BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 20.06.2025

Pronounced on : 17.07.2025

CORAM:

THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA
AND
THE HONOURABLE MS.JUSTICE R.POORNIMA

C.M.A.(MD)No.1009 of 2023
&
C.M.P.(MD)No.13965 of 2023

The Manager,
MAGMA HDI General Insurance Company Ltd.,
MAGMA House,
No.24, Park Street,
Kolkotta – 700 016. ... Appellant/ 2nd Respondent

Vs.

1.N.P.Perumal

2.Ponnammal ...Respondents 1 & 2 / Petitioners

3.P.Lingaraj ...3rd Respondent / 1st Respondent

4.The Manager,
Oriental Insurance Company,
Divisional Office – 2, K.J.R Complex,
No.16, North Veli Street,
Madurai. ...4th Respondent / 3rd Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the fair and decreetal order dated 19.04.2022 made in M.C.O.P.No.157 of 2019 on the file of Motor Accident Claims Tribunal, (Additional District and Sessions Court, (FTC)), Theni and allow this Civil Miscellaneous Appeal.

For Appellant	: Mr.S.Sankar for Mr.B.Vijay Karthikeyan
For Respondents	: Mr.Arjun Varman – for R1 & R2 Mr.C.Karthik – for R4 Notice returned unclaimed – R3

JUDGMENT

(Judgment of this Court was delivered by **R.POORNIMA, J.**)

The Appellant / 2nd Respondent / Insurance Company has filed this Civil Miscellaneous Appeal against the fair order and decreetal order dated 19.04.2022 passed in M.C.O.P.No.157 of 2019 by the Motor Accident Claims Tribunal, Additional District and Sessions Court, (FTC), Theni.

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

(a) On 28.07.2023 at about 10.30 p.m., the deceased Vignesh, who is the son of the petitioners / respondents 1 & 2 herein, was returning to his room at Choolaimedu. He was riding two wheeler bearing Registration No.TN 60 K 4884 accompanied by his friend Mandiramoorthy. When they reached Pudupettai Adithanar Road near Cindathiripettai Koovam bridge at W.S.S. Naveen Towers, a van bearing Registration No.TN 31 AU 1882 which was attached with concrete pumping machine driven by its driver in a rash and negligent manner, came from behind and crashed with the two wheeler. As a result, Vignesh and his friend Mandiramoorthy lost their balance and fell down. The tyre of the vehicle ran over the thigh and torso region and the concrete pumping machine attached to the vehicle dragged him upto 20 metres. On witnessing the accident, Javeed, son of Hussain, who is the resident of Sembiyam Mohammed Street, Perambur, Chennai raised alarm. Hence the van driver had immediately stopped the vehicle and fled away from the scene of occurrence. Thereafter, the public along with Javeed rushed near the injured persons, contacted the ambulance and reported the incident. In the said accident, Vignesh had sustained injuries on his right and left thigh, stomach, left cheek, testicles and also suffered bone fracture on his right thigh. Mandiramoorthy also had sustained some injuries. Both were taken in an ambulance to Rajiv Gandhi Government Hospital for treatment. They were admitted in ICU and surgery was performed on both of the victims and when they were taking treatment, on 03.01.2019 Vignesh succumbed to injury. The petitioners after receipt of intimation about the accident, had gone to Rajiv Gandhi Government Hospital on 27.12.2018.

(b) The eyewitness Javeed had lodged a complaint before the Sub Inspector of Police, D6 Anna Square Police Station, Traffic Investigation Branch, and the complaint was registered in Crime No. 536/T1/2018 for the offences under Section 279, 338 (2 counts), 134(a) r/w.187, 190(1), 66(1) r/w 192-A CMV Rules 108 A r/w 177 of Motor Vehicles Act the same is pending for enquiry. After death of Vignesh, provision was altered into Section 304(a) IPC.

(c) The deceased Vignesh is an Engineering graduate. He was working as an Associate – QA in Boltree Software International Private Limited, at W.S.S. Towers, Chennai. On 02.07.2013 he had derived a sum of Rs.16,369/- as salary. Taking into consideration of his efficiency and hard work, his salary was increased from time to time. At the time of accident, he received a sum of Rs.34,605/-. If he would have been alive, he would have got a sum of Rs.2,000/- etc., in each month as an increment. He would receive a sum of Rs.7,20,000/- at the age of his retirement.

(d) The 1st respondent vehicle was insured with the 2nd respondent and the policy was in force during the time of accident. The two wheeler in which the deceased Vignesh was travelling, was insured with 3rd respondent. The accident has occurred due to the rash and negligent act of the 1st respondent's driver. The deceased was holding light vehicle license as well as heavy vehicle license.

(e) The deceased Vignesh is the only son of the petitioners. Both the parents were depending upon his income. Since they lost their only son, they are now living in poverty. Both the respondents are jointly and severely liable to pay compensation to the petitioners at Rs.96,00,000/- .

3. Brief averments contained in the counter filed by the second respondent, are as follows :

(i) The driver of first respondent has no license to drive the particular type of vehicle, which was driven at the time of accident, they had attached one concrete pumping machine with the vehicle at the time of accident, without having valid permit, which is in violation of the terms and conditions of the insurance policy. This respondent is not liable to pay any amount as compensation to the petitioners.

(ii) The accident had not happened due to fault of the 1st respondent's driver. The deceased had driven the vehicle bearing Registration No.TN-60-K-4884, without wearing helmet and without following the traffic rules of the road in a rash and negligent manner and invited the accident, therefore the deceased was liable for contributory negligence .

4. The brief averments contained in the counter filed by third respondent are as follows :

The accident occurred due to the rash and negligent act of the 1st respondent's van driver. Both the first and second respondents are liable to pay compensation. This respondent is not liable to pay any compensation and this respondent is only a formal party to the petition.

5. During the trial, on the side of the petitioners, P.W.1 to P.W.3 were examined and Ex.P1 to Ex.P21 were marked. On the side of the respondents, R.W.1 to R.W.4 were examined and Ex.R1 and Ex.X1 and Ex.X6 were marked.

6. After hearing all the parties, the Tribunal allowed the petition and awarded a sum of Rs.53,24,514/- as compensation. The learned Judge directed the appellant/2nd respondent-Insurance Company to pay the entire award amount within a period of two months.

7. Aggrieved by the said order, the present Civil Miscellaneous Appeal has been filed by the Insurance Company, who is the 2nd respondent before the Tribunal against the negligence and quantum with the following among other grounds :

a)That the Tribunal failed to note that the insured vehicle was attached with a trolley containing concrete pumping machine and though heavy license is required to drive the same, the driver was not having heavy license at the time of the accident.

b) That the Tribunal failed to note that the official witness from the RTO Office examined as R.W.1 has deposed that to drive the insured vehicle, heavy license is required and the driver was not having the heavy license at the time of accident and the vehicle was not having valid permit to ply on the public road and therefore the appellant insurance company is not liable to pay the compensation.

c) That the Tribunal failed to note that the deceased drove the vehicle in a rash and negligent manner and invited the accident. The Tribunal ought to have fixed contributory negligence on the deceased.

d) That the Tribunal failed to note that the salary certificate was not marked through the employer of the deceased and therefore, it cannot be taken into consideration for fixing the monthly income of the deceased.

e) That the Tribunal failed to note that the deceased was neither has permanent job nor employed as permanent employee hence, the addition of 50% towards future prospects cannot be sustained.

h) In any event, the award of total compensation of Rs.53,24,514/- is highly excessive and needs to be modified. Hence, the appellant seeks to set aside the judgment of the trial Court and allow the

Civil Miscellaneous Appeal.

8. Heard the learned counsel on either side and perused the material available on records.

9. Now, this court has to decide the following points for consideration :

(1) whether the accident occurred due to the rash and negligent act of the driver of the 3rd respondent/1st respondent or due to contributory negligence of the deceased ?

(2) Whether the insured violated the policy conditions ?

(3) Whether the compensation amount awarded to the respondents 1 and 2 /claimants is excessive ?

10. Point Nos.1 to 3 :

Ex.P1 is the FIR in crime No.536 of 2018 was registered by TIW Anna Square Police Station for the offence under Sections 134(a) r/w.187, 190(1), 66(1) r/w 192-A CMV Rules 108 A r/w 177 of Motor

Vehicles Act against the driver of the first respondent's Tata van bearing Registration No.TN 31 AU 1882, by one Javeed. P.W.1 in the complaint clearly stated that the first respondent's Tata van attached with concrete pumping machine driven by its driver in a rash and negligent manner and dashed the two wheeler and the deceased who was travelling in the two wheeler bearing Registration No.TN 60 K 4884 along with a pillion rider fell down and sustained grievous injuries. He took them for treatment, but the deceased died due to severe injuries. Ex.P2 is the postmortem certificate issued to the deceased Vignesh also supported the version of PW1. Ex.P3 is the Motor vehicle Inspection report issued by the Motor Vehicle Inspector Grade-I, RTO, Chennai, had certified that the accident was not happened due to any mechanical defects of the offending vehicle. Ex.P18 the final report filed by the Inspector of Police, TIW-Anna Square, Chennai East is against the driver of the first respondent, namely, Parasuraman under sections 279, 338 of IPC and sections 134(a), 187, 190(1), 66, 192(A), 177 of MV Act, and 304(A) of IPC.

11. The complainant / eyewitness was examined as P.W.2, who has clearly deposed about the manner of accident and stated that the accident occurred due to the negligent act of the first respondent's driver.

12. The respondents examined the driver of the Tata Van bearing Registration No.TN 31 AU 1882, as R.W.3. In his chief examination, he admitted that the deceased was driving the vehicle by following the traffic rules, but stated that the deceased carelessly dashed against the concrete pumping machine and fell down. He further asserted that the accident could have been avoided, had the deceased driven the vehicle more carefully. However, during his cross examination, he admitted that he did not lodge any complaint against the deceased for his negligence. He further admitted that, he fled away from the place of accident, which clearly establishes that he is negligent and responsible for the occurrence. The driver of the said vehicle was employed with the first respondent, hence the 1st respondent is vicariously liable to pay compensation for the employee. It is also proved that the first respondent's vehicle was insured with the second respondent and the same was in force at the time of accident. Accordingly the insurance company is also liable to indemnify the 1st respondent and compensate the claimants.

13. The learned counsel for the appellant argued that the

insured vehicle was attached with a trolley containing concrete pumping machine for which the first respondent not obtained any valid permit and to drive the same, heavy vehicle license is required, but the driver was not having any heavy vehicle license. On the side of the insurance company R.W.1, the official from the Regional Transport Office was summoned and, he admitted that the first respondent's driver did not possessed any heavy vehicle license at the time of accident. He further deposed that they issued permit to the first respondent's Tata Van bearing Registration No.TN 31 AU 1882 but no permit was issued to the concrete pump machine attached to the vehicle.

14. Even though the vehicle involved in the accident was covered by a valid permit, but the concrete pumping machine attached to the vehicle was not permitted to ply in the road and the driver did not possess any valid driving license at the time of accident, it is well settled that the insurance company cannot absolve its liability to compensate the third party victim. It is for the insurance company, to pay the compensation to the legal heirs of the deceased with liberty to recover the same from the owner of the vehicle.

15. In this connection we refer the following judgments:-

i) The legal principle laid down by the Hon'ble Supreme Court in ***National Insurance Company Limited Vs. Swaran Singh and Others*** reported in ***2004 (3) SCC 297***, which is a land mark judgment regarding the liability insurance company in motor vehicle claims under the Motor Vehicles Act, 1988 particularly when there is a breach of policy conditions such as the driver not having valid driving license, where the insurer is directed to pay first and recover later from the vehicle owner, if there is a breach of policy condition.

ii) In ***Amrit Paul Singh and another Vs. Tata AIG General Insurance Company Ltd., and Others*** reported in ***2018 (7) SCC 558***, wherein the Hon'ble Supreme Court has held as follows :

> *"Having regard to S. 66(1) of MV Act. 1988 which prescribes that no owner of a motor vehicle shall use or permit the use of the vehicle as a transport vehicle in any public place whether or not such vehicle is actually carrying any passengers or goods save in accordance with the conditions of a permit granted or countersigned by a Regional or State Transport Authority or any prescribed*

authority, held, use of a vehicle as a transport vehicle in public place without a permit is a fundamental statutory infraction - Though S. 66(3) of MV Act, 1988 carves out certain exceptions to S. 66(1), in order to invoke those exceptions the same must be pleaded and proved - Said exceptions cannot be taken aid of in the course of argument to seek absolution from liability - In present case, no material brought on record by owner of offending vehicle (i.e. insured) to prove that he was having a permit of offending vehicle on date of accident - Hence held, insurer not liable in such a case - However, order passed by courts below in such a situation directing insurer to pay compensation amount to claimants with interest with the stipulation that insurer must be entitled to recover the same from owner and driver of vehicle, held, was proper. being in consonance with principle of pay and recover"

16. On the other aspects, namely, fixation of salary, adoption of future prospects, deduction for personal expenses and application of multiplier, the Tribunal has followed the judgment of the Hon'ble Supreme Court in ***National Insurance Co. Ltd., Vs. Pranay Sethi*** reported in ***(2017) 16 SCC 680*** and ***Smt. Sarla Verma and Ors Vs. Delhi***

Transport Corporation & Anr reported in ***(2009) 6 SCC 121.*** We therefore, do not see any reason to interfere with the said fixation.

17. On the compensation under the non-conventional heads also, we find that the amount granted by the Tribunal is within the limits fixed by the Hon'ble Supreme Court in ***Pranay Sethi's case***. We therefore, do not see any reason to interfere with the amount awarded by the Tribunal. Even accepting the case of the insurance company that the rider of the van bearing Registration No.TN 31 AU 1882 did not have a valid driving licence, at best, only pay and recovery can be ordered. The Tribunal has failed to order that. The Point Nos.1 to 3 are answered accordingly.

18. In the result, the Civil Miscellaneous Appeal fails and accordingly, the same is dismissed. However, in view of the fact that the insurance company has established that the driver of the van insured with the appellant did not possess a valid driving licence at the time of the accident, it is open to the insurance company to pay the award amount and recover it from the owner of the van by executing the award against the owner of the van. The appellant/insurance company shall deposit the

compensation within a period of eight (8) weeks from today, if not already deposited. The apportionment made by the Tribunal is also confirmed. No costs. Consequently, connected miscellaneous petition is closed.

(A.D.J.C., J.) & (R.P., J.)
17.07.2025

Index : Yes / No
NCC : Yes / No

RM

To

1.The Additional District and Sessions Court,
(FTC), Motor Accident Claims Tribunal,
Theni.

Copy to

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

A.D.JAGADISH CHANDIRA, J.
AND
R.POORNIMA, J.

RM

Judgment in
C.M.A.(MD)No.1009 of 2023

17.07.2025