

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.12.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2132 of 2013
and M.P.No.1 of 2013

The Divisional Manager
The Oriental Insurance Co. Ltd.
No.75, Krishnan nagar
Tiruvannamalai Town
Tiruvannamalai District.

... Appellant/2nd Respondent

Vs.

1.Nagarathinam

2.Sangeetha (minor)

3.Pachaiapillai (minor)

4.Deepa (minor)

5.Rama Gounder

6.Ramayee

(Respondents 2 to 4 minors represented
by mother and next friend 1st respondent)

... Respondents 1 to 6/
Petitioners

7.M.Muniyan

8.S.Saravanan

9.The Divisional Manager

M/s.United India Insurance Company Ltd.

Office at No.1, Katpadi road

Vellore Town, Vellore District.

... Respondents 7 to 9/
Respondents 1,3 & 4

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 06.09.2012 made in M.C.O.P.No.49 of 2008 on the file of Motor Accident Claims Tribunal, District Court, Tiruvannamalai.

For Appellant : Mr.M.B.Raghavan
for Mr.N.Vijayaraghavan

For R1 to R4 and
R6 : Mr.B.Jawahar

For R7 : No appearance
For R8 : No appearance
For R9 : Mr.S.Arunkumar

J U D G M E N T

This matter is heard through "Video-conferencing".

This Civil Miscellaneous Appeal has been filed by the appellant/Insurance Company challenging the award dated 06.09.2012 made in M.C.O.P.No.49 of 2008 on the file of Motor Accident Claims Tribunal, District Court, Tiruvannamalai.

2.The appellant/Insurance Company is the 2nd respondent in M.C.O.P.No.49 of 2008 on the file of Motor Accident Claims Tribunal, District Court, Tiruvannamalai. The respondents 1 to 6 filed the said claim petition claiming a sum of Rs.15,00,000/- as compensation for the death of one Annamalai, who died in the accident that took place on 11.03.2007.

3.According to the respondents 1 to 6, the husband of the 1st respondent, the deceased Annamalai, was working as a driver in a paddy harvesting tractor belonging to the 8th respondent. On the date of accident i.e., on 11.03.2007, at 22.00 hours, the deceased stationed his paddy harvesting tractor at Thiagarajapuram Village and went to Cheyyar in a Hero Honda motorcycle along with the 7th respondent Muniyan, who is a cleaner in the above said harvesting tractor, to locate the paddy field for harvesting. After locating the harvesting field, while they were returning in the motorcycle near Pa.U.Sha. Nagar Colony at Thatachampattu village, on Tiruvannamalai - Manalurpettai Road, a pedestrian suddenly crossed the road. In order to avoid hitting the pedestrian, the deceased Annamalai turned the motorcycle on the left side of the Road, dashed on the bullock cart and thus the accident has occurred. Due to the accident, the deceased Annamalai sustained fatal injuries and died. Therefore, the respondents 1 to 6 have filed the above claim petition claiming compensation against the 7th respondent, owner of the motorcycle, 8th respondent, owner of the harvesting tractor, 9th respondent, insurer of the harvesting tractor and the appellant, insurer of the motorcycle.

4.The respondents 7 and 8, owners of the motorcycle and

harvesting tractor respectively, remained exparte before the Tribunal.

5.The appellant/Insurance Company being insurer of the motorcycle filed counter statement denying the averments made in the claim petition and stated that the rider of the alleged motorcycle did not possess valid driving license to ride the motorcycle and the R.C. Book and permit of the vehicle were not in force at the time of accident. The respondents 1 to 6 failed to mention about the correct policy particulars in the claim petition. The accident has occurred only due to rash and negligent riding by the deceased. The Police officials filed a final report stating that the accident has occurred due to rash and negligent riding by the deceased, closed the case as charges abated and referred the case as 'referred charge sheet'. Therefore, the appellant/Insurance Company is not liable to pay any compensation to the respondents 1 to 6. The appellant/Insurance Company has also denied the age, avocation and income of the deceased. In any event, the compensation claimed by the respondents 1 to 6 is excessive and prayed for dismissal of the claim petition.

6.The appellant/Insurance Company filed additional counter statement stating that while the deceased was riding the motorcycle, dashed against the back side of the bullock cart. The accident has occurred only due to own negligence of the deceased. Hence, the appellant is not liable to pay any compensation to the respondents 1 to 6.

7.The 9th respondent/Insurance Company, insurer of the harvesting tractor filed counter statement stating that the vehicle involved in the accident is not insured with the 9th respondent. The respondents 1 to 6 have to prove that the deceased was possessing valid driving license to ride the motorcycle at the time of accident. The 9th respondent denied the manner of accident stated in the claim petition and the avocation of the deceased that he worked as a driver in the harvesting tractor. As per the policy condition, there is no insurance coverage for the pillion rider and therefore, the 9th respondent/Insurance Company is not liable to pay any compensation and the owner alone is liable to pay compensation. The 9th respondent/Insurance Company has also denied the age, avocation and income of the deceased. In any event, the compensation claimed by the respondents 1 to 6 is excessive and prayed for dismissal of the claim petition.

8.Before the Tribunal, the 1st respondent, wife of the deceased examined herself as P.W.1, Govindan and Raja were examined as P.W.2 and P.W.3 respectively and four documents were marked as Exs.P1 to P4. The appellant/Insurance Company examined

one Mr.Balaji, Assistant of the Insurance Company as R.W.1 and one Mr.Dharmaraja, the Sub-Inspector of Police was examined as R.W.2 and marked two documents as Exs.R1 and R2.

9.The Tribunal considering the pleadings, oral and documentary evidence, directed the 7th respondent, owner of the motorcycle as well as the appellant/Insurance Company being insurer of the said motorcycle to jointly and severally pay a sum of Rs.7,24,000/- as compensation to the respondent 1 to 6 and dismissed the claim petition as against the respondents 8 and 9, owner and insurer of the harvesting tractor respectively.

10.Against the said award dated 06.09.2012 made in M.C.O.P.No.49 of 2008, the appellant/Insurance Company has come out with the present appeal.

11.The learned counsel appearing for the appellant/Insurance Company contended that the deceased was riding the motorcycle at the time of accident and the accident has occurred due to his own negligence. The Tribunal erred in fastening the liability on the appellant without properly appreciating the judgment of the Hon'ble Apex Court reported in 2012 (1) TN MAC 1 (SC) [National Insurance Company Vs. Sinitha and others]. As per the judgments of the Hon'ble Apex Court reported in Sinitha's case referred to above and the judgments reported in 2009 (13) SCC 710 (Ningamma v. United India Insurance Co. Ltd.) and 2009 (2) SCC 417 (New India Assurance Co. Ltd. v. Sadanand Mukhi), riders are not entitled to compensation from the Insurance Company. The Tribunal failed to see that the accident occurred due to negligence on the part of the deceased as per Ex.P1/F.I.R. and Ex.R2/final report of the Police. The learned counsel further contended that the owner of the vehicle is not liable, because of the involvement of his vehicle. Only when the driver of the vehicle is negligent, the owner of the vehicle is vicariously liable and in turn, the Insurance Company is liable to indemnify the owner subject to any defence with regard to liability.

11(i).Section 163-A of the Motor Vehicles Act (hereinafter referred to as ("the Act")) enable the victims to claim compensation for the accident caused by the driver of the vehicle even without proving fault. To that extent, law has been amended by introducing Section 163-A of the Act. In such a case, the claim cannot be made by the victim for his own act against the owner merely for the reason of involvement of the vehicle. The liability itself starts with the driver of the vehicle to owner and then to the Insurance Company. When the driver himself is a tort-feasor, he cannot make a claim against the owner of the vehicle.

11(ii).The learned counsel for the appellant further

contended that when a claim petition is filed under Section 163-A of the Act, the negligence need not be proved only when the claim is made against the driver, owner and insurer. The driver himself cannot be a claimant claiming compensation against the owner and insurer of the vehicle. As per Section 147 of the Act, the insurer is liable to indemnify the claim of the paid driver or employee and not the liability of a person who uses the vehicle with consent of the owner.

11(iii).In support of his contention, the learned counsel relied on the following judgment of the Hon'ble Apex reported in 2020 (1) TN MAC 1 (SC) [Ramkhiladi and another Vs. United India Insurance Co. Ltd., and another];

"5. Heard learned counsel appearing on behalf of the respective parties at length. We have also perused and considered the Judgment and Award passed by the learned Tribunal as well as the impugned Judgment and Order passed by the High Court and the evidence on record. The short question which is posed for consideration of this Court is whether, in the facts and circumstances of the case and in a case where the driver, owner and the insurance company of another vehicle involved in an accident and whose driver was negligent are not joined as parties to the claim petition, meaning thereby that no claim petition is filed against them and the claim petition is filed only against the owner and the insurance company of another vehicle which was driven by the deceased himself and the deceased being in the shoes of the owner of the vehicle driven by himself, whether the insurance company of the vehicle driven by the deceased himself would be liable to pay the compensation under Section 163A of the Act?; Whether the deceased not being a third party to the vehicle No. RJ 02 SA 7811 being in the shoes of the owner can maintain the claim under Section 163A of the Act from the owner of the said vehicle?

5.1 The learned Tribunal held that even in absence of the driver, owner and the insurance company of another vehicle involved in an accident and whose driver was solely negligent, the application under Section 163A of the Act would be maintainable against the owner and the insurance company of the vehicle which was driven by the deceased himself, firstly on the ground that the deceased was in employment of the owner of the vehicle which was driven by him and secondly, in

an application under Section 163A of the Act, the negligence is not required to be established and proved and it is enough to establish and prove that the deceased has died in a vehicular accident and while driving a vehicle. The High Court has not agreed with the same and by the impugned Judgment and Order has held that as the claimants have not filed the claim petition against the owner of another vehicle whose driver was in fact negligent, even as per the claimants and the claim petition should have been filed by the claimants against the owner of another vehicle to seek the compensation, the application under Section 163A of the Act against the insurance company of the vehicle driven by the deceased himself is liable to be dismissed.

5.4 An identical question came to be considered by this Court in the case of Ningamma (supra). In that case, the deceased was driving a motorcycle which was borrowed from its real owner and met with an accident by dashing against a bullock cart i.e. without involving any other vehicle. The claim petition was filed under Section 163A of the Act by the legal representatives of the deceased against the real owner of the motorcycle which was being driven by the deceased. To that, this Court has observed and held that since the deceased has stepped into the shoes of the owner of the vehicle, Section 163A of the Act cannot apply wherein the owner of the vehicle himself is involved. Consequently, it was held that the legal representatives of the deceased could not have claimed the compensation under Section 163A of the Act. Therefore, as such, in the present case, the claimants could have even claimed the compensation and/or filed the claim petition under Section 163A of the Act against the driver, owner and insurance company of the offending vehicle i.e. motorcycle bearing registration No. RJ 29 2M 9223, being a third party with respect to the offending vehicle. However, no claim under Section 163A was filed against the driver, owner and/or insurance company of the motorcycle bearing registration No. RJ 29 2M 9223. It is an admitted position that the claim under Section 163A of the Act was only against the owner and the insurance company of the motorcycle bearing registration No. RJ 02 SA 7811 which was borrowed by the deceased from the opponent-owner

Bhagwan Sahay. Therefore, applying the law laid down by this Court in the case of Ningamma (supra), and as the deceased has stepped into the shoes of the owner of the vehicle bearing registration No. RJ 02 SA 7811, as rightly held by the High Court, the claim petition under Section 163A of the Act against the owner and insurance company of the vehicle bearing registration No. RJ 02 SA 7811 shall not be maintainable.

5.5 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 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.

5.6 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."

12. The learned counsel appearing for the respondents 1 to 4 and 6 contended that the accident did not occur due to the negligence on the part of the deceased. While he was riding his motorcycle, a pedestrian suddenly crossed the road. The deceased, in order to avoid hitting the pedestrian, turned the motorcycle on the left side of the road, dashed against the bullock cart and thus the accident occurred. The deceased was employed by the 8th respondent as a driver in the harvesting tractor. On the date of accident, the deceased parked the harvesting tractor and travelled in the motorcycle belonging to the 7th respondent Munian. The 7th respondent was working as a cleaner in the harvesting tractor owned by the 8th respondent. The deceased went along with the said Munian to find out the field for harvesting. After locating the harvesting field, while returning, the deceased met with accident and died. The accident has occurred during and in the course of employment as the driver of the harvesting tractor. The employment as driver of the harvesting tractor has to be notionally extended as the deceased met with an accident during and in the course of employment. The 8th respondent as owner of the harvesting tractor and the 9th respondent as insurer of harvesting tractor are jointly and severally liable to pay compensation and prayed for dismissal of the appeal. The learned counsel in support of his contentions, relied on the following judgments:

(i) 2014 (2) TNMAC 161 (SC) (Manju Sarkar and others vs. Mabish Miah and others);

8. Further case of respondent Nos.1 and 2 is that Sajal Sarkar was employed by them to drive the truck vehicle from Agartala to Dharmanagar FCI godown at Churaibari and on the truck reaching the godown, Sajal Sarkar ceased to be in their employment. This also appears to be an after thought and factually incorrect. As per the averments in the First Information Report lodged

by helper Bikram Deb the truck reached Churaibari FCI godown on 14.5.2005 and Sajal Sarkar was to return back to Agartala with the truck laden with rice bags. According to the complainant, on reaching FCI godown in the afternoon on 14.5.2005, considering the delay of loading goods, Sajal Sarkar left the place by leaving the truck in his care and told him that he would return in the night and since he did not return during the night, he searched him the next morning and after coming to know about the accident and death, he lodged the complaint. If Sajal Sarkar was actually employed only for the trip from Agartala to FCI godown Churaibari there was no need for him to inform the helper that he would come back in the night to the godown for the return trip and in the same way there was no obligation on the part of the helper Bikram Deb to search for Sajal Sarkar the next day morning leading to lodging of the complaint. These circumstances clinch the issue and prove that Sajal Sarkar was employed to drive the truck from Agartala to FCI godown Churaibari and return back to Agartala with the truck laden with the rice bags. It is also relevant to point out that respondent Nos.1 and 2 neither examined themselves in the trial nor examined helper Bikram Deb or permanent driver Gopal Sharma to substantiate their plea.

9. According to the appellants, Sajal Sarkar on reaching Dharmanagar noticed some mechanical trouble in the truck and he got down to make arrangement for repairing the same and in the night he met with an accident. Churaibari FCI godown is located in Dharmanagar. The Courts below have rejected the claim petition on the ground that there is contradiction in the claimants case since there was no mention of mechanical defect in the truck in the First Information Report. What is relevant is as to whether Sajal Sarkar continued to be in course of employment under respondent Nos.1 and 2 at the time of sustaining injuries in the accident culminating in his death. Sajal Sarkar was at Churaibari, Dharmanagar only on account of his employment as driver of the truck and there he met with the road accident.

10. This Court has in the celebrated decision in General Manager B.E.S.T. Undertaking, Bombay vs. Mrs. Agnes (AIR 1964 SC 193] laid down

as follows:

"Under Section 3(1) of the Act the injury must be caused to the workman by an accident arising out of and in the course of his employment. The question, when does an employment begin and when does it cease, depends upon the facts of each case. But the Courts have agreed that the employment does not necessarily end when the "down tool" signal is given or when the workman leaves the actual workshop where he is working. There is a notional extension at both the entry and exit by time and space. The scope of such extension must necessarily depend on the circumstances of a given case. As employment may end or may begin not only when the employee begins to work or leaves his tools but also when he used the means of access and, egress to and from the place of employment." "

(ii) (2019) 4 SCC 325 (Leela Bai and another vs. Seema Chouhan and another);

"6. On the fateful day, the deceased had returned from Indore to the Burhanpur terminus at about 7:30 pm. He met an accidental death while he was coming down the roof of the bus after having his meal at about 8:30 pm. The short question for consideration is whether the death occurred during the course of, and arising out of the employment. In the facts of the case, and the evidence available, it is evident that the deceased was present at the bus terminal and remained with the bus even after arrival from Indore not by choice, but by compulsion and necessity, because of the nature of his duties. The route timings of the bus required the deceased to be readily available with the bus so that the passenger service being provided by respondent no. 1 remained efficient and was not affected. If the deceased would have gone home every day after parking the bus and returned the next morning, the efficiency of the timing of the bus service facility to the travelling public would definitely have been affected, dependant on the arrival of the deceased at the bus stand from his house. Naturally that would bring an element of uncertainty in the departure schedule of the bus and efficiency of the service to the travelling public could be compromised. Adherence to schedule by the deceased would naturally inure to the benefit of respondent no.1 by enhancement of income because of timely service. It is not without reason that the

deceased would not go home for weeks as deposed by the appellant. Merely because the deceased was coming down the roof of the bus after having his meal, cannot be considered in isolation and interpreted so myopically to hold that he was off duty and therefore would not be entitled to compensation.

.. ..
.. ..

9. In the facts of the present case and the nature of evidence, there was a clear nexus between the accident and the employment to apply the doctrine of "notional extension" of the employment considered in Agnes (AIR 1964 SC 193) as follows:?

"11. ... '7. ... It is now well-settled, however, that this is subject to the theory of notional extension of the employers premises so as to include an area which the workman passes and repasses in going to and in leaving the actual place of work. There may be some reasonable extension in both time and place and a workman may be regarded as in the course of his employment even though he had not reached or had left his employers premises. The facts and circumstances of each case will have to be examined very carefully in order to determine whether the accident arose out of and in the course of the employment of a workman, keeping in view at all time this theory of notional extension."

.. ..

11. Agnes (supra) has been followed in Manju Sarkar and Ors. vs. Mabish Miah and Ors., (2014) 14 SCC 21, observing as follows:

"11.As rightly contended by the learned counsel appearing for the appellants there is a notional extension in the present case also and we would, therefore, hold that Sajal Sarkar met with the road accident in the course of his employment under Respondents 1 and 2. The courts below have misdirected themselves while dealing with this question and the finding rendered by them is perverse and unsustainable." "

(iii) Civil Appeal No.1836 of 2020 judgment dated 06.03.2020 (Poonam Devi and others vs. Oriental Insurance Company Ltd.);

"10. More recently in Daya Kishan Joshi & Anr. vs. Dynemach Systems Pvt. Ltd., (2018) 11 SCC 642,

the deceased was employed as an engineer for promoting sales and installation of products which required him to move around in the field. While returning from field work, he met with an accident resulting in death. Holding that his being on the road related to the nature of his duties, not only the injury was caused during the currency of the employment but also arose out of the employment.

11. Coming to the facts of the present case, the deceased was driving the truck of respondent no.2 from Ambala to Meerut. Indisputably he was in the course of his employment. We can take judicial notice of the fact that considering the manufacturers specification, the cabin of the truck was not air conditioned and would have been a baking oven in the middle of the afternoon in the sultry monsoon heat of June 2003, when the temperature was touching 42.60C in Yamunagar (Haryana) (source: weatheronline.in). It was a compulsion for the deceased to stay fresh and alert not only to protect the truck of respondent no.2 from damage but also to ensure a smooth journey and protect his own life by safe driving. We can also take judicial notice of the fact that the possibility of the truck also requiring water to prevent overheating cannot be completely ruled out. In these circumstances, can it be said that the act of the deceased in going to the canal to fetch water in a can for the truck and to refresh himself by a bath before continuing the journey was not incidental to the employment? Every action of the driver of a truck to ensure the safety of the truck belonging to the employer and to ensure his own safety by a safe journey for himself has to be considered as incidental to the employment by extension of the notional employment theory. A truck driver who would not keep himself fresh to drive in such heat would be a potential danger to others on the road by reason of any bonafide errors of judgement by reason of the heat. The theory of notional extension noticed in the Agnes (supra) and followed in Leela Bai (supra) is extracted hereunder:

"9. In the facts of the present case and the nature of evidence, there was a clear nexus between the accident and the employment to apply the doctrine of notional extension of the

employment considered in Agnes (supra) as follows: It is now well-settled, however, that this is subject to the theory of notional extension of the employers premises so as to include an area which the workman passes and repasses in going to and in leaving the actual place of work. There may be some reasonable extension in both time and place and a workman may be regarded as in the course of his employment even though he had not reached or had left his employers premises. The facts and circumstances of each case will have to be examined very carefully in order to determine whether the accident arose out of and in the course of the employment of a workman, keeping in view at all time this theory of notional extension."

13. We see no reason why the application of the theory of notional extension will therefore not apply in the facts of the present case also."

(iv) C.M.A.No.2088 of 2010, judgment dated 13.03.2018 (M/s.United India Insurance Co. Ltd. vs. Perumal and others);

"6. As mentioned above, the Driver of the vehicle had parked the vehicle for taking food at Annur. There is no other reason for the driver to be at that place other than discharging his duty. Stopping the lorry for the purpose of taking food and walking across the road are all connected to the work and any accident that happens during that period shall be construed to have taken place during the course of employment. It has reasonable nexus to his employment and theory of notional extension would certainly apply to such incidents. Therefore, the finding of the authority that the accident had taken place during the course of employment and arising out of employment does not suffer any infirmity. It is not necessary that the vehicle insured shall meet with an accident, but the object of the Act is to give the benefit to the employees, who suffered accident during and arising out of employment."

13. Though notice has been served on the respondents 7 and 8 and their names are printed in the cause list, there is no representation for the respondents 7 and 8 either in person or through counsel.

14. The learned counsel appearing for the 9th respondent/Insurance Company contended that the respondents 1 to

6 have not claimed any relief against the respondents 8 and 9, owner and insurer of the harvesting tractor respectively. The respondents 1 to 6 have not pleaded in the claim petition that the deceased met with an accident during and in the course of his employment. The accident has occurred in the public road, while the deceased was using a private vehicle. The accident has occurred only due to negligence on the part of the deceased. The vehicle belongs to P.W.2, who was the pillion rider in the offending vehicle at the time of accident. The respondents 1 to 6 have not proved the alleged employer-employee relationship between the deceased and 8th respondent. Without pleadings in the claim petition, they have raised a new ground during the arguments in the appeal. The claim petition was dismissed as against the respondents 8 and 9. The respondents 1 to 6 have not filed any appeal challenging the said finding. In Ex.P1/F.I.R. relied on by the respondents 1 to 6, there is no mention about the involvement of the harvesting tractor belonging to the 8th respondent insured with the 9th respondent. They have also not mentioned about the employer-employee relationship between the 8th respondent and that the deceased, as per the direction of the 8th respondent, used the motorcycle and invited the accident. In Ex.P1/F.I.R., there is no mention that as per the instruction given by the 8th respondent, the deceased went to find out the harvesting field. In the complaint given by P.W.2, the owner of the motorcycle, who was the pillion rider, it has not been stated that the deceased met with an accident during and in the course of employment. Hence, the claim petition was dismissed as against the respondents 8 and 9. The respondents 1 to 6 have not filed any appeal challenging the said finding dismissing the claim petition as against the respondents 8 and 9. The contention of notional theory of extension of employment of the respondents 1 to 6 is only an after thought. On the other hand, it has been stated that after identifying the harvesting field, they had their dinner at Tiruvannamalai and were returning to their place. In the complaint, it was not stated that the deceased was employed as the driver in harvesting tractor bearing Registration No.TN32-U-8034 or mentioned the name of the owner, the 8th respondent herein. In F.I.R., there is no reference regarding parking of the said harvesting tractor at Thiagarajapuram. The claim of the respondents 1 to 6 is not covered under Section 147 of the Act. The accident has occurred due to negligence of the deceased in riding the motorcycle belonging to the 7th respondent and the respondents 1 to 6 are not entitled to maintain the claim petition under Section 166 or 163-A of the Act. In support of his contentions, the learned counsel appearing for the 9th respondent relied on the following judgments:

(i) 1958 AIR SC 881(Saurashtra Salt Manufacturing Company vs. Bai Valu Raja and others);

"7. As a rule, the employment of a workman does not commence until he has reached the place of employment and does not continue when he has left the place of employment, the journey to and from the place of employment being excluded. It is now well-settled, however, that this is subject to the theory of notional extension of the employer's premises so as to include an area which the workman passes and repasses in going to and in leaving the actual place of work. There may be some reasonable extension in both time and place and a workman may be regarded as in the course of his employment even though he had not reached or had left his employer's premises. The facts and circumstances of each case will have to be examined very carefully in order to determine whether the accident arose out of and in the course of the employment of a workman, keeping in view at all times this theory of notional extension.

8. ... It is well settled that when a workman is on a public road or a public place or on a public transport he is there as any other member of the public and is not there in the course of his employment unless the very nature of his employment makes it necessary for him to be there. A workman is not in the course of his employment from the moment he leaves his home and is on his way to his work. He certainly is in the course of his employment if he reaches the place of work or a point or an area which comes within the theory of notional extension, outside of which the employer is not liable to pay compensation for any accident happening to him. In the present case, even if it be assumed that the theory of notional extension extends upto point D, the theory cannot be extended beyond it. The moment a workman left point B in a boat or left point A but had not yet reached point B, he could not be said to be in the course of his employment and any accident happening to him on the journey between these two points could not be said to have arisen out of and in the course of his employment. Both the Commissioner for Workmen's Compensation and the High Court were in error in supposing that the deceased workmen in this case were still in the course of their employment when they were crossing the creek between points A and B. The accident which took place when the boat was almost at point

A resulting in the death of so many workmen was unfortunate, but for that accident the appellant cannot be made liable."

(ii) AIR 1997 SC 432 (Regional Director, E.S.I. Corporation and another vs. Francis De Costa and another);

27. We are of the view that in the facts of this case, it cannot be said that the injury suffered by the workman one kilometer away from the factory while he was on his way to the factory was caused by an accident arising out of and in the course of his employment.

.. ..

29. Although the facts of this case are quite dissimilar, the principle laid down in this case, are instructive and should be borne in mind. In order to succeed, it has to be proved by the employee that (1) there was an accident, (2) the accident had a causal connection with the employment and (3) the accident must have been suffered in course of employment. In the facts of this case, we are of the view that the employee was unable to prove that the accident had any causal connection with the work he was doing at the factory and in any event, it was not suffered in the course of employment."

(iii) 2002 ACJ 378 (New India Assurance Company Limited vs A. Sharifa Bivi and others);

"7. On an analysis of the facts, I am inclined to hold that even on the admitted facts as stated in the first information report, as well as in the claim petition and the oral evidence adduced on the part of the claimants as well as the owner of the vehicle, it is clearly established that the deceased met with his death only while he was proceeding from his house to collect the rent from some third parties as per the directions of the owner of the vehicle. In the first information report given by the claimant, it is stated that her husband returned to his house on 23.11.1990 in the afternoon and he informed the claimant that he was proceeding to the goods-shed to collect the rental arrears as per the directions of the employer. There is no dispute about the fact that the deceased while proceeding to collect rent met with the accident. In the oral evidence of PW 1, the claimant deposed that after the collection of the rent, the deceased has gone to the house of his employer and in the house of the employer he was informed that the employer had gone to Bombay Automobiles. Therefore, from the house of the

owner, he was proceeding towards Bombay Automobiles shop and he met with the accident. A perusal of the evidence of the owner of the vehicle also shows that he had directed the deceased to collect rental arrears and after collection of the rental arrears the deceased was proceeding in his cycle towards Bombay Automobiles stores to meet him and deceased had met with the accident only during the said point of time. Therefore, the evidence clearly establishes that the accident occurred not while the deceased was performing his duties as a driver but only while discharging some other works on the directions of the employer. Therefore, on a perusal of Section 147(1)(b) proviso (i) the liability of the insurance company would arise only while the driver was performing the duties as a driver of the vehicle and not otherwise. The facts which are admitted have to be interpreted in accordance with the clear statutory provisions and there can be no scope for enlarging the meaning of the words which are clearly stated in the statute itself. There is no possibility of adopting any sympathetic approach while dealing with the statutory provisions and by ignoring admitted facts. If facts are in dispute the court may be in favour of the claimants and against the insurance company. When the fact that deceased met with the accident, when he was not discharging his duties as driver is admitted, the insurance company is clearly relieved of its liability. The liability covers only the driver and the conductor and that too only while engaged in driving the vehicle or engaged as a conductor or in examining tickets on the vehicle. It is not possible to read into the provisions something which is clearly excluded to suit the convenience of the owner of the vehicle or the employer as against the interest of the insurance company which is a public institution. The claimant is not aggrieved in any manner since her claim is enforceable against the owner or the employer.
(Emphasis supplied)

.. ..

9. Though, there can be no compensation with the facts of the present case on an analysis of the evidence as already stated above, it is clear that the deceased died only while he was performing the duties as an employee and not as a driver. The accident happened only while he was

discharging some other functions, no doubt, on the instructions of his employer. In such a case, there can be no liability on the insurance company even though, the employee is entitled to maintain his claim as against his employer."

(iv) 2014 (2) TNMAC 339 (Delhi) (Union of India and another vs. Ram Chander deceased through legal heir Maina Devi);

"7. In the present case, it is not disputed that the accident took place in a public place i.e on a public road not at the premises of the employer/Union of India/appellant and while using a private means of transportation. Also, it may be noted that the appellant had sought to conceal the fact that he was not injured at his working place, but he was injured while returning from duty and which aspect is noted in para 4 of the judgment of the Central Administrative Tribunal which makes reference to the application given by the workman admitting that he had been injured while going back from work, however, the Central Administrative Tribunal gave relief of employment to the workman on account of the Railway Board's order dated 11.4.1980.

8. In my opinion, therefore, it is clear that accident which caused injuries to the employee Sh. Ram Chander cannot be said to have happened arising out of and in the course of employment to make the appellant-Union of India liable."

(v) (2006) 2 SCC 641 (National Insurance Company Ltd. vs. Mastan and another);

"26.Thomas, J. in P.R. Deshpande v. Maruti Balaram Haibatti [(1998) 6 SCC 507] stated the law, thus:

"The doctrine of election is based on the rule of estoppel the principle that one cannot approbate and reprobate inheres in it. The doctrine of estoppel by election is one of the species of estoppel in pais (or equitable estoppel) which is a rule in equity. By that rule, a person may be precluded by his actions or conduct or silence when it is his duty to speak, from asserting a right which he otherwise would have had."

.. ..

.. ..

29.Mr. P.R. Ramasesh is not correct in contending that both the Acts should be read

together. A party suffering an injury or the dependants of the deceased who has died in course of an accident arising out of use of a motor vehicle may have claims under different statutes. But when cause of action arises under different statutes and the claimant elects the forum under one Act in preference to the other, he cannot be thereafter permitted to raise a contention which is available to him only in the former."

15. Heard the learned counsel appearing for the appellant as well as the learned counsel appearing for the respondents 1 to 4 and 6 and the learned counsel appearing for the 9th respondent and perused the entire materials on record.

16. From the materials on record, it is seen that it is the contention of the respondents 1 to 6 that the deceased was employed by the 8th respondent as driver in harvesting tractor. On the date of accident, the deceased parked the harvesting tractor, travelled in the motorcycle belonging to the 7th respondent to find out the paddy field and after locating the paddy field, while returning, the deceased in order to avoid hitting the pedestrian, who suddenly tried to cross the road, dashed on the back side of the bullock cart. It is the contention of the respondents 1 to 6 that the accident did not occur due to negligence of the deceased, but only due to the pedestrian who suddenly crossed the road. To substantiate this contention, the respondents 1 to 6 examined the 1st respondent as P.W.1 and an eye-witness to the accident as P.W.2. P.W.2 deposed as claimed by the respondents 1 to 6. On the other hand, it is the contention of the appellant that the accident has occurred only due to negligence on the part of the deceased and the appellant is not liable to pay any compensation even when the claim petition is filed under Section 163-A of the Act. The Tribunal considering the evidence of P.W.2 held that the accident did not occur due to negligence on the part of the deceased and directed the appellant and the 7th respondent being insurer and owner of the motorcycle, to pay the compensation. The Tribunal has committed an error in holding that it cannot be termed that the accident occurred due to negligence of the deceased. The Tribunal failed to consider that the F.I.R. is registered against the deceased and charge sheet was laid against the deceased. The final report was filed stating that the charges against the deceased were abated due to the death of the rider of the motorcycle in the accident. It is pertinent to note that no other vehicle is involved in the accident. Even when a pedestrian tried to cross the road suddenly, had the deceased was riding the motorcycle cautiously, he could have avoided the accident by hitting on the bullock cart. From the

above materials, it is clear that the accident has occurred only due to negligence on the part of the deceased.

17.The respondents 1 to 6 filed the claim petition under Section 163-A of the Motor Vehicles Act claiming compensation for the death of one Annamalai, who died in the accident that took place on 11.03.2007.

18.The issues to be decided in the present appeal are:

(i) Whether the claim petition filed by the respondents 1 to 6 under Section 163-A of the Act is maintainable against the Insurance Company of the Motorcycle when the deceased who borrowed the vehicle was responsible for the accident and when he was the tort-feasor?

(ii) Whether the respondents 1 to 6 are entitled to compensation under Employees Compensation Act on the notional theory of extension of employment and whether the 9th respondent is liable to pay compensation to the respondents 1 to 6 as insurer of harvesting tractor.

Issue No.1

The first issue to be decided in the present appeal is whether the claim petition filed by the respondents 1 to 6 under Section 163-A of the Act is maintainable against the Insurance Company of the Motorcycle when the deceased who borrowed the vehicle was responsible for the accident and when he was the tort-feasor?

19.When the claim petition is filed under Section 166 of the Motor Vehicles Act, the claimant has to prove the negligence on the part of the driver and owner of the offending vehicle. Due to the same, the claim petitions were disposed after lapse of considerable time. Mean while, the injured claimant or legal representatives of deceased are put to irreparable hardship due to the said delay. When the deceased was sole bread winner, the hardship caused to the legal heirs is very severe. For speedy disposal of claim petitions filed by the claimants, Section 163-A of the Act was inserted by Act 54 of 1994 with effect from 14.11.1994. The said section reads as follows:

"163-A. Special provisions as to payment of compensation on structured- formula basis. -

(1) Notwithstanding anything contained in this Act or in any other law for the time being in force or instrument having the force of law, the owner of the motor vehicle or the authorised insurer shall be liable to pay in the case of death or permanent disablement due to accident arising out of the use of motor vehicle, compensation, as indicated in the Second Schedule, to the legal heirs or the victim, as the case may be.

Explanation. - For the purposes of this subsection, "permanent disability" shall have the same meaning and extent as in the Workmen's Compensation Act, 1923.

(2) In any claim for compensation under subsection (1), the claimant shall not be required to plead or establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act or neglect or default of the owner of the vehicle or vehicles concerned or of any other person.

(3) The Central Government may, keeping in view the cost of living by notification in the Official Gazette, from time to time amend the Second Schedule."

20. As per this Section, the owner and insurer are liable to pay compensation as per II Schedule of the Act. As per Section 163-A (2) of the Act, the claimant is not required to plead and establish any wrongful act or negligence or default of the owner of the vehicle or vehicle concerned or any other person. The issue whether the owner and driver of the vehicle who is the tort-feasor can claim compensation from the owner and insurer was considered by the Hon'ble Apex Court in number of cases, wherein the Hon'ble Apex Court held that owner and driver of the vehicle who was a tort-feasor can not claim compensation from the Insurance Company.

21. In the judgment reported in 2009 (2) TNMAC 169 (SC) [Ningamma & another v. United India Insurance Co. Ltd.], the Hon'ble Apex Court considering the earlier judgment reported in (2008) 2 TNMAC 336 SC [Oriental Insurance Company vs. Rajni Devi and others], held that liability of the insurer is to indemnify the owner/insured against the claim of the third parties only. The owner is not a third party. The owner cannot be both claimant as well as recipient. The Hon'ble Apex Court further held that a person who borrows the two wheeler steps into the shoes of the owner and he is not entitled to claim compensation from the owner and insurer. The Hon'ble Apex Court in paras. 18 and 19 of the judgment reported in 2009 (2) TNMAC 169 (SC) cited supra, has held as follows:

"18. In the case of Oriental Insurance Company Ltd. v. Rajni Devi and Others, (2008) 5 SCC 736, wherein one of us, namely, Hon'ble Justice S.B. Sinha is a party, it has been categorically held that in a case where third party is involved, the liability of the insurance company would be unlimited. It was also held in the said decision that where, however, compensation is claimed for

the death of the owner or another passenger of the vehicle, the contract of insurance being governed by the contract qua contract, the claim of the claimant against the insurance company would depend upon the terms thereof. It was held in the said decision that Section 163-A of the MVA cannot be said to have any application in respect of an accident wherein the owner of the motor vehicle himself is involved. The decision further held that the question is no longer res integra. The liability under section 163-A of the MVA is on the owner of the vehicle. So a person cannot be both, a claimant as also a recipient, with respect to claim. Therefore, the heirs of the deceased could not have maintained a claim in terms of Section 163-A of the MVA. In our considered opinion, the ratio of the aforesaid decision is clearly applicable to the facts of the present case. In the present case, the deceased was not the owner of the motorbike in question. He borrowed the said motorbike from its real owner. The deceased cannot be held to be employee of the owner of the motorbike although he was authorised to drive the said vehicle by its owner, and therefore, he would step into the shoes of the owner of the motorbike.

19. We have already extracted Section 163-A of the MVA hereinbefore. A bare perusal of the said provision would make it explicitly clear that persons like the deceased in the present case would step into the shoes of the owner of the vehicle. In a case wherein the victim died or where he was permanently disabled due to an accident arising out of the aforesaid motor vehicle in that event the liability to make payment of the compensation is on the insurance company or the owner, as the case may be as provided under Section 163-A. But if it is proved that the driver is the owner of the motor vehicle, in that case the owner could not himself be a recipient of compensation as the liability to pay the same is on him. This proposition is absolutely clear on a reading of Section 163-A of the MVA. Accordingly, the legal representatives of the deceased who have stepped into the shoes of the owner of the motor vehicle could not have claimed compensation under Section 163-A of the MVA."

22. The Hon'ble Apex Court in the judgment reported in (2018) 9 SCC 801 [National Insurance Co. Ltd., Vs. Ashalata Bhowmik and

others], held that the claim petition filed under Section 163-A of the Act by legal provisions against the owner and insurer of the vehicle driven by the deceased is not maintainable and the legal heirs can maintain the claim petition only against the rider, owner and insurer of other Motorcycle, on the ground that accident occurred involving two Motorcycles and deceased who was riding one Motorcycle was not at fault, but rider of other Motorcycle was only a tort-feasor. In para 7 of the above judgment, it has been held as follows:

"7. We have carefully considered the submissions of the learned counsel made at the Bar and perused the materials placed on record. It is an admitted position that the deceased was the owner-cum-driver of the vehicle in question. The accident had occurred due to the rash and negligent driving of the vehicle by the deceased. No other vehicle was involved in the accident. The deceased himself was responsible for the accident. The deceased being the owner of the offending vehicle was not a third party within the meaning of the Act. The deceased was the victim of his own action of rash and negligent driving. A Claimant, in our view, cannot maintain a claim on the basis of his own fault or negligence and argue that even when he himself may have caused the accident on account of his own rash and negligent driving, he can nevertheless make the insurance company to pay for the same. Therefore, the respondents being the LRs of the deceased could not have maintained the claim petition filed under Section 166 of the Motor Vehicles Act."

23. In the judgment reported in 2017 (2) TNMAC 753 (SC) [United India Insurance Co. Ltd., Vs. Sunil Kumar and another], the three judges bench of the Hon'ble Apex Court held that the claimants are not required to prove the negligence on the part of the owner or driver of the vehicle and Insurance Company is not entitled to raise the plea of negligence. In para 8 of the above judgment, it has been held as follows:

"8. From the above discussion, it is clear that grant of compensation under Section 163-A of the Act on the basis of the Structured Formula is in the nature of a Final Award and the adjudication thereunder is required to be made without any requirement of any proof of negligence of the Driver/Owner of the vehicle(s) involved in the accident. This is made explicit by Section 163-A (2). Though the aforesaid section of the Act does not specifically exclude a possible defence of the Insurer based on the negligence of the Claimant as

contemplated by Section 140(4), to permit such defence to be introduced by the Insurer and/or to understand the provisions of Section 163-A of the Act to be contemplating any such situation would go contrary to the very legislative object behind introduction of Section 163-A of the Act, namely, final compensation within a limited time frame on the basis of the Structured Formula to overcome situations where the claims of compensation on the basis of fault liability was taking an unduly long time. In fact, to understand Section 163-A of the Act to permit the Insurer to raise the defence of negligence would be to bring a proceeding under Section 163-A of the Act at par with the proceeding under Section 166 of the Act, which would not only be self-contradictory but also defeat the very legislative intention."

24. The above said ratio was reiterated by the another three judges bench in the judgment reported in 2018 (2) TNMAC 149 (SC) [Shivaji and another Vs. United India Insurance Co. Ltd.], wherein it has been held as follows:

"5. The issue which arises before us is no longer res integra and is covered by a recent judgment of Three-Judges of this Court in United India Insurance Co. Ltd., Vs. Sunil Kumar and another, 2017 (2) TN MAC 753 (SC): AIR 2017 SC 5710, wherein it was held that to permit a defence of negligence of the claimant by the insurer and/or to understand Section 163-A of the Act as contemplating such a situation, would be inconsistent with the legislative object behind introduction of this provision, which is "final compensation within a limited time frame on the basis of the Structured Formula to overcome situations where the claims of Compensation on the basis of fault liability was taking an unduly long time". The Court observed that if an Insurer was permitted to raise a defence of negligence under Section 163-A of the Act, it would "bring a proceeding under Section 163-A of the Act at par with the proceeding under Section 166 of the Act which would not only be self-contradictory but also defeat the very legislative intention". Consequently, it was held that in a proceeding under Section 163-A of the Act, the Insurer cannot raise any defence of negligence on the part of the victim to counter a claim for Compensation."

25. The issue of maintainability of the claim petition by

owner or rider under Section 163-A of the Act is again considered by the Hon'ble Apex Court in the judgment reported in 2020 (1) TN MAC 1 (SC) cited supra, wherein it has been held that claim petition filed under Section 163-A of the Act by owner or borrower of vehicle is not maintainable as borrower steps into the shoes of the owner.

26. I had an occasion to consider this issue in C.M.A.No.3414 of 2019. Considering the judgment of the Hon'ble Apex Court, by the judgment dated 28.05.2020, in C.M.A.No.3414 of 2019, I held that the claimant is not entitled to claim compensation from the insurer of the vehicle in which he was riding, when another vehicle viz., Mahendra Maximo Van driven in a rash and negligent manner dashed against the Motorcycle driven by him. The relevant paragraphs are as follows:

"19. The judgment reported in 2020 (1) TN MAC 1 (SC) [Ramkhiladi and another Vs. United India Insurance Co. Ltd., and another], relied on by the learned counsel appearing for the appellant is squarely applicable to the facts of the present case. The Hon'ble Apex Court referring to earlier judgment, especially 2009 (2) TNMAC 169 (SC) [Ningamma & another v. United India Insurance Co. Ltd.], categorically held that owner of the vehicle cannot maintain a claim petition against the insurer when the accident has occurred only due to negligence on the part of the other vehicle.

20. In view of the above finding, the reliance placed by the learned counsel appearing for the respondent on the judgments of the Hon'ble Apex Court in 2018 (2) TNMAC 149 (SC) [Shivaji and another Vs. United India Insurance Co. Ltd.] and 2017 (2) TNMAC 753 (SC) [United India Insurance Co. Ltd., Vs. Sunil Kumar and another] do not advance the case of the respondent. Further, the respondent has stated that accident has occurred only due to rash and negligent driving by Mahendra Maximo Van and the respondent is making a claim against the appellant who is the insurer of Motorcycle driven by the respondent, since the Mahendra Maximo Van is not insured and he cannot claim compensation from the owner of the said vehicle. The reason given for filing claim petition against the appellant is not valid and claim petition is not maintainable under Section 163-A of the Motor Vehicles Act."

27. In the present case, from the materials available on record, it is seen that the deceased who was riding motorcycle

belonging to the 7th respondent herein, in order to avoid hitting the pedestrian, who suddenly crossed the road, caused accident by hitting the bullock cart, fell down, sustained injuries and died. The F.I.R. was registered against the deceased/rider of the motorcycle. From the above materials, it is clear that the deceased rode the motorcycle belonging to the 7th respondent and had stepped into the shoes of the owner. In view of the judgments referred to above, the legal heirs of the deceased who was the tort-feasor are not entitled to maintain the claim petition under Section 163-A of the Act, as the deceased himself was the tort-feasor. Hence, the appellant is not liable to pay any compensation to the respondents 1 to 6.

Issue No.2:

28.The next issue to be decided is whether the respondents 1 to 6 are entitled to compensation under Employees Compensation Act on the notional theory of extension of employment and whether the 9th respondent is liable to pay compensation to the respondents 1 to 6 as insurer of harvesting tractor.

29.The learned counsel appearing for the respondents 1 to 6 contended that the deceased was employed as a driver in the harvesting tractor owned by the 8th respondent. On the date of accident, the deceased parked the harvesting tractor at Thiyyagarajapuram and went to the harvesting field in the motorcycle to identify the field for harvesting. The deceased while returning after identifying the field, one pedestrian suddenly crossed the road, in order to avoid hitting the pedestrian, turned the motorcycle, dashed against the bullock cart and caused the accident. In the accident, due to the fatal injuries sustained, the deceased died. The accident has occurred during and in the course of employment as the deceased went to find out the harvesting field. On the other hand, it is the contention of the learned counsel appearing for the 9th respondent that P.W.2, owner of the offending vehicle, the motorcycle, who was the pillion rider, has not mentioned anything about the parking of harvesting tractor at Thiyyagarajapuram in the complaint lodged by him and that the deceased was working as a driver in the harvesting tractor employed by the 8th respondent, the owner of the harvesting tractor. The learned counsel appearing for the 9th respondent further contended that the present contention of the respondents 1 to 6 is only an after thought. The respondents 1 to 6 have not filed any appeal against the dismissal of the claim petition as against the respondents 8 and 9.

30.A perusal of F.I.R. reveals that while the deceased and P.W.2 were returning to their place after having their dinner, the accident has occurred at Pa.U.Sha. Nagar Colony at Thatachampattu village. As rightly pointed out by the learned counsel appearing for the 9th respondent, there is no mention about the parking of harvesting tractor at Thiyagarajapuram and the deceased was working as driver in the said harvesting tractor, employed by the 8th respondent in F.I.R. It is not in dispute that the accident has occurred in a public road while using the private vehicle. In the judgments relied on by the learned counsel appearing for the 9th respondent, it has been held that when an accident occurred in a public place and also while using the private vehicle, it cannot be held that the accident occurred during and in the course of employment.

31.In the judgment reported in AIR 1997 SC 432 (Regional Director, E.S.I. Corporation and another vs. Francis De Costa and another), the Hon'ble Apex Court considering the fact that when the accident occurred one kilometre away from the place of employment while the employee was going for work, held that the accident was not occurred during and in the course of employment.

32.In the judgment reported in 2002 ACJ 378 (New India Assurance Co. Ltd. vs. A.Sharifa Bivi and others), this Court considered the fact that when the employee was instructed to do some other work than driving the lorry and met with an accident and held that the accident has not occurred during and in the course of employment.

33.In all the judgments relied on by the learned counsel appearing for the 9th respondent, it has been held that there must be nexus between the employment and the place of accident.

34.In all the judgments relied on by the learned counsel appearing for the respondents 1 to 6, the drivers of the vehicle were in possession of the vehicle and when they left the vehicle for loading the truck or staying with the bus for morning shift or to take water for the vehicle and also refreshing himself in the hot day and finally when the driver parking the vehicle crossed the road for breakfast, met with an accident.

35.In the present case, the respondents 1 to 6 have failed to prove that the deceased was the driver in the harvesting tractor belonging to the 8th respondent, parked the harvesting tractor at Thiyagarajapuram and while in service of the 8th respondent as driver, the accident has occurred. The respondents

1 to 6 have filed the claim petition under Section 163-A of the Act and they have not claimed any compensation against the respondents 8 and 9 alleging that the accident has occurred during and in the course of employment, as driver of the harvesting tractor belonging to the 8th respondent.

36. From the judgments referred to above relied on by the learned counsel appearing for the 9th respondent and the respondents 1 to 6, it is made clear that notional theory of extended employment cannot be applied in all cases and each case has to be considered based on the pleadings and evidence let in before the Tribunal and the facts of the case.

37. It is pertinent to note that the Hon'ble Apex Court has held that when the accident occurred in a public place using private vehicle, it cannot be held that the accident has occurred during and in the course of employment. The judgments relied on by the learned counsel appearing for the 9th respondent are squarely applicable to the facts of the present case and the judgments relied on by the learned counsel appearing for the respondents 1 to 6 are not applicable to the facts of the present case as the respondents 1 to 6 have failed to prove that the deceased was employed as driver of the harvesting tractor owned by the 8th respondent and the accident has occurred during and in the course of employment. In view of the above, it is clear that the respondents 1 to 6 have failed to prove that the deceased was an employee i.e., the driver under the 8th respondent and the accident has occurred during and in the course of employment.

38. For the above reason, the claim of the counsel for the respondents 1 to 6 that the 9th respondent is liable to pay compensation as the insurer of the harvesting tractor as the deceased was working as driver under the 8th respondent and the accident has occurred during and in the course of employment, is without merits and the same is rejected.

39. In the result, this Civil Miscellaneous Appeal is allowed setting aside the portion of the award directing the appellant/Insurance Company to pay compensation to the respondents 1 to 6 and 7th respondent alone is liable to pay compensation. In view of allowing of the appeal, the appellant/Insurance Company is permitted to withdraw the amount, lying in the deposit to the credit of M.C.O.P.No.49 of 2008 on the file of Motor Accident Claims Tribunal, District Court, Tiruvannamalai, if the award amount has already been deposited by them. Consequently, connected Miscellaneous Petition is

closed. No costs. The appeal is dismissed as against the respondents 8 and 9.

Sd/-
Asst.Registrar (CS VII)

/true copy/

Sub Asst. Registrar

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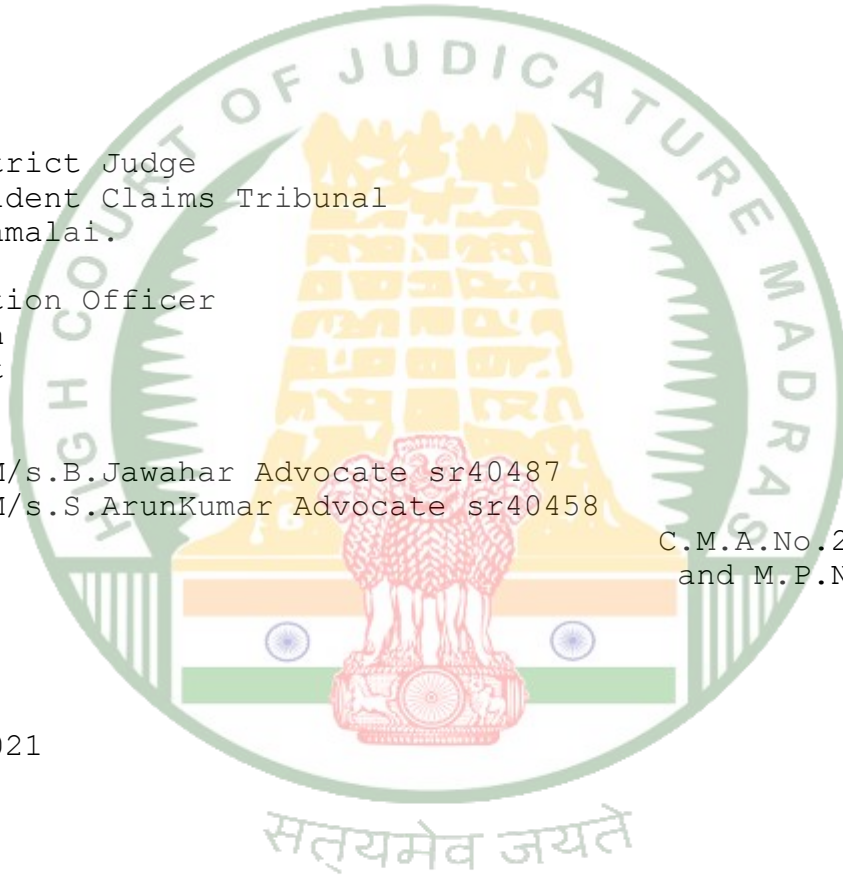
1.The District Judge
Motor Accident Claims Tribunal
Thiruvannamalai.

2.The Section Officer
VR Section
High Court
Madras.

+1 cc to M/s.B.Jawahar Advocate sr40487
+1 cc to M/s.S.ArunKumar Advocate sr40458

C.M.A.No.2132 of 2013
and M.P.No.1 of 2013

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