

C.M.A(MD)No.862 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 25.06.2025

PRONOUNCED ON:04.09.2025

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

C.M.A(MD)No.862 of 2023

The Divisional Manager,
The Oriental Insurance Company Limited,
No.39/40, Saratha Shopping Complex,
Simmakkal,
Madurai.

: Appellant/2nd Respondent

Vs.

1.Manjula	: 1 st Respondent / 1 st Petitioner
2.Mahendran	: 2 nd Respondent/2 nd Petitioner
3.Jeyaveerapandiyan	: 3 rd Respondent/3 rd Petitioner
4.Sivanandi	: 4 th Respondent/1 st Respondent

PRAYER:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicle Act, 1988, against the award dated 18.07.2022 made in M.C.O.P.No.367 of 2017, on the file of the learned Special Court for MCOP Cases, Madurai.



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For Appellant : Mr.A.Ilango

For Respondents :Mr.J.Senthil Kumaraiah
for R.1 to R.3

: R.4 – name printed
vide order dated 03.06.2025

JUDGMENT

This Civil Miscellaneous Appeal is directed against the award made in M.C.O.P.No.367 of 2017, dated 18.07.2022, on the file of the Motor Accident Claims Tribunal / Special District Court to deal with MCOP Cases, Madurai.

2. The appellant/Insurer who was mulcted with the liability to pay compensation of Rs.9,43,598/- with interest at 7.5% per annum to the respondents 1 to 3/claimants and then to recover the same from the fourth respondent for the death of Mayandi, consequent to an accident occurred on 11.06.2015, challenged the liability fastened on it and also the consequent application of the doctrine of pay and recovery.



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3. For the sake of convenience and brevity, the parties will hereinafter be referred as per their status/ranking before the trial Court.

4. Admittedly, the first claimant is the wife and the claimants 2 and 3 are the sons of the deceased Mayandi. The case of the claimants is that on 11.06.2015 at about 12.30p.m., the deceased Mayandi went to Annamparipatti Bank and while returning, he was waiting near M.S.Vishali Mahal, on the left side of the road for crossing the road and at that time, a two wheeler bearing Registration No.TN-58-AJ-8821, which came in the same direction in a rash and negligent manner had dashed against the said Mayandi and as a result of which, he sustained serious injuries all over his body, that the injured was immediately taken to Usilampatti Government Hospital and after the first aid treatment, was taken to Aristo Hospital, Madurai and despite treatment, he succumbed to injuries on 27.06.2015 and that the accident was occurred only due to the rash and negligent driving of the two wheeler rider.

5. The defence of the second respondent is that the first respondent – owner of the two wheeler allowed his son Sivamani who was then a



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minor to ride the two wheeler, that the said Sivamani, without driving licence had ridden the two wheeler and caused the accident, that the first respondent by allowing his own minor son, who has no valid licence, to drive the vehicle, has violated the conditions of the insurance policy and that therefore, the second respondent is not liable for the same.

6. During enquiry, the claimants examined the first claimant – Manjula as P.W.1 and one Muthumani alleged to be the occurrence witness as P.W.2 and exhibited 14 documents as Exs.P.1 to P.14. The first respondent had remained exparte. The second respondent examined one Ashok Kumar as R.W.1 and exhibited three documents as Exs.R.1 to R.3. The learned trial Judge, upon considering the evidence both oral and documentary and on hearing the arguments of both sides, passed the impugned order dated 18.07.2022 holding that the accident was occurred only due to the rash and negligent driving of the two wheeler rider and by holding that the two wheeler rider was not possessing valid driving licence at the time of accident, directed the second respondent to pay compensation of Rs.9,43,568/- with interest and costs and then to recover the same from the first respondent – owner of the vehicle. Challenging



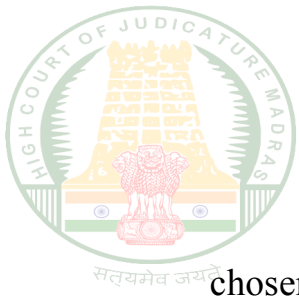
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the impugned order, the present Civil Miscellaneous Appeal came to be filed.

7. The learned Counsel for the Insurer would submit that the brother of the deceased lodged a complaint stating that the accident was occurred only when the deceased was trying to cross the road, but P.W.2 has given evidence that the deceased was standing in the left side of the road at the time of accident and that the Tribunal without considering the evidence in proper perspective, has come to an erroneous decision that the two wheeler rider alone was at fault.

8. As rightly pointed out by the learned Counsel for the claimants, the second respondent in their counter statement have not taken any defence with regard to the negligence, except taking a stand that the first respondent allowing his minor son to drive the two wheeler and that too without driving licence, has violated the policy conditions. More importantly, the second respondent in the counter statement has nowhere whispered that the deceased was also responsible for the accident. Even assuming that such a defence was taken by the Insurer, as rightly observed by the learned trial Judge, the second respondent has not



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chosen to examine the rider of the two wheeler nor any other witnesses who allegedly witnessed the accident. P.W.2 – occurrence witness in his evidence would say that the deceased was standing in the left side of the road for crossing the road and at that time, the two wheeler which came behind, has dashed against the deceased Mayandi and caused the accident. As rightly observed by the learned trial Judge, the second respondent has not adduced any contra evidence with regard to the negligence aspect and as such, the finding of the Tribunal that the two wheeler rider alone was responsible for the accident, cannot be found fault with.

9. The learned Counsel for the appellant would then contend that the deceased was admitted in the Aristo Hospital on 11.06.2015 and was discharged on 18.06.2015, but the said Mayandi was reported dead on 25.06.2015, that the deceased suffered simple injuries, that the claimants have not produced any evidence to show that the deceased was taking continuous treatment after his discharge from Aristo Hospital on 18.06.2015 and that since there was no nexus between the injuries suffered and the death, the claimants are not entitled to claim any compensation for the loss of dependency.



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10. It is pertinent to note that the second respondent has not at all taken such a stand in the counter statement or before the trial Court. As rightly pointed out by the learned Counsel for the claimants, there was only a gap of 8 days from the date of discharge till his death. It is evident that after admission in the Aristo Hospital, the injured had undergone a surgery and was taking inpatient treatment till 18.06.2015. Pre-existing conditions like diabetes and hypertension don't negate the causal link between injuries and death without concrete evidence. This plea can't be considered without prior pleadings or evidence.

11. It is not in dispute that the two wheeler rider was then a minor, son of the first respondent – owner of the two wheeler. It is also not in dispute that the two wheeler rider was not possessing valid driving licence at the time of accident. The learned Counsel for the Insurer would submit that since the first respondent – owner of the vehicle has violated the policy conditions, which includes statutory violations, the Tribunal should not have applied the doctrine of pay and recovery and the Insurer should have been absolved from its liability in its entirety.



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12. The learned Counsel for the Insurer would rely on the following decisions:

(1) **2010 ACJ 95 (Tripurari Mandal Vs. Oriental Insurance Co., Ltd., and another):**

“The law, therefore, is well settled that in a case where a defence is taken by the Insurance Company that the driver was not holding a valid driving licence, it is incumbent upon the insured to assert that the driver was holding a valid driving licence and/or at the time of handing over the vehicle he verified or seen the driving licence of the person to whom the vehicle was handed over to drive the said vehicle. In the instant case the owner of the vehicle even did not examine himself as a witness and has not either said that he saw the driving licence while handing over the vehicle to the deceased or the deceased was holding a valid driving license. The ratio laid down in [Gian Chand's](#) case is fully applicable in the facts of the present case. Be that as it may, in a recent decision the Supreme Court in the case of [Sardari & Os Vs. Sushil Kumar and Ors](#) [2008 A.I.R. S.C.W. 2075] considered all the earlier decisions including the decisions referred by us in the preceding paragraphs and held that if the driver is not holding a driving licence the Insurance Company gets exonerated.”



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(2) 2022(1) TNMAC 135 (M.Ananthi and others Vs. P.Venkatesan and another):

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“11.The general rule *laid down by* the Hon'ble Supreme Court and followed in catena of judgements is that, Driver not possessing a valid driving licence was not a ground for the Insurer to disown the liability to pay compensation to the third party claimants, since, *section 149* of the Motor Vehicles Act, 1988 mandates the Insurer to satisfy judgement/awards passed against the insured person in respect of third party risks.

15.As pointed out earlier, at the risk of repetition, in the instant case, the Insurer is the tortfeasor. The F.I.R., shows the accident occurred due to his negligence and he did not have a licence to drive the motor cycle. If the tortfeasor is somebody else other than the owner, for violation of insurance policy, pay and recovery principle, be applied. If the tortfeasor is the owner of the vehicle, then the negligence leading to the accident and the breach of policy condition allow the Insurance Company to take defence available under *section 149(2)* of the Motor Vehicles Act. The Insurance Company need not be forced to pay to the victim and recover from the insured.”



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(3) 2022(1) TN MAC 358 (Irfan Vs. K.S.Kumaran and another):

“6. The Tribunal dismissed the claim petition by taking note of the admission of the claimant himself. The claimant, as P.W.1, has admitted that he has driven the two wheeler without driving license. His admission was also corroborated by Ex.R1, Investigation Report. Further, the Tribunal relied upon the decision of the Hon'ble Supreme Court in [United India Insurance Co. Ltd., Vs. Sunil Kumar and another](#) reported in 2013 (2) TN MAC 737 (SC), wherein it was held that when the petitioner was a minor at the time of accident, he has no right to drive the vehicle but has driven the vehicle without license and thereby violated the conditions of the [Motor Vehicle Act](#) and invited the accident on his own. It was further held by the Hon'ble Supreme Court that as the minor himself driven the vehicle without licence and caused accident, the tort-feasor is not entitled for compensation. By placing reliance on the aforesaid decision of the Hon'ble Supreme Court, the Tribunal dismissed the claim petition and refused to award any compensation to the claimant.

10. It is not in dispute that the appellant was a minor at the time of accident. Even before the Tribunal, the appellant himself admitted that he was minor at the time of accident. More so, there is a clear bar and embargo for the appellant



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to drive the vehicle even before attaining the majority or in the absence of driving licence issued by the competent authority as has been enunciated under [Section 4](#) of the Motor Vehicles Act.

13. Further, when there is a clear violation of policy condition, the Insurance Company cannot be burdened with the obligation of paying compensation amount to the appellant, though, under law, he is not entitled to receive it. When the appellant himself is a tort-feaser, he is not entitled to maintain the claim petition at all. Therefore, this Court is of the view that there is no legal infirmity in the order of dismissal passed by the Tribunal.”

13. In the first decision case, the deceased had driven the tractor belonging to the appellant and since the tractor turned turtle, the deceased who came under the wheels of the tractor, died and that since the owner of the vehicle as well as the claimants who are the legal representatives of the deceased have failed to prove that the deceased was possessing valid driving licence at the time of accident, the decision of the Tribunal in exonerating the Insurer and mulcting the entire liability on the owner of the vehicle came to be confirmed.



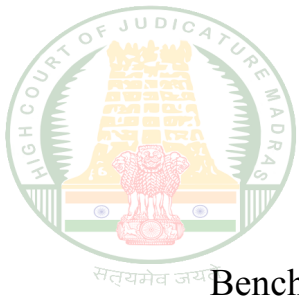
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14. In the second decision case, the Insurer himself is a tortfeasor and he did not have a valid licence to drive the vehicle and hence, this Court has upheld the decision of the Tribunal in exonerating the Insurance Company.

15. In the third decision above referred, the claimant/injured had himself admitted that he had driven the two wheeler without driving licence and he was a minor at that time and considering the above, this Court has held that since the appellant himself is a tortfeasor, is not entitled to maintain the claim petition and thereby dismissed the appeal, confirming the decision of the trial Court dismissing the claim petition.

16. The learned Counsel for the claimants would rely on a decision of the Division Bench of this Court in *M/s IFFCO-TOKIO General Insurance Company Limited Vs. Kalaiselvi and others* in C.M.A.Nos. 423 and 828 of 2021, dated 15.04.2024, wherein it was found that the two riders of the two motorcycles involved in the accident are minors and did not possess valid driving licence and since the claim was made by the legal representatives of the deceased pillion rider, the Hon'ble Division



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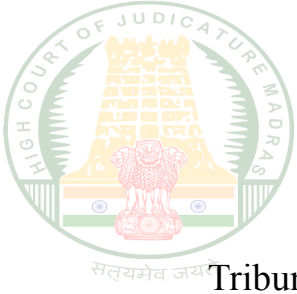
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Bench by observing that the deceased pillion rider was covered under the insurance policy, directed the Insurers of both the two wheelers to pay compensation to the claimants and then to recover the same from the owners of the two wheelers.

17. In the case on hand, the two wheeler which caused the accident is owned by the first respondent and the same is insured with the second respondent. It is not in dispute that the insurance policy was in force on the date of accident. Given the two wheeler rider's lack of a valid driving licence and minority at the time of accident, the Tribunal's application of the “Pay and Recovery” doctrine is justified.

18. The Insurance Company has not challenged the quantum of compensation. Hence, this Court concludes that the Civil Miscellaneous Appeal is devoid of merits and the same is liable to be dismissed.

19. In the result, the Civil Miscellaneous Appeal is dismissed. The appellant Insurance Company is directed to deposit the entire award amount along with accrued interest and costs, to the credit of above said M.C.O.P.No.367 of 2017, on the file of the Motor Accident Claims



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Tribunal / Special Court for MCOP Cases, Madurai, less the amount already deposited, if any, within a period of four weeks from the date of receipt of a copy of this Judgment and recover the same from the owner of the vehicle and on such deposit, the claimants are entitled to withdraw the same as per the apportionment made by the Tribunal. Consequently, the connected Miscellaneous Petition is also dismissed. The parties are directed to bear their own costs.

04.09.2025

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

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To

- 1.The Motor Accident Claims Tribunal/
Special Court for MCOP Cases, Madurai.
- 2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court, Madurai.



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K.MURALI SHANKAR,J.

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PRE-DELIVERY JUDGMENT MADE IN

C.M.A(MD)No.862 of 2023

04.09.2025