BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 10.07.2025

CORAM:

THE HON'BLE MR.JUSTICE K.K.RAMAKRISHNAN

C.M.A.(MD)No.653 of 2025
and
C.M.P.(MD)No.10343 of 2025

The Branch Manager,
The New India Assurance Co. Ltd.,
10/11-Church Road 1st Floor,
ML Complex, Dharapuram,
Tiruppur District. ... Appellant/ 3rd Respondent

Vs.

1.A.Sathish

2.Minor Sharmila

3.Minor S.Monisha
(Minor respondents 2 and 3 are represented by their Next Friend, Natural Guardian and Father 1st respondent, A.Sathish)

4.K.Pothuponnu

5.P.Sakthivel ... Respondents 1to3/ Petitioners

Prayer : This Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, to set aside the judgment passed in

M.C.O.P.No.100 of 2022 on the file of Motor Accident Claims Tribunal (Chief Judicial Magistrate), Sivagangai, dated 19.09.2024 and allow the present appeal.

For Appellant : Mr.A.M.Senthil Kumar

For Respondents : Mr.V.Kannan for R1 to R3

JUDGMENT

The Civil Miscellaneous Appeal has been preferred by the Insurance Company against the award dated 19.09.2024 passed in M.C.O.P.No.100 of 2022 by the Chief Judicial Magistrate / Motor Accident Claims Tribunal, Sivagangai.

2. The respondents 1 to 3 / claimants have filed a claim petition in M.C.O.P.No.100 of 2022, claiming compensation for the death of one Kala, in an accident that took place on 07.09.2022. The Tribunal has awarded a sum of Rs.19,42,000/- (Rupees Nineteen Lakhs and Forty Two Thousand only) with interest at 7.5% per annum as compensation. Against which, the appellant / insurer has preferred this appeal.

For the sake of convenience and brevity, the parties herein after will be referred as per their status/ranking in the Tribunal.

3. A brief substance of the claim petition is as follows:

The deceased Kala was aged about 31 years and was working as a load woman and was earning Rs.20,000/- per month. On 07.09.2022 at about 08.30 a.m., the deceased Kala was travelling as a load woman in a lorry bearing Registration No.TN-69-AH-4848 and near Sooranam, due to the rash and negligent driving of the lorry driver, the vehicle got capsized and as a result, the deceased Kala fall under the lorry and died on the spot. The claim petition was filed by the claimants seeking compensation to the tune of Rs.50,00,000/-.

4. The respondents 1 and 2 remained *ex-parte* before the Tribunal and the claim petition was opposed by the insurer.

5. A brief substance of the counter filed by the insurer is as follows:

The passengers including the deceased Kala are unauthorized passengers. The lorry driver was not possessing valid driving license. There are contradictions between the FIR and the charge sheet with regard to the driver of the lorry.

6. On the side of the claimants, 2 witnesses were examined as P.W.1 and P.W.2 and 13 documents were marked as Ex.P.1 to Ex.P.13. On the side of the insurer, 2 witnesses were examined as R.W.1 and R.W.2 and 3 documents were marked as Ex.R.1 to Ex.R.3. 2 documents were marked as Ex.X.1 and Ex.X.2.

7. The learned trial Judge, after considering the evidence, both oral and documentary, has passed the impugned award dated 19.09.2024, holding that the lorry driver was responsible for the accident and directed the insurer to pay the award amount of Rs.19,42,000/- to the claimants and then to recover the same from the owner of the lorry. Aggrieved by the said award, the insurer has come up with the present appeal.

8. It is pertinent to note that the insurer has not challenged the finding of the Tribunal that the accident had occurred only due to the rash and negligence driving of the lorry driver and that they have also not challenged the quantum of compensation awarded by the Tribunal.

9. The only contention of the learned counsel appearing for the insurer is that since the terms and conditions of the Policy was violated by

allowing a person to drive the lorry without valid driving license, the insurer cannot be fastened even with the liability of pay and recovery and that after amendment to the Motor Vehicles Act by the Central Act 32 of 2019 and the deletion of proviso to Section 149(4) of the Motor Vehicles Act, the Tribunal cannot order pay and recovery.

10. It is not in dispute that the offending vehicle was insured with the insurer and that the insurance policy was in force on on the date of accident.

11. The points for consideration are:-

(i) Whether the Tribunal is empowered to order pay and recovery against insurer in case of violation of policy conditions after deletion of proviso to old Section 149 (4) and 149 (5) [now amended as Section 150] of Motor Vehicles Act, 1988, by Motor Vehicles Amendment Act (Central Act 32 of 2019), with effect from 01.04.2022?

(ii) Whether the Tribunal erred in mulcting liability and adopting the doctrine of pay and recovery, in spite of producing the evidence to

show that the lorry driver had no valid driving license to drive the vehicle at that time?

12. When similar issues were raised before the Principal Seat of this Court in ***C.M.A.No.554 of 2025 and batch*** reported in ***2025/MHC/991,*** a learned Single Judge has held that notwithstanding the deletion of proviso to old Section 149(4) of MV Act (New Section 150), the Motor Accident Claims Tribunal can order pay and recovery. The relevant observation of this Court in ***2025/MHC/991*** reads as follows:-

> *"28. The very same title or caption is retained in New Section 150 of Motor Vehicles Act. Further, defences enumerated under Section 150(2) are result of breach/omission by insured over which innocent third parties have no control. Hence, it is highly inequitable to interpret the section against its own title and object of main enactment. In this regard, it would be appropriate to refer to observation of Apex Court in British India General Insurance Co. Ltd., vs. Captain Itbar Singh and others reported in 1959 SCC OnLine SC 32, which reads thus:-*
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> > *"17. ... ... It was said that the assured might be a man of straw and the insurer might not be able to recover anything from him. But the answer to that is that it is the insurer's bad luck. In such*

circumstances the injured person also would not have been able to recover the damages suffered by him from the assured, the person causing the injuries. The loss had to fall on some one and the statute has thought fit that it shall be borne by the insurer. That also seems to us to be equitable for the loss falls on the insurer in the course of his carrying on his business, a business out of which he makes profit, and he could so arrange his business that in the net result he would never suffer a loss. On the other hand, if the loss fell on the injured person, it would be due to no fault of his; it would have been a loss suffered by him arising out of an incident in the happening of which he had no hand at all."

(emphasis supplied)

The Apex Court in the above mentioned case law in a beautiful language emphasised the plight of third party victims and ability of insurer to cope up with liability created by law under Section 149(1) [New Section 150(1)]. Therefore, this Court holds that Section 149(1) [now Section 150 (1)] imposes a duty on insurer to satisfy award passed against insured in respect of third party claims and that duty is not affected by deletion of proviso to Section 149 (4).

29. Section 149(5) mandates that any amount paid by the insurer to the third party over and above the amount payable by insurer to the insured under the policy, shall be recovered by the insurer from the insured. Now, by virtue of new Section 147(2), the Central Government is empowered to prescribe a base premium and liability of the insurer in respect of such premium for the insurance policy. Since the liability of the insurer in respect of third party insurance is sought to be limited, by virtue of notification by Government in consultation with Insurance Regulatory and Development Authority, Sub-Section 5 of old Section 149 is deleted to remove doubt. The deletion of Sub-Section 5 of old Section 149 is in tune with the amendment introduced under Section 147(2).

30. In view of the discussions made earlier, this Court holds that notwithstanding deletion of proviso to Sub-Section (4) of Old Section 149 and Sub-Section (5) of very same Section which is renumbered as Section 150, the insurer's liability to honour the award passed against the insured in respect of third party claims continues and in the event of insurer's success in raising a defence under Sub-Section (2) of New Section 150, the Tribunal can very well order pay and recovery. In view of the same, the first argument made by the learned counsel for the appellant is rejected."

13. The above decision is squarely applicable to the case on hand. From the reading of the above said judgment, it is clear that the learned Single Judge has also followed the similar view taken by the Allahabad High Court in ***ICICI Lombard General Insurance Co Ltd Vs. Arti Devi and others dated 31.01.2025*** with regard to pay and recovery.

14. At this juncture, the learned counsel appearing for the appellant would submit that against the judgment of the Allahabad High Court, the Insurance Company preferred SLP and stay was also granted on 20.05.2025. Mere pendency of the appeal before the Hon'ble Supreme Court does not erase effect of the pronouncement made in ***C.M.A.(MD) No.554 of 2025 and batch***. Therefore, this Court has no other option but to follow the learned Single Judge's view taken in ***C.M.A.No.554 of 2025 and batch.***

15. This Court also perused the Motor Vehicles (Amendment) Bill, 2022 submitted before Lok Sabha. It is appropriate to incorporate the object of the bill, which reads as follows:

> *"Furthermore, other defences provided in clause (a) of sub-section (2) of section 150 shall be restricted in such*

a way that the insurer shall, in such a circumstance, pay the awarded compensation in the first instance to third parties including gratuitous passengers and pillion riders and may thereafter recover the same from the insured. The Act shall perform as a welfare legislation for the benefit of third parties by ensuring that they receive the fruits of the awards obtained by them straightaway with an element of certainty and not to make them wait for a prolonged recovery proceeding as against the owner of the vehicle."

16. Considering the above, this Court is not inclined to interfere the impugned judgment. Accordingly, this Civil Miscellaneous Appeal is **dismissed** and the award dated 19.09.2024 passed in M.C.O.P.No.100 of 2022 on the file of Motor Accident Claims Tribunal / Chief Judicial Magistrate, Sivagangai, is confirmed. The appellant / insurer is directed to deposit the entire award amount with accrued interest and costs, within a period of six weeks from the date of receipt of a copy of this judgment, if not already deposited. Thereafter, the appellant / insurer is permitted to recover the same from the owner of the vehicle. On such deposit being made, the respondents 1 to 3 / claimants are permitted to withdraw their shares along with interest and costs as per the apportionment fixed by the

Tribunal and the share of the minor respondents 2 and 3 / claimants 2 and 3 shall be deposited in any one of the Nationalised Banks till they attain majority. The first respondent / first claimant, who is the father of the minor respondents 2 and 3 / claimants 2 and 3, is permitted to withdraw the interest of minors once in three months directly from the Bank. Consequently, connected Miscellaneous Petition is closed. No costs.

10.07.2025

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

1.The Chief Judicial Magistrate,
Motor Accident Claims Tribunal,
Sivagangai.

2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

K.K.RAMAKRISHNAN,J.

csm

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