



CMA(MD).No.729 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Dated:28.10.2024

CORAM:

**THE HON'BLE Mrs. JUSTICE V.BHAVANI SUBBAROYAN
AND
THE HON'BLE Mr. JUSTICE K.K.RAMAKRISHNAN**

C.M.A(MD).No.729 of 2020

and

C.M.P.(MD).No.7330 of 2020

IFFCO-TOKIO General Insurance Company Ltd.,
Thiripura Arcade,
3rd Floor, No.75, Tiruvandram Road,
Palayamkottai, Tirunelveli-627 002.
Thirunelveli

... Appellant

Vs.

1. Selvi
2. Sivasankar
3. Ramkumar
4. Rajammal
5. Hakkim
6. Pattubala
7. Muthusamy

... Respondents



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Prayer : Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicle Act, 1988, to set aside the judgment and decree dated 09.09.2020 passed in M.C.O.P.No.310 of 2015 on the file of the Additional Motor Accident Claims Tribunal and Additional Subordinate Judge of Tenkasi by allowing this appeal.

For Appellant : Mr.V.Sakthivel

For Respondents : Mr.R.J.Karthick,
for R1 to R4

ORDER

[Order of the Court was made by **K.K.RAMAKRISHNAN.J.,**]

The Insurance Company filed this appeal challenging the award passed in M.C.O.P.No.310 of 2015 dated 09.09.2020 by the learned Additional Motor Accident Claims Tribunal and Additional Subordinate Judge, Tenkasi.

2.The respondents 1 to 4/claimants filed petition in M.C.O.P.No.310 of 2015 stating that on 15-05-2015, at 02.30 p.m the second respondent's car namely TATA Indica car bearing registration No.TN 76 2655, was driven



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by the 1st respondent, in which, the deceased Balasubramanian, Durai and Vasudevan and other persons were travelling. When the said car was proceeding, the 7th respondent's two wheeler suddenly crossed the road in rash and negligent manner and in order to avoid hitting the two wheeler bearing registration No.TN 72 P-5045, which belongs to the 7th respondent, the 1st respondent applied the brake, eventually, the car capsized on the road. The said Balasubramanian, Durai and Vasudevan sustained grievous injurious all over the body and the said Balasubramanian died on the spot. Based on the complaint, the jurisdictional Police Officer registered a case in Crime No.259 of 2015 for the offence under Section 279, 337 and 304(A) of IPC against the first respondent. Therefore, the legal representative of Balasubramanian namely the respondents 1 to 4/claimants filed petition in M.C.O.P.No.310 of 2015. The deceased Balasubramanian was the correspondent of Sri Niveda Nursery and Primary School, Shencottah and he was also a fruit merchant and his monthly income was Rs.35,000/- and hence, he claimed Rs.1,00,00,000/-(Rupees One Crore) as compensation. The said claim was contested by the Insurance Company of the car. The policy was act Policy and hence, the occupants of car are not eligible and no separate premium was paid and hence the company was not liable to pay the



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compensation. Further, the accident happened, due to the negligence on the part of the seventh respondent and hence, he is liable to pay compensation.

3.To prove the claim, the claimants examined four witnesses as P.W.1 to P.W.4 and exhibited 15 documents as Ex.P.1 to Ex.P.15. On the side of the insurance company, one witness was examined as R.W.1 and exhibited Policy/document as Ex.R.1.

4.The learned Trial Judge after considering the evidence and also interpreting the policy terms held that the accident happened due to the negligence on the part of the car driver. The Policy was comprehensive policy and there is a specific payment of premium of Rs.150/- and hence, the deceased Balasubramanian is entitled to claim under the purview of the policy and he is entitled for the compensation. Challenging the liability, the insurance company filed this appeal.

5.The learned counsel for the insurance company submitted that as per the policy produced before the Court below as Ex.R.1, it is act policy and hence, the learned Tribunal Judge wrongly held in holding that the



policy is a comprehensive policy. Further, there was no payment of premium amount for the occupants of the car. Therefore, learned Tribunal Judge ought not to have awarded compensation for the occupants of the car without any liability. Hence, he seeks for interference in the award by fixing liability upon the insurance company. For which, the learned counsel for the appellant/insurance company relied the following judgment of this Court as well as the Hon'ble Supreme Court:

- 5.1. In the case of *the National Insurance Company Limited Vs. Balakrishnan and others* reported in 2013 1 SCC 731.
- 5.2. In the case of the *National Insurance Company Limited Vs. Pooja Manoj Singh* in C.M.A.Nos.1835 of 2007 and 1235 of 2008.
- 5.3. In the case of the *New Indian Assurance company Limited Vs. S.Krishnasamy* in C.M.A.No.3567 of 2013.
- 5.4. In the case of *Branch Manager, New Indian Assurance Company Limited Vs. G.Sumathi* reported in 2021 (2) TNMAC 620 (DB).
- 5.5. In the case of *New India Assurance Company Limited Vs. Meenakshi* reported in 2023 (2) TN MAC 269 (DB).
- 5.6. In the case of *S.Vijayalakshmi and others Vs. Ashok Brothers Implex Limited and others* reported in MANU/TN/4980/2022.



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6.Per contra, the learned counsel for the respondents submitted that the learned Tribunal Judge considered the terms of the policy and correctly appreciated the terms of the policy and gave a finding that the deceased who was occupant of the car is entitled to claim under the said policy. Hence, she seeks for the dismissal of the appeal on the grounds that the learned tribunal judge correctly fixed the liability upon the insurance company.

7.This court considered rival submission made on either side and perused the materials available on record and also the material document namely the policy.

8.The points for consideration in this case is concerned, Whether the policy marked under Ex.R1 is a comprehensive policy or not?

8.1.Whether the contention of the learned counsel for the insurance company that the policy is an act policy and hence, the liability can not be fastened against the insurance company is correct or not?



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9.The policy is marked and it is not stated that it is either an act policy or comprehensive policy. Without any such description, this court is unable to appreciate the contention of the learned counsel for the Insurance company. Further, in this case, the premium was paid for the driver and also the personal accident owner cum driver Rs.100/-. In the policy, there was no express clause to disown the liability in respect of the occupants. The policy certificate is issued for the private car for insurance.

9.1.In the said circumstances, this Court is unable to accept the contention of the learned counsel for the Insurance company that the policy is a Act Policy. As per the act policy, the basic premium paid under third party premium was Rs.1,332/-. The third party is not defined in the act Policy. Admittedly, the sixth respondent is the owner of the vehicle. The policy stands in the name of the sixth respondent. In the said circumstances, third party means other than the insured. In the absence of any definition in the act policy, even in the policy, the third party includes the occupants of the car. In view of the payment of the money for third parties and the personal coverage and also for the driver, it is deemed that the policy is



comprehensive policy. The insurance company did not produce any documents to show that what is the ambit of the act policy and comprehensive policy. Further, the learned trial judge specifically considered the evidence of R.W.1. R.W.1 is specifically stated as follows.

ம.சா.ஆ.4 Act Policy Comprehensive Police – என்று குறிப்பிடவில்லை Liability Police + Fire and Coverage காலத்தில் உள்ளது என சாட்சியம் அளித்திருப்பதை பார்க்கும்போது ம.சா.ஆ.4 ஆனது, முன்றாம் தரப்பினர் பாலிசி அல்ல, என்பதும் அதை கூட்டுபாலிசி (Comprehensive Police) என்பதும் தெரியவருகிறது. 3-ம் எதிர்மனுதாரர் மனுதாரர்களுக்கு செலுத்த வேண்டிய இழப்பீடுகளில் இருந்து தப்பித்துக் கொள்வதற்காக ம.சா.ஆ.4 காப்பீடு சான்றிதழ் மேற்படி வாகனத்தின் ஓட்டுநருக்கும், வாகனத்திற்கு தீ விபத்து சம்பந்தமாக ஏற்பட்ட சேதத்திற்கும் காப்பீடு செய்யப்பட்டுள்ளது. மேற்படி வாகனத்தில் பயணம் செய்யப்பட்ட நபருக்கு காப்பீடு பெறப்படவில்லை என கூறுவது ஒருதலைபட்சமானது. மேற்படி வாகனம் தீ விபத்தில் சிக்கி இருந்தால் மேற்படி வாகனத்தில் பயணம் செய்த நபருக்கும் இழப்பீடு கொடுப்பதற்கு 3ம் எதிர்மனுதாரர் கடமைப்பட்டவர் என ஒப்புக் கொள்ளும்போது மேற்படி வாகனத்தில் பயணம் செய்யும் போது விபத்து ஏற்பட்டாலும் அதில் உள்ள பயணிகளுக்கு 3-ம் எதிர்மனுதாரர் தரப்பு வழக்கறிஞர் வாதம் ஏற்படையது அல்ல. ம.சா.ஆ.4 மேற்படி வாகனத்தில் பயணம் செய்த பயணிகளுக்கும் காப்பீடு செய்ததாகவே கருதப்படி வேண்டியுள்ளது.



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10. Further, he deposed that in the case of fire accident, the occupants of the car is entitled to the compensation. From the analysis of this evidence, the learner Tribunal judge held that the policy is comprehensive policy. The said analysis of the evidence by the learned Tribunal Judge is based on appreciation of the evidence of R.W.1 and the documents. This Court finds no perversity in the said finding of the learned Trial Judge. Under Section 64 U C of the Insurance Act, the insurance company shall follow the Tariff and Advisory committee, the rules, regulation, rates, advantage, terms and conditions for the transaction of the Motor Insurance Business in India and from 2007 onwards IRDA Insurance Regulatory and Development Authority the direction to the insurance company is in force for the above said purpose. Till 31-12-2006 the Tariff Advisory Committee and, thereafter, from 1-1-2007 IRDA functioned as the statutory regulatory authorities and they are entitled to fix the tariff as well as the terms and conditions of the policies issued by all insurance companies. Therefore, the insurance company is bound by the circular issued by the IRDA.



11.The Hon'ble Supreme Court in the case of ***Pushpabai Purshottam***

Udeshi vs.Ranjit Ginning and Pressing Co., reported in ***1977 ACJ 343***, has

held as follows:

20.....it is not required that a policy of insurance should cover risk to the passengers who are not carried for hire or reward. As under Section 95 the risk to a passenger in a vehicle who is not carried for hire or reward is not required to be insured the plea of the counsel for the insurance company will have to be accepted and the insurance company held not liable under the requirements of the Motor Vehicles Act.

21. The insurer can always take policies covering risks which are not covered by the requirements of Section 95. In this case the insurer had insured with the insurance company the risk to the passengers.

11.1.Consequent to the decision of the Apex Court in the case of ***Pushpabai Purshottam Udeshi v. Ranjit Ginning and Pressing Co.***, reported in ***1977 ACJ 343***, Tariff Advisory Committee as per Section 64 U C of the Insurance Act has issued a circular with regard to the liability of



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the Insurance Company in relation to private vehicle :

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*“TARIFF ADVISORY COMMITTEE
BOMBAY REGIONAL COMMITTEE*

“Circular M.V. No. 1 of 1978

Bombay 17th March 1978

*Insurance Company's Liability in Respect of
Gratuitous Passengers conveyed in a Private Car-
Standard Form for Private Car Comprehensive
Policy ? Section II ? Liability to Third-Parties.*

*I am directed to inform Insurers that advices have
been received from the Tariff Advisory Committee
to the effect that since the industry had all these
years holding the view on liability the same
practice should continue.*

*In order to make this intention clear, Insurers are
requested to amend clause 1(a) of Section II of the
Standard Private Car Policy by incorporating the
following words after the words ‘death of or bodily
injury to any person’ appearing therein:*

*‘Including occupants carried in the motor car
provided that such occupants are not carried for
hire or reward’*

*I am accordingly to request Insurers to make the
necessary amendment on sheet 38 of the Indian*



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Motor Tariff pending reprinting of the relevant sheet.

All existing Policies may be deemed to incorporate the above amendment as the above decision is being brought into force with effect from 25th March, 1977.”

The said circular has been followed by the insurance company till date.

12.The IRDA also reiterated the said circular, by issuing another following official circular dated 16.11.2009:

On 16th November, 2009, IRDA issued a Circular to CEOs of all the Insurance Companies restating the factual position relating to the liability of Insurance companies in respect of a pillion rider on a two-wheeler and occupants in a Private Car under the Comprehensive/Package Policy. The relevant portion of the said Circular is reproduced hereunder:

IRDA

*Ref: IRDA/NL/CIR/F&U/073/11/2009 November
16, 2009
To*



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CEOs of all General Insurance Companies

Re: Liability of Insurance Companies in respect of Occupants of a Private Car and Pillion rider on a Two-Wheeler under Standard Motor Package Policy [also called Comprehensive Policy].

Insurers' attention is drawn to wordings of Section II (1)(ii) of Standard Motor Package Policy (also called Comprehensive Policy) for Private Car and Two-Wheeler under the (erstwhile) India Motor Tariff. For convenience the relevant provisions are reproduced hereunder:

Section II - Liability to Third Parties:

1. Subject to the limits of liabilities as laid down in the Schedule hereto the Company will indemnify the insured in the event of an accident caused by or arising out of the use of the insured vehicle against all sums which the insured shall become legally liable to pay in respect of—

(i) death or bodily injury to any person including occupants carried in the vehicle (provided such occupants are not carried for hire or reward) but except so far as it is necessary to meet the requirements of Motor Vehicles Act, the Company



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shall not be liable where such death or injury arises out of and in the course of employment of such person by the insured.

It is further brought to the attention of insurers that the above provisions are in line with the following Circulars earlier issued by the TAC on the subject:

(i) Circular M.V. No. 1 of 1978 - dated 18th March, 1978 [regarding occupants carried in Private Car] effective from 25th March, 1977.

(ii) MOT/GEN/10 dated 2nd June, 1986 [regarding Pillion Riders in a Two-Wheeler] effective from the date of the Circular.

The above Circulars make it clear that the insured's liability in respect of Occupant(s) carried in a Private Car and Pillion Rider carried on Two-wheeler is covered under the Standard Motor Package Policy. A copy each of the above circulars is enclosed for ready reference.

The Authority vide circular No. 066/IRDA/F&U/Mar-08 dated March 26, 2008 issued under File & Use Guidelines has reiterated that pending further orders the insurers shall not vary the coverage, terms and conditions wording, warranties, clauses and endorsements in respect of



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covers that were under the erstwhile tariffs. Further the Authority, vide Circular No. 019/IRDA/NL/F&U/Oct-08 dated November 6, 2008 has mandated that insurers are not permitted to abridge the scope of standard covers available under the erstwhile tariffs beyond the options permitted in the erstwhile tariffs.

All General Insurers are advised to adhere to the afore-mentioned Circulars and any non-compliance of the same would be viewed seriously by the Authority.

This is issued with the approve of Competent Authority.

Sd/- (Prabodh Chander)

Executive Director

13.It is pertinent to note that the learned counsel appearing for the insurance company has made unintended ambiguity over the above settled issues of covering the liability to the occupants of the car and the pillion rider of the two wheeler under the misnomer of the Act policy and the Comprehensive policy without taking note of the circular of “*standard motor policy*” which emphasized M.V. No. 1 of 1978 - dated 18th March, 1978 [regarding occupants carried in Private Car] effective from 25th



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March, 1977, MOT/GEN/10 dated 2nd June, 1986 [regarding Pillion Riders in a Two-Wheeler] effective from the date of the Circular and IRDA/NL/CIR/F&U/073/11/2009 November 16, 2009. The IRDA once again reiterated the same by issuing another following circular during the course of the hearing of the larger issue before the Delhi High Court in the case of *Yashpal Luthra v. United India*, reported in **(2012) 2 TN MAC 625:**

IRDA/NL/CIR/F&U/078/12/2009 3rd Dec. 2009.

To

*All CEOs of All General Insurance Companies
(except ECGC, AIC, Staff Health, Apollo)*

*Re:Liability of Insurance Companies in respect of
Occupant of a Private Car and Pillion Rider in a
Two-Wheeler under Standard Motor Package
Policy (also called Comprehensive Policy).*

*Pursuant to the Order of the Delhi High Court
dated 23.11.2009 in MAC APP No. 176/209 in the
case of Yashpal Luthra v. United India, the
Authority convened a meeting on November 26,
2009 of the CEOs of all the general insurance
companies doing motor insurance business in the*



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presence of the Counsel appearing on behalf of the Authority and the leaned amicus curie.

Based on the unanimous decision taken in the meeting by the representatives of the general insurance companies to comply with the IRDA circular dated 16th November, 2009 restating the position relating to the liability of all the general insurance companies doing motor insurance business in respect of the occupants in a Private Car and pillion rider on a Two-Wheeler under the Comprehensive/Package Policies which was communicated to the Court on the same day i.e. November 26, 2009 and the Court was pleased to pass the order (dt. 26.11.2009) received from the Court Master, Delhi High Court, is enclosed for your ready reference and adherence. In terms of the said order and the admitted liability of all the general insurance companies doing motor insurance business in respect of the occupants in a Private Car and pillion rider on a Two-Wheeler under the Comprehensive/Package Policies, you are advised to confirm to the Authority, strict compliance of the Circular dated 16th November, 2009 and orders dt. 26.11.2009 of



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the High Court. Such compliance on your part would also involve:

(i) withdrawing the plea against such a contest wherever taken in the cases pending before the MACT, and issue appropriate instructions to their respective lawyers and the operating officers within 7 days.

(ii) with respect to all Appeals pending before the High Courts on this point, issuing instructions within 7 days to the respective operating officers and the Counsels to withdraw the contest on this ground which would require identification of the number of Appeals pending before the High Courts (whether filed by the Claimants or the insurers) on this issue within a period of 2 weeks and the contest on this ground being withdrawn within a period of four weeks thereafter.

(iii) with respect to the Appeals pending before the Hon'ble Supreme Court, informing, within a period of 7 days, their respective Advocates on record about the IRDA Circulars, for appropriate advice and action.



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Your attention is also drawn to the discussions in the CEOs meeting on 26.11.2009, when it was reiterated that insurers must take immediate steps to collect statistics about accident claims on the above subject through a central point of reference decided by them as the same has to be communicated in due course to the Honourable High Court. You are, therefore, advised to take up the exercise of collecting and collating the information within a period of two months to ensure necessary & effective compliance of the order of the Court. The information may be centralized with the Secretariat of the General Insurance Council and also furnished to us.

The IRDA requires a written confirmation from you on the action taken by you in this regard.

This has the approval of the Competent Authority.

Sd/- (Prabodh Chander)

Executive Director

14.From the above, it is clear that “as of now, the standard motor vehicle policy” covers the occupant of the car and there was no necessity to contribute separate premium. The same has been considered in detail by the



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Hon'ble Supreme Court in the case of *National Insurance Company Ltd., Vs. Balakrishnan* reported in *2013 (1)SCC 731*.

15. The Hon'ble Supreme Court in number of cases stated that in the case of the ambiguity, the benefit of the claim should be given to the claimants. In the said circumstances, learned Trial Judge correctly appreciated the fact and gave the finding. Hence, this Court finds no merit in the contention of the Insurance Company. The learned counsel relied number of judgments of this Court as well as Hon'ble Supreme Court which are all on facts. Therefore, this Court considered the contents of the policy produced before this Court. This Court had no occasion to consider the policy produced in those cases. Here, the policy did not contain any specification and also R.W.1 stated that there was no mention about act policy or comprehensive policy. He also admitted that in the case of the fire accident, the occupants of the car are entitled to claim the compensation. In the factual circumstances and going by the guidelines issued by the Hon'ble Supreme Court, this Court has to independently appreciate the facts. Hence this court is not inclined to accept the judgment relied by the Insurance Company. In all those cases, facts are totally different.



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16. Accordingly, this Civil Miscellaneous Appeal is dismissed by confirming the award passed in M.C.O.P.No.310 of 2015, dated 09.09.2020, by the Additional Motor Accident Claims Tribunal and Additional Subordinate Judge of Tenkasi. No costs. Consequently, the connected civil miscellaneous petition is closed.

[V.B.S.J] [K.K.R.K.J.]
28.10.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No

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To

1. The learned Additional Subordinate Judge,
Motor Accident Claims Tribunal, Tenkasi.
2. The Section Officer,
VR Section,
Madurai Bench of Madras High Court, Madurai.



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**V.BHAVANI SUBBAROYAN, J.
AND
K.K.RAMAKRISHNAN, J.**

vsg

Order made in
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and
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