



CMA No.1493 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 10 / 09 / 2025

JUDGMENT DELIVERED ON: 14 / 10 / 2025

CORAM:

**THE HONOURABLE MR. JUSTICE M.S.RAMESH
AND
THE HONOURABLE MR. JUSTICE R.SAKTHIVEL**

CMA NO.1493 of 2020

The Oriental Insurance Company Ltd.,
No.20, Gandhi Road,
Kallakurichi & Taluk.

... Appellant /
Respondent No.2

-VS-

1. Balu @ Balasubramaniyan
Represented by his wife – Pushpa
S/o.Ramasamy, age 42,
Residing at Sepakkam Village & Post,
Vriddhachalam Taluk.

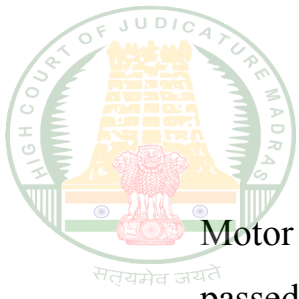
... Respondent No.1
/ Petitioner

2. P.Subramaniyan
S/o. Perumal
Residing at No.131,
Kachakudi Village, Kallakurichi Taluk,
Villupuram District.

... Respondent No.2
/Respondent No.1

PRAYER : Civil Miscellaneous Appeal filed under Section 173 of the

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Motor Vehicles Act, 1988, against the Award dated September 4, 2019 passed in M.C.O.P. No.235 of 2013 on the file of the Motor Accident Claims Tribunal (Sub Court), Kallakurichi.

For Appellant : Mr.D.Bhaskaran

For Respondent No.1 : Mr.S.Shrish
for Mr.N.Manokaran

For Respondent No.2 : Served. No Appearance

J U D G M E N T

R.SAKTHIVEL, J.

Feeling aggrieved by the Award dated September 04, 2019 passed by the 'Motor Accident Claims Tribunal (Sub Court), Kallakurichi' ['Tribunal' for short] in M.C.O.P. No.235 of 2013, the second respondent therein / insurance company has preferred the Civil Miscellaneous Appeal questioning the liability as well as the quantum of the compensation awarded.

2. For the sake of convenience, hereinafter, the parties will be referred to as per their rank in the Motor Accident Claims Original Petition.



PETITIONER'S CASE:

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3. On April 22, 2013, at around 05.00 p.m., the petitioner - Balasubramaniyan was traveling on his motorcycle bearing registration number TN-31-AS-2138 towards Veppur on National Highway-45, at that time, a Mahindra Tourist Van bearing registration number TN-31-AY-0678 driven by one Velmurugan at high speed in a rash and negligent manner, dashed the petitioner's motorcycle from behind, resulting in grievous head injuries to the petitioner. The petitioner was rushed to Government Hospital at Virudhachalam. Then he was referred to Government Hospital at Cuddalore and from there to Ramachandra Hospital at Chennai. The petitioner is a graduate in science and education. At the time of accident, he was employed in a private company in Singapore earning a sum equivalent to Rs.90,000/- per month; the accident occurred while he was in India on leave. Due to the accident caused by the rash and negligence of the first respondent's driver, the petitioner became unfit for any kind of employment. At the time of accident, the first respondent's vehicle was insured with the second respondent. Hence the claim petition against the respondents. Initially, the petitioner claimed a compensation of Rs.50,00,000/-, and subsequently enhanced the claim to Rs.1,00,00,000/- (Rupees One Crore only), along with interest and costs.



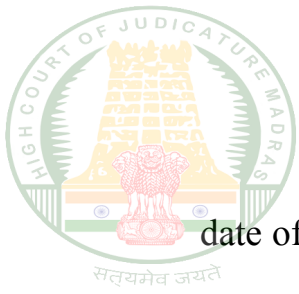
FIRST RESPONDENT'S CASE:

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4. The first respondent filed counter denying the averments made in the claim petition. The first respondent denied the age, educational qualification, income and occupation of the claimant – Balasubramaniam as well as the manner and cause of accident. According to the first respondent, the first respondent's vehicle was stationed on the left side of the road and it is the petitioner who rode in a rash and negligent manner and crashed into the first respondent's vehicle. Hence, the criminal case in Crime No.91 of 2013 lodged against the first respondent's driver in respect of the accident was eventually closed. Further, the first respondent's vehicle was insured with the second respondent / insurance company. Further, first respondent contended that there are no particulars as to the accident mentioned in the discharge summary, and the accident register has not been filed by the petitioner before the Tribunal. Stating so, the first respondent sought to dismiss the claim petition.

SECOND RESPONDENT'S CASE:

5. The second respondent contends that the petition is maintainable neither in law nor on facts. It is denied that the Mahindra Tourist Van bearing No.TN-31-AY-0678 was insured with the second respondent on the



date of accident or that it had valid documents. The second respondent also contended that the driver of the first respondent did not possess a valid driving license at the time of accident. Further, the accident was caused by the negligence on the part of petitioner and hence, neither the first respondent nor the second respondent is liable to compensate the petitioner. The claims regarding age, occupation, income, injuries and disability were denied. The second respondent further contended that the owner and insurer of the motorcycle was not added as parties due to which, the petition is liable to be dismissed on the ground of non-joinder of necessary parties. The second respondent also contended that the compensation claimed under various heads are excessive and prayed for dismissal of the claim petition.

TRIBUNAL:

6. In order to prove the statements made in the claim petition, the petitioner's wife (representing the petitioner as next-friend in the claim petition) was examined as P.W.1 and Ex-P.1 to Ex-P.15 were marked. On the side of the respondents, R.W.1 to R.W.6 were examined and Ex-R.1



and Ex-R.2 were marked. Notably, R.W.4 - Subramaniyan and R.W.5 – Velmurugan are the first respondent and his driver / son respectively. Ex-X.1 to Ex-X.3 were marked through the official witness namely R.W.1 – Rajaraman, Junior Assistant attached to Regional Transport Office (RTO), Virudhachalam.

7. The Tribunal based on the evidence, came to the conclusion that the accident happened due to the rash and negligent driving of driver of the first respondent's vehicle, namely Velmurugan, that the first respondent's vehicle was duly insured with the second respondent at the time of accident, that the first respondent's driver – Velmurugan did not possess a valid driving licence which amounts to violation of the insurance policy conditions and hence, the second respondent shall pay the compensation to the petitioner and recover the same from first respondent. The compensation awarded by the Tribunal under various heads, are as tabulated hereunder:-

<i>Sl. No.</i>	<i>Head</i>	<i>Amount</i>
1.	Disability	Rs.1,10,31,804/-
2.	Transportation Expenses	Rs.15,000/-
3.	Extra Nourishment	Rs.15,000/-



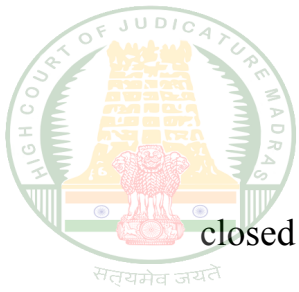
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<i>Sl. No.</i>	<i>Head</i>	<i>Amount</i>
4.	Pain and Suffering	Rs.75,000/-
5.	Attendant Charges	Rs.20,000/-
6.	Medical Bill	Rs.9,76,247/-
Total Compensation		Rs.1,21,33,051/-

8. Feeling aggrieved by the Award, the second respondent / insurance company has filed this Civil Miscellaneous Appeal, assailing the liability and the quantum awarded by the Tribunal.

ARGUMENTS:

9. Mr.D.Bhaskaran, learned Counsel for the appellant / second respondent would argue that the claimant did not prove any negligence on the part of the first respondent's driver. The Tribunal failed to consider Ex-X.1 – Accident Inspection Report (AIR) of the first respondent's vehicle and Ex-X.3 – AIR of the petitioner's motorcycle. From a bare reading of Ex-X.1 and Ex-X.3, it is clear that the accident occurred due to the rash and negligent driving of the petitioner. As there is no negligence on the part of the first respondent's driver, police did not file Final Report in the criminal case registered in respect of the accident and eventually, it was



closed by Court under Section 468 of Code of Criminal Procedure, 1973.

The initial burden is upon the petitioner to prove the alleged negligence on the first respondent's driver but the petitioner failed to examine any independent witness to prove the alleged cause and manner of accident. Even otherwise, the first respondent's driver did not possess a valid driving licence and his vehicle lacked a fitness certificate, and hence, the second respondent is not liable to compensate the petitioner. The Tribunal ought not to have ordered pay and recovery on the second respondent.

9.1. Without prejudice to the above contentions, he would submit that, in view of the fact that the claimant failed to exercise reasonable care while driving the bike and also considering the other facts of the case, the Tribunal ought to have at least apportioned the liability to pay compensation equally between the first respondent and the second respondent, instead of ordering pay and recovery.

9.2. He would further contend that the insurer of the motorcycle drove by the petitioner at the time of accident is a necessary party to the *lis* and the Original Petition is bad for non-joinder of necessary party.

9.3. He would further argue that the petitioner failed to prove his



alleged employment and income. To be noted, Ex-P.10 – Employment Pass and Ex-P.11 – Salary Voucher are not endorsed by competent authority and hence, not valid. Further, as per Ex-P.10, the petitioner's visa period comes to an end on June 9, 2013 i.e., roughly two months after the accident, and hence, it is uncertain that the petitioner would have continued in the alleged job thereafter. Further, the Tribunal is not right in considering the 75% Dementia as whole body disability. Further, the Tribunal failed to consider that there is a difference in the cost of living in Singapore and in India, and 50% deductions are to be made in order to balance the same. Further, the Tribunal awarded higher compensation than the compensation sought for by the petitioner. Accordingly, he would pray to allow the Civil Miscellaneous Appeal and set aside the Award.

9.4. He would rely on the following decisions in support of his contentions:

(i) *Rajkumar's Case* - Judgment of Hon'ble Supreme Court in *Rajkumar -vs- Ajay Kumar*, reported in AIR ONLINE 2010 SC 125 : AIR ONLINE 2010 SC 144;

(ii) *Ramzan Begam's Case* - Judgment of this Court in *Branch Manager,*



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Oriental Insurance Co. Ltd. -vs- Ramzan Begam, reported in 2024 (2) TN

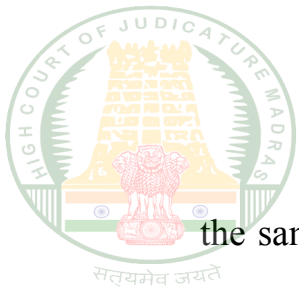
MAC 1 (DB);

(iii) **Kulamani's Case** - Judgment of this Court in *National Insurance Co. Ltd. -vs- Kulamani* dated November 20, 2024 made in *C.M.A. No.2509 of 2023*;

(iv) **N. Thinagar's Case** - Judgment of this Court in *Tamil Nadu State Transport Corporation (Madurai Division V) Ltd. -vs- N. Thinagar*, reported in *2024 (1) TN MAC 577 (DB)*.

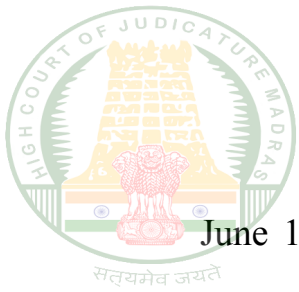
10. On the other hand, Mr.S.Shrish for Mr.N.Manokaran, learned Counsel for the Respondent No.1 / petitioner would argue that First Information Report (FIR) was registered against the driver of the first respondent. The contradictory evidence of R.W.4 and R.W.5 would show that the accident occurred due to the negligence on the part of the first respondent's driver.

10.1. As regards Ex-P.10 and Ex-P.11, he would contend that they were marked without objection and were not seriously disputed at the time of enquiry before the Tribunal, and therefore, there is no reason to reject



the same. Ex-P.9 – Passport and Ex-P.10 – Employment Pass would show that the petitioner has been employed in Singapore since February 21, 2005 and that he was initially working as an Assistant Supervisor in a Private Company for 1250 dollars per month. Ex-P.9 and Ex-P.10 coupled with Ex-P.11 would show that he gradually grew up in his career and landed on his latest job with a pay of 2000 dollars per month, apart from the considerable income from overtime.

10.2. Further, he would contend that with 75% Dementia the petitioner would not be able to work or perform his day to day activities himself without the care of others. As evident from Ex-P.5 – Medical Bill, the petitioner incurred medical expenses of nearly 10 Lakhs. The grievous nature of the injuries sustained by the petitioner are easily discernible from Ex-P.6 to Ex-P.8 – Discharge Summaries and Ex-P.12 & Ex-P.13 – Scan Reports. Ex-P.15 – Medical Board's Assessment Report shows that even after four years from the accident, the petitioner suffered from 75% Permanent Disability and inability to understand spoken words or sentences. Further, as per the direction of this Court vide Order dated February 10, 2023 made in this Civil Miscellaneous Appeal, the petitioner appeared before Government Villupuram Medical College Hospital on

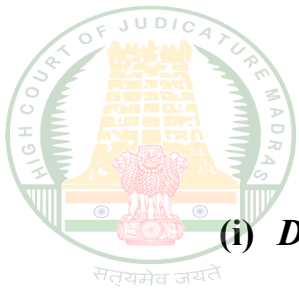


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June 14, 2023 for medical assessment, and the pursuant Medical Report

shows that the petitioner continued to suffer from the 75% Disability without any progress. With 75% Disability and Dementia, the petitioner cannot carry out even his day to day activities without assistance and care from others. Moreover, the petitioner is undergoing continuous treatment. Hence, though the Medical Board assessed the petitioner's disability as 75% permanent disability, the petitioner suffers from 100% functional disability. Hence, the petitioner is entitled to future prospects as well, however, the Tribunal considering the cost of living and taxation in Singapore, decided not to award future prospects. Further, the Tribunal failed to consider the attender charges the petitioner would have incurred, the pain and sufferings the petitioner would have endured as well as the future medical expenses. Had it done so, the compensation would have come to a higher tune. In these circumstances, there is no reason to reduce the compensation awarded by the Tribunal. Accordingly, he would pray to dismiss the Civil Miscellaneous Appeal and confirm the Award of the Tribunal.

10.3. He would rely on the following decisions in support of his contentions:



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(i) ***Dhanabalan's Case*** - Judgment of Hon'ble Supreme Court in

WEB COPY *Dhanabalan -vs- United India Insurance Co. Ltd.*, reported in (2023) 20 SCC 73;

(ii) ***Dhanabalan's Case (before HC)*** - Judgment of this Court in *United India Insurance Co. Ltd. -vs- Dhanabalan* reported in 2019 ACJ 1943;

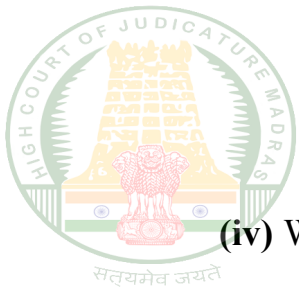
(iii) ***S. Premalatha's Case*** - Judgment of this Court in *the New India Assurance Co. Ltd. -vs- S. Premalatha* dated November 30, 2022 made in C.M.A. No.300 of 2022 and Cross Objection No.104 of 2022.

DISCUSSION:

11. Heard on either side. Perused the evidence available on record.

The following points arise for consideration in this Appeal Suit:

- (i) Whether the accident occurred due to the rash and negligent driving of the first respondent's vehicle ?
- (ii) Whether the insurer of the injured / petitioner's motorcycle is a necessary party to the Claim Petition ?
- (iii) Whether the second respondent / insurance company is liable to pay compensation to the petitioner ?



(iv) Whether the quantum of compensation awarded by the Tribunal is to be interfered with ?

Point No.(i)

12. The case of the petitioner is that on April 22, 2013, at about 05.00 p.m., he proceeded from Seppakkam to Veppur in his motorcycle bearing Registration No.TN-31-AS-2138. While proceeding near K.N.R. Petrol Bunk, a Mahindra Tourist Van bearing Registration No. TN-31-AY-0678 travelling in the same direction, collided with the petitioner's motorcycle from behind and caused an accident. The petitioner resultantly sustained head injuries as well as various other injuries all over his body. The head injuries caused in the accident rendered the petitioner unable to speak and caused 75% dementia.

13. The petitioner's wife / next friend – Pushpa was examined as P.W.1. She did not witness the accident but she marked Ex-P.1 – FIR and Ex-P.4 – Rough Sketch prepared by the Sub-Inspector of Police, Veppur. Ex-P.1 – FIR is registered against one Velmurugan, who is examined as R.W.5 and also the son of first respondent, stating that he drove the van rashly and negligently, and rear ended the petitioner's motorcycle near the petrol bunk. From Ex-P.4, it could be seen that the accident occurred in the



north-south service road, near K.N.R. Petrol Bunk. From the above evidence, it can be safely concluded that the petitioner has *prima facie* proved the factum, place, manner and cause of accident. The petitioner has *prima facie* proved that the accident occurred due to the rash and negligent driving of R.W.5 – Velmurugan. Now the onus is upon the respondents to establish their defence.

14. The first respondent / owner of the van was examined as R.W.4. In his chief-examination, he deposed that his vehicle was stationed on the left side of the Seppakkam to Veppur Road near petrol bunk. According to him, it is the petitioner who drove his motorcycle from the petrol bunk rashly and negligently, collided with the rear end of the stationed Mahindra Tourist Van, and fell down. In his cross-examination, he deposed that he did not witness the accident and further that he is not aware of the name of the driver who drove his Mahindra Tourist Van at the time of accident, but he deposed that the driver belongs to Seppakkam area.

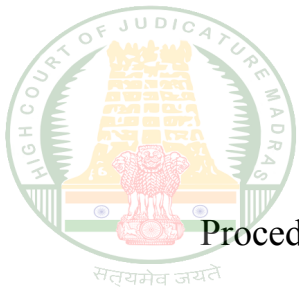
15. R.W.5 who is the driver of the Mahindra Tourist Van as per Ex-P.1 – FIR and also the son of the first respondent, deposed in line with the chief examination of his father / R.W.4. He deposed that he was just standing next to the van at the time of accident and he was not the driver of



the van; the actual driver of the van fled away from the scene of occurrence after the accident. He admitted that Ex-P.1 – FIR was registered against him, that he was pursuantly arrested and was later released on bail.

16. R.W.4 / first respondent being the owner of the van is the competent person to depose as to who was the driver of the van at the time of accident. But R.W.4 has deposed that he does not remember the name of the driver, which is highly unlikely. Being the owner of the alleged offending vehicle it is his duty to disclose the particulars as to the driver of the vehicle. He cannot simply take an evasive stand that he does not know the particulars about the driver, that too when Ex-P.1 – FIR was registered against Velmurugan who is none other than his son stating that it is Velmurugan's rash and negligent driving of the van that caused the accident. That itself causes serious doubts against the defence of the first respondent.

17. Be that as it may, as stated *supra*, Ex-P.1 – FIR was registered against R.W.5 – Velmurugan. The respondents' side examined R.W.6 – Sub-Inspector of Police, Veppur Police Station, who deposed that the police could not file Final Report within the stipulated time period and hence, the Court closed the case under Section 468 of the Code of Criminal



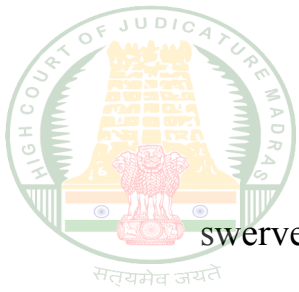
Procedure, 1973. Thus, the criminal case had not been closed for ‘mistake of fact’ or ‘referred charge-sheet’; it was closed by the Court due to limitation. Hence, this Court is of the view that R.W.5 – Velmurugan was the driver of the van at the time of accident. However, the evidence of R.W.5 – Velmurugan as to the cause and manner of accident does not inspire the confidence of this Court, for he is the son of the first respondent and he too supported the evasive stand of the first respondent that the particulars about the alleged actual driver are not known.

18. As per Ex-X.1 – AIR of the Mahindra Tourist Van, a single line scratch was alone noted on the left side rear bottom at the skirt level. Ex-X.3 – AIR of the petitioner’s motorcycle shows damages to the front right hand side rear view mirror and front right bumper. The learned Counsel for the appellant / second respondent / insurance company would contend that Ex-X.1 and Ex-X.3 disproves the manner of accident as alleged by the petitioner and supports the version of the respondents that it is the petitioner who crashed into the van from behind. As stated *supra*, P.W.1 did not witness the accident. The accident rendered the petitioner unable to speak and caused dementia. Hence, he cannot depose about the cause and manner of accident. He is not in a position to explain the exact manner of



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accident, or the damages to the rear of the van or the damages to the front right side of his motorcycle. The evidence of R.W.5 / driver of the van / son of first respondent, namely Velmurugan, is also not reliable as stated *supra*. In these circumstances, the respondents ought to have examined any independent witness, may be an ocular witness from the general public or someone from the petrol bunk. The respondents have not adduced any evidence in support of the cause and manner of accident as alleged by them. The scratch on the left side rear end of the van at the skirt level and the damage to the front right side of the petitioner's motorcycle does not conclusively point towards the negligence of the petitioner. As stated *supra*, from the evidence of P.W.1, Ex-P.1 and Ex-P.4, it could be *prima facie* gathered that the van driven in a rash and negligent manner dashed against the petitioner's motorcycle from behind causing the accident. In Ex-P.3 – Accident Information Report issued by Doctor, it is stated that the petitioner is said to have suffered injuries in an accident caused by a vehicle coming from behind. The statement in respect the manner and cause of accident found in Ex-P.3 was recorded by doctor at 05.50 p.m., while the accident had occurred at about 05.00 p.m. Hence, it is the earliest statement in respect of cause and manner of accident. The van driven rash and negligently behind the petitioner's motorcycle could have slightly



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swerved right in a failed attempt to avoid an accident and hence could have been the scratch on the left side rear bottom at the skirt level without any damage to its front, and the damage to the front right portion of the petitioner's motorcycle. In short, the van coming from behind could have hit the motorcycle on its front right portion after swerving right, which is still in line with the case of the petitioner that the van came from behind and hit the motorcycle. Even while assuming that it is the petitioner's motorcycle that hit the van from behind, then the entire front portion of the motorcycle would have got damaged, not just the front right portion. The burden to prove any other version as to the manner and cause of the accident is upon the respondents, but the respondents have failed to establish their defence. The respondents ought to have examined an independent ocular witness to prove their defence. Therefore, this Court is of the view that the accident occurred due to the rash and negligent driving of the first respondent's van driven by the R.W.5 / his son – Velmurugan. **Point No.(i) is answered accordingly in favour of petitioner and against the respondents.**

Point No.(ii)

19. The next point for consideration is whether the insurer of the petitioner's motorcycle bearing Registration No.TN-31-AS-2138 is a

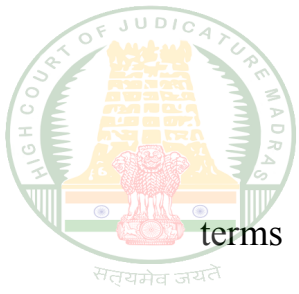


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necessary party to the Original Petition. No dispute with the fact that the motorcycle belongs to the petitioner and the same is duly insured with 'New India Insurance Company Limited'. In Ex-R.1 – Investigation Report, the insurance policy of the petitioner's motorcycle can be found and it is seen to be a package / comprehensive policy covering own damages as well. Further, the petitioner's valid driving licence to drive a two wheeler with gear is marked as Ex-P.14 and the same is also found in Ex.R.1, besides being found in Ex-X.3. Be that as it may, in view of the findings of this Court under Point No.(i), this Court is of the view that the petitioner's motorcycle's insurer is not a necessary party to the Original Petition. **Point No.(ii) is answered accordingly in favour of petitioner and against the respondents.**

Point No.(iii)

20. Third point is with respect to the pay and recovery ordered on the second respondent / insurance company. Ex.R.2, the Insurance Policy of the first respondent's Mahindra Tourist Van shows that the van was duly insured with second respondent for comprehensive cover at the time of accident. But as per Ex.R.1 – Investigation Report and Ex-X.1 – AIR of the van, R.W.5 – Velmurugan who drove the van at the time of accident, did not possess a valid driving licence, which amounts to violation of



terms of the contract of insurance. Further, R.W.1 – Junior Assistant attached to RTO, Virudhachalam, has in addition deposed that the van lacks a valid fitness certificate. The said evidence has not been controverted by the R.W.4 / first respondent and R.W.5 – Velmurugan. In view of the violations of the terms of Ex.R.2 – Insurance Policy, the first respondent would be liable to pay compensation. But since the van was duly insured with the second respondent at the time of accident, bearing in mind that compensation under the Motor Vehicles Act, 1988 is a scheme of social beneficial legislation, and also taking note of the fact that it would be an arduous task for the petitioner to realise the compensation amount from the hands of first respondent especially given his health condition, as the second respondent / insurance company is in a better position to recover money from first respondent, in the interest of justice, this Court is of the view that the Tribunal was right in ordering pay and recovery on the second respondent. **Point No.(iii) is answered accordingly.**

Point No.(iv)

21. The accident occurred on April 22, 2013 at about 05.00 p.m. As per Ex-A.3 – Accident Information Report, one G.Muthukumar admitted the petitioner to Government Hospital at Virudhachalam. At that time, the petitioner was unconscious, had an 3x3 cm abrasion on his right side scalp,



had bleeding from nose, had 2x2 cm abrasion on forehead, and his right eye had swelling and was black. After some initial treatment, the petitioner was referred to Government Hospital at Cuddalore, and from there to Ramachandra Hospital at Chennai. The petitioner was admitted as an in-patient at Ramachandra Hospital at Chennai on April 23, 2013 and took treatment there for totally about 37 to 40 days in three spells in a span of about 4 to 5 months. The petitioner first obtained treatment from April 23, 2013 to May 20, 2013, then from May 28, 2013 to May 30, 2013 and then from July 29, 2013 to August 6, 2013. Various CT Scans on brain and face were taken and the following observations at the time of his discharge after the first spell of treatment (See Ex-P.6 – Discharge Summary) were made:

“Course in the Hospital:

This 42-year-Old male patient was brought to the ER with alleged history of RTA while traveling in a two wheeler hit by a four wheeler on 22/04/13 and sustained head injury. History of LOC and right nasal bleed. On examination patient was not conscious, not obeying. GCS - 2T/15. Pupils left side 2 mm and right side 2.5 mm reacting to light. In due course of hospitalization CT brain plain done, showed features suggestive of right temporal contusion with features of



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burst temporal lobe. Patient underwent left frontotemporoparietal decompressive craniotomy and excision of the temporal contusion on 23/04/13 under GA. Postoperatively patient was monitored in the ICU on ventilatory support and patient underwent tracheostomy on 29/04/13. Post tracheostomy patient was weaned off from the ventilator and treated conservatively with analgesics, antibiotics, antiepileptics, antiedema measures, antacids and was given active limb and chest physiotherapy, mobilized adequately and antibiotics changed according to the c/s report. Patient improved symptomatically and is now neurologically stable and being discharged.

Condition at Discharge :

conscious not oriented

tracheostomy in situ 10T/15

...

...

...

Patient Education :

To take bed rest. to take medicines as advised. in case of vomiting seizures report to the hospital immediately. to give ryles feeds carefully regular tracheostomy tube care.”

22. Further, in Ex-P.7 – Discharge Summary for the second spell of treatment, it has been observed as follows:



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“Course in the Hospital :

This 42-year-old male patient who is a known case of bitemporal contusion, post craniotomy status, post tracheostomy status now has come with complaints of accidenta removal of tracheostomy tube 2 days back. On examination patient was conscious but restless, not oriented, GCS - 15/15, pupils bilateral 2 mm reacting. In due course of hospitalization the chest X-ray revealed normal study. Patient was continued on rehabilitative measures and was given trial oral feeds. Patient tolerated oral feeds and maintained saturation adequately. CT brain plain done showed features suggestive of craniectomy changes in the left temporal and parietal lobes with posttraumatic gliosis in the left temporoparietal cortex and right temporal cortex. Patient improved symptomatically and is now neurologically stable and being discharged.

Condition at Discharge : Stable and well

... ..

Patient Education : *To take bed rest. to take medicines as advised regular chest and limb exercises”*

23. Further, in Ex-P.8 – Discharge Summary for the third spell of



treatment, it has been observed as follows:

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“Course in the Hospital :

This 42-year-old male patient who is a known case of bitemporal contusion, post craniotomy status, now has come for undergoing cranioplasty and further followup and' rehabilitation. Patient conscious and responsive with GCS - 15/15. Pupils bilateral 2 mn reacting. CT brain plain showed no evidence of acute infarct or hemorrhage with pos: traumatic encephalomalacia in the right temporal and left temporoparietal lobes. Indue course, patient underwent left frontotemporoparietal cranioplasty on 30/07/13 under general anesthesia. Postoperative period was uneventful. On 7th postoperative day sutures removed and wound appeared healthy. Indue course of hospitalization patient was treated conservatively with analgesics, antibiotics, antiepileptic, antacids. Patient improved symptomatically and is now neurologically and being discharged with the following discharge advice.

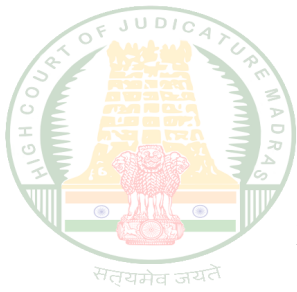
Condition at Discharge: *Stable and well.*

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Patient Education: *To take bed rest. to take medicines as adviced in case of vomiting/seizures/report to the hospital immediately.”*



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24. On September 20, 2017, the petitioner appeared before Medical Board, Government Villupuram Medical College and Hospital for medical examination. The Medical Board noted down the following observations in its Ex-P.15 - Disability Certificate:

“Wernicke’s aphasia – secondary to bitemporal contusion sustained in RTA. Surgically treated by left frontotemporoparietal decompressive and cranioplasty with excision of the temporal contusion.

*Nature of disability - Wernicke’s aphasia
(inability to understand spoken words or sentences)*

*Percentage of disability – 75% Permanent
(Manual for doctor to evaluate permanent physical disability based on expert group meeting on disability evaluation, New Delhi, 1981)”*

25. From Exs-P.6 to P.8 and Ex-P.15 – Medical Reports, the nature and severity of the injuries along with their implications on the petitioner’s day to day life can be understood. With Wernicke’s aphasia, the petitioner would not be able to understand written and spoken language making his communication with others difficult. It can also be seen that the petitioner had suffered severe head injuries leading to contusions in his temporal



region. The Medical Board has certified that the petitioner suffered 75% permanent disability in view of the injuries.

26. During the pendency of this Civil Miscellaneous Appeal, this Court vide its Order dated February 10, 2023, directed the petitioner to appear before the Government Villupuram Medical College Hospital, along with records of old treatment. Accordingly, the petitioner appeared before the Medical Board on April 24, 2023 and after assessment, the Board issued Disability Certificate dated June 14, 2023 (not marked). The same has been sent to this Court. In the latest report, the Medical Board based on clinical examination and neuropsychological test, has observed that the patient is diagnosed with 75% dementia as a post head injury sequelae. From the latest report, it can be seen that as a result of the head injury, the petitioner – Balasubramaniyan now suffers from 75 % dementia, which is decline in functions of the brain due to an injury or disease.

27. At the time of accident, the petitioner was working as a Building Construction Supervisor and General Foreman in a construction company at Singapore. Basically, the petitioner was in a supervisory role in construction field. Naturally his nature of job would include clear

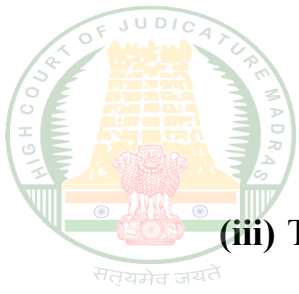


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communication with workers as well as superiors, assigning and explaining works to workers, ensuring that assigned tasks are completed properly in time, addressing the concerns of workers and looking after their basic needs. With 75 % dementia and other injuries sustained, it would be difficult for the petitioner to look after his own basic needs without the aid of others, let alone supervising and looking after others. Hence, though the Medical Board states that the petitioner suffered from 75 % Permanent Disability / Dementia, this Court is of the view that the petitioner suffers 100% functional disability in view of the 75 % dementia and head injuries. The Tribunal has worked out the compensation by considering it as a case of 75 % whole body disability, failing to note the functional disability, which in the opinion of this Court is not justifiable.

28. The petitioner's side marked Ex-P. 9 – Passports, Ex-P.10 – Employment Pass and Ex-P.11 – Salary Vouchers. From Ex-P.9 to Ex-P.11, the following are discernible :

- (i)** The petitioner is a bachelor degree holder (full time) in chemistry from the University of Madras;
- (ii)** The petitioner is a bachelor degree holder (distance learning) in English and Physical Science from the Annamalai University;



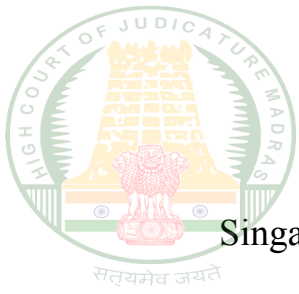
(iii) The petitioner's first passport was valid from June 10, 2003 to June 9, 2013 and his subsequent passport was valid from January 9, 2013 to January 8, 2023;

(iv) The petitioner's first visit to Singapore was in 2005 and thereafter he had travelled between Singapore and India a few times;

(v) The petitioner had worked in India at a company by name "Five Falls Minerals" as a Chemist (General) from November 22, 2003 to February 11, 2005 and earned a monthly salary of 600 Singapore dollars (roughly Rs.10,000/- at that time);

(vi) The petitioner had worked at SME Marine Scaffolding Private Limited as an Assistant Supervisor in Singapore from February 21, 2005 to January 28, 2011 drawing a monthly salary of 1250 Singapore dollars (Rs.32,750/- on average);

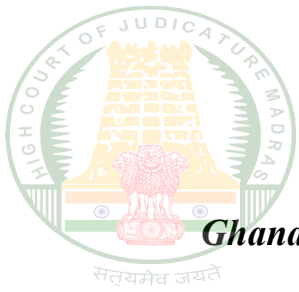
(vii) The petitioner was lastly working in GRM Builders Private Limited as Building Construction Supervisor and General Foreman from August 2012 for a monthly salary of 1800 Singapore dollars which was raised to 2000 Singapore dollars in two months *i.e.*, in October 2012. Apart from this, the petitioner drew a considerable overtime charges of 400



Singapore dollars in an average.

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29. The learned Counsel for the appellant / second respondent / insurance company would contend that the above evidence cannot be considered for neither their authors were examined nor are they authenticated by the Diplomatic and Consulate Office. The aforesaid contention deserves to be rejected in the considered opinion of this Court, for the following reasons. One, the aforesaid documents were marked without any objection. Secondly, Ex-P.10 is downloaded from the official website of the Ministry of Man Power, Government of Singapore. Needless to mention here that enquiry under the Motor Vehicles Act, 1988 is a summary procedure and the Indian Evidence Act, 1872 is not stricto sensu applicable {See Judgment of Hon'ble Supreme Court in ***Rajwati @ Rajjo -vs- United India Insurance Company Limited***, decided on ***December 9, 2022***, having neutral citation ***2022 INSC 1267*** [Paragraph Nos.16 to 20]; Judgment of a learned Division Bench of this Court in ***Chief Works Manager, Southern Railway Carriage Works -vs- V.Manimekalai***, reported in ***2015 SCC Online Mad 14125*** [Paragraph Nos.14 to 16]; Judgment of a learned Division Bench of Gujurat High Court in ***United India Insurance Co. Ltd. -vs- Damor Kacharanhai***



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Ghananhai, reported in **2006 SCC Online Guj 298** [Paragraph No.7];

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Judgment of a learned Division Bench of Karnataka High Court in **Rukmani -vs- Chandru**, dated **November 2, 2020**, having neutral citation **2020: KHC : 18912 : DB** [Paragraph No.11]}. Thirdly, Ex-P.11 – Salary Vouchers bear the signatures of the petitioner and his employer's authorised person, and they corroborate the particulars as to the pay drawn by the petitioner mentioned in Ex-P.10. Furthermore, the learned Counsel for the appellant/second respondent would contend that the petitioner's visa period came to end two months after the accident and hence, his chances of working in abroad is less. From Ex-P.9 to Ex-P.11, it can be seen that the petitioner has been working in Singapore ever since 2005 by renewing his visa time and again. Hence, it is likely that the petitioner would continue working in Singapore by getting an visa extension / renewal and the aforesaid contention does not hold water. To be noted, now the petitioner is suffering from dementia and the claim petition itself has been filed by his wife / next friend representing him. He is not in a state to depose before this Court. In these circumstances, this Court is of the view that the petitioner has *prima facie* established the above facts relating to his employment in Singapore and salary. The same has not been controverted by the respondents. Therefore, this Court concludes that the petitioner was



employed in Singapore and drew a monthly salary of 2,000 Singapore dollars at the time of accident, which roughly comes to Rs.87,554/- (as per then exchange rate). The Tribunal rightly arrived at Rs.87,554/- as the monthly salary of the petitioner and there is no need to interfere with the same.

30. The petitioner was born on May 18, 1971. The date of accident is April 22, 2013. At the time of accident, the petitioner was aged 41 years (completed). As per Judgment of the Hon'ble Supreme Court in ***Sarla Verma -vs- Delhi Transport Corporation***, reported in ***(2009) 6 SCC 121***, the appropriate multiplier for the age of 41 years is 14. The Tribunal rightly applied the multiplier of 14; further, it skipped future prospects citing foreign employment, income tax and the cost of living in Singapore, took permanent disability at 75 %, and arrived at the sum of Rs.1,10,31,804/- [Rs.87554/- x 12 x 14 x 75%] towards compensation for loss of income due to disability and further awarded compensation under various other heads as tabulated hereunder:

<i>Sl. No.</i>	<i>Head</i>	<i>Amount</i>
1.	Disability	Rs.1,10,31,804/-
2.	Transportation Expenses	Rs.15,000/-



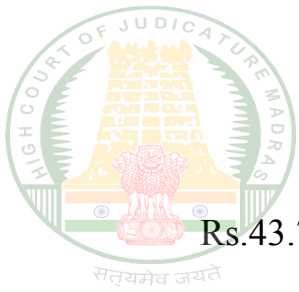
CMA No.1493 of 2020

<i>Sl. No.</i>	<i>Head</i>	<i>Amount</i>
3.	Extra Nourishment	Rs.15,000/-
4.	Pain and Suffering	Rs.75,000/-
5.	Attendant Charges	Rs.20,000/-
6.	Medical Bill	Rs.9,76,247/-
Total Compensation		Rs.1,21,33,051/-

31. In addition, the Tribunal granted 7.5% interest from the date of petition till realisation.

32. The grievance of the second respondent / insurance company is trifold. One, the Tribunal erred in considering the permanent disability of the petitioner mechanically at 75 %. As the same has been answered against the second respondent / insurance company by this Court *supra*, there is no need to delve into it again. The second grievance is that the Tribunal failed to scale down the income of the deceased on the basis of higher cost of living in Singapore compared to India and the third grievance is that the Tribunal failed to deduct income tax for the income of the deceased.

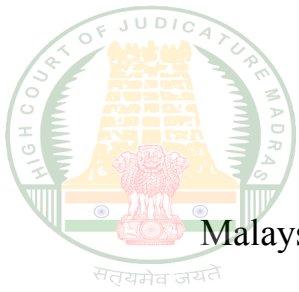
33. At the time of accident, 1 Singapore Dollar was equal to



Rs.43.7724/- . There is no material evidence to scale down the income of the deceased to match the relatively less cost of living in India compared to Singapore. In *N. Thinagar's Case* (cited *supra*), where the accident occurred in 2012 and the injured was working in the UAE, while determining the compensation towards his disability, a division bench of this Court deducted 30% towards income tax and 10% towards economic disparity, while awarding future prospects. In *Ramzan Begam's Case*, the accident occurred in 2016 and the injured therein was working in the Malaysia. The very same division bench of this Court similarly deducted 30% income tax and 10% towards economic disparity while granting future prospects.

34. Now let's consider the worst case scenario. Let's deduct the maximum tax possible and make a higher deduction for economic disparity, but while adding future prospects. The petitioner's monthly salary is Rs.87,554/- as stated *supra*. With 25% future prospects, it would be Rs.1,09,442.50/-. Multiplying it by 12 months gives an annual income of Rs.13,13,310/-.

34.1. To match economic disparities between Singapore and India, while the division bench of this Court made a deduction of 10% in case of



Malaysia and UAE, this Court is inclined to make a higher deduction of 30%. This is because in 2013, on an average, the value of the Malaysian Ringgit was Rs. 17.9/- and the UAE Dirham was Rs. 15.9/-, while Singapore Dollar was Rs.46.7/-. In other words, the value of Singapore Dollar in Indian Rupees was about 2.5 times higher than that of Malaysian Ringgit and UAE Dirham. Hence, the 10% deduction for economic disparity treated adequate by the said division bench of this Court is now considered at 30% (3 times higher). It has to be borne in mind that this Court is considering the worst possible scenario. The annual income after the said 30 % deduction will be Rs.9,19,317/-.

34.2. Now calculating Income tax according to the Indian income tax slabs for the assessment year 2013 - 2014, the first Rs.2,00,000/- is exempted from tax, the next Rs.3,00,000/- is taxed at 10% (Rs.30,000/-), and the remaining Rs.4,19,317/- is taxed at 20% (Rs.83,863/-). Adding the 3% education cess to the total tax of Rs.113,863/- [Rs.30,000/- + Rs.83,863/-], the total tax liability of the petitioner comes to Rs.1,17,279/-. Thus, the petitioner's net annual income after tax would be Rs.8,02,038/-.

34.3. Now applying the appropriate multiplier of 14, the loss of income due to disability, at the worst case scenario, comes to



Rs.1,12,28,532/-, which is still about Rs.2,00,000/- higher than what was awarded by the Tribunal.

34.4. The following table summarises the above calculation:

<i>S.No.</i>	<i>Description</i>	<i>Amount</i>
1	Monthly salary	Rs.87,554/-
2	Adding 25% future prospects	Rs.1,09,443/-
3	Annual income (12 months)	Rs.13,13,310/-
4	Deduction for economic disparity (30%)	Rs.9,19,317/-
5	After deduction of Income tax & Cess (AY 2013 - 2014)	Rs.8,02,038/-
6	Applying multiplier of 14	Rs.1,12,28,532/-
Total Compensation		Rs.1,12,28,532/-

35. Hence, this Court is of the view that the second respondent / insurance company would not have any grievance over the compensation awarded by the Tribunal. To be noted, the petitioner being satisfied with the Award did not prefer an appeal. Therefore, there is no need to interfere with the quantum of compensation awarded by the Tribunal. The same is just and reasonable. It is hereby clarified that the above calculation of deducting 30% towards economic disparity is only a guess work in the worst possible scenario to show that, in the facts and circumstances of this case, the second respondent would not have any grievance over the Award,



and it is not based on any materials. It should not and cannot be treated as a straight-jacket formula. Hence, the same shall not be treated as a precedent. **Point No.(iv) is answered accordingly.**

36. The other case laws relied on by the learned Counsels on both sides are not applicable to the facts and circumstances of this case.

37. Coming to the contention of the learned Counsel for the appellant / second respondent that the Tribunal has awarded compensation exceeding what was claimed, the Tribunal has awarded a sum of Rs.1,21,33,051/- while the amount claimed by the petitioner itself is Rs.1,00,00,000/- only. It is settled legal position that nothing stands as an impediment for the Tribunal to award compensation exceeding the claimed amount, if it deems just and fit [See *Nagappa -vs- Gurdayal Singh*, reported in (2003) 2 SCC 274, and *Meena Devi -vs- Nunu Chand Mahto @ Nemchand Mahto*, reported in (2023) 1 SCC 204]. Considering the grievous nature of injuries sustained by the petitioner which has caused him 75 % dementia and 100% functional disability, this Court is of the view that the compensation awarded by the Tribunal exceeding the claim amount is justifiable. The aforesaid contention deserves to be rejected in view of the settled legal principle.

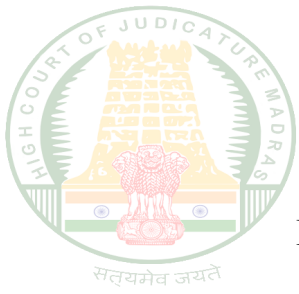


CONCLUSION:

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38. Resultantly, the Civil Miscellaneous Appeal is dismissed. Award of the Tribunal is confirmed. However, modifications to the effect of the following, which are in no manner prejudicial to the interest of the second respondent / insurance company, shall be made to the Tribunal's Award.

- (i) Out of the total compensation of Rs.1,21,33,051/- awarded by the Tribunal, Rs.40,00,000/- has already been deposited before the Tribunal as per the Order of this Court made in C.M.P. No.11083 of 2020 in this Civil Miscellaneous Appeal, and the petitioner has been permitted to withdraw the same vide Order of this Court dated March 8, 2021 made in C.M.P. No.38 of 2021 in this Civil Miscellaneous Appeal. Further, the second respondent / insurance company has made a statutory deposit of Rs.25,000/- on January 29, 2020.
- (ii) The second respondent / insurance company shall deposit the Award amount along with accrued interest, less the amount already deposited, as per the Award, within 2 months from today.
- (iii) Out of the total amount deposited, the Tribunal is directed to deposit



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Rs.50,00,000/- [Rupees Fifty Lakh only] in a high interest bearing fixed deposit in a nationalised bank. The petitioner's next friend shall be permitted to withdraw the interest accruing thereon every year and utilise the same for the needs and welfare of the petitioner. While releasing the interest thereon, the Tribunal shall ensure that the same is spent for the welfare of the petitioner.

- (iv) If there is any medical emergency requiring heavy funds, amount required shall be released from the aforesaid Rs.50,00,000/- subject to the satisfaction of the Tribunal *qua* the need of funds.
- (v) The petitioner's next friend is permitted to withdraw the remaining Award amount along with accrued interest thereon, subject to the satisfaction of the Tribunal that the petitioner is duly taken care of by his next friend.

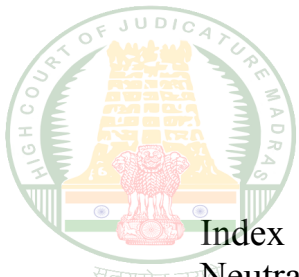
38.2. Considering the facts and circumstances of this case, there shall be no order as to costs in this Civil Miscellaneous Appeal.

[M.S.R., J.]

[R.S.V., J.]

14.10.2025

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Index : Yes

Neutral Citation : Yes

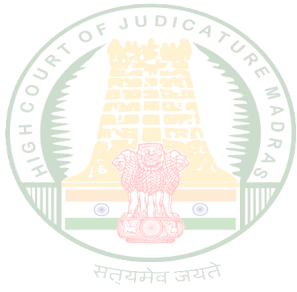
Speaking Order : Yes

jai

To

1.The Motor Accident Claims Tribunal,
Sub Judge, Kallakurichi.

2.The Section Officer,
V.R.Section,
Madras High Court, Chennai.



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CMA No.1493 of 2020

M.S.RAMESH, J.

AND
R.SAKTHIVEL, J.

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PRE-DELIVERY JUDGMENT MADE IN
CMA No.1493 of 2020

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