



IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 27-03-2026 :::: PRONOUNCED ON : 08-07-2026

CORAM

THE HON'BLE MR.JUSTICE K.KUMARESH BABU

CMA Nos. 273, 275 & 387 of 2020
and CMP Nos. 1901, 1896 & 2428 of 2020

CMA No. 273 of 2020:-

Iffco-Tokio General Insurance Company Ltd.
Servicing Office, Shashi Kiran Building,
1st Floor, Shankar Mutta Road,
Shimoga, Karnataka.

..Appellant(s)

Vs.

1. Manjunatha
2. Chudappa

..Respondent(s)

Prayer : This Appeal to set aside the decree and judgement dated 06.09.2019 passed in M.C.O.P. No. 179 of 2018 by the learned Motor Accidents Claims Tribunal (Additional District Judge), Hosur and to dismiss the claim and allow the above CMA.

For Appellant(s): Mr.B.Siva Kollappan

For Respondent(s): M/s.Mukund R Pandiyan(R2)
Mr.C.Prabakaran (R1)

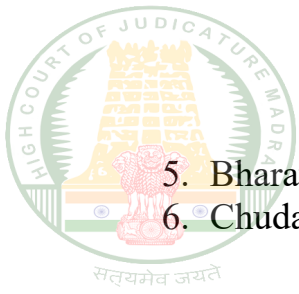
CMA No. 275 of 2020:-

Iffco-Tokio General Insurance Company Ltd
Servicing Office, Shashi Kiran Building, 1st Floor,
Shankar Mutta Road, Shimoga, Karnataka.

..Appellant(s)

Vs

1. Chikkammaiah
2. Latha
3. Geetha
4. Bhagya



5. Bharathi
6. Chudappa

..Respondent(s)

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Prayer : This petition to set aside the decree and judgement dated 06.09.2019 passed in M.C.O.P.No.26 of 2018 by the learned Motor Accidents Claims Tribunal (Additional District Judge), Hosur and to dismiss the claim and allow the above CMA.

For Appellant(s): Mr.B.Siva Kollappan

For Respondent(s): M/s.Mukund R Pandiyan(R6)
Mr.C.Prabakaran (RR1 to 3 & 5)

CMA No. 387 of 2020:-

Iffco-Tokio General Insurance Company Ltd.
Servicing Office, Shashi Kiran Building, 1st Floor,
Shankar Mutta Road, Shimoga, Karnataka.

..Appellant(s)

Vs.

1. Kenchamma
2. Manjula
3. Manjunath
4. Chudappa

..Respondent(s)

Prayer : This petition to set aside the decree and judgment dated 06-09-2019 passed in MCOP No.27 of 2018 by the Learned Motor Accidents Claims Tribunal, (Additional District Judge) Hosur and to dismiss the claim and allow the above CMA.

For Appellant(s) : Mr.B.Siva Kollappan

For Respondent(s) : M/s.Mukund R Pandiyan(R4)
Mr.C.Prabakaran (RR1 to 3)

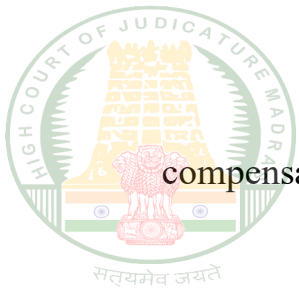


COMMON JUDGMENT

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The present Civil Miscellaneous Appeals are filed challenging the common judgement and decrees dated 06.09.2019 passed in M.C.O.P. Nos.179,27 and 26 of 2018 by the learned Motor Claims Tribunal (Additional District Judge) Hosur.

2. The facts leading to the present lis are that, on 02.05.2017 at about 3:30 p.m., an Eicher lorry bearing Registration No. KA-05-AB-7404, carrying three passengers, namely, deceased Mr.Yellappa @Ellappa, deceased Mr.Muniraj @ Chithurappa and injured Mr.Manjunatha, who were employed as a Coolies, were travelling in the said vehicle from Panjapalli to Denkanikottai. When the Eicher lorry reached near Akka Thangachi Gundu, the driver, while driving the vehicle in a rash and negligent manner, lost his control and hit a stone and capsized the lorry, resulting in the accident. As a result of the said accident, the said Mr.Yellappa @Ellappa and Mr.Muniraj @ Chithurappa succumbed to their injuries, while Mr. Manjunatha sustained severe injuries. Therefore the dependants of both the deceased and the injured Mr.Manjunatha had filed claim petitions individually. The owner and the insurer of the offending vehicle, viz., the Eicher lorry were impleaded as the 1st and 2nd respondents in each of the Claims petition. On the other hand, the second respondent/Insurance Company filed its counter statements in each of the claim petitions, denying its liability to



compensate the dependants and the injured claimant.

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3. The learned Claims Tribunal after advertising to the pleadings made by both sides, had determined the following points for consideration,

1. *Whether the accident had happened due to negligent act of the driver of the Eicher lorry bearing Regn.No.KA-05-AB-7404 ?*
2. *Whether the respondent is liable to pay compensation ? If so, how much compensation, the petitioners in MCOP.No.26/2018 is entitled to ?*
3. *Whether the respondent is liable to pay compensation ? If so, how much compensation, the petitioners in MCOP.No.27/2018 is entitled to ?*
4. *Whether the respondent is liable to pay compensation ? If so, how much compensation, the petitioner in MCOP.No.179/2018 is entitled to ?*

4. The learned Claims Tribunal after hearing both the sides and perusing the material available on record, had decided the above points vide its common judgement dated 06.09.2019.

5. Insofar as the Point No.1 is considered, the learned Claims Tribunal held that, the deceased persons along with the injured claimant were travelling as unauthorized passengers which is violation of policy condition. Accordingly it was held that the liability to pay the compensation to the claimants lies with the 1st respondent/owner. However, since the 2nd respondent was the insurer of



the offending vehicle at the time of accident, the Claims Tribunal directed that the 2nd respondent is liable to pay the compensation to the petitioners and to recover the same from the 1st respondent.

6. Insofar of as the Point Nos.2 to 4 are considered, the learned Claims Tribunal after considering the factors such as the age, monthly income and the extent of disability in the case of injured claimant and applying the principles laid down by the Hon'ble Apex Court in its judgements in the *Pranay Setti's case*, *Sarala Verma's case* and in the cases of *Jiju Kuruvila Vs Kunjamma Mohan* and *Rajesh Vs Rajbir Singh*, had decreed that, the claimants in the MCOP.No. 26 of 2018 are entitled to a compensation of Rs.5,71,000/- with an interest of 7.5% pa, the claimants in the MCOP.No.27 of 2018 are entitled to a compensation of Rs.11,39,600/- with an interest of 7.5% and the injured claimant in the MCOP.No.179 of 2018 are entitled to a compensation of Rs.2,57,728/- with an interest of 7.5%. Aggrieved by the impugned common judgement and the respective awards dated 06.09.2019, the insurance company, the 2nd respondent herein had filed the present Civil Miscellaneous Appeals against the its respective claimants, seeking the indulgence of this court.

7. Heard Mr.B.Siva Kollappan, learned counsel appearing on behalf of the appellant and Mr.MukundR.Pandiyan and Mr.C.Prabakaran, learned counsels appearing on behalf of the respective respondents.



8. These Civil Miscellaneous Appeals arise out of a common award.

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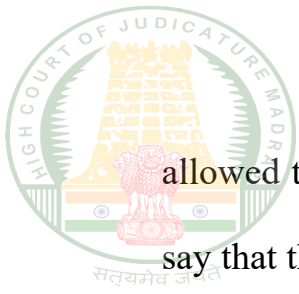
9. The learned counsel appearing for the appellant would contend that having given a finding that the deceased and the injured had travelled only as a gratuitous passenger, the Tribunal ought not to have been fastened the liability on the appellant to pay the compensation as awarded and recover the same from the owner of the vehicle. He would submit that when a finding had been arrived at by the Tribunal as regard to its liability, the principle of pay and recovery cannot at all be extended in the facts and circumstances of the case. In that context, he had relied upon the judgment of the Division Bench of this Court reported in 2018 (2) TNMAC 731 another another judgment reported in 2019 (2) TNMAC 86. Hence, he seeks indulgence of this Court.

10. Countering his arguments, the learned counsel appearing for the respective respondents, who were the claimants, would contend that the policy is not only a statutory policy as required under Section 147 of the Motor Vehicles Act, but also a policy which seeks to indemnify the own damages caused to the vehicle. He would submit that the accident had taken place during the subsistence of the policy and the appellant had not taken any action against the insured in respect of revocation of the policy and for such reason, the appellant cannot wriggle out the principle of pay and recover as it continues to



support the policy. He would also rely upon the judgment of the Hon'ble Apex Court reported in (2013) 1 SCC 731, which makes it abundantly clear that a policy that had been issued in respect of the Motor Vehicles can be bifurcated into a statutory policy and the contractual policy.

11. I have considered the submissions made by the respective counsels and perused the materials available on record. The *lis* that is to be resolved is as to whether the Tribunal was right in ordering pay and recover. There is no dispute that the policy is a composite one. The statutory policy is a compulsory insurance policy as envisaged under Section 147 of the Motor Vehicles Act. Any contract of indemnification outside the scope of the aforesaid provision would be of contract of indemnification that had been entered into between the insurer and the insured. It is true that the policy which is a statutory policy cannot be cancelled and would be binding on the parties until it is expired by efflux of time. However, it should be seen that as the policy issued by the appellant comprises of a statutory policy and also a contractual policy, the same could be bifurcated and the portion of the statutory policy cannot be cancelled. But as regards the contractual parts of the policy, which is not governed by Section 147 of the Act, on noting the violation of the policy, the appellant/insurance company had a right to resile from the said contractual obligation making such portion of the contract not binding on it. Having not taken any steps to resile itself from such contractual obligation and having

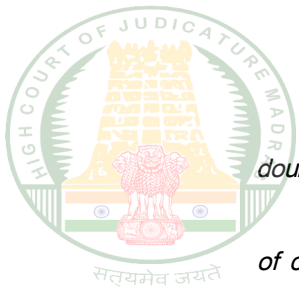


allowed the policy to expire by efflux of time, the appellant cannot be heard to say that the principle of pay and recover ought not to have been applied. If it has simpliciter statutory policy only governed by Section 147 of the Act, such an argument made by the appellant could have been appreciated, the reason to appreciate such contention would be that the appellant has no other option except to continue such a statutory policy. On the other hand, a perusal of the policy that had been marked as Ex.R1 would categorically show that the policy is not only a statutory policy but also a policy governed by certain contractual obligation. No materials have been placed before this Court with regard to any steps that was taken by the appellant/insurer as against the insured for violation of such a contract of indemnification that had been entered between itself and the insured.

12. A perusal of the Division Bench judgment relied upon by the learned counsel for the appellant would indicate that the Division Bench of this Court on noting that the issue arises out of a statutory liability governed by Section 147 of the Act and relying upon such judgment, which had dealt with the statutory liability under Section 147 of the Act, held that in such cases, the principle of pay and recovery should not be invoked.

13. For better appreciation, relevant paragraphs are extracted hereunder:-

2013 1 scc 731:- 26. In view of the aforesaid factual position, there is no scintilla of



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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 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 *Bhagyalakshmi* [(2009) 7 SCC 148 : (2009) 3 SCC (Civ) 87 : (2009) 3 SCC (Cri) 321] 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 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.

27. In view of the aforesaid legal position, the question that emerges for consideration is: whether in the case at hand, the policy is an "Act policy" or "comprehensive/package policy"? There has been no discussion either by the Tribunal or the High Court in this regard. True it is, before us, Annexure P-1 has been filed which is a policy issued by the insurer. It only mentions the policy to be a "comprehensive policy" but we are inclined to think that there has to be a



scanning of the terms of the entire policy to arrive at the conclusion whether it is really a

"package policy" to cover the liability of an occupant in a car.

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In the present case, there is no necessity for going into the issue of liability under the insurance policy as the challenge for liability to pay the compensation as given in the common award by the Tribunal on the vehicle had not been challenged by the vehicle owner.

14. In the present case, this Court had found that the policy of insurance is not only governed by Section 147 of the Act, but also a contract of indemnification which remain intact in spite of violation of such policy and therefore, the appellant cannot be allowed to resile from the principle of pay and recover.

15. In this context, it would be useful to refer to the judgment of the Hon'ble Apex Court in the case of *Akalya Narayana -vs- The Oriental Insurance Company Limited and another* made in Civil Appeal No. 013509 of 2025 dated 10.11.2025. The Hon'ble Apex Court in the aforesaid judgment, had dealt with the issue of pay and recover as an issue which had been consciously followed when the contract of insurance is not disputed. For better appreciation, the relevant paragraphs are extracted hereunder:-

“ 11. At the outset, we may observe that there is no appeal by the insured against the High Court's order holding him not



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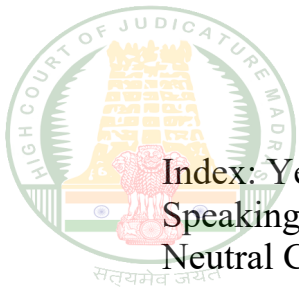


entitled to the benefit of insurance. In such circumstances, we have only to consider whether the High court should have completely absolved the insurer of its liability or ought to have directed the insurer to pay with liberty to recover the same from the vehicle owner.

12. Where the contract of insurance is not disputed, even on breach of insurance conditions, this Court had allowed recovery of compensation from the insurer by giving right to the insurer to recover the same from the vehicle owner. The pay and recover principle has been consistently followed even though it was doubted in a reference which remained unanswered. Taking a conspectus of various pronouncements, this Court recently **Rama Bai -vs- Amit Minerals** again applied the same principle and while allowing the appeal of the claimant directed that the insurance company shall satisfy the award and may recovery from the insured. Following the aforesaid decisions, we deem it appropriate to allow the appeal by directing that the first respondent (i.e., the insurer) shall satisfy the award, though, however, it can recover the amount so paid from the insured (i.e., owner of the vehicle).”

16. For the aforesaid reasons, this Court do not find any error or perversity in the impugned common award requiring interference. These Civil Miscellaneous Appeals are dismissed. No order as to costs. Consequently, connected Miscellaneous Petitions are closed.

08-07-2026

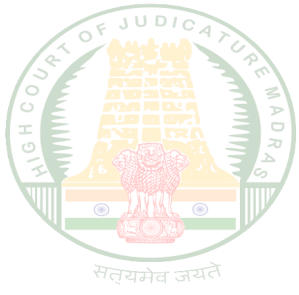


Index: Yes/No
Speaking/Non-speaking order
Neutral Citation: Yes/No

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CMA Nos. 273, 275 & 387 of 2018





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To

The Motor Accidents Claims Tribunal,
(Additional District Judge) Hosur.

CMA Nos. 273, 275 & 387 of 2020



K.KUMARESH BABU, J.

Maya

CMA Nos. 273, 275 & 387 of 2020

08-07-2026