



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 24.11.2016

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

C.M.A. (MD) Nos.348 to 350 of 2014

and

M.P. (MD) Nos.2,2 and 2 of 2014

and

C.M.A. (MD) Nos.817 to 819 of 2015

and

M.P. (MD) Nos.2,2 and 2 of 2015

The New India Assurance Company Limited,
through its Branch Manager,
No.574, Periakulam Road,
Theni Post, Theni District.

..Appellant in all the Cases/
2nd Respondent in Tribunal

Vs.

1. M.Chitra Devi	... 1st Respondent in CMA 348/14/ Claimant in MCOP 3/12 in CMA 348/14
B.Ramesh	...1st Respondent in CMA 349/14/ Claimant in MCOP 4/12
R.Manimala	...1st Respondent in CMA 350/14/ Claimant in MCOP 5/12
R.Malarvizhi	...1st Respondent in CMA 817/15/ Claimant in MCOP 16/12
R.Narmada @ Valarmathi	...1st Respondent in CMA 818/15/ Claimant in MCOP 23/12
Minor M.Karthick Raja	...1st Respondent in CMA 819/15/ Claimant in MCOP 25/12
2 Thomas	... 2 nd Respondent in all CMA's / 1 st Respondent in all MCOPS

Prayer: These Appeals filed under Section 173 of Motor Vehicles Act, 1988, against the Civil Miscellaneous Appeals Nos.348 to 350/2014 against the Judgment and Decree in M.C.O.P.No.3 to 5 of 2012, on the file of the Motor Accidents Claims Tribunal, Subordinate Court, Theni dated 31.01.2013 and the C.M.A..S.Nos.817 to 819/2015 against the Judgement and Decree in MCOP Nos.16,23 and 25 of 2012 on the file of the Motor Accident Claims Tribunal, Subordinate Court, Theni dated 08.10.2013.



For Appellant : Mr.J.S.Murali
in all the CMAs

For Respondents : Mr.K.Appadurai
in all CMAs : Mr.K.Appadurai
for R.1 and R.2

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COMMON JUDGMENT

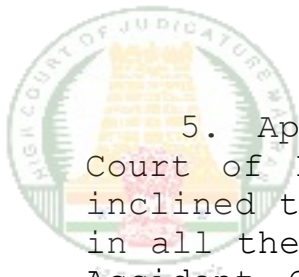
All the appeals are connected and an unfortunate accident took place on 19.06.2010 at about 09.45 hours at Bodi Mettu road. The injured claimants filed applications seeking compensation before the Motor Accidents Claims Tribunal, Theni and the Tribunal, considering the facts and circumstances of the case, granted compensation to all the injured victims.

2. The appellant/The New India Assurance Company preferred the present appeals mainly on the ground that in respect of the vehicle which met with the accident, the appellant Company issued Act only policy and the same will not cover the third persons travelling in a private Jeep.

3. The vehicle which met with the accident is a Jeep bearing registration No.KL-10-A-3962 and the vehicle was insured with the appellant only under the Act only policy. Hence, the occupants travelling in the Jeep are not covered under the policy and consequently, the appellant Insurance Company is not liable to pay any compensation. The Tribunal has committed an error in not appreciating the nature of the policy issued by the appellant Insurance Company and erroneously fixed the liability on the appellant Insurance Company by granting the award.

4. In support of his contention, the learned Counsel for the appellant Insurance Company relied upon a judgment of the Honourable Supreme Court in **United India Insurance Co. Ltd., Shimla Vs. Tilak Singh & Others** reported in **AIR 2006 SUPREME COURT 1576** and it is relevant to extract paragraph No.21 of the above judgment which is as follows:

"21. In our view, although the observations made in **Asha Rani's case** were in connection with carrying passengers in a goods vehicle, the same would apply with equal force to gratuitous passengers in any other vehicle also. Thus, we must uphold the contention of the appellant-Insurance Company that it owed no liability towards the injuries suffered by the deceased Rajinder Singh who was a pillion rider, as the Insurance Policy was a statutory policy, and hence, it did not cover the risk of death of or bodily injury to gratuitous passengers."



5. Applying the principles laid by the Honourable Supreme Court of India in the matter of Act only Policy, this Court is inclined to consider the grounds of appeal raised by the appellant in all these appeals. Accordingly, the awards passed by the Motor Accident Claims Tribunal, Theni in M.C.O.P.Nos.3 to 5 of 2012, dated 31.01.2013 and M.C.O.P.Nos.16, 23 and 25 of 2012, dated 08.10.2013 are hereby set aside and all the Civil Miscellaneous Appeals are allowed. There shall be no order as to costs. Consequently, all the connected Miscellaneous Petitions are closed.

6. The learned Counsel for the appellant - Insurance Company represented that they have deposited the award amount in all M.C.O.Ps.

7. Accordingly, the Insurance Company is permitted to withdraw the entire award amount with accrued interest and costs deposited by them in all M.C.O.Ps through RTGS by filing necessary application before the Tribunal concerned. In view of the fact that the appellant Insurance company is exonerated from the liability, the respondents/claimants are permitted to initiate action under law against the owner of the vehicle for recovery of entire compensation.

Sd/-

Assistant Registrar(CO)

/True Copy/

Sub Assistant Registrar

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To

1 The Motor Accidents Claims Tribunal,
(Subordinate Court, Theni.

2 The Motor Accidents Claims Tribunal,
(Chief Judicial Magistrate), Theni.

+6cc to Mr.J.S.MURALI Advocate Sr.No. 73045 TO 73050

+2cc to Mr.K.APPADURAI Advocate Sr.No. 72485,72486

JAM/10.01.2017/ 3P-11C

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