



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.12.2017

CORAM :

WEB COPY

**THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN**

CMA (MD) Nos.152 & 153 of 2016  
and  
CMP (MD) Nos.2455 & 2456 of 2016

**CMA (MD) No.152 of 2016 :**

M.S.V.Gugulavani

... Appellant in both CMAs  
/1<sup>st</sup> Respondent**Vs.**

1. Nagomi
2. Minor Retna
3. Minor Sudhakar
4. Varampettu

... Respondents 1 to 4 /  
Petitioners 1 to 4

5. The Branch Manager  
Bajaj Alliance General  
Insurance Co., Ltd,  
No.11, Mepsons Marketers Buildings,  
Bye pass road, Vannarapettai,  
Tirunelveli.

... 5<sup>th</sup> Respondent/  
2<sup>nd</sup> Respondent in  
CMA (MD) No.152 of 2016(Minors rep., through their  
mother and next friend, 1<sup>st</sup> respondent)**CMA (MD) No.153 of 2016 :**

1. Uchimahali
2. Madasamy
3. Samidurai
4. Mahalakshmi
5. Shanmugathai
6. Manikandan
7. Minor Subbiah
8. Minor Kavitha @ Kamala  
(Minor respondents rep.  
through their mother Vellaiyammal)

9. Madasamy Thevar
10. Chellammal

... Respondents 1 to 10 /  
Petitioners 1 to 10



11. The Branch Manager  
Bajaj Allianncce General  
Insurance Co., Ltd,  
No.11, Mepsons Marketers Buildings,  
Bye pass road, Vannarapettai,  
Tirunelveli.

... 11<sup>th</sup> Respondent/2<sup>nd</sup> Respondent

**Common Prayer:** Civil Miscellaneous Appeals are filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 31.10.2012 made in MCOP.Nos.120 & 121 of 2011 on the file of the Motor Accident Claims Tribunal, Sub Court, Valliyoor.

**CMA(MD)No.152 of 2016 :**

|                 |                                                        |
|-----------------|--------------------------------------------------------|
| For Appellant   | : Mr.A.Sivasubramanian<br>for Siva Ayyappan Associates |
| For Respondents | : Mr.J.S.Murali for R5<br>R1 to R4 - No appearance     |

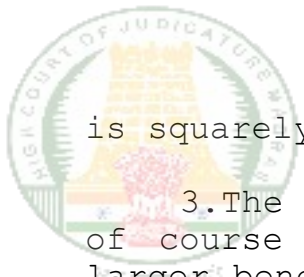
**CMA(MD)No.153 of 2016 :**

|                 |                                                        |
|-----------------|--------------------------------------------------------|
| For Appellant   | : Mr.A.Sivasubramanian<br>for Siva Ayyappan Associates |
| For Respondents | : Mr.J.S.Murali for R11<br>R1 to R10 - No appearance   |

**COMMON JUDGMENT**

The accident in question occurred on 30.03.2011 involving a indica car and a two wheeler. The deceased were traveling in the two wheeler. The legal heirs of the deceased filed MCOP.No.120 and 121 of 2011 on the file of the Motor Accident Claims Tribunal, Sub Judge, Valliyoor. A common award dated 31.10.2012 was passed. The indica car was found to be the offending vehicle. Even though the car was insured with the fifth respondent Bajaj Allianncce General Insurance Co., Ltd, the Tribunal fastened the entire liability on the vehicle owner alone. The insurer was directed to pay the award at the first instance and thereafter recover the same from the vehicle owner. Contending that the insurer alone ought to have been directed to satisfy the award and that the Tribunal erred in ordering pay and recover principle, the vehicle owner has filed these appeals.

2.The reason for ordering pay and recover principle was that the driver of the offending vehicle was not having the requisite badge endorsement. The learned counsel appearing for the appellant placed reliance on the recent decision of the Hon'ble Supreme Court reported in **(2017) 2 TNMAC 145 SC, (Mukund Dewangan vs. Oriental Insurance Company Limited)**. The Hon'ble Supreme Court held that there is no requirement of badge or a separate endorsement to drive the transport vehicle. The said decision of the three judges bench



is squarely applicable to the facts of the case on hand.

3. The learned counsel appearing for the fifth respondent would of course contend that the matter is presently pending before a larger bench. The fact remains as on date the legal position is in favour of the vehicle owner.

4. I therefore modify the award dated 31.10.2012 on the file of Motor Accident Claims Tribunal, Sub Court, Valliyoor and hold that the Bajaj Alliance General Insurance Company Ltd alone should be directed to satisfy the award in question. The question of recovering the paid amount from the vehicle owner cannot arise in this case as the vehicle is an insured one.

5. The Bajaj Alliance General Insurance Company Limited is directed to pay the sum of Rs.5,61,500/- in MCOP.No.120 of 2011 and the sum of Rs.5,79,500/- in MCOP.No.121 of 2011, with interest at the rate of 7.5% per annum from the date of petition till the date of realization and costs, within a period of eight weeks from the date of receipt of a copy of this order. On such deposit, the major claimants in both MCOPs are permitted to withdraw their share as apportioned by the Tribunal, by filing proper application. The share of the minor claimants in both MCOPs shall be deposited in any one of the nationalized bank and their natural guardians are permitted to withdraw the interest once in three months directly from the bank, till the minors are attain majority.

6. These appeals are allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-I)

/True Copy/

Sub Assistant Registrar

To

1. The Subordinate Judge,  
Motor Accident Claims Tribunal, Valliyoor.

2. The Record Keeper, V.R. Section,  
Madurai Bench of Madras High Court,  
Madurai. (2 Copies)

+ 1 CC TO Mr.A.SIVA SUBRAMANIAN, ADVOCATE IN SR No. 92496

+ 2 CC TO Mr.J.S.MURALI, ADVOCATE IN SR Nos. 92431 & 92432

SKM

TE/SV-MMS/SAR-1 : 06/04/2018 : 3P/7C