



C.M.A(MD)No.650 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on : 25.06.2025

Pronounced on : 02.07.2025

CORAM:

**THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA
AND
THE HONOURABLE MS.JUSTICE R.POORNIMA**

**C.M.A.(MD)No.650 of 2019
and
C.M.P.(MD)No.7987 of 2019**

Shriram General Insurance Company Ltd.,
2nd Floor, 306, Aringar Anna Nagar,
L.L.G.Colony, Nagasundaram Complex,
Madurai – 625 020.

... Appellant/ 2nd Respondent

Vs.

1.S.Jeyalakshmi

2.Rajam

3.Manikandan

...Respondents 1 to 3 / Petitioners

4.Ramesh Kumar

...4th Respondent / 1st Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the
Motor Vehicles Act, 1988, to set aside the fair and decretal order dated



C.M.A(MD)No.650 of 2019

26.04.2017 made in M.C.O.P.No.5239 of 2013 on the file of Motor

Accident Claims Tribunal, Special District Court, Tiruchirappalli and
allow this Civil Miscellaneous Appeal.

For Appellant : Mr.D.Sivaraman

For Respondents : Mr.D.Senthil

for V.Malaiyendran – for R1 to R3

No Appearance – for R4

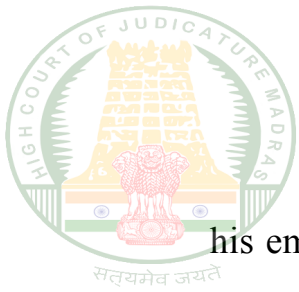
JUDGMENT

(Judgment of this Court was delivered by **R.POORNIMA, J.**)

The appellant / 2nd respondent / Insurance Company has filed this Civil Miscellaneous Appeal against the fair order and decreetal order dated 26.04.2017 passed in M.C.O.P.No.5239 of 2013 by the Motor Accident Claims Tribunal, Special District Court, Tiruchirappalli.

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

(a) On 28.07.2023 at about 07.00 hours the deceased was riding his moped bike bearing Registration No.TN 48 Q 9690 along with



C.M.A(MD)No.650 of 2019

his employee one Thiru.S.Kumaravel as a pillion rider from east to west on Tiruchirappali-Dindigul Road, keeping to the extreme left side of the road. At that time, a Car bearing Registration No.TN-45 AQ 4617 was found parked in front of them and all of a sudden, the driver of the said car, opened the door in a negligent manner without checking the right side on seeing that the deceased was immediately attempted to stop his moped bike and applied sudden brake, however the edge of the car door dashed against the deceased. Due to that, the deceased sustained grievous injuries all over his body including his head. He was taken to Trichy Government Hospital, however he succumbed to his injuries on the way.

(b) At the time of the accident, the deceased was aged about 49 years and was doing hotel business under the name and style of M/s.Annai Velankanni Mess at K.Kallikudi and earned a sum of Rs.30,000/- per month. Due to his sudden death, the 1st petitioner/wife has lost her conjugal happiness and the 2nd petitioner who is the daughter and 3rd petitioner who is the son of the deceased lost their love and affection, as well as the income of the deceased. The deceased was the only breadwinner of the family. They have no other source of income.



C.M.A(MD)No.650 of 2019

The accident occurred due to the negligent act of the first respondent.

WEB COPY The 1st respondent who is the owner of the vehicle is liable to pay the compensation. At the time of the accident, the 1st respondent's vehicle was insured with the 2nd respondent, and the insurance policy was in force. Hence, both the respondents are jointly and severally liable to pay compensation to the petitioners. The petitioners sought Rs.40,00,000/- as compensation.

3. Brief averments contained in the counter filed by the first respondent are as follows :

The accident had happened only due to the negligence on the part of the deceased alone. The deceased without obeying the traffic rules hit against the 1st respondent's car door and invited the accident. The insurance was in force on the date of the accident, hence if any award is passed, the 2nd respondent is liable to indemnify in terms of the contract of the insurance. He denied the age, income, occupation of the deceased. The compensation claimed by the petitioners is highly excessive and exorbitant and without any basis and prayed to dismiss the claim petition.



C.M.A(MD)No.650 of 2019

4. Brief averments contained in the counter filed by the

second respondent are as follows :

The respondent denied the time and manner of the accident as set out in the petition. The accident happened purely due to the negligent driving of the deceased, hence this respondent is not liable to pay any compensation. The driver of the 1st respondent did not have a valid driving license at the time of the accident, so there is a violation of the policy conditions of this respondent. During the accident, there was no policy coverage for the 1st respondent's car with this respondent. So this respondent is not liable to pay any compensation to the petitioners. This respondent denied the age, occupation and income of the deceased. The compensation claimed by the petitioners is highly excessive and exorbitant

5. During the trial, on the side of the petitioners, P.W.1 and P.W.2 were examined and Ex.P1 to Ex.P12 were marked. On the side of the respondents, RW1 and R.W.2 were examined and Ex.R1 to Ex.R6 and Ex.X1 and Ex.X2 were marked.

6. Based on the records and evidence, the trial Judge



C.M.A(MD)No.650 of 2019

awarded compensation of Rs.19,85,000/- under the following heads :

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Loss of Income	Rs.15,60,000/-
Loss of consortium	Rs.1,00,000/-
Loss of Love and affection for wife and two children	Rs.3,00,000/-
Funeral and transportation expenses	Rs.25,000/-
Total	Rs.19,85,000/-

The learned Judge directed the appellant/2nd respondent-Insurance Company to pay the entire award amount within a period of two months and recover the same from the 4th respondent/owner of the vehicle.

6. Aggrieved by the said order, the present Civil Miscellaneous Appeal has been filed by the Insurance Company who is the 2nd respondent before the Tribunal against the negligence and quantum with the following among other grounds :

(i) That the Tribunal failed to note that the accident had not occurred due to the negligence of the driver of the car bearing Registration No.TN-45-AQ-4617 insured with the Appellant, therefore, the Appellant cannot be mulcted with liability for payment of compensation.



C.M.A(MD)No.650 of 2019

(ii) That the Tribunal failed to note that a cheque issued by

the insured/owner of the vehicle towards insurance premium was dishonoured due to which the policy of insurance was cancelled. The same was duly intimated to the Regional Transport Authority as well as the insured by post and therefore, the Tribunal ought to have exonerated the Appellant from the liability by holding that there was no valid insurance policy covering the vehicle at the time of accident.

(iii) That the Tribunal failed to note that the insured himself was a party and available before the Tribunal in the claim proceedings and therefore, the Tribunal ought not to have adopted hypertechnical approach holding that the pin code number was wrongly mentioned in the postal receipt.

(iv) That the Tribunal failed to note that the Appellant has raised the plea of dishonour of cheque, cancellation of policy and intimation to the Transport officials as well as the insured, in the counter statement filed before the Tribunal, but the insured has remained *ex-parte* and failed to dispute the averments contained in the counter statement filed by the Appellant.

(v) When the concerned party i.e., the owner/insured himself has not pleaded that he had no knowledge about the cancellation of the



C.M.A(MD)No.650 of 2019

policy, it goes without saying that he had admitted the knowledge of the same, hence the Tribunal ought to have held that the vehicle was not covered by the insurance policy as on the date of the accident.

(vi) That the Tribunal erred in fixing the income of the deceased at Rs.15,000/- per month in the absence of any substantial oral or documentary evidence.

(vii) That the award of Rs.3,00,000/- towards loss of love and affection for the wife of the deceased is liable to be set aside as Rs.1,00,000/- was granted to her towards loss of consortium. If both awards are granted, it amounts to double compensation.

(viii) As claimants 2 and 3 are major, the award of Rs.1,00,000/- towards loss of love and affection is excessive and liable to be reduced.

(ix) That the Tribunal is not justified in awarding the compensation of Rs.19,85,000/-, which is highly excessive, inordinate and improper.

Hence, prayed to set aside the judgment of the trial Court and allow the Civil Miscellaneous Appeal.

7. The learned counsel for the respondents 1 to 3 /claimants argued that the first respondent did not file any complaint alleging negligence on the part of the deceased. Moreover, no witness was



C.M.A(MD)No.650 of 2019

WEB COPY

examined to prove that the deceased alone was driving the vehicle in a rash and negligent manner.

8. On the other hand, the claimants filed Ex.P1, FIR lodged against the first respondent. One Kumaravel, an eyewitness to the occurrence, who was examined as P.W.2, clearly stated that the driver of Maruti Omni is responsible for the accident. The Tribunal, therefore fixed the liability on the part of the first respondent.

9. He Further argued that in para nine of the judgement the Tribunal held that in the address of the 1st respondent, wrong pin code number was mentioned in the letter issued by the insurance company for cancellation of the policy and failed to produce the acknowledgement card, to prove that the letter issued by the insurance company was received by the owner of the vehicle. Therefore, the Tribunal directed the insurance company to pay the compensation amount and recover the same from the owner of the vehicle.

10. Heard the learned counsel on either side and perused the material available on records.



C.M.A(MD)No.650 of 2019

11. Now, this court has to decide the following points for

consideration :

(1) whether the accident occurred due to the rash and negligent act of the 4th respondent/1st respondent ?

(2) Whether at the time of accident, no valid insurance policy was in existence for the 1st respondent's vehicle ?

12. Point No.1:

Ex.P1 is the copy of FIR in crime No.200 of 2013 dated 28.07.2013 registered by the South Traffic Police, Trichy, for the offence under Sections 279, 337 and 304(A) of IPC against the driver, namely, Mr.Ramesh Kumar / 1st respondent, of the vehicle bearing Registration No.TN 45 AQ 4617. Ex.P1 / FIR was lodged by one Mr.Kumaravel, who was travelling with the deceased as pillion Rider in the TVS Excel super moped bearing Registration No.TN 48 Q 9690. In the said complaint, he clearly stated that on the date of accident, i.e., 28.07.2013, he along with his owner P.Shankara Subbu (deceased) went to the fish market, while they were returning at about 7.00 a.m., on the Trichy-Dindigul Road, near Kannan Chicken Stall, a Maruti car bearing Registration No.TN 45



C.M.A(MD)No.650 of 2019

AQ 4617, was parked in front of their vehicle. The driver of the vehicle who was seated in the front suddenly opened the door without checking for vehicles approaching from behind. As a result, the two wheeler driven by Shankar Subbu collided with the edge of the car door. Shankara Subbu sustained grievous injury on his head and the complainant also sustained injuries. Both fell down on the road. Sankara Subbu, was taken to the hospital at about 7.15 a.m., but declared as he was brought dead.

13. The complaint was lodged without any delay by the eyewitness against the driver of the car who is the first respondent before the Tribunal. Ex.P3 is the driving license of the deceased, establishing that he was holding a valid license. Ex.P4 registration certificate established that the deceased was the owner of the vehicle.

14. If the accident had occurred due to the rash and negligent driving of the deceased, the first respondent would have lodged complaint against him. But no such complaint was lodged by the first respondent. Further, no document was marked to establish that the accident occurred due to the negligence of the deceased.



C.M.A(MD)No.650 of 2019

15. On the other hand, the complaint was originally lodged

by P.W.2, who was the pillion rider of the TVS moped bearing registration No.TN 48 Q 9690. During the trial, he was examined as P.W.2, and he had clearly deposed that the first respondent suddenly opened the door of the car causing the deceased who did not anticipate, to collide with the edge of the car door, as a result of which he sustained injury and subsequently died. Ex.X2, report issued by the Motor Vehicle Inspector also supported the case of the petitioners by stating that the first respondent's vehicle front door damaged on its right side. Ex.P.2 Postmortem certificate corroborated the evidence of P.W.2. Therefore, the Tribunal rightly held that the accident occurred due to the negligent act of the first respondent. We do not find any reason to interfere with the findings of the Tribunal. The point No.1 is answered accordingly.

16. Point No.2:

The second ground urged in the Civil Miscellaneous Appeal is that the insurance policy was not in force, as the cheque issued by the owner of the vehicle towards renewal of the insurance premium was dishonoured on 30.05.2013. Consequently, the insurance policy was cancelled and the cancellation was intimated to the first respondent and



C.M.A(MD)No.650 of 2019

to the Regional Transport Authority by registered post. Therefore, the

insurance company is not liable to pay the compensation. The Tribunal ought to have held that there was no valid insurance policy covering the vehicle at the time of accident. He further stated that in order to prove the same, the respondent examined the Manager of the Insurance Company as R.W.2, through him the returned cheque, bank memo, letter issued to the insured and the Regional Transport Officer along with postal receipts were marked as Ex.R1 to Ex.R6. During trial, he stated that the cheque issued by the first respondent was returned as insufficient funds and therefore, the insurance policy was not in force at the time of accident as it had been cancelled.

17. The learned counsel for the appellant to support his contention by relying upon the judgment in ***New India Assurance Company Ltd., Vs. Tara Devi and Others*** reported in **2016 2 TNMAC 520 SC**, wherein the Hon'ble Apex Court at paragraph Nos.6 to 8 has held as follows :

“6. Learned Counsel appearing for the Appellant/Insurance Company submits that on the date of the alleged incident, the vehicle in question did not have the valid Insurance Policy. To buttress his



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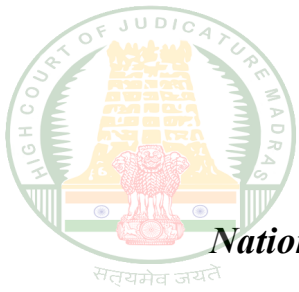
C.M.A(MD)No.650 of 2019

argument, the Learned Counsel brings to our notice the date of the Policy lapsed, the date of intimation of dishonour of the Cheque and the Cancellation Letter written to the insured/Owner. But this aspect of the matter has not been taken note either by the Tribunal or the High Court while passing the impugned Judgment(s) and Order(s).

7. We have carefully perused the documents furnished by learned counsel for the Appellant-Insurance Company. From these documents, it is clear that the alleged accident took place on 09.05.2001 and on the said date the vehicle in question did not have the valid Insurance Policy. In that view of the matter, we are of the opinion that, the Tribunal as well as the High Court are not justified in granting compensation to the respondents/claimants.

8. In view of the above, we allow this Appeal and set aside the Orders passed by the Tribunal and confirmed by the High Court. The Appellant-Insurance Company is not liable to pay any Compensation as far as the claim towards the alleged accident is concerned. The Compensation amount deposited, if any, shall be refunded to the Appellant-Insurance Company forthwith. No Costs."

18. In *Deddappa and Others Vs. The Branch Manager,*



C.M.A(MD)No.650 of 2019

National Insurance Company Ltd., reported in **(2008) 2 SCC 595**, the

Hon'ble Supreme Court has held as follows :

“24. We are not oblivious of the distinction between the statutory liability of the Insurance Company vis-`a-vis a third party in the context of Sections 147 and 149 of the Act and its liabilities in other cases. But the same liabilities arising under a contract of insurance would have to be met if the contract is valid. If the contract of insurance has been cancelled and all concerned have been intimated thereabout, we are of the opinion, the insurance company would not be liable to satisfy the claim.”

19. On careful perusal of the records, we find that Ex.R1 is the copy of registered post alleged to be issued on 30.05.2013 to the Regional Transport Authority as well as the first respondent, informing them that the cheque issued by the first respondent was dishonoured by the bank due to insufficient fund, and therefore, the policy stood cancelled. The postal receipt is also affixed with the letter sent to Regional Transport Officer as well as the first respondent. Though the first respondent failed to appear before the Tribunal and did not dispute the cancellation of policy, once the insurance company claimed that the

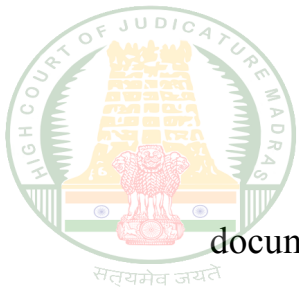


C.M.A(MD)No.650 of 2019

WEB COPY

policy issued to the insured had been cancelled, the burden of proof is upon the part of the insurance company to prove that the intimation regarding the cancellation of policy was duly communicated to the insured. The letter produced by the appellant is only a xerox copy and the postal receipt annexed to it, does not bear the date of issue. The acknowledgement card alleging that the notice is served upon the first respondent or the Regional Transport Officer had not been produced. Furthermore, the cheque said to have been issued for renewal not signed by the insured, but it was signed by one Sathish. The insurance company failed to establish that the cancellation intimation was duly served upon the insured and he acknowledged the same. Furthermore, soon after the accident, the first respondent's vehicle was inspected by the Motor Vehicle Inspector, Trichy, who submitted certificate dated 30.07.2013, stating that the insurance policy was valid from 22.05.2013 to 21.05.2014. If the cancellation intimation has been issued to the Regional Transport Officer, he would not have issued such a certificate by stating that the insurance policy was in force at the time of accident.

20. As per Section 27 of the General Clauses Act, 1897, it is clear that the service shall be deemed to be effected, with regard to any



C.M.A(MD)No.650 of 2019

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document to be served by post, as provided by a Central Act or Regulation, by properly addressing, prepaying and posting by registered post, a letter containing the document. However, the documents produced by the appellant/insurance company before the Tribunal are all xerox copies and the postal receipt does not contain the date of despatch and the acknowledgement card also not placed before the Tribunal. Therefore, the necessary ingredients, as stated above, had not been complied with.

21. The learned counsel also relied upon the judgement in ***M/s.Jay Balaji Jyothi Steels Ltd., Vs. Customs, Excise & Service Tax***, reported in **2015(37) STC 673 (Ori)**, where in the Hon'ble Division Bench of Orissa High Court has held as follows :

“6..... Section 28 of the Indian Post Office Act, 1898 which is quoted hereunder:

*"Section 28. Registration of Postal articles.-
The sender of a postal article may, subject to the other provisions of this Act, have the article registered at the post office at which it is posted, and require a receipt therefore; and the [Central government] may, by notification in the [Official Gazette], direct that, in addition to any postage chargeable under this Act, such further fee as may*



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C.M.A(MD)No.650 of 2019

be fixed by the notification shall be paid on account of the registration of postal articles."

It would be relevant also to take note of the fact that an amendment was brought into the Indian Post Office Rules, 1933, by a Gazette Notification issued by the Ministry of Communications Department of Posts), Government of India dated 24th July, 1986 introducing "Inland, Speed Post Service" by inserting Rules 66-B thereto which is quoted hereunder:

"Rule 66-B. INLAND SPEED POST SERVICE.- Inland Postal articles may be booked after obtaining receipts therefor, at the places specified in column(1) of the Schedule below and the post offices specified in the corresponding entries in column (2) of the said Schedule for delivery under the Inland Speed Post Service subject to the following conditions namely:

(1) Inland Speed Post Service shall be available in respect of all classes of mails, which can be sent by the registered service:

xxx xxx xxx xxx xxx xxx xxx"

In view of Section 28 of the Indian Post Office Act, 1898 read with Rule 66-B of Indian Post Office Rules, 1933 (as inserted vide Gazette Notification dated 24th July, 1986), any postal article i.e. registered at the post office from which it is posted, and a receipt issued in respect of



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C.M.A(MD)No.650 of 2019

such article is to be treated as "registered post". Both in the case of "registered post" as well as "speed post", the articles when delivered to the post offices, receipts thereof are required to be issued and consequently, both "speed post" and "registered post" satisfy the requirement of Section 28 of the Indian Post Office Act, 1898. The only difference between registered post and speed post if at all is the charges payable are normally higher for "speed post" as the name suggests the delivery of such articles at an early date."

The appellant/insurance company failed to produce the postal receipts with date.

22. Since the appellant/insurance company failed to establish that the insurance policy was cancelled, and that such cancellation was properly informed to the insured, the insurance company remains liable to pay the compensation and with liberty to recover the same from the first respondent/owner of the vehicle. The Tribunal rightly held that the insurance company is liable to pay the amount and to recover the same from the policyholder. We do not find any infirmity in the order of the Tribunal.



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23. The learned counsel for the appellant argued that the income of the deceased was fixed at Rs.15,000/- without any substantial proof or documentary evidence. However, the respondents 1 to 3/claimants produced Ex.P6, Ex.P10 to Ex.P12 to establish that the deceased earned a substantial income during his life time. These documents indicated that he had regular household income of Rs.15,000/- which is reasonable.

24. As far as compensation towards loss of love and affection is concerned, the Tribunal awarded a sum of Rs.3,00,000/- to the wife and children. Since the judgment was pronounced prior to the Hon'ble Apex Court decision in the case of *National Insurance Ltd., Vs. Pranay Sethi [2017 (16) SCC 680]*, the Tribunal has awarded only a moderate compensation, which needs no interference. There is no strong reason found in the Civil Miscellaneous Appeal to set aside the order of the Tribunal. Therefore, we do not find any merit in the Civil Miscellaneous Appeal, and hence, the Civil Miscellaneous Appeal is liable to be dismissed.



C.M.A(MD)No.650 of 2019

25. In the result, the Civil Miscellaneous Appeal is

dismissed. No costs. Consequently, connected miscellaneous petition is closed.

(A.D.J.C., J.) & (R.P., J.)
02.07.2025

Index : Yes / No
Internet : Yes / No
NCC : Yes / No
RM

To

1.The Special District Court,
Motor Accident Claims Tribunal,
Tiruchirappalli

Copy to

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



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C.M.A(MD)No.650 of 2019

A.D.JAGADISH CHANDIRA, J.
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Judgment in
C.M.A.(MD)No.650 of 2019

02.07.2025