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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 23.06.2026

PRONOUNCED ON : 25.06.2026

CORAM:

THE HONOURABLE MR. JUSTICE C.V.KARTHIKEYAN
AND
THE HONOURABLE MR. JUSTICE K.RAJASEKAR

CMA No. 1614 of 2020

And

C.M.A.No. 47 of 2022

And

C.M.P.No. 4276 of 2022

C.M.A.No. 1614 of 2020

The Cholamandalam MS General Insurance company Limited

st

No.9, 1 Floor, Rajaji Road

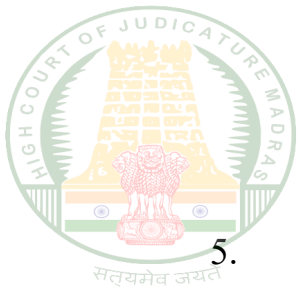
Peramanur, Salem Post and District.

rd

... Appellant/3 Respondent

Vs

1. Madheswari
W/o. Late Mariyappan
2. Prabhakaran
S/o. Late Mariyappan
3. Minor Ishwarya
D/o. Late Mariyappan
4. Minor vishnupriya
D/o. Late Mariyappan



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5. Nadaraj
S/o. Ayyakannu ... Respondents 1 to 5/Petitioners
6. Gumaran
S/o. Gopal
7. V.Renugopal ... Respondents 6 & 7 /Respondents 1 & 2

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the M.V. Act, 1988 against the Judgment and Decree made in M.C.O.P.No. 341 of 2018 dated 06.09.2019 on the file of the Motor Accidents Claims Tribunal, Special District Judge, Dharmapuri.

For Appellant : Mr. M.B.Raghavan
for M/s M.B.Gopalan Associates

For RR 1 to 5 : Mr. S.Sathiaseelan

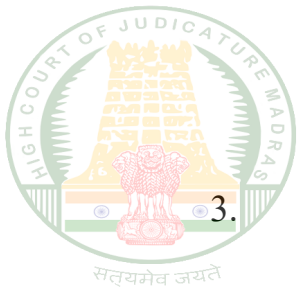
R3 & R4 minor rep. by R1

th
For 6 Respondent : No appearance

th
For 7 Respondent : Dismissed for default
(vide order dated 22.12.2023)

C.M.A.No. 47 of 2022

1. Madheswari
W/o. Late Mariyappan
2. Prabhakaran
S/o. Late Mariyappan



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3. Minor Ishwarya
D/o. Late Mariyappan

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4. Minor vishnupriya
D/o. Late Mariyappan

5. Nadaraj
S/o. Ayyakannu

(Minor 3rd and 4th petitioners are Rep. by their next friend / 1st
Appellant mother)

... Appellants/Petitioners

Vs.

1. Gumaran
S/o. Gopal

2. V.Renugopal

3. The Cholamandalam MS General Insurance company Limited
No.9, 1st Floor, Rajaji Road
Peramanur, Salem Post and District. ... Respondents/Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the M.V. Act, 1988 against the Judgment and Decree made in M.C.O.P.No. 341 of 2018 dated 06.09.2019 on the file of the Motor Accidents Claims Tribunal cum Special District Judge, Dharmapuri and prays to set aside the decree and judgment in the above MCOP No. 341 of 2018 and enhance the award amount.

For Appellants : Mr. S.Sathiaselvan



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For 3rd Respondent : Mr.M.B.Raghavan
for M/s. M.B.Gopalan Associates

R2- died

not ready in notice regarding R1

COMMON JUDGMENT

The third respondent in M.C.O.P.No. 341 of 2018 on the file of the Special District Court, MACT at Dharmapuri, aggrieved by the Judgment dated 06.09.2019 is the appellant herein.

2. M.C.O.P.No. 341 of 2018 had been filed under Section 163A of the Motor Vehicles Act claiming compensation of Rs.6,40,000/- for the death of one Mariappan in a road accident which took place on 19.04.2017. It had been stated that on 19.04.2017, the deceased Mariappan was driving a Mahendra Scorpio vehicle bearing registration No. TN 32 B 5500 belonging to the first respondent. His mother Radha accompanied him as a passenger. They were proceeding from Tirupathur to their village Padathanur. On the way in Tirupathur to Singarapettai Road at around 1.30 p.m., near Aandiyur Rajendran's house, a two wheeler bearing Registration No. TN 29 T 4701 came in the opposite direction and both the vehicles collided. Mariappan



lost control and his vehicle dashed against a tamarind tree. He suffered severe injuries. He was shifted to Government Dharmapuri Medical College Government Hospital, Tirupathur and inspite of treatment, died on 03.05.2017. It was claimed that he was aged 35 years. He was earning about Rs.50,000/- per month. The claimants were his wife, children and father. It was under those circumstances that the petition was filed under Section 163-A of the Act.

3. In the counter affidavit, the nature of the accident had been denied and it had been contended that Mariappan did not have valid driving license. It was stated that the owner and the insurer of the two wheeler had not been made a party to the case. The Tribunal failed to frame necessary points for consideration.

4. During trial, the first claimant Madheswari was examined as PW-1. She marked Exs. P-1 to P-19. Ex.P-5 was the copy of the insurance policy and Ex.P-6 was the copy of the driving license and the other documents related to the bank accounts of the claimants. The respondents did not examine any witness. They did not mark any documents.



5. On the basis of the evidence, the Tribunal held that since the claim

had been made under Section 163-A of the Motor Vehicles Act, it is based on no fault liability and there is no requirement to plead or prove negligence. They must prove only the accident and the involvement of the motor vehicle and the death of injury to the deceased or claimant.

6. Observing that the accident had been established through Ex.P-1 FIR copy and that Mariappan sustained injuries and further died subsequently owing to the injuries, it had been held that the claimants were entitled for compensation under Section 163-A of the Motor Vehicles Act. Accordingly, the Tribunal proceeded to grant total compensation of Rs.4,36,160/- as follows:-

<i>Compensation for pecuniary loss</i>	<i>Rs.4,26,660/-</i>
Funeral Expenses	Rs. 2,000/-
Loss of Consortium	Rs. 5,000/-
Loss of estate	Rs. 2,500/-
Total	Rs. 4,36,160/-



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7. Challenging this award, the Insurance Company has filed C.M.A.No. 1614 of 2020 stating that since the deceased Mariappan was the tortfeasor and since he had stepped into the shoes of the owner, the Insurance Company was not liable to pay any compensation. It is also to be noted that the claimants have also filed C.M.A.No. 47 of 2022 seeking enhancement of the compensation.

8. We have heard arguments advanced by Mr.M.B.Raghavan, learned counsel for the appellant in C.M.A.No. 1614 of 2020/respondent in C.M.A.No. 47 of 2022 and Mr.S.Sathiaseelan, learned counsel for the respondent in C.M.A.No. 1614 of 2020/appellant in C.M.A.No. 47 of 202.

9. It is the contention of Mr.M.B.Raghavan, learned counsel that the accident had occurred owing to the negligence of the driver of the Mahendra Scorpio vehicle / Mariappan, who had dashed against the tamarind tree and sustained injuries and died. He further pointed out that it was the case of the



claimants that Mariappan borrowed the vehicle and was going to his native place along with his mother. It was therefore contended by the learned counsel that he had stepped into the shoes of the owner. It was therefore contended that since he had stepped into the shoes of the owner, he cannot claim insurance from his own insurer, since the insurer is indemnifying the insured for third party claims.

10. It was also contended that the liability of the insurer is contractual in nature so far as insurer is concerned. The learned counsel placed reliance on the Judgement of the Hon'ble Supreme Court reported in ***(2020) 2 SCC 550 [Ramkhiladi and Ors. Vs. The United India Insurance Company and Ors.]*** wherein the Hon'ble Supreme Court had held by following the earlier Judgments of the Hon'ble Apex Court in ***Ningamma Vs. United India Insurance Company Ltd., MANU/SC/0802/2009 : (2009) 13 SCC 710*** and ***New India Assurance Co Ltd., Vs. Sadanand Mukhi MANU/SC/8479/2008: (2009) 2 SCC 417***, that the owner of the vehicle or his legal representatives or the borrower of the vehicle cannot raise a claim under Motor Vehicles Act, 1988, for an accident when there was no negligence on the part of the insured vehicle. It is submitted that in the aforesaid decisions, Apex Court has held that the borrower of the vehicle



steps into the shoes of the owner and, therefore, the borrower of the vehicle or his legal representatives are not entitled to compensation from the insurer under the Act.

11. This decision had been followed by a Division Bench of this Court in ***C.M.A.No. 1395 of 2021 (2024) Supreme (MAD) 2513 [M/s. Tata AIG General Insurance Company Limited Vs. Shanmugam]***, wherein the first question was framed by the Division Bench was as follows:-

“1. Whether the owner/ insured is entitled to approach the Motor Accident Claims Tribunal by filing claim petition by invoking Section 163-A of the Motor Vehicles Act, seeking compensation for the injuries sustained by relying on the personal accident coverage? ”

12. The Division Bench had referred to ***Ningamma*** referred *supra* wherein it had been held that the borrower of the vehicle would step into the shoes of the owner of the vehicle. The Division Bench had answered the question as follows:-

“25. The question before us is whether a claim



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petition can be filed before the Claims Tribunal under Section 163A by an owner/insured. Considering the language of Chapter XI and the decision in Ramkhiladi's case, the first question is answered against the claimant by observing that an owner/insurer cannot approach the Motor Accident Claims Tribunal by filing a claim petition under Section 163A of the Motor Vehicles Act, 1988 for the injuries sustained by him relying upon the personal accident cover. ”

13. Mr.S.Sathiaselvan, learned counsel for the respondent however placed reliance on the Judgment of the three Judges Bench of the Hon'ble Supreme Court reported in **2018 (2) TNMAC 149 (SC) [Shivaji and another Vs. Divisional Manager, United India Insurance Co. Ltd.,]**, wherein the Hon'ble Supreme Court relying on an earlier three Bench Judge of the Supreme court in **United India Insurance Co. Ltd., Vs. Sunil Kumar 2017 (2) TNMAC 753 (SC)**, had held as follows:-

“4 The insurer preferred an appeal before the High Court of Karnataka. The appellants also filed an appeal before the High Court seeking enhancement of compensation awarded by the Tribunal. The High Court, by its



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impugned judgment, allowed the insurer's appeal and set aside the order of the Tribunal. The High Court opined that the idea behind enacting Section 163A is to ensure that even in the absence of any mistake on the part of the driver of the offending vehicle, the injured person or the legal heirs of the deceased person are compensated by the owner and the insurer. As a result, under this provision, since the victim has been contemplated to be an innocent third party, protection is extended only to the injured person or to the legal heirs of the deceased victim, and not to the driver who is responsible for causing the said accident. Since the deceased driver in this case was the tortfeasor and responsible for causing the accident, the High Court held that compensation could not have been awarded to the appellants.

*5 The issue which arises before us is no longer res integra and is covered by a recent judgment of three judges of this Court in **United India Insurance Co. Ltd. v. Sunil Kumar & Anr.**, wherein it was held that to permit a defence of negligence of the claimant by the insurer and/or to understand Section 163A of the Act as contemplating such a situation, would be inconsistent with the legislative object behind introduction of this provision, which is "final compensation within a limited time frame on the basis of the structured formula to*



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overcome situations where the claims of compensation on the basis of fault liability was taking an unduly long time”. The Court observed that if an insurer was permitted to raise a defence of negligence under Section 163A of the Act, it would “bring a proceeding under Section 163A of the Act at par with the proceeding under Section 166 of the Act which would not only be self-contradictory but also defeat the very legislative intention”. Consequently, it was held that in a proceeding under Section 163A of the Act, the insurer cannot raise any defence of negligence on the part of the victim to counter a claim for compensation.”

14. He therefore contended that the insurer cannot raise the defence of negligence on the part of the driver of the vehicle and thereby cannot argue that they are not liable for the claim.

15. We have carefully considered the arguments advanced and perused the materials available on records.

16. The claim in this case had been filed under Section 163-A of the Motor Vehicles Act, 1988. Section 163-A of the Motor Vehicles Act is as



follows:-

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“163-A. Special Provisions as to payment of compensation on structured formula basis.-

(1) Notwithstanding anything contained in this Act or in any other law for the time being in force or instrument having the force of law, the owner of the motor vehicle of the authorised insurer shall be liable to pay in the case of death or permanent disablement due to accident arising out of the use of motor vehicle, compensation, as indicated in the Second Schedule, to the legal heirs or the victim, as the case may be.

Explanation.—For the purposes of this subsection, “permanent disability” shall have the same meaning and extent as in the Workmen’s Compensation Act, 1923 (8 of 1923).

(2) In any claim for compensation under subsection (1), the claimant shall not be required to plead or establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act or neglect or default of the owner of the vehicle or vehicles concerned or of any other person.

(3) The Central Government may, keeping in view



*the cost of living by notification in the Official Gazette,
from time to time amend the Second Schedule.”*

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17. Any claim under an insurance of motor vehicles against a third party is covered under Chapter XI of the Motor Vehicles Act. Section 147 provides the requirement of policies and limits of liability. It is to be noted that Section 163-A of the Act had been deleted with effect from 01.04.2022.

18. In the instant case, the accident occurred when Mariappan was driving the vehicle and dashed against the tamarind tree which accident caused injuries to himself consequent to which he subsequently died. Though it is stated in the claim petition that there was a two wheeler which came in the opposite side, the owner of the vehicle or the insurance company of the two wheeler were not impleaded as parties to the claim petition.

19. It is seen that Mariappan was the tortfeasor. He had borrowed the vehicle from the owner of the vehicle. He was travelling to his native place along with his mother. He therefore stepped into the shoes of the owner. When he stepped into the shoes of the owner, then the question is whether he could claim compensation from the insurer which had insured the vehicle



only indemnifying the owner against the third party claim. The Hon'ble Supreme Court in ***Ramkhiladi and Ors.***, referred supra had stated that he cannot claim any such compensation.

20. The learned counsel for the claimants had however placed reliance on the Judgment of the Hon'ble Supreme Court in ***Shivaji and another referred supra*** and ***Sunil Kumar and another referred supra***. Both Judgments placed an embargo on the insurance company from raising the defence of negligence in a claim petition under Section 163-A of the Act. The raising of a defence of negligence is a procedure and if the facts stipulate that the insurer is liable to pay compensation then the insurer cannot raise the defence of negligence. However, in the instant case, the claimants cannot raise the claim because Mariappan had stepped into the shoes of the owner and therefore, the claimants cannot claim against the insurer, who had by contract of insurance agreed to indemnify the owner only against third party claims. If the owner is the tortfeasor, who had himself caused the accident, then the insurance company would not be liable to indemnify or pay the compensation. If there is absence of negligence, he would be entitled only for personal cover. Here, Mariappan had borrowed the vehicle and had caused the accident and has been categorised as



tortfeasor.

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21. In view of this particular fact, the claimants cannot claim compensation from the insurer of the vehicle belonging to the first respondent in the claim petition from whom Mariappan had borrowed the vehicle.

22. This is the consistent view taken so far as negating compensation to be paid when the owner or the borrower of the vehicle from the owner himself is the tortfeasor as in this case.

23. In view of these reasons, we allow C.M.A.No. 1614 of 2020 filed by the Insurance Company and set aside the award granted in M.C.O.P.No. 341 of 2018 dated 06.09.2019 and dismiss the claim petition. Consequently, we dismiss C.M.A.No. 47 of 2022.

24. In result,

- (i) C.M.A.No. 1614 of 2020 stands allowed;
- (ii) C.M.A.No. 47 of 2022 stands dismissed;
- (iii) Since C.M.A.No. 47 of 2022 is being dismissed, C.M.P.No. 4276 of 2022 is closed; and
- (iv) No costs.



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(C.V.K.,J.) (K.R.S.,J.)

25-06-2026

Index: Yes / No
Speaking / Non-Speaking order
vsg

C.V.KARTHIKEYAN, J.

vsg

To

1. The Special District Court,
Motor Accidents Claims Tribunal,
Dharmapuri.
2. The Section Officer,
VR Section,
Madras High Court, Chennai.

Pre-Delivery Judgment made in

CMA No. 1614 of 2020

And

C.M.A.No. 47 of 2022

And

C.M.P.No. 4276 of 2022



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25.06.2026