IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	Pronounced on
13.12.2023	19.01.2024

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

C.M.A. NO.4163 OF 2019
AND
C.M.P. NO.23525 OF 2019

M/s.Iffco Tokio General Insurance Co. Ltd.
Rep. By its Manager
2nd Floor, Near Vemala Kalyana Mandapam
By Pass Road, Hosur, Krishnagiri District. .. Appellant

- Vs -

1. Mr. Shajahan
1. R.Sankaran .. Respondents

Civil Miscellaneous Appeal filed u/s 173 of the Motor Vehicles Act against the order and decreetal order dated 31.01.2019 made in M.C.O.P. No.613 of 2014 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate, Dharmapuri.

For Appellant : Mr. M.B.Raghavan, for
M/s. M.B.Gopalan Associates

For Respondents : Mr. S.Sathiaseelan for R-1
No Appearance for R-2

JUDGMENT

The present appeal is filed against the order passed by the Motor Accident Claims Tribunal, Chief Judicial Magistrate, Dharamapuri, in M.C.OP. No.613/2014 in and by which the Tribunal directed the appellant to pay compensation to the claimants and recover the same from the owner of the vehicle. Assailing the said order, by contending that the any person travelling in a private vehicle would not be covered under an Act Only Policy, the present appeal has been filed by the insurance company.

2. For the sake of convenience, the parties will be referred to as claimant, insurance company and the owner of the vehicle will be referred to as the 2nd respondent, as arrayed in the present appeal.

3. The short facts leading to the filing of the present appeal are as under :-

On 21.8.2014, at about 4.45 a.m., when the claimant was travelling in the car belonging to the 2nd respondent, which was driven by one Tamilarasu in Morappur – Dharmapuri main road in a rash and negligent manner, near Solaikottai the car dashed against a Tamarind tree in which the claimant suffered grievous injuries including fracture to the left leg and right leg and the Femur bone and Tibia were fractured. Therefore, the claim petition was preferred before the Tribunal seeking compensation to be paid jointly and severally by the insurance company and the 2nd respondent.

4. The main ground canvassed by the insurance company before the Tribunal to extricate itself from the liability to pay the compensation is that the policy taken by the 2nd respondent was a liability only policy, which runs for the period 25.06.2014 to 24.06.2015 and that the 2nd respondent, who is the owner of the car had not paid any additional premium to cover the risk of the passengers/occupants travelling in the car and, therefore, the claimant is not entitled to any compensation at the hands of the insurance company, as the insurance company is not vicariously liable to indemnify the insured under an Act Only Policy with regard to the occupants who are inside the

vehicle as such of those persons, who are travelling in the vehicle would not be covered under the Act Only Policy in the absence of additional premium being paid.

5. Before the Tribunal, the claimant examined himself as P.W.1 and marked Exs.P-1 to P-10. On the side of the insurance company, R.W.1 was examined and the copy of the policy was marked as Ex.R-1. On the basis of the oral and documentary evidence, the Tribunal held that any person beyond the insurer and the insured would fall within the ambit of "authorised representative" as the claimant was employed by the owner of the private vehicle, viz., the 2nd respondent and, therefore, would be entitled to compensation at the hands of the insurance company, which is to indemnify the claimant, but could recover the same from the 2nd respondent, viz., the owner of the vehicle, for the reasons stated in the impugned order. Aggrieved by the said order, the present appeal has been filed.

6. Learned counsel appearing for the appellant submitted that when the Act Only Policy did not cover liability of passengers in a private vehicle as

it is not a statutory compulsion u/s 147 of the Act, no liability can be fastened on the appellant to indemnify the claimant. It is the further submission of the learned counsel that when there is additional premium paid by the owner for the vehicle for coverage of the passenger in a private car, the passenger cannot be brought within the ambit of "third party", and the direction of the Tribunal directing the appellant to pay the compensation and, thereafter, to recover the same from the 2nd respondent is wholly misconceived. Further, it is the submission of the learned counsel that the finding that the claimant was employed under the 2nd respondent is wholly erroneous as is evident from the averments made by the claimant and even otherwise, the authorised representative of the owner in the private vehicle is distinguishable from third party as provided for u/s 147 (1)(b) (i) of the Act, 1988 and, therefore, the finding rendered by the Tribunal is erroneous and deserves to be set aside.

7. In support of his submissions, learned counsel for the appellant placed reliance on the following decisions :-

i) *New India Assurance Co. Ltd. – Vs – Asha Rani &Ors. (2003 ACJ 1);*

ii) *United India Insurance Co. Ltd. – Vs – Tilak Singh (AIR 2006 SC 1576);*

iii) *Oriental Insurance Co. Ltd. – Vs – K.V.Sudhakaran & Ors. (AIR 2008 SC 2729)*

iv) *New India Assurance Co. Ltd. – Vs – Meenakshi &Ors. (MANU/TN/1536/2023); and*

v) *The New Indian Assurance Co. Ltd. – Vs – S.Krishnasamy (MANU/TN/3049/2014 :: 2016 ACJ 5)*

8. Per contra, learned counsel appearing for the claimant submitted that the policy issued by the insurance company has to specifically state that the occupant of a private car is excluded from the purview of "third party", which is to be mentioned in the Terms and Conditions of the insurance policy and the Proposal-cum-Declaration and further submitted that even if the policy specifically excludes the occupant from being brought within the ambit of third party, the said condition runs contrary to the statutory provision and, thereby, the said condition is wholly illegal. It is the further submission of the learned counsel that the terms and conditions of the policy and the proposal-cum-declaration having not been marked before the Tribunal, the same cannot be the basis to negate the claim of the claimant, which has been properly appreciated by the Tribunal.

9. It is the further submission of the learned counsel that in the absence of specific exclusion of the occupant of the car from the purview of "Third Party" in the terms and conditions, the claimant would squarely fall within the definition of "third party" as defined under Section 145 (g) of the Act, 1988.

10. It is the further submission of the learned counsel that the policy even if it is an "Act only Policy", falls u/s 147 (1) (b) of the Act, and in the light of the definition found u/s 145 (g), the claim made by the occupants of the private car is maintainable and in this regard, reliance is placed on the decision of the Division Bench of this Court in ***National Insurance Co. Ltd. – Vs – V.S.R.Kumaresan (1989 SCC OnLine Mad 201)*** and ***Natarajan – Vs – D.Chandrasekaran (2004 (1) CTC 284)***.

11. Learned counsel for the claimant further submitted that the definition of *"Third Party"*, as provided for u/s 145 (g) is an inclusive definition, as per which, the Government is brought as a specific inclusion.

This clearly shows that the intention of the Parliament is not to exclude any class of persons from the purview of the benevolent legislation. It is the further submission of the learned counsel that the word "*includes"* used in Section 145 (g) enlarges the scope and meaning of the expression *"third party"* so as to comprehend *"third party"* not only such things as they signify according to their natural import but also those things which the clause declares that they shall include. In support of the aforesaid contention, reliance is placed on the following decisions :-

i) P.Kasilingam – Vs – PSG College of Technology (1995 Supp. (2) SCC 248);

ii) N.D.P.Namboodripad – Vs – Union of India (2007 (4) SCC 502); and

iii) Hamdard (Wakf) Laboratories – Vs – Deputy Labour Commissioner (2007 (5) SCC 281)

12. It is therefore the submission of the learned counsel that a *"third party"* to the exclusion of the insurer and the insured would include all other persons, including the occupant of the car or a person walking on the road and all such persons falling within the scope would be *"third party"* and

would be entitled to compensation from the insurance company, even on an Act Only Policy.

13. Learned counsel for the claimant further submitted that whether a passenger travelling in a private car would be covered by third party risk or not was considered by the Apex Court in the decision in ***Bhagyalakshmi – Vs – United India Insurance Co. Ltd. (2009 (7) SCC 148)*** and in view of the conflicting decisions of the Apex Court as to whether the passenger of a car would not be a *"third party"* or not, the matter was referred to a Larger Bench to decide the issue, which has been answered in favour of the appellant therein. Therefore, the said decision is squarely applicable to the present case as well.

14. It is the further submission of the learned counsel that the decisions relied on by the learned counsel for the insurance company in *Asha Rani, Tilak Singh, K.V.Sudhakaran and Balakrishnan case (supra)* have decided the issue only as to whether pillion rider of the two wheeler or occupant of a private car are covered under an "Act Only Policy"; rather the

issue as to whether pillion rider of a two wheeler or occupant of a private car would fall within the ambit of "third party" in line with Section 145 (g) of the Act has not been decided. Therefore, the said decisions would not in any way help the appellant to further their case.

15. It is the further submission of the learned counsel that Section 145 (g) is an inclusive definition and interpretation of *"third party"* appearing in the said provision was not brought to the attention of the Apex Court and in the absence of any authoritative pronouncement by the Apex Court, the decisions in *Kumaresan, Chandrasekaran case* and also in ***Royal Sundaram Alliance Insurance Co. Ltd. – Vs – A.Meenakshi (2009 (1) TN MAC 249 (DB)*** and ***New India Assurance Co. Ltd. – Vs – Murugan (2017 (1) TN MAC 184)*** should form the basis of this Court in deciding the issue and, accordingly, the answer has to be necessarily given in favour of the claimant.

16. Learned counsel for the claimant further submitted that though the earlier Division Benches in *Kumaresan, Chandrasekaran, Meenakshi and Murugan case* have taken a view that the *"third party"* would include even an

occupant of the car as also a pillion rider, however, the later Division Benches in the case of ***New India Assurance Co. Ltd. – Vs – N.Krishnasamy (2015 (1) TN MAC 19)*** and ***New India Assurance Co. Ltd. – Vs – Meenakshi (2023 SCC OnLine Mad 133)***, have held that the occupant of the car and pillion rider of two wheeler would not be third parties so as to claim compensation in the absence of payment of additional premium under comprehensive/package policy. However, the latter decisions have not taken into consideration the former decisions, which decisions are in line with Section 145 (g) of the Act. Therefore, alternatively it is pleaded that even if this Court is not inclined to accept the contentions raised on behalf of the claimant, this Court, as a matter of judicial discipline, shall refer the matter to be placed before a Larger Bench to settle the conflict in the decisions.

17. In support of the aforesaid submissions, learned counsel for the claimant placed reliance on the following decisions on various legal contentions advanced supra :-

i) Ramanlal Bhailal Patel – Vs – State of Gujarat (2008 (5) SCC 449);

ii) *Samir Agarwal – Vs – Competition Commission (2021 (3) SCC 136);*

iii) *P.Mohanraj – Vs – Shah Brothers Ispat Pvt. Ltd. (2021 (6) SCC 258);*

iv) *National Insurance Co. Ltd. – Vs. V.S.R.Kumaresan (1989 SCC OnLine Mad 201 (DB);*

v) *Natarajan – Vs – D.Chandrasekaran (2004 (1) CTC 284);*

vi) *Royal Sundaram Alliance Ins. Co. Ltd. – Vs – A.Meenakshi (2009 (1) TN MAC 249 (DB));*

vii) *New India Assurance Co. Ltd. – Vs – Murugan (2017 (1) TN MAC 184);*

viii) *Amrit Lal Sood – Vs – Kausalya Devi Thapar (1998 (3) SCC 744 (Larger Bench));*

ix) *Jugal Kishore – Vs – Ramlesh Devi (2004 (1) TN MAC 482 (MP – FB));*

x) *Dr. S.Jayaram Shetty – Vs – National Insurance Co. Ltd. (2002 SCC OnLine Kar 267 (DB));*

xi) *Oriental Insurance Co. Ltd. – Vs – Radharani (1997 SCC OnLine MP 204 (DB));*

xii) *Oriental Insurance Co. Ltd. – Vs – Ajayakumar (1999 SCC OnLine Ker 291 (FB));*

xiii) *Bhagyalakshmi – Vs – United India Insurance Co. Ltd. (2009 (7_) SCC 148);*

xiv) *Mohana Krishnan S – Vs – K.Balasubramaniyam (2022 (2) TN MAC 536 (SC));*

xv) *National Insurance Co. Ltd. – Vs – Balakrishnan (2013 (1) SCC 731)*

xvi) *New India Assurance Co. Ltd. – Vs – Meenakshi (2023 SCC OnLine Mad 1833 (DB)); and*

xvii) *National Insurance Co. Ltd. – Vs – Pranay Sethi (2017 (16) SCC 680)*

18. Replying to the submissions advanced on behalf of the claimant, learned counsel for the insurance company submitted that all the decisions, which the claimant has pressed into service relates to a Package Policy/Comprehensive Policy and not an Act Only Policy. It is the stand of the insurance company that while Package Policy/Comprehensive Policy specifically covers occupants, however, the Act Only Policy does not extend the scope to the occupants of the vehicle in the absence of any additional premium being paid and, therefore, the decisions in *Asha Rani, Tilak Singh and Balakrishnan case* are squarely attracted and necessarily the insurance company is not liable to indemnify the claimant.

19. It is the further submission of the learned counsel that even the decision in *Mohana Krishnan case (supra)*, has spelt out that the issue of the occupant of a private car falling within the ambit of *"third party"* has not been decided with reference to an Act Only Policy and that being the position, the decision in *Asha Rani, Tilak Singh and Balakrishnan case* would stand attracted.

20. This Court gave its anxious consideration to the submissions advanced by the learned counsel appearing on either side and perused the materials available on record and also the various decisions, which have been placed before this Court for consideration.

21. Exhaustive arguments were advanced on behalf of the claimant to persuade this Court to come to the conclusion that Section 145 (g), which defines *"third party"* to include the Government and is an inclusive definition, with a wide sweep and, therefore, any person, other than the first and second party, viz., the insurer and the insured would fall within the ambit of *"third party"* defined u/s 145 (g), and the occupant of the private vehicle, therefore,

would fall within the scope of *"any person"* appearing in Section 147 (1)(b)(i) of the Act, 1988 over and above the owner or his authorised representative, and, therefore, the claimant should be given the benefit of Section 145 (g) and, thereby, the insurance company would be jointly and severally liable, along with the 2nd respondent, to pay compensation to the claimant in terms of Section 147 and 149 of the Act.

22. In the above scenario, the question that falls before this Court for consideration is –

> *Whether the term "any person" found in Section 147 (1)(b)(i) of Act, 1988 would fall within the definition of "third party" as found in Section 145 (g) so as to include the occupant of a private vehicle, who is a gratuitous passenger covered by the terms of an Act Only Policy, irrespective of the fact that no additional premium is paid towards such person for extending the coverage under the Act Only Policy.*

23. The question, as coined above, therefore pertains only to a private vehicle, which is used for personal purposes by the owner of the vehicle and is not a vehicle, which is used for the transportation of goods or a passenger vehicle, which will fall within the realm of public service vehicle, in which passengers are carried for hire or reward. Therefore, the person travelling in the transport vehicle and public service vehicle would be gratuitous passengers, as it is a voluntary act of the person travelling in the vehicle and that too, for hire or reward and, therefore, it will attract only the rigour of Section 147 (1)(b)(ii).

24. Before this Court ventures into addressing the issue as also the question framed for consideration, the types of policies which are normally extended to the owner, thereby, indemnifying him from the rigours of payment in the event of any unfortunate happening, by the insurance companies requires a broader outline so as to appreciate the aforesaid contentions and to arrive at a just and reasonable decision, be it an affirmative decision or a reference to a Larger Bench.

25. Two types of policies are normally issued by the insurance companies on the basis of the approval by the Insurance Regulatory Development Authority with tweaks as is found beneficial between the parties to the insurance, viz., the insurer and the insured. One of the type of policy is generally called the *"Act Only Policy"* and the other policy is a Comprehensive Policy which is normally called a "*Package Policy"*. As denoted by the term *Package Policy* or *Comprehensive Policy*, the policy covers all the persons who are injured in the accident as also the instances, viz., death of a person or bodily injury to any passenger and damage to property of a third party, in respect of private vehicle, and it includes the owner of the goods or his authorised representative insofar as transport vehicle. Therefore, where the policy covers the owner of the goods or his authorised representative, it is to be presumed that the vehicle involved is a goods vehicle. Therefore, in respect of an occupant of a private vehicle, which is covered by a *Package Policy*, the policy covers indemnification by the insurer against all claims made by all the parties beyond the first and second party, viz., insurer and the insured. However, in respect of an Act Only Policy, the liability of the insurer to indemnify the claimant is only with reference to

third parties, who are outside the vehicle and not with reference to the occupants of the private vehicle, as additional premium is required to be paid to cover the occupants of the private vehicle. In this scenario, it is the stand of the insurance company that where no additional premium is paid in respect of the occupants of a private vehicle in respect of an Act Only Policy, no liability stands fastened on the insurer to indemnify the occupants of the private vehicle involved in an accident.

26. This has been in vogue and has been followed and the Apex Court in very many decisions has reiterated the same. However, the issue that is sought to be canvassed is with regard to the interpretation to be given to the definition of *"third party"* as is found in Section 145 (g) of the Motor Vehicles Act, 1988 (for short 'Act, 1988'), which, according to the claimant, would also take the occupant of the private vehicle within the fold of third party and the occupant of the private vehicle would stand covered under the definition of *"third party"*.

27. Normally Courts are bound to decide the issue with regard to a provision of law on the touchstone of the intent of the Parliament in enacting the law. But what is to be stressed here is the fact that the intent of the Parliament is based on sound logic on the basis of the necessities of the public based on which law is drawn up. Therefore, there may be a departure in the legal meaning from literal meaning, which a word necessarily carries, but the literal meaning would definitely have a nexus to the legal meaning, so as to enable the Parliament to define a term. Therefore, in such a scenario, this Court, deviating from the routing procedure of trying to decipher the intent of the Parliament from the usage of the words, which forms the provisions of law, keeping in mind the fact that the Motor Vehicles Act is a benevolent legislation aimed at protecting the interest of third parties, who are the beneficiaries under the Act, would analyze the definition of *"third party"* as defined u/s 145 (g) of Act, 1988 on the basis of the logic and ground realities that necessitated the employment of the various words in the provisions, which would not only reveal the intent of the Parliament, but would also affirm the firm belief that every law that is formulated is based on sound

logic, which is interpreted by the Courts, as logic is always the guiding factor in the enactment of any laws, as no law can defy logic.

28. On the above scale, this Court would now proceed to analyse the intention of the Parliament in defining *"third party"* as given in Section 145 (g), which, prior to its amendment in the year 2019, stood as under :-

> *"**145. Definitions**.....*
> *(g) "third party" includes the Government."*

29. The aforesaid Section 145 (g) is nestled in Chapter IX. By way of Motor Vehicles (Amendment) Act, 2019, which came into force on 9.8.2019, the definition of *"third party"* was amended under sub-section (i) of Section 145, as hereunder :-

> *"**145. Definitions**.....*
> *(i) "third party" includes the Government, the driver and any other co-worker on a transport vehicle."*

30. On and from the amendment in the year 2019, the entities that would fall within the ambit of *third party* has been spelt out. The necessity for bringing in the driver and co-worker in a transport vehicle within the

meaning of *"third party"* is only with regard to covering them for the purpose of compensation, which, if not included, would result in the said persons, being not considered for compensation as transport vehicle is considered a separate class of vehicle. Insofar as goods vehicle, Section 147 (1)(b)(i) takes into account the owner of the goods and authorised representative and insofar as public service vehicle, passenger alone is taken into account. Therefore, coverage extends to three types of vehicles, viz., *i) a private vehicle, ii) goods transport vehicle and iii) public service vehicle*. Only for the said purpose, the driver and co-worker in a transport vehicle, which is a public service vehicle, but used in the transportation of goods, have been brought within the ambit of *"third party"*. However, even in the said amendment, there is a specific mention only about transport vehicle and it does not in any manner speak about private vehicles and whether the occupant of a private vehicle would be a third party. Only on that basis, the above arguments have been canvassed by either side by laying emphasis on the various provisions of the Act, 1988.

31. In fact, at a particular point, while placing reliance on various decisions, learned counsel for the claimant also urged this Court to either refer the matter before a Larger Bench in view of conflicting decisions between the Division Benches of this Court or to await the outcome of the reference made by the Apex Court in the decision in *Mohana Krishnan case (supra)*.

32. The Apex Court, in *Mohana Krishnan case* had come to a conclusion that there exists no decision, which speaks clearly about *third party* with particular reference to Act Only Policy and in that regard, had referred the following issue to a Larger Bench for consideration :-

> *"2. Learned counsel for the insurance company relies upon two judgments of this Court reported as 2006 (4) SCC 404 and 2008 (7) SCC 428 to contend that a pillion rider on a motorcycle is not a third party, therefore, the insurance company is not liable to indemnify the insured on account of the injuries or death of such pillion rider.*
>
> *3. The basis of the said argument is Indian Motor Tariff Endorsement No. 70, which is to the effect that in "Act Only" policy, the insured has to pay extra premium to cover the pillion rider.*

4. However, the question as to whether the third party includes all other persons other than the insured, who is the first party and the insurer, who is the second party. Therefore, all other persons who are neither the insured nor the insurer will be third party and will be covered by the Act Only policy, we have prima facie reservation about the view expressed. Such question is required to be determined authoritatively.

5. Therefore, the Registry to place the matter before Hon'ble the Chief Justice of India to constitute a larger bench to consider the question of law as mentioned above by an appropriate Bench."

(Emphasis Supplied)

33. What manifests from the said decision is that the Apex Court had felt that there was no decision, which conclusively speaks about the interpretation to be given to the term "*any person*" occurring under Section 147 (1)(b)(i) of the Act, 1988 so as to hold that it falls within the periphery of the definition of *"third party"* under Section 145 (g) of Act, 1988, which has necessitated the reference. Further, it transpires that the Apex Court has spelt out that all the decisions rendered on the subject pertains to Comprehensive Policy/Package Policy and not touching upon Act Only Policy and, therefore, according to the Apex Court, reference stood necessitated.

34. Though a reference has been made by the Apex Court on the above issue, which issue is at present canvassed in the present appeal, the said reference would in no way restrain or preclude this Court from analysing the issue as to whether the term *"any person"* found in Section 147 (1) (b)(i) would fall within the ambit of *"third party"* by means of the inclusive definition found in Section 145 (g) of Act, 1988. Though certain decisions have been placed before this Court to canvass that there are differing decisions of this Court, which necessitates this Court, on the basis of judicial etiquette, to refer the case to a Larger Bench to resolve the conflict, for the reasons spelt out below and the various decisions, to which this Court's attention was drawn, which throw light on the above issue that has fallen for consideration, this Court is inclined to take up the issue and proceed to analyse the same on the basis of the ratio laid down in the aforesaid decisions coupled with the provisions of law to which advertence has been made in the various decisions.

35. Various decisions have been relied upon by the learned counsel on either side touching upon the ambit of *third party,* and for the purpose of a holistic consideration of the issue, the relevant decisions, which have a bearing on the issue will be discussed at the appropriate place.

36. On the basis of the aforesaid decisions, Sections 95 (1) (b) of Act, 1939, which has since been amended by inclusion of Chapter XI, with more particular reference to Section 147 which is a *pari materia* provision, are quoted hereunder for consideration, as that was the basis on which all the judgments were rendered :

Section 95 (1) (b) of Act, 1939

95. Requirements of Policies and limits of liability –

In order to comply with the requirements of this policy of insurance must me 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 or by a ??-???rative society allowed under section 108 to transact the business of an insurer, and

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

liability which be incurred by him them in respect of the death of bodily injury to any person 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, 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 a conductor of the vehicle or in examining tickets on the vehicle, or

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

(ii) except where the vehicle is a vehicle in which passengers are carried for hire or reward or by reason of or in pursuance of a contract of employment to cover liability in respect of the death of or bodily injury to persons being carried in or upon or entering or mounting or alighting from the vehicle at the time of the occurrence of the event out of which a claim arises, or

(iii) to cover any contractual liability.

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

(a) where the vehicle is a goods vehicle, a limit of twenty thousand rupees in all, including the liabilities, if any, arising under the Workmen's Compensation Act, 1923, in respect of of the death of, or bodily injury to, employees (other than the driver), not exceed- ing six in number, being carried in the vehicle;

(b) where the vehicle is a vehicle in which passengers are carried for hire or reward or by reason of or in pursuance of a contract of employment, in respect of persons other than passengers carried for hire or reward, a limit of twenty thousand rupees, and in respect of passenger a limit of twenty thousand rupees in all, and four thousand rupees in respect of an individual passenger. if the vehicle is registered to carry not more than six passengers excluding the driver or twenty thousand rupees in respect of an individual passengers, if the vehicle is registered to carry more than six passengers excluding the driver,

(c) where the vehicle is a vehicle of any other class the amount of the liability incurred."

Section 146 of Act, 1988

*"**146. Necessity for insurance against third party risk –***

No person shall use, except as a passenger or cause or allow any other person to use, a motor vehicle on 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:

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.

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:(e) 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.

Explanations 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 Act, 1988

*“**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 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 a conductor of the vehicle or in examining tickets on the vehicle, or if it is a goods carriage, being carried in the vehicle, or

(c) to cover any contractual liability.

(ii) 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

(a) engaged in driving the vehicle, or

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

(c) 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 dam was not in a public place at the time of the accident, if the act or omission which he the accident occurred in a public place.

(2) Subject to the proviso to sub-section (1), a policy of insurance referred to section (1), shall cover any liability incurred in respect of any accident, up to the follow 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 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 is issued by the insurer in favour of the person by whom the policy until the 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 differ forms, particulars and matters may be prescribed in different cases."

37. On a clear reading of the aforesaid provisions, it transpires that Section 146 (1) of Act, 1988, mandates the necessity for holding a valid insurance policy for operating a vehicle complying with the requirements of Chapter XI. Thus, the necessity for carrying a policy of insurance is brought within sub-section (1) to Section 146, which is mandatory in nature.

38. While Section 95 (1)(b) relates to a private vehicle in which person is carried and the liability of the insurer to cover the death or bodily injury of such person, the clause (i) of proviso to Section 95 (1) (b) pertains to the liability of the insurer in respect of an employee carried in the said vehicle, which is indemnifiable except in case where the liability arises under the Workmen's Compensation Act and clause (ii) of the said proviso relates to the

liability towards passengers, who are carried for hire or reward or by reason of or in pursuance of a contract of employment.

39. However, Section 147 (1)(b)(i) is a *pari materia* provision to Section 95 (1) (a), however, the amendment carries within it a rider that it includes the owner of the goods or his authorised representative carried in the vehicle, who shall also stand indemnified. Sub-section (2) to Section 147 determines the extent of liability that is indemnifiable by the insurer in respect of an accident that is coverable under the policy of insurance. Therefore, there is a clear prescription in sub-section (2) to Section 147 that the insurer shall cover any liability incurred in respect of any accident. However, the term "*any liability"* could be taken to mean a claim made by the occupant of a private vehicle, for whom the insurance company had not given any indemnity to the of the insured.

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.

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.

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.

43. Only in the above context the larger question has befallen for determination, as aforesaid, as to whether *"any person"* as found in Section 147 (1)(b)(i) is an inclusive definition so as to bring the occupant of the vehicle to be a *"third party"* as defined under Section 145 (g) of Act, 1988.

44. The term *"third party"* as defined in Oxford Advanced Learner's Dictionary (New 9th Edn.), is as under :-

> *"**third party** – a person who is involved in a situation in addition to the two main people involved".*

45. From the above, on a broader conspectus, any person, other than the two main people involved, viz., the insurer and the owner of the vehicle/insured, who are basically the first and second party, would fall within the purview of third party. However, Section 147 (1) (b) mandates that *"a policy of insurance must be a policy which insures the person or classes of persons **specified in the policy** to the extent specified in sub-section (2).* From the above, it is clear that the policy is guided by the terms and conditions agreed between the two contracting parties ***as specified in the contract of insurance*** and, therefore, the said provision should not be read in

isolation, but in conjunction with the terms and conditions accepted to between the contracting parties.

46. Only in the aforestated scenario the *Act Only Policy* is brought into forefront by the appellant, wherein with respect to a claim made by the occupant of the vehicle, in the absence of any additional premium being paid, the said person cannot be brought within the ambit of third party and, therefore, the occupant of the vehicle is excluded from the purview of payment of compensation It is to be noted that there is a separate premium payable in respect of persons, who are occupants of the vehicle as also for the owner-cum-driver of the vehicle, for specific extension of third party coverage to the said persons, even from the various decisions which have been placed before this Court for consideration. However, in this regard, the exclusion of the occupant of a private vehicle from the ambit of third party, since the terminology used in Section 147 (1) (b) (i) is *"any person"* is pressed into service on behalf of the claimant to submit that the said exclusion is against the statutory prescription under Section 145 (g) and, therefore, is not sustainable as *"third party"* u/s 145 (g) an inclusive definition with a very

wide sweep and takes within its fold all persons other than the first and second party.

47. Section 147 (1)(b) (i), which has been extracted above, provides that *a policy of insurance must be a policy, which insures the person or classes of persons specified in the policy to the extent specified in sub-section (2) against any liability which may be incurred by him in respect of death of or bodily injury to any person including owner of the goods or his authorised representative carried in the motor vehicle or damage to any property of a third party caused by or arising out of the use of the motor vehicle in a public place.*

48. Sub-section (2) of Section 147 provides the liability coverable by the insurer in respect of the accident of which clause (i) provides the cover upto the limit of liability and clause (ii) relates to the liability towards property damage of a third party. Sub-section (2) to Section 147 uses the term *"shall cover any liability incurred"*, but the said coverage is subject to the proviso to sub-section (1) which is relatable to death or bodily injury

arising out of and in the course of employment of an employee. The cover provided upto the limit of liability is in respect of third party risks, which is not disputed by the insurance company. However, the third party risks, according to the appellant, is guided by the terms accepted between the insurer and the insured.

49. In the said backdrop, Section 147 (5) assumes significance. Section 147 (5) provides a *non obstante* clause which provides that *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***.

50. From the *non obstante* clause, it is clear that Parliament has left the determination of class of persons who shall be covered by the insurer pursuant to the contract between the parties and, therefore, the guiding factor in the indemnification of liability is on the basis of the contract entered

into between the insurer and the insured. Therefore, the terms of the policy of insurance is the basis which guides the determination of persons, who would be entitled for compensation at the hands of the insurer. The Act Only Policy, which is issued, even as per the deemed acceptance between the contracting parties, spells out the persons, who would be indemnified by the insurer on behalf of the insured. Only in the said scheme, the two versions of insurance policies are being issued, viz., Act Only Policy and Comprehensive Policy/Package Policy.

51. In this backdrop, a perusal of Section 147 (1) (b) (i) of Act 1988, enjoins upon the insurer to cover liability in respect of death of or bodily 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. The said Section employs dual terms, viz., *(i) any person* and *(ii) any property of a third party*.

52. In the aforesaid backdrop, this Court would consider the decisions, which have a bearing on this case, more especially the decision in

Chandrasekaran case to appreciate the contentions advanced on behalf of the parties.

53. In *Chandrasekaran case (supra),* the Division Bench, after considering Section 95 (1) (b) of Act, 1939 vis a vis Section 147 of Act, 1988 and placing reliance upon the decision in *Amrit Lal Sood (supra),* held as under:-

> *"19. The Apex Court also in the decision in Amrit Lal Sood v. Kayushalya Devi Thapar, AIR 1988 S.C. 1433, dealt with the said expression "third party" and found that it would include occupants of the car who had gratuitously travelled in the car. But for the Clause (ii) of the proviso to Section 95 of the Act 1939, the "Act only policy" covers the risk of pillion rider as it comes under the definition "any person" as mentioned in Section 95(1)(b) of the Old Act. The same scope could be applied to the New Provision and the legislature, as stated above, has omitted Clause (ii) of proviso creating an obligation on the insured to specifically cover the liability with respect to the passengers other than the passengers mentioned under the proviso (ii) of Section 95(1)(b) of the Act 1939. Since the said proviso has been omitted and the restriction has been taken away thereby the insurance company which had covered third party risk under the "Act only policy" issued under Section 147*

of the Act, liable to pay the claim of the pillion rider who is a gratuitous passenger."

54. The above view has been arrived at by the Division Bench by adopting the analogy that what is provided for in the comprehensive policy, as dealt with in *Amrit Lal Sood case* would stand enlarged to an Act Only Policy as well on the ground that the intention of the Legislature is clear by the omission of clause (ii) of proviso to Section 95 (1)(b) of Act, 1939 while incorporating Chapter XI and more particularly Section 147 of Act, 1988.

55. It is clear that the Division Bench has transposed the benefits of the Comprehensive Policy/Package Policy into the Act Only Policy by applying the aforesaid ratio in *Amrit Lal Sood case* and had arrived at the said finding, notwithstanding the fact that the interpretation of *"any person"* found in Section 95 (1)(b) as one who would also be entitled to compensation was premised on the basis of the terms and conditions in the policy of insurance entered between the parties therein. In the considered view of this Court, the interpretation given in respect of a Comprehensive Policy read along with the

contractual obligations undertaken in terms of the contract of assurance, as made in *Amrit Lal Sood* can be imported into an Act Only Policy only after reading the terms and conditions of the Act Only Policy and not otherwise. The term *"any person"* appearing in Section 147 (1)(b)(i1) should be looked up in conjunction with the contractual obligation cast upon the insurer based on the policy of insurance and it cannot be looked at in isolation as the decision in *Amrit Lal Sood* has conjunctively the provision vis-a-vis the terms of the contract.

56. The claimant has also relied on the decision of the Division Bench of this Court in *A.Meenakshi case (supra)*. However, the said decision would not in any way be applicable or further the present case for the simple reason that it pertains to a gratuitous passenger travelling in a private care, which is covered under a Comprehensive Policy/Package Policy.

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:*
>
> > *"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."*

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.***

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:-*

> *"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."*

6. The relevant clauses in the policy before us are found in 'SECTION-II LIABILITY TO THIRD PARTIES'. They are:-

> *"1. The Company will indemnify the Insured in the event of accident caused by or arising out of the use of the Motor Car against all sums including claimant's costs and expenses which the Insured shall become legally liable to pay in respect of*
>
> *(a) death of or bodily injury to any person but except so far as is necessary to meet the requirements of Section 95 of the Motor Vehicles Act, 1939, the Company shall not be liable where such death or injury arises out of and in the course of the employment of such person by the insured.*
>
> *(b) damage to property other than property belonging to the Insured or held in trust by or in the custody or control of 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.

61. In this regard, it becomes necessary for this Court to look at the language employed in Section 147 (1)(b)(i) of Act, 1988. Sub-clause (ii) of clause (b) of sub-section (1) of Section 147 of Act, 1988 casts liability on the insurer *to insures the person or class of persons specified in the policy to the extent specified in sub-section (2) against any liability which may be incurred by him in respect of the death of or bodily 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*.

62. Section 95 (1) (b) of Act, 1939, which stood prior to the aforesaid amendment is to the effect that it *insures the person or classes of persons specified in the policy to the extent specified in sub-section (2) against any liability which may be incurred by him or them in respect of the death of or bodily injury to any person caused by or arising out of the use of the vehicle in a public place.*

63. A careful consideration of the two *pari materia* provisions show that barring the inclusion of the owner of the goods or his authorised representative carried in the vehicle, both the provisions remain almost unaltered.

64. Section employs two different terms, viz., *"any person"* and *"damage to any property of a third party*. The necessity of usage of two different terms assumes significance. Had the Parliament really not intended to bring *"any person"* within the fold of third party, it could very well have used the word *"third party"* instead of the word *"any person"*. Therefore, necessarily, the intention of the Parliament is to include *"any person"* within the ambit of *"third party"* as defined u/s 145 (g).

65. However, the *non obstante* clause u/s 147 (5) stands in the way when it comes to the liability of the insurer to indemnify the insured. Section 147 (5) makes the insurer liable to indemnify the person or class 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*. There is a

definitive intention of the Parliament, which is writ large on the said provision, which gives the parties to the contract the leverage to enter into such terms as they deem fit and proper so long as the statutory cover is extended in respect of the vehicle. In this regard, the decision in *Amrit Lal Sood case* assumes importance.

66. In *Amrit Lal Sood case (supra)*, the Supreme Court, in unambiguous terms has held that the Section does not require a policy to cover the risk to passengers who are not carried for hire or reward and that 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. This clearly shows that it is within the domain of the contracting parties to agree to the terms and conditions of the coverage and the persons to whom it will stand extended. The Supreme Court, in unequivocal terms, has, therefore, held that the liability of the insurer in the case depends on the terms of the contract between the insurer and the insured as would be evident from the policy.

67. Therefore, it is to be stated without any semblance of doubt that insofar as an Act Only Policy is concerned, the liability of the insurer is dependent on the terms of the contract between the insured and the insurer, which is provided in the policy and it is always open to the contracting parties, to enlarge the scope by giving a wider cover than the minimum requirement envisaged under the statute.

68. Therefore, the *non obstante* clause provided u/s 147 (5) is the source of power from which the insurer and the insured decide the persons, who would stand covered under the Act Only Policy and such a contract has to be the basis for determining as to whether the occupant of the private vehicle would fall within the ambit of *"third party"* for the purpose of making a claim for compensation, though in actuality, the term *"any person"* would fall within the ambit of *"third party".*

69. Reading Section 147 (1)(b)(i) in tandem with Section 147 (5), it becomes unambiguously clear that the contract entered into between the insurer and the insured would be the guiding factor in determining the

persons, who would stand covered under the policy for the purpose of liability of the insurer as per the statutory prescription and such prescription could be expanded by the contracting parties by entering into a wider contract. So the terms of the contract entered into between the first and second party is the basis on which the liability of the insurer should be gauged as is envisaged under Section 147 (5) and mere recourse to Section 147 (1)(b)(i), merely on the usage of the term *"any person"* would not be the basis to determine the liability of the insurer towards the occupants of the private vehicle, when the policy, which has been entered into is a policy, which is for the fulfilment of the statute.

70. In this regard, the ratio laid down by the Apex Court in ***Deddappa & Ors. – Vs – The Branch Manager, National Insurance Co. Ltd. & Ors. (2008 (2) TN MAC 138 (SC))***, touching on the aspect of contractual liability in a contract between two contracting parties would be an apt reference and in that context, the Apex Court held thus :-

> *"22. A contract is based on reciprocal promise. Reciprocal promises by the parties are condition precedents for a valid contract.* ***A contract furthermore must be for consideration****.*

23. In today's world payment made by cheque is ordinarily accepted as valid tender. Section 64VB of the 1938 Act also provides for such a scheme.

24. Payment by cheque, however, is subject to its encashment. In Damadilal and Ors. v. Parashram and Ors. MANU/SC/0476/1976 : AIR1976SC2229 , this Court observed:

> *On the ground of default, it is not disputed that the defendants tendered the amount in arrears by cheque within the prescribed time. The question is whether this was a lawful tender. It is well- established that a cheque sent in payment of a debt on the request of the creditor, unless dishonoured, operates as valid discharge of the debt and, if the cheque was sent by post and was met on presentation, the date of payment is the date when the cheque was posted....*

25. Recently again in New India Assurance Co. Ltd. v. Harshadbhai Amrutbhai Modhiya and Anr. MANU/SC/8127/2006 : (2006)IILLJ782SC , although in the context of the Workmen Compensation Act, 1923, Balasubramanyan, J opined:

> *It is not brought to our notice that there is any other law enacted which stands in the way of an insurance company and the insured entering into a contract confining the obligation of the insurance company to indemnify to a particular head or to a particular amount when it relates to a claim for compensation to*

a third party arising under the Workmen's Compensation Act. In this situation, the obligation of the insurance company clearly stands limited and the relevant proviso providing for exclusion of liability for interest or penalty has to be given effect to. Unlike the scheme of the Motor Vehicles Act the Workmen's Compensation Act does not confer a right on the claimant for compensation under that Act to claim the payment of compensation in its entirety from the insurer himself.

It was further observed:

The law relating to contracts of insurance is part of the general law of contract. So said Roskill, L.J. in Cehave v. Bremer. This view was approved by Lord Wilberforce in Reardon Smith v. Hansen- Tangen All ER p. 576 h wherein he said:

"It is desirable that the same legal principles should apply to the law of contract as a whole and that different legal principles should not apply to different branches of that law."

A contract of insurance is to be construed in the first place from the terms used in it, which terms are themselves to be understood in their primary, natural, ordinary and popular sense. (See Colinvaux's Law of Insurance, 7th Edn., para 2- 01.) A policy of insurance has therefore to be construed like any other contract.

On a construction of the contract in question it is clear that the insurer had not undertaken the liability for interest and penalty, but had undertaken to indemnify the employer only to reimburse the compensation the employer was liable to pay among other things under the Workmen's Compensation Act. Unless one is in a position to void the exclusion clause concerning liability for interest and penalty imposed on the insured on account of his failure to comply with the requirements of the Workmen's Compensation Act of 1923, the insurer cannot be made liable to the insured for those amounts.

26. We are not oblivious of the distinction between the statutory liability of the Insurance Company vis-à-vis a third party in the context of Sections 147 and 149 of the Act and its liabilities in other cases. But the same liabilities arising under a contract of insurance would have to be met if the contract is valid. If the contract of insurance has been cancelled and all concerned have been intimated thereabout, we are of the opinion, the insurance company would not be liable to satisfy the claim.

27. A beneficial legislation as is well known should not be construed in such a manner so as to bring within its ambit a benefit which was not contemplated by the legislature to be given to the party. In Regional Director, Employees' State

Insurance Corporation, Trichur v. Ramanuja Match Industries MANU/SC/0203/1984 : (1985)ILLJ69SC , this Court held:

> *"We do not doubt that beneficial legislations should have liberal construction with a view to implementing the legislative intent but where such beneficial legislation has a scheme of its own there is no warrant for the Court to travel beyond the scheme and extend the scope of the statute on the pretext of extending the statutory benefit to those who are not covered by the scheme."*
>
> *(Emphasis Supplied)*

71. In succinct terms, the Supreme Court, in the aforesaid decision, has clearly spelt out that the duty of the insurance company in case of statutory liability cannot be inflated and the insurer is always bound to honour the part of the contract, which has been agreed to. But, where the contract of insurance has not provided for certain things, including the same by mere implication of giving an interpretation that what is interpreted is what was intended by the Parliament is stretching the interpretation too long, thereby, defeating the purpose of the provisions of the Contract Act and negating the agreement between the contracting parties, which terms are bound by the provisions of the Contract Act. As stated in the aforesaid judgment, contract

is a reciprocal promise and both the parties to the contract are governed by the terms of the contract and no additional liability can be imposed on either party, which has not been a part of the terms of the contract. So, the liability of the insurer is more specifically determined by the terms in the contract, as what is sought to be mandated by the Act is only the necessity for holding a statutory policy and not to have a wider coverage, which has not been agreed between the parties.

72. Necessarily, as held in *Deddappa's case*, beneficial legislations should have liberal construction with a view to implementing the legislative intent but where such beneficial legislation has a scheme of its own there is no warrant for the Court to travel beyond the scheme and extend the scope of the statute on the pretext of extending the statutory benefit to those who are not covered by the scheme. The intent of the Legislature is only to the extent of having a statutory policy u/s 147 and not a comprehensive policy, which alone would cover the risk of the occupants of the private vehicle. Therefore, the terms of the contract entered into would be governing the liability of the insurance company in the matter of occupants of the private vehicle.

73. The position of law, as looked at and deciphered by this Court through the aforesaid provisions, finds favour in the decision in *Jayaram Shetty case (supra)* which sheds some light in the manner in which the word *"third party"* should be looked at and the benefits extended to the class of persons. Authoring the said decision, T.S.Thakur, J. (as His Lordship then was), heading the Division Bench of the Karnataka High Court has held as under :-

> *"11. The term 'third party' has not been defined exhaustively in the Act. Section 145(g) gives an inclusive definition and simply states that 'third party' will include the Government. That does not however present much difficulty, in understanding the true meaning and import of the term. The term 'third party' must necessarily refer to a party other than those, who are parties to the contract of insurance. For a contract of insurance, the insurer is one party while the policy holder is the other party. Any person or persons other than the said two party or parties would necessarily be referred to as third parties. That is precisely how the expression third party appearing in Chapter XI has to be understood. Considerable support for that view is available from the meaning given to*

the words "third party risk" in Stroud's Judicial Dictionary, which explains third party risks in the following words.--

> *"Third party risks (Road Traffic Act, 1930 (Clause 43), Section 35 of the Road Traffic Act, 1972 (Clause 20), Section 143) connotes that the insurer is one party to the contract, that the policy-holder is another party, and that the claims made by others in respect of the negligent use of the car may be naturally described as claims by third parties (Digby v. General Accident Fire and Life Assurance Corporation, 1943 AC 121).*

12. The argument that the insured owner of a motor vehicle involved in a motor accident can also claim to be a third party must therefore be rejected on first principles alone.

13. The issue can be viewed from another angle also. Section 147 enjoins that the policy issued by the authorised insurer should insure the person specified in the policy against any liability which may be incurred by him in respect of death of or bodily injury to any person specified in Sub-section (1)(b)(i) and (ii). The critical expression "against any liability, which may be incurred by him" in Section 147(1)(b)(i) leaves no manner of doubt that the policy of insurance, which the owner obtains from the authorised insurer is meant to insure the owner or the holder of the policy against any liability that he may incur qua third parties whether such liability be on account of death or bodily injury to any such person or damage to any property owned by him. In terms of

Sub-section (1)(b)(ii), the policy must also insure the owner against the death of or bodily injury caused by or arising out of the use of the vehicle if it is a public service vehicle used in a public place. In other words, if no liability arises against the holder of the policy, the same cannot arise against the Insurance Company. That position of law is fairly well-settled by the decision of the Supreme Court in Oriental Insurance Company Limited v. Sunita Rathi and Ors.,. The High Court had in that case while exempting the owner of the vehicle made the insurer liable to pay the compensation. The Court declared that approach to be erroneous and held that liability of the insurer arises only when the liability of the insured has been made out for purposes of indemnifying the insurer under the contract of insurance. To the same effect is the decision of the Supreme Court in Minu B. Mehta and Anr. v. Balkrishna Ramchandra Nayan and Anr.,. The claim had in that case arisen under the old Act. The Court was examining the provisions of Section 95 corresponding to Section 147 of the new Act. It observed.--

> *"The insurance policy is only to cover the liability of a person which he might have incurred in respect of death or bodily injury. The accident to which the owner or the person insuring is liable is to the extent of his liability in respect of death or bodily injury and that liability is covered by the insurance. It is therefore obvious that if the owner has not incurred any liability in respect of death or bodily injury to any person there*

is no liability and it is not intended to be covered by the insurance. The liability contemplated arises under the law of negligence and under the principle of vicarious liability. The provisions as they stand do not make the owner or the Insurance Company liable for any bodily injury caused to a third party arising out of the use of the vehicle unless the liability can be fastened on him. It is significant to note that under Sub-clause (ii) of Section 95(1)(b) of the Act, the policy of insurance must insure a person against the death 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. Under Section 95(1)(b), Clause (ii) of the Act the liability of the person arises when bodily injury to any passenger is caused by or use of the vehicle in a public place. So far as the bodily injury caused to a passenger is concerned it need not be due to any act or liability incurred by the person. It may be noted that the provisions of Section 95 are similar to Section 36(1) of the English Road Traffic Act, 1930, the relevant portion of which is to the effect that a policy of insurance must be policy which insures a person in respect of any liability which may be incurred by him in respect of death or bodily injury to any person caused by or arising out of the use of the vehicle on road. The expression "liability which may be incurred by him" is meant as

covering any liability arising out of the use of the vehicle. It will thus be seen that the person must be under a liability and that liability alone is covered by the insurance policy".

(emphasis supplied)

14. Keeping the above in view, the claim made by the appellant against the Insurance Company for payment of compensation was clearly misconceived. That is because the accident in question had not given rise to any liability against the insured viz., the claimant in the instant case. It was admittedly not a case where the insured had vis-avis a third party incurred any liability for death, injury or loss to property so as to render the Insurance Company liable to reimburse any such loss. So long as no liability arose qua the insured, the liability of the Insurance Company, which is consequential and dependent upon any such liability against insured would also not arise. The decision of a Single Bench of this Court in United India Insurance Company Limited, Gulbarga v. Siddanna Nimbanna Jawali and Anr., 2001(3) Kar. L.J. 240 : ILR 2001 Kar. 1670 and that of a High Court of Madras in United India Insurance Company Limited, Salem v. Lakshmi and Ors., correctly state the legal position. The first limb of the argument advanced by Mr. Shankar must therefore fail and is accordingly rejected.

15. That leaves us with the alternative submission made by Mr. Shankar that since the occupants of the private car owned

by the appellant were themselves insured against death or personal injury, there is no reason why the owner, who is also one of such occupants at the time of the accident could not be deemed to be similarly covered for payment of compensation. The argument must fail for two reasons. Firstly, because the occupants of a private car are covered in terms of Endorsement 5 to the policy, which reads as under.--

> *"Accidents to unnamed passengers other than the insured and his paid driver or cleaner (private cars only):*
>
> *In consideration of the payment of an additional premium it is hereby understood and agreed that the Company undertakes to pay compensation on the scale provided below for bodily injury as hereinafter defined sustained by any passenger other than the insured and/or his paid driver, attendant or cleaner and/or a person in the employ of the insured coming within the scope of the Workmen's Compensation Act, 1923, and subsequent amendments of the said Act and engaged in and upon the service of the insured at the time such injury is sustained whilst mounting or dismounting from or travelling in the motor car and caused by violent accidental external and visible means which independently of any other cause shall within three calendar months of the occurrence of such injury result in".*

16. It is evident from the above that while passengers travelling in a private car, are covered against death or bodily injury resulting from the accident involving the vehicle, the insurance cover qua the insured is specifically excluded. ***The insurance cover provided to the occupants, it is noteworthy, does not flow from the provisions of Section 147 of the Act. It on the contrary flows from the wider cover, which the insured has secured beyond the minimum prescribed under Section 147 by paying an additional premium****. In case the insured obtains such a wider cover under the terms of the policy, the Insurance Company will be liable to undertake the liability.* ***What is however clear is that the liability to compensate the occupant injured in any such event will flow not from the requirements of Section 147, but on the terms of the policy issued to the insurer. The legal position in this connection is no longer res integra having been authoritatively settled by the Supreme Court in Amrit Lal Sood and Anr. v. Smt. Kaushalya Devi Thapar and Ors., where the Court observed****.--*

> *"Section 95 requires 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".

17. It may be recalled that the insurance cover to occupants travelling in a private car without hire or reward was extended pursuant to the decision of the Supreme Court in Civil Appeal No. 2071 of 1998 stating that the insurers are not liable in respect of the insured's liability for passengers carried in a private vehicle on the ground that Section 95 of the old Act did not require the insurance policy to cover such liability. It was consequent upon the said decision that the Tariff Advisory Committee had issued circulars amending the existing policies with effect from 25th of March, 1977. The legal position however remains unaltered by the said amendment and extension of the insurance coverage for the occupants remains optional as there is no compulsion under Section 147 of the Act to provide for any such insurance. The decision of a Single Bench of this Court in Shanthabai and Ors. v. Shekappa and Ors., has dealt with the genesis of the extended cover for passengers travelling in private car."

(Emphasis Supplied)

74. The above decision relied on by the claimant leans more in favour of the insurance company rather than the claimants. From the above, it is very clear that though all the parties other than the first and second party, viz., the insurer and the insured, are deemed to be third parties, however, in respect of policy cover, as held in the aforesaid decision, the same is not guided by Section 147 (1)(b)(i) of the Act, 1988; rather, the same is guided by the terms of the policy, which has been entered into between the insurer and the insured. As held in the aforesaid decision*, the requirement to pay would only flow from the wider cover, which the insured has secured beyond the minimum prescribed under Section 147 by paying an additional premium*, in which case alone, the insurer would be liable to compensate the occupant of the private vehicle, in case of any claim. But for the payment of additional premium, the liability of the insurer to compensate the occupants of the private vehicle, even if they fall under the definition of *"third party"* would stand extinguished insofar as the insurer is concerned as no liability has been undertaken by the insurer on behalf of the insured to indemnify the claim of the occupants of a private vehicle as the occupants are not agreed to be covered under the Act Only Policy. *Therefore, the liability to compensate the*

occupant injured in any such event will flow not only from the requirements of Section 147, but would be only on the basis of the terms of the policy issued.

75. From the above, it is clear that the occupant of a private vehicle, though would be deemed to be a third party, but in the absence of specific inclusion of the occupant of the private vehicle by the contracting parties by paying additional premium for the purpose of covering the liability of the insured, the liability would not stand transposed on the insurer on behalf of the owner of the vehicle. In fine, additional premium over and above the minimum prescribed should have been paid for indemnifying the claim of a passenger of a private vehicle. Therefore, in respect of an Act Only Policy, which is the minimum prescribed u/s 147, third party would necessarily be taken to mean a person outside the vehicle and would not include the occupant of the private vehicle; however, if additional premium is paid enabling the said cover in the contract of insurance, then the occupant of the vehicle would stand covered under the Third Party Risk. Therefore, beyond the minimum prescription u/s 147 of Act, 1988, a wider policy could be taken

for covering the occupant of the private vehicle, in which case the occupant would also fall within the ambit of third party, by paying additional premium as agreed between the first and second party, viz., the insurer and the insured for the purpose of claiming compensation.

76. When the Three Judge Bench of the Supreme Court in *Amrit Lal Sood* has clearly spelt out the situations in which the insurance company would be liable to indemnify the insured and in respect of an Act Only Policy, and has specifically held that in the absence of a wider cover having been accepted between the contracting parties, the liability of the insurance company would be only to the extent of the coverage agreed between the contracting parties, the Division Bench, in *Chandrasekaran case (supra),* without taking into consideration that the policy in *Amrit Lal Sood* is a comprehensive policy, had **imported the ratio laid down in the said decision erroneously to the case before it and had** come to the conclusion that the said decision is squarely applicable even with regard to an Act Only Policy, by holding that the intent of the Legislature is writ large in the omission of clause (ii) of proviso to Section 95 95 (1)(b) in Section 147 of Act, 1988,

notwithstanding the fact that in *Amrit Lal Sood,* the Apex Court had clearly negated that the occupant of the private vehicle would not be entitled to compensation in the absence of any additional premium being paid. Therefore, with great respect, the interpretation has been erroneously arrived at by the decision of the Division Bench with regard to Act Only Policy by taking cue from the decision in *Amrit Lal Sood*, though the said case stood on a different footing, viz., which was a case covered by a Comprehensive Policy.

77. Therefore, the mere inclusion of all the persons within the ambit of third party as defined u/s 145 (g) of Act, 1988 would not enure to the benefit of the claimant, who is an occupant of the private vehicle, as the liability to compensate the occupant of the private vehicle for any death or bodily injury will flow not from the requirements of Section 147 but in relation to the terms agreed between the insurance company and the owner of the vehicle.

78. ***From the above discussion, this Court holds that "any person" as found in Section 147 (1)(b)(i) would fall within the definition of "third party"***

as defined u/s 145 (g) of Act, 1988 and all persons irrespective of their position, would be deemed to be "third party" but the indemnification of the insurer towards payment of compensation would flow only from Section 147 (5), which would be based on the terms of the contract entered into between the contracting parties, viz., the insurer and the insured and, therefore, reading Section 147 (1)(b)(i) and 147 (5) together, the occupant of the private vehicle would not be entitled for claiming compensation unless the terms of the policy spells out the intention of the contracting parties towards the occupant, by means of wider coverage under the policy and not otherwise, which alone would have been the intent of the Legislature while enacting the amendment in the year 1988.

79. The above view of this Court is strengthened on the premise that if not, the necessity of the *non obstante clause* u/s 147 (5) would not have been required. Both Act, 1939 as well as Act, 1988 has the very same *non obstante* clause, but only Section 95 (1)(b) and Section 147 (1)(b)(i) have been worded in a different manner, the necessity for which has been explained in the preceding portion of the order. Therefore, all along, the intention of the

Legislature was to leave the contracting parties to finalize the terms of the policy between them, while statutorily mandating carrying of a minimum policy, which would take care of the parties outside the vehicle, in the event of the vehicle meeting with an accident.

80. The logic behind the above would have flown from the understanding of the Legislature that the owner of a private vehicle does not normally carry passengers for hire or reward, which is taken care of u/s 147 (1)(b)(ii), but it is restricted to his friends and relatives, who alone would be the occupants of the private vehicle. In such an event, the said persons cannot be construed to be third parties for the purpose of falling within the third party risk coverage and if at all the owner of the vehicle intends to cover such persons, necessarily, a wider cover ought to be taken which would be spelt out in the terms of the policy. Therefore, the Legislature had, in its wisdom, left it to the prudent choice and discretion of the owner of the vehicle to opt for taking a wider cover for the occupants of the car, as also for the owner in addition, by paying a separate premium as addition to the base premium and had not mandated the owner to carry insurance beyond the

statutory prescription u/s 147 as has been held in *Jayaram Shetty case (supra)*. Therefore, suffice to say, that if the additional premium is not paid towards coverage for the occupants and owner of the vehicle, in respect of Act Only Policy, the insurance company is not liable to indemnify the occupants of the private vehicle.

81. Now turning to the facts of the case, it is the case of the insurance company that the policy in issue is an Act Only Policy and, therefore, the insurance company is not liable to compensate the claimant for the injuries suffered by him in the accident. It is the further case of the insurance company that when the insurance company is not liable to pay any compensation, the question of paying the compensation and recovering the same does not arise.

82. Before proceeding further with the facts of the case and the contentions advanced therein, it would not be out of context for this Court to point out that the order of the Tribunal does not reveal the manner in which it has interpreted an Act Only Policy to be one which would make the insurance

company to pay the compensation. Further, this Court is at a loss to understand as to how the order ordering recovery could be passed, when liability has been fastened on the insurance company. Further, what is more intriguing is the fact that on the above set of facts, a finding has been rendered by the Tribunal that the claimant is an employee of the owner of the vehicle, though even in the very case of the claimant, it has been admitted that the claimant is not in any way associated with the owner of the vehicle. Further, the Tribunal has passed the order on the premise that the claimant is an employee under the owner of the vehicle and, therefore, he would be entitled to compensation by invoking Section 147 (1)(b)(i) notwithstanding the fact that the parties have not canvassed employer-employee relationship between the claimant and the owner of the vehicle.

83. Be that as it may. To appreciate the above contention advanced on behalf of the insurance company, it is necessary for this Court to look at the policy of insurance, which is marked on behalf of the claimant as Ex.P-3 and by the insurance company as Ex.R-1. Both the exhibits are one and the same, but for Ex.R-1 providing the terms of liability with regard to the coverage

extended by the insurer. The said policy document is not disputed by the claimant.

84. On a closer look at the schedule of premium payment, it reveals that Part-A pertains to *'Own Damage Premium'* while Part-B pertains to *'Third Party Premium'*. Under Part-B relating to *'Third Party Premium'*, the following are the amount paid for extending the coverage :-

B.Third Party Premium (Rs.)	
Basic Premium Bi Fuel Kit (IMT 25)	1332.00 0.00
Add : Legal Liability to Driver (IMT 28) Legal Liability to Employee (IMT 29) PA to Passenger (IMT 16) Rallies (IMT 31) PA Owner Driver CSI Rs.200000 Geographical Area Extension (IMT 1) IMT 15	 50.00 0.00 0.00 0.00 100.00 0.00
Less : Third Party Property Damage (IMT 20) Limit of Liability Under Section II-I (ii) 750000	 0.00
Any other Loading Discount	
Net (B)	1482.00
Total Premium Taxable Value (A + B) Rs. Add Service Tax (183.17) + Swacch Bharat Cess (0.00) + Krishi Kalyan Cess (0.00)	Rs.1482.00 183.17

Premium Paid (Total Invoice Value) Rs.	1665.17
Since you, as insured, have declared that you do not have a valid driving license, the PA coverage for Owner-Driver will not be applicable. In case, you obtain driving license during the currency of the policy, you need to endorse the coverage by payment of premium.	

85. The terms and conditions which have been accepted by the insurance company, viz., the appellant herein, to indemnify the liability on behalf of the owner of the vehicle, which is available along with the policy and which forms part of the policy, are quoted hereunder :-

"Policy Wording for Private Car

* * * * * * *

I) LIABILITY TO THIRD PARTIES

1. Subject to the Limit of liability as laid down in the schedule hereto, the Company will indemnify the insured in the event of accident caused by or arising out of the use of the Motor Vehicle anywhere in India against all sums including claimant's costs expenses which the insured shall become legally liable to pay in respect of

i) Death or bodily injury to any person so far as it is necessary to meet the requirements of the Motor Vehicles Act

ii) Damage to property other than property belonging to the insured or held in trust or in the custody or control of the insured upto the limit specified in the schedule.

2. The Company will also 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 policy to the insured, the Company will indemnify any driver who is driving the Motor Vehicle on the insured's order or with insured's permission provided that such drive shall as though he/she were the insured observe fulfil and be subject to the terms exceptions and conditions of this policy in so far as they apply.

4. In the event of the death of any person entitled to indemnity under this policy the Company will in respect of the liability incurred by such person indemnify his/her personal representative in terms of and subject to the limitations of this Policy provided such personal representative shall as though such representative was the insured observe fulfil and be subject to the terms exceptions and conditions of this Policy in so far as they apply.

* * * * * * *

GENERAL EXCEPTIONS

* * * * * * *

4. Except so far as is necessary to meet the requirements of the Motor Vehicles Act, the Company shall not be liable in respect of death or bodily injury to any person (other than a

passenger carried by reason of or in pursuance of a contract of employment) being carried in or upon or entering or mounting or alighting from the Motor Vehicle at the time of the occurrence of the event out of which any claim arises.

* * * * * * *"

86. A careful perusal of the policy of insurance, more particularly the schedule of premium and the terms on which the first and the second party had agreed with regard to the class of persons to be covered for the purpose of payment of indemnification by the appellant, the schedule of premium shows that while the driver has been indemnified, and be covered under the limits of liability under Section II-I (ii) as shown in the Third Party Premium schedule and so is the personal accident cover for the owner of the vehicle, however, crucially, the personal accident to passenger has not been covered under the policy by paying any additional premium, meaning thereby, there is exclusion with regard to indemnification as regards the occupant of the car other than the driver, which would be to the extent of the limits of liability of Rs.7,50,000/- and personal accident with regard to the owner, who himself when being the driver to the extent of Rs.2,00,000/-. From the above, it transpires that no additional premium having been paid towards

indemnification of the passenger in the vehicle, no compensation would be payable to the occupant of the vehicle in case any claim is filed against the insurer.

87. Pausing here for a moment, a look at the conditions relating to Liability to Third Parties, as has been agreed between the insurer and the insured, it reveals that under sub-clause (i) of clause 1 thereof, a condition has been prescribed that the liability would be with regard to death of or bodily injury to any person so far as it is necessary to meet the requirements of the Motor Vehicles Act. Further, in the General Exceptions, there is a condition prescribed under clause (4) that except so far as is necessary to meet the requirements of the Motor Vehicles Act, the Company shall not be liable in respect of death or bodily injury to any person (other than a passenger carried by reason of or in pursuance of a contract of employment). From this, it is abundantly evident that there is a clear exclusion of the occupant of the car from being indemnified by the insurer and coupled with the fact that in the Schedule of Premium, no specific amount having been paid as premium for covering the occupant of the car in respect of any claim, the

insurance company cannot be made liable to pay any compensation to the claimant, who is the occupant of the car and whose presence is not connected with any contract of employment.

88. At the risk of repetition, the above view of this Court gets strengthened by the observations in *Amrit Lal Sood case (supra)*, more particularly, para-6 of the said decision, in which Liability to Third Parties, as has been agreed in the contract before the Supreme Court is extracted. In sub-clause (a) of clause (1) thereof, the condition prescribed is that the insurer would indemnify against "*death 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.....".* There is a clear mandate in the said condition that indemnification would be to the level to meet the requirements of Section 95. As discussed above, the policy in the said case therein was a comprehensive policy and, therefore, it was necessary for the insurer to indemnify and in the aforesaid circumstance, the Apex Court held that the expression *"any person"* appearing in Section 95 as it stood, would undoubtedly include the occupant of the car who is gratuitously travelling in the car. But in the case on hand,

the policy is an Act Only Policy and further no additional premium having been paid for covering the occupant of the car and further the terms of liability clearly excluding the occupant of the car, the claimant would not be entitled for any compensation at the hands of the insurer. That being the case, as held in *Jayaram Shetty case (supra)*, the policy being a mere statutory policy with no strings attached thereto with respect to indemnification of persons, who had occupied the car other than the driver/owner of the car, the insurance company would not be in any way liable to pay any compensation to the claimant as the terms of the contract entered into between the appellant and the 2nd respondent herein, read in conjunction, would absolve the insurance company of any liability towards the occupant of the car, viz., the claimant, so long as the statutory prescription has been complied with.

89. For the reasons aforesaid, this Court is of the considered view that the judgment and decree passed by the Tribunal directing the insurance company to pay the compensation to the claimant, viz., the 1st respondent herein and to recover the same from the 2nd respondent, viz., the owner of

the vehicle, suffer the vice of illegality and is arbitrary, unreasonable and is liable to be interfered with.

90. Accordingly, this civil miscellaneous petition is allowed setting aside the order and decreetal order dated 31.01.2019 made in M.C.O.P. No.613 of 2014 by the Motor Accident Claims Tribunal, Chief Judicial Magistrate, Dharmapuri. The insurance company is at liberty to withdraw the amount, if any, deposited. Consequently, connected miscellaneous petition is closed. There shall be no order as to costs in this appeal.

19.01.2024

Index : Yes / No

GLN

To

The Chief Judicial Magistrate
Motor Accident Claims Tribunal
Dharmapuri.

M.DHANDAPANI, J.

GLN

PRE-DELIVERY JUDGMENT IN
C.M.A. NO.4163 OF 2019

Pronounced on
19.01.2024