



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 07.11.2019

CORAM

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

C.M.A(MD)Nos.1010 to 1012 of 2012;
1485 & 1486 of 2011; 1396 of 2015
and 412 of 2011

C.M.A. (MD)No.1010 of 2012:

The New India Assurance Company Ltd.,
rep. by its Branch Manager,
Opp. to Stadium,
Balamore Road, Nagercoil,
Agastheeswaram Taluk,
Kanyakumari District.

... Appellant /4th Respondent

Vs.

1.Viju Prakash ...1st respondent / Petitioner

2.P.R.S.Srinivasan ...2nd respondent / 1st respondent

3.United India Insurance Company Ltd.,
rep. by its Branch Manager,
Xavier Buildings, PWD Road, Nagercoil,
Agastheeswaram Taluk,
Kanyakumari District. ...3rd respondent / 2nd respondent

4.A.Dominic Savio ...4th respondent / 3rd respondent

PRAYER:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the fair and decreetal order dated 30.03.2012 made in M.C.O.P.No.80 of 2009 on the file of the Motor Accidents Claims Tribunal, (Special Court), Nagercoil.

For Appellant	: Mr.B.Vijay Karthikeyan
For R-1	: Mr.C.Godwin
For R-3	: Mr.B.Rajesh Saravanan
For R-2 & R-4	: No Appearance



CMA (MD) No. 1011/ 2012

The New India Assurance Company Limited,
Rep by its Branch Manager,
Opp to Stadium,
Balamore Road,
Nagercoil,
Agastheeswaram Taluk,
Kanyakumari District.

Appellant / 4th respondent

- Vs. -

1. Boniphas
2. Viju Prakash
3. Shaju Prakash
4. Jessy

Respondents 1 to 4 / Petitioners

5. P.R.S. Srinivasan 5th respondent / 1st respondent

6. United India Insurance Company Limited,
Rep by its Branch Manager,
Xavier Buildings, Pwd Road,
Nagercoil, Agastheeswaram Taluk,
Kanyakumari District. 6th respondent / 2nd respondent

7. A. Dominic Savio 7th respondent / 3rd respondent

Prayer:

This Civil Miscellaneous Appeal filed under section 173 of the Motor Vehicles Act, 1988, against the award passed in M.C.O.P. No.165 of 2009, dated 30.03.2012 on the file of the Motor Accident Claims Tribunal/First Additional Subordinate Judge, Nagercoil.

For Appellant	: MR. B. Vijay Karthikeyan
For R1 to R4	: Mr. C. Godwin
For R6	: Mr. B. Rajesh Saravanan
For RR 5 & 7	: No Appearance

CMA (MD) No. 1012/ 2012

The New India Assurance Company Limited,
Rep by its Branch Manager,
Opp to Stadium,
Balamore Road,
Nagercoil,
Agastheeswaram Taluk,
Kanyakumari District.

Appellant / 4th respondent



- Vs. -

1. Predesh J.R. Thomas

1st respondent / Petitioner

2. P.R.S. Srinivasan

2nd respondent/ 1st respondent

3. United India Insurance Company Limited,
Rep by its Branch Manager,
Xavier Buildings, Pwd Road,
Nagercoil, Agastheeswaram Taluk,
Kanyakumari District.

3rd respondent / 2nd respondent

4. A. Dominic Savio

4th respondent/ 3rd respondent

Prayer:

This Civil Miscellaneous Appeal filed under section 173 of the Motor Vehicles Act, 1988, against the award passed in M.C.O.P. No.186 of 2009, dated 30.03.2012 on the file of the Motor Accident Claims Tribunal/First Additional Subordinate Judge, Nagercoil.

For Appellant	: MR. B. Vijay Karthikeyan
For R1	: Mr. C. Godwin
For R3	: Mr. B. Rajesh Saravanan
For RR 2 & 4	: No Appearance

CMA(MD)No. 1485/ 2011.

The United India Insurance Company Limited,
Through its Branch Manager,
PWD office Road,
Nagercoil, Nagercoil Village,
Kanyakumari District.

Appellant / 2nd respondent

- Vs. -

1. Minor Anni Sharin, 1st respondent / Petitioner
(Rep. by her father and Guardian Kaspar Raj)

2. P.R.S. Srinivasan

2nd respondent / 1st respondent

3. A. Dominic Savio,

3rd respondent/ 3rd respondent

4. The New India Assurance Co. Ltd.,
Thro its Branch Manager,
Opp. Anna Stadium, Nagercoil, Nagercoil Village,
Agasteeswaram Taluk,
Kanyakumari District.

4th respondent/ 4th respondent



Prayer:

This Civil Miscellaneous Appeal filed under section 173 of the Motor Vehicles Act, 1988, against the award passed in M.C.O.P. No.120 of 2006, dated 01.10.2010 on the file of the Motor Accident Claims Tribunal/Principal Subordinate Judge, Nagercoil.

For Appellant : Mr. B. Rajesh Saravanan
For R1 : Mr. M. Sudhagar Nagaraj
For R4 : MR. B. Vijay Karthikeyan

CMA(MD)No. 1486/ 2011.

The United India Insurance Company Limited,
Through its Branch Manager,
PWD office Road,
Nagercoil, Nagercoil Village, Agasteeswaram Taluk,
Kanyakumari District.

Appellant / 2nd respondent

- Vs. -

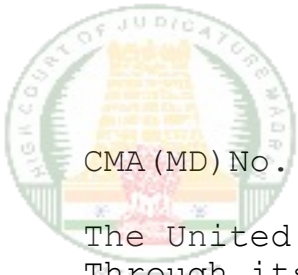
1. Minor John Benin, 1st respondent / Petitioner
(Rep. by his father and Guardian Kaspar Raj)
2. P.R.S.Srinivasan 2nd respondent / 1st respondent
3. A.Dominic Savio, 3rd respondent/ 3rd respondent
4. The New India Assurance Co. Ltd.,
Thro its Branch Manager,
Opp.Anna Stadium, Nagercoil, Nagercoil Village,
Agasteeswaram Taluk,
Kanyakumari District.

4th respondent/ 4th respondent

Prayer:

This Civil Miscellaneous Appeal filed under section 173 of the Motor Vehicles Act, 1988, against the award passed in M.C.O.P. No.121 of 2006, dated 01.10.2010 on the file of the Motor Accident Claims Tribunal/Principal Subordinate Judge, Nagercoil.

For Appellant : Mr. B. Rajesh Saravanan
For R1 : Mr. C.K.M. Appaji
For R4 : MR. B. Vijay Karthikeyan



CMA (MD) No. 1396/ 2015.

The United India Insurance Company Limited,
Through its Branch Manager,
PWD office Road,
Nagercoil, Nagercoil Village, Agasteeswaran Taluk,
Kanyakumari District.

Appellant / 2nd respondent

- Vs. -

1. Virgin Emalda @ Leema Virgin
1st respondent / Petitioner
2. P.R.S.Srinivasan
2nd respondent / 1st respondent
3. A.Dominic Savio,
3rd respondent/ 3rd respondent
4. The New India Assurance Co. Ltd.,
Thro its Branch Manager,
Opp.Anna Stadium, Nagercoil, Nagercoil Village,
Agasteeswaram Taluk,
Kanyakumari District.
4th respondent/ 4th respondent

Prayer:

This Civil Miscellaneous Appeal filed under section 173 of the Motor Vehicles Act, 1988, against the award passed in M.C.O.P. No.119 of 2006, dated 01.10.2010 on the file of the Motor Accident Claims Tribunal/Principal Subordinate Judge, Nagercoil.

For Appellant	: Mr. B. Rajesh Saravanan
For R1	: Mr. M. Sudhagar Nagaraj
For R4	: MR. B. Vijay Karthikeyan
For RR 2& 3	: No Appearance

CMA (MD) No. 412/ 2011.

The Branch Manager,
New India Assurance Company Limited,
Opp to Anna Stadium,
Nagercoil.

Appellant / 4th respondent

Vs. -

1. Virgin Emalda @ Leema Virgin ...1st respondent / Petitioner



2. P.R.S.Srinivasan

2nd respondent / 1st respondent

3. United India Insurance Company Limited,
Rep by its Branch Manager,
PWD Office Road,
Vadiveeswaram Village,
Agastheeswaram Taluk,
Kanyakumari District.

3rd respondent/ 2nd respondent

4. A. Dominic Savio

4th respondent/ 3rd respondent

Prayer:

This Civil Miscellaneous Appeal filed under section 173 of the Motor Vehicles Act, 1988, against the award passed in M.C.O.P. No.119 of 2006, dated 01.10.2010 on the file of the Motor Accident Claims Tribunal/Principal Subordinate Judge, Nagercoil.

For Appellant : MR. B. Vijay Karthikeyan

For R1 : Mr. M. Sudhakar Nagaraj

For R3 : Mr. B. Rajesh Saravanan

C O M M O N J U D G M E N T

Since all the MCOPs were arising out of one accident, in the appeals, a common Judgement is delivered.

2. These Civil Miscellaneous Appeals have been filed only challenging the liability fixed by the Courts below as 50 : 50. Now, both the Insurance Companies have preferred these appeals challenging the liabilities fixed by the Tribunal. There are two vehicles involved in the present case. One is lorry bearing registration No.TCK 3353, insured with the United India Insurance Company and another is a Mahindra Van bearing registration No.TN 74 B 0397, insured with the New India Insurance Company. The Courts below have come to the conclusion that the accident was occurred due to 'head on collusion'.

3. Now, the learned counsel for the appellant / New India Assurance Company fairly admitted that since the accident has occurred in the middle of the road, it is a case of "head on collusion" and therefore, responsibility must be on the part of both the drivers and therefore, the liability fixed by the Courts below as 50 : 50 may be confirmed.

4. On the other hand, the learned counsel for the United India Insurance Company strongly opposed the contention of the learned counsel for the New India Assurance Company that the entire negligence is on the part of the driver of the van and hence, the



entire liability has to be fixed against the driver of the van. He produced the photographs and submitted that to avoid the accident, the driver of the lorry managed to control the lorry and therefore, it has gone to the left side of the mud road.

5. Now, the issue to be decided in these cases is whether the liability fixed by the Courts below is just and fair?

6. On the perusal of the photographs it appears that the accident had occurred due to 'head on collision'. Due to the impact of the accident, the lorry pulled the van and lifted out of the road and for the purpose of removal of the lorry it was moved from the accident place and further it appears that to clear the traffic, the van and lorry were moved aside. Even in some of the photographs, it appears that behind the lorry, some glass pieces are there. Therefore, after perusal of the photographs it appears that the accident occurred due to 'head on collision' and therefore, on these aspect the Courts below has rightly fixed the liability as 50 : 50.

7. Secondly, on perusal of evidence of P.W.1 in MCOP.No.80 of 2009, he has clearly deposed that the accident had occurred due to the rash and negligent driving of the driver of the lorry. However, on seeing the photographs, it appears that the accident occurred due to the negligence on the part of both the driver of the lorry and van due to 'head on collision'. Further, the injured P.W.1 deposed that immediately after the accident he become unconscious and therefore, the Court below has not taken into consideration his evidence and this Court also does not find any infirmity on this aspect. Further, the driver of the van also clearly admitted the fact that the accident occurred due to 'head on collision'. When that being the case, no need to fix the entire liability on the driver of the lorry alone. The Courts below after considering the evidence found that both the drivers are responsible for the accident and hence, this Court find that there is no reason to interfere with the order of the Courts below and also the fixation of liability as 50:50, which is correct.

8. In the result, these Civil Miscellaneous Appeals are dismissed, confirming the liability fixed by the Courts below as 50:50. Consequently, connected M.P. is also dismissed. No costs.

Sd/-

Assistant Registrar(CS-III)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

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<https://hcservices.ecourts.gov.in/hcservices/>



To

1.The Principal Subordinate Judge,
Motor Accidents Claims Tribunal,
Nagercoil.

2.The Special Judge,
Motor Accidents Claims Tribunal,
Nagercoil.

3.The I Additional Subordinate Judge,
Motor Accidents Claims Tribunal, Nagercoil.

COPY TO

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Madurai Bench of Madras High Court,
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+1 CC to M/s.B.VIJAY KARTHIKEYAN, Advocate (SR-97174[F]
+1 CC to M/s.B. RAJESH SARAVANAN, Advocate (SR-97213[F]

C.M.A(MD)Nos.1010 to 1012 of 2012;
1485 & 1486 of 2011; 1396 of 2015
and 412 of 2011
07.11.2019

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