IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.11.2022

CORAM:

THE HONOURABLE **MS.JUSTICE V.M.VELUMANI**
and
THE HONOURABLE **MR.JUSTICE SUNDER MOHAN**

C.M.A.No.2932 of 2021 and
C.M.P.No.16766 of 2021 and C.M.P.No.10932 of 2022
and Cros.Obj.No.103 of 2021

C.M.A.No.2932 of 2021
National Insurance Co.Ltd.
Door No.52, Oppanakkarar Street,
Coimbatore – 641 001

...Appellant

Vs.

1.S.Mohammed Hakkim

2.S.Mubarak

3.M/s.TATA AIG General Insurance Co.Ltd.,
SBS Complex, 3rd Floor,
Upstairs of Samsung Mobile Service Centre,
Thillai Nagar, Trichy – 620 018.

4.K.Kumar

5.M/s.Amirtha Vishwa Vidyapeetham
Ramasamy Nagar Extension - 2
Nallampalayam Road, Ganapathy,
Coimbatore – 641 005.

... Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of M.V.Act, 1988 against the award and decree dated 19.02.2021 made in M.C.O.P.No.448 of 2017 on the file of the Motor Accidents Claims Tribunal, Special Sub Court, Coimbatore.

For Appellant : Mr.S.Arun Kumar

For R1 : Mr.R.Navaneetha Krishnan.
For R3 : Mr.J.Michael Visvasam
For R4 : Notice Dispensed with

Cros.Obj.No.103 of 2021

S.Mohammed Hakkim

...Cross Objector

vs.

1.S.Mubarak

2.M/s.TATA AIG General Insurance Co.Ltd.,
SBS Complex, 3rd Floor,
Upstairs of Samsung Mobile Service Centre,
Thillai Nagar, Trichy – 620 018.

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4.M/s.Amirtha Vishwa Vidyapeetham
Ramasamy Nagar Extension - 2
Nallampalayam Road, Ganapathy,
Coimbatore – 641 005.

5.M/s.National Insurance Co.Ltd.
Door No.52, Oppanakkarar Street,
Coimbatore – 641 001.

Prayer: This Cross Objection is filed under Order XLI Rule 22 of C.P.C., against the award and decree dated 19.12.2021 made in M.C.O.P.No.448 of 2017 on the file of the Motor Accidents Claims Tribunal, Special Sub Court, Coimbatore.

For Cross Objector: Mr.R.Navaneetha Krishnan
For R5 : Mr.S.Arunkumar
For R2 : Mr.J.Michael Visvasam

C O M M O N J U D G M E N T

(Judgment of the Court was delivered by SUNDER MOHAN,J.)

The Civil Miscellaneous Appeal has been filed by the Appellant/Insurance Company against the Judgment and Decree made in M.C.O.P.No. 448 of 2017 on the file of Motor Accident Claims Tribunal, Special Sub Court, Coimbatore. The appellant was the 5th respondent in the said M.C.O.P.No.448 of 2017. The 1st respondent/claimant has filed cross objection in Cros.Obj.No.103 of 2021 questioning the contributory negligence fixed on him as well as for enhancement of the compensation awarded by the Tribunal.

2.For easy reference, parties are referred to as per their rank in C.M.A.No.2932 of 2021.

3.According to the first respondent/claimant, on the date of accident i.e., 07.01.2017 when he was riding his Motorcycle Honda Hornet bearing Registration No. TN 76 AD7983 in the Kovai to Palakad By-pass Road near Murugan Petrol

Bunk, Ettimadai, Coimbatore, the second respondent herein who was driving his car bearing Reg. No.TN 45 BA 5992 in front of the Motor-cycle driven by the 1st respondent applied sudden brake on the highway. The 1st respondent could not control his vehicle because of the sudden brake and hit the right rear side of the Car and fell on the right side of the road. At that time the bus bearing Registration No.TN 60 E 2224 driven by the 4th respondent herein came in a rash and negligent manner and ran over the 1st respondent and caused grievous injuries all over body. Therefore, the 1st respondent claimed compensation of a Rs.1,16,00,000/- (Rupees One Crore Sixteen Lakhs only) and restricted it to one Crore against the second respondent herein, who is the driver of the car and the 3rd respondent/Insurer of the said car, the 4th respondent/driver of the bus, the 5th respondent/ owner of the bus and the appellant who is the Insurer of the bus.

4.The 4th and 5th respondents herein remained ex-parte and the second respondent appeared in person before the Tribunal.

5.The 3rd respondent filed a counter stating that the accident was caused due to contributory negligence of the claimant since as he had violated the traffic rules by not keeping a safe distance from the car driven by the second respondent herein. The 4th respondent/ driver of the bus was shown as an accused in the final report filed by the Police and hence the driver of the car namely the second respondent herein cannot be held liable for negligence.

6.The appellant filed counter stating that the driver of the bus namely the 4th respondent herein is not liable for negligence. The driver of the car was responsible for the negligent act by stopping the vehicle without any signal on a Highway suddenly. The 1st respondent was also equally guilty of contributory negligence by not keeping a safe distance and riding the two wheeler in a rash and negligent manner and hitting the backside of the car and thereafter falling to the right side of the road. The bus driver could not have anticipated the falling of the 1st respondent to the right side of the road and he was the driving on the correct lane. The Appellant/ the Insurer of the bus is not liable to pay compensation.

7.Before the Tribunal, the 1st respondent examined three witnesses on his side and marked twenty documents as Ex.P1 to P.20 and the second respondent/driver of the car was examined as DW1, and three documents were marked Exs.R1 to R3.

8.The Tribunal after considering the pleadings, oral and documentary evidence held that the 1st claimant was liable for contributory negligence and fixed the 1st respondent's liability as 20%. The Tribunal held that the accident took place due to the rash and negligent driving of the driver of the bus and apportioned 80% liability on the appellant and directed the appellant/Insurance Company to pay 80% of the total compensation awarded. The Tribunal found that the driver of the car was not liable for negligence and exonerated the third respondent/ Insurer of the car from making any payment.

9.Against the award dated 19.02.2021, the appellant/Insurance company filed the appeal in C.M.A.No.2932 of 2021 and the 1st respondent has come up with the Cross Objection No.103 of 2021 challenging the finding of the Tribunal holding him liable for contributory negligence and also praying for enhancement of compensation.

10.The learned Counsel for the Appellant/Insurance Company submitted that from the beginning it was the stand of the 1st respondent that the driver of the car suddenly stopped the car in a Highway and the appellant hit the stationary car and because of the impact, fell on the right side of the road. The bus driver could not have anticipated the sudden fall of the rider of the two Wheeler as he was in a National Highway and even if he had come at a very slow speed there was no way that he could have stopped the vehicle to avoid the running over the 1st respondent. Hence no liability could be fastened on the driver of the bus. The Appellant therefore ought to be exonerated from making any compensation to the 1st respondent. The driver of the car was examined as R.W.1 and he had admitted in his evidence, that he stopped the car because his wife had vomiting sensation. The learned counsel therefore submitted that the car had stopped suddenly on a Highway without giving sufficient warning and following the traffic rules. The Insurer/ third respondent herein in their counter however have taken a different stand stating that the car was moving and the 1st respondent/rider of the two wheeler while trying to over take the car at high speed hit the car and fell down. It is only because the 3rd respondent realised that stopping a car in a Highway is against the rules they had taken such a stand. The learned counsel therefore submitted that the car driver and insurer of car had taken two different stands. In any event, the learned counsel submitted that the driver of the car was also made an accused in the final report filed by the Police. The rough sketch would clearly show that the Bus could not have stopped in the circumstances and did not have enough space on the right side as well to avoid the accident as there was a median. The Tribunal ought not to have fixed negligence on the driver of the bus and liability on the appellant and prayed for setting aside the award of the Tribunal.

11.The learned counsel for the 3rd respondent/ Insurer of the car submitted that it was the bus which was responsible for the accident and the Tribunal had correctly come to the conclusion that the car driver was not liable for negligence and fixed the liability in the correct proportion. The driver of the car was examined as RW1 and there is no contra evidence on the side of the driver of the bus or the

1st respondent. This evidence clearly shows that there was no negligence on his part and prayed for dismissal of the appeal as against the 3rd respondent.

12.The learned counsel for the 1st respondent submitted that the Tribunal ought not to have fixed 20 % liability on the 1st respondent . He had hit the car from behind as the car stopped suddenly and he did not anticipate the sudden break applied by the driver of the Car in a Highway. The learned counsel further submitted that the Tribunal erroneously fixed 20% negligence on the part of the 1st respondent. The accident took place only due to the negligent driving by the driver of the car and the bus. The learned counsel further submitted that the monthly income fixed by the Tribunal at Rs.15,000/- is meagre and the Tribunal ought to have fixed Rs.25,000/- per month as notional income of the 1st respondent. The learned counsel also submitted that the Tribunal did not consider the appellant's claim for future medical expenses. The learned counsel had filed C.M.P.No.10932 of 2022 in C.M.A.No.2932 of 2021 praying for receiving additional documents under Order XLI Rule 27 of C.P.C. The Documents are the (i) Original Discharge summary of Ganga Hospital (P) Ltd., (ii) Original Medical

Bills and (iii) Certificate issued by Ganga Medical Centre and Hospital (P) Ltd., which shows that the 1st respondent has spent nearly Rs.2 lakhs on 07.06.2022 towards surgery and certificate has been issued by the Hospital stating that the another surgery is required at the cost of Rs.3,00,000/- and prayed for enhancement of compensation awarded by the Tribunal.

13.In the C.M.P.No.10932 of 2022 filed by the first respondent in C.M.A.No.2932 of 2021 to receive additional documents, the appellant and the other respondents have no serious objections in receiving the additional documents. Hence the C.M.P.No.10321 of 2022 is allowed.

14. Though notice has been served on the respondents 2 and 5 and their names are printed in the cause list, there is no representation for them either in person or through counsel.

15.Heard the learned counsel appearing for the appellant and learned counsel appearing for the 1st as well as 3rd respondents and perused the records.

16.From the materials available on record, it is seen that it is the consistent case of the 1st respondent that while he was riding on the National Highway, the car in front of him driven by the second respondent herein stopped suddenly, he did not anticipate the sudden break and hit the car and fell to the right side of the road. In the FIR which was earliest documents the 1st respondent had mentioned about this fact.

17.Interestingly, we find that the 3rd respondent/Insurer of the car filed a counter which is contrary to the stand taken by the driver of the Car in his evidence before the Court. The Insurer had stated in his counter as follows..

> *"It is evident from the Rough Sketch and the nature of damage sustained by the Car to its right rear portion only, there is no reason for the Car driven by the 1st Respondent to be stopped in the middle of the very wide two way road but the accident has been caused only by the rash and negligent driving of the Petitioner by slightly hitting the right rear of the Car TN-45-BA-5992 while trying to overtake it in high speed."*

The above counter of the 3rd respondent/Insurer suggests that the car was moving and it did not stop. On the other hand, the driver of the car who was examined as R.W.1 had admitted that he had stopped the car because his wife who was pregnant had vomiting sensation. The driver of the car however would say that he had signalled and stopped the car. The fact is that the driver of the vehicle had stopped the car. The driver of the car did not stop it because of any unexpected movement in front of his car. In Highways before stopping a car it is incumbent on the driver of the car to check for vehicles coming behind his car through the rear mirror before stopping the car. Admittedly, the narration of facts would show that the driver of the car had not taken any such precautions. As stated earlier, if there was any movement of vehicle or person or animal before the car then he would have no option except to apply sudden break. In situations like this the driver of the car ought to have exercised reasonable care in checking whether there were any vehicles coming behind the car. That apart we also find that contrary stands have been taken by the Insurer and Car driver. We are of the view that the Insurer realising that stopping of the car suddenly would amount to rash and negligent act took the stand in their counter that the car was moving. The reason given by the Tribunal that the driver of the car need not look for the vehicles coming from behind is not acceptable in the facts of instant case. The driver of the vehicle need not always look for the cars or vehicles behind him but while stopping it is incumbent on the driver to check for any vehicles coming behind before applying the break, especially on an Highway. Therefore we hold that the driver of the car is also liable for negligence.

18.The Tribunal is right in holding that the 1st respondent is liable for contributory negligence since he did not maintain adequate distance as per the Regulation 23 of the Rules of the Road Regulations, 1989 which reads as follows:

> *"23. Distance from vehicles in front – The Driver of a Motor Vehicle moving behind another vehicle shall keep at a sufficient distance from that other vehicle to avoid collision if the vehicle in front should suddenly slow down or stop."*

The Honourable Apex Court had held in ***Nishan Singh and others vs. Oriental Insurance Co.Ltd., and others*** reported in ***2018 (1) TN MAC 745 (SC)***

“The expression ' sufficient distance' has not been defined in the Regulations or elsewhere. The Thumb Rule of Sufficient Distance is at least a safe distance of two to three seconds gap in ideal conditions to avert collision and to allow the following Driver time to respond. The distance of 10-15 feet between the Truck and Maruti Car was certainly not a safe distance for which the Driver of the Maruti Car must take the blame. It must necessarily follow that the finding on the issue under consideration ought to be against the Claimants.”

The above portions has been extracted in the Judgment of the Tribunal. Therefore, we hold that the driver of the two Wheeler is guilty of contributory negligence.

19.As regards the bus driver, it is the case of the appellant that he could not have anticipated this fall and that the appellant should be totally exonerated also cannot be accepted. The driver of the bus also should have taken due care and caution while driving on the Highway. It is the evidence of first respondent as P.W.1 that the driver of the bus also had driven the vehicle in a rash and negligent manner and because of that he could not stop the bus and the bus ran over his leg.

The appellant had cross examined the 1st respondent as P.W.1 and had suggested that after the 1st respondent fell down, the bus dragged it for some distance before stopping. There is nothing in the cross examination to disbelieve the evidence of P.W.1 as regards the rash and negligent driving by the driver of the bus. No evidence has been let in by the appellant to contradict the evidence of P.W.1. We cannot accept the submission of the learned counsel that the sketch alone is enough to show that the driver of the bus was not liable for negligence. In the absence of any evidence contrary to the evidence of P.W.1, so far as the negligence of the driver of the bus, we hold that the driver of the bus is also liable for negligence.

20.The next question would be what is the *inter se* liability of the drivers of the car and the bus and that of the 1st respondent. From the facts narrated above, we are of the view that the driver of the car had not followed the traffic rules. He had applied sudden break in a Highway. It is his duty to check for vehicles coming behind before stopping the vehicle. The genesis of the accident is due to the negligent act of the driver of the car. Hence, we are of the view that the negligence of the driver of the car can be fixed at 40 % . As stated earlier, the rider of the two wheeler namely the 1st respondent had also violated the traffic rules by not keeping a safe distance. The negligence on his part is fixed at 30%, The negligence on the driver of the bus is fixed at 30%.

21.As regards quantum we are of the view that the Tribunal had fixed at Rs.15,000/- as notional monthly income correctly in the absence of any evidence let in by the 1st respondent. However, we find that the attender charges fixed by the tribunal is exorbitant. The learned counsel for the Appellant submitted that though the leg was amputated, the appellant was able to move about and in fact, he came to court to give evidence. The attender charges therefore fixed by the Tribunal at Rs. 18,00,000/- at Rs.6000/- per month for 25 years is exorbitant and unreasonable. Hence, the attender charges is reduced to Rs.5,00,000/-. The additional documents filed by the 1st respondent would show that the 1st respondent has paid for surgery in June 2022. The certificate issued by the Ganga Hospital shows that he is likely to spend another Rs.3,00,000/- for surgery. In view of the same, we are of the view that the compensation can be awarded under the head Future Medical Expenses at Rs.5,00,000/- (Rupees Five Lakhs only). Considering the nature of the injuries and the disability suffered by the 1st respondent, the compensation awarded by the Tribunal under all other heads are confirmed. Thus the compensation awarded by the Tribunal is modified as follows:

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or reduced or granted
1.	Loss of earning capacity	45,36,000/-	45,36,000/-	Confirmed
2.	Attender charges	18,00,000/-	5,00,000	Reduced
3.	Pain & Sufferings	2,00,000/-	2,00,000	Confirmed
4.	Loss of marital prospects	2,50,000/-	2,50,000/-	Confirmed
5.	Discomfort	1,00,000/-	1,00,000/-	Confirmed
6.	Extra Nourishment	50,000/-	50,000/-	Confirmed
7.	Medical Bills	22,03,066/-	22,03,066/-	Confirmed
8	Transportation	20,000/-	20,000/-	Confirmed
9	Damage to clothing	3,000/-	3,000/-	Confirmed
10	Future medical expenses	-	5,00,000/-	Granted

11.	Total	91,62,066/-	83,62,066/-	Reduced
12	20% negligence fixed on the 1st respondent	**Rs.73,29,653/-**	-	-
13	30% negligence fixed on the 1st respondent	-	**Rs.58,53,446/-**	**Reduced by Rs.14,76,207/-**

22.In this result, the Civil Miscellaneous Appeal No.2932 of 2021 is partly allowed by reducing the compensation awarded by the Tribunal from Rs.73,29,653/- to Rs.58,53,447/- along with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The Cros.Obj.No.103 of 2021 filed by the 1st respondent is partly allowed by granting compensation with respect to Future Medical Expenses. The Appellant-Insurance Company is directed to deposit the 30% of the award amount i.e. Rs.17,56,034/- (Rs,58,53,447 X 30%) along with proportionate interest and costs, less the amount already deposited, if any, to the credit of M.C.O.P.No.448 of 2017 within a period of six weeks from the date of receipt of copy of this Judgment. The third respondent-Insurer of the Car is directed to deposit 40% of the award amount i.e. 23,41,379/- (Rs.58,53,447

X 40%) along proportionate interest and costs, to the credit of M.C.O.P.No.448 of 2017 within a period of six weeks from the date of receipt of copy of this Judgment.. On such deposit, the first respondent who is the cross objector is permitted to withdraw the award amount now determined by this Court along with interest and cost, after adjusting the amount already withdrawn if any. The appellant-Insurance Company is permitted to withdraw the excess amount lying in the deposit, if the entire award amount has already been deposited by them. No Cost. C.M.P.No.16766 of 2021 is allowed. C.M.P.No.10932 of 2022 is closed.

(V.M.V., J) **(S.M., J)**

11.11.2022

Index : Yes / No
dk

To

1.Motor Accidents Claims Tribunal,
Special Sub Court,
Coimbatore.

2.The Section Officer
VR Section
High Court of Madras
Chennai – 600 104.

V.M.VELUMANI,J.
and
SUNDER MOHAN,J.
dk

C.M.A.No.2932 of 2021 and
C.M.P.No.16766 of 2021 and C.M.P.No.10932 of 2022
and Cros.Obj.No.103 of 2021

11.11.2022

C.M.A.No.2932 of 2021 and C.M.P.No.16766 of 2021 and C.M.P.No.10932 of 2022 and Cros.Obj.No.103 of 2021

V.M.VELUMANI,J.
AND
SUNDER MOHAN,J.

(Order of the Court was delivered by V.M.VELUMANI,J.)

Today, the above matter is listed under the caption 'For being spoken to'.

2.It is brought to the notice of this Court that in paragraph 22 of the judgment of this Court dated 11.11.2022 made in C.M.A.No.2932 of 2021 & Cros.Obj.No.103 of 2021 at 7th line, it has been mentioned as “Rs.17,56,034/- (Rs.58,53,447 X 30%)” instead of “Rs.25,08,620/- (Rs.83,62,066/- X 30%)” and at 11th line, it has been mentioned as “23,41,379/- (Rs.58,53,447/- X 40%)” instead of “Rs.33,44,827/- (Rs.83,62,066/- X 40%)”.

3.In view of the above, paragraph 22 of the judgment of this Court dated 11.11.2022 reads as follows:

“22.In this result, the Civil Miscellaneous Appeal No.2932 of

2021 is partly allowed by reducing the compensation awarded by the Tribunal from Rs.73,29,653/- to Rs.58,53,447/- along with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The Cros.Obj.No.103 of 2021 filed by the 1st respondent is partly allowed by granting compensation with respect to Future Medical Expenses. The Appellant-Insurance Company is directed to deposit the 30% of the award amount i.e. **Rs.25,08,620/- (Rs.83,62,066/- X 30%)** along with proportionate interest and costs, less the amount already deposited, if any, to the credit of M.C.O.P.No.448 of 2017 within a period of six weeks from the date of receipt of copy of this Judgment. The third respondent-Insurer of the Car is directed to deposit 40% of the award amount i.e. **Rs.33,44,827/- (Rs.83,62,066/- X 40%)** along proportionate interest and costs, to the credit of M.C.O.P.No.448 of 2017 within a period of six weeks from the date of receipt of copy of this Judgment.. On such deposit, the first respondent who is the cross objector is permitted to withdraw the award amount now determined by this Court along with interest and cost, after adjusting the amount already withdrawn if any. The appellant-Insurance Company is permitted to withdraw the excess amount lying in the deposit, if the entire award amount has already been deposited by them. No Cost. C.M.P.No.16766 of 2021 is allowed. C.M.P.No.10932 of 2022 is closed."

4.Registry is directed to issue order copy after carrying out the above corrections. The other contents of the judgment of this Court dated 11.11.2022 shall remain unaltered.

(V.M.V., J) (S.M., J)
25.11.2022

kj

V.M.VELUMANI,J.
AND
SUNDER MOHAN,J.

Kj

C.M.A.No.2932 of 2021 and C.M.P.No.16766 of 2021
and C.M.P.No.10932 of 2022 and Cros.Obj.No.103 of 2021

25.11.2022