



WEB COPY

CMA.(MD)Nos.1559 & 1560 of 2010



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

|                    |            |
|--------------------|------------|
| Date of Reserved   | 10/10/2025 |
| Date of Pronounced | 05/11/2025 |

**CORAM**

The Hon'ble Ms.Justice **R.POORNIMA**

**CMA(MD)Nos.1559 & 1560 of 2010**  
**&**  
**MP(MD)Nos.2 & 2 of 2010**

**(1) CMA(MD)No.1559 of 2010 :-**

New India Assurance Company Ltd.,  
Rep. By its Divisional Manager,  
674, Periyakulam Road,  
Theni.

: Appellant/2<sup>nd</sup> Respondent

Vs.

1.K.Palaniammal

2.K.Palaniappan

... Respondents 1 & 2 / Petitioners

3.R.Loganathan

... 3<sup>rd</sup> Respondent / 1<sup>st</sup> Respondent

**PRAYER :-** Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the order and decretal order dated 28/01/2009 passed in MCOP No.445 of 2003 on the file of the Motor Accident Claims Tribunal, Additional District Judge, Fast Track Court No.4, Periyakulam.



For Appellant : Mr.D.Sivaraman  
For Respondents : ex parte – R1 to R3

**(2) CMA(MD)No.1560 of 2010 :-**

New India Assurance Company Ltd.,  
Rep. By its Divisional Manager,  
674, Periyakulam Road,  
Theni.

: Appellant/2<sup>nd</sup> Respondent

Vs.

1.I.Katharammal

2.I.Alla Pitchai

3.I.Basheer Mohammed

4.I.Kanava Ibrahim

5.Minor I.Sakkarayammal

6.Minor I.Sammal ... Respondents 1 to 6 / Petitioners

(Minors 5 and 6 respondents are rep. through their  
mother and next friend 1<sup>st</sup> respondent herein.)

7.R.Loganathan ... 7<sup>th</sup> Respondent / 1<sup>st</sup> Respondent

**PRAYER :-** Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the order and decretal order dated 28/01/2009 passed in MCOP No.446 of 2003 on the file of the Motor Accident Claims Tribunal, Additional District Judge, Fast Track Court No.4, Periyakulam.



For Appellant : Mr.D.Sivaraman  
For Respondents : ex parte – R1 to R4 & R7

### **COMMON JUDGMENT**

Since both the Civil Miscellaneous Appeals arise out of the common award, dated 28.01.2009 made in MCOP Nos.445 & 446 of 2003 on the file of the Motor Accident Claims Tribunal / Additional District Judge, Fast Track Court No.4, Periyakulam, they are taken up together for final disposal and disposed of by a common judgment.

2. For the sake of convenience, the parties are referred to according to their litigative status before the Tribunal.

3.These Civil Miscellaneous Appeals are preferred seeking to set aside the common order and decretal order, dated 28.01.2009 passed in MCOP Nos.445 & 446 of 2003 by the Motor Accident Claims Tribunal / Additional District Judge, Fast Track Court No.4, Periyakulam.

#### **4.The facts in brief:-**

(i) On 03.03.2002, at about 4.00 a.m., the deceased Narambi @ Periyakka and Ismail along with other persons were sleeping in front



of thatched shed portion of their house at Periyakulam to Vaigai Dam road near Uduppi Hospital and at that time, the driver of the Mahindra Maxi Cab van bearing Registration No.TN 59 B 2750 belonging to the 1<sup>st</sup> respondent which was insured with the 2<sup>nd</sup> respondent drove the vehicle from east to west in a rash and negligent manner and without adhering the rules of traffic hit them, as a result of which three of them succumbed to the injuries and two others sustained grievous injuries.

(ii) At the time of accident, the deceased Narambi @ Periyakka was engaged fruit selling business and was earning a sum of Rs.4,500/- per month which was contributed towards the welfare of the family. Due to his untimely death, the petitioners not only lost their love and affection, but have also been deprived of the entire income of the deceased that was contributing to the family.

(iii) The deceased Ismail was running his old iron and steel business and earning a sum of Rs.6,000/- per month which was contributed towards the welfare of the family. Due to the unfortunate death of Narambi @ Periyakka, the petitioners not only lost their love and affection, but have also been deprived of the entire income of the deceased. Since the driver of the van was alone responsible for the accident, the petitioners in M.C.O.P.No.445 of 2003 claims a sum of Rs.3,00,000/- as compensation for the death of Narambi @ Periyakka.



The petitioners in M.C.O.P.No.446 of 2003 claims a sum of Rs. 7,50,000/- as compensation for the death of Ismail.

5. The claim was resisted by the Insurance Company disputing the manner of the accident and their liability to pay compensation.

6. Before the Tribunal, on the side of the claimants, 5 witnesses were examined and 7 documents marked. On the side of the respondents, two witnesses were examined and 2 documents marked.

7. At the conclusion of the enquiry, the Tribunal found that the accident occurred due to the negligent act of the driver of the van belong to the 1<sup>st</sup> respondent. In respect of compensation payable as per Schedule II, the Tribunal, has fixed a total compensation of Rs.50,000/-, in respect of MCOP No.445 of 2003; and in respect of MCOP No.446 of 2003, awarded Rs.50,000/-.

8. With regard to the first aspect of negligence, the Tribunal on the basis of the evidence let in by the claimants and based on the FIR registered against the driver of the van bearing Registration



No.TN 59 B 2750 belongs to the first respondent insured with the second respondent, concluded that the occurrence took place due of the negligence on the part of the driver of the van belong to the first respondent.

9. Aggrieved by the same, these appeals were preferred by the appellant insurance company disputing the negligence by stating that the van bearing Registration No.TN 59 B 2750 was not involved in the accident and has been falsely implicated in the claim petition for the purpose of claiming compensation.

10. Now, this Court has to decide the following points for considerations:

*(1) Whether the accident occurred due to the rash and negligent act of the 1<sup>st</sup> respondent's driver and whether the vehicle has been falsely implicated in this case ?*

*(2) Whether the order of the Tribunal is proper or liable to be set aside ?*

11. Point Nos.1 & 2:

The main contention of the learned counsel for the appellant



is that the vehicle belonging to first respondent viz, Maxi Cab bearing Registration No.TN 59 B 2750 was not involved in the accident and has been falsely implicated in the claim petition for the purpose of claiming compensation.

12. The learned counsel for the appellant further contended that in Ex.P1 FIR, PW4 has categorically stated that he could not see the registration number of the vehicle which was involved in the accident. He further stated that it was a lorry painted in yellow and covered by Tar-Paulin. The Tribunal failed to note that the admission made by the driver before the criminal Court cannot be a sole basis to fasten the negligence in a motor accident claim proceedings.

13. Heard the learned counsel on either side and perused the materials available on record.

14. It is true that in Ex.P1 FIR, the eyewitness PW4, not stated that the vehicle involved in the accident was Mahendra van, however, he described it as appearing like a lorry painted with yellow and covered with tar-paulin. The final report was filed by the police against the first respondent Loganathan, who is also the owner cum



driver of the vehicle. The case was taken on file in C.C.No.364 of 2003, and during trial, the first respondent admitted the guilt and paid the fine which is evident from Ex.P4 on 21.05.2004.

15. Further, this Court notes that the accident had occurred at about 04.00 a.m. The vehicle was allegedly driven in a rash and negligent manner and hit against the persons sleeping at Periyakulam-Vaigaidam Road, as a result of which, three of them succumbed to injuries and two others sustained injuries.

16. The informant who had lodged the complaint, is also one of the injured persons. In the FIR, he clearly stated that in the early hours, a motor vehicle came without noise and dashed against the persons who were sleeping. Due to darkness and drowsiness, he could not identify the vehicle, he only stated that it appears to be a lorry. Therefore, the statement contained in the FIR is merely an initial piece of information and cannot be a ground to reject the claim by holding that the first respondent vehicle not involved in the accident. The original owner of the Mahindra vehicle neither appeared nor contested the case. On the contrary, he admitted the guilt before the criminal Court and paid the fine.



WEB COPY

CMA.(MD)Nos.1559 & 1560 of 2010



17. Based on the investigation report filed by the investigating officer, the criminal Court found the driver guilty and collected the fine. The insurance company did not challenge the criminal case or contend that the offending vehicle was falsely implicated. The final report filed by the police officials after due investigation. Therefore, unless the said proceedings are not challenged and set aside by the competent Court as false case, the finding therein cannot be disregarded, the present claim petitions.

18. Further the Motor Vehicle Inspector also issued his investigating report Ex.P3 wherein the first respondent vehicle is shown in column 5 as the offending vehicle along with driver's name. Hence, the said report cannot be treated as false certificate.

19. Based on the available record, the Tribunal rightly held that the first respondent was liable for the accident, as the vehicle was duly insured with the appellant insurance company fastened the liability to pay the compensation to the injured and deceased, which need no interference. Therefore, the Civil Miscellaneous appeals have no merit and are liable to be dismissed. Point No.2 is answered accordingly.



WEB COPY

CMA.(MD)Nos.1559 & 1560 of 2010



20. CMA(MD)No.1559 of 2010

In the result, Civil Miscellaneous Appeal is dismissed and the order dated 28.01.2009 passed in MCOP Nos.445 on the file of the Motor Accident Claims Tribunal / Additional District Judge, Fast Track Court No.4, Periyakulam, is hereby confirmed. No costs. Consequently, connected Miscellaneous Petition is closed.

21. CMA(MD)No.1560 of 2010

In the result, Civil Miscellaneous Appeal is dismissed and the order dated 28.01.2009 passed in MCOP No.446 of 2003 on the file of the Motor Accident Claims Tribunal / Additional District Judge, Fast Track Court No.4, Periyakulam, is hereby confirmed. No costs. Consequently, connected Miscellaneous Petition is closed.

**05.11.2025**

Index:Yes/No  
NCC :Yes/No  
RM



CMA.(MD)Nos.1559 & 1560 of 2010

To

WEB COPY

1. The Additional District Judge,  
Fast Track Court No.4,  
Motor Accident Claims Tribunal  
Periyakulam.
2. The Section Officer,  
ER/VR Section,  
Madurai Bench of Madras High Court,  
Madurai.



WEB COPY



CMA.(MD)Nos.1559 & 1560 of 2010

**R.POORNIMA, J.**

RM

**CMA(MD)Nos.1559 & 1560 of 2010**

**05.11.2025**