



C.M.A(MD)Nos.337 of 2025 & 1224 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

Reserved on : 21.08.2025

Pronounced on : 09.10.2025

CORAM:

**THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA
AND
THE HONOURABLE MS.JUSTICE R.POORNIMA**

**C.M.A.(MD)Nos.337 of 2025 & 1224 of 2024
and
C.M.P.(MD)Nos.9579 and 5962 of 2025**

CMA(MD).No.337 of 2025

1.The Divisional Manager,
M/s.United India Insurance Company Ltd.,
No.225, TNA Complex, Salem Road,
Tiruchengode,
Namakkal.

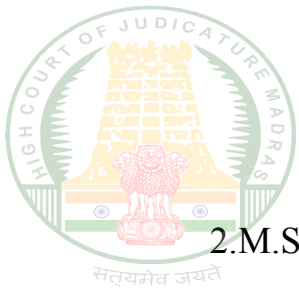
2.The Divisional Manager,
M/s.United India Insurance Company Ltd.,
No.4, Promenade Road,
Cantonment,
Trichy.

... Appellants/ Respondents 2 & 3

Vs.

1.K.Gogulraj

...1st Respondent/Petitioner



C.M.A(MD)Nos.337 of 2025 & 1224 of 2024

...2nd Respondent/1st Respondent

2.M.Shobana
3.K.Mayakannan

4.N.Ajmal Khan

...Respondents 3 & 4/Respondents 4 & 5

PRAYER : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the fair and decretal order dated 03.01.2024 made in M.C.O.P.No.105 of 2021 on the file of the Special Subordinate Judge, Motor Accident Claims Tribunal, Thiruchirapalli and allow this Civil Miscellaneous Appeal.

For Appellant : Mr.P.Pethu Rajesh

For Respondents : Mr.K.N.Thambi – for R1

No appearance – for R2 & R3

Unclaimed – for R4

C.M.A (MD) No.1224 of 2024

K.Gogulraj

... Appellant/ Petitioner

Vs.

1.M.Shobana



C.M.A(MD)Nos.337 of 2025 & 1224 of 2024

2.The Divisional Manager,
M/s.United India Insurance Company Ltd.,
No.225, TNA Complex, Salem Road,
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3.The Divisional Manager,
M/s.United India Insurance Company Ltd.,
No.4, Promenade Road,
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4.K.Mayakannan

5.N.Ajmal Khan

...Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the fair and decretal order dated dated 03.01.2024 made in M.C.O.P.No.105 of 2021 on the file of the Special Subordinate Judge, Motor Accident Claims Tribunal, Thiruchirapalli and allow this Civil Miscellaneous Appeal.

For Appellant : Mr.P.Rajalingam

For Respondents : Mr.P.Pethu Rajesh – R2 & R3

Dispensed with – for R1, R4 & R5

vide order dated 12.09.2024



C.M.A(MD)Nos.337 of 2025 & 1224 of 2024

COMMON JUDGMENT

WEB COPY(Judgment of this Court was delivered by R.POORNIMA, J.)

The Appellants / Respondents 2 and 3/ Insurance Company have filed this Civil Miscellaneous Appeal in C.M.A.(MD)No.337 of 2025 against the fair order and decretal order dated 03.01.2024 made in M.C.O.P.No.105 of 2021 on the file of Motor Accident Claims Tribunal/Special Subordinate Judge, Thiruchirapalli, by challenging the Quantum and fixing of Negligence.

2. The Appellant / Petitioner has filed the Civil Miscellaneous Appeal in C.M.A.(MD)No.1224 of 2024 against the fair order and decretal order dated 03.01.2024 made in M.C.O.P.No.105 of 2021 on the file of Motor Accident Claims Tribunal/Special Subordinate Judge, Thiruchirapalli, for enhancement of compensation.

3. Brief facts of the petition filed by the claimant before the Tribunal are as follows:

a) On 15.02.2021 at about 10.00 am, when the petitioner was riding a two-wheeler bearing Registration No.TN 48 V 9219 belonging to the 5th respondent at Palpannai to Gandhi Market Road near



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Rajasthani Marbles Shop, Trichy from east to west direction at the extreme left side of the above-mentioned road, a Lorry bearing Registration No.TN 28 Y 3213 belonging to the 1st respondent and insured with the 2nd and 3rd respondent Insurance Company which was being driven by the 4th respondent in a rash and negligent manner at a hectic speed without blowing the horn, came from west to east direction. The driver of the said lorry tried to overtake a vehicle and suddenly dashed against the petitioner's two-wheeler and causing the accident and due to the accident, the petitioner has sustained multiple grievous injuries all over the body.

b) Immediately, the petitioner was taken to Kauvery Hospital, Trichy and admitted as an inpatient from 15.02.2021 to 04.03.2021. Thereafter, he was undergoing treatment as an outpatient in the same hospital and another private hospital and spent a huge amount towards medical expenses.

c) At the time of the accident, the petitioner was pursuing B.E. Degree. He was also actively participating in cricket and engaged in part-time employment in Building Construction, earning a sum of Rs.20,000/- per month. However, due to the injuries sustained in the accident, the petitioner has been rendered incapable of performing his



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routine work as he was able to before the accident.

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d) Due to severe head injury, he lost his memory, he was unable to concentrate on his work, he could not speak, suffered severe headache, vomiting and giddiness, etc. Due to a degloving injury sustained over his penis along with raw areas on the left thigh and left groin, the petitioner has become impotent. Consequently, he has lost his married life and has been deprived of marital happiness. Moreover, the injured petitioner is permanently disabled and he has lost his income and employment and he was put through a great mental agony. Hence, the petitioner is claiming a sum of Rs.50,00,000/- towards compensation.

e) In this connection, Trichy Traffic North Investigation Wing Police registered a case in Crime No.23 of 2021 under Sections 279 and 337 of IPC against the driver of the 1st respondent's Lorry bearing Registration No.TN 28 Y 3213. The accident occurred solely due to the rash and negligent driving of the said lorry. The 1st respondent was the owner of the said Lorry. The 2nd and 3rd respondents are the Insurer. The 4th respondent was the driver. The 5th respondent is the owner of the two-wheeler bearing Registration No.TN 48 V 9219 which the petitioner was riding at the time of the accident.

Hence, 1st to 4th respondents are jointly and severally liable to pay the



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compensation to the injured petitioner.

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4. Brief averments contained in the counter filed by the 3rd respondent which was adopted by the 2nd respondent are as follows:

The petition is neither maintainable in law nor sustainable on facts. The accident did not happen in the manner as set out in the claim petition. In fact, the 4th respondent namely, the driver of the lorry bearing Registration No.TN 28 Y 3213 belonging to the 1st respondent was driving the lorry cautiously at a very normal speed adhering to the traffic rules at the time of the accident. When the petitioner who was riding the two wheeler bearing Registration No.TN 48 V 9219 in a rash and negligent manner, was trying to overtake a vehicle which was going in front of him, suddenly came to the center of the road, without noticing the above-mentioned lorry, which was proceeding from the opposite direction and dashed against the lorry causing the accident. It is pertinent to state that the lorry bearing Registration No.TN 28 Y 3213 did not have a valid fitness certificate at the time of the accident and it is a violation of policy condition and hence, the petition is liable to be dismissed as against the 2nd and 3rd Respondents.



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5. During the trial, on the side of the petitioner, P.W.1 was examined and Ex.P1 to Ex.P21 were marked. On the side of the respondent, R.W.1 and R.W.2 were examined and Ex.X.1 to Ex.X5 were marked. The disability certificate was marked as Ex.C1.

6. After hearing both parties, the Tribunal allowed the petition and awarded a sum of Rs.39,13,496/- as compensation, after deducting 10% contributory negligence on the part of the claimant. The learned Judge directed the appellants / 2nd and 3rd respondents, Insurance Company to pay the entire award amount within three months.

7. Aggrieved by the said order, the present Civil Miscellaneous Appeal in C.M.A.(MD) No.337 of 2025 has been filed by the Insurance Companies, who are the 2nd and 3rd respondents before the Tribunal against the quantum and negligence with the following among other grounds :

a) That the Tribunal failed to consider Ex.X1 rough sketch in Crime No.23 of 2021 marked through R.W.1, Special Sub-Inspector, Trichy North Transport Investigation wing which clearly established the fact that the petitioner had moved to the right-hand end



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by crossing the center portion of the road at the time of occurrence and caused the accident.

b) That the Tribunal failed to see that at the time of the accident, the Lorry did not possess a valid Fitness Certificate and without the fitness certificate, the same is not permitted to ply on the public road. In this regard, Section 56 of the Motor Vehicles Act is clear that the transport vehicle shall not be deemed to be validly registered for Section 39 unless it carries a Certificate of Fitness. In this regard, Section 39 of the said Act, clearly states about necessity of Registration and the effect of failure in Registration of the vehicle.

c) That the Tribunal failed to see that in the absence of a Fitness Certificate, it ought not to have directed the Insurance Company to pay the compensation and thereafter to recover the same from the owner of the vehicle. Concept of Pay and Recovery will not arise in case of invalid registration of the vehicle as per Sections 56 and 39 of the Motor Vehicles Act.

d) That the Tribunal failed to see that the disability assessed for the petitioner is 48%. At the time of the accident, the petitioner was a B.E., student and there is no evidence adduced to show that the petitioner had been deprived of doing his daily avocation. Since the petitioner had



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not been deprived of performing his day-to-day avocation, the Tribunal below ought not to have applied the multiplier system for assessing the compensation but instead the Tribunal below ought to have fixed Rs.5,000/- as compensation per percentage of the disability.

e) That the Tribunal failed to see that while concluding with the fact that the petitioner is not assessed with any functional disability, it ought not to have applied the multiplier system for assessing the compensation.

f) That the Tribunal failed to see the medical bills furnished by the 1st Respondent/Claimant are not genuine and were created for this case.

g) In any event, the award of total compensation of Rs.39,13,496/- is highly excessive and needs to be modified. Hence, the appellants seek to set aside the judgment of the trial Court and allow the Civil Miscellaneous Appeal.

8. Aggrieved by the said order, the Civil Miscellaneous Appeal in C.M.A.(MD)No.1224 of 2024 has been filed by the claimant for enhancement of the award with the following among other grounds :

a) That the Tribunal, while rightly fixing the negligence on



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the part of the 1st respondent's vehicle, went wrong in awarding a just and reasonable compensation.

b) That the appellant/claimant has sustained multiple injuries all over the body including severe head injury, degloving left thigh and left groin post post-traumatic urethral injury and bulbar urethral and distal penile structure status.

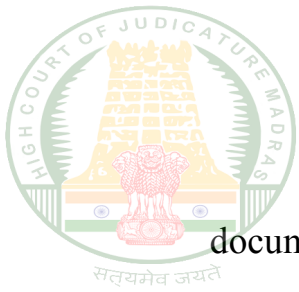
c) That the Tribunal ought to have awarded a sum of Rs.10,00,000/- under the head loss of marital life instead of awarding a sum of Rs.2,00,000/-

d) That the Tribunal erroneously fixed 10% contributory negligence on the injured, instead of the entire negligence on the part of the respondents.

Hence, the appellant prayed to allow the Civil Miscellaneous Appeal by enhancing the award amount.

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

10. Since the Civil Miscellaneous Appeals arise out of the judgment in M.C.O.P.No.105 of 2021 and issues, facts, evidence and



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documents involved in these Civil Miscellaneous Appeals are the same, they are taken up for hearing together and are disposed of by this common judgment.

11. Now, this Court has to decide the following points for considerations:

- (1) Whether the contributory negligence fixed by the claim Tribunal on the claimant is correct?*
- (2) Whether the compensation awarded by the Tribunal is on the higher side or meagre and the award amount is liable to be enhanced?*

12. Point No.1

The Tribunal held that the claimant has also contributed to the accident and fixed 10% contributory negligence on the part of the petitioner and allowed a sum of Rs.39,13,496/-, Aggrieved by the said order, the claimant filed C.M.A.(MD)No.1224 of 2024 only on two grounds namely, (i) seeking enhancement of compensation and (ii) contending that he had not contributed to the accident.



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13. As per the appellants in C.M.A.(MD)No.337 of 3025,

the entire negligence lies solely on the part of the claimant. Hence, they prayed that the entire negligence be fixed on the part of the claimant.

14. The claimant produced Ex.P1, FIR which was filed only against the driver (4th respondent) of the lorry bearing registration No.TN 28 Y 3213. During the trial, neither the driver nor the owner of the lorry appeared to contest the claim, but they remained *ex parte* and did not deny their responsibility for the accident. Furthermore, the driver of the lorry did not lodge any complaint alleging that the accident occurred only due to the negligence of the injured and negligence has to be fixed on the claimant alone.

15. At the same time Ex.X1, the rough sketch reveals that the accident occurred in the middle of the road. It further indicates that the petitioner was expected to proceed on the extreme left side of the road, but instead, he suddenly crossed the white line and thereby invited the accident, for which the petitioner has not explained how the accident occurred in the middle of the road. Therefore, considering the facts and circumstances of the case and based on materials available on record,



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particularly through rough sketch, the Tribunal held that the petitioner/injured had also contributed to the accident. Accordingly, only 10% contributory negligence is fixed on the part of the claimant, which this Court does not wish to interfere with. Point No.1 is answered accordingly.

16. Point No.2

The learned counsel appearing on behalf of the Insurance Company contended that the monthly income fixed by the Tribunal is on the higher side and the same is liable to be interfered with. On the other hand, the learned counsel for the appellant/claimant submitted that the Tribunal ought to have assessed the income of the claimant as Rs.20,000/- taking into consideration his Educational qualification and sports activities.

17. On perusal of the records, it is seen that at the time of the accident, the claimant was pursuing 1st year B.E., and was doing part-time work. However, he has not produced any document to establish that he was employed. The Tribunal, taking into consideration the educational qualification of the claimant, fixed the monthly income at



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Rs.18,000/-. Aggrieved by the said fixation, the insurance company prayed to reduce the compensation. Since the injured was pursuing an engineering professional degree, the Tribunal, after considering his educational qualification, fixed the monthly income at Rs.18,000/-. This Court finds the assessment to be proper and therefore, there is no need to interfere with the same.

18. The Tribunal awarded a compensation of Rs.2 lakhs under the head of loss of marital life. The claimant, aged about 22 years at the time of accident, had sustained grievous injuries including degloving injury to the penis and injury to the right thigh and was evaluated to have a distal penile injury and structure at distal bulbar urethra. As a result of the said injuries, the claimant suffered loss of his marital life as he became impotent. This fact is evident from the medical certificate issued by various hospitals. It reveals that he would not be able to perform sexual functions. Consequently, the claimant has sustained permanent loss of sexual capability and would not be able to have children in future. Such disability at a young age causes irreparable loss and constitutes a great loss to his marital, prospective and personal life. Therefore, we deem it proper to enhance the compensation under the



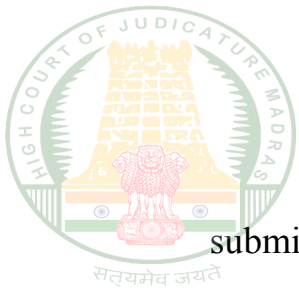
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head of loss of marital life from Rs.2,00,000/- to Rs.5,00,000/- (less 10% of contributory negligence for Rs.3,00,000 x 10/100 = 30,000/-, it comes to Rs,2,70,000/-).

19. As regards the other heads, the Tribunal has correctly and properly fixed the compensation. Hence, this Court is not inclined to interfere with the order of the Tribunal as regards the other heads. Therefore, this Court enhances the compensation to Rs.41,83,496/- (Rs.39,13,496 + 2,70,000) with interest at the rate of 7.5% per annum from the date of the petition till the date of realization.

20. The learned counsel for the appellants/insurance company contended that the lorry involved in the accident, bearing registration number TN 28 Y 3213 did not possess a valid fitness certificate on the date of the accident and in the absence of such a certificate, it was not legally permitted to ply on the roads and hence, the liability to pay the compensation ought not to have been fastened on the appellants/insurance company.

21. The insurance company indeed produced, the report



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submitted by the Motor Vehicle Inspector, Thiruverumbur under Ex.X3,

wherein it was mentioned that the fitness certificate, had expired on 25.09.2020. The accident occurred on 15.02.2021 and therefore, the vehicle was not roadworthy on the date of the accident. The question that arises for consideration is whether in such circumstances, the insurance company is liable to pay compensation to the claimant and thereafter, recover the same from the owner of the vehicle. Though the absence of a fitness certificate amounts to a violation of policy conditions, such a violation of the policy condition, is a matter between the insurer and insured. Therefore, it is proper for the insurance company to pay the compensation to the claimant first, and recover the amount from the owner of the offending vehicle. The Tribunal has rightly held that the insurance company should pay the compensation to the claimant first and recover the same from the owner of the lorry. We find no reason to interfere with the well considered findings of the Tribunal. Point No.2 is answered accordingly.

22. C.M.A.(MD)No.337 of 2025

As a result, the Civil Miscellaneous Appeal is dismissed and the award is enhanced as in C.M.A.(MD)No.1224 of 2024. No costs.



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Consequently, connected miscellaneous petitions are closed.

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23. C.M.A.(MD)No.1224 of 2024

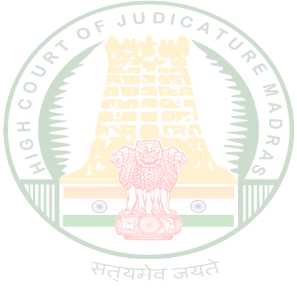
As a result, the Civil Miscellaneous Appeal is allowed. The award passed by the trial Court is enhanced and the respondents 2 and 3 / Insurance Company are directed to pay a sum of Rs.41,83,496/- to the appellant/claimant along with interest at the rate of 7.5% per annum from the date of petition till the date of deposit of the amount, less the amount if already deposited to the credit of M.C.O.P.No.105 of 2021 on the file of the Special Subordinate Court, Motor Accident Claims Tribunal, Tiruchirappalli, within a period of eight weeks from the date of receipt of a copy of this judgment. On such deposit, the appellant/claimant is permitted to withdraw the same, less the amount already withdrawn, if any, together with proportionate interest and costs, by filing an appropriate petition before the Tribunal. No costs.

(A.D.J.C., J.) & (R.P., J.)
09.10.2025

Index : Yes / No
NC : Yes / No

RM

18/20



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To

1. The Special Subordinate Court,
The Motor Accident Claims Tribunal,
Thiruchirapalli

Copy to

1. The Section Officer,
ER/VR Section,
Madurai Bench of Madras High Court,
Madurai.



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C.M.A(MD)Nos.337 of 2025 & 1224 of 2024

A.D.JAGADISH CHANDIRA, J.
AND
R.POORNIMA, J.

RM

Common Judgment in
C.M.A.(MD)Nos.337 of 2025 & 1224 of 2024

09.10.2025