

S.A.No.1687 of 2003

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Date of reserved : 13/03/2026

Date of Pronounced : 01/06/2026

CORAM

THE HON'BLE MS.JUSTICE R.POORNIMA

S.A.No.1687 of 2003

and

C.M.P.No.15413 of 2003

K.Srinivasan : Appellant/2nd Respondent/
2nd Defendant

Vs.

1.The Oriental Insurance Company Limited,
Divisional Office,
6-A, North Cotton Road,
Tuticorin-628 001.
Rep. By its Divisional Manager.
: 1st Respondent/Appellant/Plaintiff

2.M/s.L.P.L. Lorry Agencies,
No.5,Main Road, Sattur
through its Branch Office,
947, ANAG Building,
Main Road, Kovilpatti.

3.M/s/Jayaprakash Match Works
through its Partner,
M.Chandrasekar,
Kovilpatti.

4.L.P.Lakshmanan (Died) : Respondents 2 to 4/
Respondents 1, 3 and 4



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5.L.Karuthapandiyan

6.L.Arumugam

7.L.Ravichandran

8.L.Vigneswaran

: Respondents 5 to 8

(R5 to R8 are brought on record
as Lrs of the deceased 4th respondent,
vide Court order, dated 06/04/2017
made in CMP(MD)No.12103 to
12105 of 2016 in SA No.1687 of 2003)

PRAYER : Second Appeal filed under Section 100 C.P.C., against the judgment and decree, dated 12/12/2001 made in AS No.103 of 2000 on the file of the Principal District Judge, Tuticorin, reversing the judgement and decree dated 28/04/2000 made in OS No.11/1998 on the file of the Sub Court, Kovilpatti.

For Appellant : Mr.M.P.Senthil

For 1st Respondent : Mr.C.Jawahar Ravindran

For R2 and R3 : No appearance

For 4th Respondent : Died (Steps Taken)

For R5, R6 and R8 : Mr.Michael Bharathi

For 7th Respondent : Dispensed with
(vide Court order, dated 31/01/2024)



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JUDGMENT

This second appeal is filed against the judgment and decree, dated 12/12/2001 made in AS No.103 of 2000 on the file of the Principal District Judge, Tuticorin, reversing the judgement and decree dated 28/04/2000 made in OS No.11/1998 on the file of the Sub Court, Kovilpatti.

2.The appellant is the second defendant in the suit.

3. The case of the plaintiff in brief is that, on 07/03/1985, 750 bundles of safety matches value of Rs.78813-75/- were despatched by the third defendant to Jodhpur vide Invoice No. B-127, dated 07/03/1985 to M/s.Minesh and Co., Jodhpur (Rajasthan). The goods were despatched in a lorry bearing registration No.TDL-6465 belonging to the 2nd defendant/appellant, vide consignment Note No.2251, dated 07/03/1985. Insurance was effected by the third defendant with the plaintiff/Insurance Company, vide Policy No.41322/6/153/M/162/OPL, dated 31/03/1984.



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4. On 12/03/1985, the lorry of the 2nd defendant was met with an accident near Polapur on Bombay-Konkan-Goa Highways in Raigad District (Maharashtra) colliding with the another vehicle bearing registration No.MWT-9293. Due to the collision, the Lorry No.TDL 6465 with match bundles engulfed by fire resulting in total loss of the goods, for which, FIR was registered by the Poladpur police. The first defendant who had carried the safety transportation of the goods on behalf himself and on behalf of the 2nd defendant issued a letter to the third defendant's Insurance Company informing about the damages to the consignment. Surveyor was appointed and the Surveyor also visited the place and submitted a Survey report on 19/03/1985 along with the photographs about the accident. On 27/03/1985, the third defendant issued a registered letter with the Acknowledgement Card to the defendants 1 and 2, on 28/03/1985 and 30/03/1985 making out a claim for damages.

5. Since the defendants 1 and 2 did not choose to honour the claim amount, on 17/04/1985 the third defendant submitted his claim bill for Rs.79,914-75/- with the plaintiff Insurance Company. The plaintiff



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honoured the claim and settled the claim of Rs.79,914-75/- after obtaining letter of Authority dated 13/06/1985 and letter of subrogation on the same day. The plaintiff, on 07/10/1985 authorised M/s.Bhaichand Amoluk Co., Insurance Consultants and brokers to recover the amount of Rs.79,914-75/- from the carriers who in turn wrote a letter, dated 28/10/1985 to the defendants 1 and 2 calling upon them to pay the amount. On 23/11/1985, the second defendant replied through their counsel denying the claim. Even subsequent letter, dated 04/12/1985 issued by the plaintiff they did not invoke any response or paid cash. Hence, the plaintiff filed the present suit for recovery of money.

6.The first defendant disputed the liability. It is the contention of the first defendant is that there is no privity of contract between them with the third defendant. The rule of subrogation is applicable only between the plaintiff and the third defendant. The consignee M/ s Minesh and co., has purchased the entire goods. The third defendant has no insurable interest in the goods. If there is a loss, it is the consignee M/s.Minesh and Co., who has to suffer. The suit is bad for non-rejoinder of necessary party. The third defendant cannot



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authorise the present plaintiff, who is not a Power of Attorney M/s.Minesh and Co., The third defendant after receipt of the entire sale consideration in respect of 750 bundles of safety matches passed to the title to M/s.Minesh and Co. If there is a loss, it is for the consignee M/s.Minesh and Co., who has to suffer and has to claim for the loss.

7. They further contended that this defendant is not a lorry movement or Coordinator, but is only a transport broker. He has no control over any vehicle. He only accommodates lorry for transportation of the goods. The job of this defendant will be over on bringing the consignor and the lorry driver to contract. He was paid only for a meager commission. No contract of carriage was entered between this defendant and the third defendant. No goods were entrusted to him. He only arranged the second defendant/appellant to negotiate the freight. The second defendant/appellant is also a Transport Broker. This defendant issued a lorry receipt on behalf of the second defendant. The contract of carriage was entered into between the third defendant and the driver of the 2nd defendant directly. This defendant did not aware about the accident. If the accident is arising due to the negligence of the driver of



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the second defendant, this defendant cannot be held responsible for the same. The letter of subrogation stated in the plaint even if it is true, it is not held valid in law. This defendant is not liable to pay any cost to the plaintiff and the suit is liable to be dismissed.

8.The second defendant/appellant disputed the claim of the plaintiff. The second defendant states that as Carrier he had taken all precautions and care in respect of the goods during transit. But the accident was occurred unexpectedly due to reasons beyond the control of the carrier and the driver who drove the vehicle. The certificate was given without prejudice and was given at the request of the party to record their protect and mark open delivery. The certificate and the loss alleged in the plaint cannot in any way confer any benefit on the part of the plaintiff by way of proof regarding the alleged damage. There has been no reason for claiming any damages by the third defendant.

9. The trial Court, after receipt of the written statement framed the following issues:-

1.Whether the third defendant has got title over the



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goods at the time of the accident?

2. Whether the 1st defendant acted as a lorry arranger?

3. To what relief, the plaintiff is entitled to?

10. The following additional issues were framed by the trial Court on 27-04-2000:-

1. Whether the suit as framed is maintainable in law?

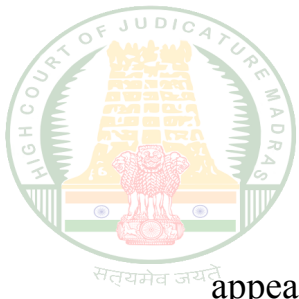
2. Whether the claim amount paid by the plaintiff on the basis of the insurance policy to the third defendant is proved by the plaintiff?

3. Whether the suit is bad for mis-joinder and non-joinder of parties?

4. Whether the plaintiff is entitled to the amount claimed in the plaint?

11. On the side of the plaintiff, PW1 and PW2 were examined and documents Exs.A1 to A11 were marked. On the side of the defendants, no oral and documentary evidence was adduced.

12. The suit was dismissed by the trial Court by its judgement and decree on 28/04/2000. Aggrieved over the same, an



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appeal was filed by the plaintiff before the Principal District Judge Tuticorin, vide AS No.103 of 2000. The first appellate court allowed the appeal, by reversing the judgement of the trial court. Against which, the present appeal is filed by the appellant/2nd defendant.

13. At the time of admission of the second appeal, the following substantial questions of law were framed:-

(a) Whether the findings of the lower appellate court are vitiated by its failure to consider the absence of any documentary evidence regarding the claim on the basis of subrogation except Ex.A9 which is not binding on the appellant and the admissions of PW1's and 2?

(b) Whether the lower appellate court is right in granting a decree as claimed in the absence of any evidence regarding the alleged loss suffered? And

(c) Whether the lower appellate court is right in granting interest at 18% per annum from the date of plaint overlooking the provisions under Section 34 of the Civil Procedure Code?



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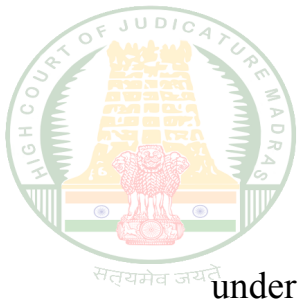
14.The following additional substantial questions of law are formulated by this Court for consideration of this Court:-

(1)Whether the learned First Appellate Court is right in law in fixing negligence on the part of the appellant/2nd defendant without advertng to the very document filed by the plaintiff himself viz., the surveyor report marked as Ex.A8?

(2)The learned First Appellant Court has committed a serious error in law in reversing the well-considered judgment and decree of the trial court, thereby fixing liability upon the appellant, without advertng to the scope and purpose of Section 8 of the Carriers Act?

(3)Whether the learned First Appellate Court is right in law in decreeing the suit merely on the basis of Ex.A9, the letter of subrogation given by the 3rd respondent, completely overlooking the fact that the 1st respondent/plaintiff had failed to produce the contract of carriage as well as the original insurance policy entered by the 3rd respondent?

15. The learned counsel appearing for the appellant/2nd defendant during his argument contended that the following documents have been omitted to be marked namely (i)Doc.3-Panchanama issued



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under Poladpur Police Station; (ii)Doc.4- Crime Registration Certificate (in Marathi); (iii)Doc.5-FIR Copy (in Marathi) issued at Poladpur Police Station; (iv)Doc.6-Statement issued at Mahada Municipality (Marathi); (v)Doc.7-Receipt issued at Mahada Municipality (Marathi); (iv)Doc.10- Photographs 8 nos; (vii)Doc.17-07.10.1985, Appointment letter issued to recovery Agent M/s.BhaichandAmoluk& Co., by the plaintiff; (vii)Doc. 18-28/10/1985, Letter issued to Recovery Agent of the Plaintiff to the defendants 1 and 2; (ix)Doc.20-04/12/1985, Letter issued by the Recovery Agent of the Plaintiff to the 1st defendant.

16. Ex.A3 is the letter, dated 27/03/1985 issued by the 3rd defendant to the defendants 1 and 2 intimating about the accident and also demanded to compensate the damages I.e., sum of Rs.78,813.75.

17. He further contended that per the very document filed along with the plaint i.e., Doc. Nos.17 and 18, which were not marked for the reasons best known to the plaintiff), one M/s.Baichand Amoluk & Co., was appointed as a recovery agent for the plaintiff. The said M/s.Baichan Amoluk & Co., has sent a letter, dated 28/10/1985 to the



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defendants 1 and 2 claiming damages. For the said letter, the appellant through his counsel has sent a reply dated 23/11/1985 (Ex.A6). The said reply dated 23/11/1985 is very crucial. At the earliest point, the appellant has clearly denied and disputed about the negligence. The crucial portion of the reply dated 23/11/1985 is extracted for easy reference:-

“1.....Unfortunately the bundles could not be delivered as my client's lorry TDL 6465 was dashed against by lorry MWT 9293 and the accident happened due to the rash and negligent driving by the driver of lorry MWT 9293. In spite of the best efforts to my client's driver nothing could be salvaged as my client's lorry was reduced to ashes.

2.The driver of the lorry MWT 9293 has been prosecuted for his rash and negligent driving. As such my client is not at all bound to pay any amount towards the alleged loss of the bundles. A Xerox copy of the proceedings of the police is herewith sent.

3.....Your client Sri Raja Rajeswari Wax Matches has to book to the owner of lorry MWT 9293 and the Insurance Company only. My client is not bound to make any payment to your client.”



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18. The learned counsel further contended that in the written statement filed by both the defendants 1 and 2, they have specifically disputed about the negligence. :- “In Para 4..... Page 3 of the written statement, it was specifically stated as follows :

“The fact of the case and circumstances cannot in anyway afford any right on the part of the plaintiff to claim damages and foist the liability against this defendant as accident was due to the criminal act of the driver who dashed against the company of this defendant, the same cannot be the reason for imposing the liability on the defendant.”

19. Immediately after the accident, even as per the plea in the plaint, the Insurance Company has appointed a surveyor (Para 7 of the plaint) which reads as follows:-

“Para 7:- On 18.03.1985, the 1st defendant issued a letter to the 3rd defendant informing the accident and damages to the consignment. A surveyor was appointed and he gave his survey report dated 19.03.1985 along with the photographs depicting the accident.”



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20. The said surveyor's report dated 19/03/1985 is marked as Ex.A8. The very own document filed by the plaintiff would clinch the issue relating to the manner in which the accident had happened, as well as whether the driver of the 2nd defendant/appellant was cause for the accident. Besides whether the driver of the 2nd defendant has drove the vehicle in a rash and negligent manner.

21. The report filed by the Surveyor, Ex.A8 dated 19/03/1985 would lead to an irresistible conclusion that the entire accident has caused only due to the rash and negligent driver of the other vehicle bearing No.MWT 9293.

22. As such the above contents of Ex.A8, the Surveyor's report, itself would suffice to hold that the entire accident has happened only due to the rash and negligent driving of the other vehicle bearing No.MWT 9293. The corollary is that the driver of the appellant's vehicle bearing No.TDL 6465 is not the cause for the accident and there is no negligence on his part.



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23. The learned counsel, therefore, contended that the report under Ex.A6 as well as the specific evidence of PW1 both in the chief examination as well as in the cross examination would only lead to an irresistible conclusion that the driver of the appellant's vehicle bearing Registration No.TDL 6465 is not the cause for accident. On the other hand, it is only the other driver of vehicle bearing Registration No.MWT 9293 is the cause for accident. As such, the corollary is that there is absolutely no negligence in taking care of the goods, much less any rash and negligent driving on the part of the appellant's vehicle.

24. He referred the provisions of the Carriers Act, 1865 and stated that it decides the liability to pay compensation. He further relied upon Section 8 of the Act, which is relevant to decide the issue.

25. Section 8 of the Carriers Act reads as follows:-

“Section-8: Common Carrier liability for loss or damage caused by neglect or fraud of himself of his agent:- Notwithstanding anything herein before contained, every common carrier shall be liable to the owner for loss of or damage to any [property (including container, pallet



*or similar article of transport used to consolidate goods) delivered] to such carrier to be carried where such loss or damage shall have arisen for the [***] Criminal Act of the carrier or any of his agents or servants and [shall also be liable to the owner for loss or damage to any such property other than property to which the provisions of section 3 apply and in respect of which the declaration required by that section has not been made, where such loss or damage has arisen from the negligence of the carrier or any of his agents or servants].”*

26. The learned counsel for appellant, therefore, concluded that reading of the above Section, it would reflect that every common carrier is not straightaway liable to the owner for the loss or damage of goods irrespective of the cause of accident. The said provision clearly states that the carrier is liable only when via such loss or damage have arisen from the criminal act of the carrier or any of its agents or servants.

27. On the other hand, the learned counsel for the first respondent/plaintiff argued that it is the primary contention of the appellant that the plaintiff is not entitled to maintain the suit on the basis



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of letter of subrogation (Ex.A9) and that there is no privity of contract between the appellant and the plaintiff, however, in the final argument before this Court, the appellant has not pressed the main ground. Regarding the maintainability of the suit, the First Appellate Court thoroughly examined the issue in para 21-22 of the judgment, discussing several judgments of the Apex Court and held that the Insurance Company's suit is maintainable. In the letter of subrogation and special power of attorney, the insured clearly assigns all actionable rights to the Insurance Company. This is not merely subrogation but also constitutes a statutory assignment that allows the Insurer to sue in its own name. In support of his contention, he relied upon the judgment of this court in ***M/s.Ravichandran Transports, Mettur Dam Vs. United India Insurance Company Limited***, reported in ***2000(1) CTC 748***.

28. He further argued that it is the contention of the appellant that the accident was not due to its lorry driver, but due to another vehicle, this is purely a factual argument and the appellant failed to plead or provide evidence to substantiate the contention in the trial Court and no oral or documentary evidence was produced and that a



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second appeal cannot be used to rise new factual issue. In support of his contention, he relied upon the following judgments namely ***(i)Kshitish Chandra Purkait Vs. Santhosh Kumar Purkait, reported in 1997(5) SCC 438; (ii)Kondiba Daguda Kadem Vs. Savitribai Sopam Gaja, reported in 1999(3) SCC 722; (iii)Municipal Committee, Hosiarpur Vs. Panjab SEB, reported in 2011(1) LW 525; and (iv)Umerkhan Vs. Bismillah, reported in 2011(9)SCC 684.***

29. It is further contended that Section 9 of the Carriers Act imposes strict liability on carriers for loss, damage or non-delivery of goods, that the burden of proving the absence of negligence lies on the carrier, but not the plaintiff. In the present case the appellant has neither produce the evidence nor pleaded that it was not negligent. Therefore, the liability for the loss rests only on the appellant.

30. He also contend that the appellant contents that the goods were already sold to the consignee (M/s.Manish& Co., Jodhpur) and therefore, the 3rd defendant/consignor is not entitled to claim damages. But it is not legally correct because at the time of the accident,



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the goods had not reached the consignee and the consideration was not received. In this aspect the First Appellate Court correctly held that the third defendant retained title to the goods at the time of the accident. Ex.A1 is the invoice of the 3rd defendant and Ex.A2 is the lorry invoice of the 1st defendant clearly establish that the 3rd defendant entrusted the goods to the appellant for transport. The appellant admitted in the written statement that he transported the goods which were damaged in the accident. Therefore, the first appellate Court has given correct findings and there is no merit in the second appeal and prayed for dismissing the second appeal.

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

32. It reveals from the records that the loss of goods was occurred due to a road accident. The plaintiff who is the insurance company of third respondent claimed damages after receipt of letter of subrogation. However the third respondent failed to produce any documents to show that the accident occurred only due to the negligent



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act of the driver of the second defendant.

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33. It is noted that the plaintiff/insurance company alone engaged a surveyor to inspect the place of occurrence and to file a report. The surveyor report, which was marked as Ex.A8, in which it was stated as follows:

“In this accident which is consequently converted in fire truck No.TDL-6465 and loaded goods (1992 bundles of safety matches) are totally burnt down. The truck No.MWT-9293, which has dashed on R/h side of truck No.TDL-6465 was not available on the spot of accident, when we had been to the spot of accident. However we understand from the police that the truck driver of truck no.MWT-9293, took his truck away from truck No.TDL-6465 after accident and hence truck No.MWT-9293 saved from the fire. The truck No.MWT-9293 has sustained other damages in this accident.

POLICE ACTION:

Poladur police station has registered the accident. Their accident case No. is 12/85. Police from Poladpur police station attended the spot of accident on 12/03/85 and carried out the panchanama. Xerox copy of police



panchanama collected from the representative of consignor is attached with this report. Police from Poladpur police station has investigated the crime, and kept the charges on the driver of the vehicle No.MWT-9293, Shri SarjeraoGanpatiPatil, under I.P.C. 279 & 427 and MVC 116, and submitted the charge sheet in Mahad Court. The crime registration No. of Poladpur police station is 14/85.

34. The Surveyor's Report and the contents of the FIR clearly reveal that the accident did not occur due to any negligent act on the part of the 2nd defendant/appellant, as alleged by the Insurance Company. On the contrary, the materials on record establish that the accident occurred when a truck bearing Registration No. MWT-9293, proceeding from the opposite direction, dashed against the right side of the vehicle driven by the 2nd defendant while crossing. There is absolutely no evidence to prove that the accident occurred solely due to the negligence of the appellant. Therefore, the appellant cannot be fastened with liability for the loss and is not liable to indemnify the Insurance Company.



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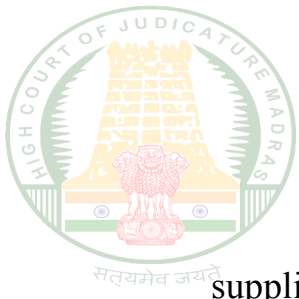
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35. In support of the above contention, the learned counsel for the appellant relied upon the judgment reported in 2024 (2) CTC 452, (particularly paragraphs 20 and 21).

36. With regard to the title over the damaged goods, the appellant contended that the third respondent had no subsisting title or insurable interest in the goods at the time of the accident, since the entire stock had already been sold to M/s. Minesh& Co., Jodhpur. The third respondent failed to produce any agreement or other document to establish that he had retained responsibility for safe delivery of the goods after the sale, though the Insurance Company contended that the carrier remained liable as the goods had not been delivered to the consignee.

37. The learned counsel for the appellant relied upon the decisions reported in L.W. 284 (paragraphs 12 to 14) and 2020 (1) CTC 646 (paragraphs 30 to 32).

38. Ex.A1, the invoice dated 07.03.1985 issued by the third respondent in favour of the purchaser, discloses that the goods were



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supplied on the account and risk of M/s. Minesh & Co. In the absence of any document showing that the seller retained responsibility for the safe delivery of the goods, Ex.A1 clearly establishes that the risk in the goods had passed to the purchaser from the moment the goods were entrusted to the carrier for transportation. Consequently, any loss sustained during transit was the loss of the purchaser and not that of the third respondent.

39. Admittedly, the purchaser, who alone had the subsisting interest in the goods at the relevant point of time, was not impleaded as a party to the suit. Therefore, the suit suffers from non-joinder of a necessary party. Further, in view of Ex.A1, the third respondent had no insurable interest in the goods at the time of the loss and, consequently, the letter of subrogation executed in favour of the Insurance Company is unenforceable in law.

40. The Trial Court, upon a proper appreciation of the oral and documentary evidence, rightly held that the plaintiff was not entitled to recover any amount from the defendants and dismissed the suit on the ground of mis-joinder and non-joinder of necessary parties.



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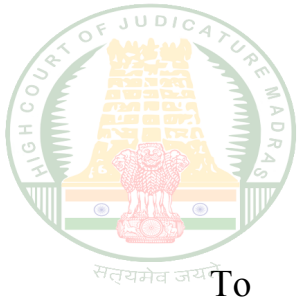
41. This Court finds no perversity, illegality or infirmity in the findings of the Trial Court. However, the First Appellate Court failed to properly consider the factual and legal aspects involved in the matter and confined its discussion mainly to the question of subrogation, ultimately fastening liability upon the appellant. Such an approach is unsustainable. Accordingly, the findings and decree of the First Appellate Court are liable to be set aside and the judgment of the Trial Court deserves to be restored.

42. In the result, this second appeal is allowed, the judgment and decree dated 12/12/2001 passed in AS No.103 of 2000 on the file of the Principal District Judge, Tuticorin, are set aside and the judgment and decree dated 28/04/2000 passed in OS No.11/1998 on the file of the Subordinate Court, Kovilpatti, are restored. No costs. Consequently, connected miscellaneous petition is closed.

01.06.2026

NCC : Yes / No
Index : Yes / No
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To
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- 1.The Principal District Judge,
Tuticorin.
- 2.The Subordinate Judge,
Kovilpatti.
- 3.The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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R.POORNIMA, J.

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