IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.04.2025

CORAM

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

C.M.A.No.2531 of 2022

1.Malliga

2.Karthikeyan

3.Eswari ... Appellants

vs.

1.E.Manimegalai

(Since R1 remained exparte before the Tribunal his presence may be dispensed with)

2.The United India Insurance Company Limited,
No.48, Arcot Road,
Saligramam, Chennai – 600 093. ... Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, to enhance and set aside the award against the judgment and decree dated 21.02.2022 and made in M.A.C.T.O.P.No.215 of 2019 on the file of the Motor Accident Claims Tribunal, Special District Court to deal with Motor Accident Claims Tribunal No.1, Tiruvallur.

For Appellants	: Mr.A.G.F.Terry Chella Raja for M/s.M.Malar
For R2	: Mr.K.Kumudha @ Kumudhakumar
For R1	: Notice Dispensed With

JUDGMENT

The Civil Miscellaneous Appeal has been filed by the claimants challenging the exoneration of the Insurance Company from liability of paying compensation.

2. According to the appellants/claimants, the husband of the 1st claimant and father of the claimants 2 and 3 namely M.Palani died in a road accident that had occurred on 02.10.2019. According to the claimants, the deceased was walking from North to South on CTH Road, School Road Junction, opposite to Door No.649, Star Fancy Stores. At that point of time, the pulsar motor cycle belonged to the 1st respondent insured with the 2nd respondent was driven by its rider in a rash and negligent manner and hit the deceased. As a result of the accident, the deceased sustained grievous injuries and died in hospital. Hence, a claim petition was filed seeking compensation of Rs.20,00,000/-.

3. The 1st respondent-owner of the vehicle remained *exparte* before the Tribunal and the 2nd respondent-insurer filed counter and denied the negligence on the part of the driver of the 1st respondent and claimed that

the accident had occurred only due to the contributory negligence on the part of the deceased. It was also stated by the 2nd respondent that 1st respondent allowed a minor aged about 16 years to drive the vehicle, therefore, there was a violation of policy conditions. Hence, the 2nd respondent was not liable to pay compensation.

4. Before the Tribunal, the 1st appellant/1st claimant was examined as PW.1 and yet another witness namely Siva was examined as PW.2. On behalf of the claimants, 15 documents were marked as Exs.P1 to P15. On behalf of the respondents, the Sub-Inspector of Police was examined as RW.1 and Deputy Manager of the Insurance Company was examined as RW.2 and one document was marked as Ex.R1.

5. The Tribunal based on the evidence available on record, came to the conclusion that 1st respondent's vehicle was driven by a minor having no driving licence, therefore, there was a violation of policy condition. Accordingly, the Tribunal exonerated the 2nd respondent/Insurance Company from the liability of paying the compensation. The compensation payable to the claimant was quantified at Rs.4,72,028/- and the 1st

respondent-owner of the vehicle was directed to pay the said amount. Aggrieved by the exoneration of 2nd respondent/Insurance Company, the appellants/claimants have come before this Court.

6. The learned counsel appearing for the appellants would submit that the deceased third party has no control over the vehicle owned by the 1st respondent and in the absence of any negligence on the part of the deceased, the Tribunal committed an error in exonerating the 2nd respondent/Insurance Company. The learned counsel further submitted that the Tribunal should have atleast ordered pay and recovery by relying on the judgment of the Apex Court in ***Jawahar Singh vs. Bala Jain and others*** reported in ***2011 (1) TANMAC 641 (SC)***.

7. The learned counsel appearing for the 2nd respondent/Insurance Company vehemently contend that as per the policy condition, the 1st respondent is expected to allow the competent person to drive vehicle and in the case on hand, the 1st respondent allowed the minor child to drive the vehicle. Therefore, it was his submission that the Tribunal was justified in exonerating the Insurance Company.

8. In ***Jawahar Singh vs. Bala Jain and others*** reported in ***2011 (1) TANMAC 641 (SC)***, the Apex Court exactly in a similar situation, directed the Insurance Company to pay the amount to the victim and recover the same from the owner of the vehicle. The relevant observation of the Apex Court in the above mentioned judgment reads as follows:-

> *"11. We cannot shut our eyes to the fact that it was Jatin, who came from behind on the motorcycle and hit the scooter of the deceased from behind. The responsibility in causing the accident was, therefore, found to be solely that of Jatin. However, since Jatin was a minor and it was the responsibility of the Petitioner to ensure that his motorcycle was not misused and that too by a minor who had no licence to drive the same, the Motor Accident Claims Tribunal quite rightly saddled the liability for payment of compensation on the Petitioner and, accordingly, directed the Insurance Company to pay the awarded amount to the awardees and, thereafter, to recover the same from the Petitioner. The said question has been duly considered by the Tribunal and was correctly decided. The High Court rightly chose not to interfere with the same."*

9. Therefore, it is clear that in ***Jawahar Singh*** case, the Motor Accident Claims Tribunal ordered pay and recovery and the said order was

affirmed by the High Court as well as the Apex Court. It is also pertinent to note under Section 149(1) of Motor Vehicles Act, 1988, insurer has statutory liability to honour award passed against insured. The innocent their party road accident victims, have no idea or control over policy violation by insured. The violation of policy condition is based on contract of insurance between owner of vehicle and insurer, over which third party victim has no control. Therefore, this Court is inclined to follow the law laid down in ***Jawahar Singh*** case and direct the 2nd respondent/Insurance Company to pay the award amount to the claimants and recover the same from the 1st respondent/owner of the vehicle.

10. Accordingly, the order passed by the Tribunal exonerating the 2nd respondent/Insurance Company is set aside. The 2nd respondent/Insurance Company is directed to deposit the award amount of Rs.4,72,028/- together with interest at the rate of 7.5% per annum from the date of claim petition to the date of realisation, to the credit of M.C.O.P.No.215 of 2019 on the file of the Motor Accident Claims Tribunal No.1, Special District Court, Thiruvallur, within a period of six weeks from the date of receipt of copy of this judgment and thereafter, recover the said amount from the

1st respondent-owner of the vehicle by following the procedure under Section 174 of Motor Vehicles Act, 1988. On such deposit, the appellants/claimants are permitted to withdraw the award amount deposited by the Insurance Company by making formal application before the Tribunal.

11. Accordingly, the Civil Miscellaneous Appeal is allowed. No costs.

09.04.2025

Index :Yes
Speaking order :Yes
Neutral Citation :Yes
dm

To

1.The Motor Accident Claims Tribunal,
Special District Court to deal with
Motor Accident Claims Tribunal No.1, Tiruvallur.

2.The United India Insurance Company Limited,
No.48, Arcot Road,
Saligramam, Chennai – 600 093.

3.The Section Officer,
VR Section, High Court,
Madras.

S.SOUNTHAR, J.

dm

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