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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on :12.11.2025

Pronounced on :27.11.2025

CORAM

THE HONOURABLE Dr. JUSTICE G.JAYACHANDRAN
and
THE HONOURABLE MR.JUSTICE MUMMINENI SUDHEER
KUMAR

C.M.A.Nos.727 and 788 of 2020

and

C.M.P.Nos.4430 and 4993 of 2020

C.M.A.No.727 of 2020:

M/s IFFCO-TOKIO General Insurance Co.Ltd.,
Tulsi Chambers, 3rd Floor, 195,
T.V.Samy Road(West), R.S.Puram,
Coimbatore 641 002. ..2nd Respondent/Appellant

/versus/

1.P.Ramasamy, 72 years,
S/o Pongeya Gounder.

2.Rajammal, 64 years,
W/o P.Ramasamy



3.Minor Navin, 14 years,
S/o Late P.Chellamuthu

4.Minor.Aswin, 11 years,
S/o Late P.Chellamuthu

Minor 3 & 4 rep.by their Guardian
Grandfather P.Ramasamy
All are residing at Door No.31/12,
Ramakutti Layout, Kavundampalayam,
Coimbatore 641 030. ..1st Respondent/5th Respondent

5.P.Periyasamy, 36 years,
S/o Palanisamy,
Residing at Door No.10/42, Pongianur,
Kavilipalayam, Sathyamangalam Taluk,
Erode District.

Civil Miscellaneous Appeal has been filed under Section 173 of Motor Vehicle Act, 1988, against the award and decree dated 02.01.2019 made in M.C.O.P.No.1958 of 2014 on the file of the Motor Accidents Claims Tribunal, Special Subordinate Judge, Coimbatore.

For Appellant :Mr.S.Arunkumar

For Respondents :Mr.S.Senthil for R1 and R2

R5-No appearance



C.M.A.No.788 of 2020:

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M/s IFFCO-TOKIO General Insurance Co.Ltd.,
Tulsi Chambers, 3rd Floor, 195,
T.V.Samy Road(West), R.S.Puram,
Coimbatore 641 002. ..2nd Respondent/Appellant

/versus/

1.K.Palanisamy Gounder, 70 years,
S/o Karuppanna Gounder

2.Palaniammal, 63 years,
W/o K.Palanisamy Gounder.

3.Minor Navin, 14 years,
S/o Late P.Chellamuthu

4.Minor Aswin, 11 years,
S/o Late P.Chellamuthu

Minor 3 & 4 rep.by their Guardian
Grandfather K.Palanisamy Gounder,
All are residing at Door No.8/45,
Ammapatti, Kariyampatti,
Ootanchadram, Dindigul District. ..Petitioners 1 to
4/Respondents 1 to 4

5.P.Periyasamy, 36 years,
S/o Palanisamy,
3/37



Residing at Door No.10/42, Pongianur,
Kavilipalayam, Sathyamangalam Taluk,
Erode District.

..1st Respondent/5th

Respondent

Civil Miscellaneous Appeal has been filed under Section 173 of Motor Vehicle Act, 1988, against the award and decree dated 02.01.2019 made in M.C.O.P.No.1446 of 2014 on the file of the Motor Accidents Claims Tribunal, Special Subordinate Judge, Coimbatore.

For Appellant :Mr.S.Arunkumar

For Respondents :Mr.S.Senthil for R1 and R2
R5 No appearance

COMMON JUDGMENT

On 15.05.2014, past midnight at about 2.30 a.m., on the Main Road of Bannari to Sathyamangalam, near Amman Chamber Privu, Sathyamangalam, the driver of the Maruti Alto Car bearing Registration No: TN 38 AF 3434 lost his control and dashed against a tamarind tree. One



Mr.P.Chellamuthu was on the wheels and his wife, Nagarathinam sustained multiple injuries both died on the spot. Rest of the passengers in the car survived.

2. The parents and two minor sons of the deceased Chellamuthu, filed claim petition M.C.O.P.No:1446 of 2014 under Section 166(1)(c) of the Motor Vehicles Act, 1988, on the file of the Motor Accident Claims Tribunal, Special Subordinate Judge, Coimbatore, for compensation of Rs.25,00,000/- The parents and two minor sons of the deceased Nagarathinam filed claim petition M.C.O.P.No.1958 of 2014 under Section 166(1) of the Motor Vehicles Act, 1988, on the file of Motor Accident Claims Tribunal, Special Subordinate Judge, Coimbatore, for compensation of Rs.25,00,000/-. In both the claim petitions, Periyasamy, the owner of the Maruthi Alto car and its insurer M/s IFFCO TOKIO General Insurance Company Limited, are the respondents.



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3. The claim petition resisted by the Insurance Company on the ground that the car under insurance is owned by one Pariyasamy. The policy is a 'Private Car Package Policy', for the period between 29.03.2014 and 28.03.2015 and was in currency at the time of accident. As per the RC, the seating capacity for the car is 5 persons. Subject to limits and limitations mentioned in the policy, the insurance company agreed to indemnify the car owner. In case of any violation or breach of terms and conditions mentioned in the policy, the insurance company is entitled to be exonerated from any liability.

4. In this case, the car was driven by the relative of the car owner and caused self accident by hitting a tamarind tree. He is not a paid driver. In fact, he is an employee in the State Transport Corporation. He borrowed the car from his relative and driving the car carrying his wife and other members of his family. Regarding the accident, Sathyamangalam Police registered a case against the driver of the car for rash and negligent driving. The criminal case



was later closed as abated.

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5. At the time of accident, seven persons were travelling in the car including the owner of the car. In violation of permit, he allowed seven persons to travel, though the vehicle has permission only to carry 5 persons in total. Thus, there is a deliberate violation of the policy condition. The deceased Chellamuthu being the tort-feaser, his dependants have no locus to claim compensation.

6. The Tribunal, on considering the specific defence taken by the Insurance Company repudiating the claims made by the respective petitioners in these two claim petitions, framed the following Points for consideration:-

1. Whether the accident was happened due to the rash and negligent act of the driver of the car?



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2. Whether the petitioners are entitled to claim compensation? If so, what is the quantum?

3. By whom the compensation has to be paid?

4. To what relief, the petitioners are entitled?

7. A joint trial was conducted, 3 witnesses for the claimants and one witness for the respondents examined. 26 documents for the claimants and 3 documents for the respondents relied. A common order was passed on 02.01.2019. The operative portion of the award, in respective claim petition reads as under:-

M.C.O.P.No.1446 of 2019:

“2. That the petitioner be and is hereby entitled to get a sum of Rs.19,85,000/- from 1st and 2nd respondents as compensation along with subsequent interest at the rate of 7.5% p.a. from the date of this petition till its realisation.

3. That the compensation amount has to be paid by the 2nd respondent and the 2nd respondent be and is hereby directed to deposit the



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said amount into the bank account of this Forum the State Bank of India, Main Branch, Coimbatore in A/c No.35988204194 IFSC Code:SBIN0000827 within one month with costs.

4.That the 1st petitioner is entitled to a sum of Rs.2,00,000/- and the 2nd petitioner is entitled to a sum of Rs.2,85,000/- and the 3rd and 4th petitioners are each entitled to get a sum of Rs.7,50,000/- out of the total compensation amount of Rs.19,85,000/-

5.Further that the petitioners are directed to furnish their proof of address, Name of bank and its branch with IFSC code, Account number by submitting the first page of the bank pass book duly attested, PAN card, Aadhaar card if available.

6.The 1st and 2nd petitioners are entitled to receive their share of compensation amount directly. The award amount in respect of minor petitioners 3 & 4 shall be deposited in the nationalised bank till he attains majority.

7.That the Advocate fee is fixed at Rs.26,850/-.

8.That the petitioners shall pay the deficit court fee if any within a months (Deficit Court fee of sum of Rs.19,222.50 paid by the petitioner)

9.That if the petitioners have not paid the court fee within the prescribed time limit the petitioner is not entitled for the interest for the subsequent period.

10.That the 2nd respondent do pay a sum of Rs.46,411.50 to the petitioners towards the costs of this petition(Cost list is filed by the petitioner's side)."

M.C.O.P.No.1958 of 2014:

"2.That the petitioner be and is hereby entitled to get a sum of Rs.18,50,000/- from 1st and 2nd respondents as compensation along with subsequent interest at the rate of 7.5% p.a. from the date of this petition till its realisation.

3.That the compensation amount has to be paid by the 2nd



respondent and the 2nd respondent be and is hereby directed to deposit the said amount into the bank account of this Forum the State Bank of India, Main Branch, Coimbatore in A/c No.35988204194 IFSC Code:SBIN0000827 within one month with costs.

4. That the 1st petitioner is entitled to a sum of Rs.2,00,000/- and the 2nd petitioner is entitled to a sum of Rs.2,50,000/- and the 3rd and 4th petitioners are each entitled to get a sum of Rs.7,00,000/- out of the total compensation amount of Rs.18,50,000/-

5. Further that the petitioners are directed to furnish their proof of address, Name of bank and its branch with IFSC code, Account number by submitting the first page of the bank pass book duly attested, PAN card, Aadhaar card if available.

6. The 1st petitioner is entitled to a sum of Rs.2,00,000/- and the 2nd petitioner is entitled to a sum of Rs.2,50,000/- and the 3rd and 4th petitioners are each entitled to get a sum of Rs.7,00,000/- out of the total compensation amount of Rs.18,50,000/-.

7. That the Advocate fee is fixed at Rs.25,500/-.

8. That the petitioners shall pay the deficit court fee if any within a months (Deficit court fee of sum of Rs.17,872.50 paid by the petitioner)

9. That if the petitioners have not paid the court fee within the prescribed time limit the petitioner is not entitled for the interest for the subsequent period.

10. That the 2nd respondent do pay a sum of Rs.43,702.50 to the petitioners towards the costs of this petition (Cost list is filed by the petitioner's side)."

8. By way of appeals, the Insurance Company is before this Court through (i) C.M.A.No.788 of 2020 contending that there is no coverage for



the unpaid driver/not an employee under the owner. Hence, there is no legal liability to compensate his life loss. (ii) C.M.A.No.727 of 2020 has been filed against M.C.O.P.No.1958 of 2014 awarding Rs.18,50,000/- as excessive compensation.

9. Mr.S.Arunkumar, the learned Counsel for the Appellant/Insurance Company submitted that, admittedly the accident occurred due to negligence of the deceased driver. He is not a paid driver under the owner Periyasamy. The policy Ex.P7 and Ex.R1 is a package cover includes only legal liability to driver under IMT-28, legal liability to the employee under IMT-29, PA to passenger under IMT-31 and PA owner driver upto Rs.2 lakhs. Since Chellamuthu does not fall under any of the above category, his dependants are not entitled to claim compensation from the Insurance Company on an application under Section 166(1) of the Motor Vehicles Act, 1988. Neither Section 166 of Motor Vehicles Act, 1988 nor the insurance policy covers the claim made by the dependants of the tort-feaser. Sections 166, 163-A and 140



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of the Motor Vehicles Act 1988 read in conjunction, clearly indicate that it is the prime responsibility of the vehicle owners to pay compensation to the third party accident victims. In case of victims, who are not the third party, then the owner has to opt for coverage paying additional premium as envisaged under the Indian Motor Tariff (IMT). Only in case of specific coverage, by contractual obligation, the Insurance Company will be liable to indemnify the owner and not otherwise.

10. The Learned Counsel for the Appellant, on going through the provisions of law and IMT, emphasised that the Tribunal had ignored the fact that the appellant had no contractual obligation to pay compensation in respect of claim petition in M.C.O.P.No.1446 of 2014 filed by the dependants of the vehicle driver/ tort-feaser.

11. Regarding quantum of compensation in both the cases, he contends that, the fixation of loss of income is excessive. He argues that the deceased,

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who was a permanent employee working as a driver under the State Transport Corporation, cannot be earning income as an acting driver, since it is in violation of service conditions. The alleged income as an acting driver wrongly considered by relying on the testimony of the claimant. Further, the deduction of $\frac{1}{4}$ towards personal expenses is also erroneous; it should have been $\frac{1}{3}$ rd since the first claimant who is the father of the deceased had his own source of income and was not financially dependant on the deceased.

12. Regarding the compensation awarded in M.C.O.P.No.1958 of 2014, the Learned Counsel for the appellant/Insurance Company contended that, in the absence of proof of avocation in respect of the deceased Nagarathinam, only based on the presumption and assumption, the Tribunal, has notionally fixed her income as Rs.8,500/-p.m. and awarded excessive compensation. Further, the addition of 25% towards future prospects and deduction of $\frac{1}{4}$ th for personal expenses, though the claimants 1 and 2 are not dependant on her financially, is erroneous.



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13. The Learned Counsel for the claimants/respondents contends that, the owner of the vehicle had paid Rs.50/- extra premium to cover the driver of the vehicle. Hence, the Tribunal has rightly held that the insurance company is liable to indemnify the owner. The insurance company cannot repudiate its claim after collecting extra premium for driver. There cannot any distinction between paid driver and unpaid driver. Further, paid means, it does not mean monetary payment alone. The Tribunal has rightly held in favour of the claimants assigning reason and the same need not be interfered.

14. In so far as the quantum of compensation, it is the contention of the learned counsel appearing for the claimants that, the Tribunal has not erred in arriving at the compensation payable. Compensation awarded is squarely within the parameters laid by the Hon'ble Supreme Court. Neither fixation of notional income nor the future prospect nor deduction towards personal income needs revisit.



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15. Point for determination in C.M.A.No.788 of 2020:

Whether payment of additional premium under legal liability to driver under IMT 28, legal liability to the employee under IMT 29, PA to passenger under IMT 31 and PA owner Driver upto Rs.2 lakhs is suffice to claim compensation against the insurer by the dependants of the tort-feaser ?If yes, whether the quantum of compensation fixed by the Tribunal is excessive ?

16. Point for consideration in C.M.A.No.727 of 2020:

Whether the quantum of compensation of Rs.18,50,000/- for the loss of a 38 years old married lady with two children based on the notional income theory is excessive ?

17. The claim petition is filed under Section 161 of the Motor Vehicles



Act, 1988, which reads as below:-

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161. Special provisions as to compensation in case of hit and run motor accident:(1)For the purposes of this Section, Section 162 and Section 163-

(a)"grievous hurt" shall have the same meaning as in the Indian penal Code (45 of 1860);

(b)"hit and run motor accident" means an accident arising out of the use of a motor vehicle or motor vehicles the identity whereof cannot be ascertained in spite of reasonable efforts for the purpose;

(c)"scheme" means the scheme framed under Section 163;

(2)Notwithstanding anything contained in the General Insurance Business (Nationalisation) Act, 1972 (57 of 1972) or any other law for the time being in force or any instrument having the force of law, the General Insurance Corporation of India formed under Section 9 of the said Act and the insurance companies for the time being carrying on general insurance business in India shall provide for paying in accordance with the provisions of this Act and the scheme, compensation in respect of the death of, or grievous hurt to, persons resulting from hit and run motor accidents;

(3)Subject to the provisions of this Act and the scheme, there shall be paid as compensation-



(a)in respect of the death of any person resulting from a hit and run motor accident, a fixed sum of [twenty five thousand rupees];

(b)in respect of grievous hurt to any person resulting from a hit and run motor accident, a fixed sum of [twelve thousand and five hundred rupees];

(4)The provisions of sub-section (1) of section 166 shall apply for the purpose of making applications for compensation under this Section as they apply for the purpose of making applications for compensation referred to in that sub-section.

18. The relationship between the owner of the vehicle and the insurance company emanates from the contract covered under the Insurance Policy marked as Ex.P7 and Ex.R1. The policy Ex.P7 and Ex.R1 is a package cover, which includes only legal liability to the paid driver and/or conductor and/or cleaner employed in connection with the operation of the insured vehicle under IMT-28, the legal liability to an employee of the insured other than paid driver and/or conductor and/or cleaner, who may be



travelling in or driving in the employer's car under IMT-29, PA to passenger under IMT-31 and PA to the owner-driver up to Rs.2 lakhs.

19. While dealing with the liability of the insurance coverage, risk of third party including unnamed passengers in respect of which premium was duly paid and rest, who do not cover the category of third party or employee, the Hon'ble Supreme Court in *Sushilaben Indravadan Gandhi and another v. New India Assurance Company Limited and others reported in [(2021) 7 SCC 151]*, had an occasion to deal with the provisions of the Motor Vehicles Act, 1988 and terms of the insurance contract under the insurance policy governed by IMT.

20. In another contest, the Hon'ble Supreme Court had an occasion to explain the expression “employees” used in the context of the Motor Vehicles Act, 1988. In *Dhanraj v. New India Assurance Co.Ltd., reported in [2005*



SCC (Cri) 363]. The expression “paid driver and/or conductor” was discussed and held that, in the absence of coverage in respect of the owner, the claim would not be sustained. In this case, IMT-28 regarding the legal limited liability to paid driver and/or conductor and/or cleaner employed in connection with the operation of insured vehicle.

21. IMT-28 Legal liability to paid driver and/or conductor and/or cleaner employed in connection with the operation of insured vehicle and IMT-29-Legal liability to employees of the insured other than paid driver and/or conductor and/or cleaner who may be travelling or driving in the employer's car. Both IMTs reads as below:

**IMT-28 LEGAL LIABILITY TO PAID DRIVER
AND/OR CONDUCTOR AND/OR CLEANER
EMPLOYED IN CONNECTION WITH THE
OPERATION OF INSURED VEHICLE**

(For all Classes of vehicles)



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In consideration of an additional premium of Rs.25/- notwithstanding anything to the contrary contained in the policy it is hereby understood and agreed that the insurer shall indemnify the insured against the insured's legal liability under the Workmen's Compensation Act, 1923, the Fatal Accidents Act, 1855 or at Common Law and subsequent amendments of these Acts prior to the date of this Endorsement in respect of personal injury to any paid driver and/or conductor and/or cleaner whilst engaged in the service of the insured in such occupation in connection with the vehicle insured herein and will in addition be responsible for all costs and expenses incurred with its written consent provided always that:

(1) this Endorsement does not indemnify the insured in respect of any liability in cases where the insured holds or subsequently effects with any insurer or group of insurers a Policy of Insurance in respect of liability as herein defined for insured's general employees.

(2) the insured shall take reasonable precautions to prevent accidents and shall comply with all statutory obligations;

*(3) the insured shall take reasonable precautions to prevent accidents and shall comply with all statutory obligations;



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(4)in the event of the Policy being cancelled at the request of the insured no refund of the premium paid in respect of this Endorsement will be allowed.

Subject otherwise to the terms and conditions limitations and exceptions of the Policy except so far as necessary to meet the requirements of the Motor Vehicles Act, 1988.

*In case of Private cars/motorised two wheelers(not used for hire or reward) delete this para.

IMT.29, LEGAL LIABILITY TO EMPLOYEES OF THE INSURED OTHER THAN PAID DRIVER AND/OR CONDUCTOR AND/OR cleaner WHO MAY BE TRAVELLING OR DRIVING IN THE EMPLOYEE'S CAR

(Private Cars only/Motorised two wheelers (not for hire or reward))

In consideration of the payment of an additional premium @ 25/- per employee insured notwithstanding anything to the contrary contained in the policy it is hereby understood and agreed that the insurer will indemnify the insured against the insured's liability at Common Law and Statutory Liability under the Fatal Accidents Act, 1855 for compensation (including legal costs of any claimant) for death of or bodily injury to any employee (other than paid



drives) of the within named insured being carried in or upon or entering in or getting on to or alighting from or driving the vehicle insured.

Provided that in the event of an accident whilst the vehicle insured is carrying more than....* employees of the insured (including the driver) the insured shall repay to the insurer a rateable proportion of the total amount payable by the insurer by the reason of this endorsement in respect of accident in connection with such vehicle insured.

Subject otherwise to the terms, conditions limitations and exceptions of this Policy.

NB *To insert the number of employees for which the premium has been paid.”

22. IMT-28 is common to all classes of vehicles. Going by definition of paid driver and employee, we note that the relative of the car owner, who drives the car along with his family members, unless engaged for payment, will not fall under the classification of paid driver. Hence, the extra premium paid under IMT-28 will not cover Chellamuthu, who was driving the car with



the knowledge and permission of the owner, who was also travelling in the car. In fact, the deceased Chellamuthu was a full-time employee of the Transport Corporation and he cannot be employed under any other person. As per the evidence, it was a family trip in which Chellamuthu's family and the family of the car owner were travelling together and it is not the case of the claimants that Chellamuthu was employed under the owner for remuneration. Personal accident cover for the driver under IMT-15 is for the owner of the vehicle or any named person. In this case, factually, the owner was a passenger and the driver was not a paid person. Had there been any provision in the IMT for a four-wheeler analogous to IMT-18, which is meant for two wheeler providing personal accident cover to unnamed hirers and unnamed pillion passengers. Vehicle owner might have opted for the additional coverage. With the existing scheme of motor vehicle insurance, it is high time IRDAI provide like IMT-18 to four wheelers also in future, owner of the car will get option to pay additional premium and get personal accident coverage for the friendly driver not an employee.



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23. By going through the provisions of IMT, we find that there is an apparent lacuna in not providing specific coverage for the driver of the car who is permitted to drive by its owner, whether he is the relative of the owner or a friend of the owner, but not a paid driver, the said person is not covered under the existing IMT. The Insurance Regulatory and Development Authority of India needs to address this issue, since more often private car owners permit any adult member of the family to drive the car allow friends to the car. For those persons there must be provision for compulsory coverage, under any of the IMT, collecting additional premium.

24. Be that as it may, even now it is not that the vehicle owners are left with no option to cover the person, who drives the car on behalf of the owner. Personal accident coverage under IMT-15 would have sufficiently taken care of a friendly driver permitted to drive the car.



25. In this case, the owner of the car has not taken additional coverage under IMT-15 by paying requisite premium.

26. Section 147 of the Motor Vehicles Act, 1988 deals with the requirement of policy and limited liability reads as below:-

147. Records to be maintained by authorised insurers:-

Every authorised insurer shall keep a record of the following particulars in respect of every policy of insurance issued by him for a period of five years, namely-

(i) full name and address of the person to whom the policy is issued;

(ii) in the case of a policy relating to a specified motor vehicle, the registration mark and the number of such vehicle and in other cases, description of the vehicle covered;

(iii) the date on which the policy of insurance comes into force and the date of its expiry;

(iv) the conditions subject to which the persons or classes of persons specified in the policy of insurance will be identified;

(v) the number and date of issue of every certificate of insurance or cover note issued in connection with the policy



of insurance;

(vi) the date, if any, on which any duplicate certificate of insurance or cover note was issued;

(vii) whether after, the issue of duplicate the original certificate of insurance was found and subsequently surrendered to the insurer and if so, on which date.

27. Considering the coverage of insurance, the victim Chellamuthu, who had driven the car, had no coverage, since he does not fall within any of the definition of third party, paid driver or employee of the owner.

28. In the said circumstances, the claimants cannot rely upon the additional premium paid under IMT-28, IMT-29 and the personal coverage, which is meant for specific class of person as found in the IMT and it cannot be extended to a non-paid driver or to a person, who is not an employee of the owner. In any insurance coverage, the liability of the insurance company is to indemnify the owner to the extent, the terms of the contract covers. When the policy does not cover the risk of the driver of the vehicle, who is



not the owner of the vehicle, in the absence of a contractual obligation, the insurance company cannot be burdened with the liability to compensate. The following judgments of the Hon'ble Supreme Court are relevant and helpful to buttress the above view:-

(i) New India Assurance Co.Ltd., v. Meera Bai and others reported in [2006(9) SCC 174];

(ii) Ramkhiladi v. The United India Insurance reported in [2020(1) TNMAC 1: 2020 ACJ 627];

(iii) National Insurance Co.Ltd., Puducherry v. Rani and others reported in [2020(1) TNMAC 593];

(iv) NIA v. C.M.Jeya reported in [(2002) 2 SCC 278];

(v) United India Insurance Co.Ltd., v. Rekha and others reported in [2017(2) TNMAC 674];

(vi) United India Insurance Co.Ltd., v. R.Krishnan and another reported in [CDJ2020 MHC 1663];

(vii) Tata AIG General Insurance Co.Ltd., v. Shanmugam reported in [2024(2) TNMAC 305].



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29. It is underscored that the liability of the Insurance Company is only to the extent of indemnification of the insured, limited to the coverage for which premium collected. In this case, the premium collected is for the third party risk and additional coverage under IMT-28, IMT-29, IMT-30, IMT-31 does not cover the friendly driver. The test for an employee is spelt out by the Hon'ble Supreme Court in *Shankar Balaji Waje v. State of Maharashtra* reported in *[AIR 1962 SC 517]* and applying the parameters laid down in the said judgment, without any doubt, one can rule out that Chellamuthu, the relative of the vehicle owner, had gone with his family and the vehicle owner in the car and there was no contractual relationship between him and the owner of the car to infer that he was employed under the car owner for the purpose of operating the car.

30. Viewed from any angle, the Insurance company, which has not collected any premium to cover the driver, who is not a paid driver or employee, under the owner, cannot be held liable to indemnify the owner of



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the car, when he has not paid any premium to get such indemnification.

31. In this regard, we are thankful to the learned counsel appearing for the Insurance Company, who brought to the notice of this Court about the direction of the Hon'ble Supreme Court in *Sujata Singh and another v. Divisional Manager National Insurance Co.Ltd., and another in Civil Appeal No(s).7198-7199/2022 dated 09.02.2023*, where an identical situation came for consideration. Tthe Hon'ble Supreme has passed the below order with a request to the Insurance Regulatory and Development Authority of India (in short “IRDAI”) to bring necessary changes in the IMT. It is profitable to reproduce the said judgment for necessary action by IRDAI.

“Application (IA No. 105072/2021) seeking Addition / Deletion /Modification Modification Parties in Civil Appeal No(s). 7965/2022 is allowed.

During the course of the hearing of these appeals, we notice that the accidents are said to have occurred while either a family member was driving/riding the vehicle or the person driving/riding the said vehicle was a close friend or relative of the owner of the vehicle. It is also noticed that in such a



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circumstance though, there is use of the motor vehicle, as required under the Motor Vehicles Act, 1988, the accident had occurred without the involvement of another 'offending' vehicle. In such a situation, the Insurance Company, while declining reimburse compensation, have sought to rely on the India Motor Tariff, more particularly, Section III relating to personal accident cover for owners-drivers.

In that regard, it is no doubt true that on issues relating to the vehicle being borrowed/hold, it has been held by this Court that such person steps into the shoes of the owner and therefore, the Section III relating to personal cover for the owner-driver would apply. However, in the present circumstance, we notice that though, the driver-owner/family member was not infact negligent in causing the accidents, it has occurred due to other causes such as in one of the cases, a Nilgai from the wild crossed the road and the accident had occurred. The claim therefore, was strictly not considered as one falling for claim of compensation.

In these sort of matters, an appropriate consideration is required to be made by the Insurance Regulatory and Development Authority of India (for short 'IRDAI') to include such claims since at present, they are not considered as an occupant of the vehicle.

Though, at this stage we do not express any opinion on



the merits of the case, but prima facie we are of the view that such coverage should be considered firstly by the IRDAI by taking into consideration the existing tariff which is indicated to also include such cases for reimbursement.

We request Mr. Abhishek Gola, learned counsel appearing for the Insurance Company as well as for the IRDAI to bring these aspects to the notice of the concerned authorities to take a decision in the matters and inform this Court. List the matters after two weeks.”

32. Finally, to sum up, we hold that the insurance for the Maruti Alto car does not cover an unpaid driver not employed under the owner of the vehicle. Hence, he being a tort-feasor, the dependants are not entitled for any compensation from the Insurance Company. The Tribunal has not gone into the provisions of the Motor Vehicles Act, 1988 and the limitations found in the terms and conditions of the policy. Taking into consideration the extra premium of Rs.50/- paid under IMT-28, the Tribunal has erroneously held that the said premium covers a friendly driver, who is neither employee of the owner nor paid for his service in operating the insured vehicle. In this case,



the owner of the car is the brother-in-law of the deceased driver. He does not fall within the definition of IMT-28 or IMT-29.

33. In the said circumstances, C.M.A.No.788 of 2020 stands allowed since it is held that the insurance company is not liable to indemnify the dependants of the tort-feasor for whom there is no insurance coverage. Next question regarding quantum of compensation does not arise in this case.

34. In the result, C.M.A.No.788 of 2020 stands allowed and the award passed by the Motor Accidents Claims Tribunal, Special Subordinate Court, Coimbatore in M.C.O.P.No.1446 of 2014 dated 02.01.2019 is hereby set aside. No order as to costs.

35. C.M.A.No.727 of 2020

C.M.A.No.727 of 2020 is filed against the award passed by the Motor Accidents Claims Tribunal, Special Subordinate Court, Coimbatore in



M.C.O.P.No.1958 of 2014 dated 02.01.2019.

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36. According to the claimants, Nagarathinam, who was a tailor by profession, was earning a sum of Rs.10,000/- per month and she was 38 years old at the time of accident. Except oral evidence of PW-1, no documentary proof is adduced to substantiate the claim regarding income.

37. The Tribunal has fixed the monthly income of the deceased at the rate of Rs.8,500/- per month notionally. Even for fixation of income notionally, there must be some input to assess the probable income. In this case, there is no input to assess the probable income. However, even if Nagarathinam, is only a homemaker, taking care of her family and minor children, the notional income cannot be less than Rs.8500/- per month, since we find no reason to interfere with the quantum of compensation awarded to the claimants of Nagarathinam, by fixing Rs.8500/- as notional income with 25% of future prospects, taking into consideration her age at the time of



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accident. The claimants are her parents and two minor children. After deducting 1/4th, for her personal expenditure, the loss of dependency has been ascertained as Rs.16,20,000/-. A sum of Rs.2,00,000/- has been paid for loss of love and affection. The total award of Rs.18,50,000/- with interest at the rate of 7.5% per annum does not appear to be excessive, as contended by the learned counsel appearing for the appellant. Therefore, the award passed by the Motor Accidents claims Tribunal, Special Subordinate Judge, in M.C.O.P.No.1958 of 2014 stands confirmed and C.M.A.No.727 of 2020 stands dismissed.

38. As a result,

(i) C.M.A.No.788 of 2020 stands allowed.

(ii) C.M.A.No.727 of 2020 stands dismissed.

(iii) Consequently, connected Miscellaneous Petition are closed. No costs.



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(Dr.G.J.J.)

(M.S.K.J.)

27.11.2025

Index:yes

Internet:yes/no

Speaking order/non speaking order

Neutral citation:yes/no

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To

The Motor Accidents Claims Tribunal,
Special Subordinate Court, Coimbatore.

Copy to:

The Chairman,
IRDA, Hyderabad.



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

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Common Judgment made in
C.M.A.Nos.727 and 788 of 2020
and
C.M.P.Nos.4430 and 4993 of 2020



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27.11.2025