



C.M.A(MD)No.1308 of 2013

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Date of Reserved	16/10/2025
Date of Pronounced	12/12/2025

CORAM:

THE HONOURABLE MS.JUSTICE R.POORNIMA

C.M.A.(MD)No.1308 of 2013

and

M.P(MD)No.2 of 2013

Iffco Tokyo General Insurance Company Limited,

1st and 2nd Floors,

No.28/195, North Usman Road,

T.Nagar,

Chennai.

: Appellant/3rd Respondent

Vs.

1.Padaya Gounder @ Padayasamy : 1st Respondent/Petitioner

2.Duraisamy

3.Palaniammal : Respondents 2 & 3/Respondents 1 & 2

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the award, dated 10/01/2013 passed in MCOP No.101 of 2007 on the file of the Motor Accident Claims Tribunal, (Principal Subordinate Court), Dindigul, and allow this Civil Miscellaneous Appeal.



For Appellant : Mr.V.Sakthivel

For Respondents : No appearance - R1 to R3

JUDGMENT

Challenging the award, dated 10/01/2013 passed in MCOP No.101 of 2007 by the Motor Accident Claims Tribunal (Principal Subordinate Court), Dindigul, this Civil Miscellaneous Appeal is preferred by the Appellant.

2.Brief facts of the petition filed by the claimants before the Tribunal are as follows:-

(i) On 29.11.2006 at about 19.30 hours the petitioner was travelling in a minidoor vehicle bearing Registration No.TN 57 C 6256 from Trichy to Pudupatti, which was proceeding on Trichy to Manapparai main road from north to south, while nearing Maravanur the said vehicle driver drove it in a rash and negligent manner, with uncontrollable speed and turned turtle. So the petitioner sustained severe injuries all over the body. Immediately he was admitting at City Hospital, Dindigul for treatment.

(ii) Over the occurrence, a case in Crime No.502 of 2006 was registered by the Manapparai Police Station for the offence under



C.M.A(MD)No.1308 of 2013

Sections 279 and 337 IPC against the driver and the said case is pending.

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(iii) The petitioner sustained fracture at right elbow and left maxilla. He also sustained abrasion on left eye brow on left frontal. sustained lacerated injuries on muscle deep over lower lip left side and pain all over the body. Two operations were done at right elbow and left maxilla.

(iv) The 2nd respondent is the owner and the 1st respondent is the previous owner and the vehicle was insured with the 3rd respondent. The petitioner was working as a coolie and earning a monthly salary of Rs. 3,000/-. Since the accident happened because of the rash and negligent driving of the minidor bearing Registration No.TN 57 C 6256, both the respondents are jointly and severally liable to pay a compensation amount of Rs.2,00,000/- to the petitioner.

3. Before the Tribunal, the third respondent/Insurance Company filed a counter affidavit denying the manner of the accident as alleged in the claim petition and also disputing their liability to pay the compensation contending that the vehicle involved in the accident is a goods carrying vehicle and it is intended to carry goods alone and not the passenger. He further contended that the petitioner is an unauthorized



C.M.A(MD)No.1308 of 2013

passenger and also another 30 unauthorized passengers had travelled in the goods vehicle at the time of accident and thereby violated the policy conditions.

4.During trial, on the side of the claimant, 2 witnesses were examined as P.W.1 and P.W.2 and 7 documents were marked as Ex.P1 to Ex.P7. On the side of the Insurance Company, one witness was examined as RW1 and one document was marked as Ex.R1.

5.Upon consideration of the materials available on record, both oral and documentary, the Tribunal awarded a total sum of Rs.1,68,500/- as compensation and also directed the 3rd respondent to pay the award amount and thereafter, recover the same from the 1st respondent within a period of two months.

6. Aggrieved by the said award, the Insurance Company, the appellant preferred this appeal contended that the Tribunal ought to have found that the claimant had travelled as unauthorised/gratuitous passenger in the insured goods vehicle at the time of accident and that such a persons are not covered by Section 147 of the Motor Vehicles Act.



C.M.A(MD)No.1308 of 2013

7. It is the further grievance of the appellant that the Tribunal ought not to have directed the appellant to satisfy the award amount at the first instance and then recover it from the owner of the vehicle even after finding that the victim of the road accident travelled in the goods carrier at the time of accident as unauthorized passenger only.

8. Heard the learned counsel appearing on either side and perused the materials available on record.

9. Now, this Court has to decide whether the order of the Tribunal is sustainable or liable to be set aside?

10.Point

The dispute is with regard to liability. Even though, so many grounds were raised in the memorandum of appeal, during the argument, the only grievance put forth by the appellant is that the Tribunal ought to have exonerated them from the liability on the ground that the petitioner was travelling as a unauthorized/gratuitous passenger and thereby violated the policy condition and prays that the Civil Miscellaneous Appeal has to be allowed.



C.M.A(MD)No.1308 of 2013

WEB COPY

11. On perusal of the records, it reveals from Ex.P1, FIR registered in crime No.506 of 2006 under Sections 279, 337 IPC against the driver of the first respondent vehicle bearing Registration No.TN 57 F 6256. The first respondent not come forward and stated that the accident was not occurred due to his negligence. Further, the claimant who is the eye witness to the occurrence was a passenger in the vehicle clearly described about the manner of accident. Therefore, it is established that the accident was occurred due to the negligent driving of the first respondent driver.

12. The main defence taken by the insurance company is that the vehicle involved in the accident is a good carrying vehicle and the claimant is a gratuitous passenger, the owner of the vehicle is not supposed to carrying passengers in the goods vehicle, and the condition of the policy was violated. The insurance policy was marked as Ex.R1 shows that on the date of accident, the policy was in force, but it was issued for the commercial vehicle. The vehicle is not supposed to carrying passengers, but in this present case the vehicle carrying passengers, which is in violation.



C.M.A(MD)No.1308 of 2013

13. The appellant insurance company relied upon the following judgements reported in

(1) Bharati AXA General Insurance Company Ltd., Vs. Aandi and Others (CMA.Nos.1529 to 1533 of 2015 dated 24.10.2018) reported in 2018 (2) TN MAC 731 (DB)

(ii) The Branch Manager Vs. B.Palanichamy Naicker and others (CMA(MD)Nos.462 and 463 of 2018 dated 19.06.2023) on the file of this Court.

14. In this connection, a reliance is placed on the judgement in ***Sunita and Others Vs. United India Insurance Company Ltd., and Others*** reported in ***2025 SCC Online SC 1464***, in which paragraph Nos.13 to 17 held as follows :

“13. Adverting to the facts in hand, from a bare perusal of the record, it is borne that the vehicle in question was insured with "Liability Only Policy" and no premium was paid to cover the driver, owner, or a gratuitous passenger travelling therein. However, even then, in our view, the Courts below erred in holding that the Insurance Company is not liable to pay the compensation to the claimant-appellants, for the principle of "Pay and Recover" ought to have been invoked. As such, we are inclined to interfere with the above findings of the Courts below.



14. *We must advert to the exposition of this Court in National Insurance Co. Ltd. v. Baljit Kaur*⁷. The deceased therein was travelling as a gratuitous passenger; and due to the rash and negligent driving of the offending vehicle, lost his life. The Insurance Company was directed to satisfy the amount awarded by the Courts below and recover the same from the owner of the vehicle, as the premium was not paid by the owner of the vehicle towards gratuitous passenger.

15. *The above position has been followed by this Court in Anu Bhanvara v. IFFCO Tokio General Insurance Co. Ltd.,*⁸ wherein the injured person was travelling as a gratuitous passenger and was not covered under the Insurance Policy, the driver and owner of the vehicle was held liable for payment of compensation amount. This Court applied the principle of "Pay and Recover" and directed the Insurance Company to pay the amount and, thereafter, recover the same from the owner of the vehicle.

16. *The aforementioned principle was adopted by this Court in various judgments of this Court in Amrit Lal Sood v. Kaushalya Devi Thapar*⁹ (1998(3) SCC 744); *New India Assurance Co. Ltd. v. C.M. Jaya*¹⁰ (2002(2) SCC 278); *National Insurance Co. Ltd. v. Challa Upendra Rao*¹¹ (2004(8) SCC 517); *New India Assurance Co. Ltd. v. Vimal Devi*¹² (2010 SCC Online SC 49); *National Insurance Co. Ltd. v. Saju P. Paul*¹³ (2013(2) SCC 41); *Manuara Khatun v. Rajesh Kumar Singh*¹⁴ (2017(4) SCC 796); and *Puttappa v. Rama Naik*¹⁵ (2018 SCC Online SC 3496).



C.M.A(MD)No.1308 of 2013

17. Applying the above expositions of law, the Courts below ought to have directed the Insurance Company to indemnify the amount and thereafter recover the same.”

15. The principal laid down in the said judgement is squarely applicable to the present case. The compensation awarded by the Tribunal is also meagre, considering the facts and circumstances of the case. Therefore, taking into account of the above judgement as well as overall circumstances, this Court find no infirmity in the direction issued by the Tribunal, directing the insurance company to pay the amount to the claimant and recover the same from the owner of the vehicle.

16. Since this Court is of the view that the findings of the Tribunal are proper and do not warrant any interference. The Tribunal awarded only just compensation and this Court find no reason to interfere with the well considered findings of the Tribunal. Therefore, the Civil Miscellaneous Appeal has no merit and the same is liable to be dismissed. Point is answered accordingly.



C.M.A(MD)No.1308 of 2013

17. In the result, Civil Miscellaneous Appeal is dismissed and the order dated 10.01.2013 passed in MCOP No.101 of 2007 on the file of the Motor Accident Claims Tribunal, Principal Subordinate Court, Dindigul, is hereby confirmed. No costs. Consequently, connected Miscellaneous Petition is closed.

12.12.2025

Index : Yes / No

Internet : Yes / No

To

- 1.The Motor Accident Claims Tribunal/
Principal Subordinate Court, Dindigul.
- 2.The Section Officer,
ER/VR Section,
Madurai Bench of Madras High Court,
Madurai.



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C.M.A(MD)No.1308 of 2013

R.POORNIMA, J.

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Pre-Delivery Judgment in
C.M.A.(MD)No.1308 of 2013

12.12.2025