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CMA.No.234 of 2023.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 21.03.2025

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

CMA No.234 of 2023

V.Senthil Kumar

... Appellant

Vs.

1. A.Rajini

2. ICICI Lombard General Insurance Co. Ltd.,
Rep. by its Regional Manager,
Office at ICICI Lombard House,
No.414, Veer Savarkar Marg,
Near Siddhi Vinayak Temple, Prabadevi,
Mumbai 400 025.

... Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act 1988 to set aside the judgment and decree dated 22.07.2022 made in MCOP No.735 of 2014 on the file of the Additional District Judge (Fast Track Court), Motor Accident Claims Tribunal, Vellore.

For appellant : Mr.C.Prabakaran

For Respondents : Mr.M.Jayaraj for second respondent



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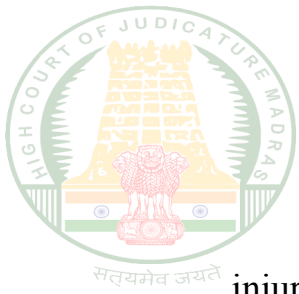
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JUDGMENT

This appeal has been filed by the injured/claimant, challenging the exoneration of the second respondent/ Insurance company from the liability of paying compensation.

2. It is the case of the appellant/claimant that on 29.07.2014, he was proceeding from his house to Adukamparai in his Apache vehicle and when he came near Thorapadi Central Jail Police Training Centre, a motorcycle belonging to the first respondent and insured with the second respondent came in the opposite direction in a rash and negligent manner and hit against the claimant. As a result of accident, the claimant sustained multiple injuries. Hence, he preferred a claim petition before the Tribunal seeking compensation of Rs.25,00,000/-.

3. The first respondent remained exparte before the Tribunal and the second respondent/ Insurance company alone contested the matter by denying the negligence on the part of the driver of the vehicle insured with it. It was also contended by the insurance company that the accident had occurred only due to the negligence of the



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injured/claimant. Further, it was pleaded by the second respondent that the first respondent owner cum rider of the two wheeler had not possessed valid driving license and hence, there was violation of policy conditions. The Tribunal, based on the evidence available on record, came to the conclusion that the accident had occurred only due to the rash and negligent driving of the two wheeler by the first respondent. However, the Tribunal held that the owner cum rider of the vehicle did not possess valid driving license on the date of accident and hence exonerated the second respondent/ insurance company from liability of paying compensation. The Tribunal directed the first respondent to pay a sum of Rs.1,82,120/- to the claimant as compensation. Aggrieved by the exoneration of the insurance company, the claimant has come before this court.

4. The learned counsel for the appellant would submit that the Tribunal committed a serious error by exonerating the insurance company and in support of his contention, he relied on the judgment of the Apex Court in *National Insurance Co. Ltd., Vs. Swaran Singh and others* reported in (2004) 3 SCC 297.



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5. The learned counsel appearing for the second respondent / insurance company would submit that failure of the first respondent to produce valid license would amount to violation of policy condition and hence, the Tribunal was justified in exonerating the insurance company from paying compensation. In support of his contention, he relied on the following judgments.

i) United India Insurance Co. Ltd. Vs. Sujata Arora and others reported in 2013(2) TN MAC 420 (SC)

ii) The Commissioner, Tiruppur Municipality Vs. K.Mayammal and two others in CMA No.781 of 2024, dated 27.03.2024 (Division Bench of Madras High Court)

iii) M.Ananthi Vs. P.Venkatesan in CMA No.1181 of 2016, dated 20.08.2020 (Single Bench of Madras High Court) reported in 2022(1) TNMAC 135.

6. The Apex Court, while considering a situation with regard to the absence of valid driving license in ***Swaran Singh Case***, observed as follows.

" 106.(iii) ... Mere absence, fake or invalid driving licence or disqualification of the Driver for driving at the relevant time, are not in themselves defences available to the



insurer against either the insured or the third parties. To avoid its liability towards insured, the insurer has to prove that the insured was guilty of negligence and failed to exercise reasonable care in the matter of fulfilling the condition of the policy regarding use of vehicles by duly licensed driver or one who was not disqualified to drive at the relevant time."

Therefore, it is clear that unless the violation of policy condition is proved to be due to negligence or failure to exercise reasonable care on the part of insured, the insurance company is not entitled to avoid its liability. In the decision of the Hon'ble Supreme Court in ***United India Insurance Co. Ltd. Vs. Sujata Arora and others reported in 2013(2) TN MAC 420 (SC)***, relied on by the learned counsel for the second respondent, the Apex Court held that driving the vehicle with a fake licence would amount to violation of policy conditions of the insurance policy and hence no liability fastened on the insurance company. However, the view of the Three Members Bench of the Apex Court in ***Swaran singh case***, was not at all brought to the notice of two member Bench of Apex Court in ***Sujata Arora case*** cited supra. Hence, ***Swaran Singh case*** has not been considered in the said case.



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7. In the case of ***The Commissioner, Tiruppur Municipality Vs. K.Mayammal and two others in CMA No.781 of 2024, dated 27.03.2024***, a Division Bench of this Court affirmed the order passed by the Tribunal, exonerating the insurance company on the ground that failure to produce appropriate Fitness Certificate for the vehicle would amount to fundamental infraction of law. The Division Bench relied on the decision of Apex Court in ***Amrit Paul Singh and others Vs. Tata AIG General Insurance Company Limited and others reported in AIR 2018 SC 2662***, to come to such a conclusion. It is pertinent to mention, though the Apex Court in the above mentioned case held that failure to have valid fitness certificate for transport vehicle was fundamental statutory infraction, proceeded to affirm "Pay and Recovery order" passed by the Tribunal as confirmed by High Court. Hence, ***Amrit Paul Singh Case*** cannot be relied to exonerate insurance company absolutely, by refusing "Pay and Recovery" order. In any event, on the facts of the present case, breach of policy condition pleaded is not failure to have fitness certificate, but failure to have valid driving licence. Hence, order in CMA No.781/2024, will not help the learned counsel for the second respondent/insurer.



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8. In the case on hand, it is not the case of the insurance company that the offending vehicle did not possess valid fitness certificate. The point raised by the insurance company is violation of insurance policy condition, as the first respondent did not possess valid driving licence. I had an occasion to consider the similar question in ***T.Vinoth Kumar Vs. S.Sekar and another in CMA No.413 of 2025 reported in 2025/MHC/704***, wherein, it was held that failure of the insured to produce valid driving licence is not fault of the third party/claimant.

9. In the said case, I had an occasion to distinguish ***Ananthi case*** cited by the counsel for the 2nd respondent/insurer. The relevant observation reads as follows.

*" 11. It is argued by the learned counsel appearing for the 2nd respondent/Insurance company by relying on the judgment of this court in **M.Ananthi and others Vs. P.Venkatesan and others reported in 220 SCC Online Mad 15047**, that failure of the insurer to have valid driving licence at the time of accident would amount to fundamental breach of policy. Therefore, the insurance company is entitled to avoid its liability of payment.*



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12. *A close scrutiny of judgment of Apex Court in **Swaran Singh** case would make it clear that the insurer is not entitled to deny its liability towards insured unless the breach is so fundamental and also contributed to the cause of the accident. It means in case of fundamental breach of condition, the insurer is only entitled to avoid its liability towards the insured not its liability towards the third parties under Section 149(1) of the Motor Vehicles Act, 1988. The Motor vehicles act is a social welfare legislation aimed at giving some compensation to the victims of road accident.*

13. *Failure of the insured to produce driving licence or failure of the insured to hold proper driving licence is not the fault of the third party, who suffered at the hands of the rash and negligent driving of the insured. The provisions of the welfare legislation has to be interpreted so as to achieve the object of the enactment (providing compensation to the road accident victims). Therefore, the Apex Court in the above mentioned case said that in cases of breach of policy conditions, insurer can be directed to pay the award amount to the innocent third parties and recover the same from the insured, who committed breach of policy conditions. Only in cases where there is a fraud or collusion between the third party and the insured, the insurance company can get its liability exonerated as held by the Apex Court in **Swaran Singh** case.*

14. *The decision of the Apex Court in **Swaran Singh** case was followed and reiterated by it in **Singh Ram Vs.***



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***Nirmala case reported in 2018(1) TN MAC 704 (SC).** In **Singh Ram** case, the owner produced the driving licence and the same was found to be fake, thereafter, he filed another driving licence and the same was found to be expired long before the accident. The Apex Court after recording the owner's failure to take reasonable care, affirmed the pay and recovery order passed by the High Court.*

*15. In the light of the judgment of the Apex Court in **Swaran Singh** and **Singh Ram** cases cited supra, merely because the 1st respondent herein owner-cum-driver of the vehicle failed to appear before the Tribunal and have not produced valid driving licence before the Tribunal, we cannot exonerate insurer of its liability towards the third party claimant.*

*16. Even assuming, it enables the insurance company to avoid its duty towards the insured as held in **Swaran Singh** case by virtue of section 149 of the Motor Vehicles Act, 1988 the 2nd respondent/ insurance company shall pay the amount to the innocent third party claimant and the same can be recovered from the insured. Therefore, I set aside the finding of the Tribunal exonerating the Insurance Company from its liability of paying the amount to the claimant. However, the insurer is entitled to recover the amount paid by it to the claimant from the first respondent/insured."*



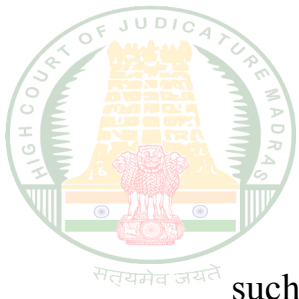
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In the case on hand, the insured failed to appear before the Tribunal and answer the breach alleged by the insurer. In such circumstances, following the law laid down by the Apex Court in *Swaransingh case* , I hold that the insurer is liable to honour its statutory duty towards third party claim. However, after paying the amount, the insurer is entitled to recover the same from the insured, due to the violation of the policy conditions, namely absence of valid driving licence.

10. In view of the above, the award passed by the Tribunal is modified and the second respondent/ insurance company is directed to pay the award amount to the appellant/claimant, with liberty to recover the same from the first respondent/owner of the vehicle.

11. Accordingly, this civil miscellaneous appeal is allowed. The second respondent /insurance company is directed to deposit the Award amount, along with interest and costs, within a period of **six weeks** from the date of receipt of a copy of this judgment, with liberty to recover the same from the first respondent/owner of the vehicle. On



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such deposit, the claimant shall be permitted to withdraw the compensation amount along with interest and costs, less the amount if any, already withdrawn by making formal application before the Tribunal. There shall be no order as to costs.

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Index : Yes/No
Speaking order : Yes/No
Neutral citation : Yes/No
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To

1. The Additional District Judge (Fast Track Court),
Motor Accident Claims Tribunal,
Vellore.
2. The Section Officer,
V.R.Section, Madras High Court.



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S.SOUNTHAR, J.

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