

C.M.A.(MD).No.2 of 2

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated 22.06.2026

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THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH
and
THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

C.M.A.(MD).No.2 of 2026

The Branch Manager,
Cholamandalam MS General Insurance Company Ltd.,
No.3 and 4, First Floor, Backside Shanmuga Theatre,
Dindigul Highway Road,
Kalavasal,
Madurai-625 019.

... Appellant / 2nd Respondent

Vs.

1.Vinoth
2.Maikannan
3.Indira

...1st to 3rd Respondents / Petitioners

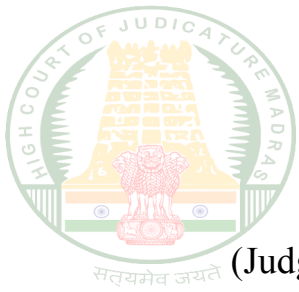
4.Thirumalai

... 4th Respondent / 1st Respondent

PRAYER:- Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the order passed in M.C.O.P.No.1848 of 2023 on the file of the Special District Court/Motor Accident Claims Tribunal, Madurai, dated 22.04.2025 by allowing the Civil Miscellaneous Appeal.

For Appellant : Mr.C.Vakeeswaran

For R1 to R3 : Mr.V.Sakthi



J U D G M E N T

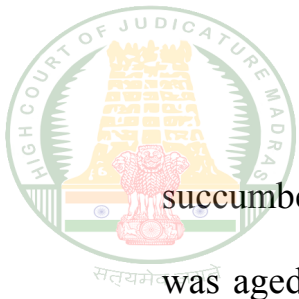
(Judgment of the Court was delivered by **K.K.RAMAKRISHNAN.J.**)

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The appellant–Insurance Company, which was the second respondent in M.C.O.P.No.1848 of 2023 on the file of the Special District Court/Motor Accident Claims Tribunal, Madurai, has preferred the present appeal challenging the findings of the Tribunal fixing negligence on the driver of the insured vehicle and directing the appellant to pay the compensation to the claimants and recover the same from the owner of the vehicle.

2. Facts of the Case:

2.1. According to the claimants, on 07.01.2021, at about 02.00 a.m., the deceased, Kavin, brother of the first claimant and grandson of claimants 2 and 3, was travelling in an Ashok Leyland Dost goods vehicle bearing Registration No.TN 58 AT 2135, along with another person, carrying hens, owned by the first respondent and driven by its driver, on the Madurai–Kappalur Bypass Road from east to west, near the Indian Oil Corporation Pirivu Road. At that time, the driver of the said Dost vehicle, while driving in a rash and negligent manner, rammed against a Bharat Benz vehicle bearing Registration No.TN 69 AL 7796, which was proceeding ahead of the Dost vehicle. Due to the impact, the deceased sustained grievous head injuries and



succumbed to the same at the spot. At the time of the accident, the deceased was aged about 21 years and was earning a sum of Rs.40,000/- per month by working as supervisor and also doing agricultural works. Contending that the accident occurred solely due to the rash and negligent driving of the driver of the offending vehicle and that the said vehicle was covered under a valid insurance policy issued by the appellant/Insurance Company, the claimants filed M.C.O.P. No.1848 of 2023 seeking compensation of Rs.80,00,000/-.

2.2.The appellant/Insurance Company filed a counter statement denying the manner of accident, age, occupation and income of the deceased and contended that the accident occurred due to the negligence of the driver of the offending vehicle, who allegedly drove the vehicle at a high speed and in violation of the Motor Vehicles Act and Rules. The appellant/Insurance Company further contended that the deceased was travelling in the said vehicle as an unauthorized passenger/fare-paying passenger in violation of the policy conditions and the provisions of the Motor Vehicles Act. Therefore, the Insurance Company was not liable to indemnify the owner of the vehicle.

2.3. Before the Tribunal, on the side of the claimants, P.W.1 and P.W.2 were examined and Exhibits P1 to P13 were marked. On the side of the



respondents, R.W.1 was examined and Exhibit R1 was marked.

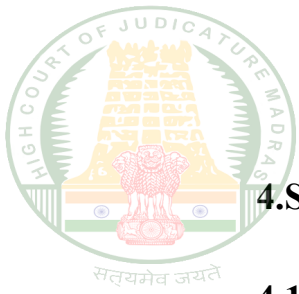
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3. Finding of the Tribunal

3.1. Upon consideration of the oral and documentary evidence, the Tribunal fixed the negligence on the driver of the insured vehicle and awarded compensation of **Rs.24,48,272/-** to the claimants in the following manner:

Sl. No.	Description	Amount (Rs.)
1.	Loss of Dependency (Rs.10,617 $\times$ 12 $\times$ 18 less 50% personal expenditure of Rs.10,617/- per annum)	22,93,272/-
2.	Loss of Love and Affection (Rs.40,000/- $\times$ 3)	1,20,000/-
3.	Loss of Estate	15,000/-
4.	Funeral Expenses	15,000/-
5.	Transportation Charge	5,000/-
Total		24,48,272/-

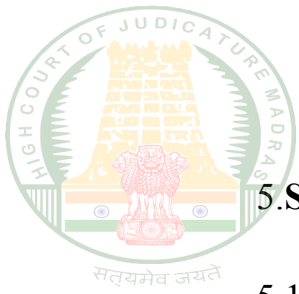
3.2.Challenging the said award, the appellant/Insurance Company has preferred the present appeal mainly on the ground of negligence and consequential liability.



4.Submissions of the learned counsel appearing for the appellant:

4.1. The learned counsel for the appellant/Insurance Company would contend that the deceased, along with another person, was travelling in the 4th respondent's goods vehicle as a gratuitous passenger at the time of the accident. Such carrying of unauthorized passengers in a goods vehicle is contrary to the provisions of the Motor Vehicles Act, 1988, and amounts to breach of the terms and conditions of the insurance policy. Hence, the appellant-Insurance Company cannot be held liable to indemnify the insured or satisfy the compensation awarded by the Tribunal.

4.2. The learned counsel for the appellant/Insurance Company would further submit that the Tribunal directed the insurer to satisfy the award and thereafter recover the amount from the owner of the vehicle (the "pay and recover" principle), after holding that the deceased/injured was travelling as a gratuitous passenger in a goods vehicle, allegedly in violation of the law laid down in *National Insurance Co. Ltd. v. Baljit Kaur, (2004) 2 SCC 1*. Thereby, the Tribunal committed an error in invoking the doctrine of "pay and recover."



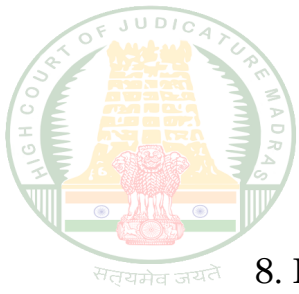
5.Submissions of the learned counsel for the respondents:

5.1. Per contra, the learned counsel for the respondents 1 to 3 would submit that though the deceased was gratuitous passenger, after considering the oral and documentary evidence, the Tribunal correctly fixed the liability on the driver of the offending vehicle and directed the insurer to satisfy the award and thereafter recover the same from the owner of the vehicle. Hence, there is no illegality and infirmity in fixing the liability on the driver of the offending vehicle and ordering to pay and recover. Hence, he prayed for dismissal of the appeal.

6. This Court carefully considered the rival submissions and perused the materials available on record.

7. This appeal has been filed only challenging the liability and pay and recover. Therefore, the point for determination in this appeal is :-

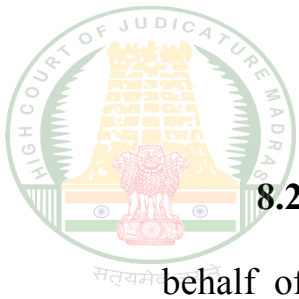
*Whether the Tribunal was justified in directing the insurer to satisfy the award and thereafter recover the amount from the owner of the vehicle (the "pay and recover" principle), after holding that the deceased/injured was travelling as a gratuitous passenger in a goods vehicle, allegedly in violation of the law laid down in **National Insurance Co. Ltd. v. Baljit Kaur, (2004) 2 SCC 1?***



8. Discussion:

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8.1. This issue was authoritatively considered by the Constitution Bench of the Hon'ble Supreme Court in *New India Assurance Co. Ltd. v. Asha Rani, (2003) 2 SCC 223*, wherein it was held that an insurer is not statutorily liable to indemnify the owner in respect of gratuitous passengers travelling in a goods vehicle. The said principle was reaffirmed in *National Insurance Co. Ltd. v. Baljit Kaur, (2004) 2 SCC 1*. However, the law did not remain the same thereafter. The subsequent decisions of the Hon'ble Supreme Court have repeatedly invoked the doctrine of "**pay and recover**" in appropriate cases, notwithstanding the absence of statutory liability, with a view to protecting the interests of innocent third-party victims. The principle has been applied in several decisions, including *National Insurance Co. Ltd. v. Swaran Singh, (2004) 3 SCC 297*; *Mangla Ram v. Oriental Insurance Co. Ltd., (2018) 5 SCC 656*; *Shamanna v. Oriental Insurance Co. Ltd., (2018) 9 SCC 650*; and other subsequent judgments. The learned counsel for the appellant, however, relied heavily upon *Baljit Kaur case* and submitted that the Tribunal committed an error in invoking the doctrine of "pay and recover", the same cannot be accepted.



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8.2. This Court finds considerable force in the submissions advanced on behalf of the claimants that in view of the latest judgment of the Hon'ble Supreme Court in the case of ***Kaminiben and Others -vs- Oriental Insurance Co.Ltd., and Ors reported in 2026 (1) TN MAC 680 (SC)***, the Hon'ble Supreme Court has once again considered the correctness of applying the doctrine of "pay and recover" in such cases by framing the specific question whether the High Court was justified in reversing the finding of Motor Accident Claims Tribunal which had directed the insurance company to pay the amount of compensation to the claimants and thereafter recover the same from the owner of the vehicle and has affirmed the exercise of such power by the Motor Accident Claims Tribunals and set aside the judgment of the High Court after elaborate discussion and following the decision of the "***Saju P.Paul***" and "***Manuara Khatun***" and distinguishing the "***Amudhavalli***" case. Further the reference was disposed of by the Hon'ble Supreme Court with observation to consider the cases on case to case basis. When the Hon'ble Supreme Court has reiterated the applicability of the "pay and recover" doctrine in the case of ***Kaminiben and Others -vs- Oriental Insurance Co.Ltd., and Ors reported in 2026 (1) TN MAC 680 (SC)***, this Court, being bound under Article 141 of the Constitution of India, has no jurisdiction to take a contrary view by placing reliance exclusively upon ***Baljit Kaur***, ignoring the subsequent law holding the field. Judicial discipline demands that this Court follow the law as explained in

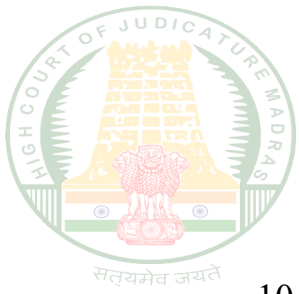


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the later binding precedents of the Hon'ble Supreme Court on the basis of binding nature of article 141 of Constitution of India, which says that the law declared by the Hon'ble Supreme Court to be binding on all Courts. Consequently, the direction issued by the learned Tribunal directing the insurer to satisfy the award in the first instance and thereafter recover the amount from the owner of the offending vehicle is fully in accordance with the settled legal position and calls for no interference. Accordingly, the contention advanced by the learned counsel for the appellant-Insurance Company is rejected.

9. Conclusion:

9.1. In view of the above, this Court finds no merit in the appeal. Accordingly, the Civil Miscellaneous Appeal is dismissed by confirming the award dated 22.04.2025 in M.C.O.P.No.1848 of 2023 on the file of the Motor Accident Claims Tribunal/ Special District Court, Madurai. The appellant–Insurance Company is directed to deposit the entire award amount, if not already deposited, together with accrued interest and costs, within a period of **six weeks** from the date of receipt of a copy of this judgment. Upon such deposit, the claimant shall be permitted to withdraw the compensation amount by filing appropriate applications before the Tribunal. No costs. Consequently, the connected miscellaneous petition is closed.



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10. After delivering the judgment, the learned counsel appearing for the appellant sought an oral certificate under **Article 134A of the Constitution of India** for preferring an appeal before the Hon'ble Supreme Court. It was submitted that the issue concerning the applicability of the doctrine of "pay and recover" in cases involving gratuitous passengers in goods vehicles continues to arise frequently and involves the interpretation of the decisions in *Asha Rani* and *Baljit Kaur* vis-à-vis the subsequent line of authorities applying the doctrine of "pay and recover."

11. Having regard to the recurring nature of the issue, the apparent development of the law through subsequent decisions of the Hon'ble Supreme Court, and the importance of authoritatively determining whether the principle laid down in *Baljit Kaur* is to be applied independently or harmoniously with the later judgments invoking the doctrine of "pay and recover," this Court is satisfied that the matter involves a substantial question of law of general public importance requiring consideration by the Hon'ble Supreme Court.

12. Accordingly, this Court grants a certificate under **Article 134A of the Constitution of India**, for the Hon'ble Supreme Court to examine the scope,



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applicability, and continued operation of the doctrine of "pay and recover" in cases involving gratuitous passengers travelling in goods vehicles.

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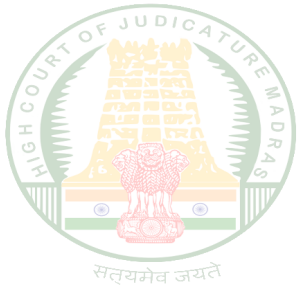
[N.A.V.,J.] & [K.K.R.K.,J.]

22.06.2026

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

- 1.The Special District Court/Motor Accident Claims Tribunal,
Madurai.
- 2.The Section Officer,
VR Section,
Madurai Bench of Madras High Court, Madurai.



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N.ANAND VENKATESH,J.
and
K.K.RAMAKRISHNAN,J.

dss

Judgment made in
C.M.A.(MD).No.2 of 2026

Dated: 22.06.2026