

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.09.2015

CORAM

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
AND
THE HONOURABLE MR. JUSTICE M.VENUGOPAL

C.M.A.Nos.1180 to 1182 of 2014
M.P.Nos.1, 1 and 1 of 2014
M.P.No.1 of 2015

M/s.HDFC General Insurance Co. Ltd.,
Rehja Complex, Anna Salai,
Chennai 600 002. ... Appellant in C.M.A.Nos. 1180 &
1181/14/2nd Respondent

M/s.HDFC Chief General Insurance Co.Ltd.
(Rahja Complex), Anna Salai,
Chennai 2. ... Appellant in C.M.A.No.1182/14/
2nd Respondent

Vs.

1. S.Srinivasan ... Respondent in C.M.A.No.1180/14/
Petitioner in MCOP No.3520/2007
1.Ranjitham
2.S.Mohanraj ... Respondents 1 and 2
in C.M.A.No.1181 of 2014/Petitioners
in MCOP No.3560/2007

1.Jayachitra @ Chitra
2.P.C.Mahita (Minor)
(2nd Respondent Minor is represented
by Mother, 1st Respondent)

3.T.N.Meenakshi
4.Thanikachalam ... Respondents 1 to 4
in C.M.A.No.1182 of 2014/
Petitioners in MCOP No.1493/2008

Uma Vijaya Kumar ... 2nd Respondent in CMA.1180/14/1st
Respondent
3rd Respondent in CMA.1181/14/1st
Respondent
5th Respondent in CMA.1182/14/1st
Respondent

Prayer: The Civil Miscellaneous Appeals are filed under Section

173 of Motor Vehicles Act, 1988, against the Order and decree, dated 19.09.2013, made in M.C.O.P.Nos.3520 and 3560/2007 and 1493/2008, on the file of the Motor Accidents Claims Tribunal (Chief Court of Small Causes), Chennai.

For Appellant : Ms.Harini
in all the CMAs for M/s.M.B.Gopalan

For Respondent 1&2
in all the CMA,
For Respondent 2
in CMA 1181 & 1182/14,
For Respondent 3&4
in CMA 1182/14 : Mr.F.Terry Chellaraja
for M/s.V.Velu

Respondent 2 in CMA 1180/14,
-do-3 in CMA 1181/14,
-do-5 in CMA 1182/14 : Not Ready Notice.

COMMON JUDGMENT

Aggrieved by the awards, dated 19.09.2013 made in M.C.O.P.Nos.3520 and 3560/2007 and 1493/2008, on the file of the Motor Accidents Claims Tribunal (Chief Court of Small Causes), Chennai, the present appeals have been filed.

2. Brief facts leading to the Civil Miscellaneous Appeals are as follows:

On 09.12.2006, about 05.15 P.M., while Mr.S.Srinivasan, Mr.Karthick Raju and Mr.Prakash were travelling in a Car, bearing Registration No.TN 09 AK 2165, from Chennai to Pondicherry, near Sikkanankuppam Village, Kancheepuram District, the driver of the Car, drove the same, in a rash and negligent manner and dashed against a transport corporation bus, which came from the opposite direction and due to which, Mr.Karthick Raju and Mr.Prakash, sustained fatal injuries and died on the spot. Mr.Srinivasan sustained multiple injuries. Legal representatives of the deceased Mr.Karthick Raju and deceased Prakash, have made separate claim petitions in M.C.O.P.No.3560 of 2007 and 1493 of 2008, for compensation of Rs.40,00,000/- and Rs.1,00,00,000/- respectively. For the injuries sustained, Mr.Srinivasan has made a claim in M.C.O.P.No.3520 of 2007, for compensation of Rs.6,00,000/-. As all the claim petitions, arose out of the same accident, for which, pleadings and evidence adduced on behalf of the parties, were one and the same, they were tried together and disposed of, by a common order. The details of the claim petitions, avocation & income of both the deceased and injured, are given below:

Claimants in	Age (Years)	Avocation & Monthly income	Nature of injuries	Disability assessed	Amount claimed
MCOP.3520/07 (Injury)	24	Mechanical Engineer, Rs.15,000/-	As per Ex.P17 - Discharge Summary, there were fractures on left tibia and left elbow.	60%	Rs.6,00,000/-
MCOP.3560/07 (Fatal)	22	Sales Executive, Rs.25,000/-	--	--	Rs.40,00,000/-
MCOP.1493/08 (Fatal)	30	Manager (Band I), Rs.60,000/-	--	--	Rs.1,00,00,000/-

3. The appellant-Insurance Company has filed separate counter affidavits in all the claim petitions, contending inter alia that the injured and deceased travelled in the abovesaid vehicle, as passengers and that the accident had not occurred due to rash and negligent driving of the driver of the offending vehicle. They further submitted that the driver of the abovesaid Car, insured with them, did not possess a valid and effective driving licence and that the vehicle was not covered with valid insurance policy and therefore, they are not liable to pay compensation. Without prejudice to the above, they disputed the nature of injuries sustained by the injured. That apart, they also disputed the age, income and avocation of the injured and the deceased, and the compensation claimed under various heads.

4. Before the Claims Tribunal, the injured/claimant in M.C.O.P.No.3520 of 2007, examined himself as PW.2. Ranjitham, mother of the deceased in M.C.O.P.No.3560 of 2013, has been examined as PW.1. Wife of the deceased in M.C.O.P.No.1493 of 2008, has been examined as PW.3. That apart, one Mr.Vasudevan, Chief Manager of ICICI Bank, has been examined as PW.4. PW.5 is the Doctor, who examined the injured in M.C.O.P.No.3520 of 2007, with reference to the medical records. Exs.P1 to P35 have been marked on the side of the respondents/claimants.

5. On behalf of the appellant-Insurance Company, a Junior Assistant attached to the Office of the Regional Transport Officer, Chennai West, has been examined as RW.1 and he has

deposed that the driver of the offending vehicle was issued with licence from 27.05.2005 to 26.05.2025, to ride motorcycle and that he was not issued with any licence to drive car. To support the above, he has produced Ex.R1 - Driving Licence of the driver of the Car, insured with the Insurance Company. The Assistant Manager (Legal), attached to the Office of the appellant-Insurance Company, has also adduced evidence, as RW.2 and marked documents, Exs.R2 to R5, on the side of the appellant-Insurance Company.

6. On evaluation of pleadings and evidence, the Claims Tribunal found that the driver of the offending vehicle, insured with the appellant-Insurance Company was negligent, in causing the accident. As the appellant-Insurance Company has proved that the driver of the Car, insured with them, did not possess a valid and effective driving licence, at the time of accident, the Tribunal, by observing that at the time of accident, the offending vehicle was validly insured with HDFC General Insurance Co. Ltd., appellant herein, has ordered the appellant-Insurance Company to pay compensation to the respondents/claimants and then recover the same from the 8th respondent herein, owner of the Car, bearing Registration No.TN 09 AK 2165. Depending upon the facts and circumstances of each case, the Claims Tribunal has quantified the compensation to the respondents/claimants, as follows:

Claimants in	Amount awarded
MCOP.3520/07	Rs.2,03,641/-
MCOP.3560/07	Rs.13,90,000/-
MCOP.1493/08	Rs.44,84,856/-

7. Ms.Harini, learned counsel appearing for the appellant-Insurance Company appearing for the appellant-Insurance Company submitted that in the absence of any valid driving licence to drive light motor vehicle, the Claims Tribunal has erred in directing the appellant-Insurance Company to pay compensation to the accident victims and then to recover the same from the owner of the vehicle. She further submitted that the Tribunal has erred in considering the future prospects, despite the clear finding that the employment of the deceased was not on a permanent basis or equivalent to the employment in a public sector or government bank. She also submitted that the quantum of compensation, awarded by the Claims Tribunal, in respect of all the cases, is excessive.

8. To sustain the award, Mr.F.Terry Chellaraja, learned counsel appearing for the injured/legal representatives of the

deceased made submissions on the ground that the Claims Tribunal has failed to add certain percentage of income towards future prospects. He further submitted that the claim petitions are decided only on 19.09.2013 and before the said date, the Hon'ble Supreme Court in *Rajesh and Others v. Rajbit Singh and Others* reported in 2013 (2) TNMAC 55 (SC), decided on 12.04.2013, has already held that future prospects ought to have been included, while assessing the loss of earning capacity. He also submitted that not satisfied with the quantum of compensation, awarded by the Claims Tribunal, separate appeals have been filed for enhancement of quantum of compensation and the same are pending.

9. Reserving the right of the legal representatives of the deceased/injured, to pursue their claim for enhancement of compensation, for which, separate appeals are stated to have been filed, we propose to consider the case of HDFC General Insurance Company, appellant herein, as to whether, they have made out a case for interference in fixing liability on them, to pay the award amount, with liberty to recover from the owner and the quantum of compensation, awarded to the legal representatives of the deceased/injured.

Heard the learned counsel for the parties and perused the materials available on record.

10. In all the appeals, the common challenge of the Insurance Company, is to the direction of the Claims Tribunal to pay the compensation amount determined in the abovesaid claim petitions, to the accident victims and then, to recover the same from the owner of the offending vehicle. The said challenge is no longer *res integra* in view of the Hon'ble Division Bench decisions of this Court in *United India Insurance Company Ltd., v. S.Saravanan* reported in 2009 (2) TNMAC 103 (DB), *United India Insurance Company Limited, Salem, Vs. V.Vijayakumar*, represented by his mother Kalamani and three others, reported in 2010 (2) TN MAC 388 (DB) and *Bajaj Alliance General Insurance Company Ltd., Pune, Vs. Manimozhi and four others*, reported in 2010 (2) TN MAC 542 (DB).

11. The question as to whether, it is open to the insurer to seek for total exoneration for payment of compensation to a third party victim or whether it has only a right of recovery under Sections 149 (4) and (5) of the Motor Vehicle's Act, has been extensively considered in *ICICI Lombard General Insurance Company Vs. Annakkili*, reported in 2012 (1) TN MAC 226, wherein, this Court following the principles of law laid down by the Apex Court and the Hon'ble Division Bench judgments held that, payment of compensation to a third party victim or legal

representatives of the deceased, as the case may be, is statutory and considering the interpretation given by the Supreme Court to Sections 147, 149 (4) and (5) vis-a-vis, the defences open to the Insurance Company under Section 149(2)(a) (ii) of the Motor Vehicles Act held that the very introduction of the words, "pay compensation to the third party and recover the same from the insured" in Section 149(4) and (5) of the Act, would reflect the divine intention of the legislature to protect the interest of the third parties, vis-a-vis inter-se disputes between the insured and insurer, and further held that the insurer cannot avoid its liability to pay compensation to a third party, but such avoidance can be made only, if willful breach of terms and conditions of the policy by the insured, by consciously and recklessly allowing the driver, who did not possess a valid and effective driving licence, to drive the vehicle and even if such breach is proved, payment of compensation to the third party victim cannot, at any stretch of imagination, be avoided by the Company and that the only remedy open to the insurer in law is to pay the compensation to the third party victims and recover from the insured. In view of the above, the insurer cannot be totally exonerated from payment of compensation to third party, but it can avoid its liability only to the insured.

12. In a decision of this Court in Branch Manager, Oriental Insurance Company Ltd., Theni Vs. Mansoor Hussain and another, reported in 2013(2) CTC 57, Hon'ble Mr. Justice, G.M.Akbar Ali, my Esteemed Brother, has considered a catena of decisions of the Supreme Court, as well as this Court and after extracting Section 149(2)(a)(ii), at paragraph Nos.19 to 29, held as follows:

"19. It has to be borne out in mind that only under Section 149 of the Act the Insurer has become a party in a tortuous claim otherwise, it is only a Suit between the victim and the tort feisor. Only under an Insurance Policy between the tort feisor and the Insurance Company the Insurer has undertaken to indemnify the insured. Therefore, the defences available to the Insurance Company is very limited.

20. Section 149(2)(a)(ii) reads as follows:

"Duty of insurers to satisfy judgments and awards against persons insured in respect of third party risks. -

2) No sum shall be payable by an Insurer under sub-section (1) in respect of any judgment or award unless, before the commencement of the proceedings in which the judgment or award is given the Insurer had notice through the Court or, as the case may be, the Claims Tribunal of the bringing of the proceedings, or in respect of such judgment or award so long as execution is stayed thereon pending an Appeal; and an Insurer to whom notice of the bringing of any such proceedings is so given shall be entitled to be made a party thereto and to defend the action on any of the following grounds, namely:-

(a) that there has been a breach of a specified condition of the Policy, being one of the following conditions, namely:-

(i) a condition excluding the use of the vehicle - (a) for hire or reward, where the vehicle is on the date of the contract of insurance a vehicle not covered by a permit to ply for hire or reward, or

(b) for organized racing and speed testing, or

(c) for a purpose not allowed by the permit under which the vehicle is used, where the vehicle is a transport vehicle, or

(d) without side-car being attached where the vehicle is a Motorcycle; or

(ii) a condition excluding driving by a named person or persons or by any person who is not duly licensed, or by any person who has been disqualified for holding or obtaining a driving licence during the period of disqualification; or

(iii) a condition excluding liability for injury caused or contributed to by conditions of war, Civil war, riot or Civil commotion; or

b) that the Policy is void on the ground that it was obtained by the non-disclosure of a material fact

or by a representation of fact which was false in some material particular."

21. This Section is corresponding to Section 96 of the old Act. In *Iffco Tokyo General Insurance Company v. Jafer Sadiq*, (2012 (1) TN MAC 394 (DB), a Division Bench of this Court (where I was a party) had an occasion to deal with the provisions under Section 96 of the old Act and the provision under Section 149 (2) (a) of the New Act.

22. On a comparative reading of the relevant provisions, we found that upon careful reading of the provisions there is a draftsman's mistake which went unnoticed for all these years under Section 149(2). This Court found as follows:

"36. In the comparative table shown above, Section 96, Clause (ii) (Old Act) deals with the grounds of defence available to the Insurance Company. Sub-clause (a) relates to a Policy which was cancelled by mutual consent, etc., sub-clause (b), which is very important which deals with three conditions -

(i) (a) use of the vehicle for hire or reward not covered by a Permit (b) for organized racing and speed testing (c) use of vehicle for a purpose not allowed by the Permit (d) without side-car being attached, where the vehicle is a Motorcycle.

(ii) deals with vehicle being driven by a person not duly licensed with.

(iii) deals with when the policy is void. - Section 96(2-A) was inserted w.e.f. 16.2.1957.

37. Now if we look at Section 149 of the Act 1988, in sub-section (2) to Section 149; what was in Section 96(2) (a) viz., the defence on cancellation of Policy is not incorporated rather it is deleted. Therefore necessarily, sub-clause (b) of Section 96(2) has become now 149(2) (a). Consequently, 96(2) (c) has become 149(2) (b). Further, consequently, sub-clause (2-A) has been e-numbered as 3. Therefore, 96(3) of the Old Act is now 149(4).

38. Now 96(3) & 149(4) are in pari material which it should not be.

MOTOR VEHICLES ACT, 1939	MOTOR VEHICLES ACT, 1988
96. Duty of insurers to satisfy judgments against persons insured in respect of third party risks. -(3) Where a certificate of insurance has been issued under sub-section (4) of Section 95 to the person by whom a policy has been effected, so much of the policy as purports to restrict the insurance of the persons insured thereby by reference to any conditions other than those in clause (b) of sub-section (2) shall, as respects such liabilities as are required to be covered by a policy under clause (b) of sub-section (1) of Section 95, be of no effect:	149. Duty of insurers to satisfy judgments and awards against persons insured in respect of third party risks. -(4) Where a certificate of insurance has been issued under sub-section (3) of Section 147 to the person by whom a policy has been effected, so much of the policy as purports to restrict the insurance of the persons insured thereby by reference to any condition other than those in clause (b) of sub-section (2) shall, as respects such liabilities as are required to be covered by a policy under Clause (b) of sub-section (1) of Section 147, be of no effect:
Provided that any sum paid by the Insurer in or towards the discharge of any liability of any person which is covered by the Policy by virtue only of this sub-section shall be recoverable by the Insurer from that person.	Provided that any sum paid by the insurer in or towards the discharge of any liability of any person which is covered by the Policy by virtue only of this subsection shall be recoverable by the Insurer from that person.

39. The reason being after the sentence "by reference to any condition other than those in clause (b) of sub-section (2) shall be of no effect", relates to old "b" which includes a condition excluding driving by a person who is not duly licenced. When it comes to Section 149(4), rightly or wrongly the sentence "by reference to any condition other than those in clause (b) of subsection (2) shall be of no effect" which relates to the present Clause (b) which reads as that the Policy is void on the ground, etc., whereas it should have been "(a)" which relates to condition excluding driving by a person who is not duly licenced.

40. The difference is very revealing and we do not think it is a mistake or error. But the Parliament appears to have introduced a very significant change under the replacing statute to mean that the defences of Insurer, while being confined to those available under Section 149(2), in respect of defences other than those under Section 149(2), as a rule the Insurer may have to pay and recover. Only under Section 149(2)(b) which relates to void Policy the Insurer can seek complete exoneration from liability. That is the understanding we get from comparative reading of Section 96(3) and Section 149(4) of the Act.

41. Since the language in Section 149(4) is in pari material with Section 96(3) of the Old Act, it gives an impression that while the Parliament or the draftsman have chosen to use the same expression 'clause (b) of sub-section (2) as used in Section 96 (3), the content and substance of the said provision is different as illustrated above. Whether it is the act of Parliament or the error of draftsman, the impact and the effect is very significant affording enormous protection to the innocent motor accident victims providing them improved and better protection in the new Act.

42. A comparative reading as above would show that the Parliament in its wisdom, apart from restricting permissible defences of Insurer to those enumerated under Section 149(2), has gone beyond and ensured that all other defences other than those provided under Section 149(2) would be of no effect in so far as third party victims are concerned.

43. At the risk of repetition we point out that the defence under Section 149(2)(b) relates to the Policy of the Insurance held to be void under Certain circumstances. Only in a case where the Policy of the Insurance is found to be void as per Section 49(2)(b) the Insurer may be justified in refusing indemnity."

23. This anomaly was pointed out by Mr. S. Srinivasa Ragavan, an Advocate for Insurance Companies, in his article 'LIFTING THE LEGISLATIVE VEIL' published in 2010 (4) CTC 68 J.S. It is pointed out that 'While drafting sub-section (4) of Section 149 of the M.V. Act in 1988, the parliament ought to have amended the provision of law by making clause (b) as clause (a)". In my view, as expressed in the judgment in Iffco Tokyo General Insurance Company v. Jafter Sadiq, 2012 (1) TN MAC 394 (DB), whether it is the draftsman's mistake or the wisdom of the

parliament, in fact the New Act had denied the right of the Insurance Company to avoid its liability in cases of driving licences. In that case, even the defence of questioning the licence of the driver is not available to the Insurer. Though there was a suggestion on the side of the Insurance Company, that it is only a draftsman's mistake, we held that it is the wisdom of the Parliament restricting the defences of the Insurer.

24. Therefore, as per the dictum laid down in National Insurance Co. Ltd. V. Swaran Singh and others, 2004 (1) TN MAC 104 (SC) : 2004 (1) TAC 321 (SC); in United India Insurance Co. Ltd. V. S. Saravanan, 2009 (2) TN MAC 103 (DB); in Bajaj Allianz General Insurance Co. Ltd., Pune v. P. Manimozhi and others, 2010 (2) TN MAC 542 (DB), in Branch Manager, United India Insurance Co. Ltd., Dharmapuri Town v. Nagammal and others, 2009 (1) TN MAC 1 (FB) and in Jawahar Singh v. Bala Jain and others, 2011 (1) TN MAC 641 (SC); and in Iffco Tokyo General Insurance Company v. Jafer Sadiq, 2012 (1) TN MAC 394 (DB), it is settled that if the Insurer establishes that there is a breach of Policy condition under Section 149(2) (a) (ii), the Insurance Company though not liable, as it has successfully established its defence, can be directed to pay and recover from the insured.

25. However, in New India Assurance Co. Ltd. V. Chandran and another, 2010 (1) TN MAC 65, a learned Single Judge of this Court has held that Where the Insurance Company has positively proved that on the date of accident, the driver of the offending vehicle has not possessed of any licence at all, the owner of the vehicle alone liable to pay compensation. The order of the Larger Bench in National Insurance Co. Ltd. V. Swaran Singh and others, 2004 (1) TN MAC 104 (SC), directing the Insurance Companies to pay and later recover even in cases of 'did not hold any licence at all' was negatived holding. It is not a precedent binding on the Courts.

26. In my humble opinion in Sardari v. Sushil Kumar, 2008 (1) TN MAC 294 (SC) (cited supra) the question of pay and recover was not considered at all. In Branch Manager, New India Assurance Co. Ltd. V. Muralikrishnan and another, 2010(3) MLJ 271, P.K. Mishra, H. laid down a ratio decidendi which is as follows: "The judgment of the Supreme Court in National Insurance Company Ltd. V. Vidhyather Mahariwala and others, 2008 (2) TN MAC 369 (SC) :

2008 (6) CTC 254 (SC) does not, as a rule, exclude the "pay and recover" policy in all cases." It applies to Sardari's case also. Similarly, the learned Single Judge has dealt with only Article 142 of the Constitution of India and the self-contained relief under Section 149(4) of the M.V. Act was not urged before the Court for pay and recover."

27. I am of the considered view that the defence available under Section 149(2)(a)(ii) which relates to duly licenced includes no licence also. The contention that in the case of no licence at all the insured was guilty of negligence and failed to exercise reasonable care in the matter fulfilling the Policy condition can not be acceptable as the victim can not suffer for the failure of the insured. The wisdom of the Three-Judges Bench of the Supreme Court in *British India General Insurance Co. Ltd. V. Captain Itbar Singh and others*, 1958-1965 ACJ 1, is very relevant. This Court is also bound by the decision of the Full Bench in *Branch Manager, United India Insurance Co. Ltd., Dharmapuri Town v. Nagammal and others*, 2009 (1) TN MAC 1 (FB) (cited supra) wherein it is held that - "Where it (Insurance Company) is successful in its defence, it may yet be required to pay the amount to the Claimant and thereafter recover the same from the owner....." It is also relevant to refer to *Jawahar Singh v. Bala Jain and others*, 2011 (1) TN MAC 641 (SC), where the Supreme Court upheld the order of the Tribunal directing the Insurer to pay and recover from the insured in case of a Minor who did not possess and could not have possessed any licence at all, caused the accident. Therefore, even in case of no licence if the Insurance Company establishes that the driver of the insured vehicle was not in possession of any type of licence, the Insurance Company is to be exonerated but as per sub-section (4) & (5) of Section 149 of the Act, they can be directed to pay and recover. Therefore, the questions are answered accordingly in all the Civil Miscellaneous Appeals. Since in all the above Appeals the Insurance Company has established no licence to the drivers, the Appellants are exonerated but directed to pay the compensation and recover the same from the owner of the vehicle in the same proceedings.

28. In *Oriental Insurance Co. Ltd. V. Shri Nanjappan and others*, 2004 (1) TN MAC 211 (SC) : 2004 (2) CTC 464 (SC) : 2004 (1) ACC 524 (SC) the mode of recovery is being mentioned and therefore the Counsel of the Insurance Company requested this Court to

incorporate such mode to enable the Insurance Company to recover the compensation paid from the owner. Since the mode of recovery is not mentioned in the orders of the Tribunal, I see there is a force in the argument of the learned Counsels for the Insurance Companies.

29. In the result, all the Appeals are disposed of holding that in all the cases of no licence, the Insurance Company, though exonerated but directed to pay and recover the same from the owner of the vehicle. The Insurance Company is entitled to recover the compensation as per the mode incorporated in Paragraph 7 of Oriental Insurance Co. Ltd. V. Shri Nanjappan and others, 2004 (1) TN MAC 211 (SC) ; 2004 (2) CTC 464 (SC) : 2004 (1) ACC 524 (SC), which is incorporated as follows:

"For the purpose of recovering the compensation amount from the insured, the Insurer shall not be required to file a Suit. It may initiate a proceeding before the concerned Executing Court as if the dispute between the Insurer and the insured was the subject matter of determination before the tribunal and as if the issue is decided against the owner and in favour of the Insurer. A notice shall be issued to the insured to furnish security for the entire amount. The offending vehicle shall be attached as a part of the security. If necessary arises, the Executing Court shall take assistance of the concerned Regional Transport Authority. The Executing Court shall pass appropriate orders in accordance with law as to the manner in which the insured/owner of the vehicle shall make payment to the Insurer. In case there is any default it shall be open to the Executing Court to direct realization by disposal of the securities to be furnished or from any other property of the insured".

13. Further, in yet another recent decision in S.Iyyapan v. United India Insurance Co. Ltd., reported in 2013 (7) SCC 62, the Hon'ble Supreme Court, while dealing with a similar contention of a valid and effective driving licence, at Paragraph 17, held as follows:

"Hence, in our considered opinion, the insurer cannot disown its liability on the ground that although the driver was holding a licence to drive a light motor vehicle but before driving light motor vehicle used as commercial vehicle, no endorsement to drive commercial vehicle was obtained in the driving licence. In any case, it is the statutory right of a third party to recover the amount of compensation so awarded from the

insurer. It is for the insurer to proceed against the insured for recovery of the amount in the event there has been violation of any condition of the insurance policy."

14. The owner of the vehicle, against whom, right of recovery has been granted, has not preferred any appeal. Hence, in the light of the decisions made in ICICI Lombard General Insurance Company Ltd., v. Annakkili and others reported in 2012 (1) TNMAC 227 and S.Iyyapan v. United India Insurance Co. Ltd., reported in 2013 (7) SCC 62, this Court is of the view that there is no manifest illegality in fastening liability on the appellant-Insurance Company to pay compensation to the respondents/claimants, in each of the appeals and then to recover the same, from the owner of the vehicle.

15. As regards the quantum of compensation in M.C.O.P.No.124 of 2003 [C.M.A.No.438 of 2012], as per Exs.P12 and P13 - Discharge Summaries issued by the Vijaya Hospital, Chennai, there were fractures in left tibia and left elbow. Open reduction and internal fixation has been done in left tibia and left elbow on 12.12.2006 and 21.12.2006 respectively. Removal of implantation was done on 21.02.2007 in Vijaya Health Centre. From the perusal of Ex.P17 - Discharge Summary issued by M.N.Orthopaedic Hospital, it is evident that a surgery has been performed on 30.08.2007 in the left elbow and that he was taking continuous treatment, in the abovesaid hospital, as outpatient. PW.5, Doctor, who examined the respondent/claimant, with reference to the medical records, has assessed the disability at 70%. However, the Tribunal, by considering the oral evidence of P.W.2, injured and PW.5, Doctor and the documents marked, fixed the disability at 60% and awarded Rs.1,20,000/- towards disability compensation. That apart, Claims Tribunal has awarded Rs.25,000/- towards pain and suffering, Rs.10,000/- towards extra nourishment, Rs.10,000/- towards transportation and Rs.38,641/- for medical expenses. Altogether, the Claims Tribunal has awarded compensation of Rs.2,03,641/-, with interest at the rate of 7.5% per annum, from the date of claim, till the date of payment.

16. PW.2, Mr.S.Srinivasan, injured, in his evidence, has stated that he was working as an Administrative Officer in ICICI Bank and earned Rs.25,000/- per month. To support the same, he has produced documents, Ex.P15 - Appointment Order, Ex.P16 - B.E. Mechanical Engineering Course Completion Certificate and Ex.P18 - Pay Slip. It is evident from Exs.P12 and P13 - Discharge Summary that the injured was given treatment as inpatient from 10.12.2006 to 29.12.2006 and during which period, surgeries were done on 12.12.2006 and 21.12.2006 respectively. Again, he was admitted on 31.12.2006 in the same hospital and

discharged on 03.01.2007. Thereafter, he has taken treatment as inpatient for two days on 21.02.2007 and 22.02.2007 respectively and during the said period, a surgery has been done on 21.02.2007. After that, he has been admitted in M.N.Orthopaedic Hospital and taken treatment as inpatient from 29.08.2007 to 01.09.2007. On 30.08.2007, a surgery has been performed in the left elbow. Though there is ample evidence to support the treatment taken for many days, the Tribunal has failed to award any amount towards the loss of income, during the period of treatment, loss of amenities and attendant charges.

17. Compensation of Rs.38,641/- awarded towards medical expenses, is duly supported by medical bills. There is no award towards damages to clothes and articles. Considering the nature of injuries, period of treatment and the surgeries performed, compensation of Rs.25,000/- and Rs.10,000/- has been awarded towards pain and suffering and extra nourishment respectively. Though the injured has taken treatment as inpatient in two different hospitals for nearly five times, the Claims Tribunal has awarded only Rs.10,000/- under the head, transportation. In the light of the above discussion, the quantum of compensation awarded by the Claims Tribunal cannot be said to be excessive or bonanza, warranting interference.

18. As regards the quantum of compensation in M.C.O.P.No.3560 of 2007 [C.M.A.No.1181 of 2015], at the time of accident, the deceased was a bachelor, aged about 22 years. Parents were aged 40 and 45 years respectively. PW.1, M.Ranjitham, has stated that the deceased was working in ICICI Bank, as an Administrative Officer and earned Rs.22,000/- per month. Upon perusal of Ex.P5 - BBM Degree Certificate, Ex.P6 - Computer Education Certificate, Ex.P7 - NCC Certificate, Ex.P8 - Appointment Order issued by ICICI Bank, Ex.P9 - Original salary statement issued by the Bank, the Tribunal fixed the monthly income of the deceased as Rs.12,500/-. As the deceased was a bachelor, the Claims Tribunal has deducted 50% towards the personal and living expenses and by applying '18' multiplier, computed the loss of contribution, as Rs.13,50,000/- ($\text{Rs.12,500/-} \times 12 \times 18 \times \frac{1}{2}$). In addition to the above, the Claims Tribunal has awarded Rs.25,000/- towards loss of love and affection, Rs.10,000/- for funeral expenses and Rs.5,000/- for transportation. Altogether, the Claims Tribunal has awarded Rs.13,90,000/- with interest, at the rate of 7.5% per annum, from the date of claim, till the date of realisation.

19. The Chief Manager of ICICI Bank has been examined as PW.4 and he has acknowledged Ex.P8 - Appointment Order of the deceased. However, considering the evidence of PW.1, mother, that her son worked only for six months and upon perusal of Ex.P9 - Salary statement issued by the Bank, wherein, the salary of the deceased was not uniform and it varied from month to

month and having regard to the eligibility of Rs.1,700/- towards conveyance, Rs.800/- for transport allowance and Rs.750/- for lunch, the Claims Tribunal has taken the income of the deceased as Rs.15,750/- and after deducting the abovesaid amount of Rs.3250/- from the income, determined the monthly income of the deceased as Rs.12,500/-, for computing the loss of dependency. Application of '18' multiplier is in terms of the Apex Court judgment in Sarla Verma v. Delhi Transport Corporation reported in 2009(2) TNMAC 1. The Tribunal has awarded compensation of Rs.13,90,000/- with interest at the rate of 7.5% per annum, from the date of claim, till deposit. The said amount awarded to the legal representatives of the deceased, cannot be said to be excessive.

20. As regards the quantum of compensation in M.C.O.P.No.1493 of 2007 [C.M.A.No.1182 of 2015], at the time of accident, the deceased was aged 32 years. PW.2, Jayachithra, has stated that the deceased was working in ICICI Bank, as Manager (Band I) and earned Rs.60,000/- per month. Upon perusal of Ex.P28 - Appointment Order of the deceased, Ex.P29 - Form 16-A for the period 06.11.2006 to 09.12.2006, Ex.P31 - Pay slip for the month of November 2006 and Ex.P32 - Salary Certificate, the Claims Tribunal fixed the monthly income of the deceased as Rs.26,174/-.. As per the decision made in Rajesh v. Rajbir Singh reported in 2013 (3) CTC 883 (SC), the Claims Tribunal added up 30% towards future prospects. After deducting 10% towards income-tax and 1/4th towards the personal and living expenses of the deceased and by applying '16' multiplier and computed the loss of contribution, as Rs.44,09,856/- (Rs.30,624/- x 12 x 16 x ¾). In addition to the above, the Claims Tribunal has awarded Rs.25,000/- towards loss of consortium, Rs.25,000/- towards loss of love and affection, Rs.10,000/- for loss of estate, Rs.10,000/- for funeral expenses and Rs.5,000/- for transportation. Altogether, the Claims Tribunal has awarded Rs.44,84,856/- with interest at the rate of 7.5% per annum, from the date of claim, till the date of realisation.

21. Though the case of the appellant-Insurance Company is that in the case of employees in unorganised sector or non-salaried or persons, do not have any permanent job and addition of 30% under the head, "future prospects", with the income drawn, at the time of death, should not be made, for computation loss of dependency compensation, we are not inclined to accept the same, for the reason that the expression "future prospects" should not be confined only to the prospects of the deceased in the career, progress or upgradation of position, in which, he was engaged, prior to death, but the expression "future prospects" should also be extended to the likelihood of increase in wages, salary or other emoluments and thereby, increase in

the income, earned by either a skilled or semi-skilled person, considering the upward increase in cost price, inflation and such other factors.

22. Judicial notice can also be taken that the cost of essential commodities, labour, etc., have never remained static and it is always on the rise. Periodically electricity and water charges, on the increase. Consequent to the upward revision of fuel, cost of transportation has increased. To meet out the basic amenities, there would be an increase in income. In relation to employment, education plays an important role. If there are more qualified persons and less number of jobs, then there is a possibility of fixing lesser salary, in the case of unorganised sectors. However, there cannot be a thumb rule, that there would not be any change in income, forever. In view of the above, there is no manifest illegality in the award, made by the Claims Tribunal.

23. In the result, the Civil Miscellaneous Appeals are dismissed. The appellant-Insurance Company is directed to deposit the entire award amount with proportionate accrued interest and costs, if not already deposited, to the credit of M.C.O.P.Nos.3520 and 3560/2007 and 1493/2008, on the file of the Motor Accidents Claims Tribunal (Chief Court of Small Causes), Chennai, within a period of four (4) weeks from the date of receipt of a copy of this order. On such deposit being made, except the minor, the respondent/claimant is permitted to withdraw the same, by making necessary applications before the Tribunal. Minor's share shall be deposited in any Nationalised Bank in fixed deposit, under the reinvestment scheme initially for a period of three years, proximate to the residence of the 1st respondent in CMA.No.1182 of 2014. The interest accruing on the share of the minor shall be paid to the first respondent/guardian once in three months, till they attain majority. No costs. Consequently, connected Miscellaneous Petition is also closed.

Sd/-

Asst.Registrar

/true copy/

Sub Asst. Registrar

skm

To

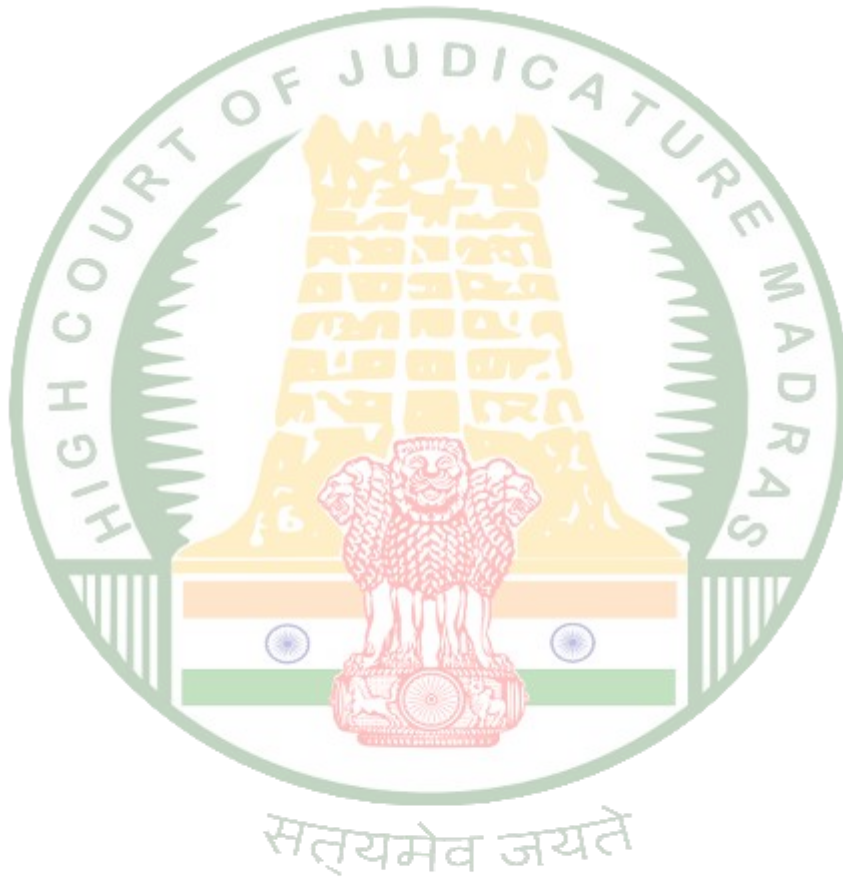
1) The Motor Accidents Claims Tribunal
(Chief Court of Small Causes), Chennai.

2)The Section Officer,
VR Section, High Court, Madras.

+3 ccs to M/s.M.B.Gopalan, Advocate, sr.47212, 47213
+3 ccs to Mr.V.velu, Advocate, sr.47815, 47816

C.M.A.Nos.1180 to 1182 of 2014

rsi co
kra 25.11.2015



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