



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.10.2023

CORAM:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

C.M.A.Nos.2530 & 2531 of 2014

The Branch Manager,
National Insurance Co. Ltd.,
Karthikeya Complex,
403-B-10, Mettur Main Road,
Bavani Taluk, Erode District.

...Appellant in both the cases

versus

1. Diwakar, Minor
Rep. By his guardian, his mother
Dhanabagyam

2. G.Ramasamy

3. K.Chinnadurai

.... Respondents in CMA.No.2530 of 2014

1. M.Nallasamy

2. G.Ramasamy

3. K.Chinnadurai

.... Respondents in CMA.No.2531 of 2014

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



26.08.2013 and made in MCOP. No.49 and 50 of 2012 on the file of the Motor Accident Claims Tribunal, Perundurai (Sub-ordinate Court, Perundurai).

For appellant : Mr.S.Vadivel

For Respondent No.1 : Mr.S.Kaithamalai Kumaran for both the cases

For Respondent No.2 & 3 : No appearance

COMMON JUDGMENT

Since the issue arises in the appeals are one and the same, the same are disposed of by way of this common order.

2. The Insurance Company has come forward with these appeals, as against the judgment and decree dated 26.08.2013 in MCOP. Nos.49 and 50 of 2012 on the file of the Motor Accident Claims Tribunal, Perundurai (Sub-ordinate Court, Perundurai).

3. It is the case of the appellant that on 15.09.2011, the respective first respondent travelled in a Maruti Omni Van bearing Registration No.TN 39 C 5959, owned by the third respondent, which was driven by the second respondent and insured with the appellant insurance company to Tirupati. When they were travelling near Palamner-Kuppam National Highways at about 5.00 am, the second respondent driven the vehicle in rash and



negligent manner and dashed against the tamarind tree, which resulted in the respective first respondent in both the cases, have sustained grievous injuries and thereafter admitted in hospital and taken treatment. Thereafter, the first respondent have filed claim petitions before the Motor Accidents Claims Tribunal. The Tribunal considering the pleadings, oral and documentary evidence, passed award on 26.08.2013 in favour of the first respondent respondent. Aggrieved over the same, both the appeals have filed by the insurance company.

4.The learned counsel appearing for the appellant Insurance company submitted that the first respondent in both the cases have travelled in a van, which was owned by the third respondent and insured with the appellant. The third respondent is having Act policy and the injured are the occupant of the van. Since the injured persons were only an occupant and the policy was only an Act policy. As such, there is no coverage for the occupants/injured persons/first respondent of the van. Without considering the said fact, the Tribunal has awarded the compensation in favour of the first respondent, which is liable to be set aside.

5. The learned counsel further submitted that though the seating



capacity of the van is 4 persons, at the relevant point of time, 6 persons have travelled in the van, on the sole ground, the appellant is not liable to pay compensation to the first respondent. The Tribunal ought to have treated the claimants as third parties and held that the insurance company should pay the award amount to the claimants and recover the same from the owner of the van. The principle of pay and recovery will not be applicable to the facts and circumstances of the case because there was no coverage in the policy for the occupants.

In this context, the learned counsel relied upon the decision of this Court in the case of New India Assurance Co. Ltd., Vs.S.Krishnasamy reported *in 2015 (1) TNMAC 19 (DB)*.

6. Per contra, the learned counsel appearing for the first respondent contended that even though, the third respondent is having Act policy, the Tribunal, after analyzing the materials available on record and also the ruling cited on either side, has rightly awarded the quantum of compensation and hence, there is no need to interference with the same and therefore, appeal has to be dismissed.



7. Heard the learned counsel for the appellant as well as the learned counsel appearing for the first respondent and also perused the materials available on record. There is no representation on behalf of the respondents 1 & 2.

8. The facts of the case are not in dispute. Admittedly, the Maruti van was owned by the third respondent, which was driven by the second respondent. The first respondent, with the permission of the third respondent, who is the relative, proceeded to Tirupati for dharshan on 15.09.2011 and the said vehicle was involved in accident in a rash and negligent driving of the driver/second respondent.

9. The issue arises in these appeals is whether the policy taken by the third respondent is an "Act policy" or "comprehensive policy".

10. On perusal of the counter affidavit filed by the appellant Insurance company before the Tribunal, which makes it clear that the policy taken by the third respondent is an Act Policy and the Tribunal also arrived at a conclusion that the policy is an Act Policy. If it is so, whether the occupants are entitled for claiming compensation in the category of third



parties. The said issue has been elaborately considered by the Hon'ble Division Bench of this Court as stated supra. The relevant paragraphs are extracted hereunder:

"6.Per contra, learned counsel appearing for the respondents 1 to 5 submitted that at the time of accident, the deceased Palanisamy was travelling as an occupant in the private car and the Car never used for hire of any reward and as per the Registration Certificate of the car, one driver plus four occupants can travel and hence, there is no prohibition for travelling as a passenger to be the occupant of the Car, apart from the driver and therefore, the deceased cannot be termed as a gratuitous passenger, nor fare paying passenger and the deceased is coming under the category of 'third party' and therefore, there is no need to pay additional premium to cover the risk or death of persons in the private car and the Insurance company ought to have satisfied the entire award amount to the dependents of the family. He further contended that even though, the first respondent is having Act policy, the Tribunal, after analyzing the materials available on record and also the rulings cited on either side, has rightly awarded the quantum of compensation and hence, there is no need to interfere with the same and therefore, the appeal has to be dismissed.

7.In support of his contention, he relied upon the following judgments:-

1.2012 ACJ 2451 [United India Insurance Co. Ltd., vs. Labanyabati Dev and others]:-

8.The judgments in the case of Baljit Kaur,: 2004 ACJ 428 (SC) and Asha Rani, 2003 ACJ 1 (SC), are relied upon by both the counsel for the claimants and insurer. In the said decisions the Supreme Court has very carefully dealt with the gratuitous passenger in a goods vehicle. In the



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case at hand, the vehicle is not a goods vehicle. It is a car which is required to be insured compulsorily. Therefore, the ratio of the aforesaid decisions, upon which reliance is placed, cannot be applied in favour of the insurance company. In the case at hand, the deceased was travelling in a car. He cannot be treated as a gratuitous passenger. Another plea taken by the claimants is that there is no evidence placed on record by the insurance company that the deceased was travelling in the car as a gratuitous passenger, therefore, contention urged in this regard in this appeal by the insurance company is wholly untenable in law. Accordingly, the deceased has to be considered as a 'third party'. The interpretation given to section 147 and meaning of clause (b) (i), supports the case of the claimants. The contention urged in this regard that the policy is an 'Act only' policy, the deceased was a gratuitous passenger and the appellant is not liable to pay compensation, are wholly unacceptable for this court and accordingly such contention is rejected and the finding of fact recorded by the learned Member of the Tribunal in the impugned judgment is based on proper appreciation of legal evidence on record. Therefore, the same shall not be interfered with by this court as the finding cannot be termed as erroneous. 2.2013(2) TN MAC 626 [[New India Assurance Co. Ltd vs. Minor Nallasivam](#)]:-

2.The Appellant-Insurance Company is the Insurer of the Van bearing Reg. No. TAE-2050. By the impugned Award, the Tribunal has awarded a Compensation of Rs. 2,79,800/- with interest at 12 per cent p.a. for the death of one Chinnasamy, who died in the Motor accident that had occurred on 17.6.1993, while he was travelling in the said Van. As the Van was driven by its driver in a rash and negligent manner, the driver of the Van lost his control and the Van fell into the ditch causing fatal injuries to the deceased. The wife, who is the 6th Respondent herein, is the owner of the vehicle and the Claimants are the children and parents of the deceased. The Claim Petition was filed by the children



and the parents of the deceased. The Tribunal, having found that the accident had occurred due to the rash and negligent driving of the Van driver, has awarded Compensation as stated above to the Claimants.

5. In this case, the deceased was travelling in the Van and he was neither the owner of the Van nor the driver. He was only a passenger of the Van. It is relevant to state that except the Insured, all other would become third parties. However, merely because, the claim relates to the death of or bodily injury to a Third party and the vehicle had valid Insurance cover as on the date of the accident, the Insurer cannot be made liable for the award. Before making the Insurer liable for the award, the question that requires to be examined is as to whether the risk in question is compulsorily required to be covered under the Act or is factually covered under the Insurance Policy. If the risk is covered either under the Act or under the Policy, the Insurer will be made liable.

6. In this case, the Appellant-Insurance Company has not filed the Policy and has not led in any evidence to show that the deceased was an unauthorized passenger. It is also not the case of the Appellant-Insurance Company that the deceased was an unauthorized passenger. Therefore, it is to be presumed that the Van involved in the accident had valid Insurance cover as on the date of the accident. The Insurance Company has also not let in any statutory defence available under the Act to avoid liability. As already observed, the deceased was neither the owner of the Van nor was the driving the Van at the time of the accident. On the facts of the case, the deceased, who is the husband of the owner/insured, cannot be treated as the insured or his representative. Hence, he would become a Third party and accordingly, I do not find any legal infirmity in the impugned award in making the Appellant-Insurance Company liable for the Award and therefore, the impugned Award is liable to be confirmed. 3.1998 ACJ 531 [*Amrit Lal Sood vs. Kaushalya Devi Thapar*] 8. Thus under Section 11 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 travelling 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. In so far 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 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. 4.2010 ACJ 2878 [New India Assurance Co.Ltd. vs. Vimal Devi and others]:-

7.The Avoidance Clause in the policy in this case makes all the difference and the direction of the High Court to the Appellant, insurance company to make payment of the full amount of compensation to the claimants and to recover its dues from the owner of the vehicle is directly in accordance with that Clause. In our view, the submission of Mr. Calla is well founded. The Appellant in this case can derive no benefit from the decision in C.M. Jaya. 2002 ACJ 271 (SC).

5.2012 ACJ 2715 [[Shantaben and others vs. Yakubbbhai Ibrahimbhai Patel and others](#)]:-

39.In view of the above pronouncement of the Apex Court, we have no hesitation in holding that in face of avoidance clause contained in the insurance policy, the Insurance Company despite its limited liability must in so far as third party is concerned, satisfy the entire award of the Claims Tribunal. The Insurance Company, of course, would be entitled to recover the amount in excess of Rs.50,000/- which is the statutory



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limit of liability, from the owner of the vehicle insured which was involved in the accident.

42. Our answer to the question framed is that wherever the insurance policy contains an avoidance clause providing that nothing in the policy shall affect the right of any person indemnified by the policy or any other person by recovering amount under or by virtue of provisions of *Motor Vehicle Act*, but further requires insured to repay to the Insurance Company all such sums paid by the company which the company would not have been liable to pay, but for this provision, the Insurance Company cannot press in service the statutory limit of liability under the *Motor Vehicles Act* insofar as the claimants are concerned. But the insured would have to repay to the company all the sums paid by the company which is in excess of its liability under the policy of insurance. 6.2013 ACJ 545 [United India Insurance Co. Ltd., vs. N.Appi Reddy and others:-

14. Applying the ratio laid down in the above cited cases, we would like to emphasize that the offending vehicle i.e. Tata sumo bearing No. AP 24 D 0999 had never been intended to be a vehicle which could be used for taking passengers on hire. It was registered and insured as a private vehicle and no extra premium was paid in respect of the passengers carried in the vehicle for hire. Therefore, In our view the learned trial Court went wrong in fastening the liability on the insurance company and the said finding is liable to be set aside.

15. Accordingly, the finding recorded by the trial Court that the insurance company is liable to pay compensation to the claimants is set aside and it is held that the owner of the vehicle shall be liable to first satisfy the award. However, following the ratio in *Baljit Kaur* case, we direct the insurance company (Appellant in C.M.A. No. 2535 of 2006 to first satisfy the award amount and recover from the owner of the vehicle



by initiating a proceeding before the executing Court without filing a separate suit for the said purpose.

16. Before the Tribunal below, the claimants adduced some evidence in regard to the private income of the deceased. The entire evidence adduced on this aspect is oral evidence. The evidence is to the effect that the deceased is a scholar in Agama, Vastu and Jyothisha Sastras. He used to fix Muhurthams, prepare horoscopes and perform different kinds of poojas and also install deities. Apart from his salary, his income from the said private source is said to be between Rs. 10,000/- to Rs. 15,000/- per month. The learned Tribunal however, hypothetically considered his private income. The learned Tribunal expressed the view that no documentary evidence such as income tax returns etc. have not been filed by the claimants to show the income of the deceased and also held that without there being any sanction or permission from the Government, the deceased who was working as Stapati in the Endowments Department in the cadre of Executive Engineer is not supposed to undertake any private job and earn income there from. Therefore, the learned Tribunal rightly held that the evidence that the deceased was getting income of Rs. 10,000/- to Rs. 15,000/- per month by attending private job cannot be taken into consideration for the purpose of computing the compensation.

17. However, the learned Tribunal held that the deceased but for the unfortunate accident would have lived up to the age of 65 years and even after his retirement on completing 58 years, he can perform private job and thereby would be getting average income of Rs. 5,000/- per month from attending the private job and thus, his private income would be Rs. 60,000/- per year and would have earned Rs. 60,000/- x 7 = Rs. 4,20,000/- and added the said income as additional income to the compensation awarded by having recourse to the multiplier method. We



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wish to state that the said approach is totally erroneous and no such income arrived at on hypothetical basis can be added to the actual loss of dependency. It has to be worked out strictly according to the multiplier method and in accordance with the provisions of *Motor Vehicles Act*.

18.....

19. In the instant case, as per Ex. A.62- salary certificate, the gross salary of the deceased at the time of his death was Rs. 16,221/- p.m. and his net. salary was Rs. 9,405/- p.m. Keeping in view, the promotional chances of the deceased, who was aged 49 years on the date of his death, 30% of the actual salary can be added to his income towards future prospects which comes to Rs. 9,406/- + Rs. 2822/- = Rs. 12,228/-, as per the judgment of the Supreme Court in *Sarla Varma and Ors. v. Delhi Transport Corporation and Anr.* 2009 (2) L.S. 29 (S.C.). Therefore, the annual income of the deceased comes to Rs. 12,228/- x 12 = Rs. 1/46,736/-. From this 1/3rd has to be deducted towards personal living expenses of the deceased which comes to Rs. 48,912/- and the remaining 2/3rd amount i.e. Rs. 97,824/- shall be taken as contribution to the family. The multiplier applicable to the age of the deceased is 13. To arrive at the loss of dependency, the above amount has to be capitalised with 13, which comes to Rs. 97,824/- x 13 = Rs. 12,71,712/-. This apart, the first claimant, who is the widow of the deceased is entitled for an amount of Rs. 10,000/- towards loss of consortium and the claimants are entitled for a sum of Rs. 5,000/- towards loss of estate and Rs. 5,000/- towards funeral expenses. In all, the claimants are entitled to compensation of Rs. 12,91,712/-.

20. The claimant No. 2 being major son and the Government employee, the claimants 4 and 5 being major daughters, who are married, not being the dependents on the deceased, they are not entitled



for compensation and the claimant No. 1, widow and claimant No. 3, minor daughter are only entitled for compensation being dependents on account of the death of the deceased. The amount of compensation shall be apportioned equally between the claimants 1 and 3. 7.2011(2)TN MAC 625 [The General Manager, New India Assurance Co. Ltd., vs. R.Senthamarai]:-

12.It is well settled that the liability of the Insurance Company is both statutory and also based on the contract of the Insurance. It is admitted that the Car bearing Registration No. TNJ 7936 was insured with the Appellant. Ex. R.1 is the copy of the Insurance Policy. As per the endorsement therein, it is a private Car Act Policy. Premium has been paid on three heads. Third party Rs. 240/-, driver Rs. 15/-, UNTPPL (Unlimited Third party Property Liability) Rs. 50/-.

13.According to the Appellants the passenger is not covered and there is a limitation as to the use of the Car and the Policy does not cover the use of the vehicle for hire or reward.

14.The 1st Respondent who was examined as PW1 would state that the deceased and some of the relatives were travelling in the Car from Vellore to Gobichettipalayam at the time of the accident. In the cross-examination, it was suggested by the Appellant that the deceased and others hired the vehicle for travelling for which P.W. 1 would plead ignorance.

15.P.W. 2 is a relative cum eyewitness. She would state that they were travelling in a hired Car. Ex. P.1 is the First Information Report. P.W. 2 is the informant. She would state that they travelled in a taxi.

16. It is not the case of the Claimants that the deceased hired the vehicle and was travelling as gratuitous passenger. But the fact remains that the vehicle was a private Car and covered by an Act Policy, but the deceased was a passenger. In Amritlal's case reported in [Amritlal Sood v. Kaushalya Devi Thapar](#) , AIR 1998 SC 1433, it is held as follows:



"the injured was a gratuitous passenger travelling in a Private Car. The High Court held that the insured was not liable since the Claimant was only passenger. The Insurance Policy was extracted by the Supreme Court and we find that it is almost identical to the Policy in the case before us. The Supreme Court held in [Amritlal Sood v. Kaushalya Devi Thapar](#) (supra) as follows at pp 46 & 47 of MLJ.

"3.The question to be decided is whether the Insurer is liable to satisfy the claim for compensation made by a person travelling gratuitously in the Car. The factual findings are not in dispute before us but for the contention of the Appellants that the amount of compensation awarded by the Division Bench is excessive. We have no difficulty in repelling that contention as we find the materials on record to be sufficient to support the award of enhanced compensation.

4.The liability of the Insurer in this 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 VII 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 carried for hire or reward. The statutory Insurance does not cover injury suffered by occupants of the vehicle who are not carried for hire or reward and the Insurer cannot be held liable under the Act, But that does not prevent an Insurer from entering into a contract of Insurance covering a risk wider than the minimum requirement of the statute whereby the risk to gratuitous passengers could also be covered. In such cases where the



Policy is not merely a statutory Policy, the terms of the Policy have to be considered to determine the liability of the Insurer.

5. In the present case the Policy is admittedly a "comprehensive Policy" "Comprehensive Insurance" has been defined in BLACK'S LAW DICTIONARY , 5th Edn., as All-risk Insurance which in turn is defined as follows:

"Type of Insurance Policy which ordinarily covers every loss that may happen, except by fraudulent acts of the insured. Miller v. Boston Ins.Co. , 218-A 2d275, 278 : 420 Pa. 566) Type of Policy which protects against all risks and perils except those specifically enumerated:

6. The relevant clauses in the Policy before us are found in "Section II - Liability to Third parties". They are:

1. The Company will indemnify the insured in the event of accident caused by or arising out of the use of the motor Car against all sums including Claimant's costs and expenses which the insured shall become legally liable to pay in respect of ?

(a) death of or bodily injury to 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.

(b) damage to property other than property belonging to the insured or held in trust by or in the custody or control of the insured.

2. The Company will pay all costs and expenses incurred with its written consent.

3. In terms of and subject to the limitations of the indemnity which is granted by this Section to the insured the Company will indemnify any driver who is driving the motor Car on the insured's order or with his permission provided that such driver ?

(a) is not entitled to indemnity under any other Policy.



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(b) shall as though he were the insured observe, fulfill and be subject to the terms, exceptions, conditions and limitations of this Policy insofar as they can apply?.

7. under the heading General Exceptions, the Company's liability is excluded inter alia in respect of any accident occurred whilst the Car is being used otherwise than in accordance with the limitations as to use or being driven by any person other than a driver. The limitations as to use set out in the Policy are not relevant in this case as it is not the case of the Insurer that there is a violation thereof. The term "driver" is expressly defined in the Policy as any of the following:

"(a) Any person,

(b) The insured may also drive a motor Car belonging to him and not hired to him under a Hire-Purchase Agreement. Provided that the person driving holds a licence to drive the motor Car or has held and is not disqualified for holding or obtaining such a licence".

8. Thus under Section II(1)(a) of the Policy, the Insurer has agreed to indemnify the insured against all claims 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 travelling 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.

9. 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 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.



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10. The High Court has placed reliance on the judgment of this Court in *Pushpabai Purahottam Udeshi v. Ranjit Ginning and Pressing Co (P) Ltd.*, (1977) 2 SCC 745. That Judgment was based upon the relevant clause in the Insurance Policy in that case which restricted the legal liability of the Insurer to the statutory requirement under *Section 95* of the Motor Vehicles Act. That decision will have no bearing in the present case inasmuch as the terms of the Policy here are wide enough to cover a gratuitous occupant of the vehicle".

20. This Circular relates to a Comprehensive Policy. Therefore, if it is a Comprehensive Policy, a gratuitous passenger in a Private Car is covered and if it is an Act Policy, it does not cover. The key term in the Policy is "Including occupants carried in the motor Car provided that such occupants are not carried for hire or reward." In the case on hand the Policy is an Act Policy and the deceased was a gratuitous passenger and therefore, the Appellants is not liable.

21. Now the question is whether the Insurance Company can be directed to pay and recover the same from the insured. The Full Bench of this Court has considered the Principle of Pay and Recovery in *Branch Manager, United India Insurance Co. Ltd., Branch Office, Nethaii Bye Pass Road, Dharmapuri Town v. Nagammal*, 2009 (1) CTC 1, (cited *supra*). However the gratuitous passenger in a private Car was not considered. The general principle is if there is breach of Policy condition the Insurer can be directed to pay and later recover from the insured. This principle is based on the judicial discretion that the Claimants should not suffer as the liability is an inter se dispute between the Insurer and the insured. Though it is not a Comprehensive Policy to cover the risk of a passenger in a Private Car, the insured had permitted a gratuitous passenger to travel in his Car against the Policy conditions. Therefore, there is a breach of Policy condition. In that case, the Principle of Pay and Recovery can be applied.



22. In the result, the Appeal is allowed. The liability of the Insurance Company to satisfy the compensation of a sum of Rs. 5,04,000/- is set aside. However, there shall be an order for pay and recover.

23. It is submitted that this Court by order dated 17.11.2004 in CMP No. 17892 of 2004 directed the Insurance Company to deposit the entire compensation amount including the interest to the credit of MCOP No. 276 of 1998 on the file of the Motor Accidents Claims Tribunal (Addl District and Sessions Judge - Fast Track Court No. III), Coimbatore. Subsequently, this Court by order dated 3.8.2005, permitted the 1st Respondent to withdraw 50% of the amount apportioned to her together with interest. The amount apportioned to the Respondents 2 & 3 were directed to be invested in a Nationalised Bank. Therefore, the Insurance Company is entitled to recover the entire compensation along with the interest from the 5th Respondent, the owner of the vehicle in the same Petition by filing Execution Petition. The 1st Respondent is permitted to withdraw the remaining 50% of the apportioned amount. Since the amount apportioned to the Respondents 2 & 3 were deposited in the Nationalised Bank, they are entitled to the same, subject to their attaining majority. No costs. Otherwise, the award dated 8.5.2003 made in MACTOP No. 276 of 1998 on the file of the Motor Accidents Claims Tribunal (Addl District and Sessions Judge-Fast Track Court No. III), Coimbatore is confirmed.

8. We have given careful consideration to the submissions made by the learned counsel on either side and perused the materials available on record.

9. After hearing the elaborate arguments made on either side, the followings points arise for consideration in this appeal:-

1. Whether the Tribunal has correctly awarded the compensation or not?; and

2. What other reliefs that the claimants are entitled to?



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10. It is admitted by both parties that the vehicle belonged to R7/S. Valliappan insured with the appellant Insurance Company and the policy is only Act policy and the same was marked as Ex.B1 before the tribunal. Even though, the Insurance Company filed this appeal questioning the quantum of compensation awarded by the tribunal, they have not argued on that ground in the appeal and hence, there is no need for this court to discuss the quantum of compensation fixed by the tribunal.

11. Ex.B1 is the Insurance Policy, which contains as follows:-

.....

"Policy No. : 720900/31/03/00401	Private Car Policy A Liability only
B: T.P.- BASIC	: 700.00
Compulsory PA to owner- Driver Amount 200000	: 100.00
WC to employee !	: 25.00
GROSS (B)	: 825
GROSS 00%TP	: 825
GROSS (A) : Net Premium	: 825
Service Tax 5%	: 41
Net Amount payable (Rounded O)	: 866

12. In this case, the deceased was only an occupant of the vehicle and he has not the driver or owner of the insured vehicle and he is only the occupant of the private car and except that, there is other evidence produced on the side of the respondents 1 to 5/dependents of the deceased. Further, the deceased was travelling in the car belonging to one Valliappan as an occupant. Since the deceased is only an occupant of the private car, he cannot be termed as '3rd party' to the Insurance Company. Admittedly, the Car, which was involved in the accident, was



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insured with the Insurance company under Act Policy and no premium was paid for gratuitous passenger/occupant and it is not a comprehensive policy.

13. In the judgment reported in 2013 ACJ 321 [[Oriental Insurance Co. Ltd vs. Surendra Nath Loomba and others](#)], the Hon'ble Supreme Court, dated 20.11.2012 held as follows:-

13. Recently this Bench in National Insurance Co. Ltd. v. Balakrishnan and Anr. Civil Appeal No. 8163 of 2012 (Arising out of SLP (C) No. 1232/2012) decided on 20.11.2012, 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 Anr.](#): 2011 ACJ 1415 wherein the High Court had referred to the circulars 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:

19. 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



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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 to be operative and binding on the insurance companies. Because of the aforesaid factual position the circulars dated 16th November 2009 and 3rd December, 2009, that have been reproduced hereinabove, were issued.

20. It is also worthy to note that the High Court after referring to individual circulars issued by various insurance companies and 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 than 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 which have been reproduced in the judgment by the Delhi High Court and we have also reproduced the same.

22. In view of the aforesaid legal position the question that emerges for consideration is whether in the case at hand the policy is an "Act Policy" or "Comprehensive/Package Policy". There has been no discussion either by the tribunal or the High Court in this regard. True it is, before us Annexure P-1 has been filed which is a policy issued by the insurer. It only mentions the policy to be a comprehensive policy but we are inclined to think that there has to be a scanning of the terms of the entire policy to arrive at the conclusion whether it is really a package policy to cover the liability of an occupant in a car.

14. We have quoted in extenso to reiterate the legal position. In the case at hand, the policy has not been brought on record. The learned



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Counsel for the Appellant-insurer would submit that it is an "Act Policy". The learned Counsel for the Respondent would seriously dispute and submit that extra premium might have been paid or it may be a "Comprehensive/Package Policy". When Certificate of Insurance is filed but the policy is not brought on record it only conveys that the vehicle is insured. The nature of policy cannot be discerned from the same. Thus, we are disposed to think that it would be appropriate to remit the matter to the tribunal to enable the insurer to produce the policy and grant liberty to the parties to file additional documents and also lead further evidence as advised, and we order accordingly.

15.It needs no special emphasis to state that whether the insurer would be liable or not would depend upon the nature of the policy when it is brought on record in a manner as required by law."

14.In the judgment reported in 2008(2) TN MAC 16 (SC) [Oriental Insurance Co Limited vs. Sudhamaran K.V. & Ors.], the Hon'ble Supreme Court has held as follows:-

"10.The only question which, therefore, arises for our consideration is as to whether the pillion rider on a scooter would be a third party within the meaning of [Section 147](#) of the Act.

Indisputably, a distinction has to be made between a contract of insurance in regard to a third party and the owner or the driver of the vehicle.

19.The law which emerges from the said decisions, is: (i) the liability of the insurance company in a case of this nature is not extended to a pillion rider of the motor vehicle unless the requisite amount of premium is paid for covering his/her risk (ii) the legal obligation arising under [Section 147](#) of the Act cannot be extended to an injury or death of the owner of vehicle or the pillion rider; (iii) the pillion rider in a two wheeler was not to be treated as a third party when the accident has



taken place owing to rash and negligent riding of the scooter and not on the part of the driver of another vehicle.

15. In the judgment reported in 2013(1)TN MAC 631(DB) [New India Assurance Co. Ltd., rep. by its Branch Manager, Branch Office, Thane vs. L.Aagnes and others], the Hon'ble Division Bench of this court held as follows:-

"13. We find, from the evidence available on record, that the deceased was the occupant of Scorpio car bearing registration No. TN 23 J 8611, insured with the 6th respondent Insurance Company. So far as the occupant of the car is concerned, he cannot be construed as a third party. The occupants of the car are eligible to get compensation only when additional premium is paid by the owner of the vehicle, covering the occupants of the car. In the instant case, as per the endorsement made in the insurance policy taken by the owner of the car, marked as Ex. R-1, the liability of the 6th respondent insurance company is limited to Rs. 70,000/- Since the liability of the insurer of the car is limited, the Tribunal has directed the Appellant Insurance Company to pay entire compensation deducting the sum of Rs. 70,000/- from the total compensation amount, holding that there was a contributory negligence on the part of both vehicles. Hence, we find no infirmity to interfere with the finding rendered by the Tribunal with regard to the payment of compensation by 6th respondent Insurance Company to the extent of Rs. 70,000/-.

16. In the judgment reported in 2009 ACJ 104 [General Manager, United India Insurance Co. Ltd. vs. M.Laxmi and others], the Hon'ble Supreme court has held as follows:-

"3. Background facts in a nutshell are as follows:

One Ramulu (hereinafter referred to as the 'deceased') died in a vehicular accident on 8.10.1996. Respondents 1 to 3 are his widow, son and father respectively. A claim petition was filed under [Section 166](#) of



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the Motor Vehicles Act, 1988 (in short 'the Act') claiming compensation of Rs. 3,00,000/-. The claimants averred in the claim petition that the deceased and one Mohd. Mohsin were going on a scooter belonging to M. Yadireddy, respondent No. 4 in the present appeal. The scooter was being driven by Mohd. Mohsin. At about 7.00 p.m. the scooter hit a bullock cart which was going in the same direction because of rash and negligent driving of the scooter, the deceased fell down and sustained fatal injuries. At the time of his death, he was 29 years of age. Compensation was claimed from the owner of the scooter. Present appellant was the insurer which had insured the vehicle in question. The insured remained ex-parte. The present appellant filed its counter-affidavit denying all the material allegations. It was pointed out that admittedly, the policy of insurance was an Act policy and the deceased was a pillion rider and also gratuitous passenger and hence, not a third party, and he cannot claim compensation from the insurance company which insured the vehicle. The learned Additional Special Judge for SPE and ACB Cases-cum-V Additional Chief Judge, City Civil Court, Hyderabad (hereinafter referred to as 'MACT') who adjudicated the claim petition, held that the policy was an Act policy in respect of the Scooter on the date of accident, therefore, the insurer had no liability. It was categorically held that unless the policy in question covers even a gratuitous passenger, such person, who met with an accident while going in the vehicle in question and received injuries or his legal heirs, in case of his death following such accident, cannot proceed against the concerned insurance company for any compensation. The compensation payable was fixed at Rs. 1,07,436/- with 12% interest per annum. It was held that the sum was to be realized from the insured and not from the present appellant.

An appeal was preferred by the claimants before the High Court, which, by the impugned judgment relying on a Circular of the Tariff



Advisory Committee held that the liability of the insurer was there. The appeal was, accordingly, allowed.

6. There is no dispute that the Circular dated 2.6.1986 refers to Comprehensive Policy. It categorically states that standard form for motorcycle should cover liability to pillion passengers in case of Comprehensive Policy. As noted by the MACT, the policy in the instant case was an Act Policy.

9. In view of what has been stated by this Court in Asha Rani and Tilak Singh cases (supra), the order of the High Court is clearly unsustainable and is set aside and that of the MACT is restored.

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 Udesb 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 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



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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. 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.

11. In view of the above discussion, this Court is of the considered view that since the policy is only an Act Policy issued by the appellant-Insurance company to the insurer third respondent, who is the owner of the van and the injured persons/first respondent are 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 policy will not cover the risk of the first respondent in both the cases and the pay and recovery cannot be applied to the facts of the case, since the appellant is not liable to pay the compensation to the injured persons. The owner of the vehicle and the driver of the vehicle are liable to pay the damages to the claimants, as the accident occurred due to rash and negligent act of the driver of the vehicle.

12. In the result, the appeals are allowed and the appellant is not liable to pay any amount to the first respondent/claimants. If any amount is paid by the appellant, the same shall be withdrawn. However, liberty is granted to the first respondent to claim compensation as ordered by the Tribunal from the second and third respondents. No costs.

06.10.2023

Index : Yes/no
RLI

To
The Judge,
The Motor Accident Claims Tribunal, Perundurai,
(Sub-ordinate Court, Perundurai).



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M.DHANDAPANI.,J.

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C.M.A.Nos.2530 & 2531 of 2014

DATED 06.10.2023