</i>	<i>Amount awarded by the Tribunal</i>
For permanent disability	Rs.30,24,000/-
For pain and sufferings	Rs. 5,00,000/-
For medical expenditure	Rs.16,72,700/-
For Nutrition	Rs. 50,000/-
Attendant charges	Rs. 8,64,000/-
For Transport expenses	Rs. 5,000/-
<i>Total</i>	<i>Rs.61,15,700/-</i>

Aggrieved by the impugned award, the appellant has preferred this present appeal.

7.The Insurance company made the following submissions;

7.1.The learned Tribunal Judge has not properly considered the evidence of eye witness namely, P.W.1. According to the counsel, during the cross examination, the witness deposed that the rod protruding from the bus caused injury to the claimant/minor, and hence the same was not properly considered.



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7.2. Even the evidence of R.W.1 also shows that after the impact, the rod protruding from the corporation bus caused injury to the claimant/Minor. In the said circumstances, he states that negligence is on the part of the Corporation bus driver and the Corporation has not properly maintained the bus and the hence, the injury was caused to the claimant/Minor. Therefore, the negligence fixed by the Court below is not in accordance with law. He further submitted that the learned trial Judge has applied the multiplier method of 100% disability and taken the income of the boy as Rs.10,000, which is against the law laid down by the Hon'ble Supreme Court reported in **2021 (1) TN MAC 283 (SC)** and hence, he seeks for reduction of the award passed by the Court below.

8. The learned counsel for the Transport Corporation submitted that the driver of the appellant insured vehicle drove the vehicle in a rash and negligent manner and crossed the median and jumped to the other side of the road and collided with the corporation bus. In the result, the rod protruding from the Corporation bus caused injury to the claimant/Minor. Hence, the same was correctly appreciated by the learned trial Judge. Even he pleaded guilty and documents also were marked and hence, without any



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explanation relating to the admission of the guilt of negligence, the plea of the insurance company can not be accepted. Apart from that, the independent witness P.W.3/the bus driver was also examined and he clearly deposed about the nature of the accident. Hence, the finding of the learned trial Judge on the insurance company is in accordance with law.

9.The learned counsel for the claimant submitted that at the time of the accident, the boy was studying in fifth Standard. Because of the accident, he sustained injuries. Thereby, he is suffering permanent disability and he is continuously taking treatment and even he is unable to sit for more than 5 or 10 minutes. In the said circumstances, he requires someone's assistance for helping him each day and he is continuously taking treatment. The learned judge has not awarded any amount under the heads of Additional Medical Expenses. Apart from that, the learned trial Judge has not awarded any amount for future loss and the award granted under the other heads is not adequate and hence, he seeks for enhancement of the award passed by the learned Trial Judge.



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10.This Court considered the rival submission made on either side and perused the record and also the impugned judgment and more particularly, the deposition of all the witnesses and the medical records pertaining to the injuries sustained by the claimant/Minor.

11. The following points arise for consideration of this appeal:

11.1. Whether the negligence is correctly fixed on the appellant insurance company?

11.2. Whether the quantum of compensation awarded by the Tribunal is correct or not?

12.Discussion on Negligence:

12.1.From the records, it is clear that the injured/claimant was travelling in the insured private bus namely Kallal Roadways Firm. The same was proceeding towards Madurai. The opposite vehicle was the Transport Corporation. According to the witnesses, the insured vehicle was driven by the driver with break neck speed without noticing the curve. At the time of the accident, the claimant/Minor was sitting on the right side window seat and catmapping. Due to the accident, the rod protruding from

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the Transport Corporation hit the injured. As a result, he sustained injury in the neck portion and right chin portion also. In the said circumstances, the said events were clearly deposed by the three independent witnesses and also R.W.1/ driver of the Corporation bus. According to the learned counsel for the Insurance Company, R.W.1's evidence was not properly considered by the learned Trial Judge. This Court, in order to consider the same, extracted the evidence of R.W.1 as follows:

விபத்து நடந்த இடம் கிழமேல் நேரான சாலை என்றால் சரிதான். நான் மேற்கிலிருந்து கிழக்கு நோக்கி சென்று கொண்டிருந்தேன். விபத்து மதுரை மத்திய பேருந்து அருகில் நடந்தது என்று சொன்னால் சரிதான். அந்த சாலையில் அடிக்கடி வாகனம் ஓட்டி சென்றுள்ளேன் என்றால் சரிதான். விபத்து நடந்த சாலை சுமார் 100 அடி அகலம் உள்ளது என்றால் சரிதான். ம.சா.ஆ.5 வரைப்படம் சரியானது தான். ம.சா.ஆ.5 சம்பவம் இடம் சரிதான். ம.சா.ஆ.5இல் மையக்கோட்டினை ஓட்டி வடக்கு பக்கம் சம்பவம் நடந்ததாக காட்டப்பட்டுள்ளது சொன்னால் சரிதான். சம்பவ சமயத்தில் எனது இடது பக்கம் வாகனம் செல்லவில்லை. எதிரே வந்த பேருந்து மையக்கோட்டை தாண்டி வருகிறது என்பதனை 10மீ தொலைவிற்குள் பார்த்தேன். நான் கவனக் குறைவாக பேருந்தை ஓட்டி சென்றதால் தான் எதிரே பேருந்து வருவதை கவனிக்காமல் பேருந்தின் மீது மோதிவிட்டேன் என்றால் சரியல்ல.



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12.2.P.W.3 specifically deposed that due to the rash and negligent driving of the insured vehicle, the said insured bus dashed against the on coming Transport Corporation bus. After the said collision the rod protruding from on coming bus, namely Transport Corporation bus caused injury to the claimant/Minor. The said evidence was corroborated by R.W.1. Therefore, the injury was not caused as projected by the learned Counsel for the Insurance Company. According to the learned counsel for the Insurance Company, the rod was protruding from the Corporation bus and the said rod caused injury to the claimant/Minor at the time of the crossing the vehicle. The same was not evidenced before the Court below. According to the claimant, only due to the impact caused by the private bus/insured by dashing against the oncoming Corporation bus, the rod came off from the said bus. The said evidence is substantiated by the FIR, final report and the plea of guilty made by the bus driver. It is well settled principle, once the plea of guilty was made by the bus driver, as per the law laid down by the various High Courts and also the Hon'ble Supreme Court, unless the admission in the said case was otherwise explained by the driver of the bus, the same is admissible to show that there was a negligence. To that extent, this Court relied the plea, made before the Criminal Court.

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12.3. In the said circumstances, the argument of the learned counsel for the appellant is not accepted. Further, the Hon'ble Supreme Court has repeatedly held that the evidence of witness to be read in whole and not pick the sentence here and there and make the submission. The learned counsel for the appellant/insurance company singled out one sentence without reading the entire evidence. From reading the evidence of P.W.3, it is clear that only after the hit by the insured vehicle against the on coming Transport Corporation bus, the rod got disjointed from the Corporation bus and not as argued by the appellant that the rod was already protruding and caused injuries to the deceased, and not because of collision. The same is evident from the damages found on the buses as per the Motor Vehicle Report. In the said circumstances, this Court is unable to accept the argument of the learned counsel for the appellant that the negligence was on the part of the driver of the Corporation bus.

13. Discussion on Quantum:

The injured/claimant sustained grievous injuries on his neck. From the records, it is clear that his neck was totally damaged and he has



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undergone multiple surgeries for C6,C7 vertebra with Titanium cage plate and screw and bone graft. Further, the said injuries in the spinal cord made him immobile. In this context, the evidence of the mother/P.W.2 reads as follows:

P.W.2(Sangeetha)

கடந்த 02.04.2017 ம் தேதி இரவு சுமார் 11.20 மணியளவில் நடந்த வாகன விபத்தில் எனது மகன் இளவர் நேரிந்த என்பவருக்கு காயங்கள் ஏற்பட்டது. அவனுக்கு ஊ6 மற்றும் ஊ7 கழுத்து எலும்புகள் நொருங்கி விட்டன. தண்டுவடத்தில் காயம் ஏற்பட்டது. வலது தாடை எலும்பு முறிவு ஏற்பட்டது. காயம்பட்ட என்னுடைய மகனை அருகில் உள்ள மீனாட்சி மின் மருத்துவமனையில் சிகிச்சைக்கு சேர்த்தார்கள். அங்கு 03.04.2017 முதல் 02.06.2017 வரை உள்நோயாளியாக சிகிச்சை அளிக்கப்பட்டது. ஊ6 கழுத்து தண்டு வட எலும்பு அகற்றப்பட்டும், ஊ7 எலும்பில் டைட்டானியம் பிளேட் மற்றும் ஸ்குருக்கள் பொருத்தப்பட்டது. அதன் பின்னர் அவன் தேவகோட்டையில் உள்ள செந்தில் மருத்துவமனையில் 08.06.2017 முதல் 18.06.2017 வரை உள்நோயாளியாக சிகிச்சை கொடுக்கப்பட்டது. பின்னர் மீண்டும் மீனாட்சி மின் மருத்துவமனையில் 02.10.2017 முதல் 04.10.2017 வரை உள்நோயாளியாக சிகிச்சை எடுத்துக் கொண்டார். பின்னர் புவந்தியில் உள்ள டிஜிஏ நுறுநுடு என்ற மருத்துவமனையில் 23.07.2017 முதல் 19.09.2017 வரை உள்நோயாளியாக சிகிச்சை



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கொடுக்கப்பட்டது. மீண்டும் அதே மருத்துவமனையில் 19.10.2017 முதல் 13.12.2017 வரையிலும், மீண்டும் 05.02.2018 முதல் 28.02.2018 வரை உள்நோயாளியாக சிகிச்சை கொடுக்கப்பட்டது. தற்பொழுது என்னுடைய மகனுக்கு இரண்டு கை, இரண்டு கால்களும் செயல் இழந்து விட்டது. இடுப்புக்கு கீழ் உணர்வுகள் இல்லாமல் போய்விட்டது. சிறுநீர் மற்றும் பலம் அவன் கட்டுப்பாட்டில் இல்லாமல் தன்னிச்சையாக வெளியேறுகிறது. அதனால் என்னுடைய மகனின் உடல் நிரந்தர ஊனமாகிவிட்டது. அவனால் யாருடைய உதவியும் இல்லாமல் செயல்பட முடியாது. விபத்து சமயத்தில் என்னுடைய மகன் சாய்ராம் மெட்ரிக்குலேசன் ஹெயர்செகண்டரி பள்ளியல் 6ம் வகுப்பு படித்து வந்தான். இந்த விபத்துக்குப் பின்னர் படிப்பு தொடர முடியாமல் வீட்டிலேயே இருக்கின்றான்.

13.1.From the above deposition of the mother of the injured, it is clear that the minor victim sustained multiple injuries in the neck region. There was a complete fracture and damage to the C6 and C7 of the spinal card. Therefore, operation was done and metal screw also fixed. He took the initial treatment for continuous period from 03.04.2017 to 02.06.2017 and thereafter he also was periodically admitted in the hospital and various treatment was given . Parallelly the victim also is continuously taking treatment in the special physiotherapy centre in order to keep his life going.



It is painful to observe the condition of the child from the above evidence of the mother of the child, that he is not even able sit for more than 5 minutes.

He lost his sense below the hip. He does not have sense the urination and the defecation. He has to be under constant assistance of somebody every minute. Hence he is being taken care of by the private attendants, apart from the family members, and hence, he has incurred a huge expenditure. Further, he has been taking treatment continuously. Even after prolonged treatment and physiotherapy, he has not fully recovered and still bed ridden. Apart from the continuous treatment, he has to undergo surgery for the purpose of removing the plate in the neck portion.

13.2.The above evidence of the mother/P.W.2, is also supported by the doctor's evidence. The doctor specifically deposed that he sustained grievous injuries and also the injuries caused complications to him. Further, the Physiotherapy doctor from the Physiotherapy Centre also was examined and he also deposed that even though various treatment has been given, he is unable to sit for more than five minutes. In the peculiar circumstance of this case, the learned Tribunal Judge has correctly applied the multiplier method to calculate the attender charges and the loss of earning.



13.3. As observed earlier, the victim has spinal cord injury as well as serious injury over the neck and confined to bed. Hence, the learned trial judge was correct in applying the principle relied laid down in the case of *Kajal Vs. Jadish Chand and others* reported in **2020 (1) TN MAC 328** to award attendant charges upon considering the specific above evidence that he is not able to move without assistance of the attender apart from the parents service. But, failed to apply proper multiplier. The child is aged about 11 years. The learned tribunal judge also observed that he would require one attender for his remaining part of life i.e., at least for 50 years and failed to calculate the attendance charges for 50 years. The learned tribunal judge has calculated only for 18 years. Therefore, this Court inclines to award attendant charges for the period of at least 30 years. More particularly, the injured victim child requires an attendant throughout his life. **Virtually, his condition is more like lamening everyday it is better to leave the life without bearing the daily sufferings.** The learned tribunal judge has fixed the monthly attendance charges for one attender as Rs. 4000/- Hence, the attendant charges is calculated for 30 years which comes as follows:-

$$4000 \times 12 \times 30 = \text{Rs. } 14,40,000/-$$



13.4. Due to the various injuries and more particularly due to the neuro problem, the medical board assessed 90% permanent disability. The insurance company neither disputed the same nor adduced contra evidence. There is no dispute on the side of the insurance company and also no contra evidence. Even though the disability is fixed as 90%, he totally lost his earning capacity, and hence, the learned Tribunal Judge has correctly took the multiplier method and adopted the monthly income of the boy as Rs. 10,000/-, and applied multiplier method of 18, future prospects $(10000 \times 40\%) = \text{Rs.}4,000/-$, calculated loss of earnings as Rs.30,24,000/-.

13.5. The learned Tribunal Judge correctly appreciated the evidence of PW1 and other records and has granted compensation of Rs.5,00,000/- under the head of pain and suffering and amenity and Rs.50,000/- for nutrition and Rs.50,000/- for transport expenses.

13.6. So far as the medical expenditure is concerned, it is the specific case of the claimant that he is continuously taking treatment admitting himself in the hospital and also taking physiotherapy treatment. Hence, as per the medical documents namely Ex.P.8, 11, 13 to 16, 18, 20, 22, 24, 25



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and 31, the Tribunal Judge has fixed the medical expenditure as Rs. 16,72,700/-Considering the nature of the surgeries and also the prolonged treatment, and for the extra nourishment awarded as Rs.50,000/-.

13.7. The above injuries requires periodical treatments and continuous medical supervision. It is the specific case of the mother of the injured/Minor that he is still undergoing Medical treatment and more particularly, he requires constant medical treatment. The evidence also is available on record to show that PW1 is incurring medical expenditure. Records also show that there were multiple operation fixing with screws and plates and the same would have to be removed. Hence, there is a bonafide requirement of future medical expenditure. There is no award under the head of future medical expenditure. Therefore, considering the nature of the injury and the condition of the injured/Minor requires continuous medical treatment, this Court is inclined to award Rs.3,00,000/- under the head of Future Medical Expenses.



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14. Conclusion :-

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Therefore, the Civil Miscellaneous Appeal is liable to be dismissed and the Cross Objection is liable to be partly allowed to the extent and claimant would be entitled to receive the following amount as a compensation under the various heads enumerated hereunder :-

<i>S. No.</i>	<i>Under the head</i>	<i>Awarded by the Tribunal</i>	<i>Awarded by this Court</i>	<i>Award confirmed or enhanced or granted</i>
1.	For loss of earning capacity	Rs.30,24,000/-	Rs.30,24,000/-	Confirmed
2.	For pain and sufferings	Rs.5,00,000/-	Rs.5,00,000/-	Confirmed
3.	For medical expenditure	Rs.16,72,700/-	Rs.16,72,700/-	Confirmed
4.	For Nutrition	Rs.50,000/-	Rs.50,000/-	Confirmed
5.	Attendant charges	Rs.8,64,000/-	Rs.14,40,000/-	Enhanced
6.	For Transport expenses	Rs.5,000/-	Rs.5,000/-	Confirmed



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7.	For Future Medical expenses	-	Rs.3,00,000/-	awarded
	Total	Rs.61,15,700/-	Rs.69,91,700/-	Enhanced

14.1. Accordingly, the civil miscellaneous appeal filed by the insurance company in C.M.A.(MD).No. 327 of 2023 is hereby dismissed.

14.2. The cross objection (MD).No.27 of 2023 filed by the claimant to enhance the compensation is partly allowed and award amount passed in M.C.O.P.No. 613 of 2017 dated 05.08.2022 on the file of the MACT, Tribunal, Special Subordinate Court, Madurai is hereby enhanced to Rs. 69,91,700/- from Rs.61,15,700/- along with interest of 7.5% per annum from the date of the filing of the petition in M.C.O.P.No. 613 of 2017 till the date of the realisation.

14.3. The appellant/insurance company is directed to deposit the entire amount within a period of eight weeks from the date of receipt of a copy of this judgment.

14.4. From the records it is clear the family of the minor have incurred huge expenditure and also they are continuously spending amount



CMA(MD).No.327 of 2023

for maintaining the child, and hence, this Court is inclined to permit the father of the claimant to withdraw Rs.25,00,000/- along with proportionate accrued interest and costs.

14.5. The remaining amount shall be deposited in a Nationalised Bank in Fixed Deposit renewable periodically, till the minor attain majority. The accrued interest is permitted to be withdrawn by the father of the 1st appellant once in three months directly from the bank.

15. The cross objector is directed to pay the excess Court fee, if any. Consequently, the connected Civil Miscellaneous Petitions are closed. No costs.

[V.B.S.J] [K.K.R.K.J.]
28.10.2024

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

vsg



CMA(MD).No.327 of 2023

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To

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



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CMA(MD).No.327 of 2023

**V.BHAVANI SUBBAROYAN, J.
AND
K.K.RAMAKRISHNAN, J.**

vsg

Order made in
C.M.A(MD).No.327 of 2023
and
C.M.P.(MD).Nos.3995
and 9755 of 2023
and
Cros.Objection (MD).No.27 of 2023

28.10.2024