



C.M.A.No.1183 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED: 03.04.2025

CORAM:

**THE HONOURABLE MR.JUSTICE R.SURESH KUMAR
and
THE HONOURABLE DR.JUSTICE A.D.MARIA CLETE**

C.M.A. No.1183 of 2023

and

C.M.P. No.11627 of 2023

M/s.National Insurance Co.Ltd.,
Office at Door No.122/165,
Nethaji Road, Manjakuppam,
Cuddalore, Tamil Nadu – 607 001,
Now State Bank Road,
Coimbatore – 18.

... Appellant

Vs.

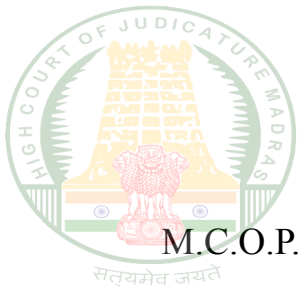
1.C.Rajkumar

2.R.Saravanan

3.D.Devan

... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and decree dated 14.12.2021 made in



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M.C.O.P.No.577 of 2016 on the file of the Motor Accident Claims Tribunal, Sub

WEB COURT, Coimbatore.

For Appellant : Mr. S. Arunkumar.

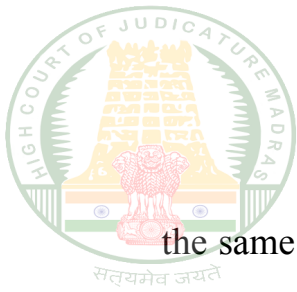
For Respondents : Mr. G. Poonkundran for R1.
R2 & R3 – Unclaimed.

J U D G M E N T

(Delivered by Dr. A.D. Maria Clete, J)

The Civil Miscellaneous Appeal (CMA No. 1183 of 2023) has been filed by the appellant Insurance Company (Bajaj Allianz General Insurance Co. Ltd.) to challenge the award passed by the Motor Accident Claims Tribunal in M.C.O.P. No. 577 of 2016 on the file of the Motor Accident Claims Tribunal (Sub Court), Coimbatore.

2. On 29.05.2013, the first respondent, C. Rajkumar, was travelling as an occupant in a Hyundai Verna Car bearing Registration No. TN 57 AF 4883, on the Trichy–Dindigul Road, near Mullaipadi. At that time, a private bus bearing Registration No. PY-01-BG-2799, owned by the third respondent and insured with the appellant insurance company, and driven by the second respondent, came in



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the same direction and, being driven in a rash and negligent manner, hit the car in

which the first respondent was travelling. As a result of the collision, the first respondent sustained grievous injuries, including bilateral femur fractures, multiple rib fractures, and subarachnoid hemorrhage, which led to substantial medical treatment and expenses. The injured claimant filed M.C.O.P. No. 577 of 2016 before the Motor Accident Claims Tribunal, Sub Court, Coimbatore, seeking Rs.1 crore as compensation.

3. In its counter, the appellant Insurance Company contended that the accident occurred due to the negligence of the first respondent, who was attempting to overtake the bus at the time of the incident. It further argued that the insurer of the Hyundai Verna car, in which the claimant was travelling, ought to have been impleaded for a proper and complete adjudication of the claim. The appellant pointed out that the bus involved in the accident did not possess a valid permit on the date of the incident, and therefore, it was not liable to indemnify the owner.

4. The driver and owner of the bus (respondents 2 and 3) remained ex parte before the Tribunal.



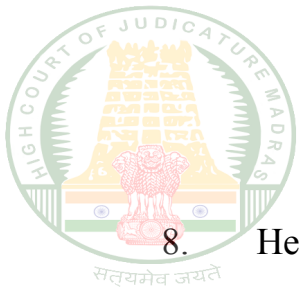
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5. In support of his claim, the first respondent examined three witnesses as PW1 to PW3 and marked documents Ex.P1 to Ex.P15. On the side of the appellant, one witness was examined as RW1, and documents Ex.R1 to Ex.R4 were marked. Additionally, the medical bills and medical certificate were marked as Ex.X1 and Ex.X2, and the disability certificate issued by the Government Medical College, Coimbatore, was marked as Ex.C1.

6. After considering the evidence, the Tribunal held the bus driver negligent, assessed the claimant's disability at 50%, and awarded a total compensation of Rs. 39,72,977/- to the first respondent. The Tribunal directed the Insurance Company to pay the compensation amount with liberty to recover the same from respondents 2 and 3.

7. Aggrieved by this award, the Insurance Company has preferred the present appeal challenging the finding on negligence, the assessment of 50% disability, and the alleged excessiveness of compensation awarded under various heads.



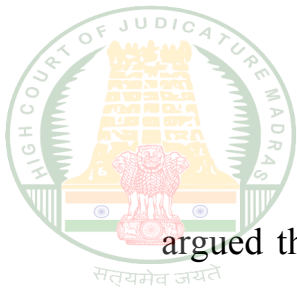
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8. Heard the parties and perused the materials available on record.

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9. The learned counsel for the appellant submitted that the Tribunal erred in holding that the accident occurred solely due to the negligence of the driver of the vehicle insured with the appellant. It was contended that the first respondent also contributed to the accident and, therefore, a finding of composite negligence ought to have been recorded. With regard to the assessment of disability, the counsel submitted that the Tribunal erroneously adopted 50% disability based on Ex.C1 (disability certificate), whereas only 30% should have been taken into account. In support of this argument, reliance was placed on the decision of the Hon'ble Supreme Court in **Raj Kumar v. Ajay Kumar and another, (2011) 1 SCC 343**. It was further contended that the compensation awarded under various other heads was excessive and not supported by adequate evidence. Accordingly, the counsel prayed for setting aside the award and allowing the appeal.

10. In response, the learned counsel for the first respondent submitted that the accident was caused solely due to the rash and negligent driving of the bus, which collided with the vehicle in which the first respondent was travelling. It was



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argued that the Tribunal rightly concluded that the second and third respondents (driver and owner of the bus) were liable and accordingly directed the appellant Insurance Company to pay the compensation and recover the amount from them. It was further submitted that the award was well-reasoned and based on the evidence on record and did not call for any interference. Hence, the appeal was liable to be dismissed.

11. The Tribunal, upon appreciation of both oral and documentary evidence, specifically found that the accident occurred due to the rash and negligent driving of the private bus bearing Registration No. PY-01-BG-2799, which, while proceeding behind the Hyundai Verna car in which the claimant was travelling, failed to maintain a safe distance and collided with the rear side of the car. Relying on the documents such as the FIR (Ex.P1), rough sketch (Ex.P5), and motor vehicle inspector's report (Ex.P3 & P4), the Tribunal concluded that the bus driver was solely responsible for the accident. As there was no evidence to suggest contributory negligence on the part of the claimant, the Tribunal rightly fastened liability on the bus driver and owner, and directed the appellant–Insurance Company to pay the compensation with liberty to recover the same. This Court



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finds the reasoning of the Tribunal to be sound and supported by the record, and

therefore confirms the finding on negligence and liability.

12. As regards the quantum of compensation, the Tribunal assessed the permanent disability of the claimant at 50%, based on the disability certificate issued by the Government Medical College, Coimbatore (Ex.C1). In doing so, the Tribunal relied on the Division Bench judgment of this Court in **Branch Manager, Shriram General Insurance Co. Ltd. v. B. Madhu and others, 2020 (1) TN MAC 202 (DB)**, and held that due to the disability, the claimant could no longer perform his day-to-day functions as before, justifying the adoption of 50% disability towards loss of earning power. While the overall computation is based on sound reasoning and warrants no interference, this Court finds the award of Rs.3,00,000/- towards pain and suffering to be on the higher side and reduces it to Rs.2,00,000/-, and the sum of Rs.2,00,000/- awarded under the head loss of amenities is also reduced to Rs.1,00,000/-. The compensation awarded under the remaining heads is found to be fair and reasonable.



13. Consequently, the total compensation amount is reduced from Rs.39,72,977/-

to Rs.37,72,977/- and the revised compensation is as follows:

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted or reduced
1	Loss of income	Rs.2,948,198	Rs.2,948,198	Confirmed
2	Pain and sufferings	Rs.300,000	Rs.200,000	Reduced
3	Loss of amenities	Rs.200,000	Rs.100,000	Reduced
4	Extra Nourishment	Rs.50,000	Rs.50,000	Confirmed
5	Attender charges	Rs.100,000	Rs.100,000	Confirmed
6	Transport expenses	Rs.25,000	Rs.25,000	Confirmed
7	Damages to clothes	Rs.3,000	Rs.3,000	Confirmed
8	Medical Expenses	Rs.346,779	Rs.346,779	Confirmed
	Total	Rs.3,972,977	Rs.3,772,977	Reduced

14. In the result, the Civil Miscellaneous Appeal filed by the appellant is disposed of and the appellant is directed to deposit the award amount now



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determined by this Court, together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit (less the default period, if any) along with interest and costs, if not already deposited, within a period of four weeks from the date of receipt of a copy of this Judgment and withdraw the excessive amount deposited if any and thereafter, recover the same from the second and third respondents. On such deposit, the first respondent is permitted to withdraw the award amount along with proportionate interest and costs, less the amount if any, already withdrawn. No costs. Consequently, the connected miscellaneous petition is closed.

(R.S.K., J) (A.D.M.C., J)

03.04.2025

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Index: Yes / No

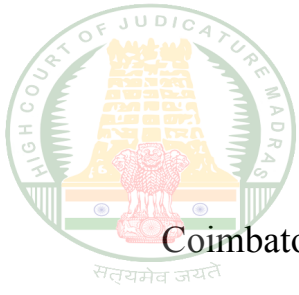
Speaking Order / Non-speaking Order

Neutral Citation: Yes / No

To

1.The Motor Accident Claims Tribunal,
Sub Court,

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Coimbatore.

2. The Section Officer,
VR Section,
High Court of Madras,
Chennai.



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and
DR. A.D. MARIA CLETE, J**

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