



*C.M.A.(MD)Nos.543 and 544 of 2013*

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Dated: 05.02.2024

CORAM:

THE HON'BLE MR.JUSTICE **P. DHANABAL**

**C.M.A.(MD)Nos.543 and 544 of 2013**

**and**

**M.P(MD) Nos. 3 and 3 of 2013**

**C.M.A.(MD)No.543 of 2013**

The Divisional Manager  
M/s. United India Insurance Co. Ltd.,  
Divisional Office,  
7A, West Veli Street, Madurai

..Appellant/Respondent No.2

.vs.

- |                                                                                                                             |                                 |
|-----------------------------------------------------------------------------------------------------------------------------|---------------------------------|
| 1. Kottaimuthu                                                                                                              | .. Respondent/Claimant          |
| 2.Subburam                                                                                                                  | .. Respondent/first respondent  |
| 3.Umadevi Vijayaram                                                                                                         | .. Respondent/third respondent  |
| 4. The Divisional Manager<br>M/s. Oriental Insurance Co Ltd.,<br>Divisional Office<br>16, North Veli Street<br>Madurai      | .. Respondent/fourth respondent |
| 5. The Divisional Manager<br>M/s. New India Assurance Co Ltd.,<br>Divisional Office<br>252-B, Kamarajar Salai<br>Madurai- 9 | .. Respondent/fifth respondent  |

**Prayer :** This Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 05.07.2011 made in M.C.O.P.No.2148 of 2005 on the file of the Motor Accident Claims Tribunal, Fast Track Court No.2, Madurai



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For Appellant : Mr.Rajesh Saravanan  
For R1 : Mr.M.P.Senthil  
R2 and R4 : Given up  
R5 : Mr.B.Vijay Karthikeyan

**C.M.A.(MD)No.544 of 2013**

The Divisional Manager  
M/s. United India Insurance Co. Ltd.,  
Divisional Office,  
7A, West Veli Street, Madurai ..Appellant/Respondent No.2  
.vs.

1. Minor. Kannan .. Respondent/Claimant
2. Subburam .. Respondent/first respondent
3. Umadevi Vijayaram .. Respondent/third respondent
4. The Divisional Manager  
M/s. Oriental Insurance Co Ltd.,  
Divisional Office  
16, North Veli Street  
Madurai .. Respondent/fourth respondent
5. The Divisional Manager  
M/s. New India Assurance Co Ltd.,  
Divisional Office  
252-B, Kamarajar Salai  
Madurai- 9 .. Respondent/fifth respondent

**Prayer :** This Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 05.07.2011 made in M.C.O.P.No.2149 of 2005 on the file of the Motor Accident Claims Tribunal, Fast Track Court No.2, Madurai

For Appellant : Mr.Rajesh Saravanan  
For R1 : In sufficient address  
R2 and R4 : Given up  
R5 : Mr.B.Vijay Karthikeyan



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### **COMMON JUDGMENT**

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These Civil Miscellaneous Appeals have been filed as against the common order passed in M.C.O.P.Nos. 2148 and 2149 of 2005 on the file of the Motor Accident Claims Tribunal, Fast Track Court No.2, Madurai, wherein the first respondents in these appeals have filed claim petitions before the Tribunal. As against the order passed by the Tribunal the second respondent has preferred these appeals.

2. The Tribunal has awarded a sum of Rs.88,000/- in M.C.O.P.No.2148 of 2005 and awarded a sum of Rs. 10,000/- in M.C.O.P. No.2149 of 2005 and directed the appellant/insurance company to pay the said amount . As against the award passed by the Tribunal the present appeals have been preferred by the appellant/second respondent Insurance company.

3. For the sake of convenience and brevity, the parties herein after will be referred to as per their status/ranking in the Tribunal.



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4. According to the appellant/second respondent the first respondent/petitioners filed petitions for compensation alleging that on 25.09.2005 the second respondent /first respondent vehicle dashed against the first respondent /petitioners, thereby they sustained injuries and hence filed petitions for claiming compensation. According to the appellant/second respondent the vehicle involved in this case was insured with the fifth respondent herein and the first respondent /petitioners have wrongly claimed as against the appellant/second respondent and the same was brought to the knowledge of the Tribunal and thereafter the first respondent/ petitioners in both petitions have amended the petition and thereby have examined witnesses and filed documents. After perusing records and evidence adduced on both sides, the Tribunal has awarded compensation by fixing liability as against the appellant/second respondent instead of fixing liability as against the fifth respondent/fifth respondent in which the vehicle was insured. As against the order passed by the Tribunal, the present appeals have been filed by the appellant/second respondent in both petitions. According to the first respondent/petitioners in both petitions initially they filed petitions as against the appellant/second respondent and thereafter the petition was amended and filed petition as against the fifth respondent/fifth respondent. According



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to fifth respondent/fifth respondent the vehicle involved in the accident was insured with the fifth respondent on the date of accident, however the Tribunal has fixed the liability as against the appellant/second respondent.

5. The learned counsel appearing for the appellant/second respondent would contend that the petitioners in main petitions have filed petitions claiming compensation as against the appellant/second respondent and after knowing that the vehicle was not insured with the appellant/second respondent the petition was amended and the fifth respondent/fifth respondent was added in the petition. On the date of accident, the vehicle of the first respondent was not insured with the fifth respondent/fifth respondent. But the Tribunal fixed liability on the appellant/second respondent instead of fixing liability as against the fifth respondent. Hence the order of the Tribunal is liable to be set aside.

6. The learned counsel appearing for the first respondent/petitioner also fairly admitted that the Tribunal has fixed liability as against the second respondent. Initially the petitioner filed petition as against the appellant/second respondent and thereafter filed amendment application and the same was allowed. Hence the fifth



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respondent is liable to pay compensation to the petitioner. However the Tribunal has awarded compensation by fixing liability as against the appellant/second respondent.

7. The learned counsel appearing for the fifth respondent/fifth respondent also fairly conceded that on the date of accident the offending vehicle was insured with the fifth respondent company. However the Tribunal after perusing Ex.P.5, Motor Vehicle Inspection Report fixed liability as against the appellant/second respondent.

8. This Court after hearing both sides and upon perusing the documents including the common order of the Tribunal, framed the following point for determination in this appeal:

i) Whether the appeal in CMA(MD) No. 543 of 2013 is liable to be allowed or not?

ii) Whether the appeal in CMA(MD) No. 544 of 2013 is liable to be allowed or not?

9. In this case, there is no dispute with regard to the quantum of amount and the parties also not disputed the quantum of amount. In this case there is no dispute that the vehicle involved in the



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accident was insured with the fifth respondent/fifth respondent but the Tribunal after taking into consideration of the Ex.P.5, Motor Vehicle Report came to conclusion that the vehicle was insured with the appellant/second respondent thereby fixed liability. Infact the vehicle was not insured with the second respondent on the date of accident and the fifth respondent also fairly admitted that the vehicle was insured with them. As per the admissions made by the learned counsel for the first respondent/petitioner and fifth respondent/fifth respondent that the first respondent vehicle was insured with the fifth respondent, it is appropriate to allow these appeals by fixing liability as against the fifth respondent/fifth respondent. Further the learned counsel appearing for the appellant has also produced copy of I.A. No. 470 of 2009 on the file of the Fast Track Court No.II, Madurai and in the above said MCOP No.2149 of 2005, wherein it is mentioned that lorry bearing Reg. No.TN 48 E 0388 was insured with New India Assurance Company Ltd., i.e., fifth respondent herein vide Cover Note No.384694(10.02.2005 to 09.02.2006) Further the learned counsel appearing for the appellant brought to the knowledge of the Court that he has deposited 50% of the amount and the same can be withdrawn by the appellant/second petitioner by filing appropriate petition before the Tribunal.



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10. In the result:

i) CMA(MD) No.543 of 2013 is partly allowed and the order passed by the Tribunal in MCOP No.2148 of 2005 is modified to the effect the fifth respondent is directed to deposit the entire award amount with interest as awarded by the Tribunal within a period of two months from the date of this judgment and on the deposit being made the petitioners are at liberty to withdraw the same by filing appropriate petition before the Tribunal. The appellant/second respondent is at liberty to withdraw the award amount already deposited.

ii) CMA(MD) No.544 of 2013 is partly allowed and the order passed by the Tribunal in MCOP No.2149 of 2005 is modified to the effect the fifth respondent is directed to deposit the entire award amount with interest as awarded by the Tribunal within a period of two months from the date of this judgment and on the deposit being made the petitioners are at liberty to withdraw the same by filing appropriate petition before the Tribunal. The appellant/ second respondent is at liberty to withdraw the award



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amount already deposited. No costs. Consequently connected miscellaneous petitions are closed.

**05.02.2024**

NCC : Yes/No  
Index : Yes/No  
Internet: Yes/No  
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**To:**

1. The Motor Accident Claims Tribunal /  
Fast Track Court No.2, Madurai .
- 2.The Record Keeper,  
Vernacular Section,  
Madurai Bench of Madras High Court,  
Madurai.



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**P. DHANABAL,J.**

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