BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 12.09.2025

Pronounced on : 17.10.2025

CORAM:

THE HONOURABLE MS.JUSTICE R.POORNIMA

C.M.A.(MD)No.1316 of 2009

1.Chellammal

2.A.Velpandi

3.A.Irullappan

4.A.Murugeswari

5.A.Devi

6.Minor.Kannan

7.Minor.Jothi Malar

(The appellants 6 and 7 are minors rep. by their mother and natural guardian 1st appellant herein.)

... Appellants/ petitioners

Vs.

1.Seenivasan ...1st respondent / 1st respondent

2.The Branch Manager,
Royal Sundaram Alliance Insurance Company Ltd.,
No.46, Whites Road, Chennai – 600 011.

...2nd respondent/ 2nd respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the fair and decretal order dated 01.03.2007 made in M.C.O.P.No.145 of 2003 on the file of the Subordinate Court, Motor Accident Claims Tribunal, Arupukottai and allow this Civil Miscellaneous Appeal.

For Appellants : Mr.G.Marimuthu

For Respondents : Mr.S.Srinivasa Raghavan – for R2

JUDGMENT

This Civil Miscellaneous Appeal has been preferred against the fair order and decretal order, dated 01.03.2007 passed in M.C.O.P. No.145 of 2003 by the Motor Accident Claims Tribunal/Subordinate Court, Arupukottai.

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

On 18.07.2003 at about 7.15 p.m., the deceased Angu along with Anthony Raj and Ramaiah was returning from work. They were walking on the left side of the road near Melur Duraisamypuram junction to reach the bus stop. At that time, a TVS Victor Bike bearing Registration No.TN-67-Q-2404 owned by the first respondent, insured with the second respondent ridden by its driver in a rash and negligent manner with high speed and hit them. As a result all three sustained multiple injuries over the bodies and were taken to the Rajapalayam Government Hospital. Upon examination, the Doctor declared that Angu, husband of the 1st petitioner and father of the petitioners 2 to 7 had succumb to injuries. Over the occurrence, a case in Crime No.161 of 2003 was registered by the Sethur Police for the offences punishable under Sections 279, 337, 338 and 304A IPC against the rider of the two wheeler .

3.At the time of accident, the deceased was aged about 52 years and he was working as E.B. Contract Mason earning a sum of Rs.9,000/- per month. Apart from that, he was also doing private work and earning daily wage of Rs.200/-. The petitioners being legal heirs of the deceased filed a claim petition seeking compensation of Rs.6,00,000/- for the death of the deceased Angu.

4.Before the Tribunal, the first respondent, who is the owner of the offending vehicle remained ex-parte. The Insurance Company second respondent filed a counter statement denying the manner of the accident as alleged in the claim petition and disputing their liability to pay compensation contending that the accident occurred due carelessness and negligent act of Angu and others. They further contended that the rider of the motorcycle did not possess a valid driving license.

5. During trial, on the side of the claimants, 2 witnesses were examined as P.W.1 and P.W.2 and 5 documents were marked as Exs.P1 to Ex.P5. On the side of the respondents, one witness was examined as R.W.1 and 3 documents were marked as Exs.R.1 to Ex.R3.

6.Upon consideration of the materials available on record, both oral and documentary, the Tribunal awarded a sum of Rs.1,57,000/- and directed the respondents to pay the award amount jointly and severally along with interest @ 7.5% pa from the date of petition till the rate of realisation.

7.Aggrieved by the said award, the present Civil

Miscellaneous Appeal has been filed by the appellants/claimants on the ground that the 1st respondent/owner of the vehicle did not appear and contested the case. He was set ex-parte in the claim petition. At the time of accident, the policy was in force. The first respondent, owner of the vehicle allowed the driver to ride the vehicle without the license.

8. That the Tribunal ought to have seen that Motor Vehicle Act is a beneficial legislation and the Tribunal ought to have directed the Insurance Company to satisfy the award amount and then recover it from owner of the vehicle.

9. The learned counsel for the respondent insurance company argued that the rider of the two wheeler does not have valid driving license at the time of accident. So, the Insurance Company cannot be mulcted with the liability.

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

11. Now, this Court has to decide whether the order of the

Tribunal is sustainable or liable to be set aside?

12. Eventhough, so many grounds were raised in the memorandum of appeal, the only grievance of the appellants is that in respect of the accident took was taken place on 18/07/2003, the insurance company may be directed to satisfied award amount at the first instance, and thereafter recover the same from the owner of the vehicle, as the climant is unable to recover the amount directly from the owner.

13. On perusal of the records, this Court finds that Ex.P3 is the Motor Vehicle Inspectors report issued by the Inspector, Srivilliputhur issued on 7.8.2003 wherein, it is clearly stated that driver of the two wheeler did not produced the license details. It is further noted in the above certificate that the cause of accident was not due to mechanical failure on the part of the vehicles. A case was registered by Sethur police in Crime No.161/2003 dated 18.7.2003 under Sections 279, 333, 338, IPC against the driver of the two wheeler. Ex.P2 is the final report filed by the above police against the driver of the two wheeler. As per as per Ex.P5 judgement dated 18.7.2004, the accused viz Vargis, who was the driver of the vehicle admitted the guilt and was consequently, convicted

and fined by the learned Judicial Magistrate, Rajapalaiyam.

14. Though notice was issued to the owner of the vehicle, the first respondent, he did not appear nor produced the driver's valid license. Since the driver failed to produce the driving license before the Motor Vehicle Inspector, the owner also failed established that the driver possessed a valid license, this Court infers that the rider of the the vehicle was not holding a valid license at the time of accident, thereby violated the policy condition. The first respondent, being the owner vicariously liable for the negligent act of her servant, the driver. It is further proved that the motorcycle belonging to the first respondent, was insured with the appellant and the policy was in force at the time of accident.

15. 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 towards third parties remain unaffected by such internal breach between the insured and the insurer.

16. 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.

17. However the Tribunal directed both the owner and the insurance Company to pay the compensation amount to the claimant. Considering that the claimants are innocent, legal heir of the deceased who lost his life in the accident and they may not be in a position to recover the money directly from the owner of the vehicle, this Court is of the considered view that pay and recovery can be invoked. Accordingly, the 2nd respondent Insurance Company is directed to pay the award amount to the claimants in the first instance and thereafter recover the same from the owner of the vehicle.

18. In such view of the matter, this Civil Miscellaneous Appeal is allowed. The 2nd Respondent Insurance Company is directed to deposit the entire award amount along with interest at the rate of 7.5% per annum and costs, from the date of claim petition petition till the date

of realization, 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 order and thereafter, recover the same from the owner of the vehicle in accordance with law. On such deposit being made, the major claimants are permitted to withdraw their respective shares as apportioned by the Tribunal by filing formal application before the Tribunal. This Court further noticed that the sixth and seventh respondents were Minors, aged about 15 and 12 years respectively at the time of filing the claim petition viz., during the year 2003 by this time, they would have attained major. If they attain majority, they could file appropriate petition to declare them as major and receive their respective claim immediately. No costs.

17.10.2025

Index : Yes / No
NCC : Yes / No

RM/er

To

1.The Subordinate Court,
Motor Accident Claims Tribunal,
Arupukottai.

Copy to

1.The Section Officer,
ER/VR Section,
Madurai Bench of Madras High Court,
Madurai.

R.POORNIMA, J.

RM/er

Judgment in
C.M.A.(MD)No.1316 of 2009

17.10.2025