

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.11.2016

CORAM

THE HON'BLE MR.JUSTICE N. SESHASAYEE

C.M.A.No.1065 of 2008
and M.P.No.1 of 2008

The Divisional Officer,
The New India Assurance Co. Ltd.,
Vellore.

Appellant/3rd
Respondent

Vs

1.Meena
2.Munusamy

3.The Managing Director,

3rd Respondent 1&2 /
Petitioner 1&2

P.A.T.C.
Now TNGSTC Rangapuram,
Vellore.

4.Pushparani

3rd Respondent/1st
petitioner

5.K.Sivakumar
6.K.Jayakumar
7.K.Satheesh Kumar
8.K.Usha
9.K.Dharani

...Respondents 4 to 9 / Respondents 4 to 9

Prayer : Civil Miscellaneous Appeal preferred under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree in MCOP.No.941 of 2002 dated 27.04.2006 on the file of the Motor Accidents Claims Tribunal, Additional District and Sessions Court, Fast Track Court No.II, Ranipet.

For Appellant : Mr.N.Vijayaraghavan
For Respondents : Mr.P.Mani

JUDGMENT

This appeal has been filed by the Insurance Company on the ground that the award for Rs.1,10,000/- with interest and costs was in favour of an injured victim in a road accident dated 14.04.1989 in which the victim was an occupant in the insured lorry which was purportedly carrying 80 persons for a birthday party. The insurer did not pursue the appeal on quantum and confirmed its submission to liability as above.

2. At the outset, this Court would observe that it is 27 years since the accident. The award is very modest. It is true that there is no coverage for unauthorised occupants carried in a goods vehicle and Section 147 of Motor Vehicles Act, 1988 does not provide such a cover. But the proof has to come from the insurer on the status of the victim and the terms and conditions of policy of insurance.

3. But despite the said position of law, it is to be noted that in cases where the victims are rustic villagers or illiterates or the awards were too modest, the inclination in this beneficial jurisdiction is to protect the interest of the victim. That is by ordering the insurer to pay and seek recovery from the insured as done by the Apex Court also in National Insurance Co. Ltd., Vs. Saju P. Paul in [2013 ACJ 554 (SC)]. Even after concluding that the victim was not covered or required to be covered by insurer, still the Hon'ble Court chose to permit the victim the benefit of the award.

4. The facts at hand are not different. It is 27 years since the accident had taken place, and to drive the claimant to seek compensation from the insured/owner of the vehicle now would be an elusive remedy rooted in judicial escapism in addressing the suffering of an innocent and a hapless citizen. This Court is constrained to hold that the appellant is liable to undertake the liability at the first instance and then to recover the same from the owner of the offending vehicle in question. The insurer will be at liberty to recover the award sum in this very proceedings without any need to resort to separate proceedings. This order shall not be construed as a precedent if there are any connected claims arising out of the same accident. The insurer having deposited the entire award sum, the claimant would be at liberty to withdraw the same. In the result, the Civil Miscellaneous Appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed

s/d-

Assistant Registrar(CO)

//True Copy//

Sub-Assistant Registrar

To

The Motor Accidents Claims Tribunal,
Additional District and Sessions Court,
Fast Track Court No.II,
Ranipet.

Copy To

The Section officer,
V.R. Section
High Court, Madras.

+1 CC to M/s. P. Mani , Advocate sr 70814

+1 CC to M/s. N. Vijayaraghavan, Advocate sr 71531

C.M.A.No.1065 of 2008

MP (CO)
sp/7/2



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