BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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

CORAM:

THE HONOURABLE MS.JUSTICE R.POORNIMA

C.M.A.(MD)No.450 of 2024
and
CMP(MD)No.6039 of 2024

1.United India Insurance Company Limited,
Through its Branch Manager,
Nagercoil.

2.United India Insurance Company Limited,
Through its Divisional Manager,
Office at No.1, Post Office Road,
Palayamkottai. : Appellants/R2 and R3

Vs.

1.Saraswathy (died)
2.Ezhil Porkozhi
3.Manmadhan : Respondents/Petitioners
4.Ramesh Kumar : 4th Respondent/1st Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the award, dated 14/12/2023 passed in MCOP No.1157 of 2021 by the Motor Accident Claims Tribunal (1st Additional District Judge), Tirunelveli, and pass such further or other orders.

For Appellants : Mr.G.Prabhu Rajadurai

For R1 to R3 : Mr.D.Sadiq Raja

JUDGMENT

Challenging the award, dated 14/12/2023 passed in MCOP No.1157 of 2021 by the Motor Accident Claims Tribunal (1st Additional District Judge), Tirunelveli, this Civil Miscellaneous Appeal is preferred by the Appellants.

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

On 03.04.2021 at about 11.00 am, when the deceased Kanagasabapathy was riding a bike No.TN-74-M-0996 near Peyodu, another two wheeler TN-37-BU-4822 came in a rash and negligent manner and hit against the bike. In the accident, Kangasabapathy got multiple injuries all over the body and immediately, he was taken to the Muthu Neuro Centre Hospital, Nagercoil, where he was taking treatment as inpatient and thereafter, he succumbed to injuries. Over the occurrence, a case in Crime No.54 of 2021 was registered by the Vellichanthai Police Station for the offence under Sections 279 and 337 IPC against rider of the two wheeler TN-74-M-0996.

3. At the time of accident, the deceased was aged about 80 years and he was a retired teacher and getting Rs.31,741/- per month as pension. Apart from that, he was also doing agricultural operation and earning Rs.20,000/- per month. The claimants being the legal heirs of the deceased filed a claim petition seeking compensation of Rs.30,00,000/- for the death of the deceased Kanagasabapathy.

4. Before the Tribunal, the first respondent, who is the owner of the offending vehicle remained ***ex-parte***. The Insurance Companies filed a counter affidavit denying the manner of the accident as alleged in the claim petition and also disputing their liability to pay the compensation contending that the accident occurred due to carelessness and negligent act of the deceased as well as the the rider of the offending vehicle. They further contended that the rider of the offending vehicle did not possess a valid driving licence at the time of the occurrence.

5.During trial, on the side of the claimants, 5 witnesses were examined as P.W.1 to P.W.5 and 22 documents were marked as Exs.P1 to P22. On the side of the Insurance Companies, 3 witnesses were examined as RW1 to RW3 and 12 documents were marked as Exs.R1 to R12.

6.Upon consideration of the materials available on record, both oral and documentary, the Tribunal awarded a total sum of **Rs.9,17,850/-** as compensation and also directed the respondents 1 to 3 to pay the award amount jointly and severally along with interest @ 7.5% pa.

7.Aggrieved by the said award, the United India Insurance Company, the appellant contended that the accident occurred due to the contributory negligence of both the deceased and the rider of the offending vehicle bearing registration No. TN-37-BU-4822. The insurer further contended that the rider of the offending vehicle did not possess a valid driving licence at the time of the accident and therefore they cannot be fastened with liability.

8. It is the further grievance of the appellants that the Tribunal ought to have directed the appellant to satisfy the award amount at the first instance and then recover it from the owner of the offending vehicle, in view of the terms and condition of violation of policy condition.

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

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

11. The dispute is with regard to liability. Even though, so many grounds were raised in the memorandum of appeal, during the argument the only the grievance putforth by the appellants is that the Tribunal ought to have exonerated them from the liability on the ground that the driver of the offending vehicle was not having a valid driving license and thereby violated the policy condition and prays that the Civil Miscellaneous Appeal has to be allowed.

12. On perusal of the records, this Court finds that Exs.R4 and R5 are the Motor Vehicle Inspector's reports issued by the Inspector, Marthandam, Kanyakumari District, issued on 26.04.2023 wherein it is clearly stated that the rider of the both vehicles involved in the accident did not produce the license details. It is further noted in the above certificate that the cause of the accident was not due to mechanical failure on the part of the vehicles. A case was registered by Vellichanthai Police in Crime No.54 of 2021m dated 04.04.2021 under Sections 279 and 337 IPC against the rider of the offending vehicle. Ex.P8 is the final

report filed by the above police against the rider of the offending two wheeler for the offence under Section 304(A) IPC. So, as seen from the Ex.R5 and R8, it can be very well inferred that human conduct of the criminal negligence alone is the reason for the accident namely Dineshkumar, who is the rider of the offending vehicle.

13. Though notice was issued to the owner as well as the rider of the offending vehicle, neither they appeared nor produced the driver's valid licence. Since, the driver failed to produce the driving licence before the Motor Vehicle Inspector and the owner of the offending vehicle also failed to establish that the driver possessed a valid licence, this Court infers that the rider of the offending vehicle was not holding a valid licence at the time of 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 belonging to the first respondent, was insured with the appellants Insurance Company and the policy was in force at the time of the accident.

14. It is well settled that when the insurance police 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.

15. 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 Insurance Companies an the owner of the offending vehicle to pay the compensation amount to the claimants jointly and severally.

16. Keeping in view of the said facts and circumstances of the case and also considering the fact that the policy was in force in respect of the offending vehicle at the time of the accident, this Court is of the considered view that **pay and recovery can be invoked.**

Accordingly, the appellants Insurance Companies are directed to pay the award amount to the claimants in the first instance and thereafter recover the same from the owner of the offending vehicle in the manner known to law.

17. It is seen from the records that the first respondent/claimant Saraswathy died, on 25/10/2024. To that effect, a memo has been filed on 05/09/2025 and the same is also recorded. Hence, it is held that the respondents 2 and 3, being the legal heirs of the deceased are entitled to equal share.

18. In view of that, the Civil Miscellaneous Appeal is **partly allowed.** The appellants Insurance Companies are directed to deposit the entire award amount together with accrued interest and costs, within a period of eight weeks from the date of receipt of a copy of this order, if not already deposited. On such deposit, the respondents 2 and 3/claimants 2 and 3 are permitted to withdraw the entire amount equally, by filing any formal petition before the Tribunal. The Appellants Insurance Companies are at liberty to recover the award amount from insured as per the law laid down by the Hon'ble Supreme Court in

Nanjappan's case [(2004)13 SCC 224]. No costs. Consequently, connected Miscellaneous Petition is closed.

29.10.2025

Index : Yes / No
Internet : Yes / No
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To,

1.The Motor Accident Claims Tribunal/
1st Additional District Judge,
Tirunelveli.

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

R.POORNIMA, J.

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Pre-Delivery Judgment in
C.M.A.(MD)No.450 of 2024

29.10.2025