



C.M.A.(MD).No.304 of 2018

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : 04.12.2023

Delivered On : 24.01.2024

CORAM:

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

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1.V.Inbam
2.Minor V.Chellameena
3.Minor V.Chellaraja ... Appellants
(the 2nd and 3rd minor appellants/claimants
represented by their mother/natural guardian V.Inbam
the first appellant herein)

Vs.

1.Yes Gee Jay Automobiles,
Through its Managing Director,
Jeyaraj Nadar Road,
Periakulam, Theni District.
(Set exparte in trial Court)

2.New India Assurance Company Limited,
Through its Divisional Manager,
Kamarajar Salai,
Madurai. ... Respondents

PRAYER : Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, to enhance the compensation awarded in judgment



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and decree made in M.C.O.P.No.400 of 2009 dated 29.07.2016, on the file of the learned Motor Accidents Claims Tribunal, District and Sessions Judge, Communal Clash Cases Court, Madurai.

For Appellant	: Mr.K.Murugesan
For R2	: Mr.B.Rajesh Saravanan
For R1	: Exparte

JUDGMENT

This Civil Miscellaneous Appeal has been filed by the appellants/petitioners, challenging the compensation awarded on certain counts by the learned Motor Accident Claims Tribunal (District and Sessions Judge), Communal Clash Cases, at Madurai in M.C.O.P.No.400 of 2009 dated 29.07.2016.

2.For the sake of convenience, the parties are addressed herein as per the rank in M.C.O.P.No.400 of 2009.

3.The brief facts leading to the filing of the Civil Miscellaneous Appeal is as follows:-

This is a fatal case. The petitioners are the wife and the minor children of the deceased namely Vanaraj. On 30.06.2008 at about 05.00 p.m., the deceased Vanaraj travelled as pillion rider in a motor cycle



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bearing registration No.TNM-65-F-3164 in Varusainadu –

Kadamalaikundu from north - south direction in the extreme left side of the road. While the motorcycle reached Mayilai Paramasivam Thottam, the driver of the first respondent bus bearing registration No.TN-60-B-6469 drove the same in a rash and negligent manner in the wrong direction and dashed against the two wheeler. As the result of which, the deceased was thrown out and he sustained fatal injuries all over the body. A crime case was registered against the driver of the first respondent by Kadamalaikundu in Crime No.139 of 2008. Seeking to compensate the death of the said Vanaraj to a tune of Rs.10,00,000/-, the petitioners have filed the claim petition.

4.The first respondent is the owner of the bus bearing registration No.TN-60-B-6469 and the second respondent is the insurance company with which the vehicle was insured. The second respondent had filed a counter refuting all the allegations in the claim petition.

5.The learned Tribunal has framed two issues. Two witnesses P.W. 1 and P.W.2 were examined and Ex.P1 to Ex.P9 were marked on the side



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of the petitioners and neither any witness was examined nor documents were marked on the side of the respondents. The first respondent was called absent and set exparte. On the basis of oral and documentary evidence and arguments submitted by respective parties, the learned Tribunal proceeded to conclude that the rider of the motorcycle did not possess proper licence and hence, the accident could have happened due to the motorcycle.

6.The learned Tribunal proceed to fix the contributory negligence of 50% to the driver of the two wheeler and 50% to the driver of the bus. The petitioners claimed that the deceased earned a sum of Rs.10,000/- as a mason cum contractor and also run cable tv network and milk society for which Ex.P5 was marked. Ex.P5 was the account ledger maintained by the deceased, which would reveal that he had as many as 206 subscribers utilizing cable tv network and the subscription amount collected was Rs.110/- per month per customer. Therefore, the income stated by the petitioners as Rs.10,000/- was proved and on the basis of the postmortem report, the learned Tribunal concluded that the deceased was 38 years old. Considering 50% of the income has to be added



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towards the future prospects, the total income of the deceased was taken as Rs.15,000/- (Rs.10,000+50%) and 1/3rd was deducted towards personal income and hence, Rs. 10,000/- was arrived at as his monthly income. As per the dictum laid down in ***Sarala Varma and others v. Delhi Transport Corporation and others*** reported in ***AIR 2009 (SCC) 3104***, the multiplier of '15' was adopted. The loss of dependency was arrived at Rs.18,00,000/-(Rs.10,000x12x15). The learned Tribunal has awarded the compensation as follows:-

Head	Compensation awarded
(I) Loss of Dependency:	Rs.18,00,000/-
(ii) Funeral Expenses:	Rs.10,000/-
(iii) Loss of Consortium to the 1 st petitioner:	Rs.20,000/-
(iv) Loss of love and affection:	Rs.10,000/-
Total compensation awarded:	Rs.18,40,000/-
Since the deceased contributed the accident, 50% of the compensation has to be deducted towards contributory negligence	Rs.9,20,000/-with interest @ 7.5 % from the date of the claim until the realization and costs.

7.Challenging the same, this Civil Miscellaneous Appeal has been filed by the appellants/petitioners/claimants seeking enhancement of



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compensation.

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8.The learned counsel for the appellants/petitioners relying upon the case of ***R.Duraisamy v. D.Arumugam and another*** reported in ***2006-5-CTC-62 Madras*** submitted that '*the driver of the transport bus driven the bus in rash and negligent manner and he is only responsible for the accident in not having taken proper care and caution while negotiating the bend and thereby, caused the accident*'. In view of such matter, the finding of the learned Tribunal determining the negligence on the part of the deceased is erroneous. Further relying upon the case of ***Dinesh Kumar v. National Insurance Company Limited and others*** reported in ***2018-1-SCC-750*** stated that '*the learned Tribunal proceeded to fix 50% contributory negligence on the deceased only on the basis of conjecture or any other evidence. Once they finding that there was contributory negligence on the part of the deceased is without any basis. The second aspect that the driver had no driving licence is of no relevance*'.



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9.The learned counsel for the appellants/petitioners relying upon the judgment of the Apex Court in the case of **G.Dhanasekar v. Managing Director** reported in **2014 ACJ 1007**, submitted that '*once negligence of the bus driver was the root cause of the accident which was the bus which dashed against the bike, the finding of the learned Tribunal with respect to the contributory negligence is unsustainable*'.

10.The learned counsel for the appellants/petitioners relied upon the judgment of the Hon'ble Apex Court in the case of **Divisional Manager v. M.Amutha and others** reported in **2023 (2) TNMAC 585(DB)** and submitted that '*riding of three persons in a two wheeler though violation of law would not automatically lead to contributory negligence, burden lies on the insurer establish nexus between triple riding and the accident*'.

11.The learned counsel for the appellants/petitioners relied upon the judgment of this Court in the case of **Kattabomman Transport Corporation limited v. Vellai Duraichi and others** reported in **2004 (1) TNMAC 180(DB)** and submitted that '*the fact that the deceased was*



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riding a motorcycle along with two other persons, may not make him guilty of contributory negligence by itself'.

12.The learned counsel for the appellants/petitioners further relied upon the judgment of the Hon'ble Apex Court in the case of ***Sudhir Kumar Rana v. Surinder Singh and others*** reported in ***2008-2-TAC-769 SC***, submitted that '*if a person drives a vehicle without licence he commits an offence and the same by itself may not lead to a finding of negligence as regards the accident and the negligence is contributed to the accident only because of the factum that the driver did possess the licence would not be a base for holding him a guilty of contributory negligence*'.

13.Per contra the learned counsel for the second respondent relied upon the deposition of P.W.1 and the rough sketch which was not marked before the learned Tribunal but produced before this Court and submitted that there is no flaw in the finding of the learned Tribunal as the spot of accident in the rough sketch would reveal that it is only the rider of the motorcycle who travelled in the wrong side.



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14. In the instant case on hand, a careful perusal of the materials available on record would prove that neither any witness nor any document was marked on the side of the respondents. Even the rough sketch relied upon by the learned counsel for the second respondent was not marked before the learned Tribunal, a perusal of FIR marked as Ex.P7 would reveal that it was only the deceased who drove the motorcycle and two other persons, were carried by him as pillion riders. It could be understood that the second respondent's contention that the rider of the motorcycle did not have any valid licence at the time of accident was not proved duly in accordance with law by adducing evidence through proper witness. Wholly on the basis of the fact that the rider of the motorcycle did not have proper licence, the learned Tribunal assuming that the accident might have been caused due to improper driving of motorcycle, fixed contributory negligence on the part of the deceased as well.

15. The learned counsel for the appellants/petitioners relied upon the judgment of this Court in the case of ***Kattabomman Transport***



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***Corporation limited v. Vellai Duraichi and others* reported in 2004 (1)**

TNMAC 180(DB) and the relevant portion is extracted as follows:-

“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 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),



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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.”

16.The learned counsel for the appellants/petitioners relied upon the judgment of this Court in the case of ***R.Duraisamy v. D.Arumugam and another*** reported in ***2006-5-CTC-62 Madras*** and the relevant portion is extracted as follows:-

“ 23. Therefore, it is clear that the driver of the Transport Corporation Bus had driven the bus in a rash and negligent manner and he is only responsible for the accident in not having taken proper care and caution while negotiating the bend and thereby caused the accident. The right of the way is to



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the appellant-claimant. The fact that the driver of the bus was driving in high speed is clear from the cross examination. In such view of the matter; the finding of the Tribunal determining the negligence on the appellant-claimant also is erroneous. I therefore hold that the driver of the Transport Bus was negligent in driving the bus and he is solely responsible for the accident and the Transport Corporation alone is liable to pay the compensation.”

17.The learned counsel for the appellants/petitioners relied upon the judgment of the Hon'ble Supreme Court in the case of ***Sudhir Kumar Rana v. Surinder Singh and others*** reported in ***2008-2-TAC-769 SC*** and the relevant portion is extracted as follows:-

“8. If a person drives a vehicle without a licence, he commits an offence. The same, by itself, in our opinion, may not lead to a finding of negligence as regards the accident. It has been held by the courts below that it was the driver of the mini-truck which was being driven rashly and negligently. It is one thing to say that the appellant was not possessing any licence but no finding of fact has been arrived at that he was driving the two-wheeler rashly and negligently. If he was not driving rashly and negligently which contributed to the accident, we fail to see as to how, only because he was not having a licence,



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he would be held to be guilty of contributory negligence.”

18.The learned counsel for the appellants/petitioners relied upon the judgment of this Court in the case of ***The Branch Manager v. Uma and others*** reported in ***2011 (1) TNMAC 136 (DB)*** and the relevant portion is extracted as follows:-

“11. Plea of contributory negligence has to be established by substantive evidence. After necessary application under Sec. 170 of M.V. Act, Appellant- Insurance Company must have adduced proper evidence to substantiate the plea of contributory negligence. Even though Appellant-Insurance Company has taken the plea of contributory negligence, no substantive evidence was adduced to establish the same. Apart from the self-serving evidence of RW1, no evidence was adduced to substantiate the same.

12. As seen from Exs.P1-FIR, criminal case in Crime No. 16/2003 was registered against the lorry driver. After completion of the investigation, charge sheet [Ex.P4] was also filed against the lorry driver. Filing of charge sheet [Ex.P4] is a prima facie indication showing that the driver of the lorry is responsible for the accident. Merely because three persons travelled in the motorcycle, it is not to be readily presumed that deceased was negligent in riding the TVS Suzuki. It is pertinent to note that the



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deceased was travelling with his wife and with their son Nagappan @ Siva, aged 14 years. In the absence of substantive evidence, Tribunal rightly held that the accident was due to rash and negligent driving of the lorry driver and rightly rejected the plea of contributory negligence.”

19.The learned counsel for the appellants/petitioners relied upon the judgment of the Hon'ble Supreme Court in the case of ***G.Dhanasekar v. Managing Director, Metropolitan Transport Corporation Ltd.***, reported in ***2014 ACJ 1007*** and the relevant portion is extracted as follows:-

“10. We shall first deal with the aspect of contributory negligence. There is no dispute that the vehicles were coming in opposite direction. It has also come in evidence that the driver of the bus has filed a complaint before the police and the police has registered an FIR. Except the driver of both the vehicles and the doctor who treated the appellant, there is no other oral evidence. The FIR, disability certificate, medical bills, driving licence, RC book and permit were also marked. The Tribunal, having referred to the entire evidence, held as follows:

“On perusal of Ex.R.1. FIR and from the evidence of the Petitioner and RW.1. driver of the bus, it is clear that both the



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vehicles came in a rash and negligent manner and with high speed and dashed against each other. In the above accident, the driver of the Tata Sumo was injured. Taking advantage of the situation, the driver of the bus gave complaint to Police. Hence the driver of the bus gave complaint accusing the driver of the Tata Sumo car. No other independent witnesses were examined. Hence this Court comes to the conclusion that the bus came in a rash and negligent manner and dashed against the deceased (sic : car). Hence it is concluded that negligence on the part of the driver of the bus is the root cause of the accident. The evidence of RW.1 driver shows that he simply throws the blame on the injured.” (Emphasis supplied)”

20.The learned counsel for the appellants/petitioners relied upon the judgment of the Hon'ble Supreme Court in the case of **Dinesh Kumar v. National Insurance Company Limited and others** reported in **2018-1-SCC-750** and the relevant portion of which is extracted as follows:-

“7.Insofar as the judgment of the High Court is concerned, the Division Bench has placed a considerable degree of importance on the fact that there was no visible damage to the lorry but that it was the motor cycle which had suffered damage and that there was no eye-witness. We are in agreement with the submission which has been urged on behalf of the appellant that plea of contributory



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negligence was accepted purely on the basis of conjecture and without any evidence. Once the finding that there was contributory negligence on the part of the appellant is held to be without any basis, the second aspect which weighed both with the tribunal and the High Court, that the appellant had not produced the driving licence, would be of no relevance. This aspect has been considered in a judgment of this Court in Sudhir Kumar (supra) where it was held as follows :

“9.If a person drives a vehicle without a licence, he commits an offence. The same, by itself, in our opinion, may not lead to a finding of negligence as regards the accident. It has been held by the courts below that it was the driver of the mini truck who was driving rashly and negligently. It is one thing to say that the appellant was not possessing any licence but no finding of fact has been arrived at that he was driving the two-wheeler rashly and negligently. If he was not driving rashly and negligently which contributed to the accident, we fail to see as to how, only because he was not having a licence, he would be held to be guilty of contributory negligence...

10. The matter might have been different if by reason of his rash and negligent driving, the accident had taken place.”

21.The learned counsel for the appellants/petitioners relied upon the judgment of the Hon'ble Supreme Court in the case of **Mohammed**



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Siddique and another v. National Insurance Company Limited and

others reported in **2020 ACJ 751** and the relevant portion of which is extracted as follows:-

“13. But the above reason, in our view, is flawed. The fact that the deceased was riding on a motor cycle along with the driver and another, may not, by itself, without anything more, make him guilty of contributory negligence. At the most it would make him guilty of being a party to the violation of the law. [Section 128](#) of the Motor Vehicles Act, 1988, imposes a restriction on the driver of a two wheeled motor cycle, not to carry more than one person on the motor cycle. [Section 194C](#) inserted by the [Amendment Act 32](#) of 2019, prescribes a penalty for violation of safety measures for motor cycle drivers and pillion riders. Therefore, the fact that a person was a pillion rider on a motor cycle along with the driver and one more person on the pillion, may be a violation of the law. 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 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



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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 PW3 to the effect that 2 persons on the pillion added to the imbalance.”



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22.The learned counsel for the appellants/petitioners relied upon the judgment of the Hon'ble Apex Court in the case of ***Divisional Manager v. M.Amutha and others*** reported in **2023 (2) TNMAC 585(DB)**, and the relevant portion of which is extracted as follows:-

“11. Therefore, we are unable to accept the argument of the learned counsel for the appellant that since three adult members were travelling and the rider of the two wheeler had no driving licence, the principle of contributory negligence would come into play. We, therefore, confirm the finding of the Tribunal with regard to the rash and negligent driving on the fifth respondent-s vehicle driver.

*14. Per contra, the learned counsel for the claimants / respondents 1 to 4 would contend that merely because the deceased was riding in a two wheeler, which was carrying 3 persons, the same was not the cause for the accident and the Tribunal had rightly negatived the plea of contributory negligence raised by the appellant. He would also place reliance on the Division Bench of this Court in the case of *Kattabomman Transport Corporation Limited V. Vellai Duraichi* reported in 2004~1~CTC~677 and the judgment of the Hon-ble Supreme Court in the case of *Mohammed Siddique V. National Insurance Company* reported in 2020~1~TNMAC~161(SC).*



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15. In the Division Bench judgment of this Court relied on by the learned counsel for the respondents 1 to 4 / claimants cited supra, this Court held that merely because there is a violation of provisions of the Rules or the policy conditions, the principle of contributory negligence cannot be mechanically applied and it should be established before the Tribunal.

16. In the judgment rendered by the Hon'ble Supreme Court also it was a case where three persons were riding the two wheeler and the Hon'ble Supreme Court held that violation of the law would not automatically lead to contributory negligence, unless it is established that the very fact of three persons were riding a two wheeler, resulted in the accident."

23. In the absence of proper oral and documentary evidence and on the basis of various judgments relied upon by the learned counsel for the appellants as discussed supra, this Court is of the considered opinion that the learned Tribunal ought not to have fixed the contributory negligence on the rider of the motorcycle i.e., the deceased thereby, deducting 50% of the compensation towards contributory negligence.



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24. In view of the same, the award passed by the learned Tribunal is modified with regard to contributory negligence alone. The quantum of the compensation fixed by the learned Tribunal is confirmed.

Head	Compensation awarded before learned Tribunal	Compensation awarded before this Court	Enhanced/ Confirmed
(I) Loss of Dependency:	Rs.18,00,000/-	Rs.18,00,000/-	Confirmed
(ii) Funeral Expenses:	Rs.10,000/-	Rs.10,000/-	Confirmed
(iii) Loss of Consortium to the 1 st petitioner:	Rs.20,000/-	Rs.20,000/-	Confirmed
(iv) Loss of love and affection:	Rs.10,000/-	Rs.10,000/-	Confirmed
Total compensation awarded:	Rs.18,40,000/-	Rs.18,40,000/-	Confirmed
Since the deceased contributed the accident, 50% of the compensation has to be deducted towards contributory negligence	Rs.9,20,000/-	Rs.18,40,000/-	Enhanced



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25. In view of the same, the compensation awarded is accordingly enhanced in the aforementioned heads.

26. The petitioners/claimants are entitled to a sum of Rs. 18,40,000/- as compensation with interest at the rate of 7.5% from the date of the claim petition till the date of realization. The second respondent/insurance company is directed to deposit Rs.18,40,000/- with 7.5% interest from date of the claim petition till the date of realization and the amount if not deposited earlier, has to be deposited within a period of 8 weeks from the date of receipt of copy of this order. On such deposit, the major claimant/first petitioner is permitted to withdraw Rs. 9,20,000/- after deducting any amount received by her earlier without filing any formal petition before the Tribunal. Insofar as the share of the minor claimants/petitioners 2 and 3 are concerned, the learned Tribunal is directed to deposit a sum of Rs.4,60,000/- each in a Fixed Deposit under a periodically renewable scheme till they attain majority and the first petitioner, the Guardian of the minor, is permitted to withdraw the



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interest accrued thereon once in three months for the welfare of the minors. The petitioners/claimants are not entitled for interest for the default period, if there is any.

27. Accordingly, the Civil Miscellaneous Appeal stands partly allowed. There shall be no order as to costs.

24.01.2024

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

To

1. Motor Accident Claims Tribunal
(District and Sessions Judge),
Communal Clash Cases Court, Madurai.

2. The Section Officer,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.

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Mrn

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