BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 27.03.2026

Pronounced on : 05.06.2026

CORAM:

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

C.M.A.(MD)No.531 of 2024

Kaleeswari ... Appellant/
Petitioner

Vs.

1.Senthil Kumar

2.The Manager,
United India Insurance Company Ltd.,
19/2, Navarang Plaza,
IInd Floor Opp. LGB Petrol Bunk,
Kovai Road,
Karur – 639002. ... Respondents/
Respondents

Prayer : This Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 to allow this appeal and enhance the award dated 04.03.2023 passed in M.C.O.P.No.204 of 2016 on the file of the Motor Accident Claims Tribunal (Principal Sub Court), Karur.

For Appellant : Mr.K.Sudalaiyandi

For Respondents : Mr.N.Pragalathan for R1

Mr.I.Robert Chandra Kumar for R2

JUDGMENT

The Civil Miscellaneous Appeal is directed against the order made in M.C.O.P.No.204 of 2016 dated 04.03.2023 on the file of the Motor Accident Claims Tribunal / Principal Subordinate Court, Karur, in dismissing the claim petition.

2. The case of the appellant / claimant is that on 07.03.2016, at about 10.30 a.m., the first respondent, who is the husband of the appellant, was riding his Yamaha two-wheeler bearing Registration No. TN-47-AC-9502, with the appellant travelling as a pillion rider, to have darshan at the Anjaneyar Temple, Namakkal. While they were proceeding on the Karur–Vangal–Namakkal Road, near Sakkarapalayam Village, a stray dog suddenly crossed the road, as a result of which the first respondent lost control of the vehicle and both of them fell on the road. According to the appellant, she sustained head injuries and was initially taken to

Rajinikanth Private Hospital, Karur, for first-aid treatment and thereafter shifted to Kovai Medical Centre, Coimbatore, for further treatment.

3. It is the further case of the appellant that she underwent surgery and was treated as inpatient for a period of 30 days, that the appellant incurred medical expenses exceeding Rs.7 lakhs and that she sustained permanent disability on account of the injuries suffered in the accident.

4. The defence of the second respondent / insurer is that the mode of accident narrated by the appellant is false and untenable, that the vehicle in dispute was ridden by the appellant's husband, the first respondent, that the appellant in collusion with her husband has filed the above claim petition solely with a view to get compensation and that therefore the petition is liable to be dismissed.

5. During trial, the appellant examined herself as P.W.1 and exhibited 18 documents as Ex.P1 to Ex.P18. The first respondent / husband of the appellant admittedly the owner and rider of the two wheeler had remained exparte. The second respondent adduced neither

oral nor documentary evidence. The disability certificate issued by the Medical Board came to be exhibited as Ex.C1.

6. The learned trial Judge, upon considering the pleadings and the evidence both oral and documentary and on hearing the arguments of both the sides, passed the impugned order dated 04.03.2023 by holding that the appellant has neither pleaded nor proved that the accident was occurred due to the rash and negligent driving of the offending vehicle, dismissed the claim petition. Aggrieved by the dismissal of the claim petition, the claimant has preferred the present appeal.

7. The learned counsel appearing for the appellant would submit that even though the accident was occurred due to the sudden cross of a street dog while the first respondent rode the two wheeler along with the appellant as a pillion rider, the first respondent due to his negligence and sudden shock, lost his balance and fell down and thereby caused the accident, that though the appellant has shown that the accident was happened only due to the carelessness and negligence of the first respondent, the Tribunal has miserably failed to consider the same, that

FIR under Ex.P1 clearly reveals about the rash and negligent driving of the first respondent but the Tribunal, rendered a finding that the appellant has failed to prove that the first respondent alone was responsible for the accident and that therefore, the dismissal of the claim petition is not sustainable in law and the same is liable to be set aside.

8. The learned counsel appearing for the second respondent / insurer would submit that the appellant has neither raised any pleadings nor adduced any evidence to show that the accident was occurred only due to the rash and negligent driving of the first respondent, that the appellant, in her evidence, has categorically admitted that her husband, the first respondent was not responsible for the accident, that the Tribunal, taking note of the pleadings and the evidence of the appellant's side, more particularly, admission made by the appellant herself, has rightly come to the conclusion that the second respondent is not liable for any claim and that therefore, the impugned order does not warrant any interference.

9. It is pertinent to note that the appellant, in her claim petition, has nowhere whispered that the first respondent had driven the two wheeler in

a rash and negligent manner and caused the accident. Moreover, in the claim petition, it has been stated that while the first respondent was proceeding in a two wheeler along with the appellant as a pillion rider in Karur-Vangal-Namakkal road near Sakkarapalayam village, a street dog suddenly crossed the road and as a result, the first respondent lost his balance and both of them fell down.

10. No doubt, in Ex.P1 FIR, it has been stated that while the first respondent drove his two wheeler in a rash and negligent manner, since a street dog suddenly crossed the road, he dashed against the dog and fell down.

11. As rightly pointed out by the learned counsel appearing for the second respondent / insurer, though the accident was occurred on 07.03.2016, complaint was given by the appellant's uncle on 14.03.2016. According to the appellant, the Vangal police came to Rajiniganth Hospital, Karur on 07.03.2016 for getting complaint but since her condition was serious and her husband had taken her to Coimbatore, they were not in a position to lodge the complaint and her uncle after

ascertaining that complaint was not lodged went to Vangal Police Station and lodged the complaint and on that basis, FIR came to be registered in Crime No.80 of 2016 under Sections 279 and 338 IPC against the first respondent.

12. As rightly observed by the learned trial Judge, the appellant has not stated whether any final report was filed by the jurisdictional police against the first respondent nor produced the copy of the final report.

13. As rightly pointed out by the learned counsel appearing for the second respondent / insurer, the appellant, in her evidence, would say that her husband was not at all at fault and the relevant portion is extracted hereunder:

> “நான் தாக்கல் செய்துள்ள மனுவிலும் நிரூபண வாக்குமூலத்திலும் என் கணவரின் தவறால் தான் விபத்து ஏற்பட்டது என்று எந்த இடத்திலாவது சொல்லியுள்ளேனா என்றால் இல்லை. என்னை கோயம்புத்தூர் மருத்துவமனையில் சிகிச்சைக்கு சேர்த்தபோது என் கணவர் மாட்டுவண்டி மீது மோதியதாக விபத்து ஏற்பட்டதாக கூறியுள்ளாரா என்றால் ஆமாம். நாய் குறக்கே வந்ததால் மாட்டு வண்டி மீது மோதி விபத்து ஏற்பட்டதாக சொன்னார். ..... மனுவில் கூறியிருப்பது உண்மை தான் என் கணவர்

மீது தவறு இல்லை என்று தான் சொல்லுவேன்.”

14. Though the appellant, in the present appeal, has taken a stand contrary to the one taken before the trial Court and has alleged that the first respondent was responsible for the accident, the appellant has not produced any iota of evidence to substantiate the same.

15. The learned counsel appearing for the second respondent / insurer placed reliance on the decision of the Hon'ble Supreme Court in ***Surender Kumar Arora and another Vs. Dr.Manoj Bisla and others*** reported in ***2012 (2) TN MAC 155 (SC),*** wherein also, there was no evidence to show that the vehicle in question was driven in a rash and negligent manner by the first respondent therein and the relevant passages are extracted hereunder:

> *“9. Admittedly, the Petition filed by the Claimants was under Section 166 of the Act and not under Section 163-A of the Act. This is not in dispute. Therefore, it was the entire responsibility of the parents of the deceased to have established that Respondent No.1 drew the vehicle in a rash and negligent manner which resulted in the fatal Accident. Maybe, in order to help Respondent No.1, the claimants had not taken up that plea before the Tribunal.*

Therefore, High Court was justified in sustaining the judgment and order passed by the Tribunal. We make it clear that if for any reason, the Claimants had filed the Petition under Section 163-A of the Act, then the dicta of this Court in the case of Kaushnuma Begum & others. v. New India Assurance Co. Ltd. & others, 2001 (3) CTC 170 (SC) : 2001 (1) SCC 9 (supra) would have come to the assistance of the Claimants.

10. In our view the issue that we have raised for our consideration is squarely covered by the decision of this Court in the case of Oriental Insurance Co. Ltd. v. Meena Variyal & others, 2007 (2) TN MAC 9 (SC) : 2007 (5) SCC 428 (supra). In the said decision the Court stated:

> *".... Therefore, the victim of an Accident or his Dependants have an option either to proceed under Section 166 of the Act or under Section 163-A of the Act. Once they approach the Tribunal under Section 166 of the Act, they have necessarily to take upon themselves the burden of establishing the negligence of the driver or owner of the vehicle concerned. But if they proceed under Section 163-A of the Act, the compensation will be awarded in terms of the Schedule without calling upon the victim or his Dependants to establish any negligence or default on the part of the owner of the vehicle or the driver of the vehicle."”*

16. The learned counsel appearing for the second respondent / insurer placed reliance on a decision of this Court in ***The United India Insurance Company Limited, Kumbakonam Vs. K.Selvam and others*** in ***C.M.A.(MD)No.1122 of 2015 dated 09.04.2021,*** wherein also, when the deceased was travelling as a pillion rider in a two wheeler ridden by her husband, a cow suddenly crossed the road and the rider immediately applied the brakes but the vehicle skidded and as a result of which, both the rider and his wife fell down on the road. In that case, the claimant has taken a stand before the trial Court that her husband was not at all responsible for the accident. This Court, by referring to Section 166 and also the decision of this Court in M/s.Bajaj Alliance General Insurance Company Limited Vs. Seeniammal and others dated 28.02.2019, has held as follows;

> *"13.Before entering into the further discussion, it is necessary to understand the scope of Section 166 of the Motor Vehicles Act and the existing legal position;*
> *Section 166 reads as follows:*
> *166. Application for compensation. – (1) An application for compensation arising out of an accident of the nature specified in sub-section (1) of section 165 may be made –*

(a) by the person who has sustained the injury; or

(b) by the owner of the property; or

(c) where death has resulted from the accident, by all or any of the legal representatives of the deceased; or

(d) by any agent duly authorised by the person injured or all or any of the legal representatives of the deceased, as the case may be :

Provided that where all the legal representatives of the deceased have not joined in any such application for compensation, the application shall be made on behalf of or for the benefit of all the legal representatives of the deceased and the legal representatives who have not so joined, shall be impleaded as respondents to the application.

(2) Every application under sub - section (1) shall be made, at the option of the claimant, either to the Claims Tribunal having jurisdiction over the area in which the accident occurred or to the Claims Tribunal within the local limits of whose jurisdiction the claimant resides, or carries on business or within the local limits of whose jurisdiction the defendant resides and shall be in such form and contain such particulars as may be prescribed :

Provided that where no claim for compensation under section 140 is made in such application, the application shall contain a separate statement to that effect immediately before the signature of the applicant.

(4) The Claims Tribunal shall treat any report of accidents forwarded to it under sub-section (6) of Section 158 as an application for compensation under this Act.

14.Section 166 contemplates the machinery for laying the claim on fault liability, whereas Section 140 of the Act deals with interim compensation, which is a fixed amount and the owner of the vehicle is mulcted with the statutory liability. The compensation claimed under Section 140 of the Act is governed by the principle of 'No-fault liability'. Section 163 A and 140 are based on strict liability (liability without fault) principle.

15.In Section 163(A) and 166 both the owner and the insurer are liable. When an application under Section 166 of the Act is filed, the Court is required to hold an enquiry into the claim and then proceed to make an award and when such a claim is made, it has to be proved that the deceased was not himself responsible for the accident by his rash and negligent driving.

16.At this juncture, it is necessary to refer the decision of our High Court passed in CMA.No.2898 of 2018 and Cross Objection No.5 of 2019, dated 28.02.2019; (M/s. Bajaj Alliance General Insurance Company Limited Vs. Seeniammal and others)

"11.The claimants filed the said claim petition under Section 166 of the Motor Vehicles Act (hereinafter referred to as 'the Act'). It is well settled that when a claimant has come out with the claim petition under Section 166 of the Act, they have to plead and prove the negligence on the part of the offending vehicle insured with the Insurance Company. Unless the claimant proves the negligence on the part of the driver of the vehicle insured with the Insurance Company, the Insurance Company is not liable to pay any compensation. The principle of Insurance Policy is that the Insurance Company has to indemnify the insured owner of the vehicle for the claim made by the third parties against the owner of the vehicle. The liability will arise when the driver of the vehicle is negligent and caused accident and then the owner becomes vicariously liable is negligent act of his driver. In the present case, no negligence is alleged on the part of the 1st respondent, rider of the motorcycle insured with the 2nd respondent. In view of the same, the Tribunal erred in fastening the liability on the 2nd respondent on the ground that the deceased was a third party, when insured was not liable to pay any compensation to the claimants. The judgments relied on by the learned counsel appearing for the 2nd respondent are squarely applicable to the

facts of the present case. The judgments relied on by the learned counsel appearing for the claimants are not relevant to the facts of the present case."

17.In that case, it was alleged that while the deceased was travelling in the motorcycle as a pillion rider, an unknown tipper lorry dashed against the motorcycle and caused accident. The Police after Investigation has filed a final report stating that the accident was occurred only due to rash and negligent driving of the tipper lorry driver and that as and when the driver of the tipper lorry was found out the case would be re-opened. Even then, the Tribunal has come to the conclusion that since the vehicle was insured with the second respondent and the deceased being third party, the insurer is liable for the claim. When that award was challenged, our High Court has held that the reasoning given by the Tribunal is erroneous and that the insurer cannot be fastened liability only on the ground that the motorcycle was insured with the appellant and consequently set aside the award passed by the Tribunal and directed the insurer to pay a sum of Rs.25,000/- as compensation under Section 161-3 (a) of the Motor Vehicles Act.

18.In the present case also, as already pointed out, *there was neither pleadings nor evidence that the negligent driving of the offending vehicle was responsible for the accident. But on the other hand, the claimants have been taking a continuous stand that the first claimant/rider of the two wheeler was not at all responsible for the accident. In order to claim compensation under Section 166 of the Motor Vehicles Act, the injured or the legal heirs of the deceased are duty bound to prove that negligent driving of the offending vehicle was the reason for the accident. Except the motorcycle driven by the first claimant, no other vehicle was allegedly involved in the accident. There is no gainsay that proof of negligence is sine qua non in a petition under Section 166 of the Motor Vehicles Act. Since the two wheeler i.e., TVS XL Motorcycle alone was allegedly involved in the accident, the claimants are under the obligation to prove that the accident was occurred because of rash and negligent driving of the two wheeler.*

19.As already pointed out, in a claim under Section 166 of the Act, it is compulsory to show that someone is guilty of negligent driving and then only, the owner of the offending vehicle can be made liable consequently and thereafter only, the liability can be fastened on the insurer. It is pertinent to mention that the liability of the insurer is to the extent of indemnification of the insured against the respondent or the injured person or in respect of damages *of property and in case, if the injured cannot be mulcted with any liability under the provisions of Motor Vehicles Act, the question of the insurer being liable to indemnify the insured does not arise at all. In no case, the insurer can be made liable straightaway and only if insured is made liable, then only insurer can be made liable to indemnify the insured."*

17. The above decision is squarely applicable to the case on hand. In the case on hand also, there was neither pleadings nor evidence that the negligent driving of the offending vehicle was responsible for the accident. It is not the specific case of the appellant that the accident was occurred only due to the rash and negligent driving of the first respondent, the rider of the two wheeler. It is also not their case that the accident was occurred due to the rash and negligent driving of the some other vehicle by some other person. As already pointed out, since there is no proof of negligence, the question of making the first respondent liable and consequently making the insurer liable does not arise at all. Considering the above, the decision of the trial Court in rejecting the claim under Section 166 of the Motor Vehicles Act cannot be faulted.

18. However, the appellant has also filed the claim application under Section 140 of the Motor Vehicles Act, which provides for liability to pay compensation in certain cases on the principle of 'no fault'. Section 140 contemplates that in the event of death or permanent disablement of any person resulting from an accident arising out of the use of a motorcycle or motor vehicles, the owner of the vehicle or the owners of the vehicles shall jointly and severally liable to pay compensation, in respect of such death or disablement in accordance with the provisions of the said Section. The liability under Section 140 is statutory in nature and arises immediately on proof of the accident resulting in death or permanent disablement. In case of death, the owners are bound to pay Rs.50,000/- and in case of permanent disablement, the owner is bound to pay to the injured person a sum of Rs.25,000/-.

19. Since the claim petition filed under Section 166 of the Motor Vehicles Act is misconceived, the appellant is entitled to get compensation under Section 140 of the Motor Vehicles Act. Hence, this Court concludes that the appellant is entitled for a sum of Rs.25,000/- as compensation in terms of Section 140 of the Motor Vehicles Act. Considering the other

facts and circumstances of the case, this Court further decides that the parties are to be directed to bear their own costs.

20. In the result, the Civil Miscellaneous Appeal is partly allowed and the impugned order dated 04.03.2023 dismissing the entire claim petition is set aside. The appellant is entitled to get **Rs.25,000/- (Rupees Twenty Five Thousand only)** as compensation. The second respondent / insurer is directed to deposit Rs.25,000/- (Rupees Twenty Five Thousand only) with interest at 7.5% per annum from the date of the claim petition till the date of realization to the credit of M.C.O.P.No.204 of 2016 on the file of the Motor Accident Claims Tribunal / Principal Subordinate Court, Karur, excluding the default period, if any, within a period of four weeks from the date of receipt of a copy of this judgment. On such deposit being made, the appellant is permitted to withdraw the amount with interest and costs on due application before the Tribunal. Parties are directed to bear their own costs.

05.06.2026

NCC :yes/No
Index :yes/No
Internet:yes/No

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To

1.The Principal Subordinate Judge,
Motor Accident Claims Tribunal,
Karur.

2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

K.MURALI SHANKAR,J.

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Pre-Delivery Judgment made in
C.M.A.(MD)No.531 of 2024

Dated : 05.06.2026