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CMA No. 470 of 2025



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25-06-2025

CORAM

THE HONOURABLE MRS.JUSTICE T.V.THAMILSELVI

CMA No. 470 of 2025

Suresh

S/o. Ponnusamy, No.17, Otraivadi St,
Seethapuram Village and Post,
Madurantakam Taluk 603 306.

Appellant(s)

Vs

Srinivasan

S/o. Perumal, No.26A, Nagar Vill,
Ottampatu Village and Post,
Tindivanam Taluk 604 005.

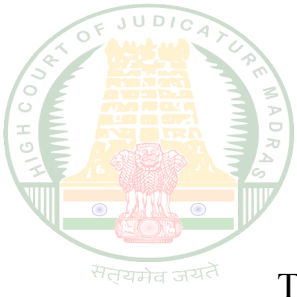
Respondent(s)

PRAYER

This Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the order dated 17.10.2024 made in MCOP.No.62 of 2020 on the file of the Motor Accidents Claims Tribunal, Subordinate Court, Madurantakam.

For Appellant(s): Mr.A.C.Kumaragurubaran

For Respondent(s): Ms.V.Pushpa For R2 R1 -
Notice Dispensed



ORDER

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The appellant has filed this appeal, to set aside the order dated 17.10.2024 made in MCOP.No.62 of 2020 on the file of the Motor Accidents Claims Tribunal, Subordinate Court, Madurantakam.

2. Challenging the award passed by the Tribunal, the claimant / appellant has preferred this appeal on the following grounds:

(i) The Tribunal has grossly erred in exonerating the Insurance Company on the ground that the vehicle was not having valid Fitness Certificate.

(ii) The Tribunal has failed to appreciate that appellant is a third party victim and in claim by third party the Insurance Company has to pay the compensation despite any breach of policy or Motor vehicles Act and can only be permitted to recover the same from the owner as per Section 149(4) & (5) of the Motor Vehicle Act.

(iii) The Tribunal failed to appreciate that the absence of Fitness Certificate cannot be a ground for exoneration of the 2nd respondent insurance Company.



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(iv) The Tribunal failed to appreciate that the Insurance Company can seek exoneration only in a claim by the owner of the vehicle for own Damages to the vehicle itself and not in a third party claim.

(v) The Tribunal has not applied its mind to the decisions cited in the award, where the Hon'ble Supreme Court has only granted pay and Recover right in third party claim and not exonerated the insurance company.

3. The learned counsel appearing for the appellant submitted that, in support of his arguments, he relied on the authority reported in **(2018) 7 SCC 588, Amrit Paul Singh and another Vs. Tata AiG General Insurance Company Ltd. and others**, in which stated as

" Motor Vehicles Act, 1988 - Ss.149(2), (1), (3), 2(28),(31)(47) and 166 - Defences available to the insurer - Use of motor vehicle as a transport vehicle in public place without permit - Prohibition under S.66(1) of MV Act, 1988 with respect to - Invocation of the said provioin - The Offending truck, on date of accident, did not posses the permit as required under S.66(1) of MV Act - Consideration of exceptions to S.66(1) as provided under S.66(3) of MV Act - Applicability and prerequisites thereof "

" 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



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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 case and other cases pertaining to pay and recover principles."

And also cited a judgment dated 13.10.2022 of the Hon'ble High Court of Judicature for Rajasthan, Bench at Jaipur, in which stated as follows:

" Counsel for the Insurance Company submits that the owner of the vehicle was not having any fitness certificate and permit to ply the vehicle on the road. Under these circumstances, there was breach of policy, hence the Insurance Company was not liable to make any amount of compensation to the claimants. Counsel further submits that the income of the deceased was assessed on the higher side without any basis and the claimants have failed to produce any cogent evidence to prove the income of the deceased, even then the Tribunal has assessed the yearly income of the deceased as rs.2,25,000/-. Counsel submits that even under the Conventional heads, an exorbitant amount...."

"Perusal of the impugned judgment indicates that while deciding issue No.2, the Tribunal came to the conclusion that fitness certificate and permit of the offending vehicle was not produced on the record, but non-production of fitness certificate and permit by the driver and owner of the vehicle would not straight way exonerate the

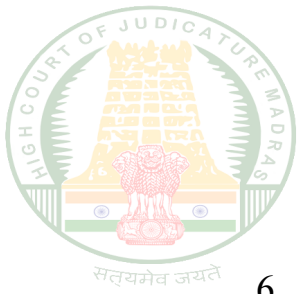


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Insurance Company from making the payment of compensation to the claimants. The tribunal, therefore, fastened the liability upon the Insurance company to make the payment of compensation to the claimants and a liberty was given to the Insurance company to recover the amount from the driver and owner of the vehicle. The Hon'ble Apex Court in the case of Amrit Paul singh & Another. Vs. TATA AIG General Insurance company Ltd., & Ors., reported in AIR (2018) SC 2626 has also taken a similar view..."

4. By relying on the legal principles laid down in the above decisions, the learned counsel for the appellant prayed that the Insurance Company be directed to pay the compensation amount and be given liberty to recover the same from the insured, by modifying the order passed by the Tribunal.

5. In response, the learned counsel appearing for the second respondent submitted that, based on the settled position of law laid down by this Hon'ble Court, when there is a clear breach of statutory conditions or violations, no direction can be issued against the Insurance Company to pay and recover the compensation. Hence, the claim should be dismissed as against the insurer.

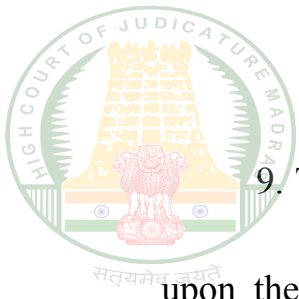


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6. On considering the submissions of both sides and upon perusal of the records, it is seen that the Tribunal awarded compensation by fixing negligence on the part of the driver of the first respondent (owner of the vehicle). It was found that the vehicle did not possess a valid permit at the time of the accident. Therefore, the entire liability was fastened on the first respondent/owner of the vehicle, and not on the Insurance Company.

7. However, considering the ratio laid down by the Hon'ble High Court of Rajasthan, it is held that merely because the offending vehicle did not possess a permit, it cannot be a ground to completely absolve the Insurance Company from its liability to compensate the claimant. The authority cited squarely applies to the facts of the present case.

8. In contrast, the judgment relied on by the respondent relates to a case involving a municipal lorry, which is distinguishable on facts and does not apply to the present matter.

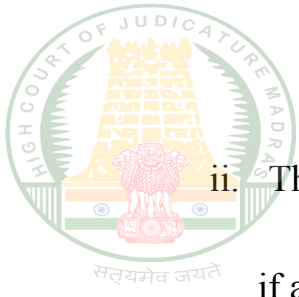


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9. Therefore, this Court is of the opinion that the liability fastened solely upon the owner of the vehicle is liable to be modified. On the date of the accident, the vehicle was insured with the second respondent/Insurance Company. Accordingly, the Insurance Company is directed to pay the compensation amount to the claimant, with liberty to recover the said amount from the first respondent (owner of the vehicle), under the principle of “pay and recovery.”

10. The second respondent / the United India Insurance Company Limited, is directed to deposit the amount awarded by the Tribunal i.e., Rs.30,000/- (Rupees Thirty Thousand only), together with interest at the rate of 7.5% per annum, from the date of claim petition till the date of deposit, within a period of four weeks from the date of receipt of a copy of this order, in the first instance. Thereafter, the Insurance Company is at liberty to recover the same from the owner of the vehicle under the same cause of action.

- i. On such deposit being made, the appellants / claimant is at liberty to withdraw the same as per the manner known to the law.



- ii. The appellant/claimant is not entitled to claim any interest for the delay,
if any, in filing this appeal.

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11. In view of the above, this Civil Miscellaneous Appeal is disposed of.

There shall be no order as to costs.

25-06-2025

Index: Yes/No

Speaking/Non-speaking order

Internet: Yes

Neutral Citation: Yes/No

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To
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1.Srinivasan

S/o. Perumal, No.26A, Nagar Vill,
Ottampatu Village and Post,
Tindivanam Taluk 604 005.

2.The Divisional Manager

United India Insurance Co.Ltd., No.7-
A, Varadhanar St, Vedhachalam Nagar,
Chengalpattu 603 001.

3. The Motor Accidents Claims Tribunal, Subordinate Court, Madurantakam.

4.The Section Officer, VR-Section, High Court of Madras.



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T.V.THAMILSELVI, J.

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