



C.M.A.(MD)No.742 of 2025

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
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DATED : 01.08.2025

CORAM:

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

C.M.A.(MD)No.742 of 2025
and
C.M.P.(MD)No.11703 of 2025

1.SBI General Insurance Company Ltd.,
through its Branch Manager,
Having office at 2nd floor,
Raj Complex, Dollygunj,
Port Blair,
Andaman and Nicobar Islands-744103.

2.SBI General Insurance Company Ltd.,
through its Branch Manager,
Office at First Floor, Castro Place,
Number 991/11,
Byepass Road, Behind New Bus Stand,
Tirunelveli.

... Appellants

Vs.

1.Sudalaikannu

... 1st Respondent/
Petitioner

2.Thangasamy

... 2nd Respondent/
1st Respondent



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Prayer : This Civil Miscellaneous Appeal has been filed under Section 173 of Motor Vehicles Act, to set aside the order made in M.C.O.P.No. 1544 of 2022 dated 07.03.2025, on the file of the Motor Accident Claims Tribunal cum Special Sub Judge to deal with MCOP cases, Tirunelveli.

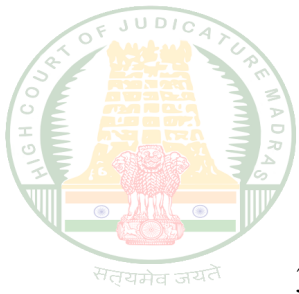
For Appellants : Mr.N.Shyllappa Kalyan

JUDGMENT

The Civil Miscellaneous Appeal has been preferred by the Insurance Company against the award dated 07.03.2025 passed in M.C.O.P.No.1544 of 2022 by the Special Sub Judge dealing with MCOP cases / Motor Accident Claims Tribunal, Tirunelveli.

2. The first respondent / claimant has filed a claim petition in M.C.O.P.No.1544 of 2022, claiming compensation for the injuries sustained by him, in an accident that took place on 02.08.2022. The Tribunal has awarded a sum of Rs.6,63,000/- (Rupees Six Lakhs and Sixty Three Thousand only) with interest at 7.5% per annum as compensation. Against which, the appellants / insurer have 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.



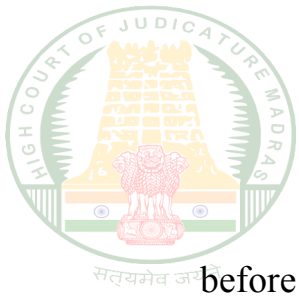
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3. A brief substance of the claim petition is as follows:

The claimant was aged about 57 years and was working as a coolie and was earning Rs.28,500/- per month. On 02.08.2022 at about 03.30 p.m., when the claimant was travelling in a Passion Pro two wheeler bearing Registration No.TN-92-C-1816 as a pillion rider, near Vasvappaneri Colony, another Passion Pro two wheeler bearing Registration No.TN-92-H-0439 belonging to the first respondent, which came in the wrong side in a rash and negligent manner, had dashed against the claimant's vehicle and as a result, the claimant sustained grievous multiple injuries. The claimant was immediately taken to Government Hospital, Karungulam and after first-aid, he was taken to TVMC Hospital at Highground. Due to the accidental injuries, he is not able to stretch or fold his left hand and is not able to sit, stand, walk or squat and is not in a position to do his normal avocation and he was hale and healthy at the time of accident. The claimant spent huge amount for treatment, medicines, conveyance and other charges. The claim petition was filed by the claimant seeking compensation to the tune of Rs.15,00,000/-.

4. The first respondent, owner of the vehicle, remained *ex-parte*



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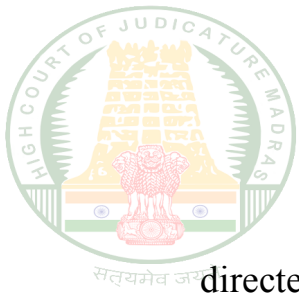
before the Tribunal and the claim petition was opposed by the insurer.

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

The age, income, nature of injuries and the manner of the accident of the claimant are all denied. FIR was lodged only after 12 days from the date of accident. The first respondent's vehicle was not involved in the alleged accident. The first respondent was not possessing valid driving license. The claim of compensation is excessive and exorbitant.

6. On the side of the claimant, 2 witnesses were examined as P.W.1 and P.W.2 and 9 documents were marked as Ex.P.1 to Ex.P.9. On the side of the insurer, 2 witnesses were examined as R.W.1 and R.W.2 and 5 documents were marked as Ex.R.1 to Ex.R.5. 2 documents were marked as Ex.X.1 and Ex.X.2 through witnesses. The disability certificate of the claimant was marked as Ex.C.1.

7. The learned trial Judge, after considering the evidence, both oral and documentary, has passed the impugned award dated 07.03.2025, holding that the first respondent was responsible for the accident and



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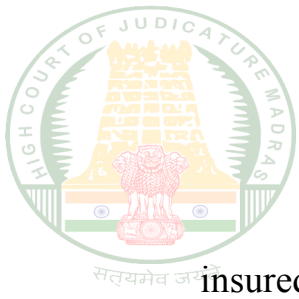
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directed the insurer to pay the award amount of Rs.6,63,000/- to the claimant and then to recover the same from the first respondent. Aggrieved by the said award, the insurer has come up with the present appeal.

8. It is pertinent to note that the insurer has not challenged the finding of the Tribunal 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 the first respondent to drive the two wheeler 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 first respondent is the owner of the two wheeler bearing Registration No.TN-92-H-0439 and the same was



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insured with the insurer and that the insurance policy was in force 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 offending vehicle rider had no valid driving license to drive the two wheeler at that time?*

12. The issue raised in this appeal has already been considered in a batch of cases by a learned Judge of this Court in **C.M.A.No.554 of 2025 and batch** reported in **2025/MHC/991**. Following the said order, recently I had an occasion to pass an order in **C.M.A.(MD)No.653 of 2025** on **10.07.2025**, which reads thus:



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“11. 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:-

“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



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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.”

12. 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.



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13. *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.*

14. *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.”



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13. Considering the above, this Court is not inclined to interfere the impugned judgment. Accordingly, this Civil Miscellaneous Appeal is **dismissed** and the award dated 07.03.2025 passed in M.C.O.P.No.1544 of 2022 on the file of Motor Accident Claims Tribunal / Special Sub Court dealing with MCOP cases, Tirunelveli, is confirmed. The appellants are 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 appellants are permitted to recover the same from the second respondent. On such deposit being made, the first respondent is permitted to withdraw the said amount, with accrued interest and costs. Consequently, connected Miscellaneous Petition is closed. No costs.

01.08.2025

NCC : Yes/No

Index : Yes/No

Internet: Yes/No

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To:

1. The Special Sub Judge,
Motor Accident Claims Tribunal,
Tirunelveli.
2. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court, Madurai.



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K.K.RAMAKRISHNAN,J.

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Judgment made in
C.M.A.(MD)No.742 of 2025
and
C.M.P.(MD)No.11703 of 2025

Dated : 01.08.2025