



C.M.A.Nos.1158 of 2022 and 1308 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Reserved on: 23.01.2026

Pronounced on: 06.03.2026

CORAM

THE HONOURABLE MRS.JUSTICE K.GOVINDARAJAN THILAKAVADI

C.M.A.Nos.1158 of 2022 and 1308 of 2023 and
C.M.P. No.13070 of 2023

C.M.A. No.1158 of 2022

Minor Sivasubramaniyan

...Appellant

Vs.

1. U. Dheena

2. The Divisional Manager,
National Insurance Co. Ltd.,
Door No.110, JN Street,
Puducherry 605 001

...Respondents

C.M.A. No. 1308 of 2023

The Divisional Manager,
National Insurance Co. Ltd.,
Door No.110, JN Street,
Puducherry 605 001.

...Appellant

Vs.



C.M.A.Nos.1158 of 2022 and 1308 of 2023

1. Minor Sivasubramaniyan
2. U. Dheena

...Respondents

Common Prayer: These Civil Miscellaneous Appeals are filed under Section 173 of the Motor Vehicle Act 1988, to set aside the judgment and decree in M.C.O.P. No.348 of 2016 on the file of the Motor Accident Claims Tribunal (I Additional Sub Judge), Cuddalore, dated 21.12.2021.

C.M.A. No.1158 of 2022

For Appellant : Ms. Ramya V. Rao
For Respondents : Mr. M. Krishnamoorthy for R2
R1 - served - No appearance.

C.M.A. No. 1308 of 2023

For Appellant : Mr. M. Krishnamoorthy
For Respondents : Ms. Ramya V. Rao for R1
R2- served - No appearance

COMMON JUDGMENT

C.M.A. 1158 of 2022 has been filed by the Appellant / claimant against the Award dated 21.12.2021 passed in MCOP No. 348 of 2016 on the file of the Motor Accident Claims Tribunal (I Additional Sub Judge), Cuddalore.

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2. C.M.A. 1308 of 2023 has been filed by the Appellant / Insurance Company questioning their liability to pay the compensation awarded by the Tribunal in the said Award.

3. Both the appeals arise out of the same accident and the same Award and hence, disposed of by this common judgment.

4. For the sake of convenience, the parties are referred to as per their ranking in the claim petition. The claimant has filed MCOP No.348/2016 on the file of the Motor Accident Claims Tribunal (I Additional Sub Judge), Cuddalore, claiming a sum of Rs.15,00,000/- as compensation for the injuries sustained by him in the accident that took place on 03.12.2015.

5. According to the claimant, on 03.12.2015 at about 6.10.p.m., when the claimant was travelling as a pillion rider in Hero Honda Splendor Plus Motorcycle, driven by his father, from south to north at Unnamalai Chettychavadi Main Road, near Iyyanar Temple, an Ambasaor car bearing

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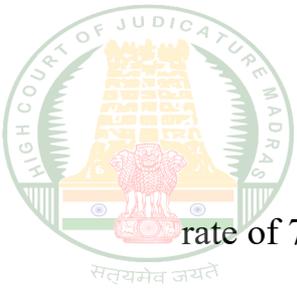
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Registration No.TN-09-AB-6374, driven by its driver in a rash and negligent

manner, came in the opposite direction dashed against the motorcycle in which the claimant was travelling, as a result of which, he sustained fracture in his right leg and sustained multiple injuries. Immediately after the accident, he was admitted in the Government Hospital, Cuddalore and thereafter, he was given treatment at a private Hospital. The accident occurred only due to the negligent act of the driver of the car. Hence, the 2nd respondent / Insurance Company is liable to pay the compensation to the claimant.

6. The claim was resisted by the 2nd Respondent / Insurance Company stating that the 1st respondent / owner of the offending vehicle plied her vehicle without valid and effective Fitness Certificate and hence, the Insurance Company is not liable to pay any compensation.

7. The Tribunal, after hearing both sides and considering the evidence available on record, concluded that the accident occurred due to the rash and negligent driving of the driver of the 1st respondent vehicle and accordingly, awarded compensation of Rs.2,50,216/- and directed the 2nd respondent / Insurance Company to pay the said compensation together with interest at the



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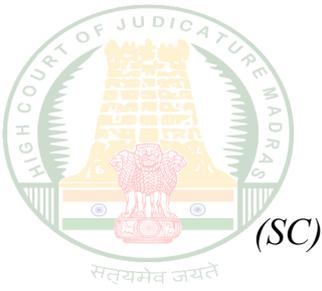
rate of 7.5% per annum from the date of filing of the claim petition till the date of realisation.

8. Questioning the quantum of compensation awarded by the tribunal, the appellant / claimant has filed CMA 1158/2022 and the Insurance Company has filed CMA No.1308/2023.

9. Ms. Ramya V. Rao, learned counsel for the appellant in CMA 1158 of 2022 / claimant argued that the tribunal ought to have awarded Rs.3,00,000/- to the minor appellant under permanent disability by following the Hon'ble Apex Court ruling in ***Master Mallikarjun vs. Divisional Manager, National Insurance Company Limited and another*** case, since the minor appellant had been assessed with 30% disability by the Medical Board, which is permanent in nature. In support of her contentions, she has relied upon the following judgments:

1. *Kumari Kiran vs. Sajjan Singh reported in 2014 (2)TN MAC 553 (SC)*

2. *Master Mallikarjun vs. Divisional Manager, National Insurance Company Limited and another reported in 2013 (2) TN MAC 338*



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It is her further contention that only meagre amounts were awarded under all other heads. Hence, prayed for enhancement of compensation awarded by the Tribunal.

10. *Per contra*, Mr. M. Krishnamoorthy, the learned counsel for the appellant / Insurance Company in C.M.A. No.1308 of 2023, would submit that the tribunal ought to have ordered for pay and recovery, since the insured vehicle was not having a valid and effective Fitness Certificate at the time of accident. He would further submit that the Tribunal has awarded exorbitant amount under all the heads. Hence, prayed for setting aside the Award of the Tribunal.

11. Heard the submissions made by the counsel for the respective parties and perused the materials on record.

12. It is not in dispute that the injured was aged 12 years old at the time of accident and his disability is assessed at 30% by the Medical Board. As per *Master Mallikarjun vs. Divisional Manager, National Insurance*

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Company Limited and another (cited supra), the tribunal ought to have

awarded a sum of Rs.3,00,000/- for 30% disability sustained by the minor appellant. Hence, this Court is inclined to award Rs.3,00,000/- towards partial permanent disability for the injured.

12.1. Further, it is the case of the Insurance Company that the Fitness Certificate of the insured vehicle expired on 25.05.2015 and as such there was no fitness certificate at the time of accident. It is not established by the claimant that the insured vehicle had effective Fitness Certificate on the date of accident. Operating a vehicle without a valid Fitness Certificate violates the Motor Vehicles Act, 1988, justifying the insurers recovery rights. If a vehicle lacks a valid Fitness Certificate at the time of accident, the Motor Accident Claims Tribunal can order the Insurance Company to pay the compensation amount at the first instance and then recover the same from the owner of the offending vehicle. In the present case, the Claims Tribunal completely overlooked the above aspects and directed the Insurance Company to pay the compensation. Section 84 of the Motor Vehicles Act, 1988, prescribes general conditions attached to all permits and Rule 47(i)(g) of the Central Motor Vehicles Rules, 1989 stipulates that an application for registration of a vehicle



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must be mandatorily accompanied by a road worthiness certificate. The above

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mentioned provisions clearly substantiated the importance and necessity of having a fitness certificate to a transport vehicle at all times. Assurance of a vehicle being completely fit to be plied on the road assumes importance in relation to the life and limb of people traveling in the vehicle, pedestrians and other vehicles. The Hon'ble Apex Court in ***Amrit Paul Singh vs. Tata AIG General Insurance Company Limited***, reported in (2018) 7 SCC 588 has held as follows :

“Any lapse by the owner of the vehicle in relation to possession of a valid fitness certificate would amount to a fundamental breach enabling the insurer to recover the relevant amount from the insured.”

Therefore, in the present case the learned Tribunal ought to have ordered for ‘pay and recover’ instead of ordering the Insurance Company to pay the compensation to the appellant / claimant. Accordingly, the Insurance Company is directed to pay the compensation to the claimant determined by this Court at the first instance and then recover the same from the owner of the offending vehicle.



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13. The following tabular column would show the amounts awarded by the Tribunal and the amounts awarded by this Court.

S. No.	Description	Amount awarded by Tribunal (Rs.)	Amount awarded by this Court (Rs.)	Award confirmed/ enhanced/ granted/ set aside
1.	Partial permanent disabilities	1,20,000/-	3,00,000/-	Enhanced
2.	Pain and sufferings	60,000/-	60,000/-	Confirmed
3.	Extra nourishment	5,000/-	5,000/-	confirmed
4.	Attender charges	2,000/-	2,000/-	Confirmed
5.	Transportation	5,000/-	5,000/-	confirmed
6.	Medical expenses	53,216/-	53,216/-	confirmed
7.	Future Medical expenses	5,000/-	5,000/-	confirmed
10	Total	2,50,216/-	4,30,216/-	Enhanced by Rs.1,80,000/-



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- i. Both the Civil Miscellaneous Appeals are partly allowed. No costs. Consequently connected miscellaneous petition is closed.
- ii. The quantum of compensation awarded by the Tribunal is enhanced to Rs.4,30,216/- from Rs.2,50,216/-.
- iii. The appellant in C.M.A. No.1308 of 2023 /Insurance Company is directed to deposit a sum of Rs.4,30,216/- (less the amount already deposited) with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit, **at the first instance**, within a period of four weeks from the date of receipt of a copy of this order, to the credit of M.C.O.P. No.348 of 2016 on the file of the Motor Accident Claims Tribunal (I Additional Sub Judge), Cuddalore, **and then recover the same from the 2nd respondent in C.M.A. No.1308 of 2023 / owner of the offending vehicle.**



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iv. On such deposit being made, the same shall be deposited in a fixed deposit in any one of the Nationalized bank and the guardian of the minor appellant is permitted to withdraw the interest amount accrued thereon once in three months, until he attain majority.

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06.03.2026

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Internet: Yes/No

Index: Yes/No

Speaking/Non-speaking order

To

1. The I Additional Sub Judge, Motor Accident Claims Tribunal , Cuddalore
2. The Section Officer,
VR Section,
High Court, Madras.

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K.GOVINDARAJAN THILAKAVADI, J.

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Pre-delivery judgment in
C.M.A.Nos.1158 of 2022 and 1308 of 2023
and
C.M.P. No.13070 of 2023

06.03.2026

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