BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **18.09.2019**

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

CRP.(MD)Nos.680 to 683 of 2009

and

M.P.(MD)Nos.1 and 1 of 2009

C.R.P(MD)No.680 of 2009:

S.Saravanan ...Petitioner /Petitioner / 1st Respondent

Vs.

1.V.Manthaiveeran (Died) ...1st Respondent/Respondent/ Petitioner

2.M/s.United India Insurance Company Limited,
Divisional Office,
6-A, West Velli Street,
Madurai-1,
Represented through its Divisional Manager
... 2nd Respondent/2nd Respondent/ Respondent

3.M/s.Ashok Leyland Finance Limited,
M/s. Indus India Bank,
Madurai,
Represented by its Branch Manager,
30 G.P.Building, First Floor, Kamaal 2nd Street,
Chinna Chokkikulam,
Madurai-2. ... 3rd Respondent/Proposed Party/NILL

4.Panchavarnam

5.Vellaichamy
6.Ravi
7.Kannan
8.Nehru ... Respondent Nos. 4 to 8

(Respondent Nos.4 to 8 are brought on record as legal representatives of the deceased first respondent vide order of this Court dated 14.09.2010 made in M.P.(MD).Nos. 2 and 3 of 2010 in Crp.(MD).Nos.680 of 2009)...Respondents 4 to 8

PRAYER : This Petition filed under Article 227 of the Constitution of India to set aside the order of the Tribunal in I.A.S.R.No.1437 of 2008 in M.C.O.P.No.2841 of 2004 dated 23.04.2008, on the file of the learned Motor Accident Claims Tribunal cum Principal District Judge, Madurai and allow the Revision with costs.

For Petitioner	:	Mr.V.Balaji
For R-1	:	No Appearance
For R-2	:	Mr.A.S.Mathialagan
For R-3	:	No Appearance
For R-4 to R-8	:	No Appearance

C.R.P(MD)No.681 of 2009:

S.Saravanan ...Petitioner/1st Respondent/ Respondent

Vs.

1.M.Kannan ... 1st Respondent/Petitioner/ Petitioner

2.K.Nagalakshmi ... 2nd Respondent/Petitioner/ Petitioner

3.M/s.United India Insurance Company Limited,
Divisional Office,
6-A, West Velli Street,
Madurai-1,
Represented by its Divisional Manager
... 3rd Respondent/2nd Respondent/ Respondent

4.M/s.Ashok Leyland Finance Limited,
M/s. Indus India Bank,
Madurai,
Represented by its Branch Manager,
30 G.P.Building, First Floor, Kamaal 2nd Street,
Chinna Chokkikulam,
Madurai-2. ...4th Respondent/Proposed Party/NILL

PRAYER : This Petition filed under Article 227 of the Constitution of India to set aside the order of the Tribunal in I.A.No.337 of 2007 in M.C.O.P.No.225 of 2005 dated 10.12.2007, on the file of the learned Motor Accident Claims Tribunal cum Principal District Judge, Madurai and allow the Revision with costs.

For Petitioner	:	Mr.V.Balaji
For R-1	:	Mr.H.Thayumanaswamy
For R-2 and R-4	:	No Appearance
For R-3	:	Mr.A.S.Mathialagan

C.R.P(MD)No.682 of 2009:

S.Saravanan ...Petitioner /1st Respondent/ 1st Respondent

Vs.

1.V.Manthaiveeran (Died) ... 1st Respondent/Petitioner/Petitioner

2.M/s.United India Insurance Company Limited,
Divisional Office,
6-A, West Velli Street,
Madurai-1,
Represented by its Divisional Manager
....2nd Respondent/2nd Respondent/Respondent

3.M/s.Ashok Leyland Finance Limited,
M/s. Indus India Bank,
Madurai,
Represented by its Branch Manager,
30 G.P.Building, First Floor, Kamaal 2nd Street,
Chinna Chokkikulam,
Madurai-2. ... 3rd Respondent/Proposed party/NILL

4.Panchavarnam
5.Vellaichamy
6.Ravi
7.Kannan
8.Nehru

(Respondent Nos.4 to 8 are brought on record as legal representatives of the deceased / first respondent vide order of this Court dated 14.09.2010 made in M.P.(MD).Nos. 2 and 3 of 2010 in Crp.(MD).Nos.682 of 2009) ...Respondents 4 to 8

PRAYER : This Petition filed under Article 227 of the Constitution of India to set aside the order of the Tribunal in I.A.No.336 of 2007 in M.C.O.P.No.2841 of 2004 dated 10.12.2007, on the file of the learned Motor Accident Claims Tribunal cum Principal District Judge, Madurai and allow the Revision with costs.

For Petitioner : Mr.V.Balaji
For R-1 & R-3 to R-8 : No Appearance
For R-2 : Mr.A.S.Mathialagan

C.R.P(MD)No.683 of 2009:

S.Saravanan ...Petitioner/Petitioner 1st Respondent

Vs.

1.M.Kannan ... 1st Respondent/1st Respondent/Respondent

2..M/s.United India Insurance Company Limited,
Divisional Office,
6-A, West Velli Street,
Madurai-1,
Represented by its Divisional Manager
....2nd Respondent/2nd Respondent/Respondent

3.M/s.Ashok Leyland Finance Limited,
M/s. Indus India Bank,
Madurai, ... 3rd Respondent/Proposed party/NILL
Represented by its Branch Manager,
30 G.P.Building, First Floor, Kamaal 2nd Street,
Chinna Chokkikulam,
Madurai-2. ...Respondents

PRAYER : This Petition filed under Article 227 of the Constitution of India to set aside the order of the Tribunal in I.A.S.R.No.1436 of 2008 in M.C.O.P.No.225 of 2005 dated 23.04.2008, on the file of the learned Motor Accident Claims Tribunal cum Principal District Judge, Madurai and allow the Revision with costs.

For Petitioner	:	Mr.V.Balaji
For R-1	:	Mr.H.Thayumanaswamy
For R-2	:	Mr.A.S.Mathialagan
For R-3	:	No Appearance

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COMMON ORDER

These Civil Revision Petitions have been filed to set aside the orders in I.A.S.R.No.1437 of 2008 in M.C.O.P.No.2841 of 2004 dated 23.04.2008, I.A.No.337 of 2007 in M.C.O.P.No.225 of 2005 dated 10.12.2007, I.A.No.336 of 2007 in M.C.O.P.No.2841 of 2004 dated 10.12.2007 and I.A.S.R.No.1436 of 2008 in M.C.O.P.No.225 of 2005 dated 23.04.2008, passed by the Motor Accident Claims Tribunal-cum-Principal District Judge, Madurai (in short 'the Tribunal'), by which the Applications filed to implead the Finance Company as party to various Claim Petitions stood dismissed.

2. It is a highly pathetic situation that the Claim Petitions have been pending for more than a decade without any disposal and at that point of view, such applications have been filed before the Tribunal for impleading the Finance Company, which were rejected by the Tribunal as not maintainable.

3. The legal representatives of the deceased, who had met with various fatal accidents, had filed claim petitions before the Tribunal, seeking compensation for the death of the deceased. On

earlier occasions, the Claimants had approached the Tribunal for impleading the Finance Company as party to the claim petitions and their plea was negatived. Thereafter, the owner of the vehicle has preferred applications before the Tribunal, seeking for the very same relief, stating that there is an agreement between him and the Finance Company and the premium amount, payable to the insurance company, in respect of the vehicles has already been paid to the Finance Company and therefore, the Finance Company can be termed as the insurer of the vehicle and that the liability should be foisted on the Finance Company.

4. The ultimate duty of the Court is to ensure payment of compensation to the claimants in right time and the question as to whether the amount is liable to be paid by the Insurance Company, who is a party to these Civil Revision Petitions or the Owner, who is the petitioner herein or the Financier sought to be impleaded, needs to be decided by the Appropriate Forum. It is pertinent to mention here that when it has been stated that there is an agreement, by which the Financier had taken the responsibility of insuring the vehicle being hypothecated with them and had also extended the loan for the purchase of those vehicles, in the considered opinion of this Court, there is no harm in impleading the Financier as party to the proceedings and hearing them, with a view to arrive at a comprehensive decision so as to give quietus to the issue on merits in the claim petitions before the Tribunal.

5. The claimants, in support of their plea that the liability for payment of compensation cannot be foisted on the Financier in lieu of Insurance Company, have referred to the decision of the Apex Court in ***HDFC Bank Limited Vs. Kumari Reshma and Others*, reported in (2015) 3 SCC 679**, wherein it has been held as follows:

> "24. On a careful analysis of the principles stated in the foregoing cases, it is found that there is a common thread that the person in possession of the vehicle under the hypothecation agreement has been treated as the owner. Needless to emphasise, if the vehicle is insured, the insurer is bound to indemnify unless there is violation of the terms of the policy under which the insurer can seek exoneration.
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> 25. In Purnya Kala Devi (supra), a three-Judge Bench has categorically held that the person in control and possession of the vehicle under an agreement of hypothecation should be construed as the owner and not alone the registered owner and thereafter the Court has adverted to the legislative intention, and ruled that the registered owner of the vehicle should not be held liable if the vehicle is not in his possession and control. There is reference to Section 146 of the Act that no person shall use

> or cause or allow any other person to use a motor vehicle in a public place without insurance as that is the mandatory statutory requirement under the 1988 Act. In the instant case, the predecessor-in-interest of the Appellant, Centurion Bank, was the registered owner along with Respondent No. 2. The Respondent No. 2 was in control and possession of the vehicle. He had taken the vehicle from the dealer without paying the full premium to the insurance company and thereby getting the vehicle insured. The High Court has erroneously opined that the financier had the responsibility to get the vehicle insured, if the borrower failed to insure it. The said term in the hypothecation agreement does not convey that the Appellant financier had become the owner and was in control and possession of the vehicle. It was the absolute fault of the Respondent No. 2 to take the vehicle from the dealer without full payment of the insurance. Nothing has been brought on record that this fact was known to the Appellant financier or it was done in collusion with the financier. When the intention of the legislature is quite clear to the effect, a registered owner of the vehicle should not be held liable if the vehicle is not in his possession and control and there is evidence on record that the Respondent No. 2, without the insurance plied the vehicle in violation of the statutory provision contained in Section 146 of the 1988 Act, the High Court could not have mulcted the liability on the financier. The appreciation by the learned Single Judge in appeal, both in fact and law, is wholly unsustainable.
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> 26. In view of the aforesaid premises, we allow the appeals and hold that the liability to satisfy the award is that of the owner, the Respondent No. 2 herein and not that of the financier and accordingly that part of the direction in the award is set aside. However, as has been conceded to by the learned senior Counsel for the Appellant, no steps shall be taken for realisation of the amount. There shall be no order as to costs."

6. The judgment (cited supra), on which a strong reliance was placed by the Claimants, is not applicable to the facts of the present case, as, in that case, the owner of the vehicle, at the time of availing loan on the agreement of hypothecation, initially had not paid the entire insurance amount and in that context, the Apex Court held that there is no need to foist the liability on the Financier. Such is not the position in the present case, as the premium amount had duly been remitted to the Finance Company by the owner of the vehicle, on the presumption that the Finance Company will in-turn settle the amount to the insurance company. However, of late, it is not known whether the Finance Company has paid the amount to the Insurance Company or not.

7. It is to be noted that while relying on a judgment, if it is found that the factual situation totally differs, then there is no compulsion for the subordinate courts to blindly rely on the same to arrive at a conclusion, as held by the Hon'ble Supreme Court in the case of **Padmasundara Rao (Dead) & others vs. State of Tamil Nadu and others**, reported in **(2002) 3 SCC 533**, as follows:

> "Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. There is always peril in treating the words of speech or judgment as though they are words in a legislative enactment, and it is to be remembered that judicial utterances are made in the setting of the facts of a particular case, said Lord Morris in Herrington vs. British Railways Board (1972) 2 WLR 537. Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases."

8. In view of what is observed herein-above, this Court is of the view that the Financier needs to be impleaded as a party to the litigation and on such impleadment, it is for the Tribunal to decide as to who is really liable to pay the compensation to the claimants, after hearing all the parties, while deciding the quantum of compensation.

9. Accordingly, these Civil Revision Petitions are allowed and the Tribunal is directed to take up the main matters (MCOP Cases) as well as the interim applications, if any, continuously and conclude the same within a period of six months from the date of receipt of a copy of this order, without adjourning the matter beyond three working days at any point of time, as the claim is of the year 2004 and the accident is of the year 2003 and the matter is pending without any progress for the past fifteen years. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

Sub Assistant Registrar(CS)

tsg

To

1. The Accident Claims Tribunal cum
   (Principal District Judge),
   Madurai.

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

+1 CC to Mr.V.BALAJI, Advocate (SR-87839[F] dated 19/09/2019)

+1 CC to Mr.A.S.MATHIALAGAN, Advocate(SR-87473[F] dated 18/09/2019)
+1cc to Mr.H.Thayumanaswamy, Advocate Sr.No.87740

Common Order made in
CRP.(MD)Nos.680 to 683 of 2009
Dated: **18.09.2019**

VB(06.11.2019) 8P 7C