



C.M.A.Nos.2736 and 2740 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 06.02.2026

Pronounced on : 16.03.2026

CORAM

THE HONOURABLE MRS.JUSTICE K.GOVINDARAJAN THILAKAVADI

C.M.A.Nos.2736 and 2740 of 2025

Mano Gopalakrishnan

...Appellant in C.M.A. No.2736/2025

Cause title accepted vide Court order dated 14.07.2025 made in
CMP No.1535/25 inCMA Sr. No.82641 of 2025.

Gopalakrishnan Kandhasamy

...Appellant in C.M.A. No.2740/2025

Vs.

1. Kalimuthu

2. The Branch Manager,

Cholamandalam MS General Insurance Company,

No.13(2), Police Line Street, Valipalayam,

Tiruppur 641 601

...Respondents in both the appeals

Common Prayer: These Civil Miscellaneous Appeals are filed under Section 173 of Motor Vehicles Act,1988, against the Common Award dated 10.01.2025 made in M.C.O.P. Nos.987 and 991 of 2019 on the file of the Exclusive Motor Accident Claims Tribunal, Tiruppur.



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Appearance in both the appeals

For Appellant : Mr.D.K.Ilamparithi
For Respondents : Mr. M.B. Raghavan for R2
R1 - No appearance

COMMON JUDGMENT

These appeals, under Section 173 of Motor Vehicles Act, have been filed by the appellant/petitioner for enhancement of the sum awarded in the judgment and decree dated 10.01.2025 made in M.C.O.P. Nos.987 and 991 of 2019 on the file of the Exclusive Motor Accident Claims Tribunal, Tiruppur.

2. For the sake of convenience, the parties are referred to as per their ranking in the Tribunal.

3. Shortly stated, on 27.02.2019, at about 16.30 hours, when the petitioner in MCOP No.991/2019 was riding the motorcycle bearing Registration No.TN 41 Q 4552 with his son (claimant in MCOP No.987/2019) as pillion rider, opposite to Rasakkalpalayam Sennamman Kovil, on Pollachi to Palladam Road, a Light Goods Vehicle (LGV) bearing Registration No. TN 41 AK 0871 driven by the 1st respondent in a rash and negligent manner hit the motorcycle driven by the petitioner in MCOP No.991/2019, as a result of



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which, the petitioner in the both the petitions have suffered grievous injuries.

They preferred claim petitions before the Motor Accident Claims Tribunal, Tirupur, in MCOP No. 987/2019 (filed by Minor Mano Gopalakrishnan) and MCOP No.991/2019 (filed by Gopalakrishnan Kandhasamy) seeking compensation of Rs.30,00,000/- each for the injuries sustained by them in the said accident.

4. The Claim petitions were resisted by the 2nd respondent / Insurance Company by stating that the accident occurred only due to the rash and negligent driving of the petitioner in MCOP No.991/2019 and that the 1st respondent did not possess effective driving license at the time of accident and hence the 2nd respondent is not liable to pay any compensation to the petitioners.

5. The Claims Tribunal framed necessary issues and came to the conclusion that the accident occurred due to the negligence of the 1st respondent / owner cum driver of the offending vehicle. Since the 1st respondent drove the vehicle without an effective driving license, which is in violation of the terms of Insurance Policy and the provisions of the MV Act,



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the Tribunal exonerated the Insurance Company from the liability and directed the 1st respondent / owner of the vehicle to pay a compensation of Rs.6,20,808/- to the petitioner in MCOP No.987/2019 and a sum of Rs.1,91,000/- to the petitioner in MCOP No.991/2019 together with interest at the rate of 7.5% per annum from the date of the claim petition till the date of realisation.

6. Questioning the dismissal of the claim as against the 2nd respondent / Insurance Company and seeking enhancement of compensation, the present Civil Miscellaneous Appeals are filed by the petitioner in both the MCOPs.

7. The learned counsel for the appellant in both the appeals would contend that, the Tribunal erred in dismissing the claim as against the 2nd respondent / Insurance Company merely on the ground that the 1st respondent, being the owner-cum-driver of the offending vehicle, did not possess a valid driving license to operate the said vehicle at the time of accident. The learned counsel for the appellant, relying on the decision of the Hon'ble Apex Court in the case of *Singh Ram vs. Nirmala & others (AIR 2018 SC 1290)* and the **Judgement of this Court dated 17.03.2025 in C.M.A. No.413 of 2025**



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(T.Vinoth Kumar vs. S.Sekar and another), submitted that the Tribunal

committed an error in exonerating the Insurance Company, since the driver of the offending vehicle did not possess a valid driving license at the time of accident. He would further submit that the Insurance Company is liable to the third party victim and recover the award amount paid by it from the insured in case of breach of policy conditions.

7.1. The learned counsel for the appellant would further submit that the petitioner in MCOP No.987/2019 sustained severe and permanent injuries, including head with facial injury, right frontal and right parietal EFH, comminuted fracture of right frontal and parietal bone and the petitioner in MCOP No.991 of 2019 sustained severe and permanent injuries, including a Left Frontal Bone injury and the Tiruppur District Medical Board issued Ex.C1 disability certificate assessing the permanent disability of the petitioner in MCOP No.987/2019 as 75% and Ex.C2 disability certificate assessing the permanent disability of the petitioner in MCOP No.991/2019 as 45%. However, the Tribunal, without taking into consideration the medical evidence, erroneously determined that the petitioner in MCOP No.987/2019 has suffered 20% permanent disability and the petitioner in MCOP



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No.991/2019 has suffered 10% permanent disability . He would further submit that the Tribunal had applied percentage method with Rs.7,000/- for every percent of disability, which is very meagre, and the same has to be suitably enhanced. It is further submitted that the Tribunal has not awarded just and reasonable compensation under the other heads. Hence, prayed for enhancement of compensation in the both the MCOPs.

8. On the other hand, the learned counsel for the 2nd respondent / Insurance Company, relying on the judgment of the Hon'ble Apex Court dated 24.04.2025, *in SLP (Civil) Nos.11757 and 11758 of 2025 (Mahaveer vs. Branch Manager, United India Insurance Company Limited)* submitted that, the failure of the insured to have a valid driving license at the time of the accident would amount to fundamental breach of policy and therefore, the Insurance Company is not liable to pay any compensation to the claimant and hence, the Tribunal rightly exonerated the Insurance Company from liability, which requires any interference by this Court.

9. Heard on both sides. Records perused.



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10. The liability of the Insurance Company to pay the third party victims and recover the award amount paid by it from the insured in case of breach of policy condition has been very well explained by the Apex Court in ***National Insurance Co. Ltd., vs. Swaran Singh***. The relevant observation of the Apex Court reads as follows:-

“96. It is, therefore, evident from the discussions made herein before that the liability of the insurance company to satisfy the decree at the first instance and to recover the awarded amount from the owner or driver thereof has been holding the field for a long time.

97. Apart from the reasons stated herein before the doctrine of stare decisis persuades us not to deviate from the said principle.

99. We may, however, hasten to add that the Tribunal and the court must, however, exercise their jurisdiction to issue such a direction upon consideration of the facts and circumstances of each case and in the event such a direction has been issued despite arriving at a finding of fact to the effect that the insurer has been able to establish that the insured has committed a breach of contract of insurance as envisaged under sub-clause (ii) of clause (a) of sub-section (2) of Section 149 of the Act, the insurance company shall be



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entitled to realise the awarded amount from the owner or driver of the vehicle, as the case may be, in execution of the same award having regard to the provisions of Sections 165 and 168 of the Act . However, in the event, having regard to the limited scope of inquiry in the proceedings before the claims Tribunal it had not been able to do so, the insurance company may initiate a separate action therefor against the owner or the driver of the vehicle or both, as the case may be. Those exceptional cases may arise when the evidence becomes available to or comes to the notice of the insurer at a subsequent stage or for one reason or the other, the insurer was not given opportunity to defend at all. Such a course of action may also be resorted when a fraud or collusion between the victim and the owner of the vehicle is detected or comes to the knowledge of the insurer at a later stage.

100. Although, as noticed herein before, there are certain special leave petitions wherein the persons having the vehicles at the time when the accidents took place did not hold any licence at all, in the facts and circumstances of the case, we do not intend to set aside the said awards. Such awards may also be satisfied by the petitioners



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herein subject to their right to recover the same from the owners of the vehicles in the manner laid down therein. But this order may not be considered as a precedent.”

10.1. After holding so in Paragraph No.102 of the judgment, the Apex Court summarised it's finding, which reads as follows:-

“102. The summary of our findings to the various issues as raised in these petitions are as follows:

(i) Chapter XI of the Motor Vehicles Act, 1988 providing compulsory insurance of vehicles against third party risks is a social welfare legislation to extend relief by compensation to victims of accidents caused by use of motor vehicles. The provisions of compulsory insurance coverage of all vehicles are with this paramount object and the provisions of the Act have to be so interpreted as to effectuate the said object.

(ii) Insurer is entitled to raise a defence in a claim petition filed under Section 163-A or Section 166 of the Motor Vehicles Act, 1988 inter alia, in terms of Section 149(2)(a)(ii) of the said Act.



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(iii) *The breach of policy conditions e.g., disqualification of*

driver or invalid driving licence of the driver, as contained in sub-section (2)(a)(ii) of section 149, have to be proved to have been committed by the insured for avoiding liability by the insurer. Mere absence, fake or invalid driving licence or disqualification of the driver for driving at the relevant time, are not in themselves defences available to the insurer against either the insured or the third parties. To avoid its liability towards insured, the insurer has to prove that the insured was guilty of negligence and failed to exercise reasonable care in the matter of fulfilling the condition of the policy regarding use of vehicles by duly licensed driver or one who was not disqualified to drive at the relevant time.

(iv) *The insurance companies are, however, with a view to avoid their liability must not only establish the available defence(s) raised in the said proceedings but must also establish 'breach' on the part of the owner of the vehicle; the burden of proof wherefor would be on them.*

(v) *The court cannot lay down any criteria as to how said burden would be discharged, inasmuch as the same would depend*



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upon the facts and circumstance of each case.

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(vi) Even where the insurer is able to prove breach on the part of the insured concerning the policy condition regarding holding of a valid licence by the driver or his qualification to drive during the relevant period, the insurer would not be allowed to avoid its liability towards insured unless the said breach or breaches on the condition of driving licence is/ are so fundamental as are found to have contributed to the cause of the accident. The Tribunals in interpreting the policy conditions would apply "the rule of main purpose" and the concept of "fundamental breach" to allow defences available to the insurer under section 149(2) of the Act.

(vii) The question as to whether the owner has taken reasonable care to find out as to whether the driving licence produced by the driver, (a fake one or otherwise), does not fulfil the requirements of law or not will have to be determined in each case.

(viii) If a vehicle at the time of accident was driven by a person having a learner's licence, the insurance companies would be liable to satisfy the decree.

(ix) The Claims Tribunal constituted under Section 165 read



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with Section 168 is empowered to adjudicate all claims in respect of the accidents involving death or bodily injury or damage to property of third party arising from use of motor vehicle. The said power of the tribunal is not restricted to decide the claims, inter se, between claimant or claimants on one side and insured, insurer and driver on the other. In the course of adjudicating the claim for compensation and to decide the availability of defence or defences to the insurer, the Tribunal has necessarily the power and jurisdiction to decide disputes inter se between insurer and the insured. The decision rendered on the claims and disputes inter se between the insurer and insured in the course of adjudication of claim for compensation by the claimants and the award made thereon is enforceable and executable in the same manner as provided in Section 174 of the Act for enforcement and execution of the award in favour of the claimants.

(x) Where on adjudication of the claim under the Act the Tribunal arrives at a conclusion that the insurer has satisfactorily proved its defence in accordance with the provisions of section 149(2) read with sub-section (7), as interpreted by this Court above,



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the Tribunal can direct that the insurer is liable to be reimbursed by the insured for the compensation and other amounts which it has been compelled to pay to the third party under the award of the Tribunal. Such determination of the claim by the Tribunal will be enforceable and the money found due to the insurer from the insured will be recoverable on a certificate issued by the Tribunal to the Collector in the same manner under Section 174 of the Act as arrears of land revenue. The certificate will be issued for the recovery as arrears of land revenue only if, as required by subsection (3) of Section 168 of the Act the insured fails to deposit the amount awarded in favour of the insurer within thirty days from the date of announcement of the award by the Tribunal.

(xi) The provisions contained in sub-section (4) with proviso thereunder and sub-section (5) which are intended to cover specified contingencies mentioned therein to enable the insurer to recover amount paid under the contract of insurance on behalf of the insured can be taken recourse of by the Tribunal and be extended to claims and defences of insurer against insured by relegating them to the remedy before regular court in cases where on given facts and



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circumstances adjudication of their claims inter se might delay the

adjudication of the claims of the victims.”

10.2. A close reading of the above judgment would make it clear that mere breach of policy condition by the insured like disqualification of the driver, invalid driving licence etc., are not by themselves defences available to the insurer against either the insured or the third party. To avoid its liability towards insured, the insurer has to prove that the insured was guilty of negligence and failed to exercise reasonable care in the matter of fulfilling the conditions of policy. In Paragraph No.102.(vi), it is clearly mentioned that the insurer would not be allowed to avoid its liability towards insured unless the said breach or breaches of the condition of driving licence is/are so fundamental as are found to have contributed to the cause of the accident.

10.3. A close scrutiny of judgment of Apex Court in **Swaran Singh case** would make it clear that the insurer is not entitled to deny its liability towards insured unless the breach is so fundamental and also contributed to the cause of the accident. It means in case of fundamental breach of condition, the insurer is only entitled to avoid its liability towards the insured not its liability



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towards the third parties under Section 149 (1) of the Motor Vehicles Act, 1988. The Motor Vehicles Act is a Social Welfare Legislation aimed at giving some compensation to the victims of road accident.

10.4. Failure of the insured to produce driving licence or failure of the insured to hold proper driving licence is not the fault of the third party, who suffered at the hands of the rash and negligent driving of the insured. The provisions of the welfare legislation has to be interpreted so as to achieve the object of the enactment (providing compensation to the road accident victims). Therefore, the Apex Court in the above mentioned case said that in cases of breach of policy conditions, insurer can be directed to pay the award amount to the innocent third parties and recover the same from the insured, who committed breach of policy conditions. Only in cases where there is a fraud or collusion between the third party and the insured, the Insurance Company can get its liability exonerated as held by the Apex Court in Swaran Singh case.

10.5. The decision of the Apex Court in Swaran Singh case was followed and reiterated by it in **Singh Ram vs. Nirmala case reported in 2018 (1) TN MAC 704 (SC)**. In Singh Ram case, the owner produced the



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driving licence and the same was found to be fake, thereafter, he filed another

driving licence and the same was found to be expired long before the accident.

The Apex Court after recording the owner's failure to take reasonable care, affirmed the pay and recovery order passed by the High Court.

10.6. In the light of the judgment of the Apex Court in Swaran Singh and Singh Ram cases cited supra, merely because, the 1st respondent did not possess valid driving licence, the insurer cannot be exonerated of its liability towards the third party claimant.

10.7. Even assuming, it enables the Insurance Company to avoid its duty towards the insured as held in Swaran Singh case by virtue of Section 149 of the Motor Vehicles Act, 1988 the 2nd respondent/Insurance Company shall pay the amount to the innocent third party claimant and the same can be recovered from the insured. Therefore, I set aside the finding of the Tribunal exonerating the Insurance Company from its liability of paying the amount to the claimant. However, the insurer is entitled to recover the amount paid by it to the claimant from the 1st respondent/insured.



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11. According to the learned counsel for the appellant in both the appeals, the Tribunal failed to note that the Tiruppur District Medical Board, after evaluating the appellant in both the appeals in accordance with established medical and legal criteria, has determined the extent of their disability. On perusing Ex.C1 Disability Certificate, it is seen that, in M.C.O.P. No.987/2019, the petitioner's disability has been certified as 75% partial permanent. In the absence of evidence brought on record against the findings of the Tiruppur District Medical Board regarding the extent of disability suffered by the appellant in CMA No.2736 of 2025, the Tribunal went wrong in determining the extent of disability from 75% to 20%. The Tribunal failed to consider the medical evidence on record, which establishes that the petitioner in M.C.O.P. No.987/2019 sustained severe and permanent injuries, including head with facial injury, right frontal and right parietal EFH, comminuted fracture of right frontal and parietal bone. Further the Disability Certificate marked as Ex.C1 issued by the Tiruppur Medical Board and the Discharge Summary marked as Ex.P10 and the wound certificate marked as Ex.P11 issued by One Care Medical Centre confirms the injuries sustained by the minor petitioner, which has led to the assessment of the Medical Board that the petitioner has suffered 75% permanent disability. Despite the above



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medical evidence, the Tribunal has fixed 20% permanent disability, which is found to be perverse and legally unsustainable. Therefore, this Court deems it fit to fix the disability at 45%.

11.1. Similarly, the petitioner in M.C.O.P. No.991/2019 sustained severe and permanent injuries, including a Left Frontal Bone injury. Further the Disability Certificate marked as Ex.C2 issued by the Tiruppur Medical Board and the Discharge Summary marked as Ex.P4 issued by Coimbatore Medical College Hospital and the wound certificate marked as Ex.P6 issued by Pollachi Government Hospital, confirms the injuries sustained by the petitioner, which has led to the assessment of the Medical Board that the petitioner has suffered 45% permanent disability. Despite the above medical evidence, the Tribunal has fixed 10% permanent disability, which is found to be perverse. Therefore, this Court deems it fit to fix the disability at 25%. However, the amount fixed by the Tribunal as Rs.7,000/- per percentage of disability is reasonable.

12. The following tabular column would show the amount awarded by the Tribunal and the enhanced amount awarded by this Court.



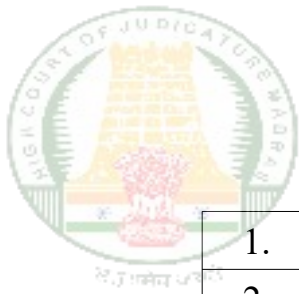
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C.M.A. No.2736 of 2025 / M.C.O.P. No.987 of 2019

S.No.	Description	Amount awarded by Tribunal (Rs.)	Amount awarded by this Court (Rs.)	Award confirmed / enhanced/ granted
1.	Compensation for partial permanent disability	1,40,000/- (20% x 7000)	3,15,000/- (45% x 7000)	Enhanced
2.	Transportation	10,000/-	10,000/-	Confirmed
3.	Extra nourishment	25,000/-	25,000/-	Confirmed
4.	Attender charges	20,000/-	20,000/-	Confirmed
5.	Damages towards his cloths and articles	5,000/-	5,000/-	confirmed
6.	Expenses incurred for treatment and medicines	3,45,808/-	3,45,808/-	Confirmed
7.	Pain and sufferings and loss of amenities	75,000/-	75,000/-	Confirmed
	Total	6,20,808/-	7,95,808/-	Enhanced by Rs.1,75,000/-

C.M.A. No.2740 of 2025 / M.C.O.P. No.991 of 2019

S.No.	Description	Amount awarded by Tribunal (Rs.)	Amount awarded by this Court (Rs.)	Award confirmed / enhanced/ granted
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1.	Loss of income	30,000/-	30,000/-	confirmed
2.	Compensation for partial permanent disability	70,000/- (10% x 7000)	1,75,000/- (25% x 7000)	Enhanced
3.	Transportation and attender charges	10,000/-	10,000/-	Confirmed
4.	Extra nourishment	25,000/-	25,000/-	Confirmed
5.	Damages towards his cloths and articles	5,000/-	5,000/-	confirmed
6.	Pain and sufferings and loss of amenities	50,000/-	50,000/-	Confirmed
7.	Medical bills	1,000/-	1,000/-	Confirmed
	Total	1,91,000/-	2,96,000/-	Enhanced by Rs.1,05,000/-

13. In the result,

- i. The Civil Miscellaneous Appeals are partly allowed. No costs.
- ii. The compensation awarded by the Tribunal in M.C.O.P. No.987 of 2019 (CMA No.2736/2025) is enhanced to **Rs.7,95,808/-** from **Rs.6,20,808/-**.
- iii. The compensation awarded by the Tribunal in M.C.O.P. No.991 of 2019 (CMA No.2740/2025) is enhanced to **Rs.2,96,000/-** from **Rs.1,91,000/-**.
- iv. The appellant/petitioner in both the appeals are directed to pay court fee for the enhanced compensation amount, if any, and the Registry is directed to draft the decree only after receipt of Court fee.



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v.The second respondent/Insurance Company is directed to deposit the enhanced compensation amount, as determined by this Court in the above appeals together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit, **at the first instance**, to the credit of respective M.C.O.Ps. on the file of the Exclusive Motor Accident Claims Tribunal, Tiruppur, within a period of **four weeks** from the date of receipt of a copy of this order/uploading of this order, **and then recover the same from the 1st respondent / owner of the offending vehicle.**

vi.The appellant/petitioner in both the appeals are not entitled to claim any interest for the default period in filing this appeal.

vii.On such deposit being made, the appellant/petitioner in both the appeals are at liberty to withdraw the same, after following due process of law.

16.03.2026

bga

Internet:Yes/No

Index:Yes/No

Speaking/Non-speaking order

21/23



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- To
1. The Presiding Officer,
Exclusive Motor Accident Claims Tribunal, Tiruppur
 2. The Branch Manager,
Cholamandalam MS General Insurance Company,
No.13(2), Police Line Street, Valipalayam,
Tiruppur 641 601



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K.GOVINDARAJAN THILAKAVADI, J.

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**Pre-delivery Common judgment in
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