



WEB COPY

C.M.A(MD)Nos.645 of 2006, 773 of 2006, 795 to 797 of 2006

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 07.12.2020

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

C.M.A(MD)Nos.645, 773, 795 to 797 of 2006

and

C.M.P(MD)No.3639 of 2006

in

C.M.A(MD)No.645 of 2006

M/s.United India Insurance Co., Ltd.,

Divisional Office,

Jeevajothi Building,

Salai Road, Dindigul.

...Appellant/Respondent No.2 in all CMAs

Vs.

Respondents in C.M.A(MD)No.645 of 2006

1.Pappathi ...Respondent No.1/Petitioner

2.Harikrishnan ... Respondent No.2/

Respondent No.1

3.Milton ... Respondent No.3/

Respondent No.3

4.M/s.National Insurance Co., Ltd.,

Branch Office No.2,

Jerom Building I Floor,

Kottai Station Road,

Trichy.

... Respondent No.4/

Respondent No.4

5.IRDA,

Insurance Regulatory Development Authority,

Parisrame Bhavan,

Basheer, BAGH,

Hyderabad,

Telengana District.

(5<sup>th</sup> respondent suo-motu impleaded

vide order dated 23.12.2016)

6.Union of India,

Rep. by its Secretary,

Ministry of Law, Justice Company Affairs,

New Delhi.

7.Union of India,

Rep. by its Secretary,

Ministry of Road and Surface Transport,

New Delhi.



8.The State of Tamil Nadu,  
rep. by its Secretary,  
Transport Department,  
Fort St., George,  
Chennai.

9.The Director General of Police,  
Mylapore,  
Chennai.

(The respondents 6 to 9 suo motu  
impleaded vide order dated  
24.01.2017)

... Respondents

Respondents in C.M.A (MD) 773 of 2006

- |                                                                                                                                   |                                    |
|-----------------------------------------------------------------------------------------------------------------------------------|------------------------------------|
| 1.Ellammal                                                                                                                        | ...Respondent No.1/Petitioner      |
| 2.Harikrishnan                                                                                                                    | ...Respondent No.2/Respondent No.1 |
| 3.Milton                                                                                                                          | ...Respondent No.3/Respondent No.3 |
| 4.M/s.National Insurance Company Limited,<br>Branch Office No.2,<br>Jerome Building Ist Floor,<br>Kottai Station Road,<br>Trichy. |                                    |
|                                                                                                                                   | ...Respondent No.4/Respondent No.4 |
| 5.IRDA,<br>Insurance Regulatory Development Authority,<br>Parisrame Bhavan,<br>Basheer,BAGH,<br>Hyderabad, Telengana District.    |                                    |
|                                                                                                                                   | ...Respondent                      |
| (5 <sup>th</sup> Respondent suo-motu impleaded vide order dated 23.12.2016)                                                       |                                    |

Respondents in C.M.A (MD) 795 of 2006

- |                                                                                                                                   |                                    |
|-----------------------------------------------------------------------------------------------------------------------------------|------------------------------------|
| 1.Rengasamy                                                                                                                       | ...Respondent No.1/Petitioner      |
| 2.Harikrishnan                                                                                                                    | ...Respondent No.2/Respondent No.1 |
| 3.Milton                                                                                                                          | ...Respondent No.3/Respondent No.3 |
| 4.M/s.National Insurance Company Limited,<br>Branch Office No.2,<br>Jerome Building Ist Floor,<br>Kottai Station Road,<br>Trichy. |                                    |
|                                                                                                                                   | ...Respondent No.4/Respondent No.4 |



5. IRDA,  
Insurance Regulatory Development Authority,  
Parisrame Bhavan,  
Basheer, BAGH,  
Hyderabad, Telengana District. ...Respondent  
(5<sup>th</sup> Respondent suo-motu impleaded vide order dated 23.12.2016)

Respondents in C.M.A (MD) 796 of 2006

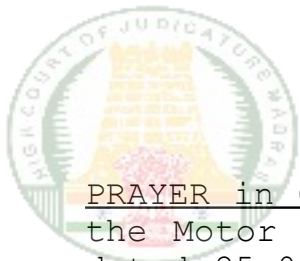
1. Perumal ...Respondent No.1/Petitioner  
2. Harikrishnan ...Respondent No.2/Respondent No.1  
3. Milton ...Respondent No.3/Respondent No.3  
  
4. M/s. National Insurance Company Limited,  
Branch Office No.2,  
Jerome Building Ist Floor,  
Kottai Station Road,  
Trichy. ...Respondent No.4/Respondent No.4

5. IRDA,  
Insurance Regulatory Development Authority,  
Parisrame Bhavan,  
Basheer, BAGH,  
Hyderabad, Telengana District. ...Respondent  
(5<sup>th</sup> Respondent suo-motu impleaded vide order dated 23.12.2016)

Respondents in C.M.A (MD) 797 of 2006

1. Poochammal ...Respondent No.1/Petitioner  
2. Harikrishnan ...Respondent No.2/Respondent No.1  
3. Milton ...Respondent No.3/Respondent No.3  
  
4. M/s. National Insurance Company Limited,  
Branch Office No.2,  
Jerome Building Ist Floor,  
Kottai Station Road,  
Trichy. ...Respondent No.4/Respondent No.4

5. IRDA,  
Insurance Regulatory Development Authority,  
Parisrame Bhavan,  
Basheer, BAGH,  
Hyderabad, Telengana District. ...Respondent  
(5<sup>th</sup> Respondent suo-motu impleaded vide order dated 23.12.2016)



PRAYER in C.M.A(MD).645 of 2006 : Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Fair and Decreetal Order dated 25.01.2005 made in M.C.O.P.No.806 of 2003 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate, Karur.

Prayer in C.M.A (MD) 773 of 2006

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, preferred against the Fair and Decreetal Order dated 31.10.2005 made in M..C.O.P.No.740 of 2003 on the file of the Motor Accidents Claims Tribunal, Chief Judicial Magistrate, Karur.

Prayer in C.M.A (MD) 795 of 2006

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, preferred against the Fair and Decreetal Order dated 31.10.2005 made in M..C.O.P.No.739 of 2003 on the file of the Motor Accidents Claims Tribunal, Chief Judicial Magistrate, Karur.

Prayer in C.M.A (MD) 796 of 2006

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, preferred against the Fair and Decreetal Order dated 31.10.2005 made in M..C.O.P.No.741 of 2003 on the file of the Motor Accidents Claims Tribunal, Chief Judicial Magistrate, Karur.

Prayer in C.M.A (MD) 797 of 2006

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, preferred against the Fair and Decreetal Order dated 31.10.2005 made in M..C.O.P.No.753 of 2003 on the file of the Motor Accidents Claims Tribunal, Chief Judicial Magistrate, Karur.

For Appellant in all C.M.As : Mr.J.S.Murali

For 1<sup>st</sup> Respondent  
in C.M.A (MD) 645 of 2006 : Mr.M.P.Senthil

For 1<sup>st</sup> Respondent  
in C.M.A (MD) 773,  
795,796 and 797 of 2006 : Mr.S.Gokulraj

For 2<sup>nd</sup> and 5<sup>th</sup> Respondents  
in all C.M.As : No Appearance

For 3<sup>rd</sup> and 4<sup>th</sup> Respondents  
in all C.M.As : Mr.A.K.Baskarapandian

\* \* \* \* \*

COMMON JUDGMENT

C.M.A(MD)Nos.645, 773, 795 to 797 of 2006 and have been filed questioning the liability fixed on the appellant/Insurance Company to pay compensation to the claimants in the accident occurred involving two vehicles.



2. The case of the claimants is that on 29.10.2003, they travelled in a Jeep bearing Registration No.TN-37-J-8001 from Karur to their native place, namely, Palayam Village, Vendasandur Taluk, after attending the marriage betrothal. When the Jeep was proceeding near the Velliyanai Hospital, it is alleged that the driver of the vehicle drove it in a rash and negligent manner. In some of the claim petitions, it is stated that when the driver of the Jeep attempted to over take the vehicle, which was proceeding in the same direction, it hit against a lorry bearing Registration No.TMH-877, which was coming from the opposite direction. Some of the claimants have alleged that the driver of the lorry was also negligent and it is a case of head on Collision.

3. In C.M.A(MD)No.645 of 2006, the appellant Insurance Company took a stand that the accident happened due to the negligence of the both the drivers of the Jeep as well as the lorry. It is further stated that the claim was excessive. If there is any policy violation, the owner of the offending vehicle alone is liable to pay compensation to the claimants.

4. In the counter filed by the Insurance Company in M.C.O.P.No.740 of 2003, it is stated that the accident occurred due to the negligence of the driver of the Jeep.

5. Though all the claim petitions were pending before the Chief Judicial Magistrate, Karur, but unfortunately appropriate steps were not taken by the parties for joint trial. In M.C.O.P.No.806 of 2003, the Tribunal came to the conclusion that both the drivers are equally responsible for the accident and accordingly, they have satisfied with the award amount. Neither the owner of the lorry nor the insurer impleaded as parties in the four other claim petitions and joint trial was conducted and the Tribunal held that the driver of the Jeep alone was responsible for the accident. In paragraph-13 of the judgment in M.C.O.P.Nos.739,740, 741 & 753 of 2003, the Tribunal has found that the police has registered a case against the driver of the Jeep and the charge-sheet has also been filed and pleading his guilty, he paid the fine amount. The judgment of the Criminal Court was also marked as Ex.P105. So, on that basis, the Tribunal fixed the entire liability on the driver of the Jeep.

6. Mr.J.S.Murali, learned counsel appearing for the Insurance Company argued that in M.C.O.P.No.806 of 2003, a judgment was rendered on 26.01.2005 fixing the liability equally on the driver of both the vehicles, but it was not taken into account in the subsequent judgment passed by the Tribunal on 31.10.2005.

7. A perusal of the records would reveal that the judgment in M.C.O.P.No.806 of 2003 was not brought to the notice of the trial Court, when the other cases were taken up for trial. In the batch of cases, after analysing the evidences, the Tribunal held that the



driver of the Jeep alone was responsible for the accident. Therefore, the finding of the Tribunal is correct.

8. It is the next contention of Mr.J.S.Murali, learned counsel appearing for the Insurance Company that the Jeep is a private passenger vehicle and the owner has taken only Act policy. When the claimants have also specifically pleaded that they were passengers in the Jeep, the Insurance Company cannot be held liable to pay compensation.

9. Per contra, the learned counsel appearing on behalf of the claimants would argue that in the counter affidavit, the Insurance Company has stated that both the drivers are responsible for the accident and both the Insurance Company and the owner of the lorry are liable to pay compensation and hence, they cannot be permitted to contend that the appellant is not liable to pay compensation to the claimants.

10. This Court is not accepting the arguments of the learned counsel for the claimants for the reason that the Hon'ble Apex Court and this Court held that when the vehicle is a passenger vehicle and it covers only Act policy, the Insurance Company cannot be made liable to pay the amount and even the principle of pay and recovery cannot be ordered in those cases.

11. It is the contention of Mr.A.K.Baskarapandian, learned counsel appearing for the respondents 3 & 4 in M.C.O.P.No.645 of 2006 that except in one C.M.A., in all other cases, there is a finding that the driver of the Jeep alone was responsible and is also justifiable and the judgment in batch cases would apply to the case in M.C.O.P.No.806 of 2003.

12. In M.C.O.P.No.806 of 2003 the Tribunal held that both the drivers are responsible for the accident and accordingly, apportioned the award amount. Since the fourth respondent/National Insurance Company has not prepared any appeal challenging the apportionment of the findings of the Tribunal in M.C.O.P.No.645 of 2006, the liability fixed against R4 is confirmed. The balance amount can be returned to the appellant Insurance Company.

13. Liability of the Insurance company is exonerated and the claimants are permitted to recover the amount from the owner of the Jeep.

14. In the result, the award and decree of the Motor Accident Claims Tribunal/Chief Judicial Magistrate, Karur made in M.C.O.P.Nos.740, 739, 741 and 753 of 2003, dated 31.10.2005 and M.C.O.P.No.806 of 2003, dated 25.01.2005 in respect of the appellant/Insurance Company are modified and the appellant/Insurance Company is exonerated from their liability and they are entitled to withdraw the award amount deposited by them, if any. The claimants



are permitted to recover the award amount from the owner of the Jeep.

15. In the result, C.M.A(MD)Nos.645,773, 795, 796 and 797 of 2006 are disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-I)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

To

1.The Motor Accident Claims Tribunal,  
Chief Judicial Magistrate,  
Karur.

2.The Record Keeper,  
V.R.Section,  
Madurai Bench of Madras High Court,  
Madurai(2 COPIES)

+1 CC to Mr.M.P.SENTHIL, Advocate SR.No. 24519

+1 CC to Mr.R.VIJAYA KUMAR, Advocate SR.No.24474

+1 CC to Mr.A.K.BASKARA PANDIAN, Advocate SR.No. 24475

C.M.A(MD)Nos.645, 773, 795 to 797 of 2006  
07.12.2020

ES(CO)

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