



C.M.A(MD). Nos.500 of 2016

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

Dated:11.09.2024

CORAM:

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

C.M.A(MD). Nos. 500 to 502 and 194 to 196 of 2016
and
C.M.P.(MD).Nos.6306, 6307 & 6308 of 2016

C.M.A.(MD).No.500 of 2016:

The United India Insurance Co.Ltd.,
730, 2nd Floor, Annasalai,
Chennai- 600 006.

... Appellant/8th Respondent

Vs.

1. G.M.Ravichandran
2. Managing Director,
Tamil Nadu State Transport Corporation,
Kumbakonam.
3. Navaneetham Ammal
4. Lakshmi Kumar
5. Aiswarya Sathyanayagi
6. Mangala Nayagi
7. Vathsala Nayagi



C.M.A(MD). Nos.500 of 2016

8. Gokul Nathan

... Respondents/Respondents 1 to 7

Prayer : Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicle Act, 1988, praying to prefer this Memorandum of Civil Miscellaneous Appeal before this Court against the Award and Decree dated 31.12.2014 passed in M.C.O.P.No.198 of 2003 on the file of the Hon'ble Motor Accidents Claims Tribunal (Chief Judicial Magistrate), Thanjavur @ Kumbakonam for the following among other grounds.

For Appellant : Mr.G.Prabhu Rajadurai

For Respondents : Mr.A.V.B.Krishna Kanth,
Standing Counsel for TNSTC for R2

: Mr.S.Sankara Pandian
for R3, R4, R6 to R8

: No appearance for R5

C.M.A(MD).No.501 of 2016:

The United India Insurance Co.Ltd.,
730, 2nd Floor, Annasalai,
Chennai-600 006.

... Appellant/8th Respondent

Vs.

1. Balasubramaniyan

2. Managing Director,
Tamil Nadu State Transport Corporation,
Kumbakonam.

3. Navaneetham Ammal



C.M.A(MD). Nos.500 of 2016

4. Lakshmi Kumar

5. Iyswarya Sathyanayagi

6. Mangala Nayagi

7. Vathsala Nayagi

8. Gogul Nathan

... Respondents/Respondents 1 to 7

Prayer : Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicle Act, 1988, praying to prefer this Memorandum of Civil Miscellaneous Appeal before this Court against the Judgment and Decree dated 31.12.2014 passed in M.C.O.P.No.199 of 2003 on the file of the Hon'ble Motor Accidents Claims Tribunal (Chief Judicial Magistrate), Thanjavur @ Kumbakonam for the following among other grounds.

For Appellant : Mr.G.Prabhu Rajadurai

For Respondents : Mr.A.V.B.Krishna Kanth,
Standing Counsel for TNSTC for R2

: Mr.S.Sankara Pandian
for R3, R4, R6 to R8

: No appearance for R5

C.M.A.(MD).No.502 of 2016:

The United India Insurance Co.Ltd.,
730, 2nd Floor, Annasalai,
Chennai -600 006.

... Appellant /8th Respondent

Vs.

1.Sethuraman



C.M.A(MD). Nos.500 of 2016

2. The Managing Director,
Tamil Nadu State Transport Corporation,
Kumbakonam.

3. Navaneetham Ammal

4. Lakshmi Kumar

5. Iyswarya Sathyanayagi

6. Mangala Nayagi

7. Vathsala Nayagi

8. Gogul Nathan ... Respondents /Respondents 1 to 7

Prayer : Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicle Act, 1988, praying to prefer this Memorandum of Civil Miscellaneous Appeal before this Court against the Judgment and Decree dated 31.12.2014 passed in M.C.O.P.No.3 of 2006 on the file of the Hon'ble Motor Accidents Claims Tribunal (Chief Judicial Magistrate), Thanjavur @ Kumbakonam for the following among other grounds.

For Appellant : Mr.G.Prabhu Rajadurai

For Respondents : Mr.A.V.B.Krishna Kanth,
Standing Counsel for TNSTC for R2

: Mr.S.Sankara Pandian,
for R3, R4, R6 to R8

: No appearance for R5



C.M.A(MD). Nos.500 of 2016

WEB COPY C.M.A.(MD).No.194 of 2016:

G.M.Ravichandran

... Appellant/Claimant

Vs.

1. The Managing Director,
Tamilnadu State Transport Corporation,
Kumbakonam.

2. Navaneetham Ammal

3. Lakshmi Kumar

4. Iswariya Sathianayagi

5. Mangalanayagi

6. Vatchalanayagi

7. Gokulnathan

8. United India Insurance Co., Ltd.,
730, 2nd Floor, Annasalai,
Chennai- 600 006.

... Respondents/Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 173 (1) of Motor Vehicle Act, 1988, praying to allow the Appeal to the effect that so as to Enhance the Compensation to the tune of Rs.1,00,000/- in addition to compensation awarded by the Tribunal by modifying the Judgment and Decree dated 31.12.2014 made in M.C.O.P.No.198 of 2003 on the file of the Motor Accident Claims Tribunal/Chief Judicial Magistrate, Thanjavur at Kumbakonam.



C.M.A(MD). Nos.500 of 2016

For Appellant : Mr.D.Boopal

For Respondents : Mr.A.V.B.Krishna Kanth,
Standing Counsel for TNSTC for R1

: Mr.S.Sankara Pandian,
for R2, R3, R5 to R7

: No appearance for R4

: Mr.G.Prabhu Rajadurai for R8

C.M.A.(MD).No.195 of 2016:

S.Balasubramanian

... Appellant/Claimant

Vs.

1. The Managing Director,
Tamilnadu State Transport Corporation,
Kumbakonam.

2. Navaneetham Ammal

3. Lakshmi Kumar

4. Iswariya Sathianayagi

5. Mangalanayagi

6. Vatchalanayagi

7. Gokulnathan

8. United India Insurance Co., Ltd.,

730, 2nd Floor, Annasalai,
Chennai- 600 006.

... Respondents/Respondents



C.M.A(MD). Nos.500 of 2016

Prayer : Civil Miscellaneous Appeal filed under Section 173 (1) of Motor Vehicle Act, 1988, praying to allow the Appeal to the effect that so as to Enhance the Compensation to the tune of Rs.1,00,000/- in addition to compensation awarded by the Tribunal by modifying the Judgment and Decree dated 31.12.2014 made in M.C.O.P.No.199 of 2003 on the file of the Motor Accident Claims Tribunal/Chief Judicial Magistrate, Thanjavur at Kumbakonam.

For Appellant : Mr.J.Selvam

For Respondents : Mr.A.V.B.Krishna Kanth,
Standing Counsel for TNSTC for R1

: Mr.S.Sankara Pandian,
for R2, R3, R5 to R7

: No appearance for R4

: Mr.G.Prabhu Rajadurai for R8

C.M.A.(MD).No.196 of 2016:

M.Sethuraman

... Appellant/Claimant

Vs.

1. The Managing Director,
Tamilnadu State Transport Corporation,
Kumbakonam.
2. Navaneetham Ammal
3. Lakshmi Kumar
4. Iswariya Sathianayagi



C.M.A(MD). Nos.500 of 2016

5. Mangalanayagi

6. Vatchalanayagi

7. Gokulnathan

8. United India Insurance Co., Ltd.,
730, 2nd Floor, Annasalai,
Chennai- 600 006.

... Respondents/Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 173 (1) of Motor Vehicle Act, 1988, praying to allow the Appeal to the effect that so as to Enhance the Compensation to the tune of Rs.50,000/- in addition to compensation awarded by the Tribunal by modifying the Judgment and Decree dated 31.12.2014 made in M.C.O.P.No.3 of 2006 on the file of the Motor Accident Claims Tribunal/Chief Judicial Magistrate, Thanjavur at Kumbakonam.

For Appellant : Mr.D.Boopal

For Respondents : Mr.A.V.B.Krishna Kanth,
Standing Counsel for TNSTC for R1

: Mr.S.Sankara Pandian,
for R2, R3, R5 to R7

: Mr.G.Prabhu Rajadurai for R8

: No appearance for R4



C.M.A(MD). Nos.500 of 2016

COMMON JUDGMENT

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

The appellant/insurance company in C.M.A.(MD).Nos.500 to 502 of 2016 filed these appeals challenging the negligence and liability passed in M.C.O.P.Nos.198 & 199 of 2003 and 3 of 2006, dated 31.12.2014, by the Hon'ble Motor Accidents Claims Tribunal (Chief Judicial Magistrate), Thanjavur at Kumbakonam.

2.The appellants in CMA.(MD).Nos.194 to 196 of 2016 filed these appeals to Enhance the Compensation to the tune of Rs.20,00,000/-, Rs.1,00,000/-, Rs.1,00,000/- and Rs.50,000/- in addition to the compensations awarded by the Tribunal by modifying the Judgment and Decree dated 31.12.2014 passed in M.C.O.P.Nos.198 & 199 of 2003 and 3 of 2006 on the file of the Motor Accident Claims Tribunal/Chief Judicial Magistrate, Thanjavur at Kumbakonam.

3.For better appreciation of the facts, the ranks of the parties mentioned in the M.C.O.P.Nos.198 & 199 of 2003 and 3 of 2006 is followed hereunder.



4. One Premkumar Vandaiyar is the owner of the Toyota Qualis bearing Registration No. TN 02 K 339. On 23.06.2001, at about 05.30 p.m the said Premkumar Vandaiyar and his brother Ravichandran and brother-in-law Balasubramanian and his worker Velu proceeded towards the Nagapattinam main road and the said vehicle was driven by his driver Sethuraman. Following said car, the said Premkumar Vandaiyar's another brother-in-law Dr. Varatharajan was proceeding in the said road in his car Matiz. Sethuraman drove the vehicle in Mariammankoil bypass road, Near Pakkulam-Thalavaipalayam Village. In the opposite, the seventh respondent's bus bearing Registration No. TN 49 N 0990 driven by its driver in a rash and negligent manner dashed against the Qualis car, as a result, the front side of Qualis got damaged and fell into nearby paddy field. Hence, the injured persons were taken to Vinodhan Hospital, Thanjavur and in the said hospital, the said Premkumar Vandaiyar was admitted from 23.06.2001 to 29.06.2001 as inpatient and subsequently he was, taken to the Apollo Hospital, Chennai. In the Apollo Hospital, he took treatment upto 06.07.2001 and died on 06.07.2001. The FIR was registered against the driver of the Qualis in Crime No. 278 of 2017. The accident happened due to the entire negligence on the part of the Transport corporation driver. The



insurance company is liable to pay compensation. The deceased Premkumar Vandiyar is a land lord and also doing multiple of business and hence, his wife and children and his mother filed claim petition claiming compensation of Rs.1,10,00,000/-.

5.The first respondent namely Transport Corporation filed a counter denying the allegations that the Transport Corporation was responsible for the allegation and specifically denied the negligence on the part of the driver of the Transport Corporation. Only due to the rash and negligence driving of the Qualis driver, the accident happened. He specifically pleaded that the Qualis car was driven by his driver in a rash and negligent manner and the said driver without noticing on coming Government bus crossed his lane and dashed against the left side wheel of the bus and thereafter, fell into paddy field. Therefore, the driver of the Qualis car is responsible for the accident.

6.The insurance company filed a counter denying the statement made by the corporation bus and it is specifically stated that only due to the rash and negligent driving on the part of the driver of the bus, the accident



happened and hence, the corporation is liable to pay compensation. The insurance company also raised plea that the Premkumar Vandiyar is the owner of the car and hence, the insurance company is not liable to pay compensation. He cannot be treated as third party and not liable to pay compensation.

7.On the side of the claimants, P.W.1 to 4 were examined and exhibited 27 documents as Ex.P.1 to Ex.P.27. On the side of the respondent, R.W.1 to R.W.5 were examined and exhibited 6 documents as D.W.1 to D.W.6 and two material objects were marked as M.O.1 and M.O.2.

8.The learned trial Judge considered both the oral and documentary evidence fixed the negligence on the part of the driver of the Qualis and granted the compensation of Rs.1,49,098/- in M.C.O.P.No.198 of 2003, Rs. 1,02,970/- in M.C.O.P.No.199 of 2003 and Rs.13,000/- in M.C.O.P.No.3 of 2006. Aggrieved over the same, the appellant insurance company has filed the appeal in C.M.A(MD).No.500 to 502 of 2016 before this Court and the claimants have filed the appeals in C.M.A.(MD).Nos.194 to 196 of 2016 before this Court to enhance the compensation granted by the tribunal.



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9.This Court considered the rival submissions made by the learned counsel appearing on either side and perused the materials available on record and the impugned judgment and the precedent relied upon by them.

10.The point for determination that arise for the consideration of these appeals are as follows:

(i) Whether the learned tribunal Judge is correct in fixing the negligence on the part of the driver of the Qualis Car?

(ii)Whether the learned tribunal Judge correctly fixed the liability upon the insurance company for the death of the occupant of the car?

(iii)Whether the claimants are entitled to enhanced compensation?

11 .**Discussion on negligence:**

The deceased Premkumar Vandaiyar, was the leader of a political party namely, Movendar Munnetra Kalagam, and was the owner of the Toyoto Qualis bearing Registration No.TN 02 K 339. Its driver was one “Sethuraman(P.W.4)”. On 23.06.2001, at about 05.30 p.m the said Premkumar Vandaiyar and his brother “Ravichandran (P.W.1)” and



brother-in-law “*Balasubramanian(P.W.2)*” and his worker “*Velu(P.W.3)*” were proceeding in Thanjavur to Nagapattinam road and the said car was driven by P.W.4. Following that car, the said Premkumar Vandaiyar's another brother-in-law Dr.Varatharajan and his friends were proceeding in a car. It is alleged by P.W.1, P.W.2, P.W.3 and P.W.4 that when their Qualis car was proceeding in the Mariammankoil bye pass road, Near Pakkulam-Thalavaipalayam Village, R.W.1/Krishnamoorthy drove the transport Corporation bus bearing Registration No.TN 49 N 990 in the opposite direction in a rash and negligent manner and dashed against the Qualis car. In the result, the Qualis car got damaged and fell into the paddy field on the southern side of the East-West road. The said Premkumar Vandaiyar sustained serious injuries and P.W.1 to P.W.4 also suffered injuries. All were taken to the Vinodhagan hospital, Thanjavur. The jurisdiction Police namely Ammapettai Police Station registered a case against P.W.4 in Crime No.278 of 2001. P.W.1/Ravichandran filed the M.C.O.P.No.198 of 2003, on the file of the Motor Accident Claims Tribunal/Chief Judicial Magistrate, Thanjavur at Kumbakonam, claiming compensation of Rs.5,00,000/-, P.W.2 filed M.C.O.P.No.199 of 2003, claiming compensation of Rs.5,00,000/- and P.W.4/Sethuraman filed M.C.O.P.No.3 of 2006 claiming compensation of



Rs.5,00,000/-, stating that the accident happened due to the negligence of R.W.1 and hence, the second respondent transport corporation is liable to pay above prayed compensation.

11.1.The occurrence took place in the East-West 26 feet width Thanjavur Nagapattinum road. The bus was proceeding towards Thanjavur in west to east direction. The Toyota Qualis car was proceeding towards Nagapattinum, in the east to west direction. Both vehicles were proceeding in opposite direction in uncontrolled speed in a helter skelter way in east to west direction, seeing this R.W.1 stopped his bus on the left side of the road. The Qualis car vehicle veered off into the lane of Bus and dashed the right side wheel of the bus and hit the sludge bridge and fell into the paddy field instead of going in the lane meant for “car” towards the west direction. In result, the accident occurred and all occupants of qualis car sustained injuries and right side wheel of bus got mangled and the left side of the qualis car got damaged. The said fact is clearly deposed by R.W.1. The same was corroborated with the telltale marks noted in the sketch marked as Ex.P3 and photo marked. The FIR was registered against the qualis car driver P.W.4 and final report was filed against him by examining the



relative of the said PremKumar Vandaiyar and the same was taken on file in C.C.No.444 of 2003 and all the eye witnesses turned hostile except R.W.1 and ended in acquittal. P.W.1 deposed that the driver R.W.1 was responsible for the accident and he deposed that after hitting the Qualis car, the bus ran a little distance and stopped (விபத்தை ஏற்படுத்திய பேருந்தானது சிறிது தூரம் சென்று நின்று விட்டது). This evidence is not corroborated with the evidence of P.W.4 who deposed that the bus stopped instantly at the said place itself (பேருந்து அதே இடத்தில் நின்று விட்டது). The said testimony of P.W.1 is not only contradictory to P.W.4's testimony and also against the factual situation namely the complete damage of the right side wheel of the bus, which is evidenced from the photograph marked as M.O.1. The said photograph was marked through R.W.2 along with negative. Therefore, the same is admissible. From the perusal of the said photograph, it is clear that the vehicle was completely damaged on the right side of the wheel and hence, there was no possibility of the bus moving further as claimed by P.W.1. Therefore, the version of P.W.1, P.W.2, P.W.3 and P.W.4 that the accident happened due to the negligence of R.W.1 deserves to be rejected. In this aspect, the learned trial Judge appreciated the above evidence in proper manner without any infirmities and this Court finds no



perversity in the said findings fixing negligence on the qualis car driver, namely, P.W.4. R.W.3 passenger travelled in the bus in her chief examination, clearly deposed that the accident happened due to the negligence of P.W.4 qualis car driver. But during her delayed cross examination she stated that she knew only about the qualis car falling down in the paddy field after the accident and she did not know any other facts. But she admitted that she read the proof affidavit and signed the same upon understanding the contents of the proof affidavit. The said evidence was appreciated by the learned trial Judge that she was won over later. This Court also concurs with the said finding of the learned trial Judge. The said Premkumar Vandaiyar was the President of the political party namely Moovendhar Munnetra Kalagam. In the said circumstances, it is quite natural R.W.3 disowned her chief examination because of influence. As per the law laid down by the Hon'ble Supreme Court reported in **2015 (3) SCC 220**, in the case of ***Vinod Kumar Vs. State of Punjab*** when the witness deposed in the chief examination, disowns the statement in the delayed cross examination, the chief examination can be taken into consideration. Apart from that, when the witness deposed contrary to the chief examination in the belated cross examination as held by the Hon'ble Supreme Court her



version in the chief examination is to be considered. Hence, this Court accepts the version of R.W.3 in the chief examination and concurs with the reasoning of the learned trial Judge that she was unable to remember the occurrence place and after accident, the qualis car totally went off its lane and veered into the extreme lane of the bus and rammed the right side wheel of the bus and causing total damage to the right side wheel of the bus which itself proves that P.W.4 drove the car as deposed by R.W.1 in a rash and negligent manner in an uncontrolled speed and caused the accident. In the said facutal circumstances, this Court applies the principle of “*res ipsa loquitur*”. Apart from that, R.W.1 was withstood to the incisive cross examination and he reiterated his stand, even in the cross examination. Therefore, his evidence is cogent and trustworthy and the same is supported by the documents and photographs and the final report and also records of the criminal case. In view of the above discussion, this Court concurs with the reasoning of the learned Tribunal Judge, in believing the evidence of R.W.1 and disbelieving the evidence of P.W.1, P.W.2, P.W.3 and P.W.4, which are contrary to Ex.P3 and the Photograph C.W.1 and C.W.2.



11.2.It is well settled principle that in the acquittal in criminal case is not a ground to disbelieve the evidence before the Tribunal. The acquittal is passed on the ground the case was not proved beyond reasonable doubt. Hence, this Court affirms the finding of the learned trial judge fixing the negligence on the driver of the qualis car namely P.W.4 and fixing the liability upon the insurance company.

11.3.According to the insurance company, the deceased was the owner of the vehicle. He died in the accident. Hence, the liability is not fastened upon the insurance company.

11.4.This Court to consider the said submission, perused the policy marked as Ex.R5. The “policy is B policy namely comprehensive policy”. In the said policy, “comprehensive premium” is paid. In the case of the comprehensive policy, the insurance company is liable to pay compensation. Further, the officer from the insurance company was examined as R.W.5. R.W.4 and another official from the insurance company were examined. He deposed that in the counter, it is stated that in the event of finding that the car driver was negligent and would have caused the accident, the company



is liable to pay the compensation. The material portion of the deposition is as follows:

மனுவில் 9வது பாராவில், 2ஆம் எதிர் மனுதாரரை, அவங்களுடைய வாகனத்தை ஓட்டிய டிரைவரின் கவனக்குறைவு, அஜாக்கிரதைய விபத்து நடந்தது என்று நீதிமன்றம் கருதினால் 2ஆம் எதிர்மனுதாரராகிய நாங்களும் நஷ்டஈடு கொடுக்க வேண்டும் என்று சொல்லப்பட்டுள்ளது என்றால் சரிதான்.

From the perusal of the policy and evidence of R.W.5, there is no restriction to pay compensation. He deposed that Ex.R5 is a Xerox copy of the insurance policy - சா.ஆ.5 எங்கள் அலுவலகத்தில் வழங்கிய சான்றிடப்பட்ட நகல் ஆகும். எ.ம.சா.ஆ.5-ல் நிபந்தனைகள் எதுவும் இல்லை என்றால் சரிதான். When there was no restriction in the policy to make compensation, the insurance company is liable to pay compensation. In the said circumstances, the learned Tribunal judge considered the various judgments of the various Courts and made detailed discussion and found that the insurance company is liable to pay compensation.

11.5.In order to appreciate the contention of the learned counsel and to consider whether the finding of the learned trial judge that the insurance company is liable to pay compensation to the occupants of the car is correct



or not? this Court is duty bound to revisit the law on the liability of the insurance company to pay the compensation to the occupants of the car.

The entire policy with the condition has not been marked by the insurance company before the Court below. The Hon'ble Supreme Court in the case of ***Insurance Co. Ltd. v. Jugal Kishore***, reported in (1988) 1 SCC 626 at page 632, directed to mark the terms and conditions of the policy in order to consider the defence of the insurance company and also to render a fair justice in the following words:

10. Before parting with the case, we consider it necessary to refer to the attitude often adopted by the Insurance Companies, as was adopted even in this case, of not filing a copy of the policy before the Tribunal and even before the High Court in appeal. In this connection what is of significance is that the claimants for compensation under the Act are invariably not possessed of either the policy or a copy thereof. This Court has consistently emphasised that it is the duty of the party which is in possession of a document which would be helpful in doing justice in the cause to produce the said document and such party should not be permitted to take shelter behind the abstract doctrine of burden of proof. This duty is greater in the case of instrumentalities of the State such as the appellant who are under an obligation



to act fairly. In many cases even the owner of the vehicle for reasons known to him does not choose to produce the policy or a copy thereof. We accordingly wish to emphasise that in all such cases where the Insurance Company concerned wishes to take a defence in a claim petition that its liability is not in excess of the statutory liability it should file a copy of the insurance policy along with its defence. Even in the instant case had it been done so at the appropriate stage necessity of approaching this Court in civil appeal would in all probability have been avoided. Filing a copy of the policy, therefore, not only cuts short avoidable litigation but also helps the court in doing justice between the parties. The obligation on the part of the State or its instrumentalities to act fairly can never be over-emphasised.

11.6. Without marking the terms and condition of the policy and the relevant terms of the policy mentioned in the Indian Motor Tariff, this Court is unable to find any restriction clause to disown the liability. It is also settled principle in order to repudiate the liability, it is the duty of the insurance company to plea and prove the same by producing the relevant evidence. In this case, sweeping argument of the learned counsel for the insurance company is that the insurance company is not liable to pay the



compensation to the occupants of the car without making any extra premium cannot be accepted without any evidence.

12. 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 01.01.2007 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.

13.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.

13.1. 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 the Insurance Company in relation to private vehicle :



C.M.A(MD). Nos.500 of 2016

***“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 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.

14.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

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 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 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*

15.It is pertinent to note that the learned counsel appearing for the insurance company has submitted argument with 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 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 the 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 December 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 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 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,



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within a period of 7 days, their respective Advocates on record about the IRDA Circulars, for appropriate advice and action.

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



16.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 make separate premium. The same has been considered in detail by the Hon'ble Supreme Court in the case of *National Insurance Company Ltd., Vs. Balakrishnan* reported in *2013 (1)SCC 731*.

17. Apart from that as discussed above, in this case, R.W.4/officer examined on the side of the insurance company clearly deposed that in the event of acceptance of the negligence against the driver of the Qualis car, the insurance company is duty bound to pay the compensation and R.W.5 deposed that there is no restriction to pay the compensation to the owner of the vehicle when he was the occupant of the car. Therefore, the insurance company is liable to pay compensation and which was correctly fixed by the learned trial judge considering the above aspect. Hence, this Court finds no grounds to interfere with the same.

18. Discussion on quantum:

The insurance company has not disputed the quantum and this Court finds no ground to accept the case of the claimants for the enhancement of



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compensation. They sustained only simple injuries and the learned trial Judge considered the documents filed by them and granted the just and reasonable compensation.

19. Accordingly, all the Civil Miscellaneous Appeals are hereby dismissed. There shall be no order as to costs. Consequently, the connected civil miscellaneous petitions are closed.

[V.B.S.J] [K.K.R.K.J.]
11.09.2024

NCC : Yes / No
Index : Yes / No
Internet : *Yes / No*
vsg



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To

1. The Motor Accident Claims Tribunal
/Chief Judicial Magistrate,
Thanjavur, at Kumbakonam.
2. The Section Officer,
VR Section(Records),
Madurai Bench of Madras High Court,
Madurai.



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C.M.A(MD). Nos.500 of 2016

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

sbn/vsg

C.M.A(MD). Nos.500 to 502 and 194 to 196 of 2016
and
C.M.P.(MD).Nos.6306, 6307, 6308 of 2016

11.09.2024