IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 30.7.2026	**Delivered on : 05.8.2026**

CORAM

THE HON'BLE MR JUSTICE N.ANAND VENKATESH

Civil Miscellaneous Appeal No.2106 of 2026

1. Jayanthi, W/o. Late A.Kumar,
No.244, Karumariamman Kovil
Street, Sirumathur, Padappai,
Kancheepuram District – 601301.

2. K.Sindhu, D/o.late A.Kumar,
No.244, Karumariamman Kovil
Street, Sirumathur, Padappai,
Kancheepuram Dist 601 301.

3. K.Maha, D/o.late A.Kumar,
No.244, Karumariamman Kovil
Street, Sirumathur, Padappai,
Kancheepuram Dist 601 301.

4. K.Meena, D/o.late A.Kumar,
No.244, Karumariamman Kovil
Street, Sirumathur, Padappai,
Kancheepuram Dist 601 301.

5. A.Chinnammal, W/o.Arumugam,
No.244, Karumariamman Kovil
Street, Sirumathur, Padappai,
Kancheepuram Dist 601 301.

O.Arumugam (Died)

(cause title accepted vide order of court dated 29.4.2026 in CMP.No.10700 of 2026 in CMA.SR.No.65514 of 2026 by RKMJ)

...Appellants

Vs

1. Soundararajan
   S/o. Aadhikesavan,
   No.29, Stringer Street,
   Broadway, Chennai-600108.

2. Go Digit General Insurance Company Ltd,
   New No.528, Old No.559, Anna Salai,
   Above Skoda Showroom, Teynampet,
   Chennai-18

...Respondents

APPEAL under Section 173 of the Motor Vehicles Act, 1988 against the award dated 24.10.2025 passed in MCOP.No.2957 of 2021 on the file of the Motor Accident Claims Tribunal (Chief Judge, Court of Small Causes), Chennai.

For Appellants:	Mr.S.Vijayaraghavan, for Mr.K.Balaji
For Respondents:	R1 – Notice dispensed with Mr.J.Michael Visuvasam for R2

JUDGMENT

This appeal has been filed by the appellants – claimants against the award dated 24.10.2025 made in MCOP.No.2957 of 2021 on the file of the Motor Accidents Claims Tribunal (Chief Judge, Small Causes Court), Chennai (for short, the Tribunal below) questioning deduction of the amount received under the Employees State Insurance (ESI) Scheme from the total compensation awarded under the Motor Vehicles Act, 1988 (for brevity, the MV Act).

2. Heard the learned counsel appearing on behalf of the appellants - claimants and the learned counsel appearing for the second respondent – Insurance Company.

3. The first appellant – first claimant is the wife; appellants 2 to 4 – claimants 2 to 4 are the daughters; the fifth appellant is the mother; and the sixth claimant – is the father of one Mr.A.Kumar (since deceased). Even during the pendency of the claim petition, the father of the deceased – Mr.O.Arumugam namely the sixth claimant died on 16.10.2025 and the cause title was amended

suitably.

4. The case of the appellants – claimants is as follows:

(i) On 29.6.2021, the said Mr.A.Kumar was riding a two wheeler at Wallajabad – Vandalur Road and at about 9.30 PM, when he was proceeding near Salamangalam Koot Road, the offending vehicle, which was a lorry, was driven in a rash and negligent manner and dashed on the two wheeler, as a result of which, the said Mr.A.Kumar was thrown out of the vehicle, sustained injuries and died on the spot. A first information report came to be filed in Crime No.728 of 2021 before C3 Manimangalam Police Station against the driver of the offending vehicle. The first respondent is the owner of the offending vehicle and the second respondent is its insurer. It was under those circumstances, the claim petition came to be filed before the Tribunal below.

(ii) Before the Tribunal below, the second respondent – Insurance Company filed a counter. Apart from other grounds raised by the second respondent – Insurance Company in the counter, one of the main grounds raised was that the deceased was covered under the ESI Scheme, that the appellants - claimants availed the benefits under the Employees' State Insurance Act, 1948 (for short, the ESI Act) and that therefore they were not entitled to payment of compensation under the MV Act.

(iii) On considering the facts and circumstances of the case and on appreciation of the evidence, the Tribunal below came to the conclusion that the accident had taken place only due to the rash and negligent driving on the part of the driver of the offending vehicle.

(iv) The Tribunal below thereafter dealt with the specific defence raised by the second respondent – Insurance Company regarding the benefit availed by the appellants - claimants under the ESI Act and rendered a finding that the claimants were entitled to the amount calculated under the MV Act, that the amount already received under the ESI Scheme must be deducted from the amount determined under the MV Act and that the balance amount alone had to be paid to the appellants - claimants.

(v) The Tribunal below proceeded to determine the total compensation at Rs.29,24,992/-, which was rounded off to Rs.29,25,000/-, under the following heads:

S.No.	Head	Amount
1	Loss of income/dependency (Rs.22,376/- X 12 X 13 X 3/4)	Rs.26,17,992/-
2	Loss of estate	Rs. 16,500/-
3	Loss of consortium (Rs.44,000/- each X 6)	Rs. 2,64,000/-
4	Funeral expenses	Rs. 16,500/-
5	Transportation charges including damages to personal belongings	Rs. 10,000/-
	Total	Rs.29,24,992/-
	Rounded off	Rs.29,25,000/-

(vi) The above total compensation amount of Rs.29,25,000/- was directed to be deposited by the second respondent – Insurance Company together with interest at the rate of 7.5% per annum from the date of claim petition till the date of realization. It was further directed by the Tribunal below that after deposit of the award amount, the amount already received by the claimants under the ESI Scheme should be deducted and that the claimants would be entitled to receive the remaining amount as apportioned by the Tribunal below. Aggrieved by that the appellants – claimants have filed this appeal questioning the deduction of the sums received by them under the ESI Scheme from the total compensation awarded by the Tribunal below under the MV Act.

5. The learned counsel appearing on behalf of the appellants made the following submissions :

- Section 53 of the ESI Act does not bar the appellants – claimants from receiving the entire compensation amount awarded under the MV Act and such a deduction is permissible only if the compensation is received as the legal heirs of the deceased employee, who was covered under the ESI Act.
- In order to apply the bar under Section 53 of the ESI Act, the injury in question must be an employment injury sustained by the victim under the ESI Act and the bar provided will not apply where the claim is made as against the tortfeasor by the injured/legal heirs of the deceased in his individual capacity and not in his capacity as an employee.
- The earlier decision rendered **by me** in ***Divisional Manager, Oriental Insurance Co.Ltd., Vellore Vs. C.Alliammal [C.M.A.No.1379 of 2023 dated 16.7.2024]*** requires reconsideration.

6. To substantiate his submissions, the learned counsel appearing on behalf of the appellants - claimants relied upon the

following:

"(i) decision rendered by me in ***C.Aliiammal***;

(ii) decision of the Hon'ble Apex Court in ***Rajkumar Agrawal Vs. Vehicle Tata Venture No.UP 70 BM 1600 Commercial Auto Sales Private Limited through its Director Sanskar Gupta [reported in 2023 SCC OnLine SC 2450];***

(iii) decision of the Hon'ble Apex Court in ***Western India Plywood Ltd. Vs. P. Ashokan [reported in 1997 (7) SCC 638];***

(iv) decision of the Hon'ble Apex Court in ***National Insurance Co.Ltd. Vs. Hamida Khatoon & Others [reported in 2009 (13) SCC 361];***

(v) decision of the Hon'ble Apex Court in ***Regional Director, ESI Corporation Vs. Francis De Costa [reported in 1993***

Supp.(4) SCC 100];

(vi) decision of a Division Bench of the Madurai Bench of this Court in ***National Insurance Co.Ltd., Tirunelveli Vs. Mahalakshmi [reported in 2023 SCC OnLine Madras 9076];***

(vii) decision of a learned Single Judge of the Bombay High Court in ***United India Insurance Co.Ltd. Vs. Ms.Vijaya R.Baait [reported in 2007 ACJ 463];***

(viii) decision of the learned Single Judge of this Court in ***Royal Sundaram Alliance Insurance Co.Ltd. Vs. S.Ajantha [CMA.No.3365 of 2011 dated 24.4.2012 = reported in 2025 (2) TN MAC 424];***

(ix) decision of the Hon'ble Apex Court in ***Royal Sundaram Alliance Insurance Co.Ltd. Vs. S.Ajanta [SLP.(C) No.33261 of 2012 dated 07.10.2015];***

(x) decision of the Hon'ble Apex Court in ***Helen C.Rebello Vs. Maharashtra State Road Transport Corporation [reported in 1999 (1) SCC 90];***

(xi) decision of a Full Bench of the Hon'ble Apex Court in ***Bajaj Alliance General Insurance Co.Ltd. Vs. Rambha Devi [reported in 2023 SCC OnLine SC 2215];***

(xii) decision of the House of Lords in ***Anderton Vs. Ryan [reported in 1985 AC 560];***

(xiii) decision of the House of Lords in ***Regina Vs. Shivpuri [reported in 1987 AC 1];***

(xiv) decision of a Full Bench of the Hon'ble Apex Court in ***Keshav Mills Co.Ltd. Vs. Commissioner of Income Tax, Bombay North, Ahmedabad [reported in 1965 SCC OnLine SC 80];***

(xv) decision of a Full Bench of the Hon’ble Apex Court in ***S.Azeez Basha Vs. Union of India [reported in AIR 1968 SC 662 = 1967 SCC OnLine SC 321];***

(xvi) decision of a Full Bench of the Hon’ble Apex Court in ***Aligarh Muslim University Vs. Naresh Agarwal [reported in 2025 (6) SCC 1]; and***

(xvii) decision of the Hon’ble Supreme Court in ***Dr.Rakesh Kumar Gupta Vs. State of Uttar Pradesh [reported in 2026 SCC OnLine SC 1102].”***

7. Per contra, the learned counsel for the second respondent – Insurance Company made the following submissions:

- A combined reading of Sections 53 & 61 of the ESI Act makes it clear that a person will not be entitled to receive any similar benefit under the provisions of any other Enactment where he has availed the benefit under the ESI Act;
- If the benefit is given both under the ESI Act and the MV Act,

it will result in a bonanza for the claimants, who will get the compensation twice for the same accident; and

- The claimants will have to choose between the two Enactments and make their claim and they cannot make a claim under both the Enactments.

8. To substantiate his submissions, the learned counsel appearing for the second respondent – Insurance Company relied upon the following :

(i) decision of the Hon'ble Apex Court in ***State of Haryana Vs. Jasbir Kaur [reported in 2003 ACJ 1800];***

(ii) decision of the Hon'ble Apex Court in ***Francis De Costa;***

(iii) decision of the Hon'ble Apex Court in ***Helen C.Rebello;***

(iv) decision of the Hon'ble Apex Court in ***United India Insurance Co.Ltd. Vs. Patricia Jean Mahajan [reported in 2002 ACJ 1441];***

(v) decision of the Hon'ble Apex Court in ***National Insurance Co.Ltd. Vs. Mastan [reported in 2006 ACJ 528];***

(vi) decision of the Hon'ble Apex Court in ***Hamida Khatoon;***

(vii) decision of the Hon'ble Apex Court in ***Oriental Insurance Co.Ltd. Vs. Dyamavva [reported in 2013 ACJ 709];***

(viii) decision of the Full Bench of the Hon'ble Apex Court in ***Reliance General Insurance Co.Ltd. Vs. Shashi Sharma [reported in 2016 ACJ 2723];***

(ix) decision of the Hon'ble Apex Court in ***New India Assurance Co.Ltd. Vs. Kamlesh [reported in 2025 ACJ 1441];***

(x) decision of the Full Bench of the Hon'ble Apex Court in ***Sebastiani Lakra Vs. National Insurance Co.Ltd. [reported in 2019 ACJ 34];***

(xi) the decision of the Hon'ble Apex Court in ***Rajkumar Agrawal;***

(xii) reference pending in the decision of the Hon'ble Apex Court in ***Rajkumar Agrawal in Diary No.14885 of 2021;***

(xiii) decision of the Hon'ble Apex Court in ***Daivshala Vs. Oriental Insurance Co.Ltd. [reported in 2025 (2) TN MAC 233];***

(xiv) decision of a Full Bench of the Hon'ble Apex Court in ***Khoday Distilleries Ltd. (now known as Khoday India Ltd.) Vs. Sri Mahadeshwara Sahakara Sakkare Karkhane Ltd., Kollegal (under liquidation) rep. By the Liquidator [reported in 2019 (4) SCC 376];***

(xv) decision of the Division Bench of the Madurai Bench of this Court in ***Mahalakshmi;***

(xvi) decision of the learned Single Judge of this Court in ***S.Ajantha;***

(xvii) decision of the Hon’ble Apex Court in ***S.Ajanta dismissing the special leave petition on 0710.2015***; *and*

(xvii) decision rendered by me in ***C.Alliammal.***

9. This Court has carefully considered the submissions of the learned counsel on either side and perused the materials available on record and more particularly, the impugned award.

10. I had an occasion to deal with the same issue in ***C.Alliammal*** wherein it has been held as follows:

> *“12. This Court has to take into consideration primarily two provisions under the Motor Vehicles Act, 1988 [hereinafter referred as 'M.V. Act'] and two provisions under the Employees' State Insurance Act, 1948 [hereinafter referred as 'ESI Act']. Insofar as the M.V. Act is concerned, the claim petition has been filed under Section 166 of the M.V. Act.*

Section 167 of the M.V. Act provides that whenever the death of or bodily injury to any person gives rise to a claim for compensation under the M.V. Act and also under the Workmen's Compensation Act, 1923 [hereinafter referred as the W.C. Act], the person entitled for such compensation must choose either of those Acts to claim compensation and he cannot do it under both enactments.

13. Section 53 of the ESI Act, specifically bars against receiving or recovery of compensation or damages under any other law in spite of an employment injury sustained by the insured person as an employee under the Act.

14. The claim can be initiated under the M.V.Act in spite of the bar provided under Section 53 of the ESI Act in a case where:

(a) the accident takes place in a public place

(b) the injury is not an employment injury; and

(c) such a claim is made against a third party and not against the employer.

15. Section 61 of the ESI Act, also specifically bars benefits provided under the ESI Act, where a person receives a similar benefit under the provisions of any other enactments.

16. The learned counsel for the appellant came up with a specific case that the accident had taken place in the course of employment and that the deceased was covered under the ESI and after his demise, the parents of the deceased were receiving the compensation by way of monthly pension from ESI Corporation. It was therefore contended that the bar under Section 53 and 61 of the ESI Act, will start operating. Consequently, the claim petition under Section 166 of the M.V. Act, is not sustainable.

17. The majority of the judgments that were relied upon by either side would show that the bar to maintain a claim petition under Section 166 of the M.V Act, will apply only in a case where such a claim is made against the employer. However, when such a claim is made against a third party for his negligence and such third party is also insured, the bar under Section 53 of the ESI Act, cannot be forced into service. Those judgments proceed on the footing that the benefits granted under the ESI Act is different from the compensation awarded under the M.V. Act. The compensation under the M.V. Act is for the tortuous liability and the benefits granted under the ESI Act, can never be a bar for granting compensation for the death caused in an accident involving a motor vehicle.

18. In short, many of the Courts have held that the claim for compensation in tort against a third party can co-exist with a claim for benefits under the ESI Act. The use of the words "any person" in Section 53 of the ESI Act cannot include within its sweep the claim in tort against the third party who is the tortfeasor in cases under Section 166 of the M.V.Act, for compensation for the loss suffered in the accident. It has been held that Section 53 merely bars the claim against the employer under any other law if the compensation is paid under the ESI Act. Considering the beneficial nature of the legislation, it has been held that the insurance coverage under the M.V. Act, is in addition to and not in substitution to the other remedies available to the aggrieved person against a stranger.

19. The learned counsel for the appellant brought to the notice of this Court the judgment passed by the Apex Court in Rajkumar Agarwal case referred supra. The Apex Court has taken into consideration various divergent views and therefore the issue has been referred to a larger Bench for an authoritative pronouncement. The relevant portions in the order are extracted hereunder:

'5. The learned counsel for the Respondents would however, refer to the

judgment passed by this Court in Western India Plywood Ltd. vs. P. Ashokan (1997) ACJ 1281 (SC), to contend that a two Judge Bench of this Court has taken note of the provisions in Sections 53, 61 and 2(8) of ESI Act and has held that the bar would apply. The learned counsel has also referred to the decision in the case of National Insurance Company Ltd. v. Hamida Khatoon and Ors. (2009) 13 SCC 361 to which the High Court has referred during the course of its order.

6. Learned counsel for the appellant has on the other hand referred to another decision of this Court by a Bench of two Hon'ble Judges in the case of Regional Director E.S.I Corporation Vs. Francis DE Costa, 1992 ACJ 636 (SC), wherein it is observed as hereunder:

'(17) The next contention that the Motor Vehicles Act provides the remedy for damages for an accident resulting in death of an injured person and that, therefore, the remedy under the Act cannot be availed of lacks force or substance. The general law of tort or special law in Motor Vehicles Act or workmen's Compensation Act may provide a remedy for damages. The coverage of insurance under the Act in an insured employment is in addition to but not in substitution of the above remedies and cannot on that account be denied to the

employee. In K.Bharathi Devi vs. General Insurance Corpn. Of India, 1989 ACJ 157 (AP), the contention that the deceased contracted life insurance and due to death in air accident the appellant received compensation and the same would be set off and no double advantage of damages under Carriage by Air Act be given was negatived.'

7. In that light having heard the learned counsel for both the sides and having noted the decisions referred to by the learned counsel for the parties, we note that though in the decisions, the Hon'ble two Judge Bench of this Court has considered the aspect and even in the case of Western India Plywood Ltd. (supra), the provision in Section 61 has been extracted, there is no authoritative pronouncement on the same as to whether the insurance amount paid under the ESI Act is a "similar benefit" as the compensation which is claimed in a case where there is a Motor Vehicle accident and claim subsists so as to bar the same.

8. Further, learned counsel for the appellant also contends since the Motor Vehicle Act, 1988 being a subsequent Act and the provisions in Section 163(A) and 167 begin with a non obstante clause, the bar should not operate against the insured employee under the ESI Act to claim compensation under the Motor

Vehicles Act.

9. These contentions require an authoritative pronouncement by a larger Bench since this Bench being of a similar strength to the Bench which decided the case of Western India Plywood Ltd. (supra), Hamida Khatoon (supra) and the cases referred supra cannot enter into that aspect of the matter.

10. Hence, the Registry to place the matter before Hon'ble the Chief Justice of India to refer the matter to a Bench of an appropriate strength for authoritative pronouncement on this aspect.'

20. The question that was referred by the two member Bench of the Apex Court is yet to be decided by a larger Bench.

21. Under normal circumstances, this Court would have awaited for an authoritative pronouncement of the larger Bench of the Apex Court since the issue involved in the present appeal also falls within the scope of consideration by the larger Bench. However, the first and second claimants, who are the parents are senior citizens and they have to be provided with some succor. In view of the same, this Court is inclined to strike a via media.

22. This Court deems it fit to permit the claimants to receive the compensation fixed by the Tribunal after deduction of the amount that *has been received by the first and second claimants as pension under the ESI Act. If that course is adopted, it cannot be stated that the claimants are taking advantage of two parallel claims under two enactments - one under the M.V. Act and the other under the ESI Act. It will be more beneficial if the claimants are paid compensation fixed by the Tribunal under the M.V. Act. The pension that is paid under the ESI Act to the first and second claimants is very minimal and therefore, the claimants will not loose a large amount of compensation fixed by the Motor Accident Claims Tribunal. Once the claimants receive the compensation fixed by the Tribunal, they will not be entitled to receive any compensation under the ESI Act.*

23. The above procedure is resorted to in view of the fact that the issue has been referred to a larger Bench by the Apex Court and it is not known as to when the authoritative pronouncement will be rendered by the Apex Court and in the meantime, the claimants, particularly the first and second claimants who are already senior citizens cannot be made to wait to receive the compensation. They may require the compensation for their livelihood.

24. In the light of the above discussion, the award passed by the Tribunal is sustained. Insofar as the quantum of compensation fixed by *the Tribunal, the amount that has been received by the first and second claimants as pension from the ESI Corporation till 31.07.2024, shall be deducted. The balance shall be paid to the claimants with interest at the rate of 7.5% p.a. The appellant insurance company has already deposited the entire award amount before the Tribunal with interest pursuant to the interim order passed on 23.08.2023. In view of the same, the compensation amount that was fixed by the Tribunal, after deducting the amount paid by the ESI Corporation, can be permitted to be withdrawn by the first and second claimants. Since the claimants are paid compensation under the M.V. Act, the pension that is paid to the claimants by the ESI Corporation can be brought to an end from 01.08.2024."*

11. When the above judgment in ***C.Alliammal*** was rendered, I was not aware that earlier, ***K.Suguna,J,*** in the decision in ***S.Ajantha,*** dealt with the scope of Section 53 of the ESI Act wherein it was held as follows:

"The stand of the learned counsel for the appellant is that in view of the bar imposed under Section 53 of the ESI Act, which has been extracted above, since the claimants had the

benefits under the ESI Act, they are not entitled to claim any compensation under the Motor Vehicles Act. The judgments relied upon by the learned counsel for the claimants, which have been extracted above, clearly indicate that two claims cannot be made as against the same forum but as against different forums namely the employer and the tortfeasor, no bar is imposed. As far as the argument of the learned counsel for the appellant that since the two words used in Section 53 is 'any other law for the time being in force', claiming benefits under two Acts is prohibited is concerned, this Court is not able to accept this argument of the learned counsel for the appellant in view of the above cited judgments of the Hon'ble Apex Court and other High Courts. The stand of the learned counsel for the claimants is double claim cannot be made as against a single forum namely the tortfeasor or the employer, but two claims, one as against the employer under the ESI Act and the other as against the tortfeasor, under the Motor Vehicles Act for the wrongful act committed by the insured can be made. Consequently, the words used 'any other law' will not support the stand of the learned counsel for the appellant. Moreover, since the stand of the learned counsel for the claimants is supported by documents, this Court is of the

> *opinion that the order passed by the Tribunal has to be confirmed. Hence, the civil miscellaneous appeal is dismissed."*

12. In the decision in ***S.Ajantha, K.Suguna,J,*** had taken a view that the bar imposed under Section 53 of the ESI Act would not apply while claiming compensation under the MV Act against a tortfeasor since such a bar confined itself to the claim made against the employer by the claimants in his or her capacity as the employee.

13. In view of the same, this Court must see if there is any conflict of view between my judgment in ***C.Alliammal*** and the judgment of ***K.Suguna,J*** in ***S.Ajantha.*** On the date when I passed the judgment in ***C.Alliammal,*** the earlier judgment of ***K.Suguna,J*** in ***S.Ajantha*** was not brought to my notice and in any case, a precedent was available on the scope of Section 53 of the ESI Act and if the same had been brought to my notice and if I had not agreed with the said view, the only option that was available to me was to refer the issue to a Division Bench after expressing my differing view. Now that the judgment of ***K.Suguna,J*** in ***S.Ajantha***

has been brought to my notice, it is incumbent upon me to see if there is any conflict and if so, to refer the matter to a Division Bench to resolve the conflict.

14. In the judgment in ***S.Ajantha, Suguna,J*** had taken a view that the bar under Section 53 of the ESI Act would apply only if the claim was made against the employer in the capacity as an employee and such bar would not operate if the claim was made against the tortfeasor under the MV Act.

15. In the judgment rendered by me in ***C.Alliammal,*** I have held that the bar under Section 53 of the ESI Act will apply only if the claim is made against the employer under any other law by the claimant in his or her capacity as an employee. I have also taken into consideration the consistent view taken in many earlier judgments to the effect that the benefits granted under the ESI Act were different from the compensation awarded under the MV Act and that under the MV Act, the claim was made only against a tortfeasor, who was a third party for his negligence and the term 'any person' used under Section 53 of the ESI Act could not include

within its sweep the claim in tort against the third party under Section 166 of the MV Act. In essence, the view taken by me in ***C.Alliammal*** is not in conflict with the view taken by ***K.Suguna,J*** in the decision in ***S.Anantha*** and hence, there is no apparent conflict between these two judgments.

16. The actual controversy arose by virtue of the subsequent observations made by me from paragraph 19 of the judgment in ***C.Alliammal*** while taking note of the judgment of the Hon'ble Apex Court in ***Rajkumar Agrawal*** wherein the Hon'ble Apex Court referred the matter to a Larger Bench with respect to the scope of Section 61 of the ESI Act. In view of the same, this Court directed the claimants therein to receive the compensation fixed by the Tribunal concerned after deducting the pension received by them from the ESI Corporation. This was more in the nature of an interim arrangement and that portion of the judgment cannot be construed as a ***ratio decidendi*** in that judgment.

17. The learned counsel appearing for the second respondent – Insurance Company submitted that Section 53 must be read along

with Section 61 of the ESI Act and that the bar that is provided therein is confined not only to the ESI Act, but also to other Enactments where similar benefits are received by the claimants.

18. For proper appreciation, Section 53 of the ESI Act is extracted as hereunder:

> *"53. Bar against receiving or recovery of compensation or damages under any other law -*
>
> *An insured person or his dependants shall not be entitled to receive or recover, whether from the employer of the insured person or from any other person, any compensation or damages under the Workmen's Compensation Act, 1923 or any other law for the time being in force or otherwise, in respect of an employment injury sustained by the insured person as an employee under this Act."*

19. A careful reading of the above provision would show that an insured person or his dependants shall not be entitled to receive or recover whether from the employer of the insured person or from any other person any compensation or damages under the Workmen's Compensation Act, 1923 or any other law for the time

being in force or otherwise in respect of an employment injury sustained by the insured person as an employee under the ESI Act.

20. These ingredients are not to be read in a disjunctive manner and they have to be understood cumulatively. The most crucial factor, which provides the actual bar, is ***when the claim is made by the insured person as an employee under the ESI Act.***

21. The ESI Act itself provides for those injuries, which fall within the category of employment injuries and the benefits, which are relatable to those injuries. For easy understanding, the same are tabulated as hereunder:

Section	*Benefit*	*Nature & scope of coverage*
S.2(8)	*Definition – "Employment Injury"*	*Defines employment injury as a personal injury caused by accident or occupational disease arising out of and in the course of insurable employment; this definition anchors every benefit listed below in this table*
S.46(1)(c) r/w S.51	*Disablement benefit*	*Periodical payments to an insured person suffering temporary or permanent disablement as a result of an employment injury; computed at the prescribed percentage of wages, payable for the period of temporary disablement or for life in case of permanent disablement*
S.51A	*Presumption as to*	*Statutory presumption in favour of the*

	accident arising in course of employment	*employee that an accident arising in the course of employment is deemed, in the absence of contrary proof, to have arisen out of employment – easing proof of employment injury*
S.51B	*Accidents while acting in breach of regulations, etc.*	*Extends the employment injury cover to accidents occurring while the employee is acting in contravention of statutory or other regulations, provided the act is done for the purpose of and in connection with the employer's business*
S.51C	*Accidents while travelling in employer's transport*	*Deems an accident occurring while travelling in transport provided by the employer to and from the place of work as an employment injury*
S.51D	*Accidents while meeting emergency*	*Covers accidents sustained by an employee while taking steps to rescue, save or protect persons or property in an emergency connected with the employer's premises*
S.51E	*Accidents while commuting to and from work*	*Extents employment injury coverage to accidents occurring while commuting between residence and place of employment subject to a nexus of time and place*
S.46(1)(d) r/w S.52	*Dependants' benefit*	*Periodical (monthly) payments to the dependants – widow/widower, dependant children and in certain cases, dependant parents – of an insured person, who dies as a result of an employment injury; apportioned among the class of dependants as prescribed.*
S.52A	*Occupational disease*	*Treats specified occupational diseases contracted in the course of employment (as listed in the Third Schedule) as employment injury for the purpose of disablement and dependants' benefit.*
S.53	*Bar against double recovery*	*Bars an insured person or dependant from receiving or recovering compensation or damages under the Workmen's/Employees' Compensation Act in respect of the same employment injury, confirming ESI as a substitute code for that injury*

S.54 & S.54A	*Determination and adjudication of disablement*	*Machinery for determination of the question of disablement by Medical Boards/Medical Appeal Tribunals and appeal therefrom, in employment – injury cases.*

22. The ESI Act also provides for coverage for certain injuries, which are independent in nature and not employment injuries. For easy understanding, the same are tabulated as hereunder:

Section	*Benefit*	*Nature & scope of coverage*
S.46(1) (a) r/w S.49	*Sickness benefit*	*Periodical cash payment (broadly 70% of average daily wages) to an insured person for periods of certified sickness, unconnected with any employment injury – available for ordinary illness of the employee, subject to contributory conditions*
S.46(1) (a) (Regns.)	*Extended & enhanced sickness benefit*	*Enhanced – rate sickness benefit for long term/notified diseases and for insured persons undergoing sterilisation – again unrelated to any employment injury*
S.46(1) (b) r/w S.50	*Maternity benefit*	*Periodical payment to an insured women for confinement, miscarriage, or sickness arising out of pregnancy/confinement/ premature birth – a benefit personal to the female employee, wholly independent of employment injury*
S.46(1) (e) r/w Ss.56-59A	*Medical benefit*	*Full medical treatment and attendance extended to the insured person and to his/ her family, from the very commencement of insurable employment, without any monetary ceiling – covering sickness, accidents (whether or not employment - related) and general ill-health of family members. This is the clearest illustration of the "family medical*

		cover" character of the scheme
S.57	*Scale of medical benefit*	*Prescribes the scale/standard of medical treatment (out-patient, in-patient, specialist and super speciality) available to the insured person and family, irrespective of cause of the ailment*
S.58	*Medical treatment by State Government*	*Casts responsibility on the State Government to provide medical treatment and attendance to insured persons and their family through its hospitals/dispensaries, again without reference to employment injury*
Ss.59 & 59A	*Establishment of hospitals; medical benefit by Corporation*	*Empowers the Corporation to establish and run its own hospitals and to itself provide medical benefit in lieu of the State Government – the infrastructural back bone of family medical cover*
S.46(1)(f)	*Funeral expenses*	*A fixed sum payable to the eldest surviving member of the family (or the person actually incurring the expenditure) on the death of an insured person – payable on death from any cause, not merely death by employment injury*
S.65	*Benefits not to be combined (Regulatory)*	*Regulates simultaneous drawal of more than one cash benefit, confirming that the Act contemplates several independent, overlapping heads of benefit – sickness, maternity, disablement, dependants' – available at different points in the same insured person's working life*
S.60	*Benefit not assignable or attachable*	*Protects all benefits under the Act (medical, sickness, maternity, disablement, dependants', funeral) from attachment or assignment – applicable uniformly, whether or not the benefit arises from employment injury*

23. Thus, it is clear from the Scheme of the Act that the benefits given under the ESI Act are independent and ***de hors*** the benefit, which a person will be entitled to receive under a different Enactment in a different capacity.

24. In the case in hand, the claim has been made by the dependants of the deceased against a third party tortfeasor, who had caused the accident due to rash and negligent driving of a lorry. The accident and the consequential injury, which proves to be fatal, by no stretch, can be construed as an employment injury. The claim has not been made against the employer and the claim has been made against the owner of the offending vehicle. The accident had happened in a public place. Apart from that, the claimants – legal heirs of the deceased are not making the claim in the capacity of the deceased as an employee and their claim is based on the individual capacity of the deceased.

25. The last issue to be decided is as to whether the reference made to a Larger Bench by the Hon'ble Apex Court in the case of ***Rajkumar Agrawal*** requires a via-media arrangement in this case

also as was done by me earlier in the case of ***C.Alliammal.***

26. The reference made to the Larger Bench by the Hon'ble Apex Court does not center around cases where the claim is directed solely against an independent third party vehicle. The reference made to the Larger Bench pertains to the general applicability of Sections 53 & 61 of the ESI Act and the bar against an employee claiming in that capacity both under the ESI Act and other similar benefits like the one under the MV Act.

27. In the considered view of this Court, the reference made by the Hon'ble Apex Court will not have any bearing in cases that are dealt with under the MV Act where the claim is made against a third party tortfeasor by the legal heirs of the deceased in his or her individual capacity and not in the capacity as an employee under the ESI Act.

28. The benefit that is availed under the ESI Act is independent on satisfying the requirement under that Act. This Court can understand if an objection is raised by an employer where

an employee chooses to make the claim for the second time and where the benefit has been received from the employer on an earlier occasion and an attempt is being made to once again claim a benefit from the same employer. When any independent claim is made under the MV Act, it will be too far-fetched for the tortfeasor (insured) and the insurer to seek for deduction from the compensation that is determined under the MV Act only on the ground that certain benefits were availed under the ESI Act. That will amount to putting a premium on illegality.

29. This is in view of the fact that the tortfeasor committed an illegality and for that illegality, he is made to pay the compensation either by himself or by the insurer and he cannot be heard to say that the benefits that were obtained by the claimants under a different Enactment for a completely different purpose must be deducted from the compensation awarded under the MV Act. Such a defence will not lie in the mouth of a tortfeasor (insured) and the liability covered by the insurer.

30. A cue can be taken from the recent judgment of the Hon'ble Apex Court in ***National Insurance Co.Ltd. Vs. Rekhaben [reported in 2017 (13) SCC 547]*** wherein it was held that the MV Act is a beneficial legislation aimed at providing relief to the victims or their families in cases of genuine claims and that the income earned by such person/claimant after providing compassionate appointment to a member of the family of the deceased could not be deducted from the quantum of compensation fixed under the MV Act.

31. In the said decision in ***Rekhaben,*** the Hon'ble Apex Court also held that the compensation was claimed from the owner of the offending vehicle, who was different from the employer, who had offered employment on compassionate grounds to the dependants of the deceased/injured, that the source, from which, the compensation on account of the accident was claimed and the source, from which, the compassionate employment was offered, were completely separate, that there was no co-relation between those two sources, that since the tortfeasor had not offered the compassionate appointment, the amount, which the claimant would

earn by his labour or by offering his services, whether by reason of compassionate appointment or otherwise, was not liable to be deducted from the compensation, which the claimant would be entitled to receive from the tortfeasor under the MV Act and that therefore, the financial benefit of the compassionate employment was not liable to be deducted at all from the compensation amount, which was liable to be paid either by the owner/the driver of the offending vehicle or the insurer.

32. In the said decision in ***Rekhaben,*** the Hon'ble Apex Court further held and that while fixing the compensation under the MV Act, the income earned by a dependant, who got such compassionate appointment, could never be a criterion to deduct the said benefit received from the compensation that was determined under the MV Act.

33. In the light of the above discussions, this Court is inclined to interfere with the findings of the Tribunal below to the effect that the benefits received by the appellants - claimants under the ESI Act would be deducted from the compensation amount fixed under the

MV Act and that the appellants – claimants would be entitled to receive only the remaining amount. Instead, this Court holds that the appellants – claimants will be entitled to receive the entire compensation awarded by the Tribunal below along with interest.

34. In the result, the above civil miscellaneous appeal is allowed and the award dated 24.10.2025 passed in MCOP.No.2957 of 2021 on the file of the Tribunal below is modified. The appellants – claimants will be entitled to the entire compensation amount of Rs.29,25,000/- (Rupees twenty nine lakhs and twenty five thousand only) as awarded by the Tribunal below. The second respondent – Insurance Company is directed to deposit the said sum along with interest at the rate of 7.5% per annum from the date of claim petition till the date of realization **less the amount already deposited** within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the appellants – claimants are entitled to withdraw their respective shares as per the proportion fixed by the Tribunal below. **It is made clear that the fifth appellant – fifth claimant is entitled to withdraw her portion of the share along with the share of her husband**

namely the sixth claimant – Mr.O.Arumugam (since deceased), who was none other than the father of the deceased, as apportioned by the Tribunal below. The guidelines issued by the Division Bench of this Court in CMA.No. 2064 of 2026 dated 08.7.2026 shall be strictly complied with respect to disbursement of the compensation amount to the appellants - claimants. No costs.

05-08-2026

Index: Yes
Speaking order
Neutral Citation: Yes

To

1. The Motor Accident Claims Tribunal
(Chief Judge, Small Causes Court),
Chennai

2. Go Digit General Insurance Company Ltd,
New No.528, Old No.559, Anna Salai,
Above Skoda Showroom, Teynampet,
Chennai-18

RS

N.ANAND VENKATESH,J

RS

CMA.No.2106 of 2026

05-08-2026