



WEB COPY

CMA No. 2160 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21-07-2026

CORAM

THE HON'BLE MR JUSTICE N. ANAND VENKATESH

CMA No. 2160 of 2022

AND

CMP No. 16785 of 2022

New India Assurance Co., Ltd.,
Sethu Krishna Trader Centre, 2nd Floor, 133/31-1,
Trichi Main Road, Gugai, Salem-6.

Now at,

Motor Third Party Claims, No.232, Bombay
Mutual Building, 6th Floor, NSC Bose Road,
Chennai 1.

..Appellant(s)

Vs

1. Sivaperumal
S/o.Lakshmanan,
No.4/29, Kovilmara Kadu, Sithanoor,
Thalavaipatti Post, Salem 636 302.
2. P.Balasubramanian
S/o.Pattappan,
No.4-29, Ward No.4, Katthavarayan Kovil,
Paguthi, Thalavaipatti Post, Salem 302.
3. The Manager, MULTIX
3rd Floor, Salect City Walk, A-3,
District Center, Chocket, New Delhi 110017.

..Respondent(s)

PRAYER: Civil Miscellaneous Appeal filed under Section 30 of the Workmens Compensation Act, to allow the Civil Miscellaneous appeal by setting aside the Order dated 10.12.2021 in EC No.216 of 2018 passed by the Joint Commissioner of Labour, Salem .



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For Appellant(s): Mr.P.Sankaranarayanan
For Respondent(s): Mr.C.Ramaraj - For R1
R2 - Left
R-3 – Signed – No appearance

JUDGMENT

This appeal has been filed by the Insurance Company against the order passed by the Joint Commissioner of Labour, Salem in E.C.No.216 of 2018 dated 10.12.2021.

2. The first respondent filed an application before the Joint Commissioner of Labour on the ground that the first respondent was working as a driver under the second respondent herein and on 12.11.2016, 20 cans of Rexine, each containing 35 litres, was loaded into the vehicle owned by the second respondent and the first respondent was driving the vehicle on NH 47 and at about 5.00 p.m., the first respondent lost control and the vehicle capsized, as a result of which, the first respondent sustained grievous injuries. He took treatment at Government Hospital, Erode and underwent surgeries. It is under these circumstances, the petition came to be filed before the Workmen's Compensation Act.

3. The Tribunal, on considering the facts and circumstances of the case and on appreciation of oral and documentary evidence, came to the conclusion



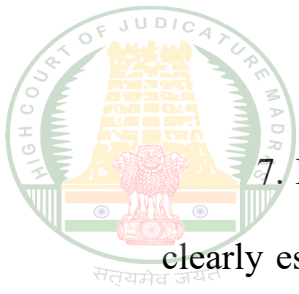
that there was an employer-employee relationship between the first and second respondents herein, and the accident had taken place in the course of employment and hence, fixed the total compensation payable at Rs.2,99,491/- with interest at the rate of 12% per annum. Since the second respondent had a policy cover with the appellant, the authority directed the compensation amount to be paid with interest by the Insurance Company. Aggrieved by the same, the present appeal has been filed before this Court.

4. The appeal came up for hearing on 03.07.2026 and the following substantial question of law was framed by this Court.

“(a) Whether the Joint Commissioner of Labour was right in awarding compensation in a case where the insurance policy was taken under a private car enhancement cover policy of insurance but the vehicle was put to commercial use in violation of the policy condition?”

5. This Court heard Mr.P.Sankaranarayanan, learned counsel appearing on behalf of the appellant and Mr.C.Ramaraj, learned counsel appearing on behalf of the first respondent.

6. This Court carefully considered the submissions made on either side and the materials available on record. This Court also carefully went through the order passed by the Joint Commissioner of Labour, Salem.



7. In the case in hand, the insurance policy, which was marked as Ex.R1, clearly establishes that it is a “Private Car Package Policy – Enhanced Cover” and whereas, the car has been put to commercial usage, and it is contended that the same is in violation of a basic policy condition. It is therefore contended that the Insurance Company cannot be made liable to pay the compensation.

8. The larger question that was addressed before this Court is that the jurisdiction was exercised by the Joint Commissioner of Labour under the Workmen’s Compensation Act and the said enactment does not have any provision to apply the principle of ‘pay and recover’. Hence, whenever there is a policy violation, the Insurance Company cannot be made liable to pay the compensation, and it is only the owner / employer who is liable to pay the compensation.

9. The application filed before the Joint Commissioner of Labour and the evidence available on record establish beyond cavil that the vehicle has been put to commercial use. The policy in question provides that the car can be used only for private purposes and not for commercial usage.

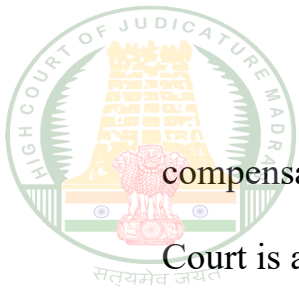
10. The liability of the Insurance Company in this case is purely a contractual liability unlike the liability under the Motor Vehicles Act, where it can fall either under the category of contractual liability and / or statutory



liability under Section 147 of the Motor Vehicles Act. Hence, even if a case cannot be brought within the scope of contractual liability, the Insurance Company can be made liable to pay compensation to a third party under statutory liability. In such cases, Section 149 of the Motor Vehicles Act also provides for the principle of 'pay and recover'. This principle of 'pay and recover' cannot be applied in a case where the claim is considered under the Workmen's Compensation Act, which has now been rechristened as the Employees' Compensation Act.

11. In view of the above, if there is any fundamental policy violation, the liability of the Insurance Company ceases, and it is only the owner/ employer who is liable to pay the compensation. The vicarious liability cannot be imposed against the Insurance Company for and on behalf of the employer if the employer commits a fundamental breach of policy, since the liability of the Insurance Company is governed only under the policy, which is construed as a contract between the parties.

12. The upshot of the above discussion, leads to the only conclusion that where there is a fundamental breach of policy committed by the employer, the Insurance Company cannot be made liable to pay the compensation to the workman, since the 'pay and recover' principle cannot be applied. In such a case, it is only the employer who has to take the entire liability and pay the



compensation to the workman. The substantial question of law framed by this Court is answered accordingly.

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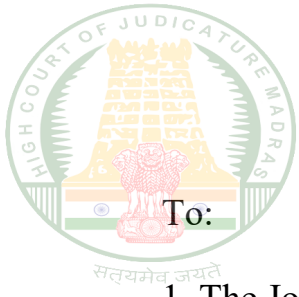
13. *Ex-consequenti*, the entire liability has to be borne only by the second respondent, who is the employer in this case. The appellant – Insurance Company is exonerated from their liability. The finding of the Joint Commissioner of Labour holding otherwise is hereby set aside.

14. In the result, this Civil Miscellaneous Appeal is allowed and there shall be a direction to the second respondent to pay the entire compensation amount along with interest, as fixed by the Joint Commissioner of Labour, Salem in E.C.No.216 of 2018, dated 10.12.2021, within a period of six (6) weeks from the date of receipt of a copy of this judgment. Whatever amount has been deposited by the appellant – Insurance Company shall be permitted to be withdrawn with accrued interest, if any. No costs. Consequently, the connected miscellaneous petition stands closed.

21-07-2026

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

SSI



To:

1. The Joint Commissioner of Labour,
Salem.

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



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N.ANAND VENKATESH J.

SSI

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