WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	17.02.2026
Pronounced on	24.04.2026

CORAM

THE HONOURABLE MRS.JUSTICE K.GOVINDARAJAN THILAKAVADI

C.M.A.No. 3659 of 2025

Sowmiya ...Appellant

Vs.

1. N. Subramanian
2. The ICICI Lombard General Insurance Co. Ltd., No.48, Wall |Tax, Harrington Plaza, 1st Floor, Park Town, Chennai 600 001 ...Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act,1988, against the order dated 29.10.2024 made in M.C.O.P. No.1029 of 2020 on the file of the Motor Accident Claims Tribunal/Chief Judge, Small Causes Court, Chennai.

For Appellant : Mr. R. MohanBabu

For Respondents : Mr. R.V.Sivaraj for R2

R1 – Notice dispensed with

https://www.mhc.tn.gov.in/judis

WEB COPY

JUDGMENT

This appeal, under Section 173 of Motor Vehicles Act, has been filed by the appellant / claimant against the order dated 29.10.2024 made in M.C.O.P. No.1029 of 2020, on the file of the Motor Accident Claims Tribunal/Chief Judge, Small Causes Court, Chennai, whereby the Claim Petition was dismissed.

2. Shortly stated, on 23.08.2017, at about 22.30 hours, while the deceased Mythili was travelling as a pillion rider in a motorcycle bearing Registration No. TN 22 DF 8290, at Velacherry to Tambaram Main |Road, from South to North direction, near Pallikarani lake, the rider of the two wheeler rode the same in a rash and negligent manner and applied sudden brake, due to the impact, the deceased fell down and sustained grievous injuries and died on 08.09.2017 despite treatment. At the time of accident, the deceased was 52 years old. Claiming the income of the deceased as Rs.15,000/- per month, a claim petition was filed by the daughter of the deceased for a compensation of Rs.30,00,000/- for the death of her mother.

https://www.mhc.tn.gov.in/judis

WEB COPY

3. The 2nd respondent / Insurance Company resisted the claim petition by stating that the rider of the motorcycle did not possess valid driving license and that the deceased died due to a stumble by herself from the motorcycle and there was no careless and negligent act of the rider of the motorcycle and prayed for dismissal of the claim petition. Accordingly, the Claims Tribunal framed necessary issues and came to the conclusion that the accident took place due to the negligence of the deceased and that it is an admitted case of the petitioner that the rider of the motorcycle was not negligence and dismissed the claim petition.

4. Aggrieved over the same, the appellant / petitioner has filed the present Civil Miscellaneous Appeal.

5. Mr. R. Mohan Babu, the learned counsel for the appellant / petitioner would contend that the Tribunal, without considering the evidence of P.W.2, an eyewitness to the accident, who has clearly stated in the cross examination that due to the rash and negligent act of the rider of the motorcycle the accident occurred, based on FIR and Final Report, has come to a conclusion that the deceased herself fell down from the motorcycle and died. According to the

https://www.mhc.tn.gov.in/judis

WEB COPY

learned counsel for the appellant, the appellant, to safeguard his brother, who is the rider of the motorcycle, agreed for action dropped procedure, that itself does not mean that the accident has not occurred and the rider was not at fault. As per Ex.P10 Insurance Policy, it provides Personal Accident cover for 2 persons which includes rider and pillion rider. Hence, as per the policy, the pillion rider is covered under the policy. Hence, prays this Court to award compensation as claimed by the appellant / petitioner.

6. On the other hand, the learned counsel for the 2nd respondent / Insurance Company submitted that, the Tribunal has considered the materials on record and rightly dismissed the claim petition, which warrants any interference.

7. Heard on both sides.

8. On a perusal of the order of the Tribunal, it is seen that, as per the evidence of P.W.2, an eyewitness to the accident, the motorcycle was driven by its rider in a rash and negligent manner, however, the Tribunal has observed that the appellant has not proved negligence on the part of the rider of the two

https://www.mhc.tn.gov.in/judis

WEB COPY

wheeler and held that it is a clear case of self fall by the deceased herself and accordingly dismissed the claim petition. The Tribunal failed to consider the evidence of PW2 and erroneously came to the above conclusion based on the FIR and Final Report, which is unsustainable. FIR and police papers are not substantive piece of evidence. They are only documents for the purpose of corroboration and/or contradictions and cannot take the place of substantive evidence recorded during trial in the claim cases.

8.1. In the present case, since the deceased was a pillion-rider and not a contractual third party, the insurer was not liable under the policy terms. On a perusal of Ex.P10 Insurance Policy, it is seen that it is a package policy with PA cover for two persons of Rs.1,00,000/- each. Hence, the appellant cannot approach the Motor Accident Claims Tribunal by filing a Claim Petition under Section 163(A) of the Motor Vehicles Act, 1988 for the death of a pillion rider relying upon the personal accident cover. This does not prevent the owner of the vehicle, who has taken the personal accident cover, from claiming compensation from his insurer. However, the Claims Tribunal is not the forum, before which he can make his claim, as he is not a third party. It is open to the owner of the vehicle to directly approach the insurer on the basis

https://www.mhc.tn.gov.in/judis

WEB COPY

of the personal accident cover. In case, the Insurance Company fails to compensate him, it is well open to him to approach the Consumer Forum or any other appropriate forum.

9. In view of the above discussions, the present Civil Miscellaneous Appeal is partly allowed. No costs. The Award dated 29.10.2024 made in M.C.O.P. No.1029 of 2020 on the file of the Motor Accident Claims Tribunal/Chief Judge, Small Causes Court, Chennai, is set aside with regard to negligence aspect. It is open to the appellant to directly approach the insurer on the basis of the personal accident cover. In case, the Insurance Company fails to compensate her, it is well open to her to approach the Consumer Forum or any other appropriate forum.

24.04.2026

bga

Internet:Yes/No
Index:Yes/No
Speaking/Non-speaking order

https://www.mhc.tn.gov.in/judis

WEB COPY

To

1. The Chief Judge, Motor Accident Claims Tribunal/Chief Judge,
   Small Causes Court, Chennai.
2. The Section Officer,
   VR Section,
   High Court, Madras.

3.The ICICI Lombard General Insurance Co. Ltd.,
No.48, Wall |Tax, Harrington Plaza,
1st Floor, Park Town, Chennai 600 001

https://www.mhc.tn.gov.in/judis

WEB COPY

K.GOVINDARAJAN THILAKAVADI, J.

bga

Pre delivery judgment in
C.M.A.No. 3659 of 2025

24.04.2026

https://www.mhc.tn.gov.in/judis