

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 27.01.2020

PRONOUNCED ON : 23.03.2020

C O R A M

The Hon'ble Mr. Justice M.M.SUNDRESH
and
The Hon'ble Mr. Justice KRISHNAN RAMASAMY

C.M.A.Nos.2307 of 2018
and 586 of 2019
and
C.M.P.No.19141 of 2018

United India Insurance Co. Ltd.,
Branch Office No.III , No.137-D,
Cherry road, Salem-1,
Now Shifted to Arjunaa Tower,
No.246/164, Cherry Road,
Salem - 636 001.

...Appellant in C.M.A.No.2307 of 2018

Vs.

1.R.Krishnan

2.M/s.Thriveni Earthmovers Pvt. Ltd.,
Opposite to Joda Women's College,
Banaikela, Keonjhar - 758 034,
Orissa State.

...Respondents in C.M.A.No.2307 of 2018

R.Krishnan

...Appellant in C.M.A.No.586 of 2019

Vs

1.M/s.Thriveni Earthmovers Pvt. Ltd.,
Opposite to Joda Women's College,
Banaikela, Keonjhar - 758 034,
Orissa State.

2.United India Insurance Company Limited,
Branch Office No.III, No.137-D Cherry Road,
Salem-1,
Now Shifted to Arjunaa Tower, 246/164, Cherry Road,
Salem-636 001.

...Respondents in C.M.A.No.586 of 2019

Common Prayer: Civil Miscellaneous Appeals filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and Decree dated 09.01.2018 made in MCOP.No.741 of 2012 on the file of the Motor Accident Claims Tribunal, Special Sub Judge-1, Salem.

C.M.A.No.2307 of 2018

For Appellant : Mr.S.Arun Kumar

For Respondents: Mr.N.Damodaran for R1
Mr.M.S.Krishnan, Senior Counsel
for Mr.P.Siva Kumar for R2

C.M.A.No.586 of 2019

For Appellant : Mr.N.Damodaran

For Respondents: Mr.M.S.Krishnan, Senior Counsel
for Mr.P.Siva Kumar for R1
Mr.S.Arun Kumar for R2

COMMON JUDGMENT

KRISHNAN RAMASAMY, J.

The United India Insurance Company has filed C.M.A.No.2307 of 2018, challenging the liability as well as quantum of compensation awarded by the Motor Accident Claims Tribunal, (Special Sub Judge-1) Salem, in M.C.O.P.No.741 of 2012 and the claimant thereunder has filed C.M.A.No.586 of 2019, not being satisfied with the quantum of compensation awarded by the Tribunal.

2. Since the parties to the Appeals are one and the same and the Appeals arise out of the same accident, they were heard together and disposed of by way of this common judgment.

3. For the sake of easy reference and understanding, the parties herein have been referred as follows:

(i) The United India Insurance Company is referred as Insurance Company/Insurer.

(ii) Thriveni Earthmovers Private Limited is referred as Thriveni/owner of the vehicle/Employer/Insured/Company.

(iii) R.Krishnan, the appellant in C.M.A.No.586 of 2019 is referred as claimant.

4. This is a case of injury. It is the case of the claimant that on 03.05.2011, at about 9.30 a.m., when the claimant was travelling in a Bolero Jeep, bearing registration No.OR 05-AC4399 belonging to the "Thriveni" driven by its driver after visiting his work site at Joda towards Bhubaneswar and when the jeep was nearing Belabahali Village, Keonjhar District, the driver of the jeep, on seeing a truck coming towards main road from a cut road, turned the jeep right side and lost his control, due to which, the jeep toppled and rolled over in the sky and thus, caused the accident. Since the accident took place only due to the rash and negligent driving by the driver of the jeep, the injured claimant filed a claim petition against both owner/Thriveni of the Vehicle as well as its insurer, claiming a sum of Rs.8,00,00,000/-.

5. The Insurance Company filed counter statement, stating that the accident occurred due to the negligence on the part of the driver of the truck. When the driver of the jeep drove the vehicle in an average speed towards Bhubaneswar, the driver of the truck without watching the vehicle on the main road, all of a sudden entered into the main road from a left side branch road and to avoid the collision the driver of the jeep turned to right side of the road and out of shock, he lost the control over the jeep and the accident took place. Since the driver of the truck fled away from the scene of occurrence, the concerned Police, having no other option, registered the FIR against the driver of the jeep. Therefore, the Insurance Company cannot be penalized. The Insurance Company also filed an additional counter, wherein, they have referred the terms and condition of the policy and IMT Endorsement Nos. 16, 22 and 28 and marked Ex.R4 in order to show the difference between IMT-28 and IMT-29.

6. On the side of the claimant, the claimant's wife was examined as P.W.1 and the Assistant General Manager of the Insured/Thriveni was examined as P.W.2 and 39 documents were marked as P1 to P39. On the side of the Insurance Company, R.W.1 and R.W.2 were examined and Exs.R1 to R6 and Exs.X1 and X2 were marked.

7. After hearing both sides and upon perusal of the materials available on record, the Tribunal came to the conclusion that the accident occurred due to the rash and negligent driving on the part of the driver of the jeep. Hence, the Tribunal fixed entire negligence on the part of the driver of the jeep. With regard to the liability, the Tribunal has considered the submission of both the claimant and Insurance Company and directed the Insurance Company to pay the entire compensation to the claimant. The break up details of the compensation awarded by the Tribunal under

various heads are mentioned in the tabulated column below:-

Heads	Amount Awarded
Loss of Income	Rs.1,80,00,000/-
Medical Expenses	Rs.63,10,091/-
Future Prospects	Rs.5,00,000/-
Attender Charges	Rs.5,00,000/-
Loss of Amenities	Rs.5,00,000/-
Future Medical Expenses	Rs.3,00,000/-
Total	Rs.2,61,10,091/-

8. Aggrieved over the said award, the Insurance Company preferred an appeal in C.M.A.No.2307 of 2018 challenging the liability as well as the quantum of compensation and the claimant preferred appeal in C.M.A.No.586 of 2019 challenging the quantum of compensation, as already stated above.

Negligence:

9. It is the contention of the learned counsel appearing for the Insurance Company that the claimant is an employee of Thriveni. When the claimant was travelling in his employer's jeep during the course of employment, an unknown truck came from opposite direction in a rash and negligent manner and the driver of the jeep in order to avoid the accident turned the jeep right side and consequently, the jeep rolled down. Since the said truck could not be traced out, FIR was filed against the driver of the Jeep, that too, belatedly, and untenable claim was made against the insurer of the Jeep/Insurance Company. The accident occurred on 03.05.2011, whereas, the complaint was lodged with a delay of 2 days, i.e. on 05.05.2011. Therefore, the learned counsel contended that the negligence fixed by the Tribunal against the driver of the Jeep is totally erroneous and the same is liable to be set aside.

10. On the other hand, Mr.M.S.Krishnan, learned Senior Counsel appearing for Mr.P.Sivakumar, learned counsel for the Thriveni contended that the accident occurred due to the rash and negligent driving on the part of the driver of the jeep, that is the reason why, the Insurance Company has not examined the driver of the jeep. Apart from that, FIR was also filed against the driver of the jeep. The manner of accident was also admitted by the Insurance Company in the counter statement filed by them. In the said counter, the Insurance Company stated that the driver of the Jeep turned the vehicle to the right side in order to avoid the accident, and lost his control, which would go to show that the accident occurred due to the rash and negligence on the part of the driver of the jeep. Therefore, he contended that the Tribunal has rightly fixed the negligence on the part of the driver of the jeep.

11. Admittedly, though the FIR was filed against the driver of the jeep, it is the duty of the Insurance Company to prove that the accident has not occurred due to the negligence on the part of the driver of the jeep. Further, the Insurance Company has not taken any steps to disprove the contents in the FIR, either by examining the driver of the jeep or producing any documents. When the burden totally lies on the Insurance Company to disprove the allegation in the FIR against the jeep driver, the Insurance Company failed to examine the driver of the jeep. Therefore, the Tribunal has drawn adverse inference and fixed the entire negligence on the part of the driver of the jeep. Apart from that, the way, in which accident occurred clearly shows that accident took place due to the rash and negligent driving on the part of the driver of the jeep alone. In fact, the FIR is also filed against the driver of the jeep. Therefore, we are also of the view that the accident occurred due to the negligence on the part of the driver of the jeep. Hence, we do not find any infirmity in the findings of the Tribunal. Accordingly, we concur with the findings of the Tribunal in this regard.

Liabilities:

12. Mr.S.Arunkumar, learned counsel appearing for the Insurance Company would submit that the Tribunal has fixed the liability wrongly against Insurance Company. As per the Insurance policy issued to the Bolero Jeep, no policy was issued so as to cover an employee, who travels in a car, owned by its employer namely Thriveni and under Section 147 of the Motor Vehicles Act, if the owner of the private car is an employer and in the said car, if any employee travel, in order to cover any employee in the case of accident to make any claim against the Insurance Company, the owner of the jeep should have entered into a separate contract as contemplated under Section 147 of the Motor Vehicles Act. In the present case, no such contract has been made between the Thriveni/owner of the jeep and the Insurance Company. By referring Section-II of liabilities to third parties, provision under Section 147 of the M.V. Act and IMT-29, he contended that an employee, who travels as an occupant in the employer's car can be covered by the Insurance policy only if the employer paid any separate premium to cover its employees.

12.1 Further, he would contend that no premium was paid by the Thriveni in order to cover its employees, who travelled in the car by way of Insurance policy. Therefore, in the present case, as per the Policy held by the owner of the Jeep, there is no obligation on the part of the Insurance Company to pay any compensation to the claimant. However, the Tribunal, without appreciating all these aspects held that the Insurance Company is liable to pay the compensation. The findings of the Tribunal is contrary to the provisions of Section II of

12.2 In support of his contention, the learned counsel referred to the following judgments:

(i)Yashpal Luthra and others Vs.
United India Insurance Co. Ltd., and
others [2011 ACJ 1415];

(ii) New Indian Assurance Company
Limited Vs. Shanti Bopanna and others
[2018 12 SCC 540];

(iii)New India Assurance Company
Limited Vs. Asha Rani [2003 2 SCC 223].

(iv) Oriental Insurance Company
Limited Vs. Meena Variyal [2007 3 SCC
428]

13. Mr.M.S.Krishnan, learned Senior counsel appearing for the Thriveni submitted that since the Tribunal has come to the conclusion that the accident occurred due to the negligence on the part of the driver of the jeep, as the jeep was insured with the Insurance Company, the Tribunal has rightly fixed the liability against the Insurance Company and directed the Insurance Company to pay the entire compensation to the claimant, viz., a sum of Rs.2,61,10,091/-. He would further contend that, in the present case, the Policy held by the owner/Thriveni is a comprehensive policy and he admitted the fact that the injured was an employee of the owner of the vehicle/Thriveni and the Jeep was driven by a driver, who was employed in the Thriveni as a driver. The claimant travelled as an occupant of the Jeep and due to the negligence of the driver of the jeep the accident occurred. Therefore, the Tribunal has rightly fixed the negligence on the part of the driver of the jeep and fixed liability against the Insurance Company. Since the Policy issued by the Insurance Company is a comprehensive package policy, and therefore, it will cover the occupant of the Vehicle, who travel in the Vehicle as an employee but the claimant has not travelled in the Vehicle (Jeep) as an employee, but travelled only as an occupant in the car. Therefore, he contended that the Tribunal has rightly decided that the occupant of the Jeep will be squarely covered under the present policy. Further, under Section 147 of the M.V. Act, there is no need to pay any additional premium to the occupant of the car. Since the injured travelled as an occupant in the Jeep, there is no need to enter any separate liability as contended by the Insurance Company. The policy issued is a comprehensive package policy, which itself covers

the occupant of the car.

13.1 Further, by referring to IMT-29, he submitted that the issue relating to applicability of IMT-29 not at all raised before the Tribunal and the same has been raised for the first time before this Court. Even the counsel, who appeared before the Tribunal has not made any submission by referring to IMT-29 and only for the first time, the Insurance Company has taken this plea before this Court and contended that the liability will not arise against the Insurance Company. Had they raised this issue at the time of trial, they would have had a chance to examine whether the claimant was travelling as an employee in the course of employment and accordingly, evidence would have been let in to prove the same. Since the Insurance Company has not taken any such plea, the owner of the vehicle did not have any chance to put forth his case before the Tribunal by way of oral as well as documentary evidence. Therefore, he contend that no finding can be rendered even by this Court. Further, he would contend that the Insurance Company cannot claim any benefit over IMT-29 since the said IMT-29 was issued by IRDA beyond the scope of Section 147 of the M.V. Act. No doubt, IRDA can issue guidelines from time to time and any such regulation should be within the frame of the provision of the Act. Therefore, the Tribunal has rightly fixed the liability. In support of his contention he relied upon the judgment in case of New India Assurance Company Limited Vs. Shanti Bopanna and others reported in 2018 12 SCC 540, wherein, in para 5 to 7 it held as follows:-

"The insurance policy

5. The vehicle belonged to M/s. Surya Pharmaceutical Ltd., and it was covered by package policy, also known as a comprehensive policy. This policy was clearly not an Act policy under Section 147 of the Act. It is not in dispute that this policy was not Act policy under Section 147 of the Act. The relevant terms of the policy are as follows:

...Subject to the limits of liability as laid down in the Schedule thereto, the company will indemnify the insured in the event of accident caused by or arising out of the use of the insured vehicles against all sums which the insured shall become legally liable to pay in respect:

(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 the Motor Vehicle 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."

6. The clause of the policy reproduced above clearly covers the insured against all sums which the insurer may become 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..."

7. We thus find that the claim of the widow and the adopted son is fully covered by the clause in the insurance contract i.e. the policy and there is no scope for acceding to the submission made on behalf of the appellant Company that the claim is excepted by virtue of the provisions of Section 147(1) of the Act in this case. We, therefore, reject the contention made on behalf of the appellant that the deceased was not a third party because he was an employee sitting in the car. It is obvious from the circumstance that the deceased was indeed a third party being neither the insurer nor the insured."

13.2 Further, the learned Senior Counsel referred to the judgment reported in 2011 ACJ 1415 in the case of Yashpal Luthra and others Vs. United India Insurance Co. Ltd., and others, wherein, it has held as follows:-

"It is clear that the comprehensive/package policy of a two wheeler covers a pillion rider & 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 Claim 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."

13.3 Further, by referring the judgment in the case of National Insurance Company Limited Vs. Balakrishnan and another reported in 2013 1 SCC 731, the learned Senior counsel contended that the "Act policy" is different from comprehensive policy. In the present case, the occupant of the vehicle would squarely be covered as third party in comprehensive Insurance policy. Further, he contended that the Insured has duly paid premium for all exclusive comprehensive policy and the insured also made all disclosures and there is no concealment on the part of the insured, and therefore, the Insurer is bound by the terms of the comprehensive Insurance Policy and it is liable to pay compensation. The Insurer after having duly accepted premium towards comprehensive policy, the insurer cannot be allowed to say that the policy will not cover the present claim, as it is well settled contract of the insurer on uberrima fides. Therefore, he contended that the claimant being an employee of the Insured, being an occupant, travelled in a Jeep belonging to the Thriveni is covered by the policy marked under Ex.R1/copy of the Insurance policy.

13. 4 The learned Senior counsel also referred the judgment reported in 2008 17 SCC 491 in the case of Bachhj Nahar Vs. Nilim Mandal and another and 2011 11 SCC 786 in the case of Kalyan Singh Chouhan Vs. C.P.Joshi with regard to the pleadings and particulars, which requires the parties to lead during trial. Since, in the present case, there was no pleadings by the Insurance Company before the Tribunal with regard to IMT-29, without any pleadings and without giving opportunity to relinquish the case of the owner of the vehicle based on the new pleadings put forth by the Insurance Company before this Court, no new finding can be rendered by this Court.

13. 5. Therefore, the learned Senior Counsel contended that the Insurance Company relied upon the case laws, which relates to "Act policy", however, the present case involves comprehensive policy. Therefore, he submitted that the case law referred by the Insurance Company will not apply to the present case.

14. In reply, the learned counsel appearing for the Insurance Company would contend that in terms of Section 147 of the M.V. Act and IMT-29, if an employee, who travels in a Vehicle owned by its Employer will not be treated as occupant of the Vehicle. If an employee travels in a Vehicle owned by its Employer, in the course of employment, he will be excluded from any coverage provided under Section 147 of the M.V. Act

and in terms of IMT-29. In order to cover any liability of the employees, who traveled in the car, the employer is bound to pay additional premium under IMT-29. Unless otherwise the employer pays any additional premium in order to cover its employees, the employees will not be indemnified to make any claim in the event of accident. In this regard, on behalf of the Insurance Company RW1 was examined and deposed the difference between IMT-28 and IMT-29. However, neither the claimant nor the owner of the vehicle has come forward to cross examine RW1 with regard to the applicability of IMT-29 or to bring out any other fact from R.W.1 to prove the case of the respondents. It is not the case of the owner of the vehicle that he has not given an opportunity to cross examine RW1. Without doing so, now, he has come forward with a new plea of applicability of IMT-29, for the first time before this Court. Therefore, he contended that the Tribunal has wrongly fixed the liability against the Insurance Company and the same is liable to be set aside.

15. We have heard Mr.N.Damodaran, the learned counsel for the claimant, Mr.M.S.Krishnan, learned Senior Counsel appearing for Thriveni and Mr.S.Arun Kumar, learned counsel appearing for the Insurance Company and perused the material available on record.

16. Upon hearing all the parties and perusing the records, the issues that arise for consideration in the present Civil Miscellaneous Appeals are as follows:

(1) Whether the claimant used the Bolero jeep bearing No.OR-05 AC.4399, in the course of his employment, when the accident occurred on 03.05.2011?

(2) Whether the injured was an employee of the Thriveni/insured or the owner of vehicle/Bolero jeep, at the time of accident?

(3) Whether Section II-Liabilities to the third party of the Private Car Package Policy (PCPP) would cover employees of the insured?

(4) Whether the premium paid under IMT-16, PA cover for unnamed persons will cover the employees of the insured?

(5) Whether the owner of the vehicle is liable to pay additional premium in terms of IMT-29 to cover its employees?

(6) Whether the liability fixed by the Tribunal against the Insurance Company is correct?

(7) Whether the quantum of compensation awarded by the Tribunal is just and fair?

17. Issue Nos: 1 and 2:

(1).Whether the claimant used the Bolero jeep, bearing No.OR-05-AC.4399, in the course of his employment, when the accident was occurred on 03.05.2011?

(2).Whether the injured was an employee of the Thriveni/insured or the owner of vehicle/Bolero jeep at the time of accident?

17.1 The injured claimant filed a Claim Petition, stating that on 03.05.2011, at about 9.30 a.m, when he was travelling in Bolero Jeep, bearing Regn.No.OR-05-AC 4399, driven by its driver towards Bhubaneswar, after visiting his work site at Joda, and when the vehicle was nearing Belabahali Village, Keonjhar District, on seeing a truck from the cut road, the driver of the Bolero jeep, in order to avoid the accident, turned the vehicle to the right side, however, lost his control over the vehicle, due to which, the jeep toppled and rolled over in the sky, resulting in an accident.

17.2 The Tribunal, taking into consideration, the averments set out in the claim statement held that the accident occurred when the claimant was travelling in a Bolero Jeep after visiting his work site at Joda and while proceeding towards Bhubaneswar at about 9.30 a.m. In order to prove that the claimant travelled not during the course of employment, Thriveni neither examined any witness nor marked any exhibits. Further, the insured Thriveni was also not able to cull out anything from P.W.1 and P.W.2. Therefore, we are of the firm view that the accident occurred when the claimant was travelling in the Bolero Jeep after visiting his work site at Joda towards Bhubaneswar, which is very well in the course of his employment. Accordingly, Issue No.1 is answered.

17.3 The claimant also stated in its claim statement that he was working as Senior General Manager in Thriveni. The said fact was not denied by both the Insurance Company and the Thriveni. The Tribunal also held that he was working as Senior General Manager in Thriveni. As per the RC book the owner of the vehicle is Thriveni. Now the issue to be decided here is whether the claimant was the owner of the vehicle at the time of accident? The claimant was working in Thriveni as Senior General Manager. He was not a Director of the Company, even if he was a Managing Director or a Director, he cannot be termed as owner of the vehicle since the vehicle was registered in the name of Thriveni, which is a separate legal entity. The claimant and the Thriveni have also admitted the fact that the claimant was working as Senior General Manager. Therefore, we are of the view that the claimant was only an employee of the Company and he was not the owner of the Vehicle. Accordingly, Issue No.2 is answered.

18. Issue No.3

Whether Section II-Liabilities to the third party of the Private Car Package Policy (PCPP) would cover employees of the insured?

18.1 To answer this issue, it would be apposite to extract the terms and conditions of Section II-liability to the third party of the Private Car Package Policy (PCPP) issued by the insurer, which is extracted herein below:-

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 insured 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 employment of such person by the

insured".

18.2 A mere perusal of Clause 1(i) of Section II-Liability to Third Parties, it appears that the Company will indemnify the insured in the event of the accident caused by or arising out of the use of insured vehicle against all sums which the insured shall become legally liable to pay in respect of death of or bodily injury of any person including occupants carried in the vehicle but except so far as it is necessary to meet the requirements of the Motor Vehicles Act, 1988, the Company shall not be liable where such death or injury arises out of and in course of employment of such person by the insured.

18.3. The words "except so far as it is necessary to meet the requirement of the Motor Vehicle Act" would indicate that the liability is restricted to the extent, the liability arising out of the statutory requirement under the Motor Vehicles Act (i.e) under Section 147 of the Motor Vehicles Act, 1998 (herein after called as " M.V. Act"). The meaning of clause 1(i) of Section II of PCPP is clear when we look into the other clauses of Insurance Policy. The Policy would cover the risks, which are not covered under Section 147 of the M.V. Act by stipulating the payment of extra premium. Section-II: Liability to Third parties to the contract of PCPP provides only the risk that requires to be covered under Section 147 of the M.V. Act. In this connection, it is relevant to reproduce Section 147 of the Act.

"S.147. Requirements 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 representatives 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 is 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, 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:"

18.4 On perusal of proviso to Section 147(1) (b) (ii) of the Act, it is clear that the statutory liabilities, which are intended to be covered under Section 147 of the Act will exclude the liabilities that arise due to death or injury sustained to any employee in the course of his employment other than the liability arising under the Workmen's Compensation Act 1923. This would mean that if an employer intends to cover its employees, the employer requires to cover by way of payment of additional premium through separate contract of insurance, i.e, by way of payment of additional premium.

18. 5 The Section-II: Liability to third parties of the PCPP will cover all third parties liabilities, which are statutorily required to be covered under 147 of the M.V. Act and for all other cases of third parties, it should be covered by way of payment of additional premium.

18.6. To find out whether the insured in the present case has paid any extra/additional premium, by way of separate contract to cover the third party liabilities that are not covered under Section-II-Liabilities to third parties and under Section 147 of the Act, it would be appropriate to extract hereunder the details of premium paid by owner of the vehicle.

SCHEDULE OF PREMIUM (IN RUPEES)	
OWN DAMAGE	LIABILITY
Basic premium on Vehicle and Accessories	B. Basic TP
A.Basic-OD	Rs.2,500.00
Rs.8,024.00/-	Total
Total	Rs.2,500.00
Rs.8,024.00/-	Add:
	Compulsory PA for Owner Driver
Gross OD (A)	Rs.100.00
Rs.8,024.00/-	PA for unnamed persons
	Rs.400.00
	LL to paid driver IMT-28
	Rs.25.00
	Sub Total (Additions)
	Rs.525.00
	Gross TP(B)
	Rs.3,025.00
	Gross OD & TP:
	(A) + (B)
	Rs.11,049.00

18.7 On perusal of the details of the premium paid by the owner of the vehicle, it appears that he has paid for basic premium for own damages a sum of Rs.8000/- which would obviously cover damage in the vehicle.

18.8 A sum of Rs.2,500/- paid towards Basic-TP(i.e) basic third party premium. This third party premium paid only with an intention to cover the statutory liabilities as to be covered under Section 147 of the Act. At this juncture, obviously, an issue will arise whether an occupant employee of the car will be treated as third party? The answer to this question would be negative. In Section II-Liability to third parties of the PCPP, it has been clearly stated that the third party liability will be covered only to the extent that it is necessary to meet the requirement of Section 147 of the M.V. Act. The Section II clearly states that the Insurance 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. Therefore, when the contract was entered to include all third party liabilities, which are statutorily required to be covered under the Act, the contract itself excludes the third party liability arises out of and in the course of employment. Therefore, premium paid towards Basic-TP does not cover the third party liability arising out of and in the course of employment. In the present case, obviously, third party liability arises out of and in the course of employment and

therefore, the premium paid under the rent Basic-TP does not cover the present claim.

18.9 On the perusal of the insurance policy coverage held by the Thriveni, it appears that the owner of the vehicle has paid a sum of Rs.100/-, compulsory PA for owner driver. In the present case, the vehicle was driven by the driver of the insured and the injured claimant is not the owner of the vehicle but he was an employee of the Company (Thriveni Earthmovers Pvt. Ltd.,.) Therefore, additional premium paid towards compulsory PA for owner driver will not be applicable for the employee. Accordingly the Issue No.3 is answered.

19. Issue No.4

Whether the premium paid under IMT-16, PA cover for unnamed persons will cover the employees of the insured?

19.1 A sum of Rs.400/- was paid for personal accident to unnamed passenger. This amount was paid as additional premium in terms of IMT-16. When the insurer issued the policy under PA for unnamed passenger, IMT-16 clearly states that it would not be applicable for the vehicle used for hire or reward. At this juncture, it would be relevant to reproduce the terms of IMT-16, which is as follows:-

"IMT-16. Personal accident to unnamed passengers other than Insured and the paid driver and cleaner{For vehicles rated as Private cars and Motorized two wheelers (not for hire or reward) with or without side car}

In consideration of the payment of an additional premium it is hereby understood and agreed that the insurer undertakes to pay compensation on the scale provided below for bodily injuries hereinafter defined sustained by any passenger other than the insured and/or the paid driver attendant or cleaner and/or a person in the employ 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 insured 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:

Details of injury Scale of Compensation

- i) Death 100%
- ii) Loss of two limbs or sight of two eyes or one limb and sight of one eye 100%
- iii) Loss of one limb or sight of one eye 50%
- iv) Permanent total disablement from injuries other than named above 100%

Provided always that

(1) Compensation shall be payable under only one of the items (i) to (iv) above in respect of any such person arising out of any one occurrence and total liability of the insurer shall not in the aggregate exceed the sum of Rs.8,00,000 during any one period of insurance in respect of any such person.

(2) no compensation shall be payable in respect of death or injury directly or indirectly wholly or in part arising or resulting from or traceable to

(a) intentional self injury suicide or attempted suicide physical defect or infirmity or (b) an accident happening whilst such person is under legal influence or intoxicating liquor or drugs.

(3) such compensation shall be payable only with the approval of the insured named in the policy and directly to the injured person or his/her legal representative(s) whose receipt shall be a full discharge in respect of the injury of such person.

(4) not more than 2 persons/passengers are in the vehicle insured at the time

of occurrence of such injury. Subject otherwise to the terms exceptions conditions and limitations of the policy."

19.2 IMT-16 is relating to the premium paid to cover the present accident to unnamed passengers other than the insured and the paid driver and the cleaner. Now, the issue to be decided herein is that, who are the persons to be covered under the category of unnamed passengers, in terms of IMT-16.

19.3 As per the IMT-16, all the passengers would be covered other than the following:-

- i) insured and/or
- ii) the paid driver attendant or cleaner; and/or
- iii) a person in the employ of the insured coming within the scope of the Workmens Compensation Act, 1923 and subsequent amendments of the said Act and
- iv) engaged in and upon the service of the insured at the time such injury is sustained whilst mounting into

19.4 From the above, it is clear that the persons, whoever, engaged in and upon the service of the insured at the time of such injury is sustained whilst mounting into, shall not be covered under IMT-16, in the category of unnamed passengers, which would otherwise mean that the persons who suffered with the injuries or death in the course of employment, he would not be covered under IMT-16 in the category of unnamed passengers. In the present case, admittedly, the claimant was an employee of the Company. Therefore, he would not fall within the purview of unnamed passengers as stated in IMT-16. In another perspective also, the employee of the Company shall not be covered under IMT-16, due to the reason that IMT-29 specifically provides for payment of additional premium for all legal liabilities to Employees of the Insured other than paid driver and/or conductor and /or cleaner, who may be travelling or driving in the employer's car. The intention of payment of additional premium under IMT-29 is to provide coverage to the employees since no coverage is available under IMT-16. Therefore, the employees would not fall under the category of unnamed passengers, as stated in IMT-16, so as to claim any compensation from the insurer. Hence, we are of the view that the premium paid by the insured under IMT-16 to cover unnamed passengers will not provide any coverage to the employees of the insured. Accordingly, Issue No.4 is answered.

20. Issue No.5

Whether the owner of the vehicle is liable to pay additional premium in terms of IMT-29 to cover its employees?

20.1 As far as fifth issue is concerned, now we have to decide whether the owner of the vehicle is liable to pay additional premium to cover its employees in terms of IMT-29? To answer this issue it is relevant to extract the IMT-29 as follows:

"IMT-29 Legal Liability to Employees of the Insured other than paid driver and/or conductor and /or cleaner who may be travelling or driving in the employer's car (Private cars only/Motorized two wheelers (not for hire or reward)

"In consideration of the payment of an additional premium @ Rs.25/- per employee insured notwithstanding anything to the contrary contained in the policy it is hereby understood and agreed that the insurer will indemnify the insured against the insured's liability at Common Law and Statutory Liability under the Fatal Accidents Act, 1855 for compensation (including legal costs of any claimant) for death of or bodily injury to any employee (other than paid drivers) of the within named insured being carried in or upon or entering in or getting on to or alighting from or driving the vehicle insured.

Provided that in the event of an accident whilst the vehicle insured is carrying more that ...* employees of the insured (including the driver) the insured shall repay to the insurer a rateable proportion of the total amount payable by the insurer by the reason of this endorsement in respect of accident in connection with such vehicle insured.

Subject otherwise to the terms, condition limitations and exception of this policy."

20.2 The IMT-29 is relating to the payment of additional premium to cover the liability to employees of the insured other than the paid drivers/conductors/cleaners.

20.3 The terms and conditions of Section II-Liability to third parties, as stated above, clearly excludes payment of compensation to the employees of the insured under the category of third party liability. Section II ultimately provides that third party liabilities would be covered as provided under Section 147 of the M.V. Act. Section 147 of the M.V. Act, clearly spells out that premium paid by the insured would cover only the statutory liabilities as stated thereunder, excluding the liabilities to the employees of the insured. Therefore, under Section 147 of M.V. Act, it is mandatory for the insured to enter into a private contract with the insurer by way of payment of additional premium to cover its employees.

20.4 The premium paid under basic third party liability does not cover the employees of the insured. As we stated earlier, additional premium paid under IMT-16 to cover unnamed passengers also excludes employees of the insured from any coverage. Therefore, in order to cover the employees of the insured, the insured is required to pay additional premium in terms of IMT-29.

20.5 This Court vide orders dated 05.09.2019 and 23.09.2019 directed the IRDA to answer the following queries:

" (i) Whether the Insurance Company is liable to pay compensation to the occupant in a private car without paying additional premium under IMT-29?

(ii) What is the scope of IMT-29 after the issuance of circular dated 3 December 2009, by IRDA."?

20.6 In compliance with the direction of this Court, Mr.M.B.Raghavan, learned counsel appearing for IRDA filed a memo, dated 30.01.2013 along with enclosures.

20.6.1 As far as first query is concerned, the IRDA submits that the Insurance Company will not be liable to pay compensation in an accident for the occupants in the private car, who are employees of the insured/owner travelling without obtaining coverage under IMT-29.

20.6.2 As far as second query is concerned, the IRDA answered that the circular, dated 03.12.2009 was not intended to modify the policy terms or include coverage for employee/occupant but only to deal with dispute being raised by the insurer for all occupants (other than employees/occupants) contrary to the express wording of the policy.

20.7 Thus, from the memo filed by IRDA dated 30.09.2019, it is clear that insurer will not have liability for occupants in a private car, who are employees of the insured/owner (except the paid driver) without obtaining

coverage under IMT-29.

20.8 Therefore, if an employer intends to cover its employees, it is mandatory for the employer to pay additional premium in terms of IMT-29. In the event of non payment of any additional premium, in terms of IMT-29, insurance coverage will not be extended to its employees. In the present case, admittedly, no additional premium was paid under IMT-29 to cover the employees of the insured. Therefore, without payment of additional premium certainly, the employees are not entitled to make any claim under the pretext that the policy issued by the insurer was a comprehensive/package policy.

20.9 At the time of argument, the learned Senior Counsel, Mr.M.S.Krishnan made a submission that issue relating to applicability of IMT-29 has been raised for the first time before this Court. Had they raised this issue at the time of trial, they would have had a chance to examine whether the claimant was travelling as employee in the course of employment. We do not find any force in the said submission of learned Senior Counsel as there is no requirement to raise the said issue now since the claimant had filed claim statement stating that the accident occurred, when he was travelling in a Bollero Jeep after visiting his work site at Joda towards Bhubaneswar. Corroborating the same, P.W.1 and P.W.2 also deposed evidence. The said averment was not disproved by the Thriveni. Further, at the time of chief examination, R.W.1 has clearly deposed about the difference between IMT-28 and IMT-29. Therefore, even at the time of examination of witnesses, the issue relating to the applicability of IMT-29 was raised. It is only the insured, who failed to cross-examine R.W.1. in this aspect. Therefore, the contention of the learned Senior Counsel that for the first time, the applicability of IMT-29 has been raised before this Court does not have any merit. Therefore, we are of the considered view that, in the present case, no additional premium was paid under IMT-29 to cover the employees of the insured.

20.10 At this juncture, it would be appropriate to deal with various case laws cited by Mr.M.S.Krishnan, learned Senior Counsel appearing for the owner of the vehicle. The learned Senior counsel referred mainly the latest decision of the Hon'ble Supreme Court in the case of New India Assurance Company Vs. Shanti Bopanna and other (supra). By referring the above case, the learned Senior Counsel contended that the Hon'ble Supreme Court has categorically held that the employees will be covered under the comprehensive policy. In the present case, since the Policy issued is under the comprehensive/package policy, he contended that the said case is squarely applicable for the present case. However, on the perusal of the above judgment, it is clear that the additional

premium payable in terms of IMT-29 to cover the legal liabilities to the employees of the insured other than paid driver had not been brought into the knowledge of the Hon'ble Supreme Court. Since the counsels failed to bring into the knowledge of the Hon'ble Supreme Court, the Hon'ble Supreme Court had no occasion to deal with about the applicability of IMT-29. The finding of the Hon'ble Apex Court in Shanti Bopanna case (supra) was made without testing the requirement of payment of additional premium by the employer to cover its employees under IMT-29. Therefore, we are of the view that the principles laid down by the Hon'ble Apex Court in the Shanti Bopanna case will not be applicable to the case on hand.

20.11 In all other cases, as referred by both the parties, there was no finding on the aspect of applicability of IMT-29. Therefore, all the above cases referred by the learned Senior counsel appearing for the owner of the vehicle will not be applicable for the present case. In fine, we hold that in the present case, owner of the vehicle is liable to pay additional premium under IMT-29, to cover its employees. Obviously, no additional premium was paid in terms of IMT-29. Hence, we are of the view that the insurance company is not liable to pay compensation as awarded by the Tribunal. Accordingly, Issue No.5 is answered.

21. Issue No.6

Whether the liability fixed by the Tribunal against the Insurance Company is correct?

21.1 The Tribunal has fixed the entire liability against the Insurance Company. In view of the finding in Issue No.1 to 5, we are of the view that the liability fixed against the Insurance Company suffers from infirmity and the same is not appropriate without the payment of any additional premium under IMT-29. In order to cover the employees of the insured, in case of death or bodily injuries arising out of and in the course of employment, no liability can be fastened against the Insurance Company without payment of any additional premium. In the present case, as we found earlier, insured has not paid any additional premium to cover its employees under IMT-29. Therefore, the liability fastened against the Insurance Company by the Tribunal is not correct. Accordingly, we set aside the award of the Tribunal to the extent of the liability fastened against the Insurance Company alone. The driver, who drove the vehicle was an employee of the insured and due to the negligence on the part of the driver of the vehicle, the accident occurred. This Court already upheld the findings of the Tribunal with regard to the fixation of the negligence against the driver. The driver, being a servant and the owner of the vehicle being a Master,

we are of the view that Thriveni/insured/ Company is liable to pay entire liabilities that arises out of this accident to the claimant. Accordingly, Issue No. 6 is answered.

Quantum:

22. Issue No.7

Whether the quantum of compensation awarded by the Tribunal is just and fair?

22.1 The learned counsel appearing for the claimant would submit that in the claim statement, it is stated that the injured was drawing a sum of Rs.1,80,000/- as salary per month at the time of accident, however, the Tribunal has considered the income of the injured as Rs.1,00,000/- per month and awarded compensation towards loss of income to the claimant. In C.M.A.No.586 of 2018, the claimant has stated that at the time of accident, the injured was drawing a sum of Rs. 1,50,000/- per month and to prove the same the claimant has referred Ex.X2/pay certificate issued by his employer and tax returns which were marked as Exs.P-30 to P-31. Therefore, he would contend that a sum of Rs.1,50,000/- per month would be appropriate and prayed for fixing a sum of Rs.1,50,000/- per month as his salary and award compensation. The counsel submitted that he has no grievance with regard to the fixation of compensation by the Tribunal under other heads.

23. The learned counsel appearing for the Insurance Company strongly opposed to fix a sum of Rs.1,50,000/- as monthly salary. He would contend that the claimant was drawing a sum of Rs.50,000/- per month in the year 2006. However, the same have been increased in the year 2011 to a sum of Rs.1,80,000/- per month. However, no increment particulars were provided to prove the case, except Ex.P30. For the assessment year 2009 - 2010, as per Ex.P-30, taxable income was shown as a sum of Rs.9,16,600/-, where, a sum of Rs.1,85,379/- deducted towards TDS and net income after deducting tax was shown as Rs.7,31,221/-. In the assessment year 2010-2011, as per Ex.P31, taxable income was shown as a sum of Rs.11,67,884/- for the said income, a sum of Rs.2,61,996/- has been deducted towards TDS and balance amount was Rs.9,05,888/-. Further he contended that as per Ex.P32, the income for the assessment year 2011 - 2012 was shown as a sum of Rs.22,02,850/-, and a sum of Rs.5,30,301 was deducted towards TDS and after deducting TDS, a sum of Rs.16,72,549/- was paid as salary. The learned Senior Counsel appearing for the owner of the vehicle Mr.M.S.Krishnan fairly submits that the compensation awarded by the Tribunal is just and fair and it does not warrant any interference by this Court.

24. According to the claimant, he has filed claim petition claiming that he was drawing a sum of Rs.1,80,000/-

per month as salary. However, on behalf of the claimant, they have produced Exs.P-35 to P-39/salary certificates, in order to show that the injured was drawing a sum of Rs.1,50,000/- at the time of accident. The claimant has also marked tax returns as Exs.P30, P31 and P32. On the perusal of these exhibits, it appears that for the assessment year 2010-2011, the total income was shown as Rs.12,67,884/- and for the assessment year 2011 - 2012, the income was shown as a sum of Rs.23,22,850/-. On perusal of the Ex.X2/the certificate issued by the Thriveni shows that the claimant was drawing a sum of Rs.1,50,000/-. Whereas, income tax returns shows that he was drawing a sum of Rs.23,22,850/-. The amount shown as salary of the claimant in the tax returns, salary certificate issued by the employer and the amount stated in the claim statement are contradictory to each other. Further, the deduction of TDS also was made in an erratic manner. We have suspicion over the erratic deduction of TDS also. Under these circumstances, the Tribunal has fixed a sum of Rs.1,00,000/- as notional income. However, we are of the view that a sum of Rs.1,00,000/- fixed by the Tribunal towards loss of income is also on the higher side. Further, no future prospects was added towards the income of the injured as held by Hon'ble Apex Court. The injured was 37 years at the time of accident and in such case, 40% future prospects required to be added as held by the Hon'ble Apex Court in the case of National Insurance Company v. Pranay Sethi reported in 2017(2)TNMAC 609 (SC). Therefore, we are of the considered view that the income of the injured can be safely fixed at a sum of Rs.1,00,000/- including future prospects. The age of the injured at the time of accident was 37. Therefore, multiplier 15 will apply as held by the Hon'ble Apex Court in case of Sarla Verma & others vs. Delhi Transport Corporation & another reported in 2009 (2) TNMAC 1 (SC). Hence, we arrive the loss of income as follows:

$$\text{Rs.1,00,000} \times 12 \times 15 = \text{Rs.1,80,00,000/-}.$$

Since we have re-determined the loss of income along with future prospect a sum of Rs.5,00,000/- awarded by the Tribunal towards future prospect is liable to be set aside. Accordingly, we set aside a sum of Rs.5,00,000/- towards future prospect. With regard to the amount awarded under other heads viz., Medical Expenses, Attender Charges, Loss of Amenities, future Medical Expenses are just and fair and the same are confirmed.

S.N o	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted of modified
1.	Loss of Income	1,80,00,000	1,80,00,000 (Including future prospect)	Modified

2.	Medical Expenses	63,10,091	63,10,091	Confirmed
3.	Future Prospects	5,00,000	Nil	Set aside
4.	Attender Charges	5,00,000	5,00,000	Confirmed
3.	Loss of Amenities	5,00,000	5,00,000	Confirmed
4.	Future Medical Expenses	3,00,000	3,00,000	Confirmed
	Total	2,61,10,091	2,56,10,091	Reduced by Rs.5,00,000 /-

25. In the present case, since we have already set aside the liability against the Insurance Company and fastened the entire liabilities against the owner of the vehicle/Thriveni, we direct the insured/Thriveni to pay the entire award of Rs.2,56,10,091/- to the claimant.

26. The Thriveni/Owner of the Bolero Jeep is directed to pay the compensation awarded by the Tribunal at Rs.2,56,10,091/- with interest at the rate of 7.5% per annum from the date of petition till the date of realisation within a period of three weeks from the date of receipt of a copy of this judgment. The compensation amount, if any, deposited by the Insurance Company before the Tribunal, shall be refunded within three weeks from the date of receipt of this order copy. In the event of disbursement of any award amount to the claimant, out of the deposit made by the Insurance Company, we direct the Tribunal to pay the same to Insurance Company out of the compensation amount deposited by owner of the vehicle/Thriveni.

27. Further, we direct the Tribunal to transfer the entire amount after deducting the award amount already disbursed to the claimant, out of the deposit made by the owner of the vehicle/Thriveni, to the claimant's Bank account by way of RTGS within three weeks from the date of deposit. In case, if the Bank account details are not available, the claimant is directed to furnish the details to the Court below duly within a week from the date of receipt of a copy of this order. On such deposit, the claimant is permitted to withdraw the entire award amount along with interest and costs, less the amount if any, already withdrawn.

28. In the result, the Civil Miscellaneous Appeal No.2307 of 2018 filed by the Insurance Company is allowed and C.M.A.No.586 of 2019, filed by the claimant is dismissed. No costs. Consequently connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CCC)

//True copy//

Sub Assistant Registrar

rst

To

1.The Motor Accident Claims Tribunal,
Special Sub Judge-1, Salem

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

+1cc to Mr.N.Damodaran, Advocate SR.No.24534

+2cc to Mr.P.Siva Kumar, Advocate SR.No.224542, 24543

+1cc to Mr.S.Arun Kumar, Advocate SR.No.24622

C.M.A.Nos.2307 of 2018
and 586 of 2019

PP(CO)
GMY(20/11/2020)

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