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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.10.2023

C O R A M

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

C.M.A.Nos.2218, 2219 & 2220 of 2015
and CM.P.Nos.19104 & 19105 of 2017 & M.P.No.1 of 2015

The Branch Manager,
M/s.United India Insurance Co, Ltd.,
No.50-A, Palivasal Street,
Perambalur. ... Appellant/2nd Respondent
(in all CMAs)

Vs

1.Tamilselvan ...1st Respondent
in C.M.A.No.2218 of 2015
/Petitioner

2.Rengam ...1st Respondent
in C.M.A.No.2219 of 2015
/Petitioner

3.Anbalagan ...1st Respondent
in C.M.A.No.2218 of 2015
/Petitioner

4.Shanmugasundaram ... 2nd Respondent
in all CMAs/1st Respondent

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COMMON PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the decree and Judgment dated 13.01.2015 made in M.C.O.P.Nos.791, 792 & 793 of 2013 on the file of the Motor Accident Claims Tribunal, Subordinate Court, Perambalur.

For Appellant ... Mr.E.Rajadurai
(In all the CMAs) for M/s.M.B.Gopalan

For Respondents ... No appearance for R1
(In CMA.No.2218 of 2015)

... Mr.T.Gopinath for R1
(In CMA.Nos.2219 & 2220 of 2015)

... R2-Died (Steps due)

COMMON JUDGEMENT

Challenging the common judgment and decree dated 13.01.2015 passed in MCOP.Nos.791, 792 & 793 of 2013 on the file of the Motor Accidents Claims Tribunal, Subordinate Court, Perambalur, the Appellant-Insurance Company has filed the present appeal.

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2. Brief facts which are necessary for the disposal of these Appeals are:

On 20.10.2013 at about 6.00 a.m, when the claimants were traveling in a Tata Sumo Car bearing Regn.No.TN-45-K-0339, owned by the 2nd respondent herein, insured with the Appellant-Insurance company, which was driven in a rash and negligent manner, suddenly a cow came across the road, on seeing the same, in order to avoid dashing the cow, the driver of the vehicle applied a sudden brake, as a result of which, the car capsized on the right side of the road thereby the claimants sustained multiple grievous injuries. Subsequently, the respective 1st respondent/claimants filed claim petitions claiming a sum of Rs.2,00,000/-, Rs.10,00,000/- & Rs.25,000/- respectively before the Tribunal. After adjudication, the Tribunal, vide common impugned decree awarded a compensation of Rs.15,000/-, Rs.2,55,000/- & Rs.15,173/- to the respective claimants and fastened the liability as against the Appellant- Insurance company. Aggrieved with the said order, the present appeal has been filed by the insurance company questioning the liability of the insurer.

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3. Learned counsel appearing for the appellant submitted that the above said accident happened solely due to the rash and negligent driving of the driver of the 2nd respondent vehicle, for which, the insurer of the vehicle cannot be made liable. Further, the 2nd respondent/owner of the vehicle had taken a third party liability policy, viz., an Act Only Policy and the respective 1st respondent herein being the occupants of the vehicle in question cannot claim compensation from the appellant insurance company as the occupants are not covered under the terms of the Act Only Policy and no separate premium had been paid by the 2nd respondent/owner of the vehicle for covering the risk of the occupants of the vehicle. Therefore, the claim petitions filed by the 1st respondent under Section 166 of the MV ACT are not maintainable. While so, without considering the above said fact, the Tribunal had erroneously fastened the entire liability on the appellant/insurance company which is not sustainable. He further relied upon the decision of the Hon'ble Division Bench of this Court in the case of ***New India Assurance Co. Ltd., Vs. S.Krishnasamy*** in ***C.M.A.No.3567 of 2013*** dated ***10.12.2014*** reported in ***2015 (1) TN MAC 19 (DB)*** to hold that, *the occupants of the*

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private car cannot be considered as "Third party" and they are not entitled to claim compensation as against the insurer in case of non-payment of separate premium for covering the risk of the occupants of the vehicle. Accordingly, he prayed for appropriate orders.

4. Per Contra, learned counsel appearing for the 1st respondent in C.M.A.Nos.2219 & 2220 of 2015 submitted that when the Tribunal had accepted that the said accident had occurred purely due to the negligence on the part of the driver who drove the car and the said vehicle being insured with the Appellant-Insurance Company, the Tribunal has rightly fixed the liability on the insurer which cannot be interefered with. Accordingly, he prayed for dismissal of these Appeals.

5. This Court heard the learned counsel appearing for the Appellant-Insurance Company as well as the learned counsel for the respective 1st respondent in C.M.A.Nos.2219 & 2220 of 2015 and perused the materials available on record.

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6. The major issue that arises for consideration in the present appeal is whether the respective 1st respondent being the occupants of the private car is eligible to claim compensation at the hands of the insurance company, though the vehicle in question is insured only under an Act Only Policy.

7. As rightly pointed out by the learned counsel for the appellant/ insurance company, the issue which is raised in the present appeal is no longer *res integra,* as the similar issue has already been considered by the Hon'ble Division Bench of this Court in the case of ***New India Assurance Co. Ltd., Vs. S.Krishnasamy*** in ***C.M.A.No.3567 of 2013*** dated ***10.12.2014*** reported in ***2015 (1) TN MAC 19 (DB)***, wherein the Division Bench of this Court held thus:-

> *"17. In the judgment reported in 2006(1) TN MAC 36(SC) [United India Insurance Co. Ltd., Shimla vs. Tilak Singh and others], the Hon'ble Supreme Court has held as follows:-*
>
> *"15. In Pushpahai Purshottam Udesh and Ors. v. Ranjit Ginning & Pressing Co. (P) IM and Anr. [1977]3SCR372 the insurance company had raised 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*

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covered. Alter 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 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.

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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."

8. In view of the ratio laid down in the aforesaid decisions, definitely, the occupant of the private car cannot be brought within the ambit of third party with regard to an Act Only Policy, when the terms of the contract entered into between the insurer and the insured in regard to a private vehicle does not provide for cover with respect to persons other than the driver of the vehicle. Therefore, definitely, the occupants of the car would not be required to be indemnified by the insurance company in the absence of any separate premium being paid to cover the risk towards the occupants .

9. In the case on hand, the policy being an Act Only Policy and the terms and conditions of the policy does not provide for covering the risk relating to

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the occupants, the Tribunal ought to have absolved the insurance company of its liability and should have fastened the liability on the 2nd respondent/owner of the vehicle, instead of which, the tribunal had fastened the liability as against the insurance company, which is wholly erroneous and, the same deserves to be set aside.

10. For the reasons aforesaid, these appeal are allowed and the impugned common judgment and decree dated 13.01.2015 made in M.C.O.P.Nos.791, 792 & 793 of 2013 is set aside. The appellant/insurance company is entitled to withdraw the award amount, if any already deposited by them before the tribunal. Further, the respective 1st respondent/claimants are at liberty to workout their remedy as against the 2nd respondent/owner of the vehicle in the manner known to law. There shall be no order as to costs in these appeals. Consequently, the connected Miscellaneous petitions are closed.

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Index : Yes / No
Neutral Citation Case : Yes / No
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To

1.The Motor Accident Claims Tribunal,
Subordinate Court, Perambalur.

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

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M.DHANDAPANI, J

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