BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 24.07.2025

CORAM:

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

C.M.A.(MD)No.716 of 2025
and
C.M.P.(MD)No.11389 of 2025

M/s.Bharati AXA GIC Ltd.,
Now company merged with
ICICI Lombard GIC Ltd.,
represented by its Manager
No.5, United Arcade, 3rd Floor,
Annamalai Nagar, Kanur Byepass Road,
Tiruchirappalli District – 620018. ... Appellant

Vs.

1.Sagunthala

2.Elayamurugan

3.Elavarasan

4.Elavarasi

5.Thirumoorthy ... Respondents

Prayer : This Civil Miscellaneous Appeal has been filed under Section 173 of Motor Vehicles Act, to set aside the award made in M.C.O.P.No. 1084 of 2022 dated 21.06.2024 (on the file of the Motor Accident Claims Tribunal, Special District Judge No.II, Tiruchirapalli).

For Appellant : Mr.N.Shyllappakalyan

For Respondents : Mr.N.Sudhagar Nagaraj for R1 to R4

JUDGMENT

The Civil Miscellaneous Appeal has been preferred by the Insurance Company against the award dated 21.06.2024 passed in M.C.O.P.No.1084 of 2022 by the Special District Judge No.II dealing with MCOP cases / Motor Accident Claims Tribunal, Tiruchirappalli.

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

On 04.02.2022 at about 18.30 hours, the deceased Elangovan was waiting at the extreme left side in front of Parameswari Maligai shop of Kumulur Main Road in order to cross the road and at that time, the fifth respondent's vehicle Hero Honda Splender Plus bearing Registration No.TN-61-S-3369, came from South to North in a rash and negligent manner, and dashed against the deceased, as a result, the deceased sustained grievous injuries and despite treatment, he died on 07.04.2022.

Then the claim petition was filed by the respondents 1 to 4 seeking compensation of Rs.30,00,000/-.

3. The learned trial Judge, after considering the evidence, both oral and documentary, passed the impugned award dated 21.06.2024, holding that the two wheeler rider was responsible for the accident and directed the appellant to pay the award amount of Rs.19,35,239/- with interest at 7.5% per annum to the respondents 1 to 4 and then to recover the same from the fifth respondent. Aggrieved by the said award, the appellant has come up with the present appeal.

4. It is pertinent to note that the appellant has challenged the finding of the Tribunal on the following grounds:

4.1. The learned counsel appearing for the appellant would submit that since the terms and conditions of the Policy was violated by allowing the person to drive the two wheeler without valid driving license, the appellant cannot be fastened with the liability of pay and recover. That after the amendment to the Motor Vehicles Act by the Central Act 32 of 2019 and after deletion of proviso to Section 149(4) of the Motor Vehicles Act, the Tribunal cannot order pay and recovery, that the respondents 1 to

4 have not produced any iota of evidence to prove the income of the deceased and that the compensation awarded under the other heads are on higher side and are unreasonable.

5. It is not in dispute that the fifth respondent is the owner of the offending vehicle and the same was insured with the appellant and that the insurance policy was in force on the date of accident. It is also not in dispute that the rider of the offending vehicle was not possessing valid driving licence at the time of accident.

6**. 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 renumbered 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 two wheeler rider had no valid driving license to drive the two wheeler at that time?

(iii) Whether the amount awarded under the various other heads are just and proper and is in accordance with law?

7. The issue raised in this appeal with regard to pay and recovery 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:

> *"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:-*
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> > *"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."*
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> *(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."

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.

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.

8. Now turning to the quantum of compensation, though the respondents 1 to 4 have taken a stand that the deceased was doing agricultural work and was earning a sum of Rs.25,000/- per month, they

have not produced any evidence to prove his income. In the absence of any evidence to show the income of the deceased, the Tribunal has rightly fixed the monthly income of the deceased at Rs.15,000/- and as such, the same cannot be found fault with. The Tribunal, by relying on the postmortem certificate of the deceased, has fixed the age of the deceased as 55 years on the date of accident and the same is not disputed by the appellant. The Tribunal, by relying the judgment of the Hon'ble Supreme Court in ***National Insurance Company Limited Vs. Pranay Sethi and others*** reported in ***2017 (2) TN MAC 609 (SC)*** and taking note of the age of the deceased, has added 10% of the income towards future prospects and arrived the monthly income at Rs.16,500/-. As per the dictum laid down by the Hon'ble Supreme Court in ***Sarla Verma and others Vs. Delhi Transport Corporation and another*** reported in ***2009 (2) TN MAC 1 (SC),*** the Tribunal has rightly deducted 1/4th of the income towards personal and living expenses of the deceased and rightly applied multiplier 11 and arrived the loss of dependency at Rs.16,33,500/-.

9. Coming to the dispute regarding award of compensation under the head of pain and suffering, since the deceased remained in hospital for

4 days under shadow of death, he must have suffered pain and suffering, awarding Rs.40,000/- towards pain and suffering is not excessive. Considering the fact that the deceased was under treatment for 4 days in the hospital, the Tribunal has rightly awarded Rs.5,000/- for transportation expenses and Rs.5,000/- for attender charges.

10. The Tribunal has rightly awarded Rs.48,400/- to the first respondent for loss of spousal consortium and Rs.48,400/- each to the respondents 2 to 4 for loss of parental consortium. The Tribunal, taking note of the Ex.P5-medical bill, has rightly granted Rs.21,839/- towards medical expenses. The Tribunal has also awarded Rs.18,150/- for loss of estate and Rs.18,150/- for funeral expenses under the conventional heads.

11. Considering the above, this Court concludes that the appeal is devoid of merits and the same is liable to be dismissed.

12. In the result, this Civil Miscellaneous Appeal stands dismissed and the award dated 21.06.2024 passed in M.C.O.P.No.1084 of 2022 on the file of Motor Accident Claims Tribunal / Special District Court No.II

to deal with MCOP cases, Tiruchirappalli, is confirmed. The appellant is directed to deposit the entire award amount with interest and costs, from the date of petition till the date of payment, excluding the default period, if any, to the credit of M.C.O.P.No.1084 of 2022 on the file of the Motor Accident Claims Tribunal / Special District Court No.II to deal with MCOP cases, Tiruchirappalli, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment. Thereafter, the appellant is permitted to recover the same from the fifth respondent. On such deposit being made, the respondents 1 to 4 are permitted to withdraw the amount along with accrued interest and costs as per the apportionment fixed by the Tribunal, less amount already withdrawn, if any, on due application before the Tribunal. Consequently, connected Miscellaneous Petition is closed. No costs.

24.07.2025

NCC : Yes/No
Index : Yes/No
Internet: Yes/No
csm

To:

1.The Special District Judge No.II to deal with MCOP cases,
Motor Accident Claims Tribunal,
Tiruchirappalli.

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

K.K.RAMAKRISHNAN,J.

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Dated : 24.07.2025