IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.11.2023

CORAM :

THE HONOURABLE MR. JUSTICE **M. DHANDAPANI**

C.M.A.No.480 of 2020
and
CMP.No.2709 of 2020

T.Shanmugam ...Appellant

Vs.

1. Simson

2. The Manager,
ICICI Lambord Insurance Company Limited,
Arihant Plaza, No.84/85, Waltax Road,
Chennai – 600 003. ...Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgement and Decree dated 31.08.2012 made in M.A.C.T.O.P.No.263 of 2009 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate, Thiruvallur.

For Appellant : Ms.A.Subadra

For Respondents : No Appearance, for R1
: Mr.K.Poomalai, for R2

JUDGMENT

Aggrieved by the Judgement and Decree dated 31.08.2012 made in M.A.C.T.O.P.No.263 of 2009 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate, Thiruvallur, the appellant has come up with this Appeal

2. The appellant is the owner of the tractor in which the 1st respondent travelled at the time of accident. The 1st respondent had filed a claim petition alleging that, on 08.09.2008 at about 06.30 am, when he was travelling as agricultural coolie in a tractor bearing Regn.No.TN-20-AF-7171 from Palavakam to Periyapalayam, near Chengalammal temple, due to the rash and negligent driving of the driver of the said tractor, the said Tractor dashed against a Santro car bearing Regn.No.TN-07-Q-5209 which came in the opposite direction, as a result of which, the 1st respondent sustained grievous injury all over his body and fracture on his right leg and had become permanently disabled. Thereby, the 1st respondent filed a claim petition under Section 166 of Motor Vehicles Act, 1988 (in short 'MV Act') seeking payment of compensation of Rs.2,50,000/-. After contest, the tribunal, vide impugned order directed

the appellant herein to pay a sum of Rs.3,69,000/- as compensation to the 1st respondent. Challenging the same, the appellant is before this Court.

3. Learned counsel appearing for the appellant submitted that, admittedly due to rash and negligent driving of the driver of the appellant vehicle, the said accident had occurred. However, the appellant had taken a comprehensive package policy from the 2nd respondent which covers all the situations and is not an Act Only Policy. The policy has been marked as Ex.R-5, from which it is clear that the carrying capacity of the tractor vehicle is only 2 and the appellant paid a premium to the tune of Rs.6,000/- and as per Section 147 of the MV Act, more particularly clause (i) of sub-section (1) therein, the authorised representative carried in the vehicle is also insured and, therefore, in respect of the accident, the insurer is liable to indemnify the owner of the vehicle and therefore, the 1st respondent is entitled for compensation at the hands of the insurance company/2nd respondent herein.

4. In view of Section 147 (1) (i), the claimant, not being a

gratuitous passenger in the said vehicle, the said provision enures to the benefit of the 1st respondent and the 2nd respondent insurance company is liable to pay compensation. While so, without considering the same, the tribunal had mechanically fastened the liability as against the appellant which is not sustainable and the same is contrary to Section 147 of the MV Act. Accordingly, she prayed for necessary direction to the 2nd respondent insurance company to pay the compensation as awarded by the Tribunal in indemnification of the appellant.

5. Per contra, the learned counsel appearing for the 2nd respondent submitted that, as per the policy, the owner cum driver alone is entitled to claim fixed personal accident coverage and apart from that, the driver of the vehicle is entitled to claim compensation. Though it is mentioned that the seating capacity is two, it does not mean that the second person who travelled in the vehicle, the 1st respondent in the case on hand, is entitled to claim compensation, since the 1st respondent is an unauthorised passenger. He further relied upon the decision of the Hon'ble Division Bench of this Court in the case of ***Bharati Axa General Insurance Co. Ltd. Vs. Aandi*** reported in ***(2018) 2 TNMAC 731*** to hold that

unauthorised passengers are not entitled for claiming compensation as against the insurance company. In view of the above decision, necessarily the appellant has to pay the compensation to the 1st respondent and the Tribunal, after carefully considering all the above said facts had fastened the liability as against the appellant / the owner of the vehicle and the said order of the Tribunal does not warrants interference of this Court. Accordingly, he prayed for dismissal of this Appeal.

6. Heard learned counsel for the appellant and the learned counsel appearing for the 2nd respondent and perused the material documents placed on record.

7. Admittedly, the 1st respondent filed a claim petition alleging that, he travelled as an agricultural coolie in the tractor owned by the appellant, insured with the 2nd respondent and due to the rash and negligent driving of the driver of the appellant vehicle, the said accident occurred in which, the 1st respondent sustained grievous injuries.

8. The FIR, which has been marked as Ex.P-1, which was lodged by the driver of the Santro car coupled with the evidence of the eye witnesses to the occurrence clearly prove that the driver of the tractor had

driven the vehicle in a rash and negligent manner and was the cause for the accident, which fact has been established and had been accepted by the Tribunal.

9. The only issue that falls for consideration before this Court relates to the liability towards payment of compensation. It is the claim of the insurance company that the policy conditions does not permit carrying of gratuitous passenger and such passenger is not entitled to claim compensation.

10. Though such a contention has been advanced, a careful perusal of Ex.R-5, the policy document, which has been issued, insuring the vehicle in question, clearly reveals that the policy is a package policy, meaning thereby, that it is a comprehensive policy covering all situations and all persons.

11. The liability of the insurer with regard to the types of policies and the liability of the insurance company under the said policies have been exhaustively discussed by the Supreme Court and also the other

High Courts in a catena of decisions, which have been taken note of by this Court in its decision in ***M/s.Iffco Tokio General Insurance Co. Ltd. - Vs - Shahjahan & Anr. (WC.M.A. No.4163/2019 - Dated 19.01.2024)*** for the purpose of arriving at a finding as to the liability of the insurer in respect of covering the risk of a third party in an accident. After exhaustive consideration, this Court, in the said decision, held thus :-

> *"40. It is to be pointed out that the policy of insurance is a contract entered into between the first party and the second party, viz., the insurer and the insured and is governed by the provisions of the Contract Act. Both the parties, viz., the insurer and the insured are guided by the terms of the contract, meaning thereby, that whatever is agreed by the insurer to be indemnified on behalf of the insured will be payable by the insurer upon the any claim being made.*
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> *41. On the basis of the said contract, as per the mandate under Section 146 (1), the policy is issued by the insurance service providers under two categories, viz., (i) Comprehensive Policy/Package Policy and (ii) Act Only Policy/Liability Policy, which is not in dispute. An Act Only Policy/Liability Policy covers the liability of the insured by the insurer in respect of liabilities, which have been specifically undertaken to be covered by the insurer in the said policy, meaning thereby, that the liability to third party by the insurer, which is the basis of the coverage would be only to the extent of the persons, or classes of persons, who are undertaken to be insured. Therefore, the indemnification would be only on the basis of the terms agreed between the first and the second party and the scope for payment of compensation cannot be enlarged to classes of persons, who are not covered by payment of additional premium and, thereby, the insurer is not liable to indemnify.*
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> *42. In case of a Comprehensive Policy/Package Policy, as the name signifies, is a comprehensive policy, which covers the liability of the insured, thereby indemnified by the insurer, of all such persons, be it the occupants of the vehicle or a person outside the vehicle and any other person, towards any*

claim made by such persons, including the driver of the vehicle as also the damage to property of the third party. In a nutshell, a Comprehensive Policy/Package Policy is an extended version of the Act Only Policy or in other words, the Act Only Policy is a miniature version of the Comprehensive Policy/Package Policy. Therefore, be it the Act Only Policy or the Comprehensive Policy/Package Policy, the liability is covered by the terms of the contract entered into between the first and second party. The Act Only Policy is issued at the behest of the insured, whereby limited liability is fastened on the insurer, as per the terms of the contract agreed between the parties. Therefore, determination of the liability of the insurer would be on the basis of the type of policy, which has been taken by the insured.

* * * * * *

57. In fact, all the decisions relied on by the learned counsel on either side deal only with a Comprehensive Policy/Package Policy and such being the case, the policy would squarely attract the insurer to indemnify the claimants, even be it occupants of a private vehicle, as the comprehensive policy covers such liability. In this regard, useful reference can be had to the decision of the Apex Court in Balakrishnan case (supra), wherein the Apex Court, while adverting to the decision of the Delhi High Court in ***Yashpal Luthra – Vs – United India Insurance Co. Ltd. (2011 ACJ 1415 (Del))****, held as under :-*

> *"25. It is also worthy to note that the High Court, after referring to individual circulars issued by various insurance companies, eventually stated thus:*
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> *"27. 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."*
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> *26. In view of the aforesaid factual position, there is no scintilla of doubt that a "comprehensive/package*

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

(Emphasis Supplied)

58. From the above, it is evident that advisory had been given by the Insurance Regulatory Development Authority to all the insurance companies that where comprehensive policy/package policy is taken, it would cover the occupants of the private vehicle as well. Further, the Supreme Court had gone on to hold that in respect of "Act Policy" admittedly it cannot cover third party risk of an occupant in a car, but insofar as a comprehensive policy/package policy, the same would cover the occupant in a car. Therefore, this decision only furthers the case to the extent that insofar as Comprehensive Policy/Package Policy, the occupant of the private vehicle would stand covered for the purpose of claiming compensation, as premium has been paid for the said coverage under the terms of contract entered into between the insurer and the insured but no ratio has been laid down that the term "any person" appearing in Section 147 (1)(b)(i) would fall within the contours of the definition of "third party" u/s 145 (g).

59. In the above backdrop, it would be worthwhile to refer to the decision in Amrit Lal Sood case (supra), which had *formed the basis for arriving at a finding by the Division Bench in Chandrasekaran case (supra) that the term "any person" appearing in Section 147 (i)(b)(ii) of Act, 1988, would fall within the periphery of "third party" as defined u/s 145 (g) of Act, 1988. The relevant portion of the order is quoted hereunder :-*

> *"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 VIII of the Act. Section 95 of the Act provides that a policy of insurance must be one which insures the person against any liability which may be incurred by him in respect of death or bodily injury to any person or damage to any property of third party caused by or arising out of the use of the vehicle in a public place. The section does not however require a policy to cover the risk to passengers who are not 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.***
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> *5.* ***In the present case, the policy is admittedly a 'Comprehensive Policy'****. Comprehensive insurance' has been defined in Black's Law Dictionary 5th edition as 'All risk insurance' which in turn is defined as follows:-*
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> *"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. 2d 275. Type of policy which protects against all risks and perils except those specifically enumerated."*
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> *6. The relevant clauses in the policy before us are found in 'SECTION-II LIABILITY TO THIRD PARTIES'. They are:-*
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> *"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 order or with his permission provided that such Driver

(a) is not entitled indemnity under any other Policy

(b) shall as though he were the Insured observe fulfil and be subject to the terms exceptions conditions and limitations of this policy in so far as they can apply."

(Emphasis Supplied)

60. From the above decision, it is emphatically clear that an insurer is not prevented from covering wider risk than the minimum requirement of the statute u/s 147 whereby the risk to gratuitous passengers could also be covered, in which case the policy is not merely a statutory policy and, therefore, it has to be construed in accordance with the terms of the policy to determine the liability of the insurer."

12. From the above decision, it is clear that where the policy issued is a comprehensive/package policy, it covers an entire gamut of situations and all the persons connected with the accident. So now the only determination to be done by this Court is the nature of policy issued by

the 2nd respondent.

13. It is the specific case of the appellant that he had entered into a contract of insurance with the 2nd respondent for a package policy, which in the words of the Apex Court is a comprehensive policy. Therefore, the said policy covers all situations and all persons. The averment of the appellant as to the nature of policy purchased is not controverted by the insurance company. In the aforesaid scenario, a perusal of Ex.R-5, the policy of insurance, marked on behalf of the insurance company reveals that the policy purchased is a Package Policy, as is evident from the certificate of insurance. The premium has been paid for own damage as also covering third party liability. Any person, other than the owner and driver of the vehicle, would be a third party and premium having been paid specifically covering the third party, necessarily, the insurance company is bound to indemnify the owner of the vehicle towards the compensation payable to the 1st respondent.

14. Further, the stand of the insurance company that the 1st respondent is a gratuitous passenger has not been established by the

insurance company through any materials. However, the FIR, which has come to be registered at the instance of the driver of the Santro car clearly reveal that the 1st respondent is employed with the appellant and would be entitled to avail the benefit u/s 147 (1)(i) of the MV Act. Therefore, the 2nd respondent cannot wriggle out of its commitment to pay the compensation due to the 1st respondent on account of the accident. Therefore, the decision in *Bharati Axa case (supra)* relied on by the 2nd respondent, which deals with the liability of the insurance company towards gratuitous passenger would not be applicable to the case on hand, as in the present case, the 2nd respondent has not proved that the 1st respondent is a gratuitous passenger and not covered by the terms of the policy.

15. Further, a perusal of the Ex.R5 makes it clear that the carrying capacity of the vehicle insured with the 2nd respondent insurance company is two and in the said vehicle, apart from the driver, the 1st respondent was travelling, who was under employment of the appellant

and as such is an authorised representative of the appellant. Therefore, necessarily, the 1st respondent would be entitled to be covered u/s 147 (1)(i) of the MV Act and is entitled to claim compensation as against the 2nd respondent insurance company, as the 1st respondent is not a gratuitous passenger in the said vehicle, but an authorised representative of the owner of the vehicle. The 2nd respondent has not dislodged the said contention by placing any materials to substantiate that the 1st respondent was indeed a gratuitous passenger and, therefore, would not be covered by the terms of the contract. In such a backdrop, without appreciating the policy conditions in proper perspective, the Tribunal had fastened the liability only as against the appellant/the owner of the vehicle, while absolving the insurance company of its joint and several liability, which is wholly erroneous and unsustainable.

16. In the above circumstances, this Court, on the basis of the discussion made above and on appreciation of the materials available on record, comes to the definitive conclusion that the 2nd respondent is liable to pay the compensation on behalf of the appellant and the order passed by the Tribunal absolving the 2nd respondent of its liability to pay the

compensation is wholly erroneous and requires to be set aside.

17. In the result, the civil miscellaneous appeal is allowed and the impugned judgment and decree dated 31.08.2012 made in M.A.C.T.O.P.No.263 of 2009 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate, Thiruvallur fixing the liability as against the appellant is set aside and this Court fixes the liability on the 2nd respondent insurance company and the compensation is to be paid by the 2nd respondent to the 1st respondent. No costs. Consequently, the connected Miscellaneous petition is closed.

18. The 2nd respondent insurance company is directed to deposit the entire award amount, as awarded by the Tribunal, along with interests and costs, to the credit of M.A.C.T.O.P.No.263 of 2009 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate, Thiruvallur, within a period of two weeks from the date of receipt of a copy of this order. On such deposit being made, the Tribunal is directed to transfer the entire deposit amount to the bank account of the 1st respondent/ claimant through RTGS within a period of two weeks thereafter.

24.11.2023

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Index : Yes / No
NCC : Yes / No
Speaking order: : Yes / No

To

1.The Motor Accident Claims Tribunal,
V Court of Small Causes, Chennai.

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

M.DHANDAPANI, J.

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C.M.A.No.480 of 2020
and
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