BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20/11/2025

CORAM

THE HONOURABLE MR JUSTICE **P.VELMURUGAN**
AND
THE HONOURABLE MRS JUSTICE **L.VICTORIA GOWRI**

CMA(MD)Nos.941 and 942 of 2021
and
CMP(MD)Nos.8810 and 8812 of 2021

1.(CMA(MD)No.941 of 2021):-

National Insurance Company Limited,
Tata Bebu
Department of Motor Tie-Up Business,
Royal Insurance Building,
2nd Floor, 14-J, Tata Road,
Church Gate, Mumbai,
Maharashtra.
(Policy No.25331031140150003820) : Appellant/2nd Respondent

Vs.

1.M.Pudumadathi
2.Minor M.Baby Sathya
(Minor respondent rep. Through her
mother and next friend Pudumadathi
1st Respondent herein)
(Amended as per order in IA No.1/20,
dated 06/03/2020) : Respondents 1 and 3/Petitioners 1 and 2
3.Minor M.Vasanth
(Minor respondent rep. Through her mother
and next friend Pudumadathi 1st respondent herein)

4.Sudalaimuthu : Respondents 3 and 4/Petitioners 3-4
5.D.Samuvel Raj : 5th Respondent/1st Respondent

Prayer:- This Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, to set aside the fair and decreetal order, dated 05/11/2019 made in MCOP No.727 of 2015 on the file of the Motor Accident Claims Tribunal/Subordinate Judge dealing with MCOP cases, Tirunelveli.

For Appellant : Mr.S.Srinivasa Raghavan

For R1 to R4 : Mr.V.Essakimuthu

For 5th Respondent : No appearance

2.(CMA(MD)No.942 of 2021):-

National Insurance Company Limited,
Tata Bebu
Department of Motor Tie-Up Business,
Royal Insurance Building,
2nd Floor, 14-J, Tata Road,
Church Gate, Mumbai,
Maharashtra.
(Policy No.25331031140150003820) : Appellant/2nd Respondent

Vs.

1.N.Banupriya
2.Minor N.Santhiya
(Minor 2nd respondent rep. Through her mother and next friend Banu Priya 1st Respondent herein) : Respondents 1 & 2/Petitioners 1 and 2
3.S.Muthu : 3rd Respondent/3rd Petitioner
4.D.Samuvel Raj : 4th Respondent/1st Respondent

Prayer:- This Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, to set aside the fair and decreetal order, dated 05/11/2019 made in MCOP No.728 of 2015 on the file of the Motor Accident Claims Tribunal/Subordinate Judge dealing with MCOP cases, Tirunelveli.

For Appellant : Mr.S.Srinivasa Raghavan

For R1 to R3 : Mr.V.Essakimuthu

For 4th Respondent : No appearance

COMMON JUDGMENT

(Judgment of the Court was made by the Hon'ble **P.VELMURUGAN. J.**)

These Civil Miscellaneous Appeals are directed against the common judgment, dated 05/12/2019 passed in MCOP Nos.727 and 728 of 2015 by the Motor Accident Claims Tribunal Authority/Special Sub Court dealing with MCOP cases, Tirunelveli.

2.**The facts of the case are as follows**:-

On 03/04/2015 at about 03.45 hours, the deceased Muthukutty and his brother-in-law Nagarajan were returning to their native from Coimbatore in TATA Indica Tourist Car bearing registration No.TN-38-BR-3912 belongs to the 1st respondent, who is the owner-cum-driver of the vehicle. When the Car was nearing Ettunaichenpatti Vilakku on Virudhunagar-Sattur main road, the driver of the Car drove it in a rash and negligent manner and dashed against the bridge on the side of the road. In that process, the deceased and other occupants of the Car sustained grievous injuries. Muthukutty was taken to Sattur

Government Hospital and after first aid, he was shifted to Tirunelveli Medical College Hospital, admitted therein in ICU and subsequently, he succumbed to injuries, whereas Nagarajan died on the spot itself and others were taken to the Government Hospital at Sattur.

3.It is the case of the claimants that the deceased Muthukutty was 32 years old and another deceased Nagarajan was 27 years at the time of the accident and both were doing Iron Scrap Merchant business and earning Rs.40,000/- each per month. Seeking compensation of Rs.1,00,00,000/-, the legal heirs of the deceased Muthukutty, filed a claim petition in MCOP No.727 of 2015. Similarly, for the death of the deceased Nagarajan, his legal heirs filed a claim petition in MCOP No.728 of 2015, seeking compensation of Rs.1,00,00,000/-.

4.The claim petitions were contested by the 1st respondent and they disputed the manner of the accident as projected by the claimants and his liability to pay the compensation.

5.The 2nd Respondent Insurance Company filed a separate counter contending that the accident occurred only due to the negligence on the part of the driver of the Car and the State Transport Authority has granted permit to the

1st respondent's Car to use the Car for particular Contract Carriage as per Rule 171 of Motor Vehicle Rules, but the 1st respondent used the Car as a stage carriage for picking up the passengers from each and every stage and without any valid stage carriage permit, the Car has been operated by the 1st respondent; in the FIR and other connected records, it has been mentioned that all the persons were travelling in the Car individually by paying fare to the 1st respondent, which is clear violation of Permit and Policy Condition and that at the time of accident, the deceased along with others were travelling in the Car. It is the further case of the 2nd respondent Insurance Company that they disputed the manner of the accident, age, income and avocation of the deceased and their liability to pay the compensation.

6.To substantiate the case, on the side of the claimants, 6 witnesses were examined as PW1 to PW6 and marked 30 documents. On the side of the respondents, one Kannan was examined as RW1 and 2 documents were marked.

7.The Tribunal, on an assessment of the entire evidence on record held that the driver of the 1st respondent alone is responsible for the accident and directed the 2nd respondent Insurance Company to pay a sum **Rs.18,14,400/-** to the claimants in respect of MCOP No.727 of 2015 and **Rs.34,97,200/-** to the claimants in respect of MCOP No.727 of 2025 as compensation along with interest at the rate of 7.5% per annum.

8.Questioning the liability and challenging the quantum of compensation, the Insurance Company is before this Court by way of filing these Civil Miscellaneous Appeals.

9.Even though so many grounds were raised in the memorandum of grounds of the appeal, the only the grievance of the appellant Insurance Company is that the Tribunal ought to have exonerated them from the liability on the ground that the driver of the Car was not having a valid driving license and thereby violated the policy condition and prays that the Civil Miscellaneous Appeals have to be allowed.

10.The learned counsel appearing for the claimants in both cases submitted that in the very same accident, except the deceased Muthukutty and his brother-in-law Nagarajan, other persons also sustained injury, for which the Tribunal has also awarded some compensation, but that award amount has not been challenged by the Insurance Company and therefore, the impugned common award passed by the Tribunal has to be confirmed and the appeals have to be dismissed.

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

12.In these cases, the manner of accident and liability are admitted by the Insurance Company. The dispute is only with regard to non-possession of a valid licence at the time of the accident. Perusal of the records shows the driver of the Car had not possessed a valid driving licence at the time of the accident, which amounts to violation of policy condition. So, due to the violation of policy condition, the Tribunal ought to have ordered pay and recovery. So, this Court is inclined to modify the award passed by the Tribunal that the Insurance Company shall pay the compensation amount first and then recover the same from the owner of the vehicle.

13.So far as the loss of income is concerned, the income of the deceased was not proved by the claimants in both cases. However, in the absence of any other document, the Tribunal has fixed the notional income of the deceased at Rs.9,000/- in respect of Muthukutty and Rs.18,000/- in respect of the deceased Nagarajan. As per the ratio laid down by the Hon'ble Apex Court in the case of **National Insurance Company Ltd., Vs Pranay Sethi and others reported in 2017(2) TNMAC 609**, the Tribunal fixed 40% of income as future prospects and accordingly, fixed the loss of income of the deceased persons. As per the **Sarla Verma'**s case, the Tribunal has adopted the correct multiplier and after deduction towards personal and living expenses of the deceased persons calculated the loss of income of the deceased persons. So far as the other heads are concerned, the Tribunal has awarded a reasonable compensation.

14.It is seen from the records, this Court infers that the driver-cum-owner of the Car, was not holding a valid licence at the time of accident, thereby violated a policy condition. It is also proved that the Car belonging to the first respondent, was insured with the appellant's Insurance Company and the policy was in force at the time of the accident.

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.** But in the case on hand, the Tribunal has directed the appellant Insurance Company to pay the compensation amount to the claimants.

16.Keeping in view of the above facts and circumstances of the case and also considering the fact that at the time of accident, the policy was in force in respect of the Car which involved in the accident, this Court is of the considered view that **pay and recovery can be invoked.** Accordingly, the appellants 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 Car in the manner known to law.

17.With the above modification, thee Civil Miscellaneous Appeal are **partly allowed.** The Insurance Company is directed to deposit the entire award amount, in both the cases, along with interest at the rate of 7.5% p.a. from the date of the petitions till the date of deposit, less the amount already deposited, if any, within a period of eight weeks from the date of the receipt of a copy of this Order. On such deposit being made, the Tribunal shall transfer the respective share of the claimants (as per the apportionment made in MCOPs) to their Bank Account directly through RTGS, within a period of four weeks thereafter. The Insurance Company is at liberty to recover the award amount in both case from the owner of the vehicle. No costs. Consequently, connected Miscellaneous Petitions are closed.

(P.VELMURUGAN, J.) **(L.VICTORIA GOWRI, J.)**
20-11-2025

Index:Yes/No
Internet:Yes/No
er

P.VELMURUGAN,J
and

L.VICTORIA GOWRI,J

er

To,

1.The Motor Accident Claims Tribunal/
Sub Court dealing with MCOP cases.
Tirunelveli.

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

<u>CMA(MD)Nos.941 and 942 of 2021</u>

20/11/2025