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Kasthuri Vs. M.Gopu

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Court : Chennai

Decided On : Jun-20-2014

Judge : P.R.Shivakumar

Appellant : Kasthuri

Respondent : M.Gopu

Judgement :

IN THE HIGH COURT OF JUDICATURE AT MADRAS DATED:

20. 06.2014 CORAM THE HONOURABLE MR. JUSTICE P.R.SHIVAKUMAR C.M.A.No.2291 of 2011 1.Kasthuri 2.Kannayakumari 3. S.Sridevi .. Appellants -Vs- 1.M.Gopu 2.Bajaj Allianz General Insurance Company Limited No.25/26, Prince Towers 4th Floor, College Road Nungambakkam, Chennai- 6 .. Respondents Civil Miscellaneous appeal filed under Section 173 of the Motor Vehicles Act against the judgment and decree dated 29.02.2011 made in M.C.O.P.No.240 of 2008 on the file of the Motor Accident Claims Tribunal, Principal District Court, Thiruvallur. For Appellants : Mr.P.Natarajan For Respondents : Mr.M.B.Raghavan -----

JUDGMENT
This Civil Miscellaneous Appeal has been preferred against the judgment and decree of the Motor Accidents Claims Tribunal (Principal District Judge), Thiruvallur dated 29.03.2011 made in M.C.O.P.No.240 of 2008 on the file of the said Tribunal.

2. The appellants herein, being the wife and daughters of one Subramani,who died in an accident that took place at about 14.00 hours on 21.04.2007 near Murukkampattu Village on the Tiruttani-Thirupathi High Road, involving the motorcycle belonging to the first respondent herein bearing Registration No.TN02-AA-5951, made a claim before the Motor Accident Claims Tribunal against the first respondent (owner) and the second respondent herein (insurer), claiming a sum of Rs.9,00,000/- as compensation. The said claim was made based on their contention that while the deceased was proceeding in his TVS Champ Moped bearing Registration No.TN20-B-6257, the motorcycle bearing Registration No.TN02-AA-5951 belonging to the first respondent came from behind at a high speed and hit the deceased due to the rash and negligent riding of the said motorcycle by its rider and that the said impact resulted in fatal injuries leading to the death of the said Subramani. It had been contended further that the deceased Subramani was aged about 50 years and was self-employed as a Mason earning Rs.6000-7000/- per month and that due to his death in the accident, his wife and daughters (appellants herein/claimants 1 to 3) suffered pecuniary loss as they suffered loss of monetary support from the income of the deceased, besides the first appellant losing consortium and the appellants 2 and 3 herein losing love and affection of the father. It was also contended that the offending vehicle, namely the motorcycle bearing Registration No.TN02-AA-5951 belonging to the first respondent herein, stood insured with the second respondent (insurer) and that hence the first and second respondents were jointly and severally liable to pay compensation to the appellants herein.

3. The first respondent herein did not contest the M.C.O.P and he remained ex parte. The second respondent / insurer alone contested the case raising all grounds of defence available to the insured, namely the first respondent, apart from the grounds available to the insurer under Section 149(2) of the Motor Vehicles Act, 1988, after getting permission under Section 170 of the Motor Vehicles Act. In the counter statement, besides making general denial of the narration of the accident contained in the M.C.O.P and the age, occupation and income of the deceased, the second respondent contended that the deceased, who was the rider of TVS Champ bearing Registration No.TN20-B-6257, was not having valid Driving Licence; that even the rider of the motorcycle belonging to the

first respondent bearing Registration No.TN02-AA-5951 which stood insured with the second respondent did not possess a valid Driving Lincence as on the date of accident and that hence, the second respondent should be exonerated from its liability to satisfy the award that might be passed against the first respondent. It was also contended that the first respondent, who was the rider of the above said motorcycle, was under the influence of alcohol at the time of accident and that the same was also a valid ground for the second respondent/insurer to repudiate the contract of insurance. The further contention raised in the counter statement was that since the insurer of the moped bearing Registration No.TN20-B-6257 in which the deceased was proceeding was not made a party respondent, the M.C.O.P was bad for non-joinder of necessary party and that in view of the violation of the policy conditions regarding the insurance of the alleged offending vehicle, namely motorcycle bearing Registration No.TN02-AA-5951, the appellants could not claim any amount even under Section 140 of the Motor Vehicles Act, unless the appellants would prove that the accident happened solely due to the negligence of the driver of the first respondent. Based on the above said pleadings made in the counter statement, the second respondent had prayed for the dismissal of the M.C.O.P.

4. The Tribunal conducted a trial in which two witnesses were examined as Pws 1 and 2 and 10 documents were marked as Exs.P1 to P10 on the side of the appellants herein/petitioners in the M.C.O.P, whereas one witness was examined as RW1 and 8 documents were marked as Exs.R1 to R8 on the side of the second respondent herein.

5. At the end of the trial, the Tribunal, considered the evidence in the light of the arguments advanced on both sides and, upon such consideration, rendered a finding that the accident took place due to the rash and negligent driving of the motorcycle bearing Registration No.TN02-AA-5951 belonging to the first respondent and that the non-impleadment of the insurer of the other vehicle in which the deceased was proceeding at the time of accident, namely TVS Champ bearing Registration No.TN20-B-6257, would not in any way affect the maintainability of the M.C.O.P or the sustainability of the claim made by the appellants herein against the respondents herein.

6. The Tribunal took the age of the deceased to be 50 years, assessed his monthly income at Rs.3,000/- deducted 1/3rd from it towards personal and living expenses of the deceased and took the balance Rs.2,000/- per month (Rs.24,000/- per annum) as the contribution made by the deceased to his family out of his income. Taking the same as the multiplicand, the Tribunal selected 13 as the appropriate multiplier and arrived at the figure Rs.3,12,000/- to be the compensation for the pecuniary loss caused to the appellants due to the untimely death of deceased Subramani in the accident. The Tribunal added a sum of Rs.5,000/- towards funeral expenses, Rs.10,000/- towards loss of consortium, Rs.10,000/- towards loss to the estate and Rs.7,957/- towards medical expenses incurred prior to the death of the deceased supported by Exs.P9 and P10 and arrived at the final figure Rs.3,44,957/ - as the total amount of compensation to which the appellants were entitled to claim.

7. However, the Tribunal held that the first respondent did have a Driving Licence which was valid upto 06.10.2002 alone; that the said Driving Licence was not renewed thereafter and that the first respondent who was the rider of the motorcycle did not possess a valid Driving Licence as on the date of accident, namely 21.04.2007. It also held that the first respondent, besides driving the vehicle without possessing a valid Driving Licence, was also under the influence of alcohol and was guilty of drunken driving and that therefore the insurer, namely the second respondent should be absolved from its liability to indemnify the first respondent or to satisfy the award that might be made against the first respondent. Accordingly, the Tribunal chose to dismiss the M.C.O.P as against the second respondent without costs and directed the first respondent alone to pay a sum of Rs.3,44,957/- as compensation to the appellant together with an interest on the said amount at the rate of 7.5% per annum calculated from the date of filing of the M.C.O.P till the date of payment and also with proportionate costs.

8. The said award passed by the Tribunal on 29.03.2011 is challenged by the appellants (claimants) contending that the amount awarded as compensation is inadequate requiring enhancement, besides contending that the award exonerating the second respondent/insurer in entirely, without even directing the insurer to pay and then recover the amount paid by the insurer to the legal heirs of

the victim from the insured, namely the first respondent on the premise that policy conditions were violated, is erroneous and unsustainable. 9.The points that arise for consideration in the appeal are:

1. Whether the Tribunal committed an error in totally exonerating the second respondent/insurer without even directing the second respondent to pay the amount of compensation to which the appellants are entitled and then recover the same from the first respondent/insured?. 2) Whether the amount awarded by the Tribunal is inadequate requiring enhancement?.

10. The arguments advanced by Mr.P.Natarajan,learned counsel for the appellants and by Mr.M.B.Raghavan,learned counsel for the contesting respondent, namely the second respondent were heard. The materials available on record were also perused.

11. It is an admitted fact that Subramani, the husband of the first appellant/father of the appellants 2 and 3, died due to the injuries sustained in an accident that took place in Murukkampattu Village on the Tiruttani-Thirupathi High Road at about 14.00 hours on 21.04.2007. It was also pleaded clearly by the appellants in their claim petition that while the deceased was proceeding in his TVS Champ moped bearing Registration No.TN20-B-6257, the motorcycle belonging to the first respondent and bearing Registration No.TN02-AA-5951 that came in the same direction hit the moped from behind and due to the impact, the deceased Subramani fell and sustained injuries, which ultimately proved to be fatal. It is also not in dispute that the above said motorcycle bearing Registration No.TN02-AA-5951 projected as the offending vehicle belonged to the first respondent and it stood insured with the second respondent as on the date of accident, namely 21.04.2007. A copy of the insurance certificate has been produced and marked as Ex.R6. It is not in dispute and on the other hand it is obvious from the document produced by the second respondent as Ex.R6 that the motorcycle bearing Registration No.TN02-AA-5951 and owned by the first respondent stood insured with the second respondent as on the date of accident, namely 21.04.2007.

12. Before the Tribunal, the first appellant figured as PW1 and one Elumalai deposed as PW2. The first appellant, who deposed as PW1, was not an eye

witness. On the other hand, she has admitted that she went to the place of occurrence only after the accident took place. However, PW2 was examined as the eye witness who saw the occurrence. In his evidence, PW2 has stated in clear and categorical terms that while the deceased Subramani was proceeding in his TVS Champ moped bearing Registration No.TN20-B-6257, the motorcycle belonging to the first respondent which came in the same direction hit the TVS Champ Vehicle on its backside, as a result of which Subramani sustained injuries and died. The sole witness examined on the side of the second respondent was not an eye witness for the occurrence. He did not venture to depose that he saw the accident and that it was due to the rash and negligent driving of the TVS Champ by the deceased, the accident took place. On the other hand, in line with the contentions raised by the second respondent in its counter statement, he has stated that the deceased Subramani did not possess a valid Driving Licence. It is also his evidence that the rider of the motor cycle, which belonged to the first respondent, did not possess a valid Driving Licence to drive the motorcycle and that the first respondent who was the rider of the motorcycle was under the influence of alcohol at the time of accident. Apart from the above said contention and the evidence adduced through RW1, the second respondent has produced a copy of the accident register relating to the first respondent as Ex.R2 and a copy of the final report submitted by the police in the criminal case registered in connection with the accident as Ex.R5.

13. It is obvious from the First Information Report, a copy of which has been marked as Ex.P1, that a case was registered in Crime No.157 of 2007 on the file of Tiruttani Police Station against the first respondent for offences under Sections 279 and 337 IPC. On the death of Subramani, the case was altered by adding Section 304-A and the copy of the alteration report has been marked as Ex.P2. Ex.P3, copy of the portmortem certificate, makes it clear that the deceased Subramani died due to the injuries sustained in the accident. The Motor Vehicle Inspector's report, a copy of which has been marked as Ex.P6, will show absence of any mechanical defect in the vehicles. The final report submitted by the police, a copy of which has been marked as Ex.R5, will show that the police, after investigation, submitted a charge sheet against the first respondent accusing him of committing offences under Sections 4(1)(j) of the Tamil Nadu Prohibition Act

and Sections 279 and 304-A of IPC.

14. The above said oral and documentary evidence adduced on the side of the parties were found to be enough by the Tribunal to prove that the accident took place solely due to the fault on the part of the first respondent, who was riding the Motor cycle bearing Registration No.TN02-AA-5951. The attempt made by the second respondent to show that the deceased Subramani should have been at fault, since according to the second respondent, the deceased did not possess a valid driving licence to drive the moped in which he was proceeding at the time of accident, has failed. The said contention has been nullified by the production of Ex.P8, copy of the registration certificate of the TVS Champ bearing Registration No.TN20-B-6257 and Ex.P7-Driving Licence of Subramani dated 09.10.2003, according to which his Driving Licence was valid as on the date of accident. Even otherwise, the mere fact that a person was riding a two wheeler without a Driving Licence, will not give rise to an inference that he did not know how to ride the motorcycle or he could have been negligent in driving the vehicle. Again, the very fact that a person ventured to drive a motorcycle without a valid Driving Licence, will not be taken as a licence for the driver of the other vehicle to hit him or run over him. In such cases, the Tribunal has to decide who was at fault and on whose rash and negligent driving, the accident took place, based on the facts brought forth by the parties and the evidence adduced regarding the manner in which the accident took place.

15. The Tribunal, on a proper appreciation of evidence, came to a correct conclusion that the accident took place due to the rash and negligent driving of the motorcycle bearing Registration No.TN02-AA-5951 belonging to the first respondent. In view of the finding that the accident took place solely due to the rash and negligent driving of the motorcycle bearing Registration No.TN02-AA-5951 belonging to the first respondent, the Tribunal rightly held that the M.C.O.P was not bad for non-joinder of necessary party since the insurer of the TVS Champ bearing Registration No.TN20-B-6257, in which the deceased was proceeding at the time of accident, was not made a party respondent. It is also obvious that the owner-cum-driver of the TVS Champ bearing Registration No.TN20-B-6257 was the deceased and that therefore there would not be any

question of impleading the owner of the said TVS Champ. All these aspects were considered by the Tribunal in proper perspective and the Tribunal came to a correct conclusion that the M.C.O.P was not bad for non-joinder of necessary parties.

16. However, relying on the documents produced on the side of the second respondent and also the evidence of RW1, the Tribunal came to the conclusion that the first respondent, who was the rider of the motorcycle involved in the accident viz. Motorcycle bearing Registration No.TN02-AA-5951, did not possess a valid Driving Licence to drive the said vehicle; that at the time of accident he was found to be under the influence of alcohol and that hence, there was violation of policy conditions giving a right to the insurer to repudiate the contract of insurance. The Tribunal held that due to the violation of the policy condition, namely the absence of Driving Licence for the rider of the motorcycle, which could be taken as a defence by the insurer under Section 149(2) of the Motor Vehicles Act, the second respondent/insurer was to be totally exonerated and that the entire liability should be mulcted on the owner of the vehicle, namely first respondent alone.

17. The said finding of the Tribunal leading to the dismissal of the M.C.O.P as against the second respondent is challenged by the appellants. According to the submissions made by the learned counsel for the appellants, the 'absence of insurance including absence of coverage of a particular person' should be distinguished from 'violation of a policy condition' as the consequences of the same will vary and in case there is absence of insurance or absence of coverage of the particular person or risk, there cannot be any question of enforcing the award passed against the owner of the vehicle against the insurer. It is the further contention of the appellants that in case of violation of a policy condition, giving raise to a right to the insurer to repudiate the contract of insurance, the liability of the insurer towards the third party for whose benefit the scheme of compulsory insurance has been introduced by the legislature shall not be affected and the same shall be in tact and that the insurer in such a case, after satisfying the claim of the victim or legal heirs of the victim, can seek reimbursement from the insured and recover the amount paid by the insurer to the victim or the legal heirs of the victim from the insured on the ground of violation of a policy condition.

18. Per contra, learned counsel for the second respondent/insurer would contend that when the insurer is given a right to raise the grounds of defence, enumerated in Section 149(2) of the Motor Vehicles Act, 1988 and the insurer succeeds in substantiating such grounds of defence, there would not be any justification for mulcting the liability on the insurer, with liberty to recover the amount from the insured after making payment to the claimant; that such a course shall be unconscionable and unethical and that in such cases the only remedy available to the claimants shall be to proceed against the owner of the vehicle (insured).

19. However, learned counsel for the appellants would contend that if the above said contention of the learned counsel for the second respondent is accepted, then the very object sought to be achieved by enforcing compulsory insurance against third party risks will be frustrated and that the Courts should be in a position to read into Section 149(2) of the Motor Vehicles Act, a condition that in case of violation of policy conditions enabling the insurer to rescind and repudiate the contract of insurance, such rescission or repudiation could be prospective so far as the third parties are concerned, though such rescission or repudiation may be effective as against the insured from the date on which such violation takes place between the insured and insurer. It is the further contention of the learned counsel for the appellants that for no-fault on the part of the third party victim, the third party victim should not be driven to go without effective remedy to recover damages, as the compulsory insurance scheme had been introduced keeping in mind that the owner of the motor vehicle may not be affluent enough to pay compensation and that if the insurer is exonerated on the ground of violation of a policy condition on the part of the insured, the poor victim may not have any remedy because in many cases the owner of the motor vehicle may even be a man of straw.

20. It is the contention strongly projected by the learned counsel for the appellants that when the law has made it mandatory that a vehicle shall be covered by a certificate of insurance for its use on road under Section 147 of the Motor Vehicles Act, the liability of the insurer towards the third party victim in case of injuries and towards the legal heirs of the deceased in case of fatal accident, for whose benefit the compulsory motor insurance scheme has been pressed into service, should

not be diluted on the ground that the owner of the vehicle namely, the insured, violated any condition of the policy. According to his further contention, if the insurer is allowed to plead violation of any condition on the part of the insured, as a ground for exonerating the insurer's liability towards the third party victims, the very object sought to be achieved by making it compulsory to have the vehicle covered by an Insurance Certificate at least to the extent indicated in the Act will be defeated. On the other hand, in case of any default or violation of a condition giving a right to the insurer to repudiate the contract of insurance, such a right should be allowed to be used only against the insured nullifying the right conferred on the insured to be indemnified by the insurer and that the insurer, whose liability towards third party victim, shall be intact should be allowed to recover the same from the insured (owner of the vehicle), instead of driving the poor victims to seek remedy against the insured (owner of the vehicle), who may be a man of straw and virtually the victim should be left with the option of making a fruitless effort in many cases to proceed against the owner. According to the learned counsel for the appellants, the very scheme itself will turn out to be a mockery, if the insurer is held not liable towards the third party for no fault on the part of the third party victim and on the other hand the fault on the part of the insured shall have the effect of affecting the rights and obligations of the insured and insurer inter se alone.

21. Several judgments have been cited on behalf of the appellants. Citing those judgments, it has been contended by the learned counsel for the appellants that the enabling provision found in Section 149(2) of the Motor Vehicles Act gives a right to the insurer to raise the grounds enumerated therein as pleas of defence against the insured and not against the third party victim and that even as against the insured, the defences available to the insurer are confined to the grounds enumerated in the said provision and that other defences would not be available to the insurer to retrospectively repudiate the contract of insurance.

22. On the other hand, learned counsel for the contesting respondent, namely the insurer, would contend that the insurer is given a right to plead the grounds on which the insurer can repudiate the contract even against the third party victim to successfully resist a claim by the third party victim against the insurer. According

to the contention raised by the learned counsel for the contesting respondent/insurer, the breach of a condition of the contract of insurance goes to the root of the matter and exonerates the insurer altogether not only towards the insured to indemnify him but also towards the third party victim who can enforce the award (decree) passed against the insured by virtue of the statutory provision found in Section 149(1) of the Motor Vehicles Act. In support of his contention, learned counsel for the contesting respondent relied on a number of decisions. Let us now consider the decisions relied on by the counsel appearing for the contesting parties.

23. In Jawahar Singh Vs. Bala Jain and Others reported in 2011 ACJ1677 a two Judge Bench of the Hon'ble Supreme Court, after referring to various judgments including the judgment reported in 2011 ACJ1424and 2007 ACJ1067 held that the fact that the motorcycle was driven by a person not holding a valid driving licence was a valid ground of defence available to the Insurance Company to deny its liability to indemnify the owner in respect of the claim made by a third party victim. But, at the same time, the Hon'ble Supreme Court upheld that decree of the Tribunal which was confirmed by the High Court, directing the Insurance Company to pay the compensation amount to the claimants and then recover the same from the owner of the vehicle (insured). In that case, a motorcycle was driven by a minor and he caused the accident, which was solely due to the fault on the part of the rider of the motorcycle. The owner of the motorcycle contended that there was no negligence or want of care on his part and that hence the fact that the motorcycle was driven, by a person not holding a driving licence, without his consent and without his knowledge could not be a ground for the Insurance Company to repudiate its liability to indemnify the owner. The said contention was negatived by the Tribunal and the High Court. On an appeal preferred by the owner of the motorcycle, the Hon'ble Supreme Court held that it was the responsibility of the owner of the vehicle to ensure that same was not misused, that too, by a minor who had no licence to drive the same and that the Motor Accident Claims Tribunal rightly saddled the liability of payment of compensation on the owner of the vehicle and also rightly directed the Insurance Company to pay the award amount to the third party victim and thereafter, to recover the same from the insured. The Hon'ble Supreme Court held that the contention of the

owner of the motorcycle that the rider of the motorcycle, a minor, walked into the house of the petitioner and took the key of the motorcycle without any intimation to the insured, was highly improbable and far fetched. The same was the reason for the Supreme Court holding that the insured/owner of the vehicle was to be saddled with the entire liability. Even then, the insurer was held liable towards the victim by directing payment of compensation to him at the first instance and then recover the same from the insured / owner of the vehicle. The said judgment simply decided the question whether the owner of the vehicle had successfully proved his plea that there was no breach of policy condition on his part and hence mulcting the liability on him either to pay the entire compensation amount either to the claimant or to reimburse the Insurance Company after the Insurance Company makes payment of the same to the claimants as per the award, was correct. The Hon'ble Supreme Court held that on facts, the plea of the insured / owner of the vehicle could not be believed and the concurrent finding of the Tribunal and the High Court in that regard could not be unsettled. The said case was decided by the Supreme Court on 09.05.2011. Even after holding that there was a clear breach of a policy condition, the Insurance Company was made liable to settle the claim to the awardees and then recover the same from the insured (owner of the vehicle).

24. In National Insurance Company Limited Vs. Muthayammal and Others reported in 2010 (1) TN MAC236 I myself had an occasion to consider the judicial pronouncements made by the Supreme Court in various cases in this regard and I arrived at a conclusion that the violation of a condition of the insurance policy will not totally exonerate the Insurance Company from its liability to satisfy the decree passed against the insured and that the liability of the insured towards third party shall be intact even if there was violation of a condition of the insurance policy, in which case the insurer shall be found entitled to get reimbursement from the insured after making payment to the awardees. Relying on the judgment of the Supreme Court in National Insurance Company Limited Vs. Baljit Kaur and others reported in 2004 ACJ428and New India Assurance Company Limited Vs. Asha Rani reported in 2003 ACJ1(SC), this Court made the following observations: ".the liability of the insurer towards the third party shall be intact even if there was a violation of a condition of the insurance contract between the owner and the

Insurer. The reason assigned therein was that the compulsory scheme of insurance was introduced to benefit the poor victims who may not be able to recover the compensation from the owner of such offending vehicles who may even be a person having meager resources from which the compensation could not be collected. A distinction was also made in the judgment regarding the liability of the Insurer in case of a no coverage of a particular person from the violation of the condition of contract of insurance giving a right to the Insurer to rescind the contract. IN the first case the Insurer will not be liable at all as there was no contract covering the risk involved to that person. In the second one, the Insurer shall have only a right to rescind the contract, but however, the Insurer's liability towards the third party victim shall be intact. In such cases the insurer shall have the right to seek recovery from the insured based on violation of the policy condition. Such a view was taken following the earlier judgment of the Supreme Court.".

25. In Bajaj Allianz General Insurance Company Ltd., Pune Vs. P.Manimozhi and four others reported in 2010 (2) TNMAC542 a Division Bench of this Court headed by Justice M.Y.Eqbal, Chief Justice, as he then was, expressed the same view. Following are the observations made by the Hon'ble Division Bench of this Court: ".14. The next contention raised by the learned counsel appearing for the appellant is that the third respondent, the rider of the two wheeler did not have a valid driving licence on the date of the accident and therefore, the insurer is not liable to pay. The Hon'ble Supreme Court as regards this point namely, possession of valid driving licence broadly classified the same under four different categories:- (i)Where, there was no licence (ii)Where, the licence is forged/fake (iii)Where, the licence is for a different class of vehicle from the offending vehicle and (iv)Where, the licence is for a learner and held that when there is a breach of condition under an Insurance policy is proved then the Insurance Company must pay and may recover.

19. In the case on hand also the victim was aged about 56 years and he was the sole breadwinner of the family and he left behind is widow and a minor son. Hence, we are of the view that the Insurance Company should be directed to make payment with liberty to recover the same.". Similar view was expressed by

another Division Bench of this Court in Dr. Bajaj Vs.K.Sunil Kumar reported in 2012 (1) TN MAC117 26. In Sohan Lal Passi V. P.Sesh Reddy reported in 1996 (5) SCC21 a larger Bench of the Hon'ble Supreme Court consisting of three Judges considered the question: ".when the owner of the vehicle (insured) has appointed a duly licenced driver and if the accident takes place when the vehicle is being driven by a person not duly licensed on the basis of the authority of the driver duly authorized to drive the vehicle, whether the Insurance Company shall be absolved from its liability?.". It was held in that case that the expression ".breach". occuring in Section 96(2)(b) of the old Act meant infringement or violation of a promise or obligation and as such the Insurance Company would have to establish that the insured was guilty of an infringement or violation of a promise; that the insurer was also found to satisfy the Tribunal or the Court that such violation or infringement on the part of the insured was willful and that if the insured had taken all precautions by appointing a duly licenced driver to drive the vehicle in question and it was not established that the insured allowed the vehicle to be driven by a person not duly licensed, then the Insurance Company could not repudiate its statutory liability. In the said case, the larger Bench considered what would constitute breach of a condition of contract of insurance and while doing so, it held that even in a case where the vehicle was driven by a person not duly licenced to drive, the insured/owner could prove that he had appointed a duly licenced person to drive and entrusted the vehicle to him for driving the same and that in the absence of proof that the insured had allowed an unlicenced person to drive the vehicle, the Insurance Company could not repudiate its liability under sub-section (1) of Section 96 (Old Act).

27. In Sohan Lal Passi V. P.Sesh Reddy reported in 1996 (5) SCC21 a larger Bench of the Hon'ble Supreme Court consisting of three Hon'ble Judges made the following observations: on behalf of the Insurance Company, a stand was taken that when Section 96(2)(b)(ii) has provided that the insurer shall be entitled to defend the action on the ground that there has been breach of a specified condition to the policy i.e. the vehicle should not be driven by a person who is not duly licensed, then the Insurance Company cannot be held to be liable to indemnify the owner of the vehicle. In other words, once there has been a contravention of the condition prescribed in sub- section (2)(b)(ii) of Section 96,

the person insured shall not be entitled to the benefit of sub-section (1) of Section 96. According to us, Section 96(2)(b)(ii) should not be interpreted in a technical manner. Sub-section (2) of Section 96 only enables the Insurance Company to defend itself in respect of the liability to pay compensation on any of the grounds mentioned in sub section (2) including that there has been a contravention of the condition excluding the vehicle being driven by any person who is not duly licensed. This bar on the face of it operates on the person insured.".

28. Referring to the above said observations of the larger Bench made in Sohan Lal Passi V. P.Sesh Reddy's case, the Hon'ble Supreme Court in United India Insurance Co. Ltd., Vs. Lehru and others reported in 2004(1) TNMAC (SC) 340, made the following observations: ".under sub-section (1) the Insurance Company must pay to the person entitled to the benefit of the decree, notwithstanding that it has become ".entitled to avoid or cancel or may have avoided or cancelled the policy".. The words ".subject to the provisions of this Section". mean that the Insurance Company can get out of liability only on grounds set out in Section 149 Sub-section (7), which has been relied on, does not state anything more or give any higher right to the Insurance Company. On the contrary the wording of sub-section (7) viz. ".No insurer to whom the notice referred to in sub-section (2) or sub-section (3) has been given shall be entitled to avoid his liability". indicate that the Legislature wanted to clearly indicate that Insurance Companies must pay unless they are absolved of liability on a ground specified in sub-section (2). This is further clear from sub-section (4) which mandates that conditions, in the insurance policy, which purport to restrict insurance would be of no effect if they are not of the nature specified in sub-section (2). The proviso to sub- section (4) is very illustrative. It shows that the Insurance Company has to pay to third parties but it may recover from the person who was primarily liable to pay. The liability of the Insurance Company to pay is further emphasised by sub-section (5). This also shows that the Insurance Company must first pay, then it can recover. If Section 149 is read as a whole it is clear that sub-section (7) is not giving any additional right to the Insurance Company. On the contrary it is emphasising that the Insurance Company cannot avoid liability except on the limited grounds set out in sub-section (2). Now let us consider Section 149(2). Reliance has been placed on Section 149(2)(a)(ii). As seen in order to avoid liability under this provision it must

be shown that there is a "breach".. As held in Skandia's and Sohan Lal Passi's cases (supra) the breach must be on part of the insured. We are in full agreement with that. To hold otherwise would lead to absurd results. Just to take an example, suppose a vehicle is stolen. Whilst it is being driven by the thief there is an accident. The thief is caught and it is ascertained that he had not license. Can the Insurance Company disown liability?. The answer has to be an emphatic ".No".. To hold otherwise would be to negate the very purpose of compulsory insurance. The injured or relatives of person killed in the accident may find that the decree obtained by them is only a paper decree as the owner is a man of straw. The owner himself would be an innocent sufferer. It is for this reason that the Legislature, in its wisdom has made insurance, at least third party insurance, compulsory. The aim and purpose being that an Insurance Company would be available to pay. The business of the Company is to insurance. In all businesses there is an element of risk. AH persons carrying on business must take risks associated with that business. Thus it is equitable that the business which is run for making profits also bears the risk associated with it. At the same time innocent parties must not be made to suffer or loss. These provisions meet these requirements.".

29. On the other hand, three judgments of the Hon'ble Supreme Court have been relied on by the contesting respondent in support of his argument that in case of violation of a policy condition, liability of the insurer to satisfy the award passed against the owner shall stand lifted and that in such cases, the proof of the right to repudiate the contract of insurance would be enough to drive the awardees to make their claim against the insured / owner alone. They are:

1. National Insurance Co. Ltd., V. Vidhyadhar Mahariwala and others reported in 2008 ACJ2860 2) United India Insurance Co. Ltd., Vs. Rakesh Kumar Arora and others reported in 2008 ACJ2855 and 3)Bhuwan Singh V.Oriental Insurance Co. Ltd., and another reported in 2009 ACJ1426 30. In the first of those judmgents, referring to the relevant provisions relating to the renewal of the Driving Licence, the Supreme Court held that the driver of the vehicle was not duly licenced to drive the vehicle in question and hence, the insurer was to be exonerated, leaving the claimant to recover the compensation amount from the owner of the vehicle. In the

second of the above said judgments, though the Hon'ble Supreme Court held that the Insurance Company was to be exonerated, since the compensation amount had already been deposited by the Insurance Company and was withdrawn by the claimants, it simply directed that the Insurance Company was entitled to recover the amount in question from the owner of the vehicle. In the third of the above said judgments, the vehicle was driven by the owner of the vehicle whose Learner's Licence had expired 14 days before the accident. There was a dispute as to who was driving the vehicle and on facts, it was held that the vehicle was driven by the owner without holding an effective licence.

31. The learned counsel also relied on a voluminous judgment of the Karnataka High Court in M.F.A.No.2596 of 2007 (MV) (Oriental Insurance Company Vs. K.C.Subramanyam and anr.). After referring to a number of judgments and dealing with various aspects, the Karnataka High Court ultimately held that if at all the insurer was to be held liable towards the third party victim (awardee) despite the fact that it was able to prove breach of a condition of the contract of insurance,the same should be done by an amendment to be made by the Parliament to the existing provisions to alleviate the sufferings of the poor victims and till then the insurer should be held exonerated even towards satisfying the award with right to recover the same from the insured.

32. However, two recent judgments of the Supreme Court are in support of the view propounded on behalf of the awardees. In Manager, National Insurance Co. Ltd., Vs. Saju P.Paul and another reported in 2013 ACJ554 the injured, who was a driver employed by the owner of the truck for driving some other vehicle owned by him, was travelling in the cabin of the truck involved in the accident, and he sustained injuries when the truck capsized. It was held that only a driver and cleaner was covered and that the risk of any other employee or second or spare driver was not covered by the insurance policy. Under such circumstances, it was held that the injured was only a gratuitous passenger and the Insurance Company was not liable to pay compensation. However, ultimately the Hon'ble Supreme Court allowed the awardee to withdraw the compensation amount deposited by the Insurance Company along with accrued interest and directed that the Insurance Company might recover the amount from the owner of the vehicle

thereafter, following the procedure as laid down in National Insurance Co.Ltd., Vs. Chella Bharathamma reported in 2004 ACJ2094 33. In S.Iyyapan Vs.United India Insurance Co. Ltd., reported in 2013 (2) TNMAC262(SC), the Hon'ble Supreme Court has held that the driver not possessing a valid driving licence was not a ground for the insurer to disown the liability to pay compensation to the third party claimants, since Section 149 mandates the insurer to satisfy judgments / awards passed against the insured person in respect of third party risks; that once a valid certificate of insurance has been issued, the insurer has to pay compensation to third party, as a statutory right to get the amount of compensation from the insurer has been conferred on the third party victim and that in such cases, the Insurance Company can proceed against the insured for recovery of the amount paid by it to the third party. The relevant portion of the said judgment is extracted hereunder: ".17. The heading Insurance of Motor Vehicles against Third Party Risks given in Chapter XI of the Motor Vehicles Act, 1988 (Chapter VIII of 1939 Act) itself shows the intention of the legislature to make third party insurance compulsory and to ensure that the victims of accident arising out of use of motor vehicles would be able to get compensation for the death or injuries suffered. The provision has been inserted in order to protect the persons travelling in vehicles or using the road from the risk attendant upon the user of the motor vehicles on the road. To overcome this ugly situation, the legislature has made it obligatory that no motor vehicle shall be used unless a third party insurance is in force.

18. Reading the provisions of Sections 146 and 147 of the Motor Vehicles Act, it is evidently clear that in certain circumstances the insurers right is safeguarded but in any event the insurer has to pay compensation when a valid certificate of insurance is issued notwithstanding the fact that the insurer may proceed against the insured for recovery of the amount. Under Section 149 of the Motor Vehicles Act, the insurer can defend the action inter alia on the grounds, namely, (i) the vehicle was not driven by a named person, (ii) it was being driven by a person who was not having a duly granted licence, and (iii) person driving the vehicle was disqualified to hold and obtain a driving licence. Hence, in our considered opinion, the insurer cannot disown its liability on the ground that although the driver was holding a licence to drive a light motor vehicle but before driving light motor vehicle used as commercial vehicle, no endorsement to drive commercial vehicle was

obtained in the driving licence. In any case, it is the statutory right of a third party to recover the amount of compensation so awarded from the insurer. It is for the insurer to proceed against the insured for recovery of the amount in the event there has been violation of any condition of the insurance policy.".

34. In the above said judgment also, the judgment of the three judge Bench of the Hon'ble Supreme Court in National Insurance Co. Ltd., Vs. Swarnan Singh others reported in 2004 (3) SCC297containing the following observations, was relied on: ".110. The summary of our findings to the various issues as raised in these petitions are as follows: (i) Chapter XI of the Motor Vehicles Act, 1988 providing compulsory insurance of vehicles against third party risks is a social welfare legislation to extend relief by compensation to victims of accidents caused by use of motor vehicles. The provisions of compulsory insurance coverage of all vehicles are with this paramount object and the provisions of the Act have to be so interpreted as to effectuate the said object. (ii) Insurer is entitled to raise a defence in a claim petition filed under Section 163 A or Section 166 of the Motor Vehicles Act, 1988 inter alia in terms of Section 149(2)(a)(ii) of the said Act. (iii) The breach of policy condition e.g., disqualification of driver or invalid driving licence of the driver, as contained in sub-section (2)(a)(ii) of section 149, have to be proved to have been committed by the insured for avoiding liability by the insurer. Mere absence, fake or invalid driving licence or disqualification of the driver for driving at the relevant time, are not in themselves defences available to the insurer against either the insured or the third parties. To avoid its liability towards insured, the insurer has to prove that the insured was guilty of negligence and failed to exercise reasonable care in the matter of fulfilling the condition of the policy regarding use of vehicles by duly licensed driver or one who was not disqualified to drive at the relevant time. (iv) The insurance companies are, however, with a view to avoid their liability must not only establish the available defence(s) raised in the said proceedings but must also establish 'breach' on the part of the owner of the vehicle; the burden of proof wherefor would be on them. (v) The court cannot lay down any criteria as to how said burden would be discharged, inasmuch as the same would depend upon the facts and circumstance of each case. (vi) Even where the insurer is able to prove breach on the part of the insured concerning the policy condition regarding holding of a valid licence by the driver or his qualification

to drive during the relevant period, the insurer would not be allowed to avoid its liability towards insured unless the said breach or breaches on the condition of driving licence is/ are so fundamental as are found to have contributed to the cause of the accident. The Tribunals in interpreting the policy conditions would apply ".the rule of main purpose". and the concept of ".fundamental breach". to allow defences available to the insured under section 149(2) of the Act. (vii) The question as to whether the owner has taken reasonable care to find out as to whether the driving licence produced by the driver, (a fake one or otherwise), does not fulfil the requirements of law or not will have to be determined in each case. (viii) If a vehicle at the time of accident was driven by a person having a learner's licence, the insurance companies would be liable to satisfy the decree. (ix) The claims 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 claimant or claimants on one side and insured, insurer and driver on the other. 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 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 in 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. (xi) The provisions contained in sub-section (4) with proviso thereunder and sub-section (5) which are intended to cover specified contingencies mentioned therein to enable the insurer to recover amount paid under the contract of insurance on behalf of the insured can be taken recourse of by the Tribunal and be extended to claims and defences of insurer against insured by relegating them to the remedy before regular court in cases where on given facts and circumstances adjudication of their claims inter se might delay the adjudication of the claims of the victims. 35. In Shimla Vs. Kamla and others etc., reported in (2001) 4 SCC342 the Hon'ble Supreme Court held that the Insurance Company could not get rid of its third party liability and on the other hand, it could recover the said amount from the owner of the vehicle after making payment to the third party awardee. Various judgments were referred and it was held in clear terms that even in case of violation of a policy condition, the liability of the insurer towards the third party victim to satisfy the award shall be intact and the proof of such violation will lead to the incorporation of a direction that the Insurance Company is entitled to recover the amount paid in discharge of its statutory liability from the owner of the vehicle in case it has succeeded in establishing that there has been a breach of a policy condition.

36. A thorough study of the case law discussed above will make it clear that though sporadic judgments appear here and there holding the insured totally exonerated, the latest judgment of the Supreme Court in S.Iyyapan Vs. United India Insurance Co. Ltd., reported in 2013(2) TNMAC262(SC) makes it clear that once a certificate of insurance is issued in compliance with Section 147 for the use of the Motor Vehicle on road, the insurer's liability towards the third party victim to satisfy the award against the owner of the vehicle shall not vanish on the ground of any breach of a condition committed by the insured. The proof of breach of a condition committed by the insured will, at the best, lead to the determination that the insurer is not liable to indemnify the insured from any loss on account of compensation to be paid to the third party victim; that in case of breach of condition, the insurer, whose relationship with the insured remains only

contractual, can prove such breach and establish that it is not liable to indemnify the insured and that in such case of proof of breach of a condition, the Insurance Company can recover the amount paid by it to the third party injured/ legal heirs of the deceased, from the insured. 37.The preponderance of decisions will indicate that the said interpretation alone will be in consonance with the intention of the legislature in enacting the law providing compulsory insurance of motor vehicles. We cannot expect a passenger who get into a passenger bus or a taxi or a maxicab to verify whether the driver did possess a valid driving licence and whether the vehicle is being used strictly in accordance with the conditions of the policy of insurance without breach of any of such conditions. If they are to be denied the benefit of the welfare legislation, which is intended to assure them that they will get compensation from the Insurance Company with which the vehicle stands insured in case of fault on the part of the owner of the vehicle or any person allowed to drive the vehicle, the very purpose of the scheme will be defeated. Persons travelling as passengers in the transport vehicles can be, in theory but not in practice, be expected to question the driver-in-charge of the vehicle as to whether the vehicle is covered by an insurance policy covering the risk to such passengers and as to whether the driver has been duly licenced to drive the vehicle. Practically it will be impossible to expect such an enquiry to be made by the passengers. At the best specific rules can be framed under the Motor Vehicles Act making it obligatory to the fleet owners in case of vehicles used for mass transport to exhibit the expiry date of permit, the date upto to which the vehicle stands insured and the particulars of the Driving Licence of the driver. Even in such an event, we cannot expect the passengers to verify and confirm the correctness of the said particulars. If the burden of such verification is cast on the passengers, and the benefit sought to be conferred on them by the welfare legislation is sought to be taken away on proof that there has been a breach of a condition of the policy, it will amount to a mockery of the scheme of compulsory insurance, as the very object sought to be achieved by the scheme shall stand minimised or nullified.

38. Apart from such passengers, there are large number of users of road who will be third parties to the vehicle concerned. One cannot expect a pedestrian walking along the road, a cyclist going in a cycle or a motorist proceeding in his motor

vehicle, to know whether the offending vehicle is driven by a person duly licenced and without breach of any of the conditions of the policy of insurance. In such cases, denying the right sought to be conferred on them for an assured recovery of compensation by virtue of the compulsory insurance scheme, for no fault on the part of such persons who become the victims of the accident, will be highly unjustifiable. Parliament intended to benefit the third party victims of the accident by assuring that there is at least the Insurance Company to pay compensation in cases wherein the owners of the vehicle may be men of straw. The scheme of compulsory insurance of motor vehicle was introduced as a welfare measure to benefit the poor victims, who may not be able to recover compensation from the owners of such offending vehicles, as very often such a owner may be having meagre resources from which the compensation cannot be recovered.

39. In this regard, a distinction must be drawn between cases of no insurance/no coverage and cases of insurance coverage wherein the Insurance Company claims to be exonerated based on the contention that there had been a breach of condition. In case of no insurance/no coverage of a particular person, it will be unjustifiable to mulct the liability on the insurer to satisfy the award at the first instance and then recover the same from the insured. In case of proof of breach of a policy condition, when the risk to the particular person is covered by the insurance certificate, the right to repudiate the contract shall govern the inter se relationship between the insured and the insurer without having the effect of taking away the right conferred on the third party victims which shall be intact. In such cases, the insurer shall have to make payment of the award amount to the awardee and then seek recovery of the same from the insured on the ground of breach of the policy condition.

40. Therefore, this Court comes to the conclusion that in the case on hand the award of the Tribunal totally exonerating the insurer, even without directing the insurer to pay first and then recover the amount from the insured is defective, erroneous and liable to be reversed. To the above extent the award of the Tribunal requires modification.

41. Coming to the question of quantum, despite the fact that a document containing the date of birth of the deceased came to be produced as Ex.P7, the Tribunal simply relied on the petition averment. The following documents produced on the side of the appellants contain reference to the age of the deceased Subramani. Ex.P3-copy of the postmortem certificate refers to the age of the deceased as about 45 years. Approximate age alone has been mentioned in Ex.P3. The Death Certificate issued by the Corporation has been produced as Ex.P4. In Ex.P4, the age of the deceased has been noted as 50 years. The same is also an approximate age. The Driving Licence of Subramani has been produced as Ex.P7. In Ex.P7, Date of birth of Subramani has been mentioned. In the absence of birth certificate or school certificate, the Date of Birth noted in the Driving Licence should have been taken as the basis for the fixation of the age of the deceased. As per Ex.P7, he was born on 17.03.1949. He died on 21.04.2007. So, at the time of death, he had completed the age of 48 years. The Tribunal has committed a mistake in fixing the age of the deceased as 50 years simply relying on the death certificate in which his age was noted as 50 years. It makes no difference if the age of the deceased is 48 or 50 years because the persons in the age group of 46 to 50 come in the same category for which a particular multiplier shall be applied. As such 13 selected and applied by the Tribunal as the appropriate multiplier is in accordance with the direction issued by the Apex Court in Reshma Kumari and Ors. Vs. Madan Mohan and another reported in 2013 ACJ1253(SC).

42. Though the appellants /claimants contended that the deceased was a Mason and he, as a Mason, was earning Rs.6,000/- to Rs.7,500/- per month, there is want of reliable evidence in proof of their contention that the deceased was a Mason by profession. PW1, who is none other than the wife of the deceased, has admitted in her evidence that she could not produce any document in writing to show that her husband was a Mason. She has also admitted that no membership card issued by the Construction Employees Society was produced. Even after such a specific suggestion in the cross-examination as to the absence of production of such membership card, the appellants have not chosen to produce the same. No evidence has been adduced to show that he was working as a Mason under any registered contractor or he himself had taken building works on

contract. No independent witness was examined to prove that the deceased was a Mason. PW2-Elumalai is none other than the son-in-law of the elder brother of deceased Subramani. It was he who lodged the complaint, based on which the criminal case was registered on the file of D1-Tirutani Police Station as Crime No.157 of 2007. There is no averment in the complaint that the deceased was a Mason. On the other hand, it has been stated that the deceased who had gone to Tirutani on a personal work was returning in his T.V.S.Champ two-wheeler bearing Registration No.TN24-V-5379 after completion of such personal work from Tiruttani to Murukkampattu, the place at which accident took place. PW2 also did not state anything in his evidence about the avocation and income of the deceased. Apart from the failure to produce any document to show that the deceased was a Mason, there is total absence of independent evidence except the interested testimony of PW1. PW1 also admitted the inability to produce the Membership card issued by the Construction Workers Welfare Board. As there is no reliable evidence to show that the deceased was a Mason and he was earning a sum of Rs.6,000/- to Rs.7500/- per month as claimed by the appellants in their petition, the choice of the Tribunal to fix a nominal income, based on the age of the deceased and the status of his family, cannot be stated to be erroneous. As the deceased was aged about 48 years and there was no reliable evidence regarding his employment/business, income or savings, the Tribunal has not committed any error in notionally fixing his income at Rs.3,000/-per month, which is equivalent to Rs.36,000/- per annum.

43. Considering the fact that both the appellants 2 and 3 had got already married and the other claimant, namely the first appellant is none other than the wife of the deceased, following the guidelines provided in the judgment of the Supreme Court in Sarla Verma case which stands clarified in Reshma Kumari case, this Court also feels that the deduction of 1/3rd income towards the personal and living expenses of the deceased and taking the balance 2/3rd alone as the pecuniary loss caused to the claimants shall be quite reasonable. In this regard, the Tribunal correctly deducted 1/3rd from the annual income and took the balance 2/3rd, namely Rs.24,000/- as the multiplicand. The product of the above said multiplicand and the appropriate multiplier '13' was accordingly worked out by the Tribunal at Rs.3,12,000/-. The same cannot be termed either inadequate or excessive.

According to the petition averments, after the accident, the deceased was given first aid treatment at Government Hospital, Tiruttani, then he was treated at Government General Hospital, Chennai and died on the same day in the said hospital. Autopsy was also done in the Government General Hospital, Chennai. The said particulars are found in Item 12 in the claim petition. A new case was sought to be introduced during trial in the evidence of PW1. She has stated in her evidence in the chief examination that after first aid treatment at Tiruttani Government Hospital, her husband was taken to Chennai for treatment; that on the way to Chennai, he was treated for about four hours on 21.04.2007 (the date of accident) at Sri Ramachandra Hospital, Porur; that since the condition of the injured was serious, for better treatment, he was moved to the Government General Hospital and admitted there at 10.00 pm on the same day and that there he succumbed to the injuries at 10.30pm. Copy of the Accident Register prepared at Tirutani Government Hospital has not been produced. Neither the Accident Register prepared at the time of alleged admission at Porur Ramachanra Hospital, nor the treatment file relating to the treatment allegedly given in the said hospital has been filed. On the other hand, admittedly the death occurred in the Government General Hospital, Chennai and autopsy was conducted in the said hospital itself. The copy of the alteration report marked as Ex.P2 contains a statement to the effect that the deceased, who was treated initially at Government Hospital, Tiruttani, was taken to Chennai for further treatment and admitted in the Government General Hospital, Chennai at 10.00pm and then he died in the said hospital at 10.30 pm on the same day. However,the appellants have chosen to produce EX.P9 series and Ex.P10 as bills for payment of charges for treatment given to the deceased at Sri Ramachandra Hospital, Chennai. 5 bills have been included in Ex.P9 series. Though such a stand was taken by PW1 for the first time in her evidence in chief examination, she was not cross-examined with any suggestion that no treatment was given to the deceased at Sri Ramachandra Hospital, Porur, Chennai. Exs. P9 series and Ex.P10 are the medical bills issued by the said hospital which is a reputed hospital, in which the name of the patient has been noted as Subramanian. From Ex.P9 series and Ex.P10 it is obvious that he was given a brief treatment at the said hospital for which a sum of Rs.7,352.20 was paid. Ex.P10 is the receipt for the ambulance charges for taking the deceased

from the said hospital to the Government General Hospital, Chennai. Therefore, the Tribunal committed no error or mistake in awarding a sum of Rs.7,957/-, namely the amount covered by Exs.P9 and P10 towards medical expenses and transport charges from one hospital to the other hospital.

44. The Tribunal chose to award a sum of Rs.5000/- towards funeral expenses and Rs.10,000/- towards loss of consortium caused to the wife of the deceased. A sum of Rs.5,000/- awarded by the Tribunal is liable to be enhanced to Rs.25,000/- following the judgment of the Supreme Court in Rajesh & others vs. Rajbir Singh others reported in 2013(3) CTC883 The age of the deceased was 48 years and the age of his wife, namely the first appellant at the time of death of her husband was 45 years. The appellants 2 and 3 are their daughters and both of them got married even prior to the death of the deceased. Considering the said fact and following the guidelines provided by the Apex Court in Rajesh & others vs. Rajbir Singh others cited supra, this Court is of the considered view that enhancing the compensation for loss of consortium caused to the first appellant (wife of the deceased) from Rs.10,000/- to Rs.50,000/- shall be reasonable. The Tribunal has chosen to award a sum of Rs.10,000/- on the head of loss of Estate. The medical expenditure and transportation charges incurred can be projected as a loss to the estate. If at all the Tribunal/Court comes to a conclusion that apart from the contribution made to the family and after meeting the personal and living expenses, the deceased could have saved certain portion of his income and such saving is not taken into account for fixing the monetary loss caused to the claimants, then the same can be awarded as a loss occasioned to the estate of the deceased. In the absence of any such evidence and in the absence of such a finding, award of the said amount on the head of loss of estate cannot be justified and the same has got to be disallowed. Hence, the total amount of compensation awarded by the Tribunal is increased to Rs.3,94,957/-, rounded off to Rs.3,95,000/ from Rs.3,44,000.90. At the cost of repetition, the split up particulars of the above said amount are furnished hereunder: Compensation for loss of monetary benefits (loss of dependency) (Rs.24,000/- x 13) : Rs.3,12,000.00 Compensation towards Funeral expenses : Rs. 25,000.00 Compensation for loss of consortium to the first appellant : Rs. 50,000.00 Medical Expenses and ambulance charges : Rs. 7,957. 00 ---------- Total amount of compensation Rs.3,94,957. 00 ----------

Rounded off to Rs.3,95,000.00 45. The Tribunal has rightly applied 7.5% to be the rate of interest to which the appellants herein/claimants were entitled on the compensation amount from the date of filing of the M.C.O.P till the date of deposit. Hence, there is no need for interference with the rate of interest. Since the appellants 2 and 3 are the married daughters of the deceased and the first appellant is the widow of the deceased, apportionment of compensation shall be as follows: Appellants 2 and 3 shall be entitled to Rs.50,000/- each with corresponding interest and the first appellant shall be entitled to Rs.2,95,000/- with corresponding interest. In fine, the appeal is allowed in part and the award of the Tribunal is modified by enhancing the quantum of compensation from Rs.3,44,000/- to Rs.3,95,000/-. The said amount is directed to be paid jointly and severally by the first and second respondents together with an interest at the rate of 7.5% from the date of filing of the M.C.O.P till the date of deposit. Out of the said amount of Rs.3,95,000/-, the first appellant shall be entitled to Rs.2,95,000/- with corresponding interest and the appellants 2 and 3 shall be entitled to Rs.50,000/- each with corresponding interest. Respondents 1 and 2 shall also pay the proportionate cost of litigation of the appellants /claimants through out. The second respondent/insurer, is entitled to recover the same from the first respondent/insured after satisfying the claim of the appellants /petitioners, by levying execution in the Tribunal itself without having a necessity to file separate suit or other proceedings. 20.06.2014 Index: Yes/No Internet: Yes/No gpa To The Motor Accident Claims Tribunal, Principal District Court, Thiruvallur P.R.SHIVAKUMAR.J., gpa Judgment in C.M.A.No.2291 of 2011 20.06.2014

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