

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.03.2017

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
AND
THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

C.M.A.Nos.261 and 1067 of 2015
M.P.No.1 of 2015

The New India Assurance Co. Ltd.,
Salem. Appellant in both appeals

versus

1. Uthra
2. Minor Janani Parvathi
(Minor is represented by
her mother, Parvathi)
3. Parvathi Respondents 1 to 3 in
C.M.A.No.261 of 2015

4. Vijayalakshmi
5. Vivek
6. Minor Varsha
(Minor is represented by
her mother, 4th respondent) Respondents 1 to 4 in
C.M.A.No.1067 of 2015

7. E.W.P. Associates,
Rep., by B.B.Mohankumar,
Managing Director,
10/1, 10/3, IInd Cross,
Maravaneri, Salem-7. ... 4th Respondent in both CMAs.

Civil Miscellaneous Appeals are filed, against the judgment and decree in M.C.O.P.Nos.68 of 2010 and 1566 of 2009, dated 04.09.2013, on the file of the Motor Accident Claims Tribunal (IInd Additional District Judge) at Salem District.

For Appellant : Mr.J.Chandran

For Respondents 1 to 3 in
both the appeals : Mr.K.Varadhakamaraj,
for Mr.T.S.Vijayaraghavan

For 7th Respondent herein : No appearance

JUDGMENT

(Judgement of the Court was made by S.MANIKUMAR, J.)

Being aggrieved by the judgment and decree in M.C.O.P.Nos.68 of 2010 and 1566 of 2009, dated 04.09.2013, on the file of the Motor Accident Claims Tribunal (IIInd Additional District Judge) at Salem District, New India Assurance Company Limited, has preferred the present appeals.

2. Facts as deduced from the material on record and the impugned common judgment are that on 7.2.2009, Sambasivam, Personal Assistant of M/s.E.W.P. Associates, 7th respondent herein and Sankaramoorthy, Manager of the said Company, were travelling in TATA Indica car, bearing Registration No.TN 30 AD 6552, belonging to the 9th respondent herein and insured with the appellant-Insurance Company, driven by one Subramani, an employee of M/s.E.W.P. Associates. When the car was proceeding on Kollam-Alapulza road, in front of M.S.M. College in Ghayankullam area, in Kerala State, driver of the car, drove the same, in a rash and negligent manner, dashed against the left side of a bus, bearing Registration No.KL-15/7038. Sankaramoorthy, Sambasivam and the driver of the car died on the spot. In this regard, a case in Cr.No.133 of 2009, under Sections 279, 337 and 304(A) IPC, has been registered against the driver of the Car, on the file of Ghayamkullam Police Station. For the death of both the deceased Sambasivam and Sankaramoorthy, their legal representatives filed separate claim petitions, claiming compensation of Rs.25,00,000/- each, under various heads.

3. Before the claims tribunal, New India Assurance Company Limited, Salem, insurer of TATA Indica car, bearing Registration No.TN 30 AD 6552, filed separate counter affidavits and denied the manner of accident. They further submitted that the accident occurred due to the rash and negligent driving of the driver of the bus bearing Registration No.KL-15/7038 and therefore, owner and insurer of the bus are necessary parties to the proceedings. They disputed the manner of accident and liability. Without prejudice to the above, they disputed the age, avocation, income of the deceased and the quantum of compensation claimed under various heads.

4. Wives of the deceased examined themselves as PW.1 in the MCOPs. PW.2 is an eye-witness to the accident. Documents, Exs.P1 & P6 - FIR, Ex.P2 - Translation copy of FIR, Exs.P3 & P10 - Death Certificates of the deceased Sambasivam and Sankaramoorthy, Exs.P4 & P11 - Post-Mortem Certificates of the deceased Sambasivam and Sankaramoorthy, Exs.P5 & P12 - Legal Heirship Certificates of the deceased Sambasivam and Sankaramoorthy, Ex.P7 - Typed copy of Ex.P4, Exs.P8 & P13 - Pay Certificates of the deceased Sambasivam and Sankaramoorthy and Ex.P9 - Driving licence and Voter's ID of Pradeeban, have been marked on the side of the respondents/claimants. On behalf of the appellant-Insurance Company, Gomagal, Assistant Manager of the Company has been examined as RW.1 and marked the Insurance Policy as Ex.R1.

5. On evaluation of pleadings and evidence, the Claims Tribunal, held that the driver of the TATA Indica car, bearing Registration No.TN 30 AD 6552, insured with the appellant-Insurance Company, was negligent in causing the accident. Considering the age, avocation and income of both the deceased, the Claims Tribunal quantified the compensation in the claim petitions as, Rs.26,35,050/- (M.C.O.P.No.68 of 2010) and Rs.18,17,000/- (M.C.O.P.No.1566 of 2009), with interest at the rate of 7.5% per annum and costs, as follows:

M.C.O.P.No.68 of 2010:

Monthly income	: Rs.25,000/-
1/3rd towards personal and living expenses	: Rs.16,667/-
Multiplier for 46 years	: 13
Loss of contribution to the family	: Rs.26,00,052/-
(Rs.16,667/- x 12 x 13)	
Loss of consortium	: Rs. 10,000/-
Loss of love and affection	: Rs. 10,000/-
Funeral Expenses	: Rs. 5,000/-
Transportation	: Rs. 10,000/-
Total	: Rs.26,35,050/-

M.C.O.P.No.1566 of 2009

Monthly income : Rs.24,750/-

1/3rd towards personal
and living expenses : Rs.16,500/-

Multiplier for 57 years : 9

Loss of contribution
to the family : Rs.17,82,000/-
(Rs.16,500/- x 12 x 9)

Loss of consortium : Rs. 10,000/-

Loss of love and affection: Rs. 10,000/-

Funeral Expenses : Rs. 5,000/-

Transportation : Rs. 10,000/-

Total: Rs.18,17,000/-

6. Assailing the findings of the Claims Tribunal, fixing negligence on the driver of TATA Indica car, bearing Registration No.TN 30 AD 6552, Mr.J.Chandran, learned counsel for the appellant-Insurance Company submitted that the Claims Tribunal ought not to have fixed negligence on the driver of the TATA Indica car, solely on the basis of the testimony of PW.1 in both the petitions.

7. On the aspect of liability, learned counsel for the appellants submitted that the alleged offending vehicle was insured with the appellant-Insurance Company, only as a private car and it cannot be used for commercial purpose. He further submitted that since the employees of the 7th respondent-Company, were not covered under the Insurance Policy, as they are not third parties, the Claims Tribunal ought to have exonerated the insurer from its liability.

8. Learned counsel appearing for respondents/claimants in both the claim petitions made submissions, to sustain the award.

9. Heard the learned counsel for the parties and perused the materials available on record.

10. From the materials on record, it could be deduced that TATA Indica car, bearing Registration No.TN 30 AD 6552, belonging to the 7th respondent herein and insured with the appellant-Insurance Company, dashed against a bus, bearing Registration No.KL 15 7038, owned by the Kerala State Board Transport Corporation. Ex.P1 - FIR, has been registered against the driver of TATA Indica car, bearing Registration No.TN 30 AD 6552, in Cr.No.133 of 2009, on the file of Ghayamkullam Police Station. Evidence of PW.1 in both the petitions, wives of the deceased, is duly supported by PW.2, eye-witness to the accident and corroborated by Exs.P1 & P6 - FIR and Ex.P2 - Translated copy of Ex.P1 - FIR. On the basis of the above oral and documentary evidence and in the absence of any contra evidence, the Claims Tribunal has arrived at the conclusion that the driver of TATA Indica car, bearing Registration No.TN 30 AD 6552, insured with the appellant-insurance company, was negligent in causing the accident.

11. As stated supra, version of the respondents/claimants is duly corroborated by documentary evidence. It is settled law that in matters relating to Motor Accidents Claims, suffice that there is preponderance of probability, as to the manner of accident and strict proof of evidence is not required. In the instant case, no material is available to reverse the order of the Tribunal. On the other hand, there is ample evidence to conclude that the accident occurred in the manner, as detailed by the respondents/claimants.

12. As regards liability, before the Tribunal, the appellant-Insurance Company has contended that as both the deceased had travelled in the car, belonging to the 7th respondent herein, for their official work and not as third parties, the Company is not liable to pay compensation and that there is a violation of policy condition. In support of the same, the Company has relied on a decision of the Hon'ble Supreme Court in Oriental Insurance Co. Ltd., v. Meena Variyal reported in 2007 ACJ 1284, wherein, it has been held as follows

"Insurance company seeks to avoid its liability on the ground that policy did not cover the employee of the owner company who was driving the car while attending to the business of the company, deceased was not a third party in terms of the policy or in terms of the Act special contract and deceased did not possess a driving licence - Tribunal held that car was

being driven by the deceased at the time of accident and he had no licence and exempted insurance company from liability on the ground that policy did not cover such an employee - Appeal by claimants."

"Where a person is not a third party within the meaning of the Act the insurance company cannot be made automatically liable merely by resorting to Swaran Singh's ratio; deceased being an employee not covered under Workmen's Compensation Act, has not to be covered compulsorily under Motor Vehicles Act and there is no special contract covering such a person, insurance company cannot be made liable to pay the compensation first and then to recover it from the insured; even if the case of the claimants that car was driven by the driver was true."

13. For distinguishing the abovesaid judgment, the Claims Tribunal has relied the decision made in Royal Sundaram Alliance Insurance Co. Ltd., v. A.Pappathi reported in 2009 (1) TNMAC 556 and held as follows:

"It is seen that the the offending vehicle is covered under due insurance at the time accident. From the evidence of P.W.1 and from Ex.P.1, 2, 3, 6 and P 10, this court holds that the accident did happen only due to the rash and negligent driving of the driver of the car TN-30-AD-6552 and due to the rash and negligent driving of the driver of the car, the deceased Sambasivam and Sankaramoorthy died. From Ex.R.1 and R2, the 1st respondent has proved that the offending vehicle is duly under insurance coverage at the time of accident and hence the 1st respondent, who is the owner of the car and the 2nd respondent being the insurer of the offending vehicle is liable to pay the compensation to the petitioners in both petitions. Further the owner and insurer of the bus is not necessary parties to these cases, as the negligent on the part of driver of 1st respondent is proved and the deceased driver was also having valid driving licence at the time of accident as stated supra. Though it is held that both the respondents are jointly and severally liable to compensate the petitioners in both the petitions, since the vehicle of the 1st respondent is insured with the 2nd respondent R2 is liable to indemnify R1. Accordingly, Point No.1 is answered accordingly."

14. On the main challenge, as to whether, an occupant of the vehicle, owned by a Company, is a third party and on his

death, whether the legal representatives are entitled to claim compensation, this Court is inclined to consider few decisions,

(i) In Royal Sundaram Alliance Insurance Co. Ltd., v A.Meenakshi reported in 2009 (1) TNMAC 249 (DB), the deceased was a passenger in the vehicle and on account of negligence of the driver, the accident occurred. Legal representatives claimed compensation. The Insurance Company disputed the claim on the ground that the passengers, who travelled in the car, were gratuitous passengers and therefore, the Company is not liable to pay any compensation. On the alternative, it was also contended that on payment of an additional premium under the Insurance Policy, coverage can be extended to five unnamed persons, for a capital sum insured of Rs.70,000/- each, in terms of (India Motor Tariff) IMT.16 and therefore, even if the insurance company is liable to pay compensation, its liability can be restricted to only Rs.70,000/- and not more than that. Considering the requirement of policies and limits of liability, set out in the Motor Vehicles Act, 1988 and after considering a catena of decisions and in particular, to the Tariff Advisory Committee's Circular, this Court held that a comprehensive/package policy, covers the risk of the occupant also and therefore, the Insurance Company cannot escape from its liability to pay compensation. Relevant paragraphs are extracted hereunder:

"6. So the law relating to Requirements of Policies and Limits of Liability is set down in Section 147 of the Motor Vehicles Act, 1988. This corresponds to Section 95 of the Motor Vehicles Act, 1939. Section 147(1)(i) provides that in order to comply with the requirements of the said Chapter, an insurance policy would cover any liability incurred by the insured in respect of the death of or bodily injury to any person, including owner of the goods etc. The section is quite wide in its scope and meaning and the object of the legislature has to be given the widest, most effective and practical meaning so that the net of coverage is extended to as many classes of persons relating to as many types of vehicles without exception. Courts are obliged to ensure that as many classes of motor accident victims receive the benefit of compensation, unless it is specifically restricted by the Act or it is specifically restricted by the contract, without violating the provisions of the Act. The insurer can and may contract to cover risks and liabilities which he is not bound to under the Act. To put it in other words, he can expand his net of coverage far beyond

the statute-imposed limits, but he can not restrict his net of coverage contrary to the statute. This is how we must advance the object of the Act. Then again we must understand who is a "third party". A third party is one who is neither the insurer nor the insured. He is simply a third party. By the same logic, third party coverage must include all third parties, unless by doing so we breach the covenants of the Policy, or include specific categories of "third parties" who are excluded by the Section.

8. Motor Insurance in India till date is Tariff driven. Section 64U of the Insurance Act provides for the establishment of the Tariff Advisory Committee to control and regulate the rates, advantages, terms and conditions that may be offered by insurers. Section 14 of the I.R.D.A. Act which deals with the duties, powers and functions of the Authority, provides in sub-section (2) (i) that the powers and functions include the control and regulation of (rates, advantages, terms and conditions), not so controlled by the Tariff Advisory Committee under Section 64U. General Regulation No.1 of IMT states that Motor insurance in India is transacted within the purview of the IMT. The Tariff Advisory Committee has laid down rules and regulations, rates, terms and conditions, advantages for transaction of insurance business in India in accordance with the provisions of Part-2B of the Insurance Act, 1938. It is stated in the IMT that the 2002 Tariff supersedes the provisions of the IMT in existence upto 30.6.2002 and that they are binding on all concerned and that there cannot be any breach of the tariff, especially a breach of the provisions of the Insurance Act, 1938. The insurance companies are also required to issue policies in accordance with the IMT provisions only.

12. Soon thereafter, the Tariff Advisory Committee took a decision which is very important for deciding the present issue and which also totally altered the effect of the decision in Pushpabai's case (supra). This is explained in detail by the Gujarat High Court in 1981 A.C.J. 277 [Harshavardhatiya Rudraditya vs. Jyotindra Chimanlal Parikh]. There, the deceased was a

gratuitous passenger. There, as in the present case, the insurance policy was a Comprehensive Policy. At that time, IMT.5 read as follows:

"In consideration of the payment of an additional premium, it is hereby understood and agreed that the Company undertakes to pay compensation on the scale provided below for bodily injury as hereinafter defined sustained by any passenger other than the insured and/or his paid driver attendant or cleaner and/or a person in the employment of the insured coming within the scope of the Workmen's Compensation Act, 1923 and subsequent amendments of the said Act and engaged in and upon the service of the insured at the time such injury is sustained whilst mounting into dismounting from or travelling in but not driving the motor car and caused by violent accidental external and visible means which independently of any other cause shall within three calendar months of the occurrence of such injury result in : Scale of compensation

(1) Death ... Rs. 15,000.00

(2)"

The counsel for the appellant produced before the Gujarat High Court a communication issued by the Tariff Advisory Committee to the insurers carrying on general insurance business in the Bombay Region, which is in the following terms:

"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 been holding the view liability (sic) the same practice should continue.

In order to make this intention clear, insurers are requested to amend clause 1(a) of s. II of the Standard Private Car Policy by incorporating the following words after the words 'death of or 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. (Emphasis ours).

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

Sd.

Regional Secretary."

The Gujarat High Court held as follows:

"Taking into consideration the spirit underlying the aforesaid instructions issued by the Tariff Advisory Committee all the insurers would be expected to adhere to the policy decision in its true spirit. The policy decision had to be evolved by reason of the fact that for years the insurers were considered to be liable even in cases of gratuitous passengers. The situation came to be altered by virtue of the decision in Pushpabai's case, AIR 1977 SC 1735, rendered on 25th March, 1977. The insurance business having been nationalised it is but reasonable to expect the insurers not to take advantage of the altered situation and to continue to discharge their obligation as hitherto. No doubt, the aforesaid instructions cannot be enforced in an M.A.C.T. proceeding in the sense that we cannot direct that the insurance company shall reimburse the insured fully or that the full decree against the insured

may be executed against the insurance company as if it was a decree passed against it. We are given to understand that the insurance companies are discharging their obligation as hitherto notwithstanding Pushpabai's case, AIR 1977 SC 1735. If such is the policy that being followed in other cases no discrimination can be made on principle in the present case. There cannot be a selective application of the policy embodied in the aforesaid resolution. If such a selective application were to be countenanced, it would violate the mandate of art. 14 of the Constitution of India. We have, therefore, no doubt that the insurance company will follow the same policy uniformly and will not clutch at this defence in the present case if the policy decision contained in the aforesaid communication is being adhered to in other cases. In case of necessity, learned counsel for the claimants will be at liberty to apply to the insurance company and make a request for implementing the aforesaid policy decision in the present case. It will be open to him to forward a copy of this judgment in support of this request."

Therefore, the Tariff Advisory Committee had brought these instructions into force literally from the date on which the judgment in Pushpabai's case was delivered by the Supreme Court. The Tariff Advisory committee determines the terms and conditions and the limits and liabilities of an insurance policy vide Section 64U of the Insurance Act. A reading of the Circular, though intended for the Bombay Region, indicates that all along, insurance companies had intended that the risk to a gratuitous occupant in a private car was to be covered and was in fact covered by a Package Policy.

13. In 1985 A.C.J. 585 [Sagar Chand Phool Chand Jain v. Santosh Gupta], the Delhi High Court had to consider a similar issue. Before the Delhi High Court, again, the judgment in Pushpabai's case was pressed into service and it was contended that the liability of the insurance company is restricted to the statutory liability under Section 95 of the 1939 Act and no more and that if the risk to the passenger has to be covered, it is to be done by a special contract and since the contract of insurance did not specify risk to the passengers, nor any additional payment or premium

was received, the passenger cannot claim to be compensated in an amount exceeding the statutory liability. On the side of the claimants, it was contended that the very concept of a Comprehensive Policy includes the risk to a passenger gratuitously carried. A special contract is necessary for limiting the liability of the insurance company and therefore, the liability is all inclusive, unless specifically limited. The Circular dated 13.3.1978, which has been extracted above, was also brought to the notice of the Delhi High Court. The policy in question was of the year 1970 and when the case came up for hearing before the Tribunal on 31.5.1979, the 1978 Instructions had come into operation. The Delhi High Court held that, "Apart from the instructions of the Tariff Advisory Committee, the contract itself provided positive indication that the risk of occupants/passengers is covered by the policy. The contract itself at the top describes it as a contract for 'Private Car (Comprehensive)'. Section 2 of the contract provides for liability to third party and this paragraph shows that the company will indemnify the insured in the event of an accident caused by or arising out of the use of the motor car against all sums including claimant's costs and expenses which the insured shall become legally liable to pay in respect of death of or bodily injury to any person but except so far as is necessary to meet the requirements of Section 95 of the 1939 Act, the company shall not be liable where such death or injury arises out of and in the course of the employment of such person with the insured". The Delhi High Court also noted that apart from these provisions, the contract itself provides for general exceptions where the company shall not be liable to pay and the exceptions do not include the occupants/passengers. In fact, at the time of arguments, the Delhi High Court was informed that the valuable and important instructions which affect the policy holders are not published either by the Tariff Advisory Committee or by the National Insurance Company.

14. Before the Delhi High Court, the counsel for the insurance company could not produce any material, nor a single policy where in a Comprehensive Policy, special premium was charged to cover the risk of occupants/passengers.

Therefore, the Delhi High Court rightly concluded that this would negatively establish that the nationalised insurance companies did not enter into special contract of insurance to cover occupants/passengers and that the Comprehensive Policy covers all the risks and liabilities to which the insured is liable. The Delhi High Court also held that the 1978 Instructions of the Tariff Advisory Committee are in the nature of express clarification of the legal position already obtaining and therefore, no new right was created by the 1978 Circular, but the existing right was only clarified. Even the 1978 Circular specifically mentioned, that this is how it has all along been understood and that in recent times, the insurance companies were taking a different stand which necessitated the Tariff Advisory Committee to come out with explicit instructions. Therefore, these instructions are not declaratory, but only clarificatory and as per Section 64U, govern the insurers.

15. The provisions relating to motor accidents claims in the Motor Vehicles Act form a self-constituted Code and they are intended to benefit the unfortunate legal heirs of an accident victim or the unfortunate injured in an accident and if the rights that these persons are entitled to are not made known to them, it is possible that they are prevented from making the rightful claim or cheated from receiving the rightful compensation.

16. What was then specifically mentioned in the Tariff Advisory Committee Circular in 1978 has now been incorporated in the contract itself in a Package Policy. Therefore, even if the 2002 Tariff regime does not specifically mention that in a Comprehensive Policy, the gratuitous occupant's risk is covered since it is a comprehensive policy, by its own terminology, it includes any person in the car or any type of vehicle except those that are specifically excluded.

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27. In Motor Vehicle Laws 13th Edition, 2008 (Lexis Nexis Butterworths Wadhwa, Nagpur), which is a critique on motor vehicle laws by Justice K.

Kannan and N.Vijayaraghavan, the learned authors on considering the large scale use of two wheelers with pillion riders and carriage of gratuitous occupants in private car have given their opinion, referring to various judgments under the head "Liability of insurer for death/injury to gratuitous passengers in private car under a Package/Comprehensive Policy", since it is a very serious and sensitive issue that requires examination, They observe as follows :

"Motor TP cover is still governed by Tariff. What TAC had directed or expressed in 1977 still holds good and their decision to amend the Policy wording which is in use till date, continues to bind the Insurers.

The Insurers cannot ignore the TAC decision and argue as if the Policy is framed or issued by them independently and there is no cover for occupants.

In our opinion, the 'additional premium' argument cannot be stretched too far by the Insurers, ignoring the Policy wording and the intention to cover as stipulated by TAC."

The learned authors also observed as follows:

"The liability of insurer to a pillion rider and a gratuitous occupant would depend upon the cover granted by insurer being Act Policy or Package Policy. In respect of an Act Policy such persons are not required to be covered. It is only under a Package Policy such persons are covered by the contract of insurance. Under the earlier dispensation in Motor Vehicle Act, this position was the same. In Pushpabai's case, the Supreme Court had held that the insurer would not be liable to occupants carried in a private vehicle under a Policy. In K.Gopalakrishnan vs. Sankaranarayanan, 1969 A.C.J. 34 and National Insurance Co. Ltd., v. V.Vasantha 1987 A.C.J. 887, the High Court, Madras had held that insurer was not liable to pillion riders carried on a 2 wheeler under an Act Policy. Similar decisions were delivered by all courts barring a few."

We read in this very exhaustive critique that it is not without reason or out of ignorance that insurers were satisfying the awards all along from 1977, it was on account of the fact that as against an Act Policy, the Comprehensive (now Package) Policy, occupants were expressly covered, due to a conscious change in the Policy wording after insurers were held not liable by the Supreme Court in Pushpabai's case; and that as regards the third party coverage under Comprehensive Policy prevailing before 25.3.1977, it is clear that the Comprehensive Policy before 25.3.1977 did not use the words "including occupants carried in the motor car provided that such occupants are not carried for hire or reward". These are the words in the 1978 Circular. They further observe thus:

"There is no change in the law Insurers are not required to cover passengers in a private car. The relevant portion of the Policy has also not changed materially ever since 1977. TAC's Circular or the amendment has not become inapplicable or irrelevant when this portion of the Policy wording is being maintained till date even under the 2002 Tariff.

When neither the law nor the relevant wording in the Policy has changed, it would not be open to Insurers to ignore the wording and the amendment brought about by TAC consciously in 1977 itself to argue that there is no liability for occupants, contrary to what is stated in the Policy document."

29. There fore it is clear from the Act itself, the words of the policy and the decision in Amritlal Sood's case (supra) that a Comprehensive Policy covers the risk of a gratuitous passenger to the extent of the liability incurred. We may imagine what will happen in a case where the owner is driving his car covered by a Comprehensive Policy. He is accompanied by his wife and children. There is an accident as in this case. The wife and children are permanently disabled by the injuries. If we agree with the appellant Insurance Company, those pathetic claimants will not get any compensation. The law never intended this to happen. That is why the TAC explicitly came out with the clarificatory Circular in 1978. We cannot forget that the words used are "third party" and "Comprehensive", so we cannot deny this relief to the third party occupant in a car covered by a Comprehensive Policy.

33. The policy holder should know as to whose risk is being covered. It should be brought to his knowledge that even his family members would be gratuitous passengers travelling in his car and we also hope that in addition to English and Hindi, the insurance companies, both public sector as well as private sector undertakings, would consider publishing the instructions and guidelines in the language of the State. The law governing the insurance policy ultimately is a law of contract and so both parties should understand exactly what are the terms of the contract and for exactly what extent and what type of coverage the policy holder is paying premium.

34. While deciding the claim petition, the Motor Accidents Claims Tribunal should examine the terms of the Policy produced by the insurer, and in the event of denial of liability, a finding should be rendered with regard to the nature of the Policy as to whether it was an 'Act Policy' or a 'Package Policy'.

(ii) In *Royal Sundaram Alliance Insurance Company Ltd., v. A.Pappathi* reported in 2009 (1) TNMAC 556, (Decision relied on by the learned counsel for the respondents/claimants, before the Tribunal) an occupant of the car died, when the driver drove the vehicle in a rash and negligent manner and dashed against a palm tree. Legal representatives made a claim for compensation. Considering the question, as to whether, an occupant in a car, should be construed as a third party and whether the Company, which has issued a package policy, under Section 6 of IMT, is liable to compensate for the death or bodily injuries to any person, including the occupants carried in vehicle (provided such occupants not carried for hire or reward) and when the insured in the above case, has also made further payment under IMT-28 of Section 7, a learned Single Judge of this Court, at Paragraphs 19 to 23, held as follows:

"19. The Insurance Act, provides for establishment of a Tariff Advisory Committee otherwise known as TAC which lays down the Rules, Regulations, Rates, Advantages, Terms and Conditions, for transaction of motor insurance business in India. For this purpose, the India Motor Tariff, hereinafter referred to as "IMT" and it contains Section 1 to Section 8 and General Regulations G.R.1 to G.R.48 and it is issued from time to time. As far as the present case is concerned, the India Motor Tariff (IMT) 2002

supersedes the provisions of the India Motor Tariff (IMT) in existence upto 30th June, 2002. It is also stated that it is binding on all concerned and any breach of the Tariff will be a breach of the provisions of the Insurance Act, 1938.

20. Under the Indian Motor Tariff (IMT) different types of policies are issued and they are contained in IMT Section 6 (page 107 of IMT). They are:-

- (a) Standard form for liability only policy,
- (b) Standard form for private car package policy,
- (c) Standard form for two wheeler package policy,
- (d) Standard form for commercial vehicles package policy,
- (e) Standard form for motor trade package policy

and the like. Each policy is split into different sections to deal with different contingencies and the parties bind themselves to the terms of the clause contained in each section of the policy. For example, the package policy for a private car which is applicable to the present case contains:-

Section I Loss of or damage to the vehicle insured,

Section II Liability to third parties,

Section III Personal accident cover for owner-driver

There are other conditions and limits. In this appeal we are concerned with the liability of the insurance company in respect of a gratuitous passengers/occupants in a private vehicle (car).

21. The first policy in Section 6 of IMT is liability only policy or act only policy. In that the liability to third parties is set out as hereunder:-

LIABILITY TO THIRD PARTIES:

1. Subject to the Limit of liability as laid down in the schedule hereto, the Company will indemnify the insured in the event of accident caused by or arising out of the use of the Motor Vehicle anywhere in India against all sums

including claimant's costs and expenses which the insured shall become legally liable to pay in respect of

i. death of or bodily injury to any person so far as it is necessary to meet the requirements of the Motor Vehicles Act.

ii. damage to property other than property belonging to the insured or held in trust or in the custody or control of the insured up to the limit specified in the schedule." (emphasis supplied)

22. The next policy in Section 6 of IMT that is relevant to this case is a private car package policy in which Section II (page 119 of IMT) deals with liability to third parties, which reads as follows:-

"Standard Form for private car package policy. Whereas the insured by a proposal and declaration dated as stated in the Schedule which shall be the basis of this contract and is deemed to be incorporated herein has applied to the Company for the insurance hereinafter contained and has paid the premium mentioned in the schedule as consideration for such insurance in respect of accidental loss or damage occurring during the period of insurance.

Now this policy witnesseth:

That subject to the Terms Exceptions and Conditions contained herein or endorsed or expressed herein;

Section I xxx

Section II Liability to third parties

1. Subject to the limits of liability 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 vehicle against all sums which the insured shall become legally liable to pay in respect of:-

(i) death of 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 the

employment of such person by the insured.

(ii) damage to property other than property belonging to the insured or held in trust or in the custody or control of the insured." (emphasis supplied)

The specific terms of the Section II of the package policy casts a liability on the insurance company to compensate the death or bodily injury to any person including occupants carried in the vehicle (provided such occupants are not carried for hire or reward). There is, therefore, a clear distinction in Section II of Act Policy (i.e.) liability only policy and Section II of package policy.

23. Further, Section 1 (Page 1 of IMT) contains General Regulations, in that the provision is made for various types of personal accidents covers. To name a few, the following covers which are available are extracted:-

"Cover is available only in respect of the following persons:-

1. Private Cars including three wheelers rated as Private cars and motorised two wheelers with or without side car (not for hire or reward): For insured or any named person other than the paid driver and cleaner. Endorsement IMT 15 is to be used.

2. Private Cars, three wheelers rated as Private cars and Motorised Two Wheelers (not used for hire or reward) with or without side car: For unnamed passengers limited to the registered carrying capacity of the vehicle other than the insured, his paid driver and cleaner. Endorsement IMT 16 is to be used.

3. In respect of all classes of vehicles: For paid drivers, cleaners and conductors.

Endorsement IMT 17 is to be used.

4..... etc.,"

The various types of endorsements ranging from IMT1 to IMT-65 are contained in Section-7. IMT Endorsements are made in appropriate Section of the policy. Based on the need of the insured, the type of policy with necessary endorsements are made. In the present case, which is a package policy, in addition to third party liability in

terms of Section-II as has been extracted in para 22 above, the insured has also taken further endorsement under Section-III, under the head personal accident cover. A premium of Rs.65/- has been paid under IMT-20 and no premium was paid under IMT-16. In the present package policy, in addition to liability cover in respect of occupants of the vehicle, the insured has also made further payment under IMT-28. It is in this background, that the claim of the legal heirs of the deceased has to be considered. If under Section-II of the package policy the claim of passengers, occupants of the car is covered, the question that has to be decided is as to whether any additional premium is required to be paid to cover a claim in respect of risk of occupants of the car and what will be the consequence of such further payment."

(iii) In National Insurance Co. Ltd., v. Balakrishnan reported in 2012 (2) TNMAC 637 (SC), Managing Director of the Company travelled in a Car, sustained injuries in an accident, due to the rash and negligent driving of the car driver. A claim for compensation was made. Company, being the owner of the Car and that the injured, Managing Director travelled in the car, only as a third party, the Tribunal held that the insurer was liable to pay compensation. Liability fastened on the Insurance Company was confirmed by the High Court. Testing the correctness of the judgment, the Insurance Company preferred an appeal to the Hon'ble Supreme Court, contending inter alia, that the claimant, being the Managing Director of the Company, as well as the Signatory in the Registration Certificate, as owner, liability of the insurer is limited only to the extent stipulated in policy. However, the Managing Director contended that that he travelled in the car only as a third party and therefore, the Insurance Company is bound to indemnify the owner. Pointing out the difference in Act Policy and Comprehensive Policy/Package Policy and taking note of the circulars issued by IRDA, a Statutory Authority, the Hon'ble Supreme Court, held as follows:

"17. At this stage, it is apposite to note that when the decision in Bhagyalakshmi and others v. United Insurance Co. Ltd., and another, 2009 (1) TNMAC 659 (SC), was rendered, a decision of High Court of Delhi dealing with the view of the Tariff Advisory Committee in respect of "comprehensive/package policy" had not come into the field. We think it apt to refer to the same as it deals with certain factual position which can

be of assistance. The High Court of Delhi in Yashpal Luthra and Anr., v. United India Insurance Co. Ltd., and Another [2012 (2) TNMAC 625 (DEL.) = 2011 ACJ 1415], after recording the evidence of the competent authority of Tariff Advisory Committee (TAC) and Insurance Regulatory and Development Authority (IRDA), reproduced a circular dated 16.11.2009 issued by IRDA 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 circular which has been reproduced by the High Court is as follows:-

"IRDA

Ref: IRDA/NL/CIR/F&U/073/11/2009

16.11.2009

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 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 aforementioned circulars and any non-compliance of the same would be viewed seriously by the Authority. This is issued with the approval of competent authority.

सत्यमेव जयते

Sd/-

(Prabodh Chander)

Executive Director"

[emphasis supplied]

18. The High Court has also reproduced a circular issued by IRD dated 3.12.2009. It is instructive to quote the same:-

"IRDA

IRDA/NL/CIR/F&U/078/12/2009

3.12.2009.

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. 176/2009 in the case of Yashpal Luthra v. United India and Ors., 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 counsel 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 Apex Court, informing, 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 and 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.

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"

[emphasis added]

19. It is extremely important to note here that till 31st December, 2006 the Tariff Advisory Committee and, thereafter, from 1st January, 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 by all insurance companies. The High Court had issued notice to the Tariff Advisory Committee and the IRDA to explain the factual position as regards the liability of the insurance companies in respect of an occupant in a private car under the "comprehensive/ package policy".

Before the High Court, the Competent Authority of IRDA had stated that on 2nd June, 1986, the Tariff Advisory Committee had issued instructions to all the insurance companies to cover the pillion rider of a scooter/motorcycle under the "comprehensive policy" and the said position continues to be in vogue till date. It had also admitted that the "comprehensive policy" is presently called a "package policy". It is the admitted position, as the decision would show, the earlier circulars dated 18th March, 1978 and 2nd June, 1986 continue to be valid and effective and all insurance companies are bound to pay the compensation in respect of the liability towards an occupant in a car under the "comprehensive/package policy" irrespective of the terms and conditions contained in the policy. The competent authority of the IRDA was also examined before the High Court who stated that the circulars dated 18th March, 1978 and 2nd June, 1986 of the Tariff Advisory Committee were incorporated in the Indian Motor Tariff effective from 1st July, 2002 and they continue to be operative and binding on the insurance companies. Because of the aforesaid factual position, the circulars dated 16th November 2009 and 3rd December, 2009, that have been reproduced hereinabove, were issued.

20. It is also worthy to note that the High Court, after referring to individual circulars issued by various insurance companies, eventually stated thus:-

"In view of the aforesaid, it is clear that the comprehensive/package policy of a two wheeler covers a pillion rider and comprehensive/package policy of a private car covers the occupants and where the vehicle is covered under a comprehensive/package policy, there is no need for Motor Accident Claims Tribunal to go into the question whether the Insurance Company is liable to compensate for the death or injury of a pillion rider on a two-wheeler or the occupants in a private car. In fact, in view of the TAC's directives and those of the IRDA, such a plea was not permissible and ought not to have been raised as, for instance, it was done in the present case."

21. In view of the aforesaid factual position, there is no scintilla of doubt that a "comprehensive/package policy" would cover the

liability of the insurer for payment of compensation for the occupant in a car. There is no cavil that an "Act Policy" stands on a different footing from a "Comprehensive/Package Policy". As the circulars have made the position very clear and the IRDA, which is presently the statutory authority, has commanded the insurance companies stating that a "Comprehensive/Package Policy" covers the liability, there cannot be any dispute in that regard. We may hasten to clarify that the earlier pronouncements were rendered in respect of the "Act Policy" which admittedly cannot cover a third party risk of an occupant in a car. But, if the policy is a "Comprehensive/Package Policy", the liability would be covered. These aspects were not noticed in the case of Bhagyalakshmi (supra) and, therefore, the matter was referred to a larger Bench. We are disposed to think that there is no necessity to refer the present matter to a larger Bench as the IRDA, which is presently the statutory authority, has clarified the position by issuing circulars which have been reproduced in the judgment by the Delhi High Court and we have also reproduced the same.

22. In view of the aforesaid legal position, the question that emerges for consideration is whether in the case at hand, the policy is an "Act Policy" or "Comprehensive/Package Policy". There has been no discussion either by the tribunal or the High Court in this regard. True it is, before us, Annexure P-1 has been filed which is a policy issued by the insurer. It only mentions the policy to be a "comprehensive policy" but we are inclined to think that there has to be a scanning of the terms of the entire policy to arrive at the conclusion whether it is really a "package policy" to cover the liability of an occupant in a car."

Ultimately, while setting aside the finding of the High Court and the Tribunal, regarding liability of insurer, the Hon'ble Apex Court remitted the matter to the Tribunal to scrutinize whether the Policy was a "Comprehensive/Package Policy" or not, to cover the liability of the occupant in the car.

15. Now in the background of the above legal pronouncement and reverting to the case on hand, it is seen that the Assistant Manager of the Company, examined as RW.1, himself has candidly admitted that the offending vehicle is duly insured under Ex.R1

- Insurance Policy. Accident has occurred due to the negligence of the driver of the Car, owned by the Company. In the light of the decisions and evidence on record, this Court finds no illegality in fastening liability on the appellant-Insurance Company to pay compensation to the respondents.

16. Though the learned counsel for the appellant-Insurance Company assailed the quantum of compensation, awarded to the legal representatives of the deceased, in both the claim petitions, this Court has directed the learned counsel appearing for the respective parties to arrive at a consensus, on the quantum. After discussion, quantum of compensation, arrived at, by the learned counsel, in each case, is as follows:

M.C.O.P.No.68 of 2010:

Monthly income	: Rs.15,000/-
Annual Income	: Rs.1,80,000/-
Adding 30% future prospects (Rs.1,80,000/- + Rs.54,000/-)	: Rs.2,34,000/-
1/3rd towards personal and living expenses	: Rs.1,56,000/-
Multiplier for 46 years	: 13
Loss of contribution to the family (Rs.1,56,000/- x 13)	: Rs.20,28,000/-
Loss of consortium	: Rs. 1,00,000/-
Loss of love and affection	: Rs. 50,000/-
Funeral Expenses	: Rs. 25,000/-
Transportation	: Rs. 10,000/-

*Total	: Rs. 22,13,000 /-

M.C.O.P.No.1566 of 2009

Monthly income	: Rs.17,000/-
Annual Income	: Rs.2,04,000/-
1/3rd towards personal and living expenses	: Rs.1,36,000/-

Multiplier for 57 years : 9

Loss of contribution
to the family : Rs.12,24,000/-
(Rs.1,56,000/- x 13)

Loss of consortium : Rs. 1,00,000/-

Loss of love and affection: Rs. 1,00,000/-

Funeral Expenses : Rs. 25,000/-

Transportation : Rs. 10,000/-

Total : Rs.14,59,000/-

17. In the result, these appeals are disposed of. The appellant-Insurance Company is directed to deposit the amount, consented to, by both the learned counsel, less the amount already deposited, with accrued interest and costs, to the credit of M.C.O.P.Nos.68 of 2010 and 1566 of 2009, on the file of the Motor Accident Claims Tribunal (IIInd Additional District Judge) at Salem District, within a period of six weeks from the date of receipt of a copy of this order. The respondents/claimants are permitted to withdraw the said amount, by making necessary applications before the Tribunal, except the minors. Minors' share shall be deposited in any Nationalised Bank in fixed deposit, under the reinvestment scheme initially for a period of three years, proximate to the residence of the guardians. The interest accruing on the share of the minor shall be paid to the guardians, once in three months, till they attain majority. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(CS IV)
Dated:26.05.2017

***Amended as per order
of this court, dated
06.07.2017 in
C.M.A.No.261 & 1067/15.
sd/- Assistant Registrar(CO)
Dated: 21.07.2017**

//True Copy//

Sub Assistant Registrar

To

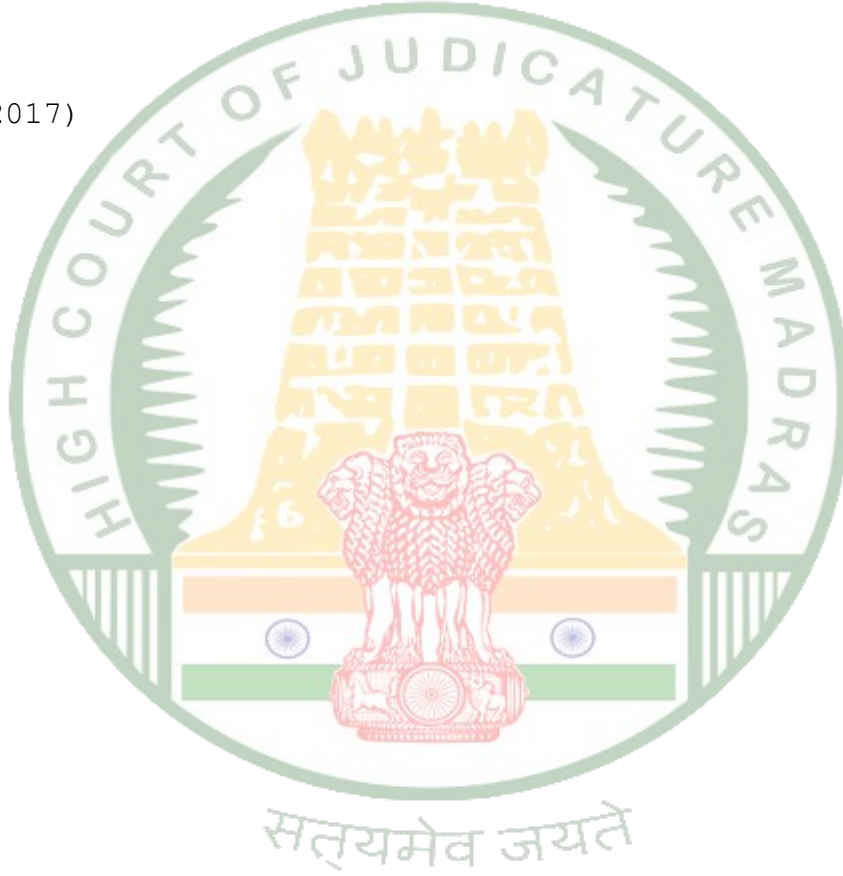
The Motor Accidents Claims
Tribunal,
(Additional District Judge)
at Salem District.

Amended order to be
despatched on 08.06.2017

+1 CC to Mr.K. Varadhakamaraj, Advocate sr 47067
+1 CC to Mr.J. Chandran, Advocate sr 47817

C.M.A.Nos.261 and 1067 of 2015

AD(CO)
sp/31/5
SP(21/07/2017)



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