



WEB COPY

*CMA NOs.947 & 949 of 2022*

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

JUDGMENT RESERVED ON: 09 / 01 / 2025

JUDGMENT DELIVERED ON: 19 / 02 / 2025

CORAM:

**THE HONOURABLE MRS. JUSTICE J.NISHA BANU  
AND  
THE HONOURABLE MR. JUSTICE R.SAKTHIVEL**

**CMA NOs.947 & 949 of 2022  
AND  
CMP NOs.7033 & 7040 OF 2022**

CMA.No.947 of 2022

The Bajaj Allianz General Insurance Co Ltd.,  
No.25/26, Prince Tower, 4th floor,  
College Road, Nungambakkam,  
Chennai - 600 006.

... Appellant /  
2<sup>nd</sup> Respondent

**Vs.**

1. Latha
2. S.Mohan Babu
3. Minor S Shankar
4. Kannan

... Respondents 1 to 4 /  
Petitioners

5. Mahadev Bhagappa Jamadar  
AP Goleshwar, Taluk Karad,  
Satara, District 415 002.

... 5<sup>th</sup> Respondent /  
1<sup>st</sup> Respondent

6. S.Devi

... 6<sup>th</sup> Respondent /  
3<sup>rd</sup> Respondent



**CMA NOs.947 & 949 of 2022**

7. National Insurance Company Limited,  
No.9, Infantry Road,  
Near Alangar Theatre Vellore.

...7th Respondent /  
4th Respondent

**CMA.No.949 of 2022**

The Bajaj Allianz General Insurance Co Ltd.,  
No.25/26, Prince Tower, 4th floor,  
College Road, Nungambakkam,  
Chennai - 600 006.

... Appellant /  
2<sup>nd</sup> Respondent

**Vs.**

1. L.Theerthakumar

... 1st Respondent /  
Petitioner

2. Mahadev Bhagappa Jamadar  
AP Goleshwar, Taluk Karad,  
Satara, District 415 002.

... 2nd Respondent /  
1st Respondent

3. S.Devi

... 3rd Respondent /  
3rd Respondent

4. National Insurance Company Limited,  
No.9, Infantry Road,  
Near Alangar Theatre Vellore.

... 4th Respondent /  
4th Respondent

**PRAYER IN CMA.No.947 of 2022** : Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, praying to set aside the Award dated July 13, 2020 passed in M.C.O.P.No.126 of 2014 on the file of the Motor Accidents Claims Tribunal (Subordinate Judge), Vaniyambadi.



**CMA Nos. 947 & 949 of 2022**

**PRAYER IN CMA.No.949 of 2022** : Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, praying to set aside the Award dated July 13, 2020 passed in M.C.O.P.No.125 of 2014 on the file of the Motor Accidents Claims Tribunal (Subordinate Judge), Vaniyambadi.

**CMA.No.947 of 2022**

|                          |   |                        |
|--------------------------|---|------------------------|
| For Appellant            | : | Mr. T.K.Premkumar      |
| For Respondents - 1 to 4 | : | Mr.F.Terry Chella Raja |
| For Respondents - 5 & 6  | : | No appearance          |
| For Respondent - 7       | : | Mr.D.Bhaskaran         |

**CMA.No.949 of 2022**

|                         |   |                        |
|-------------------------|---|------------------------|
| For Appellant           | : | Mr. T.K.Premkumar      |
| Respondent - 1          | : | Mr.F.Terry Chella Raja |
| For Respondents - 2 & 3 | : | No appearance          |
| For Respondent - 4      | : | Mr.D.Bhaskaran         |

**COMMON JUDGMENT**

**R.SAKTHIVEL, J.**

Feeling aggrieved by the Award dated July 13, 2020, passed by the 'Motor Accidents Claims Tribunal (Subordinate Judge), Vaniyambadi' ('Tribunal' for short) in M.C.O.P.Nos.125 and 126 of 2014, the second respondent therein / Insurance Company, namely the Bajaj Allianz General Insurance Co Ltd., has preferred these Civil Miscellaneous Appeals challenging its liability and the quantum of compensation.



**CMA NOs.947 & 949 of 2022**

**2.** For the sake of convenience, the parties will hereinafter be referred to as per their rank in the Motor Claims Original Petition [M.C.O.P.].

**3. Case of petitioners in both the Claim Petitions i.e., M.C.O.P. Nos.125 & 126 of 2014, is that:**

(i) On September 29, 2012, at about 4.30 am., the husband of the first petitioner in M.C.O.P. No.126 of 2014, namely Saravanan was driving a lorry bearing Registration No.TN-23-BZ-6126 belonging to the third respondent in M.C.O.P.No.125 of 2014, along with an additional driver, namely Theerthakumar, the petitioner in M.C.O.P.No.125 of 2014.

(ii) While nearing Gahonge Village on Mumbai to Pune Express Highway service road, the first respondent being the driver of the lorry bearing Registration No.MH-11-AL-6975, had stationed the said lorry in the middle of the road, without any signboard or indication. Upon realising the same, Saravanan tried to halt the lorry which he was driving and prevent any mis-happenings, but his efforts went in vein when he dashed behind the first respondent's lorry. Saravanan succumbed to the accident on the spot. The additional driver, namely Theerthakumar, the petitioner in M.C.O.P.No.125 of 2014 sustained injuries in the accident.



**CMA NOs.947 & 949 of 2022**

**(iii)** The cleaner of the first respondent's lorry preferred a false complaint about the accident and a case in Crime No.210 of 2012 was registered under Sections 279, 337, 338, 304 (A) and 427 of the Indian Penal Code, 1860 against the deceased- Saravanan. Whereas, actually the accident took place only due to negligence on part of the first respondent, who had stationed the lorry negligently in the middle of the road without any indication or signboard.

**(iv)** At the time of accident, the first respondent's lorry bearing Registration No.MH-11-AL-6975 was insured with the second respondent / insurance company, and the third respondent's lorry bearing registration No.TN 23 BZ 6126, driven by the deceased - Saravanan, was insured with the fourth respondent / insurance company. Hence, the respondents 2 and 4 are jointly and severally liable to pay the compensation to petitioners in both the Claim Petitions.

**First, third and fourth respondents :**

4. Despite notice to the first and third respondents, they did not choose to contest the original petition. Hence, they were called absent and set *ex parte* by the Tribunal. Further, though the fourth respondent appeared through counsel, he did not file counter.



**Second respondent's case :**

WEB COPY

5. The second respondent filed a counter stating that the accident occurred solely due to the rash and negligent driving of the third respondent's driver / deceased – Saravanan. First Information Report (FIR) was registered only against the deceased - Saravanan. The rough sketch also substantiate that the accident happened only due to rash and negligent driving of the deceased – Saravanan. The deceased - Saravanan was a tort-feasor. Further, the first respondent's lorry was not insured with the second respondent and further, its owner-cum-driver did not possess a valid driving license at the time of accident and thus, violated the policy conditions. Hence, the second respondent is not liable to pay any compensation to the petitioners in both M.C.O.Ps. Accordingly, he prayed to dismiss the original petitions.

**Tribunal :**

6. During joint trial of both M.C.O.Ps, on the side of petitioners, the first petitioner in M.C.O.P.No.126 of 2014 / wife of the deceased - Saravanan was examined as P.W.1, and the petitioner in M.C.O.P.No.125 of 2014 / additional driver was examined as P.W.2 and



**CMA NOs.947 & 949 of 2022**

Ex-P.1 to Ex-P.18 were marked. On the side of respondents, one Sreejith

WEB COPY

Mohan was examined as R.W.1, and Ex-R.1 to Ex-R.3 were marked.

7. The Tribunal, after hearing both sides and considering the evidence available on record, relying on the evidence of P.W.2 / additional driver / petitioner in M.C.O.P.No.125 of 2014, disbelieved the FIR as it was preferred by first respondent's cleaner and concluded that the accident happened only due to the rash and negligent act of the first respondent. At the time of the accident, the first respondent's lorry was insured with the second respondent. Hence, the respondents 1 & 2 are liable to pay the compensation to the petitioners. With regard to the quantum of compensation, the Tribunal took Rs.15,000/- as notional income and awarded a total compensation of Rs.24,77,000/- to the petitioners in M.C.O.P.No.126 of 2014. As far as the M.C.O.P.No.125 of 2014 is concerned, the Tribunal awarded a sum of Rs.1,25,702/- to the petitioner therein.

8. Feeling aggrieved by the liability fastened on it as well as the compensation awarded, the second respondent / insurance company has preferred these Civil Miscellaneous Appeals [CMAs].



**Arguments :**

WEB COPY

**9.** Mr.T.K.Premkumar, learned Counsel appearing for the appellant in both CMAs / 2<sup>nd</sup> respondent in both MCOPs / insurer of first respondent's lorry would submit that the FIR was registered against the deceased - Saravanan, based on the information given by the first respondent's cleaner. The first respondent's lorry was stationed in the service road as there was a breakdown. It is the deceased - Saravanan who drove third respondent's lorry in a rash and negligent manner and dashed behind the first respondent's lorry, and therefore, he was a tort-feasor. Hence, the second respondent is not liable to pay any compensation. Further, he would argue that the petitioners in both the original petitions filed the FIR as form and part of their petitions; since the petitioner rely on the FIR, they cannot take a contrary stand against the contents thereof. Further, the petitioners miserably failed to prove that the accident occurred due to the negligence on the part of first respondent. He would pray to consider the above facts and circumstances and allow both the Civil Miscellaneous Appeals.

**10.** Opposing these submissions, Mr.Terry Chella Raja, learned counsel appearing for the petitioners in both claim petitions



**CMA NOs.947 & 949 of 2022**

WEB COPY

would argue that P.W.2 / petitioner in M.C.O.P.No.125 of 2014, who is an ocular witness, has deposed that the accident happened only due to the rash and negligent act of the first respondent in parking his lorry in the road without any indication. Moreover, the final report would also reveal that the first respondent's lorry was stationed in the road without any signboard. Further, he would argue that while the first respondent did not contest the case, the second respondent neither examined the first respondent nor clearer of the first respondent's vehicle. The Tribunal rightly fastened the liability on second respondent and there is no reason to interfere with it. Accordingly, he prayed to dismiss both the CMAs.

**11.** Mr.D.Bhaskaran, learned Counsel for the 4<sup>th</sup> respondent in both MCOPs' / insurer of third respondent's lorry would contend that the accident occurred due to the rash and negligent act of the first respondent. The Tribunal rightly fastened the liability on the second respondent. Insurer of third respondent's lorry is a mere formal party to the case and in any case, the 4<sup>th</sup> respondent in both MCOPs', is not liable to pay any compensation to the petitioners, be it for death of the driver or for the injuries caused to the additional driver. Since 3<sup>rd</sup> respondent did not pay any additional premium for covering an additional driver /



**CMA NOs.947 & 949 of 2022**

cleaner, the petitioners in both MCOPs' are not entitled to get any compensation. Accordingly, he prayed to dismiss the CMAs.

**12.** The 1<sup>st</sup> and 3<sup>rd</sup> respondents (in both MCOPs') failed to appear before this Court despite notice and despite their name being printed on the cause list.

**Discussion :**

**13.** This Court has considered both sides' arguments and perused the evidence available on record.

**14.** According to the petitioners, the first respondent was negligent in stationing his lorry in the service road without any indication/warning, that too in the early morning hours and the deceased - Saravanan's best efforts to avert the accident went in vein and consequently, the lorry driven by him rear ended the first respondent's lorry. According to second respondent, it was the deceased – Saravanan who drove the third respondent's lorry rashly and negligently in the early morning hours and crashed into the first respondent's lorry.

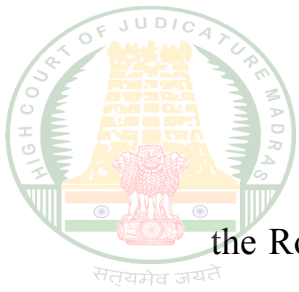
**15.** Admittedly, the accident occurred in a service road to Mumbai to Pune Express Highway at Maharashtra and the FIR was



**CMA NOs.947 & 949 of 2022**

registered against the deceased – Saravanan by the cleaner of first respondent's lorry before Pune Police. In the accident, the deceased – Saravanan passed away on the spot while the injured additional driver / P.W.2 / petitioner in M.C.O.P.No.125 of 2014 was initially treated in a hospital there and later shifted to Tamil Nadu. The practical difficulty for P.W.2 as well as the petitioners in M.C.O.P.No.126 of 2014 in filing a FIR against first respondent before the jurisdictional police at Maharashtra and following up a case in the aforesaid scenario cannot be simply brushed aside.

**16.** P.W.2, who was in the lorry cabin with the deceased – Saravanan and witnessed the accident has deposed that the accident occurred due to the negligence on the part of first respondent in parking his vehicle in the centre of the service road without any indication or signal in the early morning hours. He is a competent person to depose about the manner of accident and there is no reason to reject his evidence. The Rough Sketch also shows that the first respondent's lorry was stationed on the service road, however there is no clear cut evidence as to whether there was any signal or indication for the stationed lorry. In the facts and circumstances of this case as well as the evidence of P.W.2 and



**CMA NOs.947 & 949 of 2022**

WEB COPY

the Rough Sketch, this Court is of the view that the FIR preferred by the first respondent's cleaner before the jurisdictional police at Maharashtra would not stand in the way of justice and that the petitioners in both claim petitions have discharged their initial burden. To be noted, the Motor Vehicles Act, 1988 is a beneficial and social welfare legislation and a lenient approach must be taken while deciding claim petitions. Now the onus is upon the second respondent. The second respondent ought to have examined the first respondent or his cleaner to disprove the case of the petitioners but second respondent failed to do so. When there is no clear evidence adduced on the side of the second respondent to prove that the first respondent's lorry was stationed by following all the traffic rules and norms with proper parking indication. In view of the evidence of P.W.2, this Court comes to the conclusion that the accident occurred due to the negligent act of the first respondent in parking his lorry without taking due care and caution and without any parking indication. Admittedly, the first respondent's lorry was insured with the second respondent and hence, the second respondent is liable to pay compensation to the petitioners. The Tribunal concluded that the accident occurred due to the negligence of the first respondent and second respondent being its insurer



is liable to pay compensation to the petitioners in both Claim Petitions.

There is no reason to differ from the said finding recorded by the Tribunal.

17. As regards the quantum of compensation in M.C.O.P.No.126 of 2014, the Tribunal has awarded compensation as tabulated hereunder:

| Sl.No. | Head                                   | Amount Rs.   |
|--------|----------------------------------------|--------------|
| 1      | Loss of dependency                     | 23,62,584.00 |
| 2      | Funeral Expenses                       | 15,000.00    |
| 3      | Loss of love and affection, consortium | 1,00,000.00  |
|        | Total                                  | 24,77,584.00 |
|        | Rounded Off                            | 24,77,000.00 |

17.1. The accident happened in the year 2012. The third respondent who is the employer of the deceased - Saravanan was arrayed as Respondent No.3 but she remained *ex-parte*. The petitioners side also did not examine the third respondent to prove the deceased's salary. Without any proof, the Tribunal has taken notional income at Rs.15,000/-, which is on the higher side and therefore, this Court fixes Rs.12,000/- as notional monthly income, which appears to be just and fair considering

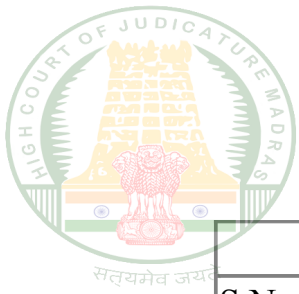


**CMA NOs.947 & 949 of 2022**

the occupation of the deceased as well as the year of accident. 25%

addition for future prospects, 1/4 deduction for his personal expenses and the multiplier of 14 adopted by the Tribunal are all in tune with the Judgments of the Hon'ble Supreme Court in ***National Insurance Company Limited -vs- Pranay Sethi [(2017) 16 SCC 680]*** and ***Sarla Verma -vs- Delhi Transport Corporation [(2009) 6 SCC 121]***. Thus, with the notional income of Rs.12,000/- per month, this Court arrives at a sum of Rs.18,90,000/- as compensation under the head 'loss of income'.

**17.2.** That apart, the compensation awarded by Tribunal under the head of loss of consortium is not in tune with ***Pranay Sethi's Case*** (cited *supra*). For loss of spousal consortium, the first petitioner is entitled to a sum of Rs.40,000/-. The petitioners 2 and 3 are entitled to a sum of Rs.40,000/- each towards parental consortium. The fourth petitioner is entitled to a sum of Rs.40,000/- towards filial consortium. Further, apart from funeral expenses of Rs.15,000/- awarded by the Tribunal, the petitioners are also entitled to another sum of Rs.15,000/- towards 'loss of estate'. Accordingly, this Court arrives at a modified compensation as detailed below:-



***CMA NOs.947 & 949 of 2022***

**M.C.O.P.No.126 of 2014**

| S.No.        | Head                                                        | Amount Rs.            |
|--------------|-------------------------------------------------------------|-----------------------|
| 1.           | Loss of Income (12000+3000 (25% FP) = 15,000 x 12x 14 x1/4) | Rs. 18,90,000/-       |
| 2.           | Loss of Filial Consortium (40000 x 2)                       | Rs.80,000/-           |
| 3.           | Loss of Spousal Consortium                                  | Rs.40,000/-           |
| 4.           | Loss of Parental Consortium                                 | Rs.40,000/-           |
| 4.           | Loss of Estate                                              | Rs.15,000/-           |
| 5.           | Funeral Expenses                                            | Rs.15,000/-           |
| <b>Total</b> |                                                             | <b>Rs.20,80,000/-</b> |

**17.3.** The second respondent / Insurance Company is directed to deposit the reduced compensation amount along with interest at the rate of 7.5% per annum from the date of petition till the date of deposit, less the amount if any already deposited, to the credit of M.C.O.P. No.126 of 2014 on the file of Motor Accidents Claims Tribunal (Subordinate Judge), Vaniyambadi, within a period of eight (8) weeks from the date of receipt of a copy of this Judgment. On such deposit being made, the petitioners are entitled to withdraw the same by filing proper application. The modified compensation amount shall be apportioned in a manner proportionate to the apportionment made by the Tribunal. The share amount of the minor children shall be deposited in any one of the Nationalised Banks, until they attain majority and the first petitioner



**CMA NOs.947 & 949 of 2022**

WEB COPY

being her mother and natural guardian is permitted to withdraw the interest accrued thereon once in every three months for the maintenance and welfare of the minors.

**18.** As regards the quantum of compensation in M.C.O.P. No.125 of 2014, the Tribunal awarded a total sum of Rs.1,25,702/-. After the accident, the petitioner initially received treatment at Lokmanya Hospital, Nigdi, and then at AR Rahaman Hospital, Vaniyambadi. The same has been substantiated through Ex-P.14 and Ex-P.16. The petitioner sustained grievous injuries and incurred medical expenses to the tune of Rs. 25,202/- as seen from Ex-P.15 and Ex-P.17. Considering the above facts, the Tribunal awarded a sum of Rs.1,25,702/- as detailed below:

| Sl.No. | Head                     | Amount Rs.  |
|--------|--------------------------|-------------|
| 1      | Pain and suffering       | 35,000.00   |
| 2      | Medical expenses         | 25,202.00   |
| 3      | Extra nourishment        | 2,000.00    |
| 4      | Loss of amenities        | 1,000.00    |
| 5      | Partial loss of expenses | 60,000.00   |
| 6      | Attender charges         | 2,500.00    |
|        | Total                    | 1,25,702.00 |

**18.1.** Considering the nature of injuries sustained by the petitioner in M.C.O.P. No.125 of 2014 / P.W.2, period of treatment as



**CMA NOs.947 & 949 of 2022**

well as the nature of his profession, this Court is of the view that the award of compensation of Rs.1,25,702/- by the Tribunal is just and fair.

This Court finds no reason to interfere with the quantum of compensation awarded by the Tribunal in favour of the petitioner in M.C.O.P. No.125 of 2014.

**Conclusion :**

**19.** In the result, the Civil Miscellaneous Appeal filed by the second respondent / insurance company in CMA.No.949 of 2022 is dismissed. The Civil Miscellaneous Appeal filed by the second respondent / insurance company in CMA.No.947 of 2022 is partly allowed and the compensation awarded by the Tribunal viz. Rs.24,77,000/- is hereby reduced to Rs.20,80,000/- (Rupees Twenty Lakhs Eighty Thousand only). In view of the facts and circumstances of this case, the parties shall bear their own costs. Consequently, connected Civil Miscellaneous Petitions are closed.

**[J.N.B., J.]**

**[R.S.V., J.]**

**19 / 02 / 2025**

Index : Yes  
Neutral Citation : Yes  
Speaking Order : Yes  
av/tk



WEB COPY



**CMA NOs.947 & 949 of 2022**

**J.NISHA BANU, J.**

**AND**

**R.SAKTHIVEL, J.**

av/tk

To

The Motor Accidents Claims Tribunal  
(Subordinate Judge)  
Vaniyambadi.

**PRE-DELIVERY COMMON JUDGMENT MADE IN**  
**CMA NOS.947 & 949 OF 2022**

**19 / 02 / 2025**