

CMA(MD) NO. 47



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 15-04-2026

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THE HONOURABLE MR JUSTICE N. ANAND VENKATESH

AND

THE HONOURABLE MR JUSTICE K.K. RAMAKRISHNAN

CMA(MD) NO.472 of 2026

and CMP(MD) No.472 of 2026

1. ICICI Lombard General Insurance Company Ltd
Through its Branch Manager
Branch Office No.2 and 3
Nungambakkam High Road
Chottabhai Centre
Chennai -34.

Appellant(s)

Vs

1. Subbu
2. Murugan
3. Selvam
4. Marathal
5. S. Murugammal
6. Peer Mohamed Khan

Respondent(s)

For Appellant(s):

Mr.N.Shyllappakalyan

Prayer in CMA(MD) No.472 of 2026:

J-1. Civil Miscellaneous Appeal filed under section 173 of Motor Vehicles Act to set aside the order passed in M.C.O.P. No. 49 of 2023 dated 07.11.2025 on the file of the Motor Accident Claims Tribunal Cum Principal District Court, Tirunelveli

Prayer in CMP(MD) No.4793 of 2026:

To grant stay of all further proceedings pursuant to the order passed in the M.C.O.P. No. 49 of 2023 dated 07.11.2025 on the file of the Motor Accident Claims Tribunal Cum Principal District Court, Tirunelveli pending disposal of the appeal.



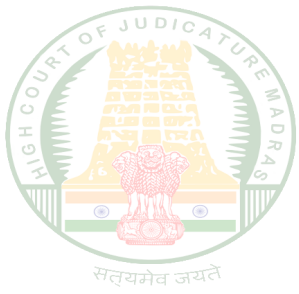
ORDER

(Order of the Court was made by the Hon'ble N.Anand Venkatesh J.)



The main issue that was canvassed by the learned counsel appearing for the appellants is that there was a policy violation, wherein, the rider did not possess a valid permit and in spite of the same, the Tribunal had proceeded to order pay and recovery. A Division Bench of this Court in CMA.(MD).Nos.747 and 753 of 2025 dated 06.02.2026 has held that after coming into force of the amendment effective from 01.04.2022, the Insurer is not liable to pay compensation in the case of policy violation and hence, pay and recovery cannot be ordered. While passing this order, the Division Bench has not taken note of the order passed by the learned Single Judge of this Court in the case of ***the Branch Manager, SBI General Insurance Company Limited Vs. Muthulakshmi and others*** reported in ***2025 (1) TN MAC 597***, wherein, the learned Single Judge has held as follows:

“25. The proviso to Old Section 149 (4) declares that amount paid by the insurer by virtue of said sub-section shall be recoverable by the insurer. The proviso is only declaratory in nature and its application is restricted to contingency contemplated under Section 149(4). It was vehemently argued by the learned counsel appearing for the Insurance Company that in view of deletion of proviso to Section 149 (4), the Tribunals are not entitled to order pay and recovery. The deleted proviso is not a substantive section which imposes obligation on the insurer to pay innocent third parties in respect of judgment and award obtained by them against the insured. As elaborately discussed above, the substantive provision is old Section 149(1). It imposes statutory obligation on the part of the insurer to pay amount to the third parties, which is due under the award obtained by them against insured. Therefore, the deletion of proviso will not take away the

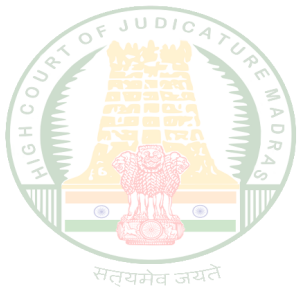


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liability of the insurer imposed by Section 149(1) [New Section 150(1)] to satisfy the award or judgment passed against insured. The position can be seen in different angle also. A perusal of Old Section 149(4) [New Section 150(4)] makes it clear that any extra restriction agreed to by insurer and the insured under contract of insurance, which falls out side the defences enumerated under old Section 149(2)(b) [New Section 150(2)], will have no effect as far as statutory liability of insurer against third parties as enumerated under Section 147(1)(b). When insurer is asked to pay more amount only by virtue of Section 149(4), proviso to said sub-section gets attracted and insurer is entitled to recover that excess amount paid by it by virtue of enlarged liability only by virtue of Section 149(4). Old Proviso to Section 149(4) only made applicable to any amount paid by insurer by virtue of SubSection (4). The said proviso is not made applicable to Sub-Section (1) of old Section 149. The same can be gathered from employment of expression “by virtue only of this sub-section” in proviso to Section 149 (4). Therefore, I hold that deletion of proviso to Sub-Section 4 of Section 149 [in new Section 150] will not affect statutory liability of insurer under Section 149(1) [New Section 150(1)] and its entitlement to recover amount paid to third parties from insured in case of establishment of defence under SubSection (2).

26. The next question to be decided is even if insurer is directed to pay as per the mandate under Section 149 (1), whether the Tribunals can order consequential recovery in the absence of proviso to Sub-Section (4). This Court would like to emphasis that the deleted proviso was only clarificatory in nature which talked about the consequences of payment made by insurer in respect of contingency contemplated under old Section 149(4). Its application was restricted to Sub-Section (4). However, statutory duty under Section 149 Sub-Section (1) compels insurer to pay the award



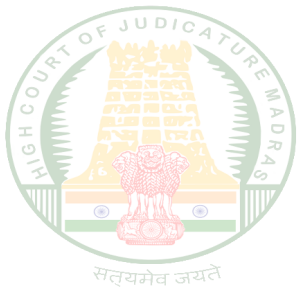
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amount. The natural consequence of insurer's success in raising defence under Sub-Section (2) would be its entitlement to recover the amount paid by it to the third party from the insured. Therefore, notwithstanding deletion of proviso to Sub-Section (4), this Court feels that Tribunal can very well order recovery against the insured while upholding defence raised by insurer under Sub-Section (2). Otherwise, there will be no meaning in allowing insurer to raise defence enumerated under Sub-Section (2). The Old Section 149(2) [New Section 150 (2)] enables Tribunals to adjudicate inter se dispute between insurer and insured, over which innocent third party victim has no control or clue. The power to order recovery is inherent part of jurisdiction to adjudicate inter se dispute between insurer and insured contemplated under Sub-Section (2).

27. If the intention of the Parliament is to deny compensation to innocent third parties in case of violation of policy conditions as mentioned in Sub-Section (2) absolutely, there is no need to keep the language of the Sub-Section (1) of New Section 150 as it was in the case of Old Section 149(1). Infact, as rightly pointed out by the learned counsel appearing for the claimants, the title of old Section 149 itself emphasis duty of the insurers to satisfy judgments and awards passed against persons insured in respect of third party risks, the same reads as follows: “149. Duty of insurers to satisfy judgments and awards against persons insured in respect of third party risks.”

28. The very same title or caption is retained in New Section 150 of Motor Vehicles Act. Further, defences enumerated under Section 150(2) are result of breach/omission by insured over which innocent third parties have no control. Hence, it is highly inequitable to interpret the section against its own title and object of main enactment. In this regard, it would be appropriate to refer to observation of Apex Court in *British India General Insurance Co. Ltd., vs. Captain Itbar Singh and others* reported in 1959 SCC



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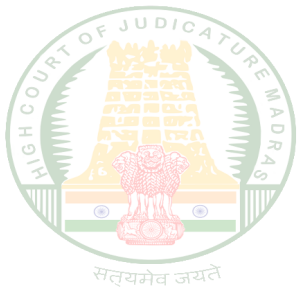
OnLine SC 32, which reads thus:



“17. It was said that the assured might be a man of straw and the insurer might not be able to recover anything from him. But the answer to that is that it is the insurer's bad luck. In such circumstances the injured person also would not have been able to recover the damages suffered by him from the assured, the person causing the injuries. The loss had to fall on some one and the statute has thought fit that it shall be borne by the insurer. That also seems to us to be equitable for the loss falls on the insurer in the course of his carrying on his business, a business out of which he makes profit, and he could so arrange his business that in the net result he would never suffer a loss. On the other hand, if the loss fell on the injured person, it would be due to no fault of his; it would have been a loss suffered by him arising out of an incident in the happening of which he had no hand at all. ” (emphasis supplied)

The Apex Court in the above mentioned case law in a beautiful language emphasised the plight of third party victims and ability of insurer to cope up with liability created by law under Section 149(1) [New Section 150(1)]. Therefore, this Court holds that Section 149(1) [now Section 150 (1)] imposes a duty on insurer to satisfy award passed against insured in respect of third party claims and that duty is not affected by deletion of proviso to Section 149 (4).

29. Section 149(5) mandates that any amount paid by the insurer to the third party over and above the amount payable by insurer to the insured under the policy, shall be recovered by the insurer from the insured. Now, by virtue of new Section 147(2), the Central Government is empowered to prescribe a base premium and liability of the insurer in respect of such premium for the insurance policy. Since the liability of the insurer in respect of



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third party insurance is sought to be limited, by virtue of notification by Government in consultation with Insurance Regulatory and Development Authority, Sub-Section 5 of old Section 149 is deleted to remove doubt. The deletion of Sub-Section 5 of old Section 149 is in tune with the amendment introduced under Section 147(2).

30. In view of the discussions made earlier, this Court holds that notwithstanding deletion of proviso to Sub-Section (4) of Old Section 149 and Sub-Section (5) of very same Section which is renumbered as Section 150, the insurer's liability to honour the award passed against the insured in respect of third party claims continues and in the event of insurer's success in raising a defence under Sub-Section (2) of New Section 150, the Tribunal can very well order pay and recovery.

2. We deem it fit to once again go into this issue. Hence, there shall be an order of interim stay subject to the condition that the entire compensation amount is deposited along with accrued interest to the credit of MCOP.No.49 of 2023 on the file of the Motor Accident Claims Tribunal-cum-Principal District Court, Tirunelveli, on or before 04.06.2026.

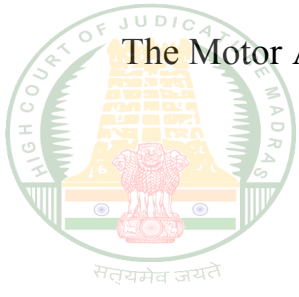
3. In the meantime, the learned counsel appearing for the appellants shall take notice both through Court and privately to the respondents returnable by 04.06.2026.

4. Registry is directed to post this case for final hearing on **04.06.2026**.

(N.ANAND VENKATESH J.) (K.K.RAMAKRISHNAN J.)

15-04-2026

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To



The Motor Accident Claims Tribunal-cum-Principal District Court, Tirunelveli.



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