

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT****DATED: 20.04.2016**

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CORAM:**THE HONOURABLE MS.JUSTICE V.M. VELUMANI**C.M.A.(MD) Nos. 1163 to 1205 of 2015

M/S. UNITED INDIA INSURANCE COMPANY LIMITED,
DIVISIONAL OFFICE,
PROMENADET ROAD,
CANTONMENT,
TRICHY AND DISTRICT

... APPELLANT IN ALL CMA'S
VS.

G. KILLIYAMMAL ... 1ST RESPONDENT in CMA(MD) No.1163 of 2015
S.VADUVAMBAL @ VADIVAMBAL ... 1ST RESPONDENT in CMA(MD) No.1164 of 2015
R. DHANAPAKIYAM ... 1ST RESPONDENT in CMA(MD) No.1165 of 2015
T. PUSHPA ... 1ST RESPONDENT in CMA(MD) No.1166 of 2015
C. RENGANATHAN ... 1ST RESPONDENT in CMA(MD) No.1167 of 2015
J. KALYANI ... 1ST RESPONDENT in CMA(MD) No.1168 of 2015
N. VIJAYA ... 1ST RESPONDENT in CMA(MD) No.1169 of 2015
S. MANIMEGALAI ... 1ST RESPONDENT in CMA(MD) No.1170 of 2015
M.DHANALAKSHMI ... 1ST RESPONDENT in CMA(MD) No.1171 of 2015
A. RANI ... 1ST RESPONDENT in CMA(MD) No.1172 of 2015
S.SASIKALA ... 1ST RESPONDENT in CMA(MD) No.1173 of 2015
B. ROJA ... 1ST RESPONDENT in CMA(MD) No.1174 of 2015
G.GOVINDAMMAL ... 1ST RESPONDENT in CMA(MD) No.1175 of 2015
M. SUSEELA ... 1ST RESPONDENT in CMA(MD) No.1176 of 2015
MANIKANDAN ... 1ST RESPONDENT in CMA(MD) No.1177 of 2015
M.ELLAMMAL ... 1ST RESPONDENT in CMA(MD) No.1178 of 2015
V.GANGA ... 1ST RESPONDENT in CMA(MD) No.1179 of 2015
V.VALLI ... 1ST RESPONDENT in CMA(MD) No.1180 of 2015
D.VIJAYA ... 1ST RESPONDENT in CMA(MD) No.1181 of 2015
L.SURIYAKANTHI ... 1ST RESPONDENT in CMA(MD) No.1182 of 2015
S.GOWRI ... 1ST RESPONDENT in CMA(MD) No.1183 of 2015
P.PADMA ... 1ST RESPONDENT in CMA(MD) No.1184 of 2015
K.KUMARI ... 1ST RESPONDENT in CMA(MD) No.1185 of 2015
M.AMSALA ... 1ST RESPONDENT in CMA(MD) No.1186 of 2015
K.LALITHA ... 1ST RESPONDENT in CMA(MD) No.1187 of 2015
S.BANGARAMMAL @ BANGARU ... 1ST RESPONDENT in CMA(MD) No.1188 of 2015
A. ARPUTHAM ... 1ST RESPONDENT in CMA(MD) No.1189 of 2015
P.NIRMALA ... 1ST RESPONDENT in CMA(MD) No.1190 of 2015
M.VELU ... 1ST RESPONDENT in CMA(MD) No.1191 of 2015



I. JEYALAKSHMI ... 1ST RESPONDENT in CMA (MD) No.1192 of 2015
ETTIYAMMAL ... 1ST RESPONDENT in CMA (MD) No.1193 of 2015
R. SELVARAJ ... 1ST RESPONDENT in CMA (MD) No.1194 of 2015
S. SUDHA ... 1ST RESPONDENT in CMA (MD) No.1195 of 2015
R. KALA ... 1ST RESPONDENT in CMA (MD) No.1196 of 2015
V. KALA ... 1ST RESPONDENT in CMA (MD) No.1197 of 2015
R. SUNDARAMBAL ... 1ST RESPONDENT in CMA (MD) No.1198 of 2015
N. DHARANI ... 1ST RESPONDENT in CMA (MD) No.1199 of 2015
R. RANI ... 1ST RESPONDENT in CMA (MD) No.1200 of 2015
V. RAMANI ... 1ST RESPONDENT in CMA (MD) No.1201 of 2015
C. VIJAYA ... 1ST RESPONDENT in CMA (MD) No.1202 of 2015
KANAGAVALLI ... 1ST RESPONDENT in CMA (MD) No.1203 of 2015
S. MARI ... 1ST RESPONDENT in CMA (MD) No.1204 of 2015
G. MAGESWARI ... 1ST RESPONDENT in CMA (MD) No.1205 of 2015

GOPALAKRISHNAN ... 2ND RESPONDENT IN ALL CMA'S

Prayer in CMA (MD) No.1163 of 2015: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act against the Judgment and decree dated 28.03.2014 made in MCOP.No.1061 of 2009 on the file of Motor Accidents Claims Tribunal / III Additional Sub Court, Trichy.

Prayer in CMA (MD) No.1164 of 2015:

To prefer this Memorandum of Civil Miscellaneous Appeal in this Honourable Court against the judgment and Decree Dated 28/03/2014 made in MCOP NO. 1018 of 2009 on the file of the Motor Accident Claims Tribunal (3rd Additional Sub Court) Trichy for the following and among other.

Prayer in CMA (MD) No.1165 of 2015:

To prefer this Memorandum of Civil Miscellaneous Appeal in this Honourable Court against the judgment and Decree Dated 28/03/2014 made in MCOP NO. 1038 of 2009 on the file of the Motor Accident Claims Tribunal (3rd Additional Sub Court) Trichy for the following and among other.

Prayer in CMA (MD) No.1166 of 2015:

To prefer this Memorandum of Civil Miscellaneous Appeal in this Honourable Court against the judgment and Decree Dated 28/03/2014 made in MCOP NO. 1067 of 2009 on the file of the Motor Accident Claims Tribunal (3rd Additional Sub Court) Trichy for the following and among other.

Prayer in CMA (MD) No.1167 of 2015:

To prefer this Memorandum of Civil Miscellaneous Appeal in this Honourable Court against the judgment and Decree Dated 28/03/2014 made in MCOP NO. 1037 of 2009 on the file of the Motor Accident Claims Tribunal (3rd Additional Sub Court) Trichy for the following and among other.



Prayer in CMA(MD) No.1168 of 2015:

The above named Appellant begs to prefer this memorandum of civil Miscellaneous Appeal in this Honourable Court against the judgement and Decree dated 28.03.2014 made in M.C.O.P.No.1054 of 2009 on the file of the Motor Accident Claims Tribunal (3rd Additional Sub Court) Trichy.

Prayer in CMA(MD) No.1169 of 2015:

The above named Appellant begs to prefer this memorandum of civil Miscellaneous Appeal in this Honourable Court against the judgement and Decree dated 28.03.2014 made in M.C.O.P.No.1030 of 2009 on the file of the Motor Accident Claims Tribunal (3rd Additional Sub Court) Trichy.

Prayer in CMA(MD) No.1170 of 2015:

The above named Appellant begs to prefer this memorandum of civil Miscellaneous Appeal in this Honourable Court against the judgement and Decree dated 28.03.2014 made in M.C.O.P.No.1041 of 2009 on the file of the Motor Accident Claims Tribunal (3rd Additional Sub Court) Trichy.

Prayer in CMA(MD) No.1171 of 2015:

The above named Appellant begs to prefer this memorandum of civil Miscellaneous Appeal in this Honourable Court against the judgement and Decree dated 28.03.2014 made in M.C.O.P.No.1063 of 2009 on the file of the Motor Accident Claims Tribunal (3rd Additional Sub Court) Trichy.

Prayer in CMA(MD) No.1172 of 2015:

The above named Appellant begs to prefer this memorandum of civil Miscellaneous Appeal in this Honourable Court against the judgement and Decree dated 28.03.2014 made in M.C.O.P.No.1036 of 2009 on the file of the Motor Accident Claims Tribunal (3rd Additional Sub Court) Trichy.

Prayer in CMA(MD) No.1173 of 2015:

The above named Appellant begs to prefer this memorandum of civil Miscellaneous Appeal in this Honourable Court against the judgement and Decree dated 28.03.2014 made in M.C.O.P.No.1047 of 2009 on the file of the Motor Accident Claims Tribunal (3rd Additional Sub Court) Trichy.

Prayer in CMA(MD) No.1174 of 2015:

The above named Appellant begs to prefer this memorandum of civil Miscellaneous Appeal in this Honourable Court against the judgement and Decree dated 28.03.2014 made in M.C.O.P.No.1021 of 2009 on the file of the Motor Accident Claims Tribunal (3rd Additional Sub Court) Trichy.



Prayer in CMA(MD) No.1175 of 2015:

The above named Appellant begs to prefer this memorandum of civil Miscellaneous Appeal in this Honourable Court against the judgement and Decree dated 28.03.2014 made in M.C.O.P.No.1051 of 2009 on the file of the Motor Accident Claims Tribunal (3rd Additional Sub Court) Trichy.

Prayer in CMA(MD) No.1176 of 2015:

The above named Appellant begs to prefer this memorandum of civil Miscellaneous Appeal in this Honourable Court against the judgement and Decree dated 28.03.2014 made in M.C.O.P.No.1049 of 2009 on the file of the Motor Accident Claims Tribunal (3rd Additional Sub Court) Trichy.

Prayer in CMA(MD) No.1177 of 2015:

The above named Appellant begs to prefer this memorandum of civil Miscellaneous Appeal in this Honourable Court against the judgement and Decree dated 28.03.2014 made in M.C.O.P.No.1065 of 2009 on the file of the Motor Accident Claims Tribunal (3rd Additional Sub Court) Trichy.

Prayer in CMA(MD) No.1178 of 2015:

To prefer this Memorandum of Civil Miscellaneous Appeal in this Honourable Court against the judgment and decree dated 28.03.2014 made in MCOP.No.1060/2009 on the file of the Motor Accident Claims Tribunal (3rd Additional Sub Court), Trichy.

Prayer in CMA(MD) No.1179 of 2015:

To prefer this Memorandum of Civil Miscellaneous Appeal in this Honourable Court against the judgment and decree dated 28.03.2014 made in MCOP.No.1042/2009 on the file of the Motor Accident Claims Tribunal (3rd Additional Sub Court), Trichy.

Prayer in CMA(MD) No.1180 of 2015:

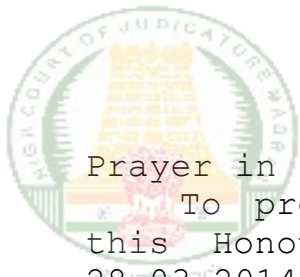
To prefer this Memorandum of Civil Miscellaneous Appeal in this Honourable Court against the judgment and decree dated 28.03.2014 made in MCOP.No.1046/2009 on the file of the Motor Accident Claims Tribunal (3rd Additional Sub Court), Trichy.

Prayer in CMA(MD) No.1181 of 2015:

To prefer this Memorandum of Civil Miscellaneous Appeal in this Honourable Court against the judgment and decree dated 28.03.2014 made in MCOP.No.1053/2009 on the file of the Motor Accident Claims Tribunal (3rd Additional Sub Court), Trichy.

Prayer in CMA(MD) No.1182 of 2015:

To prefer this Memorandum of Civil Miscellaneous Appeal in this Honourable Court against the judgment and decree dated 28.03.2014 made in MCOP.No.1019/2009 on the file of the Motor Accident Claims Tribunal (3rd Additional Sub Court), Trichy.



Prayer in CMA(MD) No.1183 of 2015:

To prefer this Memorandum of Civil Miscellaneous Appeal in this Honourable Court against the judgment and decree dated 28.03.2014 made in MCOP.No.1033/2009 on the file of the Motor Accident Claims Tribunal (3rd Additional Sub Court), Trichy.

Prayer in CMA(MD) No.1184 of 2015:

To prefer this Memorandum of Civil Miscellaneous Appeal in this Honourable Court against the judgment and decree dated 28.03.2014 made in MCOP.No.1023/2009 on the file of the Motor Accident Claims Tribunal (3rd Additional Sub Court), Trichy.

Prayer in CMA(MD) No.1185 of 2015:

To prefer this Memorandum of Civil Miscellaneous Appeal in this Honourable Court against the judgment and decree dated 28.03.2014 made in MCOP.No.1044/2009 on the file of the Motor Accident Claims Tribunal (3rd Additional Sub Court), Trichy.

Prayer in CMA(MD) No.1186 of 2015:

To prefer this Memorandum of Civil Miscellaneous Appeal in this Honourable Court against the judgment and decree dated 28.03.2014 made in MCOP.No.1043/2009 on the file of the Motor Accident Claims Tribunal (3rd Additional Sub Court), Trichy.

Prayer in CMA(MD) No.1187 of 2015:

To prefer this Memorandum of Civil Miscellaneous Appeal in this Honourable Court against the judgment and decree dated 28.03.2014 made in MCOP.No.1024/2009 on the file of the Motor Accident Claims Tribunal (3rd Additional Sub Court), Trichy.

Prayer in CMA(MD) No.1188 of 2015:

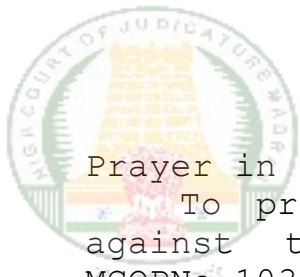
To prefer this Memorandum of CMA in this Honourable Court against the Judgment and Decree dated 28.03.2014 made in MCOPNo.1062 of 2009 on the file of the MACT (III Additional Sub Court), Trichy.

Prayer in CMA(MD) No.1189 of 2015:

To prefer this Memorandum of CMA in this Honourable Court against the Judgment and Decree dated 28.03.2014 made in MCOPNo.1040 of 2009 on the file of the MACT (III Additional Sub Court), Trichy.

Prayer in CMA(MD) No.1190 of 2015:

To prefer this Memorandum of CMA in this Honourable Court against the Judgment and Decree dated 28.03.2014 made in MCOPNo.1055 of 2009 on the file of the MACT (III Additional Sub Court), Trichy.



Prayer in CMA(MD) No.1191 of 2015:

To prefer this Memorandum of CMA in this Honourable Court against the Judgment and Decree dated 28.03.2014 made in MCOPNo.1034 of 2009 on the file of the MACT (III Additional Sub Court), Trichy.

Prayer in CMA(MD) No.1192 of 2015:

To prefer this Memorandum of CMA in this Honourable Court against the Judgment and Decree dated 28.03.2014 made in MCOPNo.1031 of 2009 on the file of the MACT (III Additional Sub Court), Trichy.

Prayer in CMA(MD) No.1193 of 2015:

To prefer this Memorandum of CMA in this Honourable Court against the Judgment and Decree dated 28.03.2014 made in MCOPNo.1066 of 2009 on the file of the MACT (III Additional Sub Court), Trichy.

Prayer in CMA(MD) No.1194 of 2015:

To prefer this Memorandum of CMA in this Honourable Court against the Judgment and Decree dated 28.03.2014 made in MCOPNo.1059 of 2009 on the file of the MACT (III Additional Sub Court), Trichy.

Prayer in CMA(MD) No.1195 of 2015:

To prefer this Memorandum of CMA in this Honourable Court against the Judgment and Decree dated 28.03.2014 made in MCOPNo.1028 of 2009 on the file of the MACT (III Additional Sub Court), Trichy.

Prayer in CMA(MD) No.1196 of 2015:

To prefer this Memorandum of CMA in this Honourable Court against the Judgment and Decree dated 28.03.2014 made in MCOPNo.1052 of 2009 on the file of the MACT (III Additional Sub Court), Trichy.

Prayer in CMA(MD) No.1197 of 2015:

The above named Appellant begs to prefer this memorandum of civil Miscellaneous Appeal in this Honourable Court against the judgement and Decree dated 28.03.2014 made in M.C.O.P.No.1050 of 2009 on the file of the Motor Accident Claims Tribunal (3rd Additional Sub Court) Trichy.

Prayer in CMA(MD) No.1198 of 2015:

The above named Appellant begs to prefer this memorandum of civil Miscellaneous Appeal in this Honourable Court against the judgement and Decree dated 28.03.2014 made in M.C.O.P.No.1058 of 2009 on the file of the Motor Accident Claims Tribunal (3rd Additional Sub Court) Trichy.



Prayer in CMA(MD) No.1199 of 2015:

The above named Appellant begs to prefer this memorandum of civil Miscellaneous Appeal in this Honourable Court against the judgement and Decree dated 28.03.2014 made in M.C.O.P.No.1045 of 2009 on the file of the Motor Accident Claims Tribunal (3rd Additional Sub Court) Trichy.

Prayer in CMA(MD) No.1200 of 2015:

The above named Appellant begs to prefer this memorandum of civil Miscellaneous Appeal in this Honourable Court against the judgement and Decree dated 28.03.2014 made in M.C.O.P.No.1027 of 2009 on the file of the Motor Accident Claims Tribunal (3rd Additional Sub Court) Trichy.

Prayer in CMA(MD) No.1201 of 2015:

The above named Appellant begs to prefer this memorandum of civil Miscellaneous Appeal in this Honourable Court against the judgement and Decree dated 28.03.2014 made in M.C.O.P.No.1039 of 2009 on the file of the Motor Accident Claims Tribunal (3rd Additional Sub Court) Trichy.

Prayer in CMA(MD) No.1202 of 2015:

The above named Appellant begs to prefer this memorandum of civil Miscellaneous Appeal in this Honourable Court against the judgement and Decree dated 28.03.2014 made in M.C.O.P.No.1035 of 2009 on the file of the Motor Accident Claims Tribunal (3rd Additional Sub Court) Trichy.

Prayer in CMA(MD) No.1203 of 2015:

The above named Appellant begs to prefer this memorandum of civil Miscellaneous Appeal in this Honourable Court against the judgement and Decree dated 28.03.2014 made in M.C.O.P.No.1064 of 2009 on the file of the Motor Accident Claims Tribunal (3rd Additional Sub Court) Trichy.

Prayer in CMA(MD) No.1204 of 2015:

The above named Appellant begs to prefer this memorandum of civil Miscellaneous Appeal in this Honourable Court against the judgement and Decree dated 28.03.2014 made in M.C.O.P.No.1032 of 2009 on the file of the Motor Accident Claims Tribunal (3rd Additional Sub Court) Trichy.

Prayer in CMA(MD) No.1205 of 2015:

The above named Appellant begs to prefer this memorandum of civil Miscellaneous Appeal in this Honourable Court against the judgement and Decree dated 28.03.2014 made in M.C.O.P.No.1056 of 2009 on the file of the Motor Accident Claims Tribunal (3rd Additional Sub Court) Trichy.



For Appellant : Mr.B. Rajesh Saravanan in all CMAs

For Respondent No.1 : Mr.N. Sudhagar Nagaraj in all CMAs

COMMON JUDGMENT

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All these Civil Miscellaneous Appeals are filed against the Common Judgment and decree, dated 28.03.2014 made in MCOP.Nos.1061 of 2009, 1018 of 2009, 1038 of 2009, 1067 of 2009, 1037 of 2009, 1054 of 2009, 1030 of 2009, 1041 of 2009, 1063 of 2009, 1036 of 2009, 1047 of 2009, 1021 of 2009, 1051 of 2009, 1049 of 2009, 1065 of 2009, 1060 of 2009, 1042 of 2009, 1046 of 2009, 1053 of 2009, 1019 of 2009, 1033 of 2009, 1023 of 2009, 1044 of 2009, 1043 of 2009, 1024 of 2009, 1062 of 2009, 1040 of 2009, 1055 of 2009, 1034 of 2009, 1031 of 2009, 1066 of 2009, 1059 of 2009, 1028 of 2009, 1052 of 2009, 1050 of 2009, 1058 of 2009, 1045 of 2009, 1027 of 2009, 1039 of 2009, 1035 of 2009, 1064 of 2009, 1032 of 2009 and 1056 of 2009 respectively on the file of the Motor Accidents Claims Tribunal / III Additional Sub Court, Trichy.

2. The issue involved in all these appeals are one and the same and therefore, all the Civil Miscellaneous Appeals are disposed of by this common order.

3. The appellant / Insurance Company is the second respondent in all MCOPs. The first respondent is claimant. The second respondent is the owner of the bus.

4. The facts of the case are as follows:-

All the claimants were travelling in the bus belonging to the second respondent insured with the appellant. The second respondent obtained permit from concerned Regional Transport Office to ply the bus in the specific route mentioned in the permit. According to the claimants, after they worshipped in Melmaruvathur temple on 20.12.2008, at 00.30 hours, the bus met with an accident. The driver of the bus was driving the bus in a rash and negligent manner and bus fell into the pit on the side of the road and all the claimants suffered injury. They took treatment for their injury and after taking treatment they filed claim petition for the injury suffered by them.

5. The second respondent, owner of the vehicle remained ex parte before the Tribunal.

6. The appellant / Insurance Company filed counter statement and denied their liability stating that the claimants must prove that driver had licence to drive the bus. The driver did not have licence to drive the bus. The claimants must prove that they travelled in the bus and they also submitted that the claimants suffered only simple injury and compensation claimed by them is on



higher side. According to the appellant, the second respondent violated the permit condition and no permit was granted to the respondent to ply bus via., Perambalur - Trichy National highways.

7. Before the Tribunal, 48 witnesses including two Doctors were examined as PW.1 to PW.48 and 40 documents were marked as Ex.P1 to Ex.P40. The respondent side examined two witnesses as RW.1 and RW2 and marked two documents as Ex.R1 and Ex.R2 including the permit issued to the second respondent.

8. The Tribunal considering the pleadings, evidence both oral and documentary and arguments held that accident occurred only due to the rash and negligent driving by the driver of bus and there was no violation of permit condition and therefore directed both the appellant and the second respondent to pay the compensation. The Tribunal considering the evidence of Doctors PWs.47 and A48 and documents relating to the medical treatment awarded compensation to each claimants. Against that award, appellants have filed the present appeal.

9. The learned counsel appearing for the appellant contended that:

(i) The Tribunal erred in holding that there was no violation on permit condition.

(ii) The Tribunal failed to consider the evidence of RW.1 official of RTO office in proper perspective to the effect that no permission was granted to the second respondent to ply the bus via Permbalur - Trichy National High way.

(iii) The Tribunal erred in holding that there was no violation of permit condition as the accident took place within the Trichy District.

(iv) The Tribunal ought to have ordered the pay and recovery as the second respondent violated the permit condition, which consequently, violated the policy condition.

10. In support of his contention, the learned counsel for the appellant relied on the following Judgments:-

(i) 2016(1) TNMAC 117 (National Insurance Company Limited Vs. J. Thilaga Jackson and others), relevant Para Nos.5 and 6, wherein it has been held as follows:-

5. I am in entire agreement with the contention of the learned counsel for the appellant and the decision relied on by him would lend support to the facts of this case. Further, it is well settled that the Apex Court and this Court in a catena of the following

Insurer shall pay the compensation and thereafter, they shall recover the amount from the vehicle owner,



whenever the compensation was ordered on the ground that the Driver did not possess valid License. The decisions are as follows:-

(i) Jawahar Singh V. Bala jain, 2011(1) TNMAC 641 (SC);

(ii) S. Iyyapan V. United India Insurance Company Limited, 2013(2) TNMAC 262(SC); 2013(7) SCC 62;

(iii) United India Insurance Company Limited V. V. Vijayakumar, 2010(2) TNMAC 388 (DB);

(iv) Bajaj Allianz General Insurance Company Limited V. P. Manimozhi, 2010 (2) TNMAC 542(DB);

(v) United India Insurance Company Limited V. S. Saravanan and another, 2009(2) TNMAC 103 (DB).

6. In view of the categorical pronouncement of this Court and the Apex Court as referred to above, the Civil Miscellaneous Appeal is disposed of by modifying the order of the Tribunal by directing the Appellant to pay compensation to the claimants and thereafter, recover the same from the insured. The claimants are permitted to withdraw their respective shares in the Award amount deposited by the appellant pursuant to the order dated 04.06.2014 of this Court, less the amount already withdrawn, if any. Consequently, MP(MD).No.1 of 2014 is closed. No costs.

(ii) 2005(1) LW 105 (National Insurance Company Limited Vs. Challa Bharatham and others), relevant Para Nos.12 and 13, wherein it has been held as follows:-

12. High Court was of the view that since there was no permit, the question of violation of any condition thereof does not arise. The view is clearly fallacious. A person without permit to ply a vehicle cannot be placed at better pedestal vis -vis one who has a permit, but has violated any condition thereof, Plying of a vehicle without a permit is an infraction. Therefore, in terms of Section 149(2) defence is available to the insurer on that aspect. The acceptability of the stand is a matter of adjudication. The question of policy being operative had no relevance for the issue regarding liability of insurer. High Court was, therefore, not justified in holding the insurer liable.

13. The residual question is what would be the appropriate direction. Considering the beneficial object of the Act, it would be proper for the insurer to satisfy the award, though in law it has no liability. In some cases, the insurer has been given the option and liberty to recover the amount from the insured. For the purpose of recovering the amount paid from the owner, the insurer



shall not be required to file a suit. It may initiate proceeding before the concerned Executing Court as if the dispute between the insurer and the owner was the subject matter of determination before the Tribunal and the issue is decided against the owner and in favour of the insurer. Before release of the amount to the claimants, owner of the offending vehicle shall furnish security for the entire amount which the insurer will pay to the claimants. The offending vehicle shall be attached, as a part of the security. If necessity arises the Executing Court shall take assistance of the concerned Regional Transport Authority. The Executing Court shall pass appropriate orders in accordance with law as to the manner in which the owner of the vehicle shall make payment to the insurer. In case there is any default it shall be open to the Executing Court to direct realization by disposal of the securities to be furnished or from any other property or properties of the owner of the vehicle i.e the insured. In the instant case considering the quantum involved we leave it to the discretion of the insurer to decide whether it would take steps for recovery of the amount from the insured.

(iii) 2008(6) MLJ 817 (Sankar and another vs. M. Ramasamy and others), relevant Para No.11, wherein it has been held as follows:-

11. Following the said judgment of the Hon'ble Supreme Court, this Court also holds that in view of the above proof of the fact that there had been violation of policy condition as the vehicle had been plied without a valid permit, the liability of the third respondent is to be restricted to making payment to the claimant with a right to recover the same from the insured namely, the second respondent / cross objector by levying execution in the very same MCOP without having the need to file a separate suit or original petition.

11. The learned counsel appearing for claimants submitted that claimants have proved that accident took place only due to rash and negligent driving by the driver of the bus belonging to the second respondent and that the nature of injury suffered by them and therefore, compensation awarded is just compensation and prayed for dismissal of all the Civil Miscellaneous Appeals.

12. Though the notice served on the second respondent and his name is also printed in the cause list, he has not chosen to appear either in person or through counsel.

<https://hcservices.ecourts.gov.in/hcservices/>

13. I have heard the learned counsel appearing for either side and carefully perused the materials available on record.



14. Only question to be decided in all these appeals is whether the second respondent violated the permit condition and therefore, whether the appellant is entitled to order of pay and recovery.

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15. From the evidence of RW.1 and Ex.B1, second respondent was given permit to ply the bus in specific route. RW.1 categorically stated that no permission was granted to the second respondent to ply the bus in Trichy-Perambalur National Highways. Admittedly, the accident took place only in the place inbetween Permbalur-Trichy National highways. Therefore, the Tribunal erred in holding that there is no violation of permit condition as accident took place within Trichy District. Therefore, the finding of the Tribunal is liable to be set aside and hereby set aside.

16. In the Judgments relied on by the learned counsel for the appellants, the Hon'ble Supreme Court and this Court held that if vehicle is plied without permit or violation of permit condition and it violates policy condition and the Insurance Company is liable to pay at the first instance and recover the same from the owner of the vehicle. The said Judgments relied on by the counsel for the appellant are squarely applicable to the facts of the present case. Therefore, the award of the Tribunal is modified to the effect directing the appellant to pay the claimants the compensation awarded and thereafter, recover the same from the owner of the vehicle, second respondent herein, by way of Execution Petition, without actually filing a suit as held by Hon'ble Apex Court in the Judgement reported in **2004 (2) CTC 464**.

17. The appellant, Insurance Company is directed to deposit the amount awarded by the Tribunal to the credit of respective MCOP Numbers within a period of eight weeks from the date of receipt of a copy of this order. On such deposit, the claimants are entitled to withdraw the award amount, after deducting the amount already withdrawn if any, on filing proper application before the Tribunal.

18. In view of the above modification, all the Civil Miscellaneous Appeals are disposed of. No costs. Consequently, connected Miscellaneous Petitions are closed if any.

Sd/-

Assistant Registrar

/True Copy/



To

The Motor Accident Claims Tribunal /
III Additional Sub Court, Trichy.

+1cc to Mr.B.RAJESH SARAIVANAN, Advocate Sr.No.22544

+1cc to Mr.N.SUDHAGAR NAGARAJ, Advocate Sr.No.22103

TRP

AA/29.06.2016/13p-3c

C.M.A.(MD) Nos. 1163 to 1205 of 2015
20.04.2016