



C.R..P.(PD)(MD).No.494 of 2023

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

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**DATED : 07.02.2025**

**CORAM:**

**THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR**

C.R.P(PD)(MD)No.494 of 2023

and

C.M.P(MD) No.2384 of 2023

The Branch Manager,  
HDFC ERGO General  
Insurance Company Limited,  
III Floor, Malankara Avenue,  
M.G.Road, Pattom,  
Trivandrum – 695 004,  
Kerala.

... Revision Petitioner/  
Petitioner/  
3<sup>rd</sup> Respondent

Vs.

1. Nesamani

2. Jayarani

3. Ajith Kumar

4. Anish

... Respondents 1 to 4/  
Respondents 1 to 4/  
Petitioners

5. Arun Kumar



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6. The General Manager,  
Muthoot Fincorp Limited,  
Muthoot Centre,  
Thiruvananthapuram,  
Thiruvananthapuram District,  
Kerala State.

7. A.Edvin Paul

8. Tamil Nadu State Transport Corporation  
(Madurai Limited)  
Represented by its Managing Director,  
Ranithottam,  
Nesamony Nagar,  
Nagercoil.

... Respondents 5 to 8/  
Respondents 5 to 8/  
Respondents 1,2,4 and 5

**PRAYER:** Civil Revision Petition filed under Article 227 of Constitution of India, as against the order dated 08.11.2022 in I.A.No.1 of 2022 in M.C.O.P.No.26 of 2019 on the file of the learned II Additional Subordinate Judge, Nagercoil.

For Petitioner : Mr.V.Sakthivel

For R8 : Mr.S.Michel Heldon Kumar

For R2 to R4, R6  
and R7 : No appearance



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## **ORDER**

The 3<sup>rd</sup> respondent in M.C.O.P.No.26 of 2019 on the file of the II Additional Sub Court, Nagercoil, is the revision petitioner.

2. The respondents 1 to 4 herein have filed the above said claim petition seeking compensation of Rs.28,00,000/- along with interest. When the claim petition was posted for filing counter, the revision petitioner/third respondent namely, the Branch Manager, HDFC ERGO General Insurance Company Limited has not filed his counter and therefore, he was set *ex parte* on 11.12.2019. Thereafter, an application came to be filed in I.A.No.1 of 2022 on 27.09.2022 seeking to set aside the *ex parte* order. This application came to be dismissed on the ground that the application was not filed by the Branch Manager, who is arrayed as the third respondent, but it was filed by the Legal Manager of the Company and therefore, it is not maintainable. Challenging the same, the present Civil Revision Petition has been filed.



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3. A perusal of the records reveal that the third respondent herein is shown as the Insurer of the Scorpio vehicle in column No.16 of the claim petition. A perusal of the affidavit in I.A.No.1 of 2022 reveals that the legal Manager from the same address has filed the affidavit seeking to set aside the *ex parte* order. The legal Manager of the HDFC ERGO Insurance Company has filed the said affidavit for State of Kerala. Therefore, such a technical ground ought not have been raised by the Tribunal for rejecting the application filed under Order IX Rule 7 of C.P.C.

4. The learned counsel appearing for the Transport Corporation strongly objected that a non-party has filed an application under Order IX Rule 7 of C.P.C and therefore, the Tribunal has rightly rejected the said application.

5. Considering the above said facts, the order passed in I.A.No.1 of 2022 is hereby set aside and the Tribunal is directed to take the counter on file. Considering the fact that M.C.O.P is pending from 2019 onwards, a direction is issued to the II Additional Subordinate Court, Nagercoil to dispose of M.C.O.P.No.26 of 2019 on or before **31.12.2025**.



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6. With the above said observations, this Civil Revision Petition stands allowed. There shall be no order as to costs. Consequently connected Miscellaneous Petition stands closed.

**07.02.2025**

NCC : Yes/No  
Index : Yes / No  
Internet : Yes / No  
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To

1. The II Additional Subordinate Court,  
Nagercoil.
2. The Section Officer,  
Vernacular Records,  
Madurai Bench of Madras High Court,  
Madurai.



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R.VIJAYAKUMAR,J.

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