



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 21.09.2020

Pronounced on: 25.09.2020

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CORAM

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

C.M.A.Nos.289 to 292 of 2016

Reliance General Insurance Company Ltd.,  
1<sup>st</sup> Floor, Sir Meenakshi Plaza,  
No.55, 80 Feet Road, Anna Nagar,  
Madurai. ...Appellant/4<sup>th</sup> Respondent  
in C.M.A.Nos.289 to 292 of 2016

/versus/

1. Tamilarasan,  
S/o.Rajukkannu,
2. Jayapriya @ Jayakrishnapriya,  
W/o.Tamilarasan,  
Both are residing at 19-A,  
Nachiyappa Street,  
Backside Bus Stand, Erode.  
Now at 74, Sankari R.S.Sankari Taluk,  
Salem District.
3. V.SenthilKumar,  
S/o.Palanisamy,  
No.36, Periya Semur Main Road,  
Periya Semur, Erode.
4. ICICI Lombard General Insurance Co. Ltd.,  
ICICI Bank Towers,  
Bandra - Kurla Complex, Mumbai.
5. S.Latha,  
W/o.SenthilKumaran,  
Residing at No.326, Arulandha Nagar,  
Thanjavur. ..Respondents/Petitioners/  
Respondents 1 to 3  
in C.M.A.No.289 of 2016



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1. Jayapriya @ Jayakrishnapriya,  
W/o.Tamilarasan,  
Residing at 19-A,  
Nachiyappa Street,  
Backside Bus Stand, Erode.  
Now at 74, Sankari R.S.Sankari Taluk,  
Salem District.
2. V.SenthilKumar,  
S/o.Palanisamy,  
No.36, Periya Semur Main Road,  
Periya Semur, Erode.
3. ICICI Lombard General Insurance Co. Ltd.,  
ICICI Bank Towers,  
Bandra - Kurla Complex, Mumbai.
4. S.Latha,  
W/o.SenthilKumaran,  
Residing at No.326, Arulandha Nagar,  
Thanjavur. ... Respondents/Petitioners/  
Respondents 1 to 3  
in C.M.A.No.290 of 2016

Rajukkannu, (died),  
S/o.Saminathan,

1. Balamurugan,  
S/o.Rajukkannu.
2. Uma Maheswari,  
W/o.Veera Vijayan,
3. Thamilarasan,  
S/o.Rajukkannu.
4. Bobby,  
W/o.Jothi Ramalingam,  
All are residing at 19-A,  
Nachiyappa Street,  
Backside Bus Stand, Erode,  
Now at 74, Sankari R.S.Sankari Taluk,  
Salem District.
5. V.SenthilKumar,  
S/o.Palanisamy,  
No.36, Periya Semur Main Road,  
Periya Semur, Erode.



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6. ICICI Lombard General Insurance Co. Ltd.,  
ICICI Bank Towers,  
Bandra - Kurla Complex, Mumbai.

7. S.Latha,  
W/o.SenthilKumaran,  
Residing at No.326, Arulandha Nagar,  
Thanjavur. ... Respondents/Petitioners/  
Respondents 1 to 3  
in C.M.A.No.291 of 2016

1. Tamilarasan,  
S/o.Rajukkannu,  
Residing at 19-A,  
Nachiyappa Street, Backside Bus Stand, Erode.  
Now at 74, Sankari R.S.Sankari Taluk, Salem District.

2. V.SenthilKumar,  
S/o.Palanisamy,  
No.36, Periya Semur Main Road, Periya Semur, Erode.

3. ICICI Lombard General Insurance Co. Ltd.,  
ICICI Bank Towers, Bandra - Kurla Complex, Mumbai.

4. S.Latha,  
W/o.SenthilKumaran,  
Residing at No.326, Arulandha Nagar,  
Thanjavur. ... Respondents/Petitioners/  
Respondents 1 to 3  
in C.M.A.No.292 of 2016

Prayer in C.M.A.No.289 of 2016: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the award and decree dated 16.07.2015 made in M.C.O.P.No.85 of 2009, on the file of the Motor Accidents Claims Tribunal, Subordinate Judge, Sankari.

Prayer in C.M.A.No.290 of 2016: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the award and decree dated 16.07.2015 made in M.C.O.P.No.87 of 2009, on the file of the Motor Accidents Claims Tribunal, Subordinate Judge, Sankari.

Prayer in C.M.A.No.291 of 2016: Civil Miscellaneous Appeals filed under Section 173 of the Motor Vehicles Act, 1988 against the award and decree dated 16.07.2015 made in M.C.O.P.No.93 of 2009, on the file of the Motor Accidents Claims Tribunal, Subordinate Judge, Sankari.



Prayer in C.M.A.No.292 of 2016: Civil Miscellaneous Appeals filed under Section 173 of the Motor Vehicles Act, 1988 against the award and decree dated 16.07.2015 made in M.C.O.P.No.94 of 2009, on the file of the Motor Accidents Claims Tribunal, Subordinate Judge, Sankari.

For Appellant : Mr.S.Arun Kumar,  
in C.M.A.No.289 to 292 of 2016

For R3 : Mr.N.Manokaran  
in C.M.A.No.289 of 2016

For R2 : Mr.N.Manokaran  
in C.M.A.No.290 to 292 of 2016

For R5 : Mr.N.Manokaran  
in C.M.A.No.291 of 2016

For R4 : Mrs.R.Sreevidhya  
in C.M.A.no.289 of 2016

For R3 : Mrs.R.Sreevidhya  
in C.M.A.No.290 to 292 of 2016

For R6 : Mrs.R.Sreevidhya  
in C.M.A.No.291 of 2016

For R5 : exparte  
in C.M.A.No.289 of 2016

For R4 : exparte  
in C.M.A.No.290 and 292 of 2016

For R7 : exparte  
in C.M.A.No.291 of 2016

For R1 & R2 : Steps not taken  
in C.M.A.No.289 of 2016

For R1 : Steps not taken  
in C.M.A.No.290 & 292 of 2016

For R1 to R4 : Steps not taken  
in C.M.A.No.291 of 2016



## C O M M O N J U D G M E N T

(The case has been heard through video conference)

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Heard the Learned Counsel for the Appellant and the Learned Counsel for the respondents.

2. These four appeals are against the common judgement passed by the Tribunal in four claim petitions arising out of a single accident. Since, the cause of action is one and the same and the point canvassed against the impugned common order is also one and the same, this Court, dispose these four Appeals through this common order.

3. On 30.05.2007, a maruti car bearing registration No.TSC 3535 owned by one Tamilarasan and insurer with Reliance General Insurance Company, met with an accident. In the said accident two years old Minor girl Suguna and 60 years old Gokilammal died. They are the daughter and mother of the vehicle owner Tamilarasan. Besides these two fatal, the car owner Tamilarasan and his wife Jayapriya @ Jayakrishnapriya the other occupant in the car sustained injuries.

4. While the minor Suguna died on the spot. Gokila @ Gokilambal, sustained injury on her head and face. She succumbed to the injuries on 02.06.2007. Jayapriya @ Jayakrishnapriya, wife of the car owner Tamilarasan sustained grievous injury on her head, lip, ears, right hand and all over the body. Thiru.Tamilarasan, owner of the car sustained injury on his head, lip, right hand and all over the body and treated at Salem, Vinayaga Mission Hospital.

5. The injured Thiru.Tamilarasan and his wife Jayapriya @ Jayakrishnapriya, have filed M.C.O.P.No.96 of 2009 and M.C.O.P.No.87 of 2009, respectively seeking compensation for their injuries sustained. They both jointly filed claim petition in M.C.O.P.No.85 of 2009, for the death of their two years daughter Suguna. The LR's of Gokila @ Gokilambal, who was the other gratuitous passenger, travelled in the car and later succumbed to the injury, filed M.C.O.P.No.93 of 2009. In this claim petition Tamilarasan S/o Gokilammal is one of the claimants.

6. In all these claim petitions, the manner in which the accident occurred has been narrated as below:-

On 30.05.2007, at 1.00 p.m., when Tamilarasan, his wife, Jayapriya, his daughter Suguna and his mother Gokila @ Gokilambal were travelling in the car bearing registration



No.TSC 3535, the car driver turned left to give way to the opposite vehicle near Ellaikal Thottam. At that time, a tipper lorry bearing registration No.TN-32-V-4278, moving ahead of the car, stopped suddenly without any signal and therefore, the car hit behind the tipper lorry. In the said accident, 60 years old Gokila @ Gokilambal and two years daughter Suguna died. Thiru.Tamilarasan and his wife Jayapriya survived with injuries.

7. The insurer of the maruti car filed counter stating that, the Maruti car was insured under them as an Act only policy and no additional premium paid for the occupants/passengers. Therefore, for the gratuitous passengers, the insurer is not liable to pay any compensation. Without prejudice to the said legal contention, insurer also submitted that the accident has occurred due to negligence of the tipper lorry driver, who has suddenly stopped the lorry without any indication/signal and also due to the contributory negligence of the maruti car driver, who has driven the vehicle rashly without noticing the tipper lorry going ahead of him. Hence, sought for dismissal of the claim petitioners as against them.

8. The Tribunal, on considering the materials placed before it, in M.C.O.P.No.85 of 2009 awarded a sum of Rs.4,10,000/- as compensation to the L.R's for the death of Minor Suguna (2 years), in M.C.O.P.No.87 of 2009 awarded Rs.1,01,500/- for Jayapriya, who sustained injuries, in M.C.O.P.No.93 of 2009 awarded a sum of Rs.3,43,500/-for the dependants of Gokila @ Gokilambal and in M.C.O.P.No.94 of 2009 awarded a sum of Rs.2,41,500/- to Tamilarasan, who sustained injuries.

9. The Learned Counsel appearing for the appellant would submit that the Tribunal has miserably failed to consider the fact that there was no coverage of insurance to the passengers in the vehicle. Being an act policy, the passengers are not entitled for any compensation. This point of law is well settled by catena of judgments rendered by the Hon'ble Supreme Court and High Courts. Despite that, without adverting to the key legal issue on liability, the Tribunal has proceeded to decide about the negligence and quantum. Therefore, the Learned Counsel would submit that, when the premium of insurance is only restricted to liability/Act, the occupants are not covered under the policy. The evidence of R.W.1 and Ex.R.1, would clearly show that, it is an act only policy and no extra premium paid for the passengers. Therefore, the award passed by the Tribunal is contrary to law and dictum of Hon'ble Supreme Court rendered in 2009 ACJ 104, so the award has to be set-aside.

10. Further, the Learned Counsel for the appellant would point out that these four claim petitions, one is by the



owner of the vehicle himself, who failed to provide insurance cover to the passengers in his vehicle. Another filed by him jointly with his wife for death of his child. The third petition is by his wife and 4<sup>th</sup> petition by the L.R's of Gokilammal, in which the owner Tamilarasan is one of the claimant.

11. Despite notice to the claimants/respondents, they have not entered appearance through counsel. Probably by this time they would have been advised about the legal position.

12. Regarding the liability of the Insurance Company, in an act only policy the Hon'ble Supreme Court as early as in the year 2006 in United India Insurance Company Limited Vs. Tilak Singh, after considering the law prior to Motor Vehicles Act, 1988 and subsequent to Motor Vehicles Act, 1988 and making a clear survey of law with regard to the liability of the insurance company in respect of gratuitous passenger, has held that the third party policy does not cover liability to gratuitous passengers, who are not carried for hire or reward. So, the insurance Company are not liable to reimburse the appellant. The observation of the Hon'ble Supreme Court in this connection is extracted below:-

"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 'good carriage'.

26. Furthermore, sub-clauses (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 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



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caused by or arising out of the use of the vehicle in a public place."

In our view, although the observation made in Asha Rani's case 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 toward 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."

13. The above referred judgment has been followed in all subsequent judgments by the Hon'ble Supreme Court as well as Hon'ble High Courts. For the sake of completion, one such judgment passed by the Division Bench of this High Court in The New India Assurance Company Limited Vs. S.Krishnasamy and others reported in CDJ 2020 MHC 6164, is extracted below. Since, it has collated all judgments on this point. The Hon'ble Division Bench, on considering the liability of an insurer to pay gratuitous passenger in Act only policy after referring the earlier rulings concluded that,

"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.



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19.Hence, we are of the considered view that since the Act policy did not cover the risk, the Insurance Company is not liable to pay any compensation to the claimants/dependents of the deceased and the owner of the vehicle alone is liable to pay damages to the claimants, as the accident occurred due to rash and negligent act of the driver of the vehicle."

19. In view of the facts and law narrated above, this Court can have no other view than what the Hon'ble Supreme Court and the Division Bench has held in respect of Act policy. Hence, the Civil Miscellaneous Appeals are Allowed. Consequently, the award passed by the Tribunal in M.C.O.P.Nos.85, 87, 93 & 94 of 2009 are hereby set-aside. No costs.

Sd/-  
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

bsm  
To,

The Motor Accidents Claims Tribunal,  
Subordinate Judge, Sankari.

Copy to

The Section Officer,  
VR Section,  
High Court, Madras.

+4cc to M/s.N.Manokaran, Advocate Sr.31596 to 31599  
+1cc to M/s.S.Arunkumar, Advocate Sr.31793

C.M.A.Nos.289 to 292 of 2016

ssv[co]  
srg 03/09/2021