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**(2000) 06 MAD CK 0066**  
**In the Madras High Court**  
**Case No : C.M.A. No. 1110 of 1996**

New India Assurance Co. Ltd.

APPELLANT

Vs

Kaliathal and Others

RESPONDENT

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**Date of Decision :** 06-06-2000

**Acts Referred:**

Motor Vehicles Act, 1988 — Section 147

**Citation :** (2002) ACJ 1035

**Hon'ble Judges :** B. Akbar Basha Khadiri, J

**Bench :** Single Bench

**Advocate :** C. Ramesh Babu, for the Appellant; M.M. Sundaresan, for the Respondent

**Final Decision :** Allowed

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## Judgement

B. Akbar Basha Khadiri, J.—Aggrieved by the award passed by the Motor Accidents Claims Tribunal (Sub-Court), Dharapuram, the

insurance company has come forward with the instant civil miscellaneous appeal.

2. This appeal has arisen in this way:

One Gopalsamy, aged about 44 years, died in a road accident on 25.2.92 involving a tractor bearing registration No. TN 33-Y 2056. At the

relevant time Gopalsamy was walking on the road and the tractor hit him, as a result of which Gopalsamy died. Gopalsamy happens to be the

owner of the ill-fated tractor which was driven by his own servant, namely, the driver. The legal representatives of Gopalsamy instituted a claim

petition in M.C.O.P. No. 377 of 1993 and claimed Rs. 6,00,000 as compensation.

3. The insurance company vehemently opposed the claim petition alleging that Gopalsamy was the insured and the insurance policy covers only the

third party's risk and not the risk to life of the insured himself and, therefore, it is not liable.

4. The Tribunal, after inquiry, came to the conclusion that the accident was due to rash and negligent driving of the tractor driver. It also concluded

that though Gopalsamy was the insured, since he was hit by the tractor while he was walking in the street, he should be construed as a third party

and accordingly, Tribunal awarded Rs. 1,40,000 as compensation. Aggrieved by the award, the insurance company has come forward with the

instant civil miscellaneous appeal.

5. The only question that arises in this appeal is whether the legal representatives of the insured can claim compensation from the insurer?

6. To appreciate the point involved in the instant case, it would be useful to recall the salient features of a contract of indemnity. A contract of

indemnity is a contract by which one party promises to save the other from loss caused to him by the conduct of the promisor himself, or by the

conduct of any other person. It would also be useful to recall as to what vicarious liability is with respect to a motor accident. Vicarious liability is

the liability of the master for the act of the servant done in the course of his employment. In case of a motor accident, if negligence of the driver

results in causing injury to a third person, then the master is liable for damages to the third person who has sustained loss. By a contract of

insurance, a policy is issued to the owner under which the insurance company undertakes to indemnify the owner for the amount of loss or damage

he suffered as a result of his servant's act.

7. As per the provisions of Section 147 of the Motor Vehicles Act, the insurer is liable to indemnify any liability which may be incurred by the

insured. It is needless to point out that every liability is referable to a corresponding right, but both the liability and right would not vest in one and

the same person. Of course a comprehensive policy entitles the owner to claim reimbursement of the entire amount of loss or damage suffered by

him due to the damage caused to his vehicle. Section 147 of the Motor Vehicles Act reads as under:

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
- (c) if it is a goods carriage, being carried in the vehicle; or
- (ii) to cover any contractual liability.

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

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

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

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

Provided that any policy of insurance issued with any limited liability and in force, immediately before the commencement of this Act, shall continue

to be effective for a period of four months after such commencement or till the date of expiry of such policy whichever is earlier.

(3) A policy shall be of no effect for the purposes of this Chapter unless and until there is issued by the insurer in favour of the person by whom the

policy is effected a certificate of insurance in the prescribed form and containing the prescribed particulars of any condition subject to which the

policy is issued and of any other prescribed matters; and different forms, particulars and matters may be prescribed in different cases.

(4) Where a cover note issued by the insurer under the provisions of this Chapter or the rules made thereunder is not followed by a policy of

insurance within the prescribed time, the insurer shall, within seven days of the expiry of the period of the validity of the cover note, notify the fact

to the registering authority in whose records the vehicle to which the cover note relates has been registered or to such other authority as the State

Government may prescribe.

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

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

that person or those classes of persons.

8. There is use of the words "incurred by him". The word "him" refers to the insured. Therefore, the insurer is liable to indemnify the liability of the

owner. Any contract of indemnity would last till the lifetime of either of the contracting parties. With the death of the owner, the policy comes to an

end and, therefore, the insurance company is not liable to compensate for the loss sustained by the third person when the owner dies. Thus, when

the insured is dead, then the question of indemnifying liability of the deceased insured does not arise. Therefore, the liability does not extend to the

heirs of the deceased. It would thus appear that even in case of third party's claim, once the insured dies in the same accident, the third party does

not have a claim against the insurance company, because the liability of the

owner ceases.

9. Let us consider the converse case. What has been stated regarding liability would equally apply to right also. As far as the insurance company is

concerned, when a liability ceases, the corresponding right to claim compensation would also cease. Considering the facts of the case, the owner

or the insured is liable for the act of negligence committed by his servant. Vicarious liability would not give rise to vicarious right for the owner to

claim compensation for the tortious act done by his servant. Therefore, such right does not pass on to the legal heirs of the owner of the vehicle.

Under the vicarious liability, the negligence of the servant passes on to the owner and thus it only creates liability and not a right in the owner of the

vehicle. Therefore, the deceased cannot take advantage of the negligence of his driver. In other words, applying the vicarious liability theory, the

owner cannot take any advantage of his servant's fault and claim compensation. When the owner cannot claim compensation, his legal heirs also

cannot claim any compensation from the insurance company. This has been reiterated by a Division Bench of this Court in United India Insurance

Co. Ltd. Vs. Lakshmi and others, , where the owner of the vehicle died in an accident due to the negligence of his driver and the legal heirs

claimed compensation. The Division Bench observed that the insured, namely, the deceased N. Ramasamy, was himself the victim of the fatal

accident caused by an act of his own driver and so the legal representatives of the deceased insured cannot make a claim for compensation against

the insurance company, since the policy of the insurance cover only the liability to be incurred by the insured against third parties in terms of

Section 95 (1) (b) (i) of the Motor Vehicles Act (4 of 1939). The Division Bench further observed that the insured having himself died in the

accident caused by his own driver and there being no liability on his part or on the part of the legal representatives towards third party, the

insurance company's liability does not at all arise.

10. I am satisfied that the Tribunal has erred in holding that under the given circumstances, Gopalsamy was a third party and, therefore, the

insurance company is liable. The Tribunal has forgotten for a moment that the liability of the insurance company came to a close under the contract

entered into between the deceased and the insurance company and, therefore,

the deceased cannot be treated as a third party, for his heirs to claim compensation.

11. In the result, this civil miscellaneous appeal is allowed. The award passed by the Tribunal as against the appellant herein is set aside.

Consequently, C.M.P. No. 11417 of 1996 and C.M.P. No. 6745 of 1997 are closed as no orders are necessary. No costs.