

(2001) 02 MAD CK 0155

In the Madras High Court

Case No : C.M.A. No.975 of 197 and Cross Objection No. 10 of 2001

P. Anwer Batcha and another

APPELLANT

Vs

Tamilarasai and 5 others

RESPONDENT

Date of Decision : 07-02-2001

Acts Referred:

Motor Vehicles Act, 1939 — Section 110, 95, 96, 96(2)

Motor Vehicles Act, 1988 — Section 146, 147, 149, 149(1), 149(2)

Citation : (2002) ACJ 931 : (2001) 2 LW 742 : (2001) 1 MLJ 497

Hon'ble Judges : P. Thangavel, J;P. Sathasivam, J

Bench : Division Bench

Advocate : Mr. K.S. Narasimhan, for the Appellant; Mr. V.M. Ravichandran, for the Respondent

Judgement

P. Sathasivam, J.—Aggrieved by the award of the Motor Accidents Claims Tribunal (Additional District Judge-cum-Chief Judicial Magistrate), Pudukkottai in M.C.O.P.No.181 of 1993, dated 10.1.1996, the owner and the insurer of the vehicle in question have filed the above appeal questioning the "negligence" and "quantum of compensation" arrived at by the Tribunal in respect of death of one Jayaraman in a motor vehicle accident that took place at 6.00 a.m., on 26.6.1992, the wife, children and parents of the deceased have prayed for a compensation of Rs.15 lakhs. The Tribunal, by the impugned order dated 10.1.1996 passed an award for Rs.5,60,000.00 with interest at the rate of 15 per cent per annum from the date of petition till the date of deposit. Questioning the said award, the owner of the Ambassador Car TN-31 Z 0270 and his insurer viz., National Insurance Company preferred the above appeal. The claimants have preferred Cross Objection No.10 of 2001 for further sum of Rs.4,40,000 in addition to amount already granted.

2. Heard the learned counsel for appellants as well as respondents.

3. Even at the outset Mr. K.S. Narasimhan, learned counsel appearing for the appellants fairly states that they are not seriously disputing the finding of the

Tribunal on the negligence aspect, hence it is unnecessary for us to traverse the facts leading to the negligence aspect. After taking us through the award of the Tribunal as well as the evidence let in, learned counsel appearing for the appellants would state that the compensation of Rs.5,60,000.00 awarded by the Tribunal is on the higher side and in particular he would submit that the Tribunal committed an error in applying wrong multiplier while determining the compensation.

4. Before considering the said contention, it is to be noted that the above appeal has been filed by the owner of the vehicle as well as the Insurance Company. In other words, the Insurance Company by joining with the owner of the vehicle which involved in the accident has filed the above appeal questioning the quantum of compensation. In such a circumstance, at the foremost we have to consider,

(i) whether the appeal of the Insurance Company filed along with the owner of the vehicle questioning the award of the Tribunal without reference to the defences available u/s 149(2) of the Motor Vehicles Act, 1988 is maintainable?

(ii) Whether in a joint appeal, even after dismissal of the appeal of the Insurance Company, one of the tort-feasor viz., owner of the vehicle can continue the appeal and challenge the award of the Tribunal?

5. Even in the Motor Vehicles Act, 1939, no motor vehicle can be used in a public place without a proper insurance complying with the requirements of Chapter Section 95 of the said Act refers about requirements of policies and limits of liability. Section 96 speaks about duty of insurers to satisfy judgments against persons insured in respect of third party risks. It is clear that, once the vehicle is insured, it is the duty of the insurer to satisfy all judgments against persons insured in respect of third party risk. However the Insurance Company is permitted to take defences provided under sub-clause (2) of Section 96. In the Motor Vehicles Act, 1988 the corresponding provision is Section 149. In the 1988 Act also the Insurance Company is permitted to take defences provided in sub-clause (2) and avoid its liability. Apart from Section 149(2), it is also relevant to refer Section 170. As per Section 170, in the course of enquiry, the claims Tribunal is satisfied that there is collusion between the person making the claim and person against whom the claim is made or the person against whom the claim is made has failed to contest the claim direct that the insurer who may be liable in respect of such claim, shall be impleaded as a party to the proceeding and the insurer so impleaded shall thereupon have, without prejudice to the provisions contained in sub-section (2) of Section 149, the right to contest the claim on all or any of the grounds that are available to the person against whom the claim has been made. After the 1988 Act, it is the duty of the Insurance Company to satisfy all the judgments and awards against the persons insured in third party risks and they are permitted to file an appeal questioning the award only in respect of defences provided in sub-section (2) of Section 149. Further, as per Section 170, even if the Insurance Company is impleaded as one

of the respondents by the claimants, if they want to question the award of the Tribunal on all aspects, it is for them to file a separate application seeking permission of the Tribunal to contest the claim on all or any of the grounds that are available to the person against whom the claim has been made. It is further clear that, if any application is filed by the Insurance Company, on satisfying itself that there is collusion between the person making the claim and the person against whom the claim is made has failed to contest the claim, it is open to the claims Tribunal, after recording reasons, permit the insurer to contest the claim on all aspects. Once the insurer obtains permission interms of Section 170, in view of the fact that the appeal before this Court is also a continuation of the original proceedings, the Insurance Company can file an appeal either individually or along with the owner or driver of the vehicle in question. In other cases, the Insurance Company can file an appeal only with regard to the defences available under sub-section (2) of Section 149.

6. In the present appeal the owner and the insurer question the finding regarding quantum of compensation arrived by the Tribunal. In other words, admittedly, none of the defences available to the Insurance Company in sub-section (2) of Section 149 is raised in the memorandum of appeal. In such a circumstance, in the light of statutory provisions, particularly Section 149(2) and in the absence of specific permission by the Tribunal interms of Section 170, the present appeal of the Insurance Company questioning the finding relating to quantum of compensation is liable to be dismissed as not maintainable.

7. Now, we shall consider various decisions referred to by Mr.K.S.Narasimhan on this aspect. In the case of British India General Insurance Co. Ltd. Vs. Captain Itbar Singh and Others, . the Three Judges Bench of the Hon"ble Supreme Court had an occasion to consider the defences open to the insurer. A contention was raised before the Supreme Court that it is only fair that a person sought to be made bound by a judgment should be entitled to resist his liability under it by all defences which he can in law advance against the passing of it. After referring Section 96 (2) of the Motor Vehicles Act, 1939 as well as the conditions in Policy of Insurance, Their Lordships have concluded,

16. Again, we find the contention wholly unacceptable. The Statute has no doubt created a liability in the insurer to the injured person but the statute has also expressly confined the right to avoid that liability to certain grounds specified in it. It is not for us to add to those grounds and therefore to the statute for reasons of hardship/ We are furthermore not convinced that the statute causes any hardship. First, the insurer has the right, provided he has reserved it by the policy, to defend the action in the name of the assured and if he does so, all defences open to the assured can then be urged by him and there is no other defence that he claims to be entitled to urge. He can thus avoid all hardship if any, by providing for a right to defend the action in the name of the assured and this he has full liberty to do. Secondly, if he has been made to pay something which one the contract of the policy he was not bound to pay, he can under the

proviso to sub-s.(3) and under sub-s.(4) recover it from the assured. It was said that the assured might be a man of straw and the insurer might not be able to recover anything from him. But the answer to that is that it is the insurer's bad luck. In such circumstances the injured person also would not have been able to recover the damages suffered by him from the assured, the person causing the injuries. The loss had to fall on some one and the statute has thought fit that it shall be borne by the insurer. That also seems to us to be equitable for the loss falls on the insurer in the course of his carrying on his business, a business out of which he makes profit, and he could so arrange his business that in the net result he would never suffer a loss. On the other hand, if the loss fell on the injured person, it would be due to no fault of his; it would have been a loss suffered by him arising out of an incident in the happening of which he had no hand at all."

8. In the case of *United India Fire & General Insurance Co., Ltd., v. Parvathy*, 1979 A.C.J. 101. the Division Bench of this Court discussed the circumstances in which the insurer is entitled to contest the claim on merits. In para. 12 Their Lordships have concluded thus,

"12. The fact that an appeal by the insurance company is maintainable u/s 110-D of the Act will not mean that the insurance company can raise all contentions that are open to the insured. The statutory limitations contained in section 96(2) will still apply and it cannot be said that those limitations will govern only the proceedings before the Tribunal, at the initial stages and not the Court at the appellate stage. In our view, the limitations contained in section 96(2) will equally apply to the appeal filed by the insurance company. Since the insurance company has not filed the appeal in the name of the insured and as there is no collusion proved between the insured and the claimant, the defences that are open to it u/s 96(2) can alone be canvassed in the appeal.

9. In the case of *Narendra Kumar v. Yarenissa*, 1997 (I) A.C.C. 341 Their Lordships have explained the scope of an appeal by the owner and the insurer as well as the legal position of Section 170 of the Motor Vehicles Act, 1988. Their conclusion in para. 6 is relevant which reads thus,

6. The question, however, is if such a joint appeal is preferred must it be dismissed in toto or can the tortfeasers, the owner of the offending vehicle, be permitted to pursue the appeal while rejecting or dismissing the appeal of the insurer. If the award has gone against the tortfeasers it is difficult to accept the contention that the tortfeaser is not an aggrieved person as has been held by some of the High Courts vide *M/s. Kantilal & Brothers & Anr. v. Ramarani Devi & Ors.*, 1980 ACJ 501, *New India Assurance Company Limited and Ors. v. Shakuntia Bai and Ors.*, 1987 ACJ 224, *Nahar Singh and Anr. v. Manohar Kumar and Ors.*, 1993 (1) ACJ 269, *Radha Kishan Sachdeva and Others Vs. L.D. Sharma and Another*, , merely because under the scheme of Section 96 if a decree or award has been made against the tort-feasers the insurer is liable to answer judgment as if a judgment-debtor. That does not snatch away the right of the

tortfeasers who are jointly and severally liable to answer judgment from preferring an appeal u/s 110-D of the Act. If for some reason or the other claimants desire to execute the award against the tortfeasers because they are not in a position to recover the money from the insurer the law does not preclude them from doing so and, therefore, so long as the award or decree makes them liable to pay the amount of compensation they are aggrieved persons within the meaning of Section 110-D and would be entitled to prefer an appeal. But merely because a joint appeal is preferred and it is found that one of the appellants, namely the insurer, was not competent to prefer an appeal, we fail to see why the appeal by the tort-feaser the owner of the vehicle, cannot be proceeded with after dismissing or rejecting the appeal of the insurer. To take a view that the owner is not an aggrieved party because the Insurance Company is liable in law to answer judgment would lead to an anomalous situation in that no appeal would lie by the tortfeasers against any award because the same logic applies in the case of a driver of the vehicle. The question can be decided a little differently. Can a claim application be filed against the Insurance Company alone if the tortfeasers are not the aggrieved parties u/s 110-D of the Act? The answer would obviously be in the negative. If that is so, they are persons against whom the claim application must be preferred and an award sought for otherwise the insurer would not be put to notice and would not be liable to answer judgment as if a judgment-debtor. Therefore, on first principle it would appear that the contention that the owner of a vehicle is not an aggrieved party is unsustainable."

After holding so, Their Lordships have held that,

9. Even in the case of a joint appeal by insurer and owner of offending vehicle if an award has been made against the tortfeasers as well as the insurer even though an appeal filed by the insured is not competent, it may not be dismissed as such. The tortfeasers can proceed with the appeal after the cause-title is suitably amended by deleting the name of the insurer.

10. In the case of Shankarayya and Another Vs. United India Insurance Co. Ltd. and Another, . the Supreme Court has held that, an appeal by the Insurance Company cannot be maintained unless a permission u/s 170 of the Motor Vehicles Act, 1988 has been obtained. In this regard the following conclusion of Their Lordships is relevant,

"4. It clearly shows that the insurance company when impleaded as a party by the court can be permitted to contest the proceedings on merits only if the conditions precedent mentioned in the section are found to be satisfied and for that purpose the insurance company has to obtain order in writing from the Tribunal and which should be a reasoned order by the Tribunal. Unless that procedure is followed, the insurance company cannot have a wider defence on merits than what is available to it by way of statutory defence. It is true that the claimants themselves had joined respondent No.1, insurance company in the claim petition but that was done with a view to thrust the statutory liability on the insurance company on account of the contract of insurance. That was not an

order of the court itself permitting the insurance company which was impleaded to avail of a larger defence on merits on being satisfied on the aforesaid two conditions mentioned in section 170....."

After holding so, in the absence of specific permission by the Tribunal permitting the Insurance Company to contest the claim on all aspects, dismissed their appeal.

11. In the case of Chinnama George and others v. N.K. Raju and another, 2000 AIR SCW 1321. after referring Section 146, 147, 149 and 173 of the Motor Vehicles Act, 1988, Their Lordships have held,

"7. (1) it is legally obligatory to insure the motor vehicle against third party risk. Driving an uninsured vehicle is an offence punishable with an imprisonment extending up to three months or the fine which may extend to Rs. 1,000 or both; (2) Policy of insurance must comply with the requirements as contained in Section 147 of the Act; (3) It is obligatory for the insurer to satisfy the judgments and awards against the person insured in respect of third party risks. These are sub-sections (1) and (7) of Section 149. Grounds on which insurer can avoid his liability are given in sub-section (2) of Section 149.

8. If none of the conditions as contained in sub-section (2) of Section 149 exist for the insurer to avoid the policy of insurance he is legally bound to satisfy the award. He cannot be a person aggrieved by the award. In that case insurer will be barred from filing any appeal against the award of the Claims Tribunal.

9. The question that arises for consideration is: can the insurer join the owner or the driver in filing the appeal against the award of the Claims Tribunal as driver or owner would be the person aggrieved as held by this Court in Narendra Kumar and Another Vs. Yarenissa and Others, This Court has held that appeal would be maintainable by the driver or the owner and not by the insurer and, thus, a joint appeal when filed could be maintainable by the driver or the owner. This is how the Court held:-

For the reasons stated above, we are of the opinion that even in the case of a joint appeal by insurer and owner of offending vehicle if an award has been made against the tortfeasers as well as the insurer even though an appeal filed by the insurer is not competent, it may not be dismissed as such. The tortfeaser can proceed with the appeal after the cause-title is suitably amended by deleting the name of the insurer."

10. There is no dispute with the proposition so laid by this Court. But the insurer cannot maintain a joint appeal along with the owner or the driver if defence on any ground u/s 149(2) is not available to it. In that situation joint appeal will be, incompetent. It is not enough if the insurer is struck out from the array of the appellants. The appellate Court must also be satisfied that a defence which is permitted to be taken by the insurer under the Act was taken in the pleadings and was pressed before the Tribunal. On the appellate Court being so satisfied

the appeal may be entertained for examination of the correctness or otherwise of the judgment of the tribunal on the question raising from / relating to such defence taken by the insurer. If the appellate Court is not satisfied that any such question was raised by the insurer in the pleadings and / or was pressed before the Tribunal the appeal filed by the insurer has to be dismissed as not maintainable. The Court should take care to ascertain this position on proper consideration so that the statutory bar against the insurer in a proceeding of claim of compensation is not rendered irrelevant by the subterfuge of the insurance company joining the insured as a co-appellant in the appeal filed by it. This position is clear on a harmonious reading of the statutory provisions in sections 147, 149 and 173 of the Act. Any other interpretation will defeat the provision of sub-section (2) of Section 149 of the Act and throw the legal representatives of the deceased or the injured in the accident to unnecessary prolonged litigation at the instance of the insurer."

12. In the case of Rita Devi and others v. New India Assurance Co., Ltd., and another, AIR 2000 S.C. 1930, their Lordships have reaffirmed the decision reported in Shankarayya v. United India Insurance Co., Ltd., 1998 ACT 513 viz., that an appeal by the Insurance Company questioning negligence and quantum aspects cannot be maintained unless a permission u/s 170 of the Motor Vehicles Act, 1988 has been obtained.

13. In the case of New India Assurance Co. Ltd. Vs. Kamla and Others, . the Division Bench of Madhya Pradesh High Court permitted the Insurance Company to challenge the quantum of compensation in the appeal, since the appellant was permitted to contest the application for compensation on all the grounds, which were available to the owner / driver.

14. In the case of Konidala Jaya Bharati and Another Vs. A. Chokkalingam and Another, . the Division Bench of Andhra Pradesh High Court at Hyderabad had an occasion to consider similar question. The case before the Division Bench arose under the provisions of Motor Vehicles Act, 1939. After referring the relevant provisions viz., Sections 96(2) and 110-D, the Division Bench in para 16 has held,

16. In the instant case by the impugned award it is clear that the award is passed against the owner and the insurance company with joint and several liability. Therefore, both of them are aggrieved and if they choose to file a joint appeal such a joint appeal would be maintainable.

Regarding the other point, viz., whether the owner can be said to be aggrieved person in case the amount awarded is covered by the insurance policy, the Bench has concluded that,

The owner is an aggrieved person and the appeal filed by him is maintainable even if the insurance company is made liable regarding the quantum awarded by the tribunal."

15. In the case of New India Assurance Co. Ltd. and Another Vs. Sandhya Jain

and Others, . the Division Bench of Himachal Pradesh High Court at Shimla considered the maintainability of the joint appeal of the insurance company and the owner of the offending vehicle. Their Lordships after referring the Narendra Kumar and Another Vs. Yarenissa and Others, , dismissed the appeal of the Insurance Company and permitted the owner of the vehicle to pursue the appeal after amending the cause-title.

16. In C.M.A.No.633 of 2000 dated 4.8.2000, K.P. Sivasubramaniam. J., after referring the decisions of the Supreme Court in Narendra Kumar and Another Vs. Yarenissa and Others, , rejected the objection raised by the claimants and considered the quantum of compensation, since the appeal filed by the owner was maintainable.

17. It is also brought to our notice the Division Bench decision of this Court (P.Shanmugam and A. Subbulakshmy, JJ.) in CMA.No.205 of 1989 dated 1.12.2000. The said appeal was filed by the owner and the insurer. Though an objection was raised as to the maintainability of the appeal by the Insurance Company, based on the decision of the Apex Court in the case of Chinnama George and Others Vs. N.K. Raju and Another, , the Division Bench declined to go into that question, since the owner of the vehicle has also filed an appeal and considered the same and allowed the appeal to the extent mentioned therein.

18. In the case of National Insurance Co. Ltd. Vs. Leela and Others, the Division Bench of Kerala High Court had an occasion to consider similar question. After referring the earliest decision of the Supreme Court viz., in the case of British India General Insurance Co. Ltd. Vs. Captain Itbar Singh and Others, permitted the learned counsel appearing for the Insurance Company to argue the appeal on merits. AR. Lakshmanan, J., (as he then was) speaking for the Bench has held,

" 3. The Full Bench held that the Supreme Court decision in Captain Irbar Singh's case, 1958 ACJ 1, is clear authority that it is open to the insurer to reserve a right in the policy of insurance to defend the action in the name of the assured and in case, there is such a reservation, all defences open to the assured can be urged by him. The Full Bench also said that the above decision is binding on it and has been, in fact, followed by various High Courts. In view of the above Supreme Court decision and followed by the High Court we have permitted the counsel for the insurance company to argue the matter on merits....."

19. In the case of United India Insurance Co., Ltd., v. Member, M.A.C.T. Lakhimpur and others, AIR 1993 Gau. 28. the Division Bench of the Gauhati High Court has held that, the insurer is bound by Section 96 (2) (Motor Vehicles Act, 1939) and Section 149 (Motor Vehicles Act, 1988). In the appellate forum also right of appeal is restricted to raising contentions enumerated in Section 149 of the Act unless, of course, the Tribunal has passed an order u/s 170 of the Act, or unless the insurer has reserved in the policy the right to contest the claim on behalf of the insured.

20. In the case of Oriental Insurance Co.. Ltd. v. Anita and others, 1997 ACJ 520.

the Full Bench of Allahabad High Court has held that, there can be no escape from the conclusion that except in a case which falls u/s 170 of the Act and an order is passed thereunder permitting the insurer to contest the claim on all or any of the grounds available to the person against whom the claim has been made, the only defences open to an insurer, both before the Tribunal as also in Appeal, are those available to it u/s 149 of the Act. They further held that the insurer cannot challenge the finding of negligence recorded against the driver or owner of the vehicle nor can it question the quantum of compensation awarded to the claimants.

21. In the case of New India Assurance Co. Ltd. and Another Vs. Charanjit Singh, , the Division Bench of Punjab & Haryana High Court at Chandigarh, after finding the collusion between the claimant and the owner permitted the appellant insurance company to contest the appeal regarding the quantum of compensation u/s 170(a) of the Motor Vehicles Act 1988.

22. Apart from the above decisions, Mr K.S. Narasimhan, learned counsel appearing for the appellants has also invited our attention, to the conditions in the policy of insurance, which enables the insurance company to conduct in the name of the insured to defence or settlement of any claim or to prosecute in the name of the insured and conduct any proceedings and the insured shall give all such information and assistance as the company may require.

23. We have already referred to the earliest decision of the Supreme Court namely, British India General Insurance Co. Ltd. Vs. Captain Itbar Singh and Others, , wherein Their Lordships held that, it is open to the insurer to reserve a right in the policy of insurance to defend the action in the name of the assured and in case there is such reservation, all defences open to the assured can be urged by them. We have also referred to Section 149(2) of the Motor Vehicles Act, 1988. There is no dispute with regard to the defences provided in sub-section (2) of Section 149, it is always open to the insurance Company to file an appeal and question the award. The recent decisions of the Supreme Court, particularly from Narendra Kumar v. Yarenissa, 1997 (1) ACC 341, it is clear that, in the case of joint appeal by the Insurer and the owner of the vehicle, if an award has been made against the owner as well as the insurer, even though an appeal filed by the" insurer is not competent, the appeal may not be dismissed as such and the owner or driver (tort-feasor), can proceed with the appeal after the cause title is suitably amended by deleting the name of the insurer. The said view in Narendra Kumar and Another Vs. Yarenissa and Others, has been followed by the Division Bench of the Himachal Pradesh High Court in New India Assurance Co. Ltd. and Another Vs. Sandhya Jain and Others, .

24. We have already referred to the views expressed by other Division Benches namely, Uadhy Pradesh, Andhra Pradesh, Gauhati, Allahabad and Punjab & Haryana. However, among all the decisions, it is our duty to refer once again the recent decision of the Supreme Court in Chinnama George and others v. N.K. Raju and another, AIR 2000 SCW 1321, We have already extracted the

conclusion of Their Lordships, particularly after referring Narendra Kumar and Another Vs. Yarenissa and Others, In Narendra Kumar's case. Their Lordships have held that , even in the case of joint appeal by insurer and owner of the offending vehicle, if an award has been made against the tort-feasors and the insurer even though an appeal filed by the insurer is not competent, it may not be dismissed as such and further held that, tort-feasors can proceed with the appeal after the cause title is suitably amended by deleting the name of the insurer. The said conclusion in Narendra Kumar's case has been approved by Their Lordships in Chinnama George and Others Vs. N.K. Raju and Another, . However, in paragraph 10, Their Lordships have expressed that the insurer can not maintain joint appeal along with the owner or driver, if defence on any ground u/s 149(2) is not available to it. After holding so, it is stated that in that situation, joint appeal will be incompetent. The further observation by Their Lordships is relevant,

"..... It is not enough if the insurer is struck out from the array of the appellants. The appellate court must also be satisfied that a defence which is permitted to be taken by the insured under the Act was taken in the pleadings and was pressed before the Tribunal. On the appellate court being so satisfied that the appeal may be entertained for examination of the correctness or otherwise of the judgment of the Tribunal on the question arising from / relating to such defence taken by the insurer. If the appellate court is not satisfied that any such question was raised by the insurer in the pleadings and or was pressed before the Tribunal the appeal filed by the insurer has to be dismissed as not maintainable....."

We have already referred to the grounds taken in the appeal memorandum. Except questioning the findings regarding negligence and quantum, none of the defences available u/s 149(2) of the Act have been raised. Though in the counter statement filed before the tribunal all objections have been raised including the defences available u/s 149(2), the fact remains that the defences available to the insurance company have not been substantiated. In such circumstances, we hold that the insurance company cannot maintain joint appeal along with the owner or driver, since none of the defences u/s 149(2) are available. We further hold that, the appeal of the insurance company is not maintainable and liable to be dismissed.

25. We have already referred to the line of decisions with regard to permission granted to the insurance company u/s 170 of the Act to contest the claim on all aspects. In view of Section 170, it is incumbent on the insurance company that, if there is a collusion between the person making the claim and the person against whom the claim is made and the person against whom the claim is made has failed to contest the claim, shall obtain a specific order from the tribunal to contest the claim on all aspects. The Claims Tribunal on satisfaction grants such permission in favour of the insurance company, it will be open to it to file an appeal and question the award on all aspects. Admittedly, in the present case,

the insurance company did not secure any order in terms of section 170. In the light of the fact that the Tribunal has not granted permission to contest the claim on all aspects u/s 170, the defences u/s 149(2) are not available and raised in the memorandum of grounds of appeal, we hold that, even in the joint appeal with owner or driver, the insurance company cannot maintain the same; accordingly, the same is liable to be dismissed. Thus, the appeal of the insurance company shall stand dismissed as not maintainable, whereas the owner of the vehicle first appellant herein is permitted to pursue the appeal and cause title to that extent shall be amended by the Registry.

26. In the light of the above said conclusion, now we shall consider the case of the first appellant - the owner of the vehicle. Mr. V.M. Ravichandran, learned counsel for the respondents - claimants would raise an objection that inasmuch as the owner of the vehicle has not deposited the amount in terms of first proviso to sub-section (1) of Section 173 of the Act, the owner cannot be permitted to pursue the appeal. Since the insurer had deposited the said amount at the time of filing of the appeal only on behalf of the owner, the said contention is liable to be rejected. Even at the earlier part of our order we have referred to that there is no dispute with regard to the conclusion arrived at by the tribunal on the negligence aspect. We have already stated that, for the death of one Jayaraman, the wife, the children and parents have prayed for a compensation of Rs.15 lakhs. The first claimant - wife of the deceased was examined as P.W.1. Apart from her evidence, she also produced and marked post mortem certificate as Ex.P 3, certificate issued by the Income Tax Department as Ex.P4 and income tax receipts as Exs. P5 to P 33. Exs.P.34, P.37, P.38 and P 39 also speak about the income of the deceased. As per the evidence of P.W.1 and Ex.P 3, the post-mortem certificate as well as Ex. P 35 - proceedings of the LIC, the deceased was aged about 50 years, accordingly, we hold that, on the date of accident the deceased was aged about 50 years. The perusal of payment of Income Tax and receipts as seen from Exs.P4 to P.33, as rightly observed by the Tribunal, the deceased was getting reasonable income. One Balaji Venkataraman, who was handling the accounts of the deceased was examined as P.W.2. The Account Book Ex.P.34 shows that the net income of the deceased for the year ending 31.3.1991 was Rs.33,867.25, Rs.41,400.75 for the year ending 31.3.1992 and Rs.27,642.02 for the period from 1.4.1992 to 24.6.1992. Considering those details, the Tribunal has arrived a conclusion that, at any rate, the deceased would earn Rs.3,000.00 per month. Since the claimants have filed Cross-appeal to the extent of Rs.4,40,000.00, we have carefully perused the oral evidence of P.Ws.1 and 2 as well as the documentary evidences viz., Exs.P.4 to" P.39. Learned counsel appearing for the Cross-objectors after taking us through the evidence of the Auditor - P.W.2 as well as the Account Book - Exs.P.34, Payment of Income Tax under Exs.P.5 to P.33 would contend that the deceased was earning Rs.9,000.00 per month. Though there is some force in the argument, we are not inclined to accept that the average income of the deceased was Rs.9,000.00 per month. The deceased met with an accident and died on

26.6.1992, accordingly among other documents, assessment and payment of Income Tax for the year ending 31.3.1992 is relevant. As per the evidence of P.W.2 as well as the income tax receipts and account book, the net income for the year ending 31.3.1992 was Rs.41,400.75. In such a circumstance, we are of the view that after deducting his personal expenses, the deceased would have contributed atleast Rs.3,500.00 per month and the annual contribution would be Rs.42,000.00. Though the Tribunal had applied multiplier of 15, as per Second Schedule to the Motor Vehicles Act, 1988 the proper multiplier to be applied is 13; accordingly by applying the multiplier of 13 we fix the total pecuniary loss at Rs.5,46,000.00. Though the Tribunal has granted Rs.20,000.00 for the consortium to the wife, loss of love and affection to the children and loss of expectation of life and loss of help to the parents, we are of the view that all the claimants are entitled to separate amounts on those claims; accordingly we fix Rs.10,000.00 towards loss of consortium to the wife i.e., first claimant, Rs.15,000.00 towards loss of love and affection to the claimants 2 to 4 children of the deceased and Rs.9,000.00 to the parents - claimants 5 and 6 for the sudden death of their son. Accordingly, the claimants are entitled the compensation of Rs.5,80,000.00 with interest at the rate of 12 per cent per annum from the date of the petition till the date of deposit and the same shall be paid by the Insurance Company. Out of the compensation of Rs.5,80,000.00, we apportion the amount in the following manner. The first claimant - wife of the deceased is entitled Rs.2 lakhs; claimants 2 to 4 - major children of the deceased (sons and daughter) are each entitled Rs.1 lakh. 5th petitioner father of the deceased is granted Rs.30,000. 00 and the 6th petitioner - mother of the deceased is entitled Rs.50,000.00. We also permit the first claimant - wife to withdraw the accrued interest if any.

27. In the light of what is stated above, we pass the following order:

1. The appeal of the Insurance Company shall stand dismissed as not maintainable.
2. The appeal filed by the owner of the vehicle is demised as devoid of merits.
3. Cross Objection filed by the claimants is allowed in part.
4. No costs.