BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 26.08.2025

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THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

C.M.A(MD)No.870 of 2025
and
C.M.P.(MD)No.13540 of 2025

1.The Manager,
SBI General Insurance Co.,Ltd.,
104, 2nd Floor, Excellence Buuilding,
Block No.15, T S 949-10,
Race Course Road,
Coimbatore – 641 018.

2.The Manager,
SBI General Insurance Co., Ltd.,
No.332/2, Sindhiya Commercial Complex,
Medical College Road,
Sundaram Nagar, Thanjavur.

: Appellants/Respondents 2 and 3

Vs.

1.Kalimuthu : 1st Respondent/Petitioner

2.Sankar : 2nd Respondent/1st Respondent

PRAYER:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act,1988 against the Judgment and Decree made in M.C.O.P.No.1359 of 2023, on the file of the Motor Accident Claims Tribunal (The Special Subordinate Judge), Thanjavur, dated 17.03.2025.

For Appellants : Mr.R.Ramadurai

JUDGMENT

The Civil Miscellaneous Appeal is directed against the order made in M.C.O.P.No.1359 of 2023, dated 17.03.2025, on the file of the Motor Accident Claims Tribunal / Special Subordinate Court, Thanjavur.

2. The appellants/Insurer who were mulcted with the responsibility to pay compensation of Rs.2,40,000/- with interest at 7.5% per annum to the first respondent/claimant for the disability sustained by him consequent to an accident occurred on 09.09.2023, challenged the liability mulcted on it and the 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 claimant examined himself as P.W.1 and exhibited 7 documents as Exs.P.1 to P.7. The first respondent had remained exparte. The respondents 2 and 3 /Insurer examined two witnesses as R.W.1 and R.W.2 and exhibited 9 documents as Exs.R.1 to R.9. The disability certificate issued by the Medical Board to the claimant came to be exhibited as Exs.C.1. The learned trial Judge, considering the evidence both oral and documentary and on hearing the arguments of both sides, passed the impugned order dated 17.03.2025 holding that the accident was occurred only due to the rash and negligent driving of the first respondent's driver, but taking note of the fact that the first respondent's driver had no driving licence on the date of accident and thereby the first respondent violated the policy condition and also the fact that the trailer which had hit against the petitioner, was not at all registered, directed the respondents 2 and 3 / Insurer to pay the compensation of Rs.2,40,000/- with interest and costs and then to recover

the same from the first respondent. Aggrieved by the invoking of pay and recovery doctrine, the Insurer has preferred the present appeal.

5. The learned Counsel for the Insurer would mainly contend that the first respondent owner allowed his minor son to ride the two wheeler and without a driving licence, the Insurer cannot be mulcted with any liability, directing them to pay and that then to recover from the owner of the vehicle and 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.

6. 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."

7. 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.

8. In the result, the Civiil Miscellaneous Appeal is dismissed. Consequently, the connected Miscellaneous Petition is also dismissed. The parties are directed to bear their own costs.

26.08.2025

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

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To

1. The Motor Accident Claims Tribunal /
Special Subordinate Court, Thanjavur.

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

K.MURALI SHANKAR,J.

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