



C.M.A(MD)No.1240 of 2009

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Date of Reserved	25/09/2025
Date of Pronounced	29/10/2025

CORAM:

THE HONOURABLE MS.JUSTICE R.POORNIMA

C.M.A.(MD)No.1240 of 2009

and

MP(MD)No.3 of 2009

National Insurance Company Limited,
175-A, Great Cotton Road,
Tuticorin-628 002.

: Appellant/2nd Respondent

Vs.

1.K.Sundarapandi
2.Kaja Mohaideen

: 1st Respondent/Petitioner
: 2nd Respondent/R2

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the judgment and decree passed by the Motor Accident Claims Tribunal, District Judge, FTC No. 2, Thoothukudi, in MCOP No.245 of 2003, dated 01/09/2008 and pass such further or other orders.

For Appellant : Mr.D.Sivaraman

For 1st Respondent : Mr.G.Prabhurajadurai



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JUDGMENT

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This Civil Miscellaneous Appeal is preferred against the judgment and award made in MCOP No.245 of 2023, dated 01/09/2008 by the Motor Accidents Claims Tribunal/Additional District Judge, FTC No.2, Thoothukudi.

2. Brief facts of the petition filed by the claimant before the Tribunal are as follows:-

On 28.06.2003 at about 14.45 hours, the claimant was proceeding to attend his shift duty near the main gate of the Spinning Mill at Tuticorin-Palayamkottai Road. At that time, the rider of the motor cycle TN-72-H-2853 came in rash and negligent manner and dashed against the claimant. In that process, he sustained grievous injuries all over the body. Immediately, he was taken to AVM Hospital, Tuticorin and there he was admitted as inpatient and was taking treatment between 28.06.2003 and 05.07.2003. Over the occurrence, a case in Crime No.425 of 2003 was registered by the Tuticorin South Police Station for the offences punishable under Sections 279 and 337 IPC against rider of the two wheeler.



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3. At the time of the accident, the injured claimant was aged about 55 years and he was working as a Drawing Tender at Tuticorin Spinning Mills Limited and deriving a salary of Rs.4,658/- per month. Claiming compensation of Rs.2,00,000/- for the injuries sustained by him, a claim petition was filed before the Tribunal.

4. Before the Tribunal, the first respondent, who is the owner of the motor cycle remained *ex-parte*. The Insurance Company alone filed a counter statement denying the manner of the accident as alleged in the claim petition and also disputing their liability to pay compensation contending that the accident occurred due to the negligence on the part of the injured and the rider of the motor cycle did not possess a valid driving licence at the time of the accident.

5. During trial, on the side of the claimant, 2 witnesses were examined as PW1 and PW2 and 14 documents were marked as Exs.P1 to P14. On the side of the Insurance Company, 3 witnesses were examined as RW1 to RW3 and 5 documents were marked as Exs.R1 to R5.



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6. Upon consideration of the materials available on record,

both oral and documentary, the Tribunal awarded a sum of **Rs.75,670/-** and directed the respondents 1 and 2 to pay the award amount jointly and severally along with interest @ 9.5% pa.

7. Aggrieved by the said award, the Insurance Company is before this Court on the ground of fastening liability upon them by stating that the rider of the two-wheeler did not possess a license at the time of the accident. He further contended that the 1st respondent/owner of the two wheeler did not appear and contested the case before the Tribunal; He was set *ex-parte* in the claim petition. So, the Insurance Company cannot be mulcted with the liability.

8. Heard the learned counsel appearing on either side and perused the materials available on record.

9. Now, this Court has to decide whether the order of the Tribunal is sustainable or liable to be set aside?



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10. Even though, so many grounds were raised in the memorandum of appeal, the only grievance of the appellant Insurance Company is that since the driver of the offending vehicle is driver did not possess a valid license at the time of accident in respect of the accident, without taking into consideration of the above, the Tribunal misdirected in mulcting the appellant for payment of compensation to the claimant.

11. On perusal of the records, this Court finds that Ex.4 is the Motor Vehicle Inspector's report issued, on 05/07/2003, wherein it is noted that the cause of accident was not due to mechanical failure on the part of the vehicle, and the license was not produced by the driver of the offending vehicle. A case was registered by Tuticorin South Police Station in Crime No.425 of 2003, dated 28/06/2003 under Sections 279 and 337 IPC against the rider of the two wheeler. Ex.P6 is the Charge Sheet filed by the above police against the rider of the two wheeler under Section 279 and 338 IPC. As per Ex.P7 judgment, dated 24/02/2005, the accused viz., Iyyappan, who was the rider of the two wheeler admitted the guilt and was consequently convicted and fined by the Judicial Magistrate No.1, Tuticorin.



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12. Though, notice was issued by the insurance company under Exs.R2 and R3 to the owner of the two wheeler and the rider of the two wheeler, neither they appeared nor produced the driving licence. Since they failed to produce the driving licence for the two wheeler before the Motor Vehicle Inspector, this Court infers that the rider of the two wheeler was not having a valid license at the time of the accident, thereby violated a policy condition. The first respondent, being the owner vicariously liable for the negligent act of his servant, the driver. It is further proved that the motor cycle is belonging to the first respondent, was insured with the appellant Insurance Company and the policy was in force at the time of the accident.

13. It is well settled that when the insurance policy is in force, a third party cannot be made to suffer for the negligent act of the driver of the insured vehicle merely on the ground that the driver had violated a policy condition. The liability of the Insurance Company towards third parties remain unaffected by such internal breach between the insured and the insurer.



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14. Based on various judicial pronouncements, by this

Court as well as the Hon'ble Supreme Court, it is well settled that when the Insurance Policy is in force, the Insurance Company is liable to satisfy the award amount in the first instance and thereafter, recover the same from the owner of the offending vehicle in accordance with law. However, the Tribunal directed both the owner of the vehicle and the Insurance Company to pay the compensation amount to the claimant jointly and severally.

15.Keeping in view of the above facts and circumstances of the case and also considering the fact that at the time of the time, the policy was in force for the offending vehicle, this Court of the considered view that pay and recovery can be invoked. Accordingly, the Appellant Insurance Company is directed to pay the award amount to the claimant in the first instance and thereafter recover the same from the owner of the vehicle.

16.In such view of the matter, this Civil Miscellaneous Appeal is **partly allowed**. The appellant/Insurance Company is directed to deposit the award amount with accrued interest at the rate of 7.5% per



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annum and costs, from the date of claim petition till the date of realisation, at the first instance, less the amount already deposited, if any, within a period of eight weeks from the date of receipt of a copy of this Judgment and thereafter, recover the same from the owner of the vehicle in accordance with law. On such deposit being made, the claimant is permitted to withdraw the entire amount by filing formal application before the Tribunal. No costs. Consequently, connected Miscellaneous Petition is closed.

29.10.2025

Index : Yes / No
Internet : Yes / No
NCC : Yes / No

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- 1.The Motor Accident Claims Tribunal/
Additional District Judge, FTC-II,
Thoothukudi.
- 2.The Section Officer,
ER/VR Section,
Madurai Bench of Madras High Court,
Madurai.



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R.POORNIMA, J.

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Pre-delivery Judgment in
C.M.A.(MD)No.1240 of 2009

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