IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated :16.04.2025

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

CMA.No.558 of 2025
and Cross.Obj.No.31 of 2025 and
C.M.P.No.4243 of 2025

In CMA.No.558 of 2025

The National Insurance Co Limited
Divisional Office, 110, J.N.Street, II Floor,
Puducherry. ... Appellant

Vs.

Sengeni (Died)
1.Muniammal
2.Vasantha
3.Kumar
4.Parameswari
5.Murugan
6.Vellaichamy ... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, to set aside the decree and judgement passed by the MACT/1st Additional District Court, Tindivanam in MCOP.No.96/2018 dated 12-02-2024.

For Appellant : Mr.S.Senthil Kumar
For Respondents : M/s.G.Amala for R1 to R5
R6-Notice dispensed with

Cross.Obj.No.31 of 2025

Sengeni (Died)
1.Muniammal
2.Vasantha
3.Kumar
4.Parameswari
5.Murugan ...Cross Objectors

Vs.

1.The National Insurance Co Limited
Divisional Office, 110, J.N.Street, II Floor,
Puducherry.

2. Vellaichamy ... Respondents

Prayer: Cross Objection filed under Order 41 Rule 22 of CPC, to set aside the 20 per cent contributory negligence fixed on the part of the deceased and to enhance the award amount in the Decree and Judgment made in MCOP No.96/2018, on the file of 1st Additional District Judge, Tindivanam dated 12.02.2024 by allowing this cross objection with interest and cost.

For Cross Objectors : M/s. G.Amala
For respondents : M/s.S.Senthil Kumar for R1

JUDGMENT

The civil miscellaneous appeal is filed by the insurance company challenging the award passed by the Motor Accident Claims Tribunal in MCOP.No.96 of 2018 fixing the compensation payable to the dependents of the fatal victim in a road accident at Rs.9,92,160/-.

2. According to the respondents 1 to 5/ claimants, the son of the deceased 1st claimant and 2nd claimant and the brother of the other claimants namely Arumugam died in a road accident that had occurred on 19-07-2016. According to the claimants, when the deceased attempted to cross the Chennai GST Road opposite to Thenpasiyar bus stop, the car belonged to the 6th respondent and insured with the appellant herein came in a rash and negligent manner and hit the deceased. As a result of the accident, the deceased died and hence, the claim petition was filed by the parents of the deceased seeking compensation of Rs.50,00,000/-. Pending claim petition, the 1st claimant, the father of the deceased died and hence, the siblings of the deceased were brought on record as legal representatives.

3. The 6th respondent, owner of the car remained exparte before the Tribunal and the claim petition was resisted by appellant/ the insurer of the car on the ground that the accident had occurred solely due to the negligence on the part of the deceased, who crossed the road suddenly without noticing the fast-moving vehicle in the national highway.

4. The Tribunal, based on the evidence available on record, came to the conclusion that the primary negligence was on the part of the driver of the car and fixed 80% negligence on him. The Tribunal also fixed 20% contributory negligence on the part of the deceased. The amount payable to the claimants was quantified at Rs.9,92,160/- after deducting 20% contributory negligence on the part of the deceased. Aggrieved by the said award, the insurer of the car has filed this appeal.

5. The claimants/ respondent 1 to 5 also filed a cross-objection seeking enhancement of the compensation and also challenged the 20 % contributory negligence fixed on the part of the deceased.

6. The learned counsel for the appellant/Insurance Company submitted that the accident had occurred after expiry of the temporary

registration of the car. Therefore, the car was used in road without any proper registration and hence, the insurer was not liable to pay compensation. The learned counsel further submitted that the accident had occurred only due to the negligence on the part of the deceased and hence, the Tribunal committed an error in fixing 80% negligence on the part of the driver of the car.

7. The learned counsel for the respondents 1 to 5/ claimants submitted that taking into consideration that there was no proper registration for the car at the time of accident, the Tribunal rightly ordered pay and recovery and the same may be affirmed. The learned counsel further submitted that the accident had occurred only due to the negligence on the part of the driver of the car and hence, the findings of the Tribunal with regard to the contributory negligence on the part of the deceased is liable to be set aside. The learned counsel also submitted that the notional income of Rs.8,000/- fixed by the Tribunal is very much on the lower side. Therefore, it requires enhancement.

8. The learned counsel for the appellant/Insurance Company submitted that the car was used by its owner without proper registration

which would amount to fundamental infraction of statutory provision. Therefore, the insurance company was not at all liable to pay any amount. In support of his contention, the learned counsel relied on the judgment of the Division Bench of this Court in ***Commissioner, Tiruppur Municipality Vs K.Marayammal and others reported in 2024 (1) TN MAC 591 (DB).***

9. It is not in dispute that the temporary registration for the car expired even before the date of accident. Therefore, on the date of accident, there was no registration for the car. Driving car or motorcycle without proper registration would amount to violation of the policy conditions and therefore, the Tribunal ordered pay and recovery.

10. In the judgment cited above, the learned counsel for the insurance company therein relied on the judgment of the Hon'ble Apex Court in ***Amrit Paul Singh and others Vs Tata AIG General Insurance Company Limited and Others reported in 2018 (1) TN MAC 721 (SC): AIR 2018 SC 2662*** and submitted that driving a vehicle without permit would amount to fundamental statutory infraction and hence, the insurance company should be absolved of its liability. The relevant

observation of the Division Bench judgment of this Court in ***Marayammal*** case reads as follows:-

> *"12. The learned Counsel would also draw our attention to the judgment of the Hon'ble Supreme Court in **Amrit Paul Singh and others v. Tata AIG General Insurance Co. Ltd. and others, 2018 (1) TN MAC 721 (SC): AIR 2018 SC 2662**. He would further submit that the Hon'ble Supreme Court after examining the provisions of the Motor Vehicles Act concluded that use of vehicle in a Public place without permit is fundamental statutory infraction and the same cannot be equated with the absence of License or fake License or License for different kind of vehicle. The learned Counsel would point out that the Hon'ble Supreme Court had made a distinction between the fundamental statutory infraction and a regular infraction of the Rules, in order to sustain the conclusion of the High Court that the Insurance Company is absolved of the liability when there is a fundamental Statutory*

infraction".(Emphasis supplied)

11. It is pertinent to point out that in ***Amrit Paul Singh*** case cited supra and relied on by Division Bench, the Hon'ble Apex Court, after coming to the conclusion that driving vehicle without permit would amount to fundamental infraction of statute, confirmed the order passed by the Tribunal as well as the High Court directing the insurer to pay the compensation amount to the claimants and recover the same from the owner, who was guilty of breach of policy conditions. The relevant portion of the Hon'ble Apex Court judgment in ***Amrit Paul Singh*** case reads as follows:-

> *"20. The Hon'ble Supreme Court after referring to the provisions of Section 66 which deal with the permit which after referring to the Judgment in* ***National Insurance Co. Ltd. v. Swaran Singh and others, 2004 (1) TNMAC 104 (SC): 2004 (3) SCC 297,*** *concluded that if it is a fundamental statutory infraction then the Insurance Company is absolved of its liability and therefore, there cannot be even a direction to the Insurance Company to pay the*

compensation with liberty to recover it. After discussing other Judgments on the issue the Hon'ble Supreme Court observed as follows: (emphasis supplied).

"24. In the case at hand, it is clearly demonstrable from the materials brought on record that the vehicle at the time of the accident did not have a Permit. The Appellants had taken the stand that the vehicle was not involved in the accident. That apart, they had not stated whether the vehicle had Temporary Permit or any other kind of Permit. The exceptions that have been carved out under Section 66 of the Act, needless to emphasise, are to be pleaded and proved. The exceptions cannot be taken aid of in the course of an argument to seek absolution from liability. Use of a vehicle in a Public place without a permit is a fundamental Statutory infraction. We are disposed to think so in view of the series of exceptions carved out in Section 66. The said situations cannot be equated with absence of Licence or a fake Licence or a Licence for different kind of vehicle, or, for that matter, violation of a condition of carrying more number of passengers.

Therefore, the principles laid down in National Insurance Co. Ltd. v. Swaran Singh, 2004 (3) SCC 297: 2004 SCC (Cri) 733 and Lakhmi Chand v. Reliance General Insurance, 2016 (3) SCC 100: (2016) 2 SCC (Civ) 45 in that regard would not be applicable to the case at hand. That apart, the Insurer had taken the plea that the vehicle in question had no permit. It does not require the wisdom of the "Tripitaka", that the existence of a permit of any nature is a matter of Documentary evidence. Nothing has been brought on record by the insured to prove that he had a permit of the vehicle. In such a situation, the onus cannot be cast on the insurer. Therefore, the Tribunal as well as the High Court had directed that the Insurer was required to pay the compensation amount to the Claimants with interest with the stipulation that the Insurer shall be entitled to recover the same from the Owner and the Driver. The said directions are in consonance with the principles stated in Swaran Singh [National Insurance Co. Lid. v. Swaran Singh, 2004 (3) SCC 297: 2004 SCC (Cri) 733) and other cases pertaining to Pay and Recover Principle. (Emphasis supplied)

12. Therefore, it is clear that in ***Amrit Paul Singh*** case relied on by the Division Bench in ***Marayammal*** case, the Hon'ble Apex Court in similar situation, affirmed pay and recovery order passed by the Tribunal as well as High Court. The same was not properly brought to the notice of the Division Bench in ***Marayammal*** case. Therefore, the Division Bench proceeded to absolve the Insurance Company of its liability.

13. The Hon'ble Apex Court in ***Amrit Paul Singh*** case cited supra, relying on earlier three member bench decision of the Hon'ble Apex Court in ***Swaran Singh*** case, affirmed the view that even if the vehicle was plied on road without proper permit, the insurer is liable to pay compensation to the third party victims and then, recover the same from the owner of the vehicle. Therefore, the pay and recovery order passed by the Tribunal is affirmed by following the decision of Hon'ble Apex Court in ***Amrit Paul Singh*** case cited supra.

14. The learned counsel for the appellant vehemently contended that the accident had occurred on 19.07.2016 at about 8.40PM and the deceased was negligent in crossing the national highway without noticing the fast moving vehicles.

15. A perusal of the evidence of P.W.1 would indicate that the deceased attempted to cross the national highway near Thenpasiyar bus stop from East to West and during the process the accident had occurred. It is not the case of the claimants that the deceased attempted to cross the road in regular Zebra crossing. When a pedestrian is attempting to cross the road especially in a national highway, he must be satisfied that the road is free and there is no fast moving vehicle near the crossing spot. Therefore, there was negligence on the part of the deceased also. The driver of the car should also take necessary care while plying the vehicle and he must be cautious of pedestrians crossing the roads. Therefore, taking into consideration the entire facts and circumstances of the case, this Court feels that contributory negligence of 20% fixed by the Tribunal on the pedestrian is on lower side and the same is increased to 30%.

16. In the claim petition, it was stated by the claimants that deceased was a owner of bullock cart and was engaged in agriculture at the time of accident and he was earning a sum of Rs.20,000/- per month. However, in order to prove the avocation and income of the deceased, no documentary evidence have been let in by the claimants.

17. It is settled law that even if there is no proof of income, taking into consideration the facts and circumstances of the case, this Court can fix the notional income. In the case on hand, the Tribunal fixed only Rs.8,000/- as notional income and the same is very much on lower side.

18. The accident had occurred in the year 2016. Therefore, taking into consideration the date of accident and the cost of living, this Court is inclined to fix Rs.15,000/- as the notional income for the deceased. The Tribunal fixed the age of the deceased at 35 years based on Ex.P9, legal heir certificate. Therefore, the claimants are entitled to 40% enhancement towards future prospects. The applicable multiplier is 16. Since the deceased died as a bachelor, 1/2 of the amount shall be deducted towards personal expenses. Therefore, the claimants are entitled to Rs.20,16,000/- towards loss of dependency.

Rs.15,000 x 1.4 x 12 x 16 x 1/2 = Rs. 20,16,000/-

19. Originally, the claim petition was filed by the father and mother of the deceased (1st and 2nd claimants). The 2nd claimant/mother of the deceased is entitled to Rs.40,000/- towards parental consortium. The conventional damages payable to the deceased 1st claimant would enure to his estate. After death of 1st claimant, his legal representatives were brought on record. Therefore, since the legal representatives of the 1st claimant are already on record, this Court is inclined to award another sum of Rs.40,000/- under the head parental consortium towards estate of the deceased 1st claimant. In addition to the above said amount, the claimants are entitled to Rs.15,000/- each under the heads funeral expenses and loss of estate. The amount of Rs.30,000/- awarded by the tribunal under the head loss of companionship is set aside.

20. In view of the discussions made earlier, the compensation awarded by the Tribunal is modified as follows:-

Sl.	Description	Amount awarded	Amount awarded	Award confirmed or

No		by Tribunal (Rs)	by this Court (Rs)	enhanced or granted
1.	Loss of dependency	10,75,200/-	20,16,000/-	Enhanced
2.	Loss of Estate	15,000/-	15,000/-	Confirmed
3.	Funeral Expenses	20,000/-	15,000/-	Reduced
4.	Loss of Parental Consortium	1,00,000/-	80,000/-	Reduced
5	Loss of companionship	30,000/-	Nil	Set aside
	Total	**12,40,200/-**	**21,26,000/-**	**Enhanced by 8,85,800/-**
	Less: 20% contributory negligence fixed by the tribunal is increased to 30%	**2,48,040/-**	**6,37,800/-**	
	Net compensation	**9,92,160/-**	**14,88,200/-**	**Enhanced by 4,96,040/-**

21. The total compensation payable to the claimants is Rs.21,26,000/-. From this amount, 30% shall be deducted towards contributory negligence. After deduction of 30% towards contributory negligence, the claimants are entitled to Rs.14,88,200/-.

22. With the above modifications, the Civil Miscellaneous Appeal

filed by the appellant/Insurance company is dismissed and the cross objection filed by the claimants/cross objectors is partly allowed and the compensation awarded by the Tribunal at Rs.9,92,160/- is enhanced to Rs.14,88,200/-.The respondents 1 to 5 are entitled to interest at the rate of 7.5% per annum from the date of filing of the claim petition till the date of realization. The appellant/Insurance company is directed to deposit the enhanced award amount to the credit of MCOP.No.96/2018 on the file of Motor Accident Claims Tribunal/1st Additional District Court, Tindivanam, along with interest and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of copy of this Judgment.

23. As far as apportionment is concerned, the claimants 3 to 6/respondents 2 to 5 are entitled to Rs.30,000/- each. The 2nd claimant/1st respondent is entitled to Rs.13,68,200/-.

24. The respondents 1 to 5 are permitted to withdraw their share of

compensation amount, along with interests and costs, less the amount if any, already withdrawn by filing a formal application before the Tribunal. Consequently, the connected miscellaneous petition is closed. No costs.

16.04.2025

Index:Yes
Internet:Yes
Neutral Citation: Yes
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To

1. Motor Accident Claims Tribunal
The 1st Additional District Court, Tindivanam.

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

S.SOUNTHAR, J.

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CMA.No.558 of 2025
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