BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 29.08.2025

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THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

C.M.A(MD)No.939 of 2025
and
C.M.P.(MD)No.14265 of 2025

United India Insurance Company Limited,
Karur,
represented by its Manager,
Door No.19/2, Navarang Plaza, 2nd Floor,
Opp. to LGB Petrol Bunk,
Kovai Road, Karur-639 002.
: Appellant/Respondent No.2

Vs.

1.Ammaiappan
2.K.Parameswari : Respondent 1 and 2/Petitioners

3.S.Baskar : 3rd Respondent/1st Respondent

PRAYER:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act,1988 against the award passed in M.C.O.P.No.265 of 2023, dated 20.11.2024, on the file of the Motor Accidents Claims Tribunal, Principal District Court, Karur.

For Appellant : Mr.J.S.Murali

JUDGMENT

The Civil Miscellaneous Appeal is directed against the award made in M.C.O.P.No.265 of 2023, dated 20.11.2024, on the file of the Motor Accident Claims Tribunal / Principal District Court, Karur.

2. The appellant/Insurer who was mulcted with the liability to pay compensation of Rs.4,52,000/- with interest at 7.5% per annum to the respondents 1 and 2/claimants for the death of Pappayee, consequent to an accident occurred on 28.03.2023, challenged the liability mulcted on it and consequent application of doctrine of pay and recovery.

3. For the sake of convenience and brevity, the parties will hereinafter be referred as per their status/ranking in their original petition.

4. During trial, the claimants examined the first claimant as P.W.1 and one Muthukumar 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 two witnesses as R.W.1 and R.W.2 and exhibited 2 documents as Exs.R.1 and R.2. The learned trial Judge, considering the evidence both oral and documentary and on hearing the arguments of both sides, passed the impugned order dated 20.11.2024 holding that the accident was occurred only due to the rash and negligent driving of the first respondent's driver and also taking note of the fact that the first respondent's driver was not possessed valid driving licence at the time of accident, directed the Insurer to pay compensation of Rs.4,52,000/- with interest and costs to the claimants and then to recover the same from the first respondnet – owner of the vehicle. Aggrieved by the impugned order, the Insurer has preferred the present Civil Miscellaneous Appeal.

5. The learned Counsel for the Insurer would contend that the driving licence of the first respondent's vehicle driver got expired on 03.10.2020 itself, that the said driver has not renewed his licence and he was not possessing any valid driving licence on the date of accident and that since the first respondent allowed his driver to drive the vehicle

without driving licence, the Insurer cannot be mulcted with the liability directing them to pay compensation and then to recover from the vehicle owner.

6. The learned Counsel for the Insurer would mainly contend that after the amendment to the Motor Vehicles Act, vide Central Act 32/2019 and the deletion of proviso to Section 149 (4) of the Motor Vehicles Act, the Tribunal has no power or jurisdiction to order pay and recovery. The learned Counsel would further contend that the Tribunal erred in not considering Section 150(2) of the recent Motor Vehicle Amendment Act 2019, which specifically adumbrates that the Insurer is not liable to pay compensation to the claimants for the breach of policy and permit condition committed by the vehicle owner.

7. At this juncture, it is necessary to refer the decision of this Court in ***C.M.A.No.554 of 2025 and batch*** reported in ***2025/MHC/991,*** wherein a learned Judge of this Court 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 and the relevant passages are extracted hereunder:

"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:-

> *"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."

8. In view of the above, the only and main ground canvassed by the Insurer that the doctrine of pay and recovery cannot be made applicable, cannot be sustained. Consequently, this Court concludes that the Civil Miscellaneous Appeal is absolutely devoid of merits and the same is liable to be dismissed.

9. In the result, the Civiil 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.265 of 2023, on the file of the Motor Accident Claims Tribunal / Principal District Court, Karur 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.

29.08.2025

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

SSL
To

1. The Motor Accident Claims Tribunal /
Principal District Court, Karur.

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

K.MURALI SHANKAR,J.

SSL

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