



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT  
DATED : 31.10.2017

CORAM :

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN  
C.M.A.(MD)Nos.859 to 863 of 2015

and

M.P.(MD).Nos.1,1,1,1 and 1 of 2015

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The New India Assurance Company  
Limited,  
through its Branch Manager,  
2<sup>nd</sup> Floor, Star Building  
Sennattumattam Junction  
Kattappanai Post,  
Idikki District  
Kerala State.

... Appellant in all appeals

Vs.

C.Pitchaimani

... 1<sup>st</sup> Respondent in  
C.M.A.859/2015

P.Petchiammal

... 1<sup>st</sup> Respondent in  
C.M.A.860/2015

K.Ramuthai

... 1<sup>st</sup> Respondent in  
C.M.A.861/2015

C.Alagammal

... 1<sup>st</sup> Respondent in  
C.M.A.862/2015

S.Rajathi

... 1<sup>st</sup> Respondent in  
C.M.A.863/2015

Manoj Antony

... 2<sup>nd</sup> Respondent in all  
appeals

Common Prayer: Appeals filed under Section 173 of M.V.Act, 1988, to set aside the judgment and decree of the Claims Tribunal in M.C.O.P.Nos.164, 170, 172, 175, 174 of 2012 dated 02.06.2015 on the file of the Motor Accident Claims Tribunal, Subordinate Court, Uthamapalayam.

In all appeals

For Appellant

For Respondents

: Mr.J.S.Murali

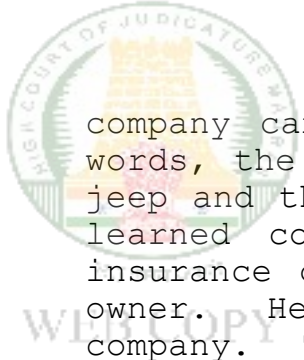
: Mr.K.Kumaravel for R1

Mr.M.Ramesh for R2

#### JUDGMENT

Heard the learned counsel on either side.

2.In all these appeals, the insurance company has been made liable. The learned counsel for the appellant would contend that the policy issued to the offending vehicle marked as Ex.R2 was only an Act policy. No premium was paid to cover the risk of passengers travelling in the said vehicle. Therefore, according to the terms and conditions of policy of insurance, the appellant insurance



company cannot be made liable to pay any compensation. In other words, the claimants were travelling only as occupants in a private jeep and therefore stand categorised as gratuitous passengers. The learned counsel for the appellant therefore submitted that the insurance company has no legal obligation to indemnify the vehicle owner. He sought complete exoneration of the appellant insurance company. The issue is no longer res-integra. The Hon'ble Supreme Court in the decision reported in 2017(1) TN MAC 289(SC) - *Manuara Khatun Vs. Rajesh Kr. Singh*, held that even when the offending vehicle has the coverage of only Act policy, still the insurance company would be liable. The insurance company must pay the award amount to the claimants and would be entitled to recover the entire paid amount from the vehicle owner by filing execution petition in this very same proceedings. Following the above said decision of the Hon'ble Supreme Court, this impugned award is modified accordingly to the effect that the appellant is directed to pay the award amount to the claimants and at liberty to recover the same from the vehicle owners in this very same proceedings by filing execution petition.

3. These civil miscellaneous Appeals are partly allowed as indicated above. The appellant is directed to deposit the entire compensation amount with interest @ 7.5% per annum from the date of petition till the date of realisation with costs, within a period of eight weeks from the date of receipt of a copy of this order, if the same has not been deposited already. On such deposit, the claimants in all the appeals are entitled to withdraw the same, less the amount already withdrawn by them, if any. Thereafter, the appellant is at liberty to recover the same from the owner of the vehicle in the very same proceedings by filing execution petition. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-II)

/True copy/

Sub Assistant Registrar

To

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

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

+5cc to Mr. J.S. MURALI, Advocate, SR.84970, 84971, 84972, 84973, 84794

+5cc to Mr. K. KUMARAVEL, Advocate, SR.85100, 85101, 85105, 85102, 85103

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