IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 03.02.2026

Pronounced on : 27.03.2026

THE HONOURABLE MRS.JUSTICE K.GOVINDARAJAN THILAKAVADI

C.M.A.Nos.1019 and 1395 of 2025 and
C.M.P. Nos.8492, 11769, 24632 & 24635 of 2025

The United India Insurance Company Limited,
14/1, 77B, Salem Main Road,
Puduchampalli, Raman Nagar Post,
Mettur Dam, Salem District. …Appellant in both the appeals

Vs.

1. S. Boopathy
2. P. Vellasamy
3. C. Mariyappan … Respondents in both the appeals

Prayer: These Civil Miscellaneous Appeals are filed under Section 173 of Motor Vehicles Act,1988, against the Award and decree dated 15.12.2023 made in M.C.O.P Nos.39 and 40 of 2018 on the file of the Motor Accident Claims Tribunal, Subordinate Court, Mettur.

Appearance in both the CMAs

For Appellant : Mr. D. Bhaskaran
For Respondents : Mr. M. Elango for R1
Mr. M.R. Jothimanian for R2
R3 – Served – No appearance

COMMON JUDGMENT

These Appeals are directed against the award dated 15.12.2023 made in M.C.O.P Nos.39 and 40 of 2018 on the file of the Motor Accident Claims Tribunal, Subordinate Court, Mettur.

2. For the sake of convenience, the parties are referred to as per their ranking in the Tribunal.

3. Shortly stated, on 06.11.2017, at about 06.30 a.m, when the appellant's father Shanmugam was going to attend a funeral in his two wheeler bearing Registration No. TN 52 W 1827 along with his wife Ponnammal as pillion rider, at Molaparaiyur-Kolathur Road, Kaveripalayam, Anna Nagar, a Tractor bearing Registration No. TN 38 AJ 8616, driven by the 3rd respondent herein in a rash and negligent manner, dashed against the two wheeler ridden by the said Shanmugam, due to which, while the mother of the appellant sustained fatal injuries and died on the spot, the father of the appellant died on the way to hospital.

4. The claimant is the son of the deceased Shanmugam and Ponnannaml. He filed Claim Petitions in M.C.O.P. Nos. 39 and 40 of 2018 claiming compensation of Rs.20,00,000/- and Rs.25,00,000/- respectively, for the death of his parents.

5. The claim was opposed by the appellant / Insurance Company by stating that the deceased was not having driving license and did not also wear helmet at the time of accident. Further, it is stated in the additional written statement that the insured tractor was used to transport river sand illegally, in violation of the policy rules. Hence, the owner of the offending vehicle is liable to pay compensation to the deceased persons. Hence, prayed for dismissal of the suit.

6. The learned Tribunal, after trying the issues, vide its Common Order dated 15.12.2023, partly allowed the claim Petitions and awarded a sum of Rs.7,70,000/- in M.C,O,P. No.39 of 2018 and a sum of Rs.15,50,000/- in M.C.O.P. No.40 of 2018 and directed to the appellant/Insurance Company to pay the said amounts to the petitioner together with interest at the rate of 7.5% per annum from the date of claim petition till the date of realisation.

7. Aggrieved by this, the Insurance Company is on appeal. According to Mr. D. Bhaskaran, the learned counsel for the appellant / Insurance Company, the insured Tractor is meant for Agricultural purpose and as per FIR and Final Report, the vehicle in question was used for sand theft and a charge sheet was filed under Section 379 IPC and 21(1) of Mines and Minerals Act and hence, the Tribunal ought to have exonerate the Insurance Company from any liability or, ought to have at least granted the right of recovery from the owner of the vehicle. In support of his contentions, he relied on the judgment of the Hon'ble Supreme Court in the case of ***Oriental Insurance Company Ltd., vs. Shri Nanjappan and others*** reported in ***AIR 2004 SC 1630*** and ***Judgement of this Court dated 11.06.2025 made in C.M.A.No.1397 of 2025 (Usha Nandhini vs. Ambika and others).*** He further submitted that the claimant is a major and married son of the deceased and hence he cannot be treated as dependant on his deceased parents. He would further submit that, despite any proof of income, the Tribunal has fixed the monthly income of the deceased father and mother of the petitioner at Rs.20,000/- and Rs.6,000/- respectively, which is on the higher side and that since there is only one dependant, the Tribunal ought to have deducted 50% towards the personal income of the deceased parents of the

petitioner. He would further submit that since the deceased Shanmugam was not having the valid driving license to ride the motorcycle at the time accident and that both the deceased were not hearing helmet at the time of accident, some contributory negligence ought to have been fixed on the part of the deceased and that the Tribunal erred in granting Rs.40,000/- for pain and sufferings. Hence prayed for setting aside the Award passed by the Tribunal in the above MCOPs.

8. On the other hand, Mr. M. Elango, the learned counsel appearing for the 1st respondent / petitioner and Mr. M.R. Jothimanian, the learned counsel appearing for the 2nd respondent / owner of the offending vehicle, would submit that, the learned Tribunal, upon considering the facts and circumstances of the case, has awarded just compensation, which warrants any interference by this Court.

9. Heard on both sides. Records perused.

10. It is not in dispute that a criminal case was registered against the owner and driver of the offending vehicle under Sections 379 IPC and 21(1) of

Mines and Minerals Act. According to the respondents, the driver and the owner of the offending vehicle were acquitted by the learned Judicial Magistrate No.I, Mettur. Using a vehicle for illegal activities like transporting river sand is a fundamental breach of insurance policy, which generally stipulates that the vehicle must be used in accordance with law and permitted conditions. Therefore, when a vehicle is used for unlawful purpose, the Insurance Company can, in many instances, be exonerated from liability to compensate the claimants. Though the owner and the driver of the vehicle were acquitted in the criminal case, the criminal proceedings is separate and acquittal of the driver / owner in a criminal case does not automatically exonerate the owner from his liability from paying compensation. If the acquittal is based on benefit of doubt or lack of evidence, the insurer may still contest the claim by proving the fact of illegal usage / transportation on a balance of probabilities. Policy violation depends on the actual illegal transport of sand, which can be proved by seizure reports and witness testimonies, even if the driver is not convicted of theft under Section 379 IPC. Therefore, an acquittal in a criminal case regarding illegal sand transport does not automatically makes the Insurance Company liable, as the standard of principles in a criminal law (beyond reasonable doubt) differ from civil / contractual law (preponderance of probabilities). Unless the accused is acquitted based on a finding that the vehicle was not involved in illegal activities and that the charges were false, insurer may be liable to indemnify**.** However, in the present case, the owner and the driver of the offending vehicle were acquitted based on the principle 'beyond reasonable doubt'. Therefore, the owner of the offending vehicle is liable to pay the entire compensation to the claimant, since there is a policy violation. Hence, this Court is inclined to modify the award passed by the tribunal. Accordingly, **the appellant/Insurance Company is directed to pay the compensation determined by this Court to the claimant and recover the same from the owner of the offending vehicle under the pay and recovery principle**.

10.1. Now, coming to the issue of dependency of the appellant, in the case of ***National Insurance Company Limited vs. Birender and others reported in (2020) 11 SCC 356***, the Hon'ble Apex Court clarified that adult children, even if earning, could be considered dependants based on the specific facts of the case. The Hon'ble Apex Court emphasised that dependency is not solely determined by financial independence but also by other facts, such as, living arrangements and extent of financial support provided by the deceased. If the adult sons were earning modest incomes and living with the deceased, they could be considered dependants.

10.2. A perusal of the Final Report reveals that the accident occurred only due to the rash and negligent driving of the driver of the Tractor. Mere non-wearing of a helmet or lack of a driving license does not automatically constitute negligence or contributory negligence on motor accidents unless it is proved that these factors directly caused or contributed to the accident. In the present case, the appellant/Insurance Company has not proved that the deceased has contributed to the accident by not wearing helmet.

10.3. It is seen from the Award that the Tribunal fixed the monthly income of the deceased father and mother of the appellant at Rs.20,000/- and Rs.6,000/- respectively, since there was no proof for their income, and deducted Rs.5,000/- and Rs.1,000/- respectively for their personal expenses. Considering the year of accident and, since no proof has been provided by the appellant for the income and avocation of his deceased parents, fixing of the above notional income and awarding loss of income without adding future prospects by the Tribunal, warrants any interference. However, since the appellant is the sole dependant of the deceased, as per ***Sarala Varma and***

Others vs. Delhi Transport Corporation and Others reported in ***2009 (2) TN MAC 1 (SC),*** 50% should be deducted towards the personal expenses of the deceased.

10.4. Considering the age of the deceased Ponnammal, multiplier 13 is adopted as per the judgment reported in ***2009 (2) TN MAC 1 (SC), Sarala Varma and Others vs. Delhi Transport Corporation and Others.*** Hence, the loss of dependency in C.M.A. No.1019 of 2025 (MCOP No.39 of 2018) is calculated as under:

<u>Calculation</u>

Notional Income = Rs.6,000/-

<u>Loss of dependency</u>

= Rs.6,000/- x 12 x 13 - 1/2

= Rs.4,68,000/-

10.5. Considering the age of the deceased Shanmugam, multiplier 11 is adopted as per the judgment reported in ***2009 (2) TN MAC 1 (SC), Sarala Varma and Others vs. Delhi Transport Corporation and Others.*** Hence, the loss of dependency in C.M.A. No.1395 of 2025 (MCOP No.40 of 2018) is calculated as under:

Calculation

Notional Income = Rs.20,000/-

Loss of dependency

= Rs.20,000/- x 12 x 11 - 1/2

= Rs.13,20,000/-

When a compensation of Rs.40,000/- is awarded towards love and affection, awarding compensation of Rs.40,000/- by the Tribunal under the head of 'pain and sufferings' is unwarranted and hence, the same is set aside. The Tribunal has awarded just compensation under the other heads, which warrants any interference.

CMA No.1019 of 2025 (MCOP No.39 of 2018)

S. No.	Description	Amount awarded by Tribunal (Rs.)	Amount awarded by this Court (Rs.)	Modification
1.	Loss of income	6,60,000/-	4,68,000/-	**Reduced**
2.	Pain and sufferings	40,000/-	-	Set aside
3.	Transportation	10,000/-	10,000/-	Confirmed
4.	Love and affection	40,000/-	40,000/-	Confirmed
5.	Funeral Expenses	20,000/-	20,000/-	
	Total	7,70,000/-	5,38,000/-	Reduced by Rs.2,32,000/-

C.M.A. No.1395 of 2025 (MCOP No.40 of 2018)

S. No.	Description	Amount awarded by Tribunal (Rs.)	Amount awarded by this Court (Rs.)	Modification
1.	Loss of income	14,40,000/-	13,20,000/-	**Reduced**
2.	Pain and sufferings	40,000/-	-	Set aside
3.	Transportation	10,000/-	10,000/-	Confirmed
4.	Love and affection	40,000/-	40,000/-	Confirmed
5.	Funeral Expenses	20,000/-	20,000/-	
	Total	15,50,000/-	13,90,000/-	Reduced by Rs.1,60,000/-

10.6. Furthermore, the learned counsel for the appellant pointed out that some security order may be granted to save the insurance company in future to recover the amount from the owner of the offending vehicle. To that effect, he relied the judgement in the case of ***Appeal (Civil) No. 1012 of 2004 in Oriental Insurance Company Limited Vs. Shri Nanjappan and others***. As per the ratio laid down in the above case, the Insurance Company needs some security. Therefore, the 2nd respondent / owner of the offending vehicle is directed to furnish security for the entire amount which the insurer will pay to the claimant or, the owner of the offending vehicle shall give undertaking that he would not transfer the vehicle till completion of recovery proceedings. The 2nd respondent herein/ owner of the offending vehicle is directed to file undertaking affidavit within a period of six weeks from the date of receipt of a copy of this judgment.

11. In the result,

i. Both the civil Miscellaneous Appeals are partly allowed. No Costs. Consequently, connected miscellaneous petitions are closed.

ii. The quantum of compensation awarded by the Tribunal is scaled down to Rs.5,38,000/- from Rs.7,70,000/- in CMA No.1019 of 2025 (MCOP No.39 of 2018). In C.M.A. No.1395 of 2025 (MCOP No.40 of 2018), the compensation awarded by the Tribunal is scaled down to Rs.13,90,000/- from Rs.15,50,000/-.

iii. The appellant/Insurance company is directed to deposit the above compensation amount determined by this Court with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit, **at the first instance**, within a period of six weeks from the date of receipt of a copy of this order, to the credit respective MCOPs on the file of the

Motor Accident Claims Tribunal, Subordinate Court, Mettur, **and then recover the same from the 2nd respondent herein / owner of the offending vehicle.** The appellant / Insurance Company is at liberty to withdraw the excess amount, deposited by them, over and above the compensation awarded by this court.

iv. On such deposit the 1st respondent / petitioner is at liberty to withdraw the same with costs and interest, after filing a proper petition for withdrawal.

v. The 2nd respondent herein / owner of the offending vehicle shall adhere to the directions given by this Court in paragraph No.10.6.

27.03.2026

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Internet:Yes/No
Index:Yes/No
Speaking/Non-speaking order

To,

1. The Subordinate Judge,
   Motor Accident Claims Tribunal, Mettur.
2. The Section Officer, VR Section, High Court, Madras.

K.GOVINDARAJAN THILAKAVADI, J.

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Pre delivery common judgment in
C.M.A.Nos.1019 and 1395 of 2025 and
C.M.P. Nos.8492, 11769, 24632 & 24635 of 2025

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