

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 29.11.2016

DATE OF DECISION : 05.01.2017

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

C.M.A.Nos.3661 of 2013 & of 2080 of 2014

M/s New India Assurance Co.Ltd.,
Branch Office
No.39-C, Bypass Road
Dharmapuri 636 701 ... Appellant/2nd respondent

-vs-

Thiru Murugan
S/o Mathaiyan ... 1st Respondent/Claimant

Thiru Rajendiran
S/o Ramasamy ... 1st Respondent/Claimant

Thiru K.Murugan ... 2nd Respondent/1st respondent

Memorandum of Grounds of Civil Miscellaneous Appeals under Section 173 of the Motor Vehicles Act, 1988 against the award and decree dated 17.11.2012 made in M.C.O.P.Nos.1114 & 1115 of 2009 on the file of the Motor Accident Claims Tribunal, Subordinate Judge, Dharmapuri.

For Appellant :: Mr.J.Chandran

For Respondents :: Mr.S.Sathiaseelan for R1
in both the CMA's
No appearance for R2

JUDGMENT

M/s United India Insurance Company Limited, Dharmapuri, aggrieved by the award made in M.C.O.P.Nos.1114 & 1115 of 2009 dated 17.11.2012 passed by the Motor Accident Claims Tribunal, Subordinate Judge, Dharmapuri awarding a compensation of Rs.53,798/- and Rs.3,74,821/- with interest at the rate of 7.5% per annum from the date of petitions till realisation to the respective claimant, has filed these appeals questioning the liability and quantum.

2. Mr.J.Chandran, learned counsel for the appellant Insurance company heavily contended that when sufficient evidence, both oral and documentary, were produced by the insurance company that at the time of accident, the vehicle was covered with an "Act policy" and not for any other category of persons who were on board of either the Tractor or Trailer,

therefore the insurance company should have been exonerated from the liability or the risk of gratuitous passengers, the Tribunal has failed to consider the same. When the persons injured in the accident are gratuitous passengers and no insurance premium has been paid to the company, the Tribunal, considering the factor that the claimants, who are not third parties, who are alone covered under the "Act policy", ought to have held that the claimants, who have voluntarily travelled on the load of hollow bricks without following safety rules against Rule 238 of the Tamil Nadu Motor Vehicles Act, are not entitled for any compensation. Assailing the quantum of compensation, he further submitted that the compensation of Rs.3,74,821/- awarded for the injuries sustained by the claimant-Rajendiran in C.M.A.No.2080 of 2014 is wholly excessive, exorbitant and unsustainable in law, because, when the accident occurred solely due to the reckless playful act of the claimants, the Tribunal ought to have reduced the compensation under Section 140 of the Motor Vehicles Act.

3. Explaining further, he submitted that both the claimants Mr.Murugan and Mr.Rajendiran were neither loading nor unloading coolies, but were only unauthorised passengers. Moreover, when the Tractor bearing Registration No.TN 28 M 6729 belonging to the second respondent was insured only for agricultural purpose, the said vehicle was carrying hollow bricks/blocks for commercial purpose. This apart, the owner of the vehicle also did not pay any premium towards the risk of persons travelling in the said vehicle, therefore, both Murugan and Rajendran, who sustained injuries, should be treated only as unauthorised passengers. However, in order to claim compensation, they have set up a case as though they were coolies. When there was no permit to carry the passengers or coolies, as the seating capacity is for driver only, as the said vehicle was not used in accordance with the provisions of the Motor Vehicles Act, for breach of the conditions of policy, the insurance company also is not liable to indemnify the owner of the said vehicle for such violations. Adding further, the learned counsel submitted that even the claim petitions also clearly admit the fact that the Tractor bearing Registration No.TN 28 M 6729 involved in the accident on 9.4.2009 at 7.00 A.M., had carried hollow bricks for the purpose of constructing a motor pump set at K.N.Savulur. Again emphatically reiterating the points, he submitted that admittedly no premium whatsoever was paid towards the coolies, therefore, when the injured Murugan and Rajendran claimed before the Tribunal that they were all working as loading and unloading coolies for the transport of hollow bricks, they are not entitled to get any compensation from the insurance company for the injuries sustained by them. In fact, the said point was also canvassed before the Tribunal that the owner of the Tractor cum Trailer had not taken any policy covering the risk of coolies nor paid any additional premium, therefore, the impugned award saddling the liability to pay the compensation on the insurance company is liable to be set aside.

4. Concluding his arguments, he submitted that even the driver of the Tractor also had no valid driving licence to drive

the same at the time of the alleged accident. Besides, when the Tractor was insured for agricultural purpose, carrying hollow bricks for commercial purpose is another violation of the policy conditions, for which the liability cannot be saddled on the insurance company. In any event, when the owner of the said vehicle had not paid any premium towards the risk of passengers travelled in the said vehicle, they are to be treated only as unauthorised passengers, hence they cannot be brought even under third parties. On the other hand, the Tribunal, having considered the injured claimants under third party coverage, for the injuries sustained by them, has awarded a huge and unreasonable amount of compensation, therefore the same is liable to be set aside. In support of his submission that a gratuitous passenger is not entitled to get any compensation for the death of or bodily injury caused in an accident, he pressed into service a judgment of the Apex Court in the case of Oriental Insurance Company Limited v. Sudhakaran K.V. and others, (2008) 7 SCC 428, wherein it is held that a gratuitous passenger in a goods vehicle would not be covered by a contract of insurance entered into by and between the insurer and the owner of the vehicle in terms of Section 147 of the Act. Taking support from Tilak Singh's case, (2006) 4 SCC 404 extending the said principle to all other categories of vehicles, the Apex Court has held that the insurance company concerned owed no liability towards the injuries suffered by the deceased who was a pillion rider, as the policy was a statutory policy and hence it did not cover the risk of death of or bodily injury to a gratuitous passenger. In the said case, as the contract of insurance was entered into for the purpose of covering the third party risk and not the risk of the owner or a pillion rider, an exception in the contract of insurance has been made, namely, by covering the risk of the driver of the vehicle. Since the deceased therein indisputably was not the driver of the vehicle, the contract of insurance did not cover the owner of the vehicle, certainly not the pillion rider. On the basis of the said judgment, the learned counsel for the insurance company further submitted that when the pillion rider of a two-wheeler was not to be treated as third party, when the accident had taken place owing to rash and negligent riding of the scooter and not on the part of the driver of another vehicle, the said ratio will equally apply in the present cases, as the accident occurred only due to the rash and negligent driving by the driver of the Tractor and Trailer, therefore the claimants cannot be treated as third parties. Moreover, the requisite amount of premium was not paid by the owner for covering their risk.

5. Again taking support from the judgment of a Hon'ble Division Bench of this Court in Royal Sundaram Alliance General Insurance Co.Ltd., v. P.Ayyakannu and another, 2009 (5) MLJ 707, Mr.J.Chandran, learned counsel submitted that when gratuitous passengers travelled in a vehicle beyond the number for which there is a seating accommodation, the insurance company is not even liable to indemnify the injured in respect of the injuries sustained. Explaining the case considered by the Division Bench, he submitted that the Hon'ble Division Bench, while

referring to Rule 236 providing that no person shall be carried in the cabin of a goods vehicle beyond the number for which there is a seating accommodation, has observed that Section 149 cannot be understood as imposing a liability on the insurer to make payment even in respect of those who have been loaded into the vehicle against the terms of permit and against the terms and conditions of the registration of the vehicle and although the insurer is bound to cover the third party risk, the risk can only be understood to mean the risk of passengers authorized or permitted to be carried in the said vehicle. On that basis, the Division Bench has held that the insurer is liable to indemnify the liability only with regard to one person who sat in the cabin of the vehicle along with the driver and whose liability alone the insurer was bound to cover, as the vehicle can carry only two persons. Again taking support from another judgment of the Apex Court in the case of *Oriental Insurance Company Limited v. Surendra Nath Loomba and others*, 2013 ACJ 321 holding that the insurance company is liable under comprehensive/package policy, but not under Act policy, he has contended that when the Tractor-Trailer was insured with the insurance company under an 'Act policy', there is no liability on the insurance company to pay the compensation to the claimants herein.

6. Per contra, Mr.S.Sathiaseelan, learned counsel for the respondents claimants in both the appeals submitted that on 9.4.2009 at about 7.00 A.M., when the Tractor with Trailer carrying hollow bricks from Balaji Brick Industries belonging to Chinnasamy Maistry of MGR Nagar was proceeding for the purpose of building a motor pump set in the agricultural land along with the coolies Mr.Murugan, Mr.Rajendran and Mr.Poomani, on the way, near K.N.Savulur, the driver of the Tractor stopped the vehicle at Moondru Maangai Wheat Mill. It is at this point of time, the coolies Rajendran, Poomani and Murugan got down from the vehicle to answer the nature's call. But, without noticing that they had boarded the tractor, the driver of the Tractor started to turn the vehicle, as a result the vehicle capsized and the hollow bricks fell on the claimants Rajendran and Murugan and both of them sustained grievous injuries. When the accident occurred only due to the rash and negligent driving of the driver of the vehicle, P.W.1 Murugan and P.W.2 Rajendran, having sustained grievous injuries, were rushed to the nearby Dharmapuri Om Sakthi hospital for first aid. Thereafter, for better treatment, they were taken to Dharmapuri Government Hospital and then to Bangalore Viswabharathi Hospital, wherein they were taking treatment as in-patients. The discharge summary, Ex.P5 issued to P.W.1-Murugan by the Bangalore Viswabharathi Hospital clearly shows that he sustained grievous injuries on his left earlobe, left hand and also on his right ankle and he was taking treatment for the said injuries from 9.4.2009 to 15.4.2009. P.W.2- Rajendran also sustained multiple injuries, for which he was taking treatment in both the Dharmapuri Om Sakthi Hospital and Bangalore Viswabharathi Hospital from 9.4.2009 to 9.5.2009. Once again he was re-admitted as in-patient from 31.5.2009 to 7.6.2009, since he sustained fracture in his hip and also sustained grievous injuries in his stomach. He also underwent a surgery in his hip

and owing to grievous injuries on his stomach, the flow of urine was also blocked. The record shows that he had also undergone an operation for the said problem. The wound certificate, Ex.P9 and the discharge summary, Ex.P10 issued by the Bangalore Viswabharathi Hospital in favour of Rajendran clearly show that he had sustained multiple injuries, for which he had not only lost his income during the period of treatment, but also his future earning capacity. Therefore the Tribunal, keeping in mind that the driver of the Tractor-Trailer was holding a valid driving licence and the vehicle involved in the accident was also having a valid insurance policy and that the Tractor was carrying hollow bricks/blocks for the purpose of building a motor pumpset in the agricultural land, has clearly held that the vehicle was used for agricultural purpose and there was no violation of the policy conditions. Since both the injured are third parties, as per Section 145(g) of the Motor Vehicles Act, which defines 'third party' as including the Government, it would mean that other than the contracting parties to the insurance policy, the expression 'third party' should include everyone. In support of his submissions, he has also pressed into service a Full Bench judgment of the Madhya Pradesh High Court in Jugal Kishore and another v. Ramlesh Devi and others, 2004 ACJ 297 holding that 'third party' should include everyone, be it a person travelling in another vehicle, one walking on the road or a passenger in the vehicle itself which is the subject matter of the insurance policy. Pleading further, he submitted that the Full Bench of the Madhya Pradesh High Court has held that even if there is a violation of the conditions of policy, the insurance company will be liable to indemnify the victim in the event of an accident, if the vehicle is used for the purpose other than for which it is insured other than the conditions mentioned in Section 149(2) of the Motor Vehicles Act, the insurance company is liable to indemnify the victim and will be entitled to recover the compensation amount from the owner pointing out the breach of conditions of the policy. Therefore, in the cases on hand, when there is a clear cut finding given by the Tribunal that the driver of the Tractor attached with Trailer, while carrying hollow bricks for the purpose of using the same for building a motor pump set, turned the vehicle carelessly resulting in the accident, for the rash and negligent driving of the driver of the Tractor with Trailer, the insurance company is liable, since both the injured were travelling as coolies and even assuming for a moment that they are not to be treated as coolies, they are to be treated as 'third parties' under Section 145(g) of the Motor Vehicles Act, 1988 and since the Full Bench of the Madhya Pradesh High Court has held that 'third party' should include everyone, be it a person travelling in another vehicle, one walking on the road or a passenger travelling in the vehicle itself which is the subject matter of insurance policy, the finding given by the Tribunal saddling the liability on the insurance company cannot be interfered with, he pleaded.

353 holding that a 'third party' is neither the insurer nor the insured, submitted that Section 147 is quite wide in its scope and meaning and the object of the legislature has been rightly interpreted by the Hon'ble Division Bench of this Court to give 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 any exception. Again pressing into service a judgment of the learned single Judge of this Court in Royal Sundaram Alliance General Insurance Co.Ltd., v. D.Gunasekaran and others, 2014 (2) TN MAC 79 to advance the argument that even under an 'Act policy', the insurance company is liable to pay the compensation to the owner of the goods or his representative, as per Section 147(1)(b) & (c) giving statutory protection to the insured in case of goods vehicle. Therefore, the contention that the insurer is liable only in respect of one passenger is also not tenable, he pleaded.

8. Heard the learned counsel for the parties.

9. P.W.1-Murugan and P.W.2-Rajendran sustained injuries in an accident that took place on 9.4.2009 at about 7.00 A.M., when the driver of the Tractor cum Trailer was carrying hollow bricks/blocks from Balaji Bricks Industries to K.V.Savulur. The reason for the purpose of carrying hollow bricks has been shown as one for building a motor pump set in the agricultural field. While the said vehicle was rashly driven by its driver, it capsized and the hollow bricks fell on both the injured Murugan and Rajendran. The First Information Report, Ex.P1 registered on the file of Dharmapuri Police Station in Crime No.757 of 2009 for the offence under Sections 279 and 337 of IPC against the driver of the Tractor-Trailer was accepted by the Tribunal to hold that the accident occurred only due to the rash and negligent driving of the vehicle by its driver. Consequent to the finding on negligence on the part of the driver of the vehicle, as the driver was having a valid driving licence on the date of accident and the appellant also issued the policy for the said vehicle, the Tribunal has saddled the liability on the insurance company for payment of compensation to both the injured.

10. Mr.J.Chandran, learned counsel for the appellant insurance company has canvassed before this Court that when the owner of the Tractor cum Trailer had taken only an 'Act policy', the claimants are not entitled to claim compensation for the injuries sustained by them in the accident. But on the very same plea of the insurance company that the coverage being under an 'Act policy' the claimants are not entitled to compensation, this Court in the judgment in the New India Assurance Co.Ltd., Salem-4 v. Vijayakumar and others, 2001-2-L.W. 833, rejecting the said contention, has held that even if it is an 'Act policy', the insurance company has to pay the amount quantified by the Tribunal. In this context, it is pertinent to extract the relevant portions of the said judgment, as follows:-

“3. The points raised by the learned counsel for the appellant in the CMAs are: (1) The insured had violated policy conditions by

carrying more than five persons in the jeep; and (2) Policy issued was an "Act policy" which would not cover gratuitous passengers in the jeep.

9. Per contra, Mr.P.Jagadeesan, learned counsel for the respondents made the following submissions:

The Insurance Company had only a limited liability was not raised in the claim petition MACT OP 1846/1992, that the words 'any person' in Sec.147(b)(i) would very much include a gratuitous passenger and that the Insurance Company could not escape liability.

It was also submitted by the learned counsel for the respondents that the new Section is only clarificatory in nature and the words 'any person' were there in existence already in the earlier Act.

10. Let us now take up the question as to whether the passenger in the jeep could be termed to be a third party entitled to compensation as per terms of the policy issued by the company. The accident took place in May, 1992 after coming into force of the new Act. The sections relevant for consideration are Section 95 under the old Act and Section 147 under the new Act.

In Section 95(1)(b)(i) the requirement is that the policy of insurance must be a policy insuring the person or classes of persons specified in the policy to the extent specified in sub-section (2) against any liability which may be incurred by him in respect of the death of or bodily injury to any person (emphasis supplied) or damage to any property of a third party caused by or arising out of the use of the vehicle in a public place.

11. In *Amrit Lal Sood v. Koushalya Devi Thapar* [1988 ACJ 531] the Supreme Court dealing with a case under the old Act has held that the expression 'any person' would undoubtedly include an occupant gratuitously travelling in the car.

12. Thus the position under the old Act itself was that the insurer would be liable in the case of injury to or death of a passenger travelling in the vehicle not for hire or reward involved in the accident provided the policy insured such a person.

25. Now coming to the new Act, Section 147 of the new Act runs as follows:-

147. Requirement of policies and limits of liability. - (1) In order to comply with the requirements of this Chapter, a policy of insurance must be a policy which -

(a) is issued by a person who is an authorised insurer; and

(b) insures the person or classes of persons specified in the policy to the extent specified in sub - section (2) -

(i) against any liability which may be incurred by him in respect of the death of or bodily injury to any person, including owner of the goods or his authorised representative carried in the vehicle] or damage to any property of a third party caused by or arising out of the use of the vehicle in a public place ;

(ii) against the death of or bodily injury to any passenger of a public service vehicle caused by or arising out of the use of the vehicle in a public place;

Provided that a policy shall not be required -

(i) to cover liability in respect of the death, arising out of and in the course of his employment, of the employee of a person insured by the policy or in respect of bodily injury sustained by such an employee arising out of and in the course of his employment other than a liability arising under the Workmen's Compensation Act, 1923 (8 of 1923), in respect of the death of, or bodily injury to, any such employee -

(a) engaged in driving the vehicle, or

(b) if it is a public service vehicle, engaged as a conductor of the vehicle or in examining tickets on the vehicle, or

(c) if it is a goods carriage, being carried in the vehicle, or

(ii) to cover any contractual liability.

Explanation. - For the removal of doubts, it is hereby declared that the death of or bodily injury to any person or damage to any property of a third party shall be deemed to have been caused by or to have arisen out of, the use of a vehicle in a public place notwithstanding that the person who is dead or injured or the property which is damaged was not in a public place at the time of the accident, if the act or omission which led to the accident occurred in a public place.

(2) Subject to the proviso to sub-section (1), a policy of insurance referred to in sub-section (1), shall cover any liability incurred in respect of any accident, up to the following limits, namely :-

(a) save as provided in clause (b), the amount of liability incurred.

(b) in respect of damage to any property of a third party, a limit of rupees six thousand :

Provided that any policy of insurance issued with any limited liability and in force, immediately before the commencement of this Act, shall continue to be effective for a period of four months after such commencement or till the date of expiry of such policy whichever is earlier.

26. The words "injury to any person, including the owner of the goods or his authorised representative carried in the vehicle" in sub-section (1)(b)(i) above, were substituted by Act 54 of 1994 with effect from 14.11.1994.

28. A full Bench of the Kerala High Court in *Oriental Insurance Co.Ltd. v. Ajayakumar* [1999 ACJ 1499] held that the risk of a passenger travelling in a private vehicle gratuitously was covered by an 'Act policy' and the insurance company was liable.

29. In *Oriental Insurance Co.Ltd. v. Radha Rani* [1999 ACJ 1524] the question arose, in the case of the death of a non-fare paying passenger in jeep when the vehicle dashed against an electric pole, whether the insurance company was liable under 'Act policy' in that case. A Division Bench of the Madhya Pradesh High Court held that 'any person' in Section 147(1) of the 1988 Act would cover an occupant who was carried without hire or reward and even if no extra premium was paid for such passengers and the policy was only an 'Act only' policy, the insurance company would be liable....

34. Thus, I hold that the appellant/Insurance company cannot escape liability to pay compensation to the victims or their legal representatives in the accident, that even if the policy is only an Act policy, the insurance company has got to pay the amounts quantified by the Tribunal."

11. In the light of the above, if the arguments of the claimants are considered that both the injured are third parties as per Section 145(g), the Hon'ble Division Bench of this Court in Royal Sundaram Alliance Insurance Company Limited v. A.Meenakshi and others, 2009-2-L.W. 353 has also held that under Section 145(g), a third party is one who is neither the insurer nor the insured. In this context, it is relevant to extract paragraph-6 of the said judgment, as follows:-

"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."

12. It is pertinent to extract Section 145(g) of the Act as follows:-

"145(g). "third party" includes the Government.

13. A Full Bench of the Madhya Pradesh High Court in Jugal Kishore and another v. Ramlesh Devi and others, 2004 ACJ 297, while dealing with the meaning and scope of 'third party' under

Section 145(g) of the Motor Vehicles Act, has also held that the 'third party' should include everyone, be it a person travelling in another vehicle, one walking on the road or a passenger in the vehicle itself which is the subject matter of the insurance policy. In this context, it is pertinent to extract the relevant paragraphs of the said judgment, as follows:-

"14. Word "third party" is considered by the Division Bench of this Court in the case of Usha Jain v. United India Insurance Co., (1996 J LJ 117) in para 7 of the judgment, it is held that word "third party" have nowhere been defined in the Act and under Chapter VIII section 93(d) of the Act only states that "third party" includes the "Government". In the context of the provisions contained in Chapter VIII and the Scheme of Insurance with regard to motor vehicles, it may well be understood by the words "third party" that they include persons and Government other than the insurer and insured.

15. In the case of Nagashetty (supra) the question was considered that the driver of the vehicle was not having valid licence to drive a tractor. It was contended that under section 10 licence is granted to drive specific category of motor vehicles. Merely attachment of a trailer to the tractor for carrying goods, licence to drive tractor will not become ineffective. Tractor shall remain a tractor and its nature will not change. In this case, insurance policy was issued for tractor and additional premium of Rs. 12/- has been taken for a trailer. In this case, deceased were walking on the road when the tractor with trailer dashed against the deceased and the injured. Apex Court held that the deceased and injured are third party and were not passengers in the vehicle.

16. On the question whether the insurance company is liable to indemnify the gratuitous passengers travelling in a trailer of a tractor and whether such passengers will be treated as "third party". On one hand, claimants and owner of the vehicle have argued that the third party would mean passengers travelling in a tractor whereas on the other hand, this proposition was seriously contested by the insurance company. Insurance company submitted that if accident occurs and the victim who is not travelling in the same vehicle will be third party, but gratuitous passengers travelling in the trolley of the

tractor will not be third party and insurance company is not liable to indemnify such passengers.

17. Section 145(g) of the Act defines "third party". It defines that the "third party" includes the Government. It would mean that other than the contracting parties to the insurance policy, the expression "third party" should include everyone, be it a person travelling in another vehicle, one walking on the road or a passenger in the vehicle itself which is the subject-matter of the insurance policy. Every insured takes out an insurance policy against a third party risk and enters into a contract with insurer only with the motive, intention and purpose of covering the risks which may arise in relation to claims lodged against him by a third party. Insurer agreeing to issue insurance policy thereby undertakes to insure the insured and indemnify him against all risks in relation to all claims lodged against him by third party. It will not be proper to narrow the scope and ambit of the word "third party" and exclude the passengers from the operation and purview which would not only defeat the very purpose of taking out the insurance policy, but the very object of the Motor Vehicles Act which makes it mandatory requirement of law that all vehicles/owners of the vehicles must be compulsorily insured against third party risk.

19. In the case of New India Insurance Co. v. Kamla (supra), the Apex Court has considered the implication arising out of Sub-section (4) and its proviso together with section 149 of the Motor Vehicles Act, 1988 and has held that the provisions are intended to safeguard the interest of the insurer who otherwise is not liable to pay any amount to the insured, but for the provisions contained in Chapter XI of the Act. This would mean that the insurance company has to pay to the third parties only on account of the fact that a policy of insurance has been issued in respect of the vehicle, but the insurer is entitled to recover any such sum from the insured if the insurer were not otherwise liable to pay such sum to the insured by virtue of the conditions of the contract of insurance indicated by the policy."

14. A careful reading of the ratio laid down by the Hon'ble Division Bench of this Court shows that a 'third party' is one who is neither the insurer nor the insured and the third party coverage must include all third parties. In the light of the Full Bench judgment of the Madhya Pradesh High Court, when a 'third party' includes everyone, be it a person travelling in another vehicle, one walking on the road or a passenger of the vehicle which is the subject matter of insurance policy, the finding given by the Tribunal that both the injured claimants, while travelling as coolies on the Trailer attached to the Tractor sustained injuries only due to the fault of its driver, are entitled to the compensation from the insurance company, does not warrant any interference. One another contention made by the learned counsel for the appellant that the owner of the vehicle had taken only an 'Act policy' and when there was no coverage on the employees, namely, loadmen of the Tractor, also cannot be accepted, in the light of the judgment of this Court in the New India Assurance Company Limited, Salem v. Vijayakumar and others, 2001-2-L.W.833, wherein this Court has held that even if it is an 'Act policy', the insurance company has to pay the amount quantified by the Tribunal.

15. For all the aforesaid reasons, both the civil miscellaneous appeals fail and they are dismissed confirming the common award passed by the Tribunal. It is seen from the records that pursuant to the interim order, the appellant insurance company had already deposited the entire award amount together with interest in respect of the claimant-Rajendiran to the credit of the M.C.O.P.No.1115 of 2009 on the file of the Motor Accident Claims Tribunal, Subordinate Judge, Dharmapuri. Hence the appellant is directed to deposit the entire award amount together with interest in respect of the claimant-Murugan to the credit of the M.C.O.P.No.1114 of 2009 on the file of the Motor Accident Claims Tribunal, Subordinate Judge, Dharmapuri within a period of four weeks from the date of receipt of a copy of this order, if not deposited already. The first respondent-claimant in each case is entitled to withdraw the entire amount with accrued interest by moving appropriate application before the Tribunal. Consequently, M.P.Nos.1 of 2013, 1 of 2014, C.M.P.No.9852 of 2016 are closed. No costs.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

To

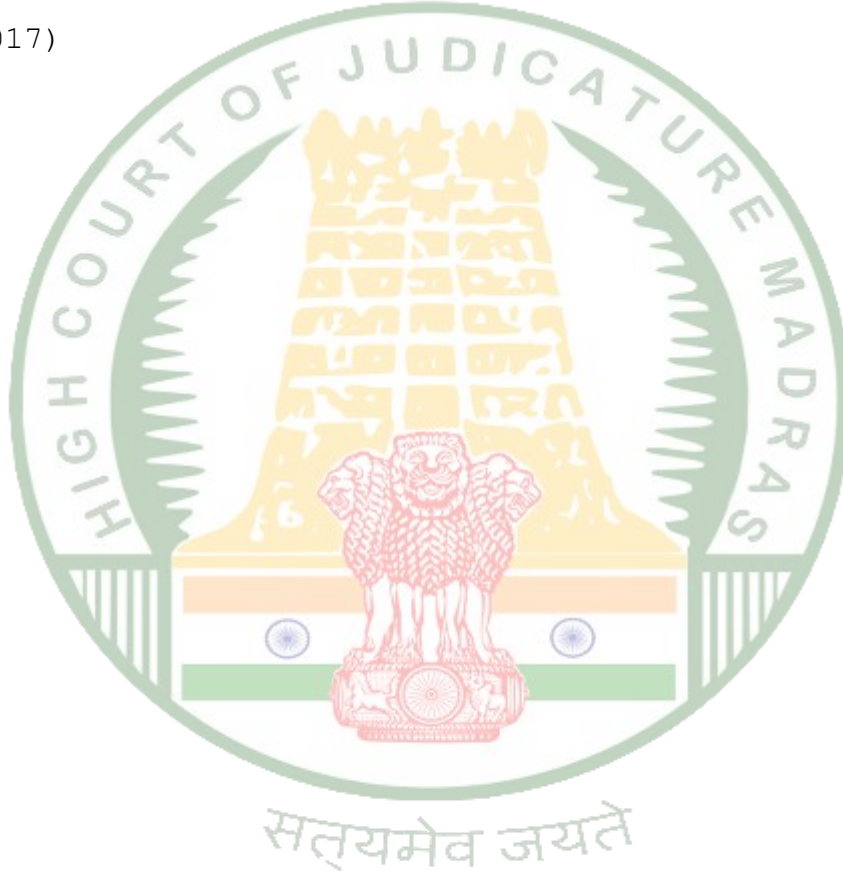
The Motor Accident Claims Tribunal
Subordinate Judge
Dharmapuri

+1cc to Mr.J.Chandran, Advocate sr.1002

+2ccs to M/s.S.Sathiaseelan, Advocate sr.1335 &1336

Judgment in
C.M.A.Nos.3661 of 2013 & 2080 of 2014

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