



C.M.A(MD)No.601 of 2021

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 29.07.2026

PRONOUNCED ON: 07.08.2026

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

C.M.A(MD)No.601 of 2021

1.Muniammal

2.Rajapandi

: Appellants/Claimants

Vs.

1.Mariappan

2.The Branch Manager,
IFCO-TOKYO General Insurance
Company Ltd.,
Door No.4BA 12, 13, Managaimaal,
Maninagar,
Palayam Kottai Road,
Tuticorin – 628 001.

: Respondents / Respondents

PRAYER:- Civil Miscellaneous Appeal filed under Section 173(1) of the Motor Vehicles Act, 1988 against the Judgment dated 02.12.2020, passed by the Motor Accident Claims Tribunal, Chief Judicial Magistrate (FAC), Tirunelveli, in M.C.O.P.No.441 of 2017.



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For Appellant : Mr.B.Ramnath

For Respondents : Mr.V.Sakthivel
for R.2

: R.1 – Dispensed with.

JUDGMENT

This Civil Miscellaneous Appeal is directed against the order passed in M.C.O.P.No.441 of 2017, dated 02.12.2020, on the file of the Motor Accident Claims Tribunal / Chief Judicial Magistrate Court, Tirunelveli, in dismissing the claim petition.

2. Admittedly, the appellants/claimants are the parents of the deceased Esakkimurugan. The case of the claimants is that the said Esakkimurugan on 17.08.2017 at about 07.30p.m., was riding a two wheeler bearing Registration No.TN-69-BY-6496 with Anbulingam as pillion rider in Ramanathapuram – Tuticorin ECR road, and at the place near Esakkimuthu tea shop, another motor vehicle bearing Registration No.TN-69-AU-6592 which came in the opposite direction collided with the other two wheeler and the rider and the pillion rider of the two



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wheeler bearing Registration No.TN-69-BY-6496 and the rider of the two wheeler bearing Registration No.TN-69-AU-6592 had sustained fatal injuries and subsequently succumbed to the injuries.

3. Admittedly, F.I.R., was registered in Cr.No.124 of 2017 under Section 304(A) I.P.C., on the file of the Kolathoor Police Station against the deceased Esakkimurugan. It is evident from the records that the legal heirs of the deceased Esakkimurugan, Anbulingam and the rider of the two wheeler bearing Registration No. TN-69-AU-6592 had laid claim petitions in M.C.O.P.Nos.441 of 2017, 460 of 2017 and 459 of 2017 and during the pendency of the claim petition, the claim petition in M.C.O.P.No.459 of 2017 was settled at Lok Adalat before the District Legal Services Authority and thereafter, a joint trial was proceeded in the other two petitions and the impugned common award dated 02.12.2020 came to be passed.

4. The learned trial Judge, upon considering the evidence, has come to a finding that the accident was occurred due to the rash and negligent driving of the rider of the two wheeler bearing Registration No.



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TN-69-BY-6496, ie., the deceased Esakkimurugan. The Tribunal, by referring the judgment of this Court in *National Insurance Co. Ltd., Puducherry Vs. Rani and 5 others* reported in *2020(1) TN MAC 593* and the *Branch Manager, United India Insurance Co. Ltd., Vs. Gnanasigamony and 6 others* reported in *2019(1) TN MAC 423*, has held that the deceased Esakkimurugan borrowed the vehicle from the registered owner and thereby steps into the shoes of the owner and as such his dependents cannot claim compensation under Section 163-A of the Motor Vehicles Act and on that basis dismissed the claim petition.

5. The learned Counsel for the appellants/claimants would submit that the owner of the vehicle paid additional premium of Rs.50/- to the personal accident coverage to the owner cum driver, that since the additional premium for the owner cum driver was paid and during the period of validity the accident was occurred, the policy would cover the owner also, even if he was not on the wheels at the time of accident, that the expression “owner cum driver” cannot be split up to narrow down the enforceability of the policy to the driver only, if he is also the owner of



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the vehicle and that the Tribunal without considering the above aspects erroneously dismissed the claim petition.

6. In similar facts and circumstances, this Court in ***Tamil Ilakkiya and Others Vs. The Branch Manager, the Oriental Insurance Company Limited***, in ***C.M.A(MD)No.225 of 2022, dated 07.11.2022***, has held as follows:

“15. Considering the facts and circumstances of the case and also the legal position above referred, the above finding of the Tribunal cannot be found fault with. But, at the same time, Ex.R.1 policy relating to the vehicle in question is a package policy and it is clearly evident from Ex.R.1 that premium for PA Cover for owner-driver was paid and the liability is shown as Rs.1 lakh. In the impugned order, the learned trial Judge has observed that admittedly, the policy is to cover the third party insurance only and there is no coverage under this policy for owner-driver; that even though the vehicle is insured with the respondent for a liability of policy towards third parties only and there is no premium paid towards the owner-cum-driver then the petitioners cannot avail benefits of this application.



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16.R.W.1/Official of the Insurance Company, in his cross examination would admit that the policy was in force at that point of time; that the policy is a package policy. Moreover, as already pointed out, in Ex.R.1 Policy, it has been specifically mentioned in the schedule of premium that PA for owner-driver at Rs.50/- was paid and the limit of liability for P.A. cover under Section III for Registered Owner Cum Driver is Rs.1,00,000/-.

*17.No doubt, the Tribunal has also observed that even if P.A Cover is there, P.A claim has to be made separately and not in this Motor Accident Claim Petition. At this juncture, it is necessary to refer the judgment of the Hon'ble in **Ram Khiladi vs United India Insurance Company** reported in 2020 (2) SCC 550:*

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



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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 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 163-A of the Act was made only against the owner and



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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 163-A 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.”

*18.The above decision is squarely applicable to the case on hand. In the present case, as already pointed out, in Ex.R.1 package policy, personal accident coverage is given to the owner cum driver of the vehicle to the extent of Rs.1,00,000/-. It is necessary to refer the decision of this Court in **National Insurance Company Limited Vs. Velmurugan** reported in **2018 SCC Online Mad 13152** and the relevant passages are extracted hereunder :*

“IMT-15 Personal Accident cover to the insured or any named person other than paid driver of cleaner (applicable to private cars including Three Wheelers rated as private cars and motorized Two Wheeler with or without side car [not for hire or reward]

In consideration of the payment of an additional premium it is hereby agreed and understood that the



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company undertakes to pay compensation on the scale provided below for bodily injury as hereinafter defined sustained by the insured person in direct connection with the vehicle insured or whilst mounting and dismounting from or traveling in vehicle insured and caused by violent accidental external and visible means which independently of any other cause shall within six calendar months of such injury result in

	Scale of compe nsatio n
<i>(i)Death</i>	<i>100%</i>
<i>(ii) Loss of two limbs or sight of two eyes or one limb and sight of one eye</i>	<i>100%</i>
<i>(iii) Loss of one limb or sight of an eye</i>	<i>50%</i>
<i>(iv)Permanent total disablement from injuries other than named above</i>	<i>100%</i>

Provided always that

1. the compensation shall be payable under only one of the items (i) to (iv) above in respect of any such person arising out of any one occurrence and the total liability of the insurer shall not in the aggregate exceed the sum of Rs.---



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during any one period of insurance in respect of any such person.

2. No compensation shall be payable in respect of death or bodily injury directly or indirectly wholly or in part arising or resulting from or traceable to (a) intentional self injury suicide or attempted suicide physical defect or infirmity or (b) an accident happening whilst such person is under the influence of intoxicating liquor or drugs.

3. Such compensation shall be payable only with the approval of the insured named in the policy and directly to the injured person or his/her legal representative(s) whose receipt shall be a full discharge in respect of the injury of such person *Subject otherwise to the terms exceptions conditions and limitations of this policy.*

** The Capital Sum insured (CSI) per passenger is to be inserted.*

IMT.16. PERSONAL ACCIDENT TO UNNAMED PASSENGERS OTHER THAN INSURED AND THE PAID DRIVER AND CLEANER (For vehicles rated as Private Cars and Motorised Two Wheelers (not for hire or reward) with or without side Car)



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In consideration of the payment of an additional premium, it is hereby understood and agreed that the Insurer undertakes to pay compensation on the scale provided below for bodily injuries hereinafter defined sustained by any passenger other than the insured and /or the paid driver attendant or cleaner and /or a person in the employ of the insured coming within the scope of the Workmen's Compensation Act,1923 and subsequent amendments of the said Act and engaged in and upon the service of the insured at the time such injury is sustained whilst mounting into, dismounting from or traveling in but not driving the insured Motor Car and caused by violent, accidental, external and visible means which independently of any other cause shall within three calendar months of the occurrence of such injury result in:

[The Tabular column as in IMT-15 and Clauses 1 to 3 in the Proviso, remains the same and therefore, there is no need to repeat the same]

*(4) not more than ---- ** persons/passengers are in the vehicle insured at the time of occurrence of such injury. Subject otherwise to the terms exceptions conditions and limitations of this policy.*

** The Capital sum insured (CSI) per passenger is to be inserted.*

*** the registered sitting capacity of the vehicle insured is to be inserted."*



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19. Considering the above, the claimants are entitled to get Rs.1,00,000/- (Rupees One Lakh Only) as per the terms of contract of insurance. Hence, this Court concludes that the impugned award dismissing the claim petition is liable to be set aside and the respondent/insurer is liable to pay a sum of Rs.1,00,000/- with interest at 7.5% per annum. Considering the other facts and circumstances of the case, this Court further decides that the parties are directed to bear their own costs and the above points are answered accordingly.”

7. The above legal position is squarely applicable to the case on hand. In the present case also, it is evident from Ex.R.2 – Policy that an additional premium of Rs.50/- was paid towards personal accident coverage for the owner cum driver and the liability under the said cover was limited to Rs.1,00,000/-.

8. The learned counsel appearing for the second respondent/Insurer would fairly concede that the policy contained personal accident cover for the owner-cum-driver. He would, however, contend that the claimants cannot seek compensation under the personal accident cover before the



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Motor Accident Claims Tribunal and that they have to approach the appropriate forum for enforcing such contractual liability.

9. In view of the dictum laid down by the Hon'ble Supreme Court in *Ramkhiladi's case*, referred to supra, the Tribunal is competent to award compensation to the extent of the liability covered under the personal accident cover. In the present case, as already pointed out, Ex.R.2 – Insurance Policy specifically provides personal accident cover for the owner-cum-driver with the liability limited to Rs.1,00,000/-. Hence, this Court is of the view that the claimants are entitled to compensation of Rs.1,00,000/- in terms of the contract of insurance. Consequently, the impugned award dismissing the claim petition is liable to be set aside and the second respondent/Insurer is directed to pay a sum of Rs.1,00,000/- to the claimants, together with interest at the rate of 7.5% per annum from the date of the claim petition till the date of realization. Considering the other facts and circumstances of the case, the parties are directed to bear their own costs.



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10. .In the result, the Civil Miscellaneous Appeal is allowed and the impugned order, dismissing the claim petition is set aside. The second respondent/Insurer is directed to deposit a sum of Rs.1,00,000/- (Rupees One Lakh Only) with interest at 7.5 % per annum from the date of petition till the date of payment excluding the default period if any, to the credit of M.C.O.P.No.441 of 2017, on the file of the Motor Accident Claims Tribunal/Chief Judicial Magistrate (FAC), Tirunelveli, within a period of four weeks from the date of receipt of copy of this judgment and on such deposit, the claimants are permitted to withdraw a sum of Rs.50,000/- (Rupees Twenty Thousand Only) each along with accrued interest, on filing appropriate application before the Tribunal. The parties are directed to bear their own costs.

07.08.2026

NCC : Yes : No

Index : Yes : No

Internet : Yes : No

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1. The Motor Accident Claims Tribunal /
Chief Judicial Magistrate (FAC), Tirunelveli
2. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court, Madurai.



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K.MURALI SHANKAR,J.

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PRE-DELIVERY JUDGMENT MADE IN

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