

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.07.2019

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.Nos.1125 to 1128 and 1824 to 1828 of 2007  
and M.P.Nos.3, 3, 3, 3, 3, 3, 3, 3 and 3 of 2007  
and

M.P.Nos.1, 1 and 1 of 2009 in  
C.M.A.Nos.1824, 1826 and 1827 of 2007

National Insurance Co.Ltd.  
Branch Office II  
No.92, Devarpuram Road,  
Tuticorin.

... Appellant/4<sup>th</sup> Respondent in all the  
appeals

Vs

1.Kavitha

2.Palanisamy Gounder

3.Viswammal ... Respondents 1 to 3 /Petitioners

4.Rajamanickam

5.United India Insurance Co.Ltd.  
Peria Kadai Road,  
Dharapuram, Erode.

6.Rajendran ... Respondents/4 to 6/Respondents in  
C.M.A.No.1125/2007

1.Geetha

2.Minor Guru Prasath  
(rep.by her mother as  
next friend and natural guardian,  
the first respondent).

3.T.N.Ganesan

4.Rajammal .. Respondents 1 to 4/Petitioners

5.Rajamanickam

6.United India Insurance Co.Ltd.  
Peria Kadai Road,  
Dharapuram,Erode.

7.Rajendran ... Respondents 5 to 7/Respondents in  
C.M.A.No.1126/2007

1.Rajamani

2.Shanthi

3.Sudha

4.Amulu Ammal ...Respondents 1 to 4/Petitioners

5.Rajamanickam

6.United India Insurance Co.Ltd.  
Peria Kadai Road,  
Dharapuram,Erode.

7.Rajendran ... Respondents 5 to 7/Respondents in  
C.M.A.No.1127/2007

1.S.K.Kanagaraj

2.Ramathal

3.Sasikala ...Respondents 1 to 3/Petitioners

4.Rajamanickam

5.United India Insurance Co.Ltd.  
Peria Kadai Road,  
Dharapuram,Erode.

6.R.Balu

7.Rajendran ... Respondents 4 to 7/Respondents in  
C.M.A.No.1128/2007

1.Nirmala ...1<sup>st</sup> Respondent/Petitioner

2.Rajamanickam

3.United India Insurance Co.Ltd.  
Peria Kadai Road, Dharapuram,Erode.

4.Rajendran ... Respondents 2 & 3/Responent in  
C.M.A.No.1824/2007

1.Lingammal ...1<sup>st</sup> Respondent/Petitioner

2.Rajamanickam

3.United India Insurance Co.Ltd.  
Peria Kadai Road,  
Dharapuram,Erode.

4.Rajendran ... Respondents 2 & 3/Respondents in  
C.M.A.No.1825/2007

1.Subramani

2.Subbulakshmi ...Respondents 1 & 2/Petitioners

3.Rajamanickam

4.United India Insurance Co.Ltd.  
Peria Kadai Road,  
Dharapuram,Erode.

5.Rajendran ... Respondents 3 to 5/Respondents in  
C.M.A.No.1826/2007

Chinnasamy (deceased)

1.Thulasiammal ...1<sup>st</sup> Respondents/Petitioner

2.Rajamanickam

3.United India Insurance Co.Ltd.  
Peria Kadai Road,  
Dharapuram,Erode.

4.Rajendran ... Respondents 2 to 4/Respondents in  
C.M.A.No.1827/2007

1.Easwaran ...1<sup>st</sup> Respondent/Petitioner

2.Rajamanickam

3.United India Insurance Co.Ltd.  
Peria Kadai Road,  
Dharapuram,Erode.

4.Rajendran .. Respondents 2 to 4/Respondents in  
C.M.A.No.1828/2007

C.M.A.No.1125 of 2007 filed under Section 173 of the Motor Vehicles Act against the judgment and decree dated 18.07.2006 made in MACTOP No.1002 of 2001 on the file of the Motor Accidents Claims Tribunal and Additional District Judge (Fast Track Court-V), Coimbatore at Tiruppur.

C.M.A.No.1126 of 2007 filed under Section 173 of the Motor Vehicles Act against the judgment and decree dated 18.07.2006 made in MACTOP No.1010 of 2001 on the file of the Motor Accidents Claims Tribunal and Additional District Judge (Fast Track Court-V), Coimbatore at Tiruppur.

C.M.A.No.1127 of 2007 filed under Section 173 of the Motor Vehicles Act against the judgment and decree dated 18.07.2006 made in MACTOP No.1024 of 2001 on the file of the Motor Accidents Claims Tribunal and Additional District Judge (Fast Track Court-V), Coimbatore at Tiruppur.

C.M.A.No.1128 of 2007 filed under Section 173 of the Motor Vehicles Act against the judgment and decree dated 18.07.2006 made in MACTOP No.387 of 2002 on the file of the Motor Accidents Claims Tribunal and Additional District Judge (Fast Track Court-V), Coimbatore at Tiruppur.

C.M.A.No.1824 of 2007 filed under Section 173 of the Motor Vehicles Act against the judgment and decree dated 18.07.2006 made in MACTOP No.1003 of 2001 on the file of the Motor Accidents Claims Tribunal and Additional District Judge (Fast Track Court-V), Coimbatore at Tiruppur.

C.M.A.No.1825 of 2007 filed under Section 173 of the Motor Vehicles Act against the judgment and decree dated 18.07.2006 made in MACTOP No.1019 of 2001 on the file of the Motor Accidents Claims Tribunal and Additional District Judge (Fast Track Court-V), Coimbatore at Tiruppur.

C.M.A.No.1826 of 2007 filed under Section 173 of the Motor Vehicles Act against the judgment and decree dated 18.07.2006 made in MACTOP No.1020 of 2001 on the file of the Motor Accidents Claims Tribunal and Additional District Judge (Fast Track Court-V), Coimbatore at Tiruppur.

C.M.A.No.1827 of 2007 filed under Section 173 of the Motor Vehicles Act against the judgment and decree dated 18.07.2006 made in MACTOP No.1023 of 2001 on the file of the Motor Accidents Claims Tribunal and Additional District Judge (Fast Track Court-V), Coimbatore at Tiruppur.

C.M.A.No.1828 of 2007 filed under Section 173 of the Motor Vehicles Act against the judgment and decree dated 18.07.2006 made in MACTOP No.150 of 2002 on the file of the Motor Accidents Claims Tribunal and Additional District Judge (Fast Track Court-V), Coimbatore at Tiruppur.

For Appellant : Mrs.N.B.Surekha  
in all the appeals for National Insurance Co.,

For Respondents

For all Claimants : Mr.Ma.P.Thangavel

Rajamanickam/Owner of the Vehicle  
: Mr.S.S.Swaminathan in all CMAS

United India Insurance Co.Ltd.,  
Peria Kodai Road, Dharapuram,  
Erode : Mr.N.Vijayaraghavan

Rajendran/Owner of the Vehilce : No Appearance

#### COMMON JUDGMENT

All these appeals arise out of a same accident, which took place on 21.11.2001. On that date, at about 13.00 hours, the respective deceased in MCOP Nos.1002, 1003, 1010, 1019, 1020, 1023, 1024 of 2001 and 387 of 2002 and the injured in MCOP No.150 of 2002, were travelling in the Tata Sumo Car bearing Reg.No.TN-37-L-6222 and insured with the respondent Insurance Company, in the Ottanchatram Road, Dharapuram. At that time, the lorry bearing Reg.No.TN-69-C-6909 and insured with the appellant Insurance Company, came from the opposite direction and there was a head-on collision between these two vehicles. Due to the said impact, the respective deceased in MCOP Nos.1002, 1003, 1010, 1019, 1020, 1023, 1024 of 2001 and 387 of 2002, sustained grievous injuries and died. The first respondent in C.M.A.No.1828 of 2007 sustained grievous injuries. The respective legal heirs of the deceased as well as the injured filed claim petitions before the Tribunal. The Tribunal awarded compensation in those petitions, as under:

| CMA No.   | MCOP No.  | Amount (Rs.) |
|-----------|-----------|--------------|
| 1125/2007 | 1002/2001 | 5,00,000/-   |
| 1126/2007 | 1010/2001 | 5,39,000/-   |
| 1127/2007 | 1024/2001 | 4,34,000/-   |
| 1128/2007 | 387/2002  | 4,97,000/-   |

| CMA No.   | MCOP No.  | Amount (Rs.) |
|-----------|-----------|--------------|
| 1824/2007 | 1003/2001 | 3,37,000/-   |
| 1825/2007 | 1019/2001 | 3,75,000/-   |
| 1826/2007 | 1020/2001 | 4,60,000/-   |
| 1827/2007 | 1023/2001 | 4,07,000/-   |
| 1828/2007 | 150/2002  | 7,50,000/-   |

These amounts have been awarded with interest at the rate of 7.5% per annum, from the respective dates of the claim petitions.

2.The learned counsel for the appellant Insurance Company has not disputed the quantum of compensation awarded by the Tribunal. But she submitted that the Tribunal has misdirected itself in fixing composite negligence on both the drivers of the vehicles, ie., drivers of the lorry and the Tata Sumo Car, when the fact remains that only the driver of the Tata Sumo Car drove the car in a rash and negligent manner and caused the accident. Hence, the Tribunal ought to have fixed the entire negligence on the part of the driver of the Tata Sumo Car, insured with the United India Insurance Co.Ltd., Dharapuram, Erode. She submitted that the Tribunal has misdirected itself in relying upon the evidence of P.W.9, who deposed before the Tribunal that the accident had occurred in the middle of the road and it is a head-on-collision.

3.The learned counsel for the respondent Insurance Company / insurer of Tata Sumo Car, has submitted that the Tribunal has considered the materials and evidence in a proper manner and has correctly arrived at the finding that there was head-on-collision between the two vehicles, and accordingly fixed the negligence on the part of the drivers of both Tata Sumo Car and the Lorry and hence the same does not require any interference in the hands of this Court.

4.Heard the learned counsel on either side and perused the materials available on record carefully and meticulously.

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5.It has been argued on behalf of the appellant Insurance Company before the Tribunal that as per Ex.P1 and Ex.R1-First Information Report, the accident had occurred only due to the negligence on the part of the driver of the Tata Sumo Car and Ex.R2-Rough Sketch also shows the same. Since the driver of the car died in the accident, the case filed against him has been abated as per Ex.R3-Final Report; that the Tata Sumo Car tried

to overtake a Maruti car on the right hand side rashly and negligently and dashed against the lorry. But it was put forth before the Tribunal on behalf of the respondent Insurance Company that the accident had occurred due to the negligence on the part of both the drivers. It was also submitted that the lorry driver was not examined and only the cleaner of the lorry was examined and hence the deposition made by the cleaner should not be taken as a genuine one. Considering the materials and evidence available on record, the Tribunal observed that the Investigating Officer of the appellant Insurance Company was not examined and no report has been filed by him. In this connection, the Tribunal has relied upon the evidence of P.W.9-Eswaran, who deposed that the accident had occurred due to the negligence on the part of both the drivers. Taking all these into consideration, the Tribunal fixed the negligence on the part of the drivers of both the Tata Sumo Car and the Lorry. This Court is not inclined to interfere with such a factual finding rendered by the Tribunal, on a detailed analysis of the matter. In view of the above stated circumstances, the Civil Miscellaneous Appeals are liable only to be dismissed and accordingly the same are dismissed. No costs. Consequently, the connected miscellaneous petitions are closed.

6.It is submitted that the appellant Insurance Company as well as the respondent Insurance Company have deposited 50% of their respective compensation amounts, fixed by the Tribunal. In view of the dismissal of these appeals, the appellant Insurance Company and the respondent Insurance Company are directed to deposit the award amounts with interest, as ordered by the Tribunal, after deducting the amounts if any already deposited, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposits being made, all the major claimants in these appeals are permitted to withdraw their respective shares, on making proper application before the Tribunal. The share of the second respondent minor in C.M.A.No.1126 of 2007 shall continue to be in the bank deposit as ordered by the Tribunal, till the minor attains majority. The interest accrued in respect of the minor, shall be withdrawn by the first respondent-mother once in three months directly from the bank, which shall be utilised for the benefit and welfare of the minor.

Sd/-

Assistant Registrar(CS-V)

//True copy//

Sub Assistant Registrar

KM

To

1.The Motor Accidents Claims Tribunal  
and Additional District Judge (Fast Track Court-V),  
Coimbatore at Tiruppur.

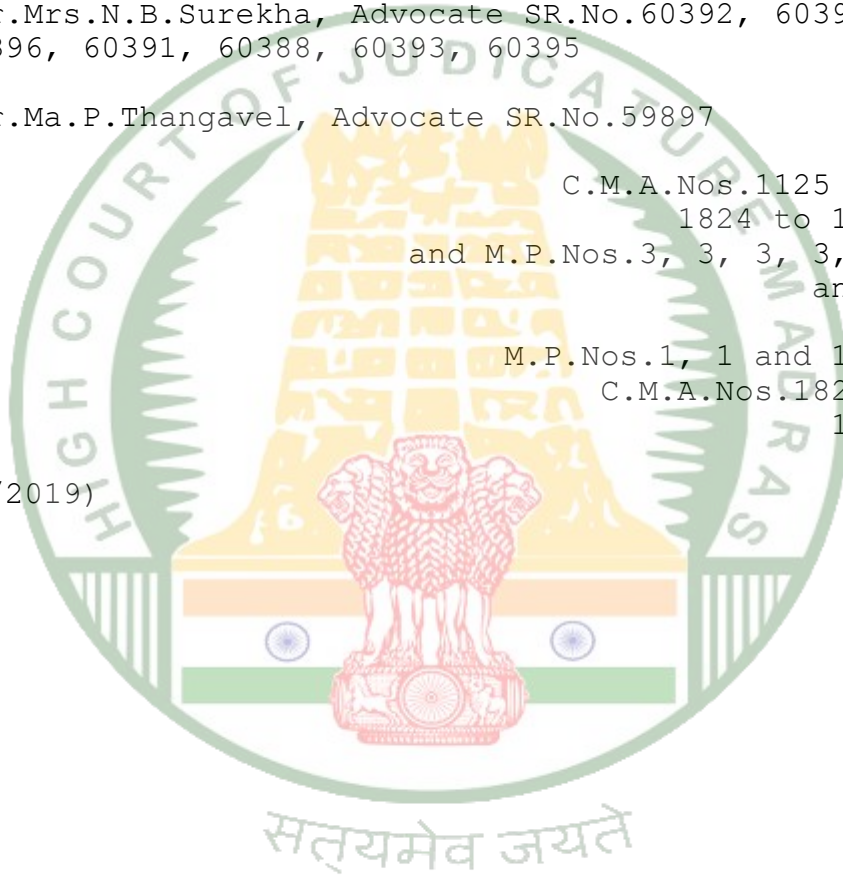
2.The Section Officer,  
VR Section, Madras High Court.

+9cc to Mr.Mrs.N.B.Surekha, Advocate SR.No.60392, 60390, 60389,  
60394, 60396, 60391, 60388, 60393, 60395

+1cc to Mr.Ma.P.Thangavel, Advocate SR.No.59897

C.M.A.Nos.1125 to 1128 and  
1824 to 1828 of 2007  
and M.P.Nos.3, 3, 3, 3, 3, 3, 3, 3  
and 3 of 2007  
and  
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C.M.A.Nos.1824, 1826 and  
1827 of 2007

CNR (CO)  
GMY (18/09/2019)



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