BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 02.06.2026

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH
and
THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

C.M.A.(MD).No.630 of 2026
and
C.M.P.(MD).No.6556 of 2026

1.M/s.United India Insurance Company Ltd.,
Represented by its Divisional Manager,
Having divisional Office at I Floor,
Hall No.7 & 8, Sridevi Complex,
Tilak Road, Tirupati, Chithoor,
Andhra Pradesh – 517501.

2.M/s.United India Insurance Company Ltd.,
Rep.by its Divisional Manager,
Having divisional Office at No.1,
Post Office Road,
Palayamkottai,
Tirunelveli. ... Appellants / 2nd and 3rd Respondents

Vs.

1.Mariya John
2.Sitta ...1st & 2nd Respondents / 1st & 2nd Petitioners

3.K.Radhakrishnan ... 3rd Respondent / 1st Respondent

Prayer:- Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the order made in M.C.O.P. No.990 of 2022 dated 12.08.2025 on the file of the learned III Additional District Judge to deal with MCOP Cases, Tirunelveli.

For Appellants : Mr.N.Shyllappakalyan

For R1 and R2 : Mr.A.Arun Ramnath

JUDGMENT

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

The appellant–Insurance Company, which was the second respondent before the Motor Accident Claims Tribunal in M.C.O.P. No.990 of 2022 on the file of the learned III Additional District Judge to deal with MCOP Cases, Tirunelveli has preferred the present appeal challenging the finding of negligence fixed on the driver of the insured vehicle bearing Registration No. AP-03- TL-2669 by order dated 12.08.2025.

2.Facts of the case:

2.1. According to the appellant, on 13.06.2022 at about 11.15 p.m., the deceased was riding a two-wheeler along with a pillion rider, namely Muthuraj, on the Tirunelveli–Kanyakumari National Highway. At that time, the deceased allegedly entered the carriageway meant for vehicles proceeding in the opposite direction in order to reach a petrol bunk situated on the eastern side of the road for refuelling his vehicle. While so, the insured vehicle bearing Registration No.AP-03-TL-2669 hit the two-wheeler, resulting in the death of the rider and injuries to the pillion rider. Based on the complaint, the Nanguneri Police registered a case in Crime No.164 of 2022 for offences under Sections 279, 337 and 304-A IPC.

2.2. Subsequently, the parents of the deceased filed the claim petition seeking compensation of Rs.50,00,000/-. The appellant–Insurance Company filed a counter statement denying the manner of accident and specifically contended that the accident occurred solely due to the rash and negligent riding of the deceased. It was further pleaded that the deceased had entered the wrong side of the road during night hours and, therefore, the insured vehicle was not responsible for the occurrence.

2.3. Before the Tribunal, on the side of the claimants, P.W.1 and P.W.2 were examined and Exhibits P1 to P12 were marked. On the side of the respondents, R.W.1 and R.W.2 were examined and Exhibits R1 to R8 were marked.

3. **Finding of the Tribunal**

3.1. Upon consideration of the oral and documentary evidence, the Tribunal fixed the negligence on the driver of the insured vehicle and awarded compensation of Rs.**21,51,200/-** to the claimants in the following manner:

Sl. No.	Head of Compensation	Amount (Rs.)
1.	Loss of Dependency	20,41,200/-
2.	Loss of Estate	15,000/-
3.	Funeral Expenses	15,000/-
4.	Filial Consortium (Rs.40,000/- each to the parents)	80,000/-
	Total	**21,51,200/-**

3.2.Challenging the said award, the appellant insurance company has preferred the present appeal mainly on the aspect of negligence.

4.Submissions of the learned counsel appearing for the appellant:

Assailing the said finding, the learned counsel for the appellant submitted that under Ex.R7, the Investigating Officer, after conducting a detailed investigation, had closed the criminal case as mistake of fact by fixing negligence on the deceased himself. It was further contended that Ex.R2-sketch prepared during the course of investigation clearly established that the deceased had entered the lane meant for vehicles proceeding in the opposite direction. According to the appellant, the Tribunal failed to properly appreciate the contents of Ex.R2 and wrongly discarded the evidence of R.W.2, the police official, on the ground that he was not an eyewitness and had merely spoken about the contents of the final report.

5.**Submissions of the learned counsel for the respondent:**

Per contra, the learned counsel appearing for the claimants submitted that the Tribunal, upon a proper appreciation of the oral and documentary evidence available on record, rightly fixed the negligence on the driver of the offending vehicle. Further, though the Insurance Company disputed the manner of the accident, the driver of the offending vehicle was not examined before the Tribunal. In such circumstances, the Tribunal was justified in drawing an adverse inference against the respondents and fixing the negligence on the driver of the offending vehicle insured with the appellant Insurance Company.

6**.** This Court carefully considered the rival submissions and perused the materials available on record.

7. This appeal has been filed only challenging the finding on the aspect of negligence. Therefore, the point for determination in this appeal is :-

(i) Whether the plea of the insurance company that the deceased alone was responsible for the accident or was guilty of contributory negligence is sustainable?

8.Discussion:

8.1. It is not in dispute that the First Information Report in Crime No.164 of 2022 was initially registered against the driver of the insured vehicle. Though the investigating agency subsequently filed a closure report treating the case as a mistake of fact. The evidence of P.W.1 discloses that neither the de facto complainant nor the claimants were informed about the filing of such closure report. Consequently, they were deprived of an opportunity to challenge the same before the competent forum. Therefore, this Court is not inclined to place undue reliance upon the closure report alone and has independently examined the evidence on record, particularly Ex.R2-sketch.

8.2. A perusal of Ex.R2 reveals that the deceased had ridden his two-wheeler into the lane meant for vehicles proceeding from the opposite direction. At the same time, the materials on record indicate that he had done so in an attempt to reach the petrol bunk situated on the eastern side of the highway for refuelling purposes. However, significantly, the driver of the insured vehicle was not examined before the Tribunal. In the absence of his evidence, the manner in which the accident occurred cannot be fully explained from the side of the insured vehicle.

8.3. From the record, it is clear that the driver of the insured vehicle had not faced any unexpected situation and the road was also free and hence he could have had an opportunity to avoid the accident without dashing the two wheeler. However, he dashed against the two-wheeler by driving the vehicle in a rash and negligent manner. In these circumstances, this Court is of the view that the deceased contributed to the occurrence by entering the wrong carriageway. Equally, the driver of the insured vehicle, being the driver of a larger and heavier vehicle, was under a greater duty to be vigilant and have proper control. As observed by the Gujarat High Court in ***Rehana Rahimbhai Kasambhai vs The Transport Manager, Ahmedabad*** reported in ***AIR 1976 Gujarat 37***, drivers of heavy vehicles bear a higher degree of responsibility towards other road users and must operate their vehicles in a manner that enables them to avoid collisions by exercising reasonable care and control and the relevant portions is as follows:

> *" 16. In a long series of decisions this court has been right1y guided by the view that those who are moving with heavy and mechanically operated vehicles in road traffic bear a greater responsibility not on1v towards the pedestarians and cyclists but also towards equally heavier and speedier vehicles and should, therefore, drive their vehicles in such a manner that they can stop them and take them into control within a fraction of a moment to avoid a collision. The driver of such a vehicle should always be on a proper look out and watch the road behaviour of all the*

pedestrians and vehicles moving an the road.”

8.4. Applying the above principle to the facts of the present case, this Court holds that the deceased contributed to the occurrence of the accident by entering the carriageway meant for vehicles proceeding in the opposite direction. At the same time, the driver of the insured vehicle had sufficient opportunity to notice the movement of the deceased and take reasonable steps to avoid the collision. In the absence of any evidence from the side of the driver to establish that he had exercised due care and caution and he had an opportunity to avoid the accident by reducing the speed and driving the vehicle in careful manner, this Court is inclined to fasten contributory negligence on the driver of the insured vehicle as well. Accordingly, contributory negligence is fixed in the ratio of 50:50 between the deceased and the driver of the insured vehicle.

8.5. Insofar as the quantum of compensation awarded by the Tribunal is concerned, this Court finds no reason to interfere with the assessment made by the Tribunal.

9. **Conclusion**:

9.1. Accordingly, the Civil Miscellaneous Appeal is partly allowed. The finding of the Tribunal fastening the entire negligence on the driver of the insured vehicle is modified and contributory negligence is fixed at 50% on the deceased and 50% on the driver of the insured vehicle. Consequently, the claimants shall be entitled to 50% of the compensation awarded by the Tribunal. In all other respects, the award passed in M.C.O.P.No.990 of 2022 dated 12.08.2025 on the file of the learned III Additional District Judge dealing with MCOP Cases, Tirunelveli, stands confirmed.

9.2. The appellant/Insurance Company is directed to deposit 50% of the award amount together with accrued interest and costs, after deducting the amount already deposited, if any, within a period of eight weeks from the date of receipt of a copy of this judgment. On such deposit, the claimants are permitted to withdraw their respective shares together with proportionate interest and costs, after adjusting the amount, if any, already withdrawn. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

[N.A.V.,J.] & [K.K.R.K.,J.]
02.06.2026

NCC :Yes/No
Index :Yes/No
Internet:Yes/No
pal

To

1.The III Additional District Judge to deal with MCOP Cases,
Tirunelveli.

2.The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.

N.ANAND VENKATESH,J.
and
K.K.RAMAKRISHNAN,J.

pal

Judgment made in
C.M.A.(MD).No.630 of 2026

Dated: 02.06.2026