BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 27.06.2025

CORAM:

THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA
and
THE HONOURABLE MS.JUSTICE R.POORNIMA

CMA(MD)No.31 of 2025
and
CMP(MD)No.9915 of 2025

Sundar @ Yusuf ... Appellant

vs.

1. Mr.Ashokkumar

2. Deleted
[vide order dated 27.08.2024 made in CMP(MD)No.9208/2024 in CMA(MD)SR.No.25243/2024]

3. United India Insurance Company Ltd.,
Represented through its Manager,
37/2, Mattappa Street, Neel Complex,
2nd Floor, Tenkasi-627811. ... Respondents
(R3 impleaded vide order dated 07.11.2024 made in CMP(MD)No.12068 of 2024 in CMA(MD)SR.No.25243 of 2024)

PRAYER: Appeal filed under Section 173 of the Motor Vehicles Act, 1988, agains the order and decree dated 01.09.2020 passed in MCOP.No.54 of 2014 on the file of the Motor Accident Claims Tribunal cum Additional Subordinate Court, Tenkasi.

For Petitioner : Mr.R.J.Karthick for Mr.S.Suresh Manickam
For R1 : Mr.K.Esakki Durai
For R3 : Mr.A.Elango

JUDGMENT

[Judgment of the Court was made by **A.D.JAGADISH CHANDIRA, J.**]

This Civil Miscellaneous Appeal is filed against the order and decree dated 01.09.2020 passed in MCOP.No.54 of 2014 on the file of the Motor Accident Claims Tribunal cum Additional Subordinate Court, Tenkasi.

2. Mr.R.J.Karthick learned counsel for the appellant would submit that the appellant is the owner of the offending vehicle. The alleged accident is said to have taken place on 01.03.2011 and on the date of accident, the offending vehicle was insured with United India Insurance Company Ltd., having office at No.37/2, Mattappa Street, Neel Complex, 2nd Floor, Tenkasi, and the policy number is 091002/31/10/01/00004067 and the period of insurance was from 07.07.2010 to 06.07.2011. The claimant instead of impleading the United

India Insurance Company Limited, had wrongly impleaded Shriram General Insurance Company Limited, who were the insurer for the offending vehicle subsequent to the accident from 07.07.2012 to midnight of 06.07.2013. Though the appellant / owner of the offending vehicle remained *ex parte* without contesting the case, Shriram General Insurance Company Limited who had contested the case, had informed the Tribunal that they were not the insurer during the period of accident and in such circumstances, a burden is cast on the Tribunal under Section 72 to implead the insurer who has issued the policy during the period of accident.

3. He would further submit that when the previous policy had not been marked, the claimant ought to have obtained the motor vehicle inspector's report to find out who was the previous insurer and the claimant had failed to do the same and the Tribunal without looking into the same, had passed the award against the owner of the vehicle. The appellant was under the impression that the insurance company would defend his case and thereby he had not appeared before the Tribunal.

He would further submit that as on date, the claimant have filed EP for a sum of Rs.28,09,966/- and that a valuable house belonging to the appellant worth more than Rs.40 Lakhs has been attached by the Executing Court. He would submit that unless the matter is remitted back and the insurer on the date of accident namely, United India Insurance Company Limited, Tenkasi Branch, is impleaded and a re-trial is conducted, the appellant will be put to undue hardship. He would submit that the appellant undertakes to contest the case before the Tribunal and in order to protect the interest of the claimant, the appellant is also ready to deposit 25% of the award amount before the Tribunal.

4. Mr.K.Esakki Durai, learned counsel for the 1st respondent / claimant placing reliance on the latest policy issued by Shriram General Insurance Company Limited would submit that the claimant had filed the claim petition and the appellant/owner of the vehicle stood *ex parte* and that if he had appeared and intimated the Tribunal that United India Insurance Company Limited is the concerned insurer, the Tribunal

would not have passed such an order. Now the Executing Court has attached the house property belonging to the appellant/vehicle owner.

5. Mr.A.Elango, learned counsel appearing for the impleaded 3rd respondent/United India Insurance Company Limited would submit that the offending vehicle was insured with United India Insurance Company Limited for the period from 07.07.2010 to 06.07.2011. However, he would submit that the insurance company was not put on notice and they were not a party before the Tribunal. He would submit that the appellant is entitled to contest the MCOP on merits and the insurance company may not be penalised with interest on account of the delay caused by the claimant in not impleading the proper party.

6. This Court finds that the insurer United India Insurance Company Limited, who is the proper respondent, had not been impleaded before the Tribunal. In view of the same, the order and decree dated 01.09.2020 passed in MCOP.No.54 of 2014 on the file of the Motor Accident Claims Tribunal cum Additional Subordinate Court,

Tenkasi, is set aside and the matter is remitted back to the Tribunal to decide the case afresh after impleading the United India Insurance Company Limited. The Tribunal shall take every endeavour to dispose of MCOP.No.54 of 2014 as expeditiously as possible preferably within a period of six months from the date of receipt of a copy of this judgment. Till the disposal of MCOP 58 of 2014, further proceedings in E.P.No.217 of 2023 shall be kept in abeyance. There shall be an order of *status quo* in respect of the residential property of the appellant attached in the E.P.

7. With the above direction, the Civil Miscellaneous Appeal is allowed. No costs. Consequently, connected miscellaneous petition is closed.

[A.D.J.C., J.] **[R.P., J.]**
27.06.2025

Index : Yes / No
Neutral Citation : Yes / No
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To:

The Judge,
Motor Accident Claims Tribunal cum
Additional Subordinate Court,
Tenkasi.

A.D.JAGADISH CHANDIRA, J.
AND
R.POORNIMA, J.

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JUDGMENT MADE IN
CMA(MD)No.31 of 2025
DATED : 27.06.2025