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C.M.A.No.2378 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.07.2026

CORAM

THE HON'BLE MR JUSTICE N. SATHISH KUMAR

AND

THE HON'BLE MR.JUSTICE M.JOTHIRAMAN

C.M.A.No.2378 of 2026

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C.M.P.No.18220 of 2026

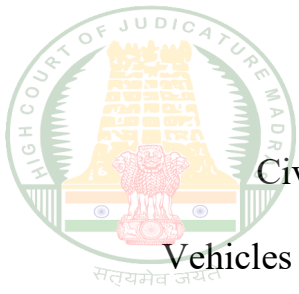
The New India Assurance Company Limited
Dharapuram Branch Office
at M.L.Complex, 1st Floor
Dharapuram, Tiruppur District - 638 656

..Appellant

Vs

- 1.P.Subramaniam
S/o.Palani
2. Sagundaladevi
W/o.Subramaniam
3. Shanmuga Vijayan
S/o.Subramaniam
4. Karthika
W/o.Chandrasekaran
5. S.Pradeepkumar
Son of Sakthivel
6. C. Sakthivel
Son of Chinna Senna Naicker

..Respondents



Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 to set aside the order dated 28.08.2025 made in M.C.O.P.No.801 of 2023 on the file of Court of Special District Judge (to deal with MCOP cases), Erode.

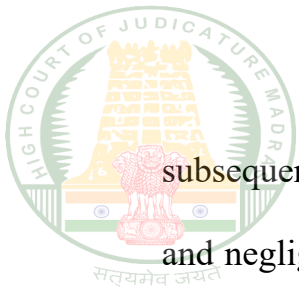
For Appellant(s) : Mr.K.Vinod

JUDGMENT

(Judgment of the Court was delivered by N.Sathish Kumar J.)

This Civil Miscellaneous Appeal has been filed by the Insurance Company challenging the award passed by the Court of Special District Judge (to deal with MCOP cases), Erode in M.C.O.P No.801 of 2023 dated 28.08.2025.

2. Respondents 1 to 4 herein are the claimants before the Tribunal. The case of the claimants is that on 22.11.2022 at about 03.30pm, when the deceased Padmini was travelling as a pillion in TVS XL Super bearing Registration No.TN 33 AE 1289 driven by her brother Shanmuga Vijayan, the third respondent herein, on the Kalingarayanpalayam to Kavundapadi road, near Perumapalayam, E.B.Colony, 1st pirivu from east to west direction, the fifth respondent herein/first respondent before the Tribunal drove the tanker lorry bearing Registration No.TN 3 BL 3999 in a rash and negligent manner and dashed the against the TVS XL Super due to which the deceased fell down and sustained fatal injuries and



subsequently died. Contending that the accident had happened only due to the rash and negligent driving of the driver of the tanker lorry, the claimants have filed the claim petition before the Motor Accident Claims Tribunal.

3. The Tribunal, on considering the facts and circumstances of the case and on appreciation of oral and documentary evidence, 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.

4. Having rendered the above finding, the Tribunal proceeded to determine the compensation amount in the claim petition as follows:

<i>Sl.No.</i>	<i>Compensation awarded under the head</i>	<i>Amount (in Rs.)</i>
1.	Towards Loss of Income / Dependency (19,600 x 12 x 18 x 1/2)	Rs.21,16,800/-
2.	Compensation towards Loss of filial consortium for the petitioners 1 and 2 (Rs.44,000/- each)	Rs. 88,000/-
3.	Compensation for Funeral Expenses	Rs.16,500/-
4.	Compensation towards Loss of Estate	Rs.16,500/-
5.	Compensation for medical expenses (as per Ex.P14 Hospital and Medical Bills)	Rs.65,853/-
6.	Compensation for Damages to clothing and articles	Rs.2,000/-
	Total	Rs.23,05,653/-



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5. The above compensation amount of Rs.23,05,653/- was directed to be paid along with interest at the rate of 7.5% per annum from the date of the petition till the date of deposit to claimants 1 and 2, who are father and mother of the deceased. The Tribunal held that as claimants 3 and 4 are elder brother and sister of the deceased, they could not be considered as the dependents of the deceased. Considering the fact that the driver of the offending vehicle did not possess a valid driving license, pay and recover was ordered by the Tribunal.

6. The Insurance Company has filed the present appeal mainly on the ground that the driver of the offending vehicle did not possess a valid driving license and therefore, pay and recover ought not to have been ordered.

7. This Court carefully considered the submissions made by the learned counsel appearing for the appellant and also the award passed by the Tribunal.

8. The ground that was taken by the learned counsel appearing for the appellant Insurance Company is that the Tribunal ought not to have ordered pay and recover. The said ground is squarely covered by the judgment of a Coordinate Bench of this Court in a batch of appeals in CMA.(MD).No.517 of 2025 etc, dated 01.06.2026 wherein this Court has held as follows:

"75.For the reasons stated above, we hold and declare that:

"a. The deletion of the proviso to Section 149(4) and Section



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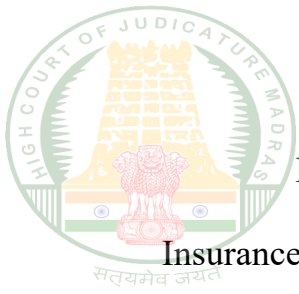
149(5) in the Motor Vehicles Act, 1988, as it stood prior to the amendment by the Motor Vehicles (Amendment) Act, 2019 (Act 32 of 2019), does not have the effect of obliterating the statutory duty of the insurer to pay the claims made under an award or decree in respect of liability covered under a policy of insurance

b. The duty vis-à-vis a third party is statutory in character and flows from Section 150(1) of the Motor Vehicles Act, 1988, as amended by Act 32 of 2019, and remains unhindered by the fact that the insurance company has succeeded in establishing a contractual defense permitted under Section 150(2).

c. In the event the insurance company succeeds in establishing a defense under Section 150(2), the insurer will stand absolved from its contractual liability vis-à-vis the insured. Consequently, the insurer, after satisfying its statutory liability under Section 150(1) can proceed to recover the sum so paid from the insured. The insurance company can proceed to recover the same in terms of the directions contained in paragraph 110 (x) of the decision of the Supreme Court in *National Insurance Co. Ltd v Swaran Singh*, (2004) 3 SCC 297.

d. Conversely, if the insurance company does not succeed in establishing a defense under Section 150(2) the burden to meet the entire claim will fall on the insurer by virtue of Section 147(2) as amended by Act 32 of 2019, and Rule 2 of the Third-Party Insurance (Base Premium and Liability) Rules, 2022 which provides for unlimited liability in respect of third party insurance under Chapter XI of the Act."

Hence, this Court does not find any illegality in the order passed by the Tribunal applying the principle of pay and recover.



In the result, this Civil Miscellaneous Appeal stands dismissed. The Insurance company is directed to deposit the entire compensation amount, less the amount already deposited, together with interest at 7.5% p.a. from the date of claim petition till the date of deposit within a period of four (4) weeks from the date of receipt of a copy of this judgment. The claimants will be entitled to withdraw the compensation amount as apportioned by the Tribunal. The other directions issued by the Tribunal with regard to the mode of payment of compensation remains unaltered. No costs. Consequently, connected Miscellaneous Petition is closed.

(N.S.K.,J.) (M.J.R.,J.)
30.07.2026

Index: Yes/No
Speaking/Non-speaking order
Neutral Citation: Yes/No

gpa

To

1. The Special District Judge
(to deal with MCOP cases), Erode
2. The Section Officer
VR Section
Madras High Court



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**N.SATHISH KUMAR, J.
AND
M.JOTHIRAMAN, J.**

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