

In the Court of the II Additional District Judge, Thoothukudi.

Present: Tmt. M.Breetha, M.L.,

II Additional District Judge, Thoothukudi.

Friday, the 07th day of August 2026

I.A. No.5/2026 and I.A. No.6/2026

in

M.C.O.P. No. 8/2020

- 1) R. Veerappan
- 2) R. Azhagarsamy
- 3) R. Nagaraj
- 4) D. Mariammal
- 5) S. Ramachandran

...Petitioners/Claimants

..Vs..

- 1) S. Krishnan (Died)
- 2) Oriental Insurance Company Ltd.,
Thoothukudi
- 3) Ayyammal

...Respondents /Respondents

**...Proposed Respondent /
Legal Heir of 1st Respondent**

These petitions came on 29.07.2026 for final hearing before this court in the presence of Advocate Thiru.E.Nallamaharajan, for the petitioners/Claimants and Advocate Thiru.T.Subendran, for the 2nd respondent and upon hearing the arguments on both sides and having stood over for consideration till this day, this court delivered the following:

COMMON ORDER

I.A.No.5/2026 : This petition has been filed under Order 22 Rule 9 of C.P.C to set aside the abatement caused on the death of the 1st respondent.

I.A.No.6/2026: This petition has been filed under Order 22 Rule 4 and 151 of C.P.C to implead the legal representatives of the deceased 1st respondent.

2) Brief averments in the Petition:

The petitioners are the claimants in the main petition and have averred that the main petition has been filed seeking compensation for the death of their father in a motor accident and that the main petition is posted for arguments and that the 1st respondent died on 07.10.2020 and therefore, it is just and necessary to implead the legal representative of the deceased 1st respondent and the fact of death of 1st respondent and the particulars of his legal representative came to their knowledge belatedly and that the main petition was abated for non impleading the legal representative of the deceased 1st respondent in time and and hence, constrained to file these petitions to set aside the abatement and to implead the legal representative of deceased 1st respondent and prays to allow the same.

3) Brief contentions of the counter filed by the 2nd respondent:

The 2nd respondent has denied all the averments made in the petition and has contended that the petitioners/claimants shall prove that the proposed party is the legal heir of the deceased 1st respondent and that the reason stated by the petitioners is not acceptable and prays for dismissal of the petition with costs.

4) The point for consideration is whether this petition can be allowed or not?

5) Both sides are heard. Records have been perused.

6) The 1st respondent in the main claim petition died. The petitioners have averred that the 1st respondent died on 07.10.2020 and therefore, it is just and necessary to implead the legal representative of the deceased 1st respondent and the fact of death of 1st respondent and the particulars of his legal representative came to their knowledge belatedly and that the main petition was abated for non impleading the legal representative of the deceased 1st respondent in time and and hence, constrained to file these petitions to set aside the abatement and to implead the legal representative of deceased 1st respondent.

8) The death of the 1st respondent on 07.10.2020 is undisputed. Under Order 22 Rule 4 of the CPC, where a sole defendant or respondent dies and the right to sue survives, the court must implead the legal representatives to proceed with the adjudication. Because the accident involves a statutory claim that survives the deceased owner to be indemnified by the insurance company, the right to sue safely survives against the estate of the deceased. Therefore, the presence of the proposed legal representative is absolutely necessary for a complete and final adjudication of the dispute.

9) The 2nd respondent raised a generic objection demanding proof of legal heirship and arguing that the delay is unacceptable. However, the 2nd respondent has not produced any contrary evidence to explicitly disprove the status of the proposed legal heir.

10) Admittedly, there is a delay in filing these applications, leading to an automatic abatement. The petitioner has stated that the delay was due to the late knowledge of the death and lack of particulars of the heirs. It is a well-settled principle of law that rules of procedure are meant to advance the cause of justice, not to defeat it. Courts must adopt a liberal and pragmatic approach to condoning delays and setting aside abatements, ensuring that substantive justice triumphs over technical defaults, provided there is no gross negligence or deliberate inaction. No such mala fide intention is apparent on the part of the petitioner here.

11) To give a fair opportunity to the parties to decide the matter on its merits, this Court is inclined to allow the petitions.

In the result,

I.A. No. 5 of 2026 is allowed. No costs.

I.A. No. 6 of 2026 is allowed. No costs.

The order was dictated to the Steno-Typist, directly typed by her, in the computer, corrected and pronounced by me, in open court, this the **07th day of August 2026**.

**II Additional District Judge,
Thoothukudi.**

Petitioners side witness and Documents : NIL

Respondents side witness and Documents: NIL

**II Additional District Judge,
Thoothukudi.**

**II ADJ, Thoothukudi
Draft/Fair
Common Order
I.A. No. 5/2026 and
I.A. No. 6/2026
in
M.C.O.P. No. 8/2020
Dated: 07.08.2026**