



C.M.A.No.3610 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.10.2023

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

C.M.A.No.3610 of 2014

And

M.P.No.1 of 2014

The Oriental Insurance Co. Ltd.,
Rep. by its Branch Manager,
No.364/1, 10th B Main,
Srinivasa Mansion,
Jaya Nagar,
Bangalore.

... Appellant

Vs.

1.Anandhan @ Ananda Kumar
2.P.Sathish Kumar

... Respondents

Prayer:

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree made in MACTOP No.30 of 2010 on the file of the Motor Accidents Claims Tribunal (Subordinate Judge) at Vaniyambadi dated 21.07.2012.

For Appellant : Mr.M.Krishnamoorthy
For Respondents : No Appearance

J U D G M E N T

The second respondent Insurance Company before the Motor



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Accidents Claims Tribunal at Vaniyambadi, is the appellant herein. This appeal has been filed seeking to set aside the order dated 21.07.2012 passed by the Motor Accidents Claims Tribunal (Subordinate Judge) at Vaniyambadi in M.C.O.P.No.30 of 2010.

2.The brief facts of the case is that the first respondent was working in M/s.Sridharshan Package Industries. On 26.10.2009 evening, the first respondent loaded the package materials in the Eicher Vehicle bearing Registration No.Ka-03-8333 belonging to the second respondent and insured with the appellant and proceeded along with the goods to Tambaram, Chennai to deliver the same. At about 02.00 hours (27.10.2009) they were nearing South to Kaali Kovil near Bharathidasan College in Krishnagiri – Vaniyambadi Road. Due to rash and negligent driving, the driver lost his control and dashed against the back side of a unknown lorry and due to the sudden impact, the first respondent sustained injuries.

3.Thereafter, the injured first respondent/ claimant filed claim petition before the Motor Accidents Claims Tribunal at Vaniyambadi, claiming compensation of Rs.7 Lakhs. After adjudication, the Motor Accidents Claims Tribunal at Vaniyambadi awarded a sum of



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Rs.1,25,600/- with interest at the rate of 7% from the date of petition till the date of award and directed the appellant Insurance Company to pay the compensation on behalf of the second respondent/ owner of the vehicle. Aggrieved by the same, the appellant Insurance Company has filed this appeal.

4.The learned counsel appearing for the appellant submitted that the second respondent had taken policy with the appellant and further submitted that the policy is an Act policy and it is not stage career policy and as per the policy, un-authorized passengers are not entitled for any compensation from the Insurance Company. The first respondent travelled in a goods vehicle as an un-authorized passenger. Hence, the appellant is not liable to pay any compensation to the claimant. If at all the claimant is entitled for any compensation, the owner of the vehicle is liable to pay the compensation, however, the Tribunal directed the appellant Insurance Company to pay the entire compensation, which is not sustainable one. In support of his contentions, the learned counsel relied upon the decision of the Hon'ble Division Bench of this Court reported in **2015 (1) TNMAC 19 (DB) [New India Assurance Company Limited Vs. S.Krishnasamy and others]**.



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5.The learned counsel appearing for the appellant further submitted that pursuant to the order of this Court dated 06.01.2015 made in M.P.No.1 of 2014 in C.M.A.No.3610 of 2014, the appellant has deposited the entire amount as ordered by the Tribunal to the credit of M.C.O.P.No.30 of 2010 before the Motor Accidents Claims Tribunal (Subordinate Judge) at Vaniyambadi.

6.Though the names of the respondents have been printed in the cause list, there is no representation for the respondents. Considering the pendency of the civil miscellaneous appeal, this Court is inclined to proceed with the case and decide the same based on the materials available on record.

7.Admittedly, the first respondent was working as a worker in M/s.Sridharshan Package Industries. On 26.10.2009 evening, the first respondent loaded the package materials in the Eicher Vehicle bearing Registration No.Ka-03-8333 belonging to the second respondent and insured with the appellant and proceeded along with the goods to Tambaram, Chennai to deliver the same. At about 02.00 hours (27.10.2009) they were nearing South to Kaali Kovil near



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Bharathidasan College in Krishnagiri – Vaniyambadi Road. Due to rash and negligent driving, the driver lost his control and dashed against the back side of a unknown lorry and due to the sudden impact, the first respondent sustained injuries.

8. Thereafter, the injured first respondent/ claimant filed claim petition before the Motor Accidents Claims Tribunal at Vaniyambadi, claiming compensation of Rs.7 Lakhs. The copy of the insurance policy has been marked as Ex.R1 before the Tribunal. The Tribunal proceeded with the matter as if the occupier comes under the third party category and directed the appellant Insurance Company to pay compensation, however, the fact remains that the policy is an Act policy and as per the policy, un-authorized passengers or gracious passengers are not coming under the category of third party and are not entitled for any compensation from the Insurance Company.

9. It is relevant to extract the decision of the Hon'ble Division Bench of this Court reported in **2015 (1) TNMAC 19 (DB) [New India Assurance Company Limited Vs. S.Krishnasamy and others]** hereunder:

"6.Per contra, learned counsel appearing for the



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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,



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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 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



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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



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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,



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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



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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."



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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



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the statutory 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



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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.



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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



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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 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](#).



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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



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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]:-



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"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



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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](#)



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(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



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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.



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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



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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.

(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



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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



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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.

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



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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



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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



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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."

18.In view of the rulings cited above, we are of the considered view that since, the policy is only an Act policy.



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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.

[Emphasis added]

10.In the present case, the policy is an Act policy issued by the appellant Insurance Company to the insurer. The claimant/ first respondent who was only an occupant of the goods vehicle, cannot be considered as third party of the vehicle. Hence, the policy will not cover the risk of the injured claimant. Hence, applying the ratio laid down by the Hon'ble Division Bench of this Court in its decision reported in **2015 (1) TNMAC 19 (DB) [New India Assurance Company Limited Vs. S.Krishnasamy and others]**, the doctrine of



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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 claimant and then recover the same from the owner of the vehicle involved in the accident cannot be ordered.

11.In view of the above, the Judgment and Decree dated 21.07.2012 made in M.C.O.P.No.30 of 2010 by the Motor Accidents Claims Tribunal (Subordinate Judge) at Vaniyambadi is set aside. The appellant Insurance Company is permitted to withdraw the amount deposited by the appellant to the credit of M.C.O.P.No.30 of 2010 before the Motor Accidents Claims Tribunal (Subordinate Judge) at Vaniyambadi.

12.The civil miscellaneous appeal is allowed. No costs. Consequently, the connected miscellaneous petition is closed.

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Speaking Order/ Non Speaking Order
Index: Yes/ No
Internet: Yes/ No

To

1.The Motor Accidents Claims Tribunal (Subordinate Judge) at

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