

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.02.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2696 of 2018
and C.M.P.No.20384 of 2018

United India Insurance Company Ltd.,
First Floor, No.235, N.M.Road
Avadi, Chennai - 54. . . Appellant/2nd Respondent

Vs.

1.Sathish Kumar . . .1st Respondent/Petitioner
2.Rajarathinam . . . 2nd Respondent/1st Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the award and decree dated 06.07.2018 made in M.C.O.P. No.346 of 2015 on the file of the Motor Accidents Claims Tribunal (2nd Additional District and Sessions Court), Tiruvallur at Poonamallee.

For Appellant : Mr.D.Bhaskaran

For R1 : Mr.E.M.K.S.Siddharthan

For R2 : No appearance

J U D G M E N T

This Civil Miscellaneous Appeal is filed by the appellant against the award and decree dated 06.07.2018 made in M.C.O.P. No.346 of 2015 on the file of the Motor Accidents Claims Tribunal (2nd Additional District and Sessions Court), Tiruvallur at Poonamallee.

2.The 2nd respondent/Insurance Company in MCOP No.346 of 2015 has come out with this present Civil Miscellaneous Appeal challenging liability fastened on the appellant.

3.The learned counsel for the appellant contended that the Insurance Company has marked the Ex.R.1-Insurance Policy which is an Act Policy and there is no liability on the part of the Insurance Company towards claim of the pillion riders. The Act Policy does not cover the risk of death or bodily injuries to the gratuitous passengers. The liability of the Insurance Company can be determined only on the basis of premium collected

and in the absence of additional premium, the Insurance Company is not liable to pay compensation. The Tribunal erred in holding that the 1st respondent is third party and failed to note that occupant of the vehicle cannot be treated as third party. Further, the Tribunal failed to take note of the Judgment reported in 2012 (2) TN MAC 637 (SC) and 2012 (2) TN MAC 650 (SC). Further, in support of his contention, he relied upon the following Judgments:

(i).New India Assurance Co. Ltd., Vs. S.Krishnasamy and others reported in 2015 (1) TN MAC 19 (DB).

"18.In view of the rulings cited above, we are of the considered view that since, the Policy is only an Act Policy issued by the Appellant-Insurance Company to the Insurer and the deceased Palanisamy was only an occupant of the Private Car, cannot be considered as 'Third party' of the vehicle and the Policy is covered risks to the third party alone. Hence, the deceased was only the occupant of the Private Car and the said Policy will not cover the risk of the deceased. The Doctrine of Pay and Recovery cannot be applied to the facts of the case, since the Appellant-Insurance Company is not liable to pay the Compensation. Hence, pay amount to the Claimants and then recover the same from the owner of the vehicle involved in the accident cannot be ordered and in view of the above, the rulings cited on the side of the Respondents 1 to 5/Claimants are not applicable to the facts of the present case."

(ii).National Insurance Co. Ltd., Vs. M.Padmini and others, reported in 2017 (1) TN MAC 566

"5.It is not an easy route that the Tribunal has adopted to conclude that the Appellant was not liable. It helped itself to be guided by several Authorities commencing from New India Assurance Vs. Asha Rani and Others, 2004 (2) TN MAC (SC) 387 : 2003 (2) SCC 223, to United India Insurance Company Limited Vs. Tilak Singh and others, 2006 (1) TN MAC 36 (SC) : 2006 (2) CTC 661, to arrive at its conclusion. I find the said finding is in order and does not call for any interference.

6.In this context, I find that the submissions of the learned Counsel for the Respondents/Claimants suspecting the genuineness of Ext.R1 less convincing. It does not stand to reason as to why should an Insurance Company go personal

in this particular case to fabricate a document when it faces claims running to several lakhs every day. And Ext.R6 - Proposal Form does not support him either. As to the second leg of his argument in equating Loading TP with additional premium, it needs to be stated that the expression TP is but an abbreviation for Third Party and the premium on a Third Party Insurance is additionally loaded. In this regard General Regulations in GR3 of IMT is relevant.

"G.R.3 Policy Forms:

Policies insuring Motor Vehicles are to be issued only as per the Standard Form(s) given in Section 6 of the Indian Motor Tariff.

A.Types of Policies:

There are two types of Policies:

(i) Liability Only Policy: This covers Third party Liability for bodily injury and/or death and Property damage. Personal Accident Cover for Owner-Driver is also included.

(ii) Package Policy: This covers loss or damage to the Vehicle insured in addition to (i) above.

Restricting the scope of cover under Section-I (loss of or damage to the Vehicle insured) of the Package Policy without any reduction in Tariff rates is permitted. Excepting this, no alteration or extension of any of the covers, Terms, Conditions, Exclusions, etc. of any of the Policies/Endorsements laid down in this Tariff is permitted without prior approval of the TAC.

8. The circumstances in which the Doctrine of Pay and Recover might be applied is considered by a Full Bench of this Court in Branch Manager, United India Insurance Co. Ltd. v. Nagammal, 2009 (1) CTC 1, where the Court inter alia held that in all cases that were decided after the decision of National Insurance Co. Ltd. v. Baljit Kaur and others, 2004(1) CTC 210 (SC) : 2004 SCJ 428, Tribunal cannot apply the Doctrine of "Pay and Recover" where there is no Insurance cover. So far as the present case is concerned, the Award was passed by the Tribunal on 20.2.2007, some three years after the Judgment in Baljit Kaur case (delivered on 6.1.2004). However, the Judgment of the Full Bench in Nagammal case was pronounced only on 23.12.2008, and hence, the Tribunal could not be

blamed for applying the Doctrine of "Pay and Recover". But. As on today Nagammal's case holds the territory and hence this Court holds that the Doctrine of 'Pay and Recover' cannot be applied in this case."

(iii).The Oriental Insurance Co. Ltd., Vs.R.Kumaravel and another reported in CDJ 2014 MHC 3632

"6. There is no dispute that the circular dated 2.6.1986 refers to comprehensive policy. It categorically states that standard form for motor cycle should cover liability to pillion passengers in case of comprehensive policy. As noted by the M.A.C.T., the policy in the instant case was an Act policy.

7. In New India Assurance Co. Ltd vs. Asha Rani, 2003 ACJ 1 (SC), it has been noted as follows:

(25) Section 147 of 1988 Act, inter alia, prescribes compulsory coverage against the death of or bodily injury to any passenger of 'public service vehicle'. Proviso appended thereto categorically states that compulsory coverage in respect of drivers and conductors of public service vehicle and employees carried in a goods vehicle would be limited to the liability under the Workmen's Compensation Act. It does not speak of any passenger in a 'goods carriage'.

(26) In view of the changes in the relevant provisions in 1988 Act vis-a-vis 1939 Act, we are of the opinion that the meaning of the words 'any person' must also be attributed having regard to the context in which they have been used, i.e., 'a third party'. Keeping in view the provisions of the 1988 Act, we are of the opinion that as the provisions thereof do not enjoin any statutory liability on the owner of a vehicle to get his vehicle insured for any passenger travelling in a goods vehicle, the insurers would not be liable therefor.

(27) Furthermore, sub-clause (i) of clause (b) of sub-section (1) of Section 147 speaks of liability which may be incurred by the owner of a vehicle in respect of death of or bodily injury to any person or damage to any property of a third party caused by or arising out of the use of the vehicle in a public place, whereas sub-clause (ii) thereof deals

with liability which may be incurred by the owner of a vehicle 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.

6. In the judgment of the Supreme Court in 2006 ACJ 1441 (cited supra), it has been held as follows:-

21. In our view, although the observations made in Asha Rani's case, 2003 ACJ 1 (SC), were in connection with carrying passengers in a goods vehicle, the same would apply with equal force to gratuitous passengers in any other vehicle also. Thus, we must uphold the contention of the appellant insurance company that it owed no liability towards the injuries suffered by the deceased Rajinder Singh who was a pillion rider, as the insurance policy was a statutory policy and hence it did not cover the risk of death of or bodily injury to gratuitous passenger.

7. The dictum laid down therein applies to the facts of the present case, as the policy marked on the side of the appellant shows that it is only an Act policy, the Tribunal ought to have exonerated the Insurance Company from paying the compensation, but the Tribunal has erroneously come to the conclusion that since the proposal form is not filed along with the insurance policy copy, the insurance company is liable to pay the compensation. The said finding is not legally sustainable and the same is liable to be set aside. Accordingly, the said finding is set aside and consequently, the appellant is exonerated from paying the compensation amount."

(iv).Oriental Insurance Co. Ltd., Vs. Surendra Nath Loomba and others reported in 2012 (2) TN MAC 650 (SC)

"13. Recently this Bench in National Insurance Company Ltd. v. Balakrishnan & Another[10], after referring to various decisions and copiously to the decision in Bhagyalakshmi (supra), held that there is a distinction between "Act Policy" and "Comprehensive/Package Policy". Thereafter, the Bench took note of a decision rendered by Delhi High Court in Yashpal Luthra and Anr. V. United India Insurance Co. Ltd. and Another[11] wherein the High Court had referred to the circulars issued by the Tariff Advisory Committee (TAC) and

Insurance Regulatory and Development Authority (IRDA). This Court referred to the portion of circulars dated 16.11.2009 and 3.12.2009 which had been reproduced by the High Court and eventually held as follows: -

"19. It is extremely important to note here that till 31st December, 2006 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. He 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 and 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 than 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."

(v).National Insurance Co. Ltd., Vs.Balakrishnan and another reported in 2012 (2) TN MAC 637 (SC)

"4. The tribunal, in its award dated 19.4.2007, addressed to the issues of rash and negligent driving of the driver, injuries sustained by the insured and the liability of the insurance company. On the basis of the material brought on record, it came to hold that the accident had occurred due to rash and negligent driving of the driver of the 1st

respondent; that the claimant was injured in the accident; that regard being had to the injuries sustained he was entitled to get Rs.8,63,200/- as compensation with interest @ 7.5% per annum from the date of the petition till the date of deposit; and that the insurance company was liable to indemnify as the owner of the vehicle was the company, and the injured was travelling in the car as a third party.

6. We have heard the learned counsel for the parties and perused the record. As has been indicated at the beginning, the seminal issue is whether the appellant-company is liable to make good the compensation determined by the tribunal to the victim in the accident. On a scrutiny of the award passed by the tribunal which has been given the stamp of approval by the High Court, it is manifest that the 1st respondent was the Managing Director of the respondent No. 2 and the vehicle was registered in the name of the company but the Managing Director had signed on behalf of the company in the R. C. book of the car that was involved in the accident. The High Court has returned a finding that the company and the Managing Director are two different legal entities and hence, the Managing Director cannot be equated with the owner. On that foundation, the claimant has been treated as a passenger and, accordingly, liability has been fastened on the insurer. The learned counsel appearing for the insurer would contend that assuming he is the owner being a signatory in the R.C. book, the liability of the company is limited upto Rs.2,00,000/- and under no circumstances a non-fare paying passenger would be covered under the policy. In oppugnation, the learned counsel for the respondent-claimant has proposed that barring the insurer and the insured, all others are third parties and, therefore, he is covered by the policy. It is also urged by him that as he had travelled as an occupant in a private car he is a third party vis-à-vis the insurer and hence, it is bound to indemnify the owner as the risk of the third party is covered.

16. Thus, it is quite vivid that the Bench had made a distinction between the "Act policy" and "comprehensive policy/package policy". We respectfully concur with the said distinction. The crux of the matter is what would be the liability of the insurer if the policy is a

"comprehensive/package policy". We are absolutely conscious that the matter has been referred to a larger Bench, but, as is evident, the Bench has also observed that it would depend upon the view of the Tariff Advisory Committee pertaining to enforcement of its decision to cover the liability of an occupant in a vehicle in a "comprehensive/package policy" regard being had to the contract of insurance.

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."

(vi).National Insurance Company Limited Vs. Srinivasa and others reported in CDJ 2017 Kar HC 1513

12. The Division Bench of this Court in MAHADEVA PANDURANGA PATIL case referred to above, at paragraphs 16 and 17 held as under:

16. If the risk of an occupant of a car, inmate of a vehicle or passenger in a private car, is to be covered, additional premium has to be paid. If no additional premium is paid, their risk is not covered. The statutory liability under Sections 146 and 147 of the Act has to be read with the terms of the insurance policy issued under Section 146 of the Act. But that does not prevent an insurer from entering into a contract of insurance covering a risk wider than the minimum requirement of the statute, whereby the risk to gratuitous passengers could also be covered. A third party policy does not cover liability to gratuitous passengers who are not carried for hire or reward.

If a liability other than the limited liability provided for under the Act is to be enhanced under an insurance policy, additional premium is required to be paid. The liability is restricted to the liability arising out of the statutory requirements under Section 14 only.

17. In view of the authoritative pronouncement of the Apex Court holding that an occupant/inmate/passenger in a private car, is not a third party, the finding recorded by the Tribunal that the insurance policy issued covers the risk of such persons and therefore the insurance company is liable to pay compensation amount is illegal and contrary to the law declared by the Apex Court. In fact, in the policy, no additional premium is received by the insurance company to cover the risk of such persons. It is clear from the terminology used in the policy which fact is not in dispute. In one of the cases, additional premium is collected to loading the risk of third party only, as is clear from the policy that loading was not meant to cover risk of inmates of a private car and therefore, merely because an additional premium is collected under the said policy, it cannot be inferred that the risk of inmates of a car are covered. The words are specific that the loading is done in order to cover only third party risk, it is not a case of additional premium being collected to cover the risk of inmates along with third parties. Therefore, in the facts of this case, we are satisfied, as the insured has not paid additional premium and the insurance company has not collected any additional premium, the risk of the occupants of private car was not covered. Therefore, liability foisted on the insurance company cannot be sustained and accordingly, it is hereby set-aside.

(vii).Oriental Insurance Co. Ltd Vs. K.V,Sudhakaran and others reported in CDA 2008 SC 1040:

"19. The law which emerges from the said decisions, is: (i) the liability of the insurance company in a case of this nature is not extended to a pillion rider of the motor vehicle unless the requisite amount of premium is paid for covering his/her risk (ii) the legal obligation arising under Section 147 of the Act cannot be extended to an injury or death of the owner of vehicle or the pillion rider; (iii) the pillion rider in a two wheeler was not to be treated as a third party when the accident has

taken place owing to rash and negligent riding of the scooter and not on the part of the driver of another vehicle."

(viii).The General Manager, United India Insurance Co. Ltd., Vs.M.Laxmi and others reported in CDJ 2008 SC 1890:

8. In United India Assurance Co. Ltd., Shimla v. Tilak Singh and Ors. (2006 (4) SCC 404), it has been noted as follows:

"In our view, although the observations made in Asha Rani case (supra) were in connection with carrying passengers in a goods vehicle, the same would apply with equal force to gratuitous passengers in any other vehicle also. Thus, we must uphold the contention of the appellant Insurance Company that it owed no liability towards the injuries suffered by the deceased Rajinder Singh who was a pillion rider, as the insurance policy was a statutory policy, and hence it did not cover the risk of death of or bodily injury to a gratuitous passenger."

(x).The Divisional Manager, United India Insurance Co. Ltd., Vs. M.V.Rajendran and another reported in CDA 2017 MHC 430:

"5.Considering the facts and circumstances of the case and the submissions made on either side, this Court is of the view that Act policy covers the losses arising out of the persons stipulated in Section 147of the Motor Vehicles Act, 1988 and the said provision of the Motor Vehicles Act will not cover a pillion rider in a Motor Cycle and therefore, the Insurance Company is not liable to pay compensation and the Civil Miscellaneous Appeal is to be allowed."

4.Per contra, the learned counsel appearing for the 1st respondent contended that the 1st respondent traveling in the Motor bike in the pillion is a third party, as he is not a party to the contract of Insurance between the 2nd respondent and appellant. The Tribunal has considered all the materials on record by giving valid reason and held that the 1st respondent is third party and appellant is liable to pay compensation. The Motor Vehicle Act is a welfare legislation and it has to be applied in favour of claimants as the claimants must enjoy the fruits of award and the award should not be a paper award. As per Section 149, the appellants are liable to pay the compensation at the first instance and recover the same from the

owner of the vehicle and relied on the following Judgments in support of his contention:-

(i) Manuara Khatun and others vs. Rajesh Kr. Singh and others reported in 2017 (1) TN MAC 289 (SC)

"15) The aforesaid question, in our opinion, remains no more res integra. As we notice, it was subject matter of several decisions of this Court rendered by three Judge Bench and two Judge Bench in past, viz., National Insurance Co. Ltd. vs. Baljit Kaur & Ors., (2004) 2 SCC 1, National Insurance Co. Ltd. vs. Challa Upendra Rao & Ors., (2004) 8 SCC 517, National Insurance Co. Ltd. vs. Kaushalaya Devi & Ors., (2008) 8 SCC 246, National Insurance Co. Ltd. vs. Roshan Lal, [Order dated 19.1.2007 in SLP© No. 5699 of 2006], and National Insurance Co. Ltd. vs. Parvathneni & Anr., (2009) 8 SCC 785.

16) This question also fell for consideration recently in Manager, National Insurance Company Limited vs. Saju P. Paul & Anr., (supra) wherein this Court took note of entire previous case law on the subject mentioned above and examined the question in the context of Section 147 of the Act. While allowing the appeal filed by the Insurance Company by reversing the judgment of the High Court, it was held on facts that since the victim was travelling in offending vehicle as "gratuitous passenger" and hence, the Insurance Company cannot be held liable to suffer the liability arising out of accident on the strength of the insurance policy. However, this Court keeping in view the benevolent object of the Act and other relevant factors arising in the case, issued the directions against the Insurance Company to pay the awarded sum to the claimants and then to recover the said sum from the insured in the same proceedings by applying the principle of "pay and recover".

(ii). The New India Assurance Company Limited Vs. Minor Nallasivam and others in CMA No.259 of 1997:

"6. In this case, the Appellant Insurance Company has not filed the Policy and has not led in any evidence to show that the deceased was an unauthorized passenger. It is also not the case of the Appellant Insurance Company that the deceased was an unauthorized passenger. Therefore, it is to be presumed that the van involved in the accident had valid insurance cover as on the date of the accident. The Insurance Company has also not let in

any statutory defence available under the Act to avoid liability. As already observed, the deceased was neither the owner of the van nor was the driving the van at the time of the accident. On the facts of the case, the deceased, who is the husband of the owner/insured, cannot be treated as the insured or his representative. Hence, he would become a third party and accordingly, I do not find any legal infirmity in the impugned award in making the Appellant Insurance Company liable for the award and therefore, the impugned award is liable to be confirmed."

(iii).M/s New India Assurance Co. Ltd., Vs. Murugan and others in CMA Nos.3661 of 2013 and 2080 of 2014:

"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."

(iv).New India Assurance Co. Ltd., Vs. P.Arunachalam and others reported in 2017 ACJ 530 :

"Motor Vehicles Act, 1988, Section 147 (1)-Motor insurance - Pillion rider-Death of-Liability of insurance company-pillion rider on motor cycle fell

down and sustained fatal injuries when her husband driving the motor cycle took a turn-claimants are minor children of the deceased and her father-in-law and mother-in-law-whether in view of collection of premium by insurance company towards third party risk, the Tribunal was justified in fixing liability on the insurance company-held: yes.

11. As regards the first issue before us, a perusal of Ex.R2 Insurance Policy would show that a sum of Rs.357/- was collected towards Third Party Premium. Hence, we hold that the Tribunal is right in fixing the liability on the appellant Insurance Company to compensate the claimants."

(v).Oriental Insurance Co. Ltd., Vs.Minaxi and others reported in 2000 ACJ 385 :

"18.In all the cases, therefore, it is clear that the insurance companies in question had issued Act policies but to cover the risk of the third parties too. That being so, I have got no hesitation to hold that the appellant insurance companies could be saddled with the liabilities of compensating the respondents owners in both the sets of appeal.

19.In the above term as at para (16) supra under the liability to third parties read along with the provision in section 147 of the Act in my considered view, it is clear that the appellant insurance company had covered the third party risk and that risk also included the risk caused by death or injury of pillion riders. Therefore, I have got no reservation to uphold the impugned judgments and awards passed by the tribunal in two sets of appeal."

5.Heard the learned counsel appearing for the appellant as well as the learned counsel appearing for the respondent and also perused the materials available on record.

6.The issue to be decided in the appeal is whether the policy of insurance taken by the owner of the vehicle as per Section 147 of the Motor Vehicles Act covers the bodily injury or death of pillion rider traveling in the offending two-wheeler.

7.The issue whether the rider and pillion rider in a two-wheeler and occupants of a four-wheeler are entitled to claim compensation from the Insurance Company for the bodily injury or death when the policy was issued under Section 147 of the Motor

Vehicles Act is no longer res-integra.

8. From the judgments relied on by the learned counsel appearing for the appellant as well as the 1st respondent, the following principles emerge:

"(i). The policy which the owner of the vehicle takes under Section 147 of the Motor Vehicles Act is 'Statutory Policy', also known as 'the Act Policy'.

(ii) It covers the liability of the owner in respect of third party only. After amendment of the Section in the year 1994 by Act 54 of 1994 which came into force with effect from 14.11.1994, it covers owner of the goods or his authorized representative carried in the goods vehicle.

(iii). The owner of the vehicle can pay extra premium to increase the liability of the insurer in respect of third party.

(iv). The rider, pillion rider of a two-wheeler and occupant of a four-wheeler are not third parties and they are not covered by Act Policy issued by the Insurance Company.

(v). The owner of the vehicle can pay extra premium to cover personal accident claim, the rider, pillion rider and occupant of a four-wheeler. The policy issued by the Insurance Company after receiving extra premium to cover rider and pillion rider of a two-wheeler and occupants of a four-wheeler is called 'Comprehensive Policy'.

(vi). Only when the owner of the vehicle takes Comprehensive Policy by paying extra premium, the pillion rider in a two-wheeler can claim compensation from the Insurance Company. If the policy is Act only Policy, the rider, the pillion rider in a two-wheeler and occupant of a four-wheeler are not third parties as per Section 147 of the Motor Vehicles Act and they are not entitled to claim compensation from the Insurance Company."

9. I have extracted the portions of the judgments relied on by both the learned counsel appearing for the appellant as well as the 1st respondent as they have elaborately made submissions on the issue to be decided in this appeal.

10. It is seen that the 1st respondent was traveling as a pillion rider in the Motor bike, driven by the 2nd respondent. According to the 1st respondent due to rash and negligent driving by the 2nd respondent, the Motor bike skidded and the 1st

respondent fell down and sustained with multiple injuries.

11.The contention of the appellant is that the policy in question is only an Act policy and it covers risk and liability in respect of the third parties only and it does not cover the rider and pillion rider of the Motor bike. The 1st respondent has not disputed that the policy issued by the appellant is only an Act Policy. It is not the case of the 1st respondent that policy issued by the appellant is comprehensive policy covering both rider and pillion rider of the Motor bike. The Tribunal fastened the liability of the appellant on the ground that the 1st respondent was a third party. Such finding is erroneous. It is well settled that in an Act Policy the rider and the pillion rider of the two wheeler are not covered and Insurance Company is not liable to pay compensation for the bodily injuries or the death. Whether, the pillion rider is covered under the Act Policy or not was considered by the Hon'ble Apex Court in the Judgment reported in 2006 (4) SCC 404 [United India Insurance Co. Ltd., Shimla Vs. Tilak Singh and others], wherein the Hon'ble Apex Court has held that the pillion rider is not covered in the Act Policy and the Insurance Company is not liable to pay compensation to the pillion rider.

12.In the present case, the Insurance Policy in question is only 'Act Policy' and 1st respondent was a pillion rider. In view of principles that emerged in the judgments referred to above, the 1st respondent is not a third party and he is only a gratuitous passenger. The contention of the learned counsel for the 1st respondent that the 1st respondent is a pillion rider and the Tribunal rightly directed the appellant to pay the compensation is without merits. The Tribunal erroneously held that the 1st respondent, pillion rider is a third party and appellant is liable to pay compensation. In the judgment of the Hon'ble Apex Court reported in 2006 (4) SCC 404 extracted above, it has been held that pillion rider is a gratuitous passenger in case of Act Policy. In the judgment of the Hon'ble Apex Court reported in 2007 (5) SCC 428 [Oriental Insurance Co. Ltd., vs. Meena Variyal], the Hon'ble Apex Court referring to Asha Rani's case, [New India Assurance Co. Ltd., Vs. Asha rani], held in paragraph No.18 as follows:

"In other words, this Court clearly held that the apparently wide words 'any person' are qualified by setting in which they occur and that 'any person' is to be understood as a third party".

As per the judgments referred to above, in an Act Policy, the pillion rider in a two-wheeler is a gratuitous passenger and appellant is not liable to pay compensation to the 1st respondent. In view of the fact that the appellant is not liable to pay any compensation, the question of pay and recovery does

not arise.

13.In view of the Judgments of the Hon'ble Supreme Court, the award of the Tribunal is set aside and the Civil Miscellaneous Appeal is allowed. The appellant / Insurance Company is permitted to withdraw the amount deposited in the credit of the claim petition, by filing necessary application before the Tribunal. No costs. Consequently connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-V)

//True copy//

Sub Assistant Registrar

Jer/gsa

To

1.The II Additional District and Sessions Judge,
(Motor Accidents Claims Tribunal),
Tiruvallur at Poonamallee.

2.The Section Officer,
V.R. Section,
High Court, Madras.

+1cc to Mr.D.Bhaskaran, Advocate SR.No.19135

+2cc to Mr.E.M.K.S.Siddharthan, Advocate SR.No.19420

C.M.A.No.2696 of 2018
and C.M.P.No.20384 of 2018

NRJK (CO)
GMY (23/07/2019)

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