



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14-07-2026

CORAM

THE HON'BLE MR JUSTICE N. ANAND VENKATESH

CMA No. 371 of 2023

AND

CMP No. 3128 of 2023

WEB COPY

The Branch Manager
National Insurance Company Ltd,
L.R.N. Buildings, Saradha College Main Road,
Salem 636 007.

..Appellant(s)

Vs

1. Anandi
S/o Theerthagiri, Melveedhi,
Bethanayakkanpalayam Taluk, Karumandurai,
Salem District.

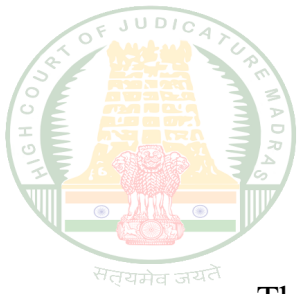
2. A.Ramachandran
S/o Annamalai Moopan,
13, Periyagoundapuram Post,
Karipati Via, Vazhapadi Taluk,
Salem District 636 106.

..Respondent(s)

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicle Act, seeking to set aside the Judgment and decree dated 26.08.2022 and made in M.C.O.P.No.424 of 2017 on the file of Motor Accident Claims Tribunal, Special Subordinate Court No.1, Salem.

For Appellant(s): M/s.N.B.Surekha

For Respondent(s): R1 - No Such Person
R2 - No Such Address



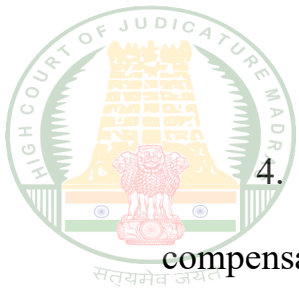
JUDGMENT

WEB COPY

This appeal has been filed by the Insurance Company against the award passed by the Motor Accident Claims Tribunal, Special District Judge No.1, Salem in M.C.O.P.No.424 of 2017, dated 26.08.2022.

2. The first respondent is the claimant. The claim petition was filed on the ground that the first respondent was travelling in a Tata 407 van along with the goods on 31.05.2016. At about 8.00 p.m., one of the rear wheel burst, and the driver lost control of the vehicle, and as a result of which, the vehicle capsized, and the claimant sustained the following injuries: *“Left ganglio capsular focal old hemorrhagic infarct with focal atrophy and wallerian degeneration. Total occlusion of left middly cerebral artery at the origin”*. The claimant underwent treatment as an in-patient for nearly 13 days. An FIR also came to be registered against the driver of the Tata 407 van in Crime No.271/2016. It is under these circumstances, the claim petition came to be filed before the Tribunal.

3. The Tribunal, on considering the facts and circumstances of the case and on appreciation of oral and documentary evidence came to a conclusion that the accident had taken place only due to the rash and negligent driving on the part of the driver of the Tata 407 van.



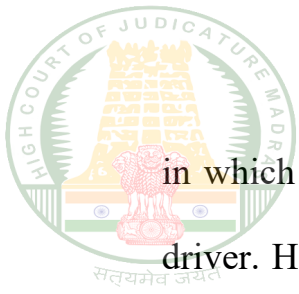
4. The Tribunal having rendered the above finding fixed the total compensation payable at Rs.1,54,943/- under the following heads:

Sl. No.	Compensation awarded under the head	Amount (in Rs.)
1.	Pain and Sufferings	Rs.30,000/-
2.	Transport Expenses	Rs.10,000/-
3.	Extra Nourishment	Rs.20,000/-
4.	Attender Charges	Rs.10,000/-
5.	Damages to clothes	Rs.1,000/-
6.	Medical Expenses	Rs.43,943/-
7.	Loss of income during treatment period	Rs.30,000/-
8.	Loss of Amenities	Rs.10,000/-
	Total	Rs.1,54,943/-

The above compensation was directed to be paid with interest at the rate of 7.5% per annum. Aggrieved by the same, the present appeal has been filed by the Insurance company.

5. This Court heard the learned counsel for the appellant – Insurance Company. This Court carefully considered the submissions made by the learned counsel for the appellant and the materials available on record. This Court also carefully went through the award passed by the Tribunal.

6. The main ground that was urged by the learned counsel for the appellant is that the claimant was a gratuitous passenger and the goods vehicle

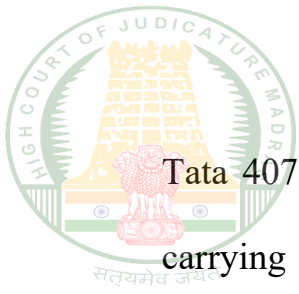


in which had a permitted carrying capacity of only two persons, including the driver. However, nearly ten persons were travelling in the Tata 407 van, which amounts to a fundamental violation of the policy condition. It is therefore contended that the owner of the vehicle should have been mulcted with the liability and the Insurance Company ought to have been exonerated from liability.

7. In the case in hand, the insurance policy which was marked as Ex.R1 shows that the carrying capacity of the vehicle was only for two persons, including the driver. The same is also evident from the RC book marked as Ex.R2. The evidence before the Tribunal shows that nearly ten persons travelled along with goods, which includes the claimant.

8. As per the policy, the liability of the Insurance Company is limited to two persons, namely, the driver and the employee. In the case in hand, the claimant was employed by the owner for loading and unloading the goods. Hence, the liability of the Insurance Company can be confined to the claimant. Consequently, the finding of the Tribunal directing the appellant Insurance Company to pay the compensation amount to the claimant does not warrant interference by this Court.

9. The evidence on record shows that nearly ten persons travelled in the



Tata 407 van. This is certainly in violation of the policy condition. Since the carrying capacity was only two persons, including the driver. Hence, the Tribunal ought to have applied the principle of “pay and recover”.

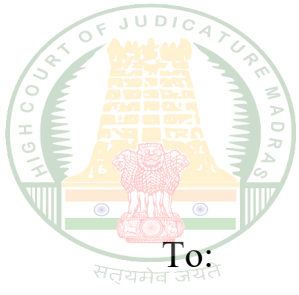
10. In the light of the above discussion, this Court is inclined to invoke the principle of “pay and recover” and the compensation amount paid by the Insurance Company can be recovered from the owner of the vehicle, namely, the second respondent. The second respondent had chosen to remain ex parte before the tribunal and has not contested the case.

11. In the result, the Civil Miscellaneous Appeal is partly allowed. The award passed by the Tribunal is sustained with the modification that the appellant – Insurance Company will pay the compensation amount along with interest to the claimant and it can be recovered from the second respondent. The directions issued by the Tribunal with regard to the mode of payment of compensation remains unaltered. No costs. Consequently, the connected miscellaneous petition stand closed.

14-07-2026

Index: Yes/No
Speaking/Non-speaking order
Neutral Citation: Yes/No

SSI



To:

WEB COPY

1. The Special Sub Judge-I,
Motor Accident Claims Tribunal,
Krishnagiri.

2. The Section Officer,
V.R.Section.



WEB COPY

CMA No. 371 of 2



N.ANAND VENKATESH J.

SSI

**CMA No. 371 of 2023
AND
CMP No. 3128 of 2023**

14-07-2026