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**(2012) 12 MAD CK 0081**

**In the Madras High Court**

**Case No :** C.M.A. (MD) No. 16 of 2010 and M.P. (MD) No. 1 of 2010

National Insurance Company Ltd. APPELLANT

Vs

Dhas and Others RESPONDENT

**Date of Decision :** 21-12-2012

**Acts Referred:**
Motor Vehicles Act, 1988 — Section 149

**Citation :** (2012) 12 MAD CK 0081

**Hon'ble Judges :** P. Devadass, J

**Bench :** Single Bench

**Advocate :** D. Sivaraman, for the Appellant; C. Mayilvahanan for Respondents - 1 to 3, Mr. V.M. Balamohanthampi for Respondent - 4 and Mr. M. Suri for Respondent - 5, for the Respondent

**Final Decision :** Dismissed

# Judgement

P. Devadass

1. The question in this appeal is whether the fourth respondent, who held an L.M.V. driving licence having driven a two-wheeler and caused the death of one Saratha, will enable the appellant (Insurance Company) to avoid its liability under the contract of insurance (insurance policy). On 6.6.2002, Saratha came walking along the road. At that time, the fourth respondent came driven a two-wheeler. He drove rashly. Knocked at her. She died. Her dependents claimed compensation. They were awarded Rs. 2,12,100/-.

2. The Tribunal found that the fourth respondent held only L.M.V. driving licence and since the fifth respondent, the owner of the two wheeler ought not to have allowed an unqualified person to drive the bike, the owner was at fault and directed the appellant/Insurance Company to pay the compensation amount first to the victims and recover it from the vehicle owner.

3. According to the learned counsel for the appellant, there is violation of terms and conditions of policy, so, the company cannot be asked to pay the amount.

4. On the other hand, the learned counsel for respondents 1 to 3/claimants would contend that the deceased did not aware that the vehicle has been driven by a person, who is not qualified to drive it. They were third parties. The policy was also in force. In the circumstances, the Tribunal was right in directing the appellant to pay them the compensation amount first and recover it from the vehicle owner.

5. The learned counsel for the fourth respondent would submit that the Tribunal had rightly issued the said direction.

6. The learned counsel for the fifth respondent contended that the fifth respondent is not liable to pay the amount.

7. On evidence, it is found that the fourth respondent, who drove the two-wheeler, was only licenced to drive a four wheeler, since he had only an L.M.V. driving licence. But, this fact was not known to deceased Saratha. It is common sense that the road users will not have knowledge of any defect in the driving licence held by the drivers of the offending vehicles.

8. Liability to pay compensation to road accident victim has been statutorily imposed on the Insurance Company by directing them to satisfy the award passed against the vehicle owner (See Section 149 of the Motor Vehicles Act). It introduced the ''concept of indemnification''. When the vehicle owner is called upon to pay the compensation amount in view of his fault or fault of his driver, there is a risk for him to pay the amount to the road accident victim. To cover this risk, the vehicles on public roads must be insured with an approved Insurance Company. This has been brought about by a contract of Insurance as between the vehicle owner/insured and the insurer/Insurance Company. This bipartite agreement is to cover the insured from the said risk. It is an arrangement between the vehicle owner and the Insurance Company. Actually it is to safeguard the road accident victims. The road accident victims are third parties. The liability created u/s 149 of M.V. Act is statutory. But, the liability created under contract of insurance as between the vehicle owner and the Insurance Company is contractual. If at all any breach of terms and conditions of the policy, it would be a matter between the vehicle owner and the Insurance Company. For that, the Insurance Company can proceed against the other party to the contract, namely, the vehicle owner. For the sin of the vehicle owner, a third party/road accident victim should not be made to suffer. In such circumstances, in order to protect the road accident victims, the idea of directing the Insurance Company first to honour its statutory commitment by paying the compensation amount to the victims (See Section 149 M.V. Act) and then, by virtue of right available to the company under the contract of insurance policy proceed against its insured for breach of terms and conditions of the policy has been devised in New India Assurance Co., Shimla Vs. Kamla and Others etc. etc., . A Division Bench of this Court in The United India Insurance Co. Ltd. Vs. S. Saravanan (Infirmity) rep. by his wife, NF.S. Lalitha and Ravi, also took similar view in a situation where the driver of the offending vehicle did not held effective

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driving licence to drive the offending vehicle. An innocent road accident victims should not be left in lurch, asked to run after the owners of offending vehicles with paper decrees. In Indian condition, the mental agony of a decree holder really starts when he was granted a decree. Therefore, we should not place the road accident victims in such a pitiable position. Thus, the concept of pay and recover comes to stay. In this view of the matter, we approve the ''pay and recover'' direction issued by the Tribunal. In the result, this Civil Miscellaneous Appeal is dismissed. The award of the Tribunal is confirmed. Within 4 weeks from the date of receipt of a copy of this Judgment, the appellant shall deposit the entire amount, less amount, if any already deposited. On such deposit, the first respondent shall be paid his entire share amount, less amount, if any already withdrawn. The share of respondents 2 and 3 shall be deposited in a Bank upto 18 years of their age. However, the accrued interest thereon shall be regularly paid to the first respondent. No costs. Consequently, the connected Miscellaneous Petition is closed.

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