BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05.11.2025

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THE HONOURABLE MS.JUSTICE R.POORNIMA

C.M.A.(MD)No.1182 of 2024
and
CMP(MD)No.12437 of 2024
and
C.M.P(MD)No.11101 of 2025

The Branch Manager,
National Insurance Company ltd.,
5A, Sub Collector Office Road,
Opposite Old District Court,
Y.M.R.Patti, Dindigul. : Appellant/2nd Respondent

Vs.

1.Arumugam
2.Palaniammal : Respondents 1 & 2/ Petitioners
3.N.Muthukalai : 3rd Respondent/1st Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the award made in M.C.O.P.No. 228 of 2021, dated 30.04.2024 on the file of the Motor Accident Claims Tribunal / Principal District Court, Dindigul allow this appeal.

For Appellant : Mr.N.S.Ramakrishna Dass

For R1 & R2 : Mr.V.Dinesh Kumar

For R3 : Mr.V.Sudalayandi

JUDGMENT

Challenging the award, dated 30.04.2024 passed in MCOP No.228 of 2021 by the Motor Accident Claims Tribunal / Principal District Court, Dindigul, this Civil Miscellaneous Appeal is preferred by the Appellant.

2.**Brief facts of the petition filed by the claimants before the Tribunal are as follows**:-

On 03.06.2020 at about 1.15 pm the deceased Chinnaiya @ Sri ride a two-wheeler along with his friend Balasubramanian on his Hero Honda Two-wheeler bearing No.TN-59-AX-7431 when they were travelling from west to east near Kesampatti Kizhkki Lake, at that time TN 59 BU 4879 Hero Splendor Plus Drum came in the opposite direction in a high speed. The driver of the Hero Splendor drove the vehicle in a rash and negligent manner without blowing the horn on the bend road and dashed against the deceased Chinnaiya vehicle. In the accident, Chinnaiya got multiple injuries all over the body and immediately, he was taken to the Mellur Government Hospital for treatment and the doctor declared that he died on the way to the hospital. Over the occurrence, a case in Crime No.340 of 2020 was registered by the Melavalavu Police Station for the offence under Sections 279, 337 and 304(A) IPC against rider of the two wheeler TN-59-BU-4879.

3. At the time of accident, the deceased was aged about 22 years and he was working as Electrician and getting Rs.20,000/- per month as salary. The claimants being the legal heirs of the deceased filed a claim petition seeking compensation of Rs.20,00,000/- for the death of the deceased Chinnaiya @ Sri.

4. Before the Tribunal, the third respondent, who is the owner of the two-wheeler TN-59-BU-4879 filed a counter denied the manner of accident by stating that the accident occurred due to the rash and negligent driving of the deceased, who has ride the vehicle. It was also stated that the rider of the Hero Honda Splendor TN-59-BU-4879 was also sustained injury in the accident and he was taken to the hospital. Subsequently he was also died on 04.06.2020. Without proper investigation, a false case has been foisted against the driver of the Hero Honda Splendor.

5. The Insurance Companies filed a counter affidavit denying the manner of the accident as alleged in the claim petition and also disputing their liability to pay the compensation contending that the accident occurred due to carelessness and negligent act of the deceased as well as the the rider of the offending vehicle. They further contended that the rider of the offending vehicle did not possess a valid driving licence at the time of the occurrence.

6. During trial, on the side of the claimants, 2 witnesses were examined as P.W.1 and P.W2 and 9 documents were marked as Exs.P1 to P9. On the side of the respondents, 4 witnesses were examined as RW1 to RW4 and 9 documents were marked as Exs.R1 to R9.

7. Upon consideration of the materials available on record, both oral and documentary, the Tribunal awarded a total sum of **Rs.15,62,000/-** as compensation and also directed the second respondent / Insurance Company to pay the award amount along with interest @ 7.5% pa.

8. Aggrieved by the said award, the National Insurance Company has filed the present appeal contending that the first respondent

rider of the offending vehicle did not possess a valid driving licence at the time of accident and that the accident occurred due to the contributory negligence of both the deceased and therefore they cannot be fastened with liability.

9. It is the further grievance of the appellant that the Tribunal ought to have directed the appellant to satisfy the award amount at the first instance and then recover it from the owner of the offending vehicle, in view of the terms and condition of violation of policy condition.

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

11. Now, this Court has to decide whether the order of the Tribunal is sustainable or liable to be set aside?

12. The dispute is with regard to liability. Even though, so many grounds were raised in the memorandum of appeal, during the argument the only grievance putforth by the appellant is that the Tribunal ought to have exonerated them from the liability on the ground

that the driver of the offending vehicle was not having a valid driving license and thereby violated the policy condition and prays that the Civil Miscellaneous Appeal has to be allowed.

13. On perusal of the records, this Court finds that R.W.1, who is the staff of Regional Transport Office stated that no driving licence had been issued in favour of the rider of the offending vehicle namely Anandharaj. Furthermore, R.W.1 an Administrative Officer of the appellant Insurance Company deposed that the rider of the offending vehicle did not possess a valid driving licence at the time of accident. Further clarified that the Insurance Company had issued a legal notice to the first respondent further directing him to produce the driving licence of Thiru.Anandharaj under Ex.R8 as evident by the acknowledgment card Ex.R9. However, the first respondent failed to produce the driving licence. Without properly appreciating the above evidence, the Tribunal erroneously concluded that the insurance company had not proved that the rider of the offending vehicle did not possess a valid driving licence and consequently fastened the liability under the insurance company. Ex.R5 is the Motor Vehicle Inspector's report issued on 26.06.2020 wherein it is clearly stated that the rider of the offending vehicle involved in the accident had not produce the license details.

14. Since, the driver failed to produce the driving licence before the Motor Vehicle Inspector, and the owner of the offending vehicle also failed to establish that the driver possessed a valid licence, this Court infers that the rider of the offending vehicle was not holding a valid licence at the time of accident, thereby violating the policy condition; The first respondent, being the owner vicariously liable for the negligent act of his servant, the driver. However since the motor cycle belonging to the first respondent, was insured with the appellant Insurance Company and the policy was in force at the time of the accident. It is well settled that when the insurance policy is in force, a third party cannot be made to suffer for the negligent act of the driver of the insured vehicle merely on the ground that the driver had violated a policy condition. The liability of the insurance towards third parties remain unaffected by such internal breach between the insured and the insurer.

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.

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

17. In view of that, the Civil Miscellaneous Appeal is **partly allowed.** The appellant Insurance Company is directed to deposit the entire award amount together with accrued interest and costs, within a period of eight weeks from the date of receipt of a copy of this order, if not already deposited. On such deposit, the respondents 1 & 2 / claimants are permitted to withdraw the entire amount equally, by filing any formal petition before the Tribunal. The Appellant Insurance Company is at liberty to recover the award amount from insured as per the law laid

down by the Hon'ble Supreme Court in **Nanjappan's case [(2004)13 SCC 224]**. No costs. Consequently, connected Miscellaneous Petitions are closed.

05.11.2025

Index : Yes / No
Internet : Yes / No
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To,

1.The Motor Accident Claims Tribunal,
Principal District Court, Dindigul.

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

R.POORNIMA, J.

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Pre-Delivery Judgment in
C.M.A.(MD)No.1182 of 2024

05.11.2025