

CMA.(MD)No.1866 of 2013

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Dated : 24/09/2025

CORAM

The Hon'ble Ms.Justice **R.POORNIMA**

CMA(MD)No.1866 of 2013

and

MP(MD)No.2 of 2013

The New India Assurance Company Limited,
Represented by its Manager,
No.482-483, S.N.V. Chambers,
3rd Floor, Coimbatore-12.

: Appellant/2nd Respondent

Vs.

1.Annalakshmi

: 1st Respondent/Petitioner

2.Sri Murugan

: 2nd Respondent/1st Respondent

PRAYER:-Civil Miscellaneous Appeal is filed under section 173 of the Motor Vehicles Act, 1988, to set aside the order of the learned Tribunal in MCOP No.696 of 2012, dated 03/12/2012 on the file of the Motor Accidents Claims Tribunal, Fourth Additional District Court, Tiurunelveli.

For Appellant : Mr.J.S.Murali

For Respondents : No appearance



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JUDGMENT

This Civil Miscellaneous Appeal is preferred against order passed in MCOP No.696 of 2012, dated 03/12/2012 by the Motor Accident Claims Tribunal (Fourth Additional District Court), Tirunelveli.

2. The brief case of the claimant are as follows:-

On 23/02/2009 at about 02.00 p.m., the deceased was driving a Toyota Qualis Car bearing registration No.TN-39-S-8484 belonging to the 1st respondent, insured with the 2nd respondent from Chettikurichi to Kovilpatti. When the vehicle was proceeding on the Sankarankoil-Kovilpatti Main Road, it capsized and met with an accident, as a result of which, the deceased sustained serious injuries. Immediately, after the occurrence, he was taken to the Tirunelveli Medical College Hospital at Palayamkottai, where he later succumbed to the injuries.

3. Over the occurrence, a case in Crime No.58 of 2009 was registered by the Manoor Police for the offences under Sections 279, 337, 338 @ 304-A IPC and the case was pending before the Judicial Magistrate No.5, Tirunelveli and subsequently, referred.



4. The deceased was a driver and thereby, earning a sum of

Rs.3,000/- per month and he was the only breadwinner of the family and there is no one to look after the family of the petitioner. The petitioner's family has not only lost the deceased, but also suffered a severe economic hardship. Had the deceased not met with the accident, he would have lived up to 90 years and would have earned a name and fame and financial stability for his family. He was about 36 at the time of the accident and was hale and healthy. At present, there is none to extend financial support or care to the petitioner. Therefore, the petitioner has filed a claim petition claiming compensation of Rs.3,93,500/- for the death of her husband.

5. The second respondent, Insurance Company filed a counter denying the entire allegation contained in the petition. The occurrence in this case occurred only due to the rash and negligent act of the driver, who is the deceased and that the claim petition has been filed under Section 163 of the Motor Vehicles Act. According to the latest decision of the Hon'ble Apex Court, no claim could be entertained under section 163-A of the Motor Vehicles Act, for own negligence. The age, occupation and monthly earning of the deceased person mentioned in columns 3, 4 and 6 of the claim petition are denied. The second



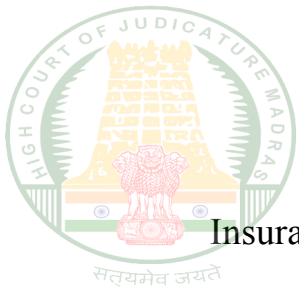
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respondent Insurance Company is not liable to pay any compensation much less the sum of Rs.3,93,500/- as claimed by the petitioner. The compensation claimed is highly excessive and the interest claimed is also not proper and that as per the decision of the Hon'ble Apex Court, only interest at the rate of 6% per annum has to be awarded and prayed for dismissal of the claim petition.

6. Before the Tribunal, on the side of the petitioner, the petitioned was examined herself as PW1 and 23 documents were marked as Exs.P1 to P23. On the side of the Insurance Company, no oral and documentary evidence was adduced.

7. After considering the evidence and materials available on record, the Tribunal awarded a compensation of Rs.3,93,500/- together with interest at the rate of 8% per annum and directed the second respondent Insurance Company to deposit the same within a period of two months before the Court and also directed to deposit the said amount for three months in a Nationalized Bank in a fixed deposit scheme and also directed to pay the court fee amount for the compensation amount.

8. Against which, the present appeal is filed by the Appellant



Insurance Company against their liability with the following grounds:-

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(i) The Tribunal has failed to consider the fact that the deceased is the brother of the owner of the vehicle and the deceased himself drove the vehicle in a rash and negligent manner, caused the accident and died and as such, he cannot be regarded as a third party and hence, neither 163(A), nor 166 of the Motor Vehicles Act would be applicable;

(ii) The Tribunal has failed to consider the fact that the deceased had borrowed the vehicle from his brother and therefore, he stepped into the shoes of the owner of the vehicle;

(iii) The Tribunal has failed to consider the fact that the deceased was not a paid driver and the Insurance Company is liable to pay compensation only for the paid driver under the Workmen's Compensation Act;

(iv) The Tribunal has failed to consider the fact that there was no requirement to cover the brother of the insured, while driving the insured vehicle, which was insured with the Appellant Insurance Company, since he was neither a paid driver, nor an occupant covered under the package policy for the insured vehicle with the Appellant Insurance Company as a private car;

(v) The Tribunal has failed to consider the fact that where the



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deceased person was driving the insured vehicle and no other vehicle is involved in the accident; As per the decision of the Hon'ble Apex Court, the driver of the insured vehicle would not be covered under Section 147 of the Act, unless he was a Workman or paid driver and also the owner cannot be a third party.

(vi)The Tribunal has failed to consider the fact that only a third party can claim compensation from the insured and insurer and there is no provision in the Act for the insured to claim compensation for himself from the insurer;

(vii)The Tribunal also failed to consider the fact that the accident had occurred only due to the rash and negligent driving of the deceased and he is the tort-feasor, and hence, the claimant is not entitled to claim any compensation under section 163(A) of the Motor Vehicles Act.

9. During the course of the argument, the learned counsel for the appellant Insurance Company contended that the vehicle alleged to have been driven by the deceased, the vehicle actually belonged to his brother, who is the registered owner of the vehicle. It was further argued that a tort-feasor himself cannot claim any compensation. The counsel also submitted that the Tribunal failed to appreciate the fact that the



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accident occurred solely due to the rash and negligent driving of the deceased and that as a tort-feasor, the deceased had stepped into the shoes of the owner and therefore, he is not entitled to any compensation from the Appellant Insurance Company.

10. It was further argued that the Tribunal erred in adopting the multiplier of 16, when the age of the deceased was 36 at the time of the accident and the proper multiplier, as per the recent decision of the Hon'ble Apex Court would be only 15.

11. Despite service of notice, the respondents have not chosen to appear, either in person or through an Advocate. Hence, they were called absent and set *ex parte*.

12. Now this Court had to determine whether the claimant is entitled to the compensation as awarded by the Tribunal.

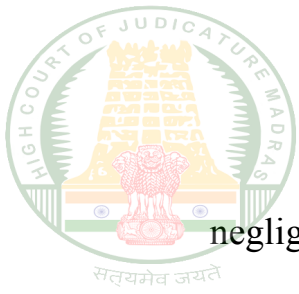
13. On perusal of the records, it is seen that on the side of the claimant, a copy of the FIR was marked as Ex.P1. FIR was registered in Crime No.58 of 2009 on 12/02/2009 by the Manur Police Station for the offences punishable under sections 279, 337, 338 @ 304A IPC



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against the deceased Rajasekar @ Chandrasekar. The contention of the FIR discloses that the complaint was lodged by one Kaliraj, working as Sales Manager in Sri Murugan Provisional Shop at Coimbatore. It is further stated in the FIR that to attend the family deity Temple, the complainant, his grandfather Sankara Reddiyar, grandmother Rajammal, maternal aunt, the deceased and others were travelling in the vehicle bearing registration No.TN-39-S-8484 proceeding from Chettikurichi to Kovilpatti on the northern side, the deceased Rajasekar @ Chandrasekar drove the vehicle on the left side of the road in a rash and negligent manner, the vehicle deviated from the road capsized and consequently, fell off the road thereby, and all of them sustained injury and were taken to the hospital for treatment.

14. The claimant was examined as P.W.1. During the course of cross-examination, she admitted that the owner of the vehicle was the brother of the deceased and that he was not the driver of the alleged vehicle at the time of the accident. He was running a provisional store in Coimbatore. This establishes that at the time of the accident, the deceased had borrowed the vehicle from his brother and was driving it which proves that at the time of the accident, the deceased borrowed the vehicle from his brother and was himself driving it in a rash and



negligent manner and caused the accident.

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15. When a person borrows a vehicle from its owner and drives it, he steps into the shoes of the owner. In the present case, the deceased himself drove negligently and was solely responsible for the accident. Therefore, he cannot claim compensation from the Insurance Company, as he does not fall within the category of third party.

16. In this regard, it is useful to refer to the decision of the Hon'ble Supreme Court in the case of *Ramkhiladi and another Vs. United India Insurance Company and another [(2020)2 SCC 550]*, wherein it has been held that claim petition under Section 163-A is not maintainable by borrower/permissive user of vehicle against the owner and/or insurer of the said vehicle, as such, such borrower/permissive user steps into shoes of owner, and owner cannot both be claimant and recipient. In a claim under Section 163-A of the MV Act, the deceased/victim has to be a third party in relation to the vehicle in question and mere own-use of the motor vehicle by the owner/borrower/permissive user does not entitle such persons to maintain a petition filed under Section 163-A of the MV Act against the insurer of their own/borrowed vehicle.



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17. Now coming to the case at hand, the Tribunal has not given any specific finding on the issue of whether the deceased was at fault or not. Instead, it has merely observed that it was not proved, who was responsible for the accident. However, the FIR, clearly records that the vehicle was driven by the deceased himself, and that he was solely responsible for the negligent driving that caused the accident. Further, the claimant has not lodged any complaint disputing that her husband was not responsible for the accident, rather she admits during the trial that it was the deceased alone who was driving the vehicle at the time of accident.

18. It has been proved that the vehicle belonged to the deceased's brother and that the deceased borrowed the same. He drove the vehicle in a rash and negligent manner, which resulted in the accident. Once he borrowed the vehicle from the lawful owner, he stepped into the shoes of the owner, therefore, he is not entitled to maintain any claim for compensation.

19. However, the Tribunal, without considering the above aspects and without proper application of mind, has erred in granting the compensation to the claimant. Hence, this Court is of the considered



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view that the impugned award passed by the Tribunal is liable to be set aside.

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20. In the result, this Civil Miscellaneous Appeal is allowed and the impugned order passed in MCOP.No.696 of 2012, dated 03/12/2012 by the Motor Accident Claims Tribunal (Fourth Additional District Court), Tirunelveli is hereby set aside and the petition in MCOP No.696 of 2012 is hereby dismissed. The appellant insurance company is entitled to get back the deposited amount before the Tribunal, if any by filing appropriate application before the Tribunal in the manner known to law. No costs. Consequently, the connected Miscellaneous Petition is closed.

24.09.2025

Index:Yes/No
Internet:Yes/No
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To

1.The Motor Accident Claims Tribunal/
IV Additional District Judge,
Tirunelveli.

2.The Section Officer,
ER/VR Section,
Madurai Bench of Madras High Court, Madurai.

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R.POORNIMA, J

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