



C.M.A.Nos.669 & 2014 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Reserved on: 12.11.2025

Delivered on: 25.11.2025

CORAM

THE HONOURABLE Dr.JUSTICE G.JAYACHANDRAN

and

THE HONOURABLE MR.JUSTICE MUMMINENI SUDHEER KUMAR

C.M.A.Nos. 669 & 2014 of 2022

& C.M.P.No.4761 of 2022

C.M.A.No.669 of 2022

M/s.Royal Sundaram General Insurance Company Limited,
Represented by its Manager,
No.188/5, 3rd Floor, Royal Towers,
New Bus Stand Road, Meyyanur,
Salem District – 636 004. ... Appellant/2nd respondent

/versus/

1. Tmt.Bhuvaneshwari,
W/o.Late. Balaji.
2. Aravind (Minor),
(Minor rep. By his Mother and Next Friend 1st Respondent)

Tmt.Vasanth – (died)

3. Thiru.Venkatraman,
S/o.Late. Subramanian

Respondent 3 died. Respondents 1 & 2 are already on record as Lrs of the deceased viz.,

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Venkatraman recorded vide Court order dated 07.07.2023 made in C.M.A.Nos.669 & 2014 of 2022 by RSMJ & RKMJ.

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4. Tmt.Kalaimani,

5. Thiru.Arun Kumar,

6. The Divisional Manager,

M/s.New India Assurance Company Limited,

Divisional Office,

Jerome Building, II Floor,

Fort Station Road,

Trichy – 2.

... Respondents 4 to 6/Respondents 1, 3 & 4

Prayer in C.M.A.No.669 of 2022: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree in MCOP.No.119 of 2019, dated 25.10.2021, on the file of the Motor Accident Claims Tribunal, Additional District Court, Ariyalur.

For Appellant : Mr.M.B.Raghavan,
for M/s.M.B.Gopalan, Associates

For Respondents : Mr.S.Kaithamalai Kumaran,
for Mr.P.Parthi Kannan, for R1 & R2
: Mr.M.Krishnamoorthy, for R6
: Died, for R3
: No appearance, for R4
: set *exparte*, for R5

C.M.A.No.2014 of 2022:



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1. Bhuvaneshwari,
W/o.Balaji (Late).

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2. Minor Aravind,
Rep. By his Mother
1st Appellant Bhuvaneshwari.

3. Tmt.Vasantha (died)

4. Venkatraman (died)

Cause title accepted vide Court order dated 22.07.2022 made in C.M.P.No.11466 of 2022 in
C.M.A.SR.No.48667 of 2022 by VMVJ & SSJ

/versus/

1. Tmt.Kalaimani.

2. M/s.Royal Sundaram General Insurance Co. Ltd.,
Rep. By its Manager,
No.188/5, Third Floor,
Royal Towers,
New Bus Stand Road,
Meyyanur, Salem District - 636 004.
(Policy No.VGC 0397902000100 from 11.05.2016 to 27.01.2017)

3. Thiru.Arun Kumar.

4. Divisional Manager,
New India Assurance Co. Ltd.,
Divisional Office,
Jerome Building, II Floor, Fort Station Road,



C.M.A.Nos.669 & 2014 of 2022

Trichy – 2.

... Respondents

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Prayer in C.M.A.No.2014 of 2022: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, pleaded to modify the judgment and award passed in M.C.O.P.No.119 of 2019 on the file of Motor Accident Claim Tribunal (Additional District Judge), Ariyalur and directing the 4th respondent to pay the award amount to the appellants and recover from 3rd respondent.

For Appellants : Mr. Mr.S.Kaithamalai Kumaran,
for Mr.P.Parthi Kannan

For Respondents : Mr.M.B.Raghavan,
for M/s.M.B.Gopalan, Associates, for R2
: Mr.M.Krishnamoorthy, for R4
: No appearance, for R1
: set *exparte*, for R3

COMMON JUDGMENT

These two appeals are against the award passed by the Motor Accident Claims Tribunal, Ariyalur in M.C.O.P.No.119 of 2019, dated 25.10.2021.



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(i) C.M.A.No.669 of 2022, filed by the Insurance Company, challenging

both liability as well as quantum of compensation.

(ii) C.M.A.No.2014 of 2022, filed by the claimants, challenging the order of the Tribunal exonerating the 4th respondent/insurance company instead of ordering “pay and recover”.

2. The gist of the case leading to the appeals:-

The claimants are the wife and minor son of late Balaji. On 09.10.2016, when Balaji was driving along with his wife and son, travelling in a Taxi bearing Reg.No:KA-05-AE-1681 from Bangalore to Kumbakonam, near Karukkai village, Andimadam on the Jayamkondam-Virudhachalam highways, at about 6.30 hours, a 12-wheeler lorry bearing No:TN-52-B-5070, coming from the opposite side driven rashly by its driver at heavy speed grazed the side body of the Taxi, in the impact the Taxi capsized and Balaji died on the spot.



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The other occupants in the Taxi sustained injuries. Alleging negligence on the

driver of the truck, the claim petition by the wife of the deceased along with her

minor son and parent- in-laws filed seeking compensation of Rs.2,02,00,000/-.

The respondents in the petition are the owners of the vehicles involved in the said accident and their respective insurers.

3. The first respondent is the owner of the lorry bearing Reg No:TN-52-B-5070. The 2nd respondent is the insurer of the lorry. The first respondent remained *exparte*. The 2nd respondent filed counter stating that the claim petition contains distorted version about the accident. The driver of the Taxi was at absolute fault and dashed against the rear side of the lorry after crossing the car cabin. The Motor Vehicle report for the vehicles will clearly show that the impact for the taxi was on its front and for the lorry on the rear. Thus, the offending vehicle is the taxi. Furthermore, F.I.R was registered against the driver of the Taxi for causing death due to his rash and negligent driving.



4. The 3rd respondent is the owner of the Taxi bearing Reg.No:KA-05-AE-1681. In its counter, the 4th respondent, denies valid insurance coverage and also blaming the driver of the lorry for negligence. According to this defendant, the lorry being the 12-wheeler goods carrier vehicle, its driver without diligence recklessly, in violation of the traffic rules proceeding from South to North rashly and dashed the taxi ignoring signals. The taxi driver to avoid the collusion turned to his left extremely. Despite his best effort, hit the long-chassis lorry on its rear side. The registration of FIR on the basis of the complaint given by the driver of the lorry. Taking advantage of the absence of the occupants of the taxi who were bereaved over the death of Balaji, given the false complaint against the taxi driver. The police failed to investigate the case properly. Hence, the respondents 1 and 2 alone liable to pay compensation.

5. Further, it was contended that the cheque given by the owner of the lorry for payment of the insurance policy premium got dishonoured and the policy was cancelled with intimation to the vehicle owner and the concerned



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Regional Transport Office. Hence, there was no valid contract of insurance

between the 3rd respondent the owner of the taxi and the 4th respondent. The driver of the taxi had no valid driving licence and the taxi did not have fitness certificate.

6. Before the Tribunal, two witnesses for the petitioners/claimants (P.W1 & P.W2) examined and 18 documents (Ex.P1 to Ex.P18) marked. On the side of the respondents, 5 witnesses (R.W1 to R.W5) examined and 15 documents (Ex.R1 to Ex.R15) marked. In addition, two documents (Ex.X1 & Ex.X2) were marked as court exhibits.

7. The Tribunal, after appreciating the evidence, awarded compensation of Rs.1,63,65,328/- with interest at 7.5% from the date of filing till the date of realisation. It held that the drivers of both the vehicles were at fault and equally negligence for the accident. Considering the fact that the cheque given for the premium to cover the insurance of the taxi got bounced and the cancellation of



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insurance was duly intimated to the owner and RTO, the tribunal exonerated the

insurer of the taxi, namely, New India Assurance Co., Ltd/the 4th respondent and

held that the owner of the taxi, namely, the 3rd respondent liable to pay the 50% of the compensation awarded. (i.e., Rs.81,82,664/- with interest 7.5%).

8. C.M.A.No.669 of 2022:

M/s.Royal Sundaram General Insurance Co., the 2nd respondent in the claim petition is the appellant. The validity of insurance cover for the vehicle bearing Registration No:TN-52-B-5070 under Ex.P-8 is not disputed. The accident and death of Balaji, one of the occupants in the taxi, is also not disputed. The dispute is in respect of holding the lorry driver equally responsible for the accident along with the tax driver.

9. According to the Learned Counsel for the appellant, the Tribunal ignored the F.I.R (Ex.P-1) and the evidence thereon, which proves that the



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accident occurred is entirely due to the negligence of the taxi driver and not the

lorry driver. A case was registered against the driver of the taxi and he was prosecuted for his negligence and rash driving. The Tribunal erred in disbelieving the evidence of R.W-2, who witnessed the occurrence and went to the police station to report the accident. Equally, it erred in discarding the evidence of R.W-1, who is the Investigating Officer of the motor accident case and the final report Ex.R-1.

10. The Tribunal failed to properly appreciate Ex.P-6, the Motor Vehicle report for the lorry (Reg.No.TN-52-B-5070) and Ex.R-5, the Motor Vehicle report for the car (Reg.No.KA-05-AE-1681). The nature of damages to these two vehicles is a telltale evidence to hold that the car driver absolute at fault and no contributory negligence on the part of the lorry driver.

11. Regarding quantum, the Learned Counsel for the claimants contended that the income of the deceased excessively calculated, than the evidence placed



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to show the employment of the deceased in Axis Bank and his emoluments.

Likewise, out of four claimants, one died soon after the filing of the claim petition. Therefore, only three persons were dependants of the deceased. The tribunal erred in deducting only $\frac{1}{4}$ share for personal expenditure instead of $\frac{1}{3}$ share.

Point for determination:-

Whether the Tribunal erred in holding that both the drivers compositely negligent for causing the accident and whether the quantum of compensation for the death of Balaji is excessive?

12. Records perused. P.W-1 is the first claimant. She is the wife of the deceased. She was one of the co-passengers travelling in the car at the time of accident. Her presence and experiencing the accident is absolutely certain. The rest of the testimonies are secondary in nature. Whereas, the testimony of R.W-



2, who claims to be a chance witness to the accident is only a probable.

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13. In column 12 of the Motor Vehicle Inspector's report marked as Ex.R5, the damage to the Toyota Etios Liva car, classified as tourist taxi, is as below:

The windscreen glass broken, front bonner, bumper, grill damaged, radiator and A/C condenser damaged, front both wheel arch damaged, front left tyre cut, left side suspension arm damaged, engine cooling line, alternator, air cleaner wiring damaged, front left door damaged.

14. In the Motor Vehicle Inspector's report marked as Ex.P6 relating to the lorry bearing Reg.No.TN-52-B-5070, the damage to the Ashok Leyland is as below:

Dent in diesel tank, rear RT side mudguard damaged.



15. The Accident Register for the 1st claimant Bhuvaneshwari, marked as

Ex.P10, reveals that she sustained injury in contusion over the right thigh. The Accident Register of the 2nd claimant, Prabha, marked as Ex.P11, reveals a cut injury on the anterior part of the neck and another cut injury below the left angle of the mandible.

16. The evidence of P.W.1 is that, at the time of the accident, her husband Balaji was sitting in the front passenger seat next to the driver and she and her son were sitting in the back seat. The evidence indicates that after grazing the tanker lorry, the car turned turtle on the left side. That is the reason why the deceased Balaji, who was sitting on the left side front had sustained fatal injury comparing to the driver who was on the wheel.

17. The testimony of R.W-1, who had investigated the crime is based on the statements of witnesses he collected during the course of investigation. The tribunal had disbelieved the testimony of P,W-1 being a witness interest. The



testimony of R.W-1 and R.W-2 also not fully believed in respect of fixing the

negligence. Considering the entries in the Accident Register for Bhuvaneswari (first claimant) and her son Minor Aravind (second claimant) marked as Ex.P-10 and Ex.P-11, the tribunal has held that the earliest documents Ex.P-10 and Ex.P-11 indicates that soon after the accident, the surviving victims were admitted in the hospital for treatment.

18. The entries in Accident Register copy indicates that they reported the motor accident involving the lorry and car caused due to the negligence of the lorry driver. The examination of Ex.P-5, the rough sketch does not rule out the contribution of negligence by the drivers of the vehicles involved. A 12-wheeler lorry, on a straight road 30 feet width, in or about 45 degree position, across the road touching the tar road and mud road damaged on the right rear side due to impact of the Toyota car which sustained complete damage of its front portion till its front left door, gives a fair impression that both at fault and one cannot blame other for exclusive negligence.



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19. Under such circumstances, we find no error in the finding of the Tribunal fixing negligence equally on the drivers of the vehicle involved in the accident.

20. Regarding quantum, we find from the College Transfer Certificate and other records, the age of the deceased was about 44 years on the date of his death. He was serving as Assistant Vice President in Axis Bank as per the testimony of P.W-2 the Senior Manager, HR in Axis bank and Ex.X-2 and Ex.P13, the income of the deceased is proved. The legal heir certificates Ex.P-4 and the pleadings indicates his wife, son and parents were depending on him.

21. Ex.X2 salary slip and Ex.P13 pay slip of the deceased Balaji for the month of September 2016 substantiate the case of the claimants. Ex.P.16 the income tax returns for the assessment year 2016-2017, the tribunal had rightly



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concluded based on the documents that the deceased was drawing salary of

Rs.1,24,350/- per month and the evidence of P.W.2 supports the case of the

claimants that the deceased had bright future of earning more in future.

Therefore, we are of the opinion that the quantum of compensation passed by

the Tribunal is reasonable, just and fair.

Point for determination:

Whether the insurer of the car is vicariously liable when the cheque issued towards payment of premium bounced for want of funds and duly intimated to the owner of the vehicle?

22. The car bearing Reg.No.KA-05-AE-1681 belongs to the 3rd respondent. It was insured under the New India Assurance Company Limited/4th respondent. The insurance policy marked as Ex.R7 covers period commencing from 20.08.2016 12.00.01 A.M to 19.08.2017 11.59.59 P.M. An



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Inclusion of IMT-23 with compulsory PA cover for Owner Driver, Legal

Liability to passengers, LL to paid driver, conductor, cleaner employed for operation. The date of accident is 09.10.2016 at about 6.30 hours. Going by the policy and date of accident, the insurance company, namely New India Assurance Company/4th respondent is liable to indemnify the death of passengers travelled in this car on 09.10.2016. However, it is brought on record that the said Policy Schedule-cum-Certificate of Insurance issued by New India Assurance Company, on receipt of a premium of Rs.24,590/- through cheque maintained in State Bank of India, Bangalore by the owner Arun Kumar. The said cheque returned unpaid *vide* Indian Overseas Bank memo, dated 24.08.2016. Hence, the insurance coverage cancelled *vide* communication dated 26.08.2016 through registered post sent to the owner of the vehicle and to the Regional Transport Officer. These documents are marked on behalf of the New India Assurance Company/4th respondent as Ex.R7 to Ex.R12. The letter sent by RTO received and postal acknowledgement is filed. Whereas, the letter sent to the owner returned with postal endorsement addressee not known.



23. The Learned Counsel for the Insurance Company argues no liability to pay and recover will arise in this case since the contract of insurance had already been rescinded for failure of consideration. Though in exceptional cases, courts have ordered “pay and recover” following judgments of Hon'ble Supreme Court in exercise of power under Article 142 of the Constitution of India, to avoid unnecessary hardship to the claimants in this case no such exceptional situation arises. In support of this contention, the following judgments were relied.

1). *The National Insurance Co. Ltd. vs. Seema Malhotra* reported in (2001) 3 SCC 151.

2). *Deddappa & Ors vs. The Branch Manager, National Insurance Co. Ltd.* reported in (2008) 2 SCC 595.

3). *United India Insurance Co. Ltd. vs. Laxmamma* reported in (2012) 5 SCC 234.



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4). *Smt. Prasanna B vs. Kabeer and another*
reported in 2019(1) TN MAC 274 (FB) (Ker).

24. In *Seema Malhotra* case (cited supra), the Hon'ble Supreme Court had held that dishonour of the premium cheque exonerates the insurer from performing its part of the contract. The question of insurer's right to repudiate the claim was answered in this case in detail.

“12. The question has now to be considered as the same is the crux of the issue involved in this case. As pointed out earlier the insurance is a contract whereby one undertakes to indemnify another against loss, damage or liability arising from an unknown or contingent event and is applicable only to some contingency or act to occur in future. We have to consider how far the legislature has controlled the insurance business. Section 2(9) of the Insurance Act defines “insurer”, inter alia, as

“any body corporate ... carrying on the business of insurance, which is a body corporate incorporated under any law for the time being in force in India”.

Section 2-D of the Act says that:

“2-D. Every insurer shall be subject to all the provisions of this Act in relation to any class of insurance



business so long as his liabilities in India in respect of business of that class remain unsatisfied or not otherwise provided for.”

13. It is in the aforesaid context that we have to consider the impact of Section 64-VB of the Insurance Act. As sub-sections (1) and (2) of the said section alone are material for the purpose we extract them herein:

“64-VB. (1) No insurer shall assume any risk in India in respect of any insurance business on which premium is not ordinarily payable outside India unless and until the premium payable is received by him or is guaranteed to be paid by such person in such manner and within such time as may be prescribed or unless and until deposit of such amount as may be prescribed, is made in advance in the prescribed manner.

(2) For the purposes of this section, in the case of risks for which premium can be ascertained in advance, the risk may be assumed not earlier than the date on which the premium has been paid in cash or by cheque to the insurer.”

14. Sub-section (1) is not applicable to cases in which premium is ordinarily payable outside India. In other words, the insurer has no liability to the insured unless and until the premium payable is received by the



insurer. As the premium can be paid in cash or by cheque, what is the position when the cheque issued to the insurer is dishonoured by the drawee bank?

15. Sections 51, 52 and 54 of the Indian Contract Act can profitably be referred to for the purpose of deciding the point. They are subsumed under the sub-title “Performance of reciprocal promises” in the said Act. Section 51 deals with a contract concerning reciprocal promises to be simultaneously performed and in such a contract the promisee is absolved from performing his promise unless the promisor is ready or willing to perform his part of the promise. Section 52 says that where the order in which reciprocal promises are to be performed has not been expressly provided in the contract such promise shall be performed in that order which the nature of the transaction warrants it. Illustration (b) given to Section 52 highlights the utility of the provision. That illustration is as follows: A and B contract that A shall make over his stock-in-trade to B at a fixed price, and B promises to give security for the payment of the money. A's promise need not be performed until the security is given, for the nature of transaction requires that A should have security before he delivers his stock.



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16. Section 54 of the Contract Act is to be read in that background. It is extracted below:

“54. When a contract consists of reciprocal promises, such that one of them cannot be performed or that its performance cannot be claimed till the other has been performed, and the promisor of the promise last mentioned fails to perform it, such promisor cannot claim the performance of the reciprocal promise, and must make compensation to the other party to the contract for any loss which such other party may sustain by the non-performance of the contract.”

17. In a contract of insurance when the insured gives a cheque towards payment of premium or part of the premium, such a contract consists of reciprocal promise. The drawer of the cheque promises the insurer that the cheque, on presentation, would yield the amount in cash. It cannot be forgotten that a cheque is a bill of exchange drawn on a specified banker. A bill of exchange is an instrument in writing containing an unconditional order directing a certain person to pay a certain sum of money to a certain person. It involves a promise that such money would be paid.



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18. Thus, when the insured fails to pay the premium promised, or when the cheque issued by him towards the premium is returned dishonoured by the bank concerned the insurer need not perform his part of the promise. The corollary is that the insured cannot claim performance from the insurer in such a situation.”

25. In *Deddappa case (cited supra)*, the Hon'ble Supreme Court affirmed the dictum laid in *Seema Malhotra case (cited supra)* and held that:

“We are not oblivious of the distinction between the statutory liability of the Insurance Company vis-a-vis a third party in the context of Sections 147 and 149 of the Act and its liabilities in other cases. But the same liabilities arising under a contract of insurance would have to be met if the contract is valid. If the contract of insurance has been cancelled and all concerned have been intimated thereabout, we are of the opinion, the insurance company would not be liable to satisfy the claim.”



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26. After clarifying the law, invoking Article 142 of the Constitution of

India, directed the insurer to pay compensation first and then recover the same from the vehicle owner.

27. Following the above dictum, in *Laxmamma* case (cited supra), the Hon'ble Supreme Court reiterated the statutory principle that an insurer's liability towards third parties subsists unless cancellation and intimation occur before the accident.

28. Recently, in *National Insurance Company Limited vs. Sunita Devi & Others* reported in *2025 INSC 95*, consolidating the judgments rendered earlier, the Hon'ble Supreme Court, through *Justice N.V.Anjaria*, after narrating the facts and findings of the Courts below has held as below:-

“5.3 Adverting to the facts of the present case, it is to be noticed that the accident took place on 22.08.2025. The cheque



towards premium was dishonoured and intimation was given vide letter dated 04.05.2005. Therefore, there was a gap of more than three months from the date when the insurance policy was liable to be treated as cancelled and the date when the accident took place.

5.4 The High Court in its judgment, while confirming the judgment and award of the Claims Tribunal, appears to have taken the view that the insurer having admittedly issued the insurance policy against third party risk, the rights of third party would not get affected when the policy was issued and in that light the insurer must satisfy the award in favour of the third party, by protecting the rights of the insurer to allow it the right of recovery.

5.5 From the facts on record and more particularly in view of the decisions of this Court in Deddappa (supra) and United India Insurance Company Ltd. vs. Laxmamma (supra) it could be immediately seen that even as this Court has underscored the proposition that cancellation of insurance policy issued in favour of the third party for covering third party risk, because of bouncing of cheque for premium or non-payment of premium, would in law, absolve the insurer from liability to pay the compensation, once the insurer has intimated the cancellation to the parties concerned.”



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29. In *Sunita Devi case (cited supra)*, taking note of the fact that, pursuant to the order dated 27.07.2007, passed by the Court pending proceedings, the appellant-Insurance Company had already deposited one-half of the total awarded compensation with interest and that the claimants have withdrawn the said amount. Hence, in the larger interest of justice to all parties, the Court held that no recovery deserves to be permitted for the said amount deposited and withdrawn from the claimants. It would be not only harsh but would amount to “setting the clock back”. However, the appellant – Insurance Company, shall be at liberty to recover the said 50% amount along with interest deposited by it as above and received by the claimants as above, from the owner of the offending vehicle, in accordance with law. As far as the balance 50% amount along with interest is concerned, which remains, the claimants shall be entitled to recover the same from the owner of the offending vehicle in accordance with law.

30. Similar to the facts of the above case, in the instant case also the



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cheque given for the premium bounced and duly intimated to the owner and the

concerned RTO. The accident had occurred after the intimation of the cancellation of insurance. Thus, the contract duly repudiated for want of consideration. The contractual relationship had severed on the day the cancellation intimated. Therefore, the Tribunal, after holding negligence of both the drivers had equally contributed for the accident, directed the insurer of the lorry to pay 50% since the lorry had valid coverage. He directed the owner of the car to pay the balance 50% being vicariously liable for his employee negligence. We find the order of the Tribunal is in consonance to law and dictum of the Hon'ble Supreme Court. 'Pay and recover' cannot be ordered when law does not permit.

31. The recent judgment of the Hon'ble Supreme Court in *Sunitha Devi* (cited supra), after reaffirming the law, the Supreme Court had protected the claimants only from depositing back the 50% of the compensation already withdrew by them, pursuant to the interim order pending Special Leave Petition



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before the Hon'ble Supreme Court. For the balance 50%, it has permitted the

claimants to proceed against the vehicle owner. Therefore, the said judgment is only in favour of the Insurance Company. Hence, appeal in C.M.A.No.2014 of 2022 filed by the claimants, deserves to be dismissed.

32. In the result, we confirm the order of the Tribunal, dated 25.10.2021 passed in M.C.O.P.No.119 of 2019 both on quantum as well as liability. Accordingly, C.M.A.No.669 of 2022 and C.M.A.No.2014 of 2022 stands dismissed with costs. Consequently, connected Miscellaneous Petition closed.

(Dr.G.J, J.) & (M.S.K, J.)
25.11.2025

Index :Yes/No.

Neutral Citation :Yes/No.

Internet :Yes.

bsm

To,

1. The Motor Accident Claim Tribunal (Additional District Judge), Ariyalur



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2. The Section Officer, V.R.Section, High Court, Madras.

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Dr.G.JAYACHANDRAN, J.
&
MUMMINENI SUDHEER KUMAR, J.
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Pre-delivery common judgment made in
C.M.A.Nos. 669 & 2014 of 2022



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