**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

**DATED: 04.12.2025**

**CORAM:**

**THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN**
**AND**
**THE HONOURABLE MS.JUSTICE R.POORNIMA**

**C.M.A(MD)Nos.133, 231, 505, 506 & 507 of 2021**
**and**
**C.M.P(MD)Nos.1129, 1905, 4554, 4555 & 4556 of 2021**
**& 1043 & 8041 of 2022**

**1.C.M.A(MD)No.133 of 2021**:

Royal Sundaram Alliance Insurance Company Limited,
Represented by its Branch Manager,
Nos.45 & 46,
Whites Road,
Sundaram Towers,
Chennai. ... Appellant/Respondent No.4

Vs.

1.Geetha
2.Minor Rishwanth
3.Minor Harshana ... Respondents 1 to 3/ Petitioners

4.Kousalya

5.ICICI Lombard General Insurance Company Limited,
Represented by its Manager,
(Bye Pass Road), Mettupalayam Road,
Coimbatore District.

6.Rajkumar ... Respondents 4 to 6/
Respondents 1 to 3

7.Backialakshmi ... 7th Respondent/
5th Respondent

(Minor respondents 2 & 3 are represented by their mother and natural guardian/1st respondent herein)

PRAYER:- Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the fair and decreetal order dated 19.11.2019 made in M.C.O.P.No.411 of 2017 on the file of the Motor Accident Claims Tribunal (VI Additional District Judge), Madurai and allow this Civil Miscellaneous Appeal.

For Appellant : Mr.S.Srinivasa Raghavan

For Respondents : Mr.A.Saravanan (R1 to R3)

: No appearance (R4 & R6)

: Mr.V.Muthukamatchi (R5)

: No appearance (R4 & R6)

: Mr.D.Venkatesh (R7)

**2.C.M.A(MD)No.231 of 2021**:

The Branch Manager,
ICICI Lombard General Insurance Company Limited,
Mettupalayam Road, (Byepass Road),
Coimbatore. ... Appellant/Respondent No.2

Vs.

1.Geetha
2.Minor Rishwanth
3.Minor Harshanaa ... Respondents 1 to 3/Claimants 1 to 3

4.D.Kousalya ... 4th Respondent/1st Respondent

5.T.Ramkumar

6.The Manager,
Royal Sundaram Alliance Insurance Company Limited,
Sundaram Towers, 45 & 46, Whites Road,
Chennai.

7.Packialakshmi ... Respondents 5 to 7/
Respondents 3 to 5

(Minor respondents 2 & 3 are represented by their mother and natural guardian/1st respondent herein)
(R – 4 is given up vide order dated 04.12.2025)

PRAYER:- Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the Judgment and Decree dated 19.11.2019 made in M.C.O.P.No.411 of 2017 on the file of the

Motor Accident Claims Tribunal (VI Additional District Judge), Madurai and allow this Civil Miscellaneous Appeal.

For Appellant : Mr.Mr.V.Muthukamatchi

For Respondents : Mr.A.Saravanan (R1 to R3)

: No appearance (R7)

: Mr.V.Agnes (R5)

: Mr.S.Srinivasa Raghavan (R6)

**3.C.M.A(MD)No.505 of 2021**:
The Branch Manager,
ICICI Lombard General Insurance Company Limited,
First Floor, Layola Technical Institute No.7,
Arignar Anna Road, Gnanaolivapuram,
Madurai – 16. ... Appellant/Respondent No.4

Vs.

1.A.Perumal ... 1st Respondent/ Claimant

2.T.Ramkumar
3.The Manager,
Royal Sundaram Alliance Insurance Company Limited,
No.37, Krishnarav Tank Street,
Madurai.

4.D.Kousalya ... Respondents 2 to 4/Respondents 1 to 3

(R – 4 is given up vide order dated 04.12.2025)

PRAYER:- Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the Judgment and Decree dated 19.11.2019 made in M.C.O.P.No.713 of 2015 on the file of the Motor Accident Claims Tribunal cum VI Additional District Judge), Madurai and allow this Civil Miscellaneous Appeal.

For Appellant : Mr.Mr.V.Muthukamatchi

For Respondents : Mr.P.Thiyagarajan (R1)

: No appearance (R2 & R3)

**4.C.M.A(MD)No.506 of 2021**:

The Branch Manager,
ICICI Lombard General Insurance Company,
No.7, U.U.Road, Gnanaolivapuram,
Madurai. ... Appellant/Respondent No.4

Vs.

1.Saratha
2.Minor Sudesh ... Respondents 1 & 2/ Claimants

3.T.Ramkumar

4.The Manager,
Royal Sundaram Alliance Insurance Company Limited,
No.37, Krishnarav Tank Street,
Madurai.

5.D.Kousalya ... Respondents 3 to 5/Respondents 1 to 3

(Minor respondent No.2 is represented by his mother and natural guardian/1st respondent herein)

(R – 5 is given up vide order dated 04.12.2025)

PRAYER:- Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the Judgment and Decree dated 19.11.2019 made in M.C.O.P.No.786 of 2015 on the file of the Motor Accident Claims Tribunal cum VI Additional District Judge), Madurai and allow this Civil Miscellaneous Appeal.

For Appellant : Mr.Mr.V.Muthukamatchi

For Respondents : Mr.K.Mahendran (R1, R2, R6 & R7)

: No appearance (R3 & R4)

**5.C.M.A(MD)No.507 of 2021**:

The Branch Manager,
ICICI Lombard General Insurance Company,
First Floor, Layola Technical Institute No.7,
Arignar Anna Road,
Gnanaolivapuram,
Madurai – 16. ... Appellant/Respondent No.4

Vs.

1.Fathimakani
2.K.Peer Mohammed
3.K.Sensitha Parveen ... Respondents 1 to 3/Claimants 1 to 3

4.T.Ramkumar
5.Royal Sundaram Alliance Insurance Company Limited,
Subramaniam Building 2nd Floor,
Annal Salai 1 Club House Road,
Chennai.

6.D.Kousalya ... Respondents 4 to 6/
Respondents 1 to 3

(R – 6 is given up vide order dated 04.12.2025)

PRAYER:- Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the Judgment and Decree dated 19.11.2019 made in M.C.O.P.No.2148 of 2014 on the file of the Motor Accident Claims Tribunal cum VI Additional District Court, Madurai and allow this Civil Miscellaneous Appeal.

For Appellant : Mr.Mr.V.Muthukamatchi

For Respondents : Mr.C.Godwin (R1 to R3)

: No appearance (R4 & R5)

## COMMON JUDGMENT

**(Judgment of the Court was delivered by G.K.ILANTHIRAIYAN, J.)**

C.M.A(MD)No.133 of 2021 has been filed by the Royal Sundaram Alliance Insurance Company Limited against the Judgment and Decree passed in M.C.O.P.No.411 of 2017 on the file of the Motor Accident Claims Tribunal (VI Additional District Court), Madurai. On the other hand, arising out of the same M.C.O.P.No.411 of 2017 on the file of the Motor Accident Claims Tribunal (VI Additional District Court), Madurai, the ICICI Lombard General Insurance Company has filed C.M.A(MD)No.231 of 2021.

2.C.M.A(MD)Nos.505 to 507 of 2021 have been filed by the ICICI Lombard General Insurance Company against the Judgments and Decrees passed in M.C.O.P.Nos.713 of 2015, 786 of 2015 and 2148 of 2014 respectively, on the file of the Motor Accident Claims Tribunal (VI Additional District Court), Madurai.

3.Since the issue involved in all the appeals is one and the same, these appeals are disposed of by a common judgment.

4.The learned counsel appearing for the appellants in

C.MA(MD)Nos.231, 505, 506 and 507 of 2021 has filed memos stating that notice to the fourth respondent in C.M.A(MD)No.231 of 2021, notice to the fourth respondent in C.M.A(MD)No.505 of 2021, notice to the fifth respondent in C.M.A(MD)No.506 of 2021 and notice to the sixth respondent in C.M.A(MD)No.507 of 2021 may be dispensed with, and filed memos dated 04.12.2025 to that effect. The said memos are recorded.

5.All the claim petitions arise out of one and the same accident, filed by the legal heirs of the deceased persons and injured persons.

6.C.M.A(MD)Nos.231 & 505 to 507 of 2021 are filed by the Insurer, viz., ICICI Lombard General Insurance Company, of the Toyoto Innova Car bearing Registration No.TN-66-A-5004.

7.C.M.A(MD)No.133 of 2021 is filed by the Insurer, viz., Royal Sundaram Alliance Insurance Company Limited, of the Maruthi Swift Car bearing Registration No.TN-59-AR-1721, in which the deceased and injured persons were travelling on 31.08.2014 and met with an accident.

8.The legal heirs of the deceased and injured persons, who travelled in the Maruti Swift Car bearing Registration No.TN-59-AR-1721, filed claim petitions alleging that while travelling on 31.08.2014, driven by one of the deceased, the vehicle proceeding towards Natham on the Madurai Main Road from North to South dashed against the Toyota Innova Car bearing Registration No.TN-66-A-5004, which was coming in the opposite direction on its proper lane. Due to the said accident, three persons died on the spot and two others sustained injuries. Based on the complaint, an F.I.R was registered in Crime No.961 of 2014 on the file of the Inspector of Police, Oomatchikulam Police Station, Madurai District.

9.In support of their claim petitions, P.W.1 to P.W7 were examined and Ex.P.1 to Ex.P.59 were marked. On the side of the respondents, R.W.1 was examined and Ex.R.1 and Ex.R.2 were marked. Witness documents were marked as Ex.W.1 to Ex.W.10 and a Court document was marked as Ex.X1.

10.On perusal of the oral and documentary evidence, the Tribunal fixed the liability on the insurer of the Maruti Swift Car viz., Royal Sundaram Alliance Insurance Company Limited, at 70% and fixed the remaining 30% liability on the insurer of the Toyota Innova Car viz., ICICI Lombard Insurance Company Limited. Aggrieved by the same, both insurers have filed these appeals questioning the apportionment of liability.

11.The learned counsel appearing for the appellant/ICICI Lombord Insurance Company Limited in C.M.A(MD)Nos.231 &

505 to 507 of 2021 submits that even as per the F.I.R, which was marked as Ex.P.32, the driver of the Maruti Swift Car drove the vehicle in a rash and negligent manner and also under the influence of alcohol, and thereafter crossed into the adjacent lane and dashed against the Toyota Innova Car, which was coming from opposite direction on its proper lane. Therefore, the accident occurred solely due to the rash and negligent driving of the Maruti Swift Car driver, and hence no negligence can be attributed to the driver of the Toyota Innova Car. The rough sketch, marked as Ex.P.36, clearly shows that the driver of the Maruti Swift Car had driven the car in a rash and negligent manner and dashed against the opposite vehicle.

12.One of the injured witness, who travelled in the Maruti Swift Car, deposed that the driver had consumed liquor along with others and drove the car under the influence of alcohol in a rash and negligent manner. Further, R.W.1 categorically deposed that the accident occurred only due to the rash and negligent driving of the

Maruti Swift Car driver. Without properly appreciating the same, the Tribunal wrongly fixed 30% liability on the insurer of the Toyota Innova Car.

13.The learned counsel appearing for the appellant/Royal Sundaram Alliance Insurance Company Limited in C.M.A(MD)No. 133 of 2021 submits that as per the F.I.R, the accident was caused by the driver of the Maruti Swift Car, who had borrowed the vehicle from its owner at the time of the accident. Therefore, the driver stepped into the shoes of the owner and thereby ceased to be a third party under the the provisions of the Motor Vehicles Act. Consequently, the legal heirs of the deceased driver in M.C.O.P.No. 411 of 2021 are not entitled to any compensation and the Tribunal ought not to have entertained the claim petition.

14.The learned counsel appearing for the claimants submitted that the Maruti Swift Car was insured with the Royal

Sundaram Alliance Insurance Company Limited and the insurance policy covered the persons, who travelled in the said Car. Therefore, according to him, the claimants are entitled to claim compensation and the Tribunal rightly awarded compensation in their favour. Insofar as fixing liability is concerned, it was submitted that the Tribunal rightly fixed the liability at 70% on the insurer of the Maruti Swift Car and 30% on the insurer of the opposite vehicle, namely, the Toyota Innova Car bearing Registration No.TN-66-A-5004, since the accident allegedly occurred due to contributory negligence to that extent.

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

16.After thorough perusal of the submissions made by the learned counsel appearing on either side and the materials available on record, the present case shall be dealt with by deciding on the following issues:

> "1. Whether the driver of the Maruti Swift was the sole reason for the accident due to his rash and negligence?
>
> 2. Whether the deceased driver is a borrower or owner of the said car, viz., Maruti Swift and whether his legal representatives are entitled for a compensation on such capacity?"

17.Dealing with the first issue, the rough sketch marked as Ex.P.36 reveals that the Maruti Swift Car bearing Registration No.TN-59-AR-1721, driven by one Manikandan, was proceeding from North to South on the Madurai-Natham Main Road. The Toyota Innova Car bearing Registration No.TN-66-A-5004 was proceeding from South to North. The driver of the Maruti Swift Car lost control of the vehicle and while driving in a rash and negligent driving at a terrific speed, crossed into the wrong side and dashed against the Toyotta Innova Car. The F.I.R in Crime No.961 of 2014 on the file of the Oomatchikulam Police Station, Madurai District, marked as Ex.P.32, was registered against the driver of the Maruti Swift Car. However, since the said driver died due to the accident, the charges stood abated.

18.That apart, one of the insured, who was examined as P.W.6, deposed that on 31.08.2014 at about 06.15 p.m., he along with others travelled in the Maruti Swift Car to Alagarkovil. On the way to Alagarkovil, they stopped the Maruti Swift Car at Chatrapatti and purchased three liquor bottles. After consuming alcohol, the driver proceeded to drive the Maruti Swift Car towards Alagarkovil. Therefore, it is clear that the driver of the Maruti Swift Car drove the vehicle under the influence of alcohol, entered the wrong lane and dashed against the Toyota Innova Car which was coming from the opposite side. In fact, no one, who travelled in the Toyota Innova Car, sustained injuries.

19.The accident had occurred at about 06.15 p.m., and there was sufficient daylight. Even before switching on the headlights of the Maruti Swift Car, the accident had occurred. Therefore, it cannot be said that the accident had taken place because of rash and negligent driving of both the vehicles and hence negligence cannot be attributed equally on the drivers of both the Cars. In view of the above, the Tribunal ought not to have fixed the liability on the insurer of the Toyota Innova Car at 30% and this Court is of the view that the entire liability has to be fastened on the Maruti Swift Car.

20.With respect to the second issue, it was considered by the Hon'ble Apex Court in the following judgment of ***Ramkhiladi and another Vs. United India Insurance Co. Ltd., and another*** reported in ***2020 (2) SCC 550***:

*"5.4 An identical question came to be*

*considered by this Court in the case of Ningamma (supra). In that case, the deceased was driving a motorcycle which was borrowed from its real owner and met with an accident by dashing against a bullock cart i.e. without involving any other vehicle. The claim petition was filed under Section 163A of the Act by the legal representatives of the deceased against the real owner of the motorcycle which was being driven by the deceased. To that, this Court has observed and held that since the deceased has stepped into the shoes of the owner of the vehicle, Section 163A of the Act cannot apply wherein the owner of the vehicle himself is involved. Consequently, it was held that the legal representatives of the deceased could not have claimed the compensation under Section 163A of the Act. Therefore, as such, in the present case, the claimants could have even claimed the compensation and/or filed the claim petition under Section 163A of the Act against the driver, owner and insurance company of the offending vehicle i.e. motorcycle bearing registration No. RJ 29 2M 9223, being a third party with respect to the offending vehicle. However, no claim under Section*

*163A was filed against the driver, owner and/or insurance company of the motorcycle bearing registration No. RJ 29 2M 9223. It is an admitted position that the claim under Section 163A of the Act was only against the owner and the insurance company of the motorcycle bearing registration No. RJ 02 SA 7811 which was borrowed by the deceased from the opponent-owner Bhagwan Sahay. Therefore, applying the law laid down by this Court in the case of Ningamma (supra), and as the deceased has stepped into the shoes of the owner of the vehicle bearing registration No. RJ 02 SA 7811, as rightly held by the High Court, the claim petition under Section 163A of the Act against the owner and insurance company of the vehicle bearing registration No. RJ 02 SA 7811 shall not be maintainable.*

*5.5 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. In the present case, the parties are governed by the contract of insurance and under the contract of insurance the liability of the insurance company would be qua third party only. In the present case, as observed hereinabove, the deceased cannot be said to be a third party with respect to the insured vehicle bearing registration No. RJ 02 SA 7811. There cannot be any dispute that the liability of the insurance company would be as per the terms and conditions of the contract of insurance. As held by this Court in the case of Dhanraj (supra), an insurance policy covers the liability incurred by the insured in respect of death of or bodily injury to any person (including an owner of* *the goods or his authorized representative) carried in the vehicle or damage to any property of a third party caused by or arising out of the use of the vehicle. In the said decision, it is further held by this Court that Section 147 does not require an insurance company to assume risk for death or bodily injury to the owner of the vehicle.*

*5.6 In view of the above and for the reasons stated above, in the present case, as the claim under Section 163A of the Act was made only against the owner and insurance company of the vehicle which was being driven by the deceased himself as borrower of the vehicle from the owner of the vehicle and he would be in the shoes of the owner, the High Court has rightly observed and held that such a claim was not maintainable and the claimants ought to have joined and/or ought to have made the claim under Section 163A of the Act against the driver, owner and/or the insurance company of the offending vehicle i.e. RJ 29 2M 9223 being a third party to the said vehicle."*

*Therefore, as stated supra, the Hon'ble Apex Court has held that claim petition filed under Section*

*163-A of the Act by owner or borrower of vehicle is not maintainable as borrower steps into the shoes of the owner."*

21.Further, the Hon'ble Apex Court in the judgment of ***National Insurance Co. Ltd., Vs. Ashalata Bhowmik and others*** reported in ***(2018) 9 SCC 801***, held as follows:

> *"7. ......... The deceased was the victim of his own action of rash and negligent driving. A Claimant, in our view, cannot maintain a claim on the basis of his own fault or negligence and argue that even when he himself may have caused the accident on account of his own rash and negligent driving, he can nevertheless make the insurance company to pay for the same. Therefore, the respondents being the LRs of the deceased could not have maintained the claim petition filed under Section 166 of the Motor Vehicles Act."*

22.In view of the above, the finding in respect of fixing

30% liability on the appellants in C.M.A(MD)Nos.505 to 507 of 2021 is hereby set aside, as there was no contributory negligence from the side of Toyota Innova Car. The entire liability is fixed on the insurer of the Maruti Swift Car, namely the appellant/Royal Sundaram Alliance Insurance Company Limited in C.M.A(MD)No. 133 of 2021. Insofar as the quantum is concerned, this Court finds no infirmity or illegality in the award passed by the Tribunal.

23.Accordingly, the Judgment and Decree passed in M.C.O.P.Nos.713 of 2015, 786 of 2015 and 2148 of 2014 respectively on the file of the Motor Accident Claims Tribunal (VI Additional District Court), Madurai, are modified only in respect of liability and **C.MA(MD)Nos.505 to 507 of 2021 are allowed**. Since the entire liability is fixed on the Royal Sundaram Alliance Insurance Company Limited, the said Insurance Company is directed to deposit the entire award amount together with interest and costs as awarded by the Tribunal, less the amount already deposited, to the credit of the claim petitions, within a period of six weeks from the date of receipt of a copy of this Judgment. On such deposit, the major claimants in C.M.A(MD)Nos.505 to 507 of 2021 are permitted to withdraw their respective shares with proportionate interest and costs by filing formal permission petition before the Tribunal. The share of the minor claimant in C.MA(MD)No.506 of 2021 shall be deposited in a Nationalised Bank in a fixed deposit until he attains majority. The interest accruing on such deposit is permitted to be withdrawn by the first respondent in C.MA(MD)No.506 of 2021, once in three months directly from the Bank.

24.Further, the claimants in M.C.O.P.No.411 of 2017 are not entitled to any compensation, as they are the legal representatives of the driver of the Maruti Swift Car bearing Registration No.TN-59-AR-1721, who was the main cause for the accident. It has been clearly established that he had consumed alcohol and driven the Maruti Swift Car in a rash and negligent manner, entered the wrong lane, and dashed against the Toyota Innova Car, which was coming from the opposite side in its proper lane. Therefore, the driver of the Maruti Swift Car being the tortfeasor, and the accident having occurred solely due to his negligence, the entire liability has not been fastened on the insurer of the Maruti Swift Car. Consequently, the claimants in M.C.O.P.No.411 of 2017 are not entitled to any compensation.

25.Accordingly, the Judgment and Decree passed in M.C.O.P.No.411 of 2017 on the file of the Motor Accident Claims Tribunal (VI Additional District Judge), Madurai is dismissed and as such, the claimants are not entitled to any compensation and **C.M.A(MD)Nos.133 of 2021 and 231 of 2021 are allowed**. The Royal Sundaram Alliance Insurance Company Limited and the ICICI Lombard General Insurance Company Limited are entitled to refund of the amount deposited, if any in M.C.O.P.No.411 of

2017. Whatever amount deposited by the appellants in C.M.A(MD)No.133 of 2021 and C.M.A(MD)No.231 of 2021 shall be refunded to them on filing proper application before the Tribunal. No costs. Consequently, connected Miscellaneous Petitions are closed.

**[G.K.I.J.,] [R.P.J.,]**
**04.12.2025**

NCC :Yes/No
Index :Yes/No
Internet :Yes
ps

To

1.The Motor Accident Claims Tribunal,
(VI Additional District Judge),
Madurai.

2.The Record Keeper (Vernacular Records),
Madurai Bench of Madras High Court, Madurai.

**G.K. ILANTHIRAIYAN, J.**
**AND**
**R. POORNIMA, J.**

ps

**C.M.A(MD)Nos.133, 231, 505, 506 & 507 of 2021**

**04.12.2025**