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C.M.A.No.1361 of 2018

T.V.THAMILSELVI, J.

This Civil Miscellaneous Appeal is listed under the caption, "For Being Mentioned" at the instance of the learned counsel for Appellant.

2. The learned counsel for Appellant submitted that the Tribunal vide Order dated 26.04.2017, partly allowed M.C.O.P.No.9 of 2015 and directed the Appellant to pay a sum of Rs.13,86,000/- as compensation to the Respondents 1 & 2 at the first instance and thereafter, recover the same from 4th Respondent (owner of the Lorry). Challenging the said order of the Tribunal, the Appellant had preferred C.M.A.No.1361 of 2018 before this Court.

2.1. It is further submitted by the learned counsel for Appellant that this Court vide Judgment dated 25.07.2025, disposed of C.M.A.No.1361 of 2018 by observing as follows:

> *"4. On considering the submissions made on both sides and on perusal of the records, it is revealed that the said accident occurred in the month of April at about 5.00 a.m., in the early morning hours. It is admitted that the lorry was parked at the time of the accident. The evidence shows that the driver of the Tata A/C vehicle could have seen the parked lorry from a distance and avoided the accident, but due to his negligence, he hit the stationary lorry, causing the accident.*
>
> *5. Hence, this Court is of the view that contributory negligence should be apportioned between the drivers of both vehicles. Accordingly, 40% (Rs.5,54,400/-) of the negligence is fixed upon the driver of the Tata A/C vehicle belonging to the seventh respondent, and 60% (Rs.8,31,600) is fixed upon the appellant. Consequently, the award passed by the*

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Tribunal is modified to the above extent.

6. Both the appellant and the owner of the Tata A/C vehicle (R6 - Kavitha and insurer R7 - Sriram General Insurance Company) shall deposit their respective shares of the compensation amount, i.e., 60% (Rs.8,31,600) and 40% (Rs.5,54,400/-), in total Rs.13,86,000/-, after deducting the amount already deposited, together with interest at the rate of 7.5% per annum from the date of the claim petition till the date of realization, to the credit of M.C.O.P. No.9 of 2015 on the file of the Motor Accidents Claims Tribunal, Special District Judge, Erode, within a period of eight weeks from the date of receipt or uploading of a copy of this order. On such deposit being made, the claimants are at liberty to withdraw the same, as per the apportionment made by the Tribunal, after following due process of law.

7. In view of the above, this Civil Miscellaneous Appeal is disposed of. There shall be no order as to costs."

2.2. The learned counsel for Appellant also submitted that this Court has fixed contributory negligence on driver of the Lorry as well as on driver of the Tata Ace in the ratio 60:40 and directed the Appellant (insurer of the Lorry) to pay 60% of the compensation and 7th Respondent (insurer of the Tata Ace) to pay 40% of the compensation to the Respondents 1, 2, 8 & 9 (claimants), but, this Court has not issued any direction to the Appellant (insurer of the Lorry) and 7th Respondent (insurer of the Tata Ace) regarding the recovery of compensation amount. Therefore, the learned counsel prayed that appropriate direction may be issued to the Appellant (insurer of the Lorry) and 7th Respondent (insurer of the Tata Ace) to recover the compensation amount from the 4th Respondent (owner of the Lorry) and 6th Respondent (owner of the Tata Ace) respectively.

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3. The learned counsel appeared on behalf of the Respondents 1, 2, 8 & 9 respectively, submitted that they have no serious objection for issuing such direction to the Appellant (insurer of the Lorry) and 7th Respondent (insurer of the Tata Ace).

4. Considering the above submissions made by the learned counsel on either side, this Court is inclined to issue direction to the Appellant (insurer of the Lorry) and 7th Respondent (insurer of the Tata Ace) to recover the compensation amount from the 4th Respondent (owner of the Lorry) and 6th Respondent (owner of the Tata Ace) and to modify Paragraph No.6 of the Judgment dated 25.07.2025 in C.M.A.No.1361 of 2018. Accordingly, the same is modified as follows:

> *"6. Out of the total compensation of Rs.13,86,000/- awarded by the Tribunal, appellant (insurer of the Lorry) shall deposit Rs.8,31,600/- (60% of the compensation) and 7th respondent (insurer of the Tata Ace) shall deposit Rs.5,54,400/- (40% of the compensation), after deducting the amount(s), if any, already deposited, along with interest at 7.5% per annum from the date of petition till the date of deposit (excluding the default period, if any), to the credit of M.C.O.P.No.9 of 2015 on the file of Motor Accident Claims Tribunal, Erode, within a period of eight weeks from the date of receipt or uploading of a copy of this judgment, at the first instance and thereafter, appellant (insurer of the Lorry) shall recover the compensation amount from the 4th respondent (owner of the Lorry) and 7th respondent (insurer of the Tata Ace) shall recover the compensation amount from the 6th respondent (owner of the Tata Ace). On such deposit being made, claimants are permitted to withdraw their respective share of the award amount along with proportionate interest*

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and cost, as per the apportionment ordered by the Tribunal. So far as the share of 2nd respondent (minor son of the deceased) is concerned, the appellant (insurer of the Lorry) and 7th respondent (insurer of the Tata Ace) shall deposit his share in a Fixed Deposit Account in any one of the Nationalized Banks, till he attains majority and the interest accrued thereon shall be withdrawn by his guardian once in three months, directly from the Bank. The claimants are directed to pay the necessary Court fee, if any, on the enhanced award amount, before receiving the copy of this judgment. No costs.

5. In all other aspects, Judgment dated 25.07.2025 in C.M.A.No.1361 of 2018 shall remain unaltered. Registry is directed to issue a fresh judgment copy to all concerned, after carrying out the aforesaid modification.

07.01.2026

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T.V.THAMILSELVI, J.

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C.M.A.No.1361 of 2018

07.01.2026

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25-07-2025

CORAM

THE HONOURABLE MRS.JUSTICE T.V.THAMILSELVI

CMA No. 1361 of 2018
and
CMP.No.10935 of 2018

1. United India Insurance Co.Ltd.
Having Office At 61/2694, I St Floor,
Indian Bank Upstair, South Main Road,
Tanjore.

Appellant(s)

Vs

1. SRIDEVI
W/o. Late. Kumar @ Ashok Kumar
Both Are Res At D.No.1/2,
Soolakathanvalasu, Thiruvachi Village,
Karumandisellipalayam Po, Perundurai
Tk.

2.Minor. Nagulan
S/o. Late. Kumar @ Ashok Kumar.
Minor Rep By His Mother Sridevi.

3.PERIYASAMY
S/o. Rangasamy, Pookara North St,
Tanjore And Dt.

4.JAYAPRAKASH
S/o. Rajaguru, 20, Karampathur South
St, Thirukkarukkaakavur, Papanasam,
Tanjore Dt.

5.S. Senthilkumar
S/o. Sathiyanarayanan, 329,

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Valayakara St, Erode And Tk And Dt.

6.KAVITHA
W/o. Senthilkumar, 32, Kamachikadu, Erode And Tk And Dt.

7.Shriram General Insurance Co.Ltd., 6 Th Respondent, Having Office At Erode.

8.PALANISAMY
S/o. Late. Govindasamy, 8 And 9 Res At 196, Valayakkara St, Erode Tk And Dt.

9.JEGATHAMBIGAI
W/o. Palanisamy.

Respondent(s)

PRAYER

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicle Act, prays to set aside the award and decree dated 26.04.2017 made in MCOP No.9 of 2015 on the file of the Motor Accidents Claims Tribunal, Special District Judge, Erode.

For Appellant(s): Mr.S.Arun Kumar

For Respondent(s): Mr.M.Guruprasad For R1 & R2
Mr.C.S.Saravanan For Rr8 & R9
R-4 and r7 - No Appearance
Batta Due - R3,5 And 6

ORDER

The appellant has filed this appeal to set aside the award and decree dated 26.04.2017 made in MCOP No.9 of 2015 on the file of the Motor Accidents Claims Tribunal, Special District Judge, Erode.

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2. The learned counsel for the appellant, who is the third respondent / Insurance Company in M.C.O.P. No. 9 of 2015, submitted that while awarding compensation, the Tribunal failed to take note of the fact that the accident occurred due to the negligence of the driver of the Tata A/C vehicle belonging to the seventh respondent (R5 in the M.C.O.P.), and instead, the Tribunal wrongly fixed the entire liability upon the owner of the lorry as well as the insurance company. Such a finding, according to the learned counsel, is illegal and liable to be set aside. He further submitted that the lorry was parked on the roadside with sufficient space, whereas the driver of the Tata A/C vehicle drove the vehicle in a rash and negligent manner and hit the parked lorry. The lorry was visible from at least 20 meters ahead, but since the driver of the Tata A/C vehicle came at an uncontrollable speed, he hit against the parked vehicle, thereby causing the accident. Hence, contributory negligence ought to have been fixed on the driver of the Tata A/C vehicle.

3. The learned counsel for the claimants / respondents 1 and 2 raised objections stating that at the time of the accident, the lorry insured with the appellant was parked negligently on the road without following proper parking rules. Though the driver of the Tata A/C vehicle drove the vehicle at a controllable speed, he was unable to avoid collision due to the improper parking of the lorry. Therefore, the Tribunal has rightly fixed the entire liability upon the owner of the lorry as well as the insurance company.

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4. On considering the submissions made on both sides and on perusal of the records, it is revealed that the said accident occurred in the month of April at about 5.00 a.m., in the early morning hours. It is admitted that the lorry was parked at the time of the accident. The evidence shows that the driver of the Tata A/C vehicle could have seen the parked lorry from a distance and avoided the accident, but due to his negligence, he hit the stationary lorry, causing the accident.

5. Hence, this Court is of the view that contributory negligence should be apportioned between the drivers of both vehicles. Accordingly, 40% (Rs.5,54,400/-) of the negligence is fixed upon the driver of the Tata A/C vehicle belonging to the seventh respondent, and 60% (Rs.8,31,600) is fixed upon the appellant. Consequently, the award passed by the Tribunal is modified to the above extent.

6. Both the appellant and the owner of the Tata A/C vehicle (R6 – Kavitha and insurer R7 – Sriram General Insurance Company) shall deposit their respective shares of the compensation amount, i.e., 60% (Rs.8,31,600) and 40% (Rs.5,54,400/-), in total Rs.13,86,000/-, after deducting the amount already deposited, together with interest at the rate of 7.5% per annum from the date of

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the claim petition till the date of realization, to the credit of M.C.O.P. No.9 of 2015 on the file of the Motor Accidents Claims Tribunal, Special District Judge, Erode, within a period of eight weeks from the date of receipt or uploading of a copy of this order. On such deposit being made, the claimants are at liberty to withdraw the same, as per the apportionment made by the Tribunal, after following due process of law.

7. In view of the above, this Civil Miscellaneous Appeal is disposed of. There shall be no order as to costs.

25-07-2025

Index:Yes/No
Speaking/Non-speaking order
Internet:Yes
Neutral Citation:Yes/No
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To
1.SRIDEVI
W/o. Late. Kumar @ Ashok Kumar
Both Are Res At D.No.1/2,
Soolakathanvalasu, Thiruvachi Village,
Karumandisellipalayam Po,
Perundurai Tk.

2.Minor. Nagulan
S/o. Late. Kumar @ Ashok Kumar.
Minor Rep By His Mother Sridevi.

3.PERIYASAMY
S/o. Rangasamy, Pookara North St,
Tanjore And Dt.

4.JAYAPRAKASH
S/o. Rajaguru, 20, Karampathur South
St, Thirukkarukkaakavur, Papanasam,
Tanjore Dt.

5.S. Senthilkumar
S/o. Sathiyanarayanan, 329,
Valayakara St, Erode And Tk & Dt.

6.KAVITHA
W/o. Senthilkumar, 32, Kamachikadu,
Erode And Tk And Dt.

7.Shriram General Insurance
Co.Ltd., 6 Th Respondent, Having
Office At Erode.

8.PALANISAMY
S/o. Late. Govindasamy, 8 And 9 Res
At 196, Valayakkara St, Erode Tk
And Dt.

9.JEGATHAMBIGAI
W/o. Palanisamy.

10.The Motor Accidents Claims Tribunal,
Special District Judge, Erode.

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11.The Section Officer, VR section, High Court of Madras.

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T.V.THAMILSELVI J.
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CMA No. 1361 of 2018

25-07-2025