

(2013) 10 MAD CK 0071

In the Madras High Court

Case No : Civil Miscellaneous Appeal No. 2508 of 2008 M.P. No. 1 of 2013 in
C.M.A. No. 2508 of 2008

The Manager, The New India Assurance Co. Ltd.

APPELLANT

Vs

Chennamma and Others
Chennamma, Kumar, Sujitha
Minors Rep. by Mother and Guardian Chennamma and
Ramulamma Vs The Manager, The New India Assurance Co.
Ltd. and M/s. Ravi Bricks Pvt. Ltd.

RESPONDENT

Date of Decision : 22-10-2013

Acts Referred:

Citation : (2013) 10 MAD CK 0071

Hon'ble Judges : R. Subbiah, J; R. Banumathi, J

Bench : Division Bench

Advocate : K. Padmanabhan, for the Appellant; G. Karthikeyan Nos. 1 to 4, for
the Respondent

Judgement

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R. Banumathi, J.—Challenging the fastening of liability and ordering pay and
recover and also challenging the quantum of compensation",,

awarded in M.C.O.P. No. 126 of 2003 (9.1.2007) on the file of Motor Accident
Claims Tribunal (Sub-Court), Tiruvallur, Appellant-Insurance",,

Company has preferred this appeal. Brief facts are that on 5.10.2002 at 1.45
P.M., deceased Venkata Kondaiya was proceeding in his Hero",,

Honda motorcycle bearing registration No. TN-22 Y 1596 on Chennai-Minjur
Road. While he was nearing Pungambedu bus stand, the lorry",,

bearing registration No. TN-20 Z 3024 belonging to the 5th Respondent coming
in the opposite direction driven by its driver in a rash and,,

negligent manner dashed against the motorcycle. Due to the impact, Venkata
Kondaiya sustained grievous injuries and immediately Venkata",,

Kondaiya was admitted in Stanley Government Hospital where he succumbed to the injuries. A criminal case in Crime No. 646 of 2002 under,,

Sections 279, 304(A) I.P.C. of Minjur Police Station was registered against the lorry driver for rash and negligent driving. At the time of accident",,,

deceased was working as Riveter in Electrical and Mechanical Department in Chennai Port Trust and was earning Rs. 15,000/- per month.",,,

Alleging that the accident was due to rash and negligent driving of the lorry driver, the Claimants who are wife, sons and mother of the deceased",,,

have filed Claim Petition claiming compensation of Rs. 30,00,000/-.",,,

2. Resisting the Claim Petition and denying its liability to pay the compensation, Appellant-Insurance Company has filed the counter stating that the",,,

driver of the 5th Respondent (owner of the lorry) had only licence to drive light motor vehicle and the vehicle involved in the accident is heavy,,

motor goods vehicle and that the driver of the 5th Respondent was not having valid driving licence to drive the heavy motor goods vehicle. Since,,

the driver of the vehicle did not have a valid driving licence to drive heavy motor goods vehicle and since the owner of the vehicle has violated the,,

terms and conditions of the policy, Appellant-Insurance Company is not liable to pay compensation for the death of the deceased in the road traffic",,,

accident. Appellant-Insurance Company also denied age, avocation, income of the deceased and that the compensation claimed is excessive.",,,

3. Before the Tribunal, 1st Claimant-Chinnammal examined herself as P.W. 1. Eye-witness Devaraj was examined as P.W. 2. Rajan, the then",,,

Assistant Superintendent of Chennai Port Trust was examined as P.W. 3. Exs. P1 to P7 were marked. On the side of Appellant-Insurance,,

Company, Exs. R1 to R3 were marked. No oral evidence was adduced on the side of Appellant-Insurance Company.",,,

4. Upon consideration of oral and documentary evidence, Tribunal held that the accident was due to rash and negligent driving of the lorry bearing",,,

registration No. TN-20 Z 3024. Referring to Ex. R3-Insurance Policy and pointing out that the lorry was having valid insurance coverage from,,

26.11.2001 to 25.11.2002, the Tribunal held that the Appellant-Insurance Company is liable to pay the compensation. By referring to Ex. R1-",,,

history sheet for drivers, Tribunal held that the driver of the lorry was holding driving licence for light motor vehicle and the vehicle involved in the",,,

accident is heavy goods vehicle and that the driver of the lorry did not have valid driving licence and the Tribunal held that Appellant-Insurance,,

Company shall recover the same from the 5th Respondent-owner of the lorry. Insofar as quantum of compensation, Tribunal has taken the monthly",,,

income of the deceased at Rs. 10,000/- per month and Rs. 1,20,000/- per annum. Deducting one-third for personal expenses, Tribunal has",,,

calculated the loss of contribution to the family at Rs. 80,000/- per annum. Adopting multiplier ""16"", Tribunal has calculated the loss of dependency",,,

at Rs. 12,80,000/-. Adding conventional damages, Tribunal has awarded total compensation of Rs. 12,89,500/- payable by the Appellant-",,,

Insurance Company to the Claimants and then recover the same from 5th Respondent.,,,

5. To prove that the accident was due to rash and negligent driving of lorry driver, before the Tribunal, P.W. 2-eye witness was examined. In his",,,

evidence, P.W. 2 has stated that on 5.10.2002 while he was walking in Chennai-Minjur road, near Pungambedu Bus stand, Venkata Kondaiya",,,

was proceeding in his Hero Honda motorcycle bearing registration No. TN-22 Y 1596 in the same road and at that time, the lorry bearing",,,

registration No. TN-20 Z 3024 proceeding on the opposite direction driven by its driver in a rash and negligent manner dashed against the",,,

motorcycle. In the accident Venkata Kondaiya sustained grievous injuries and he was taken to Stanley Government Hospital where he succumbed,,

to the injuries. P.W. 2 has stated that the accident occurred only due to rash and negligent driving of the lorry driver. Ex. P1-FIR was registered,,

against the lorry driver. Evidence of P.W. 2 is corroborated by the recitals in Ex. P1-FIR. Based on the evidence of P.W. 2 and registration of,,

criminal case against the lorry driver, Tribunal held that the accident was due to rash and negligent driving of the lorry bearing registration No. TN-",,,

20 Z 3024. Finding of the Tribunal as to the rash and negligent driving of the lorry driver is not seriously challenged. Appellant-Insurance Company,,

has filed this appeal mainly challenging the fastening of liability upon the Appellant-Insurance Company and direction for pay and recover and also,,

the quantum.,,,

6. Mr. E. Padmanabhan, learned counsel for Appellant-Insurance Company has submitted that the Tribunal erred in fastening the liability on the",,,

Appellant-Insurance Company in the case where the driver did not possess effective driving licence to drive heavy motor vehicle. Learned counsel,,

submitted that the driver of the lorry had only licence to drive light motor vehicle and he did not possess valid and effective licence to drive heavy,,

motor vehicle at the time of accident. Learned counsel further submitted that when the vehicle was allowed to be driven by its driver who did not,,

have a valid driving licence, Appellant-Insurance Company is entitled to succeed in its defence and avoid liability and while so, Tribunal committed",,,

an error in directing the Appellant-Insurance Company to pay the compensation. According to the learned counsel, it has to be construed as",,,

having no licence at all and even pay and recover also cannot be ordered. To fortify his submissions, the learned counsel for Appellant-Insurance",,,

Company has placed reliance upon National Insurance Co. Ltd. Vs. Swaran Singh and Others, ; National Insurance Co. Ltd. Vs. Vidhyadhar",,,

Mahariwala and Others, and New Indian Assurance Co. Ltd. Vs. Roshanben Rahemansha Fakir and Another, .",,,

7. Per contra, Mr. G. Karthikeyan, learned counsel for Claimants submitted that at the time of accident even as per the endorsement made in Ex.",,,

R1, the driver of the lorry was authorised to drive ""transport vehicle"" and driver had valid driving licence and therefore, rightly Appellant-Insurance",,,

Company was held liable to pay the compensation and recover the same from the owner of the lorry. It was submitted that as per the decisions,,

reported in National Insurance Co. Ltd. Vs. Swaran Singh and Others, and 2012 (1) TNMAC 117 (DB) [Dr. Balaji v. K. Sunil Kumar and",,,

National Insurance Co. Ltd.], the driver was having licence and therefore, Appellant-Insurance Company cannot repudiate its claim on the ground",,,

that driver did not possess valid licence. In support of his contention, the learned counsel placed reliance upon 2012 (1) TN MAC 117 (DB) [Dr.",,,

Balaji v. K. Sunil Kumar and National Insurance Co. Ltd.]; A. Gopalakrishnan and Chandran Vs. Rumugham and The Oriental Insurance Co.,,,

Ltd., and Branch Manager, Oriental Insurance Company Ltd. Vs. Mansoor Hussain and Another, .",,,

8. Considering the rival submissions, the following points arise for determination in this appeal:-",,,

(1) Whether the lorry bearing registration No. TN-20 Z 3024 involved in the accident is a "heavy goods vehicle"?,,

(2) At the time of accident whether the driver had valid driving licence to drive the lorry TN-20 Z 3024?,,

(3) When the driver of the lorry has been granted licence to drive one type of vehicle, but at the relevant time the driver was driving another type of",,,

vehicle, whether Appellant-Insurance Company is to be absolved of its liability?",,

(4) Whether the Tribunal was right in ordering pay and recover?,,

(5) Whether the quantum of compensation awarded by the Tribunal is just and reasonable?,,

9. Point No. 1:-,,

Tribunal held that the lorry bearing registration No. TN-20 Z 3024 involved in the accident is a heavy motor vehicle whereas the driver of the lorry,,

was holding only light motor vehicle licence and that he did not possess a valid licence to drive heavy motor vehicle. Per contra, according to",,,

Claimants, the vehicle was not a heavy motor vehicle and Ex. R1-History sheet for drivers carries an endorsement authorising the driver to drive",,,

transport vehicle"" and therefore, he had valid driving licence.",,

10. According to Claimants the lorry bearing registration No. TN-20 Z 3024 involved in the accident was not a heavy goods vehicle and that Ex.,,,

R1-History sheet for drivers carries an endorsement authorising the driver to drive ""transport vehicle"" and therefore, the driver had valid driving",,,

licence to drive the lorry bearing registration No. TN-20 Z 3024 at the time of accident. The certified copy of Registration Certificate of the lorry,,

was filed as additional document in M.P. No. 1 of 2013. The Registration Certificate being certified copy issued by the Assistant Registering,,

Authority, RTO Redhills, Chennai, the same is ordered to be received as additional document and marked as Ex. P8 in this appeal, as per which",,,

the owner is 5th Respondent.,,,

11. Section 41 of Motor Vehicles Act provides for registration of motor vehicles. As per sub-section (4) of Section 41, in addition to the other",,,

particulars required to be included in the certificate of Registration, it shall also specify the type of motor vehicle, being a type as the Central",,,

Government may, having regard to the design, construction and use of the motor vehicle, by notification in the official Gazette, specify. In Ex. P8-",,,

Registration Certificate of the vehicle involved in the accident, the lorry bearing registration No. TN-20 Z 3024 is classified as ""Heavy Goods",,,

Vehicle". In Ex. P8-Registration Certificate, the unladen weight is stated as 6,400 kilograms and laden weight is stated as 16,200 kilograms.",,

Contention of the Claimants is that even though the vehicle was classified as "Heavy Goods Vehicle", since the unladen weight of the vehicle is only",,

6,400 kilograms, the vehicle falls under the definition of Light Motor Vehicle within the meaning of Section 2(21) of Motor Vehicles Act, 1988.",,

12. Definition clause in Section 2 of Motor Vehicles Act, 1988 defines various categories of vehicles which are "goods carriage", "heavy goods",,

vehicle", "heavy passenger motor vehicle", "light motor vehicle", "maxi cab", "medium goods vehicle", "medium passenger motor vehicle", "motor",,

cab", "motor car", "motor cycle", "motor vehicle", "omnibus", "tourist vehicle" and "transport vehicle" etc.",,

13. "Light motor vehicle" is defined in Section 2(21) of the Act as under:-,,

(21) "light motor vehicle" means a transport bus or omnibus the gross vehicle weight of either of which or a motor car or tractor or road-roller the,,

unladen weight of any of which, does not exceed 7500 kilograms.",,

14. "Heavy goods vehicle" is defined in Section 2(16) as under:-,,

(16) "heavy goods vehicle" means any goods carriage the gross vehicle weight of which, or a tractor or a road-roller the unladen weight of either",,

of which, exceeds 12,000 kilograms.",,

15. By careful reading of Section 2(21), it is seen that "light motor vehicle" means "transport bus" or "omnibus" the gross vehicle weight of either of",,

which or a motor car or tractor or road-roller the unladen weight of any of which does not exceed 7,500 kilograms. Unladen weight indicated in",,

Section 2(21) of the Act is referable only to the "motor car" or "tractor" or "road-roller". Insofar as "transport bus" or "omnibus", only the gross",,

vehicle weight has to be taken into consideration. Since the vehicle involved in the accident in the present case is a lorry/goods vehicle, only the",,

gross vehicle weight is to be taken into consideration to classify the category of the vehicle. Therefore, the Claimants are not right in contending that",,

the lorry bearing registration No. TN-20 Z 3024 has unladen weight of 6400 kilograms and therefore, to be construed as "light motor vehicle". As",,

defined in Section 2(16) of the Act, "heavy goods vehicle" means any goods carriage the gross vehicle weight of which exceeds 12,000 kilograms.",,

In this case, since the gross vehicle weight of the lorry involved is 16,200

kilograms, we are of the view that the vehicle/lorry involved in the",
accident is only a ""heavy goods vehicle.",,

16. Point Nos. 2, 3 and 4:",,,

The next point we are required to consider is whether driver had a valid driving licence to drive ""heavy goods vehicle"" and when the driver of lorry",,

has been granted licence to drive one type of vehicle, but at the relevant time he was driving another type of vehicle, whether the Appellant-",,

Insurance Company is to be absolved of its liability and whether the Tribunal was right in ordering pay and recover.,,

17. As per Ex. R1-History sheet for drivers-driving licence, the driver of the vehicle had obtained licence for "light motor vehicle". In Ex. R1, the",,

following clauses of vehicles are stated viz.,",,

(a) Motor Cycle;,,

Sl. No.,Transport Vehicles,Non-Transport Vehicles

i),"Motor cycle with side car for

carrying goods","Motor cycle with or without car

for personal use

(ii),"Motor cycle with trailer to carry

goods","Motor cycle with trailer to carry

personal effects

(iii),"Motor cycle used for hire to

carry one passenger on pillion

and motorised cycle rickshaw

for goods/passengers on hire.", "Mopeds and motorised cycles

(engine capacity exceeding

35CC)

(iv),Motor cab and Luxury cabs.,Invalid carriage.

(v),"Goods carrier

trucks/tankers/mail carriers.", "Three wheeled vehicles for

personal use.

(vi),Trailors,Motor car

- (vii), Maxi cab, Fork lift
- (viii), Stage carriers, "Vehicles/trailors fitted with equipments like Rig. generator, compressor.
- (ix), "Contract carriages and tourist vehicles", Crane mounted vehicle.
- (x), "Three wheeled vehicles for transport of passenger/goods.", Tractor
- (xi), "Mobile clinic/X-Ray van/library vans", "Trailors to carry personal effects.
- (xii), Private Service Vehicle, "Tower wagons and tree trimming vehicles.
- (xiii), Educational Institution buses., "Two Trucks Breakdown Van Recovery Vehicles.
- (xiv), Ambulances, Ombi Buses for private use.
- (xv), Mobile canteens, "Camper van/trailer for private use.
- (xvi), Cash vans,
- (xvii), Articulated, Vehicles
- (xviii), Camper vans/trailers,
- (xix), Animal ambulances,
- (xx), Hearses,
- (xxi), Mobile workshops,
- (xxii), "Fire tenders, snorked ladders, Auxillary trailers and fire fighting vehicles.",
- (xxiii), Omnibus,
- (xxiv), Dumper/Excavator,

149(2)(a)(ii) of the Act. The condition of the Policy provided a coverage to a

person who has held permanent valid driving licence and is not,,
disqualified from holding or obtaining such licence. In terms of Section 149(2)(a)
(ii) of the Act, the insurer is entitled to raise defence in the Claim",,,

Petition filed u/s 163(A) or Section 166 of M.V. Act.,,,

25. In the present case the vehicle involved in the accident is a "heavy goods
vehicle". The driver had licence to drive "light motor vehicle/transport,,

vehicle". He did not have a valid driving licence to drive "heavy goods vehicle".
The point falling for consideration is when the driver of the vehicle,,

involved in the accident did not have a valid driving licence, whether the insurer
can be directed to pay compensation to the Claimants and recover",,,

the same subsequently from the insured.,,,

26. Learned counsel for Appellant-Insurance Company submitted that since the
driver had licence only to drive light motor vehicle and was not,,

having valid licence to drive heavy goods vehicle and since there was violation of
conditions of Policy, the Tribunal ought not to have ordered the",,,

Appellant-Insurance Company to pay the compensation and recover from the
insured. It was submitted that Tribunal ought to have awarded,,

compensation only against the 5th Respondent-owner of the lorry, who has
violated the terms of the Policy. In support of his contention, learned",,,

counsel placed reliance upon National Insurance Co. Ltd. Vs. Swaran Singh and
Others, ; New India Assurance Co. Ltd. Vs. Manjit Kaur and",,,

Others, ; Ram Babu Tiwari Vs. United Indian Insurance Co. Ltd. and Others, and
United India Insurance Co. Ltd. Vs. E. Rajamanickam and",,,

Balasubramani, .",,,

27. Right of the victim of road accident to claim compensation is a statutory one.
Insurance Company is entitled to raise defence in terms of,,

Section 149(2)(a)(ii) of the Act to avoid its liability towards insured. So far as the
statutory liability of the insurer contemplated under the provisions,,

of Motor Vehicles Act in the matter relating to the payment of compensation, the
mere fact that there was violation of the terms and conditions",,,

subject to which the insurance policy has been issued, cannot have the effect of
exonerating the insurer from the statutory liability cast upon him in",,,

this regard to pay the amount to the third party victim. In order to avoid its
liability towards insured, the insurer has to prove that the insured was",,,

guilty of negligence and failed to exercise a reasonable care in the matter of

fulfilling the conditions of the Policy regarding use of vehicle by duly,,
 licensed driver or one who was not disqualified to drive at the relevant time.,,,

28. Onus is always on the Insurance Company to prove that the driver had no valid driving licence and that there was violation of breach of policy,,
 conditions. Observing that in each case evidence has to be adduced before the Claims Tribunal and decision has to be taken in the facts and,,
 circumstances of each case, in Swaran Singh's case, the Hon"ble Supreme Court held as under:-""82. Section 3 of the Act casts an obligation on a",,,
 driver to hold an effective driving licence for the type of vehicle which he intends to drive. Section 10 of the Act enables Central Government to,,
 prescribe the forms of driving licences for various categories of vehicles mentioned in sub-section (2) of said Section. The various types of vehicles,,
 described for which a driver may obtain a licence for one or more of them are (a) motor cycle without gear; (b) motor cycle with gear; (c) invalid,,
 carriage; (d) light motor vehicle; (e) transport vehicle; (f) road-roller and (g) motor vehicle of other specified description. The definition clause in,,
 Section 2 of the Act defines various categories of vehicles which are covered in broad types mentioned in sub-section (2) of Section 10. They are,,
 "goods carriage", "heavy goods vehicle", "heavy passenger motor vehicle", "invalid carriage", "light motor vehicle", maxi cab", "medium goods",,,
 vehicle", "medium passenger motor vehicle", "motor cab", motorcycle", omnibus", "private service vehicle", "semi-trailer", "tourist vehicle",",,,
 "tractor", "trailer", and "transport vehicle". In claims for compensation for accidents, various kinds of breaches with regard to the conditions of",,,
 driving licences arise for consideration before the Tribunal. A person possessing a driving licence for "motor cycle without gear", for which he has",,,
 no licence. Cases may also arise where holder of driving licence for "light motor vehicle" is found to be driving a "maxi cab", "motor-cab" or",,,
 "omnibus" for which he has no licence. In each case on evidence led before the Claims Tribunal, a decision has to be taken whether the fact of the",,,
 driver possessing licence for one type of vehicle but found driving another type of vehicle, was the main or contributory cause of accident. If on",,,
 facts, it is found that accident was caused solely because of some other unforeseen or intervening causes like mechanical failures and similar other",,,
 causes having no nexus with driver not possessing requisite type of licence, the

insurer will not be allowed to avoid its liability merely for technical",,,
breach of conditions concerning driving licence.,,,

83. We have construed and determined the scope of sub-clause (ii) of sub-section (2) (a) of Section 149 of the Act. Minor breaches of licence,,
conditions such as want of medical fitness certificate, requirement about age of the driver and the like not found to have been the direct cause of",,,

the accident, would be treated as minor breaches or inconsequential deviation in the matter of use of vehicles. Such minor and inconsequential",,,

deviations with regard to licensing conditions would not constitute sufficient ground to deny the benefit of coverage of insurance to the third parties.,,,

84. On all pleas of breach of licensing conditions taken by the insurer, it would be open to the Tribunal to adjudicate the claim and decide inter se",,,

liability of the insurer and insured; although where such adjudication is likely to entail undue delay in decision of the claim of the victim, the Tribunal",,,

in its discretion may relegate the insurer to seek its remedy of reimbursement from the insured in the civil Court.,,,

29. In a catena of decisions, the Hon"ble Supreme Court has dealt with liability of the Insurance Company while interpreting Section 149(2)(a)(ii)",,,

of the Act and the proviso appended to Sub-sections (4) and (5) of Section 149 of M.V. Act. In Swaran Singh's case, the Three Judges of the",,,

Hon"ble Supreme Court has dealt in detail with the licence and had settled the principles in cases where -,,

(a) when the person has been granted licence for one type of vehicle, but at the relevant time he was driving another type of vehicle;",,,

(b) where the driver's licence is found to be fake;,,,

(c) where the person is in possession of a learner's licence. and the Hon"ble Supreme Court has concluded with the following summary of,,

findings:-""102. The summary of our findings to the various issues as raised in these petitions is 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 u/s 163A 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 a 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 wherefore 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",,,

circumstances 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 the insured unless the",,,

said breach or breaches of 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 insurer u/s 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 learners

licence, the insurance companies would be liable to satisfy the",,,
decree.,,,

(ix) The Claims Tribunal constituted u/s 165 read with Section 168 is empowered to adjudicate all claims in respect of the accidents involving,,

death or bodily injury or damage to property of third party arising from 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 the insurer and the insured. The decision rendered on the claims and disputes inter se between the insurer and,,

insured in the course of adjudication of claim for compensation by the claimants and the award made thereon is enforceable and executable in the,,

same manner as provided 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 u/s 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 the proviso thereunder and sub-section (5) which are intended to cover specified,,

contingencies mentioned therein to enable the insurer to recover the 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 the 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.,,

30. That the driver did not possess valid driving licence and that there was breach of conditions of policy has to be proved by the insurer. As held,,

in Swaran Singh's case, to avoid its liability, the insurer has to prove that the insured was guilty of negligence and failed to exercise reasonable care",,,

in the matter of fulfilling the conditions of the policy regarding use of the vehicles by duly licensed driver.,,

31. Cases where the Insurance Company was exonerated from its liability and ""no order as to pay and recover"":-",,,

Learned counsel for Appellant-Insurance Company placed reliance upon New India Assurance Co. Ltd. Vs. Manjit Kaur and Others, to contend",,,

that the Claimant has to realise the amount of compensation only from the insured. In the said case, the owner-cum-driver of Maruthi car was not",,,

holding driving licence. Both Tribunal and the High Court held that Claimant would be entitled to realise the amount of compensation as assessed,,

from the driver of the offending vehicle, particularly, when he happened to be the owner of the vehicle. The Hon"ble Supreme Court declined to",,,

interfere with the award passed by the Tribunal and confirmed by the High Court. The said case was a case of owner himself driving the vehicle,,

and having no licence at all.,,

32. In Ram Babu Tiwari Vs. United Indian Insurance Co. Ltd. and Others, , where driving licence expired on 11.2.1993 and not renewed till",,,

6.2.1996. There was no valid driving licence during the period from 11.2.1993 to 6.2.1996, particularly, on the date of accident i.e. 27.1.1996.",,,

Pointing out that after three years from the date of expiry, there was no renewal of licence and that question as to whether the owner of the vehicle",,,

had taken care to inform himself as to whether the driver entrusted to drive the vehicle was having a licence or not is essentially a question of fact,,

and that he has not renewed the licence after three years, the Hon"ble Supreme Court held that insurer of the vehicle would not be liable to",,,

indemnify the insured.,,

33. Learned counsel for Appellant-Insurance Company has placed reliance upon United India Insurance Co. Ltd. Vs. E. Rajamanickam and,,

Balasubramani, in which one of us (RPSJ) held that when there was violation of conditions of Policy, the insurer cannot be fastened with liability. It",,,

was the case of no licence and the rider of two wheeler did not have valid driving licence and therefore, it was held that principle of "pay and",,,

recover" cannot be applied to the case.,,,

34. The cases relied upon by the learned counsel for Appellant-Insurance Company are the cases where the driver did not have any licence at all,,

and those decisions cannot be applied to the case on hand. The present case cannot be considered as a case of having no driving licence at all. As,,

held in Swaran Singh's case, it is the obligation on the part of the owner to take adequate care to see that the driver had appropriate licence.",,,

When the owner is hiring a driver, it is his responsibility to check whether the driver has a valid driving licence.",,,

35. Regarding the responsibility cast upon the owner to verify whether the driver had driving licence, in United India Insurance Company Ltd. Vs.",,,

Lehru and Others, , the Hon"ble Supreme Court held as under:-",,,

20. When an owner is hiring a driver he will therefore have to check whether the driver has a driving licence. If the driver produces a driving,,

licence which on the face of it looks genuine, the owner is not expected to find out whether the licence has in fact been issued by a competent",,,

authority or not. The owner would then take the test of the driver. If he finds that the driver is competent to drive the vehicle, he will hire the driver.",,,

We find it rather strange that insurance companies expect owners to make enquiries with RTOs, which are spread all over the country, whether the",,,

driving licence shown to them is valid or not. Thus where the owner has satisfied himself that the driver has a licence and is driving competently,,

there would be no breach of Section 149(2)(a)(ii). The insurance company would not then be absolved of liability. If it ultimately turns out that the,,

licence was fake, the insurance company would continue to remain liable unless they prove that the owner/insured was aware or had noticed that",,,

the licence was fake and still permitted that person to drive. More importantly, even in such a case the insurance company would remain liable to",,,

the innocent third party, but it may be able to recover from the insured.....",,,

36. The owner of the vehicle has responsibility to see that the driver had valid driving licence. It is the question of fact to be decided whether the,,
owner of the vehicle committed breach of terms and conditions of the contract of insurance and also the provisions of the Act by consciously,,
allowing any person to drive the vehicle who did not have valid driving licence. In the Tribunal, the owner-5th Respondent remained ex-parte.",,,
Since the owner-5th Respondent remained ex-parte, no evidence was adduced to show that the owner exercised a reasonable care to verify that",,,
the driver had a valid driving licence. As pointed out earlier, the driver of the offending lorry had licence to drive ""light motor vehicle"" and the",,,
driving licence also carries an endorsement to drive ""transport vehicle"". When the driver produced the driving licence with endorsement to drive",,,
"transport vehicle" the owner is not expected to verify further details and prima facie he must have been satisfied that the driver had a valid driving,,
licence. It is the duty of the insurer to substantiate the plea that the vehicle was driven by a person who was not duly licensed and that the,,
owner/insured was aware that the driver did not have a valid driving licence.,,
In any event, the Insurance Company would remain liable to the innocent third party, but it may be able to recover from the insured.",,,
37. The heading Insurance of Motor Vehicles against Thirty Party Risks given in Chapter XI of the Motor Vehicles Act, 1988 (Chapter VIII of the",,,
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,,
situation, the legislature has made it obligatory that no motor vehicle shall be used unless a third party insurance is in force.",,,
38. In recent decision S. Iyyapan Vs. United India Insurance Company Ltd. and Another, , the driver was holding a licence to drive light motor",,,
vehicle and there was no endorsement to drive the commercial vehicle. Observing that it is statutory right of a Thirty Party to recover the amount of,,
compensation awarded from the insurer and directing pay and recover, the Hon"ble Supreme Court held as under:-",,,

17. Reading the provisions of Sections 146 and 147 of the Motor Vehicles Act, it is evidently clear that in certain circumstances the insurer's right",,

is safeguarded but in any event the insurer has to pay compensation when a valid certificate of insurance is issued notwithstanding the fact that the,,

insurer may proceed against the insured for recovery of the amount. u/s 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 any event there has been violation of any condition of the insurance policy.,,

39. In National Insurance Co. Ltd. Vs. Laxmi Narain Dhut, , the Hon"ble Supreme Court referring to Swaran Singh's case and holding that the",,

Insurance Company cannot avoid its liability in case of Third Party risks held as under:-,,

In view of the above analysis the following situations emerge:,,

1. The decision in Swaran Singh's case (supra) has no application to cases other than third party risks.,,

2. Where originally the licence was a fake one, renewal cannot cure the inherent fatality.",,

3. In case of Third Party risks the Insurer has to indemnify the amount and if so advised, to recover the same from the insurer.",,

4. The concept of purposive interpretation has no application to cases relatable to Section 149 of the Act.,,

40. The Hon"ble Supreme Court has consistently held that in case of Third Party risks the insurer has to indemnify the amount and if so directed, to",,

recover the same from the insured. Here in this case, the claim has been made by the dependants in respect of death of Venkata Kondaiya who",,,

was riding a two wheeler and the Claim is in respect of Third Party claim. As per the consistent view taken by the Hon"ble Supreme Court, the",,,

Insurance Company in case of Third Party risks, the Insurance Company has to indemnify the insured. Therefore, we are of the view the Tribunal",,,

was right in directing the Appellant-Insurance Company to pay and recover.,,

41. Point No. 5:-,,

Quantum of compensation Deceased Venkata Kondaiya was working as Riveter Grade II in the Electrical and Mechanical Department in Chennai,,,

Port Trust and was getting salary of Rs. 10,395/- per month. In her evidence, P.W. 1 has stated that at the time of accident, her husband was",,,

working in Chennai Port Trust and was earning Rs. 15,000/- per month. To prove that deceased was working in Chennai Port Trust, Claimants",,,

have examined P.W. 3-Rajan, the then Assistant Superintendent working in Chennai Port Trust. In his evidence, P.W. 3 has stated that deceased",,,

Venkata Kondaiya was working in Chennai Port Trust in Electric Department and was earning Rs. 10,395/- per month. Ex. P6 is the salary",,,

certificate issued by the Chennai Port Trust. In his evidence, P.W. 3 further stated that had the deceased Venkata Kondaiya been alive, he would",,,

have got further promotion and would have earned more salary.,,

42. By perusal of Ex. P6-salary certificate, it is seen that the gross salary of the deceased is Rs. 10,395/- per month. Tribunal has taken the",,,

monthly income of the deceased at Rs. 10,000/- and the annual income at Rs. 1,20,000/- and deducting one-third for personal expenses, Tribunal",,,

has calculated the loss of contribution to the family at Rs. 80,000/- per annum, which in our considered view is reasonable and the same is",,,

maintained.,,

43. In the Claim Petition, the age of the deceased was mentioned as 38 years. As per Ex. P5-driving licence of deceased, the date of birth is",,,

mentioned as 10.1.1964 and on the date of accident i.e. on 05.10.2002, deceased was aged 38 years. Tribunal has adopted multiplier ""16"" for",,,

calculating the loss of dependency. As per Second Schedule to M.V. Act, for age group 35-40, the proper multiplier to be adopted is ""16"", which",,,

the Tribunal has rightly adopted and the same is maintained. Adopting multiplier

"16", the "loss of dependency" is calculated at Rs. 12,80,000/-",

(Rs. 80,000 x 16 = Rs. 12,80,000/-) and the same is confirmed.",

44. Insofar as conventional damages, Tribunal has awarded Rs. 2,000/- for "funeral expenses"; Rs. 5,000/- for "loss of consortium" and Rs.",

2,500/- for "loss of estate" which in our considered view is reasonable and the same are maintained. The total compensation of Rs. 12,89,500/-",

awarded by the Tribunal is just and reasonable and the same is confirmed. Appellant-Insurance Company is directed to pay the said compensation,,

of Rs. 12,89,500/- along with interest at the rate of 7.5% per annum from the date of Claim Petition till the date of realisation to the Claimants and",

recover the same from the 5th Respondent, owner of the vehicle.",

45. In Oriental Insurance Co. Ltd. Vs. Shri Nanjappan and Others, in Para No. (7), the Hon"ble Supreme Court indicated the mode to recover",

the compensation from the insured. Para No. (7) reads as under:-,,

For the purpose of recovering the compensation amount from the insured, the Insurer shall not be required to file a Suit. It may initiate a",

proceeding before the concerned Executing Court as if the dispute between the Insurer and the insured was the subject matter of determination,,

before the Tribunal and as if the issue is decided against the owner and in favour of the Insurer. A notice shall be issued to the insured to furnish,,

security for the entire amount. The offending vehicle shall be attached as a part of the security. If necessity arises, the Executing Court shall take",

assistance of the concerned Regional Transport Authority. The Executing Court shall pass appropriate orders in accordance with law as to the,,

manner in which the insurer/owner of the vehicle shall make payment to the Insurer. In case there is any default it shall be open to the Executing,,

Court to direct realisation by disposal of the securities to be furnished or from any other property of the insured.,,

(Emphasis added),,

In the result, the award passed by the Tribunal in M.C.O.P. No. 126 of 2003 dated 9.1.2007 on the file of Motor Accident Claims Tribunal (Sub-",

Court), Tiruvallur is confirmed and the appeal is dismissed directing the Appellant-Insurance Company to pay the compensation to the Claimants",

and recover the same from the 5th Respondent, owner of the lorry bearing registration No. TN-20 Z 3024 as per the mode stated in Paragraph",

(7) of Oriental Insurance Co. Ltd. Vs. Shri Nanjappan and Others, .",,,

M.P. No. 1 of 2013 is allowed and the certified copy of Registration Certificate of the lorry bearing registration No. TN-20 Z 3024 is marked as,,

Ex. P8 in the appeal.,,

It was stated before us that as per order in M.P. No. 1 of 2008 dt. 14.8.2008, Appellant-Insurance Company has deposited the entire",,,

compensation amount awarded by the Tribunal along with accrued interest to the credit of M.C.O.P. No. 126 of 2003 on the file of Motor,,

Accident Claims Tribunal (Sub-Court), Tiruvallur.",,,

2nd Claimant-Kumar is said to have attained majority. 2nd Claimant is permitted to withdraw his share along with accrued interest, after declaring",,,

himself as major by filing necessary application before the Tribunal.,,

1st Claimant is permitted to withdraw her share along with accrued interest, if already not withdrawn, immediately after the receipt of copy of this",,,

judgment. The share in respect of minor 3rd Claimant-Suji is ordered to be invested in anyone of the nationalised bank till she attains majority and,,

the 1st Claimant-mother is permitted withdraw the accrued interest once in three months directly from the Bank. It is brought to the notice of the,,

Court that the 4th Claimant-Ramulamma is dead. The 4th respondent, being the mother of the deceased, the amount apportioned to her share shall",,,

be apportioned amongst all the other Claimants 1 to 3 equally.,,

Consequently, connected Miscellaneous Petition if any is closed. No costs.",,,