



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.03.2022

CORAM:

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

CMA No. 3291 of 2017

And

C.M.P.No. 20764 of 2017

United India Insurance Co. Limited.,
1170, Muthiah Complex
Mettur Road, Erode -11

... Appellant

Vs

1. Kalamani

... I Respondent

2. Minor Divya

... II Respondent

3. Minor. Naveenkumar
(Minors Rep by their Next Friend and
Guardian Mother Kalamani)

... III Respondent

4. Kannammal

... IV Respondent

5. M.Ramesh

... V Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the M.V. Act, 1988 against the Judgment and Decree dated 05.01.2017 made in M.C.O.P.No. 188 of 2014 on the file of the MACT (Sub-Court) at Perundurai.

For Appellant : M/s. I. Malar

For RR 1 to 4 : Mr. T.Sai Krishnan

J U D G M E N T

The second respondent in M.C.O.P.No. 188 of 2014, which had been disposed of on 05.01.2017 by the Motor Accident Claims Tribunal/Sub Court, Perundurai, is the appellant herein, aggrieved by the Judgment directing compensation for death due to accident caused to be borne by the appellant herein/Insurance Company.



2. The husband of the first claimant / father of the second and third claimants / son of the fourth claimant, one Duraisamy was standing on the Southern side of the Perundurai to Bhavani Road at Perundurai Mahalakshmi Theatre Bus Stop along with his father Perumal on 12.02.2014 at around 8.30 p.m. At that time, the first respondent in the original petition/M.Ramesh had come riding a Honda Shine motor cycle bearing Registration No. TN -56 B-4509 in a rash and negligent manner and in high speed and had dashed against the aforementioned Duraisamy, who suffered serious head injuries and died on the spot itself. He was aged about 40 years and was doing agricultural work. Seeking compensation for the death of the said Duraisamy, the Claim Petition had been filed by his legal heirs / widow, children and mother.

3. The second respondent was stated to be the insurer of the aforementioned motorcycle. They contested the claim petition and in the counter, they had very specifically stated that the vehicle was not insured with them. They further stated that at the time of the accident, there was no policy in force. The policy relied on by the claimants was for the period from 15.02.2014 to 14.02.2015. The accident had occurred on 12.02.2014. Since there was no policy which covered or put the insurer in liability for any accident involving the vehicle, they abjured liability and contested the claim mulcted on them.

4. The trial on the issue was taken up by the Motor Accident Claims Tribunal at Perundurai and Judgment was delivered on 05.01.2017.

5. During the course of trial, on the side of the claimants, PW-1, PW-2 and PW-3 were examined. PW-1 was the first claimant / widow of the deceased Duraisamy, PW-2 was infact the agent who issued the policy for the vehicle and he deposed on summons being issued to him. On the side of the respondents, one witness RW-1 was examined. The copy of the policy was marked as Ex.P-1. The respondents marked a copy of an advocate notice dated 17.12.2015 and the acknowledgment card for the same.

6. In the course of the Judgment, the first issue which was framed was to fix the negligence for the accident and the second issue was to determine the compensation payable and the third issue was with respect to who should pay the compensation and the fourth issue was with respect to any other rights which could be granted to the claimants.



7. With respect to the first issue, the Tribunal had come to a conclusion that it was the rash and negligent manner, in which, the offending motor vehicle bearing Registration No. TN-56 B-4509 was driven, was responsible for the accident as it had been found as a fact that the deceased was standing near bus stop and the motor vehicle came, driven in a rash and negligent manner and dashed against him, causing serious injuries and he succumbed to such injuries and died on the spot itself.

8. After that, the Tribunal proceeded to determine the compensation which could be granted. Duraisamy, was aged 40 years at the time of his unfortunate death and was working as a coolie and was said to be earning a sum of Rs.15,000/- per month. The Tribunal however determined that the notional monthly income can be determined at Rs.6,000/- and thereafter, deducted 1/4th from that amount and took into account a net monthly income of Rs.4,500/- and adopted a multiplier of '15' and arrived at a sum of Rs.8,10,000/- as loss of income. Thereafter further heads of compensation were granted including towards funeral expenses, towards loss of consortium and towards loss of love and affection. A total compensation of Rs.9,81,000/- was arrived at. The present appeal has not been preferred with respect to such compensation and therefore, since there is no denial or dispute with such compensation arrived at, I would confirm the said amount.

9. The third issue framed was to who is to pay the compensation.

10. The claim petition in M.C.O.P.No. 188 of 2014 had been filed under Section 166 of the Motor Vehicles Act, 1988. In a petition filed taking advantage of the aforesaid provision, the claimants have to prove not only negligence but also it places a duty on the Tribunal to determine the compensation which has to be paid for the accident, if negligence is established, and by whom, the compensation is to be paid and what is the compensation is to be paid.

11. The powers of the Tribunal have been given in the substantial provisions under Sections 168 and 169 of the Motor Vehicles Act, 1988. It had been stated that the procedure to be adopted would summary trial procedure and that while recording evidence, the Tribunal is vested with the powers of a Civil Court and can issue summons for appearance of witnesses.

12. It is under authority of such provision, was the insurance agent, PW-2 summoned. He produced a copy of the



insurance policy, which had been marked as Ex.P-9. This policy is the bone of contention between the learned counsel for the appellant and the learned counsel for the respondents.

13. The appellant disputes liability to pay the compensation amount and places reliance on the said Ex.P-9.

14. The learned counsel for the respondent urges the Court to confirm the order of the trial Court whereby the appellant herein was directed to pay the compensation again placing reliance on the very same document Ex.P-9.

15. A further examination of the facts would reveal that the accident complained of, took place on 12.02.2014 at 8.30 p.m. It is stated that on 12.02.2014, the premium towards the policy had been paid to PW-2 the insurance agent, who stated that the normal working hours are between 10.00 a.m., and 5.00 p.m. Let us take that statement as a fact to be considered and that the amount towards the premium had been paid during the normal working hours on 12.02.2014. This would indicate that the premium was paid a few hours earlier to the accident which occurred at around 8.30 p.m., on the very same day.

16. The effect of payment of premium is an offer made by the owner of a vehicle seeking upon the Insurance Company to insure the vehicle so that the owner may be indemnified for any loss which the vehicle suffers or for any claim made against the vehicle owing to an accident. It remains an offer till its accepted by the Insurance Company.

17. The acceptance is done into two ways. Under Section 145(1)(b) of the Motor Vehicles Act 1988, the Insurance Company can issue what is called a cover note. This is issued for new vehicles since prior to registration taking up an insurance policy is a prerequisite and precondition for registration of the vehicle. Therefore, a cover note is immediately issued as the vehicle is physically available and seen.

18. In the case of a vehicle which is already on the road, before a policy is issued and before the premium is accepted by the Insurance Company, there is also a procedure where the Insurance Company will have to verify whether the vehicle is actually available or not. Only thereafter is the premium accepted. The significance of such acceptance is the issuance of a certificate of insurance. That is the first document which indicates that the premium has been accepted and a binding contract had been entered into between the insured and



the insurer with respect to the vehicle under question. Till that time, the premium paid does not bring about a contract between the two parties. Thereafter, the insurance policy is issued which gives the terms and conditions under which the insurer would be held liable, if at all a claim is made either for damages to the vehicle or a claim is made for an accident which occurred owing to the driving of the vehicle.

19. The persons, who are covered under the policy would be reflected in the policy itself. It is also to be noted that the insurance contract is a contract of utmost good faith and there must be truthful disclosure by the insured and the insurers liability is restricted to the terms and conditions of the policy.

20. These are all factors which are inbuilt in any contract of insurance. Such a contract of insurance has to be interpreted in stricto sensu and there cannot be any implied interpretation applied to a contract of insurance.

21. A perusal the insurance policy, of Ex.P-9 shows that the receipt for the premium was dated 12.02.2014 and that it was paid by cash and that the first respondent M.Ramesh had paid the premium. The time of payment is not given there. As stated, the time could be presumed as during the normal work hours between 10 a.m., and 5 p.m. PW-2 the insurance agent stated during his chief examination that mere receipt of a premium does not result in a contract of insurance at all. Such categorical statement in the chief examination necessitated a suggestion to be put to him in chief examination that he was speaking at the behest of the respondents.

22. In the insurance policy, Ex.P-9, it had also been mentioned that the policy that the insurance starts on 15.02.2014 at 00:00 hours which is 12.00 in the night and expires on 14.02.2015 in the midnight. This is the period which is covered under this particular policy, namely, policy No. 1706003113P107511778 in the name of the insured is M.Ramesh and the Registration number of the vehicle which had been insured TN-56 B-4509 and also other details, namely, the vehicle make, the chasis number, the engine number, the year of manufacture and such other details had been given.

23. It is also seen that the issuing agent's name had been given and it had also been stated that it was issued on 13.02.2014 at 6.31.21 p.m., in the evening. The policy is also dated 13.02.2014.



24. The learned counsel for the first respondent/claimants relied on the Judgment of the Hon'ble Supreme Court in 2013 SCC Online SC 592 [National Insurance Co., Ltd., Vs. Balkar Ram and Ors...]. That was an appeal filed by the Insurance Company that was a case where a cheque had been issued towards the premium pursuant to a cover note which had been issued on 17.04.2000. The cheque was also issued simultaneously. The Hon'ble Supreme Court had stated as follows with respect to that particular transaction:-

"The Appellant/Insurance Company assailed the award passed by the Tribunal essentially on the ground that the cover note for the policy of insurance was issued on 7.04.2000 for which a cheque was submitted by the owner."

25. It is thus seen that a cover note had been issued by the Insurance Company. A cover note comes under Section 145 (1) (b) of the Motor Vehicles Act, 1988. Thereafter, that particular cheque was dishonoured on 17.04.2000. The accident took place on 19.04.2000. It had been observed by the Hon'ble Supreme Court that the intimation regarding the dishonoured of the cheque had been given by the Insurance Company only on 26.04.2000. Therefore, the Hon'ble Supreme Court held that since the policy holder had issued another cheque substituting the cheque which had earlier been dishonoured, the Insurance Company was liable to pay the compensation.

26. The learned counsel for the first respondent also relied on (2008) 9 SCC 133 [National Insurance Company Ltd., Vs. Abhaysing Pratapsing Waghela and Others]. In that case, the provisions under Section 145(1)(b) of the Motor Vehicles Act 1988 and Section 147 of the Motor Vehicles Act 1988 were examined with respect to the liability of the insurer under a contract of insurance. Even in that case, a cheque had been issued towards payment of premium. The cheque was dishonoured. However, a cover note had been issued prior to the date of the accident that is on the date when the cheque was tendered to the insurer. The Hon'ble Supreme Court held that if a cover note had been issued which is issued under a specific provision under the Act, namely, Section 145(1)(b), then it remains validated till it was cancelled. An accident which took place after the cover note had been issued would make the Insurance Company liable to indemnify the owner for damages caused or for compensation directed to be paid owing to an accident. The



facts in the instant case are different. Significantly, on payment of premium, a cover note was not issued.

27. The learned counsel for the appellant / Insurance Company placed reliance on a Division Bench Judgment of this Court in 2017(1)TNMAC 168 (DB), [The Branch Manager, National Insurance Co.Ltd., Vs. Vijayalakshmi and Ors.]. The Division Bench examined in detail the issues relating to the commencement of the coverage and the effective date on which the Insurance, would begin to cover and also examined whether the date of payment of premium or the date mentioned in the insurance, would bring about a contract of insurance. It was observed that the contract of insurance being a special contract, coverage would commence from time and date mentioned in the policy of insurance.

28. In that particular case, the premium was paid and receipt / cover note was issued 2.51 p.m., on 27.10.2011, the accident had taken place at 5.00 p.m. The insurance had come into force from midnight on 28.10.2010 till midnight on 27.10.2011. It was therefore held that since there was no insurance on 27.10.2010, the insurer was not liable to pay compensation. The Division Bench relied on a series of Judgments for this particular proposition. They had been captured in paragraph Nos. 8 to 12:-

"8. Let this Court consider the decisions relied on by the learned counsel appearing for the appellant/insurance company.

8.1. In Oriental Insurance Co. Ltd., v. Sunitha Rathi and Others [1998 ACJ 121 (SC)], the issue arose for consideration, is as to liability under the policy of insurance issued subsequent to the accident, though it was issued some time later on the same day. The facts of the case would disclose that the accident occurred at 2.20 p.m. on 10.12.1991 and at about 2.55 p.m., the insurance policy and cover note were obtained by the insured, owner of the motor vehicle involved in the accident. The Hon'ble Supreme Court of India by placing reliance upon the decision in National Insurance Co. Ltd. v. Jikubhai Nathuji Dabhi [1997 ACJ 351 (SC)] found that the insurance



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company cannot be held liable and having taken note of the fact that the compensation amount has already been paid by the insurance company, held that it need not be recovered from the claimants by the insurance company.

8.2. In New India Assurance Co. Ltd. v. Bhagwati Devi and Others [1999 ACJ 534], the facts of the case would disclose that the policy was taken at 4.00 p.m. on 17.02.1989 and accident took place at 9.00 a.m. on the same day. The Hon'ble Supreme Court has placed reliance upon the decision in National Insurance Co. Ltd. v. Jikubhai Nathuji Dabhi [1997 ACJ 351 (SC)], wherein it has been held that when there is a special contract mentioning in the policy the time when it was bought, it would be operative from that time and not fictionally from the previous midnight. Therefore, it has been held that since there is a mention of a specific time for its purchase then a special contract to the contrary comes into being and the policy would be effective from the mentioned time.

8.3. In New India Assurance Co. Ltd. v. Sita Bai and Others [2000 ACJ 40] the facts of the case would disclose that the accident took place at 10.00 a.m. on 16.04.1987 and the proposal for insuring the vehicle in question was made by the owner of the vehicle on 16.04.1987 at 21.00 hours. However, in the facts of the case, the Hon'ble Supreme Court found that the policy was taken subsequent to the said incident and therefore, exonerated the insurance company.

8.4. In National Insurance Co. Ltd. Motor Third Party Claims, Chennai-2 v. N.Ponnaiyan @ Kolappan & Others [2004 (1) TN MAC 63 (DB)], similar issue arises for



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consideration and a Division Bench of this Court by placing reliance upon the judgment in Jikubhai Nathuji Dabhi case (cited supra), factually found that the accident took place at 3.00 p.m. on 12.07.1991 and in Ex.R2/policy, it came into force with effect from 7.15 p.m. on 12.07.1991 and therefore, held that policy coverage would be operative from the time mentioned in the policy and therefore, the insurance company cannot be mulcted with liability to pay compensation.

8.5. In National Insurance Co. Ltd., Branch Office, Dharmapuri Vattam v. Geetha & Others [2004 (1) TN MAC 174 (DB)], the accident took place at 05.30 a.m. on 15.06.1998 and the terms of the Insurance Policy covers only the period from 15.06.1998, 10.00 a.m. A plea was put forward stating that since it is a renewal of policy, it should relate back to the expiry of the time of the previous policy. However, it was found that there was no material available to come to the conclusion that it is a policy for renewal and taking into consideration the earlier decisions which include Jikubhai Nathuji Dhabhi case (cited supra), it was found that unless the insurance company accepts and issues policy, person who paid premium cannot come forward with plea that insurer had obligation to pay compensation and therefore, held that insurance company is not liable to pay compensation.

8.6. In National Insurance Co. Ltd. v. Sobina Iakai and Others [2007 ACJ 2043], similar issue arises for consideration and the facts of the said case would disclose that the insurance policy was issued on 22.06.1992 at 12.45 p.m. and the policy expired on 21.06.1993 and came to be renewed 9 days thereafter and subsequently got expired and subsequently renewed 21 days thereafter. The Hon'ble Supreme Court of



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India found that at the time of accident, there was no insurance coverage and by placing reliance on Jikubhai Nathuji Dabhi case (cited supra) and Oriental Insurance Co. Ltd. v. Sunitha Rathi [1998 ACJ 121 (SC)], it has been held that once a specific time and date is mentioned, then the Insurance policy becomes effective from that point of time and therefore, allowed the appeal filed by the Insurance Company and exonerated it by paying compensation.

8.7. In Oriental Insurance Co. Ltd. v. Porselvi and Another [2009 (2) TNMAC 161 (SC)] similar view was taken.

8.8. In The Divisional Manager, New India Assurance Co. Ltd., v. Poovarasan and another [2012(1) TN MAC 571], the facts of the case would disclose that the coverage of the policy commenced from the midnight of 18.01.2002 whereas the accident took place at 6.00 p.m. on 17.01.2002. A plea was taken that the receipt of the amount towards the policy is only for renewal and not for a fresh policy and as such, the insurance company is liable to pay compensation. A Single Bench of this Court, on a detailed analysis of the earlier decisions which include Jikubhai Nathuji Dhabhi case (cited supra), has held that even assuming that premium had been received, effectiveness of the policy commences from the specific time and date mentioned in the policy of insurance and therefore, allowed the appeal filed by the insurance company.

8.9. In Oriental Insurance Co. Ltd., Salem-1 v. Vedathal and 3 others [2013 (1) TN MAC 103 (DB)], it has been held that the date of issue of the policy, therefore, is not decisive as to the date of the commencement and the date and time with effect from which the Insurer assumes the



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risk and therefore, the appeal was decided in favour of the Insurance company.

9. In Oriental Insurance Company Ltd. Nagercoil, Kanyakumari District. v. S.Mariyal and 2 others [1999-1-L.W.578], the Insurance Company put forward a plea that on the relevant date and time of the accident, the vehicle was not covered by the policy issued by the appellant insurance company. A Single Bench of this Court by placing reliance upon a Full Bench decision of the Karnataka High Court in Asma Begum and Others v. Nisar Ahmed and Others [1990 ACJ 832 (FB)] wherein renewal of the policy came up for consideration and it is relevant to extract para 11 of the said judgment:

11....As regards the principle of renewal of a permit of licence taking effect from an earlier date, it appears to us that it would be applicable to a case where under the scheme a permit or licence issued is permanent and requires periodical renewal on payment of prescribed fee and satisfying the prescribed terms and conditions subject to which it had been issued. Examples of such licences are the permanent driving licence, a permanent cinema licence or a permanent stage carriage permit. As far as motor vehicle insurance is concerned, there is nothing like issuing of permanent policy, subject to periodical renewal. It is an insurance only for the period specified in the policy. There is no question of renewal of that policy. It is true that if during any particular period for which the vehicle insurance policy was taken there had been no claim in respect of the vehicle concerned, some reduction is given in the amount of premium in the form of 'no claim bonus'. That is only an incentive given to the customers to take the insurance policy for the succeeding years from the same company, but the allowing of no claim bonus is no



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ground to hold that the policy, whenever it is issued, had continued from the date of expiry of the previous policy. There is no continuation in the case of motor vehicle insurance. Each policy is separate and independent and holds good only for the period mentioned in the policy. The words 'renewal policy' used both in Tipanna's case 1982 ACJ (Supp.) 192 (Karnataka) and in this case on the receipt, as submitted by the learned counsel for the 3rd respondent, were only to indicate that the vehicle was insured earlier with the same company and for the purpose of giving rebate in the amount of premium and that by itself would not have the effect of the policy being effective from the date of expiry of the previous policy and of filling up the gap and foisting the liability arising out of an accident which had taken place at a time when the policy was not in existence, on the insurance company. In Tippanna's case, 1982 ACJ (Supp.) 192 (Karnataka) because the insurance company, for whatever be the reason, had issued a policy to be effective from 10.2.1978, a date earlier to the accident, this Court held that risk arising out of an accident which had taken place on 11.2.1978 was covered. But in this case it is clear that the period commencing from 4.11.1983 till 17.11.1983 is not covered by the policy. The premium was paid only on 17.11.1983 for a period of one year and on the payment of premium the policy was issued. Therefore, there can be no doubt that it covers the risk arising after the date and time specified on the policy.....

10. To sum up, our conclusions are:

(i) A Motor vehicle insurance policy is effective only for the period specified in the policy and not from the date of expiry of the earlier policy if any, in respect of the same vehicle, issued by the same insurer.



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(ii) In view of Section 64-V(b) of the Insurance Act the risk on the part of the insurer commences only on the payment of the premium by the insured.?

10. In Manager Oriental Insurance Company Ltd. Namakkal v. Latha and 5 others [2000-1-L.W. 739], Single Bench of this Court held that insurance policy is a special contract and it becomes operative only from the time specifically mentioned in the policy and reliance was also placed upon the judgment in Oriental Insurance Company Ltd. Nagercoil, Kanyakumari District. v. S.Mariyal and 2 others [1999-1-L.W.578] (cited supra).

11. In New India Assurance Co. Ltd. v. Ram Ratan and Others [2003 ACJ 323 (Madhya Pradesh -DB)], facts of the case would disclose that the accident took place at about 8.00 a.m. on 24.12.1992 and the contract of insurance commenced at 2.00 p.m. on 24.12.1992 as per the cover note issued by the insurance company and the effectiveness of the cover note came up for consideration in the above cited decision and it is relevant to extract para 8 of the said judgment:

8. Another aspect of the same question is status of cover note. The practice followed by the insurance company is to issue cover note by its competent office/agent immediately on payment of the insurance premium and covers the risk, in case some accident takes place. It is followed by formal execution of policy of insurance within a reasonable time. [See United India Insurance Co. Ltd. v. Surendran Nair, 1990 ACJ 581 (Kerala)]. Therefore, it is held that New India Assurance Co. Ltd. is not liable for payment of compensation in this case.?

A Division Bench of Madhya Pradesh in the above cited decision held that liability of the insurance company for



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payment of compensation arising out of motor accident, starts after the time mentioned in policy and not before it.

12. In Bijeram v. Mangudas and Others [2004 ACJ 153 (MP)], the facts of the case would disclose that the accident occurred at about 4.00 p.m. on 02.12.1992 and prior to that, proposal along with amount of the premium to the agent of the insurance company at 11.00 a.m on 02.12.1992 and as such, plea was taken that the policy commences from the time of handing over the proposal form and premium to the agent of the insurance company, in view of the provision of Section 64-VB of the provisions of Insurance Act. A Single Bench of the Madhya Pradesh High Court, on going through Ex.D4- policy and on perusal of the same found that the effective date and time of the insurance is mentioned as 5.30 p.m. on 02.12.1992 to 01.12.1993 and in view of the decision of the Apex Court in New India Assurance Co. Ltd. v. Bhagwati Devi [1999 ACJ 534 (SC)], when the time of commencement is mentioned in the insurance policy it shall become effective for the liability of payment of compensation from the time onwards, as mentioned in the policy and therefore, the Insurance Company is exonerated from compensating the claimants."

29. The ratio laid down in the aforementioned Judgments are quite clear. They have stated and affirmed the position of law that the policy coverage would operate only from the date and time mentioned in the policy and if the accident had occurred earlier, then the Insurance Company would not be liable to pay the compensation granted towards such accident.

30. In the instant case, the policy Ex.P-9 shows that the insurance policy commence from 00.00 hours on 15.02.2014. The accident had occurred on 12.02.2014. There was no insurance policy of the appellant on that particular date on 12.02.2014. Therefore, the appellant cannot be mulcted with the liability to pay the compensation as determined by the Tribunal.



31. This Civil Miscellaneous Appeal is therefore allowed and that portion of the order of the Tribunal directing the appellant/insurance company to pay the compensation is set aside. Consequently, connected Miscellaneous Petition is closed. No order as to costs. Since the negligence of the fifth respondent/M.Ramesh has been held proved by the Tribunal, which finding has been affirmed by this Court, the claimants are at liberty to proceed against the fifth respondent/M.Ramesh to recover the compensation determined by the Tribunal and affirmed by this Court. Such recovery can be made in manner known to law.

32. If the appellant had deposited the compensation amount, at the time of admission of the Appeal, the appellant is permitted to withdraw the same by filing appropriate application.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

vsg
To

1. The Subordinate Judge
Motor Accident Claims Tribunal
Perundurai.

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

+1 CC to Mr.T. Ravi Chandran, Advocate sr 14219
+1 CC to Mr.T. Sai Krishnan, Advocate sr 14439.

CMA No. 3291 of 2017
And
C.M.P.No. 20764 of 2017

SS (CO)
SP (05/04/2022)