

C.M.A(MD)No.768 of 2009

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on : 03.07.2026

Pronounced on : 10.07.2026

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

C.M.A(MD)No.768 of 2009

The Divisional Manager,
Royal Sundaram Alliance Insurance Company Ltd,
No.46, Whites Road, Chennai.

: Appellant

Vs.

1.Rajalingam

2.Karuppayee

3.R.Veluchamy

: Respondents

PRAYER:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the award passed in M.C.O.P.No.233 of 2007, dated 12.02.2009 on the file of the Motor Accident Claims Tribunal (Sub Court, Kulithalai.

For Appellant : Mr.S.Srinivasa Raghavan,

For Respondents : Mr.V.Kannan, for R1 and R2.

: No Appearance, for R3.



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JUDGMENT

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The Civil Miscellaneous Appeal is directed against the award made in M.C.O.P.No.233 of 2007, dated 12.02.2009 on the file of the Motor Accident Claims Tribunal (Sub Court), Kulithalai.

2.The appellant/Insurer, who was mulcted with liability to pay compensation of Rs.1,52,000/- with interest and costs to the respondents 1 and 2/claimants for the death of their son Manikanda, consequent to an occurred on 24.09.2005, challenged the liability mulcted on it.

3. For the sake of convenience and brevity, the parties will hereinafter be referred as per their status/ranking before the Tribunal.

4.The case of the claimants is that on 24.09.2005 at about 02.00 pm in Kulithalai main road near Ayyarmalai, the deceased Manikandan along with his friend Velusamy was travelling in a TVS Centra motorcycle bearing Reg.No. TN-47-L-7095 towards Kulithalai and at that time, the motorcycle dashed against the tamarind tree and as a result of which, the



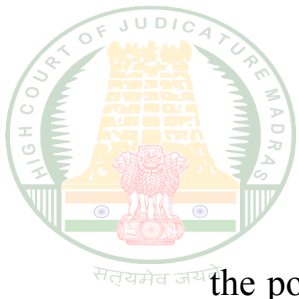
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said Manikandan has sustained multiple fatal injuries and the pillion rider Velusamy also sustained grievous injuries; that the injured Manikandan after first aid treatment at Government Hospital Kulithalai, was referred to Government Head Quarters Hospital, Trichy, but when he was taken to I.S.Nurshing home, Trichy, he was declared as dead.

5. It is not in dispute that the two wheeler bearing Reg.No. TN-47-L-7095 was owned by the first respondent and the same was insured with the second respondent. The claimants, being the parents of the deceased Manikandan laid the above claim petition under Section 163 (A) and 166 of Motor Vehicles Act against the owner and the insurer of the two wheeler, in which the deceased was travelling. The Tribunal, by holding that the claim petition filed under Section 163(A) of M.V.Act., was maintainable and directed the respondents 1 and 2 to pay compensation of Rs.1,52,000/- jointly or severally to the claimants with interest and costs.

6. The learned counsel appearing for the appellant/Insurance Company would contend that a claim petition under Section 163-A of the Motor Vehicles Act is maintainable only at the instance of a third party to



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the policy of insurance and not by or on behalf of the owner of the insured vehicle. According to the learned counsel, when the deceased himself had borrowed the insured vehicle from its registered owner and met with the accident while riding the same, he stepped into the shoes of the owner and, therefore, no claim under Section 163-A can be maintained against the insurer of the said vehicle.

7. The learned counsel for the appellant placed reliance on the judgment of the Hon'ble Supreme Court in ***Ningamma and another Vs. United India Insurance Co.Ltd.***, reported in **2009 (2) TN MAC 169 (SC)** wherein the Hon'ble Apex Court has held that a person who borrows a motorcycle from the registered owner and causes an accident by his own negligence is not entitled to claim compensation from the insurer of the said vehicle, since such borrower steps into the shoes of the registered owner.

8. The learned counsel for the appellant also placed reliance on the judgment of the Hon'ble Supreme Court in ***Ramkhiladi and another Vs. United India Insurance Company and another*** reported in (2020) 2 SCC 550, wherein the Hon'ble Apex Court has reiterated the above principle and the relevant passages are extracted hereunder :



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9.5 *It is true that, in a claim under Section 163A of the Act, there is no need for the claimants to plead or establish the negligence and/or that the death in respect of which the claim petition is sought to be established was due to wrongful act, neglect or default of the owner of the vehicle concerned. It is also true that the claim petition under Section 163A of the Act is based on the principle of no fault liability. However, at the same time, the deceased has to be a third party and cannot maintain a claim under Section 163A of the Act against the owner/insurer of the vehicle which is borrowed by him as he will be in the shoes of the owner and he cannot maintain a claim under Section 163A of the Act against the owner and insurer of the vehicle bearing registration No. RJ 02 SA 7811. In the present case, the parties are governed by the contract of insurance and under the contract of insurance the liability of the insurance company would be qua third party only. In the present case, as observed hereinabove, the deceased cannot be said to be a third party with respect to the insured vehicle bearing registration No. RJ 02 SA 7811. There cannot be any dispute that the liability of the insurance company would be as per the terms and conditions of the contract of insurance. As held by this Court in the case of Dhanraj (supra), an insurance policy covers the liability incurred by the insured in respect of death of or bodily injury to any person (including an owner of the goods or his authorized representative) carried in the*



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vehicle or damage to any property of a third party caused by or arising out of the use of the vehicle. In the said decision, it is further held by this Court that Section 147 does not require an insurance company to assume risk for death or bodily injury to the owner of the vehicle.

9.6 In view of the above and for the reasons stated above, in the present case, as the claim under Section 163A of the Act was made only against the owner and insurance company of the vehicle which was being driven by the deceased himself as borrower of the vehicle from the owner of the vehicle and he would be in the shoes of the owner, the High Court has rightly observed and held that such a claim was not maintainable and the claimants ought to have joined and/or ought to have made the claim under Section 163A of the Act against the driver, owner and/or the insurance company of the offending vehicle i.e. RJ 29 2M 9223 being a third party to the said vehicle.

9. The learned counsel for the claimants would submit that there is no factual or legal basis for sustaining the present appeal and that the appeal has remained pending for more than 16 years; that the insurance company is relying upon a judgment after more than a decade, attempting to oppose the decision of the Tribunal and that the Tribunal by referring to the legal



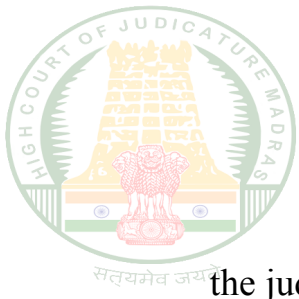
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position, has rightly mulcted the liability on the insurer and the same cannot be found fault With.

10. As already pointed out, the deceased Manikandan alone rode the two-wheeler, while the owner of the vehicle travelled as a pillion rider. As rightly contended by the learned counsel appearing for the appellant, the deceased can only be treated as a borrower of the vehicle from the first respondent, who is its registered owner, and therefore, he cannot be treated as a third party. In order to maintain a claim petition under Section 163-A of the Motor Vehicles Act, the deceased must be a third party to the policy of insurance. Since the deceased had borrowed the vehicle from its owner, he stepped into the shoes of the owner. Consequently, the claimants, being the legal heirs of the deceased, cannot maintain a claim under Section 163-A of the Motor Vehicles Act against the owner and insurer of the very same vehicle.

11. In view of the above, this Court has no hesitation in holding that the claim petition under Section 163-A of the Motor Vehicles Act is not maintainable. At the same time, it is necessary to refer to paragraph 9.8 of



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the judgment of the Hon'ble Supreme Court in Ramkhiladi's case, wherein it has been held that though such a claim under Section 163-A is not maintainable, the parties are nevertheless governed by the contract of insurance and, if the policy provides for Personal Accident Cover to the owner-driver, the claimants would be entitled to the amount payable under the said contractual coverage. Since the deceased had stepped into the shoes of the owner, his legal heirs would be entitled to the amount payable under the Personal Accident Cover.

9.8 However, at the same time, even as per the contract of insurance, in case of personal accident the ownerdriver is entitled to a sum of Rs.1 lakh. Therefore, the deceased, as observed hereinabove, who would be in the shoes of the owner shall be entitled to a sum of Rs.1 lakh, even as per the contract of insurance. However, it is the case on behalf of the original claimants that there is an amendment to the 2 nd Schedule and a fixed amount of Rs.5 lakh has been specified in case of death and therefore the claimants shall be entitled to Rs.5 lakh. The same cannot be accepted. In the present case, the accident took place in the year 2006 and even the Judgment and Award was passed by the learned Tribunal in the year 2009, and the impugned Judgment and Order has been passed by the High Court in 10.05.2018, i.e. much prior to the amendment in the



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2nd Schedule. In the facts and circumstance of the present case, the claimants shall not be entitled to the benefit of the amendment to the 2 nd Schedule. At the same time, as observed hereinabove, the claimants shall be entitled to Rs.1 lakh as per the terms of the contract of insurance, the driver being in the shoes of the owner of the vehicle.

12. The above decision squarely applies to the facts of the present case. As already pointed out, the Tribunal awarded a sum of Rs.1,52,000/- as compensation. However, in view of the law laid down by the Hon'ble Supreme Court and the terms of the insurance policy, the claimants are entitled only to the Personal Accident Cover available under the policy, namely, a sum of Rs.1,00,000/-. Accordingly, the award passed by the Tribunal is liable to be modified.

13. In the result, the Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the tribunal at Rs.1,52,000/- is reduced to Rs.1,00,000/-. The claimants shall be entitled to Rs.50,000/- each. The Appellant/Insurance Company is directed to deposit the modified amount with interest at 7.5% per annum and costs within a period of four weeks



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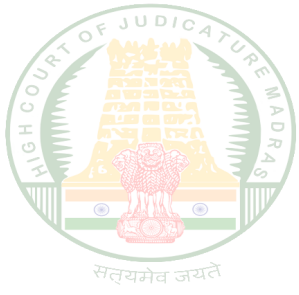
from the date of receipt of copy of this order, if not already deposited. The claimants are permitted to withdraw the said amount by filing necessary application before the Tribunal. Parties are directed to bear their own costs.

10.07.2026

NCC : Yes/No
Index : Yes/No
Internet : Yes/No
das

To,

1. Motor Accident Claims Tribunal (Sub Court,
Kulithalai.
2. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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K.MURALI SHANKAR,J.

das

Pre-delivery order made in
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