THE HON'BLE SRI JUSTICE B. CHANDRA KUMAR

M.A.C.M.A. No. 943 of 2009

Judgment:

The National Insurance Company Limited, represented by its Divisional Manager, aggrieved by the award dated 01.05.2008 passed in OP No. 1670 of 2006 by the X Additional Chief Judge (FTC), City Civil Court, Hyderabad-cum-Motor Accidents Claims Tribunal, filed this appeal.

Respondents 1 to 3 herein are the claimants, the respondents 4 and 5 herein are the previous and present owners of the lorry respectively and they are shown as respondents 1 and 2 respectively before the Tribunal. The appellant herein is the third respondent before the Tribunal.

The parties hereinafter will be referred to as they are arrayed before the Tribunal for the sake of convenience.

The brief facts of the case are as follows. On 20.04.2006 at about 7.00 PM one the deceased Mudavath Valya along with his friends Katravath Narsimha and Katravath Somla were proceeding on a Scooter bearing No. APT-12-3454 from Balanagar to Utukunta Thanda. The scooter was being driven by the deceased Valya. Somla was sitting in between Valya and Narasimha. When the said scooter reached Balanagar Bridge on national highway No.7, the offending lorry bearing No.AP 28-V 3884 being driven by its driver came behind the scooter. It is alleged that the driver of the lorry drove the same in a rash and negligent manner and dashed to the scooter from backside, as a result of which all the three persons proceeding on the scooter fell down and sustained bleeding injuries. Valya (deceased in the present

case) and K. Somla died on the spot. The injured Narasimha proceeded to the police station and lodged a complaint to the police, basing on which the police, Balanagar registered a case in Crime No.113 of 2006. The driver of the lorry was arrested on 15.05.2006. The Investigating Officer recorded the statements of witnesses, conducted scene of offence panchanama in the presence of mediators, held inquest over the dead bodies of both the deceased persons, got the vehicle inspected by the Motor Vehicle Inspector and after completing investigation, laid charge sheet against the driver of the lorry. The first claimant is the wife, the second claimant is the father and the third claimant is the mother of the deceased Valya. Contending that the deceased was aged about 34 years as on the date of his death and earning Rs.5,000/- per month by working as driver, the claimants claimed compensation of Rs.5,00,000/-. It is also their case that the vehicle was previously registered in the name of the first respondent and the second respondent is the present owner of the vehicle and that the vehicle was insured with the third respondent insurance company and all the respondents are jointly and severally liable to pay compensation to them.

Respondents 1 and 2 remained *ex parte*. The third respondent-insurance company filed counter. It is the case of the Insurance Company that the claimants have to prove the age, occupation and income of the deceased. They have also disputed the narration and the manner of accident as averred by the claimants. Their specific case is that the driver of the lorry was not negligent and that he was not holding valid driving license on the date of accident and the claim is excessive and exorbitant. The insurance company has also denied the issuance of policy for the lorry involved in the accident.

The Tribunal formulated the following issues.

1. Whether the accident resulting in death of Valya occurred owing to the rash and negligent driving of the driver of lorry bearing No. AP 28V 3884?
2. Whether the petitioners are entitled for compensation and, if so, to what amount and from whom? And
3. To what relief?

On behalf of the claimants, the first claimant was examined as PW.1 and one Tourya was examined as PW.2 and Exs.A1 to A6 were marked. On behalf of the insurance company RW.1 was examined and the copy of insurance policy was marked as Ex.B1.

The Tribunal, on consideration of oral and documentary evidence, came to the conclusion that there is contributory negligence of 25% on the part of the scooterist and 75% on the part of the driver of the lorry and accordingly apportioned the negligence. On issue No.2 the Tribunal has taken the income of the deceased at Rs.3000/- per month and after deducting 1/3rd towards his personal expenses, determined the annual loss of dependency at Rs.24,000/- (3000 – 1000 = 2000 x 12 = 24000/-) and by applying the multiplier '16', estimated the total loss of dependency and awarded total compensation of Rs.3,93,500/-, which includes Rs.2000/- towards funeral expenses, Rs.2,500/- towards loss of estate and Rs.5,000/- towards loss of consortium. Aggrieved by the same, the insurance company preferred this appeal.

Sri Kota Subba Rao, learned counsel for the Insurance Company, submitted that the injured lodged a complaint stating that an unknown lorry caused the accident and the lorry driver did not stop the lorry at the place of accident and that the documents filed by the claimants, particularly the contents of charge sheet also go to show that the lorry driver was arrested on 15.05.2006 and these circumstances reveal that the lorry was not stopped at the place of

accident. Sri Kota Subba Rao has also taken me through the recitals of FIR, charge sheet and the deposition of PW.2 and it is his submission that according to PW.2, who claimed to have witnessed the accident, after the accident he and others stopped the lorry and handed over he lorry driver to the police. His main submission is that the evidence of PW.2 is contrary to the version of the injured complainant and recitals of charge sheet, and therefore the very involvement of the lorry in the accident is doubtful. It is also his submission that even if the involvement of the lorry in the accident is accepted, there is no evidence to show that the lorry was driven in a rash and negligent manner at the time of accident. It is also his contention that in the above circumstances, the claimants ought to have impleaded the driver of the lorry. He has relied on a decision reported in **APSRTC v. N. Krishna Reddi**[1], in support of his contention that merely because the police filed charge sheet against a driver of the vehicle, it cannot be presumed that the allegations made in the charge sheet are true. He has also relied on a decision of the apex Court reported in **Oriental Insurance Co.Ltd., v. Meena Variyal**[2], in support of his contention that the driver of the vehicle ought to have been made as party to the proceedings. It is also his submission that the police ought to have sent accident information report in Form 54 of the Central Motor Vehicles Rules 1989 and also furnished a copy of the same to the insurance company and that the Tribunal ought to have enquired whether the accident information report relates to a real accident or it is the outcome of any collusion and fabrication of an accident. In support of the said contention he has relied on a decision reported in **Jai Prakash v. National Insurance Co. Ltd**[3]. He has also relied on a decision reported in

Machindranath Kernath Kasar v. D.S. Mylarappa[4], in support of his contention that the driver of the vehicle ought to have been examined in this case. It is also his contention that when three persons travel on a motor cycle which is meant for two persons, that itself shows that there is a contributory negligence and in support of the said contention he has relied on a judgment in case between **National Insurance Co.Ltd., v. S. Chitra**[5]. He has further submitted that since the driver of the lorry has been acquitted by the competent criminal court and the judgment of the criminal court reveals that none of the prosecution witnesses had supported the police case that circumstance also supports the version of the insurance company that the involvement of the lorry in the accident is doubtful.

Per contra, Smt. A. Chayadevi, learned counsel for the claimants, submitted that it is not necessary to implead the driver of the vehicle as a party in all the cases. Depending upon facts and circumstances of the case, the Tribunal may decide the same and in no case the driver is being impleaded as party and accident information reports are not being sent to the police promptly. Her main submission is that as far as the claimants are concerned, they have been claiming compensation for the death of the deceased, who is a third party and the relevant provisions of M.V. Act being beneficial provisions have to be liberally interpreted. It is also her submission that merely because there are laches on the part of the police officials during the course of investigation, that should not be a ground to deny compensation to the victims of road accidents. It is also her submission that the insurance company being an organization having sufficient means could have got the matter enquired by appointing an enquiry officer and collected necessary documents and evidence in support of its pleas. Thus, her submission is that there must be

foundation and basis by making specific pleas and then evidence must be adduced to substantiate the same. Her submission is that as far as the claimants are concerned, they have made specific averments, let in oral and documentary evidence. She further submits that in this case the Investigating Officer has visited the place of accident, conducted scene of offence panchanama and held inquest over the dead bodies of the deceased persons and arrested the driver of the lorry and the evidence of PW.2 proves that the driver of the lorry drove the same in a rash and negligent manner and dashed to the scooter from its backside, these circumstances clinchingly establish that the accident occurred due to rash and negligent driving of the driver of the lorry. Her next submission is that findings of a criminal court while acquitting a driver are not binding on Tribunals and the Tribunal basing on the evidence adduced before it should determine the issue of negligence of the driver. Her further submission is that there is nothing on record to show that the lorry is not involved in the accident or that there was any collusion between the owner of the lorry and the police and the claimants. It is also her submission that the Insurance Company did not make any plea that the vehicle is not involved in the accident and without making any such plea in their counter the insurance company is not justified in taking that plea at the appellate stage. Her further submission is that when the claimants have filed necessary documents and examined PW.2, the burden shifted to insurance company and the insurance company ought to have adduced evidence in support of their contention. It is also her contention that the insurance company had not taken any plea that the police have filed a false case against the driver of the lorry or that the insurance company had made any such complaint to the higher police officials. Her further submission is that each case has to be decided on its own

facts and circumstances and that the facts of the cases relied on by the learned counsel for the insurance company are entirely different and can be distinguished and they are not applicable to the case on hand. She has further argued that in many cases police do not show the correct date and time of the arrest of the accused even though they take the accused into their custody and for the reasons best known to them they show the arrest of the accused according to their convenience. It is also her submission that the version of PW.2 cannot be doubted, merely because the version of police is different with regard to the date and time of the arrest of the driver. It is also her submission that if at all PW.2 wanted to support the claimants case he would have deposed that the driver was not arrested at the place of accident which version would be in tune with the case of the claimants and police. It is also her submission that the insurance company had even denied the subsistence of policy, but however subsequently they themselves produced the copy of policy. According to Smt. Chaya Devi, even the finding of the Tribunal with regard to apportioning of the negligence i.e., 25% on the part of the scooterist and 75% on the part of the lorry driver, is incorrect and not based on any evidence.

In reply, Sri K. Subba Rao has submitted that the code of civil procedure is not applicable to the proceedings before the claims Tribunals and therefore merely because there was no plea in the counter of the insurance company, that cannot be a ground to reject the contention of the insurance company. On the other hand, Smt. A. Chaya Devi submits that whether there is a plea or not, but the Tribunal is bound to follow fair procedure and fair procedure requires that a plea, which will be a surprise at belated stage, cannot be taken.

The points that arise for consideration are whether the lorry is not involved in the accident and whether the claimants have proved

that the accident occurred due to rash and negligent driving of the driver of the lorry and whether the insurance company is not liable to indemnify the owner of the vehicle.

The claimants specific case is that the deceased Valya along with Narasimha and Somla were proceeding on the scooter which was being driven by Valya and when the said scooter reached Balanagar bridge on national highway No.7 the offending lorry being driven by its driver in a rash and negligent manner dashed to the scooter from its backside and caused the accident at about 7.00 PM. Admittedly, as a result of this accident, both the deceased Valya and Somla died on the spot. It is true that in the FIR lodged by K. Narsimha, the sole surviving injured, he had mentioned that the scooter was dashed by an unknown lorry and that the lorry driver did not stop the lorry at the place of accident. But, however, there is a recital in his complaint to the effect that he would identify the lorry, if it is shown to him. The recitals of charge sheet go to show that the investigating officer recorded the statements of one eye witness namely Kottakapu Jangireddy and the owner of the crime vehicle Kotavath Venkatesh. It also reveals that he had visited the place of accident and conducted panchanama at the scene of accident in the presence of mediators. The Investigating Officer had mentioned in the charge sheet that basing on the statements of the eye witnesses and owner of the vehicle, the identity of the crime vehicle was established. It also reveals that then he arrested the driver of the lorry on 15.05.2006 and sent him for judicial remand. After completing investigation he laid charge sheet against the driver of the lorry. The charge sheet has been filed for the offences punishable under Section 304-A IPC and under Section 134/187 of the MV Act. Thus, the charges include the inaction on the part of the driver in not rendering

any help to the injured persons and in not furnishing the information to the police and the insurer as required under Sub-section (6) of Section 158 of the M.V. Act. The said provision is as follows.

> "As soon as any information regarding any accident involving death or bodily injury to any person is recorded or report under this section is completed by a police officer, the officer incharge of the police station shall forward a copy of the same within thirty days from the date of recording of information or, as the case may be, on completion of such report to the Claims Tribunal having jurisdiction and a copy thereof to the concerned insurer, and where a copy is made available to the owner, he shall also within thirty days of receipt of such report, forward the same to such Claims Tribunal and Insurer."

It is apt to quote the relevant paras in case between **Jai Prakash v. National Insurance Co.Ltd** (3 supra), relied on by the learned counsel for the insurance company, which are as follows.

> "**Directions to Police Authorities:**
>
> 8. The Director General of Police of each State is directed to instruct all Police Stations in his State to comply with the provisions of Section 158(6) of the Act. For this purpose, the following steps will have to be taken by the Station House Officers of the jurisdictional police stations:
>
> (i) Accident Information Report in Form No. 54 of the Central Motor Vehicle Rules, 1989 ('AIR' for short) shall be submitted by the police (Station House Officer) to the jurisdictional Motor Vehicle Claims Tribunal, within 30 days of the registration of the FIR. In addition to the particulars required to be furnished in Form No. 54, the police should also collect and furnish the following additional particulars in the AIR to the Tribunal: (i) The age of the victims at the time of accident; (ii) The income of the victim; (iii) The names and ages of the dependent family members.

(ii) The AIR shall be accompanied by the attested copies of the FIR, site sketch/mahazar/photographs of the place of occurrence, driving licence of the driver, insurance policy (and if necessary, fitness certificate) of the vehicle and postmortem report (in case of death) or the Injury/Wound certificate (in the case of injuries). The names/addresses of injured or dependant family members of the deceased should also be furnished to the Tribunal.

(iii) Simultaneously, copy of the AIR with annexures thereto shall be furnished to the concerned insurance company to enable the Insurer to process the claim.

(iv) The police shall notify the first date of hearing fixed by the Tribunal to the victim (injured) or the family of the victim {in case of death) and the driver, owner and insurer. If so directed by the Tribunal, the police may secure their presence on the first date of hearing.

Suggestions for Insurance Companies:

15. In cases of death, where the liability of the insurer is not disputed, the insurance companies should, without waiting for the decision of the Motor Accidents Claims Tribunal or a settlement before the Lok Adalat, endeavour to pay to the family (Legal representatives) of the deceased, compensation as per the standard formula determined by the decisions of this Court.

16. In cases of injuries to any accident victim, where the liability is not disputed, the insurer should offer treatment at its cost to the injured, without waiting for an award of the Tribunal. If insurance companies can meet the bills for treatment of those who have taken a medical insurance policy, we see no reason why they should not extend a similar treatment to the accident victims of vehicles insured with them.

Thus, the police concerned should comply with the provisions of Section 158(6) of the M.V. Act, 1988. There is nothing on record in

this case to show that the police officer who completed the investigation had sent any report as required under sub-section (6) of Section 158 of the M.V. Act. There cannot be any doubt to say that the driver of the lorry ought to have stopped the vehicle as required under Section 132 of the M.V. Act and he ought to have informed the police as required under Section 133 of the M.V. Act and ought to have taken steps to secure medical attention for the injured person and he ought to have given information to the insurer about the occurrence of the accident as required under Section 134(c) of the M.V. Act. However, the point that arises for consideration is whether for the failure of the driver or owner of the vehicle to comply with the statutory requirements as provided under the M.V. Act, whether the claimants should be deprived of their compensation. Similarly, merely because the investigating officer has not sent any information as required under Sub-Section (6) of Section 158 of the M.V. Act, whether the claim of the claimants has to be dismissed.

It has to be seen that the owner of the vehicle remained ex parte. It is settled law that as and when the insurance company claims that it can avoid its liability burden lies on it to specifically aver the violations committed by the insured and to prove them. No steps were taken to summon him by the insurance company. It has to be seen that the police seems to have examined him and the police have not charge sheeted him for any of the offences as mentioned supra. Of course, the driver of the vehicle is not made as party to the proceedings. Nothing prevented the insurance company to file an application to implead the driver or to summon the driver or owner of the vehicle and to examine him in support of their case. Sri K. Subba Rao, learned counsel for the insurance company, though appears to be right in saying that the strict compliance of code of civil procedure is

not applicable to the proceedings under the M.V. Act while dealing with the claim applications, but at the same time it cannot be disputed that the issues have to be framed on the basis of the pleadings of the parties. Therefore, the pleadings of the parties assume much importance.

Before denying the contentions of the claimants, the insurance companies are expected to make necessary enquiries as to whether the vehicle is insured with it and whether the claimants are the legal heirs and dependents of the deceased. I am shocked to observe that Insurance Companies without any regard for truth in most of the cases state in their counter that the vehicle involved in the accident is not insured with their company and it is for the claimants to prove the same and subsequently the insurance company itself produces the policy. When the Insurance Company is the custodian of records is it justified in denying the coverage of policy in counter and throw burden on claimants to prove the same? It is not just and legal on the part of the insurance companies to make incorrect or false pleas that the vehicle is not insured with it without verifying the facts. Such pleading amounts to false pleadings and misleading the Court. All the pleas of Insurance Company should be based on the facts ascertained after due verification.

Truth shall succeed if fraud is detected by the Insurance Company, it must resist the same and prove the same before the Tribunal. In case of hit and run or when an accident is caused by a vehicle not insured, the possibility of involving a vehicle which is insured cannot be ruled out. Similarly false implication of a driver having driving licence when the vehicle was in fact driven by a driver who does not have valid driving licence also cannot be ruled out. Our experience shows that false implication of innocent persons in murder

case cannot be ruled out. If that is the case in murder cases, the false implication of an accused in case of 304-A IPC cannot be ruled out. The Insurance Companies, therefore, should make necessary enquiries.

It is the duty of the superior police officers to see that, no driver or a vehicle is falsely implicated in a case. Prompt investigation, time to time supervision helps in this regard, seizure of all the necessary documents from the vehicle, driver and sending copies of the same to the superior officers helps a lot in this regard. The insurance companies should impress upon the Government and superior police officials to see that they receive accident information report or copy of FIR immediately after the occurring of the accident. They should verify the facts as early as possible. Delay in dispatch of FIR and records to the Courts and Superior Officers always gives scope for fabrication of false cases. The words used in sub-section 6 of Section 158 of the M.V. Act "within thirty days" have to be interpreted as early as possible. The interest of insurance companies can be protected by seeing that no vehicle is falsely implicated in any accident. The police officials who reach at the spot have a great role to play while investigating any criminal case. Their promptness and presence of mind result in successful investigation and ultimately assists the Court in arriving at truth. Similarly, the RTA officials who inspect the vehicle also should note all the particulars of driving licence, insurance policy. Therefore, the investigating officers should collect all necessary documents as directed by the apex Court in the case referred third supra and send copies of the same. If the insurance companies receive information immediately soon after the accident, then it would help them to act immediately and to ascertain the facts and to put forth their pleas.

Though false implication of a vehicle cannot be totally ruled out, but there must be some evidence and some basis to prove the same. First of all, in the case on hand, there is no specific plea by the insurance company in their counter that the vehicle said to have been involved in the accident is not in fact involved in the accident, but it is falsely involved in the case. Admittedly, the insurance company has not questioned the charge sheet filed against the driver of the lorry and there is nothing on record to show that the insurance company lodged any complaint to the superior police officials complaining that the vehicle is falsely implicated in the case or that there is collusion between the claimants, insured and the local police. It is not in dispute that the police after completing investigation laid charge sheet against the driver of the lorry. As discussed above, the recitals of the charge sheet go to show that the investigating officer had visited the scene of accident and observed the same and prepared scene of offence crime panchanama in the presence of mediators. Admittedly, no issue was framed by the Tribunal to the effect that the alleged crime vehicle is falsely implicated in the case. In the absence of any such plea or an issue, there was no occasion for the claimants to lead evidence on that issue. A reading of the averments of the petition and the counter give an impression that the involvement of the vehicle is not in dispute. What Insurance Company pleaded is that there is no negligence on the part of the driver of the lorry and that there is contributory negligence. It has also disputed the coverage of policy and averred that the driver of the vehicle was not holding a valid driving license to drive the vehicle. In the absence of any plea doubting the involvement of the vehicle, the Tribunal seems to be justified in relying on the documents filed by the claimants and also on the evidence of PW.2. Of course, PW.2 has admitted that he was not examined by the police

and, admittedly, his name does not find place in the list of witnesses of the charge sheet filed by the police. Of course, the version of PW.2 that the vehicle was stopped at the place of accident and that he along with others caught hold of the driver and handed over him to the police is contrary to the prosecution case and recitals of FIR in Ex.A1. Even if it is accepted that a part of the evidence of witness is false, it does not mean that his entire evidence has to be discarded. It has to be seen that through PW.1, the wife of the deceased, the documents have been marked and PW.2 claims to have witnessed the accident. According to him, the lorry came at high speed and dashed to the scooter from its backside. He further deposed that he went to the hospital and there the police recorded his statement. It has to be seen that no suggestion has been given to PW.2 that the offending vehicle is not involved in the accident and that the vehicle is falsely implicated in the case. Similarly, no such suggestion has been given to PW.1 also. Thus, no foundation has been laid by the insurance company to say that the involvement of the vehicle is doubtful or that the vehicle is falsely implicated in the case.

Coming to the decisions relied on by the learned counsel for the insurance company, those cases can be distinguished on facts. In **APSRTC v. N. Krishna Reddi** (1 supra), the bus belonging to APSRTC and a van insured with respondent No.3-insurance company were involved in the accident. The injured claimed compensation alleging that the driver belonging to APSRTC drove the vehicle in a rash and negligent manner. The Van driver died in the accident. Police filed charge sheet against the driver of the bus. No evidence was adduced on behalf of the insurance company. On behalf of APSRTC its driver was examined. The Tribunal held that the accident occurred due to the rash and negligent driving of the bus by RW.1

mainly on the basis that he was charge sheeted by the police. In the above circumstances, this Court observed that merely because the police charge sheeted RW.1 it cannot be presumed that the allegations made therein are true and that the allegations in the charge sheet have to be proved by adducing evidence referring to the contents of the charge sheet filed in that case. It was observed as follows.

> "It is significant to note that Ex.A2, certified copy of the charge sheet, does not show that the investigating officer took pains to visit the scene of accident and verify as to how actually the accident took place. He did not even take pains to conduct a panchanama of the scene of accident and draw a sketch of the scene of accident, though the driver of the van died in the accident."

In that case the report of the Motor Vehicle Inspector was not produced. But, in the case on hand, the recitals of charge sheet go to show that the SI of Police recorded the statements of witnesses, visited the scene of accident and conducted panchanama at the scene of accident in the presence of mediators and held inquest over the dead bodies of the deceased and then had sent requisition to the Motor Vehicle Inspector to inspect the vehicle after the arrest of the driver. The vehicle was inspected by the Motor Vehicle Inspector and the Motor Vehicle Inspector himself furnished a report holding that the accident was not due to any mechanical defect of the vehicle. It also reveals that the Investigating Officer had examined the owner of the crime vehicle. Thus, the facts of the present case appears to be different from the facts of the case relied on by the learned counsel for the insurance company.

Sri K. Subba Rao, learned counsel for the Insurance Company, has also relied on a decision reported in **Oriental Insurance Co.Ltd.,**

v. Meena Variyal (2 supra). In that case, the main dispute was whether the vehicle was driven by the deceased Suresh Chandra Variyal, the driver of the Car or by Mahmood Hasan at the time of accident. In that case Mahmood Hasan himself lodged a report to the police stating that the Car was driven by Suresh Chandra Variyal at the time of accident. Since there was a controversy as to whether it was Mahmood Hasan or the deceased himself was driving the Car, in the above circumstances, the apex Court observed that surely such a question could have been decided only in presence of Mahmood Hasan who would have been principally liable for any compensation that might be decreed in case he was driving the vehicle. It has to be seen that the deceased was not a third party in that case. The deceased was employee of the company, which was the owner of the Car. The main controversy was whether the deceased was a third party or not. It was held that since the deceased was not a third party and he was an employee of the owner of the vehicle, he was not covered by the policy and therefore the insurance company was not liable to reimburse the owner. It has to be seen that in that case also it was specifically held that the decision of **Swaran Singh's** case has no application to the cases other than third party risks. It was observed that in claims by a third party, there cannot be much doubt that once the liability of the owner is found, the insurance company is liable to indemnify the owner, subject of course, to any defence that may be available to it under Section 149(2) of the Act. Thus, it is clear that on facts, the decision relied on by the learned Insurance Company can be distinguished.

Each case has to be decided on its own facts and circumstances. Wherever and whenever it appears that involvement of vehicle itself is doubtful, then the insurance company should make

thorough investigation and collect all necessary documents and by adducing the required evidence should prove its contention.

Coming to the issue of contributory negligence, it appears that Sri K. Subba Rao, learned counsel for the insurance company, is right in saying that when three persons travel on a motor cycle which is meant for two persons, such act is sufficient to show that there is contributory negligence. He has relied on the decision reported in **National Insurance Co.Ltd., v. S. Chitra** (5 supra). In that case, the Madras High Court quoted paras 10, 11 and 12 from the case in between **Managing Director, Tamil Nadu State Trans. Corpn. Ltd. v. Abdul Salam (2004 ACJ 1827 (Madras)**, which are as follows.

> "(10) We are concerned as to whether such action of the individuals is permissible under law. The motor cycle and any other two-wheeler are meant only for two persons, the rider and a pillion rider. If more than two persons are travelling on a motor cycle or any other two-wheeler, undoubtedly such action of the individual would become illegal and unauthorized. It is an awful sight when we come across three persons travelling on a motor cycle. They are sitting in such a cramped manner that the rider of the motor cycle almost sitting on the petrol tank or at the front edge of the seat. When he was sitting in such a position, naturally because of the restricted movement of his legs, he cannot have complete control over the brake. The movements of his hands are also restricted. When that be so, this court is of the opinion that definitely the rider of the two-wheeler cannot have full control over the vehicle.
>
> (11) Apart from that, when three persons are travelling on a motor cycle, two as pillion riders, any unusual movement of the pillion riders would make the rider of the motor cycle to lose his control over the vehicle. Even though such travelling of three persons on a motor cycle is contrary to the statute, still the enforcement wing do not care to take note of the same and failed to take action against their illegal action. Virtually because of the failure on the part of the enforcement wing,

such travelling of three persons on the two-wheelers have become a regular sight. Even though the highway patrolling is available but it is a rare sight to see a highway patrolling vehicle. Travelling of three persons has become rampant in the mofussils and in the city; especially among the youngsters like the college students. When that be the case, the enforcing authority is expected to enforce the statute with some strictness to avoid any untoward incident. There is no purpose in conducting the Road Safety Week without infusing the road sense in compliance of the rules and regulations of the statute in the minds of those who are using the vehicles.

(12) When three persons travel on motor cycle which is meant for two persons, this court is of the view, the conduct of the persons who travel in such a manner is liable for contributory negligence; especially when their action is contrary to the statute."

In view of the above discussion, I hold that the negligence has to be apportioned between the scooterist and the driver of the lorry at 25% :: 75%.

I have gone through the evidence of RW.1 and the recitals of counter filed by the insurance company and whatever contentions that have been raised by RW.1 ought to have been raised by the insurance company in their counter. In the absence of any specific plea the settled legal position is that no amount of evidence will not be helpful. I have also gone through the award passed by the Tribunal on the issue of quantum and there appears to be nothing to interfere with the findings of the Tribunal on that issue. Though the award of the Tribunal is confirmed, but the same has to be apportioned in the ratio of negligence as indicated above.

Accordingly, the appeal is allowed in part. However, in the

circumstances, no costs.

B. CHANDRA KUMAR, J.

Date: 30.04.2011
Nsr

---

[1] 2004 (5) ALT 322
[2] 2007 ACJ 1284
[3] 2010 ACJ 455
[4] 2008(2) TAC 789 (SC)
[5] 2010 ACJ 1316