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CMA.No.2813 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27-07-2026

CORAM

THE HON'BLE MR JUSTICE N. ANAND VENKATESH

Civil Miscellaneous Appeal No.2813 of 2022
& CMP.No.21938 of 2022

The Chief Manager,
The Oriental Insurance Co.Ltd.,
Third Party Claims Hub, New No.216,
Old No.115, Prakasam Salai,
Broadway, Chennai 108.

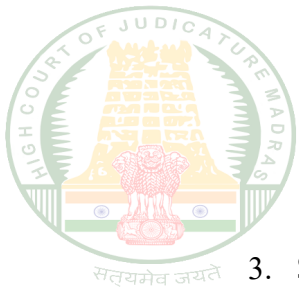
...Appellant

Vs

1. Tmt.Mahalaxmi,
W/o. Late. Sakthivel,
Mariamman Koil Street, 4th Ward,
P.N.Palayam, Panruti Taluk
Now residing at Kondur Colony,
Cuddalore-1.

Saranraj (Minor) **(Died)**,
S/O Late Sakthivel

2. Sharmila (Minor)
D/o. Late. Sakthivel,
(Minor respondent is rep.by mother,
guardian & next friend 1st respondent
herein), residing at Mariamman
Koil Street, 4th Ward, P.N.Palayam,
Panruti Taluk, Now residing at Kondur
Colony, Cuddalore-1.



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3. Sandiya @ Saranya (Minor)
D/o. Late. Sakthivel,
(Minor respondent is rep.by mother,
guardian & next friend 1st respondent
herein), residing at Mariamman Koil
Street, 4th Ward, P.N.Palayam, Panruti
Taluk, Now residing at Kondur Colony,
Cuddalore-1.
4. Rosi (Minor)
D/o. Late. Sakthivel,
(Minor respondent is rep.by mother,
guardian, next friend 1st respondent
herein), residing at Mariamman Koil
Street, 4 th Ward, P.N. Palayam,
Panruti Taluk, Now residing at
Kondur Colony, Cuddalore-1.
5. Durga (Minor)
D/o. Late. Sakthivel,
(Minor respondent is by mother,
guardian, next friend 1st respondent
herein) residing at Mariamman Koil
Street, 4th Ward, P.N.Palayam,
Panruti Taluk, Now residing at
Kondur Colony, Cuddalore-1.
- Pandu, **(died)**, S/O Sagadevan
6. Eagavalli, W/o. Pandu,
Mariamman Koil Street, 4th Ward,
P.N.Palayam, Panruti Taluk,
Now residing at Kondur Colony,
Cuddalore-1.
7. Thamasri (Minor)
D/o. Late. Sakthivel,
(Minor respondent is rep.by mother,
guardian, next friend 1st respondent



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herein), Mariamman Koil Street,
4th Ward, P.N.Palayam, Panruti
Taluk, Now residing at Kondur
Colony, Cuddalore-1.

8. V.Venkatesan, S/o. Vaithialingam,
No.22, Angalamman Koil Street,
Melpattampakkam, Panruti Taluk.
(died)

...Respondents

APPEAL under Section 173 of the Motor Vehicles Act, 1988
against the judgement and decree dated 05.1.2019 in MCOP.No.
1748 of 2011 on the file of the Motor Accidents Claims Tribunal
(Principal District Court), Cuddalore.

For Appellant:	Mr.S.Senthilkumar
For Respondents:	Ms.Ramya V.Rao for R1 to R7 R8 – died

JUDGMENT

This appeal has been filed by the appellant - Insurance
Company against the award dated 05.1.2019 in MCOP.No.1748 of
2021 on the file of the Motor Accidents Claims Tribunal (Principal
District Court), Cuddalore (for short, the Tribunal below) questioning
their liability to pay the compensation.



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2. Heard the learned counsel for the appellant – Insurance Company and the learned counsel appearing for respondents 1 to 7.

3. Originally, there were 9 claimants in this case. They were the wife, six minor children and parents of one Mr.P.Sakthivel (since deceased). Even during the pendency of the claim petition, one minor son and the father of the deceased passed away.

4. The facts leading to filing of this appeal are as follows:

(i) The said Mr.P.Sakthivel was an agricultural cooli and loadman. On 07.7.2011, he travelled in a tractor loaded with two trailers in his capacity as a loadman/cooli from Kondur to Eithanur. At about 12.50 Hours, when the tractor was nearing Eithanur Road, the left side tyre busted, due to which, the driver of the tractor lost control and ultimately, the vehicle capsized and fell into a nearby pit. As a result, the said Mr.P.Sakthivel sustained fatal injuries and succumbed to the injuries on the spot. A first information report came to be registered in Crime No.337 of 2011 on the file of the Station House Officer, Nellikuppam Police Station against the driver of the tractor. The first respondent is the owner of the vehicle



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involved in the accident and the second respondent is its insurer. It was under those circumstances, the claim petition came to be filed before the Tribunal below.

(ii) The Tribunal, on considering the facts and circumstances of the case and on appreciation of the oral and documentary evidence, came to the conclusion that the accident had taken place only due to the rash and negligent driving on the part of the driver of the tractor.

(iii) The Tribunal below took into consideration the defence taken by the appellant – Insurance Company to the effect that the said Mr.P.Sakthivel did not travel in the tractor as a loadman, that he was actually travelling in the mud guard of the tractor and that therefore, the appellant – Insurance Company was not liable to pay compensation. The Tribunal below ultimately concluded that the said Mr.P.Sakthivel travelled in the tractor in his capacity as a cooli and considering the fact that the policy was a package policy, the appellant - Insurance Company was liable to pay compensation. The Tribunal below further ordered pay and recovery on the ground that there was a violation of the policy conditions by the owner of the vehicle.



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(iv) Having rendered the above findings, the Tribunal below fixed the total compensation amount of Rs.13,60,000/- under the following heads:

<i>S.No</i>	<i>Head</i>	<i>Amount</i>
1	<i>Loss of dependency</i>	<i>Rs.12,90,240/-</i>
2	<i>Loss of estate, loss of consortium & funeral expenses</i>	<i>Rs. 70,000/-</i>
	<i>Total</i>	<i>Rs.13,60,240/-</i>
	<i>Rounded off to</i>	<i>Rs.13,60,000/-</i>

(v) The appellant – Insurance Company was directed to pay the entire compensation amount together with interest at the rate of 8% per annum from the date of claim petition till date of realization. The appellant – Insurance Company was granted liberty to recover the entire compensation amount from the first respondent. Aggrieved by that, the above appeal has been filed before this Court by the appellant – Insurance Company questioning their liability.

5. This Court has carefully considered the submissions of the learned counsel on either side and perused the materials available on record and more particularly the impugned award.



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6. In the case in hand, the insurance policies for the tractor and one of the trailers would clearly show that they covered the liability of driver of the tractor and nothing more.

7. The issue involved in this case is no longer res integra. Admittedly, on evidence, it comes to light that the said Mr.P.Sakthivel travelled only in the mud guard of the tractor. A Division Bench of this Court in the case of **United India Insurance Co.Ltd. Vs. Lakshamma [C.M.A.No.496 of 2021 dated 03.8.2023]** held as follows:

"6. Mr.S.Arunkumar, learned counsel for the Insurance Company would vehemently contend that the deceased having travelled in a Tractor, being an unauthorized passenger, the Tribunal ought not to have directed pay and recover. Drawing our attention to the RC Book of the Tractor, which shows that the permitted capacity is only one and that too, to the driver. The learned counsel would contend that Rule 28 of the Central Motor Vehicle Rules prohibits the driver from carrying or allowing any person to be carried on a Tractor. He would also invite our attention to Section 147 of the Motor Vehicles Act, which according to him does not require the



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Insurance Company to cover unauthorized persons travelling in a Tractor.

7. The learned counsel for the Insurance Company draw our attention to the judgment of the Hon'ble Supreme Court in United India Insurance Company Ltd. Vs. K.K.Suresh and Another reported in 2009 (1) LW 27 to contend that a person, who travels in a goods vehicle unauthorizedly is not covered by the policy and therefore, the Insurance Company cannot be made liable. Mr.S.Arunkumar would also point out that the Hon'ble Supreme Court has held that if there is only one seat in the vehicle, even owner of the goods is travelled in such vehicle, the insurance is not covered.

8. He would also draw our attention to the judgment of a Division Bench of this Court in Bharati AXA General Insurance Co. Ltd., Vs. Aandi and Others reported in 2018 (2) TN MAC 731 to which one of us (Hon'ble Mr.Justice R.Subramanian) was a party wherein, it was held that there is no statutory requirement to cover a person, who travels as passenger in any type of vehicle. After analysing the scope of Sections 147 & 149 of the Motor Vehicles Act, it was pointed out that the Insurance Company is liable to cover the risk in respect of death or bodily injury or damage to any property of a Third party, owner of the goods or his



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Authorized Representative carried in a goods vehicle or against the death or bodily injury to the passenger of a Public service vehicle. It was concluded that the Insurer is not required to cover a particular type of a person, who is an unauthorized passenger in a vehicle, which does not contain any provision for passengers and therefore, a direction to pay and recover to be issued in respect of such persons.

9. The judgment of the Hon'ble Supreme Court in National Insurance Company Ltd. Vs. Swaran Singh and Others reported in 2004 (3) SCC 297 was also considered by the Division Bench and it was held that, the law laid down the principle of pay and recover would apply only where there is a subsisting contract of insurance covering the risk and the Insurance Company avoids the liability of certain violations of policy conditions in cases where, the Insurance Company is not bound to recover the risk, despite there being a valid policy, there cannot be a direction for pay and recover.

10. Mr.S.Arunkumar would also draw our attention to the judgment of the Hon'ble Supreme Court in Shivraj Vs. Rajendra and Another reported in 2018 (2) TN MAC 273 wherein, the Hon'ble Supreme Court had confirmed the conclusions of the High Court to the effect that the Insurance Company was not



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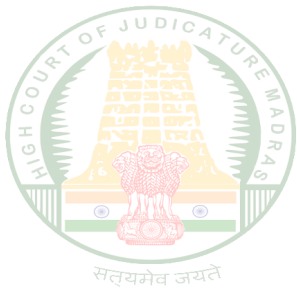
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liable for such loss or injuries suffered by a person, who travels in a Tractor. However, the Hon'ble Supreme Court taking into account the peculiar circumstances directed the Insurance Company to pay compensation with liberty to recover.

11. We must hasten to add that the attention of two Judge Bench, which decided Shivaraj Vs. Rajendra and Another was not drawn to the dictum of the larger Benches in New India Assurance Co. Ltd., Vs. Asha Rani and Others reported in 2004 (2) TN MAC 387 and National Insurance Co. Ltd., Vs. Baljit Kaur and others reported in 2004 (1) CTC 210 wherein, Hon'ble Supreme Court had after detailed discussions held that the pay and recover would arise only there is a valid contract of insurance and there is a statutory requirement for coverage of the risk.

12. Mr.S.Arunkumar, learned counsel would also invite our attention to the judgment of the Full Bench of the Karnataka High Court in Gandhilingappa @ Gandhilinga and Another Vs. K.Guleppa and Others reported in (2021) 2 TN MAC 116 wherein, the Full Bench has framed the following points for determination:-

"i) Whether a person travelling on a mud-guard of a tractor can be construed as an authorized passenger or an unauthorized



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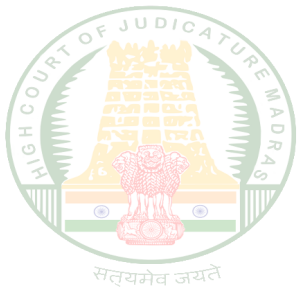
passenger and liability of such person is covered or not?

ii) Whether the persons who are working either on the ploughing or crushing machines attached to the tractor can be construed as employees so as to cover their risk statutorily under Section 147 of MV Act though there is only one seating capacity in the tractor apart from the driver?

iii) Whether the crushing machine or ploughing machine or any other instrument attached to the tractor can be considered to be an attachment to the tractor so as to cover the risk of the insured in respect of employees and the policy taken in respect of the tractor alone ?"

13.The Full Bench of the Karnataka High Court answered the Question No.1 in terms of paragraph 23 of the said judgment, which reads as follows:-

"23. The Apex Court has reiterated that a tractor could lawfully accommodate only one person, namely, the driver. The Apex Court categorically held that the appellant in the said case had travelled in the tractor as a passenger even though the tractor could accommodate only one person namely the driver. It was categorically held that the insurer was not liable to indemnify the owner of the tractor for the liability of a passenger travelling on the tractor.



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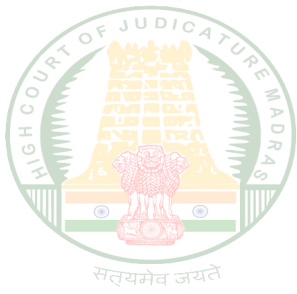


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Hence, in view of the dictum of the Apex Court referred above, the liability of a person sitting on the mud-guard of a tractor is not required to be covered by statutory insurance policy, as contemplated by sub-section (1) of Section 147 of the M.V.Act."

14. Contending contra, Mr.K. Varadhakamaraj, learned counsel for the respondents/claimants would rely upon the judgment of the Hon'ble Supreme Court in *Shivawwa and another Vs. Branch Manager, National India Insurance Co. Ltd.*, and another reported in 2018 (1) TN MAC 435 wherein, the Hon'ble Supreme Court had held that a person travelling along with his goods in the Tractor, though may not be strictly covered by the policy, the Insurer could still be directed to pay and recover in terms of the judgment of the *National Insurance Company Ltd. Vs. Swaran Singh and Others* reported in 2004 (3) SCC 297.

15. We do not find any reference to any of the other judgment of the Hon'ble Supreme Court, which deals with a liability of the Insurance Company or the requirement of the statute to cover the risk in the said judgment. We find that the judgment of the Hon'ble Supreme Court in *Shivawwa ad Another Vs. Branch Manager, National India Insurance Co. Ltd.*, runs counter to pronouncement of the



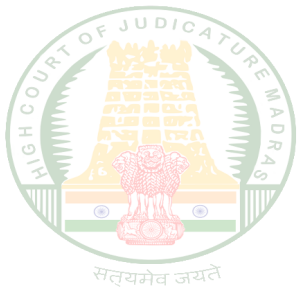
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judgments in Shivaraj Vs. Rajendra and Another reported in 2018 (2) TN MAC 273, National Insurance Co. Ltd., Vs. Chinnamma and Others reported in (2004) 8 SCC 697, New India Assurance Co. Ltd., Vs. Darshna Devi and Others reported in 2008 ACJ 1318 and United India Insurance Co. Ltd., Vs. K.K.Suresh & Another reported in 2009 (1) LW 27.

16. We further find that there is no discussion on the scope of the risk that should be covered by the Insurance Company in such cases. As rightly pointed out by the Full Bench of the Karnataka High Court with which, we concur with respect to a person travelling in the mud-guard of the Tractor is not covered by the policy, irrespective of the capacity in which, he travels in the said vehicle. Rule 28 of the Central Motor Vehicle Rules contains a direct prohibition on persons, being allowed to travel in the mudguard of the Tractor. When there is a statutory violation that persons, who travels in the mud-guard is unauthorized passenger, we cannot burden the Insurance Company with liability when it is not required to cover the risk of an unauthorized passenger. The First Information Report in the case on hand shows that the deceased has travelled in the mud-guard of the Tractor. A perusal of the RC Book of the Tractor as well as the Trailor shows that it is an



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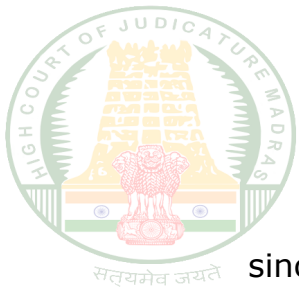


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agriculture vehicle. The facts revealed that it was used for non agricultural purpose. Therefore, the very user of the vehicle, being in violation of the framed conditions would also entail the Insurance Company to avoid its liability."

8. It is also relevant to take note of the judgment in the case of ***United India Insurance Co.Ltd., Vridhachalam Vs. Saraswathi & 2 Others [reported in 2022 (1) TN MAC 648]***, which was a case where the tractor had a seating capacity for one person whereas gratuitous passenger had travelled in that tractor. It was held that the Insurance Company would not be liable to pay compensation.

9. The above judgments would squarely apply to the facts of this case. The liability of the appellant - Insurance Company cannot be extended beyond the coverage that has been given in the insurance policy. Unfortunately, in this case, the said Mr.P.Sakthivel travelled in the mud guard of the tractor and not even in the trailer. In view of the same, this Court holds that the appellant – Insurance Company is not liable to pay the compensation to the claimants



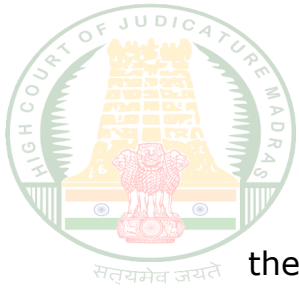
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since the policy does not cover an eventuality of this nature.

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10. In the light of the above discussions, the finding of the Tribunal below mulcting the entire liability on the appellant – Insurance Company is hereby set aside. At best, respondents 1 to 7 – surviving claimants can only get the compensation from the owner of the offending vehicle. The interest component awarded by the Tribunal below is restricted to 7.5% per annum.

11. Accordingly, the above civil miscellaneous appeal is allowed and the award dated 05.1.2019 in MCOP.No.1748 of 2011 on the file of the Tribunal below is set aside. The finding with regard to pay and recovery is also set aside. Since the eighth respondent is dead, **there shall be a direction to the legal heirs of the eighth respondent to deposit the entire compensation amount awarded by the Tribunal below together with interest at the rate of 7.5% per annum from the date of claim petition till the date of realization, within eight weeks from the date of receipt of a copy of this judgment.** On such deposit, since respondents 2 to 5 herein would have attained majority by now,



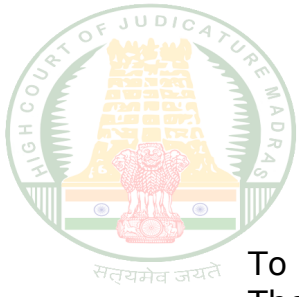
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they are permitted to withdraw their respective shares as per the proportion fixed by the Tribunal below. The share of the minor - 7th respondent shall be kept in fixed deposit till she attains majority and the first respondent is permitted to withdraw the accrued interest once in three months till the 7th respondent attains majority. **While entertaining this appeal, this Court, by order dated 20.12.2022 in CMP.No.21938 of 2022 granted an order of interim stay on condition that the appellant – Insurance Company should deposit 50% of the award amount together with accrued interest. In view of the judgment rendered now in this appeal, the appellant – Insurance Company is permitted to withdraw the amount so deposited along with accrued interest.** The guidelines issued by the Division Bench of this Court in CMA.No.2064 of 2026 dated 08.7.2026 shall be strictly complied with respect to disbursement of the compensation amount to the claimants. No costs. Consequently, the connected CMP is closed.

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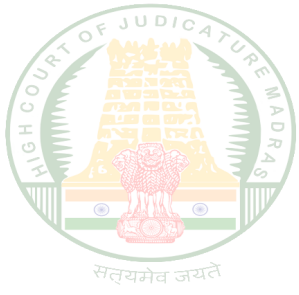
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The Motor Accidents Claims Tribunal
(Principal District Court), Cuddalore.

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N.ANAND VENKATESH,J

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