IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On	29.04.2021
Pronounced On	11.06.2021

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

C.M.A.No.4127 of 2019
and
C.M.P.No.23338 of 2019

(Through Video Conferencing)

The Oriental Insurance Company Limited,
No.32/3/2, 13th Street,
Phase-II, TNHB,
Sathuvacherry, Vellore. ... Appellant/4th Respondent

Vs.

1.Ulagaraj

2.Jagadeesan

3.Sasikala

4.Vinitha

5.Seema

6.Venkatesan

7.Murugesan

8.Kumar ... Respondents/Petitioners 1 to 5 & RR 1 to 3

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree made in M.C.O.P.No.133 of 2015 dated 12.04.2019, on the file of the Motor Accidents Claims Tribunal, Special Subordinate Court, Tirupattur.

For Appellant : M/s.Harini for Mr.N.Vijayaraghavan

For Respondents : No appearance

J U D G M E N T

There is no representation on behalf of the first to fifth respondents/claimants even though the name of the counsel Mr.M.Kavikannan has been printed in the cause list. He has filed vakalat for the first to fifth respondents. This case was listed twice earlier and adjourned so that the counsel for the first to fifth respondents can appear and defend the impugned Judgment and Decree and assist the Court. However, it appears that the counsel engaged for them is not interested to protect the interest of his clients despite the case appearing twice in the list. After hearing the learned counsel for appellant insurance company it was finally reserved for passing orders.

2. The Insurance Company is the appellant in this appeal. It is aggrieved by the impugned Judgment and Decree dated 12.04.2019 passed by the Motor Accident Claims Tribunal (Special Subordinate Judge), Tirupattur in M.C.O.P.No.133 of 2015.

3. By the impugned Judgment and Decree, the Tribunal has awarded an amount of Rs.17,47,500/- together with interest at 7.5% per annum from the date of claim petition till the date of deposit to the first to fifth respondents even though they have claimed for Rs.10,00,000/- before the Tribunal.

4. The first to fifth respondents were the claimants before the Tribunal in M.C.O.P.No.133 of 2015. They had filed a claim petition for compensation for the death of their wife and mother Poongodi who died in an accident tragically on 07.03.2014. She was riding as a pillion rider on a motor cycle (TVS-XL Super) bearing Registration No.TN-23-BL-4249 driven by the fourth respondent who is her daughter. The said motor cycle was hit by an uninsured motor cycle (Hero Honda) bearing Registration No.TN-23-BZ-1801. Therefore, the claim petition was filed against only against the appellant, the insurer of the motor cycle (TVS-XL Super) bearing Registration No.TN-23-BL-4249.

5. The case of the appellant Insurance Company is that the Tribunal having concluded that the owner and the rider of the Hero Honda Motorcycle bearing Registration No.TN-23-BZ-1801 was rash and negligent and had caused the accident, ought not to have awarded compensation to be paid by the appellant insurer of the TVS-XL Super Motorcycle bearing Registration No.TN-23-BL-4249, merely because the owner the appellant had extended a comprehensive insurance cover for the owner of the aforesaid moped.

6. The Tribunal has allowed the claim petition with the following observations:-

> "Point No.3
> Liability:-
>
> This tribunal for the reasons stated in Point No.1 has comes to a conclusion that the driver of the Hero Honda vehicle bearing

registration No.TN 23 BZ 1801 namely Venkatesan the first respondent is responsible for the accident. Further more on perusal of Ex.P2 the RC Book the same stands in the name of the 2nd respondent. It is an admitted fact that the Hero Honda motor cycle was not insured with the any of the Insurance Company. In that situation than the 1st and 2nd respondents being the driver and the owner of the said vehicle is liable to pay the compensation to the petitioners.

Though the 1st and 2nd respondents is liable to pay a compensation to the petitioner. It is necessary to point out that in this case the owner and insurer of the TVS XL Super bearing registration No.TN 23 BL 4249 was also added as 3rd and 4th respondent on perusal of Ex.P5 the MV Report for the said vehicle the said vehicle belongs to the 3rd respondent. On perusal of Ex.R2 is the policy for the said vehicle the same is package policy which covered the pillion riders as well. In that situation when the 4th respondent had a contract of insurance with the 3rd respondent that they will cover the pillion rider from any unfortunate incident then the 4th respondent now cannot contends that as their insured vehicle driver is not fault then they are not liable to pay the compensation. Further more the 4th respondent as not cited any condition which exclude that if their driver is not fault then they are not liable to pay the compensation to the pillion rider as well. When that being the case the contention of the Fourth respondent in this aspect is rejected by this tribunal. In this aspect it is useful to refer the judgment of Honourable Punjab and Haryana High Court in 'The Oriental Insurance Company Limited Vs. Smt. Indro @ Indro Devi and ors.' (FAO-1831-2014), decided on 8.1.2016 the issue was considered in detail."

7. The Tribunal has referred to the following passages from the above decision:-

"Even without reference to evidence of guilt on the part of the motorcycle, a package policy that covers the risk to a pillion rider is a hybrid policy of motor insurance with life insurance. It requires proof of the fact of the use of a motor vehicle and a claim before the MACT as requiring negligence to be established under Section 166. The Motor

Vehicles Act itself has gone through a sea-change and the policies have also undergone changes to accommodate claims in situations where no negligence at all need to be proved. While section 140 rules out a requirement of any negligence, Section 163-A allows for a structured formula to be applied to a limited class of persons without having to prove that negligence of yet another person that had caused the accident. A strict liability under Section 163-A is a further extension of an accommodation under the Motor Vehicles Act a new concept of making the insurer liable even without proof of negligence. A policy such as, a personal accident cover provides for liability for death or injury to a person that is akin to life insurance or accident insurance without any need to prove negligence. A package policy covering the risk to passenger or pillion rider is an innovation propelled by judicial interventions. In the strictness of application in the manner conceived under the Act, Insurance Company Act and the Motor Vehicles Act, a comprehensive policy so called did no more than enlarging the liability to not merely to third parties but allowed for claims for own damage to the vehicle. It was the judgment in Pushpabai Purshottam Udesh and others Versus Ranjit Ginning & Pressing Company (P) Limited and another AIR 1977 SC 1735 that impelled the Insurance Regulatory Authority to issue circulars to comprehensively cover even persons who were not third parties. This extension of liability cannot actually be seen under the bare provisions of the terms of the policy themselves, but they 6 of 9 have come through later instructions. (see particularly, IRDA/CIR/FFU/073/11/2009, dated 16.11.2009) the way the law of insurance has been understood, a package policy that covers the risk of a pillion rider in a motorcycle accident will be triggered for its applicability in every situation that the incident of death or injury takes place. No further proof is necessary for making a claim for the representatives of the deceased in such a situation. I will indeed hold to the next extreme situation of there being no requirement for proof of any negligence whatever when a claim is made by a representative of a person, who was killed by the use of a motor vehicle. The two factors

> that are required to be established are: (i) the death was on account of use of a motor vehicle and (ii) the vehicle in which he was traveling was insured under a package policy. The liability shall be attracted immediately in the claim before a Tribunal."

8. The learned counsel for the appellant Insurance Company submits that the owner of the TVS-XL Super Motorcycle bearing Registration No.TN-23-BL-4249 had also independently filed M.C.O.P.No.134 of 2015 which was disposed by the Tribunal. It is submitted that the Tribunal ought to have dismissed the claim of first to fifth respondents/claimants.

9. The learned counsel for the appellant Insurance Company placed reliance on the decision of the Hon'ble Supreme Court in Minu B.Mehta Vs Balkrishna Ramchandra Nayan, 1977 (2) SCC 441. He submitted that in the said decision, it has been held that to fasten the liability on the insurer, the claimant has to prove negligence of the owner of the insured vehicle The said order was rendered in the context of Section 95 and 110E of the Motor Vehicles Act, 1939.

10. The learned counsel for the appellant Insurance Company submitted that though Motor Vehicles Act, 1939 was replaced with Motor Vehicles Act, 1988, the said ratio has been followed even after the enactment of Motor Vehicles Act, 1988.

11. The learned counsel for the appellant Insurance Company further submitted that the decision of the Punjab & Haryana High Court rendered in The Oriental Insurance Company Ltd., Vs Indro and others, 2016 ACJ 1759 which has been followed by the Tribunal proceeds on the wrong assumption of law and therefore, the impugned order passed by the Tribunal is liable to be set aside.

12. The learned counsel for the appellant Insurance Company has further placed reliance on the following decisions:-

i. Reshma Kumari Vs. Madan Mohan, 2013 ACJ 1253 (SC).

ii. Surender Kumar Arora and another Vs. Dr.Manoj Bisla and others, 2012 ACJ 1305 SC.

iii. New India Assurance Co. Ltd., Vs. Selvamani and others, 2015 ACJ 431.

iv. Lachoo Ram and Others Vs. Himachal Road Transport Corporation, 2014 (1) CTC 893 SC.

v. United India Insurance Co. Ltd. Vs. K.Shanthakumar and Another, 2015 ACJ 2630.

13. As a concession, the learned counsel for the appellant Insurance Company has offered a concession with a humanitarian view in mind. He submits that the appellant Insurance Company was willing to pay a sum of Rs.5,00,000/- as compensation under Section 163A of the Motor Vehicle Act, 1988 since the policy issued was a comprehensive policy.

14. I have considered the arguments advanced by the learned counsel for the appellant and the case laws submitted before this Court.

15. The facts are not in dispute. The accident took place on 07.03.2014 when the deceased Poongodi travelled on a TVS-XL Super moped bearing registration No.TN-23-BL-4249 as a pillion rider. It was hit by an uninsured Hero Honda Motorcycle bearing registration No.TN-23-BZ-1801.

16. The accident resulted in an injury to the rider of the moped Vinitha. The insured rider is the daughter of the deceased who is the fourth respondent herein. She had also independently filed M.C.O.P.No.134 of 2015. The said M.C.O.P. was partly allowed.

17. M.C.O.P.No.133 of 2015 was filed by all the legal representatives of the deceased Poongodi. It was allowed by the Tribunal by its impugned judgment and decree dated 12.04.2019. The Tribunal has awarded a sum of Rs.17,47,500/- as compensation to the legal representatives of the said pillion rider-deceased Poongodi who are the first to fifth respondents herein.

18. Under Section 166 of the Motor Vehicle Act, 1988, an application for compensation arising out of an accident of the nature specified in Sub-Section (1) of Section 165 of the Act may be made before the Tribunal constituted under Section 165 of the said Act.

19. The Hon'ble Supreme Court in Minu B. Mehta and Others Vs. Balkrishna Ramchandra Nayan and Others, (1977) 2 SCC 441 : AIR 1977 SC 1248 had rendered its decision in the context of Sections 95 and 110(e) of the Motor Vehicles Act, 1939. Section 95 of the Motor Vehicles Act, 1939 is pari materia with Section 147 of the Motor Vehicles Act, 1988. For a easy comparison, both Sections 95 and 110(e) of the Motor Vehicles Act, 1939 and Section 147 of the Motor Vehicles Act, 1988 are reproduced below:-

Section 95 of the Motor Vehicles Act, 1939	Section 147 of the Motor Vehicles Act, 1988
95. 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 is issued by a person who is an authorised insurer [or by a co-operative society allowed under section 108 to transact the business of an 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 or damage to any property of a third party caused by or arising out of the use of the vehicle in a public place ; (ii) Against the death of or bodily injury to any passenger of a public service vehicle caused by or, arising out of the use of the vehicle in a public place Provided that a policy shall not be required- (i) To cover liability in respect of the death, arising out of and in the course of his employment, of the employee of a person insured by the policy or in respect of bodily injury sustained by such an employee arising out of and in the course of his employment [other than a liability arising under the Workmen's Compensation Act, 1923, in respect of the death of, or bodily injury to, any such employee-	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 representative carried in the vehicle or damage to any property of a third party caused by or arising out of the use of the vehicle in a public place; (ii) against the death of or bodily injury to any passenger of a public service vehicle caused by or arising out of the use of the vehicle in a public place: Provided that a policy shall not be required— (i) to cover liability in respect of the death, arising out of and in the course of his employment, of the employee of a person insured by the policy or in respect of bodily injury sustained by such an employee arising out of and in the course of his employment other than a liability arising under the Workmen's Compensation Act, 1923 (8 of 1923) in respect of the death of, or bodily injury to, any such employee—

(a) Engaged in driving the vehicle, or (b) If it is a public service vehicle, engaged as a conductor of the vehicle or in examining tickets on the vehicle, or (c) If it is a goods vehicle, being carried in the vehicle], or (ii) Except where the vehicle is a vehicle in which passengers are carried for hire or reward or by reason of or in pursuance of a contract of employment, to cover liability in respect of the death of or bodily injury to persons being carried in or upon or entering or mounting or alighting front the vehicle at the time of the occurrence of the event 'out of which a claim arises, or (iii) To cover any contractual liability.	(a) engaged in driving the vehicle, or (b) if it is a public service vehicle engaged as 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.
110E.Recovery of money from insurer as arrear of land revenue: Where any money is due from [any person] under an award, the Claims Tribunal may, on an application made to it by the person entitled to the money, issue a certificate for the amount to the Collector and the Collector shall proceed to recover the same in the same manner as an arrear of land revenue.	(2) Subject to the proviso to sub-section (1), a policy of insurance referred to in sub-section (1), shall cover any liability incurred in respect of any accident, up to the following limits, namely:—

	(a) save as provided in clause (b), the amount of liability incurred; (b) in respect of damage to any property of a third party, a limit of rupees six thousand: Provided that any policy of insurance issued with any limited liability and in force, immediately before the commencement of this Act, shall continue to be effective for a period of four months after such commencement or till the date of expiry of such policy whichever is earlier. (3) A policy shall be of no effect for the purposes of this Chapter unless and until there is issued by the insurer in favour of the person by whom the policy is effected a certificate of insurance in the prescribed form and containing the prescribed particulars of any condition subject to which the policy is issued and of any other prescribed matters; and different forms, particulars and matters may be prescribed in different cases. (4) Where a cover note issued by the insurer under the provisions of this Chapter or the rules made thereunder is not followed by a policy of insurance within the prescribed time, the insurer shall, within seven days of the expiry of the period of the validity of the cover note, notify the fact to the registering authority in whose records the vehicle to which the cover note relates has been registered or to such other authority as the State Government may prescribe. (5) Notwithstanding anything contained in any law for the time being in force, an insurer issuing a policy of insurance under this section shall be liable to indemnify the person or classes of persons specified in the policy in respect of any liability which the policy purports to cover in the case of that person or those classes of persons.

20. Similarly, Section 92A of the Motor Vehicles Act, 1939 is *pari materia* with Section 163A of the Motor Vehicles Act, 1988. Both provisions read as under:-

Section 92-A of the Motor Vehicles Act, 1939	Section 163A of the Motor Vehicles Act, 1988
"92-A. Liability to pay compensation in certain cases on the principle of no fault.— (1) Where the death or permanent disablement of any person has resulted from an accident arising out of the use of a motor vehicle or motor vehicles, the owner of the vehicle shall, or, as the case may be, the owners of the vehicles shall, jointly and severally, be liable to pay compensation in respect of such death or disablement in accordance with the provisions of this section. (2) The amount of compensation which shall be payable under sub-section (1) in respect of the death of any person shall be a fixed sum of fifteen thousand rupees and the amount of compensation payable under that sub-section in respect of the permanent disablement of any person shall be a fixed sum of seven thousand five hundred rupees. (3) In any claim for compensation under sub-section (1), the claimant shall not be required to plead and establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act, neglect or default of the owner or owners of the vehicle or vehicles concerned or of any other person. (4) A claim for compensation under sub-section (1) shall not be defeated by reason of any wrongful act, neglect or default of the person in respect of whose death or permanent disablement the claim has been made nor shall the quantum of compensation recoverable in respect of such death or permanent disablement be reduced on the basis of the share of such person in the responsibility for such death or permanent disablement."	163A. Special provisions as to payment of compensation on structured formula basis: (1) Notwithstanding anything contained in this Act or in any other law for the time being in force or instrument having the force of law, the owner of the motor vehicle or the authorised insurer shall be liable to pay in the case of death or permanent disablement due to accident arising out of the use of motor vehicle, compensation, as indicated in the Second Schedule, to the legal heirs or the victim, as the case may be. (2) In any claim for compensation under sub-section (1), the claimant shall not be required to plead or establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act or neglect or default of the owner of the vehicle or vehicles concerned or of any other person. (3) The Central Government may, keeping in view the cost of living by notification in the Official Gazette, from time to time amend the Second Schedule.

21. Similarly, Section 166 of the Motor Vehicles Act, 1988 is similar to Section 110A of the Motor Vehicles Act, 1939 of the Act which are reproduced below:-

Section 110A of the Motor Vehicles Act, 1939	*Section 166 of the Motor Vehicles Act, 1988*
110A. Application for compensation. (1) An application for compensation arising out of an accident of the nature specified in sub-section (1) of section 110 may be made- (a) by the person who has sustained the injury ; or (b) Where death has resulted from the accident, by all or any of the legal representatives of the deceased ; or (c) By any agent duly authorised by the person injured or all or any of the legal representatives of the deceased, as the case may be:	166. Application for compensation: (1) An application for compensation arising out of an accident of the nature specified in sub-section (1) of section 165 may be made (a) by the person who has sustained the injury; or (b) by the owner of the property; or (c) Where death has resulted from the accident, by all or any of the legal representatives of the deceased; or (d) by any agent duly authorised by the person injured or all or any of the legal representatives of the deceased, as the case may be : Provided that where all the legal representatives of the deceased have not joined in any such application for compensation, the application shall be made on behalf of or for the benefit of all the legal representatives of the deceased and the legal representatives who have not so joined, shall be impleaded as respondents to the application.

Provided that where all the legal representatives of the deceased have not joined in any such application for compensation, the application shall be made on behalf of or for the benefit of all the legal representatives of the deceased and the legal representatives who have not so joined, shall be impleaded as respondents to the application. (2) Every application under sub-section (1) shall be made to the Claims Tribunal having jurisdiction over the area in which the accident occurred, and shall be in such form and shall contain such particular as may be prescribed:	(2) Every application under sub-section (1) shall be made, at the option of the claimant, either to the Claims Tribunal having jurisdiction over the area in which the accident occurred, or to the Claims Tribunal within the local limits of whose jurisdiction the claimant resides or carries on business or within the local limits of whose jurisdiction the defendant resides, and shall be in such form and contain such particulars as may be prescribed: Provided that where no claim for compensation under section 140 is made in such application, the application shall contain a separate statement to that effect immediately before the signature of the applicant.

22. Section 166 of the Motor Vehicles Act, 1988 states that an application for compensation arising out of an accident specified in Sub-Section 1 to Section 166 of the Act may be made: -

(a) by the person who has sustained the injury; or
(b) by the owner of the property; or
(c) where death has resulted from the accident, by all or any of the legal representatives of the deceased; or
(d) by any agent duly authorised by the person injured or all or any of the legal representatives of the deceased, as the case may be:

23. As per the proviso, where all the "legal representatives" of the deceased have not joined in any such application for compensation, the application shall be made on behalf of or for the benefit of all the "legal representatives" of the deceased and the legal representatives who have not so joined, shall be impleaded as respondents to the application.

24. The claims Tribunal is required to adjudicate claims for compensation under Section 165 of the Act in respect of accidents involving _

(a) death; or
(b) bodily injury to a person arising out use of motor vehicle; or

(c)damage to any body.

25. On the other hand, Section 163(A) of the Act is an exception to Section 166 of the Motor Vehicles Act, 1988. Under the scheme of the said provision, notwithstanding anything contained in this Act or in any other law for the time being in force or instrument having the force of law, the owner of the motor vehicle or the authorised insurer shall be liable to pay compensation in the case of death or permanent disablement due to accident arising out of the use of motor vehicle, compensation, as indicated in the Second Schedule, to the legal heirs or the victim, as the case may be.

26. In any claim for compensation under sub-section (1) of Section 163A, the claimant is not required to either plead or establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act or neglect or default of the owner of the vehicle or vehicles concerned or of any other person.

27. It is therefore submitted that as a corollary, a claimant is duty bound to prove negligence on the part of the driver of the vehicle for making a scheme under Section 166 of the Act.

28. As mentioned in the beginning of the order, under Section 165 of the Motor Vehicles Act, 1988, the Tribunal is empowered to adjudicate on the claims for compensation in respect of accidents involving (i) death of, or (ii) body injury to, arising out of the use of motor vehicles, or (iii) damages to any property of a third party so arising or both. There is no restriction or any mitigating circumstances, under which, the owner or the insurer can distance itself from the liability .

29. Further, Explanation to Section 165 of the Motor Vehicles Act, 1988 declares that expression “claim for compensation in respect of accidents involving death of or body injury to persons, arising out of the use of motor vehicles” includes a claim for compensation under Sections 140 and Section 163-A of the Act.

30. Section 147 of the Motor Vehicles Act, 1988 merely contemplates minimum requirements to be complied by insurance company.

31. The decisions which were rendered in the context of third party liability under the Act will not apply to a case where there is a comprehensive policy. It may also be propitious to refer to Circular No.IRDA/NL/F&U/073/11/2009 dated 16.11.2009 which is re-produced below:-

INSURANCE REGULATORY AND DEVELOPMENT

AUTHORITY :

Ref: IRDA/NL/CIR/F&U/073/11/2009
Dated :16.11.2009

To,
CEOs of all general insurance companies

Re: Liability of insurance companies in respect of occupants of a Private car and pillion rider on a two-wheeler under Standard Motor Package Policy (also called the Comprehensive Policy).

Insurers attention is drawn to wordings of Section II 1 (ii) of Standard Motor Package Policy (also called the Comprehensive Policy) for private car and two-wheeler under the (erstwhile) India Motor Tariff. For convenience the relevant provisions are reproduced hereunder:-

Section II - Liability to Third Parties

1. Subject to the limits of liabilities 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 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.

It is further brought to the attention of insurers that the above provisions are in line with the following circulars earlier issued by the TAC on the subject:

(i) Circular M.V. No. 1 of 1978 - dated 18th March, 1978 (regarding occupants carried in Private Car) effective from 25th March, 1977.

(ii) MOT/GEN/10 dated 2nd June, 1986 (regarding pillion riders in a two-wheeler) effective from the date of circular.

The above circulars make it clear that the insured liability in respect of occupant(s) carried in a private car and pillion rider carried on two-wheeler is covered under the Standard Motor Package Policy. A copy each of the above circulars is enclosed for ready reference.

The Authority vide circular No. 066/IRDA/F&U/Mar-08 dated March 26, 2008 issued under File & Use Guidelines has reiterated that pending further orders the insurers shall not vary the coverage, terms and conditions wording, warranties, clauses and endorsements in respect of covers that were under the erstwhile tariffs. Further the Authority, vide circular No. 019/IRDA/NL/F&U/Oct-08 dated November 6, 2008 has mandated that insurers are not permitted to abridge the scope of standard covers available under the erstwhile tariffs beyond the options permitted in the erstwhile tariffs.

All general insurers are advised to adhere to the afore-mentioned circulars and any noncompliance of the same would be viewed seriously by the Authority.

This is issued with the approval of competent authority.

Sd/-
(Prabodh Chander)
Executive Director"

32. The above circular is binding on all Insurance Companies. Thus, a pillion rider is covered by the Standard Motr Policy. The insurer is liable to pay compensation to the legal representative(s) of the deceased.

33. Even though the liability is contractual, it is intended to a insulate and protect the injured or dependents of the deceased who may have the misfortune of meeting with an accident resulting in death or bodily injury, arising out of the use of motor vehicle while being carried either as a passenger in a private passenger car or as a pillion rider.

34. In fact, the learned counsel for the appellant Insurance Company has also authored an article in (2012) 5 LW (JS) 1, wherein, he has opined as follows:-

> Remember the Insurance Regulatory & Development Authority (IRDA) Circular dt.16/11/2009 clarifying that the insurance insurance companies would be liable for 'gratuitous occupants carried in a private car' and 'pillion riders carried on a two wheeler' under a Comprehensive or Package Motor Insurance Policy. It came out after a confusing state of affairs and differing

judgments across India. But the 'confusion' was never there and got introduced when some private players took it upon themselves to set the cat among pigeons from misunderstanding, deliberate or otherwise. Now that the insurance industry has reconciled itself to the present dispensation, they may well embark on the venture to extract additional premium from private motor vehicle owners to cover the risk to such occupants. A close examination of the events/circumstances leading to the present may well lend hope to the insurer to seek and achieve the goal. It makes interesting reading and here goes.

35. The said Article was noticed after the case was reserved for passing orders.

36. In New India Assurance Co. Ltd. v. Asha Rani [(2003) 2 SCC 223, it was held that the judgment in Satpal Singh case [(2000) 1 SCC 237 : 2000 SCC (Cri) 130] had been incorrectly decided and that the insurer will not be liable to pay compensation. In his concurring opinion, the Hon'ble Mr.Justice S.B. Sinha after contrasting the language used in the 1939 Act with that of the 1988 Act, observed as under:- (vide SCC p. 235, paras 25 and 27):

"25. Section 147 of the 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'.

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."

37. In National Insurance Co. Ltd. Vs. Baljit Kaur, (2004) 2 SCC 1, the Hon'ble Supreme Court in the context of Section 147 (1)(b) of the Act, held as under:-

> 17. By reason of the 1994 amendment what was added is "including owner of the goods or his authorised representative carried in the vehicle". The liability of the owner of the vehicle to insure it compulsorily, thus, by reason of the aforementioned amendment included only the owner of the goods or his authorised representative carried in the vehicle besides the third parties. The intention of Parliament, therefore, could not have been that the words "any person" occurring in Section 147 would cover all persons who were travelling in a goods carriage in any capacity whatsoever. If such was the intention, there was no necessity of Parliament to carry out an amendment inasmuch as the expression "any person" contained in sub-clause (i) of clause (b) of sub-section (1) of Section 147 would have included the owner of the goods or his authorised representative besides the passengers who are gratuitous or otherwise.

38. In United India Insurance Co. Ltd. Vs. Tilak Singh, (2006) 4 SCC 404, the Court noting the above ratio held as under:-

> 21. In our view, although the observations made in Asha Rani case [(2003) 2 SCC 223 : 2003 SCC (Cri) 493] 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.

39. In National Insurance Co. Ltd. Vs. Balakrishnan, (2013) 1 SCC 731, the Court took note of the decision of the Delhi High Court in Yashpal Luthra case [2011 ACJ 1415 (Del)], wherein, the Delhi High Court observed as under:-

> "27. 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 the Motor Accidents 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.”

40. In Jagtar Singh Vs. Sanjeev Kumar, (2018) 15 SCC 189 : (2019) 1 SCC (Cri) 850, the Hon'ble Supreme Court held as under:-

> 3. In view of the aforesaid, we think it appropriate to set aside the judgment and order passed by the High Court and remit the matter for consideration whether the policy in question is a “comprehensive/package policy” or exclusively an “Act policy”. After such consideration it shall pass a reasoned order. Needless to say, if any other contention is available to the insured, he will be at liberty to raise the same before the High Court.

41. Noting the views expressed by the Delhi High Court in Yashpal Luthra case [2011 ACJ 1415 (Del), the Hon’ble Supreme Court in para 26 in National Insurance Co. Ltd. Vs. Balakrishnan, (2013) 1 SCC 731 observed as under:-

> 26. 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 from a “comprehensive/package policy”. As the circulars have made the position very clear and 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 Bhagyalakshmi [(2009) 7 SCC 148 :

(2009) 3 SCC (Civ) 87 : (2009) 3 SCC (Cri) 321] 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 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.

42. In Surender Kumar Arora Vs. Manoj Bisla, (2012) 4 SCC 552, the Court held as under:-

> 9. Admittedly, the petition filed by the claimants was under Section 166 of the Act and not under Section 163-A of the Act. This is not in dispute. Therefore, it was the entire responsibility of the parents of the deceased to have established that Respondent 1 drew the vehicle in a rash and negligent manner which resulted in the fatal accident. Maybe, in order to help Respondent 1, the claimants had not taken up that plea before the Tribunal. Therefore, the High Court was justified in sustaining the judgment and order passed by the Tribunal. We make it clear that if for any reason, the claimants had filed the petition under Section 163-A of the Act, then the dicta of this Court in Kaushnuma Begum [(2001) 2 SCC 9 : 2001 SCC (Cri) 268] would have come to the assistance of the claimants.

43. The above decisions was rendered in the context of unauthorised passenger albeit gratuitous passenger in a “goods carriage”.

44. In Reshma Kumari Vs. Madan Mohan, (2013) 9 SCC 65, the Hon’ble Supreme Court held as under:-

> 13.4. On the other hand, by making an application for compensation arising out of an accident under Section 166 it is necessary for a claimant to prove negligence on the part of the driver or owner of the vehicle. The burden is on the claimant to establish the negligence on the part of the driver or owner of the vehicle and on proof thereof, the claimant is entitled to compensation.

45. In New India Assurance Co., Ltd., Vs. Selvamani and others, 2015 ACJ 431, this Court held as under:

"Motor Vehicles Act, 1988, Section 165(1) and 166(1)-Claim application-Maintainability of-Negligence of victim-Motor Cycle hit a cycle resulting in injuries to motorcyclist and pillion rider-Both filed claim but they had neither lodged any F.I.R nor adduced any evidence to prove negligence of cyclist-Tribunal without giving a finding on negligence allowed compensation to both against owner and insurance company of motor cycle-Appellate Court SCCH 5 found that motorcyclist was negligent in causing the accident-Whether claim application under Section 166(1) is maintainable when the claimant himself is negligent in causing the accident. Held, no; claimant is a wrong doer, he is not entitled to compensation".

46. Since liability of the Insurance Company is contractual in the case of comprehensive policy, therefore, one has to necessarily go by the terms of the insurance policy and the provisions of the Motor Vehicles Act, 1988. Exhibit R2 prescribes the limitation as to the use under the policy. They are as follows:-

The Policy Covers use only under a permit within the meaning of the Motor Vehicles Act, 1988 on such carried falling under subsection 3 of section 66 of the Motor Vehicles Act, 1988.

1. Use only for social, domestic and pleasure purposes and the insurance business or profession. The policy does not cover used for hire or reward, tuition, racing , pace making, reliability trial, speed testing, carriage of goods (other than samples or personal luggage) in connection with any trade or business or use for any purpose in connection with Motor Trade.

2. In the event of a claim under the policy exceeding Rs.1 lakh or a claim for refund of the premium exceeding Rs.1 lakh, the insurer will comply with the provisions of the AML policy of the company. The AML policies available in all our operating offices as well as companies website.

Limit of Liability:

i. Under section II--I (i) in respect of any one accident: as per the Motor Vehicles Act, 1988.

ii. Under section II--I (ii) in respect of any one the series of claim arising out of one event is Rs.1,00,000/-.

47. In the present case, the comprehensive policy issued by the appellant Insurance Company includes compensation to be to a pillion rider as well. It also covers personal accident cover for the owner cum driver.

48. Comprehensive Policy is issued on payment of extra premium. It is intended to cover the risk of not only an occupant but also the pillion rider of a two wheeler irrespective of the negligence of the owner of the vehicle, on which, the injured or deceased was travelling. Therefore, I do not find any reasons to differ with the views expressed by the Tribunal in the light of the decisions of the Hon'ble Supreme Court in National Insurance Co. Ltd. Vs. Balakrishnan, (2013) 1 SCC 731, in Jagtar Singh Vs. Sanjeev Kumar, (2018) 15 SCC 189 : (2019) 1 SCC (Cri) 850 and the views of Delhi High Court in Yashpal Luthra case [2011 ACJ 1415 (Del) and the views expressed by the learned counsel for the appellant Insurance Company in the above Article. Thus, the award amount is confirmed.

49. Therefore, the appellant Insurance Company is directed to deposit a sum of Rs.17,47,500/- together with interest at 7.5% per annum from the date of claim petition till the date of payment as was awarded by the Tribunal, less any amount already deposited, within a period of six weeks from the date of receipt of a copy of this Judgment.

50. On such deposit, the first to fifth respondents are permitted to withdraw their shares in the same proportion awarded by the Tribunal together with interest, less any amount already withdrawn, by filing suitable application before the Tribunal.

51. Accordingly, this Civil Miscellaneous Appeal is dismissed. No cost.

Sd/-

Assistant Registrar (CO)

//True Copy//

Sub Assistant Registrar

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To

1.The Motor Accidents Claims Tribunal,
Special Subordinate Court,
Tirupattur.

Copy To

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

C.M.A.No.4127 of 2019
and C.M.P.No.23338 of 2019

SSN(CO)
GN(21/09/2021)