

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.10.2015

CORAM

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

C.M.A.No.2351 of 2015
M.P.No.1 of 2015

M/s.Iffco Tokio General Insurance Co. Ltd.,
Avinashi. ... Appellant

Vs.

1. S.Chandramohana
2. Ugaeshwaran (Minor)
3. S.Kavinaya (Minor)
(Minors are represented by
her mother, 1st respondent)
4. V.Annamalai
5. A.Saroja
6. Sivaraj ... Respondents

Prayer: The Civil Miscellaneous Appeals are filed under Section 173 of Motor Vehicles Act, 1988, against the Order and decree, dated 11.03.2015, made in M.C.O.P.No.1215 of 2013, on the file of the Motor Accidents Claims Tribunal (Second Additional District & Sessions Court), Tiruppur.

For Appellant : Mr.M.B.Raghavan

JUDGMENT

Being aggrieved by the liability fastened on M/s.IFFCO Tokio General Insurance Co. Ltd., and the quantum of compensation of Rs.33,93,888/-, awarded to the legal representatives of the deceased, with interest, at the rate of 7.5% per annum, the appeal has been filed.

2. As the finding of negligence is not disputed, there is no need to advert to the same.

3. Short facts leading to the appeal are as follows:

On 28.02.2013, about 20.30 Hours, the deceased, A.Senthilnathan, was standing in front of his godown at Sedan Thottam, Aeripalayam, Thekkalur, a car, bearing Registration No.TN 30 AB 1739, driven in a rash and negligent manner, dashed

against him. Though he was taken to the hospital, his life could not be saved. In this regard, a case in Cr.No.109 of 2013, has been registered against the driver of the car, for the offences, under Sections 279 and 304(A) IPC., on the file of the Avinashi Police Station. According to the legal representatives of the deceased, wife, aged 28 years, minors children, aged 7 and 5 years respectively, parents, aged 54 and 50 years respectively, at the time of accident, the deceased was aged 30 years and as a Weaver of cotton Grey cloth, earned Rs.1,58,654/- per annum. They claimed compensation of Rs.35,00,000/-.

4. Before the Tribunal, the appellant-Insurance Company, in their counter affidavit, has contended that at the time of accident, the driver of the Car, did not possess a valid and effective driving licence, to drive the said vehicle. Thus, they denied their liability to pay compensation. On the quantum of compensation, they disputed their age, avocation and the income claimed and the compensation claimed under various heads.

5. Before the Claims Tribunal, wife examined herself as PW.1 and reiterated the manner of accident. PW.2, is the eye-witness to the accident. PW.3 is stated to be the Partner of M/s.Suriya Prakash Textiles Company Ltd., to which, the deceased had supplied cotton Grey cloth and earned Rs.1,58,654/- per annum. Documents, Ex.P1 - FIR, Ex.P2 - Post-Mortem Certificate, Ex.P3 - Death Certificate, Ex.P4 - Legal Heir Certificate, Ex.P5 - Pan Card, Ex.P6 - Income-Tax Deduction, Ex.P7 - Income-Tax Returns, Ex.P8 - Original Pan Card, Ex.P9 - Income-Tax Deductions, Ex.P10 - Income Tax Returns for the assessment year 2010-11, Ex.P11 - R.C. Book and Ex.P12 - Receipt of acceptance for supplying cotton grey cloth, have been marked on the side of the respondents/claimants.

6. On behalf of the appellant-Insurance Company, the appellant herein, Junior Assistant of the Regional Transport Office, Avinashi and he has marked Ex.R1 - Authorisation Letter, Ex.R2 - Motor Vehicles Inspector's Report and Ex.R3 - Check Report for payment of fine. The Law Officer of the appellant-Insurance Company, has been examined as RW.2 and he has marked Ex.R4 - Insurance Policy, Ex.R5 - Postal Letter, Ex.R6 - Acknowledgment, Ex.R7 - Letter addressed to the driver of the offending vehicle and Ex.R8 - Returned cover.

7. On evaluation of pleadings and evidence, the Claims Tribunal came to the conclusion that the driver of the car, bearing Registration No.TN 30 AB 1739, insured with the appellant-Insurance Company, was negligent in causing the accident and inasmuch as the insurer has adduced evidence to prove that the driver of the offending vehicle, did not possess a valid and effective driving licence, at the time of accident and when the deceased was a third party victim, directed the

appellant-Insurance Company to pay the compensation amount and thereafter, to recover from the owner of the vehicle.

8. Based on the entries in Ex.P2 - Post-Mortem Certificate, Ex.P3 - Death Certificate and Ex.P10 - Income Tax Returns for the assessment year 2010-11, the Claims Tribunal has fixed the age of the deceased as 30 years. Accepting the oral testimony of PW.3, partner of M/s.Suriya Prakash Textiles Company Ltd., that prior to death, the deceased had supplied cotton grey cloth and earned Rs.1,58,654/- per annum and the documents, such as, Ex.P9 - Income-Tax Deductions, Ex.P10 - Income Tax Returns for the assessment year 2010-11 and Ex.P12 - Receipt of acceptance for supplying cotton grey cloth, the Claims Tribunal arrived at the conclusion that the deceased earned Rs.1,58,654/- per annum and accordingly, determined his monthly income as Rs.13,220/-. As they were five dependants, the Tribunal deducted 1/4th towards personal and living expenses of the deceased and arrived at a figure of Rs.9,915/- (Deduction of Rs.3,305/-). As the deceased was aged 30 years, the Claims Tribunal added 50% of the income, under the head, future prospects and computed the loss of monthly income at Rs.14,872/- (Rs.9,915/- + 4,957/-). Applying '17' multiplier for the age group of 30 years, the Tribunal computed the dependency compensation at Rs.30,33,888/- (Rs.14,872/- x 12 x 17). In addition to the above, the Claims Tribunal has awarded Rs.1,00,000/- towards loss of consortium, Rs.2,50,000/- towards loss of love and affection and Rs.5,000/- each, towards transportation and funeral expenses respectively. Altogether, the Claims Tribunal has awarded Rs.33,93,888/-, with interest, at the rate of 7.5% per annum, from the date of claim, till deposit.

9. Though Mr.M.B.Raghavan, learned counsel for the appellant-Insurance Company contended that in the absence of valid driving licence, the insurer cannot be mulcted with the liability to pay the compensation amount to the accident victims and then, to recover the same from the owner of the offending vehicle, this Court is not inclined to accept the said contention, for the reason that the said issue 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).

10. 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.

11. 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 Hon'ble 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 tortfeasor. Only under an Insurance Policy between the tortfeasor 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.

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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.

Jafer 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".

12. Further, in yet another 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."

13. 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 and then, to recover the same, from the owner of the vehicle.

14. On the quantum of compensation, the respondents/claimants have examined PW.3, Partner of M/s.Suriya Prakash Textiles Company Ltd., to prove that prior to the accident, the deceased had supplied cotton Grey cloth and earned Rs.1,58,654/- per annum. PW.3 has marked Ex.P9 - Income-Tax Deductions, Ex.P10 - Income Tax Returns for the assessment year 2010-11 and Ex.P12 - Statement of receipt for supply of cotton grey cloth.

15. During the course of hearing, learned counsel for the appellant-Insurance Company also produced Ex.P10 - Income Tax Returns in Form No. ITR 4, for the assessment year 2010-11, submitted by the deceased, Senthilnathan. The annual income is shown as Rs.1,58,654/-. Nature of business shown in the income-tax return is weaving of cotton grey cloth.

16. In a decision in Kalpanaraj v. Tamil Nadu State Transport Corporation reported in 2015 (2) SCC 764, the Hon'ble Apex Court held that income shown in the Income-Tax Returns can be fixed as the annual income of the deceased. In the case on hand, acceptable oral and documentary evidence, have been adduced, on the side of the claimants to prove avocation and income. Decision referred to above, would also lend support to the case of the respondents/claimants.

17. Determination of the age of the deceased, is based on the entries in Ex.P10 - Income Tax Returns in Form No.ITR 4, for the assessment year 2010-11 and therefore, the same cannot be found fault with. 1/4th deduction has been made, in accordance with the decision in Sarla Verma v. Delhi Transport Corporation Ltd., reported in 2009 (2) TNMAC 1 (SC). There is no error in the multiplier adopted by the Tribunal. In the light of the above decisions and discussion, determination of monthly income for computing the loss of contribution to the family and consequently, the quantum of compensation awarded by the Tribunal, cannot be said to be faulty.

18. Award of Rs.1,00,000/- under the head, loss of consortium, can be justified, in the light of the the decision in Rajesh v. Rajbir Singh reported in 2013 (9) SCC 54. Minors are aged about 7 and 5 years respectively. When the 1st respondent-wife has been compensated under the head, loss of consortium, the additional compensation of Rs.50,000/- under the head, loss of love and affection, is superfluous. Considering the age of the minors, the excess amount awarded to the wife, can be adjusted under the head, loss of love and affection to respondents 2 to 3, minor children.

19. Compensation of Rs.5,000/- each, awarded towards transportation and funeral expenses, is less. The overall quantum of compensation awarded to the legal representatives of the deceased/respondents, cannot be said to be on the higher side, warranting interference. Apportionment remains intact. For the reasons, stated supra, liability fastened on the appellant-Insurance Company to pay compensation to the legal representatives of the third party victim and then to recover from the owner of the vehicle and the quantum of compensation of Rs.33,93,888/-, with interest, at the rate of 7.5% per annum, from the date of claim, till deposit, to the legal representatives of the deceased, are sustained.

20. In the result, the Civil Miscellaneous Appeal is dismissed. Consequent to the dismissal of the appeal, the appellant-Insurance Company is directed to deposit the entire award amount, less the statutory deposit of Rs.25,000/- already made, to the credit of M.C.O.P.No.1215 of 2013, on the file of the Motor Accidents Claims Tribunal (Second Additional District & Sessions Court), Tiruppur, within a period of four weeks from the date of receipt of a copy of this judgment. Upon such deposit, the respondents/claimants are permitted to withdraw the

entire amount, as per the apportionment made by the Tribunal, on making necessary application before the Claims Tribunal. Consequently, the connected M.P.No.1 of 2015 is closed.

skm

-s/d-

Assistant Registrar (CS-IV)

True Copy

Sub-Assistant Registrar

To

The Motor Accidents Claims Tribunal
(Second Additional District & Sessions Court), Tiruppur.

+ 1 cc to Mr.M.B.Gopalan, Advocate SR 58193

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C.M.A.No.2351 of 2015



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