



C.M.A.No.2897 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED : 28.03.2025

CORAM

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

C.M.A.No.2897 of 2022
and C.M.P.No.22404 of 2022

M/s.TATA AIG General
Insurance Company Limited,
Peninsula Corporation Park,
Nicholes Piramar Tower
IX Floor,
Ganpatrao Kadam Marg,
Lower Barel,
Mumbai – 400 013.

... Appellant

VS.

1.P.Matheswari

2.Minor.Santhosh,
Son of Late. Pallanisamy,
Represented by his
Mother Matheswari.

3.Minor.Srineewasan,
Son of Late. Pallanisamy,
Represented by his
Mother Matheswari.

4.Minor. Nivashini,
Daughter of Late. Pallanisamy,
Represented by her
Mother Matheswari.

5.Marappan



C.M.A.No.2897 of 2022

6.Papathi

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7.N.Syed Nizam

... Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, to set aside the Final Award dated 30th June, 2022, passed in M.C.O.P.No.517 of 2013, by the Exclusive Motor Accidents Claims Tribunal, at Tirupur.

For Appellant : Mr.J.Michael Visuvasam

For R1 to R6 : Mr.Ma.P.Thangavel

For R7 : No Appearance

For R5 : Died

J U D G M E N T

The Civil Miscellaneous Appeal is filed by the Insurance Company challenging the award passed by the Exclusive Motor Accidents Claims Tribunal, Tirupur in M.C.O.P.No.517 of 2013, dated 30.06.2022. The 5th respondent-Marappan died pending appeal. His legal representatives namely 6th respondent (wife) and respondents 2 to 4, children of predeceased son are already on record. Hence, there is no abatement of appeal.

2. According to the claimants, the husband of the 1st claimant and father of the claimants 2 to 4 and the son of the claimants 5 and 6 namely



C.M.A.No.2897 of 2022

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Palanisamy died in a road accident that had occurred on 09.03.2013. As per the claim petition, the deceased was travelling in a two wheeler bearing Registration No.TN 37 BW 9895 from north to south on the Perumanallur to Tirupur Road. When he came near Perumallur High School, an unknown vehicle driven by it's driver in a rash and negligent manner came from behind and hit the vehicle of the deceased. As a result of the accident, the deceased suffered grievous injuries and later, died in hospital. Therefore, the claimants preferred a claim petition seeking compensation of Rs.20,00,000/-.

3. The 7th respondent-owner of the vehicle remained *exparte* before the Tribunal and the claim petition was resisted only by the Appellant-Insurance Company by filing counter.

4. In the counter, it was stated by the appellant-insurance company that accident had occurred only due to the negligence on the part of the driver of the unknown vehicle. The Appellant/Insurance Company had also taken a definite stand that deceased was not a third party and hence, the claim petition filed under Section 163A of the Motor Vehicles Act, 1988, was not maintainable.



C.M.A.No.2897 of 2022

5. Before the Tribunal, the 1st respondent/1st claimant was examined

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as PW.1 and two other witnesses were examined as PW.2 and PW.3. On behalf of the claimants, 6 documents were marked as Exs.P1 to P6. On behalf of the Appellant-Insurance Company, one Cristilda, Junior Assistant, RTO Office was examined as RW.1 and another witness-Easwaran, Law Officer of the Insurance Company was examined as RW.2. On behalf of the Insurance Company, 4 documents were marked as Exs.R1 to R4.

6. The Tribunal based on the evidence available on record, came to the conclusion that the deceased did not have effective driving licence at the time of accident. The Tribunal held that the appellant/insurance company has not established that deceased was the owner of the vehicle or he was the agent, employee or representative of the erstwhile owner and hence, it shall be liable to pay compensation to the deceased, as he is a third party.

7. Even from the averment found in the claim petition, the 7th respondent is the owner of the vehicle and the appellant herein is the insurer. The deceased has driven the vehicle belonged to the 7th respondent. However, there is no evidence available on record to show that he is an



C.M.A.No.2897 of 2022

employee of the owner. In these circumstances, he can only be treated as a borrower from the erstwhile owner. Hence, as a borrower of vehicle, he stepped into the shoes of the owner. Therefore, he cannot be an insured as well as the beneficiary.

8. The said position has been clarified by the Apex Court in ***Ramkhilladi and another vs. The United India Insurance Company and another*** reported in (2020) 2 SCC 550, the relevant portion reads as follows:-

“9.5 It is true that, in a claim under Section 163A of the Act, there is no need for the claimants to plead or establish the negligence and/or that the death in respect of which the claim petition is sought to be established was due to wrongful act, neglect or default of the owner of the vehicle concerned. It is also true that the claim petition under Section 163A of the Act is based on the principle of no fault liability. However, at the same time, the deceased has to be a third party and cannot maintain a claim under Section 163A of the Act against the owner/insurer of the vehicle which is borrowed by him as he will be in the shoes of the owner and he cannot maintain a claim under Section 163A of the Act against the owner and insurer of the vehicle bearing Registration No. RJ 02 SA 7811.”



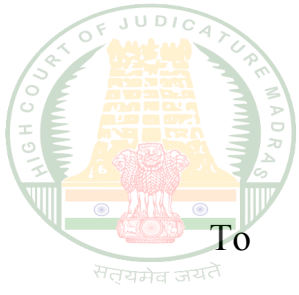
C.M.A.No.2897 of 2022

9. In view of the law laid down by the Apex Court in **Ramkhiladi** case, the Tribunal committed an error in allowing the claim petition filed by the claimants under Section 163(A) of the Motor Vehicles Act, 1988, when the deceased was not a third party. Therefore, the impugned award passed by the Exclusive Motor Accidents Claims Tribunal, Tirupur in M.C.O.P.No.517 of 2013, dated 30.06.2022 is set aside and the Civil Miscellaneous Appeal stands allowed.

10. It is stated by the learned counsel appearing for the appellant-insurance company that the Insurance Company already deposited 50% of the award amount with interest. In view of the allowing of the appeal, the appellant-insurance company is permitted to withdraw the said amount with accrued interest, if any. No costs. Consequently, the connected civil miscellaneous petition is closed.

28.03.2025

Index :Yes/No
Speaking order :Yes/No
Neutral Citation :Yes/No
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C.M.A.No.2897 of 2022

To

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1.The Exclusive Motor Accidents Claims Tribunal,
Tirupur.

2.The Section Officer,
VR Section,
High Court, Madras.



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C.M.A.No.2897 of 2022

S.SOUNTHAR, J.

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C.M.A.No.2897 of 2022

28.03.2025