



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.03.2025

WEB COPY

CORAM

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

C.M.A.No.413 of 2025

T.Vinoth Kumar

... Appellant

vs.

1.S.Sekar

2.M/s.Reliance General Insurance Company Ltd,
Binny Compound,
Kumaran Road,
Tiruppur.

... Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, against the award dated 30.04.2024 passed in MCOP No.675 of 2018 on the file of Presiding Officer, Motors Accident Claims Tribunal at Tiruppur.

For Appellant : Mr.K.Myilsamy

For R2 : Mr.P.Suresh Srinivasan

For R1 : Notice Dispensed With



C.M.A.No.413 of 2025

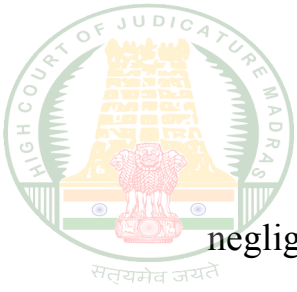
J U D G M E N T

WEB COPY

The Civil Miscellaneous Appeal is filed by the injured/claimant challenging the award passed by the Motor Accident Claims Tribunal, dismissing the original petition against the 2nd respondent/Insurance Company and directing the 1st respondent/owner-cum-driver of the offending vehicle to pay the compensation amount.

2. It is the case of the claimant that on 08.04.2018, when the claimant was driving in his two wheeler bearing Registration No.TN 39 BT 2374 in Bishop School Road, near Dollar Quarters by adhering to the traffic rules and regulations, the 1st respondent came in his Honda Activa two wheeler bearing Registration No.TN 39 BT 9015 in a rash and negligent manner and dashed against the claimant's vehicle. As a result of which, the claimant was thrown away and sustained grievous injuries. Hence, a claim petition was filed by the claimant seeking compensation of Rs.5,00,000/- against the respondents.

3. The 1st respondent remained *exparte* before the Tribunal and the claim was resisted by the 2nd respondent/Insurance Company by denying the



WEB COPY

negligence on the part of the 1st respondent. It was also claimed by the 2nd respondent that the 1st respondent/rider of the vehicle insured with it, did not possess effective driving license on the date of accident and hence, the 2nd respondent was not liable to pay compensation to the claimant. It was also stated that the accident had occurred only due to the negligence on the part of the claimant himself.

4. Before the Tribunal, the appellant/claimant was examined as PW.1 and yet another witness was examined as PW.2. On behalf of the claimant, 11 documents were marked as Exs.P1 to P11. The Legal Officer of the 2nd respondent/Insurance Company was examined as RW.1 and on behalf of the 2nd respondent/Insurance Company, 4 documents were marked as Exs.R1 to R4. The copy of the Aadhar Card of PW.2 was marked as Ex.X1.

5. The Tribunal based on the evidence available on record came to the conclusion that accident had occurred due to the negligence on the part of the driving of the 1st respondent. However, the Tribunal held that the 1st respondent did not possess valid driving license on the date of accident and the same would amount to fundamental breach of the terms of insurance

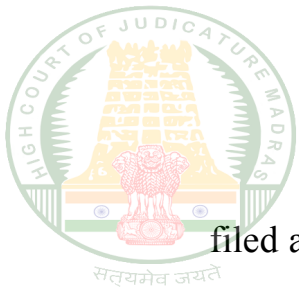


WEB COPY

with the 2nd respondent-insurance company and hence, the Tribunal exonerated the 2nd respondent-insurance company from paying compensation amount. The amount payable to the claimant was quantified as Rs.3,42,916/-. Aggrieved by the said award, the claimant has come before this Court.

6. The learned counsel appearing for the appellant/claimant by relying on the decisions of the Apex Court in *National Insurance Co. Ltd., vs. Swaran Singh and others* reported in (2004) 3 SCC 297 and *Singh Ram vs. Nirmala and others* reported in 2018 (1) TN MAC 704 (SC), submitted that the Tribunal committed an error in exonerating the 2nd respondent/Insurance Company. The learned counsel further submitted that the amount awarded by the Tribunal towards loss of income is very much on lower side and the same requires enhancement.

7. In order to prove negligence, the claimant examined himself as PW.1. He clearly deposed that the accident had occurred only due to the negligence on the part of the 1st respondent. The evidence of PW.1 is very well corroborated with the contents of the FIR marked as Ex.P1, which was



WEB COPY

filed against the 1st respondent. It is also seen that final report was also filed against the 1st respondent after investigation and the same was marked as Ex.P2. Based on the evidence of PW.1, Exs.P1 and P2, the Tribunal rightly came to the conclusion that the accident had occurred due to the rash and negligent driving of the 1st respondent. However, the Tribunal exonerated the 2nd respondent/Insurance Company from liability on the ground that the 1st respondent failed to possess valid driving license on the date of accident.

8. The liability of the Insurance Company to pay the third party victims and recover the award amount paid by it from the insured in case of breach of policy condition has been very well explained by the Apex Court in *National Insurance Co. Ltd., vs. Swaran Singh*. The relevant observation of the Apex Court reads as follows:-

“96. It is, therefore, evident from the discussions made hereinbefore that the liability of the insurance company to satisfy the decree at the first instance and to recover the awarded amount from the owner or driver thereof has been holding the field for a long time.

97. Apart from the reasons stated hereinbefore the doctrine of stare decisis persuades us not to deviate from the



WEB COPY



C.M.A.No.413 of 2025

said principle.

99. *We may, however, hasten to add that the Tribunal and the court must, however, exercise their jurisdiction to issue such a direction upon consideration of the facts and circumstances of each case and in the event such a direction has been issued despite arriving at a finding of fact to the effect that the insurer has been able to establish that the insured has committed a breach of contract of insurance as envisaged under sub-clause (ii) of clause (a) of sub-section (2) of Section 149 of the Act, the insurance company shall be entitled to realise the awarded amount from the owner or driver of the vehicle, as the case may be, in execution of the same award having regard to the provisions of Sections 165 and 168 of the Act . However, in the event, having regard to the limited scope of inquiry in the proceedings before the claims Tribunal it had not been able to do so, the insurance company may initiate a separate action therefor against the owner or the driver of the vehicle or both, as the case may be. Those exceptional cases may arise when the evidence becomes available to or comes to the notice of the insurer at a subsequent stage or for one reason or the other, the insurer was not given opportunity to defend at all. Such a course of action may also be resorted when a fraud or collusion between the victim and the owner of the vehicle is detected or comes to the knowledge of the insurer at a later stage.*



100. Although, as noticed hereinbefore, there are certain special leave petitions wherein the persons having the vehicles at the time when the accidents took place did not hold any licence at all, in the facts and circumstances of the case, we do not intend to set aside the said awards. Such awards may also be satisfied by the petitioners herein subject to their right to recover the same from the owners of the vehicles in the manner laid down therein. But this order may not be considered as a precedent.”

9. After holding so in Paragraph No.102 of the judgment, the Apex Court summarised it's finding, which reads as follows:-

“102. The summary of our findings to the various issues as raised in these petitions are as follows:

(i) Chapter XI of the Motor Vehicles Act, 1988 providing compulsory insurance of vehicles against third party risks is a social welfare legislation to extend relief by compensation to victims of accidents caused by use of motor vehicles. The provisions of compulsory insurance coverage of all vehicles are with this paramount object and the provisions of the Act have to be so interpreted as to effectuate the said object.

(ii) Insurer is entitled to raise a defence in a claim petition filed under Section 163-A or Section 166 of the Motor Vehicles Act, 1988 inter alia, in terms of Section 149(2)(a)(ii) of the said Act.



(iii) *The breach of policy conditions e.g., disqualification of driver or invalid driving licence of the driver, as contained in sub-section (2)(a)(ii) of section 149, have to be proved to have been committed by the insured for avoiding liability by the insurer. 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.*

(iv) *The insurance companies are, however, with a view to avoid their liability must not only establish the available defence(s) raised in the said proceedings but must also establish 'breach' on the part of the owner of the vehicle; the burden of proof wherefor would be on them.*

(v) *The court cannot lay down any criteria as to how said burden would be discharged, inasmuch as the same would depend upon the facts and circumstance of each case.*

(vi) *Even where the insurer is able to prove breach on the part of the insured concerning the policy condition regarding holding of a valid licence by the driver or his qualification to drive during the relevant period, the insurer*



WEB COPY



C.M.A.No.413 of 2025

would not be allowed to avoid its liability towards insured unless the said breach or breaches on the condition of driving licence is/ are so fundamental as are found to have contributed to the cause of the accident. The Tribunals in interpreting the policy conditions would apply "the rule of main purpose" and the concept of "fundamental breach" to allow defences available to the insurer under section 149(2) of the Act.

(vii) The question as to whether the owner has taken reasonable care to find out as to whether the driving licence produced by the driver, (a fake one or otherwise), does not fulfil the requirements of law or not will have to be determined in each case.

(viii) If a vehicle at the time of accident was driven by a person having a learner's licence, the insurance companies would be liable to satisfy the decree.

(ix) The Claims Tribunal constituted under Section 165 read with Section 168 is empowered to adjudicate all claims in respect of the accidents involving death or bodily injury or damage to property of third party arising from use of motor vehicle. The said power of the tribunal is not restricted to decide the claims, inter se, between claimant or claimants on one side and insured, insurer and driver on the other. In the course of adjudicating the claim for compensation and to decide the availability of defence or defences to the insurer, the Tribunal has necessarily the power and jurisdiction to



WEB COPY



C.M.A.No.413 of 2025

decide disputes inter se between insurer and the insured. The decision rendered on the claims and disputes inter se between the insurer and insured in the course of adjudication of claim for compensation by the claimants and the award made thereon is enforceable and executable in the same manner as provided in Section 174 of the Act for enforcement and execution of the award in favour of the claimants.

(x) Where on adjudication of the claim under the Act the Tribunal arrives at a conclusion that the insurer has satisfactorily proved its defence in accordance with the provisions of section 149(2) read with sub-section (7), as interpreted by this Court above, the Tribunal can direct that the insurer is liable to be reimbursed by the insured for the compensation and other amounts which it has been compelled to pay to the third party under the award of the Tribunal. Such determination of the claim by the Tribunal will be enforceable and the money found due to the insurer from the insured will be recoverable on a certificate issued by the Tribunal to the Collector in the same manner under Section 174 of the Act as arrears of land revenue. The certificate will be issued for the recovery as arrears of land revenue only if, as required by sub-section (3) of Section 168 of the Act the insured fails to deposit the amount awarded in favour of the insurer within thirty days from the date of announcement of the award by the Tribunal.

(xi) The provisions contained in sub-section (4) with



WEB COPY



C.M.A.No.413 of 2025

proviso thereunder and sub-section (5) which are intended to cover specified contingencies mentioned therein to enable the insurer to recover amount paid under the contract of insurance on behalf of the insured can be taken recourse of by the Tribunal and be extended to claims and defences of insurer against insured by relegating them to the remedy before regular court in cases where on given facts and circumstances adjudication of their claims inter se might delay the adjudication of the claims of the victims.”

10. A close reading of the above judgment would make it clear that mere breach of policy condition by the insured like disqualification of the driver, invalid driving licence etc., are not by themselves defences available to the insurer against either the insured or the third party. 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 conditions of policy. In Paragraph No.102.(vi), it is clearly mentioned that the insurer would not be allowed to avoid its liability towards insured unless the said breach or breaches of the condition of driving licence is/are so fundamental as are found to have contributed to the cause of the accident.



WEB COPY

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 **2020 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.

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.



WEB COPY

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. 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



C.M.A.No.413 of 2025

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 it's 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 1st respondent/insured.



WEB CODE

17. It is seen from the records, the Tribunal noted based on Ex.P3-Discharge Summary, the claimant suffered fracture of both the bones in his left leg namely tibia and fibula. The same was treated by closed reduction with nailing, the claimant was admitted to hospital on 08.04.2018 and got discharged on 11.04.2018. Ex.P5-Discharge Summary from another hospital proves the fracture suffered by the claimant was united and his implant was also removed. The claimant has not appeared before the Medical Board for assessment of disability. In these circumstances, taking into consideration the nature of injury suffered by the claimant, the Tribunal awarded a compensation of Rs.75,000/- towards grievous injuries. The claimant has not produced any Disability Certificate to establish the disability suffered by him. The Discharge Summary-Ex.P5 reads that the fracture was united properly and implant was also removed. However, the Tribunal liberally granted a lump sum of Rs.75,000/- towards compensation for the grievous injuries suffered by the claimant. The Tribunal also liberally granted Rs.75,000/- towards pain and sufferings and loss of amenities (Rs.50,000 + Rs.25,000). There is no concrete evidence available on record to show that how long the claimant has been kept out of action due to the injuries.



C.M.A.No.413 of 2025

18. Taking into consideration the nature of injuries, this Court feels

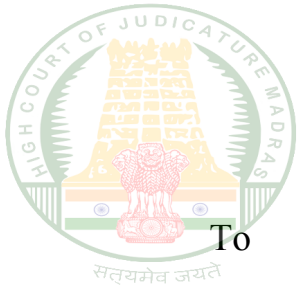
he would have been kept out of action for atleast three months. Even if his notional income is fixed at Rs.16,500/- taking into consideration the date of accident, the amount of Rs.50,000/- awarded by the Tribunal under the head loss of income appears to be reasonable.

19. In view of the discussions made earlier, the quantum of compensation awarded by the Tribunal appears to be very reasonable in the facts and circumstances of the case and the claimant has not made out any case for enhancement of compensation.

20. Accordingly, the Civil Miscellaneous Appeal is partly allowed by directing the 2nd respondent/Insurance Company to pay the award amount as ordered by the Tribunal to the claimant with liberty to recover the same from the 1st respondent/owner of the vehicle. No costs. The claimant is not entitled to claim interest for 85 days as per order in C.M.P.No.27598 of 2024.

17.03.2025

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



C.M.A.No.413 of 2025

To

WEB COPY

- 1.The Presiding Officer, Motors Accident Claims Tribunal,
Tiruppur.
- 2.M/s.Reliance General Insurance Company Ltd,
Binny Compound,
Kumaran Road,
Tiruppur.
- 3.The Section Officer,
VR Section,
High Court, Madras.



WEB COPY



C.M.A.No.413 of 2025

S.SOUNTHAR, J.

dm

C.M.A.No.413 of 2025

17.03.2025