



C.M.A.No.2019 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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<i>Reserved on</i>	15.12.2025
<i>Pronounced on</i>	21.01.2026

CORAM:

**THE HONOURABLE MRS. JUSTICE K. GOVINDARAJAN
THILAKAVADI**

**C.M.A.No.2019 of 2021
and C.M.P.No.10946 of 2021**

M/s.TATA AIG General

Insurance Company Limited,

Chennai.

...Appellant

Vs.

1.Priya

2.Minor. Jananishri D/o. Late.Subramanian

Represented by next friend and mother Priya.

3.Chellammal

...Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the decree and judgment dated 12.06.2020 passed in M.C.O.P.No.811 of 2015 on the file of the Motor Accident Claims Tribunal, (Mahila Sessions Court) at Perambalur.

For Appellant : Mr. J.Michael Visuvasam

For Respondents : No appearance



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JUDGMENT

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The Civil Miscellaneous Appeal is preferred against order dated 12.06.2020 passed in M.C.O.P.No.811 of 2015 on the file of the Motor Accident Claims Tribunal, (Mahila Sessions Court) at Perambalur.

2. Shortly stated, that as per claims of the petitioners, the accident took place 21.06.2016 on Musiri-Thuraiyur route. The deceased, Subramanian, was driving the motor cycle bearing Registration No.TN-28-AJ-7792, Hero Honda Splender Plus and dashed against a pedestrian. As result of the accident, the deceased, Subramnian sustained multiple fatal injuries who succumbed to the accidental injuries on 02.07.2016. FIR was registered by the Jembunathapuram police.

3. The claimants as legal heirs of the deceased Subramanian, have filed the Claim Petition, claiming a sum of Rs.15,00,000/- for the death of the deceased. In the claim petition it was averred that the deceased was 40 years and was earning a sum of Rs.10,000/- per month by doing agricultural work and by carrying on Salt and Dal export business.



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4. The claim of the claimants was resisted by the respondents

stating that the deceased being a party to the contract is not a third party and hence, the claim is not maintainable before the Motor Accident Claims Tribunal. It is further stated that the deceased has driven the vehicle bearing Reg.No.TN-28-AJ-7792 without a valid and effective driving license at the time of the accident and therefore, violated the provisions of the Motor Vehicle Act, as well as the terms and conditions of the policy. Hence, the respondent is not liable to pay any compensation to the petitioners and prayed for dismissal of the claim petition.

5. The Tribunal, partly allowed the Claim petition and passed an award of compensation to a tune of Rs.1,00,000/- and directed the respondent to deposit the compensation amount within period of one month from the date of receipt of copy of the said Order, by holding that in a claim petition under Section 163A of MV Act, the question whether the deceased is a tortfeasor or a third party, owner or driver does not arise. It is further held that under Ex.R5 Policy copy, the deceased has paid Rs.50/- towards personal accident cover and applying the principles laid down in ***Divisional Manager, United India Insurance Company Ltd. Vs.***



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R. Rekha & Others reported in ***2018 ACJ 796 : 2017 (2) TNMAC 674***

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(DB), concluded that the claimants are entitled to Rs.1,00,000/- towards personal accident cover.

6. Assailing the same, the present appeal is preferred by the appellant/ Insurance Company. The learned counsel for the appellant/ Insurance Company would submit that an owner / insured cannot approach the Motor Accidents Claims Tribunal by filing a claim petition under Section 163A of the Motor Vehicle Act, 1988, for the injuries sustained by him relying upon the personal accident cover. It is open for the claimants to approach the claimants forum or any other appropriate forum to make their claim. To support his contention, he has relied upon the judgment in the case of ***TATA AIG General Insurance Company Limited*** reported in ***2024 (2) TN MAC 305 (DB)*** in which it is held that, an owner / insured cannot approach the Motor Accident Claims Tribunal by filing a claim petition under Section 163A of the Motor Vehicles Act, 1988, for the injury sustained by him relying upon the personal accident cover.



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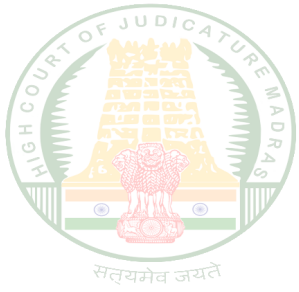
7. The learned counsel for the appellant submitted that even under personal accident cover for owner / driver no compensation shall be payable in respect of death or bodily injury if such accident happens while the injured is under the influence of intoxicating liquor or drugs and moreover the personal accident cover is subject to only when the owner / driver holds an effective driving license. He would submit that in the present case there is sufficient evidence to prove that the injured was under the influence of alcohol and was not having effective driving license at the time of accident. Hence, he is not liable to any compensation under the personal accident cover.

8. Despite notice, the respondents remained absent.

9. Heard. Records perused.

10. The Appellant/Insurance Company has questioned the very invocation of the Tribunal by stating that the deceased cannot be treated as a third party to the accident, besides raising other defences. The Tribunal ultimately granted compensation of a sum of Rs.1,00,000/-, which is payable under the personal accident cover in the insurance policy.

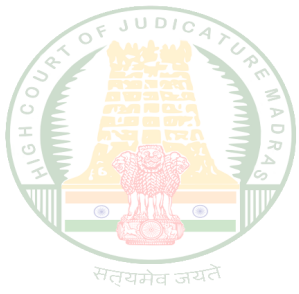
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11. Aggrieved by the said award, the Insurance Company had come

forward with the civil miscellaneous appeal. Applying the principles laid down by this Court in the cited case by the learned counsel for the appellant for the similar facts, this Court also holds that the claimants cannot approach the Motor Accident Claims Tribunal for the death of the deceased / Owner / Insured by filing a claim petition under Section 163 A of the Motor Vehicles Act, 1988, who has taken a personal accident cover. As observed in the above cited judgment, the claimants are not prevented from claiming compensation from the insurer, having taken a personal accident cover. However, the claims Tribunal is not the forum, before which the claimants can make their claim, as the deceased is not a third party. It is open to the claimants to approach the insurer on the basis 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. All other questions are left to the Insurance Company to take appropriate decision in accordance with law.



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12.In the result,

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- i. the civil miscellaneous appeal is allowed. No costs. Consequently connected miscellaneous petition is closed.
- ii. The decree and judgment dated 12.06.2020 passed in M.C.O.P.No.811 of 2015 on the file of the Motor Accident Claims Tribunal, (Mahila Sessions Court) at Perambalur, is set aside.

21.01.2026

Index: Yes/No
Internet: Yes/No
Speaking/Non-Speaking order
vsn/bga

To

1. The Mahila Sessions Judge, Motor Accident Claims Tribunal
Perambalur.
2. The Section Officer, VR Section, High Court, Madras.



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K.GOVINDARAJAN THILAKAVADI,J
vsn/bga

Pre delivery Judgment in
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