



*C.M.A.(MD)No.431 of 2022
& Cros. Obj(MD)No.27 of 2022*

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 10.10.2022

Pronounced on : 23.11.2022

CORAM:

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

C.M.A.(MD)No.431 of 2022

and

Cros.Obj(MD)No.27 of 2022

C.M.A.(MD)No.431 of 2022

United India Insurance Company Limited,
through its Branch Manager,
ESP Complex, No.78,
Sokkalalpuram, Mukkudal,
Tirunelveli District.

...Appellant/2nd Respondent

Vs.

1.Saravanan

...1st Respondent/Petitioner

2.Petchidurai

...2nd Respondent/1st Respondent

(R2 is exonerated vide Court
order dated 21.07.2022 made
in CMA(MD)No.431 of 2022)

Cros.Obj(MD)No.27 of 2022

Saravanan

...Cross Objector/1st Respondent

Vs.



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1.United India Insurance Company Limited,
through its Branch Manager,
ESP Complex, No.78,
Sokkalapuram, Mukkudal,
Tirunelveli District.

...1st Respondent/Appellant

2.Petchidurai

...2nd Respondent/1st Respondent

Prayer in C.M.A.(MD)No.431 of 2022 : This Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, to set aside the award dated 28.09.2021 passed in M.C.O.P.No.244 of 2020 on the file of Motor Accident Claims Tribunal / Special Sub Court dealing with MCOP cases, Tirunelveli.

Prayer in Cros.Obj(MD)No.27 of 2022 : This Cross Objection filed under Order 41 Rule 22 of Civil Procedure Code, to allow the cross appeal by modifying the decree and judgment dated 28.09.2021 passed in M.C.O.P.No. 244 of 2020 on the file of the Motor Accident Claims Tribunal and Special Sub Court dealing with MCOP cases, Tirunelveli by allowing this cross appeal by enhancing the compensation amount of Rs.10,00,000/- in addition to the amount already awarded by the learned Tribunal towards compensation in favour of the cross objectors with costs.

(in C.M.A.(MD)No.431 of 2022)

For Appellant : Mr.I.Suthakaran

For Respondents : Mr.V.Sakthivel for R1

(in Cros.Obj(MD)No.27 of 2022)

For Appellant : Mr.V.Sakthivel

For Respondents : Mr.I.Suthakaran for R1



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COMMON JUDGMENT

The Civil Miscellaneous Appeal and the Cross Objection are directed against the award passed in M.C.O.P.No.244 of 2020 dated 28.09.2021 on the file of the Motor Accident Claims Tribunal / Special Subordinate Court dealing with MCOP cases, Tirunelveli.

2. The appellant/Insurer, who was made liable to pay compensation of Rs.7,83,158/- with interest at 7.5% per annum and costs to the claimant for the disability suffered by him, due to an accident occurred on 11.10.2019, challenged the liability mulcted on it.

3. The Cross Objector/claimant, who was awarded compensation of Rs.7,83,158/- with interest at 7.5% per annum and costs for the disability suffered by him, challenged the quantum of compensation awarded at, by the Tribunal and claimed enhancement of the same.

4. The case of the claimant is that on 11.10.2019 at about 07.30 p.m., when the claimant was riding his motorcycle bearing Registration



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No.TN-72-BK-4704 along with one Sankar as pillion rider near Pettai Railway Gate near Service Centre on Tirunelveli – Mukkudal main road, one Swaraj Mazda mini lorry came in the opposite direction in a rash and negligent manner and dashed against the motorcycle and as a result of which, the claimant and the pillion rider fell down and sustained injuries, that immediately, the claimant was taken to TVMC Hospital at Highground, Tirunelveli and subsequently, was taken to Madhubala Hospitals at Anbu Nagar, Tirunelveli, that the claimant had also taken treatment at Aravind Eye Hospital and Sushrushah Hospitals at Nagercoil and that the accident was occurred only due to the rash and negligent driving of the Swaraj Mazda mini lorry driver and hence, a case was registered against him in Crime No.256 of 2019 for the offences under Sections 279, 337 and 338 IPC on the file of Tirunelveli Traffic Investigation Wing Police.

5. It is the further case of the claimant that he was aged 26 years at the time of accident, that he suffered fractures over the right frontal lobe, right maxillary sinus, right zygomatic arch, right orbital wall, left mandibular and crush injury over the left eye, that the claimant underwent facio-maxillary surgery, that the claimant, due to the fractures over the skull, is not able to stand for long time as the claimant felt giddiness and headache frequently, that his



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chin and face were disfigured and that the claimant was doing Carpenter work at Bangalore and was earning Rs.20,000/- per month.

6. The defence of the second respondent is that the claimant drove the motorcycle bearing Registration No.TN-72-BK-4704 with two pillion riders in a rash and negligent manner in the curve without observing the traffic rules, without having any driving license to drive two wheeler and without wearing helmet and hit against the Swaraj Mazda mini lorry, that the accident was occurred due to the negligence on the part of the claimant, who had no knowledge to drive the two wheeler, that since the claimant sustained injuries in that accident, the driver of the mini lorry was made a scapegoat and a criminal case was foisted against him, that the claimant is also guilty of contributory negligence and that the amounts claimed are excessive.

7. During trial, the claimant has examined himself as P.W.1 and examined Dr.Chandrasekaran and Tr.Mareeswaran as P.W.2 and P.W.3 respectively and exhibited 24 documents as Ex.P.1 to Ex.P.24. The respondents have adduced neither oral nor documentary evidence. The disability certificate issued by the Medical Board has been exhibited as Ex.C.1.



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8. The learned trial Judge, upon considering the evidence, both oral and documentary and on hearing the arguments of both the sides, has passed the impugned award dated 28.09.2021 holding that the Swaraj Mazda mini lorry driver was responsible for the accident, directing the appellant/Insurer to pay compensation of Rs.7,83,158/- with interest at 7.5% per annum and costs to the claimant. Aggrieved by the said award, the Insurer has come forward with the present appeal and whereas, the claimant has preferred the Cross Objection.

9. The points that arise for consideration are :

(i) Whether the Tribunal erred in deciding that the mini lorry driver was responsible for the accident, despite showing that the claimant had travelled with two other persons in a two wheeler at the time of accident, that the claimant was not possessing valid driving license and that the claimant was not wearing helmet at that point of time?

(ii) Whether the Tribunal erred in applying the percentage method for determining the disability compensation, despite showing that the claimant had lost his right eye sight?

(iii) Whether the quantum of compensation awarded at by the Tribunal is just and proper and is in accordance with law?



Point Nos.(i), (ii) and (iii) :

10. The claimant has examined himself as P.W.1 to prove the mode of accident and he would reiterate the version raised in the claim petition. According to P.W.1, when he was riding a two wheeler bearing Registration No.TN-72-BK-4704 with one Sankar as pillion rider near Pettai Railway Gate near Service Centre on Tirunelveli – Mukkudal main road, a Swaraj Mazda mini lorry bearing Registration No.TN-04-V-5766, which came in the opposite direction in a rash and negligent manner, dashed against the motorcycle and as a result of which, himself and others fell down and sustained serious injuries.

11. Though P.W.1 was cross-examined, nothing was elicited by the appellant/Insurer in their favour.

12. Admittedly, FIR was registered against the mini lorry driver. It is pertinent to note that the jurisdictional police, after completing investigation, has laid the final report against the mini lorry driver.

13. Admittedly, as already pointed out, the appellant/Insurer has not adduced any evidence. Though the appellant/Insurer has taken a defence that the mini lorry driver was not at fault and the claimant alone was responsible for the



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accident, they have not chosen to examine the mini lorry driver and they have also not offered any reason or explanation for non-examining him. To put it in short, the appellant/Insurer has not produced any contra evidence regarding negligence aspect. Considering the above, the finding of the Tribunal that the accident was occurred only due to the rash and negligent driving of the mini lorry driver, cannot be found fault with.

14. The main contention of the appellant/Insurer is that the claimant had driven the motorcycle with two other persons as pillion riders, that he was not possessing valid driving license, that he was not wearing helmet at the time of accident and that the above aspects had definitely contributed for the accident and as such, the liability cannot be mulcted only on the appellant/Insurer.

15. The learned counsel appearing for the claimant would contend that mere travelling of three persons in a two wheeler does not amount to any negligence on the part of the claimant and that no other materials or evidence has been adduced by the appellant/Insurer to prove that travelling of three persons alone the accident had occurred.



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16. The learned counsel appearing for the claimant has relied on the following decisions in support of his contention,

(i) 2004 (1) TN MAC 180 (DB) :

Kattabomman Transport Corporation Limited, represented by its Managing Director vs. Vellai Duraichi and others

*“8. In the light of the said conclusion, we have carefully verified the factual details and the ultimate decision arrived at in the first Division Bench decision, namely, **Tamil Nadu State Transport Corporation, Coimbatore Division v. Abdul Salam** (cites supra). As observed earlier, except stating that 3 persons travelled in a motor vehicle, which is prohibited, no specific finding was given to the effect that travelling of three persons in a motor cycle was responsible for the accident; hence we are of the view that the conclusion in 2003 I M.L.J. 489 is to be confined to that case. In other words, merely because there is violation of the provisions of the Act or Rules or the policy conditions, it is not automatic that in every case the principle of contributory negligence is to be applied mechanically. As rightly observed in the other Division Bench decision, namely, **M.Anandavalli Amma v. Arvind Eye Hospital (2002-3 L.W. 710)**, unless there is evidence to prove that the accident took place only because of such act that is taking/travelling more persons in a motor cycle which resulted in an accident, the owner of the other vehicle and its insurer will be*



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liable to pay compensation. To put it clear, if the appellant-Transport Corporation is able to prove that it is because of the addition of one more (third person in the motor cycle instead of two), the accident occurred, the position would be different. In other words, unless the owner of the vehicle or the Insurance Company is able to prove that the accident took place only because of such act that is taking more persons than the prescribed number, the owner/ Insurance Company will be liable to make good the loss/compensation. In the case on hand the materials placed before the Tribunal show that it was the bus driver who had gone to the other side of the road, hit the motor cycle thereby caused the accident. There is no evidence to show that the accident occurred because of travelling of three persons in the motor cycle. In the light of the above said conclusion, we reject the contra argument made by the learned counsel for the appellant.”

(ii) 2020 (1) TN MAC 161 (SC) :

***Mohammed Siddique and another vs. National Insurance Co. Ltd.,
and others***

“13. But such violation by itself, without anything more, cannot lead to a finding of contributory negligence, unless it is established that his very act of riding along with two others, contributed either to the accident or to the impact of the accident upon the victim. There must either be a causal connection between



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the violation and the accident or a causal connection between the violation and the impact of the accident upon the victim. It may so happen at times, that the accident could have been averted or the injuries sustained could have been of a lesser degree, if there had been no violation of the law by the victim. What could otherwise have resulted in a simple injury, might have resulted in a grievous injury or even death due to the violation of the law by the victim. It is in such cases, where, but for the violation of the law, either the accident could have been averted or the impact could have been minimized, that the principle of contributory negligence could be invoked. It is not the case of the insurer that the accident itself occurred as a result of three persons riding on a motor cycle. It is not even the case of the insurer that the accident would have been averted, if three persons were not riding on the motor cycle. The fact that the motor cycle was hit by the car from behind, is admitted. Interestingly, the finding recorded by the Tribunal that the deceased was wearing a helmet and that the deceased was knocked down after the car hit the motor cycle from behind, are all not assailed. Therefore, the finding of the High Court that 2 persons on the pillion of the motor cycle, could have added to the imbalance, is nothing but presumptuous and is not based either upon pleading or upon the evidence on record. Nothing was extracted from PW-3 to the effect that 2 persons on the pillion added to the imbalance.



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14. *Therefore, in the absence of any evidence to show that the wrongful act on the part of the deceased victim contributed either to the accident or to the nature of the injuries sustained, the victim could not have been held guilty of contributory negligence. Hence the reduction of 10% towards contributory negligence, is clearly unjustified and the same has to be set aside.”*

17. The learned counsel appearing for the appellant/Insurer has relied on the judgment passed in ***Tamil Nadu State Transport Corporation vs. Marimuthu and others*** in C.M.A.(MD)No.358 of 2016 dated 04.02.2021,

“20. No doubt, as already pointed out, taking more than 2 persons in a two wheeler, by itself is an offence but whether it would amount to negligence or not is required to be decided on the facts and circumstances of the given case. If a rider takes 2 persons as pillion riders, that itself would not amount to negligence. For example, if a rider takes his wife and a child or if he takes 2 small boys or lean persons, that by itself would not amount to negligence. But if the rider takes 2 or 3 grown-up persons or obese persons, that by itself would amount to negligent driving since the rider can lose his control of the vehicle at any point of time. In the case on hand, since four grown-up students had travelled in the two wheeler, I have no hesitation to hold that the rider and all the pillion riders are guilty of negligent riding / travelling.



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21. *In the present case, to some extent, it's a case of head on collision. In Ex A3, the Motor vehicle Inspector has pointed out that he noticed some damages in the centre of bumper and grill of the Bus. The Appellant in their counter statement has taken a stand that the Bus driver after noticing the two wheeler with four persons coming after overtaking two lorries in the opposite direction, stopped the Bus on the left extreme of the road and that at that time two wheeler rider who came in a rash and negligent manner, unable to control the vehicle, dashed against the front right side bumper of the Bus. The Tribunal, on considering the damages shown in MVI Report, has observed that the version of the Appellant cannot be accepted. Considering the evidence available, I am of the view that the variation shown as to where the damages occurred in the Bus, does not make any difference.*

22. *Though the claimants have pleaded that lorry driver had allowed the two wheeler rider to overtake the lorry and while proceeding after overtaking the lorry, bus driver who came in the opposite direction, in a rash and negligent manner, had dashed against the two wheeler, they have not chosen to examine the said lorry driver nor gave any particulars of the said lorry.*

23. *Since the two wheeler was proceeding on the right side of the lorry and was overtaking the lorry, as alleged by the claimants, two wheeler rider should have seen the Bus coming*



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from the opposite direction. Even after seeing the Bus, he decided to proceed further and in that decision, we can easily infer that he miscalculated the speed of the vehicles, the space and the time taken to cross that space between the two wheeler and the Bus, as he was carrying more weight than the prescribed. Considering the above, this court is of the clear view that not only the two wheeler rider but all the pillion riders are also liable for contributory negligence. Considering the entire facts and circumstances, this court is also of the view that the degree of contributory negligence can be fixed at 50% on the part of the deceased and is fixed accordingly.”

18. In the said decision, it has been specifically observed that taking more than two persons in a two wheeler, by itself is an offence, but whether it would amount to negligence or not is required to be decided on the facts and circumstances of the given case and that if a rider takes two persons as pillion riders, that itself would not amount to negligence.

19. Now coming to the case on hand, as already pointed out, the driver of the mini lorry has not been examined to prove the manner of the accident. It is not the specific case of the appellant/Insurer that the accident occurred as a result of three persons riding on a motorcycle and it is also not their case that



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the accident would have been averted if three persons were not riding on the motorcycle.

20. Regarding the contention of not wearing the helmet, as rightly pointed out by the learned counsel appearing for the claimant, the complainant in FIR has specifically stated that the rider Saravanan was wearing helmet at the time of accident. Moreover, the appellant/Insurer has not produced any evidence or materials to show that the claimant was not wearing helmet at the time of accident.

21. Now turning to the defence of non-possession of driving license, the claimant has taken a specific stand that he was having driving license and the same was lost in that accident. The claimant as P.W.1 in his evidence would reiterate the solid contention. During cross-examination, nothing was elicited by the appellant/Insurer in their favour. Moreover, as rightly pointed out by the learned counsel appearing for the claimant, the appellant/Insurer has neither produced any evidence nor taken any steps to prove that the claimant was not possessing valid driving license at the time of accident.



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22. Considering the above and on applying the legal position above referred, this Court decides that in the absence of any evidence to show that the wrongful act on the part of the claimant contributed either to the accident or to the nature of the injury sustained, the claimant cannot be held guilty of contributory negligence.

23. Now coming to the quantum of compensation, for which, the Cross Objection was laid by the claimant, it is the specific case of the claimant that he suffered head injury, fractures in face and lost his left eye.

24. It is evident from the records that after the accident, the claimant was immediately taken to TVMC Hospital at Highground Tirunelveli, thereafter, he was admitted in Madhubala Hospitals at Anbu Nagar, Tirunelveli on 12.10.2019 and after facio-maxillary surgery, was discharged on 18.12.2019, that the claimant had been taking outpatient treatment in Aravind Eye Hospital and that subsequently, he was admitted in Sushrushah Hospitals at Nagercoil.

25. It is the specific case of the claimant that he suffered fractures over the right frontal lobe, right maxillary sinus, right zygomatic arch, right orbital wall, left mandibular and crush injury over the left eye and also sustained



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multiple injuries all over the body and that he had spent more than Rs.6,00,000/- towards medical expenses.

26. It is pertinent to note that the appellant/Insurer has only challenged the liability mulcted on it and not the quantum of compensation awarded at by the Tribunal. As already pointed out, the claimant has filed the above Cross Objection seeking enhancement of the compensation.

27. The Tribunal, after taking note of the medical bills produced under Ex.P.16, Ex.P.17, Ex.P.19 and Ex.P.21, has rightly awarded Rs.3,28,158/- towards medical expenses.

28. Now the main contention of the claimant is that though the claimant had suffered multiple fractures and also lost his left eye, the Tribunal erred in applying the percentage method for determining the compensation instead of adopting and applying the multiplier formula.

29. Before entering into further discussion, it is necessary to refer the decision of the Hon'ble Supreme Court in ***Raj Kumar vs. Ajay Kumar and another*** reported in ***2010 (2) TN MAC 581***,



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“9. Therefore, the Tribunal has to first decide whether there is any permanent disability and if so the extent of such permanent disability. This means that the tribunal should consider and decide with reference to the evidence: (i) whether the disablement is permanent or temporary; (ii) if the disablement is permanent, whether it is permanent total disablement or permanent partial disablement, (iii) if the disablement percentage is expressed with reference to any specific limb, then the effect of such disablement of the limb on the functioning of the entire body, that is the permanent disability suffered by the person. If the Tribunal concludes that there is no permanent disability then there is no question of proceeding further and determining the loss of future earning capacity. But if the Tribunal concludes that there is permanent disability then it will proceed to ascertain its extent. After the Tribunal ascertains the actual extent of permanent disability of the claimant based on the medical evidence, it has to determine whether such permanent disability has affected or will affect his earning capacity.

....

13. We may now summarise the principles discussed above:

(i) All injuries (or permanent disabilities arising from injuries), do not result in loss of earning capacity.



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(ii) The percentage of permanent disability with reference to the whole body of a person, cannot be assumed to be the percentage of loss of earning capacity. To put it differently, the percentage of loss of earning capacity is not the same as the percentage of permanent disability (except in a few cases, where the Tribunal on the basis of evidence, concludes that percentage of loss of earning capacity is the same as percentage of permanent disability).

(iii) The doctor who treated an injured-claimant or who examined him subsequently to assess the extent of his permanent disability can give evidence only in regard the extent of permanent disability. The loss of earning capacity is something that will have to be assessed by the Tribunal with reference to the evidence in entirety.

(iv) The same permanent disability may result in different percentages of loss of earning capacity in different persons, depending upon the nature of profession, occupation or job, age, education and other factors. ”

30. In the case on hand, the Medical Board, by observing that it is a case of post traumatic orofacial sequelae, has assessed the permanent disability at



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43%. Admittedly, the claimant has lost his left eye, apart from fractures in the face and other parts of the body.

31. The learned counsel appearing for the claimant has relied on the judgment of this Court in *M.Ahmed Abdullah vs. Vairamuthu and another (C.M.A.No.1707 of 2015 dated 18.02.2020)* and in the case of *M/s.United India Insurance Company Limited, Salem vs. Balan and another (C.M.A.No. 198 of 2016 dated 19.11.2020)* to canvass their contention that for loss of vision, multiplier formula has to be adopted.

32. No doubt, in the above two decisions, learned Judges of this Court have adopted and applied multiplier formula for determining the disability compensation. But, at the same time, the contention of the injured in those cases that the disability has to be fixed at 100% was not accepted.

33. In the present case, considering the disability suffered by the claimant, this Court is of the view that this is a fit case for applying the multiplier method to assess the compensation. As per the records, it is evident that the claimant was born in the year 1994. The appellant/Insurer has not specifically disputed



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the same. Hence, the age of the claimant is taken as 26 years at the time of accident. According to the claimant, he was working as Carpenter in Bangalore and was earning Rs.20,000/- per month. Admittedly, the claimant has not produced any materials or evidence to prove his avocation and income. Nowadays, agriculture coolies and other coolies are getting not less than Rs.300/- per day. In the absence of any other evidence, this Court fixes the monthly income of the claimant at Rs.9,000/-. Hence, this Court fixes the compensation at Rs.7,89,480/- (Rs.9000/- x 12 x 17 x 43%) as loss of earnings.

34. Now coming to the other heads, considering the fact that the claimant has suffered multiple injuries and loss of vision in one eye and period of treatment, the Tribunal has rightly awarded Rs.50,000/- towards pain and suffering and Rs.10,000/- towards transportation. But at the same time, the amounts awarded towards loss of convenience, extra nourishment and loss of income are excessive. Hence, the compensation awarded by the Tribunal is modified as follows:-



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S. No.	Description	Amount awarded by Tribunal (Rs.)	Amount awarded by this Court (Rs.)	Award confirmed or enhanced or granted or reduced
1.	Temporary loss of income	50,000	36,000 (9000x4 months)	Reduced
2.	Transportation	10,000	10,000	Confirmed
3.	Extra Nourishment	50,000	20,000	Reduced
4.	Medical Expenses	3,28,158	3,28,158	Confirmed
5.	Loss of convenience	50,000	20,000	Reduced
6.	Attendant Charges	30,000	20,000	Reduced
7.	Pain and suffering	50,000	50,000	Confirmed
8.	Loss of earnings	2,15,000	7,89,480	Enhanced
	Total	7,83,158	12,73,638	Enhanced by Rs.4,90,480/-

35. In the result, the Civil Miscellaneous Appeal is dismissed. The Cross Objection is partly allowed and the compensation awarded by the Tribunal at Rs.7,83,158/- is hereby enhanced to **Rs.12,73,638/- (Rupees Twelve Lakhs Seventy Three Thousand Six Hundred and Thirty Eight only)** together with interest at 7.5% per annum and costs. The appellant/Insurer is directed to deposit the modified award amount with accrued interests and costs to the credit



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of M.C.O.P.No.244 of 2020 on the file of Motor Accident Claims Tribunal /
Special Subordinate Court dealing with MCOP cases, Tirunelveli, after
deducting the amount already deposited if any, within a period of four weeks
from the date of receipt of a copy of this judgment. On such deposit being made,
the claimant is permitted to withdraw the award amount with accrued interest
and costs, less amount already withdrawn, if any, on due application before the
Tribunal. Parties are directed to bear their own costs.

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Index :yes/No
Internet:yes/No
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To

1. The Motor Accident Claims Tribunal /
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K.MURALI SHANKAR,J.

csm

Pre-Delivery Order made in
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