

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:31.07.2018

CORAM

THE HONOURABLE MR.JUSTICE S.BASKARAN

CIVIL MISCELLANEOUS APPEAL NOS.379, 380, 381,382, 383, 384, 385,
386, 387, 388, 389, 390, 391,392, 393, 394, 395, 396, 397, 398,
399, 400, 401,402, 403, 404 OF 2018

The United India Insurance Co. Ltd.
City Branch Office,
1, Vettukattil Building, 3rd Floor,
Jose Junction, M.G.Road,
Ernakulam, Cochin.

Appellant/2nd respondent
in all CMAs

.vs.

1.Annapoorani ... 1st respondent/Claimant
2.A.Jayaprakash ... 2nd respondent/ 1st respondent
3.K.Kamalahasan ... 3rd respondent/3rd respondent
(in CMA.No.379 OF 2018(MCOP.No.91 OF 2011))

1.Sudha ... 1st respondent/Claimant
2.A.Jayaprakash ... 2nd respondent/ 1st respondent
3.K.Kamalahasan ... 3rd respondent/3rd respondent
(in CMA.No.380 OF 2018(MCOP.No.92 OF 2011))

1.Sarasu ... 1st respondent/Claimant
2.A.Jayaprakash ... 2nd respondent/ 1st respondent
3.K.Kamalahasan ... 3rd respondent/3rd respondent
(in CMA.No.381 OF 2018(MCOP.No.93 OF 2011))

1.Kalpana ... 1st respondent/Claimant
2.A.Jayaprakash ... 2nd respondent/ 1st respondent
3.K.Kamalahasan ... 3rd respondent/3rd respondent
(in CMA.No.382 OF 2018(MCOP.No.94 OF 2011))

1.Radha ... 1st respondent/Claimant
2.A.Jayaprakash ... 2nd respondent/ 1st respondent
3.K.Kamalahasan ... 3rd respondent/3rd respondent

(in CMA.No.383 OF 2018(MCOP.No.96 OF 2011))

1.Sudha ... 1st respondent/Claimant
2.A.Jayaprakash ... 2nd respondent/ 1st respondent
3.K.Kamalahasan ... 3rd respondent/3rd respondent

(in CMA.No.384 OF 2018(MCOP.No.97 OF 2011))

1.Govindan ... 1st respondent/Claimant
2.A.Jayaprakash ... 2nd respondent/ 1st respondent
3.K.Kamalahasan ... 3rd respondent/3rd respondent

(in CMA.No.385 OF 2018(MCOP.No.98 OF 2011))

1.Madammal ... 1st respondent/Claimant
2.A.Jayaprakash ... 2nd respondent/ 1st respondent
3.K.Kamalahasan ... 3rd respondent/3rd respondent

(in CMA.No.386 OF 2018(MCOP.No.99 OF 2011))

1.Munivel
2.Minor Thenmozhi
3.Minor Swetha
(Minors are rep. by their NF
& Father Munivel)
... Respondents 1 to 3/Claimants 1 to 3

4.A.Jayaprakash ... 4th respondent/ 1st respondent
5.K.Kamalahasan ... 5th respondent/3rd respondent

(in CMA.No.387 OF 2018(MCOP.No.106 OF 2011))

1.Mathivanan
2.Minor Pairavan
3.Minor Iswarya
(Minors are rep. by their
NF & father Mathivanan)
... Respondents 1 to 3/Claimant 1 to 3

4.A.Jayaprakash ... 4th respondent/ 1st respondent
5.K.Kamalahasan ... 5th respondent/3rd respondent

(in CMA.No.388 OF 2018(MCOP.No.108 OF 2011))

1.Chinnathai
2.T.Mathayan
3.T.Sidharaji
4.Muthayee
5.Rukmani ... Respondents 1 to 5/Claimant 1 to 5
6.A.Jayaprakash ... 6th respondent/ 1st respondent
7.K.Kamalahasan ... 7th respondent/3rd respondent

(in CMA.No.389 OF 2018 (MCOP.No.110 OF 2011))

1.Madhappan
2.Pairappan ... Respondents 1 & 2/Claimant 1 & 2
3.A.Jayaprakash ... 3rd respondent/ 1st respondent
4.K.Kamalahasan ... 4th respondent/3rd respondent

(in CMA.No.390 OF 2018 (MCOP.No.116 OF 2011))

1.Ravikumar
2.Minor Aravind
3.Minor Keerthana
(Minors are rep. by their
NF & father Ravikumar)
... Respondents 1 to 3/Claimant 1 to 3
4.A.Jayaprakash ... 4th respondent/ 1st respondent
5.K.Kamalahasan ... 5th respondent/3rd respondent

(in CMA.No.391 OF 2018 (MCOP.No.118 OF 2011))

1.Thangavel
2.Vignesh ... Respondents 1 & 2/Claimant 1 & 2
3.A.Jayaprakash ... 3rd respondent/ 1st respondent
4.K.Kamalahasan ... 4th respondent/3rd respondent

(in CMA.No.392 OF 2018 (MCOP.No.120 OF 2011))

1.Thangavel
2.Vignesh ... Respondents 1 & 2/Claimant 1 & 2
3.A.Jayaprakash ... 3rd respondent/ 1st respondent
4.K.Kamalahasan ... 4th respondent/3rd respondent

(in CMA.No.393 OF 2018 (MCOP.No.130 OF 2011))

1.Madhesh
2.Dheepa ... Respondents 1 & 2/Claimant 1 & 2
3.A.Jayaprakash ... 3rd respondent/ 1st respondent
4.K.Kamalahasan ... 4th respondent/3rd respondent

(in CMA.No.394 OF 2018 (MCOP.No.134 OF 2011))

1.Devendran ... 1st respondent/1st Claimant
2.A.Jayaprakash ... 2nd respondent/ 1st respondent
3.K.Kamalahasan ... 3rd respondent/3rd respondent

(in CMA.No.395 OF 2018 (MCOP.No.176 OF 2011))

1.Kavitha ... Respondents 1 & 2/Claimant 1 & 2
2.Mathi ... 3rd respondent/ 1st respondent
3.A.Jayaprakash ... 4th respondent/3rd respondent
4.K.Kamalahasan

(in CMA.No.396 OF 2018 (MCOP.No.186 OF 2011))

1.Kantha @ Kanthammal ... 1st respondent/1st Claimant
2.A.Jayaprakash ... 2nd respondent/ 1st respondent
3.K.Kamalahasan ... 3rd respondent/3rd respondent

(in CMA.No.397 OF 2018 (MCOP.No.548 OF 2011))

1.Thangaraju ... 1st respondent/1st Claimant
2.A.Jayaprakash ... 2nd respondent/ 1st respondent
3.K.Kamalahasan ... 3rd respondent/3rd respondent

(in CMA.No.398 OF 2018 (MCOP.No.549 OF 2011))

1.Karthik ... 1st respondent/1st Claimant
2.A.Jayaprakash ... 2nd respondent/ 1st respondent
3.K.Kamalahasan ... 3rd respondent/3rd respondent

(in CMA.No.399 OF 2018 (MCOP.No.550 OF 2011))

1.Kavitha ... 1st respondent/1st Claimant
2.A.Jayaprakash ... 2nd respondent/ 1st respondent
3.K.Kamalahasan ... 3rd respondent/3rd respondent

(in CMA.No.400 OF 2018 (MCOP.No.819 OF 2011))

1.Menaka ... 1st respondent/1st Claimant
2.A.Jayaprakash ... 2nd respondent/ 1st respondent
3.K.Kamalahasan ... 3rd respondent/3rd respondent

(in CMA.No.401 OF 2018 (MCOP.No.821 OF 2011))

1.Mallika ... 1st respondent/1st Claimant
2.A.Jayaprakash ... 2nd respondent/ 1st respondent
3.K.Kamalahasan ... 3rd respondent/3rd respondent

(in CMA.No.402 OF 2018 (MCOP.No.825 OF 2011))

1.Saila	... 1 st respondent/1 st Claimant
2.A.Jayaprakash	... 2 nd respondent/ 1 st respondent
3.K.Kamalahasan	... 3 rd respondent/3 rd respondent

(in CMA.No.403 OF 2018 (MCOP.No.827 OF 2011))

1.Mahendran	
2.Saravanan	
3.Pratap Kumar	
4.Kalaivani	... Respondents 1 to 4/Claimant 1 to 4
5.A.Jayaprakash	... 5 th respondent/ 1 st respondent
6.K.Kamalahasan	... 6 th respondent/3 rd respondent

(in CMA.No.404 OF 2018 (MCOP.No.829 OF 2011))

CMA.Nos.379 to 404 of 2018

These Civil Miscellaneous Appeals have filed under Section 173 of Motor Vehicles Act, 1988, against the award and Decree dated 01.04.2015 made in MCOP.Nos., 91, 92, 93, 94, 96, 97, 98, 99, 106, 108, 110, 116, 118, 120, 130, 134, 176, 186, 548, 549, 550, 819, 821, 825, 827 and 829 of 2011 respectively on the file of the Motor Accident Claims Tribunal/(Principal District Judge), Krishnagiri.

For Appellant : Mr.T.Ravichandran
(in All appeals)

Respondents : Mr.K.Suryanarayanan
for R1 in CMA.379 to 386/2018
& R1 to R3 in CMA.387,388,391/2018
395,397 to 403/18

R1 & R2 in CMA.NOs.390,392 to 394,
396/2018

R1 to R4 in CMA.404/2018

R1 to R5 in CMA.389/2018

No Appearance : R2 & R3 in CMA.379 to 386,
395,397 to 403/2018

R3 & R4 in CMA.390,392 to 394,396/2018

R4 & R5 in CMA.387,388,391/2018

R5 & R6 in CMA.404 & R6 & R7

in CMA.379/2018 (in all appeals)

COMMON JUDGMENT

Aggrieved over the findings of the Tribunal, dated 01.04.2015 made in MCOP.Nos.106, 91, 92, 93, 94, 96, 97, 97, 99, 108, 110, 116, 118, 120, 130, 134, 176, 186, 548, 549, 550, 819, 821, 825, 827 and 829 of 2011 on the file of the Motor Accident Claims Tribunal/(Principal District Judge), Krishnagiri, the present appeals have been filed by the 2nd respondent Insurance Company to set aside the award passed by the Tribunal.

2.For the sake of convenience, the parties will be hereinafter referred to in this judgment as arrayed before the Tribunal.

3.The case of the petitioners is that while the injured petitioners and unfortunate deceased victims were travelling in the vehicle belonging to the third respondent bearing Registration No.TN-39-K-9328 from Thirumalvadi to Bommidi, on 16.06.2010 to attend the marriage ceremony. While so, at about 22.15 hours, as the said vehicle was proceeding at normal speed, while going near Kartharapatty Jai Sakthi Matriculation Higher Secondary School in Palacode to Dharmapuri Road, the first respondent goods vehicle bearing Registration No.KL-07-0963, which was coming in the opposite direction, at high speed, driven in rash and negligent manner, dashed against the third respondent van, in which the injured petitioners and the deceased persons were travelling causing them multiple grievous injuries, resulting in death of 18 persons and causing injury to other passengers. The first respondent being the owner of the vehicle and the second respondent being the insurer of the offending vehicle are liable to pay compensation to them. Further, the third respondent being the owner of the vehicle, in which, the deceased and injured petitioners travelled is impleaded as a party. The petitioners in M.C.O.P.No.106 of 2011 sought for a sum of Rs.10,00,000/-, the petitioner in M.C.O.P.No.91 of 2011 sought for a sum of Rs.9,00,000/-, the petitioner in M.C.O.P.No.92 of 2011 sought for a sum of Rs.10,00,000/-, the petitioner in M.C.O.P.No.93 of 2011 sought for a Rs.5,00,000/-, the petitioner in M.C.O.P.No.94 of 2011 sought for a sum of Rs.10,00,000/-, the petitioner in M.C.O.P.No.96 of 2011 sought for a sum of Rs.10,00,000/-, the petitioner in M.C.O.P.No.97 of 2011 sought for a sum of Rs.9,00,000/-, the petitioner in M.C.O.P.No.98 of 2011 sought for a sum of Rs.3,00,000/-, the petitioner in M.C.O.P.No.99 of 2011 sought for a sum of Rs.10,00,000/-, the petitioners in M.C.O.P.No.108 of 2011 sought for a sum of Rs.10,00,000/-, the petitioners in M.C.O.P.No.110 of 2011 sought for a sum of Rs.10,00,000/-, the petitioners in M.C.O.P.No.116 of 2011 sought for a sum of Rs.5,00,000/-, the petitioners in M.C.O.P.No.118 of

2011 sought for a sum of Rs.10,00,000/-, the petitioners in M.C.O.P.No.120 of 2011 sought for a sum of Rs.10,00,000/-, the petitioners in M.C.O.P.No.130 of 2011 sought for a sum of Rs.10,00,000/-, the petitioners in M.C.O.P.No.134 of 2011 sought for a sum of Rs.10,00,000/-, the petitioner in M.C.O.P.No.176 of 2011 sought for a sum of Rs.10,00,000/-, the petitioners in M.C.O.P.No.186 of 2011 sought for a sum of Rs.10,00,000/-, the petitioner in M.C.O.P.No.548 of 2011 sought for a sum of Rs.10,00,000/-, the petitioner in M.C.O.P.No.549 of 2011 sought for a sum of Rs.10,00,000/-, the petitioner in M.C.O.P.No.550 of 2011 sought for a sum of Rs.10,00,000/-, the petitioner in M.C.O.P.No.819 of 2011 sought for a sum of Rs.10,00,000/-, the petitioner in M.C.O.P.No.821 of 2011 sought for a sum of Rs.5,00,000/-, the petitioner in M.C.O.P.No.825 of 2011 sought for a sum of Rs.10,00,000/-, the petitioner in M.C.O.P.No.827 of 2011 sought for a sum of Rs.10,00,000/- and the petitioners in M.C.O.P.No.829 of 2011 sought for a sum of Rs.10,00,000/- as compensation from the respondents 1 and 2, who are the owner and insurer of the offending vehicle.

4. On the other hand, opposing the claim petitions, the Second respondent-Insurance Company by filing counter contends that the petitioners have to prove that they are entitled to get compensation from the second respondent Insurance Company. The HMV goods vehicle bearing Registration No.KL-07-0963 is not insured with the second respondent. The driver of the said goods vehicle was not having valid driving licence at the time of accident. It is not correct to allege that the driver of the first respondent vehicle came at high speed and dashed against the vehicle, in which the injured petitioners and deceased were travelling. The driver of the 3rd respondent vehicle bearing Registration No.TN-39-K-9328 took 60 persons of the marriage party as paid passengers and due to his rash and negligent driving in drunken mood, while attempting to over took the stationed tractor dashed against the on coming lorry bearing Registration No.KL-07-0963, which was coming in the opposite direction. Due to the impact of the same, the vehicle in which the injured petitioners and deceased were travelling capsized resulting in the death of 18 passengers on the spot, while 40 other persons suffered multiple injuries. The accident occurred only due to the high speed, rash and negligent driving by Kumaravel, the driver of the vehicle bearing Registration No.TN-39-K-9328. The said driver Kumaravel was in drunken mood. Further, carrying passengers in the goods vehicle was amount to violation of policy condition and Motor Vehicle Rules. The police registered a case against the said Kumaravel, driver of the van bearing Registration No.TN-39-K-9328 only. It is alleged in the First Information Report that the driver of the goods vehicle, namely, Kumaravel, was responsible for the accident. Thus, the owner of the said vehicle, the third

respondent herein and their insurance company is liable to pay compensation. The accident occurred due to head on collision of the above said two vehicles. The petitioners have not sought for any relief against the owner and insurer of the vehicle bearing Registration No.TN-39-K-9328. The claim of the petitioners about the age, avocation and income of the injured petitioners and deceased is not admitted. The amount claimed by the petitioners is highly excessive. The amount claimed by the petitioners, who stated that they are the legal heirs of the deceased is not supported by any document. Thus, the second respondent sought for dismissal of the claim petitions.

5.Before the Tribunal, all the above said MCOPs. were taken up for joint trial. The petitioners examined P.W.1 to P.W.26, produced documents Ex.P1 to Ex.P77 to prove their claim. On the side of the respondents, R.W.1 to R.W.3 were examined and documents Ex.R1 and Ex.R3 were produced to contradict the claim of the petitioners.

6.The Tribunal, after analysing the evidence on record, found the petitioners are entitled to get compensation as per Section 163(A) of the Motor Vehicles Act and passed an award for a sum of Rs.4,63,500/- in MCOP.No.106 of 2011, Rs.2,11,303/- in M.C.O.P.No.91 of 2011, Rs.2,53,000/- in M.C.O.P.No.92 of 2011, Rs.87,000/- in M.C.O.P.No.93 of 2011, Rs.1,65,000/- in M.C.O.P.No.94 of 2011, Rs.2,24,206/- in M.C.O.P.No.96 of 2011, Rs.1,25,000/- in M.C.O.P.No.97 of 2011, Rs.68,000/- in M.C.O.P.No.98 of 2011, Rs.1,42,000/- in M.C.O.P.No.99 of 2011, Rs.4,09,500/- in M.C.O.P.No.108 of 2011, Rs.2,23,500/- in M.C.O.P.No.110 of 2011, Rs.1,38,500/- in M.C.O.P.No.116 of 2011, Rs.4,09,500/- in M.C.O.P.No.118 of 2011, Rs.2,98,500/- in M.C.O.P.No.134 of 2011, Rs.4,09,500/- in M.C.O.P.No.120 of 2011, Rs.1,64,500/- in M.C.O.P.No.130 of 2011, Rs.1,51,000/- in M.C.O.P.No.176 of 2011, Rs.1,64,699/- in M.C.O.P.No.186 of 2011, Rs.1,35,000/- in M.C.O.P.No.548 of 2011, Rs.56,000/- in M.C.O.P.No.549 of 2011, Rs.2,23,570/- in M.C.O.P.No.550 of 2011, Rs.1,77,045/- in M.C.O.P.No.819 of 2011, Rs.2,15,500/- in M.C.O.P.No.821 of 2011, Rs.4,58,500/- in M.C.O.P.No.825 of 2011, Rs.1,64,500/- in M.C.O.P.No.827 of 2011 and Rs.3,56,500/- in M.C.O.P.No.829 of 2011 as compensation and the same was payable by the respondents 1 and 2 to the petitioners. Aggrieved over the said findings of the Tribunal, the second respondent Insurance Company has come forward with these present appeals.

7.Heard the learned counsel appearing for the appellant/2nd respondent Insurance Company and the learned counsel appearing for the petitioners/claimants and perused the materials available on record.

8.The learned counsel appearing for the appellant/2nd

respondent Insurance Company contends that the Tribunal committed grave error in awarding compensation to the petitioners/claimants without any evidence to prove that the accident occurred due to the negligence of the driver of the first respondent vehicle bearing Registration No.TN-39-K-9328. The Tribunal failed to consider the evidence, which clearly shows that the driver of the vehicle bearing Registration No.TN-39-K-9328 carried 60 passengers instead of admitted capacity and the said driver was under the influence of alcohol at the time of accident. The Tribunal wrongly fixed the burden on the second respondent Insurance Company, the appellant herein. The Tribunal also failed to consider the fact that the Criminal case was registered against the driver of the goods van, in which the petitioners and deceased travelled and wrongly fixed the negligence on the first respondent vehicle driver. The Tribunal ought to have fixed the liability on the third respondent/owner of the vehicle in which the petitioners and deceased travelled and their insurer of the said vehicle instead of fixing liability on the the appellant/second respondent Insurance Company. The Tribunal ought to have considered fixing contributory negligence on the opposite vehicle which was driven by one Kumaravel under the influence of alcohol. As the third respondent vehicle carried 60 persons as un authorized passengers, it clearly amounts to violation of permit rules and policy conditions. Therefore, the petitioners/claimants are not entitled to seek compensation from the appellant/second respondent Insurance Company. Thus, the appellant/second respondent Insurance Company seeks to set aside the award passed by the Tribunal by entertaining the appeals.

9.Per contra, the learned counsel appearing for the respondents/petitioners/claimants contends that they are third parties as far as the first respondent vehicle is concerned and they being not at first are entitled to seek compensation from the second respondent Insurance company/appellant herein. Thus, the petitioners/claimants sought for dismissal of these appeals.

10.This is an unfortunate case, wherein, 60 persons travelling as unauthorised passengers in a van met with an accident resulting in death of 18 persons on the spot and remaining 40 persons suffering injures of various nature. The claim petitions are filed under Section 163(A) of the Motor Vehicles Act,1988. The Tribunal, considering the evidence placed before it, found that the first respondent vehicle was involved in the accident and as the claim petition is filed under Section163(A) of the Motor Vehicles Act, passed an award against the first respondent owner as well as the second respondent insurer of the vehicle as stated above. The said conclusion, is now under challenge in the present appeals. The only contention raised by the learned counsel appearing for the

appellant/second respondent Insurance Company is that the Tribunal ought to have fixed the negligence on the driver of the other vehicle bearing Registration No.TN-39-K-9328, in which the injured petitioners and deceased travelled at the time of accident and not on the first respondent vehicle driver, who was not at fault.

11.Admittedly, two vehicles bearing Registration No.TN-39-K-9328 belonging to the third respondent herein, in which, 60 persons including the injured petitioners travelled and the first respondent vehicle bearing Registration No.KL-07-0923, coming in the opposite direction and dashed against each other due to head on collision, causing fatal injuries to 18 persons and grievous injuries to 40 other persons. Admittedly, the police registered First Information Report against the driver of the third respondent vehicle only. The petitioners travelled in the said vehicle. The copy of the First Information report is produced as Ex.P1. The Rough Sketch of the occurrence spot is produced as Ex.R1. To prove that the driver of the third respondent vehicle in which the injured petitioners and deceased travelled was in drunken mood, Ex.R2 certificate is produced by the Inspector of Police who deposed as R.W.2. It is stated that as per Ex.P1 first information report both the vehicles dashed head on collision and in the goods van of third respondent 60 person travelled. Further, R.W.2 also stated that in Ex.P1 first information report it is stated that the driver of the said van was in drunken mood. However, it is admitted by R.W.2 that no charge sheet was filed and the case was closed under Section 408 Cr.P.C. The official of the Insurance Company who deposed as R.W.3 stated that the negligence of the other goods vehicle driver alone is the cause for the accident. It is also pointed out that as per Ex.R1 Rough Sketch of the occurrence spot, the accident took place on the western side to the middle of the road. It is also clear from Ex.R1 that both the vehicles were proceedings near the middle of the road only. Thus, the learned counsel appearing for the appellant/2nd respondent Insurance Company contends that the evidence will clearly prove that negligence of the third respondent van driver alone caused the accident. It is further contended that the said driver Kumaravel was in a drunken mood and the same is established by Ex.R2 document.

12.On the other hand, refuting the contention of the appellant/2nd respondent Insurance Company, the learned counsel appearing for the petitioners/claimants contends that the claim petitions being filed under Section 163(A) of the Motor Vehicles Act, the Insurance Company is prohibited from raising defence of negligence as the same will nullify the intention of legislature which created Section 163(A) of Motor Vehicle Act, will specific purpose of providing compensation to the unfortunate victims of the accident. In support of the same, he relied upon the Apex Court ruling reported in 2017 (2) TN MAC 753(SC) in UNITED INDIA

INSURANCE CO. LTD., Vs. SUNIL KUMAR AND ANOTHER, wherein it is held as follows:-

"8. From the above discussions, it is clear that grant of Compensation under Section 163-A of the Act on the basis of the Structured Formula is in the nature of a Final Award and the adjudication thereunder is required to be made without any requirement of any proof of negligence of the Driver/Owner of the vehicle(s) involved in the accident. This is made explicit by Section 163-A(2). Though the aforesaid section of the Act does not specifically exclude a possible defence of the Insurer based on the negligence of the Claimant as contemplated by Section 140(4), to permit such defence to be introduced by the Insurer and/or to understand the provisions of Section 163-A of the Act, namely, final Compensation within a limited time frame on the basis of the Structured Formula to overcome situations where the claims of Compensation on the basis of fault liability was taking an unduly long time. In fact, to understand Section 163-A of the Act to permit the Insurer to raise the defence of negligence would be to bring a proceeding under Section 163-A of the Act at par with the proceeding under Section 166 of the Act, which would not only be self-contradictory but also defeat the very legislative intention.

9. For the aforesaid reasons, we answer the question arising by holding that in a proceeding under Section 163-A of the Act, it is not open for the Insurer to raise any defence of negligence on the part of the victim."

It is clear from the above said ruling that if the claim is filed under Section 163(A) of the Motor Vehicles Act, the Insurance company is restrained from raising the defence of negligence. As such, the claim of the petitioners that they are not liable to prove any negligence on the part of the first respondent driver and they entitled to seek compensation against any one of the vehicle owner or insurer is to be accepted.

13. The learned counsel appearing for the petitioners/claimants further contended that as two vehicles were involved in the accident, it is open to them to file claim petition seeking entire compensation from any one of joint tort-feasors. In support of the same, he relied upon the Apex Court ruling reported in 2015(1) TN MAC 801 (SC) in KHENYEI Vs. NEW

INDIA ASSURANCE COMPANY LTD AND OTHERS, wherein it is held as follows:-

"18.This Court in Challa Bharathamma & Nanjappan(supra) has dealt with the breach of Policy conditions by the owner when the Insurer was asked to pay the Compensation fixed by the Tribunal and the right to recover the same was given to the Insurer in the Executing Court concerned if the dispute between the Insurer and the owner was the subject-matter of determination for the Tribunal and the issue has been decided in favour of the insured. The same analogy can be applied to the instant cases as the liability of the Joint Tort-feasor is joint several.

In the instant case, there is determination of inter se liability of Composite Negligence to the extent of negligence of $2/3^{\text{rd}}$ & $1/3^{\text{rd}}$ of respective drivers. Thus, the vehicle Trailer-Truck, which was not insured with the Insurer, was negligent to the extent $2/3^{\text{rd}}$. It would be open to the Insurer being Insurer of the bus after making payment to Claimant to recover from the owner of the Trailer-Truck the amount to the aforesaid extent in the Execution proceedings. Had there been no determination of the inter se liability for want of evidence or other Joint Tort-feasor had not been impleaded, it was not open to settle such a dispute and to recover the amount in Execution proceedings but the remedy would be to file another Suit or appropriate proceedings in accordance with law. What emerges from the aforesaid discussion is as follows:

(i)In the case of Composite Negligence, Plaintiff/Claimant is entitled to sue both or any one of the Joint Tort-feasors and to recover the entire Compensation as liability of Joint Tort-feasors is joint and several.

(ii)In the case of Composite Negligence, apportionment of Compensation between two Tort-feasors vis-a-vis the Plaintiff/Claimant is not permissible. He can recover at his option whole damages from any of them.

(iii)In case all the Joint Tort-feasors have been impleaded and evidence is sufficient, it is open to the Court/Tribunal

to determine inter se extent of Composite Negligence of the drivers. However, determination of the extent of negligence between the Joint Tort-feasors is only for the purpose of their inter se liability so that one may recover the sum from the other after making whole of payment to the Plaintiff/Claimant to the extent it has satisfied the liability of the other. In case both of them have been impleaded and the apportionment/extent of their negligence has been determined by the Court/Tribunal, in main case one Joint Tort-feasor can recover the amount from the other in the Execution proceedings.

(iv) It would not be appropriate for the Court/Tribunal to determine the extent of Composite Negligence of the drivers of two vehicles in the absence of impleadment of other Joint Tort-feasors. In such a case, impleaded Joint Tort-feasor should be left, in case he so desires, to sue the other Joint Tort-feasor in independent proceedings after passing of the Decree of Award.

Thus, it is clear that the petitioner/claimant is at liberty to proceed against the owner of any one of the vehicle involved in the accident.

14. In the case on hand, the only contention of the appellant/2nd respondent Insurance Company is that the accident occurred due to violation of permit and policy condition by the driver of the vehicle bearing Registration No. TN-39-K-9328, who carried 60 passengers in violation of rules and also drove the vehicle in a drunken mood. It is further contended that no case was registered against the first respondent vehicle driver and as such, he cannot be held that the joint tort-feasor and the entire negligence is to be placed on the third respondent vehicle driver Kumaravel only. In the case on hand, the first information report registered against the said driver Kumaravel is closed and further action is dropped. Even otherwise, the Tribunal is bound to consider the issue of negligence independently irrespective of conclusion arrived at in criminal proceedings. In the case on hand, as stated earlier, the first information report itself being closed, no further criminal proceeding was initiated. Further, in the light of the above said rulings relied upon by the petitioners/claimants as the claim is made under Section 163(A) of the Motor Vehicles Act, the Tribunal is not bound to look into the issue of negligence of which driver caused the accident. As such the evidence on record having proved the fact of the said two vehicles were involved in the accident and the injured petitioners and

deceased travelling in the goods vehicle suffered injuries in the said accident is proved, they are entitled to seek compensation under Section 163(A) of the Motor Vehicles Act.

15. The learned counsel appearing for the petitioners/claimants further relying upon the ruling reported in 2012 ACJ 1335 in UNITED INDIA INSURANCE CO. LTD., Vs. MOHANAN AND OTHERS, contended that in the event of claim raised under Section 163(A) of the Motor Vehicles Act, the legal heirs of the deceased are entitled to seek compensation from the owner and insurer of the other vehicle. Even if the negligence of the deceased driver himself who drove the vehicle is the cause for accident, in which the deceased and the injured petitioners travelled is maintainable. The said ruling is held as follows:-

"Motor Vehicles Act, 1988, Section 163-A - Negligence is irrelevant in a claim under section 163-A and when negligence is irrelevant contributory negligence will also be irrelevant - Liability under section 163-A does not depend on negligence or fault - If two vehicles are involved in accident and driver of one vehicle suffers injury/death due to his own negligence then the claimant/heirs cannot claim against the insurer of the vehicle which he was driving but they can stake claim against the owner and insurer of the other vehicle involved in the accident - Whether the claimants are entitled to compensation under section 163-A, from the owner and insurance company of the other vehicle - Held: Yes..."

Like wise, the learned counsel appearing for the petitioners/claimants contends that it is not compulsory for the petitioners/claimants to implead the owner and insurer of the vehicle in which they travelled and they are entitled to seek compensation against any one of the vehicle owner and insurer involved in the accident. In support of the same, he relied upon the ruling reported in 2012 ACJ 1986 in UNITED INDIA INSURANCE CO. LTD., Vs. MADHAVAN AND OTHERS. It is therefore clear from the above said rulings that it is sufficient for the petitioners/claimants to prove that both the vehicles are involved in the accident and the Tribunal is not bound to look into the issue of which driver negligence caused the accident. As such, it is clear from the evidence on record, that the above said two vehicles were involved in the accident as claimed by the petitioners. Thus, the conclusion of the Tribunal that the petitioners are earning less than Rs.40,000/- only per annum and the claim being made under Section 163(A) of the Motor Vehicles Act, the same is maintainable against the first and second respondents who are the owner and insurer of the other vehicle which dashed against the vehicle in which the injured petitioners and deceased travelled is maintainable. The

contention of the appellant/2nd respondent Insurance Company to the contrary cannot be entertained and the same has to fail. Thus, the claim of the petitioners raised under Section 163(A) of the Motor Vehicles Act seeking compensation from the owner and insurer of the other vehicle involved in the accident is appropriate and maintainable. The conclusion of the Tribunal to that effect is to be confirmed.

16.Both sides have not disputed the quantum of compensation arrived at by the Tribunal in the claim petitions. As such, the reasons stated by the petitioners for awarding the above mentioned amounts to each of the petitioners being appropriate and proper and further as the quantum of award being not questioned by either side in the present appeal, this Court does not find any value reason to modify the amount awarded by the Tribunal as compensation to each of the petitioners. Hence, the quantum of compensation arrived at by the Tribunal is confirmed.

17.In view of the above said discussion, there is no merit in the appeals filed by the appellant/2nd respondent insurance company and the same has to fail.

18.In the result, the Civil Miscellaneous Appeals are dismissed. No costs. The order and decreetal order dated 01.04.2015 made in MCOP.Nos.106, 91, 92, 93, 94, 96, 97, 97, 99, 108, 110, 116, 118, 120, 130, 134, 176, 186, 548, 549, 550, 819, 821, 825, 827 and 829 of 2011 passed by the learned Principal District Judge, Krishnagiri is hereby confirmed.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To

1. The Principal District Judge,
Motor Accident Claims Tribunal,
Krishnagiri.
2. The Section Officer, V.R.Section, High Court,
Madras - 104. (2copies)

+1cc to Mr.T.Ravichandran, Advocate, S.R.No.52077
+1cc to Mr.M.Selvam, Advocate, S.R.No.52767

C.M.A.Nos.379 to 404 of 2018

TM(CO)
GSP(24/09/2018)