



C.M.A.(MD)Nos.1573, 1574 and 1575 of 2011

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : 15.07.2022

Delivered On : 12.08.2022

CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

C.M.A.(MD)Nos.1573, 1574 and 1575 of 2011

C.M.A.(MD)No.1573 of 2012

National Insurance Company Limited,
Jerome Buildings, 1st Floor, Fort Station Road,
Trichy.

.. Appellant

Vs.

1.S. Muthu

2.M. Indrani

3.M. Sathiya Bhama

4.M. Sathis Pandiyan

5.R. Sivakumar

.. Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree, dated 07.01.2010, made in M.C.O.P.No.108 of 2002, on the file of the Motor Accident Claims Tribunal – Principal District Judge, Tiruchirappalli.

For Appellant : Mr.D.Sivaraman

For Respondent No.5 : No appearance

For Respondent No.1 to 4 : Mr.N.Sudhagar Nagaraj



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C.M.A.(MD)No.1574 of 2012

National Insurance Company Limited,
Jerome Buildings, 1st Floor, Fort Station Road,
Trichy.

.. Appellant

Vs.

1.A. Vergin Metelda
2.Arokia Dass
3.Selvam
4.Jesudass
5.Robert
6.Chinnappa
7.Benjamin

.. Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree, dated 07.01.2010, made in M.C.O.P.No.109 of 2002, on the file of the Motor Accident Claims Tribunal – Principal District Judge, Tiruchirappalli.

For Appellant	: Mr.D.Sivaraman
For Respondent No.8	: No appearance
For Respondent No.1 to 7	: Mr.N.Sudhagar Nagaraj

C.M.A.(MD)No.1575 of 2012

National Insurance Company Limited,
Jerome Buildings, 1st Floor, Fort Station Road,
Trichy.

.. Appellant



C.M.A.(MD)Nos.1573, 1574 and 1575 of 2011

Vs.

1.Sumathi

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2.Minor Subatra

(Minor Petitioner is Rep. Through Her Mother
1st Petitioner Sumathi

3.P. Ramasamy

4.R. Periyamayagam

5.R. Sivakumar

.. Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree, dated 07.01.2010, made in M.C.O.P.No.148 of 2002, on the file of the Motor Accident Claims Tribunal – Principal District Judge, Tiruchirappalli.

For Appellant : Mr.D.Sivaraman

For Respondent No.5 : No appearance

For Respondent No.1 to 4 : Mr.N.Sudhagar Nagaraj

COMMON JUDGMENT

C.M.A.(MD)No.1573 of 2012 has been filed against the award, dated 07.01.2010, made in M.C.O.P.No.108 of 2002, on the file of the Motor Accident Claims Tribunal – Principal District Judge, Tiruchirappalli. The appellant herein is the second respondent, the respondents 1 to 4 herein are the claimants and the fifth respondent herein is the first respondent in the original M.C.O.P. Petition.



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2. C.M.A.(MD)No.1574 of 2012 has been filed against the award, dated 07.01.2010, made in M.C.O.P.No.109 of 2002, on the file of the Motor Accident Claims Tribunal – Principal District Judge, Tiruchirappalli. The appellant herein is the second respondent, the respondents 1 to 7 herein are the claimants and the eighth respondent herein is the first respondent in the original M.C.O.P. Petition.

3. C.M.A.(MD)No.1575 of 2012 has been filed against the award, dated 07.01.2010, made in M.C.O.P.No.108 of 2002, on the file of the Motor Accident Claims Tribunal – Principal District Judge, Tiruchirappalli. The appellant herein is the second respondent, the respondents 1 to 4 herein are the claimants and the fifth respondent herein is the first respondent in the original M.C.O.P. Petition.

4. Brief substance of the claim petition in M.C.O.P.No.148 of 2002 is as follows:

The deceased Balu @ Balakrishnan was a video cameraman, the deceased moorthi @ Sathyamoorthi was a video lightman and the deceased Augustine was a still photographer. All the three persons travelled in a motorcycle bearing Registration No.TN-45-M-2388. The deceased Balu @ Balakrishnan was riding the motorcycle, the other two persons travelled as pillion riders. There was a heap of sand on the road and the motorcycle skidded and dashed against the near by Palmyra



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tree. The rider of the two wheeler, viz., Balu @ Balakrishnan, died on the spot and the other two persons died on the way to the hospital. The deceased-Balu @ Balakrishnan was earning Rs.9,000/- per month. The petitioners are his dependents and they claimed a sum of Rs.10,00,000/- as compensation.

5. Brief substance of the claim petition in M.C.O.P.No.108 of 2002 is as follows:

The deceased-Moorthy @ Sathyamoorth was a video lightman. He was aged about 26 years and he was earning Rs.6,000/- per month. The petitioners are his dependents and they claimed a sum of Rs.6,00,000/- as compensation.

6. Brief substance of the claim petition in M.C.O.P.No.109 of 2002 is as follows:

The deceased-Augustine was aged about 27 years and he was working as a still photographer and was earning Rs.7,000/- per month. The petitioners are his dependents and they claimed a sum of Rs.8,00,000/- as compensation.

7. Brief substance of the counter filed by the Insurance Company in all the three petitions (M.C.O.P.Nos.148, 108 and 109 of 2011) is as follows:-



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The date, time and place of occurrence are not correct. Three persons travelled in a motorcycle against the Motor Vehicle Rules. The rider of the motorcycle was riding the motorcycle in an intoxicated state of mind and due to overload the rider lost the control and dashed against the tree. The deceased has contributed to the accident. The age, occupation, monthly income of the deceased are all denied. The first respondent is the brother of the deceased – Balu @ Balakrishnan. The deceased Balakrishnan worked as a Labour in a building construction company, at Singapore and after the expiry of the work permit, he returned to India and he remained unemployed. The deceased persons went on a jolly ride to Kallanai. They have consumed alcohol and while returning back, due to the negligence of the rider of the motorcycle, they met with an accident. The Compensation claimed is too excessive.

8. On the side of the claimants, 4 witnesses were examined and 7 documents were marked. On the side of the respondents, 1 witness was examined and 2 documents were marked. The Tribunal has awarded Rs.3,60,000/- as compensation in M.C.O.P.No.108 of 2002, the Tribunal has awarded Rs.4,00,000/- as compensation in M.C.O.P.No.109 of 2002 and the Tribunal has awarded Rs. 4,50,000/- as compensation in M.C.O.P.No.148 of 2002. Against that awards, the appellant / Insurance Company has filed these appeals.



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9. Brief substance of the grounds of the appeal in CMA(MD)No.1573 of

2011, is as follows:-

The Tribunal failed to see that the deceased person had violated the statutory provisions by travelling three persons in a single motorcycle and that the rider was in an intoxicated state of mind and he contributed to the accident. The seating capacity of the two wheeler is only 1 + 1, the insurance company was not liable to pay compensation. The Tribunal has failed to follow the dictum of the Apex Court in Sarla Verma's case reported in 2009-ACJ-1298, whereas, the Apex Court has held that $\frac{1}{2}$ of the income has to be deducted in a case of death of a Bachelor. The Tribunal has erred in fixing the income of the deceased at Rs.36,000/- per annum, in the absence of any oral or documentary evidence. The award is excessive.

10. Brief substance of the grounds of the appeal in CMA(MD)No.1574 of

2011, is as follows:-

The Tribunal failed to see that the deceased person had violated the statutory provisions by travelling three persons in a single motorcycle and he contributed to the accident. The seating capacity of the two wheeler is only 1 + 1, the insurance company was not liable to pay compensation. The Tribunal has fixed the income of the deceased at Rs.30,000/- per annum and applied multiplier '17', which is excessive. The award is also excessive.



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WEB COPY 11. Brief substance of the grounds of the appeal in CMA(MD)No.1575 of 2011, is as follows:-

The Tribunal failed to see that the deceased person had violated the statutory provisions by travelling three persons in a single motorcycle and he contributed to the accident. The seating capacity of the two wheeler is only 1 + 1, the insurance company was not liable to pay compensation. The Tribunal has failed to follow the dictum of the Hon'ble Apex Court held in Ningamma's case reported in 2009-ACJ-2020, wherein, the Apex Court has held that a person borrowing the vehicle from the owner automatically steps into the shoes of the owner and hence, the Insurer is not liable to indemnify the owner for own damages. The Tribunal has erred in fixing the income of the deceased at Rs.36,000/- per annum and applied multiplier '17', which is excessive. The award is also excessive.

12. On the side of the appellant, it is stated that three persons travelled in a motorcycle and the rider of the two wheeler skidded on a heap of sand. No other vehicle was involved in the accident. The claim petitions were filed both under Section 163 (A) and under Section 166 of the Motor Vehicle Act, which is not maintainable. The income claimed by the claimants is Rs.6,000/-, Rs.7,000/- and Rs. 8,000/- per month and not less than Rs.40,000/- per annum, only if the income



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claimed is less than Rs.40,000/- per annum, the claim under Section 163 (A) is maintainable.

13. Under Section 163 (A) of the Motor Vehicles Act, there is no necessity for the claimants to prove the negligence, but, under Section 166 of the Motor Vehicles Act, the entire liability is on the claimants to prove the negligence.

CMA(MD)No.1575 of 2011

14. The first respondent is the brother of Balu @ Balakrishnan, the rider has borrowed the vehicle from the owner and he stepped into the shoes of the owner and he has to be considered as the owner of the vehicle and he cannot claim any compensation from the Insurance Company.

15. A judgment of the Hon'ble Supreme Court reported in **2009-ACJ-2020 [Ningamma and another V. United India Insurance Co. Ltd.,]** is cited, wherein, it is stated as follows:-

“Whether the legal representatives of a person driving a vehicle after borrowing it from the owner meets with accident without involving any other vehicle, would be entitled to claim compensation under Section 163-A of M.V. Act; No borrower steps into the shoes of the



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owner and the owner cannot himself be a recipient of compensation as liability to pay the same is on him.”

16. On the side of the appellant, it is stated that under Section 147 of the Motor Vehicles Act, the Insurance Company is not liable to pay compensation. Both the claimants and the respondent cannot be the same person. At the time of accident, Balu @ Balakrishnan stepped into the shoes of the owner/first respondent for his own negligence. A judgment of the Hon'ble Supreme Court reported in 2020-2-SCC-550 [Ramkhiladi and another V. United India Insurance Company and another] is cited, wherein, it is stated as follows:-

“Claim petition under Section 163-A of the Motor Vehicles Act is not maintainable by borrower / permissive user of vehicle against owner or insurer of said vehicle, as such borrower permissive user steps into shoes of owner and the owner cannot both the claimant and the recipient. In a claim under Section 163 A of M.V. Act, the deceased / victim has to be a third party in relation to vehicle in question. Merely, own use of motor vehicle by owner / borrower / permissive user does not entitle such persons to maintain, Section 163-A petition is against the insurer of their own / borrowed vehicle. The owner / borrower / permissive users are not “third parties” in relation to their own/borrowed vehicle and hence are not covered by statutory insurance under Section 147. Hence, the claim of the owner / borrower / permissive user would be limited to personal accident



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coverage re-own-use of the vehicle, if any, strictly as per contract of insurance covering the borrowed vehicle.”

17. On the side of the appellant, it is stated that the rider of the vehicle Balu @ Balakrishnan was responsible for the accident. He was the tort feaser and the claimants cannot claim any compensation from the Insurance Company. On the side of the appellant, it is stated that in an earlier case, wherein, the rider of the motorcycle hit a tamarind tree, the award was set aside by this Court. A judgment of this Court in CMA No.2638 of 2019, dated 04.03.2020 [Divisional Manager, TATA AID General Insurance Company Limited, V. A.C.Jagadeesann] is cited, wherein, it is stated as follows:-

“39.The tenor and purport of the above Judgment is the principle of -No Fault Liability? obviously implies that the injury or death or the claimant is the result of the involvement of a third party with the claimant being an innocent by stander and the accident has occurred out of no fault of his.”

18. On the side of the appellant, it is further stated that the seating capacity of the two wheeler is only for one pillion rider. Due to overload of the vehicle, the rider lost the control and the claimants of only one of the pillion rider can be taken into account for claiming compensation.



WEB COPY 19. A judgment of the Hon'ble Supreme Court reported in **2007(2)-TNMAC-193 (SC) [National Insurance Company Limited V. Anjana Shyam and others]** is cited, wherein, it is stated as follows:

“Due to overloading, ie. 90 passengers, carried in stage carriage as against permitted capacity of 42 passenger, the bus fell into nullah causing death of 26 and injuries to 63 passengers. The Insurer can be made liable in respect of number of passengers for whom Insurance can be taken under Act and for whom Insurance has been taken. But, not in respect of other passengers involved in the accident.

Insurer is directed to deposit higher of 42 awards out of 90 in lump sum. Amount so deposited, directed to be distributed proportionately to all 90 claimants. All the claimants to recover the balance from the owner of the vehicle.”

20. On the side of the appellant, it is further stated that when three persons were travelling in a motorcycle, it was unbalanced any unusual movement of the pillion rider would make the rider of the motorcycle to loose his control over the vehicle.



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21. A judgment of this Court, reported in **2004-ACJ-1827 (Managing Director, Tamil Nadu State Transport Corporation V. Abdul Salam and others)**, is cited, wherein, it is stated as follows:-

11. Apart from that, when three persons are travelling in a motor cycle, two as pillion riders, any unusual movement of the pillion riders would make the rider of the motor cycle to loose his control over the vehicle. Even though such travelling of three persons in a motor cycle is contrary to the statute, still the enforcement wing do not care to take note of the same and failed to take action against their illegal action. Virtually because of the failure on the part of the enforcement wing, such travelling of three persons in the two wheelers has become a regular sight. Even though the highway patrolling is available but it is a rare sight to see a highway patrolling vehicle. The travelling of three persons has become rampant in the mofussils and in the City; especially among the youngsters like the college students. When that be the case, the enforcing authority is expected to enforce the statute with some strictness to avoid any untoward incident. There is no purpose in conducting the Road Safety Week without infusing the road sense in compliance of the Rules and Regulations of the statute in the minds of those who are using the vehicles.



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22. On the side of the appellant, it is stated that the pillion riders also contributed to the accident. Two pillion riders would make the rider of the motorcycle to loose his control and they can get only 50% of the award amount. A judgment of this Court in **CMA(MD) No.358 of 2016 [Branch Manager, Tamil Nadu State Transport Corporation V. Marimuthu and others]** dated 04.02.2021, is cited, wherein, it is stated as follows:-

“20.No doubt, as already pointed out, taking more than 2 persons in a two wheeler, by itself is an offence but whether it would amount to negligence or not is required to be decided on the facts and circumstances of the given case. If a rider takes 2 persons as pillion riders, that itself would not amount to negligence. For example, if a rider takes his wife and a child or if he takes 2 small boys or lean persons, that by itself would not amount to negligence. But if the rider takes 2or 3 grown~up persons or obese persons, that by itself would amount to negligent driving since the rider can loose his control of the vehicle at any point of time. In the case on hand, since four grown~up students had travelled in the two wheeler, I have no hesitation to hold that the rider and all the pillion riders are guilty of negligent riding / travelling.”

23. On the side of the respondents, it is stated that the petitions filed only under Section 163(A) of the Motor Vehicles Act and there is no need to prove the negligence. In para-12 of the order of the Tribunal, it was clearly stated that under



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Section 163(A) of the Motor Vehicles Act, there is no need to prove the negligence of the vehicle driver.

24. The claimants can file petition either Section 163 (A) or under Section 166 of the Motor Vehicles Act, but, unfortunately, they have filed the petitions both under Sections 163(A) and 166 of M.V.Act which is not proper. No other vehicle was involved in the accident. The rider of the motorcycle was having valid driving licence. There is no evidence on the side of the Insurance Company to prove that the rider of the vehicle was in an intoxicated mood at the time of accident. The income claimed by the claimants is more than Rs.40,000/- per month and hence Section 163 (A) of the Motor Vehicles Act is not applicable to the petitions filed by the claimants.

CMA(MD)No.1575 of 2011:

25. Under Section 166 of the Motor Vehicles Act, it is the duty of the claimants to prove the negligence on the part of the rider. In this case, the rider of the two wheeler has allowed two persons to occupy the vehicle as pillion riders and he hit the vehicle on the sand heap on the road and dashed against a palmara tree. Hence, the rider of the motorcycle-Balau @ Balakrishnan was the tort feaser and he



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borrowed the vehicle from his brother - the first respondent therein and hence, the claim on his death is not maintainable. The claimants are not entitled to claim any compensation.

26. Hence, CMA(MD)No.1575 of 2011 is allowed. The award, dated 07.01.2010, made in M.C.O.P.No.148 of 2002, on the file of the Motor Accident Claims Tribunal – Principal District Judge, Tiruchirappalli, is hereby set aside. The Insurance Company is entitled for refund of amount, if any, already deposited.

CMA(MD)No.1573 of 2011:

27. Three persons had travelled in a motorcycle at the time of accident. Two persons travelled in a two wheeler as pillion riders, which is against the Rules. Hence, both the pillion riders contributed 50% to the negligence. Since contributory negligence was fixed on both of the pillion riders, the contention of the Insurance Company that only one of them is entitled for compensation is not taken in to consideration. There is no serious dispute regarding the quantum of the award amount.



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CMA(MD)No.1574 of 2011:

28. The Tribunal has fixed Rs.3,60,000/- as compensation in M.C.O.P.No108 of 2002 (CMA(MD)No.1573 of 2011), after deducting 50% towards the contributory negligence of the deceased, the claimants are entitled to Rs. 1,80,000/- as compensation.

29. The Tribunal has fixed Rs.4,00,000/- as compensation in M.C.O.P. No.109 of 2002 (CMA(MD)No.1574 of 2011), after deducting 50% towards contributory negligence on the deceased, the claimants are entitled to Rs.2,00,000/- as compensation.

30. CMA(MD)No.1573 of 2011 is partly allowed. The compensation is reduced from Rs.3,60,000/- to **Rs.1,80,000/-**.

(i) The claimants are entitled to Rs.1,80,000/- as compensation.

(ii) The appellant - Insurance Company, is directed to deposit the entire compensation of Rs.1,80,000/- (if not already deposited) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and with cost, within a period of eight weeks from the date of receipt of a copy of this order.



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(iii) On such deposit being made by the Insurance Company, the respondents / claimants are permitted to withdraw their shares as per the ratio fixed by the Tribunal with proportionate interest and costs, on filing of proper petition before the Tribunal, less any amount, if already withdrawn by them.

31. CMA(MD)No.1574 of 2011 is partly allowed. The compensation is reduced from Rs.4,00,000/- to **Rs.2,00,000/-**.

(i) The claimants are entitled to Rs.2,00,000/- as compensation.

(ii) The appellant - Insurance Company, is directed to deposit the entire compensation of Rs.2,00,000/- (if not already deposited) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and with costs, within a period of eight weeks from the date of receipt of a copy of this order.

(iii) On such deposit being made by the Insurance Company, the respondents / claimants are permitted to withdraw their respective shares as per the ratio fixed by the Tribunal with proportionate interest and costs, on filing of proper petition before the Tribunal, less any amount, if already withdrawn by them. The Claimants are not entitled for interest for the default period, if there is any default. No costs.



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WEB COPY 32. CMA(MD)No.1575 of 2011 is allowed and the award of the Tribunal in M.C.O.P.No.148 of 2002 is hereby set aside, as the claimants are not entitled for any compensation. The appellant / Insurance Company is permitted to get refund of the amount, if any, deposited by him, in all cases.

12.08.2022

Index : Yes/No

Internet : Yes/No

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Note : In view of the present lock down owing to COVID – 19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

To

1.The Motor Accident Claims Tribunal –

Principal District Judge,

Tiruchirappalli.

2.The Section Officer,

V.R. Section,

Madurai Bench of Madras High Court,

Madurai.



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C.M.A.(MD)Nos.1573, 1574 and 1575 of 2011

R. THARANI, J.

Ls

Pre-delivery Judgment made in
C.M.A.(MD)Nos.1573, 1574 and 1575 of 2011

12.08.2022