

C.M.A.Nos.2285 of 2023 and 2854 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Reserved on	29.01.2025
Pronounced on	08.04.2025

C O R A M:

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

AND

THE HONOURABLE MR.JUSTICE R.SAKTHIVEL

C.M.A.Nos.2285 of 2023 and 2854 of 2022

and

C.M.P.No.21779 of 2023

in

C.M.A. No.2285 of 2023

C.M.A.No.2285 of 2023

M/s.The IFFCO-TOKIO General Insurance Co. Ltd.,

No.43/3, First Floor,

100 Feet Road, Mudaliarpeth,

Pondicherry-605 004.

... Appellant/4th Respondent

-vs-

1. M.Vignesh

... 1st Respondent/Petitioner

2. M.N.Krishnamoorthy

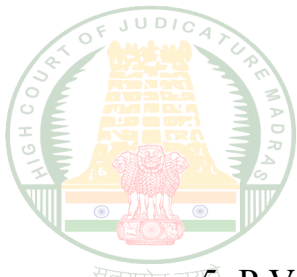
... 2nd Respondent/1st Respondent

3. M/s.The National Insurance Co. Ltd.,

No.165, Nethaji Street,

Manjakuppam, Cuddalore.

... 3rd Respondent/2nd Respondent



C.M.A.Nos.2285 of 2023 and 2854 of 2022

5. P.Venkatesh
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... 4th Respondent/3rd Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 praying to set aside the final award dated 6th September, 2022 passed in M.C.O.P.No.1524 of 2016 by the Motor Accident Claims Tribunal (Special Subordinate Court) at Cuddalore.

For Appellant	: Mr.J.Michael Visuvasam
For R1	: Mrs.Ramya V.Rao
For R3	: Mrs.R.Srividya
For R2 & R4	: No Appearance

C.M.A.No.2854 of 2022

M.Vignesh

... Appellant/Petitioner

-vs-

1. M.N.Krishnamoorthy

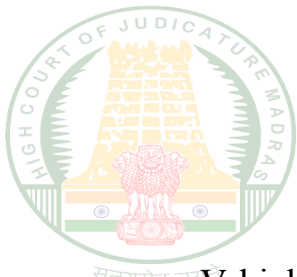
2. M/s.The National Insurance Co. Ltd.,
No.165, Nethaji Street,
Manjakuppam, Cuddalore.

3. P.Venkatesh

4. The IFFCO-TOKIO General Insurance Co. Ltd.,
No.43/3, First Floor,
100 Feet Road, Mudaliarpet,
Pondicherry-605 004.

... Respondents/Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor



C.M.A.Nos.2285 of 2023 and 2854 of 2022

Vehicles Act, 1988 praying to allow the appeal and enhance the compensation awarded vide Award dated 6th September, 2022 made in M.C.O.P.No.1524 of 2016 on the file of the Motor Accident Claims Tribunal / Special Sub Court, Cuddalore.

For Appellant : Mrs.Ramya V.Rao
For R2 : Mrs.R.Srividya
For R1 & R3 : No Appearance
For R4 : Mr.J.Michael Visuvasam

COMMON JUDGMENT

R.SAKTHIVEL,J.

Feeling aggrieved by the Award dated September 6, 2022 passed by the 'Motor Accidents Claims Tribunal / Special Subordinate Court, Cuddalore', ['Tribunal' for short] in M.C.O.P.No.1524 of 2016, the fourth respondent therein / Insurance Company has preferred C.M.A.No.2285 of 2023 praying to set aside the Award, while the petitioner therein has preferred C.M.A.No.2854 of 2022 praying to enhance the compensation. This Common Judgment will now decide both the Civil Miscellaneous Appeals.

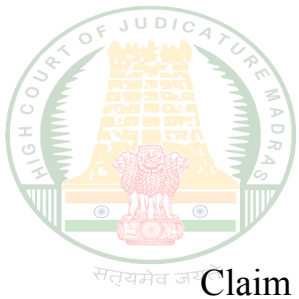


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2. For the sake of convenience, hereinafter, the parties will be referred to as per their array in the Motor Claims Original Petition No.1524 of 2016.

PETITIONER'S CASE

3. On January 10, 2016 at about 02.30 a.m., the petitioner / injured was travelling in the Car bearing Registration No. TN-22-CH-9267 driven by one Ravi – a deceased in the accident, on Chennai-Trichy National Highways near Chepauk Komugi Bridge River. At that time, a lorry bearing Registration No. TN-34-D-3677, driven in a rash and negligent manner, dashed against the Car. Consequently, the petitioner sustained grievous injuries and multiple fractures all over his body and head. According to the petitioner/injured, the accident occurred due to the rash and negligent driving of the driver of the lorry. Before the Tribunal, owner and insurer of the said car, as well as owner and insurer of the said lorry, were arrayed as Respondent Nos.1 to 4 respectively. At the time of accident, the petitioner was a 23 years old Pandit earning a sum of Rs.50,000/- per month. Stating that the lorry was insured with the 4th respondent and that the accident occurred due to the careless and reckless driving of the driver of the 3rd respondent's lorry, the petitioner filed the



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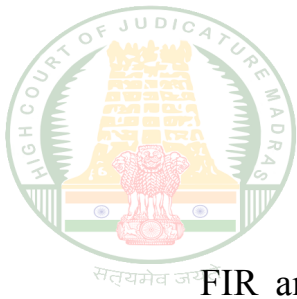
Claim Petition before the Tribunal seeking compensation of Rs.25,00,000/- (Rupees Twenty Five Lakhs only) along with interest and costs from the respondents.

SECOND RESPONDENT'S CASE

4. It is the case of the second respondent that there was negligence on the part of the driver of the lorry bearing Registration No.TN-34-D-3677, as he drove the lorry in a rash and negligent manner, causing the accident. In the absence of proof of negligence on the part of the car driver, the 2nd respondent is not liable to pay any compensation to the petitioner. Furthermore, the petitioner must establish the age, income, and occupation of the deceased. The validity of the deceased's driving license, Registration Certificate, Permit *etc.*, was disputed. The First Information Report (FIR) was registered with a false narration of facts. Stating that the compensation claimed is unsustainable and excessive, the 2nd respondent prayed for the dismissal of the claim petition.

FOURTH RESPONDENT'S CASE

5. It is the case of the fourth respondent that the allegation that the lorry driver was the root cause of the accident is denied. As per



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FIR and charge sheet, the car driver was responsible for the accident.

Since the car driver / deceased – Ravi died in the accident, the case was closed as abated. Therefore, the 2nd respondent / insurer of the car is liable to compensate the petitioner. Consequently, the claim against the 4th respondent / insurer of the lorry is not maintainable, and therefore, the 4th respondent has prayed for dismissal of the claim petition against it.

TRIBUNAL

6. The enquiry was conducted jointly with that of MCOP No.1525 of 2016. Before the Tribunal, the petitioner in MCOP No.1525 of 2016, namely Balajisharma was examined as P.W.1 and the petitioner herein was examined as P.W.2 and Ex-P.1 to Ex-P.21 were marked. On the side of the respondents, one Santhialakshmi, Legal Officer of the 4th respondent / insurer of the lorry was examined as R.W.1 and copy of charge sheet was marked as Ex-R.1. The disability certificate No.2035, issued by the District Medical Board, Government Head Quarters Hospital, Cuddalore, assessing the disability of the petitioner at 37% was marked as Ex-C.1.



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7. The Tribunal, after considering the evidence available on record, passed a common Judgment holding that the accident had occurred on account of fault on part of the driver of the 3rd respondent's lorry. Accordingly, the Tribunal held that the 4th respondent, being insurer of the lorry, is liable to pay the compensation to the petitioner.

8. With regard to quantum of compensation, though there was no document produced in proof of income of the injured, on the basis of the age of the injured and alleged occupation, the income of the injured was taken notionally at Rs.10,000/- per month. The Tribunal, upon considering the injuries sustained by the petitioner in the accident as well as Ex-C.1 – Disability Certificate, computed the compensation for disability on percentage method by taking Rs.5,000/- per disability percentage and further, awarded compensation under various other heads as stated below:-

Sl. No.	Head	Amount
1.	Partial Permanent Disability (Rs.5,000x37%)	Rs.1,85,000/-
2.	Pain and sufferings and mental agony	Rs.1,25,000/-
3.	Bystander chargers	Rs.5,000/-



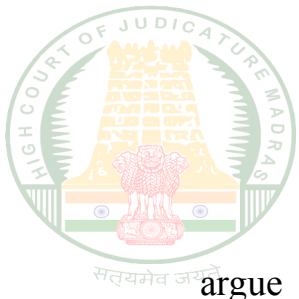
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Sl. No.	Head	Amount
4.	Transport Charges	Rs.5,000/-
5.	Nutrition	Rs.25,000/-
6.	Medical Expenses	Rs.3,95,550/-
7.	Loss of Earning for 6 months (Rs.10,000/-x6)	Rs.60,000/-
8.	Loss of Amenities	Rs.10,000/-
Total		Rs.8,10,550/-

9. Feeling aggrieved by quantum of compensation awarded by the Tribunal as well as the liability fastened on it, the 4th respondent / insurer of the lorry has preferred C.M.A.Nos.2285 of 2023. Whereas, dissatisfied with the Award amount, the petitioner has preferred CMA No. 2854 of 2022 praying to enhance the Award amount.

ARGUMENTS:

10. Mr.J.Michael Visuvasam, learned counsel for the appellant in C.M.A.Nos.2285 of 2023 / 4th respondent / insurer of the lorry would argue that FIR was registered against the driver of the car. The petitioner, having filed the claim petition based on the FIR, cannot turn around and say contrary to the FIR that the accident had occurred due to the rash and negligent driving of driver of the lorry. He would further

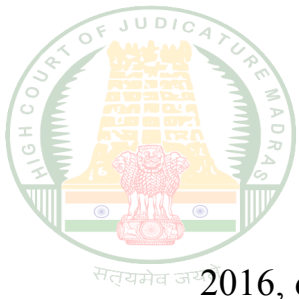


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argue that the manner of the accident itself establishes that the first respondent's car's driver alone was negligent and sole cause of the accident. The Tribunal failed to consider the said aspects and by merely relying on the evidence of an eyewitness / P.W.2, fastened the liability on the 4th respondent /insurer of the lorry, which is erroneous. Further, he would argue that the compensation awarded by the Tribunal is excessive and not based on evidence. The notional income taken by the Tribunal is on the higher side. Accordingly, he prayed to allow C.M.A.Nos.2285 of 2023, dismiss CMA No.2854 of 2022 and set aside the Award of the Tribunal.

11. Per contra, Mrs.Ramya V. Rao, learned counsel appearing for appellant in CMA No. 2854 of 2022 / petitioner, would contend that the accident happened during wee hours on January 10, 2016, and P.W.2 / petitioner has clearly deposed that the accident occurred only due to the rash and negligent driving of the 3rd respondent's lorry's driver. She would further contend that it is clear from the evidence of one Singaravelan, Special Sub Inspector of Police (S.S.I.), Veppur, who is a witness in the connected matter arising out of the same accident in M.C.O.P.No.1523 of



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2016, deposed as R.W.1 that, the car proceeded from South to North in the correct lane and the lorry, which was proceeding from North to South, had taken diversion, travelled in the car's lane and dashed against the car. From his evidence, it is discernible that the accident had occurred only due to the rash and negligent driving of the 3rd respondent's lorry's driver. There is no infirmity or illegality in fixing the liability on the 4th respondent / insurer of the lorry and hence, no interference is warranted in this regard. Accordingly, she prayed to dismiss CMA No.2285 of 2023 filed by the insurer of the lorry.

11.1. Further she would contend that, the fixation of notional income at Rs.10,000/- is very low and the same may be enhanced to Rs.15,000/- per month, considering the facts and circumstances of the case as well as the cost of living prevailing at that point of time. Further, though as per Ex-C.1 - Disability Certificate issued by the Medical Board, the injured sustained only 37% permanent disability, in reality, he suffered 100% functional disability and hence, the Tribunal ought to have applied multiplier method to arrive at a just and fair compensation. Further, the Tribunal failed to consider the loss of future earning capacity and the



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Tribunal has not taken into consideration the future prospects of earning while awarding the compensation. Accordingly, she would pray to allow the CMA No.2854 of 2022 and enhance the compensation awarded by the Tribunal.

12. Mrs.R.Srividya, learned counsel for the 3rd respondent in CMA No.2285 of 2023 / 2nd respondent in CMA No.2854 of 2022 / insurer of the car, referring to the evidence of said R.W.1 in M.C.O.P.No.1523 of 2016 / S.S.I. in regard of the manner of accident, would contend that the accident occurred due to the rashness and negligence on the part of the driver of the lorry and hence, it is the insurer of the lorry / 4th respondent who is liable to pay compensation. There being no negligence on the side of the car, 2nd respondent being its insurer, is not liable to pay any compensation. Accordingly, she prayed to dismiss both the Civil Miscellaneous Appeals as against insurer of the car.

DISCUSSION:



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13. Heard the learned counsel on either side and perused the evidence and materials available on record.

14. The accident occurred in the wee hours of January 10, 2016. Driver of the car, namely Ravi and front co-passenger, namely S.Ramanarayanan passed away in the accident. The petitioner and two others were injured. The dependents of the driver of the car – Ravi filed M.C.O.P. No.1522 of 2016, in which one Singaravelan, Special Sub Inspector of Police (S.S.I.), Veppur was examined as R.W.1 and he had deposed that the injured's car was travelling in the left lane in accordance with the rules and norms, and it was the lorry which was diverted onto the left lane / car's lane due to road maintenance. Further, the petitioner in this case, namely Vignesh examined himself as P.W.2, and deposed that they were proceeding on the left lane as per rules towards Chennai and at that time, the 3rd respondent's lorry came in the opposite direction in their lane (left lane) in a rash and negligent manner and caused the accident.

15. From the above evidence of the petitioner and the S.S.I., it is discernible that the car was proceeding in the correct lane. Though the



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lorry was diverted onto the left lane for road maintenance, the lorry driver, for he is travelling in the opposite lane, ought to have taken more care and caution. The burden is upon the 3rd respondent / owner of the lorry and the 4th respondent / the lorry's insurer to prove that the lorry's driver drove the lorry in a careful and cautious manner while proceeding in the left lane / car's lane. In these circumstances, the 4th respondent / insurer of the lorry ought to have examined the lorry driver, who is the competent person to depose in this regard, but it failed to do so.

16. Though the FIR has been lodged against the driver of the car, it has to be noted that it has been lodged by the lorry driver. He naturally would have preferred the complaint in terms favourable to him and hence, the FIR alone cannot be taken to fix negligence in this case. One may argue that if really the lorry driver was negligent, the petitioner's side would have preferred a complaint too, or at least denied the FIR by filing protest petition. On the face of it, the argument may seem plausible. But one has to look deeper through the lens of facts and circumstances of this case. The accident occurred in the wee hours. Two occupants passed away in the accident, and the remaining three occupants including the



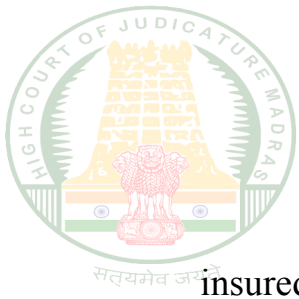
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petitioner herein were injured in the accident and admitted in the hospital.

There is no evidence available on record to show whether the factum of registration of FIR and the pursuant closure report was intimated to the petitioner's side or not. Considering the cumulative facts and circumstances, this Court is of the view that non filing of FIR or protest petition on the side of the petitioner is not sufficient to impute negligence on the car driver.

17. As per the evidence of petitioner herein / P.W.2, the driver of the lorry was responsible for the accident. The evidence of R.W.1 in M.C.O.P. No.1522 of 2016 / S.S.I. that on account of diversion, it was the lorry driver, who barged into the lane in which the car was proceeding to Chennai in the righteous direction, dashed against the car and caused the accident, is plausible and strengthens the case of the petitioner. The Tribunal, after considering the facts and circumstances, by relying on the evidence of P.W.2 herein and R.W.1 in M.C.O.P. No.1522 of 2016, found the 3rd respondent's lorry's driver negligent. Ex-P.4 – Motor Vehicle Inspection Report [M.V.I. Report] and Ex-P.5 – Insurance Policy document of the lorry would show that the 3rd respondent's lorry was

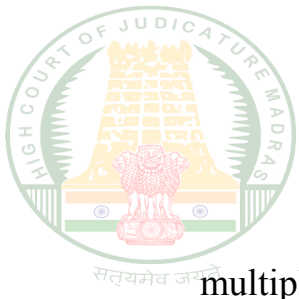


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insured with the 4th respondent at the time of accident and accordingly, the Tribunal held the 4th respondent as the insurer of the lorry liable to pay compensation to the petitioner. This Court finds no reason to deviate from the said findings of the Tribunal.

18. The next line of argument put forth by the learned counsel for the petitioner is that this is a fit case for applying multiplier method as the petitioner suffers from functional disability on account of the accident and that future prospects should also be taken into consideration, and the same cannot be brushed aside.

19. Perusal of Ex-C.1 – Disability Certificate the petitioner suffered *diffuse axonal injury, fracture of left leg both bones, fracture of nasal bone*, leading to 37% permanent disability. Considering the petitioner's alleged occupation, this Court believes that the petitioner may experience difficulty and discomfort in carrying out his occupation, resulting in a functional disability of 15%. He might have difficulty in squatting for a long time and even being exposed to smoke while performing fire rituals. Hence, this Court deems this case fit for applying



multiplier method.
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20. The Tribunal fixed Rs.10,000/- as notional income of the deceased, which appears on the lower side. Considering the age of the deceased, his alleged occupation, the cost of living prevailing at the time of accident and other facts and circumstances, this Court is of the view that the deceased would have earned not less than Rs.12,000/- per month. Bearing in mind *Aandal's Case* [*Andal -vs- Abhinav Kannan*, reported in (2019) (1) TN MAC 5], this Court takes the notional income of the deceased at Rs.12,799/- per month. As per the Supreme Court's guidelines in *National Insurance Co. Ltd. vs. Pranay Sethi* reported in AIR 2017 SC 5157, a 40% increase for future prospects is granted. Then, multiplier of 18 is applied considering the age of the petitioner at the time of accident viz., 23 years, in tune with *Sarla Verma -vs- Delhi Transport Corporation* reported in (2009) 6 SCC 121. As stated *supra*, functional disability is considered at 15%. Accordingly, the compensation under the head of loss of earning capacity comes to Rs.5,80,517/-.

21. Since multiplier method has been adopted, there is no



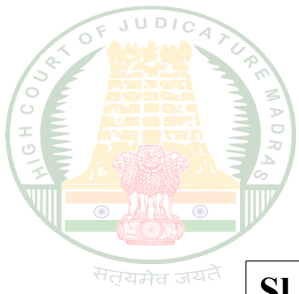
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need to grant compensation under the head of permanent disability and hence, the same is removed.

22. Further, the Tribunal awarded Rs.3,95,550/- for medical expenses. However, on perusal of Ex-P.21 – Medical Bills, it is seen that credit facility was extended to the petitioner in respect of payment of medical bills to the tune of Rs.48,442/- and the said amount cannot be included while reckoning the medical expenses. Hence, the said amount is reduced under the said head. To be noted, the learned counsel for the petitioner conceded to deposit the aforesaid amount.

23. Further, the compensation awarded by the Tribunal under the heads of transportation charges, loss of amenities as well as attender charges, appear to be on the lower side and hence are enhanced to Rs.20,000/-, Rs.20,000/- and Rs.25,000/- respectively.

24. Accordingly, the petitioner/injured is entitled to get enhanced compensation of **Rs.11,42,625/-**. The revised compensation is as detailed below:



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Sl.No.	Head	Amount
1.	Loss of earning capacity (Rs.12,798/- + 40% x 12 x 18 x 15/100)	Rs.5,80,517/-
2.	Pain and sufferings	Rs.1,25,000/-
3.	Attender chargers	Rs.20,000/-
4.	Transport Charges	Rs.20,000/-
5.	Nutrition	Rs.25,000/-
6.	Medical Expenses (Rs.3,95,550-Rs.48,442)	Rs.3,47,108/-
7.	Loss of Amenities	Rs.25,000/-
	Total	Rs.11,42,625/-

25. Therefore, the appellant / Insurance Company is directed to deposit the enhanced award amount of **Rs.11,42,625/-** (Rupees Eleven lakh forty-two thousand six hundred and twenty-five only) along with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit, to the credit of M.C.O.P.No.1524 of 2016 on the file of Motor Accident Claims Tribunal (Special Subordinate Court), Cuddalore, less the amount if any already deposited, within a period of eight weeks from the date of receipt of copy of this Judgment. On such deposit being made, the petitioner/injured is entitled to withdraw the same by filing proper application. The petitioner/injured is directed to pay necessary Court fee for the enhanced compensation, if any.



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CONCLUSION:

26. Accordingly, C.M.A.No. 2854 of 2022 filed by the petitioner / injured is allowed in part with proportionate costs as detailed above. C.M.A.No.2285 of 2023 filed by the Insurance Company is dismissed with no costs. Consequently, connected Civil Miscellaneous Petition is closed.

(J.N.B.J.,) (R.S.V,J.,)
08.04.2025

Index: Yes / No
Internet: Yes / No
Speaking Order/ Non Speaking Order
ar/tk

To:

1. Motor Accident Claims Tribunal /
Special Subordinate Judge,
Cuddalore.
2. The Section Officer,
V.R.Section,
Madras High Court, Chennai.



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C.M.A.Nos.2285 of 2023 and 2854 of 2022

J.NISHA BANU,J.,
AND
R.SAKTHIVEL,J.,
ar/tk

PRE-DELIVERY JUDGMENTS IN
C.M.A.Nos.2285 of 2023 and 2854 of 2022

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