IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.09.2025

CORAM:

THE HONOURABLE DR. JUSTICE **G.JAYACHANDRAN**
and
THE HONOURABLE MR. JUSTICE **MUMMINENI SUDHEER KUMAR**

C.M.A.No.605 of 2021
and
C.M.P.No.3681 of 2021

The Branch Officer,
The New India Assurance Co Ltd,
D.No.482-483, Iii Floor, Chamber Building,
Near Power House Bus Stop,
Cross Cut Road, Gandhipuram,
Coimbatore-641 012. .. Appellant

Vs.

1.A.Hussaina Zakkir
2.Minor Adnan Hussain
3.Minor Ayaana
4.C.M.Zackriah (Died)
5.Khurshid Begam
6.F. Amjathkhan
7.J. Kaleem

[R4 died R5 (already on record) is declared as Lrs of the deceased R4 viz., C.M.Zackriah vide order dated 07.12.2023 made in C.M.A.No.605 of 2025 by RSMJ & NSJ] .. Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the Decree and Judgment passed in M.C.O.P.No.640 of 2013 on 03.10.2019 on the file of the Learned Motor Accident Claims Tribunal, Chief Judicial Magistrate, Coimbatore.

For Appellant : Mr.J.Chandran

For R1 to R5 : Mr.V.Udayakumar

For R6 & R7 : No appearance

JUDGMENT

[Order of the Court was made by Dr.G.JAYACHANDRAN., J.]

The Civil Miscellaneous Appeal has been filed by the Insurance company against the award passed by the Motor Accident Claims Tribunal, Coimbatore, in M.C.O.P.No.640 of 2013, dated 03.10.2019.

2. The brief facts, as narrated in the claim petition, are as below:-

On 29.02.2012, at about 8.30 a.m., when the husband of the first claimant, Zakkir Hussain, was travelling in a car bearing Registration No. TN 43 D 3579, along with others, from Mysore to Ooty. When the vehicle reached near Mahadeshvara Petrol Bunk, Mysore-Nanjangud Main Road, it met with an accident. Zakkir Hussain sustained injuries to his chest and forehead. He was initially admitted to Vidyaranya Hospital, Mysore and was later shifted to St.Joseph's Hospital, Mysore. Despite treatment, he succumbed to the injuries on 26.03.2012.

3. The claimants, being the wife, two minor children and parents of the deceased Zakkir Hussain, filed a claim petition seeking compensation. A claim for a sum of Rs.50,00,000/- was laid before the Tribunal.

4. The Insurance Company took a specific stand that the records collected by it indicated that the deceased, Zakkir Hussain, was in fact driving the vehicle at the time of accident. It was further contended that the insurance policy covered only the 'owner cum driver' and not a driver.

5. It was further contended that an earlier personal accident claim had been made by the first claimant, wherein it was stated that Zakkir Hussain had died in a motor accident while driving a car owned by one Kaleem. However, on investigation, this claim was found to be false, since the final report revealed that the offending vehicle was a four-wheeler bearing Registration No.TN 43 D 3579. It was further alleged that the claimants had tampered with the records and had made a false averment that the deceased was only a passenger and not the driver of the offending vehicle. In view of these allegations it was submitted that a false claim had been made and accordingly, the Insurance Company prayed for dismissal of the claim petition.

6. In order to sustain the claim petition, the first claimant was examined as PW.1, one Dr.N.Chandrashekar was examined as PW.2 and Mr.Karthikeyan, Assistant in the Medical Records Department was examined as PW.3. During the cross-examination of PW.1, 15 documents were marked. The respondents also marked certain documents and few more documents were introduced through the Assistant Manager of the Insurance Company, who was examined as RW.1.

7. The trial Court, on appreciation of the oral and documentary evidence, found that the final report filed by the police after investigation, which was marked as Ex.P8, indicated that at the time of accident, the vehicle was being driven by one Amjath Khan (the 1st respondent in the claim petition) and not by the deceased.

8. The vehicle owned by the 2nd respondent and insured with the 3rd respondent, i.e., Insurance Company. After considering the documents filed to prove the income and earning capacity of the deceased, the Tribunal awarded a total sum of Rs.19,60,000/- applying the formula laid down by the Hon'ble Supreme Court in the case of ***National Insurance Company Limited Vs. Pranay Sethi and Others [(2017) 16 SCC 680]***. The compensation amount was apportioned among the claimants as per the manner stated in the claim petition.

9. In the appeal, it is contended that the Tribunal failed to properly consider the contradiction in the claim petition with regard to the manner in which the accident occurred, the identify of the vehicle involved in the accident and the role of the deceased.

10. The learned counsel appearing for the appellant / Insurance

Company, relying upon the intimation given by St.Joseph's Hospital regarding the road accident which was marked as Ex.R2, submitted that the said hospital, where the injured Zakkir Hussain was shifted from initial treatment at Vidyaranya hosptial, Mysore, recorded in the column meant for the alleged history of the road traffic accident that "he was driving the car which hit a tree (from Mysore to Ooty near Nanjangud Main Road)"

11. The learned counsel further relied upon Ex.R4, another hospital intimation purportedly issued by St.Joseph's Hospital on 03.09.2012 i.e., nearly six months after the death of the Zakkir Hussain. In this document, under the column pertaining to the history of the road traffic accident, it is stated that the deceased "travelling in the car" which hit a tree. It was argued that both Ex.R2 (dated 26.03.2012) and Ex.R4 (dated 03.09.2012) originated from the same hospital, there is a clear contradiction between the two regarding the role of the deceased in the accident.

12. The learned counsel appearing for the Insurance Company/appellant contended that this contradiction reveals a clear fabrication of records with respect to the role of the deceased in the accident. It was argued that if Zakkir Hussain was the driver of the vehicle and sustained injuries due to his own negligence, the insurance policy would not cover such liability. Therefore, in order to over come the ineligibility for compensation, the claimants have fabricated the records as if that the deceased was merely a passenger in the vehicle at the time of accident.

13. The learned counsel appearing for the claimants submitted that the two documents relied upon by the Insurance Company, namely Ex.R2 and Ex.R4, were emanated from the custody of the Insurance Company and marked during the cross examination of PW.1. However, neither the author of the said document nor the person from whom they were obtained the document was examined by the Insurance Company. Therefore, these two documents namely Ex.R2 and Ex.R4 have no evidentiary value.

14. It was further submitted that the Tribunal rightly relied upon the First Information Report and final report filed by the police after investigation, which clearly indicated that the deceased was a passenger in the car at the time of the accident. Based on this, the Tribunal has held that the claimants are entitled to compensation, since the passenger of the injured vehicle is entitled to claim compensation under the Motor Vehicles Act.

15. This Court, on considering the rival submissions and the records, finds that when the legal heirs of the deceased Zakkir Hussain initially made a claim for compensation, the Insurance Company rejected the same, stating that there were discrepancies regarding the identity of the vehicle involved in the accident and there was misrepresentation regarding the driver at the time of accident. Subsequently, when the claim petition was filed with a specific plea that the deceased, Zakkir Hussain, was a passenger in the vehicle bearing Registration No.TN 43 D 3579, the Insurance Company was unable to substantiate the stand it had previously taken while rejecting the claim through its communication dated 01.11.2012, which was marked as Ex.R12.

16. The documents marked during the cross examination of PW.1 by the Insurance Company cannot be taken into consideration for any evidentiary purpose, since the contents of these documents were neither spoken to nor proved through the examination of their respective authors.

17. This Court finds that in the proof affidavit filed by the Additional Manager of the 3rd respondent/Insurance Company, a specific averment was made to the effect that the vehicle involved in the accident was a two wheeler. However, during the course of arguments before the Tribunal as well as before this Court, the 2nd respondent has conceded that the vehicle involved was a four wheeler bearing Registration No.TN 43 D 3579. Even assuming such a concession had not been made, this facts now established through the First Information Report (Ex.P7), the Final Report (Ex.P8) and Motor Vehicle Inspector's report (Ex.P10).

18. To consider the plea of the Insurance Company that the injured, Zakkir Hussain, was driving the vehicle at the time of accident, this Court finds that except for the entry in the police intimation allegedly issued by St.Joseph's Hospital on 26.03.2012, which was created nearly one month after the date of the accident, no credible or proven evidence has been produced. This document remains unsubstantiated and stands in contradiction to the findings of the police investigation.

19. Therefore, on due consideration of the materials placed on record and the findings of the Tribunal, this Court is of the view that there is no merit in the appeal filed by the Insurance Company and the same is liable to be dismissed.

20. Accordingly, this Civil Miscellaneous Appeal stands dismissed with costs. Consequently, the connected Civil Miscellaneous Petition is closed.

[Dr.G.J., J.] & [M.S.K., J.]
24.09.2025

Index : Yes/No
Internet : Yes/No
Speaking order/Non speaking order

rpl

To

The Motor Accident Claims Tribunal,
Chief Judicial Magistrate,

Coimbatore.

Dr.G.JAYACHANDRAN., J.
and
MUMMINENI SUDHEER KUMAR., J.

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