



C.M.A(MD)No.789 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

Dated:28.10.2024

CORAM:

**THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN
and
THE HON'BLE MR JUSTICE K.K. RAMAKRISHNAN**

C.M.A(MD)No.789 of 2021

and

C.M.P(MD)No.7339 of 2021

The Branch Manager,
M/s.National Insurance Co., Ltd.,
175 A, Great Cotton Road,
Tuticorin.

: Appellant/2nd Respondent

Vs.

1.G.Danam

2.D.Chandra

3.D.Prince

: Respondents 1 & 3/ Petitioners

4.D.Antony Prathab Singh

: Respondent No.4/ Respondent No.1

PRAYER: Civil Miscellaneous Appeal has been filed under Section 173 of Motor Vehicles Act, 1988 against the judgment and decree dated 26.02.2021 passed in M.C.O.P.No.114 of 2018, on the file of the Motor Accident Claims Tribunal/II Additional District Court, Tuticorin.



C.M.A(MD)No.789 of 2021

For Appellant : M/s.P.Malini
For R1 & R2 : Mr.T.Selvakumaran
For R3 & R4 : No appearance

JUDGMENT

[Judgment of the Court was made by **K.K. RAMAKRISHNAN .J.**]

The Insurance Company filed this appeal challenging the liability fixed on the insurance company and order of pay and recovery in M.C.O.P.No.114 of 2018 passed by the Motor Accident Claims Tribunal, II Additional District Court, Tuticorin.

2.Facts of the case:-

On 12.06.2018 at about 03.30 p.m., the deceased Xaviour Premnath travelled as a pillion rider in the fourth respondent's bike bearing Registration No. TN 69 AJ 0596 ridden by one Karthick without licence. When they were proceeding in the Arel-Tuticorin main road, from West to East direction, the said bike met with an accident due to the rash and negligent driving by the said Karthick. In the result, the deceased



C.M.A(MD)No.789 of 2021

sustained injury and died. The deceased completed Diploma in Marine Engineering and was working as helper in Puthiyamputhur Kalpakka Chemicals and earned a sum of Rs.11,678/- per month. The claimants, who are dependants of the deceased, filed a claim petition claiming a sum of Rs.60,00,000/- as compensation.

3. The insurance company/appellant filed the counter affidavit denying the liability on the ground that the policy was an “Act policy” and the pillion rider was not entitled to claim compensation. Further, one Karthick rode the vehicle without licence and hence, they seek for dismissal of the claim petition.

4. With the said pleadings, the trial Court framed necessary issues.

5. To prove the case of the claimants, they examined three witnesses as P.W.1 to P.W.3 and marked Ex.P1 to Ex.P21 and on the side of the respondents, R.W.1 was examined and Ex.R1 was marked.



C.M.A(MD)No.789 of 2021

WEB COPY

6. Findings of the Tribunal

The learned Tribunal Judge, after considering the policy and also the evidence of R.W.1, did not accept the plea of the insurance company that as per the policy pillion rider was not entitled to claim compensation. But the Tribunal considering the fact that the said two-wheeler was ridden by one Karthick without having valid driving licence granted a sum of Rs.28,00,000/- as compensation with a direction to pay and recover.

7. Challenging the liability and direction of pay and recovery, the insurance company has filed this appeal.

8. Submission of the counsel for the appellant:-

The learned counsel appearing for the Insurance Company would submit that the policy is an Act policy and the same was marked as Ex.R1. R.W.1 was examined on the side of the insurance company. From the evidence, it is clear that in the policy there was no payment for additional premium to the pillion rider, and therefore, she seeks for setting aside the award passed by the learned Tribunal.



C.M.A(MD)No.789 of 2021

WEB COPY

(ii) She further submitted that even as per the findings of the Tribunal, the accident was caused by the rider of the two-wheeler, who had no valid licence and hence, when the rider of the two-wheeler rode the vehicle without any licence, the insurance company is not liable to pay compensation. When there is no liability on the part of Insurance Company, the Tribunal ordered pay and recover and the same is not legally maintainable.

(iii) For which, she relied on the following judgments:-

(i) United India Insurance Co., Ltd., Shimla vs. Tilak Singh and others reported in 2006(2) CTC 661;

(ii) United India Insurance Co., Ltd., vs. R.Krishnan reported in 2020(2) TN MAC 417 (DB);

(iii) Branch Manager, New India Assurance Co., Ltd., Vs.G.Sumathi and others reported in 2021(1) TNMAC 620 (DB);

(iv) New India Assurance Co., Ltd., vs. Ningawwa reported in 2020(1) TNMAC 737 (FB) (Kar.).



C.M.A(MD)No.789 of 2021

(iv) Relying on the above judgments, the learned counsel appearing for the insurance company submitted that in the case of the comprehensive policy, if there is any violation of the condition as per Section 149(4) of the Motor Vehicles Act, 1988, the Court has power to order pay and recovery. But in this case, there was no such situation and hence, she seeks for setting aside the order of pay and recover.

9. Submission of the learned counsel for the respondents:-

Per contra, the learned counsel for the claimants would submit that R.W.1 was examined on the side of the appellant/insurance company and he specifically admitted that as per the terms and conditions, there was no prohibition to grant compensation to the pillion riders.

10. With regard to the above principle, he relied on the judgment of three member bench of the Hon'ble Supreme Court in **2004 ACJ-1 (Swaran Singh)**. He also relied the Judgment of Hon'ble Full bench of this Court in the case reported in **2009 1 TNMAC 1 (FB)** and he seeks to dismiss the civil miscellaneous appeal.



C.M.A(MD)No.789 of 2021

11. From the above arguments, this Court framed the following points for consideration to decide the appeal:

(i) Whether Court below has correctly applied the principle of pay and recover?

(ii) Whether the Court below correctly interpreted terms of the policy and arrived at the conclusion that the appellant insurance company is liable to pay the compensation to the pillion rider of the insured two wheeler?

12.The learned counsel for the insurance company would submit that there is a requirement under the policy to pay a separate premium for the pillion rider in order to fasten liability on the insurance company under the policy marked under Ex.R.5. To appreciate the said submission, this Court perused the policy and extract the policy conditions:



C.M.A(MD)No.789 of 2021

[illegible]



C.M.A(MD)No.789 of 2021



Address all Tax Policy Issuing Office

राष्ट्रीय वनस्पति रक्षण कम्पनी लिमिटेड
NATIONAL INSURANCE COMPANY LIMITED
 Registered Office: No. 3, Midleton Street,
 Kolkata - 700 071

LIABILITY ONLY POLICY

WE HEREBY warrant by a proposal and declaration filed and placed in the Schedule 13.1 and 13.2 books of this contract and a document to be incorporated hereinto, applicable to the Company for the following material purposes and have paid the necessary consideration for such interest in respect of a share covering death in the period of insurance.

HOW THIS POLICY WITNESSETH

Thursday, 1 January 2009 and Copyright, content owned by Lippincott Williams & Wilkins

5. ROUTE TO THE AXES

- [illegible]

[illegible]

APPLICATION OF LIMITS OF INDEMNITY

APPLICATION OF LIMITS OF INDEMNITY
In the event of any accident involving indemnity, it is agreed that no person shall be liable to the terms of this Policy and/or of any Endorsement in respect of the amount of any indemnity at all apply to the appropriate amount of indemnity to all persons indemnified and such indemnity shall apply to the full extent of the limit of indemnity.

PERSONAL ACCIDENT COVER FOR OWNER-DRIVER

[illegible]

	Scale of compensation
0. best	100%
21. Loss of best limb or right of arm, or one limb and right of one arm.	100%
22. Loss of one limb or right of one arm.	50%
23. Loss of right of one limb or one of other than named limbs.	100%

Donated Water for

- [illegible]

$$\text{The } \sum_{i=1}^n \lambda_i = 0$$

- [illegible]





C.M.A(MD)No.789 of 2021

policy and implementation of the policy.

WEB COPY

14. In the case of comprehensive policy, there was no denial of the liability. Hence, this Court is unable to accept the arguments of the learned counsel for the appellant that the company is not liable to pay compensation even in the case of policy taken as comprehensive policy without making separate premium to the pillion rider.

15. Upon the careful consideration of the policy terms, this Court is unable to find any such requirement to pay separate premium for the pillion rider. In the clause ***i) liability to third parties 1.(i) death of or bodily injury to any person so far as it is necessary to meet the requirements of the Motor Vehicles Act.***

16. From the above clause, it is clear that as per the Motor Vehicles Act, and the following circular issued by the IRDA, “the standard policy”(Motor Vehicle Accident), expressly and impliedly deemed to include the pillion rider. To appreciate both side contentions, this Court extracts circular issued by IRDA in the following tabular column:



C.M.A(MD)No.789 of 2021

WEB COPY

17. Thereafter, IRDA issued the circular with coverage of pillion rider under the “*standard Motor package Policy*”:

Ref: IRDA/NL/CIR/F&U/073/11/2009 November 16, 2009

To

CEOs of all General Insurance Companies

Re: Liability of Insurance Companies in respect of Occupants of a Private Car and Pillion rider on a Two-Wheeler under Standard Motor Package Policy [also called Comprehensive Policy].

Insurers' attention is drawn to wordings of Section II (1)(ii) of Standard Motor Package Policy (also called Comprehensive Policy) for Private Car and Two-Wheeler under the (erstwhile) India Motor Tariff. For convenience the relevant provisions are reproduced hereunder:

Section II - Liability to Third Parties:

1. Subject to the limits of liabilities as laid down in the Schedule hereto the Company will indemnify the insured in the event of an accident caused by or arising out of the use of the insured vehicle against all sums which the insured shall become legally liable to pay in respect of—

(i) death or bodily injury to any person including occupants carried in the vehicle (provided such occupants are not carried for hire or reward) but except so far as it is necessary to meet the requirements of Motor



C.M.A(MD)No.789 of 2021

Vehicles Act, the Company shall not be liable where such death or injury arises out of and in the course of employment of such person by the insured.

It is further brought to the attention of insurers that the above provisions are in line with the following Circulars earlier issued by the TAC on the subject:

- (i) Circular M.V. No. 1 of 1978 - dated 18th March, 1978 [regarding occupants carried in Private Car] effective from 25th March, 1977.
- (ii) MOT/GEN/10 dated 2nd June, 1986 [regarding Pillion Riders in a Two-Wheeler] effective from the date of the Circular.

The above Circulars make it clear that the insured's liability in respect of Occupant(s) carried in a Private Car and Pillion Rider carried on Two-wheeler is covered under the Standard Motor Package Policy. A copy each of the above circulars is enclosed for ready reference.

The Authority vide circular No. 066/IRDA/F&U/Mar-08 dated March 26, 2008 issued under File & Use Guidelines has reiterated that pending further orders the insurers shall not vary the coverage, terms and conditions wording, warranties, clauses and endorsements in respect of covers that were under the erstwhile tariffs. Further the Authority, vide Circular No. 019/IRDA/NL/F&U/Oct-08 dated November 6, 2008 has mandated that insurers are not permitted to abridge the scope of standard covers available under the erstwhile tariffs beyond the options permitted in the erstwhile tariffs.

All General Insurers are advised to adhere to the afore-mentioned Circulars and any non-compliance of the same would be viewed seriously by the Authority.



C.M.A(MD)No.789 of 2021

This is issued with the approve of Competent Authority.

WEB COPY

Sd/- (Prabodh Chander)

Executive Director

18.After the above circulars, the standard Motor Package Policy itself covers pillion rider without any doubt. Further, during the course of the hearing of Delhi High Court in the case of ***Yashpal Luthra Vs. United Insurance Company*** reported in ***2011 ACJ 1415***, IRDA sent further communication to all the insurance company, which reads as follows:

IRDA/NL/CIR/F&U/078/12/2009 3rd Dec. 2009.

To

All CEOs of All General Insurance Companies (except ECGC, AIC, Staff Health, Apollo)

Re: Liability of Insurance Companies in respect of Occupant of a Private Car and Pillion Rider in a Two-Wheeler under Standard Motor Package Policy (also called Comprehensive Policy).

14/26



C.M.A(MD)No.789 of 2021

Pursuant to the Order of the Delhi High Court dated 23.11.2009 in MAC APP No. 176/209 in the case of *Yashpal Luthrav. United India*, the Authority convened a meeting on November 26, 2009 of the CEOs of all the general insurance companies doing motor insurance business in the presence of the Counsel appearing on behalf of the Authority and the leaned *amicus curie*.

Based on the unanimous decision taken in the meeting by the representatives of the general insurance companies to comply with the IRDA circular dated 16th November, 2009 restating the position relating to the liability of all the general insurance companies doing motor insurance business in respect of the occupants in a Private Car and pillion rider on a Two-Wheeler under the Comprehensive/Package Policies which was communicated to the Court on the same day *i.e.* November 26, 2009 and the Court was pleased to pass the order (dt. 26.11.2009) received from the Court Master, Delhi High Court, is enclosed for your ready reference and adherence. In terms of the said order and the admitted liability of all the general insurance companies doing motor insurance business in respect of the occupants in a Private Car and pillion rider on a Two-Wheeler under the Comprehensive/Package Policies, you are advised to confirm to the Authority,

strict compliance of the Circular dated 16th November, 2009 and orders dt. 26.11.2009 of the High Court. Such compliance on your part would also involve:

- (i) withdrawing the plea against such a contest wherever taken in the cases pending before the MACT, and issue appropriate instructions to their respective lawyers and the operating officers within 7 days.
- (ii) with respect to all Appeals pending before the High Courts on this point, issuing instructions within 7 days to the respective operating officers and the Counsels to withdraw the contest on this ground which would require identification of the number of Appeals pending before the High Courts (whether filed by the Claimants or the insurers) on this issue within a period of 2 weeks and the contest on this ground being withdrawn within a period of four weeks thereafter.
- (iii) with respect to the Appeals pending before the Hon'ble Supreme Court, informing, within a period of 7 days, their respective Advocates on record about the IRDA Circulars, for appropriate advice and action.

Your attention is also drawn to the discussions in the CEOs meeting on 26.11.2009, when it was reiterated that insurers must take immediate steps to collect statistics about accident claims on the above subject through a central point of reference



C.M.A(MD)No.789 of 2021

decided by them as the same has to be communicated in due course to the Honourable High Court. You are, therefore, advised to take up the exercise of collecting and collating the information within a period of two months to ensure necessary & effective compliance of the order of the Court. The information may be centralized with the Secretariat of the General Insurance Council and also furnished to us.

The IRDA requires a written confirmation from you on the action taken by you in this regard.

This has the approval of the Competent Authority.

Sd/- (Prabodh Chander)

Executive Director

19.From the above reading of the circulars, it is clear that the argument of the learned counsel for the insurance company under the caption of “*Act policy*”, is misconceived.

19.1.It is also well settled principle that IRDA regulations guidelines and circulars are binding on the insurance companies and the same has been reiterated by the Hon'ble Supreme Court in the case of ***United India Insurance Co. Ltd. v. Manubhai Dharmasinhbhai Gajera***, reported in ***2008 10 SCC 404*** and the relevant paragraph is as follows:-

35. The Authority wants the insurance companies to offer a fair deal and all the terms and conditions of their offer must be transparent. There should not be any hidden



C.M.A(MD)No.789 of 2021

agenda. Even they should not take recourse to “ticketing contract”. When, however, the terms of the new product or revised product require the approval of the Authority, prima facie, the same would mean that they are fair and reasonable. The action on the part of the Authority is not in question. Regulations, guidelines and circulars are binding on the insurance companies.

19.2. Therefore, when the IRDA clearly demonstrated the standard Motor Policy which is also known as the comprehensive policy covering the liability to the two wheeler by giving the purposive interpretation to the third party to the policy which is legislative in nature and the same is binding on the insurance company Therefore, the argument of the learned counsel for the insurance company that there is requirement under the policy to make a separate premium cannot be accepted. Further, the said position was clarified in detailed manner by the Hon'ble Supreme Court in the case of ***National Insurance Company Ltd., vs. Balakrishananand others*** reported in ***2013 1 SCC 731***.

20. It is also settled principle that when the insurance company took a plea that there is a requirement to pay separate premium under the



C.M.A(MD)No.789 of 2021

policy, the insurance company is duty bound to prove the said fact. In this aspect, it is relevant to follow the following portion of the judgment of the Hon'ble Supreme Court in the case of National Insurance Company Ltd., Vs. Jugal Kishore and others reported in **1988 (1) SCC 626**:

10. Before parting with the case, we consider it necessary to refer to the attitude often adopted by the Insurance Companies, as was adopted even in this case, of not filing a copy of the policy before the Tribunal and even before the High Court in appeal. In this connection what is of significance is that the claimants for compensation under the Act are invariably not possessed of either the policy or a copy thereof. This Court has consistently emphasised that it is the duty of the party which is in possession of a document which would be helpful in doing justice in the cause to produce the said document and such party should not be permitted to take shelter behind the abstract doctrine of burden of proof. This duty is greater in the case of instrumentalities of the State such as the appellant who are under an obligation to act fairly. In many cases



WEB COPY



C.M.A(MD)No.789 of 2021

even the owner of the vehicle for reasons known to him does not choose to produce the policy or a copy thereof. We accordingly wish to emphasise that in all such cases where the Insurance Company concerned wishes to take a defence in a claim petition that its liability is not in excess of the statutory liability it should file a copy of the insurance policy along with its defence. Even in the instant case had it been done so at the appropriate stage necessity of approaching this Court in civil appeal would in all probability have been avoided. Filing a copy of the policy, therefore, not only cuts short avoidable litigation but also helps the court in doing justice between the parties. The obligation on the part of the State or its instrumentalities to act fairly can never be over-emphasised.

21.From the above principle, it is clear that no such requirement is mentioned in the policy marked before the Court below in this case. Therefore, this Court affirms the finding of the learned Tribunal Judge fixing the liability upon the insurance company.



C.M.A(MD)No.789 of 2021

22.The Insurance Company took a plea that the rider of the two wheeler had no valid licence. Ex.P3 is the Motor Vehicle Inspection report. In the said report, it is stated that no driving licence was found on record. To disprove the same, neither the owner of the two wheeler nor the claimants produced any documents to show that the rider had valid driving licence. There was no evidence from the Regional Transport Office to prove the existence of the licence. Therefore, the learned Tribunal Judge has correctly held that the rider of the two wheeler rode the two wheeler without any valid licence. The said finding of the learned Tribunal Judge was not challenged by the owner of the two wheeler, namely, the first respondent in the claim petition. In the said circumstances, the direction of the learned trial Judge to pay and recover the compensation amount from the owner of the vehicle is sustainable. The said issue is already settled by the Hon'ble Three Judges Bench of the Supreme Court reported in **2004 ACJ (1)** and in number of subsequent judgments. If the rider of the two wheeler did not possess the driving licence, the insurance company must satisfy the award at the first instance and recover the same from the owner of the vehicle and the same is fortified by the judgments:

20/26



C.M.A(MD)No.789 of 2021

WEB COPY

23.The Hon'ble Full Bench of Karnataka High Court dealt with the issue of application of the pay and recovery in the case of the deceased who travelled as a gratuitous passenger in the goods vehicle. The said Full Bench also affirmed in paragraph No.81, the principle laid down by the Hon'ble Supreme Court in “*Swaran Singh case*”, *Baljit Kaur Case* and *Shammanna's Case*. Apart from that, in paragraph No.83, the Full Bench (**New India Assurance Co., Ltd., vs. Ningawwa** reported in **2020(1) TNMAC 737 (FB) (Kar.)**.) answered as follows:

83.With the above said observations, we answer the questions 1 and 2 which are referred for our consideration, in the following manner:

Question referred:

(I)if it is shown the Insurance Policy is not 'Act' Policy in terms of Sections 145 & 147 of the Motor Vehicles Act, but a Contractual Policy issued collecting extra premium indicating Insurance Company has enlarged its liability, will not the Insurance Company be liable to pay and recover even if there is any breach by the Insurer?

(II) In such cases, is not the rule to 'pay and recover' applicable in view of the mandate in Section 149,M.V.Act, that upon issuance of Policy, the Insurer is bound to discharge the Award as if it were a Judgment-debtor?

Answers:

(i)The insurer is liable to pay the Third



party to recover from the insured even if there is breach of any condition recognized under Section 149(2) even if it is a fundamental breach (that is breach of condition which is the cause for the accident) and the Insurer proves the said breach, in view of the mandate under Section 149(1) of the Act. But no such order can be passed against the Insurer, if, on the facts and circumstances of a case, a finding is given by the Court that the Third party (Injured or deceased) had played and fraud or was in collusion with the insured, individually or collectively, for a wrongful gain to themselves or cause wrongful loss to the Insurer.

(ii) The Court can also fasten the absolute liability on the Insurer, if there is any breach of condition which is enumerated under Section 149(2) of the Act, or any other condition of the Policy if the Insurance Company has waived breach of any such condition or has taken the special responsibility to pay by collecting extra premium by covering any type of risk depending upon facts of each case.

(iii) Before passing any order on the Insurance Company to pay and recover, the Court has to examine the facts and circumstances of each case and if it finds that the victim, injured or the deceased, in a particular case, was solely or jointly responsible for breach of such fundamental condition by playing fraud or in collusion with the insured, the Court may exercise its discretion not to fasten the liability on the Insurer.

(iv) However, the Court should not adopt the above guideline as a general rule in all cases, but only under peculiar facts and circumstances of each case and on giving appropriate reasons.



C.M.A(MD)No.789 of 2021

*In the result, the Appeal is dismissed.
Parties to bear their respective costs.*

WEB COPY

24.From reading of the above, this Court does not find any infirmity in the direction of the learned Tribunal Judge to pay and recover on consideration of the policy marked before the Court below.

25.Further, the ratio of the Division Bench of this Court reported in **2020 2 TNMAC 417** relied by the learned counsel for the insurance company is not applicable to the facts of the present case. In paragraph No.20.8, this Court has held that in order to cover its employee under the insurance policy other than the permitted workers, the requirement of the payment of the additional premium on the part of the insured has been elaborately considered and in the absence of any such payment, this Court has held that the insurance company is not liable to pay the amount. In this case, as already discussed, the standard motor policy itself impliedly and expressly covered the pillion rider. Therefore, this Court unable to accept the argument of the learned counsel for the appellant to disown the liability on the basis of the above ratio laid down in **2020 2 TNMAC 417**. Similarly, this Court is unable to accept the decision of this Court reported in **2021 1 TNMAC 620** for the reason that in the said judgment,



C.M.A(MD)No.789 of 2021

the above circular issued by IRDA and the judgment of the Hon'ble Supreme Court reported in **2013 (1) SCC 731** was not considered.

26. In view of the above discussion on the various factual and legal aspects, the contention of the learned counsel for the appellant that without making any separate payment of premium for the pillion rider of the two wheeler, the direction of the learned Tribunal Judge to pay and recover is not correct cannot be accepted.

27. The questions framed are answered against the appellant and in favour of the claimants.

28. Hence, this Court finds no merit in the contention of the counsel for the appellant and Civil Miscellaneous Appeal is dismissed by confirming the judgment and decree dated 26.02.2021 passed in M.C.O.P.No.114 of 2018, by the Motor Accident Claims Tribunal/II Additional District Court, Tuticorin. Consequently, the connected Miscellaneous Petition is closed. No costs.



WEB COPY



C.M.A(MD)No.789 of 2021

(V.B.S.J.) (K.K.R.K.J.)
28.10.2024

Index: Yes/No
Internet: Yes/No
am/sbn

To

1. The Motor Accident Claims Tribunal/
II Additional District Court, Tuticorin.
2. The Section Officer,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



C.M.A(MD)No.789 of 2021

V.BHAVANI SUBBAROYAN.J.,
and
K.K. RAMAKRISHNAN.J.,

am/sbn

C.M.A(MD)No.789 of 2021

28.10.2024