IN THE HIGH COURT OF JUDICATURE AT MADRAS
Dated: 21.04.2017

CORAM

The Honourable Mr.Justice S.Manikumar
and
The Honourable Mr.Justice M.Govindaraj

Civil Miscellaneous Appeal No.2568 of 2015,
M.P.No.1 of 2015 and C.M.P.No.1201 of 2016

The Divisional Manager
The New India Assurance Company Ltd.
Sheikpet Nadu Street
Kancheepuram ... Appellant

Vs

1.Smt.R.Sujatha
2.Selvi R.Hemapriya
3.R.Praveen Kumar, Minor
4.Smt.B.Saraswathi
5.B.Narayanamurthy ... Respondents

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Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the common judgment and decree dated 30.06.2015,passed in M.C.O.P.No.98 and 2014, by the Motor Accident Claims Tribunal, (Subordinate Judge), Tiruttani.

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For Appellant : Mr.R.Sivakumar

For Respondents: Mr.D.Anandan for R1 to R4

JUDGMENT
(Made by S.Manikumar, J)

Being aggrieved by the quantum of compensation of Rs.53,56,164/-, with interest, at the rate of 7.5% per annum and costs, from the date of claim, till deposit, awarded to the respondents 1 to 4 herein/legal representatives of the deceased, stated to be a Police Constable and aged 46 years, at the time of accident, New India Assurance Company Ltd./appellant herein, has filed the civil miscellaneous appeal.

2. The admitted facts are that in the accident, which occurred on 08.01.2014 between a motorcycle bearing

Registration No.TN-73 X-2472 and a private bus bearing Registration No.TN-25 AX-7575, B.Ravikumar, sole breadwinner of the claimants/respondents 1 to 4, police constable, died. In this regard, a case in Crime No.27/2014 has been registered on the file of Inspector of Police, Kanchi Taluk Police Station under Sections 279, 337 and 304-A against the driver of the bus bearing Registration No.TN-25 AX-7575, insured with the deceased/claimants/respondents 1 to 4 herein, claimed compensation of Rs.65,00,000/-, under various heads.

3. Before the Claims Tribunal, wife of the deceased examined herself as PW.1, and deposed about the manner of accident. PW.2 is the eye-witness of the accident. PW1 has marked EX.P1 - FIR, EX.P2 - Postmortem Certificate, EX.P3 - Charge Sheet, EX.P4 - Legal heir certificate, EX.P5 - Salary Bill Receipts and EX.P6 - Identity card. On the side of the appellant herein/Insurance Company, Kathirvelu, Assistant Manager, has been examined as RW1 and through him, Ex.R1 - Investigation Report, Ex.R2 - Lawyer's notice and Ex.R3 - Policy copy, have been marked.

4. On evaluation of pleadings and evidence, the Claims Tribunal came to the conclusion that the driver of the bus bearing Registration No.TN-25 AX-7575, 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, the Tribunal directed the appellant-Insurance Company to pay the compensation amount and thereafter, to recover the same from the owner of the vehicle.

5. Having regard to the age of the deceased, documents, stated supra and evidence of PW1, wife of the deceased, the Claims Tribunal fixed the monthly income of the deceased as Rs.27,528/-.

6. Based on the entries in EX.P2 - Postmortem Certificate and EX.P6 - Identity card of the deceased, the Claims Tribunal fixed the age of the deceased as 46 years. After adding Rs.13,764/- (50% of the monthly income) towards future prospects, the Tribunal fixed the monthly income of the deceased as Rs.41,292/-, for the purpose of computing loss of contribution to the family. Considering the number of legal representatives, the Tribunal deducted 1/4th towards personal and living expenses of the deceased and after applying '13' multiplier applicable to the age of the deceased, determined a sum of RS.48,31,164/- (Rs.41,292/- x 12 x 13 x 3/4), as loss of contribution to the family.

7. That apart, the Claims Tribunal has awarded a sum of Rs.1,00,000/- under the head consortium to wife, a sum of Rs.50,000/- each to the wife, minor children and mother of the deceased under the head, loss of love and affection, Rs.25,000/- for funeral expenses and Rs.2,00,000/- under the head loss of happiness and mental agony. Altogether, the Claims Tribunal has awarded a sum of Rs.53,56,164/-, as compensation, with interest, at the rate of 7.5% per annum from the date of claim till deposit and costs, to the legal representatives.

8. Appellant-Insurance company has assailed correctness of the award of the Tribunal on the grounds that the Tribunal has erred in awarding a higher compensation to the legal representatives of the deceased and directed the Insurance company to pay the compensation and then to recover the same from the owner of the offending vehicle; that the Tribunal ought to have directed the 5th respondent herein, to pay the entire compensation -amount to the respondents 1 to 4; that the Tribunal has failed to note that the licence of the driver of the bus expired on 08.08.2013 and on the date of accident, the driver of the bus was not having effective and valid driving licence; that the Tribunal failed to note that when the 5th respondent violated the terms and conditions of the policy, the entire liability should have been fixed on the 5th respondent; that the Tribunal erred in fixing the monthly income of the deceased as Rs.27,528/-, added 50% towards future prospects and adopted multiplier 13; that the Tribunal ought not to have added 30% only towards future prospects, as per Sarla Verma case, and the Tribunal erred in awarding excess compensation under the head loss of love and affection and loss of happiness and mental agony, and for the above said reasons, prayed to set aside the award. Arguments were also advanced on the aspect of negligence.

9. Though, Mr.R.Sivakumar, learned counsel for the appellant-

Insurance Company, inter alia assailed the correctness of the finding, fixing negligence on the driver of the bus, as erroneous, this Court is not inclined to reverse the same. Testimony of PW1, wife of the deceased, is duly corroborated by EX.P1 - FIR. PW2 - Syed Abdualla, eye witness, who has deposed about the manner of accident. On the contra, RW1 has deposed that, at the time of accident, the driver of the bus was not having a valid driving licence. Investigation report has been marked as EX.Rl. Upon perusal of the same, the Tribunal has recorded that, at the time of accident, the driver of the bus was not having a valid driving licence. The Inspector of Police, has registered a case against the driver of the bus as per EX.Pl and after thorough investigation, laid a charge sheet against him. Driver has not been examined, and hence adverse inference can be drawn. Useful reference can be made to few decisions,

(i) In New India Assurance Co. Ltd., v. Debajani Sahu reported in I (2002) ACC 1.03 (Ori.), the Orissa High Court held that,

> "8. In the present case, the Claims Tribunal found about the negligence of the bus driver on the basis of the evidence of the P.Ws. It is contended that P.W. 2 himself being the driver employed by the deceased was a highly interested witness and his evidence cannot be accepted as reliable. There is no dispute in the fact that the accident was caused involving the scooter and the bus. Even assuming that the evidence of P.W. 2 is not accepted, still then the doctrine of res ipsa loquitur is applicable. In such a situation, the owner of the bus should have examined the driver of the bus to explain the circumstances under which the accident occurred, as the other person involved in the accident having died cannot speak from the grave to explain the circumstances under which the accident had taken place. Of course, the bus owner has remained ex-parte, but no attempt was made by the Insurance Company which was contesting the case even on merit (whether justifiably or not is immaterial), has not chosen to adduce any evidence to rebut the evidence of P.W. 2, not has bothered to summon the bus driver to explain the circumstances under which the accident took place. In such a case, an adverse inference can be drawn against the owner/Insurance Company for not examining the bus driver who would have been the best witness to explain the circumstance under which the accident occurred. In such view of the matter, the finding of the Tribunal on the question of negligence cannot be assailed and the contention in this regard raised by the Counsel for the appellant cannot be accepted. "

(ii) In Sitabai v. Ishak Hussain reported in I (2001) ACC 761 (DB), the Madhya Pradesh High Court, at Paragraph 5, held as follows:

> "5. In this case, the claimants could not examine any eyewitness of the accident. It was difficult for the claimants to search an eyewitness as the claimants were not present on the spot at the time of accident. This difficulty is avoided by applying the maxim res ipsa loquitur. Their Lordships of the Supreme Court in case of Puspabai Purshottam Udeshi v. Ranjit Ginning and Pressing Co., reported in 1977 ACJ 343 (SC), observed:

"The normal rule is that it is for the plaintiff to prove negligence but as in some cases considerable hardship is caused to the plaintiff as the true cause of the accident is not known to him but is solely within the knowledge of the defendant who caused it, the plaintiff can prove the accident but cannot prove how it happened to establish negligence on the part of the defendant. This hardship is sought to be avoided by applying the principle of res ipsa loquitur. The general purport of the words res ipsa loquitur is that the accident 'speaks for itself or tells its own story. There are cases in which the accident speaks for itself so that it is sufficient for the plaintiff to prove the accident and nothing more. It will then be for the defendant to establish that the accident happened due to some other cause than his own negligence.Where the maxim is applied the burden is on the defendant to show either that in fact he was not negligent or that the accident might more probably have happened in a manner which did not connote negligence on his part. For the application of the principle it must be shown that the car was under the management of the defendant and that the accident is such as in ordinary course of things does not happen if those who had the management used proper care."

In this case, the respondent No.1 was driving the vehicle which left the road and dashed against a tree. In view of this maxim, the burden shifts on the respondent No. 1to prove that he was not negligent. It was in the special knowledge of respondent No.1 as to how the vehicle left the road and came down and struck against a tree. The respondent No.1 did not examine himself. Under such circumstances, adverse inference that he drove the vehicle in a rash and negligent manner as a result of which this accident occurred, shall be drawn against him. The learned Tribunal committed error in not applying this maxim. We hold that the accident occurred due to rash and negligent driving of the vehicle by respondent No.1."

(iii) In Beni Bai & others v. A. Salim & another reported in II (1999) ACC 408 (DB) (M.P.), the Madhya Pradesh High Court, held as follows:

> In the circumstances, for non-examination of the material witnesses particularly the driver and the conductor, who had the first hand knowledge of the manner in which the accident occurred, necessarily an adverse inference has to be drawn against the respondents. For want of evidence on behalf of the respondents, the plea raised in defence cannot be said to be established. On the other hand, the appellants have examined Atmaram, A. W.l. who was at the spot, who stated that at the bus stop when the passengers were getting down from the bus, the driver without seeing that the passengers have got down or not, started the bus and there one boy came under the wheel of the bus. From the circumstances, it cannot be inferred that the deceased might have jumped from the running bus. Hence it was the duty of the driver and conductor to have taken care to see whether passengers have got down from the bus or not, then only the driver could have started the bus. As the driver and conductor have failed in their duties to take care, we hold that the accident occurred due to negligence of the driver of the city bus. This Court in similar circumstances where the same type of defence was taken, has observed that it is the driver of the passenger bus who has to take care that the passengers who wish to get down from the bus have got down and then to start the bus. But that care was not taken.Therefore, it was held that the accident was caused because of the negligence of the driver and conductor.

In the absence of any contra evidence, accepting the evidence of PWs.1 and 2, and considering documents stated supra, the Tribunal has held that the accident occurred solely due to the rash and negligent driving of the driver of the bus. Testing -the findings of negligence, on the principles of preponderance of probability, there are no grounds for reversal. Hence, the finding of negligence is confirmed. Since the 5th respondent is the owner and the appellant being the insurer, the Tribunal fixed the liability on them jointly and severally liable to pay compensation to the legal representatives of the deceased.

10. Though the learned counsel for the appellant-Insurance Company contended that in the absence of a valid driving licence, the insurer cannot be mulcted with liability to pay compensation 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 decision of a Hon'ble Division Bench 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 MAC542 (DB).

11. The question as to whether, it is open to the insurer to seek for total exoneration for payment of compensation to a third party victim or whether it has only a right of recovery under Sections 149 (4) and (5) of the Motor Vehicle's Act, has been extensively considered in ICICI Lombard General Insurance Company Vs. Annakkili, reported in 2012 (1) TN MAC 226, wherein, this Court following the principles of law laid down by the Apex Court and the Hon'ble Division Bench judgments held that, payment of compensation to a third party victim or legal representatives of the deceased, as the case may be, is statutory and considering the interpretation given by the Supreme Court to Sections 147, 149 (4) and (5) vis-a-vis, the defences open to the Insurance Company under Section 149(2)(a)(ii) of the Motor Vehicles Act held that the very introduction of the words, "pay compensation to the third party and recover the same from the insured" in Section 149(4) and (5) of the Act, would reflect the divine intention of the legislature to protect the interest of the third parties, vis-a-vis inter-se disputes between the insured and insurer, and further held that the insurer cannot avoid its liability to pay compensation to a third party, but such avoidance can be made only, if willful breach of terms and conditions of the policy by the insured, by consciously and recklessly allowing the driver, who did not possess a valid and effective driving licence, to drive the vehicle and even if such breach is proved, payment of compensation to the third party victim cannot, at any stretch of imagination, be avoided by the Company and that the only remedy open to the insurer in law is to pay the compensation to the third party victims and recover from the insured. In view of the above, the insurer cannot be totally exonerated from payment of compensation to third party, but it can avoid its liability only to the insured.

12. In a decision of this Court in Branch Manager, Oriental Insurance Company Ltd., Theni Vs. Mansoor Hussain and another, reported in 2013(2) CTC 57, Hon'ble Mr. Justice, G.M.Akbar Ali, my Esteemed Brother, has considered a catena of decisions of the 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 tort feasor. Only under an Insurance Policy between the tort feasor and the

Insurance Company the Insurer has undertaken to indemnify the insured. Therefore, the defences available to the Insurance Company is very limited.

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

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

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

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

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

(b) for organized racing and speed testing, or (c) for a purpose not allowed by the permit under which the vehicle is used, where the vehicle is a transport vehicle, or (d) without side-car being attached where the vehicle is a Motorcycle; or

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

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

b) that the Policy is void on the ground that it was obtained by the non-disclosure of a material fact or by a representation of fact which was false in some material particular."

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

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

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

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

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

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

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

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

MOTOR VEHICLESACT, 1939	MOTORVEHICLESACT, 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 subsection (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 subsection (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 sub-section 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) CTC68 J.S. It is pointed out that 'While drafting sub-section (4) of Section 149 of the M.V. Act in 1988, the parliament ought to have amended the provision of law by making clause (b) as clause (a)". In my view, as expressed in the judgment in Iffco Tokyo General Insurance Company v. Jafter Sadiq, 2012 (1) TN MAC 394 (DB), whether it is the draftsman's mistake or the wisdom of the parliament, in fact the New Act had denied the right of the Insurance Company to avoid its liability in cases of driving licences. In that case, even the defence of questioning the licence of the driver is not available to the Insurer. Though there was a suggestion on the side of the Insurance Company, that it is only a draftsman's mistake, we held that it is

the wisdom of the Parliament restricting the defences of the Insurer.

24. Therefore, as per the dictum laid down in National Insurance Co. Ltd. V. Swaran Singh and others, 2004 (1) TN MAC 104 (SC) : 2004 (1) TAC321 (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., Oharmapuri 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)(iiJ, 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 fulfillingthe 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, 201122 (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 posses 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) CTC464 (SC) : 2004 (1) ACC524 (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) CTC464 (SC) : 2004 (1) ACC 524 (SC), which is incorporated as follows:

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

13. Further, in yet another 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 valid and effective driving licence, at Paragraph 17, held as follows:

"Hence, in our considered opinion, the insurer cannot disown its liability on the ground that although the driver was holding a licence to drive a light motor vehicle but before driving light motor vehicle used as commercial vehicle, no endorsement to drive commercial vehicle. was obtained in the driving licence. In any case, it is the statutory right of a third party to recover the amount of compensation so awarded from the insurer. It is for the insurer to proceed against the insured for recovery of the amount in the event there has been violation of any condition of the insurance policy. "

14. 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) SCC62, 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 offending vehicle.

15. As regards quantum of compensation, PW.1, wife of the deceased, has deposed that at the time of accident, her husband was aged about 46 years and a Police Constable. To support the same, EX.P5 - Salary Bills and EX.P6 - Identity card of the deceased have been marked.

16. At the time of accident, husband of PW1 was aged about 46 years. As rightly contended by the learned counsel for the appellant, the Tribunal has erred in adding 50% of the income, towards future prospects. As per the decision of the Hon'ble Apex Court in Rajesh v. Rajbir Singh reported in 2013 (2) TNMAC 55 (SC), for the age group of people above 40 years, 30% of the income has to be considered for future prospects. Application of '13' multiplier, and deduction of 1/4th towards personal and living expenses of the deceased, as per Sarla Verma v. Delhi Transport Corporation reported in 2009 (5) LW 561, cannot be found fault with.

17. As per Ex.P5, monthly income of the deceased was Rs.27,528/-. After deducting Rs.30/- towards FBF and Rs.150/- towards insurance, the balance amount of Rs.27,348/- should be taken as the monthly income of the deceased. After adding Rs.8,258/- (30% of the monthly income) towards future prospects, monthly income of the deceased is fixed as Rs.35,552/- and the annual income of the deceased is arrived as RsA,26,624/-. A sum of Rs.1,00,000/- is exempted under Section 80C of the Income Tax Act, from the annual income of the deceased. The net annual income of the deceased would be Rs.3,26,624/-, and for calculation purpose, the same can be rounded off to Rs.3,26,620/-. During the Assessment year 2013 - 2014, for the annual" income up to Rs.2,00,000/-, there was 'Nil' income tax, and for the annual ranging from Rs.2,00,001 to Rs.5,00,000/-, income tax shall be 10%. Thus, a sum of Rs.13,042/- (10% tax + cess) has to be deducted from the annual income of RsA,26,624/- and the net annual income shall be RsA,13,582/-. The deceased is survived by his wife, daughter, minor son and mother. Considering the number of legal representatives four in number, deduction of 1/4th from the annual income towards the personal and living expenses of the deceased has to be made and that the net annual income for the purpose of computation of loss of contribution to the family, would be Rs.3,10,186/-, and after applying '13' multiplier, for the age group of the deceased, a sum of RSAO,32,418/- (Rs.3,10,186/- x 13), is arrived at, as loss of contribution to the family.

18. A sum of Rs.1,00,000/- awarded under the head consortium to wife, cannot be said to be excessive and hence the same is confirmed. The Tribunal has awarded a sum of Rs.2,00,000/-, at the rate of Rs.50,000/- each, to the wife, minor children and mother of the deceased under the head loss of love and affection. Since, wife has been awarded consortium at the rate of Rs.1,00,000/-, a separate compensation awarded under the head loss of love and affection to wife has to be deducted. At the time of accident, children were aged 19 years and 16 years respectively and mother was aged 65 years. Hence, we we deem it fit to award a sum of Rs.3,00,000/- under the head loss of love and affection. The Tribunal, has awarded a sum of Rs.2,00,000/- under the head loss of amenities, the same in our considered view, is not tenable and hence the same is deducted from the award. Compensation of Rs.25,000/- for funeral expenses is confirmed.

19. Learned counsel for the claimants/respondents 1 to 4 submitted that the Tribunal has failed to award compensation under the heads transportation, loss of estate and conventional damages. Hence, we deem it fit to award a sum of Rs.15,000/- for transportation, Rs.10,000/- towards loss of estate and Rs.2,000/- towards damage to clothes and articles. After, reworking, compensation due and payable to the legal representatives of the deceased/respondents 1 to 4 works out to RS.44,84,418/- with interest, at the rate of 7.5% per annum from the date of claim till
deposit and costs, detailed as hereunder.

Loss of contribution to the family	:	Rs.40,32,418/-
Loss of consortium	:	Rs. 1,00,000/-
Loss of love and affection	:	Rs. 3,00,000/-
Funeral Expenses	:	Rs. 25,000/-
Transportation	:	Rs. 15,000/-
Loss of Estate	:	Rs. 10,000/-
Damages to clothes and articles	:	Rs. 2,000/-
	:	Rs.44,84,418/-

20. Compensation awarded by the Tribunal is Rs.53,56,164/-. On appeal by the insurance company, the compensation now determined by this court is Rs.44,84,418/-. Hence, there shall be a reduction of Rs.8,71,746/-.

21. Learned counsel for the appellant-insurance company, submitted that the insurance company has deposited a sum of Rs.58,80,914/-, including interest, to the credit of M.C.O.P.No.98 of 2014 on the file of Motor Accident Claims Tribunal (Subordinate Judge), Tiruttani. Hence, the appellant-

insurance company is permitted to withdraw the balance amount lying in the deposit of M.C.O.P.No.98 of 2014. Reduction of compensation will be from the share apportioned to the wife. Respondents 1 to 4/Claimants/legal representatives of the deceased B.Ravikumar are permitted to withdraw the shares apportioned. to them, with proportionate interest.

In the result, the Civil Miscellaneous Appeal is allowed in part. The appellant-Insurance Company is permitted to withdraw balance amount, from the credit of M.C.O.P.No.98 of 2014 on the file of Motor Accident Claims Tribunal (Subordinate Judge), Tiruttani. Claimants/legal representatives of the deceased B.Ravikumar are permitted to withdraw the shares apportioned to them with proportionate interest, after making necessary application and proper identification. No costs in the appeal. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

asr

To

1.The Motor Accident Claims Tribunal
(Subordinate Judge), Tiruttani

2.The Section Officer
VR Section High Court
Madras

+1 cc to Mr.S.Udayakumar Advocate sr 24328
+1 cc to Mr.R.Sivakumar Advocate sr 24334

C.M.A.No.2568 of 2015,
M.P.No.1 of 2015, and
C.M.P. No.1201 of 2016

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