

CMA NO.3348 OF 2021**IN THE HIGH COURT OF JUDICATURE AT MADRAS****DATED : 07.01.2026**

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CORAM:

**THE HONOURABLE MR. JUSTICE N.SATHISH KUMAR
AND
THE HONOURABLE MR. JUSTICE R.SAKTHIVEL**

CMA NO.3348 OF 2021**AND****CMP NOS.19083 OF 2021 AND 15270 OF 2022**

New India Assurance Company Ltd.,
91/106, 1st Floor, Big Street,
Tiruvannamalai.

... Appellant /
2nd Respondent

Versus

1.Sudha

2.Minor Manisha

3.Minor Ramya

4.Minor Hariharan

5.Lingammal

... Respondents 1 to 5 /
Petitioners 1 to 5

Note: Minor Respondents 2 to
4 are represented by their
Next Friend / Mother - Sudha,
the 1st respondent herein

6.J.Ravi

... 6th Respondent /
1st Respondent

7.Venkatesan

... 7th Respondent /
3rd Respondent



CMA NO.3348 OF 2021

WEB COPY

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, praying to set aside the Fair and Decretal Order dated October 21, 2019 passed in M.C.O.P. No.439 of 2013 on the file of the Motor Accident Claims Tribunal (Special Sub Court) Tirupattur and to dismiss the claim for compensation.

For Appellant : Mr.S.Dhakshnamoorthy
For Respondents 1 to 4 : Mr.M.Sivakumar
For Respondents 5 to 7 : Unserved

J U D G M E N T

(Judgment of the Court was made by R.Sakthivel, J.)

Feeling aggrieved by the Fair and Decretal Order dated October 21, 2019 passed by 'the Motor Accident Claims Tribunal (Special Sub Court), Tirupattur' ['Tribunal' for short] in M.C.O.P. No.439 of 2013, the second respondent in the said Original Petition namely New India Assurance Company Ltd., has preferred this Civil Miscellaneous Appeal.

2. For the sake of convenience, hereinafter, the parties will be denoted as per their array before the Tribunal.



PETITIONER'S CASE

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3. The first petitioner is the wife, the second to fourth petitioners are the minor children and the fifth petitioner is the mother of the deceased - Govindaraj.

3.1. The accident occurred on February 11, 2012. At the time of accident, the deceased was an Auto driver employed under the first respondent and he was earning more than Rs.10,000/- per month. On the fateful day, at about 01.45 p.m., the deceased was driving the Autorickshaw bearing Registration No.TN-23-BY-1969 owned by the first respondent in the course of his employment, on Tirupattur - Alangayam main road towards Alangayam. While nearing Kalarur bus stop, the deceased met with an accident and the Autorickshaw capsized.

3.2. In the accident, the deceased sustained grievous injuries and passed away on the spot. The deceased was taken to Government Hospital, Tirupattur for postmortem. With regard to the accident, a First Information Report (F.I.R.) for offences under Sections 279 and 304(A) of the Indian Penal Code, 1860 was registered by Tirupattur (Rural) Police in Crime No.87 of 2012 and the same is pending for investigation. Since the accident took place in the course of employment under the first respondent



CMA NO.3348 OF 2021

and since the Autorickshaw was insured with the second respondent, the respondents 1 and 2 are liable to pay compensation to the petitioners.

Accordingly, the petitioners filed the claim petition claiming a sum of Rs.10,00,000/- as compensation.

FIRST RESPONDENT'S CASE

4. The first respondent filed counter denying all the averments stated in the Original Petition. According to the first respondent, the accident happened solely due to the rash and negligent act of the deceased. On July 2, 2009 itself, the Autorickshaw driven by the deceased and involved in the accident was sold off to G.Venkatesan, the third respondent by duly signing in the delivery note, transfer form and other documents. But the third respondent failed to effect name transfer. Further, in turn, the third respondent had sold the Autorickshaw to the deceased. This first respondent has never even seen the deceased. The first respondent came to know about the accident only on receipt of notice from the Court. The Autorickshaw is insured with the second respondent. Stating so, the first respondent sought to dismiss the Original Petition.



SECOND RESPONDENT'S CASE

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5. The second respondent filed counter denying the allegations made by the petitioners in the Original Petition. The second respondent contended that the petitioners have to prove the income of the deceased, his contribution to the family and dependency of the petitioners. The deceased - Govindaraj drove the Auto bearing Registration No.TN23-BY-1969 in a rash and negligent manner and only due to the same, the Auto capsized. The contents of the F.I.R. reveal that in order to avoid collision with an oncoming Car, the deceased turned his Autorickshaw to the left and consequently the Autorickshaw capsized. No such event took place, since even the registration number of the Car is not mentioned. The deceased did not possess a valid badge to drive a passenger vehicle. Stating so, the second respondent sought to dismiss the Original Petition.

THIRD RESPONDENT'S CASE

6. The third respondent remained absent before the Tribunal and was set *ex-parte*.

TRIBUNAL

7. At trial, on the side of the petitioners, the wife of the deceased



Govindaraj, namely Sudha was examined as P.W.1 and Ex-P.1 to Ex-P.8 were marked. During cross examination of P.W.1, Ex-R.3 - Sale Receipt was marked. Venkatesan, the third respondent, said to be an eyewitness to the accident was examined as P.W.2 and during his cross-examination Ex-R.2 - Letter executed by third respondent in favour of first respondent was marked. On the side of the respondents, G.Sampath - Assistant attached to second respondent's office was examined as R.W.1; an Assistant attached to Regional Transport Office, Vaniyambadi was examined as R.W.2 and Ex-R.1 was marked; and first respondent was examined as R.W.3 during whose cross-examination Ex-P.9 was marked.

8. The Tribunal, upon consideration of the oral and documentary evidence available on record, observed that the petitioners by examining P.W.2 - Eyewitness has proved that the accident occurred when the deceased attempted to turn left to avoid collision with an oncoming Car. The first respondent is the registered owner of the Autorickshaw. The deceased was the first respondent's driver at the time of accident. The second respondent is its insurer. Ex-P.3 - Policy covers paid driver and conductor. As regards the contention that the deceased did not possess a badge to drive passenger vehicle, relying on *Mukund Devangan -vs- Oriental Insurance Company*, reported in (2017) 14 SCC 663, the



CMA NO.3348 OF 2021

Tribunal held that licence to drive Light Motor Vehicles is sufficient to drive Light Motor Passenger Vehicles. Accordingly, the Tribunal held that the second respondent–Insurance Company is liable to pay compensation to the petitioners and accordingly awarded a sum of Rs.20,00,150/- (Rupees Twenty Lakhs One Hundred and Fifty only) as compensation, as tabulated hereunder:

Sl.No.	Head	Amount
1	For Loss of Dependency	Rs.13,77,000/-
2	For Future Prospects	Rs.5,50,800/-
3	For Parental Consortium	Rs.40,000/-
4	For Funeral Expenses	Rs.15,000/-
5	For Loss of Estate	Rs.15,000/-
6	Transportation	Rs.2,350/-
	Total	Rs.20,00,150/-

9. Challenging the Award, the second respondent / Insurance Company has preferred this Civil Miscellaneous Appeal.

ARGUMENTS:

10. Mr.S.Dhakshnamoorthy, learned Counsel for the appellant / second respondent/ insurance company submits that the deceased is a tort-feasor. The accident occurred due to his rash and negligence. Further, the



deceased was the owner of the Auto bearing Registration No.TN-23-

BY-1969. P.W.1, who is the wife of the deceased, clearly deposed that the

deceased owned the said vehicle. Therefore, as per the Insurance Policy

(Ex-P.3), the deceased cannot be considered as a third party; rather, he can

only be considered as insured under Ex-P.3 - Policy which is for any claim

against third parties. Since the deceased being a owner cum tort-feasor, the

insurer is not liable to pay any compensation under a third-party liability

policy. In this regard, he relies on ***Ram Khiladi -vs- United India***

Insurance Company Limited, reported in (2020) 2 SCC 550. He further

submits that the policy in question was issued in respect of the vehicle

bearing Registration No.TN-23-BY-1969 in the name of the first

respondent - Ravi. He further submits that even though the Registration

Certificate is in the name of the first respondent, in view of the evidence of

P.W.1, the Insurance Company cannot be held liable to pay any

compensation. Even if the petitioners are able to establish an employer-

employee relationship between the deceased and the first respondent, the

proper remedy available to the petitioners would be to seek compensation

under 'the Employees' Compensation Act, 1923' ['E.C. Act' for brevity]

and not before the Tribunal under the Motor Vehicles Act, 1988.

Accordingly, the learned Counsel prays to allow the Civil Miscellaneous

Appeal.



11. *Per contra*, Mr.M.Sivakumar, learned Counsel for respondents 1 to 4 / Petitioners contends that as per Ex-P.9 – Registration Certificate, the first respondent is the registered owner of the vehicle. The deceased was employed as a driver under the first respondent. It is not in dispute that, on the date of the accident, the insurance was in force. Bare reading of Ex-P.3 would show that the insurance policy covers the driver. Therefore, the Insurance Company is liable to pay compensation to the petitioners. The learned Counsel further submits that the Tribunal, after appreciating the facts and circumstances of the case, rightly awarded just and proper compensation and there is no reason for this Court to interfere with the same. Accordingly, the learned Counsel prays to dismiss the Civil Miscellaneous Appeal.

DISCUSSION:

12. This Court has considered the submissions made on either side and perused the materials available on record. The points that arise for consideration in this Civil Miscellaneous Appeal are as follow:

- (i)** Whether the deceased was the owner of the auto bearing Registration No.TN-23-BY-1969 ?



(ii) Whether the alleged employer-employee relationship between the first respondent and the deceased is proved ?

(iii) Whether the petitioners are entitled to compensation under the Motor Vehicles Act, 1988 ?

Point No.(i)

13. This Court has perused the Registration Certificate (Ex-P.9). It is evident from the same that the first respondent - J.Ravi, is the registered owner of the Autorickshaw. As per Section 2(30) of the Motor Vehicles Act, 1988, 'owner' means a person in whose name a motor vehicle stands registered. As the Autorickshaw is registered in the name of first respondent, only he can be recognised as its owner.

14. The first respondent in his written statement has claimed that he sold off the Autorickshaw on July 2, 2009 itself to the third respondent and that the third respondent failed to effect name transfer. The first respondent goes on to contend that he cannot be termed as the 'owner'. First of all, the said averment is not valid in view of Section 2 (30) of the Motor Vehicles Act, 1988. Even while assuming otherwise, the documentary evidence available on record contradicts the claims of the first respondent regarding the sale of the Autorickshaw. The accident occurred on February 11, 2012.



Ex-P.3 - Insurance Policy valid for the period between March 4, 2011 and March 3, 2012 stands in the name of first respondent, and Ex-P.9 - Registration Certificate shows that the Autorickshaw's Fitness Certificate was renewed on April 25, 2011. While insurance in some cases may be obtained by a person other than the registered owner, obtaining fitness certificate without the involvement of the registered owner is not possible. This belies the case of the first respondent. For the same reason, this Court is of the view that Ex-R.3 - Sale Receipt and the evidence of P.W.2 with regard to sale of the Autorickshaw are nothing but an afterthought.

15. It is true that P.W.1, who is the wife of the deceased, has deposed that her husband / deceased is the owner of the Autorickshaw. Her oral evidence pales into insignificance in view of Section 2 (30) of the Motor Vehicles Act, 1988 when the first respondent is the registered owner as per Ex-P.9. Further, given her background and given the fact that she was a housewife, it is probable that she was not involved in the affairs of her husband's employment. There is a possibility that she was under a mistaken impression that her husband was the owner of the Autorickshaw. Hence, her deposition that the deceased is the owner of the Autorickshaw,



CMA NO.3348 OF 2021

in the facts and circumstances of this case, cannot be relied upon in the absence of corroboratory evidence, especially when the Registration Certificate in Ex-P.9 states otherwise.

16. Accordingly, the contention of the Insurance Company that the deceased was the owner of the vehicle does not hold merit and is hereby rejected. **Point No.(i) is answered accordingly.**

Point No.(ii)

17. In view of the finding under Point No.(i) above, it is clear that the deceased was driving the Autorickshaw owned by first respondent at the time of accident. In Ex-P.1 - F.I.R., which is the earliest statement, it has been stated that the deceased was earning a living by driving Autorickshaw. Coupling these two facts together, it could be reasonably inferred that the deceased was an employee under the first respondent. There is no sufficient evidence available on record to suggest the contrary. It is no one's case that the deceased hired the Autorickshaw on rent from the first respondent. In these circumstances, this Court is of the view that employer - employee relationship is to be inferred. **Point No.(ii) is answered accordingly.**



Point No.(iii)

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18. Ex-P.1 - F.I.R. *inter alia* states that on the date of accident the deceased was driving the Autorickshaw at a slow speed, at that time, a Car was speeding from the opposite direction, in order to avert collision, the deceased turned the Autorickshaw left and due to bumpy road conditions, the Autorickshaw capsized. From what is stated in the F.I.R., negligence *prima facie* appears to be on the said Car. In that case, the F.I.R. ought to have been registered against that said Car. But without any investigation, the F.I.R. has been registered against the deceased. There is not even an *iota* of information available on record about the said Car. The petitioners did not claim any compensation from the owner and the insurer of the said Car; they are not parties to the Original Petition. On the other hand, the Original Petition has been filed against the owner and insurer of the Autorickshaw. This conduct of the petitioners creates serious doubts in their version of accident involving a Car as stated in her written complaint which culminated into Ex-P.1 - F.I.R. and makes it unreliable.

19. At the same time, the fact that the accident occurred while the deceased was driving the Autorickshaw is not in dispute. In other words, while the manner of accident as alleged by the petitioners is not established, the factum of accident is proved. As stated above, the first



respondent is the owner of the Autorickshaw. The injuries shown in Ex-P.2

- Post-mortem Report coupled with Ex-P.5 - Motor Vehicle Inspection Report [M.V.I. Report] show that the deceased died due to the injuries sustained in the accident that occurred while he was driving the Autorickshaw which is owned by the first respondent. As stated under Point No.(ii), there exist an employer-employee relationship between the first respondent and the deceased. Hence this Court is of the view that the deceased died during the course of employment under the first respondent.

20. Further, it is true that the deceased did not possess a badge for driving Light Motor Passenger Vehicles. Ex-P.4 - Driving Licence of the deceased is valid only for Light Motor Vehicles (LMVs) and not for Passenger LMVs. The Tribunal placed reliance on ***Mukund Devangan's Case*** [cited *supra*] to hold that licence to drive LMVs i.e., any vehicle having gross weight of less than 7500 kgs, is sufficient to drive Passenger LMVs. As per Ex-P.9- Registration Certificate of the Autorickshaw driven by the deceased, it falls under the category of LMVs. Hence, the Tribunal rightly relied on ***Mukund Devangan's Case*** which was subsequently confirmed by a Five Judge Constitutional Bench of Hon'ble Supreme Court in ***M/s.Bajaj Alliance General Insurance Company Limited -vs- Rambha Devi***, reported in (2025) 3 SCC 95 and held so.



21. Given the facts and circumstances of the case, the accident can only be considered as a 'self-fall' and the remedy available to petitioners is to claim compensation under E.C.Act and not under the Motor Vehicles Act, 1988. The petitioners ought to have applied for compensation before the Commissioner under E.C.Act.

22. Ordinarily, this Court would have relegated the petitioners to the appropriate forum under E.C.Act. However, since the employer - employee relationship and the factum of accident in the course of employment stand established, since Ex-P.-3 - Insurance Policy covers paid driver and conductor, with a view to avoid multiplicity of proceedings and in the interest of justice, this Court is inclined to determine and award compensation in accordance with Section 4 of E.C. Act, without relegating the petitioners to the appropriate forum. Such an approach is not unprecedented. In the *Oriental Insurance Company Limited -vs- Kaliya Pillai*, reported in *2002 (4) CTC 469*, son of the petitioners therein fell down from the tractor he was driving and passed away. The petitioners therein claimed compensation for the same under the Motor Vehicles Act, 1988. The Tribunal passed an Award in favour of the petitioners. An appeal



came to be filed over the same before a Division Bench of this Court by the insurance company contending that the son of the petitioners therein is a tort-feasor and not a third party and hence, he is not entitled to any compensation. This Court found that the petitioners are not entitled to claim compensation under the Motor Vehicles Act, 1988, but as there was employer-employee relationship, instead of directing the claimants to approach the appropriate authority under E.C.Act, proceeded to determine compensation under the said Act by itself.

23. To determine compensation under Section 4 of E.C.Act, first step is to check the employer-employee relationship, next step is to ascertain whether the accident occurred in the course of employment, the third step is to determine the monthly income of the deceased and the fourth step is to determine the age of the deceased. In this case, as stated above, there is employer-employee relationship and the deceased passed away during the course of employment. As regards monthly income, though the petitioners pleaded that the deceased earned Rs.20,000/- per month, no evidence was let in to substantiate the same. Hence, this Court is inclined to take the monthly wage fixed under Section 4. Vide the Notification issued under Section 4 (1B) of E.C.Act in S.O.No.1258 (E) dated May 31, 2010, the Central Government fixed monthly wages for the



relevant period at Rs.8,000/-. Coming to the age of the deceased, as per

Ex-P.2 - Post-mortem Report, his age at the time of accident is 29 years.

But in Ex-P.4 - Driving Licence it has been stated that the deceased was born on June 26, 1971. In other words, as per Ex-P.4, the age of the deceased at the time of accident is 40 years. This Court takes the age stated in Ex-P.4, which is the best available source. Considering Rs.8,000/- as the monthly income of the deceased, if calculated as per Section 4 of E.C.Act, the compensation payable to the deceased would be Rs.7,36,680/- $[(Rs.8,000/- \times \frac{1}{2} \times 184.17)]$. Further, a deceased employee is entitled to Rs.5,000/- towards funeral expenses as per sub-section 4 of Section 4 of E.C.Act. Thus, the petitioners are entitled to a total compensation of Rs.7,41,680/-. Furthermore, Section 4-A (3) (a) of E.C.Act provides for a fixed interest of 12% per annum. **Point No.(iii) is answered accordingly.**

24. No quarrel with the legal proposition advanced in ***Ram Khiladi's Case***, but it is distinguishable from the instant case. Here the deceased is not the owner as stated *supra*, there exist employer-employee relationship and Ex-P.3 - Insurance Policy covers driver as well. Hence, ***Ram Khiladi's Case*** is not applicable.



CONCLUSION:

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25. In the result, the Civil Miscellaneous Appeal is partly allowed. The Fair and Decretal Order dated October 21, 2019 passed by the Tribunal is modified as hereunder:

25.1. The insurance company is directed to deposit the compensation of Rs.7,41,680/- [Rupees Seven Lakh Forty One Thousand Six Hundred and Eighty only] now determined by this Court along with interest at the rate of 12% per annum from 30 days post the date of accident (date of accident is February 11, 2012) till the date of deposit, to the credit of M.C.O.P. No.439 of 2013 on the file of the Motor Accident Claims Tribunal (Special Sub Court), Tirupattur, less the amount if any already deposited, within a period of eight (8) weeks from the date of receipt of copy of this Judgment.

25.2. The first petitioner being the wife of the deceased shall be entitled to Rs.2,00,000/- with proportionate interest. Petitioners 2 to 4 being his then minor children shall be entitled to Rs.1,50,000/- each with proportionate interest. The fifth petitioner being his mother shall be entitled to the remaining amount of Rs.91,680/- with proportionate



CMA NO.3348 OF 2021

interest. As the minor children would have attained the age of majority now, there is no reason to deposit their share in a nationalised bank. The Tribunal shall disburse the amount as per the above apportionment.

25.3. Considering the facts and circumstances of the case, the parties shall bear their own costs throughout. Consequently, connected Civil Miscellaneous Petitions are closed.

[N.S.K., J.]

[R.S.V., J.]

07.01.2026

Index : Yes
Neutral Citation : Yes
Speaking Order : Yes
TK

To

The Motor Accident Claims Tribunal
(Special Sub Court)
Tirupattur.



WEB COPY



CMA NO.3348 OF 2021



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CMA NO.3348 OF 2021

N.SATHISH KUMAR, J.

AND

R.SAKTHIVEL, J.

TK

CMA NO.3348 OF 2021

07.01.2026

Page No.21 of 21