BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 06.04.2026

Pronounced on : 12.06.2026

CORAM:

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

C.M.A.(MD)No.953 of 2025 & Cros.Obj(MD)No.9 of 2026
and
C.M.P.(MD)No.14455 of 2025

<u>C.M.A.(MD)No.953 of 2025</u>

The Manager,
National Insurance Company Limited,
261-A, Periyakulam Road,
Arun Motors, B.K.Patti,
Theni-625531. ... Appellant/
Respondent No.2

Vs.

1.Minor.Mathan Kumar
(The minor respondent represented through
his mother natural guardian Mrs.Annalakshmi) ... Respondent No.1/
Petitioner

2.M.Karthick ... Respondent No.2/
Respondent No.1

Cros.Obj(MD)No.9 of 2026

Minor.Mathan Kumar
(The minor respondent represented through
his mother natural guardian Mrs.Annalakshmi) ... Appellant/
1st Respondent

Vs.

1.The Manager,
National Insurance Company Limited,
261-A, Periyakulam Road,
Arun Motors, B.K.Patti,
Theni-625531. ... 1st Respondent/
Appellant

2.M.Karthick ... 2nd Respondent/
2nd Respondent

Prayer in C.M.A.(MD)No.953 of 2025 : This Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 to set aside the award dated 20.01.2025 passed in M.C.O.P.No.523 of 2023 on the file of the Motor Accident Claims Tribunal / Special Subordinate Judge to deal with MCOP cases, Dindigul by allowing this appeal.

Prayer in Cros.Obj(MD)No.9 of 2026 : This Cross Objection filed under Order 41 Rule 22 of Civil Procedure Code, to enhance the compensation in cross objection and dismiss the C.M.A.(MD)No.953 of 2025 as against the order passed in M.C.O.P.No.523 of 2023 on the file of the Motor Accident Claims Tribunal / Special Subordinate Judge to deal with MCOP cases, Dindigul on 20.01.2025.

(in C.M.A.(MD)No.953 of 2025)

For Appellant : Mr.V.Sakthivel

For Respondents : Mr.S.Pugalendhi for R1

No appearance for R2

(in Cros.Obj(MD)No.9 of 2026)

For Appellant : Mr.S.Pugalendhi

For Respondents : Mr.V.Sakthivel for R1

No appearance for R2

COMMON JUDGMENT

The Civil Miscellaneous Appeal and the Cross Objection are directed against the award made in M.C.O.P.No.523 of 2023 dated 20.01.2025 on the file of the Motor Accident Claims Tribunal / Special Subordinate Court to deal with MCOP cases, Dindigul.

2. In C.M.A.(MD)No.953 of 2025, the appellant / insurer, who was mulcted with liability to pay compensation of Rs.1,00,000/- (Rupees One Lakh only) as per the personal accident coverage with interest at 7.5% per annum and costs payable to the first respondent / claimant for the

disability suffered by him, consequent to an accident occurred on 31.05.2023, challenged the liability mulcted on it.

3. In Cros.Obj(MD)No.9 of 2026, the Cross Objector / claimant, who was awarded with total compensation of Rs.3,82,000/- (Rupees Three Lakhs and Eighty Two Thousand only) with interest at 7.5% per annum and costs for the disability suffered by him in the accident occurred on 31.05.2023, challenged the extent of liability mulcted on the first respondent / insurer.

4. For the sake of convenience and brevity, the parties herein after will be referred to as per their status/ranking in the Tribunal.

5. The case of the claimant is that on 31.05.2023 at about 11.50 p.m., the claimant, after watching a drama at Balathiruppathi, while returning as a pillion rider in a Hero Splendor Plus two wheeler bearing Registration No.TN-60-AH-8499 ridden by one Siva Kumar, who drove the two wheeler in a rash and negligent manner, nearby Achyutha School, caused the accident and as a result of which, the minor claimant sustained

injuries all over his body and that the accident was occurred only due to the rash and negligent riding of the two wheeler.

6. It is the further case of the claimant that the claimant had taken inpatient treatment at Government Hospital, Dindigul from 01.06.2023 to 06.06.2023, that the claimant was aged about 12 years and was a student at that time, that due to the injuries suffered, he could not perform his regular duties and that therefore, the claimant was constrained to file the claim petition.

7. The defence of the second respondent/Insurance Company is that the policy covering the first respondent's vehicle was only an "Act Only" policy, covering third-party risks, valid for the period from 01.07.2022 to 30.06.2026. According to the second respondent, the vehicle had been covered under a package policy only for the period from 01.07.2021 to 30.06.2022. Since the accident occurred on 31.05.2023, during the currency of the Act Only policy, the risk of a pillion rider or occupant of the first respondent's vehicle was not covered under the policy. It is their further case that the first respondent had not paid any additional premium

for coverage of such risk and, therefore, the second respondent is not liable to indemnify the owner or satisfy any claim arising out of the accident.

8. The first respondent / owner of the two wheeler had remained ex-parte.

9. The Tribunal, considering the evidence available on record, has come to a finding that the accident was occurred only due to the rash and negligent driving of the first respondent's vehicle rider. Since the said finding has not been challenged, the same has attained finality.

10. The Tribunal, taking note of the fact that premium of Rs.350/- was paid for "Optional PA cover for unnamed passenger" and the policy stipulates the sum insured of "Optional PA cover unnamed passenger" as Rs.1,00,000/- and by observing that though the claimant cannot be brought under the category of third party as per the Hon'ble Apex Court judgments, as per the policy the second respondent is liable to pay Rs.1,00,000/- to the claimant out of the compensation determined at Rs.3,82,000/-.

11. The Tribunal, considering the disability at 17% fixed by the Medical Board and relying on the judgment of the Hon'ble Supreme Court in ***Master Mallikarjun Vs. Divisional Manager, National Insurance Co. Ltd., and another*** reported in ***2013 (2) TNMAC 338,*** has awarded Rs.3,00,000/- for disability and awarded Rs.25,000/- for pain and suffering, Rs.15,000/- for loss of amenities, Rs.10,000/- for extra nourishment, Rs.7,000/- for attender charges, Rs.7,000/- for transport charges, Rs.3,000/- for damages to clothing and articles and Rs.15,000/- for discomfort and inconvenience of parents, totalling at Rs.3,82,000/-. The Tribunal, taking note of the PA cover for unnamed passenger, directed the second respondent to pay compensation of Rs.1,00,000/- and directed the first respondent to pay the remaining balance award amount of Rs.2,82,000/-.

12. It is pertinent to note that neither the claimant nor the second respondent / Insurance Company has challenged the quantum of compensation awarded by the Tribunal. The challenge in the present appeal is confined only to the extent of liability fastened on the second respondent.

13. The learned counsel appearing for the second respondent / insurer would submit that since the policy issued by the second respondent to the vehicle in question is only an Act policy, the pillion rider is not covered under the said policy, that the personal accident coverage is not a statutory coverage mandated under the provisions of the Motor Vehicles Act, that the claimant was travelling as a pillion rider in the second respondent's insured two wheeler, that no personal accident coverage was available to such a pillion rider under the policy, that there is no requirement under the said Act to extend personal accident cover to a pillion rider unless an additional premium has been paid and that the Tribunal failed to take note of the terms and conditions governing personal accident cover as contained in Section III of the policy and erroneously invoked the provisions of the Motor Vehicles Act to direct the insurance company to pay a sum of of Rs.1,00,000/- under the head of personal accident coverage.

14. The learned counsel appearing for the second respondent / Insurance Company would further submit that the injuries sustained and the disability suffered by the claimant do not fall within the scope of the

personal accident coverage provided under the policy. According to him, the insured would be entitled to the benefit of personal accident coverage only in cases of death, loss of limbs, loss of sight, or permanent total disablement arising from injuries, as specifically enumerated in the policy conditions, and that the claimant's case does not satisfy any of the said contingencies.

15. Per contra, the learned counsel appearing for the claimant would submit that the policy covering the vehicle is a package policy, valid for the period from 01.07.2022 to 30.06.2026. He would further submit that, though the Tribunal has awarded a total compensation of Rs.3,82,000/- to the minor claimant, it directed the second respondent/Insurance Company to pay only a sum of Rs.1,00,000/- and directed the first respondent to pay the balance amount. According to the learned counsel, the said direction is legally unsustainable and, since the policy is a package policy, the second respondent is liable to indemnify the insured and satisfy the entire award amount.

16. The learned counsel appearing for the second respondent /

insurer placed reliance upon the decision of the Division Bench of this Court in ***Pula Shanmugam and another Vs. Yugender Ravellah and others*** in ***C.M.A.No.2093 of 2023 dated 29.01.2025*** and the relevant passages are extracted hereunder;

> *"16. Ex-R.5 - Insurance Policy is a bundle policy. While its Own Damage Policy covering pillion riders got expired on September 14, 2021 i.e., before the accident, its Act Only Policy was in force on the date of accident. Now the question is whether a pillion rider is a third party or not. The current legal position is that, Indian Motor Tariff Endorsement No.18, which is to the effect that in Act Only Policy, the insured has to pay extra premium to cover the pillion rider. No such extra premium has been paid by the first respondent under Ex-R.5, extending the third respondent's liability to pillion rider / deceased. Hence, the third respondent is not liable to pay any compensation to the petitioners.*
>
> *17. In this regard, it is pertinent to refer to the Judgment of the Hon'ble Supreme Court in Oriental Insurance Co. Ltd. -vs- Sudhakaran K.V., (2008) 7 SCC 428, wherein it has been observed as hereunder:*
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> > *"25.The law which emerges from the said decisions, is : (i) the liability of the insurance*

> *company in a case of this nature is not extended to a pillion-rider of the motor vehicle unless the requisite amount of premium is paid for covering his/her risk; (ii) the legal obligation arising under Section 147 of the Act cannot be extended to an injury or death of the owner of vehicle or the pillion-rider; (iii) the pillion-rider in a two-wheeler was not to be treated as a third party when the accident has taken place owing to rash and negligent riding of the scooter and not on the part of the driver of another vehicle."*

18. To be noted, Hon'ble Supreme Court referred the question as to whether a pillion rider is covered under third party insurance or not to a larger bench vide its Order dated August 25, 2022 made in Mohana Krishnan S. -vs- K. Balasubramaniyam, Special Leave to Appeal (C) No. 3433 of 2020. However, the current legal position is that pillion rider is not covered under third party insurance unless an additional premium in this regard was paid.

19. Thus, both, Ex-R.3 and Ex-R.5 - Insurance Policies, do not cover the pillion rider. The deceased being a pillion rider can claim neither under own damage nor third party coverage. The Tribunal after elaborately discussing the legal position, has rightly come to the *conclusion that the respondent 2 and 3 are not liable to pay the compensation to the petitioner and only, the first respondent is liable to pay the compensation. There is no need to interfere with the same."*

17. In the present case, as already pointed out, an additional premium of Rs.350/- was paid towards "Optional PA cover for unnamed passenger". It is further evident from Ex.R1 insurance policy that the sum insured under the said Optional PA cover for unnamed passenger was fixed at Rs.1,00,000/-. In the annexure to policy, IMT.16 has been referred, which deals with personal accident coverage for unnamed passengers, other than the insured, paid driver, attendant or cleaner and provides that the insurer shall pay compensation for bodily injuries sustained by such passengers in accordance with the scale mentioned therein. The scale of compensation reads as follows;

Details of Injury	***Scale of Compensation***
i) Death	*100%*
ii) Loss of two limbs or sight of two eyes or one limb and sight of one eye	*100%*
iii) Loss of one limb or sight of one eye	*50%*
iv) Permanent Total Disablement from injuries other than named above	*100%*

18. The learned counsel appearing for the second respondent / insurer would submit that though the offending vehicle was covered under a bundle policy and an additional premium had been paid towards PA cover for unnamed passengers, the liability of the insurer is governed and limited by the contractual terms of the policy. According to the learned counsel, the claimant being a pillion rider cannot automatically claim lump-sum compensation under the PA coverage merely because an additional premium had been collected.

19. The learned counsel appearing for the second respondent / insurer would submit that the personal accident coverage contained in the policy provides compensation only in specific contingencies such as death, loss of limb, loss of eye sight or permanent total disablement. Per contra, the learned counsel appearing for the claimant would submit that the claimant, being a pillion rider, is a third party to the contract of insurance and that once an additional premium has been collected for unnamed passengers' coverage under a package policy, the insurer cannot avoid its liability by placing reliance upon the restrictive clauses contained in the personal accident coverage schedule.

20. It is not in dispute that the offending two wheeler was covered under a bundle policy and that additional premium was also paid towards personal accident coverage for unnamed passengers. As already pointed out, a perusal of the policy schedule further reveals that the limit of liability under the said optional personal accident cover was fixed at Rs.1,00,000/-. It is now settled that, in the case of 'Act only' policy, the risk of a pillion rider is not automatically covered unless an additional premium has been paid. At the same time, where the policy is covered under a package / comprehensive policy and an additional premium has admittedly been collected, covering unnamed passengers, the liability of the insurer has to be determined with reference to the nature and the extent of coverage provided under the policy.

21. A cursory perusal of the policy condition would disclose that the personal accident cover is a contractual benefit confined only to the specific categories of injuries enumerated therein. The policy specifically contemplates payment of compensation only in cases of death, loss of limbs, loss of eye sight or permanent total disablement. Admittedly, the claimant had sustained only 17% disability and the same does not fall

under any of the specific contingencies covered under the policy. In such circumstances, this Court is of the view that the Tribunal was not justified in directing the second respondent to pay a sum of Rs.1,00,000/- merely on the ground that an additional premium had been paid towards unnamed passengers coverage. When the claim itself does not satisfy all the conditions prescribed under the personal accident cover clause, the second respondent cannot be mulcted with liability contrary to the express the terms of the contract of insurance.

22. In so far as the contention that the claimant, being a pillion rider, should be treated as a third party and therefore the insurer is liable to indemnify so far as the entire liability is concerned, it is pertinent to note that the said issue is presently pending consideration before Larger Bench of the Hon'ble Supreme Court in ***Mohana Krishnan S Vs. K.Balasubramaniyam's*** case referred supra. As on date, the legal position laid down in the earlier decisions, holding that the risk of a pillion rider is not automatically covered under a statutory Act Only Policy, continues to hold the field. Therefore, this Court is bound to decide the present case in accordance with the existing legal position.

23. Considering the above facts and circumstances and taking note of the legal position, this Court is of the view that the direction issued by the Tribunal fastening liability upon the second respondent to pay Rs.1,00,000/- cannot be sustained and the same is liable to be set aside. Consequently, the owner of the offending vehicle alone is liable to satisfy the entire award amount. Having regard to the other facts and circumstances of the case, this Court further holds that the parties shall bear their respective costs.

24. In the result,

(i) the Civil Miscellaneous Appeal stands allowed and the impugned award directing the appellant to pay Rs.1,00,000/- (Rupees One Lakh only) as compensation under the personal accident coverage is set aside. The second respondent / owner of the offending vehicle shall be liable to pay the entire compensation to the first respondent / claimant as determined by the Tribunal. If the appellant has already deposited any amount, they are permitted to withdraw the same, together with accrued interest, if any.

(ii) the Cross Objection stands dismissed.

(iii) Consequently, connected Miscellaneous Petition is closed. The parties shall bear their own costs.

12.06.2026

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

To

1.The Special Subordinate Judge (to deal with MCOP cases),
Motor Accident Claims Tribunal,
Dindigul.

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

K.MURALI SHANKAR,J.

csm

Pre-Delivery Common Judgment made in

C.M.A.(MD)No.953 of 2025
and
Cros.Obj(MD)No.9 of 2026

Dated : 12.06.2026