

C.M.A. (MD) No. 750 of 2025

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on : 24.04.2026

Delivered on : 25.06.2026

CORAM:

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

C.M.A(MD)No.750 of 2025

and

C.M.P(MD)Nos.12018 and 17888 of 2025

M/s.The New India Assurance Co.Ltd.,
through its Manager,
No.1360, Amman Complex, First Floor,
Mettur Road, (Near Abirami Theatre)
Erode District.

: Appellant

Vs.

1.Mariappan

2.Chandrasekaran

: Respondent

Prayer : This Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, against the judgment, dated 28.08.2024 made in M.C.O.P.No.66 of 2023, on the file of the Motor Accident Claims Tribunal cum Chief Judicial Magistrate, Karur.

For Appellants : Mr.E.Chandrasekaran,

For Respondents : Mr.K.Sudalayandi, for R1.

: No Appearance, for R2.



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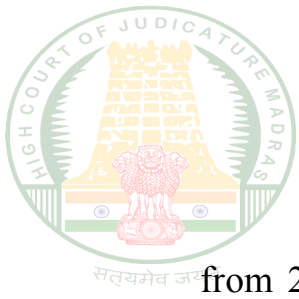
JUDGMENT

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The Civil Miscellaneous Appeal is directed against the award passed in M.C.O.P.No.66 of 2023, dated 28.08.2024, on the file of the Motor Accident Claims Tribunal cum Chief Judicial Magistrate, Karur.

2. The appellant/ Insurer, who was mulcted with liability to pay compensation of Rs.6,56,120/- with interest and costs to the first respondent/claimant, for the disability sustained by him, consequent to an accident occurred on 22.09.2022, challenged the decision of the Tribunal in invoking the doctrine of pay and recovery.

3. The case of the claimant is that on 22.09.2022, when the claimant was riding his two wheeler bearing Reg.No.TN 47 BY 9690, for returning home in Karur-Erode road from east to west, another motorcycle bearing Reg.No.TN 47 AJ 3324 (TVS XL), which was going ahead of the claimant's vehicle suddenly took a right turn and due to sudden action, the claimant, who was proceeding behind him could not control his vehicle and dashed behind the TVS XL motorcycle and as a result of which, the claimant sustained injuries; that the claimant was given inpatient treatment



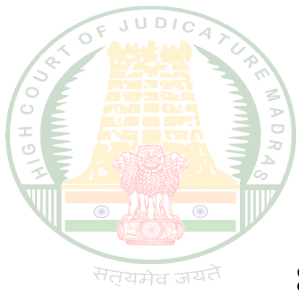
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from 23.09.2022 to 28.09.2022 at Ganga Hospital and that the accident was occurred only due to the rash and negligent riding of the two wheeler bearing Reg.No.TN 47 AJ 3324 (TVS XL) by one Sakthivel.

6. During trial, the claimant examined himself as P.W.1 and exhibited 11 documents as Ex.P.1 to Ex.P.11. The second respondent examined one witness as R.W.1 and exhibited 4 documents as Ex.P.1 to Ex.P.4. Disability certificate issued to the claimant by the Medical Board came to be exhibited as Ex.C.1.

7. The learned trial Judge, upon considering the evidence available on record, has rendered a finding that the accident was occurred only due to the rash and negligent driving of the two wheeler bearing Reg.No.TN 47 AJ 3324 (TVS XL) owned by the first respondent and that since the second respondent/insurer has proved that the first respondent's vehicle rider was not possessing valid driving license at the time of accident, directed the second respondent to pay compensation of Rs.6,56,120/- with interest and costs and then to recover the same from the first respondent.



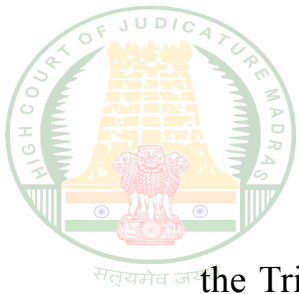
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8. It is pertinent to mention that the appellant/insurer has not challenged the finding of the Tribunal fastening the responsibility on the first respondent's vehicle rider for the accident. Moreover, though the appellant has raised some grounds challenging the quantum of compensation awarded by the Tribunal, the learned counsel for the appellant would submit that they are only challenging the decision of the Tribunal in applying the doctrine of pay and recover.

9. The learned counsel for the appellant would submit that the Tribunal has given a categorical finding that the insurer has proved the factum that the first respondent's rider was not having valid driving license at the time of accident and that since the first respondent allowed the said Sakthivel to ride the two wheeler without driving license, the insurer cannot be mulcted with liability, directing them to pay compensation and then to recover from the vehicle owner.

10. The learned Counsel for the Insurer would mainly contend 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,



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the Tribunal has no power or jurisdiction to order pay and recovery. The learned Counsel would further contend that the Tribunal erred in not considering Section 150(2) of the recent Motor Vehicle Amendment Act 2019, which specifically adumbrates that the Insurer is not liable to pay compensation to the claimants for the breach of policy and permit condition committed by the vehicle owner.

11. At this juncture, it is necessary to refer the decision of this Court in ***C.M.A.No.517 of 2025 and batch, dated 01.06.2026***, wherein the Division Bench has specifically held that the deletion of proviso to Section 149(4) and Section 149(5) in the Motor Vehicles Act, 1988, as it stood prior to the amendment by the Motor Vehicles (Amendment) Act, 2019, does not have the effect of obliterating the statutory duty of the insurer to pay the claims made under an award or decree in respect of liability covered under a policy of insurance and that in the event the insurance company succeeds in establishing his defence under Section 150(2), the insurer will stand absolved from its contractual liability vis-à-vis the insured and consequently, the insurer, after satisfying its liability can proceed to recover the same from the insured and the relevant passages are extracted hereunder :



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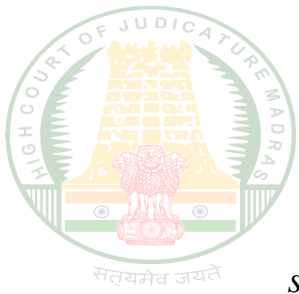
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75. *For the reasons stated above, we hold and declare that: a. The deletion of the proviso to Section 149(4) and Section 149(5) in the Motor Vehicles Act, 1988, as it stood prior to the amendment by the Motor Vehicles (Amendment) Act, 2019 (Act 32 of 2019), does not have the effect of obliterating the statutory duty of the insurer to pay the claims made under an award or decree in respect of liability covered under a policy of insurance.*

b. The duty vis-à-vis a third party is statutory in character and flows from Section 150(1) of the Motor Vehicles Act, 1988, as amended by Act 32 of 2019, and remains unhindered by the fact that the insurance company has succeeded in establishing a contractual defense permitted under Section 150(2).

c. In the event the insurance company succeeds in establishing a defense under Section 150(2), the insurer will stand absolved from its contractual liability vis-à-vis the insured. Consequently, the insurer, after satisfying its statutory liability under Section 150(1) can proceed to recover the sum so paid from the insured. The insurance company can proceed to recover the same in terms of the directions contained in paragraph 110 (x) of the decision of the Supreme Court in National Insurance Co. Ltd v Swaran Singh, (2004) 3 SCC 297.

d. Conversely, if the insurance company does not



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succeed in establishing a defense under Section 150(2) the burden to meet the entire claim will fall on the insurer by virtue of Section 147(2) as amended by Act 32 of 2019, and Rule 2 of the Third-Party Insurance (Base Premium and Liability) Rules, 2022 which provides for unlimited liability in respect of third party insurance under Chapter XI of the Act.

*76. In these batch of appeals, there is a factual finding of a violation of one of the policy conditions on one or more grounds set out in Section 150(2) of the Motor Vehicles Act, 1988. Consequently, the Motor Accident Claims Tribunals (MACT) has directed the insurance companies to first pay the third party and thereafter recover the sums so paid under the award from the insured. In so far as CMA (MD) 213 of 2026 is concerned, we observe that in *Sunita v United India Insurance Company*, 2025 SCC Online SC 1464, the Supreme Court directed pay and recover even in the absence of a fitness certificate which constituted a breach of a policy condition.*

...

78. In view of the discussion made and the conclusions arrived at, supra, we find absolutely no error in the aforesaid directions to pay and recover made by the MACT in all these appeals.

12. In view of the above, the main contention canvassed by the insurer that the doctrine of pay and recovery cannot be made applicable to



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the case on hand, cannot be sustained. Consequently, this Court concludes that the appeal is devoid of merits and is liable to be dismissed. Considering the other facts and circumstances, the parties are to be directed to bear their own costs.

13. In the result, the Civil Miscellaneous Appeal is dismissed. The appellant Insurance Company is directed to deposit the entire award amount along with accrued interest and costs, to the credit of above said M.C.O.P.No.66 of 2023, on the file of the Motor Accident Claims Tribunal cum Chief Judicial Magistrate, Karur, less the amount already deposited, if any, within a period of four weeks from the date of receipt of a copy of this Judgment and recover the same from the owner of the vehicle and on such deposit, the claimant is permitted to withdraw the award amount with interest and costs, less amount already withdrawn, if any, on due application before the Tribunal. Consequently, connected Miscellaneous Petitions are closed. The parties are directed to bear their own costs.

25.06.2026

NCC :yes/No
Index :yes/No
Internet :yes/No



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To

1. The Motor Accident Claims Tribunal cum
Chief Judicial Magistrate, Karur.
2. The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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K.MURALI SHANKAR,J.

das

Pre-delivery order made in
C.M.A(MD)No.750 of 2025
and
C.M.P(MD)Nos.12018 and 17888 of 2025

Dated :25.06.2026