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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27-01-2025

CORAM

THE HONOURABLE MR JUSTICE M.DHANDAPANI

CMA No. 146 of 2025

AND

CMP NO. 1258 OF 2025, CMP NO. 1255 OF 2025, CMA NO. 163 OF 2025, CMA NO. 166 OF 2025, CMP NO. 1236 OF 2025, CMP NO. 1237 OF 2025, CMA NO. 149 OF 2025

M/s. New India Assurance Co.Ltd
(Kannankurichi) T.P. HUB, having office at
No.133/31 A, Sethu Krishna Trade Centre,
2nd Floor, Trichy Main Road, (Near Raja
Sabari Theatre), Gugai, Salem 636006.

Appellant(s) in all W.P.'s

Vs

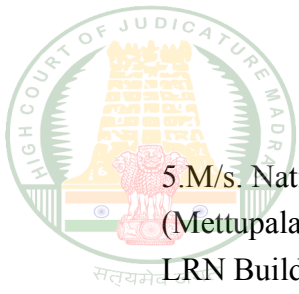
1. M. Kumar
2.K. Annakili
3.A. Balagurunathan
4.M/s. National Insurance Co.Ltd
(Mettupalayam), having Divisional Office-I,
LRN Building Saradha College Road, Salem
636007.
*(2nd Respondent set exparte in the lower
Court. Hence, notice to her is dispensed with)*

Respondent(s) in C.M.A.No.146 of 2025

1.Umamageshwari,
2.Minor A. Devashena
rep. by her N/F Mother Umamageshwari, D/o.
Arichandran, D.No.2/153/129, Arunthathiyar
Street, Pallipatti, Salem 636122.

3.K. Annakili,

4.A. Balagurunathan,



5.M/s. National Insurance Co.Ltd
(Mettupalayam), having Divisional Office-I,
LRN Building Saradha College Road, Salem

636007.

6.Anbu,

7.Mallika,

(3rd respondent set exparte in the lower Court.

Hence notice to her is dispensed with)

Respondent(s) in C.M.A.No.163 of 2025

1. Revathi,

*(The first respondent is suo motu declared as
major vide order dated 27.01.2025 in*

C.M.A.No.166 of 2025)

2.K. Annakili,

3.A. Balagurunathan,

S/o. Arumugam, 7A, Mookkai Road,

Bungalow Medu, Mettupalayam 641301.

4.M/s. National Insurance Co.Ltd

(Mettupalayam), having Divisional Office-I,

LRN Building Saradha College Road, Salem

636007.

(2nd Respondent set exparte in Lower Court.

Hence notice to her is dispense with)

... Respondent(s) in C.M.A.No.166 of 2025

1. K. Kaveri

2.K. Annakili

D/W/o. Kandasamy, D.No.71, Nehru Nagar,

Udayappatty, Salem 636140.

3.A. Balagurunathan

4.M/s. National Insurance Co.Ltd

(Mettupalayam), having Divisional Office-I,

LRN Building Saradha College Road, Salem

636007.

...Respondent(s) in C.M.A.No.149 of 2025

COMMON PRAYER:

These Civil Miscellaneous Appeals have been filed against the common award and decree dated 20.01.2023 passed in MCOP Nos.1423, 123, 129 & 70 of 2021 on the file of the learned Special District Judge, MCOP Tribunal at Salem.



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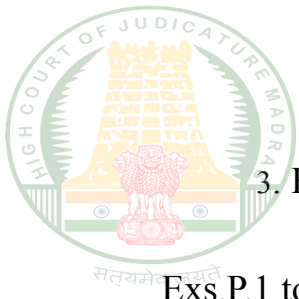
For Appellant(s): R.Sivakumar

For Respondent(s): M/s. S.P. Yuvaraj For R1 M/s. D.
Baskaran For R4

ORDER

Since the issue involved in the present appeals are one and the same, they are disposed of by way of this common order.

2. It is the case of the appellant in respective appeals / insurer of the Tata Sumo car that on 06.09.2020 at about 3.00 hrs, when the injured claimants and the deceased were travelling in a Tata Sumo car bearing Regn.No.TN 33 AE 0222 belonging to one Annakili driven by its driver, due to the flickering lights of Swaraj Mazda Truck bearing Regn.No.TN72 F 3828 which was parked on the left side of the road, the driver of the Tata Sumo car dashed the offending vehicle, thereby the deceased succumbed to injuries and the injured claimants sustained grievous injuries all over their bodies. Claiming compensation under various heads, the injured and the legal heirs of the deceased have filed the respective claim petitions in MCOP Nos.1423, 123, 129 & 70 of 2021.



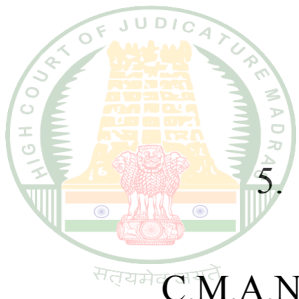
3. Before the Tribunal, the claimants examined P.W1 to P.W.4 and marked Exs.P.1 to P.21. On behalf of the respondents, the examined R.W.1 to R.W.4 and

marked Exs.R1 to R7 and the Court documents were marked as Exs.X1 to X4.

After trial, the Tribunal, on appreciation of oral and documentary evidence has awarded a sum of Rs.14,41,000/-, Rs.1,05,000/-, Rs.1,05,000/-, 40,000/- respectively to be payable by the appellant / insurer of the Tata Sumo.

Challenging the same, the appellant has come up with these appeals.

4. The learned counsel appearing for the appellant in respective appeals / insurer of the Car submits that though the said accident happened only due to the negligence on the part of the Truck, however, without considering the fact that the F.I.R. was also registered as against the driver of the Truck, the Tribunal has fastened the entire liability as against insurer of the Car which is wholly unsustainable. Moreso, the Driver of the Truck was not in possession of a valid driving licence at the time of accident. Further, the award under the other heads are highly excessive and the same requires interference of this Court.



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5. The learned counsel appearing on behalf of the 4th respondent in C.M.A.No.146 of 2025 / insurer of the Truck submits that though the appellant / insurer of the car claimed that the Truck was parked without any proper indicator, however, it is evident from the Photograph Ex.X4 produced by the appellant that the Truck was parked with proper indicator. Further, FIR is not a conclusive proof nor is an encyclopedia for deciding the case and it is only to set the criminal law in motion and no further. While so, the mere fact that the FIR has been lodged against the driver of the Truck alone cannot be the basis to attribute rash and negligent driving on the driver of the Truck. Hence, the appellant / insurer of the car is liable to indemnify the claimants.

6. The learned counsel appearing on behalf of the claimants submits that the compensation awarded by the Tribunal is very meagre and the same requires interference. Accordingly, he prayed for passing appropriate orders.

7. Heard the learned counsel on either side and perused the materials placed on record.



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8. Admittedly, the appellant / insurer of the car claimed that the Truck was parked without any proper indicator, however, it is clear from Ex.X4 Photograph produced by the appellant that the Truck was parked with proper indicator. Hence, due to the negligent driving of the driver of the car, the said accident happened, for which, the Tribunal ordered for pay and recovery which does not require any interference. Further, FIR is not a conclusive proof nor is an encyclopedia for deciding the case and it is only to set the criminal law in motion and no further. While so, the mere fact that the FIR has been lodged against the driver of the Truck alone cannot be the basis to attribute rash and negligent driving on the driver of the Truck.

9. Insofar as the compensation under the other heads are concerned, the Tribunal has taken into consideration the nature of injuries suffered by the injured and the deceased and after proper appreciation of the material documents placed before it, has awarded the compensation, which cannot be said to be erroneous or arbitrary and, therefore, this Court confirms the award

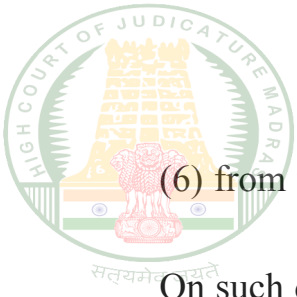


passed by the tribunal in favour of the respective claimants.

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10. The claim petition in M.C.O.P.No.129 of 2021 was filed in the year 2021, the first respondent in C.M.A.No.166 of 2025 was aged about 16 years. Now, the first respondent should be aged about 20 years and is therefore, major. Though no application has been taken out to declare her as major, this Court *suo motu* takes into account the age given in the claim petition and also taking into account the efflux of time, declares the first respondent as major and discharges her mother namely Vijaya from the guardianship. The Registry shall carry out the necessary amendments.

11. For the reasons aforesaid, this Appeal stands dismissed, confirming the award passed by the tribunal in MCOP Nos.1423, 123, 129 & 70 of 2021 dated 20.01.2023 and the appellant – insurer of the car is directed to deposit the respective compensation awarded by the tribunal to the credit of MCOP Nos.1423, 123, 129 & 70 of 2021 along with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and costs as awarded by the



(6) from the date of receipt of a copy of this judgment, if not already deposited.

On such deposit being made, the Tribunal is directed to transfer the share of the major claimants directly to their bank accounts through RTGS within a period of two (2) weeks thereafter. Further the Tribunal is directed to deposit the share of the second respondent in C.M.A.No.163 of 2025 / minor in an interest heeding fixed deposit with anyone of the nationalized banks until they attain majority and the interest derived from out of the said deposit shall be paid to the mother of the minor claimant / Umamageshwari every quarter to be utilized for the welfare of the said minor claimant after attaining majority. It is open to the minor claimant to file necessary application to establish the majority, at which point of time the Tribunal is directed to transfer the amount in the fixed deposit directly to the bank account of the first respondent in C.M.A.No.163 of 2025 / minor claimant through RTGS within a period of two weeks thereafter. No costs. There shall be no order as to costs in this appeal.

27.01.2025

Index : Yes / No

Speaking order / Non-speaking order

Netrual Citation Case : Yes / No



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To

1. Special District Judge, MCOP Tribunal at Salem.
2. The Section Officer, V.R. Section, High Court, Madras.



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C.M.A.Nos.146, 149, 163 & 16

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M.DHANDAPANI, J.

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C.M.A.Nos.146, 149, 163 & 166 of 2025

27.01.2025