IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18-03-2026

CORAM

THE HON'BLE MRS.JUSTICE R. KALAIMATHI

CMA No. 3573 of 2025

1.M.Malligadevi
W/o. Mahalingam, No.1/265, VOC Nagar,
2nd Street, Dharapuram Road,
K.Chettipalayam,
Ganapathipalayam, Veerapandi,
Tiruppur District.

2.M. Anitha
W/o. Mathivanan,
No.616, TPN Garden 2nd Street,
K. Chettipalayam, Tiruppur District.

3.M. Anbarasan
S/o. Mahalingam, No.44/45,
Vivekanandha Nagar, Kovilvazhi,
Dharapuram Road,
Muthanampalayam,
Tiruppur District.

..Appellant(s)

Vs.

1.M.Arul (Driver)
S/o. Mariyappan, No.2/113,
Semu Thenpathi, Rayanallur,
Thiruthuraipoondi Taluk,
Thiruvarur - 641 175.

2.M. Parnabass (Owner)
S/o. Mahalingam,
No.986, Sivan Kovil Street,
Melakadu Thirupoondi East,
Kameswaram, Kilvelur Taluk,
Nagapattinam - 611 110.

3.The New India Assurance Company Limited
Post Box No.47,
Kumaran Shopping Complex, Kumaran Road,
Tiruppur - 641 601.

..Respondent(s)

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicle Act, 1988, to enhance the award dated 18.10.2024 passed in MCOP.No.388 of 2020 on the file of Special District Court (to deal with MCOP Cases), Tiruppur.

For Appellant(s): Mr.K.Myilsamy

For Respondent(s): No Appearance for R1 and R2
Mr.K.J.Sivakumar for R3

JUDGMENT

This Civil Miscellaneous Appeal has been preferred by the claimants herein against the Award dated 18.10.2024 passed in M.C.O.P.No.388 of 2020 on the file of the Special District Court (to deal with MCOP Cases), Tiruppur, as regards the liability issue and for enhancement of compensation.

2. Parties are indicated herein as per their litigative status and ranking before the Tribunal.

3. Claim petition was filed under Section 166 of the Motor Vehicles Act, 1988, claiming compensation of Rs.40,00,000/- for the death of one C.Mahalingam, who died on account of the road traffic accident that took place on 09.02.2020.

4. At trial, to substantiate the claim of the petitioners, one witness was examined and nine documents were exhibited. On the side of the 3rd respondent / Insurance Company, two witnesses were examined and three documents in "X" series were exhibited. R.W1-Annadurai is the Staff of the Road Transport Office, Tiruppur. One Ashokan was examined as R.W2 in the capacity of Manager of the 3rd respondent Insurance Company.

5. The Tribunal upon consideration of oral and documentary evidence and after hearing the arguments advanced by either side, fastened liability upon the 2nd respondent (owner of the lorry). As the lorry was plied without fitness certificate, quantified the compensation at Rs.7,68,000/- with interest at the rate of 7.5% per annum from the date of claim petition and the amounts granted under various heads are given hereunder:-

> *"For loss of dependency Rs.5,88,000/-; for loss of estate and funeral expenses Rs.18,000/- under each head; and for loss of consortium Rs.1,44,000/- was granted."*

6. Case of the claimants is given hereunder in brief:

While the deceased, C.Mahalingam was proceedings in a two wheeler TVS XL bearing Registration No.TN 39 AR 3886 along Tiruppur Kovilvazhi to Veerapandi Road, on 09.02.2020 at about 12.10 p.m, at the point of Alagapuri Nagar Raja Hotel, heading from north to south, a lorry bearing Registration No. TN 51 F 4935 came from east to west at high speed and in a rash and negligent manner collided with the deceased vehicle, resulted in the death of C.Mahalingam. At the relevant point of time, the deceased was 60 years of age and was working as Printing Worker in the Textiles and had been earning a sum of Rs.20,000/- per month. Wife, daughter and son of the deceased had filed the claim petition.

7. Despite the receipt of notice, the respondent no.1 and 2 remained expartie before the Tribunal.

8. On behalf of the 3rd respondent / Insurance Company, it has been stated that the alleged accident occurred due to the rash and negligent driving of the rider of two wheeler: he was not wearing helmet and did not possess valid driving licence. The driver of the 1st respondent vehicle (lorry) did not possess effective fitness certificate at the relevant point of time and thereby violated the terms and conditions of the policy. And hence, it is claimed that the Insurance Company is not liable to indemnify the insured.

9. The arguments of the learned counsel for the appellants is twofold: (i) the deceased was aged about 61 years at the relevant point of time and was working as a Printing Worker in a Clothing Company and earning a monthly income of Rs.20,000/-, but the Tribunal has taken the income of the deceased at Rs.10,500/- is less; (ii) on behalf of the 3rd respondent, a plea is taken to the effect that the vehicle of the 1st respondent (lorry bearing Registration No.

TN 51 F 4935) was plied without fitness certificate. To this effect, staff of Road Transport Office and the Manager of the 3rd respondent Insurance Company have been examined and the said details have been established. He would further argue that as it is a violation of policy conditions, then the 2nd respondent should have been ordered to pay the compensation at the first instances and at a later point of time, to recover the same from the 1st respondent. But the Tribunal on the contrary to the established principle of law, has fastened the liability upon the 1st respondent in entirety is erroneous. To buttress his arguments, the following judgement referred to:

> *i). Commissioner, Tiruppur Municipality, Tiruppur – 641 601 vs. K.Marayammal and others* reported in *2024 SCC Online Mad 12468.*

10. As regards the consequence of absence of fitness certificate, Section 56 provides the same. For better understanding, Section 56 of the Motor Vehicles Act, 1988, is extracted is extracted hereunder:

> "*56. Certificate of fitness of transport vehicles. - (1) Subject to the provisions of sections 59 and 60, a transport vehicle shall not be deemed to be validly registered for the purposes of section 39, unless it carries a certificate of fitness in such form containing such particulars and information as may be prescribed by the Central Government, issued by the prescribed authority, or by an authorized testing station mentioned in sub-section (2), to the effect that the vehicle complies for the time being with all the requirements of this Act and the rules made thereunder:*
>
> *Provided that where the prescribed authority or the ''authorized testing station'' refuses to issue such certificate, it shall supply the owner of the vehicle with its reasons in writing for such refusal.*

[Provided further that no certificate of fitness shall be granted to a vehicle, after such date as may be notified by the Central Government, unless such vehicle has been tested at an automated testing station.]

[(2) The "authorised testing station" referred to in sub-section (1) means any facility, including automated testing facilities, authorised by the State Government, where fitness testing may be conducted in accordance with the rules made by the Central Government for recognition, regulation and control of such stations.]

(3)Subject to the provisions of sub-section (4), a certificate of fitness shall remain effective for such period as may be prescribed by the Central Government having regard to the objects of this Act.

(4)The prescribed authority may for reasons to be recorded in writing cancel a certificate of fitness at any time, if satisfied that the vehicle to which it relates no longer complies with all the requirements of this Act and the rules made thereunder; and on such cancellation the certificate of registration of the vehicle and any permit granted in respect of the vehicle under Chapter V shall be deemed to be suspended until a new certificate of fitness has been obtained:

[Provided that no such cancellation shall be made by the prescribed authority unless, -

(a)such prescribed authority holds such technical qualification as may be prescribed by the Central Government and where the prescribed authority does not hold the technical qualification, such cancellation is made on the basis of the report of an officer having such qualification; and

(b)the reasons recorded in writing cancelling a certificate of fitness are confirmed by an authorised testing station chosen by the owner of the vehicle whose certificate of fitness is sought to be cancelled:

Provided further that if the cancellation is confirmed by the authorised testing station, the cost of undertaking the test shall be borne by the owner of the vehicle being tested and in the alternative by the prescribed authority.]

(5)A certificate of fitness issued under this Act shall, while it remains effective, be valid throughout India.

[(6) All transport vehicles with a valid certificate of

fitness issued under this section shall carry, on their bodies, in a clear and visible manner such distinguishing mark as may be prescribed by the Central Government.

(7)Subject to such conditions as the Central Government may prescribe, the provisions of this section may be extended to non-transport vehicles.]"

11. As per Section 56 of the Motor Vehicles Act, so far as transport vehicles are concerned, it makes specific provisions for the issue of certificate of fitness, its currency, and its cancellation. A transport vehicle registered under Section 22 of the Motor Vehicles Act and in relation to which a certificate of registration is issued, it must also possess a certificate of fitness issued by an Authorized Officer.

12. It is also relevant to refer to Section 39 of the Motor Vehicles Act, 1988, which deals with registration of motor vehicles and reads as follows:

> *"39. Necessity for registration.—No person shall drive any motor vehicle and no owner of a motor vehicle shall cause or permit the vehicle to be driven in any public place or in any other place unless the vehicle is registered in accordance with this Chapter and the certificate of registration of the vehicle has not been suspended or cancelled and the vehicle carries a registration mark displayed in the prescribed manner: Provided that nothing in this section shall apply to a motor vehicle in possession of a dealer subject to such conditions as may be prescribed by the Central Government."*

13. Therefore, non-possession of a valid fitness certificate is a major

infraction and it goes to the extent of cancelling the registration of the vehicle, as a vehicle plied without fitness certificate is deemed to have been not registered.

14. On careful perusal of Section 66 of the Motor Vehicles Act, it explains the necessity of having permit for plying vehicle as a transport vehicle and it mandates that no owner of motor vehicle shall use or permit the use of the vehicle as a transport vehicle in any public place, whether or not such vehicle actually carries passengers or goods, save in accordance with the conditions of a permit granted or countersigned by the Regional or State Transport Authority or any such authority authorising the use of the vehicle in that place in the manner in which the vehicle is being used, subject to the exemption under sub-section (3) of Section 66 of the Act.

15. As regards the field of precedents, the point as to the non-possession of a valid permit to transport a vehicle and the related right of defence of the insurer to contest the claim and its extent, under such circumstances, was considered by the Apex Court in ***National Insurance Co. Ltd. v. Challa Upendra Rao & ors.*** **reported as (2004) 8 SCC 517**. Claim petitions were filed by the injured and the legal representatives of the deceased passengers who met with the accident on 09.05.1992 while travelling in an Auto, were resisted by the insurer, stating that there was no valid permit to ply the vehicle and that, as per the terms of the policy, the

insurer had no liability to pay compensation. The Insurer's plea was accepted by the Tribunal and the liability was imposed upon the insured, sparing the insurer. The judgment of the Tribunal was challenged in appeal before the Division Bench of the High Court, questioning the correctness of the view regarding the non-liability of the insurer. The High Court by the impugned judgment, concluded that the Insurer was liable to indemnify the award. The Insurer preferred an appeal before the Apex Court and it was held that the statutory defences which are available to the insurer to contest the claim are confined to those provided under Section 149(2). The High Court opined that when there is no permit, the question of violation of any condition thereof does not arise, was held to be fallacious. The Hon'ble Supreme Court further observed that a person without permit to ply a vehicle cannot be placed on a better pedestal vis-a-vis, one who has a permit but has violated condition thereof. Plying a vehicle without permit is an infraction. Therefore, in terms of Section 149(2), defence is available to the insurer on that aspect. The question of policy being operative has no relevance to the issue regarding the liability of the insurer. Finally, it was ordered that considering the beneficial objective of the Act, the insurer should satisfy the award with liberty to recover the amount from the insured at a later point of time.

16. Based on the aforestated observations, it is pellucid that the insurer is entitled to take such a defence under Section 149(2) of the Motor Vehicles Act, 1988, and the same has been duly established by examining R.W.1 and

R.W.2. It is made clear that the owner of the lorry had plied without fitness certificate at the relevant point of time. Plying of vehicle without fitness certificate is clearly an infraction and therefore, in terms of Section 149(2) of MV Act, defence is available to the insurer on that aspect. Therefore, as the policy was operative during the relevant point of time, it would be appropriate for the insurer to satisfy the award at the first instance, with liberty to recover the amount from the insured at a later point of time.

17. Though R.W1 Tvl. Annadurai, Staff of Tiruppur Road Transport Office, Motor Vehicle Inspector Report in respect of lorry (TN 51 F 4935) along with the fine details is marked as Ex.X3. On perusal of Ex.X3, MVI Report in Column No.8, it is mentioned that fitness certificate was issued on 02.05.2020. It is relevant to note that the accident occurred on 09.02.2020 at 12.10 hours and the said lorry was brought for inspection by the Motor Vehicles Inspector on 14.02.2020.

18. The Manager of the Insurance Company / 3rd respondent Tvl.Ashokan was examined as R.W2. It is his evidence that on the relevant date, the owner of the 1st respondent lorry permitted to ply his vehicle without fitness certificate and he would further contend that intimation was sent to the 2nd respondent (owner of the Vehicle) calling upon him to produce the fitness certificate. The said copy of notice and acknowledgement card are Ex.R2 and Ex.R3.

19. Reverting to the enhancement of compensation issue, it is the evidence of P.W1 that the deceased was working as Printing Worker and earning a sum of Rs.20,000/- per month. The Tribunal has fixed the notional income of the deceased at Rs.10,500/- per month. As regards the age of the deceased Ex.P7- copy of Post Mortem Certificate and Ex.P8 - copy of the Death Certificate, this Court deems fit to fix the age of the deceased as 61 years at the relevant point of time.

20. As per ***National Insurance Co. Ltd. v. Pranay Sethi and Others,*** reported in ***2017 (2) TN MAC 609 (SC)***, if the person is aged above 60 years, then a standard addition is not required to be added with notional income (future prospects) while computing the loss of dependency. To substantiate the income of the deceased, no concrete proof is marked. Date of accident is 09.02.2020. Interest of justice would be met, if the deceased income is fixed at Rs.13,000/- per month. As held in ***Sarla Verma and others v. Delhi Transport Corporation and another*** reported in ***2009 (2) TN MAC 1 (SC)***, the relevant multiplier to be adopted is “7m”. For computing loss of dependency, the following formula emerges:

Rs.13,000/- -1/3 x 12 x 7m = Rs.7,28,028/-

21. As regards the amounts awarded under the other heads, the amounts awarded by the Tribunal appears to be reasonable and acceptable and hence, it does not warrant any interference by this Court. The amounts

computed as mentioned supra after rework is tabulated and given hereunder:-

Sl. No.	Description	Amount awarded by Tribunal	Amount awarded by this Court	Award confirmed or enhanced or granted or reduced
1.	For Loss of Dependency	Rs.5,88,000/-	Rs.7,28,028/-	Enhanced
2.	For Loss of Estate	Rs.18,000/-	Rs.18,000/-	Confirmed
3.	For Funeral Expenses	Rs.18,000/-	Rs.18,000/-	Confirmed
4.	For Loss of Consortium	Rs.1,44,000/-	Rs.1,44,000/-	Confirmed
	Total	Rs.7,68,000/-	Rs.9,08,028/-	Enhanced

Rounded off as Rs.9,08,000/-

22. Thus, the compensation awarded by the Tribunal is enhanced from Rs.7,68,000/- to Rs.9,08,000/- which would carry interest at the rate of 7.5% per annum from the date of petition till the date of realisation.

23. In the result,

(i) The Civil Miscellaneous Appeal stands partly allowed. There is no order as to costs.

(ii) The compensation awarded by the Tribunal is enhanced from Rs.7,68,000/- to Rs.9,08,000/-.

(iii) The Insurance Company/ third respondent is directed to deposit the enhanced compensation amount now determined by this Court i.e., Rs.9,08,000/- (less the amount already deposited if any) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and costs (excluding the period of default if any) to the credit of

M.C.O.P.No.388 of 2020 on the file of the Special District Court (to deal with MCOP Cases), Tiruppur, within a period of six weeks from the date of receipt of a copy of this Judgment. The third respondent/ Insurance Company is directed to pay the compensation at the first instance and shall recover the same from the respondent no.2 / insured, thereafter.

(iv) On such deposit being made, the appellants are permitted to withdraw their share of the award amount, as per the apportionment fixed by the Tribunal, with interest, after adjusting the amount, if any, already withdrawn, by filing necessary application before the Tribunal.

(v) The claimants are directed to pay the Court fee for the enhanced compensation amount, if required.

(vi) The Tribunal below shall disburse the amount upon production of the certified copy showing proof of payment of Court fee by the claimants.

18.03.2026

NCC : Yes/No
Index : Yes / No
Internet : Yes / No
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To

1. The Special District Court (to deal with MCOP Cases), Tiruppur

2.The Section Officer,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.

R.KALAIMATHI, J.

MAC

CMA No. 3573 of 2025

18-03-2026