



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 11.11.2020

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

C.M.A. (MD) No.1760 of 2010

and

M.P. (MD) No.1 of 2010

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National Insurance Company Limited

Office at 92, Devarpuram Road

Tuticorin

through its Branch Manager

... Appellant/Respondent 2

-vs-

1.Manikandan

...Respondent 1/Petitioner

2.R.Thiruvarangam

3.S.Suresh @ Durairaj

...Respondents 2&3/Respondent 1&3

4.IRDA

(Insurance Regulatory Development Authority)

Parisrame Bhavan

Basheer Barg

Hyderabad, Telengana District

... 4th Respondent

[R4 suo motu impleaded vide court order dated 23.12.2016]

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, to set aside the Judgment and Decree dated 29.03.2010, made in M.C.O.P.No.911 of 2005, on the file of the Motor Accident Claims Tribunal, I Additional District Judge, Tirunelveli.

For Appellant : Mr.D.Sivaraman

For Respondents : No appearance for R1 & R3

Ms.L.Victora Gowri

Assistant Solicitor General of India
for R4

R2 set ex-parte before the Tribunal

J U D G M E N T

This civil miscellaneous appeal arises out of the Judgment and Decree dated 29.03.2010, made in M.C.O.P.No.911 of 2005, on the file of the Motor Accident Claims Tribunal / I Additional District Court, Tirunelveli.



2. The claim petition was filed by the first respondent seeking compensation of Rs.3,00,000/-. It is the case of the claimant that on 14.06.2005, he was travelling in a Tata Sumo bearing registration No.TN72 D1771, belonging to the second respondent and insured with the appellant - Insurance Company. When the Tata Sumo was proceeding near Ramanatham on Trichy - Chennai Main Road, at about 05.30 a.m., the driver of the vehicle drove the vehicle in a rash and negligent manner and entered into the mud portion. As a result, the driver lost control of the vehicle and dashed against a roadside tamarind tree, due to which, the claimant and other passengers travelled in the vehicle had sustained grievous injuries. Immediately, the claimant was taken to Government Hospital, Thittakudi, for treatment. Alleging that the accident had taken place due to the rash and negligent driving of the driver of the vehicle, the claimant laid a petition, for awarding compensation of Rs.3,00,000/-.

3. The claim was opposed by the appellant - Insurance Company mainly contending that there is no risk cover for the person, who travelled in a private vehicle as per the policy conditions. Further, the claimant cannot be considered as a third party and hence, no risk cover is made for him and the appellant - Insurance Company is not liable to indemnify the loss of the owner of the vehicle.

4. The claim petition was taken up for trial along with other claim petitions arising out of the same accident. On the side of the claimants, P.Ws.1 to 5 were examined and Exs.P1 to P22 were marked. On the side of the respondents, R.Ws.1 and 2 were examined and Exs.R1 and R2 were marked.

5. Upon consideration of the oral and documentary evidence adduced by the parties, the Tribunal came to the conclusion that the accident occurred only due to the negligent driving of the driver of the vehicle and therefore, he was held responsible for the accident and awarded a compensation of Rs.43,866/- along with interest at the rate of 7.5% per annum and held that the appellant - Insurance Company and the owner of the vehicle are liable to pay the same. Aggrieved over the said finding, the Insurance Company has filed the present civil miscellaneous appeal.

6. Mr.D.Sivaraman, learned counsel appearing for the appellant - Insurance Company would submit that admittedly, the claimant was travelling in a Tata Sumo and as per the conditions of the Insurance Policy (Ex.R1), the appellant - Insurance Company cannot be mulcted with liability. The learned counsel would also submit that they have not questioned the quantum of compensation awarded in favour of the first respondent / claimant.



7. Though notice has been served on the respondents 1 to 3 and their names have been printed in the cause list, none appeared on behalf of the respondents 1 to 3.

8. Heard the learned counsel for the appellant and the learned Additional Solicitor General of India for the fourth respondent and perused the materials available on record.

9. The only issue arises for consideration in this appeal is whether the Insurance Company can be made liable to pay compensation for the death or injuries sustained by the occupants of a private car, when the vehicle was covered with Act Policy.

10. In **United India Insurance Co. Ltd. vs. Tilak Singh, [(2006) 4 SCC 404]**, the liability of the Insurance Company to pay compensation under Section 147 of Motor Vehicles Act, 1988 for the death or injury to gratuitous passenger carried in a private vehicle came up for consideration. The Honourable Apex Court, in that case, following the dictum laid down by the Apex Court in **T.V. Jose (Dr.) vs. Chacko P.M., [(2001) 8 SCC 748]** and **New India Assurance Co. Ltd. vs. Asha Rani, [(2003) 2 SCC 223]**, has held as follows:

"21. In our view, although the observations 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 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."

11. In **G.M., United India Insurance vs. M.Laxmi and others**, dated 14.11.2008 in S.L.P.(C) No.20608 of 2004, the Apex Court has adopted the view taken in **Tilak Singh's** case.

12. The Division Bench of this Court in **New India Assurance Co. Ltd. vs. S.Krishnasamy, [2015 (1) TN MAC 19 (DB)]**, while deciding the liability of the insurer in respect of occupants of a Car, has held that the occupants of the Car cannot be termed as "Third Party". Since the Car was insured under Act Policy, the insurer cannot be held to be liable to pay compensation. The relevant paragraphs of the said decision would run thus:

"18. In view of the rulings cited above, we are of the considered view that since, the



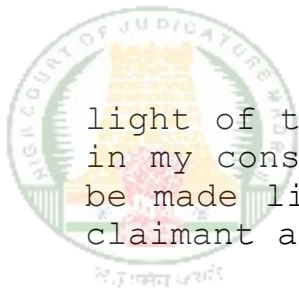
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Policy is only an Act Policy issued by the Appellant - Insurance Company to the Insurer and the deceased Palanisamy was only an occupant of the Private Car, cannot be considered as 'Third party' of the vehicle and the Policy is covered risks to the 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.

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."

13. In **National Insurance Co. Ltd. vs. M.Padmini**, reported in **2017 (1) TN MAC 566**, this Court set aside the direction issued by the Tribunal by applying the doctrine of Pay and Recover in the case of a passenger travelling in a Jeep, which covered only Act Policy.

14. Reverting back to the matter on hand, the claimant was travelling in a Tata Sumo owned by the second respondent herein. It is not disputed that the insurance policy in respect of the offending vehicle is in the nature of Act only policy and no additional premium was collected by the insurer covering the risk of the occupants of the vehicle. The Honourable Apex Court in **Tilak Singh's** case, **Laxmi's** case and this Court in **Krishnasamy's** case (cited supra) have taken a consistent view that Act Only Policy does not cover the risk of the pillion rider of a two-wheeler or a passenger in a private Car. Furthermore, this Court in **Padmini's** case (cited supra) quashed the direction issued by the Tribunal to the Insurance Company to pay the award amount to the claimant and recover it from the owner of the vehicle. In the



light of the principles laid down in the decisions referred above, in my considered opinion, the appellant - Insurance Company cannot be made liable to pay the award amount to the first respondent / claimant as per the directions of the Tribunal.

15. For the foregoing reasons, the civil miscellaneous appeal is allowed and the Judgment and Decree dated 29.03.2010, made in M.C.O.P.No.911 of 2005, on the file of the Motor Accident Claims Tribunal / I Additional District Court, Tirunelveli, are set aside. No costs. Consequently, connected miscellaneous petition is closed.

16. In view of the above findings of this Court, it is open to the appellant - Insurance Company to withdraw the amount (i.e.22,000/-) deposited at the time of filing of this appeal. Since the appellant - Insurance Company has been exonerated from their liability to pay the compensation, it is open to the first respondent / claimant to recover the amount awarded by the Tribunal from the second respondent - owner of the vehicle in the manner known to law.

Sd/-

Assistant Registrar (CS-III)

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/ /2020

Sub Assistant Registrar(CS)

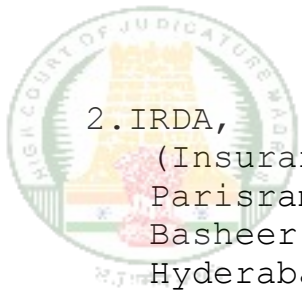
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Note :

In view of the present lock down owing to COVID-19 pandemic, a web copy of the Judgment may be utilized for official purposes, but, ensuring that the copy of the Judgment that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

To:

1.The I Additional District Judge,
Motor accident Claims Tribunal,
Tirunelveli.



2. IRDA,
(Insurance Regulatory Development Authority),
Parisrame Bhavan,
Basheer Barg,
Hyderabad, Telengana District.

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The Record Keeper-2 copies
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to Mr.D.SIVARAMAN, Advocate (SR-21991[F] dated 18/11/2020)

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