

IN THE HIGH COURT OF JUDICATURE AT MADRAS

[RESERVED ON : 25.02.2019]

[PRONOUNCED ON : 03.09.2019]

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

C.M.A.Nos.1692 & 1694 of 2011 [2 cases]

and

M.P.Nos.1 and 1 of 2011 [2 cases]

and

C.M.A.Nos.3569, 3570, 3571, 3572 and 3574 of 2011

C.M.A.Nos.1692 & 1694/2011:-

The Divisional Manager,
The United India Insurance Co. Ltd.,
No.46, Kadpadi Salai,
Vellore.

... Appellant in C.M.A.Nos.1692 & 1694/2011/ Respondent II

.. Vs ..

1. Chandhirababu ...1st Respondent/ Petitioner

2.Jeyachandhran
...2nd Respondent in C.M.A.1692/2011/ Respondent I

1. Sivakumar ...1st Respondent / Petitioner

2. Jeyachandhran ...2nd Respondents in
C.M.A.1694/2011/ Respondent I

C.M.A.Nos.3569, 3570, 3571, 3572 and 3574 of 2011:

Dhandapani ... Appellant in C.M.A.No.3569/2011

Thulasi ... Appellant in C.M.A.No.3570/2011

Chandra Babu ... Appellant in C.M.A.No.3571/2011

Anbalagan ... Appellant in C.M.A.No.3572/2011

Elumalai ... Appellant in C.M.A.No.3574/2011

.. Vs ..

1. Jeyachandhran ... 1st Respondent in C.M.A.Nos.3569,
3570, 3571, 3572 and 3574 of 2011

2. The Divisional Manager,
The United India Insurance Co. Ltd.,
No.46, Kadpadi Salai,
Vellore. ... 2nd Respondent in C.M.A.Nos.3569,
3570, 3571, 3572 and 3574 of 2011

Prayer in C.M.A.Nos.1692 & 1694 of 2011:

Civil Miscellaneous Appeals filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and Decree dated 25.11.2010 passed by the Motor Accident Claims Tribunal, (Chief Judicial Magistrate), Thiruvannamalai District, in M.C.O.P.Nos.55 & 57 of 2009 respectively.

C.M.A.Nos.3569, 3570, 3571, 3572 and 3574 of 2011:

Civil Miscellaneous Appeals filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and Decree dated 25.11.2010 passed by the Motor Accident Claims Tribunal, (Chief Judicial Magistrate), Thiruvannamalai District, in M.C.O.P.Nos.53, 54, 55, 56 and 58 of 2009 respectively.

For Appellant in

C.M.A.Nos.1692 & 1694/2011 &
2nd Respondent in Nos.3569,
3570, 3571, 3572 and 3574 of 2011 : Mr.J.Chandran

1st Respondent in

C.M.A.Nos.1692 & 1694/2011 &
Appellants in
Nos.3569, 3570, 3571, 3572
and 3574 of 2011 : Mr.F.Terry Chellaraja

COMMON JUDGMENT

C.M.A.Nos.1692 and 1694 of 2011 have been preferred by the Insurance Company on the point of liability and also on the point of quantum. On the other hand, the claimants have preferred C.M.A.Nos.3569, 3570, 3571, 3572 and 3574 of 2011 seeking enhancement of compensation awarded by the Tribunal.

2. All the above Civil Miscellaneous Appeals are arising out of the same accident and hence, common trial was conducted and evidence in common was taken up and common judgment was pronounced. In respect of M.C.O.P.Nos.55 and 57 of 2009 preferred by Chandhirababu and Sivakumar respectively, the Insurance Company has preferred two Civil Miscellaneous Appeals viz., C.M.A.Nos.1692 and 1694 of 2011 as stated therein.

3. The factum of the accident, manner of the accident and the rash and negligent driving on the part of the driver of

the Lorry are not in dispute and hence, the finding arrived at by the Tribunal in this regard is hereby confirmed.

4. The claimants have preferred the claim petitions in M.C.O.P.Nos.53 to 58 of 2009 before the Tribunal alleging that on 29.12.2002 at about 10.30 p.m., all the claimants were going in a Bullock Cart near Kattukoil in T.Athipakkam village on Tiruvannamalai to Tirukoilur Road and at that time, a mini Lorry bearing Registration No.TN-37-J-6730, belonging to the first respondent before the Tribunal, was driven by its driver in a rash and negligent manner without observing traffic rules and dashed against the Bullock Cart in which, the claimants were travelled. As a result of which, all the claimants were sustained injuries and they were taken to Government Hospital at Tirukoilur for treatment. Bullock cart was fully damaged and one Bullock was also died. In respect of the said accident, a case in Crime No.455 of 2002 for the offences under Sections 279, 337 and 338 was registered by the Manalurpettai police. For the injuries sustained by all the claimants, they have filed the above M.C.O.Ps., claiming compensation.

5. Before the Tribunal, on the side of the claimants, the claimants examined themselves as P.Ws.1 to 6 and one Dhandapani was examined as P.W.7 and Doctors were examined as P.Ws.8 and 9 and documents Exs.P.1 to P.32 were marked. On behalf of the second respondent before the Tribunal, one witness was examined as R.W.1 and documents Exs.R.1 to R.4 were marked.

6. Learned counsel appearing for the appellant in C.M.A Nos.1692 and 1694 of 2011/Insurance Company would contend that the insurance company has raised a specific plea in the counter statement regarding non possession of valid driving license. But, the Tribunal has erroneously held that the Insurance Company is also liable to pay compensation to the claimants. Besides, the quantum of compensation awarded by the Tribunal in respect of M.C.O.P.Nos.55 and 57 of 2009 is excessive and hence, the learned counsel prayed for allowing of the appeals in C.M.A Nos.1692 and 1694 of 2011.

7. Learned counsel appearing for the appellants in C.M.A.Nos.3569 to 3574 of 2011/claimants would contend that the compensation awarded by the Tribunal is too low and hence, prayed for enhancement of compensation by allowing of the appeals in C.M.A.Nos.3569, 3570, 3571, 3572 and 3574 of 2011.

8. The question that arises for consideration is as to whether the Insurance Company is liable to pay compensation jointly and severally.

9. The Insurance Company has filed a counter statement before the Tribunal alleging that the driver of the Mini Lorry namely, Murugan, on the fateful day, does not possess any valid and effective driving license to drive the Light Motor Vehicle [LMV] and in this regard, reliance is placed upon Ex.R.2-legal notice issued to the driver of the Mini Lorry and as well as to the owner of the Mini Lorry namely, Jeyachandran.

10. It appears that the said legal notice-Ex.R.2 was returned as unserved as could be seen from Exs.R.3 and R.4. Further, R.W.1, who is the staff of the Insurance Company, marked Ex.R.1-Investigation Report filed by the private investigator appointed by the Insurance Company. R.W.1 could depose before the Magistrate Court that the driver of the Mini Lorry has pleaded guilty and he has also paid the fine amount of Rs.1,800/-. However, to the dismay, though the factum of admission of guilt by the driver of the Mini Lorry along with case particulars and Court particulars were given, neither the copy of the judgment nor the charge sheet filed before the Tribunal was not filed. In the cross examination, the admission made by R.W.1 that it is not mentioned anywhere in Ex.R.1-investigation report regarding non possession of valid and effective driving license also assumes significance.

11. It appears that the legal notice issued under Ex.R.2 was not served upon the driver of the Mini Lorry nor on the owner of the Mini Lorry and the owner of the Mini Lorry also remained ex-parte before the Tribunal and further, the Investigation Officer, who prepared Ex.R.1, was not examined before the Tribunal and hence, the Tribunal has held that the Insurance Company has not discharged the initial burden upon its shoulders and the same is found to be correct view. In the absence of any positive evidence to discharge the initial burden upon the insurance company, on the plea regarding non possession of driving license by the driver on the date of the accident and in view of the specific admission made by R.W.1 that the driver of the vehicle has pleaded guilty and paid the fine amount before the Magistrate Court coupled with the fact that even in Ex.R.1-Investigation Report filed by the private investigator appointed by the Insurance Company, nowhere it was mentioned regarding non possession of the required license and hence, the similar finding arrived at by the Tribunal is hereby confirmed and the plea of the Insurance Company regarding the point of liability stands negatived.

12. On the point of quantum of compensation, the learned counsel for the claimants and the learned counsel for the insurance company were heard.

C.M.A.No.3569/2011 [M.C.O.P.No.53 of 2019]:

13. The injured/claimant namely, Dhandapani has preferred M.C.O.P.No.53 of 2019 alleging various averments inter alia contending that due to the accident, his Bullock Cart was

completely damaged and one Bullock had died. It appears from the records of the Tribunal that the damage of the Bullock Cart and the death of one Bullock owned by the appellant in C.M.A.No.3569 of 2011 [M.C.O.P.No.53 of 2019] have been duly proved by the documentary evidence adduced before the Tribunal under Exs.P.4 and P.5 and accordingly, taking into consideration the date of the accident i.e., on 29.12.2002, the compensation of Rs.11,000/- awarded by the Tribunal for the death of one Bullock stands enhanced to Rs.20,000/-. The Tribunal has awarded a sum of Rs.19,200/- towards repairing cost for the Bullock Cart and the same is confirmed. Further, the Tribunal has awarded a sum of Rs.15,000/- towards pain and sufferings and the said amount is also confirmed. A sum of Rs.20,000/- was awarded by the Tribunal under the head of loss of income and the same is enhanced to Rs.25,000/-. The Tribunal has awarded a consolidated sum of Rs.20,000/- towards transportation, extra nourishment, medical expenses and future medical expenses and the said amount is enhanced to Rs.28,000/-. P.W.9/Dr.Ravindran, had issued Ex.P.23/permanent disability certificate fixing the disability at 10% and accordingly, the Tribunal has awarded a sum of Rs.10,000/- towards partial permanent disability. The said amount awarded by the Tribunal towards disability is just and reasonable and hence, the same is hereby confirmed.

14. Accordingly, the award of the Tribunal stands enhanced as follows:-

Sl. No.	Head	Amount awarded by the Tribunal	Amount granted by this Court
1.	Transportation, Extra Nourishment, Medical expenses and Future medical expenses	Rs. 20,000/-	Rs. 28,000/-
2.	Repairing cost for the Bullock cart	Rs. 19,200/-	Rs. 19,200/-
3.	For the death of one Bullock	Rs. 11,000/-	Rs. 20,000/-
4.	Pain and sufferings	Rs. 15,000/-	Rs. 15,000/-
5.	Partial permanent disability	Rs. 10,000/-	Rs. 10,000/-
6.	Loss of income	Rs. 20,000/-	Rs. 25,000/-
	Total	Rs. 95,200/-	Rs. 1,17,200/-

Accordingly, C.M.A.No.3569/2011 is partly allowed enhancing the compensation from Rs.95,200/- to Rs.1,17,200/-.

CMA No.3570 of 2011 [M.C.O.P.No.54 of 2009] :

15. The injured/claimant namely, Thulasi, aged about 75 years, has preferred the above MCOP No.54 of 2009 claiming compensation for the death of her Bullock and for the damage caused to her Bullock Cart and also for permanent disability suffered by her due to the injuries sustained in the accident. The Tribunal has awarded a consolidated sum of Rs.10,000/- under the heads of transportation, extra nourishment, medical expenses and future medical expenses and the said amount is enhanced to Rs.15,000/-. As per Ex.P.9-Bullock Cart damage estimate certificate in respect of P.W.2, the Tribunal has awarded a sum of Rs.19,150/- towards repairing cost for the Bullock Cart and the same is confirmed. The Tribunal has awarded a sum of Rs.11,500 for the death of Bullock and the said amount is enhanced to Rs.20,000/-. Further, the Tribunal has awarded a sum of Rs.10,000/- towards pain and sufferings and the said amount is also confirmed. P.W.9-Doctor had issued Ex.P.24-permanent disability certificate fixing disability at 30%. However, after going through the records, the Tribunal has fixed the disability at 20% and awarded a sum of Rs.20,000/- and as the said amount is found to be reasonable, it is confirmed. A sum of Rs.10,000/- awarded by the Tribunal under the head of loss of income is just and reasonable and hence, the same is also confirmed.

16. Accordingly, the award of the Tribunal stands enhanced as follows:-

Sl. No.	Head	Amount awarded by the Tribunal	Amount granted by this Court
1.	Transportation, Extra Nourishment, Medical expenses and Future medical expenses	Rs. 10,000/-	Rs. 15,000/-
2.	Repairing cost for the Bullock cart	Rs. 19,150/-	Rs. 19,150/-
3.	For the death of Bullock	Rs. 11,500/-	Rs. 20,000/-
4.	Pain and sufferings	Rs. 10,000/-	Rs. 10,000/-
5.	Partial permanent disability	Rs. 20,000/-	Rs. 20,000/-
6.	Loss of income	Rs. 10,000/-	Rs. 10,000/-
	Total	Rs. 80,650/-	Rs. 94,150/-

Accordingly, C.M.A.No.3570/2011 is partly allowed

enhancing the compensation from Rs.80,650/- to Rs.94,150/-.

C.M.A.No.3571 of 2011 & C.M.A.No.1692 of 2011
[M.C.O.P.No.55/2009]:

17. The contention of the learned counsel appearing for the appellant in C.M.A.No.1692 of 2011/insurance company has already been negatived for the reasons recorded in the preceding paragraphs and hence, C.M.A.No.1692 of 2011 filed by the insurance company is dismissed.

18. The injured/claimant namely, Chandra Babu, who preferred M.C.O.P.No.55 of 2009, has filed C.M.A.No.3571 of 2011 alleging that due to the accident, he has sustained injuries and also lost his left eye and taken treatment in two spells and hence, the compensation awarded by the Tribunal is too low. As per Ex.P.14, he has taken treatment initially between 30.12.2002 and 02.01.2003. Thereafter, he was admitted in Government Hospital, Chennai, from 05.01.2003 to 13.01.2003 as could be seen from Ex.P.12-Discharge Summary and he was admitted as an inpatient for about 12 days. P.W.8-Dr.Somasundaram had issued disability Certificate-Ex.P.22 fixing the disability in respect of loss of vision in one eye at 50% and P.W.9-Dr.Ravindran fixed the disability sustained by the Chandra Babu at 15% and issued Ex.P.26-Permanent disability certificate. Taking into consideration the fact that the claimant/Chandra Babu is aged about 30 years and also the fact that he lost vision in one eye, the compensation of a sum of Rs.65,000/- awarded by the Tribunal under the head of partial permanent disability appears to be too low. Admittedly, he is a coolie and he lost vision in one eye and he has to depend upon others for his livelihood. The essential criteria fixed by the Hon'ble Apex Court in Rajkumar Vs. Ajaykumar & another reported in 2010 (2) TN MAC 581 SC, is being satisfied and hence, for assessment of compensation multiplier method has to be adopted. P.W.8-Doctor had fixed the permanent disability at 50% and the same is accepted. On the date of the accident, the injured/claimant was aged about 30 years. As per the decision of the Hon'ble Apex Court in Sarla Verma v. Delhi Transport Corporation reported in [2009 (2) TN MAC 1 (SC)], considering the age of the injured/claimant, multiplier of 17 has to be adopted. Since the injured/claimant was working as a coolie, he could have earned a sum of Rs.3,000/- per month and hence, the compensation that could be awarded to the claimant under the head of permanent disability is re-assessed as under:-

$$\text{Rs.3,000/-} \times 12 \times 17 \times 50/100 = \text{Rs.3,06,000/-}.$$

19. Further, the Tribunal has awarded a consolidated sum of Rs.50,000/- under the heads of transportation, extra nourishment and medical expenses and the said amount is confirmed. Tribunal has awarded a sum of Rs.25,000/- towards pain and sufferings and a sum of Rs.25,000/- towards loss of

income and the same are also confirmed. The claimant lost vision in one eye and was taking treatment as an inpatient for number of days and hence, this Court now awards a sum of Rs.6,000/- towards attender charges.

20. Accordingly, the award of the Tribunal stands enhanced as follows:-

Sl. No.	Head	Amount awarded by the Tribunal	Amount granted by this Court
1.	Transportation, Extra Nourishment and Medical expenses	Rs. 50,000/-	Rs. 50,000/-
2.	Pain and sufferings	Rs. 25,000/-	Rs. 25,000/-
3.	Partial permanent disability	Rs. 65,000/-	Rs. 3,06,000/-
4.	Loss of income	Rs. 25,000/-	Rs. 25,000/-
5.	Attender charges	Nil	Rs. 6,000/-
	Total	Rs. 1,65,000/-	Rs. 4,12,000/-

Accordingly, C.M.A.No.3571/2011 is partly allowed enhancing the compensation from Rs.1,65,000/- to Rs.4,12,000/-.

C.M.A.No.3572 of 2011 [M.C.O.P.No.56/2009]:

21. The claimant namely, Anbalagan, who preferred M.C.O.P.No.56 of 2009, has filed C.M.A.No.3572 of 2011 contending that he has taken treatment in Government Hospital, Thirukovilur as could be seen from Ex.P.20- Wound Certificate and he has underwent surgery and was inpatient for two weeks. P.W.9-Doctor, who had physically examined the claimant Anbalagan, taking note of Ex.P.28-X-ray, has come to the conclusion that the claimant has sustained fracture of left thumb which was mal united and catching power was reduced and issued Ex.P.20-Wound Certificate fixing the disability at 20%. However, based on the cross examination of the Doctor P.W.9, the Tribunal has awarded a sum of Rs.15,000/- towards partial permanent disability by fixing the disability at 15%. On re-appreciation of evidence, this Court has come to the conclusion that the disability sustained by the claimant namely Anbalagan is 20% and accordingly, awards a sum of Rs.20,000/- [Rs.1000 x 20 = Rs.20,000/-] towards partial permanent disability. Taking note of the fact that it could have taken not less than three months for restoration of his daily activities, loss of income during the period of treatment fixed by the Tribunal at Rs.10,000/- is confirmed. Tribunal has awarded a sum of Rs.10,000/- towards pain and

sufferings and a sum of Rs.20,000/- under the heads of transportation, extra nourishment and medical expenses and the said amount are confirmed. The Tribunal has not awarded any amount towards attender charges and loss of amenities and hence, this Court is of the considered view that it is just and proper to award a sum of Rs.7,000/- towards attender charges and a sum of Rs.7,000/- towards loss of amenities.

22. Accordingly, the award of the Tribunal stands enhanced as follows:-

Sl. No.	Head	Amount awarded by the Tribunal	Amount granted by this Court
1.	Transportation, Extra Nourishment and Medical expenses	Rs. 20,000/-	Rs. 20,000/-
2.	Pain and sufferings	Rs. 10,000/-	Rs. 10,000/-
3.	Partial permanent disability	Rs. 15,000/-	Rs. 20,000/-
4.	Loss of income	Rs. 10,000/-	Rs. 10,000/-
5.	Attender charges	Nil	Rs. 7,000/-
6.	Loss of Amenities	Nil	Rs. 7,000/-
	Total	Rs. 55,000/-	Rs. 74,000/-

Accordingly, C.M.A.No.3572/2011 is partly allowed enhancing the compensation from Rs.55,000/- to Rs.74,000/-.

C.M.A.No.1694 of 2011 [M.C.O.P.No.57/2009]:

23. The contention of the learned counsel appearing for the appellant in C.M.A.No.1694 of 2011/insurance company has already been negated for the reasons recorded in the preceding paragraphs and hence, C.M.A.No.1694 of 2011 filed by the insurance company is dismissed.

C.M.A.No.3574 of 2011 [M.C.O.P.No.58/2009]:

24. The claim petitioner namely, Elumalai, said to have suffered fracture on the right elbow and the same was mal united so is the evidence of the claimant in the witness box. The claimant/Elumalai, who was examined as P.W.5, had deposed that in the accidental injury that took place on 29.12.2002, he had sustained fracture on the right elbow and the same was mal united. P.W.9 Doctor had issued Ex.P.18-Wound Certificate by fixing the disability at 35%. The Doctor had clearly deposed that due to the fracture on the right leg, the same

was mal united and restrictions in the movement of the leg is 20 to 120 degree and he has to limb and go and accordingly, fixed the disability at 35%. However, based on the cross examination of the Doctor P.W.9, the Tribunal has awarded a sum of Rs.20,000/- towards partial permanent disability by fixing the disability at 20%. On re-appreciation of evidence, this Court has come to the conclusion that the disability sustained by the appellant/claimant is 35% and accordingly, awards a sum of Rs.35,000/- [Rs.1000 x 35 = Rs.35,000/-] towards partial permanent disability. The Tribunal has awarded a sum of Rs.10,000/- towards loss of income and the same is confirmed. Tribunal has awarded a sum of Rs.10,000/- towards pain and sufferings and a sum of Rs.20,000/- under the heads of transportation, extra nourishment and medical expenses and the said amount are confirmed. The Tribunal has not awarded any amount towards attender charges and loss of amenities and hence, this Court is of the considered view that it is just and proper to award a sum of Rs.7,000/- towards attender charges and a sum of Rs.7,000/- towards loss of amenities. Further, this Court awards a sum of Rs.500/- towards damage to clothing.

25. Accordingly, the award of the Tribunal stands enhanced as follows:-

Sl. No.	Head	Amount awarded by the Tribunal	Amount granted by this Court
1.	Transportation, Extra Nourishment and Medical expenses	Rs. 20,000/-	Rs. 20,000/-
2.	Pain and sufferings	Rs. 10,000/-	Rs. 10,000/-
3.	Partial permanent disability	Rs. 20,000/-	Rs. 35,000/-
4.	Loss of income	Rs. 10,000/-	Rs. 10,000/-
5.	Attender charges	Nil	Rs. 7,000/-
6.	Loss of Amenities	Nil	Rs. 7,000/-
7.	Damage to clothing	Nil	Rs. 500/-
	Total	Rs. 60,000/-	Rs. 89,500/-

Accordingly, C.M.A.No.3574/2011 is partly allowed enhancing the compensation from Rs.60,000/- to Rs.89,500/-.

26. In the result,

I. C.M.A.Nos.1692 and 1694 of 2011 preferred by the insurance company are dismissed.

II.C.M.A.No.3569/2011 is partly allowed enhancing the compensation from Rs.95,200/- to Rs.1,17,200/-.

III.C.M.A.No.3570/2011 is partly allowed enhancing the compensation from Rs.80,650/- to Rs.94,150/-.

IV.C.M.A.No.3571/2011 is partly allowed enhancing the compensation from Rs.1,65,000/- to Rs.4,12,000/-.

V. C.M.A.No.3572/2011 is partly allowed enhancing the compensation from Rs.55,000/- to Rs.74,000/-.

VI.C.M.A.No.3574/2011 is partly allowed enhancing the compensation from Rs.60,000/- to Rs.89,500/-.

VII. The interest granted by the Tribunal at 7.5% stands confirmed.

VIII.The appellant in C.M.A.Nos.1692 & 1694 of 2011/Insurance Company is directed to deposit the enhanced compensation amount within a period of eight weeks from the date of receipt of a copy of this judgment, less the amount already deposited, if any.

IX.On such deposit, the appellants in C.M.A.Nos.3569, 3570, 3571, 3572 and 3574 of 2011/claimants are permitted to withdraw the enhanced award amount, less the amount already withdrawn, if any.

X. The claimants shall pay necessary Court fee, if any, on the enhanced compensation.

XI.No order as to costs.

XII.The connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(Ccc)

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Sub Assistant Registrar

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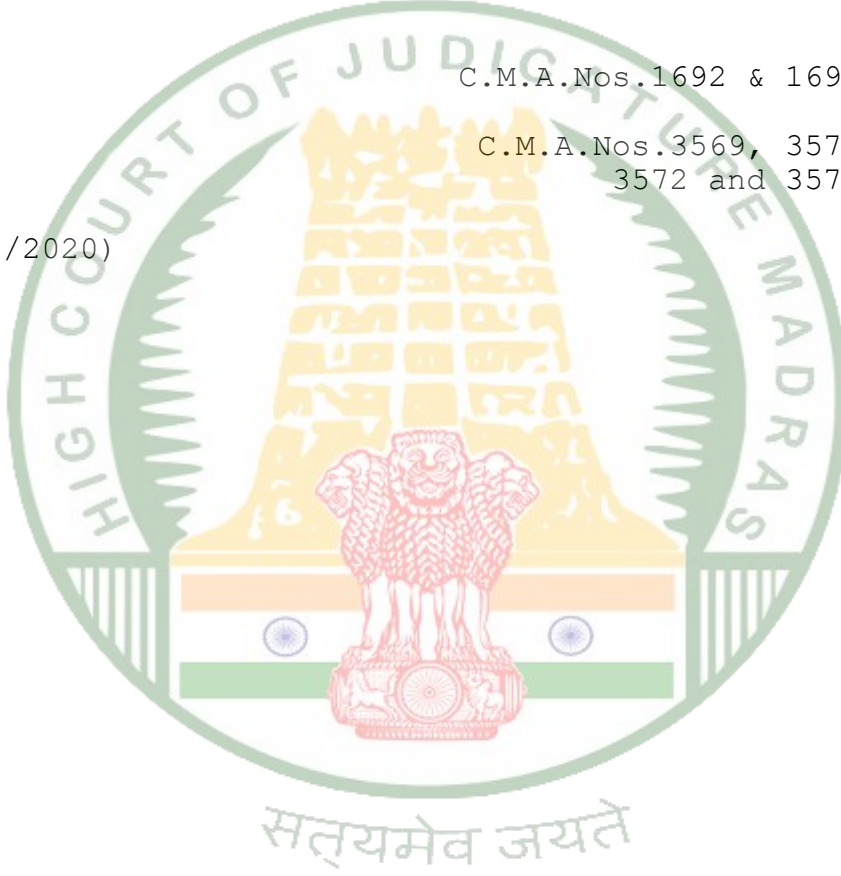
To

1. The Chief Judicial Magistrate,
Motor Accident Claims Tribunal,
Thiruvannamalai District.
2. The Section Officer,
V.R. Section, High Court,
Madras.

C.M.A.Nos.1692 & 1694 of 2011
and
C.M.A.Nos.3569, 3570, 3571,
3572 and 3574 of 2011

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