

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 08.02.2018

Pronounced on : 27-04-2018

CORAM:

THE HONOURABLE MR. JUSTICE R. SUBBIAH

and

THE HONOURABLE MR. JUSTICE P.D. AUDIKESAVALU

Civil Miscellaneous Appeal No. 3130 of 2013
Civil Miscellaneous Appeal Nos. 630 and 1018 of 2014
and
Miscellaneous Petition No. 1 of 2013 in
CMA.No.3130/2013
Miscellaneous Petition No. 1 of 2014 in
CMA.No.630 & 1018/2014

C.M.A. No. 3130 of 2013

1. Mrs. Balamanohari
represented by power agent
Rajalingam, 2nd appellant herein
2. Rajalingam .. Appellants/Claimants

Versus

1. M/s. Sri Venkateswara College of Engineering
represented by its Chairman
No.3, Pennalur, Sriperumbadur Taluk
Kanchipuram District
2. M/s. Vel Tech College of Engineering
represented by its Chairman
No.42, Avadi - Alamathi Road
Chennai - 600 062
3. United India Insurance Company Limited
No.73-C, M.T.H. Road, Ambattur
Post Box No.112
Chennai - 600 053 .. Respondents/Respondents

CMA No. 630 of 2014

United India Insurance Company Limited
No.73-C, M.T.H. Road, Ambattur
Post Box No.112
Chennai - 600 053 .. Appellant/3rd Respondent

1. Mrs. Balamanohari
represented by power agent
Rajalingam, 2nd respondent
2. Rajalingam ...Respondents 1 & 2/Claimants
3. M/s. Sri Venkateswara College of Engineering
represented by its Chairman
No.3, Pennalur, Sriperumbadur Taluk
Kanchipuram District
4. M/s. Vel Tech College of Engineering
represented by its Chairman
No.42, Avadi - Alamathi Road
Chennai - 600 062 .. Respondents 3 & 4/
Respondents 1 & 2

CMA No. 1018 of 2014

M/s. Sri Venkateswara College of Engineering
represented by its Chairman
No.3, Pennalur, Sriperumbadur Taluk
Kanchipuram District .. Appellant/1st Respondent

Versus

1. Mrs. Balamanohari
represented by power agent
Rajalingam, 2nd respondent
2. Rajalingam ...Respondents 1 & 2/Claimants
3. M/s. Vel Tech College of Engineering
represented by its Chairman
No.42, Avadi - Alamathi Road
Chennai - 600 062
4. United India Insurance Company Limited
No.73-C, M.T.H. Road, Ambattur
Post Box No.112
Chennai - 600 053 .. Respondents 3 & 4/Respondents 2 & 3

Appeals filed under Section 173 of The Motor Vehicles Act
against the Judgment and Decree dated 20.03.2013 passed in MCOP
No. 336 of 2007 on the file of Chief Small Causes Judge/Motor
Accidents Claims Tribunal, Chennai

CMA No. 3130 of 2013

For Respondents : Mr. Ar.L. Sundaresan, Senior Advocate
for Mrs. Al. Ganthimathi for R1
Mr. S. Thangasivam for R2
Mr. S. Arunkumar for R3

CMA No. 630 of 2014

For Appellant : Mr. S. Arunkumar

For Respondents : Mr. K.S. Kumar for RR1 and 2
Mr. Ar.L. Sundaresan, Senior Advocate
for Mrs. Al. Ganthimathi for R3
Mr. S. Thangasivam for R4

CMA No. 1018 of 2014

For Appellant : Mr. N.R. Chandran, Senior Advocate
for Mr. R. Natarajan

For Respondents : Mr. K.S. Kumar for RR1 and 2
Mr. Thankasivan for R3
Mr. S. Arunkumar for R4

COMMON JUDGMENT

R. Subbiah, J

All these Civil Miscellaneous Appeals arise out of the Judgment and Decree dated 20.03.2013 passed in MCOP No. 336 of 2007 on the file of Chief Small Causes Judge/Motor Accidents Claims Tribunal, Chennai. By the said decree and Judgment dated 20.03.2013, the Tribunal awarded a sum of Rs.17,10,000/- as compensation payable to the claimants 1 and 2 with proportionate costs and interest at the rate of 7.5% per annum payable by the respondents 1 and 3 in the Claim Petition.

2. For the sake of convenience, the parties to these appeals shall be referred to as per their litigative status as 'claimants' and 'respondents' in MCOP No. 336 of 2007 and as arrayed in CMA. No. 3130 of 2013 filed by the claimants.

3. The claimants are the parents of the deceased Karthikeyan, According to the claimants, on 09.03.2006 at about 16.50 hours, the deceased was returning from his college to his house in his two wheeler bearing Registration No. TN-02-B-7652 along with his friend Jegan, who was travelling as a pillion rider. When the two wheeler driven by the deceased was approaching near a Petty shop adjacent to Nazareth College, Avadi, the bus bearing Registration No. TN-63-Z-5533 came in a rash and negligent manner being driven by its driver and hit the two wheeler driven by the deceased from behind. In the impact, the deceased was thrown out of the two wheeler and sustained grievous injuries. Even though the deceased was taken to a near by hospital, he was declared as brought dead to the hospital. According to the claimants, the first respondent

- Sri Venkateswara College of Engineering is the owner of the bus from whom the second respondent - Vel Tech College of Engineering had hired the vehicle on contract basis and that the bus was insured with the third respondent - Insurance Company. Therefore, according to the claimants, the respondents 1 to 3 are jointly and vicariously liable for the death of their son Karthikeyan. Thus, the claimants have filed the claim petition against the respondents claiming a compensation of Rs.1 crore.

4. The claim petition was resisted by the first respondent - Sri Venkateswara College of Engineering by filing a counter affidavit. According to the first respondent, they are not necessary party to be impleaded in the Claim Petition inasmuch as the first respondent had transferred the ownership of the bus involved in the accident much prior to the accident on 22.10.2005 itself in favour of one Mr.S.P. Annamalai, a resident of No.11, Prakasam Street, Vijayalakshmipuram, Ambattur, Chennai - 600 053 and it was also informed to the competent registering authority on 22.10.2005 itself. On such intimation, the Regional Transport Authority has also cancelled the permit issued in favour of the first respondent for the vehicle in question by passing an order under Reg.B2/37690/2005 dated 07.10.2005. According to the first respondent, the claimants, without verifying the records and status of ownership of the vehicle in question, have filed the Claim Petition and therefore, they prayed for dismissal of the Claim Petition as against the first respondent.

5. The second respondent - Vel Tech College of Engineering filed a counter affidavit repudiating the averments made in the claim petition. According to the second respondent, before filing the Claim Petition, the claimants, through their counsel, have sent a notice dated 21.04.2006 demanding payment of compensation for which the second respondent had sent a suitable reply dated 24.05.2006 denying their liability to pay the compensation. It was further contended that the first respondent was the owner of the vehicle viz., Ashok Leyland bus bearing Registration No. TN-63-Z-5533, as on the date of accident and therefore, they ought not to have been impleaded as a party respondent to the claim petition. Therefore, the second respondent prayed for dismissal of the claim petition.

6. The third respondent - Insurance Company has filed a counter affidavit contending inter alia that the compensation claimed by the claimant is onerous, excessive and it is not proportionate to the nature of avocation of the deceased. It was also contended by the third respondent that the driver of the vehicle had driven the vehicle slowly and cautiously and it was the deceased who had suddenly darted across the middle of the road, which resulted in the accident. It was also contended that the claim petition is liable to be dismissed for non-joinder of the insurer of the Motor cycle driven by the deceased. The third respondent also denied that the vehicle in question was insured with them. That apart, it was contended that the driver of the bus did not possess a valid and

effective driving licence and that the vehicle was not used in accordance with the permit at the time of accident. Therefore, the third respondent prayed for dismissal of the Claim Petition.

7. Before the Tribunal, in order to establish the claim for compensation made in the claim petition, the second claimant, father of the deceased, examined himself as PW1 along with one Mr. Senthilkumar, an eye witness to the accident, as PW2 and marked Exs. P1 to P21. On the side of the respondents, four witnesses were examined as RW1 to 4 and Exs. R1 to R10 were marked besides Proceedings of the Regional Transport Officer was marked as Ex.X1. Among the four witnesses examined on behalf of the respondents, RW1 was the Principal (Student Affairs) of the second respondent - Vel Tech College of Engineering. RW2 was the Assistant Manager of the third respondent/Insurance Company. RW3 was the Secretary of the first respondent - Sri Venkateswara College of Engineering. RW3 was examined to speak about the transfer of ownership of the vehicle in question in favour of one Mr. S.P. Annamalai through whom Exs. R6 to R9 were marked to substantiate the same. RW4 was the Special Sub-Inspector of Police, Avadi Traffic Region.

8. The Tribunal, upon consideration of the oral and documentary evidence has come to the conclusion that the accident was the result of rash and negligent driving of the driver of the bus and brushed aside the plea of the respondents that the deceased had contributed to the accident. Resultantly, the Tribunal, after analysing the pecuniary loss confronted by the claimants owing to the death of the deceased, passed a decree and Judgment dated 20.03.2013 awarding a sum of Rs.17,10,000/- as compensation in their favour. As far as the liability to pay the compensation is concerned, the Tribunal has concluded that the first respondent is the registered owner of the vehicle in question and the vehicle was insured with the third respondent/insurance company. The Tribunal also rendered a finding that the first respondent did not establish the transfer of ownership of the vehicle in question in favour of one Annamalai and there is no evidence made available to show that the vehicle was hired to the second respondent - Vel Tech College of Engineering. Therefore, the Tribunal, while holding that the first and third respondents are jointly and vicariously liable to pay the compensation amount, directed the third respondent-Insurance Company to pay the compensation amount to the claimants and thereafter recover it from the first respondent. While holding so, the Tribunal dismissed the claim petition as against the second respondent - Vel Tech College of Engineering.

9. Feeling dissatisfied with the quantum of compensation awarded by the Tribunal, the claimants, who are parents of the deceased, have filed CMA No. 3130 of 2013 seeking enhancement of the compensation.

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10. As against the very same award passed by the Tribunal, C.M.A. No. 630 of 2014 is filed by the Insurance Company

contending that they have taken a defence before the Tribunal specifically contending that on the date of accident, the vehicle was running without a valid permit. In such circumstances, according to the Insurance Company, the Tribunal ought not to have directed them to pay the compensation to the claimants and to thereafter recover it from the first respondent - Venkateswara College of Engineering. Instead, the Tribunal ought to have directed the first respondent/owner of the vehicle - Sri Venkateswara Engineering College to pay the compensation amount to the claimant. Therefore, it is the specific contention of the Insurance Company in CMA No. 630 of 2014 that the Tribunal erred in directing them to pay the compensation to the claimants and thereafter recover it from the owner of the vehicle and prayed for setting aside the direction issued by the Tribunal to pay the compensation amount.

11. Assailing the very same Judgment and Decree passed by the Tribunal, the first respondent in the claim petition namely Sri Venkateswara College of Engineering has filed CMA No. 1018 of 2014 contending that the Tribunal erred in directing the insurance company to pay the compensation with a right to recover the compensation from them. It is the vehement contention of the first respondent that even prior to the accident, the ownership of the vehicle in question was transferred by them in favour of one Annamalai, Son of Subbiah, but the Tribunal, without appreciating such defence made on behalf of the first respondent erred in directing the Insurance Company to pay the compensation to the claimants and to recover it from them. Thus, the counsel for the first respondent prayed to set aside the Judgment of the Tribunal in so far as it relates to the recovery right given to the Insurance Company to pay the compensation amount to the claimants and thereafter to recover it from the owner of the vehicle.

12. Mr. K.S. Kumar, learned counsel for claimants would contend that the deceased was the only son for the claimants and that they have lost their only son at his young age. The hopes and aspirations of the claimants to see their son prosper both in his personal life as well as professional life has been shattered into pieces by virtue of his death in the accident. The deceased was a bright student and had he been alive, he would have achieved greater horizons in his professional life. The Tribunal did not take note of the fact that the deceased was offered a job in United States based company namely M/s. Butler International with an annual salary of 96,000 US Dollars and in order to fortify the same documentary evidence Exs. P13, 14, 15, 16, 17, 18 and 20 were marked. In spite of the above documentary evidence, the Tribunal notionally fixed a sum of Rs.20,000/- per month as income of the deceased out of which Rs.10,000/- was deducted towards personal expenses. According to the counsel for the claimants, the Tribunal erred in deducting half of the income of the deceased towards personal expenses and arrived at the compensation amount. Further, the Tribunal, erroneously determined the compensation amount by taking into account the age of the mother of the deceased, who is the first claimant instead of taking the age of the

deceased. The multiplier fixed at '14' is improper and the Tribunal ought to have taken the multiplier at '18' on the basis of the age of the deceased to determine the compensation amount. The funeral expenses awarded by the Tribunal at Rs.10,000/- is very low and inadequate and that the Tribunal ought to have awarded Rs.25,000/- under the said head. Similarly, the amount awarded towards loss of love and affection to the claimants, for having lost their only son, at Rs.10,000/- to each of them is very meagre. In any event, the amount of Rs.17,10,000/- awarded by the Tribunal is grossly disproportionate and it is liable to be enhanced.

13. Mr. Ar.L. Sundaresan, learned Senior Advocate appearing for the first respondent - Sri Venkateswara College of Engineering in CMA No. 3130 of 2013 would contend that the first respondent cannot be fastened with any liability to pay compensation to the claimants herein and the recovery right given by the Tribunal in favour of the insurance company is legally not sustainable. The Tribunal failed to take note of the fact that even as early as on 22.10.2005 the ownership of the bus in question was transferred by the first respondent in favour of one S.P. Annamalai. Thus, on the date of accident namely 09.03.2006, the first respondent ceased to be the owner of the bus in question. The learned Senior counsel for the first respondent invited the attention of this Court to the reply notice dated 24.05.2006, Ex.R1 sent by the second respondent - Vel Tech College of Engineering to the notice dated 21.04.2006 sent by the father of the deceased and contended that in the said reply notice dated 24.05.2006, it was only stated that on the fateful day namely 09.03.2006, when the bus was driven by the driver of their College i.e., Vel Tech College of Engineering, in a careful manner, the deceased attempted to overtake the bus and at that time, an autorickshaw, which was coming in the front of the two wheeler, colluded with it, which resulted in the accident. Except such a false averment, in the reply notice dated 24.05.2006, nothing was stated by the second respondent denying the ownership of the bus in question. Further, in Ex.R10, proceedings of the Inspector of Police, Traffic Wing, it was stated that one Subbiah had taken the vehicle from the police station after the accident. According to the learned Senior counsel, the said Subbiah is none other than the father of S.P. Annamalai to whom the first respondent had transferred the vehicle in question on 22.10.2005. This would show that the vehicle in question stood transferred in the name of Mr. S.P. Annamalai, Son of Subbiah and the said Annamalai in turn had hired the vehicle to Vel Tech Engineering College, the second respondent. Even on the date of accident, the bus was operated by Mr. S.P. Annamalai for and on behalf of M/s. Vel Tech Engineering College, the second respondent and the second respondent also did not deny the possession of the vehicle as well as the operation of the vehicle on the date of accident. Therefore, the learned Senior counsel for the first respondent would contend that the decree and judgment of the Tribunal is liable to be set aside.

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14. The learned Senior counsel for the first respondent also invited the attention of this Court to Exs. R7, R8 and R9,

Insurance Transfer Certificate, Report of Transfer of Ownership and Notice for transfer of ownership respectively. According to the learned Senior counsel, these documents would clinchingly prove that the vehicle in question stood transferred in favour of Mr. S.P. Annamalai even on 22.10.2005. Further, Exs. R7, R8 and R9 corroborates the statement contained in Ex.P1, first information report, Ex.P21, legal notice dated 21.04.2006 and Ex.R1, reply notice dated 24.05.2006. Therefore, it is contended by the learned Senior counsel that the second respondent - Vel Tech College of Engineering, was the owner of the vehicle in question as on the date of accident and the Tribunal erred in conferring right to recovery with the Insurance Company to recover the compensation amount from the first respondent only on the ground that on the date of accident, the vehicle was operated without a valid permit. In any event, the fact that the vehicle was operated on the date of accident without a valid permit or in breach of the conditions of permit is not a ground on which the Insurance company can disown their liability to pay compensation to the claimants. In this context, the learned Senior counsel appearing for the first respondent - Sri Venkateswara College of Engineering invited the attention of this Court to Section 149 of The Motor Vehicles Act, which reads as follows;-

"149. Duty of insurers to satisfy judgments and awards against persons insured in respect of third party risks:- (1) If, after a certificate of insurance has been issued under sub-section (3) of Section 147 in favour of the person by whom a policy has been effected, judgment or award in respect of any such liability as is required to be covered by a policy under clause (b) of sub-section (1) of Section 147 (being a liability covered by the terms of the policy) or under the provisions of Section 163-A is obtained against any person issued 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, subject to the provisions of this Section, pay to the person entitled to the benefit of the decree any sum not exceeding the sum assured payable thereunder, as if he were the judgment debtor, in respect of the liability, together with any amount payable in respect of costs and any sum payable in respect of interest on that sum by virtue of any enactment relating to interest on judgment

(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 conditions 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 is not covered by a permit to ply for hire or reward; or

(b) for organised 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 motor cycle; or

(ii) a condition excluding driving by a named person or persons or by any person who is not duly licenced, 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.

(3) Where any such judgment as is referred to in sub-section (1) is obtained from a Court in a reciprocating country and in the case of a foreign judgment is, by virtue of the provisions of Section 13 of the Code of Civil Procedure, 1908 (5 of 1908) conclusive as to any matter adjudicated upon by it, the insurer (being an insurer registered under the Insurance Act, 1938 (4 of 1938) and whether or not he is registered under the corresponding law of the reciprocating country) shall be liable to the person entitled to the benefit of the decree in the manner and to the extent specified in sub-section (1) as if the judgment were given by a Court in India.

15. By placing reliance on Section 149 (2) of the Motor Vehicles Act, the learned Senior counsel for the first respondent would contend that the circumstances under which the Insurance Company can raise a defence and to deny their liability is contemplated under Section 149 (2) (i) (a) and (c). As per Section 149 (2) (i) (a) of the Motor Vehicles Act, if the vehicle is not covered by any permit to ply for hire or reward, the insurance company can raise a defence to disown their liability to pay the compensation. Similarly, as per Section 149 (2) (i) (c) of the said Act, if the vehicle was a

transport vehicle and it was allowed to be used for a purpose other than the one for which permit was issued, then also, the Insurance Company can disown their liability to pay compensation. In this case, even as early as on 22.10.2015, the first respondent transferred the vehicle in favour of one Mr. S.P. Annamalai. Even before such transfer of ownership, on 07.10.2015, the first respondent has surrendered the permit issued in their favour. Hence, the defence raised by the Insurance Company in this case will not fall under any of the conditions stipulated either under Section 149 (2) (i) (a) or under Section 149 (2) (i) (c) of The Motor Vehicles Act. In such circumstances, Insurance Company cannot contend that there is a violation of the permit condition as on the date of accident and consequently, the Insurance Company cannot disown their liability to pay the compensation amount to the claimants. Even otherwise, according to the learned Senior counsel for the first respondent, Ex.R3, copy of insurance policy was marked before the Tribunal which would reveal that the policy was issued on 10.06.2005 having validity till 09.06.2006. The permit was surrendered by the first respondent on 07.10.2005 and therefore, as on the date of contract of insurance, there was a valid permit and consequently, the contention of the insurance company that they are not liable to pay the compensation has to be rejected.

16. Mr. N.R. Chandran, learned Senior counsel appearing for the first respondent/appellant in CMA No. 1018 of 2014 would vehemently contend that the first respondent was the owner of the bus bearing Registration No. TN-63-Z-5533. However, much prior to the accident namely on 09.03.2006, the ownership of the bus was transferred to one Mr. S.P. Annamalai, who is an employee of the second respondent - Vel Tech Engineering College on 23.10.2005. Such transfer of ownership was also duly intimated to the Regional Transport Authority concerned. Even otherwise, on the date of the accident, the vehicle was duly covered by insurance coverage and the insurance was in force between 10.06.2005 to 09.06.2006. When the accident had occurred during the currency of the insurance coverage and when the ownership of the vehicle in question was transferred by the first respondent in favour of one S.P. Annamalai, who represents Vel Tech Engineering College, the second respondent, the Tribunal ought not to have directed the Insurance company to pay the compensation and to recover it from the first respondent. When the transfer of ownership of the vehicle in question was intimated to the concerned authorities, as per Section 50 of The Motor Vehicles Act, it amounts to an acceptance of transfer and there is no necessity to wait for a formal order to be passed for having accepted such transfer. In any event, the first respondent cannot be held responsible and they cannot be fastened with any liability to pay the compensation amount when once the ownership of the vehicle in question is already transferred. Therefore, the direction issued by the Tribunal to the insurance company to pay the compensation amount and to recover it from the first respondent calls for interference by this Court. In this context, the learned Senior counsel for the first respondent

invited the attention of this Court to Section 50 of The Motor Vehicles Act, which is extracted below:-

"50. Transfer of Ownership:- (1) Where the ownership of any motor vehicle registered under this chapter is transferred-

(a) the transferor shall-

(i) in the case of vehicle registered within the same State, within fourteen days of the transfer, report the fact of transfer, in such form with such documents and in such manner, as may be prescribed by the Central Government to the registering authority within whose jurisdiction the transfer is to be effected and shall simultaneously send a copy of the said report to the transferee; and

(ii) in the case of a vehicle registered outside the State, within forty-five days of the transfer forward to the registering authority referred to in sub-clause (1)-

(A) the no objection certificate obtained under section 48; or

(B) in a case where no such certificate has been obtained;-

(i) the receipt obtained under sub-section (2) of section 48; or

(ii) the postal acknowledgment received by the transferor if he has sent an application in this behalf by registered post acknowledgment due to the registering authority referred to in section 48, together with a declaration that he has not received any communication from such authority refusing to grant such certificate on requiring him to comply with any direction subject to which such certificate may be granted

(b) the transferee shall, within thirty days of the transfer, report the transfer to the registering authority within whose jurisdiction he has the residence or place of business where the vehicle is normally kept as the case may be, and shall forward the certificate of registration to that registering authority together with the prescribed fee and a copy of the report received by him from the transferee in order that particulars of the transfer of ownership may be entered in the certificate of registration

(2) Where-

(a) the person in whose name a motor vehicle stands registered dies; or

(b) a motor vehicle has been purchased or acquired at a public auction conducted by, or on behalf of Government

the person succeeding to the possession of the vehicle or, as the case may be, who has purchased or acquired the motor vehicle, shall make an application for the purpose of transferring the ownership of the vehicle in his name, to the registering authority in whose jurisdiction he has the residence or place of

business where the vehicle is normally kept, as the case may be, in such manner, accompanied with such fee, and within such period, as may be prescribed by the Central Government

(3) If the transferor or the transferee fails to report to the registering authority the fact of transfer within the period specified in clause (a) or clause (b) of sub-section (1) as the case may be, or if the person who is required to make an application under sub-section (2) (hereafter in this section referred to as the other person) fails to make such application within the period prescribed, the registering authority may, having regard to the circumstances of the case, require the transferor or the transferee, or the other person, as the case may be, to pay, in lieu of any action that may be taken against him under Section 177 such amount not exceeding one hundred rupees as may be prescribed under sub-section (5)

Provided that action under Section 177 shall be taken against the transferor or the transferee or the other person, as the case may be, where he fails to pay the said amount

(4) Where a person has paid the amount under sub-section (3) no action shall be taken against him under Section 177

(5) For the purposes of sub-section (3) a State Government may prescribe different amounts having regard to the period of delay on the part of the transferor or transferee in reporting the fact of transfer of ownership of the motor vehicle or of the other person in making the application under sub-section (2)

(6) On receipt of a report under sub-section (1), or an application under sub-section (2), the registering authority may cause the transfer of ownership to be entered in the certificate of registration.

(7) A registering authority making any such entry shall communicate the transfer of ownership to the transferor and to the original registering authority, if it is not the original registering authority.

17. By placing reliance on the above position of law, the learned Senior counsel for the first respondent would contend that as required under Section 50 of The Motor Vehicles Act, an intimation was delivered to the competent registering authority about the transfer of ownership of the bus in question and there is no obligation on the part of the transferor, first respondent herein, to wait for a formal order to be passed thereon. The learned Senior counsel for the first respondent also would contend that the father of the deceased had sent a notice dated 21.04.2006, Ex.P21 addressed to the second respondent College and on receipt of the same, a reply dated 24.05.2006, Ex.R1 was sent by the second respondent -Vel Tech

College of Engineering, in which they have not denied the ownership of the vehicle in question. Further, the learned Senior counsel would contend that the first information report, Ex.P1 was registered as against the driver of the bus. A perusal of Ex.P1 would indicate that at the time of the accident, the bus was carrying the students of the second respondent College, which would indicate that the bus was owned and used only by the second respondent. According to the learned Senior counsel for the first respondent, Mr. S.P. Annamalai, to whom the first respondent had sold the vehicle in question, is none other than an employee of the second respondent college. Further, it was Mr. Subbiah, father of S.P. Annamalai, who took the vehicle from the custody of the police soon after the accident and therefore, it is clear that the ownership was transferred by the first respondent much prior to the accident and therefore, the first respondent cannot be fastened with any liability to pay compensation as if they are the owner of the vehicle in question. Furthermore, Ex.P7, charge sheet filed by the investigation officer would also reveal that the bus belonged to the second respondent college and the accident was the result of negligence of the driver of the bus. In spite of all the above evidence made available, the second respondent has unceremoniously filed a counter affidavit before the Tribunal stating that they are not the owner of the vehicle in question and the same was also relied on by the Tribunal to mulct the first respondent with liability to pay the compensation amount by giving recovery right to the insurance company.

18. The learned Senior counsel for the first respondent also relied on Section 157 of the Motor Vehicles Act, which reads as under:-

"157. Transfer of Certificate of insurance:-

(1) Where a person in whose favour the certificate of insurance has been issued in accordance with the provisions of the Chapter transfers to another person the ownership of the motor vehicle in respect of which such insurance was taken together with the policy of insurance relating thereto, the certificate of insurance and the policy described in the certificate shall be deemed to have been transferred in favour of the person to whom the motor vehicle is transferred with effect from the date of transfer.

(2) The transferee shall apply within fourteen days from the date of transfer in the prescribed form to the insurer for making necessary changes in regard to the fact of transfer in the certificate of insurance and policy described in the certificate in his favour and the insurer shall make the necessary changes in the certificate and the policy of insurance in regard to the transfer of insurance.

19. By replying upon Section 157 of The Motor Vehicles Act, the learned Senior counsel for the first respondent would contend that when once the ownership of the motor vehicle in question was transferred, automatically, the certificate of

insurance and the policy described in the certificate shall be deemed to have been transferred in favour of the person to whom the motor vehicle was transferred with effect from the date of transfer. While so, when the transfer of the bus in question has been proved by the first respondent, the Tribunal erred in giving recovery right to the insurance company to recover the compensation from the first respondent.

20. The learned Senior counsel for the first respondent also relied on the decision rendered by the Honourable Supreme Court in the case of (Firdaus vs. Oriental Insurance Company Limited and others) reported in 2018 1 Law Weekly 153 wherein it was held that even if the insured vehicle stood transferred to the other person, the liability of the insurance company to pay the compensation amount will not cease.

21. The learned Senior counsel for the first respondent also relied on the decision of the Honourable Supreme Court in the case of (Pushpa @ Leela and others vs. Shakuntala and others) reported in 2011 (2) CTC 693 to contend that even assuming that the transfer was not intimated to the concerned authority, still, the insurance coverage in respect of the vehicle in question is in tact and the insurance policy stand in the name of the original owner which will have the effect of the insurance company having the statutory obligation to pay the compensation amount to the claimants. Therefore, the learned Senior counsel for the first respondent would pray for setting aside the recovery right given by the Tribunal to the Insurance Company to recover the compensation amount from them, after paying it to the claimants.

22. Mr. Thanka Sivan, learned counsel appearing for the second respondent - Vel Tech Engineering College would contend that it is incorrect to state that on the date of accident, the registration certificate stood in the name of the second respondent. Though the first respondent would assert that the ownership of the vehicle in question stood transferred in favour of Mr. S.P.Annamalai and such transfer was intimated to the concerned transport authority, before the Tribunal, no evidence was produced to substantiate the same. Therefore, the Tribunal is right in dismissing the claim petition as against the second respondent and directed the insurance company to pay the compensation to the claimants with a right to recover such compensation amount from the first respondent. In such view of the matter, the learned counsel prayed for dismissal of the appeals filed by the first respondent.

23. Mr. Arun Kumar, learned counsel appearing for the Insurance Company would contend that though the first respondent - Sri Venkateswara College of Engineering had taken a defence that the ownership of the vehicle in question was transferred in favour of one Annamalai even before the accident and it was also intimated to the concerned registering authority, however, there is no evidence produced to substantiate the same. Before the Tribunal, RW3, Arunachalam, Secretary of the first respondent College and RW4, Special Sub-

Inspector of Police attached to Avadi Tank Factory Police Station were examined. RW3 in his evidence has admitted that there is no written proof to show that the transfer of ownership of the vehicle in question was intimated to the concerned authority. According to the learned counsel, admittedly, the registration certificate, Ex.P10 stands in the name of the first respondent as on the date of the accident. Even the records produced through RW3 and RW4 would show that tax was paid in the name of the first respondent herein and it only indicates that the ownership of the vehicle remain unchanged. The learned counsel further brought to the notice of this Court that there is nothing on record to show that Annamalai had authorised his father Subbiah to receive the vehicle from the police custody, in his capacity as a owner of the vehicle. Similarly, in the reply dated 24.05.2006, Ex.R1 sent to the counsel for the claimants, it was contended by the second respondent that the accident was not caused by the vehicle of the second respondent at all and it was an auto which caused the accident while proceeding from the opposite direction. The contents of Ex.R1 were reiterated by RW1, who was the Principal (Student Affairs) of the second respondent college. However, the first respondent did not cross examine RW1 for the reasons best known. Thus, the first respondent is only attempting to shift the responsibility to pay the compensation amount to claimants by raising pleadings without substantiating the same with material documents.

24. As far as the contention of learned Senior Counsel for first respondent in C.M.A. No. 3130 of 2013 to the effect that since the permit was surrendered by the first respondent the question of statutory violation does not arise and therefore, the first respondent cannot be fastened with any liability to pay the compensation to the claimants, it is replied by the learned counsel for the Insurance company that as per Section 66 of The Motor Vehicles Act, without the permit, no owner of a motor vehicle shall use or permit the use of the vehicle as a transport vehicle in any public place, whether or not such vehicle is actually carrying any passengers or goods. In the present case, admittedly, the permit issued in the name of the first respondent was cancelled as early as on 07.10.2005 and the accident occurred on 09.03.2006. While so, it is clear that the vehicle was permitted to be used by the first respondent without proper and valid permit from the concerned authority and thereby the first respondent breached the provisions of Section 166 of the Motor Vehicles Act and the specific condition imposed in the policy, marked as Ex.R3. It is one of the statutory violation and it amounts to breach of policy condition.

25. The learned counsel for the Insurance Company also invited our attention to Section 149 of the Motor Vehicles Act which deals with duty of insurers to satisfy judgments and awards against persons insured in respect of third party risks. As per Section 149 (2) (i) (c) of The Motor Vehicles Act, if the vehicle was used for a purpose not allowed by the permit, then the liability to pay the compensation cannot be fastened

on the insurer and that the Insurance Company can disown their liability to pay the compensation. In this case, the vehicle was allowed to be used without a permit and that there was a violation of the policy condition, in such circumstances, the direction issued by the Tribunal to the Insurance Company to pay the compensation amount to the claimants and to recover it from the first respondent is legally not sustainable and that the Tribunal ought to have straightaway directed the first respondent to pay the entire compensation amount.

26. As regards the contention of the learned counsel for the claimants, the learned counsel for the Insurance Company would contend that the deceased was a student at the time of accident. The Tribunal, notionally arrived at the loss of income of the deceased and awarded a just and fair compensation. In such circumstances, the learned counsel for the Insurance Company would contend that the compensation amount awarded by the Tribunal cannot be said to be inadequate and it does not call for interference by this Court and consequently prayed for dismissal of the appeal filed by the claimant as well as the first respondent.

27. We have heard the learned counsel on either and perused the material records. The following points arise for consideration in these appeals and they are:-

(i) Whether the first respondent, who claims to be the erstwhile owner of the bus bearing Registration No. TN-63-Z-5533 has proved the transfer of ownership of the said bus in favour of the second respondent?

(ii) Whether the vehicle was in possession and control of the second respondent as on the date of accident, if so, whether the second respondent could be fastened with liability?

(iii) Whether the plying of the offending vehicle without a valid permit would amount to violation of policy condition, which gives right to the insurance company to decline their liability to pay the compensation amount to the claimants?

(iv) Whether the recovery rights given by the Tribunal to the Insurance Company to recover the compensation amount from the first respondent is legally sustainable?

(v) Whether the claimants are entitled for enhanced compensation?

Question No. 1

28. It is the specific defence of the first respondent - Sri Venkateswara Engineering College in the claim petition filed by the claimants that they were the erstwhile owner of the bus bearing Registration No. TN-63-Z-5533 which was involved in the accident in the instant case on 09.03.2006. According to the first respondent - Sri Venkateswara College of Engineering, even prior to the accident, they have transferred the ownership of the vehicle in question in favour of one S.P. Annamalai, Son of Subbiah on 22.10.2005 and from that date, the possession and control of the vehicle vests with the second

respondent. In other words, as on the date of accident, the vehicle does not belong to the first respondent, rather, it was owned by Mr. S.P. Annamalai. After such purchase, Mr. S.P. Annamalai hired the vehicle to the second respondent college and it was the second respondent which was using the bus for transporting the students of their college. Even as on the date of the accident, the students of the second respondent college alone were travelling in the bus. Therefore, according to the first respondent, they were not the owner of the vehicle as on the date of the accident and consequently, the recovery right given to the Insurance Company to recover the compensation from the first respondent is legally unsustainable and hence, the award passed by the Tribunal has to be set aside. In support of such contention, the learned Senior counsel appearing for the first respondent in both the appeals would invite the attention of this Court to Exs. R7, R8 and R9. Ex.R7 is the Insurance Transfer Certificate dated 22.12.2005 issued by the first respondent in favour of the transferee Mr. S.P. Annamalai. Ex.R8 is the Report of Transfer of Ownership of a Motor Vehicle dated 22.12.2015 issued by the first respondent. Ex.R9 is the Form 29 relating to transfer of Motor Vehicle executed by the first respondent on 22.12.2005. Relying on the above documentary evidence, it is contended that the first respondent has duly proved the transfer of ownership of the vehicle in question in favour of Mr. S.P. Annamalai even on 22.12.2005.

29. On perusal of Exs. R7 to R9, we find that they were executed by the first respondent in favour of Mr. S.P. Annamalai, however, there was no seal affixed in those documents by the competent registering authority and this would only indicate that the transfer of ownership of the vehicle was not made in accordance with the Motor Vehicles Act and Rules made thereunder, particularly Section 50 (6) and (7) of the said Act. Merely because the first respondent executed certain documents in favour of the transferee, it will not amount to transfer of ownership of the vehicle. In other words, in the absence of any endorsement or entry in the Certificate of Registration by the Registering Authority as required under Section 50 (6) of the Act, the ownership continued to remain with the transferor and it cannot be construed to have been transferred in favour of the transferee. In the present case, by reason of execution of Exs. R7 and R8, the liability of the first respondent to pay compensation to the claimants cannot be extinguished or ceased and the first respondent continued to be the owner of the vehicle in question. It is needless to mention that for transfer of ownership of a vehicle, such transfer must be intimated to the registering authority and necessary endorsement or seal has to be made in the registration certificate of the vehicle. In the absence of such endorsement made by the registering authority, mere execution of documents, as contended by the first respondent, will not partake the character of a transfer as contemplated under Section 50 (6) and (7) of The Motor Vehicles Act. Therefore, we are of the view that the so-called transfer of

ownership made by the first respondent is not in accordance with law.

30. The learned Senior counsels appearing for Sri Venkateswara College of Engineering, in unison, in their respective appeals would vehemently contend that soon after the accident, the custody of the vehicle was handed over to Mr. Subbiah, father of S.P. Annamalai, to whom the first respondent has sold the vehicle and therefore it can be construed that the ownership stood transferred in favour of Mr. S.P. Annamalai. It is further contended that even in the reply notice dated 24.05.2006 sent on behalf of the second respondent, the second respondent categorically admitted that they are the owner of the bus involved in the accident. Such a contention urged on behalf of the learned Senior counsels appearing for the Sri Venkateswara College of Engineering has no force of law. Mere deliverance of the vehicle to Mr. Subbiah, Son of Mr. S.P. Annamalai will not be a ground to contend that the ownership of the vehicle was transferred. It is well settled proposition of law that when a thing has to be done in a particular manner, it has to be done only in that manner and not otherwise. Applying this principle to the facts of the present case, even assuming that the custody of the vehicle was delivered by the police authorities in favour of Mr. Subbiah, Son of S.P. Annamalai, that by itself will not amount to transfer of ownership of the vehicle. Assuming that the vehicle is in the control and custody of the second respondent, for all practical purpose, the first respondent continued to be the owner of the vehicle in question unless and until necessary endorsements are made in the Certificate of Registration. Admittedly, the Certificate of Registration with endorsement or seal of the Registering Authority has not been produced by the first respondent. In this context, useful reference can be made to the decision of the Honourable Supreme Court in (Naveen Kumar vs. Vijay Kumar and others) reported in (2018) SCC Online SC 84 wherein in Para Nos. 17 and 18, it was held as follows:-

"17. Since the second respondent was in control and possession of the vehicle this Court held that the High Court was in error in fastening the liability on the financier. The failure of the second respondent to effect full payment for obtaining an insurance cover was neither known to the financier nor were there any collusion on its part. Consequently, the High Court was held to be in error in fastening liability on the financier.

18. The consistent thread of reasoning which emerges from the above decision is that in view of the definition of the expression 'owner' in Section 2 (3) , it is the person in whose name the motor vehicle stands registered who, for the purposes of the Act, would be treated as the 'owner'. However, where a person is a minor, the guardian of the minor would be treated as the owner. Where a Motor Vehicle is subject to an assignment of hire purchase, lease or hypothecation, the person in possession of the

vehicle under that agreement is treated as the owner. In a situation such as the present where the registered owner has purported to transfer the vehicle but continues to be reflected in the records of the registering authority as the owner of the vehicle, he would not stand absolved of liability. Parliament has consciously introduced the definition of the expression 'owner' in Section 2 (30), making a departure from the provisions of Section 2 (19) in the earlier Act of 1939. The principle underlying the provisions of Section 2 (30) is that the victim of a motor accident or, in the case of a death, the legal heirs of the deceased victim should not be left in a state of uncertainty. A claimant for compensation ought not to be burdened with following a trail of successive transfers, which are not registered with the registering authority. To hold otherwise would be to defeat the salutary object and purpose of the Act. Hence, the interpretation to be placed must facilitate the fulfilment of the object of the law. In the present case, the first respondent was the owner of the vehicle involved in the accident within the meaning of Section 2 (3). The liability to pay compensation stands fastened upon him. Admittedly the vehicle was uninsured. The High Court has proceeded upon a misconstruction of the judgments of this Court in *Reshma and Purnya Kala Devi*."

31. The above decision of the Honourable Supreme Court squarely applies to this case. Even though the first respondent claims that the ownership of the offending vehicle stood transferred even prior to the date of accident, the name of the first respondent continues to be reflected in the records of the registering authority as the owner of the vehicle, and therefore, the first respondent cannot be absolved of their vicarious liability to pay compensation, as the owner of the vehicle in question. In other words, notwithstanding the sale of the vehicle in question, the transferor - first respondent did not take any steps for the change of the name of the ownership in the certificate of registration of the vehicle. In view of such omission on the part of the transferor, it shall be deemed that the first respondent continued to be the owner of the vehicle in question within the meaning and definition of 'owner' as contemplated under Section 2 (30) of The Motor Vehicles Act which stipulates that "owner is the one in whose name a motor vehicle stands registered". Therefore, we answer Question No.1 against the first respondent by holding that the first respondent was the owner of the vehicle in question as on the date of accident, as contemplated under Section 2 (30) of The Motor Vehicles Act

Question No.2

32. It is the contention of the learned Senior counsels appearing for the Sri Venkateswara College of Engineering that soon after purchasing the vehicle in question, the transferee Mr. Annamalai hired the vehicle to the second respondent College and the second respondent college alone was using the bus for transporting the students of their college. Even as on the date of accident, the students of the second respondent college alone were travelling in the bus, which would go to show that the second respondent was in possession and control of the vehicle in question. Therefore, when the possession and control of the vehicle was with the second respondent as on the date of the accident, the first respondent cannot be mulcted with any responsibility to pay compensation. Even in the reply notice dated 24.05.2006, Ex.R1 sent to the counsel for the claimants, the second respondent did not deny the fact that at the time of accident, the students of the second respondent college were travelling in the bus. It is further contended that RW1, Principal (Student Affairs) of the second respondent college in his cross-examination has merely stated that he does not know whether the students of the second respondent college were travelling in the bus as on the date of accident. Thus, according to the learned Senior counsels for the first respondent, the contents of reply notice dated 25.04.2006, Ex.R1 and the deposition of RW1 would clearly indicate that the possession and control of the vehicle in question was with the second respondent at the time of accident.

33. Though mere possession or control or regulation of the vehicle in question with the second respondent would not be sufficient to hold that the ownership of the vehicle stood transferred in favour of the second respondent, it would not absolve the second respondent of its tortious liability for the use of the motor vehicle. In the instant case, it is evident that the vehicle was transferred by the first respondent in favour of one S.P. Annamalai by executing Exs. R7 to R9 and the said S.P. Annamalai in turn had hired the vehicle to the second respondent - Vel Tech College of Engineering, which would mean that the possession and control of the vehicle was with the second respondent by lawful means, at the time of accident. The fact remains that Exs. R7 to R9 did not contain the endorsement of the competent transport authority and it would not result in transfer of ownership of the vehicle in question, in favour of the second respondent, in accordance with Section 50 of The Motor Vehicles Act. However, it would not absolve the second respondent of their tortious liability as it was the second respondent who was in possession and control of the use of the motor vehicle at the time of accident. In this background, useful reference can be made to the decision rendered by the Honourable Supreme Court in (National Insurance Company Limited vs. Deepa Devi and others) reported in (2008) 1 Supreme Court Cases 414, in Para Nos. 10 and 11, it was observed as follows:-

"10. Parliament either under the 1939 Act or the 1988 Act did not take into consideration a situation of this nature. No doubt, Respondents 3 and 4 continued to be the registered owners of the vehicle despite the fact that the same was requisitioned by the District Magistrate in exercise of the power conferred upon him under the Representation of the People Act. A vehicle is requisitioned by a statutory authority, pursuant to the provisions contained in a statute. The owner of the vehicle cannot refuse to abide by the order of requisition of the vehicle by the Deputy Commissioer. While the vehicle remains under requisition, the owner does not exercise any control thereover. The driver may still be the employee of the owner of the vehicle but he has to drive it as per the direction of the officer of the State, who is put in charge thereof. Save and except for legal ownership, for all intent and purpose, the registered owner of the vehicle loses entire control thereover. He has no say as to whether the vehicle should be driven at a given point of time or not. He cannot ask the driver not to drive a vehicle on a bad road. He or the driver could not possibly say that the vehicle would not be driven in the night. The purpose of requisition is to use the vehicle. For the period the vehicle remains under the control of the State and/or its officers, the owner is only entitled to payment of compensation thereof in terms of the Act, but he cannot not (sic) exercise any control thereupon. In a situation of this nature, this Court must proceed on the presumption that Parliament while enacting the 1988 Act did not envisage such a situation. If in a given situation, the statutory definitions contained in the 1988 Act cannot be given effect to in letter and spirit, the same should be understood from the common sense point of view.

34. The same legal position has been reiterated by the three Judge Bench of the Honourable Supreme Court in the case of (Purnya Kala Devi vs. State of Assam and another) reported in (2014) 14 Supreme Court Cases 142 wherein it was held that the underlying legislative intention of wider definition of 'owner' adopted under Section 2 (30) of The Motor Vehicles Act is to include in the definition of 'owner' a person in possession of a vehicle either under an agreement of lease or agreement of hypothecation or under a hire-purchase agreement to the effect that a person in control and possession of the vehicle should be construed as the 'owner' and not the registered owner alone.

35. In the light of the aforesaid dictum laid down by the Honourable Supreme Court in the above referred decisions, we are of the opinion that when possession and control of the

vehicle was fully gained by the second respondent, as on the date of accident, through a legitimate means, the second respondent - Vel Tech College of Engineering, is primarily liable to pay the compensation amount to the claimants. However, such primary liability fixed on the part of the second respondent will not absolve the liability of the registered owner of the vehicle in this case namely the first respondent - Sri Venkateswara College of Engineering from paying the compensation amount to the claimants. In other words, the option is left open to the claimants to recover the compensation amount either from the registered owner - first respondent or from the second respondent, who was in possession and control of the vehicle in question, through legitimate means, at the time of accident. In such view of the matter, we answer question No.2 by holding that the vehicle in question was in possession, control and regulation of the second respondent - Vel Tech Engineering College at the time of accident and thereby the second respondent is primarily liable to compensate the claimants and if the claimant had recovered the compensation amount from the first respondent either directly or through its insurer viz., the third respondent, the first respondent is entitled to get the same reimbursed of such amount paid, from the second respondent.

Question No.3 and 4

36. Mr. Arun Kumar, learned counsel appearing for the Insurance Company would vehemently contend that at the time of the accident, the vehicle was plying without any permit. In such circumstances, the question of the Insurance Company paying the compensation amount to the claimants and thereafter recovering it from the owner of the vehicle will not arise. But it is the contention of the learned Senior counsels appearing for Sri Venkateswara College of Engineering that non-possession of permit will not fall within the scope and ambit of Section 149 (2) (i) (a) or Section 149 (2) (i) (c) of The Motor Vehicles Act because even before the date of accident, the first respondent transferred the ownership of the vehicle to one S.P. Annamalai and also surrendered the permit issued in their favour. In other words, only if the owner is in possession of permit and if there is violation of condition of permit, then only, the provisions contained under Section 149 of The Motor Vehicles Act can be invoked. Therefore, according to the learned Senior counsels appearing for the first respondent, in this case, absolutely, there is no statutory violation and the question of recovering the amount from the first respondent will not arise. In such circumstances, according to the learned Senior counsels for Sri Venkateswara College of Engineering, the defence raised by the Insurance Company has to be rejected.

37. We are not inclined to accept such submission raised on behalf of the first respondent - Sri Venkateswara College of Engineering. In the present case, admittedly, at the time of accident, the vehicle was operated without a permit at all, which is prohibited under Section 66 of The Motor Vehicles Act.

In this context, Section 66 of The Motor Vehicles Act has to be looked into which reads as follows:-

"66. Necessity for permits:- (1) No owner of a motor vehicle shall use or permit the use of a vehicle as a transport vehicle in any public place whether or not such vehicle is actually carrying any passengers or goods save in accordance with the conditions of a permit granted or countersigned by a Regional or State Transport Authority or any prescribed authority authorising him the use of the vehicle in that place in the manner in which the vehicle is being used."

38. The contention of the first respondent is that they have surrendered the permit issued in their favour even as early as on 07.10.2015. Admittedly, thereafter, no new permit was issued for operating the bus in question. Section 149 (2) (i) (c) of The Motor Vehicles Act specifically deals with the circumstances under which the Insurance Company can take a defence. As per Section 149 (2) (i) (c) if the vehicle is a transport vehicle and it was operated by violating the conditions of permit or it is allowed to be used for a purpose other than the one for which such permit is issued, then it will confer a right to the Insurance Company to take a defence to disown their liability. In this case, there was no permit at all which is still worse than violating a condition of permit. Therefore, we are of the view that such defence raised by the Insurance Company is in consonance with Section 66 of The Motor Vehicles Act.

39. In the present case, admittedly, the vehicle in question was operated without a permit in a public place. Further, as on the date of accident, the vehicle was carrying the students of the second respondent college. Thus, the vehicle in question was operated without even a permit issued by a Motor Vehicle Authority, which is a statutory violation and therefore also, the defence raised by the insurance company is legally sustainable. In other words, on the date of accident, the offending vehicle is not covered by a valid permit to ply, and therefore, the insurance company cannot be mulcted with any liability to pay compensation. At the same time, we hold that as on the date of accident, the Insurance Coverage in respect of the vehicle in question, is very much in force. Further, even though the Insurance Company succeeds in raising a legal defence, yet it is required to pay the compensation amount to the claimants and thereafter to recover it from the principal owner of the vehicle in question as has been directed by the Tribunal in this case. This principle is adopted to ensure that the compensation amount awarded to the legal heirs of the deceased is swiftly paid by the Insurance Company, being a legal entity, which would add solace and succour to the claimants who have lost their only son at a prime age. In this context, we are fortified by the decision of the Honourable Supreme Court in the case of (National Insurance Company Limited vs. Swaran Singh and others) reported in (2004) 3 Supreme Court Cases 297 wherein in para No.110, it

was held as follows:-

"110. (ix) The claim Tribunal constituted under Section 165 read with Section 168 is empowered to adjudicate all claims in respect of the accidents involving death or of bodily injury or damage to property of third party arising in use of motor vehicle. The said power of the Tribunal is not restricted to decide the claims inter se between the claimant or claimants on one side and insured, insurer and driver on the others. In the course of adjudicating the claim for compensation and to decide the availability of defence or defences to the insurer, the Tribunal has necessarily the power and jurisdiction to decide disputes inter se between the insurer and the insured. The decision rendered on the claims and disputes inter se between the insurer and insured in the course of adjudication of claim for compensation by the claimants and the award made thereon is enforceable and executable in the same manner as provided under Section 174 of the Act for enforcement and execution of the award in favour of the claimants.

(x) Where on adjudication of the claim under the Act the Tribunal arrives at a conclusion that the insurer has satisfactorily proved its defence in accordance with the provisions of Section 149 (2) read with sub-section (7), as interpreted by this Court above, the Tribunal can direct that the insurer is liable to be reimbursed by the insured for the compensation and other amounts which it has been compelled to pay to the third party under the award of the Tribunal. Such determination of claim by the Tribunal will be enforceable and the money found due to the insurer from the insured will be recoverable on a certificate issued by the Tribunal to the Collector in the same manner under Section 174 of the Act as arrears of land revenue. The certificate will be issued for the recovery as arrears of land revenue only if, as required by sub-section (3) of Section 168 of the Act the insured fails to deposit the amount awarded in favour of the insurer within thirty days from the date of announcement of the award by the Tribunal...."

40. Considering the aforesaid decision rendered by the Honourable Supreme Court in Swaran Singh case, the Full Bench of this Court in the case of (Branch Manager, United India Insurance Co., Ltd., Dharmapuri Town vs. Nagammal and others) reported in (2009) 1 TN MAC 1 held in para No.31 as follows:-

"31. Thus, from analysis of the statutory provisions, as explained by the Supreme Court in various decisions rendered from time to time, the following picture emerges:-

(i) The Insurance Policy is required to cover the liability envisages under Section 147, but wider risk can always be undertaken.

(ii) Section 149 envisages the defences which are open to the Insurance Company. When the Insurance Company is not successful in its defence, obviously, it is required to satisfy the decree and

the award. Where it 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 under such circumstance envisaged and enumerated in Section 149 (4) and 149 (5).

(iii) Under Section 147, the Insurance Company is not statutorily required to cover the liability in respect of a passenger in a goods vehicle unless such passenger is the owner or agent of the owner of the goods accompanying such goods in the concerned goods vehicle.

(iv) Since there is no statutory requirement to cover the liability in respect of a passenger in a goods vehicle, the principle of 'Pay and Recover' as statutorily recognised in Section 149 (4) and Section 149 (5), is not applicable ipso facto to such cases and, therefore, ordinarily the Court is not expected to issue such a direction to the Insurance Company to pay to the claimant and thereafter recover from the owner.

(v) Where, by relying upon the decision of the Supreme Court in Satpal Singh's case, either expressly or even by implication, there has been a direction by the Trial Court to the Insurance Company to pay, the Appellate Court is obviously recovered to consider as to whether such direction should be set aside in its entirety and the liability should be fastened only on the driver and the owner or whether the Insurance Company should be directed to comply with the direction regarding payment to the Claimant and recover thereafter from the owner.

(vi) No such direction can be issued by the Trial Court to the Insurance Company to pay and recover relating to liability in respect of a passenger travelling in a goods vehicle after the decision in Baljit Kaur's case merely because the date of accident was before such decision. The date of the accident is immaterial. Since the law has been specifically clarified, no Trial Court is expected to decide contrary to such decision.

(vi) Where, however, the matter has already been decided by the trial court before the decision in Baljit Kaur's case, it would be in the discretion of the Appellate Court, depending upon the facts and circumstances of the case, whether the Doctrine of 'Pay and Recover' should be applied or as to whether the Claimant would be left to recover the amount from the person liable i.e., the driver or the owner, as the case may be."

41. It is evident from the decision of the Full Bench of this court that in a case where the Insurance Company is successful in its defence under Section 149 of The Motor Vehicles Act to disown their liability to pay the compensation to the claimant, it may yet be required to pay the amount to the Claimant and thereafter, it may recover from the owner of

the vehicle. Applying this principle, the Tribunal has rightly directed the Insurance Company to pay the compensation to the claimants and thereafter to recover it from the principle owner namely the first respondent in this case. We see no reason to interfere with such a recovery right given by the Tribunal to the Insurance Company and accordingly we answer question No.3 and 4 in this appeal.

Question No.5

42. The learned counsel appearing for the claimants would contend that the deceased was 20 years at the time of accident. He was a student pursuing his III year Engineering Degree. On the fateful day on 09.03.2006, while the deceased was returning home, he was hit by the offending bus, which was owned by the first respondent and is in possession and control of the second respondent. The Tribunal, on analysing the oral and documentary evidence, rendered a specific finding that due to the rash and negligent driving of the driver of the bus, the accident had occurred. This finding of the Tribunal has reached a finality as it was not assailed by any of the respondents.

43. For the purpose of determining the quantum of compensation payable to the claimants, the Tribunal fixed the notional income of the deceased at Rs.20,000/- per month, deducted 50% thereof towards personal expenses and applied multiplier '14' to arrive at a sum of Rs.16,80,000/- towards loss of income of the deceased. At the same time, the Tribunal has awarded a sum of Rs.10,000/- each to the claimants towards loss of love and affection, Rs.10,000/- towards funeral expenses to make the total compensation at Rs.17,10,000/-, which

according to the counsel for the claimants is meagre and it is liable to be enhanced by this Court. It is further contended on behalf of the claimants that the Tribunal erred in adopting multiplier '14' on the basis of age of the mother of the deceased.

44. The main contention urged on behalf of the claimants is that the deceased was a young, vibrant and bright student and even during the course of his studies, he was offered employment in an United States based company namely M/s. Butler International with an annual salary of 96,000 US Dollars. In order to fortify this submission, the claimants have marked Ex. P17, Visa issued to the deceased, Ex.P20, Job offer letter issued by M/s. Butler International. Apart from these documents, the passport of the deceased was marked as Ex.P18, the testimonials of the deceased were also marked as Exs. P13 and P14. On the basis of these documentary evidence, it is contended that the Tribunal failed to award reasonable and fair compensation to the claimants. It was also urged before us that the Tribunal, while determining the compensation amount, erred in taking the age of the mother of the deceased instead of taking the age of the deceased.

45. At the outset, the contention of the learned counsel for the claimants that for determining the compensation amount, the age of the deceased has to be taken into account is legally sustainable in view of the decision rendered by the Full Bench of the Honourable Supreme Court in the case of (National Insurance Company Limited vs. Pranay Sethi and others) reported in (2017) (2) TN MAC 609 (SC) wherein it was categorically held that the age of the deceased has to be the basis for applying the multiplier.

46. At the same time, it is universally accepted principal that half of the earning capacity or expected earning capacity can be taken into account for the purpose of determining compensation under the head 'future prospects'. Applying this principle, we feel that the Tribunal ought to have awarded atleast 40% of the notional income assessed in favour of the deceased towards future prospects especially when it was proved that the deceased was offered an employment in a foreign country. In such view of the matter, we are inclined to award 40% of the notional amount fixed by the Tribunal towards future prospects which would work out to Rs.8,000/- per month. Thus, the total notional income of the deceased can be fixed at Rs.28,000/- out of which 50% deduction can be given towards personal expenses of the deceased, who died as a bachelor. In that event, the loss of income to be determined will be Rs.30,24,000/- (Rs.14,000 X 12 X 18) which will be the just and fair compensation payable to the claimants.

47. Similarly, we feel that the compensation awarded towards love and affection at Rs.10,000/- each to the claimants needs to be re-visited. Admittedly, the claimants lost their only son in the accident in his prime age and any amount of monetary compensation will not be of any solace to the claimants. Taking this into account, we award a sum of Rs.25,000/- each to the claimants. Similarly, the amount awarded under the head funeral expenses is also to be enhanced and accordingly, it is enhanced from Rs.10,000/- to Rs.15,000/-. Thus, we hold that the claimants are entitled for a total sum of Rs.30,89,000/- as follows:-

Loss of income	:	Rs. 30,24,000.00
Loss of love and affection	:	Rs. 50,000.00
Funeral Expenses	:	Rs. 15,000.00

		Rs.30,89,000.00
Rounded off to		Rs.30,90,000.00

48. As we have already held that the Tribunal has rightly given recovery rights to the Insurance Company to recover the compensation amount from the first respondent as they are deemed to be the principal owner of the offending vehicle as per the registration certificate as on the date of accident, at the same time, we cannot lose sight of the fact that the possession and control of the offending vehicle vests with the second respondent through legitimate means and who was in possession and control of the vehicle in question at the time of accident. Further, it was established that the students of

the second respondent college were travelling in the bus at the time of accident. Therefore, we hold that the first respondent is at liberty to recover the compensation amount, that may be recovered from them by the Insurance Company, from the second respondent - Vel Tech Engineering College.

49. In the result,

(i) CMA No. 3130 of 2013 filed by the Claimants is partly allowed by modifying the Judgment and Decree dated 20.03.2013 passed in MCOP No. 336 of 2007 on the file of Chief Small Causes Judge/Motor Accidents Claims Tribunal, Chennai by enhancing the compensation amount awarded in favour of the claimants from Rs.17,10,000/- to Rs.30,89,000/-, which is payable by the respondents 1 to 3 since their liability is joint and several in paying the compensation amount to the claimants. However, this compensation amount is directed to be deposited by the Insurance Company within a period of eight weeks from the date of receipt of a copy of this Judgment to the credit of MCOP No. 336 of 2007 on the file of Chief Small Causes Judge/Motor Accidents Claims Tribunal, Chennai, after adjusting the amount, if any, already deposited by them and thereafter recover such amount paid from the first respondent. On such deposit, the claimants are entitled to withdraw the same in equal proposition with accrued interest.

(ii) Consequently, CMA No. 630 of 2014 filed by the Insurance Company against the Judgment and Decree dated 20.03.2013 passed in MCOP No. 336 of 2007 on the file of Chief Small Causes Judge/Motor Accidents Claims Tribunal, Chennai is dismissed confirming the recovery right given by the Tribunal against the first respondent - Sri Venkateswara College of Engineering.

(iii) CMA No. 1018 of 2014 filed by the first respondent is dismissed confirming the Judgment and Decree dated 20.03.2013 passed in MCOP No. 336 of 2007 on the file of Chief Small Causes Judge/Motor Accidents Claims Tribunal, Chennai with an observation that in the event of recovery of the compensation amount by the insurance company from the first respondent, it is open to the first respondent to recover such amount from the second respondent - Vel Tech Engineering College, in the very same Execution Proceedings.

(iv) There shall be no order as to costs in all these appeals. Consequently, connected miscellaneous petitions are closed.

rsh

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

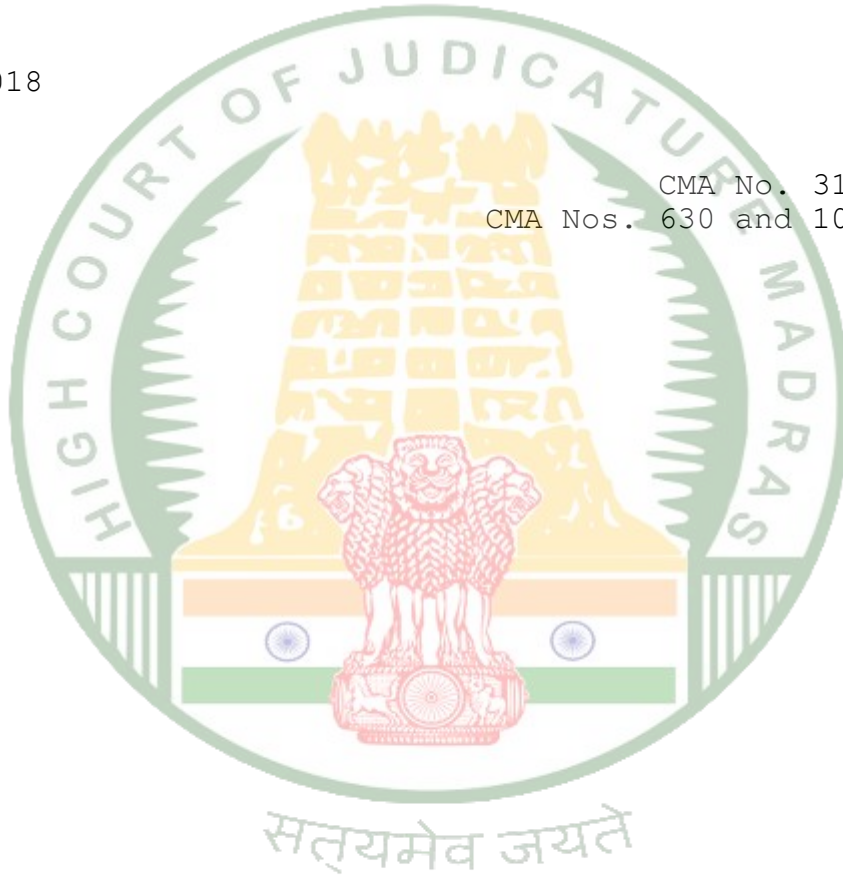
To

The Chief Small Causes Judge/
Motor Accidents Claims Tribunal
Chennai

+1cc to Mr.K.S.Kumar, Advocate SR.NO.31609
+1cc to Mr.R.Natarajan, Advocate SR.NO.31566
+1cc to Mr.S.Arunkumar, Advocate SR.NO.31847
+1cc to Mr.S.Thangasivam, Advocate SR.NO.31970
+2cc to Mrs.AL.Gandhimathi, Advocate SR.NO.32094

KGK(CO)
sm:18.9.2018

CMA No. 3130 of 2013
CMA Nos. 630 and 1018 of 2014
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