



C.M.A.(MD)No.1161 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
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Reserved on : 16.04.2026

Pronounced on : 23.06.2026

CORAM:

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

C.M.A.(MD)No.1161 of 2023

and

C.M.P.(MD)No.15499 of 2023

Branch Manager,
M/s.Iffco-Tokio General Insurance
Company Ltd.,
Madurai.

... Appellant/
Respondent No.2

Vs.

1.K.Velliayammal

2.K.Thavamani

3.M.Lakshmi

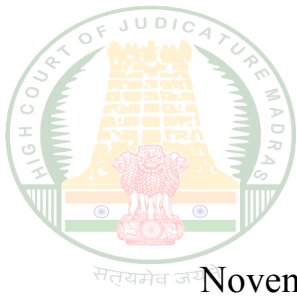
4.K.Alaguraja

... Respondents No.
1 to 4/Petitioners

5.K.Muthuraja

... Respondent No.5/
Respondent No.1

Prayer : This Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the judgment and decree dated 29th



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November, 2022 passed in M.C.O.P.No.1025 of 2019 on the file of the 5th Additional District and Sessions Judge (Motor Accident Claims Tribunal), Madurai by allowing this appeal.

For Appellant : Mr.V.Sakthivel

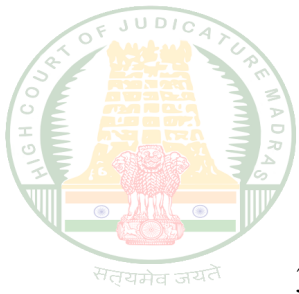
For Respondents : Mr.K.Kumaravel for R1 to R4

No appearance for R5

JUDGMENT

The Civil Miscellaneous Appeal is directed against the award made in M.C.O.P.No.1025 of 2019 dated 29.11.2022 on the file of the Motor Accident Claims Tribunal / V Additional District and Sessions Court, Madurai.

2. The appellant / insurer, who was mulcted with liability to pay compensation of Rs.4,79,500/- (Rupees Four Lakhs Seventy Nine Thousand and Five Hundred only) with interest at 7.5% per annum and costs payable to the respondents 1 to 4 / claimants for the death of Kamatchi, consequent to an accident occurred on 19.04.2019, challenged the liability fastened on it.



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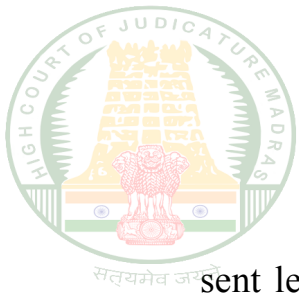
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3. When the matter was taken up for final disposal, the learned counsel appearing for the appellant / insurer would mainly contend that they are disputing the liability mulcted on it and that they are not challenging the quantum of compensation.

4. For the sake of convenience and brevity, the parties herein after will be referred to as per their status / ranking in the Tribunal.

5. The Tribunal, considering the evidence available on record, by holding that the accident was occurred only due to the rash and negligent riding of the rider of the first respondent's two wheeler bearing Registration No.TN-59-BZ-7274, directed the respondents 1 and 2 to pay the compensation with interest and costs to the claimants.

6. The learned counsel appearing for the second respondent / insurer would mainly contend that the rider of the offending vehicle was not possessing valid driving license at the time of accident, that the second respondent / insurer had taken a specific defence in the counter statement and adduced evidence in this regard, that the second respondent / insurer



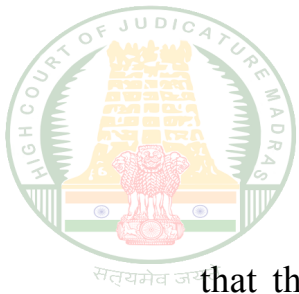
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sent legal notices on 16.10.2021 to the first respondent as well as to the rider of the two wheeler for production of driving license but they failed to produce the same, that the second respondent / insurer has also summoned and examined the official attached to the Regional Transport Office (RTO) of Madurai and they have informed that they have not issued any driving license to the rider of the two wheeler, that the Tribunal ought to have exonerated the second respondent / insurer from liability or atleast the Tribunal ought to have applied the doctrine of pay and recovery and that the entire liability mulcted on the second respondent / insurer is liable to be set aside.

7. The learned counsel appearing for the claimants would submit that the Tribunal, considering the fact that the second respondent / insurer has not proved that the rider of the two wheeler was not having any valid driving license at the relevant point of time, has proceeded to pass the impugned award against the respondents including the insurer and that therefore, the award does not warrant any interference.

8. The second respondent / insurer, in order to prove their defence



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that the rider of the two wheeler was not holding a valid and effective driving license at the time of accident, according to the learned counsel appearing for the second respondent / insurer, they had issued notices to the first respondent as well as to the rider of the two wheeler calling upon them to produce driving license and other relevant particulars. The second respondent / insurer has produced the copy of the legal notices dated 16.10.2021 and the acknowledgement cards under Ex.P4 series to show that the same was received by the first respondent and the rider Muthumani.

9. Admittedly, the first respondent had remained ex-parte before the Tribunal and neither the owner nor the rider produced the driving license at any stage of the proceedings.

10. The second respondent / insurer had also summoned and examined the concerned official from the Regional Transport Office (RTO) in support of their defence. No doubt, the learned counsel appearing for the claimants would contend that the Regional Transport Office (RTO) official was unable to give a definite opinion as to whether



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the rider possessed a valid driving licence, for want of complete particulars such as the date of birth and other identifying details of the driver. But the fact remains that, despite specific notices, the owner and the driver failed to produce the driving licence, which was a document exclusively within their knowledge and possession.

11. The learned counsel appearing for the second respondent / insurer placed reliance on the decision of the Hon'ble Division Bench of this Court in *National Insurance Company Limited, Bhavani Vs. Samiyathal and others* reported in *2004 (1) TN MAC (DB) 455*, wherein also, the insurance company had taken a similar defence of want of valid driving license on the date of accident and the insurance company, in an attempt to substantiate the same, summoned and examined an official from the Regional Transport Office and also produce the notice sent to the owner and driver of the vehicle for production of the driving license and their non-production and the relevant portion is extracted hereunder;

“6. With regard to the first contention that the driver was not possessed of a valid driving licence to drive the lorry, as rightly observed by the Tribunal, it is the Insurance Company to substantiate their plea by placing



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necessary materials that the driver was not having a valid driving licence on the date of the accident. In the counter statement, the Insurance Company has taken a plea that the driver was not having a valid licence to drive lorry. In support of their plea, the Insurance company has examined one Benchamin, an officer working in the Regional Office as R.W.1. He deposed before the Court that the lorry belonged to the second respondent/6th respondent herein. The said lorry was insured with their company and there was a valid policy for the period from 11-1-88 to 10-1-1989. A copy of the insurance policy has been marked as Ex.R-1. He admitted that as per the policy their liability to third parties is limited to Rs. 1,50,000/-, for which the owner has paid a premium of Rs. 240/-. He also deposed that no additional premium has been paid for unlimited liability. According to him, on the date of the accident, the lorry driver-Kandasamy/5th respondent herein was not having a valid licence to drive lorry. He further deposed that he (driver) was charge-sheeted for the same. According to him, their company had sent a notice-Ex.R-2 on 12-01-95 to the driver-Kandasamy to produce his driving licence. Ex.R-2 was returned un-served, and the returned cover has been marked as Ex.R-3. The insurance company had also sent a similar notice dated 29-5-95 to the owner of the lorry-Chinnasamy informing him about the non-production of driving licence by the



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driver and the violation of Motor Vehicles Act and policy conditions, and the same has been marked as Ex. R-4. Since the owner refused to receive the registered notice, the same was returned and the returned cover has been marked as Ex. R-5. It is true that R.W.1 has admitted that the Insurance company had not taken steps to ascertain from the Regional Transport Office, whether the lorry driver was issued with a driving licence to drive vehicle like lorry. Here, we have to note that after taking the stand in the counter statement that the driver was not possessed with a valid driving licence to drive a lorry, the insurance company has sent registered legal notices to the driver as well as the owner of the lorry. It is also brought to our notice that both the notices were returned un-served. As a matter of fact, the verification of the cover addressed to the owner, shows that he refused to receive the same. These materials would show that the insurance company had taken necessary steps to ascertain the fact whether the driver was having a valid driving licence or not? It is not either clear or explained as to why the driver and the owner did not respond to the notice issued by the insurance company. Likewise, they could have appeared before the Tribunal and informed their stand. However, before this Court, the owner of the lorry is represented by a counsel. Even before us, there is no explanation or information regarding the stand taken by the insurance



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company, namely, whether the driver was having a valid licence at the time of the accident to drive a lorry. In such a circumstance, as rightly contended by the learned counsel for the appellant/insurance company, though the appellant had discharged the initial responsibility in proving the fact that the driver of the vehicle had no valid driving licence, the said fact had not been discharged either by the claimants or by the owner of the vehicle. However, as observed by the Hon'ble Supreme Court in New India Assurance Co. Ltd., v. Kamla, reported in 2001 ACJ 843, the insurance company is liable to pay to the third parties irrespective of the fact that there has been any breach of violation of the policy conditions. In the event that there is a breach/violation of the policy conditions, the insurance company can recover from the insured the amount so paid to the third parties, if as per the policy conditions, the insurer had no liability to pay such sum. The Tribunal, by relying on the very same judgment, rightly directed the insurance company to pay the compensation amount to the claimants. However, the grievance of the appellant is that the Tribunal has not issued any direction to the Insurance Company to recover the amount from the insured. In (cited supra), the Supreme Court issued a direction to the Claims Tribunal to decide the question whether the insurance company is entitled to recover the amount from the owner of the vehicle on



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account of the vehicle being driven by a person who had no valid licence to drive the vehicle after affording opportunity to all the parties concerned. Learned counsel for the appellant has also relied on a Division Bench decision of this Court rendered in C.M.A. No. 627 of 1999 dated 03-08-2001 (M/s. National Insurance Co. Ltd. vs. Sakthi and others) (P. Sathasivam and A. Subbulakshmy, JJ). Before the Division Bench similar question was raised by the appellant/insurance company. After referring to the decision of the Supreme Court in New India Assurance Company, Shimla v. Kamla and others, 2001 ACJ 843, the Division Bench has held that, "the insurer and the insured are bound by the conditions enumerated in the policy and the insurer is not liable to the insured, if there is violation of any policy condition". The Division Bench has also held that "the insurer who is made statutorily liable to pay compensation to third parties on account of the certificate of insurance issued shall be entitled to recover from the insured the amount paid to third parties, if there was any breach or violation of the policy condition on account of the vehicle being driven without a valid licence." We are in respectful agreement with the above view. In the present case, we have already referred to the specific stand taken by the insurance company in their counter statement, the evidence of R.W.1, their officer, Exs. R-1 to R-5, and the conduct of the driver and the owner in not responding to



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the request of the insurance company for production of valid licence to drive a lorry. Accordingly, as observed by the Supreme Court in (cited supra), we hold that the insurance company is liable to pay compensation to the claimants-respondents 1 to 4 herein and on account of violation/breach of terms of insurance policy, namely, the lorry being driven without a valid licence, the appellant/insurance company is entitled to recover from the insured.”

The above decision is squarely applicable to the case on hand.

12. No doubt, it is true that the burden of establishing breach of policy condition initially lies upon the insurer but once the insurer produced the necessary materials to show that necessary efforts were taken to verify the license particulars and calls upon the insured and driver to produce the license, the burden gets shifted to the owner to produce the relevant records. In the case on hand, the first respondent has not offered any reason or explanation for their failure to produce the driving license. As rightly contended by the learned counsel appearing for the second respondent / insurer, the Tribunal has not considered the above aspects nor recorded any finding regarding the insurer's defence of absence of valid driving license.



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13. Considering the materials available on record, this Court is of the view that the second respondent / insurer has proved that there existed a breach of the policy condition relating to the absence of valid and effective driving license by the driver of the offending vehicle. But at the same time, having regard to the settled legal principles governing third-party risk under the Motor Vehicles Act, the respondents 1 to 4 / claimants cannot be deprived of the compensation awarded in their favour.

14. Though the second respondent / insurer has raised some grounds in the appeal memorandum touching the quantum of compensation, as already pointed out, they have not challenged the quantum of compensation awarded at by the Tribunal.

15. In view of the above, while confirming the quantum of compensation awarded at by the Tribunal, the appellant is to be directed to pay the compensation in the first instance to the respondents 1 to 4 and thereafter recover the same from the fifth respondent / owner of the offending vehicle. Considering the other facts and circumstances of the case, the parties are to be directed to bear their own costs.



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16. In the result, this Civil Miscellaneous Appeal is partly allowed. The appellant / insurer is directed to deposit the award amount with interest at 7.5% per annum and costs from the date of petition till the date of realization excluding the default period, if any, to the credit of M.C.O.P.No.1025 of 2019 on the file of Motor Accident Claims Tribunal / V Additional District and Sessions Court, Madurai, after deducting the amount already deposited, if any, within a period of four weeks from the date of receipt of a copy of this judgment. Thereafter, the appellant / insurer is permitted to recover the same from the fifth respondent / first respondent as per law. On such deposit being made, the respondents 1 to 4 / claimants are permitted to withdraw their shares as per the apportionment fixed by the Tribunal together with interest and costs, less amount already withdrawn, if any, on due application before the Tribunal. Consequently, connected Miscellaneous Petition is closed. Parties are directed to bear their own costs.

23.06.2026

NCC :yes/No
Index :yes/No
Internet:yes/No
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K.MURALI SHANKAR,J.

csn

To

- 1.The V Additional District and Sessions Judge,
Motor Accident Claims Tribunal,
Madurai.
- 2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

Pre-Delivery Judgment made in
C.M.A.(MD)No.1161 of 2023
and
C.M.P.(MD)No.15499 of 2023

Dated : 23.06.2026