IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.03.2017

CORAM:

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

C.M.A.Nos.2557 and 2674 of 2015
M.P.No.1 of 2015

The Branch Manager,
United India Insurance Co. Ltd.,
Ariyalur ... Appellant in both appeals

versus

Panjavarnam
Sundararaj
Seethabathi
Govindasamy
Amsayal ... Respondents 1 to 5 in C.M.A.No.2557 of 2015

Susheela
Minor Kokila
Minor Krishna
(Minors are represented by their mother, 5th respondent)
Ramasamy
Rajakumari (Died) ... Respondents 1 to 4 in C.M.A.No.2674 of 2015

Senthilkumar ... 6th Respondent in C.M.A.No.2557 of 2015
.. 5th Respondent in C.M.A.No.2674 of 2015

Civil Miscellaneous Appeals are filed, against the judgment and decree in M.C.O.P.Nos.259 and 260 of 2013, dated 17.02.2015, on the file of the Motor Accident Claims Tribunal (Principal District Judge) at Perambalur District.

For Appellant : Mr.J.Chandran

For Respondents 1 to 5 in C.M.A.No.2557 of 2015 : Mr.SP.Yuaraj

For Respondents 1 to 4 in C.M.A.No.2674 of 2015 : Mr.A.A.Venkatesan

For 6th Respondent herein : Set Exparte before Tribunal
in CMA 2557/15 & 5th respondent
in CMA 2674/15

JUDGMENT

(Judgement of the Court was made by S.MANIKUMAR ,J.)

Being aggrieved by the judgment and decree in M.C.O.P.Nos.259 and 260 of 2013, dated 17.02.2015, on the file of the Motor Accident Claims Tribunal (Principal District Judge) at Perambalur District, United India Insurance Company Limited, has preferred the present appeal.

2. Facts as deduced from the material on record and the impugned common judgment are that on 13.04.2013 at 05.30 A.M., Rajendran (M.C.O.P.No.259 of 2013) along with Rajamanickam (M.C.O.P.No.260 of 2013), were proceeding in a two-wheeler, bearing Registration No.TN 46 H 8735, driven by Rajendran, on Chennai-Trichy National Highways, from North to South, to call labourers, for the harvest of "Karunai Kizhangu", raised in the land, belonging to Rajamanickam. North of Murukkankudi Pirivu road, near Angalamman Nagar, a HMT Tractor along with the Trailers, bearing Registration No.TN 46 D 4221, TN 45 W 5967 and TN 25 Y 4468, belonging to the 9th respondent herein and insured with the appellant-Insurance Company, driven by its driver, in a rash and negligent manner, dashed against the two-wheeler. Both the rider and pillion rider sustained fatal injuries and died on the spot. In this regard, a case in Cr.No.123 of 2013, on the file of Mangalamedu Police Station, has been registered against the driver of Tractor, insured with United India Insurance Company Limited, Ariyalur. For the death of Rajendran and Rajamanickam, their legal representatives filed separate claim petitions, claiming compensation of Rs.20,00,000/- each, under various heads.

3. Before the claims tribunal, United India Insurance Company Limited, Ariyalur, insurer of Tractor and Trailers, has filed separate counter affidavits and denied the manner of accident. They further submitted that at the time of accident, the driver of the Tractor and Trailer had no valid and effective driving licence and that there was a violation of policy condition. They have disputed the manner of accident and liability. Without prejudice to the above, they have disputed the age, avocation, income of both the deceased and the quantum of compensation claimed under various heads.

4. Wives of the deceased examined themselves as PWs.1 and 2, respectively. PW.3 is an eye-witness to the accident. Documents, Ex.P1 - FIR, Exs.P2 and P5 - Post-mortem Certificates of the deceased, Ex.P3 - Driving licence of the deceased

Rajendran (M.C.O.P.No.259 of 2013) and Ex.P4 - Insurance Policy, have been marked on the side of the respondents/claimants. On behalf of the appellant-Insurance Company, two witnesses, Saradha, Junior Assistant, RTO, Perambalur and Harikrishna, Legal Assistant Manager, have been examined as RWs.1 and 2 respectively. Documents, Exs.R1 and R4 - Registration Certificates of Tractor and Trailers, bearing Registration Nos.TN 46 D 4221 and TN 45 W 5967, Exs.R2 and R5 - Authorization letters of RTO, Perambalur, along with summons, Ex.R3 - Details of the driving licence, Ex.R6 - Motor Vehicle Inspector's Report, Ex.R7 -Insurance Policy, Exs.R8 and R9 - Advocate notice to the 9th respondent herein, along with postal receipt and acknowledgement card and Exs.R10 and R11 - Advocate notice to the driver of the offending vehicle, along with postal receipt and acknowledgement card, have been marked on the side of the appellant-Insurance Company.

5. On evaluation of pleadings and evidence, the Claims Tribunal, held that the driver of the Tractor and Trailers, bearing Registration No.TN 46 D 4221, TN 45 W 5967 and TN 25 Y 4468, insured with the appellant-Insurance Company, was negligent in causing the accident. Considering the age, avocation and income of both the deceased, the Claims Tribunal quantified the compensation in both the claim petitions, with interest at the rate of 7.5% per annum, from the date of claim, till deposit, as follows:

M.C.O.P.No.259 of 2013:

Loss of contribution to the family	: Rs.8,91,000/-
Loss of consortium	: Rs.1,00,000/-
Loss of love and affection	: Rs. 50,000/-
Funeral Expenses	: Rs. 10,000/-
Transportation	: Rs. 10,000/-
Loss of Estate	: Rs. 10,000/-
Total	: Rs.10,71,000/-

M.C.O.P.No.260 of 2013:

Loss of contribution to the family	: Rs.12,15,000/-
Loss of consortium	: Rs. 1,00,000/-

Loss of love and affection	: Rs.	50,000/-
Funeral Expenses	: Rs.	10,000/-
Transportation	: Rs.	10,000/-
Loss of Estate	: Rs.	10,000/-
Total	: Rs.	13,95,000/-

6. Assailing the finding of the Claims Tribunal, fixing negligence on the driver of Tractor and Trailer, bearing Registration No.TN 46 D 4221, TN 45 W 5967 and TN 25 Y 4468, Mr.J.Chandran, learned counsel for the appellant-Insurance Company submitted that the Claims Tribunal ought not to have fixed negligence on the driver of the Tractor and Trailer, solely on the basis of the testimony of PW.1, the respondent/claimant.

7. On the aspect of liability, learned counsel for the appellants submitted that when evidence has been adduced to prove that the driver of the offending vehicle, did not possess the required driving licence with a badge, to drive heavy goods vehicle, the Claims Tribunal ought to have exonerated the Insurance Company. The Tribunal ought to have directed the owner of the Tractor and Trailer to pay compensation.

8. Learned counsel appearing for respondents/claimants in both the claim petitions made submissions, to sustain the award.

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

10. From the materials on record, it could be seen that HMT Tractor along with the Trailer, bearing Registration No.TN 46 D 4221, TN 45 W 5967 and TN 25 Y 4468, belonging to the 9th respondent herein and insured with the appellant-Insurance Company, hit the two-wheeler, from behind. Ex.P1 - FIR, has been registered against the driver of Tractor and Trailers, bearing Registration No.TN 46 D 4221, TN 45 W 5967 and TN 25 Y 4468, in Cr.No.123 of 2013, on the file of Mangalamedu Police Station. Evidence of PWs.1 and 2, wives of the deceased, as to the manner of accident, is supported by PW.3, eye-witness to the accident and corroborated by Ex.P1 - FIR. On the basis of the above oral and documentary evidence and in the absence of any contra evidence, the Claims Tribunal, arrived at the conclusion that the driver of Tractor along with the Trailer, bearing Registration No.TN 46 D 4221, TN 45 W 5967 and TN 25 Y 4468 and insured with the appellant-insurance company, was negligent in causing the accident.

11. As stated supra, version of the respondents/claimants is duly corroborated by documentary evidence, stated supra. It is settled law that in matters relating to Motor Accidents Claims, suffice that there is preponderance of probability, as to the manner of accident and strict proof of evidence is not required. In the instant case, no material is available to reverse the order of the Tribunal. On the other hand, there is ample evidence to conclude that the accident occurred in the manner, as detailed by the respondents/claimants.

12. The question that requires to be considered is whether, driving a tractor-cum-trailer, driven by a driver, having licence to drive light non-transport motor vehicle, amounts to fundamental breach of terms and conditions of the policy, so as to enable the insurer to seek for exoneration? or as insurer of the vehicle to pay compensation to the third party accident victims and then, to recovery the same from the owner?

13. Before adverting to the facts of the instant case, let us consider few decisions on this aspect,

(i) National Insurance Co. Ltd, v. Swaran Singh, [(2004) 3 SCC 297], wherein the Hon'ble apex Court held as follows:

> "47. If a person has been given a licence for a particular type of vehicle as specified therein, he cannot be said to have no licence for driving another type of vehicle which is of the same category but of different type. As for example, when a person is granted a licence for driving a light motor vehicle, he can drive either a car or a jeep and it is not necessary that he must have driving licence both for car and jeep separately.
>
> 88. Section 10 of the Act provides for forms and contents of licences to drive. The licence has to be granted in the prescribed form. Thus, a licence to drive a light motor vehicle would entitle the holder there to drive the vehicle falling within that class or description.
>
> 89. Section 3 of the Act casts an obligation on a driver to hold an effective driving licence for the type of vehicle which he intends to drive. Section 10 of the Act enables the Central Government to prescribe forms of driving licences for various categories of vehicles mentioned in sub-section (2) of the said section. The various types of vehicles described for which a driver may obtain a licence for one or more of them are: (a) motorcycle without gear, (b) motorcycle with gear, (c) invalid carriage, (d) light motor vehicle, (e) transport vehicle, (f) road roller, and

(g) motor vehicle of other specified description. The definition clause in Section 2 of the Act defines various categories of vehicles which are covered in broad types mentioned in sub-section (2) of Section 10. They are "goods carriage", "heavy goods vehicle", "heavy passenger motor vehicle", "invalid carriage", "light motor vehicle", "maxi-cab", "medium goods vehicle", "medium passenger motor vehicle", "motor-cab", "motorcycle", "omnibus", "private service vehicle", "semi-trailer", "tourist vehicle", "tractor", "trailer" and "transport vehicle". In claims for compensation for accidents, various kinds of breaches with regard to the conditions of driving licences arise for consideration before the Tribunal as a person possessing a driving licence for "motorcycle without gear", [sic may be driving a vehicle] for which he has no licence. Cases may also arise where a holder of driving licence for "light motor vehicle" is found to be driving a "maxi-cab", "motor-cab" or "omnibus" for which he has no licence. In each case, on evidence led before the Tribunal, a decision has to be taken whether the fact of the driver possessing licence for one type of vehicle but found driving another type of vehicle, was the main or contributory cause of accident. If on facts, it is found that the accident was caused solely because of some other unforeseen or intervening causes like mechanical failures and similar other causes having no nexus with the driver not possessing requisite type of licence, the insurer will not be allowed to avoid its liability merely for technical breach of conditions concerning driving licence.

90. We have construed and determined the scope of sub-clause (ii) of sub-section (2) of Section 149 of the Act. Minor breaches of licence conditions, such as want of medical fitness certificate, requirement about age of the driver and the like not found to have been the direct cause of the accident, would be treated as minor breaches of inconsequential deviation in the matter of use of vehicles. Such minor and inconsequential deviations with regard to licensing conditions would not constitute sufficient ground to deny the benefit of coverage of insurance to the third parties."

(ii) In Natwar Parikh & Co. Ltd., v. State of Karnataka reported in 2005 (7) SCC 364, at Paragraph 24, the Hon'ble Supreme Court, held as follows:

"24. Section 2(28) is a comprehensive definition of the words "motor vehicle". Although, a "trailer" is separately defined under Section 2(46) to mean any vehicle drawn or intended to be drawn by motor vehicle, it is still included into the definition of the words "motor vehicle" under Section 2(28). Similarly, the word "tractor" is defined in Section 2 (44) to mean a motor vehicle which is not itself constructed to carry any load. Therefore, we have to read the words "motor vehicle" in the broadest possible sense keeping in mind that the Act has been enacted in order to keep control over motor vehicles, transport vehicles etc. A combined reading of the aforestated definitions under Section 2, reproduced hereinabove, shows that the definition of "motor vehicle" includes any mechanically propelled vehicle apt for use upon roads irrespective of the source of power and it includes a trailer. Therefore, even though a trailer is drawn by a motor vehicle, it by itself being a motor vehicle, the tractor- trailer would constitute a "goods carriage" under Section 2 (14) and consequently, a "transport vehicle" under Section 2(47). The test to be applied in such a case is whether the vehicle is proposed to be used for transporting goods from one place to another."

(iii) In New India Assurance Company Limited v. Roshanben Rahemansha Fakir & Anr., (2008) 8 SCC 253, the Hon'ble Supreme Court differentiated a transport vehicle and non transport vehicle and held that a driver who had a valid licence to drive a Light Motor Vehicle was not authorized to drive a Light Goods Vehicle. It was further held that the person must possess the licence for the class of vehicle involved in the accident.

(iv) In Oriental Insurance Co. Ltd., v. Angad Kol reported in 2009 (11) SCC 356, heirs and legal representatives of the deceased have claimed compensation, contending inter alia that death of Genda Bai, was caused due to the injuries sustained in the accident, when she was knocked down by a Mini Door Auto. Disputing the liability to pay compensation, the Insurance Company therein, raised a plea that the driver did not possess a valid and effective licence. However, the Tribunal, fastened the liability on the Insurance Company and quantified the compensation at Rs.1,83,000/-. The claimants sought for enhancement. The Company filed a Cross Objection. A Hon'ble Division Bench of the Madhya Pradesh High Court enhanced the compensation and dismissed the Cross-Objection. Testing the correctness of the judgment, an appeal was filed before the Hon'ble Apex Court, on the contention that the Insurance Company is not liable to pay compensation. After considering the statutory provisions and the need for a particular kind of licence, a two Judges Bench of the Hon'ble Supreme Court, at Paragraph 19, held that,

> "Interest of justice would be subserved, if we, in exercise of our jurisdiction under Article 142 of the Constitution while directing the insurance company to deposit the balance amount before the Tribunal with liberty to the claimants to withdraw the same give right to the appellant to recover the said amount from the owner and the driver of the vehicle."

(v) Though the Hon'ble Supreme Court in Angad Kol's case (cited supra), declared that the appellant-Insurance Company cannot be statutorily mulcted with the liability to pay compensation to the injured or legal representatives of the deceased, if the driver of the offending vehicle did not possess the required licence to operate the vehicle, depending upon the class of the vehicle, yet in the interest of justice, directed the Insurance Company to pay and recover.

(vi) Relevant portion of the judgment in New India Assurance Co. Ltd., v. Prabhu Lal reported in AIR 2008 SC 614 and considered in Angad Kol's case is extracted hereunder:

> "37. The argument of the Insurance Company is that at the time of accident, Ram Narain had no valid and effective licence to drive Tata 709. Indisputably, Ram Narain was having a licence to drive light motor vehicle. The learned Counsel for the Insurance Company, referring to various provisions of the Act submitted that if a person is having licence to drive light motor vehicle, he cannot drive a transport vehicle unless his driving licence specifically entitles him so to do (Section 3). Clauses (14), (21), (28) and (47) of Section 2 make it clear that if a vehicle is "light motor vehicle", but falls under the category of transport vehicle, the driving licence has to be duly endorsed under Section 3 of the Act. If it is not done, a person holding driving licence to ply light motor vehicle cannot ply transport vehicle. It is not in dispute that in the instant case, Ram Narain was having licence to drive light motor vehicle. The licence was not endorsed as required and hence, he could not have driven Tata 709 in absence of requisite endorsement and the Insurance Company could not be held liable.
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> 38. We find considerable force in the submission of the learned Counsel for the Insurance Company. We also find that the District Forum considered the question in its proper perspective and held that the vehicle driven by Ram Narain was covered by the category of transport vehicle under Clause (47) of

Section 2 of the Act. Section 3, therefore, required the driver to have an endorsement which would entitle him to ply such vehicle."

(vii) In S. Iyyapan v. United India Insurance Co., [(2013) 7 SCC 62], the Hon'ble apex Court held as follows:

"17. Reading the provisions of Sections 146 and 147 of the Motor Vehicles Act, it is evidently clear that in certain circumstances the insurer's right is safeguarded but in any event the insurer has to pay compensation when a valid certificate of insurance is issued notwithstanding the fact that the insurer may proceed against the insured for recovery of the amount. Under Section 149 of the Motor Vehicles Act, the insurer can defend the action inter alia on the grounds, namely,

(i) the vehicle was not driven by a named person,

(ii) it was being driven by a person who was not having a duly granted licence, and

(iii) person driving the vehicle was disqualified to hold and obtain a driving licence.

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.

18. In the instant case, admittedly the driver was holding a valid driving licence to drive light motor vehicle. There is no dispute that the motor vehicle in question, by which accident took place, was Mahindra Maxi Cab. Merely because the driver did not get any endorsement in the driving licence to drive Mahindra Maxi Cab, which is a light motor vehicle, the High Court has committed grave error of law in holding that the insurer is not liable to pay compensation because the driver was not holding the licence to drive the commercial vehicle. The impugned judgment 5 is, therefore, liable to be set aside.

> 19. We, therefore, allow this appeal, set aside the impugned judgment 5 of the High Court and hold that the insurer is liable to pay the compensation so awarded to the dependants of the victim of the fatal accident. However, there shall be no order as to costs."

14. Section 2 of Motor Vehicles Act, 1988 defines various categories of vehicles which are 'goods carriage', 'heavy goods vehicle', 'heavy passenger motor vehicle', 'light motor vehicle', 'maxi cab', 'medium goods vehicle', 'medium passenger motor vehicle', 'motor cab', 'motor car', 'motor cycle', 'motor vehicle', 'omnibus', 'tourist vehicle' and 'transport vehicle' etc. "Light motor vehicle" is defined in Section 2(21) as under:-

> "(21) 'light motor vehicle' means a transport bus or omnibus the gross vehicle weight of either of which or a motor car or tractor or road-roller the unladen weight of any of which, does not exceed 7500 kilograms."

15. As per Section 2(47) of Act, "transport vehicle" means a public service vehicle, a goods carriage, an educational institution bus or a private service vehicle. "Public Service Vehicle" means any motor vehicle used or adapted to be used for the carriage of passengers for hire or reward, and includes a maxi cab, a motor cab, contract carriage and stage carriage [Vide Section 2(35)]. The expression "Goods Carriage" occurring in Section 2(47) is defined in Section 2(14) of the Act as under:-

> "(14) 'goods carriage' means any motor vehicle constructed or adapted for use solely for the carriage of goods, or any motor vehicle not so constructed or adapted when used for the carriage of goods."

16. Goods Carriage may be a heavy goods vehicle or a medium goods vehicle. As per Section 2(16) 'heavy goods vehicle' means any goods carriage the gross vehicle weight of which, or a tractor or a road-roller the unladen weight of either of which, exceeds 12,000 kilograms. Section 2(23) defines 'medium goods vehicle' which reads as under:-

> "(23) 'medium goods vehicle' means any goods carriage other than a light motor vehicle or a heavy goods vehicle."

17. A Light Motor Vehicle is defined under Section 2(21) to mean a transport vehicle or omnibus the gross vehicle weight of

either of which or a motor car or tractor or road-roller the unladen weight of any of which, does not exceed 7,500 kg. A "transport vehicle", has been defined under Section 2(47) to mean a public service vehicle, a goods carriage, an educational institution bus or a private service vehicle. A combined reading of Section 2(21), 2(47), Section 10 of the Act and Form 6 issued under Rule 16 (1) would clearly show that a separate endorsement is needed for a person to drive Light Motor Vehicle, when it is a transport vehicle.

18. "Tractor" and "Trailer", are defined under Sections 2 (44) and 2(46) of the Motor Vehicles Act, 1988. The same are reproduced as under:-

> "Tractor" means a motor vehicle which is not itself constructed to carry any load (other than equipment used for the purpose of propulsion); but excludes a road- roller."
>
> "Trailer" means any vehicle, other than a semi-trailer and a side-car, drawn or intended to be drawn by a motor vehicle."

19. Tractor is not designed to carry load. A tractor by itself cannot therefore be a goods vehicle. A trailer is fitted with a tractor, for carrying goods. Trailer cannot propel itself and it is invariably attached to a mechanically propelled contrivance. "Goods carriage" is defined under Section 2(14) and it is required to be reproduced as under:-

> "goods carriage" means any motor vehicle constructed or adapted for use solely for the carriage of goods, or any motor vehicle not so constructed or adapted when used for the carriage of goods."

20. When the above definition contemplates a motor vehicle, constructed or adapted for the purpose of carrying goods, a tractor, being incapable of carrying goods by its definition, would become a goods carriage, if it is attached to a trailer, which is designed to carry goods. Tractor by its attachment to a trailer becomes a goods carriage.

21. Reading of the above various categories of 'transport vehicles', makes it clear that there is a distinction between 'goods carrier' and 'other vehicles'. A conjoint reading of Sections 2(16), 2(33) and 2(47) of the Act, makes it clear that for driving 'goods vehicle', a separate endorsement is necessary.

22. Evidence of RW.1, Saradha, Junior Assistant, Regional Transport Officer, Perambalur, coupled with Ex.R3 - Driving Licence, shows that the driver of the vehicle, owned by the 9th respondent herein, had licence only to drive light motor vehicle

and that he did not possess a required badge to drive a goods carriage vehicle. In Ex.R6 - Motor Vehicle Inspector's report, the offending vehicle has been mentioned as Heavy Goods Vehicle. Hence, it is evident that the driver of the vehicle, owned by the 9th respondent, had no valid driving licence to drive a heavy goods vehicle or goods carriage vehicle.

23. Material on record further shows that a Legal Assistant Manager of the appellant-Insurance Company has been examined as RW.2 and through him, documents, Exs.R8 and R9 - Advocate notice to the 9th respondent herein, along with the postal receipt and acknowledgement card and Exs.R10 and R11 - Advocate notice to the driver of the offending vehicle, along with the postal receipt and acknowledgement card, have been marked. They have not produced the required licence nor the endorsement.

24. Though the appellant-Insurance Company has submitted that the driver of the offending vehicle did not have a badge to drive a goods vehicle and sought for total exoneration, this Court is not inclined to accept the same, in view of the decisions of the Hon'ble Apex Court in Skandia Insurance Co. Ltd., v. Kokilaben reported in (1987) 2 SCC 654, Sohan Lal Passi Vs. P.Sesh Reddy, reported in (1996) ACC 617 (SC) = 1996 ACJ 1044 (SC) = 1996(5) SCC 21, New India Assurance Company Ltd., Shimla, Vs. Kamla and others, reported in 2001 (4) SCC 342, United India Insurance Company Ltd., Vs. Lehru and others, reported in 2003 (3) SCC 338, National Insurance Co. Ltd., v. Swaran Singh reported in 2004 ACJ 1, Oriental Insurance Co. Ltd., v. Meena Variyal reported in 2007 ACJ 1284, National Insurance Company Ltd., Vs Laxmi Narain Dhut, reported in 2007 (2) L.W 719 and three Hon'ble Division Bench judgments 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).

25. Further, in a batch of appeals, this Court in ICICI Lombard General Insurance Company Ltd., v. Annakkili and others reported in 2012 (1) TNMAC 227, after hearing learned counsel appearing for the Insurance Companies, at length and following the dictum of the Hon'ble Supreme Court that payment of compensation to a third party victim or legal representatives of the deceased, as the case may be, being statutory and considering the interpretation given by the Hon'ble 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 and by holding 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, this Court has held that the insurer cannot avoid its liability to pay compensation to a third party to pay compensation, but such avoidance could be made only, if willful breach of terms and conditions of the policy by the insured, by consciously and recklessly allowing the driver, who do 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 the only remedy open to the insurer 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 the third party, but it can avoid its liability only to the insured.

26. As per the principles enunciated in Oriental Insurance Company Ltd v. Angad Kol and others [(2009) 11 SCC 356], New India Assurance Co. Ltd, v. Roshanben Rahemansha Fakir and Anr. [2008 ACJ 2161] and National Insurance Co. Ltd v. Kusum Rai, 2006 ACJ 1336, possession of light motor vehicle licence alone is not sufficient to drive a vehicle, which partakes the character of a goods vehicle or any motor vehicle not so constructed or adapted, when used for carriage of goods.

27. Though notice to the owner of the vehicle is served, there is no appearance, either in person or through counsel. In the light of the discussion and decisions, this Court is inclined to direct the appellant-Insurance Company to pay compensation to third parties and recover the same, from the owner of the vehicle.

28. Though the learned counsel for the appellant-Insurance Company assailed the quantum of compensation, awarded to the legal representatives of the deceased, in both the claim petitions, this Court has directed the learned counsel appearing for the respective parties to arrive at a consensus, on quantum. After discussion, the quantum of compensation, arrived at, by the learned counsel, in each case, is as follows:
M.C.O.P.No.259 of 2013:

Loss of contribution to the family	: Rs.5,94,000/- (Rs.6,000 x 12 x 11 x 1/4)
Loss of consortium to wife	: Rs.1,00,000/-
Loss of love and affection to the children	: Rs.2,00,000/- (Rs.1 Lakh each)

Loss of love and affection to the parents	:	Rs. 50,000/- (Rs.25,000/- each)
Funeral Expenses	:	Rs. 25,000/-
Transportation	:	Rs. 10,000/-
Loss of Estate	:	Rs. 30,000/-
Damages to clothes	:	Rs. 1,000/-
Total	:	Rs.10,10,000/-

M.C.O.P.No.260 of 2013:

Loss of contribution to the family	:	Rs.10,53,000/- (Rs.6,000 x 30% addition x 12 x 11 x 1/4)
Loss of consortium to wife	:	Rs. 1,00,000/-
Loss of love and affection to the minor children	:	Rs. 1,00,000/- (Rs.50,000/- each)
Loss of love and affection to the parents	:	Rs. 50,000/- (Rs.25,000/- each)
Funeral Expenses	:	Rs. 25,000/-
Transportation	:	Rs. 10,000/-
Loss of Estate	:	Rs. 30,000/-
Damages to clothes	:	Rs. 1,000/-
Total	:	Rs.13,49,000/-

29. In the result, these appeals are disposed of. The appellant-Insurance Company is directed to deposit the amount, consented to, by both the learned counsel, less the amount already deposited, with accrued interest and costs, to the credit of M.C.O.P.Nos.259 and 260 of 2013 respectively, on the file of the Motor Accident Claims Tribunal (Principal District Judge) at Perambalur District, within a period of six weeks from the date of receipt of a copy of this order. The respondents/claimants are permitted to withdraw the said amount, by making necessary applications before the Tribunal, except the minors. Minors' 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

5th respondent herein/claimant. 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 Petitions are closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

To

The Motor Accidents Claims Tribunal,
(Principal District Judge) at Perambalur District.

copy to
The Section Officer
VR section,
High Court, Madras

+2 Ccs to M/s. S.P. Yuvaraj, sr 17219 & 17220

C.M.A.Nos.2557 and 2674 of 2015

SS(CO)
sp/11/5