

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 19.02.2026

Pronounced on : 02.06.2026

CORAM:

THE HONOURABLE MR.JUSTICE P.VADAMALAI

C.M.A(MD)No.409 of 2021

and

C.M.P(MD)No.3595 of 2021

The New India Assurance Company Ltd.,
Through its Branch Manager,
Branch Office, Catholic Centre,
Door No.913, Main Road,
Kovilpatti.

... Appellant/2nd Respondent

Vs.

1.Murugalakshmi,
W/o.Late.Jeyaram,
D.No.2/24, North Street,
Vagaithavoor, Sivagnanapuram,
Kovilpatti Taluk,
Now Residing at
D.No.15, Pillaiyar Kovil Street,
V.M.Chathiram,
Tirunelveli – 11.

...1st Respondent/Petitioner

2.Santhan Kumar,
S/o.Dharmaraj,
Vahaidhavoor,
K.Sivagnanapuram,
Kovilpatti Taluk - 628 716.

...2nd Respondent/1st Respondent

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the judgment and decree in MCOP.No.1090 of 2017, dated 01.12.2020 on the file of the Motor Accidents Claims Tribunal, I Additional District Court, Tirunelveli and allow the appeal with costs.



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For Appellant : Mr.J.S.Murali
For R1 : Mr.M.Arumugam
R2 : No Appearance

JUDGMENT

This Civil Miscellaneous Appeal is preferred against the judgment and decree 01.12.2020 passed in M.C.O.P.No.1090 of 2017 by the Motor Accident Claims Tribunal/I Additional District Judge, Tirunelveli.

2.The 2nd respondent in M.C.O.P.No.1090 of 2017 is the appellant herein. The petitioner/claimant is the first respondent herein.

3.For the sake of convenience, the parties as arrayed in M.C.O.P.No. 1090 of 2017 are adopted hereunder.

4.The brief facts of the case:

On 01.04.2016 at about 9.00 a.m., the deceased minor Suryaprakash was travelling in the load auto bearing registration No.TN 74 U 7373, driven by his father Jeyaram, from Kayathar to Kadambur. While the said auto was running near Ahilandapuram Vilakku, the left side door of the load auto suddenly opened and the deceased minor Suryaprakash fell from the load auto. Due to the impact, the aforesaid minor Suryaprakash sustained multiple fatal injuries and died. An F.I.R. in Crime No.131 of 2016 was registered

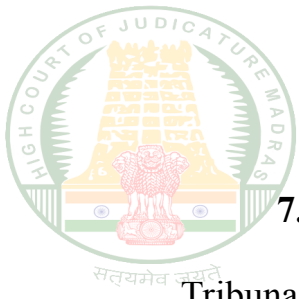


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against the driver of the auto by the Kayathar police station. The auto belonged to the 1st respondent and the same was insured with the 2nd respondent. The father of the deceased minor died after the accident. Hence, the mother of the deceased minor Suryaprakash filed a claim petition seeking compensation of Rs.10,00,000/-.

5.The 2nd respondent/Insurance Company objected to the claim petition by contending that the offending vehicle is a load auto, which does not have any permit to pick up passengers, and there is no insurance coverage for the occupant of the load auto. The driver of the vehicle violated the policy conditions, moreover, the driver of the load auto did not possess any valid driving licence. Hence, the 2nd respondent/Insurance Company is not liable to pay any compensation. Therefore, the petitioner is not entitled to any claim from the 2nd respondent/Insurance Company.

6.Before the Tribunal, on the petitioner's side, two witnesses were examined as P.W.1 and P.W.2 and Ex.P.1 to Ex.P.8 were marked. On the respondents' side, three witnesses were examined as R.W.1 to R.W.3 and Ex.R.1 to Ex.R.3 were marked. In addition, Ex.X.1 to Ex.X.5 were also marked.



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7. After hearing both sides and after considering the evidence, the Tribunal has passed the impugned award by holding that the driver of the 1st respondent's vehicle was responsible for the accident and the parents of the deceased minor Suryaprakash contributed their part of negligence and fixed 50% negligence on the part of the driver of the vehicle. The Tribunal awarded total compensation of Rs.9,60,000/-. The Tribunal has directed the 2nd respondent/Insurance Company to pay 50% of the award amount at Rs.4,80,000/- and shall recover the same from the owner of the vehicle.

8. Aggrieved by the said award, the 2nd respondent/Insurance Company preferred this Civil Miscellaneous Appeal.

9. Heard both sides and perused the records in this Civil Miscellaneous Appeal.

10. The learned counsel appearing for the 2nd respondent/Insurance Company has mainly argued that the offending vehicle is a load auto for the purpose of carrying commercial goods and the seating capacity is only one. But, at the time of the accident, the driver of the 1st respondent's vehicle allowed his wife, sister, and minor son (deceased herein) to travel as a gratuitous passengers. Moreover, the 1st respondent/owner of the offending



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vehicle did not have any valid permit and fitness certificate to ply on the road and also the driver of the vehicle did not possess a valid driving license.

The insurance policy is only third party coverage and not for any passengers, who are gratuitous passengers, travelling in the load auto. The 2nd respondent/Insurance Company has adduced oral and documentary evidence to prove the same. In such facts and circumstances, the 2nd respondent/Insurance Company is not liable to pay any compensation, but only the owner is liable to pay the compensation. Without considering these aspects, the Tribunal erred in awarding compensation, directing the 2nd respondent/Insurance Company to pay and recover compensation from the 1st respondent. In a similar type of case, this Court has already held that the pay and recovery cannot be ordered against the insurance company. Therefore, the award in respect of appellant/2nd respondent/Insurance Company may be set aside by allowing this appeal.

11. In support of his argument, the learned counsel relied on the following citations:

(1) 2021 (2) TN MAC 336 of Madras High Court in the case of United India Insurance Co. Ltd., /v/ Minor Santhoshkumar, wherein it is held in paragraph No.13 to 15 as follows:

“13. In the case before the Honble Supreme



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Court was that two children were travelling as gratuitous passengers in the jeep/goods vehicle and they suffered permanent disability of amputation of wrist and another person suffered amputation of his arm upto below elbow resulting in 70% to 55% disability and the Court has stated that considering the children were travelling in the jeep as gratuitous passengers in the goods vehicle, had come to the conclusion keeping in view the peculiar facts and circumstances of this case applied the principle of pay and recover. But in the present case, this Court is not inclined to accept the said theory as in the present case on hand, the vehicle involved is a mini door auto, which has a seating capacity of only one person which a three wheeler and in that mother aged 36 years along with her two children were travelling as gratuitous passengers in the auto, while taking a turn, the vehicle was capsized and they sustained injuries.

*14. Moreover, the Insurance company has submitted that the insurance coverage is only for the goods vehicle for third party insurance and not for the passengers travelling in the said vehicle. Accordingly, they have also submitted that as per our Hon'ble Division Bench judgment in CMA Nos. 1529 to 1533 of 2015 dated 24.10.2018 [**Bharati Axa General Insurance Company Limited vs. Anandi & others**], gratuitous passengers are not*



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entitled to receive any compensation.

*15.Considering the facts and circumstances of the present case in hand and this Court being bound by the judgment of Honble Division Bench of this Court cited supra in CMA Nos.1529 to 1533 of 2015 dated 24.10.2018 (**Bharati Axa General Insurance Company Limited vs. Anandi & others**), which squarely applies to the case on hand and coupled with the fact that the Insurance Policy covers only the third party coverage and the said vehicle is meant for only carrying goods, which is also evident from the order of the Tribunal, is of the view that the order passed by the Tribunal by directing the Insurance Company to pay the compensation and thereafter recover the same from the second respondent, alone needs interference.”*

2) 2018 (2) TN MAC 731 (DB) of Madras High Court in the case of Bharati AXA General Insurance Co. Ltd., /v/ Aandi and Others, wherein it is held in paragraph Nos.24 and 50 to 52 as follows:

"24.We have considered the rival submissions. Section 147 of the Motor Vehicles Act, spells out the requirements of the Motor Insurance Policy as well as the limits of liability. While Section 147(1), deals with the matters which will have to be covered by the policy, Proviso to Section 147(1), sets out exemptions. Section 147(1)(b) which requires the



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policy to insure the person or classes of persons specified in the policy to the extent specified in sub-Section 2 against any liability which may be incurred by him in respect of the death or bodily injury to any person, including owner of the goods or his authorized representative carried in the vehicle or damage to any property of a third party caused by or arising out of the use of the vehicle in a public place.

*50. In fact, we find that in none of the judgments referred to viz., **National Insurance Co. Ltd. Vs. Swaran Singh & Ors.** reported in (2004) 3 SCC 297, **Mangla Ram Vs. Oriental Insurance Co. Ltd.** reported in (2018) 5 SCC 656, **Rani & Ors. Vs. National Insurance Co. Ltd. & Ors.** reported in 2018 (9) Scale 310 and **Manuara Khatun and Others Vs. Rajesh Kumar Singh And Others** reported in (2017) 4 SCC 796, the question regarding the liability of the Insurance Company to pay the compensation in respect of an unauthorized passenger in the goods vehicle did arise for consideration. We are therefore of the considered opinion that the judgment of the Two Judge Bench in **Shivaraj Vs. Rajendra and another** referred to supra cannot be taken as a precedent to conclude that the Insurance Company would be liable to pay the compensation even in respect of an unauthorized passenger, in a goods vehicle, in the light of*



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*categorical pronouncement of larger bench of the Hon'ble Supreme Court in **New India Assurance Company Vs. Asha Rani and others and National Insurance Co. Ltd., Vs. Baljit Kaur and others** referred to supra. We therefore conclude that the Tribunal, in the case on hand, was not right in directing the Insurance Company to pay the compensation and giving it the liberty to recover the same from the owner.*

51.No doubt true that in many cases the claimants may not be able to realise the award amount from the owners of the vehicles involved in the accident. But, the said factual situation alone cannot impel us to do something against the provisions of the statute and the decisions of the larger benches of the Hon'ble Supreme Court of India.

52. In fine, all the appeals will stand allowed only in respect of the question of liability of the Insurance Company to pay the compensation. The quantum of compensation is affirmed and there will be an award only against the owner of the vehicle viz., 1st respondent in all the Original Petitions and the award against the Insurance Company will stand set aside. However, in view of the fact that the claimants are not before us. We do not impose any costs. Consequently, the connected Miscellaneous Petitions are closed.”



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12. Per contra, the learned counsel for the petitioner submitted that the Tribunal has elaborately discussed the matter keeping in mind the settled principles laid down by the Hon'ble Supreme Court and has correctly fixed liability as 50% + 50%. It is not denied that the 2nd respondent/Insurance Company is the insurer of the offending vehicle and the policy was also in force at the time of the accident. Though the deceased travelled as a gratuitous passenger, the insurance company is primarily liable to pay and recover the same from the owner, which is the settled principle and even the same has been adopted in a recent case in **Kaminiben and Ors. vs. Oriental Insurance Company** by the Hon'ble Supreme Court. Moreover, the insurance company has deposited the awarded amount into the Court. Therefore, the Civil Miscellaneous Appeal may be dismissed.

13. In support of his arguments, the learned counsel for the petitioner/claimant has relied on the following decisions:

(i) **CDJ 2017 SC 179 in the case of Manuara Khatun & Ors. /v/ Rajesh Kr.Singh & Ors.**, it is held in paragraph Nos.21 and 22 as follows:

"21) It is for all these reasons, we find no good ground to take a different view than the one consistently being taken by this Court in all previous decisions, which are referred supra, in this regard. _



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22) In view of the foregoing discussion, we are of the view that the direction to United India Insurance Company (respondent No. 3) - they being the insurer of the offending vehicle which was found involved in causing accident due to negligence of its driver needs to be issued directing them (United India Insurance Company-respondent No.3) to first pay the awarded sum to the appellants (claimants) and then to recover the paid awarded sum from the owner of the offending vehicle (Tata Sumo)-respondent No.1 in execution proceedings arising in this very case as per the law laid down in Para 26 of Saju P. Paul's case quoted supra.

(ii) CDJ 2004 SC 228 in the case of M/s.National Insurance Co.

Ltd. /v/ Baljit Kaur, it is held in paragraph No.21 as follows:

"21.The upshot of the aforementioned discussions is that instead and in place of the insurer the owner of the vehicle shall be liable to satisfy the decree. The question, however, would be as to whether keeping in view the fact that the law was not clear so long such a direction would be fair and equitable. We do not think so. We, therefore, clarify the legal position which shall have prospective effect. The Tribunal as also the High Court had proceeded in terms of the decisions of



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this Court in Satpal Singh (supra). The said decision has been overruled only in Asha Rani (supra). We, therefore, are of the opinion that the interest of justice will be subserved if the appellant herein is directed to satisfy the awarded amount in favour of the claimant if not already satisfied and recover the same from the owner of the vehicle.

iii) 2026 Live Law SC 174 in the case of Kaminiben & Ors. /v/ The Oriental Insurance Company Ltd., & Others, wherein it is held in paragraph No.10 as follows:

"10. In the present case, the deceased was travelling in the subject tempo along with Ganesh Idol, which was taken for immersion in Narmada River. Thus, the dominant purpose for hiring the vehicle was not for travelling but for carrying the Ganesh idol for immersion. Travelling in the vehicle was only incidental, therefore, at best, the deceased can be treated as gratuitous passenger travelling with his goods (Ganesh idol). This being the circumstance, we rely on the judgment in the matter of Manuara Khatun & Ors. (supra), wherein this Court has held thus in paragraph Nos.15 and 16:-

“15. This question also fell for consideration recently in National Insurance Co. Ltd. v. Saju P. Paul [National Insurance Co. Ltd. v. Saju



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P. Paul, (2013) 2 SCC 41 : (2013) 1 SCC (Civ) 968 : (2013) 1 SCC (Cri) 812 : (2013) 1 SCC (L&S) 399] wherein this Court took note of entire previous case law on the subject mentioned above and examined the question in the context of Section 147 of the Act. While allowing the appeal filed by the insurance company by reversing the judgment [Saju P. Paul v. National Insurance Co., 2011 SCC OnLine Ker 3791;2012 ACJ 1852] of the High Court, it was held on facts that since the victim was travelling in offending vehicle as “gratuitous passenger” and hence, the insurance company cannot be held liable to suffer the liability arising out of accident on the strength of the insurance policy. However, this Court keeping in view the benevolent object of the Act and other relevant factors arising in the case, issued the directions against the insurance company to pay the awarded sum to the claimants and then to recover the said sum from the insured in the same proceedings by applying the principle of “pay and recover”.

16. R.M. Lodha, J. (as his Lordship then was and later became CJI) speaking for the Bench held in paras 20 and 26 as under : (Saju P. Paul case [National Insurance Co. Ltd. v. Saju P. Paul, (2013) 2 SCC 41 : (2013) 1 SCC (Civ) 968 : (2013) 1 SCC (Cri) 812 : (2013) 1 SCC (L&S) 399] , SCC pp. 52 & 55)



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“20. The next question that arises for consideration is whether in the peculiar facts of this case a direction could be issued to the Insurance Company to first satisfy the awarded amount in favour of the claimant and recover the same from the owner of the vehicle (Respondent 2 herein).

26. The pendency of consideration of the above questions by a larger Bench does not mean that the course that was followed in Baljit Kaur [National Insurance Co. Ltd. v. Baljit Kaur, (2004) 2 SCC 1 : 2004 SCC (Cri) 370] and Challa Upendra Rao [National Insurance Co. Ltd. v. Challa Upendra Rao, (2004) 8 SCC 517 : 2005 SCC (Cri) 357] should not be followed, more so in a peculiar fact situation of this case. In the present case, the accident occurred in 1993. At that time, the claimant was 28 years old. He is now about 48 years. The claimant was a driver on heavy vehicle and due to the accident he has been rendered permanently disabled. He has not been able to get compensation so far due to the stay order passed by this Court. He cannot be compelled to struggle further for recovery of the amount. The Insurance Company has already deposited the entire awarded amount pursuant to the order of this Court passed on 1-8-2011



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*[National Insurance Co. Ltd. v. Saju P. Paul
[National Insurance Co. Ltd. v. Saju P. Paul,
(2013) 2 SCC 41, 55 (footnote 14)]] and the said
amount has been invested in a fixed deposit
account. Having regard to these peculiar facts of
the case in hand, we are satisfied that the claimant
(Respondent 1) may be allowed to withdraw the
amount deposited by the Insurance Company
before this Court along with accrued interest.
The Insurance Company (the appellant) thereafter
may recover the amount so paid from the owner
(Respondent 2 herein). The recovery of the amount
by the Insurance Company from the owner shall be
made by following the procedure as laid down by
this Court in Challa Upendra Rao [National
Insurance Co. Ltd. v. Challa Upendra Rao, (2004)
8 SCC 517 : 2005 SCC (Cri) 357].”*

14. On hearing both sides and on perusal of records, it is clear that the accident took place due to the rash and negligent driving of the driver of the load auto bearing registration number TN 74 U 7373, which belonged to the 1st respondent. It is also clear that the deceased minor Suryaprakash was travelling along with the driver, who is his father, when the accident took place. There is no dispute that the vehicle involved in the accident is a load auto. The Tribunal has held that the accident took place due to a rash and



negligent act of the driver of the load auto and therefore, the liability was fixed as 50% upon the driver. On careful consideration of the evidence adduced by both, it is clear that the owner of the vehicle has allowed the driver to use the load auto to travel with his family member against the permitted use of the vehicle. Therefore, the Tribunal has correctly fixed liability as 50% + 50% and directed the insurance company to pay 50% of compensation and recover the same from the owner.

15. It is the definite case of the insurance company that the family members of the driver, including the deceased Suryaprakash herein, travelled in the vehicle as gratuitous passengers and hence, the insurance company has no legal obligation to indemnify the owner of the vehicle. The learned counsel for the 2nd respondent/Insurance Company relied on rulings of this Court in **United India Insurance Co. Ltd., /v/ Minor Santhoshkumar case** reported in **2021 (2) TN MAC 336** and in **Bharati AXA General Insurance Co. Ltd., case** reported in **2018 (2) TN MAC 731 (DB)**, in which it is held that in circumstances of this nature, the insurance company is not liable to pay and recover the award in the light of principle of the Hon'ble Supreme Court in **Asha Rani's case**. On perusal of the ruling of the Hon'ble Supreme Court reported in **2017 (1) TN MAC 289 (SC)** considering the **Asha Rani's case and Baljit case** it was clearly held that since the question involved was



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referred to a Larger Bench and the reference made to Larger Bench was disposed of by keeping the issue undecided, the Hon'ble Supreme Court has not taken a different view than the one consistently being taken in all previous case decisions, that the insurance company has to first satisfy the award amount in favour of the claimant and recover the same from the owner of the vehicle. Therefore, merely because the deceased was a gratuitous passenger, an insurance company cannot be exonerated from liability to pay compensation in motor accident claims. The Hon'ble Supreme Court has affirmed this fact in its recent pronouncement in the **Kaminiben case (2026 Live Law SC 174)**, relied on by the petitioner/claimant's side.

16.It is pertinent to mention here that the Tribunal has awarded only 50% compensation amount, that too directing the insurance company to pay that 50% amount and recover the same from the owner of the vehicle. The owner of the vehicle remained ex-parte before the Tribunal as well as before this Court despite the name being printed in the cause list. In the light of the above settled principle of the Hon'ble Supreme Court, this Court is of the view that the award passed by the Tribunal does not warrant interference in respect of liability. Further, in the case of accident claims, the Tribunal has to adopt settled principles while awarding compensation favouring the claimants rather than the insurance companies. Hence, the citations relied on



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by the appellant/Insurance Company are not applicable to the facts and circumstances of this case.

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17.In other respects, there is no dispute in respect of arriving at the compensation by the Tribunal, and the 2nd respondent/Insurance Company was directed to pay 50% of the awarded compensation amount. Therefore, the compensation awarded by the Tribunal is held correct and the same is not liable to be set aside.

18.In the result, this Civil Miscellaneous Appeal is dismissed and the award, dated 01.12.2020, passed in M.C.O.P.No.1090 of 2017 by the Motor Accident Claims Tribunal/I Additional District Judge, Tirunelveli, is confirmed. No costs. Consequently, the connected Civil Miscellaneous Petition is closed.

02.06.2026

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
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To

- 1.The Motor Accident Claims Tribunal/
I Additional District Judge,
Tirunelveli.
- 2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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P.VADAMALAI, J.

VSD

Pre - Delivery Judgment made in
C.M.A(MD)No.409 of 2021
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