



CMA (MD) Nos.691 to 698 of 2021

CMA (MD) Nos.691 to 698 of 2021

WEB CO **SUNDER MOHAN, J.**

This case is posted today under the caption “For Being Mentioned”.

2. It is now reported that the first respondent in CMA (MD) No.691 of 2024 and the first respondent in CMA (MD) No.692 of 2024 are no more. Accordingly, the shares of the respective first respondents in C.M.A.(MD) Nos.691 & 692 of 2024 shall be withdrawn by their legal heirs, upon establishing that they are their legal heirs, before the Tribunal. Hence, paragraphs 19 & 21 of the order of this court dated 13.09.2024 shall read as follows:-

19. On such deposit, the legal heirs of the first respondent, on establishing that they are his legal heirs, and the second to fourth respondents are permitted to withdraw the same, as per the apportionment fixed by the Tribunal, along with proportionate interest and costs, less the amount already withdrawn, if any, by filing an application before the Tribunal.

21. On such deposit, the legal heirs of the first respondent, on establishing that they are his legal heirs, and the second respondent are permitted to withdraw the same, as per the apportionment fixed by the Tribunal, along with proportionate interest and costs, less the amount already withdrawn, if any, by filing an application before the Tribunal.



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CMA (MD) Nos.691 to 698 of 2021

SUNDER MOHAN, J.

3. Hence, Registry is directed to issue fresh order copy after incorporating the above corrections. The other contents of the order of this court shall remain unaltered.

rgr/jen

10.01.2025

CMA (MD) Nos.691 to 698 of 2021



CMA (MD) Nos.691 to 698 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on	10.09.2024
Pronounced on	13.09.2024

CORAM

THE HON'BLE MR.JUSTICE SUNDER MOHAN

C.M.A.(MD) Nos.691 to 698 of 2021

and

**C.M.P.(MD) Nos.6371, 6376, 6379, 6381,
6383, 6385, 6388 & 6391 of 2021**

C.M.A.(MD) No.691 of 2021

M/s.National Insurance Company Limited,
Rep. by its Branch Manager,
D.No.63, Rasi Plaza,
West Pradharsanam Road,
Karur.

... Appellant

Vs.

1.R.Vellaichamy
S/o.Ramasamy

2.S.Jothimani
W/o.Sakthivel

3.V.Parameswaran
S/o.Velliasamy

4.V.Lakshmi
D/o.Velliasamy



CMA (MD) Nos.691 to 698 of 2021

WEB CO

5.M/s.Barani Transport,
Rep. by its Managing Director,
D.No.2, North Prathasanam Road,
Karur Town, Karur District.

6.A.Ramasubbu
S/o.Aariya Nayagun

7.M/s.Reliance General Insurance Company Ltd.,
Rep. by its Branch Manager,
D.No.570, Naicom Cross Road,
Near Royal Industrial Estate,
Vadaala (West), Mumbai.

...

Respondents

[R1 died and R2 to R4 were recorded as his legal heirs *vide* the order of this Court dated 07.08.2024]

[R6 remained *ex parte* before the Tribunal. Notice to him was dispensed with *vide* the order of this Court dated 10.07.2024]

Prayer:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 to set aside the Judgment and Decree dated 30.08.2019 made in M.C.O.P.No.10 of 2019 on the file of the Motor Accident Claims Tribunal, Additional District Judge, Karur.

For Appellant : Mr.A.S.Mathialagan

For R2 to R4 : Mr.K.Sudalaiyandi

For R5 : No appearance

For R7 : Mr.V.Sakthivel



CMA (MD) Nos.691 to 698 of 2021

WEB C C.M.A.(MD) No.692 of 2021

M/s.National Insurance Company Limited,
Rep. by its Branch Manager,
D.No.63, Rasi Plaza,
West Pradharsanam Road,
Karur.

... Appellant

Vs.

1.N.Shanmugam
S/o.Late.Natarajan

2.N.Parthiban
S/o.Late.Natarajan

3.M/s.Barani Transport,
Rep. by its Managing Director,
D.No.2, North Prathasanam Road,
Karur Town, Karur District.

4.A.Ramasubbu
S/o.Aariya Nayagun

5.M/s.Reliance General Insurance Company Ltd.,
Rep. by its Branch Manager,
D.No.570, Naicom Cross Road,
Near Royal Industrial Estate,
Vadaala (West), Mumbai.

...

Respondents

[Death of R1 was recorded *vide* the order of this Court dated 07.08.2024]

[R4 remained *ex parte* before the Tribunal. Notice to him was dispensed with *vide* the order of this Court dated 10.07.2024]



CMA (MD) Nos.691 to 698 of 2021

Prayer:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 to set aside the Judgment and Decree dated 30.08.2019 made in M.C.O.P.No.11 of 2019 on the file of the Motor Accident Claims Tribunal, Additional District Judge, Karur.

For Appellant : Mr.A.S.Mathialagan

For R2 : Mr.K.Sudalaiyandi

For R3 : No appearance

For R5 : Mr.V.Sakthivel

C.M.A.(MD) No.693 of 2021

M/s.National Insurance Company Limited,
Rep. by its Branch Manager,
D.No.63, Rasi Plaza,
West Pradharsanam Road,
Karur.

... Appellant

Vs.

1.S.Jothimani
W/o.Sakthivel

2.M/s.Barani Transport,
Rep. by its Managing Director,
D.No.2, North Prathasanam Road,
Karur Town, Karur District.

3.A.Ramasubbu
S/o.Aariya Nayagun



CMA (MD) Nos.691 to 698 of 2021

4.M/s.Reliance General Insurance Company Ltd.,

Rep. by its Branch Manager,
D.No.570, Naicom Cross Road,
Near Royal Industrial Estate,
Vadaala (West), Mumbai.

Respondents

...

[R3 remained *ex parte* before the Tribunal. Notice to him was dispensed with *vide* the order of this Court dated 25.07.2024]

Prayer:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 to set aside the Judgment and Decree dated 30.08.2019 made in M.C.O.P.No.12 of 2019 on the file of the Motor Accident Claims Tribunal, Additional District Judge, Karur.

For Appellant : Mr.A.S.Mathialagan

For R1 : Mr.K.Sudalaiyandi

For R2 : No appearance

For R4 : Mr.V.Sakthivel

C.M.A.(MD) No.694 of 2021

M/s.National Insurance Company Limited,
Rep. by its Branch Manager,
D.No.63, Rasi Plaza,
West Pradharsanam Road,
Karur.

... Appellant

Vs.



CMA (MD) Nos.691 to 698 of 2021

WEB COPY

1.M.Jeyanthi
W/o.Maheskumar

2.M/s.Barani Transport,
Rep. by its Managing Director,
D.No.2, North Prathasanam Road,
Karur Town, Karur District.

3.A.Ramasubbu
S/o.Aariya Nayagun

4.M/s.Reliance General Insurance Company Ltd.,
Rep. by its Branch Manager,
D.No.570, Naicom Cross Road,
Near Royal Industrial Estate,
Vadaala (West), Mumbai.

...

Respondents

[R3 remained *ex parte* before the Tribunal. Notice to him was dispensed with *vide* the order of this Court dated 25.07.2024]

Prayer:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 to set aside the Judgment and Decree dated 30.08.2019 made in M.C.O.P.No.13 of 2019 on the file of the Motor Accident Claims Tribunal, Additional District Judge, Karur.

For Appellant : Mr.A.S.Mathialagan

For R1 : Mr.K.Sudalaiyandi

For R2 : No appearance

For R4 : Mr.V.Sakthivel

C.M.A.(MD) No.695 of 2021



CMA (MD) Nos.691 to 698 of 2021

M/s.National Insurance Company Limited,
Rep. by its Branch Manager,
D.No.63, Rasi Plaza,
West Pradharsanam Road,
Karur.

... Appellant

Vs.

1.V.Subha
W/o.Veeramani

2.M/s.Barani Transport,
Rep. by its Managing Director,
D.No.2, North Prathasanam Road,
Karur Town, Karur District.

3.A.Ramasubbu
S/o.Aariya Nayagun

4.M/s.Reliance General Insurance Company Ltd.,
Rep. by its Branch Manager,
D.No.570, Naicom Cross Road,
Near Royal Industrial Estate,
Vadaala (West), Mumbai.

Respondents

...

[R3 remained *ex parte* before the Tribunal. Notice to him was dispensed with *vide* the order of this Court dated 25.07.2024]

Prayer:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 to set aside the Judgment and Decree dated 30.08.2019 made in M.C.O.P.No.14 of 2019 on the file of the Motor Accident Claims Tribunal, Additional District Judge, Karur.



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CMA (MD) Nos.691 to 698 of 2021

For Appellant : Mr.A.S.Mathialagan
For R1 : Mr.K.Sudalaiyandi
For R2 : No appearance
For R4 : Mr.V.Sakthivel

C.M.A.(MD) No.696 of 2021

M/s.National Insurance Company Limited,
Rep. by its Branch Manager,
D.No.63, Rasi Plaza,
West Pradharsanam Road,
Karur.

... Appellant

Vs.

1.N.Nazreen
W/o.Nizamdeen

2.M/s.Barani Transport,
Rep. by its Managing Director,
D.No.2, North Prathasanam Road,
Karur Town, Karur District.

3.A.Ramasubbu
S/o.Aariya Nayagan

4.M/s.Reliance General Insurance Company Ltd.,
Rep. by its Branch Manager,
D.No.570, Naicom Cross Road,
Near Royal Industrial Estate,
Vadaala (West), Mumbai.

Respondents

...



CMA (MD) Nos.691 to 698 of 2021

[R3 remained *ex parte* before the Tribunal. Notice to him was dispensed with *vide* the order of this Court dated 25.07.2024]

Prayer:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 to set aside the Judgment and Decree dated 30.08.2019 made in M.C.O.P.No.15 of 2019 on the file of the Motor Accident Claims Tribunal, Additional District Judge, Karur.

For Appellant	: Mr.A.S.Mathialagan
For R1	: Mr.R.Mathiyalagan
For R2	: No appearance
For R4	: Mr.V.Sakthivel

C.M.A.(MD) No.697 of 2021

M/s.National Insurance Company Limited,
Rep. by its Branch Manager,
D.No.63, Rasi Plaza,
West Pradharsanam Road,
Karur.

... Appellant

Vs.

- 1.Kajamoideen
S/o.Abdul Rahuman
- 2.Syed Musthafa
S/o.Abdul Rahuman
- 3.Jumanahassin



CMA (MD) Nos.691 to 698 of 2021

S/o.Abdul Rahuman

4.M/s.Barani Transport,
Rep. by its Managing Director,
D.No.2, North Prathanam Road,
Karur Town, Karur District.

5.A.Ramasubbu
S/o.Aariya Nayagun

6.M/s.Reliance General Insurance Company Ltd.,
Rep. by its Branch Manager,
D.No.570, Naicom Cross Road,
Near Royal Industrial Estate,
Vadaala (West), Mumbai.

Respondents

[R1 - died]

[R5 remained *ex parte* before the Tribunal. Notice to him was dispensed with *vide* the order of this Court dated 25.07.2024]

Prayer:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 to set aside the Judgment and Decree dated 30.08.2019 made in M.C.O.P.No.16 of 2019 on the file of the Motor Accident Claims Tribunal, Additional District Judge, Karur.

For Appellant : Mr.A.S.Mathialagan

For R2 & R4 : No appearance

R3 : Mr.R.Mathiyalagan

For R6 : Mr.V.Sakthivel

C.M.A.(MD) No.698 of 2021



CMA (MD) Nos.691 to 698 of 2021

M/s.National Insurance Company Limited,
Rep. by its Branch Manager,
D.No.63, Rasi Plaza,
West Pradharsanam Road,
Karur.

... Appellant

Vs.

1.Shahul Hameed
S/o.Madharsha Rowther

2.Jaffer Nisha
W/o.Shahul Hameed

3.M/s.Barani Transport,
Rep. by its Managing Director,
D.No.2, North Prathasanam Road,
Karur Town, Karur District.

4.A.Ramasubbu
S/o.Aariya Nayagun

5.M/s.Reliance General Insurance Company Ltd.,
Rep. by its Branch Manager,
D.No.570, Naicom Cross Road,
Near Royal Industrial Estate,
Vadaala (West), Mumbai.

Respondents

...

[R4 remained *ex parte* before the Tribunal. Notice to him was dispensed with *vide* the order of this Court dated 25.07.2024]

Prayer:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 to set aside the Judgment and Decree dated 30.08.2019 made in M.C.O.P.No.17 of 2019 on the file of the Motor



CMA (MD) Nos.691 to 698 of 2021

Accident Claims Tribunal, Additional District Judge, Karur.

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For Appellant : Mr.A.S.Mathialagan

For R1 & R2 : Mr.R.Mathiyalagan

R3 : No appearance

For R5 : Mr.V.Sakthivel

COMMON JUDGMENT

The instant appeals challenge the common award dated 30.08.2019 passed by the Motor Accident Claims Tribunal [Additional District Court], Karur, in M.C.O.P.Nos.10 to 17 of 2019 aggrieved by the finding on negligence.

2. The appeals arise out of eight claim petitions. In 4 claim petitions, the legal representatives of the deceased are the petitioners. In the other 4 claim petitions, the injured are the petitioners. They had stated in the claim petitions that on 29.08.2013, at about 11.50 a.m., while the deceased and the injured were travelling in a bus bearing Registration No.TN-47-AB-1919, insured with the appellant herein, the driver of the



CMA (MD) Nos.691 to 698 of 2021

bus drove the same in a rash and negligent manner and collided with the lorry from behind, which was carrying a blade used in a windmill, as a result of which a few persons died and many others were injured.

3. The owner and the insurer of the lorry filed a counter before the Tribunal, stating that the accident took place only due to the negligence of the bus driver and that they were unnecessarily impleaded as parties.

4. The appellant, the insurer of the bus, filed a counter stating that the accident took place only due to the negligence of the lorry driver, who had suddenly turned the vehicle to the left, and the bus driver, despite his best efforts, dashed against the protruding blade used in the windmill, and hence, the appellant is not liable to pay any compensation.

5. Before the Tribunal, the claimants examined some of the legal heirs of the deceased, many injured eyewitnesses, and doctors who had treated the injured witnesses, as P.W.1 to P.W.10, and marked Exs.P1 to P57. The appellant and the insurer of the lorry examined R.W.1 to R.W.



4 and marked Exs.R1 and R2.

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6. The Tribunal, after taking into consideration the oral and documentary evidence, held that the accident took place only due to the rash and negligent driving of the driver of the bus insured with the appellant herein and directed the appellant to pay the compensation determined in each of the claim petitions.

7. The learned counsel for the appellant, the insurer of the bus, submitted that the finding of the Tribunal fastening the liability on the appellant is erroneous; that the lorry driver had taken a sharp left and the blade used in the windmill was unauthorisedly protruding to the extent of 5 meters on the back side of the lorry and because of the sharp turn of the lorry, the bus, which was going in the right direction, collided with the blade; and that the entire liability ought to have been fixed on the driver of the lorry, and in any case, contributory negligence ought to have been fixed and relied on the evidence of R.W.1 and R.W.2.

8. The learned counsel for the claimants, per contra, submitted



CMA (MD) Nos.691 to 698 of 2021

that the finding of the Tribunal is in accordance with law and therefore, there is no reason to interfere with the award.

9. The learned counsel for the insurer of the lorry, M/s.Reliance General Insurance Company Limited, submitted that the finding of the Tribunal holding the bus driver guilty of negligence, based on the evidence of eyewitnesses and the final report filed by the police and the Judgment of the Criminal Court convicting the bus driver, does not call for any interference.

10. The learned counsel for the appellant was unable to point out any infirmity in the quantum of compensation awarded by the Tribunal to the claimants in each of the claim petitions. Therefore, the quantum of compensation awarded by the Tribunal in all claim petitions is not the issue in these appeals.

11. Therefore, the only question involved in the instant appeal is whether the finding on negligence by the Tribunal is justified.

12. The claimants had examined the injured witnesses and some



CMA (MD) Nos.691 to 698 of 2021

of the eyewitnesses to prove the manner of the accident. They had also marked Ex.P1, the FIR, to corroborate the version of the eyewitnesses, besides Ex.P26, the final report filed by the police after the investigation.

13. That apart, R.W.1, the bus driver, had admitted in his cross-examination that he was convicted by the Criminal Court. He had further admitted that the FIR was lodged against him, stating that he was talking on the cellphone at the time of the occurrence. The witnesses before the Criminal Court had deposed that R.W.1, the bus driver, was talking on the cellphone while driving. The evidence of eyewitnesses is cogent and convincing, which is corroborated by the records of the criminal case besides the admission made by R.W.1 that he was convicted by the Criminal Court. It is R.W.1's version that the lorry driver, who was proceeding in front of the bus, had suddenly taken a left turn towards the Petrol Bunk, and thereby, the blade used in the windmill, which was protruding to the extent of 5 meters, blocked the road, and hence, he could not control the bus, which resulted in the accident. R.W.1 is an interested witness, and his evidence does not inspire confidence in the light of the evidence produced on the side of the claimants, namely, the oral evidence of eyewitnesses and the criminal court records.



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14. The contention of the learned counsel for the appellant is that since there was an authorized protrusion of the blade used in the windmill from the backside of the lorry, it has to be considered as a violation and hence, contributory negligence has to be fixed on the lorry driver. This Court is of the view that there is no evidence before the Tribunal that the protrusion was unauthorized and hence the same cannot be presumed. Further, the manner of the accident, by which several people who were seated in the bus, died and were injured, would speak for itself. The principle *res ipsa loquitur* would be applicable to the facts of the instant case. But for the rash and negligent driving, this accident could not have occurred.

15. R.W.2, the Motor Vehicle Inspector, had deposed that the accident took place only because the lorry driver had taken a left turn. This Court is of the view that since he is not an eyewitness to the occurrence, his evidence, which is in the nature of an opinion, cannot be accepted in the light of the overwhelming evidence to the contrary.

16. Therefore, this Court is of the view that the finding of the



CMA (MD) Nos.691 to 698 of 2021

Tribunal holding that the driver of the bus insured with the appellant is liable for rash and negligent driving is in accordance with law and is justified. The point is answered accordingly.

17. As stated above, since the learned counsel for the appellant was unable to point out any infirmity in the quantum of compensation awarded by the Tribunal, the award is confirmed. The instant appeals are liable to be dismissed.

C.M.A.(MD) No.691 of 2021 [M.C.O.P.No.10 of 2019]

18. The appellant, Insurance Company, is directed to deposit the award amount of Rs.11,52,000/- together with interest at 7.5% per annum from the date of the claim petition till the date of the realization and proportionate costs, after deducting the amount already deposited, if any, within a period of four (4) weeks from the date of receipt of a copy of this Judgment.

19. On such deposit, the first to fourth respondents/claimants are permitted to withdraw the same as per the apportionment fixed by the Tribunal along with the proportionate interest and costs, less the amount



CMA (MD) Nos.691 to 698 of 2021

already withdrawn, if any, by filing an application before the Tribunal.

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C.M.A.(MD) No.692 of 2021 [M.C.O.P.No.11 of 2019]

20. The appellant, Insurance Company, is directed to deposit the award amount of Rs.6,34,000/- together with interest at 7.5% per annum from the date of the claim petition till the date of the realization and proportionate costs, after deducting the amount already deposited, if any, within a period of four (4) weeks from the date of receipt of a copy of this Judgment.

21. On such deposit, the first and second respondents/claimants are permitted to withdraw the same as per the apportionment fixed by the Tribunal along with the proportionate interest and costs, less the amount already withdrawn, if any, by filing an application before the Tribunal.

C.M.A.(MD) No.693 of 2021 [M.C.O.P.No.12 of 2019]

22. The appellant, Insurance Company, is directed to deposit the award amount of Rs.4,93,332/- together with interest at 7.5% per annum from the date of the claim petition till the date of the realization and



CMA (MD) Nos.691 to 698 of 2021

proportionate costs, after deducting the amount already deposited, if any, within a period of four (4) weeks from the date of receipt of a copy of this Judgment.

23. On such deposit, the first respondent/claimant is permitted to withdraw the same along with the proportionate interest and costs, less the amount already withdrawn, if any, by filing an application before the Tribunal.

C.M.A.(MD) No.694 of 2021 [M.C.O.P.No.13 of 2019]

24. The appellant, Insurance Company, is directed to deposit the award amount of Rs.3,71,365/- together with interest at 7.5% per annum from the date of the claim petition till the date of the realization and proportionate costs, after deducting the amount already deposited, if any, within a period of four (4) weeks from the date of receipt of a copy of this Judgment.

25. On such deposit, the first respondent/claimant is permitted to withdraw the same along with the interest and costs, less the amount already withdrawn, if any, by filing an application before the Tribunal.



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C.M.A.(MD) No.695 of 2021 [M.C.O.P.No.14 of 2019]

26. The appellant, Insurance Company, is directed to deposit the award amount of Rs.3,51,630/- together with interest at 7.5% per annum from the date of the claim petition till the date of the realization and proportionate costs, after deducting the amount already deposited, if any, within a period of four (4) weeks from the date of receipt of a copy of this Judgment.

27. On such deposit, the first respondent/claimant is permitted to withdraw the same along with the interest and costs, less the amount already withdrawn, if any, by filing an application before the Tribunal.

C.M.A.(MD) No.696 of 2021 [M.C.O.P.No.15 of 2019]

28. The appellant, Insurance Company, is directed to deposit the award amount of Rs.2,74,005/- together with interest at 7.5% per annum from the date of the claim petition till the date of the realization and proportionate costs, after deducting the amount already deposited, if any, within a period of four (4) weeks from the date of receipt of a copy of this



CMA (MD) Nos.691 to 698 of 2021

Judgment.

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29. On such deposit, the first respondent/claimant is permitted to withdraw the same along with the interest and costs, less the amount already withdrawn, if any, by filing an application before the Tribunal.

C.M.A.(MD) No.697 of 2021 [M.C.O.P.No.16 of 2019]

30. The appellant, Insurance Company, is directed to deposit the award amount of Rs.8,44,000/- together with interest at 7.5% per annum from the date of the claim petition till the date of the realization and proportionate costs, after deducting the amount already deposited, if any, within a period of four (4) weeks from the date of receipt of a copy of this Judgment.

31. On such deposit, the first to third respondents/claimants are permitted to withdraw the same as per the apportionment fixed by the Tribunal along with the proportionate interest and costs, less the amount already withdrawn, if any, by filing an application before the Tribunal.

C.M.A.(MD) No.698 of 2021 [M.C.O.P.No.17 of 2019]



CMA (MD) Nos.691 to 698 of 2021

32. The appellant, Insurance Company, is directed to deposit the award amount of Rs.15,26,000/- together with interest at 7.5% per annum from the date of the claim petition till the date of the realization and proportionate costs, after deducting the amount already deposited, if any, within a period of four (4) weeks from the date of receipt of a copy of this Judgment.

33. On such deposit, the first and the second respondents/claimants are permitted to withdraw the same as per the apportionment fixed by the Tribunal along with the proportionate interest and costs, less the amount already withdrawn, if any, by filing an application before the Tribunal.

34. In the result, these Civil Miscellaneous Appeals are dismissed. No costs. Consequently, the connected Miscellaneous Petitions are closed.

13.09.2024

Index: Yes/ No
Neutral Citation: Yes / No
Speaking Order/Non-Speaking Order



CMA (MD) Nos.691 to 698 of 2021

WEB COPY Copy To:

- 1.The Additional District Judge,
Motor Accident Claims Tribunal,
Karur, Karur District.
- 2.The Section Officer,
V.R.Section,
Madurai Bench of Madras high Court,
Madurai.

SUNDER MOHAN, J.

JEN

Pre-Delivery Common Judgment made
in
C.M.A.(MD) Nos.691 to 698 of 2021



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CMA (MD) Nos.691 to 698 of 2021

and
C.M.P.(MD) Nos.6371, 6376, 6379, 6381,
6383, 6385, 6388 & 6391 of 2021

13.09.2024