

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 19.11.2014

PRONOUNCED ON : 26.06.2015

CORAM

THE HONOURABLE Mr.JUSTICE P.R.SHIVAKUAMR

C.M.A.No.3694 of 2010

M/s.United India Insurance
Company Limited
Branch Office
No.22-B, Shop No.11
Krishnaveni Complex
Pallipalayam - 638 006

... Appellant/3rd Respondent

Vs.

1.P.Dhandapani
2.R.Pravinkumar
3.S.Rajeswaran

...Respondent 1 /Petitioner

... Respondents 2 & 3/Respondents 1 & 2

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree of the Motor Accident Claims Tribunal (Chief Judicial Magistrate), Erode dated 03.06.2010 made in M.C.O.P.No.6 of 2010.

For Appellant : Mr.J.Chandran

For Respondents : Mr.R.Nalliyappan for R1
Mr.I.C.Vasudevan for R3

JUDGMENT

United India Insurance Co. Ltd, which figured as the third respondent in MCOP No.6/2010 on the file of the Motor Accident Claims Tribunal (Chief Judicial Magistrate), Erode has preferred this Civil Miscellaneous Appeal under Section 173 of the Motor Vehicles Act, 1988 against the award of the Tribunal dated 03.06.2010 made in the said MCOP.

2. The first respondent Dhandapani (injured) preferred a claim under Section 166 of the Motor Vehicles Act, 1988 for a sum of Rs.15,00,000/- as compensation for the injuries sustained by him in a road accident that took place at 8.45 p.m on 08.07.2006, against the respondents 2 to 3 herein and the appellant herein, on the premise that they were respectively the driver, owner and insurer of the offending vehicle, namely a TVS Victor motorcycle bearing

Regn. No.TN-33 AC-4468. Initially the first respondent(claimant) made a claim for Rs.7,00,000/- as compensation. Subsequently, the petition was amended and the claim was enhanced to Rs.15,00,000/-. The claim was made on the basis of his contention that the accident took place due to the rash and negligent driving of the said motorcycle belonging to the third respondent herein (second respondent in the MCOP) by the second respondent herein (first respondent in the MCOP) and that all the three persons, namely the respondents 2 and 3 herein and the appellant herein (respondents 1 to 3 in the MCOP) were jointly and severally liable to pay the said amount as compensation as driver, owner and insurer of the said offending vehicle, namely motorcycle bearing Regn. No.TN-33 AC-4468.

3. The claim was resisted by the respondents 2 and 3 herein/respondents 1 and 2 in the MCOP contending that the accident did not take place due to the rash and negligent driving of the motorcycle owned by the third respondent herein (second respondent in the MCOP) and driven by the second respondent herein (first respondent in the MCOP), as contended by the claimant. However, they also took a stand that the vehicle stood fully insured with the appellant herein (third respondent in the MCOP) and that since the vehicle was driven by the second respondent herein, who was then holding a valid Learner's Licence and was accompanied by the third respondent herein, who was holding a regular driving licence to drive the said vehicle, the appellant herein, being the insurer alone would be liable to pay the compensation, if any, to which the first respondent herein (claimant) was entitled. They also contended that the petition averments regarding the age, profession and income of the deceased and also the alleged permanent disability resulting in loss of earning capacity should be substantiated by the first respondent herein (claimant) by adducing evidence.

4. The appellant herein (third respondent in the M.C.O.P.) resisted the claim denying the petition allegations regarding the manner in which the accident took place and the alleged negligence on the part of the second respondent herein. It was also contended in the counter statement of the appellant herein (third respondent in the MCOP) that there was violation of policy conditions in so far as the second respondent herein (first respondent in the MCOP) did not possess an effective valid driving licence to drive the motorcycle as on the date of accident and that hence the appellant herein (insurer) was entitled to be exonerated from its liability to indemnify the insured. Besides the said plea denying the liability of the insurer on the ground of alleged violation of the policy condition, the appellant herein (insurer) had also resisted the claim on the question of negligence and quantum of compensation.

5. In the enquiry conducted before the Motor Accident Claims Tribunal, five witnesses were examined as PWs1 to 5 and 24 documents were marked as Exs.P1 to P24 on the side of the first respondent herein (claimant). One witness was examined as RW1 and

two documents were marked as Exs.R1 and R2 on the side of the appellant herein (insurer).

6. The Tribunal appraised the evidence and, upon such appreciation of evidence, rendered a finding that the accident took place due to the act of the second respondent herein (1st respondent in the MCOP) in driving the motorcycle bearing Regn. No.TN-33 AC-4468 in a rash and negligent manner and hitting against the first respondent herein (claimant), who had then become a pedestrian after parking his vehicle near the place of impact. The Tribunal also held that the injuries sustained by the first respondent herein (claimant) in the said accident resulted in permanent disability. The Tribunal assessed the permanent disability at 55%, fixed the age of the first respondent herein (claimant) as on the date of accident as 46 years, took Rs.4,000/- to be his monthly income, selected '13' to be the appropriate multiplier and assessed the compensation for loss of future earning capacity at Rs.3,43,200/- being the product of 55% of the annual income multiplied by the selected multiplier. Adding Rs.25,000/- towards pain suffering, Rs.10,000/- towards extra nourishment, Rs.10,000/- towards transport expenses, Rs.3,000/- towards expenditure incurred on the attendants of the injured while he was taking treatment in the hospital, a sum of Rs.5,000/- towards future loss of amenities in life and Rs.72,820/- towards medical expenses, the Tribunal fixed the total amount of compensation at Rs.4,73,020/-. The split up particulars of the amount arrived at by the Tribunal are as under:

Loss of earning capacity	: Rs.3,43,200/-
Pain and suffering	: Rs. 25,000/-
Extra Nourishment	: Rs. 10,000/-
Transport Expenses	: Rs. 10,000/-
Expenses on Attendants	: Rs. 3,000/-
Future loss of amenities	: Rs. 5,000/-
Medical Expenses	: Rs. 76,820/-

Total : Rs.4,73,020/-

7. Regarding the contention of the appellant herein (insurer) that there was violation of a policy condition in so far as the second respondent herein (first respondent in the MCOP) was driving the vehicle, without possessing valid driving licence is concerned, the Tribunal held that the said contention was not proved and accepted the contention of the second respondent and third respondent herein/respondents 1 and 2 in the MCOP that the second respondent herein was holding a valid learner's driving licence to

drive the motorcycle and he was accompanied by the third respondent herein, who was holding a regular driving licence to drive such type of vehicle and that therefore, there was no violation of the policy condition so that the insurer could be exonerated from its liability to indemnify the insured. Ultimately, the Tribunal mulcted the entire liability on the appellant herein/third respondent in the MCOP (insurer) and passed an award on 03.06.2010 directing the appellant herein (insurer) to pay a sum of Rs.4,73,020/- as compensation to the first respondent herein (claimant) together with an interest on the said amount at the rate of 7.5% per annum from the date of filing of the petition till the date of deposit, within two months from the date of award, with a rider that in the event of default in depositing the said amount within two months, interest shall be paid at the rate of 9% per annum. The Tribunal also held the first respondent herein (claimant) entitled to recover proportionate cost from the appellant herein (insurer).

8. The insurance company, which figured as the third respondent in the MCOP, has chosen to prefer this Civil Miscellaneous Appeal challenging the fixation of the liability on it on various grounds set out in the grounds of Civil Miscellaneous Appeal. The appeal came to be preferred not only challenging the finding of the Tribunal negating the contention of the appellant herein (insurer) regarding the alleged violation of the terms and conditions of the policy and fixing of the liability on the appellant herein (insurer), but also on the question of negligence as well as quantum of compensation awarded by the Tribunal.

9. The points that arise for determination in the appeal are as follows:

"1. Whether the Tribunal committed an error in holding that there was no violation of the policy condition regarding the licence to be held by the rider of the vehicle and the other requirements for riding the motorcycle by a person holding learner's licence?

2. Whether the Tribunal is right in fixing the liability on the insurer of the offending vehicle without fixing the liability at the first instance on the insured, namely the owner of the offending vehicle?"

10. The arguments advanced by Mr.J.Chandran, learned counsel appearing on behalf of the appellant, by Mr.R.Nalliappan, learned counsel for the first respondent/claimant and by Mr.I.C.Vasudevan, learned counsel for the third respondent/owner of the vehicle were heard. The materials available on record were also perused.

POINT No.1:

11. The first and foremost contention of the learned counsel for the appellant is that the Tribunal's award without fixing the

liability at the first instance on the owner of the vehicle, namely insured and straight away fixing the liability on the appellant herein (insurer) is not proper. The next contention of the learned counsel for the appellant is that though the respondents 2 and 3 herein (respondents 1 and 2 in the MCOP) had taken a stand that the second respondent herein (first respondent in the MCOP) who was riding the motorcycle bearing Regn. No.TN-33 AC-4468 belonging to the third respondent herein (second respondent in the MCOP) was holding a Learner's Licence effective as on the date of the accident and that he was accompanied by the third respondent herein (second respondent in the MCOP), who was holding a regular valid licence to drive the said vehicle, neither the Learner's Licence held by the rider of the motorcycle, namely the second respondent herein, nor the driving licence of the person, who accompanied him in the motorcycle as pillion rider to give him instructions, namely the third respondent herein, was produced; that on the other hand, the rider of the motorcycle, namely the second respondent herein was prosecuted and convicted for an offence under Section 3 r/w 181 of the Motor Vehicles Act, 1988 and that brushing aside the said facts, the Tribunal erroneously held that there was no violation of the policy condition, which would exonerate the appellant herein (insurer). The other contentions are regarding the merits of the case regarding. The appellant herein (insurer) has not obtained any permission under Section 170 of the Motor Vehicles Act, 1988 to raise the grounds of defence available to the insured, namely the owner of the vehicle.

12. Per contra, learned counsel for the first respondent herein/claimant would contend that the insurer, who pleads violation of the policy condition, should prove it by adducing reliable evidence; that since the appellant herein (insurer) had not adduced sufficient evidence to prove that the second respondent herein was not holding even a Learner's Licence as contended by him in his counter statement, the finding of the Tribunal that the insurer failed to prove its case that there was violation of policy condition, could not be termed either defective or infirm warranting interference in this appeal.

13. In the criminal case, the second respondent was prosecuted for an offence of driving the vehicle without valid licence and policy in STC No.8140/2006 on the file of Judicial Magistrate No.I, Erode. From Ex.P5, it is obvious that the second respondent herein (first respondent in the MCOP) pleaded guilty and has made an admission that he was riding the vehicle without a valid driving licence. Such an admission shall be a valid piece of evidence. The person, who disputes the correctness of the admission made therein may lead evidence regarding the circumstances and the reasons for making such admission and prove that the fact admitted therein was not correct.

14. In this case, neither the second respondent nor the third respondent appeared as a witness before the Tribunal to discredit the evidentiary value of the admission made before the criminal court. They have also not chosen to produce the alleged Learner's

Licence possessed by the second respondent, not even the driving licence held by the third respondent, who is said to have accompanied the first respondent in the two wheeler to give him instructions was examined before the Tribunal as a witness. His licence was also not produced. Under the said circumstances, the Tribunal committed an error holding that there was no violation of any of the terms and conditions of the policy when Ex.P5 judgment evidences a best piece of evidence, namely an admission made before the criminal court disregarding the best piece of evidence that the second respondent herein drove the two wheeler without a valid driving licence. Therefore, the finding of the Tribunal that there was no violation of policy condition has got to be reversed.

15. It is the further contention of the learned counsel for the first respondent herein (claimant) that the rejection of the claim of the insurer for exoneration and fixation of the liability on the appellant herein (insurer) were made on proper appreciation of evidence and correct application of the provisions of law. In this regard, the learned counsel for the first respondent was supported by the learned counsel for the third respondent. However, regarding the question of negligence and the quantum of compensation, the learned counsel for the third respondent supported the contention of the learned counsel for the appellant and contended that the amount awarded as compensation was excessive and exorbitant.

16. This court took into consideration the above said submissions made on both sides.

17. There is no dispute regarding the fact that the accident took place near Jacees Matriculation School bus stop at Moolapalayam on the Erode to Avalpoondurai Road on 08.07.2006 at about 8.45 p.m. According to the petition averments, the first respondent herein (claimant) parked his van bearing Regn. No.TN-37 L-0814 at the extreme left (western) side of the north-south road and was walking along the said road from South to North to see his daughter, who was working in Jones company and while he was nearing the Jacees Matriculation School bus stop, a TVS Victor motorcycle bearing Regn. No.TN-33 AC-4468, of which the second respondent herein was the rider, came there in the same direction, namely South to North, in a rash and negligent manner and dashed against the first respondent herein (claimant) from behind. Based on the said narration of the incident, the first respondent herein (claimant) had contended that the accident took place solely due to the rash and negligent driving of the motorcycle by the second respondent herein (first respondent in the MCOP).

18. In this regard, the first respondent herein (claimant) himself figured as PW1 and gave evidence reiterating the petition averments regarding the manner in which the accident took place. In order to substantiate his contention that the second respondent herein/first respondent in the MCOP, who was riding the motorcycle bearing Regn. No.TN-33 AC-4468 was at fault, as he acted with rashness and negligence in riding the said vehicle and dashed it

against PW1 from behind, he has also examined PW3-Sridharan and PW4-Dr.Selva Perumal besides producing Ex.P1 copy of the first information report, Ex.P2-report of Motor Vehicle Inspector, Ex.P4-copy of the charge sheet and Ex.P5-copy of the judgment in the criminal case.

19. As against the said evidence, which are enough to prove the petition averments regarding the nature of the accident and the negligence on the part of the rider of the motorcycle, namely the second respondent herein, there is no contra evidence adduced on the side of the second and third respondents herein (driver and owner of the offending motorcycle, bearing Regn. No.TN-33 AC-4468. The appellant herein (insurer) also has not adduced reliable evidence to show absence of negligence on the part of the rider of the motorcycle or to prove any contributory negligence on the part of the first respondent herein (claimant). The rough sketch prepared by the Investigating Officer in the criminal case will not be enough to discredit the overwhelming evidence adduced on the side of the first respondent herein (claimant). Even the said rough sketch marked as Ex.R1 shall not support the case of the appellant herein and respondents 2 and 3 herein that there was no negligence on the part of the second respondent herein (first respondent in the MCOP) or that there was any contributory negligence on the part of the first respondent herein (claimant). On a proper appreciation of evidence, the Tribunal came to the correct conclusion that the accident was proved to have occurred due to the rash and negligent driving of the motorcycle bearing Regn. No.TN-33 AC-4468 by the second respondent herein/first respondent in the MCOP. The said finding is neither defective nor infirm and it does not warrant any interference by this court.

20. The first respondent herein (claimant) is a heavy vehicle driver holding Driving Licence for driving heavy vehicles. The said fact is obvious from the evidence of PW1 and Ex.P11 - Driving Licence of the first respondent (claimant). The contention of the first respondent herein (claimant) that he had parked his van bearing Regn. No.TN-37 L-0814 on the western edge of the road and was walking along the road when he was hit by the motorcycle has been substantiated by oral and documentary evidence. The same has not been disputed, nor was it disproved by reliable evidence. Hence the contention of the first respondent/claimant that he was a driver by profession was correctly accepted by the Tribunal. His age was also correctly fixed at 46 years based on the date of birth found in Ex.P11. Since there was no document to prove his income, considering the fact that he was holding a heavy vehicle Driving Licence, the Tribunal held that such a person would be easily earning a sum of Rs.4,000/- per month. The said finding cannot be challenged as defective or infirm.

21. The first respondent herein/claimant sustained the following injuries that are found noted in Ex.P3, copy of the wound certificate:-

- 1) Lacerated injury over the centre of the forehead 2"x1"x 1/2"
- 2) Contusion over the right temporal scalp 3"x3"
- 3) Contusion with deformity in right thigh 8"x 6"
- 4) Contusion right gulteal region 3"x3"
- 5) Contusion with abrasion right leg 3"x3"
- 6) Contusion with abrasion left leg 2"x2"
- 7) Abrasion back of right side chest 4"x3"
- 8) Abrasion left shoulder 2"x2"
- 9) Contusion over the left temporal scalp 2"x2"

A consideration of Ex.P3-wound certificate, Ex.P10-discharge summary, Ex.P14-prescription slips, Ex.P15-Discharge summary, Exs.P16 and P19 - Disability certificates, Exs.P17, P18 and P20 to P24 - X ray bill, X rays and laboratory report, along with the evidence of Medical Officers (PW2 and PW4) would make it clear that the claimant had suffered a permanent disability to the tune of 55%. The Tribunal's choice of fixing the permanent disability at 55% and the corresponding loss in future earning capacity at 55% has got to be confirmed, since the appellant has not successfully projected the said finding to be incorrect or defective. The Tribunal also adopted appropriate multiplier as per the chart provided in Sarla Verma & Ors vs Delhi Transport Corp.& Anr reported in (2009) 6 SCC 121, which was confirmed in Reshma Kumari and Ors. Vs. Madan Mohan and another reported in 2013 ACJ 1253 (SC). Hence the fixation of a sum of Rs.3,43,200/- as compensation for the loss of earning capacity has to be accepted as a correct assessment. Award of a sum of Rs.76,820/- towards medical expenses is also justified as they are covered by the medical bills produced as Exs.P6 to P9, P18, P22 and P23. Considering the nature of injuries, nature and duration of treatment and the permanent disability with which the first respondent(claimant) is found at present, the award of a sum of Rs.25,000/- towards pain and suffering, Rs.10,000/- towards extra nourishment, Rs.10,000/- towards transport expenses and Rs.3,000/- towards expenditure incurred on the persons who were attending on the first respondent herein(claimant) while he was taking treatment in the hospital and Rs.5,000/- towards the loss of amenities in life due to the permanent disability, cannot be held to be either excessive or arbitrary. Hence the total amount arrived at by the Tribunal as compensation to which the first respondent(claimant) was entitled has got to be confirmed.

22. The next question that arises for consideration is, "Whether the appellant (insurer) has proved the absence of valid driving licence for the second respondent herein/first respondent in the MCOP to drive the motorcycle bearing Regn. No.TN-33 AC-446 owned by the third respondent herein/second respondent in the MCOP?"

23. When a claim is made by the injured or by the legal representatives of the deceased against the owner as well as insurer of the motor vehicle involved in the accident and the insurer claims to be exonerated from liability to indemnify the injured on the ground of violation of the terms and conditions of

the policy, the burden of proving the same shall lie on the insurer. In the case on hand, the appellant herein (insurer) had taken a plea in the counter statement admitting that the offending vehicle, namely motorcycle bearing Regn. No. TN-33 AC-4468 stood insured with the appellant herein as on the date of accident. Copy of the insurance policy itself has been produced and marked by the appellant herein (insurer) as Ex.R2. There is no dispute regarding the coverage of insurance and the fact that the insurance policy was in force as on the date of accident. However, such a plea of the appellant (insurer) was just opposite to the stand taken by the respondents 2 and 3 herein/respondents 1 and 2 in the MCOP in their counter statement. According to the averments found in the counter statement of the respondents 2 and 3 herein/respondents 1 and 2 in the MCOP, the first respondent in the MCOP, who was riding the motorcycle was holding a valid Learner's Licence to drive the motorcycle and he was accompanied by the third respondent herein to give him driving instructions. It is their further assertion that the third respondent herein was holding a regular licence to drive the motorcycle and that apart from the third respondent herein, no other person was accompanying the second respondent herein in the motorcycle. It has been further stated that in accordance with the Motor Vehicle Rules 'L' boards had been displayed on the front and back side of the vehicle and the holder of the Learner's Licence was accompanied by the third respondent herein, a person holding a valid driving licence to drive the motorcycle and that therefore, there was no violation of the terms and conditions of the policy. Of course Respondents 2 and 3 (first and second respondents in the MCOP), who had taken such a stand, did not adduce evidence in proof of the same. When the insured, namely the owner of the vehicle fails to produce the driving licence of the driver of the motor vehicle involved in the accident, the same alone shall not be enough to prove that the driver did not possess a valid driving licence. There is absence of sufficient evidence to show that the third respondent herein, who was accompanying the second respondent herein (first respondent in the MCOP) in the motorcycle involved in the accident, did not possess a valid driving licence to act as an instructor of the second respondent herein/first respondent in the MCOP.

24. When the insurance company wants to get exonerated from its liability under the contract of insurance to indemnify the insured on the ground of violation of terms and conditions of the policy, the burden of proving the same shall lie on the insurance company. In this regard, the insurance company, besides examining RW1, the Zonal Deputy Manager, who would simply state that the first respondent in the MCOP did not possess a legally valid driving licence at the time of accident, no other evidence was adduced on the side of the appellant herein (insurer). The appellant herein (insurer) could have examined the concerned official in the RTO office having jurisdiction over the area in which the first respondent in the MCOP was residing to show that no driving licence/learner's licence had been issued to the second respondent herein/first respondent in the MCOP. The appellant herein/insurer could have served a notice on the respondents 2 and

3 to produce the learner's licence of the second respondent herein and the regular driving licence of the third respondent. If at all such a notice was given and despite service of such notice, the insured failed to produce the driving licence, then the insurer could have urged the Tribunal to draw an adverse inference against the insured in respect of the allegation of violation of the terms and conditions of the policy. No such notice came to be served on the respondents 2 to 3 herein/respondents 1 and 2 in the MCOP.

25. In *Bhuvan Singh V. Oriental Insurance Co. Ltd. & Another* reported in 2010-1-LW-254, the Hon'ble Supreme Court has held that the burden of proving that there was absence of driving licence for the driver of the vehicle and it amounted to violation of the terms and conditions of the policy lies on the insurance company.

26. In *National Insurance Co. Ltd. V. Swaran Singh* reported in 2004 (1) ACJ 1 Supreme Court, the Hon'ble Supreme Court made the following observation:

"The proposition of law is no longer *res integra* that the person who alleges breach must prove the same. The insurance company is, thus, required to establish the said breach by cogent evidence. In the event the insurance company fails to prove that there has been breach of conditions of policy on the part of the insured, the insurance company cannot be absolved of its liability."

It was further observed in the very same judgment as follows:

"The insurance companies are, however, with a view to avoid their liability must not only establish the available defence(s) raised in the said proceedings but must also establish "breach" on the part of the owner of the vehicle, the burden of proof whereof would be on them."

27. In this case, except pointing out the fact that the first respondent was charge-sheeted for an offence under Section 3 r/w 181 of the Motor Vehicles Act, 1988 and was convicted, there is no other evidence to show that the second respondent herein/first respondent in the MCOP did not possess a valid learner's licence at the time of accident. The judgment of the criminal court shall be irrelevant in the motor accident claims case, except to show the fact that there had been a prosecution regarding the accident and it resulted in either acquittal or conviction. In case the conviction is based on admission, the same shall be relevant not as the judgment of the criminal court, but as an admission made in prior court proceedings. It should also be kept in mind that though an admission shall be a valid and is a better piece of evidence, it shall not amount to conclusive proof. The alleged fact admitted can be proved to be incorrect stating the circumstances and the purposes for which such admission came to be made.

28. In this case, though the second respondent herein convicted for an offence under Section 3 r/w 181 on his plea of guilty, that alone will not amount to proof of the fact that he was not holding a learner's licence at the time of accident and the conditions for riding a motorcycle by him had not been complied with. Had the judgment of the criminal court been produced by the third respondent herein and it was marked through a witness examined on the side of the appellant herein (insurer), then the respondents in the appeal, namely the claimant and the respondents 1 and 2 in the MCOP would have got a chance to cross-examine such witness suggesting that the fact admitted before the criminal court was false and that the plea of guilty was made in order to avoid unnecessary prolongation of the case. As it was not done by the insurance company, the mere fact that the second respondent herein was charge-sheeted for an offence under Section 3 r/w 181 of the Motor Vehicles Act, 1988 and was convicted with a fine of Rs.1,700/- on the basis of his plea of guilty, shall not be enough to discharge the burden cast on the appellant herein (insurance company) to prove the absence of driving licence for the second respondent herein, especially when the respondents 2 and 3 herein/respondents 1 and 2 in the MCOP have taken a plea that the second respondent herein/first respondent in the MCOP was holding a valid learner's licence at the time of accident. For the above said reasons, this court comes to the conclusion that the finding of the Tribunal that the contention of the appellant herein (insurer) that there was violation of the terms and conditions of the policy as the second respondent herein did not hold a valid driving licence as on the date of accident was not proved by the appellant herein (insurer), does not deserve any interference.

29. Even assuming that the admission made by the first respondent in the criminal proceedings and the testimony of RW1 would be enough to discharge the burden of proof cast on the insurance company, the same shall not be enough to hold that the appellant herein (insurance company) shall be exonerated from its statutory liability towards the third party victims. In this regard, the judgment of the Supreme Court in National Insurance Co. Ltd., Vs. Swarnan Singh others reported in 2004 (3) SCC 297 and a judgment of a Division Bench of this court in Bajaj Allianz General Insurance Company Ltd., Pune Vs. P.Manimozhi and four others reported in 2010 (2) TNMAC 542, shall point out the fact that the breach of a condition of the policy shall alter the inter se rights and liabilities of the insurer and the insured and the same shall, in no way, affect the liability of the insurer towards the third party claims. That is the reason why in such cases of proof of breach of conditions of the contract of insurance on the part of the insured, the insurance companies are held liable to satisfy the awards towards the third party claimants and then recover such amount from the insured/owner of the vehicle. In the above said context also, the contention of the appellant herein (insurance company) that it stands exonerated from its liability to satisfy the award of compensation towards the first respondent (injured claimant) has got to be discountenanced. The fixation of the liability by the Tribunal on the appellant (insurance company) is

on application of sound principles of law and the same cannot be termed erroneous.

POINT No.2

30. The learned counsel for the appellant (insurance company) has contended that the Tribunal committed an error in straight away mulcting the liability on the insurer without first casting the liability on the owner of the offending vehicle. The scheme envisaged under Section 149 of the Motor Vehicles Act, 1988 contemplates the fixation of the liability at the first instance on the insured (owner of the vehicle) and enforcement of the same against the insurer on the basis of the insurance coverage of the vehicle. The section says that, in case, after a certificate of insurance has been issued, and a judgment or award is obtained against the insured by the policy, then notwithstanding that the insurer may be entitled to avoid or cancel or may have avoided or cancelled the policy, the insurer shall pay to the person entitled to the benefit of the decree any sum not exceeding the sum assured therein as if he were the judgment debtor in respect of the liability together with any amount payable in respect of the costs and any sum payable in respect of interest on that sum. The section makes it clear that notwithstanding that the insurer may be entitled to avoid or cancel the policy on the ground of violation of the policy conditions, which are enumerated in sub clause (2) of Section 149 of the Motor Vehicles Act, 1988, the insurer's liability to satisfy the award in favour of third party shall be intact. The interest of insurer in such case of violation of terms and conditions of the policy, is limited to seeking reimbursement of the amount paid by the insurance company to the claimant, from the insured person on the ground of violation of the policy conditions enabling the insurer to repudiate the contract of insurance. The above observations have been made, only to show that, even if it is assumed that the appellant herein (insurance company) was able to prove absence of valid driving licence for the second respondent herein to drive the motorcycle involved in the accident, its liability towards the first respondent (claimant) shall be intact.

31. It has been pointed out supra that the appellant herein (insurance company) failed to establish violation of the policy condition by proving that the motorcycle was driven by a person not holding a valid licence, by adducing reliable evidence. Therefore, though this court accepts the contention of the learned counsel for the appellant that the Tribunal committed an error in fixing the liability on the appellant (insurer) without fixing the liability at the first instance on the insured, it rejects the contention of the appellant that the appellant (insurer) shall stand exonerated of its liability towards first respondent (claimant) to satisfy the award of compensation passed against the third respondent (insured). The first contention of the learned counsel for the appellant alone is accepted and this court holds that the Tribunal committed an error in directly fixing the liability on the appellant herein (insurer) without first holding the tortfeasors, namely the respondents 2 and 3 herein/respondents 1 and 2 in the

MCOP liable to pay compensation to the first respondent herein (injured). Hence the award of the Tribunal is liable to be modified by fixing the liability on the respondents 2 and 3 herein (driver and owner of the offending vehicle) at the first instance and holding the appellant herein (insurance company) jointly and severally liable with respondents 2 and 3 to satisfy the award of compensation. Accordingly, the award shall be modified by holding the appellant and respondents 2 and 3 herein/Respondents 1 to 3 in the MCOP jointly and severally liable to pay the compensation as indicated above to the first respondent herein (injured claimant). The Tribunal's direction to pay interest at the rate of 7.5% per annum from the date of petition till deposit in case award amount would be deposited within two months from the date of award and at a higher rate namely, 9% per annum, in case of default in depositing the amount within two months as per the award amounts to awarding a penal interest, which will not be justifiable. Hence the award of the tribunal has to be modified with regard to interest fixing the interest uniformly at the rate of 7.5% per annum. In all other respects, including quantum, the award of the Tribunal deserves confirmation.

In the result, the appeal is allowed in part. The award of the Tribunal is modified by directing the appellant and the respondents 2 and 3 herein/respondents 1 to 3 in the MCOP to jointly and severally pay the award amount, namely Rs.4,73,020/- together with an interest on the said amount at the rate of 7.5% per annum from the date of filing of the MCOP till payment/deposit and also the proportionate cost in the MCOP. However, there shall be no order as to cost in the CMA.

Sd/-

Assistant Registrar

True Copy

Sub Assistant Registrar

सत्यमेव जयते

asr

To

1.The Motor Accident Claims Tribunal
(Chief Judicial Magistrate), Erode.

2.The Section Officer, V.R.Section, High Court, Madras

1 cc to Mr.R.Nalliyappan , Advocate Sr.No.31664

C.M.A.No.3694 of 2010

rv(co)

pmk.31.7,2015