

TNTS040019092024



BEFORE THE MOTOR ACCIDENTS CLAIMS TRIBUNAL, TENKASI
(The Additional Sub-ordinate Court -Tenkasi)

Present : **Thiru. S. MURUGAVEL, B.A., B.L.,**
Secretary, District Legal Service Authority, Tenkasi

Additional Sub-ordinate Judge, Tenkasi (FAC)

Eighteenth day of March 2026, Wednesday

M.A.C.O.P.No. 9 of 2023
(CNR No.TNTS040019092024)

1. Kaliasammal
2. Geetha
3. Mariraj
4. Mariammal

All are residing at,
Door no. 38/J/4, Vedakovil south street,
Melakadayanallur,
Kadayanallur Taluk,
Tenkasi District

...Petitioners

-Versus-

The Branch Manager,
HDFC ERGO General Insurance company Ltd,
Old no.559, New no. 528, 2nd floor, Annasalai,
Tynampettai, Chennai-600018

... Respondent

Date of filing : 04.01.2023
Date of taken on file : 12.01.2023
CNR No. : TNTL10000362023
Date of Award : 18.03.2026

This petition came before me for final hearing on 18.02.2026 in the presence of Mr.A.Murugan, the learned Counsel for the Petitioner, Mr.J.Samsudeen, the learned counsel for the Respondent and upon hearing the arguments of both sides

and on perusal of entire case records and on having stood over for consideration till this date, this Tribunal passed the following,

A W A R D

This petition is filed under sections 140,163(A),166 of the Motor Vehicles Act and Rule 4(1)& (2) of M.A.C.T. Rules claiming a compensation of a sum of Rs.80,00,000/- for the deceased namely Murugan and the claim Petition filed by the legal heirs of the deceased.

2. Facts in brief as set out in the Petition:

The Petitioners stated that on 18.08.2022 at 06.45 P.M, the deceased namely Murugan was driving the two-wheeler bearing registration no. TN76-AQ-3880 in cautious manner from Kadayanallur to Velayuthapuram road, while the driving of the said two-wheeler nearby Kuthalaperi Pond, some cows were suddenly crossed the road and the deceased lost his control from the vehicle and he fell down on the road. Due to the accident, the deceased sustained severe injuries and he had taken to hospital and the doctor declared that the said Murugan was died. Due to sudden crossing of the said cows, the deceased sustained fatal injuries and died. The case registered in Sambavarvadakarai Police station in crime no. 231 of 2022 under section 174 of CrPC as accident fall. The Petitioner stated that the accident happened due to sudden cross of the cows and he was working as tractor driver and he earned a sum of Rs.30,000/- per month. The 1st Petitioner is wife, 2nd & 3rd Petitioners are sons, 4th Petitioner is mother of the deceased and the Petitioners lost only earning member. The deceased two-wheeler insured with the Respondent insurance company and the Respondent have to indemnify to the claim of the Petitioners. Finally, they prayed that the Respondent is liable to pay compensation to the Petitioners and this claim petition filed for claiming compensation a sum of Rs.80,00,000/- from the Respondent.

3. **Brief facts contained in the Counter filed by the Respondent is as follows:**

The Respondent denies all the allegations and averments except those that are expressly and specifically admitted and put the petitioners to strict proof of the same. The Petitioners has to prove the manner of the accident and the case registered as accident fall and the tort-feasor cannot be claim compensation. This Petition cannot be filed under section 166 and 163A of MV Act and it can be filed any one of the section. Due to the rash and negligent driving of the deceased, the accident was happened and for the tort-feasor cannot be claimed any compensation. The deceased himself invited the accident of his own and the deceased was not a third party to the insured vehicle and this Respondent is not liable to indemnify the owner of the vehicle. The facts contained in the claim petition about the age, occupation and income of the deceased are denied. The Petitioners has to prove that they are legal heirs of the deceased. The claim sum of Rs. 80 lakhs is exaggerated and untenable and this Respondent is reserving its rights to file additional statement and it is prayed that this petition may be dismissed.

4. **Points for Consideration:** -

1.	<i>Whether the deceased is third party to the insurance policy?</i>
2.	<i>Whether the Petitioners are entitled to get any compensation?</i>
3.	<i>Who is liable to pay compensation?</i>
4.	<i>What is the quantum of the compensation that the Petitioners are entitled to?</i>

On the Petitioner side, the PW1 examined and Ex.P1 to Ex.P6 were marked. On the side of the Respondent side, the RW1 examined and Ex.R1,R2 were marked.

5. **Point No.(i):-**

i) The learned counsel for the Petitioners argued that due to sudden cross of cows, the accident was happened and the deceased sustained fatal injuries and the Respondent are liable to pay compensation to the Petitioners and he prayed that this Petition may allowed. The learned counsel for the Respondent argued that as per insurance policy, the deceased was riding the two-wheeler and he died in the accident without involving any other vehicle and he is not construed as third party and the Petitioners is not entitled any compensation amount and he prayed that this petition may be dismissed.

ii) In this petition, the 1st Petitioner namely Kaliammal examined as PW1 and she deposed that on 18.08.2022 at 06.45 P.M, the deceased namely Murugan was driving the two-wheeler bearing registration no. TN76-AQ-3880 in cautious manner from Kadayannallur to Velayuthapuram road, while the driving of the said two-wheeler nearby Kuthalaperi Pond, some cows were suddenly crossed the road and the deceased lost his control from the vehicle and he fell down on the road. Further, she deposed that due to the accident, the deceased sustained severe injuries and he had taken to hospital and the doctor declared that the said Murugan was died. According to the Petitioners is that due to the accident, the deceased sustained fatal injuries and he died, the post mortem report was marked as Ex.P2. Further, the 1st Petitioner lodged a complaint before Sambavarvadakarai Police station in crime no. 231 of 2022 under section 174 of Cr.P.C as accident fall, the FIR was marked as Ex.P1. As per the Ex.P1, the 1st Petitioner stated in the complaint that the deceased was riding his two-wheeler bearing registration no.TN76AQ-3880 by cautiously and due to sudden cross some cows, the deceased lost his control and fell down and he died.

iii) On perusal of facts contained in the Ex.P1, the deceased namely Murugan was driving the two-wheeler by cautiously and due to sudden cross some

cows, the deceased lost his control and fell down and he died. According to the Petitioners that the accident occurred due to sudden cross of some cows in the road and in this accident, there was no third party or third-party vehicle involved to decide the negligence point. As per section 163A of the MV Act, the Respondent side cannot be raised any negligent driving about the deceased. The Petitioners filed this claim Petition under sections 140,,166, 163A of M.V.Act for deceased by claiming compensation.

6. This Petition filed in the year 2023 for accident occurred on 19.08.2022. As per section 163B of M.V.Act says as follows,

“163B. Option to file claim in certain cases: Where a person is entitled to claim compensation under section 140 and section 163A, he shall file the claim under either of the said sections and not under both.”

The Petitioner can be filed the claim Petition under section 140 or 163A of M.V.Act. But the Petitioner cannot be filed the claim petition under section 140 and 163A of M.V.Act in both. Further, the section 140 & 163A of MV Act repealed as per Amended Act of 2019 with effect from 01.04.2022. But this Petition filed under sections 140 and 163A of MV Act. Even though, it is necessary to read the section 163A of M.V.Act as follows,

“163A. 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 sub-section, “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 sub-section (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”.

As per section 163A of M.V.Act, the insurance company liable to pay compensation to the claimants/deceased arising out of the use of the vehicle in a public place. On perusal of facts of this Petition, the deceased was driving two-wheeler, which was belongs to him, the deceased was driving the two-wheeler and he lost his control and he slipped out from the said vehicle and died. The accident occurred due to driving of the deceased and in this accident, there was no third party or third-party vehicle involved to decide the negligence point. As per section 163A(2) of MV Act, the injured/ deceased side not necessary to prove the negligent act. But this Petition filed under section 140 of M.V.Act, it is necessary to read the section 147 of M.V.Act as follows,

“147. Requirements of policies and limits of liability:

(1) In order to comply with the requirements of this Chapter, a policy of insurance must be a policy which- (a) *is issued by a person who is an authorised insurer; and*

(b) insures the person or classes of persons specified in the policy to the extent specified in sub-section (2) (i) against any liability which may be incurred by him in respect of the death of 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;

(ii) against the death of or bodily injury to any passenger of a public service vehicle caused by or arising out of the use of the vehicle in a public place:

Provided that a policy shall not be required- (i) *to cover liability in respect of the death, arising out of and in the course of his employment, of the employee of a person insured by the policy or in respect of bodily injury sustained by such an employee arising out of and in the course of his employment other than a liability arising under the Workmen’s Compensation Act, 1923 (8 of 1923), in respect of the death of, or bodily injury to, any such employee-*

(a) engaged in driving the vehicle, or

(b) if it is a public service vehicle engaged as a conductor of the vehicle or in examining tickets on the vehicle, or

(c) if it is a goods carriage, being carried in the vehicle, or (ii) to cover any contractual liability.

Explanation.—For the removal of doubts, it is hereby declared that the death of or bodily injury to any person or damage to any property of a third party shall be deemed to have been caused by or to have arisen out of, the use of a vehicle in a public place notwithstanding that the person who is dead or injured or the property which is damaged was not in a public place at the time of the accident, if the act or omission which led to the accident occurred in a public place.”

As per said provisions, the third party can be filed the petition for claiming compensation from owner or insurance company arising out of use motor vehicle. In this Petition, the accident occurred due to act of the deceased and tort-feasor is not entitled any compensation any disablement or fatal injuries. According to the Respondent that at the time of accident, the deceased was driving his vehicle by rash and negligent manner. Even if, the Petitioners can received any compensation under section 140 of M.V.Act and the balance amount can be received as per section 163A of M.V.Act. If the claim petition filed under section 163A of M.V.Act, as per section 163A(2) of M.V.Act, the negligent or wrongful act or default is not necessary to prove the same. But the Deceased is owner of the vehicle cannot be treated as third party within definition.

7. In this aspect, the Hon’ble Apex court decided in “***Dhanraj -Vs- New India Assurance Company and others reported in (2004) 8 SCC page 553*** it has been held that the owner of the vehicle does not come within the definition of third party and the insurance policy does not require an insurance company to assume risk of the owner the vehicle. Further, ***in New India Assurance Company Limited - vs- Sadanand Mukhi and Others reported in (2009) 2 SCC page 417*** decided that the deceased driving motor vehicle after borrowing it from real owner and thus he stepped into shoes of owner of vehicle, the injured/legal heirs of the deceased could not claim compensation under section 163-A of M.V.Act . Further, in “***Ningamma - vs- United India Insurance Co. Ltd.*** reported in (2009) 13 SCC page 710 decided by Hon’ble Apex court as follows,

“19.We have already extracted Section 163-A of the MVA hereinbefore. A bare perusal of the said provision would make it explicitly clear that

persons like the deceased in the present case would step into the shoes of the owner of the vehicle. In a case wherein the victim died or where he was permanently disabled due to an accident arising out of the aforesaid motor vehicle in that event the liability to make payment of the compensation is on the insurance company or the owner, as the case may be as provided under Section 163-A. But if it is proved that the driver is the owner of the motor vehicle, in that case the owner could not himself be a recipient of compensation as the liability to pay the same is on him. This proposition is absolutely clear on a reading of Section 163-A of the MVA. Accordingly, the legal representatives of the deceased who have stepped into the shoes of the owner of the motor vehicle could not have claimed compensation under Section 163-A of the MVA.

20. When we apply the said principle into the facts of the present case we are of the view that the claimants were not entitled to claim compensation under Section 163-A of the MVA and to that extent the High Court was justified in coming to the conclusion that the said provision is not applicable to the facts and circumstances of the present case. However, the question remains as to whether an application for demand of compensation could have been made by the legal representatives of the deceased as provided in Section 166 of the MVA. The said provision specifically provides that an application for compensation arising out of an accident of the nature specified in sub-section (1) of section 165 may be made by the person who has sustained the injury; or by the owner of the property; or where death has resulted from the accident, by all or any of the legal representatives of the deceased; or 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.”....

8. In this aspect, in ***Ramkhilladi and another -vs- The United India Insurance Company and another*** reported in 2020 (2) SCC page 550 decided by Hon’ble Apex court as follows,

" 5.....is whether, in the facts and circumstances of the case and in a case where the driver, owner and the insurance company of another vehicle involved in an accident and whose driver was negligent are not joined as parties to the claim petition, meaning thereby that no claim petition is filed against them and the claim petition is filed only against the owner and the insurance company of another vehicle which was driven by the deceased himself and the deceased being in the shoes of the owner of the vehicle

driven by himself, whether the insurance company of the vehicle driven by the deceased himself would be liable to pay the compensation under Section 163A of the Act; Whether the deceased not being a third party to the vehicle No. RJ 02 SA 7811 being in the shoes of the owner can maintain the claim under Section 163A of the Act from the owner of the said vehicle "

Above dictum of the Hon'ble Apex court that the accident occurred to act of the owner of the vehicle and the injured/deceased not being as third party. In this present petition, the deceased was driving the two-wheeler bearing registration no. TN76-AQ-3880, the deceased is not a third party. As per section 147 of M.V.Act, if there is no third party involves any incident, the insurance company cannot be liable to pay compensation to the injured or deceased legal heirs. In this Petition, as per evidence of the PW1 is that the deceased was driving the two-wheeler and due to sudden cross of the cows and he lost his steadiness and control from the vehicle and he fell down from the vehicle. As per Petitioners is that there was no any other vehicle involved in the incident.

9. Now, it is necessary the Petition filed by the Petitioner is maintainable or not. In this aspect, the Hon'ble High court of Madras decided as follows, ***The Divisional Manager -vs- A.C.Jagadeesan*** reported in *CDJ 2022 MHC page 1638* decided by Hon'ble High court of Madras as follows,

"2.In order to appreciate the above issue, it is necessary to give a brief resume of the facts that have culminated in filing of the appeal as follows:

(i) Claimant's case:

3.It is the case of the 1st respondent that on 08.10.2014, while he was driving the Car bearing Registration No.TN 24R 1666, belonging to the 2nd respondent, he lost control and hit a tamarind tree. The impact caused grievous injuries to him. The 1st respondent suffered a left leg knee joint fracture, left hip joint fracture, pelvic bone fracture, head injury and injuries all over the body (as stated in the claim petition).

4.The scene of accident as narrated by the 1st respondent in Column No.23 of the claim petition is as follows: The petitioner submits that on 08.10.2014 at about 07.30 am, the petitioner was going from Bargur to

Mathur Village on business work in the car bearing Registration No.TN 24R 1666 on the left side of the road with due care and caution and by observing the traffic rules. The petitioner submits that while he was going from Bargur to Athiganoor Village on Mathur to Bargur road near Perumalkuppam Village one Nadar Kottai due to the bad conditions of the road, the Car had lost its control and dashed against a tamarind tree. Hence, the petitioner had sustained fractures of left leg knee joint, left hip joint fracture, pelvic bone fracture and injuries on head, left leg, left hip, and injuries all over the body. Hence, the petitioner was immediately taken to the Government Headquarters Hospital, Krishnagiri and then to MIOT Hospitals, Chennai for higher treatment. Therefore, the 1st respondent had filed a claim petition under Section 163A of the Motor Vehicles Act, 1988. Counter of the Insurance,”

Further decided as,

“In Ramkhiladi and another v. The United India Insurance Company and another [2020 (2) SCC 550], the Tribunal had relied upon the principle that in a claim under Section 163A the claimant was not required to plead or establish negligence. The High Court had overturned this finding and held that the application under Section 163A of the Act against the Insurance Company of the vehicle driven by the deceased himself is liable to be dismissed. This was the subject matter of challenge before the Hon'ble Supreme Court. The learned Judge explained the principle and the purport of a claim under section 163A in Para 5.5 which is extracted hereinbelow:

"5.5 It is true that, in a claim under Section 163A of the Act, there is no need for the claimants to plead or establish the negligence and/or that the death in respect of which the claim petition is sought to be established was due to wrongful act, neglect or default of the owner of the vehicle concerned. It is also true that the claim petition under Section 163A of the Act is based on the principle of no-fault liability. However, at the same time, the deceased has to be a third party and cannot maintain a claim under Section 163A of the Act against the owner/insurer of the vehicle which is borrowed by him as he will be in the shoes of the owner and he cannot maintain a claim under Section 163A of the Act against the owner and insurer of the vehicle bearing registration No. RJ 02 SA 7811."

39.The tenor and purport of the above Judgment is the principle of 'No Fault Liability obviously implies that the injury or death or the claimant is

the result of the involvement of a third party with the claimant being an innocent by stander and the accident has occurred out of no fault of his.

Therefore, in the light of the above, the Award passed by the learned Special Sub Judge, Motor Accidents Claims Tribunal, Tiruvannamalai, in M.C.O.P.No.13 of 2017 is liable to be set aside and is accordingly set aside. No costs. Consequently, connected Miscellaneous Petition is closed.

As per dictum of the Hon'ble High court and Hon'ble Apex court, the principle of no-fault liability implies any injury or death of the claimant in result of involvement of the third party. If the accident occurred, the owner or insurance can be liable to pay compensation. But the injured or deceased is owner of the vehicle, it shall not construe as third party as per section 147, 163A of M.V.Act as per decisions cited supra. The Petitioners is not entitled any compensation as filed this petition under section 140 &166 of M.V.Act. Therefore, the Point No. (i) is answered accordingly.

10. Point No.(ii) to (iv)

As per answer of the point no.i, the Deceased is owner of the vehicle bearing registration no. TN76AQ-3880 and the said vehicle insured with the Respondent and the insurance policy copy marked as Ex.R1&Ex.P4. The learned counsel for the Respondent stated that a sum of Rs.375/- premium paid for personal accident cover and it can be awarded only a sum Rs.15 lakhs in case of death and he relied the decision rendered in *National insurance company, Thoothukudi District - vs- M.Pitchandi reported in 2024(1) TNMAC page 758*. As per Ex.P4, the insurance premium of Rs. 375/- paid for compulsory PA to owner cum driver and it is contractual liability between the Insurer and Insurance company. Further, this tribunal is not competent court to decide the same, it can be adjudicated before competent consumer forum or civil court. In this aspect,

M/s.The Cholamandalam MS General Insurance Company Limited,Chennai-vs-Ramesh Babu decided by Hon'ble High court of Madras in C.M.A.No.2434 of 2019 dated 02.09.2020 as follows,

“35. The Motor Vehicles Act being a Special legislation and the Motor Accident Claims Tribunal is constituted to deal with the Accident Claims specifically and under the provisions of the Motor Vehicles Act, the Tribunal have no jurisdiction to deal with all other policies issued by the Insurance company, which all are contractual in nature and the terms and conditions agreed between the parties specifically. Such contracted policy cannot raise any right to the parties to file Claim Petition under the Motor Vehicles Act and such claims are to be made before the competent Forum namely before Consumer Forum or before the competent Civil Court of Law. The enforceability of the terms and conditions cannot be adjudicated as such contractual policies are unconnected with the scope of the provisions of the Motor Vehicles Act, more specifically, under Section 147 of the Motor Vehicles Act.

36. It is relevant to consider that the Motor Vehicle policies are issued by the Insurance company for the purpose of grant of compensation and the language employed is “Compensation”. However, the Personal Accident Coverage Policy reveals that it is “benefit” is to be granted. Thus, the word “Compensation” adopted under the Motor Vehicle Policy cannot be equated with the “benefit” to be granted under the Personal Accident Policy, which is independent and unconnected with the provisions of the Motor Vehicles Act as well as the compensation to be assessed and granted under the Motor Vehicles Act. There is a difference between the Motor Vehicle Policy and Personal Accident Coverage Policy. Motor Accident Policies are strictly within the ambit of the provisions of the Motor Vehicles Act. The Personal Accident Coverage Policy is strictly in accordance with the terms and conditions agreed between the parties. The contractual liability or obligations cannot be adjudicated by the Motor Accident Claims Tribunal under the provisions of the Motor Vehicles Act and in such an event, the Motor Accident Claims Tribunal are usurping the powers of the competent Civil Court, which is impermissible. If such contractual liabilities are adjudicated before the Motor Accident Claims Tribunal, then the Tribunal are exercising excess jurisdiction, which is not contemplated nor conferred under the provisions of the Motor Vehicles Act.

37. This being the distinct factors, which are to be ascertained with reference to the nature of Insurance Policy, all the Tribunals are bound to look into the nature of the Policy at the first instance, before entertaining the Claim Petition. The Litigants should not be unnecessarily driven to various Courts by waiting for a long period before the Accident Claims

Tribunal. Whenever a Claim Petition is filed, either under Section 166 or under Section 163-A of the Act or otherwise, the entertainability as well as the maintainability of the Claim Petitions are to be verified with reference to the nature of the policies issued by the Insurance Company. Contrarily, the Tribunal cannot adjudicate the terms and conditions agreed between the parties in a contract and grant compensation by invoking the provisions under the Motor Vehicles Act.”

As per dictum of the Hon'ble High court, the Petitioner's vehicle insured with personal accident cover as per Ex.P4 and the Petitioner may file any petition before competent consumer forum or civil court for claiming compensation for contractual liability of insurance company. This Tribunal cannot be decided this petition for compensation as per Personal accident cover as per cited *supra*. Hence, the Petitioners are not entitled any compensation before this tribunal for deceased namely Murugan and this petition is liable to be dismissed. As per answer of the point no. i the Petitioners are not entitled any compensation from the Respondent in this Petition, and this Petition is liable to be dismissed and the above said observation, answered the point No.ii to iv accordingly.

In the result, the Petition filed by the Petitioners is dismissed and no costs.

As per the Judgment of the Hon'ble High court in M/s. Cholamandalam General insurance company -vs- Ayyanar and others decided in TR.CMP Nos. 264 to 281 of 2020 dated 11.05.2020, no separate decree passed.

This award is typed by me in my laptop and made correction by me and pronounced by me in the open court on this the 18th day of March 2026.

Motor Accidents Claims Tribunal Judge
and additional Subordinate Judge,
Tenkasi. (FAC)

The Petitioner side witness:

P.W- 1 – Kalaiammal(the 1st Petitioner)

The Petitioner side documents:

- | | | |
|--------|------------|--------------------------------------------------------------------------------------|
| Ex.P.1 | 19.08.2022 | Copy of the FIR. |
| Ex.P.2 | 19.08.2022 | Copy of the post mortem report |
| Ex.P.3 | ---- | Copy of the registration certificate of vehicle bearing registration no. TN76AQ-3880 |
| Ex.P.4 | 30.10.2020 | Copy of the Insurance policy |
| Ex.P.5 | 30.09.2022 | Copy of legal heir certificate |
| Ex.P.6 | ---- | Copy of driving licence |

The Respondent side witnesses:

R. W.1- Rajesh

The Respondents side documents:

1. Ex.R1- Copy of the insurance for the vehicle reg.no.TN76AQ-3880
2. Ex.R2- Copy of the rough sketch, and final report

The third-party witnesses: Nil

The third-party documents: Nil

The court documents: Nil

Motor Accidents Claims Tribunal Judge
and Additional Subordinate Judge,
Tenkasi (FAC)

Additional Sub Court, Tenkasi

MACOP No.9/2023

Award (Original/Draft)

Dated 18.03.2026
