IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.01.2017

CORAM : THE HONOURABLE Mr. JUSTICE N.SESHASAYEE

CMA.No.3366 of 2004
and CMA.No.1971 of 2005

New India Assurance Co. Ltd.,
Rep. by Branch Manager,
Villupuram. ... Appellant in both CMAs

Vs.

1.Baranikumar ... 1st Respondent in CMA.No.3366 of 2004
2.Sridhar ... 1st Respondent in CMA.No.1971 of 2005
3.Karunanidhi ... 2nd Respondent in both CMAs
(2nd respondent (in both CMAs) exparte before the Lower Court)

Common Prayer : Civil Miscellaneous Appeals filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree in MCOP. No.244 of 2000 and MCOP. No.248 of 2000 dated 07.11.2002 on the file of Motor Accident Claims Tribunal, Principal Sub Court, Tindivanam.

For Appellant (in both CMAs) : Mr.N.Vijayaraghavan

For Respondents (in both CMAs) : Mr.Santhana Raman [for R1]
R2 - Exparte

COMMON JUDGMENT

CMA No.3366 of 2004 and CMA.No.1971 of 2005 are filed against the awards of Rs.50,000/- with interest and costs for injuries sustained by one Baranikumar and one Sridhar who were carried in a goods vehicle. The insurer has filed the appeals contending that the victims were unauthorised occupants and not entitled for coverage. The quantum awarded in both cases is not in dispute.

2. While it is true that liability of insurer to a person unauthorisedly carried in a goods vehicle can be questioned, this Court finds that this accident occurred on 14.02.2000 and the MCOPs are of 2000 origin and awards dated 07.11.2002 and appeals of the year 2004 and 2005.

3. More importantly it was in ***New India Assurance Co. Ltd. Vs. Asha Rani*** in **2003 ACJ 1 (SC)** by orders dated 03.12.2002, the Apex Court had clarified as to who was entitled for coverage by reversing the verdict of the Apex Court in ***New India Assurance Co. Ltd., Vs. Satpal Singh*** in **2000 ACJ 1 (SC)**. In Satpal Singh case, insurer was held liable for such claims also and as such the High Courts and Tribunals were also duty bound to follow the same.

4. It is in the light of such circumstances the Courts in the land pointed out that since clarification came in 02.12.2002, earlier verdicts holding insurer liable for such claims was based on law as it then stood vide **Satpal Singh** and as such in such cases, in appeals also, pay and recovery may be ordered instead of exonerating the insurer outright. Further in **The Manager, National Insurance Co. Ltd., Vs. Saju P.Paul** in **2013 ACJ 554 (SC)** the Apex Court chose to direct insurer to pay and recover alone.

5. For all the reasons, this Court is not inclined to disturb the modest awards after sixteen years of the date of accident. Accordingly, the insurer is held liable for the claims and the appeals are dismissed but with liberty to insurer to seek recovery from the insured. There shall be no orders as to costs.

11.01.2017

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To:

1.The Motor Accidents Claims Tribunal,
Principal Sub Court,
Tindivanam.

2.The Section Officer,
VR Section, High Court, Madras.

N.SESHASAYEE, J.

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CMA.No.3366 of 2004
and CMA.No.1971 of 2005

11.01.2017