IN THE HIGH COURT OF JUDICATURE OF MADRAS

Reserved on 01.03.2023

Pronounced on 24.03.2023

CORAM:

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

and

THE HONOURABLE MR. JUSTICE P.B.BALAJI

**CMA.No.3658/2014 & Cross Appeal No.77/2017
and C.M.P. No.1/2014**

C.M.A. No.3658 of 2014

M/s.New India Assurance Co.Ltd
1st Floor, Amman Complex
No.1360, EVN Road
Erode 638 011. ... Appellant

versus

1.Mrs.Meenakshi
2.Mr.Ramasamy
3.Mrs.Muthammal
4.Mr.S.Arjunan
5.Union of India
rep.by its Secretary
Ministry of Surface Transport
New Delhi.

6.Union of India
rep.by its Secretary
Finance Department
New Delhi.

7.The Chairman
Insurance Regulatory & Development
Authority of India [IRDAI]
Sy.No.115/1, Financial District
Nanakramguda Gochibowli
Hyderabad 500 032.

8.The State of Tamil Nadu
rep.by its Home Secretary
Fort St George, Chennai.

9.The State of Tamil Nadu
rep.by its Secretary
Transport Department
Fort St George, Chennai.

10.The Director General of Police
State of Tamil Nadu
Mylapore, Chennai. ... Respondents

****RR 5 to 10 suo motu impleaded as respondents vide Court order dated 20.04.2018 made in CMA.No3658/2014 and MP.No.1/2014 and Cross.Obj.No.77/2017.**

Cross Objection No.77/2017

1.Mrs.Meenakshi
2.Mr.Ramasamy
3.Mrs.Muthammal ... Appellants

versus

1.M/s.New India Assurance Co.Ltd
1st Floor, Amman Complex
No.1360, EVN Road
Erode 638 011.

2.Mr.S.Arjunan ... Respondents

Prayer in CMA.No.3658/2013: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree passed in MCOP.No.1426/2010 on 16.04.2014 on the file of the Motor Accident Claims Tribunal [Subordinate Judge], at Tiruppur.

Prayer in Cross Objection No.77/2017:- Cross Objection filed under Order 41 Rule 22 of CPC to enhance the award amount in the decree and judgment dated 16.04.2014 made in MCOP.No.1426/2010 on the file of the Motor Accident Claims Tribunal/Sub Court, Tiruppur, by allowing the Cross Objection with interest and cost.

CMA.No.3658/2014:-

For Appellant	:	Mr.J.Chandran
For RR1 to 3	:	Mr.Ma.P.Thangavel
For R4	:	Mr.D.Selvaraju
For RR5&6	:	Mr.Ar.L.Sundaresan Assistant Solicitor General assisted by Mr.S.Diwakar, SPC
For R7	:	Mr.M.B.Raghavan
For RR8 to 10	:	Mr.Edwin Prabakar, Spl.GP

Cross Objection No.77/2017:

For Appellants	:	Mr.Ma.P.Thangavel
For R1	:	Mr.J.Chandran
For R2	:	Mr.D.Selvaraju

COMMON JUDGMENT

S.S.SUNDAR, J.

(1)CMA.No.3658/2014 is preferred by the New India Assurance Company who is the insurer of the vehicle owned by the 4th respondent in the Appeal as against the Award of compensation by the Motor Accident Claims Tribunal [Sub Court, Tiruppur] in MCOP.No.1426/2010.

(2)Cross Objection No.77/2017 is preferred by the claimants seeking enhancement of the compensation awarded by the Tribunal.

(3)The 1st respondent in the Civil Miscellaneous Appeal is the wife and respondents 2 and 3 are the parents of the deceased Palanisamy Respondents in the Appeal are the Cross Objectors in the Cross Objection.

(4)Since both the Civil Miscellaneous Appeal and the Cross Objection arise out of the judgment of the Tribunal dated 14.04.2014 made in MCOP.No.1426/2010, both are disposed of by this common judgment.

(5)Brief facts that are necessary for the disposal of the above Appeal and Cross Objection are as follows:-

(6)On 26.11.2010, at about 23.30 hours, the deceased by name Palanisamy along with the 4th respondent by name Arjunan travelled in a Maruti 800 Car [a passenger car] on their way from Pollachi to Erode. The accident occurred near Periya Thottam, Periyar Nagar Bus Stop at Kayampalayam, Kovai to Trichy Main Road. There is no dispute that the said vehicle is owned by the 4th respondent. It is the common case of the appellant/Insurance Company and the claimants that the 4th respondent drove the vehicle in a rash and negligent manner and dashed against the stone at the left side of the road. As a result of that, the car rolled on the road and persons residing nearby, came to rescue the persons inside the car and found the deceased Palanisamy dead on the spot and the body was sent to the Government Hospital at Kangeyam. Since the vehicle was was insured with the appellant/Insurance Company, the claimants filed the claim petition before the Tribunal in MCOP.No.1426/2010 claiming a sum of Rs.25 lakhs for the loss of income and under other heads. It is also stated by the claimants who are respondents 1 to 3 in CMA.No.3658/2014 that the appellant herein and the 4th respondent are jointly and severally liable to pay the entire compensation.

(7)The Claim petition was contested by the appellant/Insurance Company who was the 2nd respondent before the Tribunal mainly on the ground that the Policy taken by the 4th respondent was only an Act Policy [liability only/statutory policy] and no additional premium was paid for gratuitous passengers/occupants of the car, and hence, the appellant/Insurance Company is not liable to pay any compensation to the claimants. Since the deceased was a gratuitous passenger in a private car and is not a third party under the terms of the Policy, the appellant contended that the Policy does not cover the risk and hence, the appellant/Insurance Company is not liable to pay the compensation. In the counter affidavit, the quantum of compensation claimed was also denied and the claimants were put to strict proof of income of the deceased as stated in the petition.

(8)The Tribunal, upon considering the evidence, both oral and documentary, held that the accident was caused due to the rash and negligent manner of driving of the car by the 4th respondent herein. On the question of quantum, the Tribunal found that the income of the deceased was Rs.15,331/- per month. Since 1/3rd of the income is being paid to the family as Family Pension, the Tribunal has taken Rs.10,000/- as loss of income per month. Adding 50% towards future prospects and deducting 1/3rd, the Tribunal held that the total compensation payable towards loss of income is Rs.19,20,000/-, applying 16 as multiplier. A further sum of Rs.1,00,000/- was awarded by the Tribunal towards loss of love and affection and funeral expenses.

(9)On the question of liability, the Tribunal accepted that the Policy is proved as Act Policy. However, relying upon Rules 236 to 242 of the Tamil Nadu Motor Vehicles Rules, 1989 framed under the Motor Vehicles Act, the Tribunal held that the Insurance Company / appellant herein, is liable on the ground that the deceased Palanisamy who is a police constable, should be treated as 'exempted' by virtue of Rule 242 of the Tamil Nadu Motor Vehicles Rules, 1989. Though there is no reference to any particulars in the Claim Petition before the Tribunal, during evidence, PW1-wife of the deceased Palanisamy gave evidence to the effect that her husband and 4th respondent were asked to accompany a remand prisoner from Borstal School at Pollachi to the learned Judicial Magistrate at Erode and again to take back the prisoner to the Borstal School in Pollachi and that the accident had taken place when her husband and the 4th respondent were returning from Pollachi to Erode Police Station. Since the accident took place while the deceased and 4th respondent were engaged in their official duty to transport a remand prisoner, it was argued that the Tribunal should apply the exception under

Rule 242 of the the Tamil Nadu Motor Vehicles Rules, 1989. The said contention of the claimants was accepted and the Tribunal therefore, directed the appellant/Insurance Company to pay the entire Award amount of Rs.20,20,000/- to the claimants with interest @ 7.5% per annum within a period of two months. Aggrieved by the Award of the Tribunal, the above Civil Miscellaneous Appeal is preferred by the Insurance Company / 2nd respondent before the Tribunal.

(10)The claimants filed Cross Objection No.77/2017 seeking enhancement of the compensation awarded by the Tribunal since the claimants have claimed a sum of Rs.25 lakhs as compensation and the Tribunal has reduced the compensation to Rs.20,20,000/-. It is contended in the Cross Appeal that the Tribunal ought to have taken that the deceased was earning Rs.15,331/- per month as per the Salary Certificate marked as Ex.P7 and that the entire monthly income of the deceased ought to have been taken. It is contended that the amount payable to the dependents of the deceased by way of Family Pension, cannot be deducted. The claimants also raised an objection that the Tribunal ought to have allowed at least a sum of Rs.1 lakh towards loss of consortium and further amounts towards loss of love and affection and loss of estate etc.

(11)Mr.J.Chandran, learned counsel appearing for the Insurance Company submitted that the deceased Palanisamy was just a gratuitous passenger and that the Act Policy does not cover the risk of third parties. It is submitted that the Insurance Company is not liable towards third party risk which is not covered as per the terms of Policy and the deceased being a gratuitous passenger, the Tribunal ignoring that the provision of Motor Vehicles Act, has awarded compensation against the appellant without considering the legal position settled in favour of the Insurance Company in several decisions. Learned counsel for the appellant also submitted that the Tribunal has committed a serious error by referring to Rules 236 to 242 of the Tamil Nadu Motor Vehicles Rules, 1989, which are not applicable in the present case where the vehicle involved is not a goods vehicle but only a passenger car in respect of which there is no statutory liability in terms of Section 147 of the Motor Vehicles Act.

(12)In the course of hearing of the Appeal, respondents 5 to 10 were suo motu impleaded as respondents vide order dated 20.04.2018, by the Hon'ble Division Bench consisting of the Hon'ble Mr. Justice N.KIRUBAKARAN [as he then was] and the Hon'ble Mr. Justice R.PONGIAPPAN [as he then was]. The Division Bench in its order dated 25.04.2018, after referring to Section 146 of the Motor Vehicles Act, expressed its view that time has come to amend the Act to include own risk, occupants of the car, pillion rider and the third party, so that a Comprehensive Policy is made mandatory for the owners of the vehicle at the time of purchasing itself. Taking note of the number of cases coming before the Court and the road accident victims are helpless to get compensation in the absence of any valid insurance policies at the time of accident, the Division Bench held that steps need to be taken by the Government to make insurance cover for the life time period according to the age of the vehicle. Therefore, for the reasons stated in the order, the Division Bench felt that respondents 5 to 10 should be impleaded as necessary and proper parties.

(13)After impleading respondents 5 to 10, a Memo was filed on behalf of the Insurance Regulatory and Development Authority [IRDA] in response to the query raised by this Court with reference to another appeal in CMA.No.1428/2017. That may not have any relevance to the present Civil Miscellaneous Appeal and therefore, this Court is unable to consider the Memo which has no reference to the issue raised for consideration in these appeals.

(14)Similarly, the Chief General Manager of IRDA of India, vide communication dated 20.09.2018 has referred to the modifications to General Regulations [GR] -36 of India Motor Tariff ['IMT'], 2002, on Compulsory Personal Accident [CPA] Cover for owner-driver. An assurance was given that the minimum capital sum insured at Rs.15 lakhs shall be provided under CPA cover for owner-driver under Liability Only under Section III of Package Policy to all classes of vehicles and Bundled Covers wherever applicable at the premium rate of Rs.750/- per annum for annual policy.

(15)It is noticed that by communication dated 20.09.2018, the Chief General Manager of the 7th respondent has also indicated that the provisions applicable for third party insurance shall continue to apply.

(16)The Union of India represented by the Secretary to Finance Department, who has been impleaded as the 6th respondent in the Civil Miscellaneous Appeal, has filed an affidavit before this Court in response to the general queries of this Court on certain Policies regarding the suggestion given by this Court particularly relating to third party insurance, Comprehensive Insurance and the Insurance for the life time of the vehicle. On Third Party Insurance, it is mentioned about different types of policies in vogue helps to compensate other people, vehicles and property in the event of an accident. It is indicated that the first party is responsible for liability arising from self damage and a third party insurance cover can be purchased by an insured from an insurer for protection against the claims of another person[third party]. On this subject, the Government has taken the following stand:-

> *"10.I submit that, mandatory Third Party Insurance of Vehicles has resulted in creating a captive*

market for the Insurance Companies. The practice of determination of Insurance Premium and its periodic revision with IRDA being the approval agency, also tends to create some kind of dominant player position qua the Insurance Sector. As a result, each Insurance Company follows the IRDA approved rates of premium, which goes against the concept of competitive markets. It pegs down the Insurance premium rates for each and every actor in the insurance space leaving no incentives for creating a business based on the principles of a competitive market and the service levels. The Commercial vehicle owners have been agitating against the steep increases in the Third Party Insurance premium based on presumed actuarial calculations and observed strikes on this account. Ideally, IRDA should only prescribe an upper cap on the Insurance premium and leave the rates of insurance premiums to be offered to the insurance companies as per their own market perceptions.

11.I submit that, with respect to the provisions for insurance cover, it is highlighted that the issue has been discussed with various stakeholders and accordingly, an amendment in sub-rule[1][b] rule 47 *of the Central Motor Vehicles Rules, 1989, is under consideration of the Ministry wherein the validity of third party insurance for new vehicles may be provided for a period not less than three years for the Light Motor Vehicles and E-cart/E-rickshaws and the validity of the insurance certificate for the Motor Cycles may be not less than five years for the insurance certificate as per section 146 of the Motor Vehicles Act, 1988.*

12.I submit that, it is humbly placed before this Hon'ble High Court that this Ministry has taken up the issue with General Insurance Council for providing the updated information about the insurance and validity of each vehicle insured in the country and to have it on the 'VAHAN' database which maintains the information about each vehicle registered in the country. The Insurance Information Bureau of India [IIB] has started updating the insurance details for each new insurance and renewal of insurance made for the vehicle on the VAHAN database since last one month. It is also being requested to update the information of the old insurance data of vehicles. This insurance related information available in the VAHAN *database is available to the Transport Authorities, Police Authorities through web service access of VAHAN database and also available through M-Parivahan mobile app of the Ministry. This is expected to improve enforcement and facilitate better compliance to the provisions of Motor Vehicles Act, 1988.*

13.I submit that keeping the aforesaid in view, the Ministry is of the considered view that additional provisions for a comprehensive motor vehicle insurance policy in the current scenario may not be a preferred option. Any such move would also create huge challenges for the Insurance Companies and it is felt that their preparedness for handling the additional claims would have to be evaluated before any further decision on enhancing the scope of the insurance is taken."

(17)The Ministry of Road Transport and Highways, has circulated a letter dated 29.08.2018 addressed to the Principal Secretaries and Secretaries [Transport] and Transport Commissioners of all the States/UT Administrations.

(18)None of the affidavits or Memos filed on behalf of the newly impleaded respondents have any relevance to the case on hand. This Court finds no reason in the Appeal to give any general directions and we leave it open to the Government of India and the 7th respondent to keep in mind the problems faced by the litigants in relation to motor accidents Since this is a complex issue involving the interest of several institutions who are not parties, we only hope that the Government may come forward with appropriate amendments taking note of the problems and grievance of all the stakeholders. This Court is not expected to deal with the general grievance of public in this Civil Miscellaneous Appeal and we are not inclined to express our own opinion, other than disposing of the Civil Miscellaneous Appeal and the Cross Objection purely on merits and in accordance with the provisions of the Acts and Rules which are applicable.

(19)The prime contention of the learned counsel for the Insurance Company is that Rules 236 to 242 of the Tamil Nadu Motor Vehicles Rules, 1989, are not applicable to a passenger car. For the purpose of considering the arguments of the learned counsel for the claimants and the appellant/Insurance Company, it is necessary for this Court to extract Sections 146 and 147 of the Motor Vehicles Act and Rules 236 to 242 of the Tamil Nadu Motor Vehicles Rules, 1989 which are as follows:-

"Section 146 of the Motor Vehicles Act:-

146 Necessity for insurance against third party risk. —

(1) No person shall use, except as a passenger, or cause or allow any other person to use, a motor vehicle in a public place, unless there is in force in relation to the use of the vehicle by that person or that other person, as the case may be, a policy of insurance complying with the requirements of this Chapter: [26] [Provided that in the case of a vehicle carrying, or meant to carry, dangerous or hazardous goods, there shall also be a policy of insurance under the Public Liability Insurance Act, 1991 (6 of 1991).] Explanation. —A person driving a motor vehicle merely as a paid employee, while there is in force in relation to the use of the vehicle no such policy as is required by this sub-section, shall not be deemed to act in contravention of the sub-section unless he knows or

has reason to believe that there is no such policy in force.

(2) Sub-section (1) shall not apply to any vehicle owned by the Central Government or a State Government and used for Government purposes unconnected with any commercial enterprise.

(3) The appropriate Government may, by order, exempt from the operation of sub-section (1) any vehicle owned by any of the following authorities, namely:—

(a) the Central Government or a State Government, if the vehicle is used for Government purposes connected with any commercial enterprise;

(b) any local authority;

(c) any State transport undertaking:

Provided that no such order shall be made in relation to any such authority unless a fund has been established and is maintained by that authority in accordance with the rules made in that behalf under this Act for meeting any liability arising out of the use of any vehicle of that authority which that authority or any person in its employment may incur to third parties. Explanation. —For the purposes of this sub-

section, "appropriate Government" means the Central Government or a State Government, as the case may be, and—

(i) in relation to any corporation or company owned by the Central Government or any State Government, means the Central Government or that State Government;

(ii) in relation to any corporation or company owned by the Central Government and one or more State Governments, means the Central Government;

(iii) in relation to any other State transport undertaking or any local authority, means that Government which has control over that undertaking or authority.

Section 147 of the Motor Vehicles Act:-

147 Requirements of policies and limits of liability. —

(1) In order to comply with the requirements of this Chapter, a policy of insurance must be a policy which —

(a) is issued by a person who is an authorised insurer; and

(b) insures the person or classes of persons specified in the policy to the extent specified in sub-section (2)—

(i) against any liability which may be incurred by him in respect of the death of or bodily[27] *[injury to any person, including owner of the goods or his authorised representative carried in the vehicle] or damage to any property of a third party caused by or arising out of the use of the vehicle in a public place;*

(ii) against the death of or bodily injury to any passenger of a public service vehicle caused by or arising out of the use of the vehicle in a public place:

Provided that a policy shall not be required—

(i) to cover liability in respect of the death, arising out of and in the course of his employment, of the employee of a person insured by the policy or in respect of bodily injury sustained by such an employee arising out of and in the course of his employment other than a liability arising under the Workmen's Compensation Act, 1923 (8 of 1923) in respect of the death of, or bodily injury to, any such employee—

(a) engaged in driving the vehicle, or

(b) if it is a public service vehicle engaged as conductor of the vehicle or in examining tickets on the vehicle, or

(c) if it is a goods carriage, being carried in the vehicle, or

(ii) to cover any contractual liability.

Explanation. —For the removal of doubts, it is hereby declared that the death of or bodily injury to any person or damage to any property of a third party shall be deemed to have been caused by or to have arisen out of, the use of a vehicle in a public place notwithstanding that the person who is dead or injured or the property which is damaged was not in a public place at the time of the accident, if the act or omission which led to the accident occurred in a public place.

(2) Subject to the proviso to sub-section (1), a policy of insurance referred to in sub-section (1), shall cover any liability incurred in respect of any accident, up to the following limits, namely:—

(a) save as provided in clause (b), the amount of liability incurred;

(b) in respect of damage to any property of a third party, a limit of rupees six thousand:

Provided that any policy of insurance issued with any limited liability and in force, immediately before the commencement of this Act, shall continue to be *effective for a period of four months after such commencement or till the date of expiry of such policy whichever is earlier.*

(3) A policy shall be of no effect for the purposes of this Chapter unless and until there is issued by the insurer in favour of the person by whom the policy is effected a certificate of insurance in the prescribed form and containing the prescribed particulars of any condition subject to which the policy is issued and of any other prescribed matters; and different forms, particulars and matters may be prescribed in different cases.

(4) Where a cover note issued by the insurer under the provisions of this Chapter or the rules made thereunder is not followed by a policy of insurance within the prescribed time, the insurer shall, within seven days of the expiry of the period of the validity of the cover note, notify the fact to the registering authority in whose records the vehicle to which the cover note relates has been registered or to such other authority as the State Government may prescribe.

(5) Notwithstanding anything contained in any law for the time being in force, an insurer issuing a policy of insurance under this section shall be liable to

indemnify the person or classes of persons specified in the policy in respect of any liability which the policy purports to cover in the case of that person or those classes of persons.

Section 236 of the Tamil Nadu Motor Vehicles Rules, 1989:-

236. Limit of persons in goods carriage.— *No person shall be carried in the cabin of a goods carriage beyond the number for which there is a seating accommodation at the rate of thirty eight centimeters measured along the seat, excluding the space reserved for the driver, for each person, and not more than six persons in all in addition to the driver shall be carried in any goods carriage.*

237. Animals in goods carriage.— *(1) No animal shall be carried in a goods carriage unless,—*

(i) in the case of goats, sheep, deer or pig, a minimum floor space-of 60 cm. x 100 cm. per head of such animal, is provided in the vehicle.

(ii) In the case of any other animal— (a) minimum floor space of 210 cms. x 100 cms. per head of animal and half of such floor space for a: young one

of such animal which is weaned is provided in the vehicle;

(b) the load body of the vehicle is constructed of a strong wooden planks or of iron sheets with a minimum height of 150 centimetre measured from the floor of the vehicle on all sides and the back; and

(c) the animals are properly secured by ropes tied to the sides of the vehicle.

***Explanation**.— (i) "Animal" for the purpose of this rule includes goat, sheep, buffalo, bull, ox, cow, deer, horse, pony, mule, ass, and pig or the young one thereof.*

(ii) An attendant provided by the owner of the animals shall accompany the animals with necessary cattle food and give food and water to the animals in transit in time.

(2) No animal belonging to or intended for circus'or zoo shall be carried in a goods carriage unless—

(i) in the case of wild or ferocious animal a suitable case, either separate from or integral with the load body of the vehicle used, of sufficient strength to contain the animal securely at all time is provided; and

(ii) reasonable floor space for each such animal is provided in the vehicle.

(3) No goods carriage, when carrying any animal under the above rule shall be driven at a speed in excess of 30 kilometres-per hour.

238:-Prohibition of persons on the top of goods carriage.— *No person shall be carried in goods carriage upon the goods or otherwise in such a manner that such person is in danger of falling from the vehicle, and in no case shall any person be carried in a goods carriage in such a manlier that any part of his person when he is in a sitting position, is at a height exceeding 300 centimetres from the surface upon which the vehicle rests.*

239.Permission to carry more persons in goods carriage.— *Notwithstanding the provisions of rule 236, the Regional Transport Authority or the State Transport Authority may, subject to such conditions as it thinks fit, allow a large number of persons to be carried in a goods carriage.*

240.No person to be carried for hire or reward.— *Nothing contained in rules 236, 238 and 239 shall be* *deemed to authorise the carriage of any person for hire or reward on any goods carriage.*

241.Travel subject to rule 240.— *No person shall travel in a goods carriage save in accordance with rule 240.*

242.Rules 236 to 240 not to apply.— *The provisions of rules 236 to 240 shall not apply to motor vehicles registered under section 60 or to goods carriages which are being used for the carriages of troops or the police or members of the general public affected by natural calamities like fire, flood and cyclone or by disturbances and agitations to places of safety or, for transporting remand prisoners, under trial prisoners or witnesses by the police."*

(20)On a bare perusal of Rules 246 to 242 it would only indicate that these rules are applicable to limit the liability of persons or animals carried in goods vehicles. Rule 242 is an exception to Rules 236 to 240. Rules 236 to 240 cannot be applied to motor vehicles registered under Section 60 or to goods carriages which are used for carriages of troops or the police or members of general public affected by natural calamities like fire, flood, cyclone or by disturbances and agitations to places of safety or for transporting remand prisoners, under trial prisoners or witnesses by police. Therefore, Rule 242 at best can be relied upon to show that Rules 236 to 240 cannot be applied when a goods carriage is engaged for transporting remand prisoners. It is admitted in the present case that the vehicle involved in the accident is a passenger car and not a goods vehicle. It can also be gathered from the evidence of PW1 that the vehicle was not involved in the accident when the remand prisoner was being transported in the vehicle. The version of PW1 that after handing over the remand prisoner at Pollachi, the 4th respondent called his personal car for them to return to Erode Police Station. Therefore, the vehicle involved in the accident was never involved in transporting a remand prisoner as focused by the learned counsel for the claimants. On a bare reading of Rules 236 to 242 of the Tamil Nadu Motor Vehicles Rules, 1989, this Court finds that the Tribunal has erroneously applied the Rules to hold that the Insurance Company is liable for the entire claim. Therefore, the decision of the Tribunal is *per se* illegal and unsustainable.

(21)Learned counsel for the appellant/Insurance Company tried to explain what is Act Policy/Liability Only Policy. It is indicated in the Act Policy that the Insurance Company has agreed to indemnify the insured in the event of accident caused by or arising out of use of motor vehicle anywhere in India against all sums including claimants cost and expenses which is insured shall become legally liable to pay in respect [1]death of or bodily injury to any person so far as it is necessary to meet the requirements of the Motor Vehicles Act ; [2]Damage to the property other than property belonging to the insured are held in trust or in the custody of control of the insured to the limits specified in the schedule.

(22)There is no provision in the Act Policy to indemnify the insured anything beyond the requirements of the Motor Vehicles Act. The Standard Wordings in respect of Policy including Premium Computation Table Certificate of Insurance and Cover Note as provided in the statute is followed by verbatim reproduction in the Act Policy. Therefore, as per the policy taken by the 4th respondent, the Insurance Company is required to indemnify the insured in the event of accident caused by arising out of the use of motor vehicle only in respect of death of or bodily injury to any person so far as it is necessary to meet the requirements of the Motor Vehicles Act. Since the reading of Sections 146 and 147 of the Motor Vehicles Act do not indicate the requirement to cover a gratuitous passenger travelling in a car, this Court finds force in the submission of the learned counsel for the Insurance Company. Section 147[1][i][b] of Act indicates only the liability which may be incurred by the owner of a vehicle in respect of death of or bodily injury to any person or damage to any property of a third party caused by or arising out of the use of the vehicle in a public place.

(23)The learned counsel for the 7th respondent in CMA.No.3658/2014 / IRDAI also made submissions by referring to Sections 146 to 149 of the Motor Vehicles Act. He relied upon several judgments of the Hon'ble Supreme Court and this Court.

(24)In ***New India Assurance Co.Ltd Vs. Asha Rani and Others*** reported in ***2033 [2] SCC 223,*** the Hon'ble Supreme Court has held as follows:-

> *"**26.** In view of the changes in the relevant provisions in the 1988 Act vis-à-vis the 1939 Act, we*

are of the opinion that the meaning of the words "any person" must also be attributed having regard to the context in which they have been used i.e. "a third party". Keeping in view the provisions of the 1988 Act, we are of the opinion that as the provisions thereof do not enjoin any statutory liability on the owner of a vehicle to get his vehicle insured for any passenger travelling in a goods vehicle, the insurers would not be liable therefor.

***27.** Furthermore, sub-clause (i) of clause (b) of sub-section (1) of Section 147 speaks of liability which may be incurred by the owner of a vehicle in respect of death of or bodily injury to any person or damage to any property of a third party caused by or arising out of the use of the vehicle in a public place, whereas sub-clause (ii) thereof deals with liability which may be incurred by the owner of a vehicle against the death of or bodily injury to any passenger of a public service vehicle caused by or arising out of the use of the vehicle in a public place.*

***28.** An owner of a passenger-carrying vehicle must pay premium for covering the risks of the passengers. If a liability other than the limited liability* *provided for under the Act is to be enhanced under an insurance policy, additional premium is required to be paid. But if the ratio of this Court's decision in New India Assurance Co. v. Satpal Singh [New India Assurance Co. v. Satpal Singh, (2000) 1 SCC 237 : 2000 SCC (Cri) 130] is taken to its logical conclusion, although for such passengers, the owner of a goods carriage need not take out an insurance policy, they would be deemed to have been covered under the policy wherefor even no premium is required to be paid. "*

(25)In ***National Insurance Company Limited Vs. Baljith Kaur and Others*** reported in ***2004 [2] SCC 1,*** the Hon'ble Supreme Court has held as follows:-

*"**20.** It is, therefore, manifest that in spite of the amendment of 1994, the effect of the provision contained in Section 147 with respect to persons other than the owner of the goods or his authorized representative remains the same. Although the owner of the goods or his authorized representative would now be covered by the policy of insurance in respect of a goods vehicle, it was not the intention of the*

legislature to provide for the liability of the insurer with respect to passengers, especially gratuitous passengers, who were neither contemplated at the time the contract of insurance was entered into, nor was any premium paid to the extent of the benefit of insurance to such category of people."

(26)The question whether a statutory Insurance Policy under the Motor Vehicles Act, 1988, intended to cover the risk to life or damage to properties of third parties would cover the risk of death or injury to a gratuitous passenger carried in a private vehicle, came before the Hon'ble Supreme Court in the case of ***United India Insurance Company Limited Vs Tilak Singh and Others*** reported in ***2006 [4] SCC 404*** and the Hon'ble Supreme Court has concluded the issue in the following lines:-

"21. *In our view, although the observations made in Asha Rani case [(2003) 2 SCC 223 : 2003 SCC (Cri) 493] were in connection with carrying passengers in a goods vehicle, the same would apply with equal force to gratuitous passengers in any other vehicle also. Thus, we must uphold the contention of the appellant Insurance Company that it owed no liability towards the injuries suffered by the deceased*

Rajinder Singh who was a pillion rider, as the insurance policy was a statutory policy, and hence it did not cover the risk of death of or bodily injury to a gratuitous passenger."

(27)In a similar case, a Division Bench of this Court in ***S.Vijayalakshmi and Others Vs. Ashok Brothers Implex Limited and Another*** in CMA.No.2163/2017 vide judgment dated 17.06.2022, has held as follows:-

"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. <u>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</u> 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."

(28)A Division Bench of this Court in the case of ***National Insurance Company Limited Vs. Pooja Manoj Singh and Others*** reported in ***2010 [2] TN MAC 550[DB]***, has held in a similar case where a vehicle involved was a private car and it was only an Act Policy that was taken by the owner of the vehicle, that the occupants of the car were not covered under the Policy when the vehicle was dashed against the tree. The Division Bench has accepted the contention of the Insurance Company tht no additional premium was paid covering the risk of owner of vehicle and therefore, the Insurance Company has no liability to pay the compensation.

(29)A few more judgments were cited on behalf of the appellant/Insurance Company and the 7th respondent/IRDAI for the proposition that an Act Policy will not cover the risk of gratuitous passenger in a car and that the owner of the vehicle alone is liable if the accident was caused due to the rash and negligent driving of the car. This Court is fully convinced that it is settled now by several precedents/authorities and pronouncements of the Hon'ble Supreme Court that it is not the intention of the legislature to mandate covering the risk of death of or bodily injury to a passenger even though it may be open to the insured by paying extra premium to cover the risk of death of a passenger.

(30)Learned counsel appearing for the claimants referring to Rules 236 to 242 of the Tamil Nadu Motor Vehicles Rules, 1989, submitted that the Tribunal has rightly applied Rules 242 to make the Insurance Company liable for the entire claim. This Court has already held that Rules 236 to 242 of the Motor Vehicles Rules, 1989, has no application to a passenger car.

(31)Learned counsel for the claimants also relied upon several judgments of the Hon'ble Supreme Court, this Court and other High Courts to substantiate his contentions. He submitted that the history of statute from 1929 to 1994 shows that Section 147 of the Motor Vehicles Act, 1988, covers the occupants of the car. He further submitted that the history of statute also show the intention of legislation to cover the risk of occupants of a private car. He also submitted that the liability of the Insurance Company covering the risk of occupants of the private car is also an issue pending by way of reference before the Larger Bench of Hon'ble Supreme Court.

(32)In ***Bhagyalakshmi and Others V. United Insurance Company Limited and Another*** reported in ***2009 [7] SCC 148,*** the Hon'ble Supreme Court noticed conflicting views on the question as to whether gratuitous passengers travelling in a private car or pillion riders carried on two-wheelers are automatically covered under a package policy. The Hon'ble Supreme Court opined that the matter requires consideration by a Larger Bench. However, there is no divergent view as regards a case which is similar to the present case where the policy is a statutory policy or an Act only Policy. The uniform view expressed in all other judgments is that the gratuitous passenger in a private vehicle would not be covered for a bodily injury or death under the policy insurance which is an Act Policy. In respect of a package policy for private cars, the Hon'ble Supreme Court expressed its view that the matter requires consideration by a

Larger Bench. The scope of reference to a Larger Bench was in fact considered by the Hon'ble Supreme Court in ***National Insurance Company Limited V. Balakrishnan and Another*** reported in ***2013 [1] SCC 731***, wherein the Hon'ble Supreme Court has held as follows:-

> **"20.** *Thus, it is quite vivid that the Bench in Bhagyalakshmi case [(2009) 7 SCC 148 : (2009) 3 SCC (Civ) 87 : (2009) 3 SCC (Cri) 321] had made a distinction between the "Act policy" and "comprehensive policy/package policy". We respectfully concur with the said distinction. The crux of the matter is what would be the liability of the insurer if the policy is a "comprehensive/package policy". We are absolutely conscious that the matter has been referred to a larger Bench, but, as is evident, the Bench has also observed that it would depend upon the view of the Tariff Advisory Committee pertaining to enforcement of its decision to cover the liability of an occupant in a vehicle in a "comprehensive/package policy" regard being had to the contract of insurance."*

(33)The position reiterated by the Hon'ble Supreme Court in various other decisions in cases of Act Policy is also reiterated in the case of

Balakrishnan's case [cited supra], to the effect that an Act Policy cannot cover a third party risk of an occupant in a car. Since the Tribunal did not render a finding whether the policy is a comprehensive policy/package policy or 'Act Policy', the Hon'ble Supreme Court remanded the matter to the Tribunal to scrutinise the policy in a proper perspective with a specific direction that if the conclusion is arrived at that the policy in question is a comprehensive / package policy, the liability should be fastened on the insurer. Therefore, the two judgments relied on by the claimants are in fact against the proposition for which the learned counsel argued before us.

(34)Several other judgments were also relied upon by the learned counsel for the claimants. This Court need not cite all the judgments as many of the cases are relating to cases where the vehicle involved was a goods carrier. Learned counsel then relied upon a few judgments for the proposition that in cases where Hon'ble Supreme Court found that the possibility of recovery from the owner of vehicle is Nil, has ordered pay and recovery and therefore, this Court in the present case, should direct the Insurance Company to pay the Award amount and then permit the Insurance Company to recover the same from the 4th respondent/owner of vehicle.

(35)This Court is unable to countenance the argument of the learned counsel for the claimants in view of the categorical pronouncements of Hon'ble Supreme Court in several cases answering this issue against the claimants. A Full Bench of this Court has considered the liability of the insurers. It has been held that in the absence of any statutory requirement to cover liability in respect of a passenger and goods vehicle, the principle of pay and recover as statutorily recognised in Sections 149[4] and 149[5] are not applicable *ipso facto.* The Full Bench of this Court, in the case of ***Branch Manager, United India Insurance Co.Ltd., Dharmapuri Town Vs. Nagammal and Others*** reported in ***2009 [1] TN MAC 1 [FB]*** after elaborately considering several provisions of the Act and precedents, has summarised the decision in the following lines:-

> *31. Thus from an analysis of the statutory provisions as explained by the Supreme Court in various decisions*

rendered from time to time, the following picture emerges :

(i) The Insurance Policy is required to cover the liability envisages under Section 147, but wider risk can always be undertaken.

(ii) Section 149 envisages the defences which are open to the Insurance Company. Where the Insurance Company is not successful in its defence, obviously it is required to satisfy the decree and the award. Where it is successful in its defence, it may yet be required to pay the amount to the claimant and thereafter recover the same from the owner under such circumstance envisaged and enumerated in Section 149(4) and Section 149(5).

(iii) Under Section 147 the Insurance Company is not statutorily required to cover the liability in respect of a passenger in a goods vehicle unless such passenger is the owner or agent of the owner of the goods accompanying such goods in the concerned goods vehicle.

(iv) Since there is no statutory requirement to cover the liability in respect of a passenger in a goods vehicle, the principle of pay and recover, as statutorily

recognised in Section 149(4) and Section 149(5), is not applicable ipso facto to such cases and, therefore, ordinarily the Court is not expected to issue such a direction to the Insurance Company to pay to the claimant and thereafter recover from the owner.

(v) Where, by relying upon the decision of the Supreme Court in Satpal Singh's case, either expressly or even by implication, there has been a direction by the Trial Court to the Insurance Company to pay, the appellate court is obviously required to consider as to whether such direction should be set aside in its entirety and the liability should be fastened only on the driver and the owner or whether the Insurance Company should be directed to comply with the direction regarding payment to the claimant and recover thereafter from the owner.

(vi) No such direction can be issued by any trial court to the Insurance Company to pay and recover relating to liability in respect of a passenger travelling in a goods vehicle after the decision in Baljit Kaur's case merely because the date of accident was before such decision. The date of the accident is immaterial. Since the law has been specifically

clarified, no trial court is expected to decide contrary to such decision.

(vii) Where, however, the matter has already been decided by the trial court before the decision in Baljit Kaur's case, it would be in the discretion of the appellate court, depending upon the facts and circumstances of the case, whether the doctrine of pay and recover should be applied or as to whether the claimant would be left to recover the amount from the person liable i.e., the driver or the owner, as the case may be."

(36)The above judgment of the Full Bench was later relied on by a Division Bench of this Court in ***Bharthi Axa General Insurance Company Limited rep.by its Manager, 1st Floor, Fems Icon, Bangalore Vs. Aandi and Others,*** reported in ***2018 [2] TN MAC 731 [DB].***

(37)It is true that in some of the cases cited by the learned counsel for the claimants, the Hon'ble Supreme Court had occasion to direct pay and recovery having regard to peculiar facts and circumstances of the case. This Court found that in all those cases, the Hon'ble Supreme Court has not laid down as a proposition of law but in exercise of its power under

Article 142 of the Constitution of India to render complete justice between parties. Therefore, this Court has no inclination to follow any of those judgments to direct pay and recovery.

(38)Learned counsel for the claimants relied on the following judgments:-

(a) Judgment of the Karnataka High Court in the case of ***Manager, Oriental Insurance Co.Ltd Vs. Nagesh and Another*** reported in ***ILR 2011 KAR 5790 ;***

(b) Judgment of the Hon'ble Supreme Court in the case of ***United India Insurance Co. Ltd, Shimla Vs. Tilak Singh and Others*** reported in ***2006 [4] SCC 404 ;***

(c) Judgment of the Hon'ble Supreme Court in the case of ***Bhagyalakshmi and Others vs. United Insurance Company Limited and Another*** reported in ***2009 [7] SCC 148 ;***

(d) Judgment of the Hon'ble Supreme Court in the case of ***National Insurance Company Limited Vs. Balakrishnan and Another*** reported in ***2013 [1] SCC 731 ;***

(e) Judgment of the Hon'ble Supreme Court in the case of ***Oriental Insurance Co. Ltd., Vs. Radha Rani and Others*** reported in ***1998 [1] MPLJ 645 ;***

(f) Judgment of the Karnataka High Court in the case of ***United India Insurance Co. Ltd Vs. Smt.Chandramma and Others*** reported in ***ILR 1999 KAR 523 ;***

(g) Judgment of the Orissa High Court in the case of ***United India Insurance Co. Ltd Vs. Labanyabati Dev and Others*** reported in ***2011 SCC Online Ori 83 ;***

(h) Judgment of the Hon'ble Supreme Court in the case of ***Manuara Khatun and Others V. Rajesh Kumar Singh and Others*** reported in ***2017 [4] SCC 796 ;***

(i) Judgment of the Hon'ble Supreme Court in the case of ***Anu Bhanvara and Others Vs. IFFCO Tokio General Insurance Co. Ltd and Others*** reported in ***2020 [20] SC 632 ;***

(j) Judgment of the Hon'ble Supreme Court in the case of ***Balu Krishna Chavan Vs. Reliance General Insurance Co.Ltd and Others*** reported in ***2022 [2] TN MAC 593 [SC] ;***

(k) Judgment of the Hon'ble Supreme Court in the case of ***Pushpabai Purshottam Udeshi and Others Vs. Messrs.Ranjith Ginning and Pressing Company Pvt Ltd and Others*** reported in ***1977 [2] SCC 745 ;***

(l) A Three Judge Bench Judgment of the Hon'ble Supreme Court in the case of ***Oriental Insurance Company Ltd. Vs. Ajay Kumar*** reported in ***1999 SCC Online Ker 291 ;***

(m) A Five Judge Bench Judgment of the Hon'ble Supreme Court in the case of ***New India Assurance Co Ltd Vs. C.M.Jaya and Others*** reported in ***2002 [2] SCC 278 ;***

(n) A Three Judge Bench Judgment of the Hon'ble Supreme Court in the case of ***New India Assurance Co. Ltd Vs. Asha Rani and Others*** reported in ***2003 [2] SCC 223 ;***

(o) A Three Judge Bench Judgment of the Hon'ble Supreme Court in the case of ***New India Assurance Co. Ltd Vs. Baljit Kaur & Others*** reported in ***2004 [2] SCC 1 ;***

(p) Judgment of the Hon'ble Supreme Court in the case of ***United India Insurance Co.Ltd V. Santro Devi and Others*** reported in ***2009 [1] SCC 558 ;***

(q) A Division Bench Judgment of this Court in the case of ***Royal Sundaram Alliance Insurance Co. Ltd Vs. A. Meenakshi and Others*** reported in ***2009 [2] LW 353 ;***

(r) Judgment of the Delhi High Court in the cse of ***Yashpal Luthra and Others Vs. United India Insurance Co. Ltd*** reported in ***CDJ 2009 DHC 834 ;***

(s) Judgment of the Hon'ble Supreme Court in the case of ***National Insurance Co.Ltd Vs. Saju P.Paul and Another*** reported in ***2013 [2] SCC 41 ; and***

(t) Judgment of learned Single Judge of this Court in the case of ***National Insurance Co. Ltd Vs. Krishnan*** reported in ***2013 SCC Online Mad 992.***

(39) We find that none of the judgments above referred to and relied upon by the learned counsel for the claimants are applicable to the facts of the

present case and therefore, this Court finds that the Appeal filed by the Insurance Company has to be allowed and the judgment and decree of the Tribunal is liable to be set aside.

(40)Learned counsel for the claimants though referred to the filing of Cross Objection No.77/2017, he has not made any serious submissions on merits in the Cross Objection. The Tribunal on its own, based on the admission of claimants, deducted 1/3rd of salary of the deceased Palanisamy as the claimants are also drawing Family Pension as a result of the accident. Since no argument was advanced and no judgment was cited to show that the view expressed by the Tribunal is contrary to the settled principles of law on this issue, this Court does not find any merit in the Cross Objection of the claimants. Since the liability is now against the 4th respondent/owner of the vehicle, who is also a Head Constable, this Court finds that the 4th respondent who did not avail an opportunity to dispute the claim will be put to more prejudice if more compensation is fixed in this appeal. Hence, this Court is of the view that the Cross Objection is liable to be dismissed.

(41)We find no reason to reduce the compensation awarded by the Tribunal as the Tribunal has arrived at the monthly income of the deceased properly on the basis of supporting documents and fixed the multiplier in terms of the decision of the Hon'ble Supreme Court in the case of ***Sarala Verma Vs. Delhi Transport Corporation and Another*** reported in ***2009 [6] SCC 121.*** The sum awarded towards other heads are reasonable. Hence, the quantum fixed by the Tribunal is confirmed. However, the award of Tribunal directing the Insurance Company to pay the compensation amount alone is set aside. In stead, the liability will be that of the 4th respondent, namely the owner of the vehicle and the 4th respondent shall pay the award amount as directed by the Tribunal to the claimants, with interest @ 7.5% per annum from the date of petition till the date of payment.

(42)In the result,

(a) CMA.No.3658/2014 filed by the New India Assurance Company Limited is allowed and the judgment and decree dated 16.04.2014 made in MCOP.No.1426/2010 on the file of the Motor Accident

Claims Tribunal [Subordinate Judge], at Tiruppur, insofar as fixing the liability on the Insurance Company is set aside.

(b) **Quantum of compensation awarded by the Tribunal to the tune of Rs.20,20,000/- [Rupees Twenty Lakhs Twenty Thousand only] is confirmed.**

(c) **The 4th respondent, namely, Mr.S.Arjunan, is liable to pay the Award amount of Rs.20,20,000/- with interest @ 7.5% per annum from the date of petition till the date of payment.**

(d) **Cross Objection No.77/2017 stands dismissed.**

(e) Consequently, connected Miscellaneous Petition is closed. There shall be no order as to costs.

[S.S.S.R.J.,] [P.B.B.J.,]
24.03.2023

Internet: Yes
AP

To
1.The Subordinate Judge,
Motor Accidents Claims Tribunal,
Tirupur.

2.M/s.New India Assurance Co.Ltd

1st Floor, Amman Complex
No.1360, EVN Road
Erode 638 011.

3.The Secretary, Union of India,
Ministry of Surface Transport
New Delhi.

4.The Secretary, Union of India,
Finance Department
New Delhi.

5.The Chairman
Insurance Regulatory & Development
Authority of India [IRDAI]
Sy.No.115/1, Financial District
Nanakramguda Gochibowli
Hyderabad 500 032.

6.The Home Secretary,
State of Tamil Nadu
Fort St George, Chennai.

7.The Secretary, State of Tamil Nadu,
Transport Department
Fort St George, Chennai.

8.The Director General of Police
State of Tamil Nadu
Mylapore, Chennai.

S.S.SUNDAR, J.,
AND
P.B.BALAJI, J.,

AP

**Common Judgment in
CMA.No.3658/2014 &
Cross Appeal No.77/2017**

24.03.2023