IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 23.7.2026	Delivered on 28.7.2026

CORAM

THE HON'BLE MR JUSTICE N.ANAND VENKATESH

Civil Miscellaneous Appeal No.3009 of 2025
& CMP.No.25412 of 2025

Cholamandalam MS General Insurance Co. Ltd., (Legal Department), Hari Nivas Towers, No.163, I & II Floors, Thambu Chetty Street, Chennai-600 001.

...Appellant

Vs

1. U.Durga,
W/o. Late B.Umashankar,
Residing at Door No.3/27,
Plot No.108, Jawhar Ayya Nagar,
Aadhanur Village, Madambakkam,
Kanchipuram District - 603 202.

2. U.Ashwin (Minor)
S/o. Late B.Umashankar,
(Minor Rep by Mother/Next Friend 1st Respondent), Residing at Door No.3/27, Plot No.108,
Jawhar Ayya Nagar, Aadhanur Village, Madambakkam,
Kanchipuram District - 603 202.

3. U.Priyadharshan (Minor)
S/o.Late B.Umashankar,
(Minor Rep by Mother/Next Friend
1st Respondent), Residing at
Door No.3/27, Plot No.108,
Jawhar Ayya Nagar, Aadhanur
Village, Madambakkam,
Kanchipuram District - 603 202.

4. P.Balaji, S/o. Late Prasath,
Residing at Door No.3/27,
Plot No.108, Jawhar Ayya Nagar,
Aadhanur Village, Madambakkam,
Kanchipuram District -603 202

...Respondents

APPEAL under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 24.7.2024 made in MCOP. No.1275 of 2022 on the file of the Motor Accident Claims Tribunal, (Special Sub Court No.1 to deal with MCOP Cases), Court of Small Causes, Chennai.

For Appellant:	Mrs.R.Sree Vidhya
For Respondents:	Mr.G.Balaji Prasad for R1 to R3 R4 – served & no appearance

JUDGMENT

This appeal has been filed by the appellant – Insurance Company against the award dated 24.7.2024 in MCOP.No.1275 of 2022 on the file of the Motor Accident Claims Tribunal (Special Sub

Court No.1 to deal with MCOP Cases), Court of Small Causes, Chennai (for short, the Tribunal below).

2. Heard the learned counsel for the appellant – Insurance Company and the learned counsel appearing for respondents 1 to 3 – claimants 1 to 3.

3. The first respondent – first claimant is the wife; respondents 2 and 3 – claimants 2 and 3 are the minor children; and the fourth respondent – fourth claimant is the father of one Mr.B.Uma Shankar (since deceased).

4. The facts leading to filing of this case are as follows:

(i) On 18.9.2021, the said Mr.B.Uma Shankar was riding a two wheeler at Ambur – Vellore NH Road near Pallikonda and at about 7.40 PM, when the two wheeler approached a flyover on the NH Road, a stray dog suddenly darted across the path, due to which, the said Mr.B.Uma Shankar applied the brake. In that process, he lost balance, fell down, sustained fatal injuries and succumbed to the injuries in the hospital on 21.9.2021. It was under those circumstances, the claim petition came to be filed before the Tribunal below under Section 166 of the Motor Vehicles Act, 1988 (for brevity, the Act).

(ii) Before the Tribunal below, the appellant – Insurance Company filed a counter and took a stand that the deceased borrowed the vehicle from the owner of the vehicle namely one Mr.Karthik Murali Muralidharan, that it was the owner of the vehicle, who was the insured in this case and that there was no privity of contract between the deceased and the appellant – Insurance Company. They also took a further stand that if the claimants were claiming for personal accident cover, the Motor Accidents Claims Tribunal was not the appropriate forum, that the compensation could not be claimed by filing a petition under Section 166 of the Act, that the owner of the vehicle was not impleaded as a party to the claim petition and that the vicarious liability, if any, could not be fastened on the appellant – Insurance Company. Ultimately, the appellant – Insurance Company sought for dismissal of the claim petition.

(iii) The Tribunal below, on considering the facts and circumstances of the case and on appreciation of the oral and documentary evidence, came to the conclusion that the deceased borrowed the vehicle from its owner and died due to the accident, that the borrower of the vehicle would step into the shoes of the owner and that the legal heirs of the deceased could claim the personal accident coverage.

(iv) Having rendered the above finding, the Tribunal below fixed a sum of Rs.15 lakhs as compensation under the personal accident cover and directed the appellant – Insurance Company to pay the said amount to the respondents together with interest at the rate of 7.5% per annum from the date of claim petition till the date of realization. Aggrieved by that, the appellant – Insurance Company has filed this appeal before this Court.

5. The learned counsel for the appellant – Insurance Company submitted that a claim petition under Section 166 of the Act is not maintainable for claiming personal accident cover since it is a contractual liability, which cannot be enforced before the Motor Accidents Claims Tribunal. She would further submit that the deceased was, admittedly, a borrower of the vehicle and that therefore, the legal heirs of the deceased will not be entitled to the

personal accident cover, which is meant only for the named owner of the vehicle. She also took a stand that the appellant – Insurance Company cannot be made liable without impleading the owner of the vehicle as a party to the claim petition and that as a consequence, the claim petition itself ought to have been dismissed by the Tribunal below.

6. In order to substantiate her submissions, the learned counsel for the appellant – Insurance Company relied upon the following :

(a) decision of a learned Single Judge of the Punjab & Haryana High Court in the case of ***Arvind Kumar Vs. Sham Sundar Ravi Kumar [reported in MANU/PH/0606/2018];***

(b) decision of a learned Single Judge of this Court in the case of ***National Insurance Co.Ltd., Puducherry Vs. Rani & Others [C.M.A.No.1848 of 2017 dated 12.3.2020];***

(c) decision rendered by me in the case of ***ICICI Lombard General Insurance Co.Ltd., Trichirapalli Vs. Sulotchana & Others [C.M.A.No.2221 of 2022 dated 15.4.2024];***

(d) decision rendered by a Division Bench of this Court in the case of ***Royal Sundaram Alliance Insurance Co.Ltd., Chennai Vs. Geetha & Others [C.M.A.(MD) No.133 of 2021 etc. cases dated 04.12.2025];*** and

(e) decision rendered by another Division Bench of this Court in the case of ***Cholamandalam MS General Insurance Co. Ltd. Vs. Madheswari & Others [C.M.A.Nos.1614 of 2020 & 47 of 2022 dated 25.6.2026].***

7. Per contra, the learned counsel appearing for respondents 1 to 3 – claimants 1 to 3 submitted that as per India Motor Tariff

(IMT) 15, the authorized driver of the vehicle will also be entitled for the personal accident cover, that the contractual liability of the appellant – Insurance Company will cover both the owner of the vehicle as well as the authorized user of the vehicle and that therefore, the personal accident cover can be extended even to the borrower of the vehicle.

8. In order to substantiate his submissions, the learned counsel appearing for respondents 1 to 3 – claimants 1 to 3 relied upon the following :

(a) decision of a Division Bench of the Hyderabad High Court for the State of Telangana and the State of Andhra Pradesh in the case of ***Royal Sundaram Alliance Insurance Co.Ltd. Vs. Vemavaram Sudheer Babu [reported in 2019 (2) TN MAC 592];***

(b) decision of the Hon'ble Apex Court in the case of ***Manjusha Vs. United India Assurance Co.Ltd. [reported in 2025 (2)***

TN MAC 221];

(c) decision of the Hon'ble Apex Court in the case of ***Vasuki Vs. Santhi [Civil Appeal Nos.6257 & 6258 of 2017 arising out of S.L.P.(Civil) Nos.13041 & 13042 of 2017 dated 07.10.2021]; and***

(d) decision of the Full Bench of the Hon'ble Apex Court in the case of ***Oriental Insurance Co.Ltd. Vs. Sunita Rathi [reported in 1998 (1) SCC 365].***

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. In the case on hand, there is no doubt that the said Mr.B.Uma Shankar had borrowed the vehicle from the said Mr.Karthik Murali Muralidharan, who is the actual owner of the vehicle. The said Mr.B.Uma Shankar met with the accident and died. What has been claimed by the dependants of the deceased was a

sum of Rs.15 lakhs under the personal accident cover of the motor policy.

11. The main issue that arises for consideration is as to whether the claim petition can be maintained by the legal heirs of the deceased, who, admittedly, borrowed the vehicle from its owner, for claiming the personal accident cover.

12. Before dealing with the above issue, this Court will first take note of the judgments that were relied upon by the learned counsel for respondents 1 to 3 – claimants 1 to 3.

13. The decision of the Division Bench of the High Court of Hyderabad in ***Vemavaram Sudheer Babu*** is a case arising out of a claim made by the occupants of the vehicle, who were treated as gratuitous passengers. The High Court held that the claim for compensation in respect of accidents involving death or bodily injury could relate to any person, if the claim arose out of use of a motor vehicle. In that case, there was a reference to personal accident coverage policy and its application to the owner of the vehicle, who

was also travelling in the same vehicle. The name of the owner of the vehicle was also included as a party in that case. Hence, this judgment will not have any application to the facts of this case.

14. The next judgment is the decision of the Hon'ble Apex Court in ***Manjusha*** wherein the deceased was the brother of the owner of the vehicle. The claimants approached the Tribunal concerned not merely by claiming compensation under the personal accident cover, but had raised a regular claim. In that case, the Hon'ble Apex Court held that neither the insurance policy was available nor any contention was taken regarding the limited liability. Hence, the Hon'ble Apex Court set aside the order of the High Court mainly on the ground that the Insurance Company therein neither pleaded liability nor filed the policy. Hence, this judgment also will not help the respondents 1 to 3 – claimants 1 to 3.

15. The third one is the judgment of the Hon'ble Apex Court in ***Vasuki's case***, which arose out of the claim made by the dependants of the deceased, who was the father and the vehicle

stood in the name of the mother. The Hon'ble Apex Court held that there was a personal accident policy, which covered the owner of the vehicle and that since the driver was none other than the husband and the liability of the Insurance Company therein was limited to Rs.1 lakh, the Hon'ble Apex Court directed the said amount to be paid to the claimants. This judgment also will not apply to the facts of the present case since the borrower of the vehicle was not a close relative to the owner of the vehicle. In any event, the owner of the vehicle has not been made a party in this case.

16. The last judgment is the decision of the Hon'ble Apex Court in ***Sunita Rathi,*** which pertained to the question as to whether there was a proper insurance cover at the time of accident. This judgment also will not have relevance to the facts of the present case.

17. Coming to the judgments cited on the side of the appellant – Insurance Company, the first judgment is the decision of the Punjab & Haryana High Court in ***Arvind Kumar,*** which arose out of

a claim under Section 163A of the Act. The same is the case in both the decisions of this Court respectively in ***Rani*** and ***Sulotchana.***

18. Even the judgment of the Division Bench of this Court in ***Geetha*** arose out of the claim petitions filed under Section 166 of the Act.

19. The last judgment in the case of ***Madheswari*** also arose out of a claim petition filed under Section 163A of the Act.

20. All these judgments will not have any relevance while deciding this case since, in those cases, the borrower of the vehicle met with the accident and the claim was made under Section 163A of the Act.

21. In the case in hand, the legal heirs of the borrower of the vehicle are virtually attempting to step into the shoes of the owner of the vehicle and make a claim under the personal accident cover.

22. The policy in this case has been marked as Ex.R.2. Section

III of the policy provides for personal accident cover for specified injuries and death of the owner-cum-driver of the insured motor vehicle and this cover is subject to the following conditions:

> *"(i) the owner-driver is the registered owner of the vehicle insured herein;*
>
> *(ii) the owner-driver is the insured named in this policy;*
>
> *(iii) the owner-driver holds an effective driving licence, in accordance with the provisions of Rule 3 of the Central Motor Vehicles Rules, 1989, at the time of accident."*

23. IMT-15 has to be taken into consideration at this juncture and for proper appreciation, the same is extracted as hereunder:

> *"Personal Accident Cover to the insured or any named person other than paid driver or cleaner (applicable to private cars including three wheelers rated as private cars and motorized two wheelers with or without side car [not for hire or reward]):*
>
> *In consideration of the payment of an additional premium, it is hereby agreed and understood that the company undertakes to pay compensation on the scale provided below for bodily injury as hereinafter defined sustained by the insured person in direct connection with the*

vehicle insured or whilst mounting and dismounting from or travelling in vehicle insured and caused by violent accidental external and visible means which independently of any other cause shall within six calendar months of the occurrence of such injury result in :

Details of inquiry	*Scale of compensation*
i) death	*100%*
ii) Loss of two limbs or sight of two eyes or one limb and sight of one eye	*100%*
iii) Loss of one limb or sight of one eye	*50%*
iv) Permanent total disablement from injuries other than named above	*100%*

Provided always that

(1) compensation shall be payable under only one of the items (i) to (iv) above in respect of any such person arising out of any one occurrence and total liability of the insurer shall not in the aggregate exceed the sum of Rs……... during any one period insurance in respect of any such person.*

(2) no compensation shall be payable in respect of death or injury directly or indirectly wholly or in part arising or resulting from or traceable to (a) intentional self injury suicide or attempted suicide physical defect or infirmity or (b) an accident happening whilst such person is under the influence of intoxicating liquor or drugs.

(3) such compensation shall be payable only

> *with the approval of the insured named in the policy and directly to the injured person or his/ her legal representative(s) whose receipt shall be a full discharge in respect of the injury of such person.*
>
> *Subject otherwise to the terms exceptions conditions and limitations of this policy.*
>
> *******The Capital Sum Insured (CSI) per passenger is to be inserted."*

24. A combined reading of the terms of the policy and IMT-15 makes it clear that it is confined to the personal accident cover of the insured named in the policy or his/her legal representative(s), whose receipt shall be a full discharge in respect of the injury of such person.

25. If a personal accident cover, which, by its definition, is confined only to the registered owner of the vehicle or to his/her legal representative(s), bringing in a third party, who is a borrower of a vehicle and directing the payment of personal accident cover to such a third party or his/her legal representative(s) will go against the very objective of providing personal accident cover by the Insurance Company.

26. In the judgment in ***Vasuki***, the Hon'ble Apex Court took into consideration the fact that the vehicle stood in the name of the wife and it was driven by the husband. Hence, on those peculiar facts, the personal accident cover was extended.

27. However, in the case in hand, the borrower of the vehicle is a third party and just because he has been authorized by the owner of the vehicle to use his vehicle, that will not, in any way, create an entitlement to the borrower of the vehicle or his/her legal representative(s) to make a claim under the personal accident cover by filing a petition under Section 166 of the Act.

28. The liability of the Insurance Company may be in the nature of contractual liability arising out of a policy or a statutory liability arising out the provisions of the Act. In the case in hand, only the contractual liability will apply and therefore, the Court has to look into the terms and conditions of the contract. The policy covers only the owner of the vehicle or at best his/her legal representative(s) when it comes to personal accident cover. By no stretch, the personal accident cover can be extended to a third party

or his/her legal representative(s). Ex consequenti, a petition under Section 166 of the Act cannot be maintained to make such a claim. If such claims are entertained, any third party, who suffers an accident because of his own negligence, will start claiming compensation under the personal accident cover, which is meant only for the owner of the vehicle, in whose name, the policy has been issued. This interpretation of the policy runs against the intent between the parties regarding the liability under the personal accident cover. The Insurance Company does not have any privity of contract with the third party or his/her legal representative(s) when it comes to payment of the fixed amount under the personal accident cover.

29. In the case in hand, the respondents – claimants have not even impleaded the owner of the vehicle as a party to the claim petition and instead, they have made a claim as a matter of right under the personal accident cover even without the owner of the vehicle being made aware of such a claim filed by them. In the light of the above discussions, the award passed by the Tribunal below by mulcting the liability on the appellant – Insurance Company is

unsustainable and the same requires the interference of this Court.

30. In the result, the above civil miscellaneous appeal is allowed and the award dated dated 24.7.2024 made in MCOP.No. 1275 of 2022 on the file of the Motor Accident Claims Tribunal, (Special Sub Court No.1 to deal with MCOP Cases), Court of Small Causes, Chennai is hereby set aside. While entertaining this appeal, this Court granted an order of interim stay on 23.10.2025 in CMP. No.25412 of 2025 on condition that the appellant – Insurance Company should deposit Rs.7.50 lakhs with proportionate interest within four weeks therefrom. It is made clear that whatever amount has been deposited by the appellant – Insurance Company shall be permitted to be withdrawn together with accrued interest. No costs. Consequently, the connected CMP is closed.

28-07-2026

Index: Yes
Speaking order
Neutral Citation: Yes
To
The Motor Accident Claims Tribunal,
(Special Sub Court No.1 to deal with
MCOP Cases), Court of Small Causes,
Chennai.

N.ANAND VENKATESH,J

RS

CMA.No.3009 of 2025 &
CMP.No.25412 of 2025

28-07-2026