



WEB COPY



C.M.A.No.2163 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.06.2022

CORAM:

THE HONOURABLE **MS.JUSTICE V.M.VELUMANI**
and
THE HONOURABLE **MR.JUSTICE S.SOUNTHAR**

C.M.A.No.2163 of 2017

1.S.Vijayalakshmi
2.T.C.Panneerselvam
3.Valarmathi
4.Gunasundari
5.Jayalalitha

... Appellants

Vs.

1.Ashok Brothers Implex Ltd.
No.6-D, Lakshmi Bhawan
609, Mount Road
Chennai-6.

2.The Oriental Insurance Company Limited
Arcot Road
Vellore.

... Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 06.02.2017 made



C.M.A.No.2163 of 2017

in M.C.O.P.No.80 of 2011 on the file of Motor Accident Claims Tribunal, I

Additional District and Sessions Court, Vellore.

For Appellants : Mr.C.Prabakaran
For R2 : Mr.J.Chandran

J U D G M E N T

(Judgment of the Court was delivered by V.M.VELUMANI,J.)

The Civil Miscellaneous Appeal is filed challenging the portion of the award, dismissing the claim petition as against the Insurance Company from its liability, passed by the Tribunal dated 06.02.2017 made in M.C.O.P.No.80 of 2011 on the file of Motor Accident Claims Tribunal, I Additional District and Sessions Court, Vellore.

2.The appellants are claimants in M.C.O.P.No.80 of 2011 on the file of Motor Accident Claims Tribunal, I Additional District and Sessions Court, Vellore. They filed the said claim petition claiming a sum of Rs.39,71,000/- as compensation for the death of one Senthil @ Senthilkumar, who died in the accident that took place on 25.01.2009.



C.M.A.No.2163 of 2017

3. According to the appellants, on the date of accident i.e., on 25.01.2009, at about 17.30 hours, while the deceased Senthil @ Senthilkumar along with one Rajendran was travelling in a Maruthi car bearing Registration No.TN-04-C-9272 on Chennai to Bangalore National Highways Road, near Kilambi Koot Road, the driver of the car drove the same in a rash and negligent manner, dashed against the small bridge on the left side of the road and caused the accident. Due to the said impact, both the deceased Senthil @ Senthilkumar and the said Rajendran died on the spot. Therefore, the appellants filed the above claim petition claiming compensation against the respondents, who are owner and insurer of the car respectively.

4. The 1st respondent, owner of the car remained exparte before the Tribunal.

5. The 2nd respondent/Insurance Company insurer of the car filed counter statement denying the averments made in the claim petition and stated that driver of the car viz., Rajalingam also died in the accident and hence, the Police closed the investigation. As per the Police investigation, the



C.M.A.No.2163 of 2017

deceased purchased the car from the 1st respondent. Both the deceased Senthilkumar and Rajendran travelled in the said car as paid passengers. As per the R.C. Book, only four persons are allowed to travel in the car including driver, but at the time of accident, five persons travelled in the car, which is in violation of policy conditions. Therefore, the 2nd respondent/Insurance Company is not liable to pay any compensation to the appellants. In any event, the compensation claimed by the appellants is excessive and prayed for dismissal of the claim petition.

6.The 2nd respondent/Insurance Company filed additional counter statement and stated that the 1st respondent insured the offending Maruthi car covering liability only with fire and theft. The 1st respondent has not taken package policy from the 2nd respondent. The 1st respondent has not paid any extra premium to cover the occupants of the car and prayed for dismissal of the claim petition.

7.Before the Tribunal, the 1st appellant, wife of the deceased Senthilkumar, examined herself as P.W.1, one Gnanakirubakaran,



C.M.A.No.2163 of 2017

co-employer of the deceased was examined as P.W.2, wife of deceased Rajendran (1st petitioner in the connected M.C.O.P.No.199 of 2012) was examined as P.W.3 and one Vimalkumar, eye-witness to the accident was examined as P.W.4 and 14 documents were marked as Exs.P1 to P14. The 2nd respondent/Insurance Company examined one Swamykannu, Junior Assistant of Insurance Company as R.W.1 and marked 7 documents as Exs.R1 to R7. The Court documents were marked as Exs.X1 to X4.

8.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by Rajalingam, the driver of the car belonging to the 1st respondent and directed the 1st respondent to pay a sum of Rs.39,01,605/- as compensation to the appellants and dismissed the claim petition as against the 2nd respondent/Insurance Company.

9.Challenging the portion of award dismissing the claim petition as against the 2nd respondent/Insurance Company, the appellants have come out with the present appeal.



C.M.A.No.2163 of 2017

10.The learned counsel appearing for the appellants contended that the Tribunal failed to consider Exs.P3 and R4/Insurance Policies and evidence of P.W.4, who was the victim in the same accident. The policy issued by the 2nd respondent in respect of offending vehicle belonging to the 1st respondent is a comprehensive policy. The Tribunal erroneously exonerated the 2nd respondent/Insurance Company from its liability and fastened the liability only on the owner of the vehicle, the 1st respondent. The policy marked as Ex.P3 covers the risk of private car for fire and theft with liability. The policy also covers right of owner and driver and therefore, policy is the comprehensive policy, which covers passengers in the car. In the claim petition filed by P.W.4/Vimal Kumar, the injured in the very same accident, the Tribunal fastened liability on the Insurance Company, the Insurance Company has deposited the said amount and P.W.4 has also withdrawn the amount. The claim of the 2nd respondent that the policy is only 'Act only policy', is hit by the principles of resjudicata and prayed for allowing the appeal.



C.M.A.No.2163 of 2017

11.The learned counsel appearing for the 2nd respondent/Insurance Company made submissions in support of the award passed by the Tribunal and submitted that the deceased Senthilkumar, at the time of accident, travelled in the car as a passenger. The policy issued by the 2nd respondent is 'Liability only policy', which does not cover the risk of occupants of the car. The Tribunal considering the evidence of R.W.1 and documents filed by the 2nd respondent, rightly held that Insurance Company is not liable to pay compensation and prayed for dismissal of the appeal as against the Insurance Company.

12.Heard the learned counsel appearing for the appellants as well as the learned counsel appearing for the 2nd respondent/Insurance Company and perused the entire materials available on record.

13.From the materials on record, it is seen that one Senthil @ Senthilkumar, husband of the 1st appellant, who travelled in the car belonging to the 1st respondent as occupant of the car, died in the accident caused by the negligence of driver of the car. The appellants claimed compensation against



C.M.A.No.2163 of 2017

the respondents that at the time of accident, the car was insured with 2nd respondent and the policy issued is a comprehensive policy and therefore, the 2nd respondent along with the 1st respondent is liable to pay compensation to the appellants. On the other hand, it is the case of the 2nd respondent/Insurance Company that at the time of accident, the deceased Senthilkumar travelled as paid passenger in the car and policy issued by the Insurance Company does not cover the risk of passengers or occupants of the car. To prove their case, the appellants filed and marked copy of the policy as Ex.P3 and the 2nd respondent marked the said policy as Ex.R4. A perusal of the said Insurance policy reveals that 1st respondent has taken 'Liability only policy' with coverage for fire and theft of the car. No extra premium was paid for passengers or occupants of the car.

14.It is well settled that if the policy issued by the Insurance Company is only 'Act only policy'/'Liability only policy', the Insurance Company is not liable to pay any compensation for the risk of occupants of the car or pillion rider of the two wheeler. In the following judgments, the Hon'ble Apex Court as well as the Division Bench and the learned Single Judge of this Court have



C.M.A.No.2163 of 2017

categorically held that the Insurance Company is not liable to pay compensation, if the policy is 'Act only policy'/'Liability only policy' for the injured or death of the occupants/passengers of the car or pillion rider in the two wheeler.

(i) (2002) 2 SCC 278 (New India Assurance Co. Ltd. vs. C.M.Jaya and others);

"6.The facts of the case in Amrit Lal Sood and Another vs. Kaushalya Devi Thapar and others [(1998) 3 SCC 744], were that on 25.8.1970, the Fiat car owned by the second appellant collided with a goods carrier. The car was being driven by the first appellant, a brother of the second appellant. The car was insured with the fifth respondent. One Kishan Sarup Thapar, traveling in the car, got injured and was hospitalized for some time. He made claim for Rs.1,25,000/- as compensation before the Motor Accident Claims Tribunal. The Tribunal awarded Rs.15,800/- as compensation. The claimant filed an appeal before the High Court for enhancement of compensation. The insurer (fifth respondent) filed appeal disputing its liability to satisfy the claim. In claimant's appeal compensation was enhanced to Rs.20,800/-. In the appeal filed by the insurance company the learned Judge held that the claimant was a gratuitous passenger traveling in the car and, therefore, the insurance company was not liable. Two Letters Patent appeals were filed one by the legal representatives of



C.M.A.No.2163 of 2017

the claimant and another by the driver of the vehicle. The appeal filed by the driver was dismissed and in the appeal filed by the legal representatives of the claimant compensation was increased to Rs.56,000/- by the Division Bench of the High Court. The driver and the owner of the car filed appeals in this Court. The question that came up for decision before this Court was whether the insurer was liable to satisfy the claim for compensation made by a person traveling gratuitously in the car. In deciding this question the Court took the view that:

"4.The liability of the insurer in the case depends on the terms of the contract between the insured and the insurer as evident from the policy. Section 94 of the Motor Vehicles Act, 1939 compels the owner of a motor vehicle to insure the vehicle in compliance with the requirements of Chapter VIII of the Act. Section 95 of the Act provides that a policy of insurance must be one which insures the person against any liability which may be incurred by him in respect of death or bodily injury to any person or damage to any property of third party caused by or arising out of the use of the vehicle in a public place. The section does not however require a policy to cover the risk to passengers who are not



WEB COPY



C.M.A.No.2163 of 2017

any person but except so far as is necessary to meet the requirements of Section 95 of the Motor Vehicles Act, 1939, the Company shall not be liable where such death or injury arises out of and in the course of the employment of such person by the insured."

Looking to this clause the Court in paragraph 8 has held: -

"Thus under Section II(1)(a) of the policy the insurer has agreed to indemnify the insured against all sums which the insured shall become legally liable to pay in respect of death of or bodily injury to "any person". The expression "any person" would undoubtedly include an occupant of the car who is gratuitously traveling in the car. The remaining part of clause (a) relates to cases of death or injury arising out of and in the course of employment of such person by the insured. In such cases the liability of the insurer is only to the extent necessary to meet the requirements of Section 95 of the Act. Insofar as gratuitous passengers are concerned there is no limitation in the policy as such. Hence under the terms of the policy, the insurer is liable to



C.M.A.No.2163 of 2017

satisfy the award passed in favour of the claimant. We are unable to agree with the view expressed by the High Court in this case as the terms of the policy are unambiguous."

Distinguishing the judgment in Pushpabai Purshottam Udeshi and others vs. Ranjit Ginning & pressing Co. (P) Ltd. and another [(1977) 2 SCC 745], the Court observed that the said judgment was based upon the relevant clause in the insurance policy, which restricted the legal liability of the insurer to the statutory requirements under Section 95 of the Act and so that decision had no application to the case as the terms of the policy stated in paragraph 6 of the judgment were wide enough to cover a gratuitous occupant of the vehicle. The Court also referred to the case of Jugal Kishore (supra) in which it is held that though it is not permissible to use a vehicle unless it is covered at least under "act only" policy, it is not obligatory for the owner to get a comprehensive policy but it is open to the insurer to take a policy covering a higher risk."

(ii) (2006) 4 SCC 404 (United India Insurance Co. Ltd., Shimla vs.

Tilak Singh and others);

"21.In our view, although the observations made in Asha Rani's case, 2003 ACJ 1 (SC), were in connection with carrying passengers in a goods vehicle the same would apply with equal force to gratuitous passengers in any other vehicle also. Thus, we must uphold the contention of the appellant insurance



C.M.A.No.2163 of 2017

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 or bodily injury to gratuitous passenger.

22.For the aforesaid reasons, we allow the appeal and set aside the impugned judgment and hold that appellant insurance company is not liable to pay the compensation awarded to the claimants."

(iii) 2010 (2) TNMAC 550 (DB) (National Insurance Company Limited, No.661, Trunk Road, Poonamallee, Chennai-56 vs. Pooja Manoj Singh and others);

"9. We have heard learned counsel for the parties. It has not been disputed that originally the Insurance Company was not impleaded as party respondent in the Claim Petition. It was at the instance of the Transport Corporation, the Tribunal by its order impleaded the Insurance Company. The appellant Insurance Company took a very specific and categorical defense that although the Zen Car was insured, but the policy was an "Act Policy", and no additional premium was paid for covering the risk of occupants of the car. In spite of the above said admitted position, the Tribunal without recording any finding with regard to the liability of the Insurance Company proceeded on the basis that since there was head on collision between the bus and the car, the liability should be apportioned



C.M.A.No.2163 of 2017

at the ratio of 2:1. We are of the view that the Tribunal committed error of law in holding the Insurance Company liable to pay the compensation amount. As noticed above, the insurance policy of the car, which was a private car, was an Act Policy, and therefore, the occupants of the car were not covered under the policy. In the case of Oriental Insurance Co. Ltd. Vs. Jhuma Saha reported in 2007 ACJ 818 (SC), the fact of the case was that the deceased was the owner of the vehicle, a Maruti Van. While he was driving the said vehicle, it dashed with a tree and the owner of the vehicle succumbed to the injuries. A claim case was filed by the legal representatives of the deceased for compensation. The insurance company contested the claim and denied its liability on the ground that no additional premium was paid covering the risk of the owner of the vehicle. The Apex Court observed:

"13. The additional premium was not paid in respect of the entire risk of death of or bodily injury to the owner of the vehicle. If that be so, section 147(1)(b) of the Motor Vehicles Act which in no uncertain terms covers a risk of a third party only would be attracted in the present case. "

Hence, in the facts of the case, it can safely be couched that the appellant Insurance Company has no liability to pay the compensation."

(iv). 2012 (2) TNMAC 637 (SC) (National Insurance Company Limited vs. Balakrishnan and another);



C.M.A.No.2163 of 2017

"4. The tribunal, in its award dated 19.4.2007, addressed to the issues of rash and negligent driving of the driver, injuries sustained by the insured and the liability of the insurance company. On the basis of the material brought on record, it came to hold that the accident had occurred due to rash and negligent driving of the driver of the 1st respondent; that the claimant was injured in the accident; that regard being had to the injuries sustained he was entitled to get Rs.8,63,200/- as compensation with interest @ 7.5% per annum from the date of the petition till the date of deposit; and that the insurance company was liable to indemnify as the owner of the vehicle was the company, and the injured was travelling in the car as a third party.

5.

6. We have heard the learned counsel for the parties and perused the record. As has been indicated at the beginning, the seminal issue is whether the appellant-company is liable to make good the compensation determined by the tribunal to the victim in the accident. On a scrutiny of the award passed by the tribunal which has been given the stamp of approval by the High Court, it is manifest that the 1st respondent was the Managing Director of the respondent No. 2 and the vehicle was registered in the name of the company but the Managing Director had signed on behalf of the company in the R. C. book of the car that was involved in the accident. The High Court has



C.M.A.No.2163 of 2017

returned a finding that the company and the Managing Director are two different legal entities and hence, the Managing Director cannot be equated with the owner. On that foundation, the claimant has been treated as a passenger and, accordingly, liability has been fastened on the insurer. The learned counsel appearing for the insurer would contend that assuming he is the owner being a signatory in the R.C. book, the liability of the company is limited upto Rs.2,00,000/- and under no circumstances a non-fare paying passenger would be covered under the policy. In oppugnation, the learned counsel for the respondent-claimant has proponed that barring the insurer and the insured, all others are third parties and, therefore, he is covered by the policy. It is also urged by him that as he had travelled as an occupant in a private car he is a third party vis-à-vis the insurer and hence, it is bound to indemnify the owner as the risk of the third party is covered.

.. ..

.. ..

.. ..

16. Thus, it is quite vivid that the Bench had made a distinction between the "Act policy" and "comprehensive policy/package policy". We respectfully concur with the said distinction. The crux of the matter is what would be the liability of the insurer if the policy is a "comprehensive/package policy". We are absolutely conscious that the matter has been referred to a larger Bench, but, as is evident, the Bench has also observed that it would depend upon the view of the Tariff



WEB COPY



C.M.A.No.2163 of 2017

Advisory Committee pertaining to enforcement of its decision to cover the liability of an occupant in a vehicle in a "comprehensive/package policy" regard being had to the contract of insurance.

.. ..

.. ..

20. It is also worthy to note that the High Court, after referring to individual circulars issued by various insurance companies, eventually stated thus:-

In view of the aforesaid, it is clear that the comprehensive/package policy of a two wheeler covers a pillion rider and comprehensive/package policy of a private car covers the occupants and where the vehicle is covered under a comprehensive/package policy, there is no need for Motor Accident Claims Tribunal to go into the question whether the Insurance Company is liable to compensate for the death or injury of a pillion rider on a two-wheeler or the occupants in a private car. In fact, in view of the TAC's directives and those of the IRDA, such a plea was not permissible and ought not to have been raised as, for instance, it was done in the present case.

21. In view of the aforesaid factual position, there is no scintilla of doubt that a "Comprehensive / Package Policy" would cover the liability of the Insurer for payment of compensation for the occupant in a Car. There is no cavil that an "Act Policy" stands on a different footing from a "Comprehensive/Package Policy". As the circulars have made the position very clear and the IRDA, which is presently the Statutory Authority, has commanded the Insurance Companies



C.M.A.No.2163 of 2017

*stating that a "Comprehensive/Package Policy" covers the liability, there cannot be any dispute in that regard. We may hasten to clarify that the earlier pronouncements were rendered in respect of the "Act Policy" which admittedly cannot cover a third party risk of an occupant in a car. But, if the policy is a "Comprehensive/Package Policy", the liability would be covered. These aspects were not noticed in the case of **Bhagyalakshmi and others vs. United Insurance Co. Ltd. and another, 2009 (1) TN MAC 659 (SC)**, and, therefore, the matter was referred to a Larger Bench. We are disposed to think that there is no necessity to refer the present matter to a Larger Bench as the IRDA, which is presently the Statutory Authority, has clarified the position by issuing circulars which have been reproduced in the judgment by the Delhi High Court and we have also reproduced the same."*

(v). (2012) 13 SCC 792 (Oriental Insurance Company Limited vs.

Surendra Nath Loomba and others);

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



C.M.A.No.2163 of 2017

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

"24. It is extremely important to note here that till 31st December, 2006 Tariff Advisory Committee and thereafter from 1st January, 2007, IRDA functioned as the statutory regulatory authorities and they are entitled to fix the tariff as well as the terms and conditions of the policies by all insurance companies. The High Court had issued notice to the Tariff Advisory Committee and the IRDA to explain the factual position as regards the liability of the insurance companies in respect of an occupant in a private car under the "comprehensive/ package policy". Before the High Court the Competent Authority of IRDA had stated that on 2nd June, 1986 the Tariff Advisory Committee had issued instructions to all the insurance companies to cover the pillion rider of a scooter/motorcycle under the "comprehensive policy" and the said position continues to be in vogue till date. He had also admitted that the comprehensive policy is presently called a package policy. It is the admitted position, as the decision would show, the earlier circulars dated 18th March, 1978 and 2nd June, 1986 continue to be valid and effective and all insurance companies are bound to pay the compensation in respect of the liability towards an occupant in a car under the "comprehensive/package policy" irrespective of the terms and conditions contained in the policy. The competent authority of the IRDA was also examined before the High Court who stated that the circulars dated 18th March, 1978 and 2nd June, 1986 of the Tariff Advisory Committee were incorporated in the Indian Motor Tariff effective from 1st July, 2002 and they continue



C.M.A.No.2163 of 2017

and, therefore, the matter was referred to a larger Bench. We are disposed to think that there is no necessity to refer the present matter to a larger Bench as the IRDA, which is presently the statutory authority, has clarified the position by issuing circulars which have been reproduced in the judgment by the Delhi High Court and we have also reproduced the same."

(vi). 2013 (1) TNMAC 729 (National Insurance Company Limited

vs. Krishnan);

"23. In a recent decision of the Apex Court in [National Insurance Co. Ltd., v. Balakrishnan](#) reported in 2012 (2) TNMAC 637 (SC), the Managing Director of the Company travelled in a Car, sustained injuries in an accident, due to the rash and negligent driving of the car driver. A claim for compensation was made. The Claims Tribunal awarded compensation, holding that the owner of the car was a Company and that the injured, Managing Director travelled in the car only as a third party and hence, the Company was liable to pay compensation. The finding of the Tribunal was confirmed by the High Court. Testing the correctness of the judgment, the Insurance Company preferred an appeal to the Supreme Court, contending inter alia, that the claimant, being the Managing Director of the Company, as well as the Signatory in the Registration Certificate, as owner, the liability of the insurer is limited only to the extent stipulated in policy. However, the Managing Director has contended that that he had travelled in the car only as a third party and therefore, the Insurance



C.M.A.No.2163 of 2017

Company is bound to indemnify the owner. Pointing out the difference in the Act Policy and Comprehensive Policy/Package Policy and taking note of the circulars issued by IRDA, a Statutory Authority, the Supreme Court, held as follows:

"17. At this stage, it is apposite to note that when the decision in Bhagyalakshmi and others v. United Insurance Co. Ltd., and another, 2009 (1) TNMAC 659 (SC), was rendered, a decision of High Court of Delhi dealing with the view of the Tariff Advisory Committee in respect of "comprehensive/ package policy" had not come into the field. We think it apt to refer to the same as it deals with certain factual position which can be of assistance.

.....

20. It is also worthy to note that the High Court, after referring to individual circulars issued by various insurance companies, eventually stated thus:-

"In view of the aforesaid, it is clear that the comprehensive/package policy of a two wheeler covers a pillion rider and comprehensive/package policy of a private car covers the occupants and where the vehicle is covered under a comprehensive/package policy, there is no need for Motor Accident Claims Tribunal to go into the question whether the Insurance Company is liable to compensate for the death or injury of a pillion rider on a two-wheeler or the occupants in a private car. In fact, in view of the TACs directives and those of the IRDA, such a plea was not permissible and ought not to have been



WEB COPY



C.M.A.No.2163 of 2017

raised as, for instance, it was done in the present case.”

21. In view of the aforesaid factual position, there is no scintilla of doubt that a “comprehensive/package policy” would cover the liability of the insurer for payment of compensation for the occupant in a car. There is no cavil that an Act Policy stands on a different footing from a “Comprehensive/Package Policy”. As the circulars have made the position very clear and the IRDA, which is presently the statutory authority, has commanded the insurance companies stating that a “Comprehensive/Package Policy” covers the liability, there cannot be any dispute in that regard. We may hasten to clarify that the earlier pronouncements were rendered in respect of the Act Policy which admittedly cannot cover a third party risk of an occupant in a car. But, if the policy is a “Comprehensive/Package Policy”, the liability would be covered. These aspects were not noticed in the case of Bhagyalakshmi (supra) and, therefore, the matter was referred to a larger Bench. We are disposed to think that there is no necessity to refer the present matter to a larger Bench as the IRDA, which is presently the statutory authority, has clarified the position by issuing circulars



C.M.A.No.2163 of 2017

which have been reproduced in the judgment by the Delhi High Court and we have also reproduced the same.

.....

25. *Though the learned counsel for the appellant-Insurance Company, contended that the coverage for payment of additional premium for "owner-cum-driver", cannot be extended to the occupant of the car, this Court is not inclined to accept the said contentions, in view of the recent decision of the Supreme Court in National Insurance Co. Ltd., v. Balakrishnan reported in 2012 (2) TNMAC 637 (SC) and taking note of payment of additional premium, this Court is of the view that when the owner-cum-driver has paid an additional premium of Rs.100/-, taking a coverage for the pecuniary and non-pecuniary losses, suffered by him, in an accident, arising out of the use of the vehicle, then he is entitled to seek for compensation."*

(vii). 2015 (1) TNMAC 19 (DB) (New India Assurance Company Limited vs. S.Krishnasamy and others);

"17.In the Judgment reported in United India Insurance Co. Ltd., Shimla v. Tilak Singh, 2006 (1) TN MAC 36 (SC), the Hon'ble Supreme Court has held as follows:

"15. In Pushpabai Purshottam Udeshi v. Ranjit Ginning & Pressing Co. (P) Ltd., 1977 (3) SCR 372, the Insurance Company had raised



WEB COPY



C.M.A.No.2163 of 2017

the contention that the scope of Statutory Insurance under Section 95(1)(a), read with 95(1)(b)(i) of the Motor Vehicles Act, 1939 does not cover the injury suffered by a passenger and, since there was a limited liability under the Insurance Policy, the risk of the Insurance Company would be limited to the extent it was specifically covered. After referring to the English Road Traffic Act, 1960, and *Halsbury's Laws of England* (Third Edition), this Court came to the conclusion that Section 95 of the 1939 Act required that the Policy of Insurance must be a Policy insuring the insured against any liability incurred by him in respect of death or bodily injury to a third party and rejected the contention that the words "third party" were wide enough to cover all persons except the insured and the Insurer. This Court held as under: (*vide Para 20*)

"Therefore it is not required that a Policy of Insurance should cover risk to the passengers, who are not carried for hire or reward. As under Section 95, the risk to a passenger in a vehicle, who is not carried for hire or reward is not required to be insured the plea of the Counsel for the Insurance Company will have to be accepted and the Insurance Company held not liable under the requirements of the Motor Vehicles Act."

22. For the aforesaid reasons, we allow the Appeal and set aside the impugned



WEB COPY



C.M.A.No.2163 of 2017

Judgment holding that the Appellant-Insurance Company is not liable to pay the Compensation awarded to the Claimants."

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

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. "



C.M.A.No.2163 of 2017

15.The contention of the learned counsel appearing for the appellants that 2nd respondent is restrained or estopped from denying the liability and policy in view of Ex.P10. The appeal in C.M.A.No.263 of 2015 filed by 2nd respondent/Insurance Company challenging the award of the Tribunal for the very same accident was dismissed by this Court on the ground that Insurance Company did not take a plea that they are not liable to pay compensation to the occupants of the car. In the present case, the 2nd respondent has stated in the counter statement that the deceased Senthilkumar travelled as paid passenger and Insurance Company is not liable to pay compensation. In addition to that, the 2nd respondent in the additional counter statement has taken a specific plea that policy issued by 2nd respondent is 'Liability only policy' and policy issued does not cover the risk of occupants of the car. Hence, the question of resjudicata does not arise.

16.The contention of the learned counsel appearing for the appellants that the 1st respondent has taken policy for theft and fire and therefore, the said policy is comprehensive policy covering risk of occupants of the car, is without merits. Unless additional premium is paid for covering the risk of



C.M.A.No.2163 of 2017

occupants of the car or passengers in the car, the Insurance Company is not liable to pay any compensation. Unless additional premium is paid, the injured claimants or legal heirs of the deceased occupants are not entitled to claim compensation from the Insurance Company. For the above reasons, the finding of the Tribunal directing the 1st respondent/owner of the car to pay compensation and dismissing the claim petition as against the 2nd respondent/Insurance Company does not warrant any interference by this Court.

17.In the result, this Civil Miscellaneous Appeal is dismissed and the sum of Rs.39,01,605/- awarded by the Tribunal as compensation to the appellants along with interest and costs is confirmed. The 1st respondent is directed to deposit the entire amount awarded by the Tribunal along with interest and costs, less the amount already deposited, if any, within a period of eight weeks from the date of receipt of a copy of this judgment. On such deposit, the appellants are permitted to withdraw their respective share of the award amount, as per the apportionment fixed by the Tribunal, along with proportionate interest and costs, less the amount if any, already withdrawn.



C.M.A.No.2163 of 2017

This appeal is dismissed as against the 2nd respondent/Insurance Company.

No costs.

(V.M.V., J) (S.S., J)

17.06.2022

Index : Yes / No

kj

To

1.I Additional District and Sessions Judge
Motor Accident Claims Tribunal
Vellore.

2.The Section Officer
VR Section
High Court
Madras.



WEB COPY



C.M.A.No.2163 of 2017

**V.M.VELUMANI,J.
and
S.SOUNTHAR,J.**

kj

C.M.A.No.2163 of 2017

17.06.2022