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- 1 THILLAI AMMAL W/O.RAJAMANICKAM, 2/186,
NORTH STREET, VELIPRINGIUM, PUDUPALAYAM, LALKUDI TALUK,
TRICHY DISTRICT. .. R1/PETITIONER
- 2 A.MAHARAJAN S/O.APPADURAI, 2/16-A, HAYAHARPALAYAM,
REDDIPALAYAM POST, ARIYALUR TALUK, PERAMBALUR DISTRICT.
... Respondent NO.2 in CMA(MD). 221/ 2011/R1
- 1 JANAKI W/O. PITCHAI PILLAI, VELIPRINGIUM, PUDUPALAYAM,
LALKUDI TALUK, TRICHY DISTRICT. .. R1/PETITIONER
- 2 A.MAHARAJAN S/O.APPADURAI, 2/16-A, HAYAHARPALAYAM,
REDDIPALAYAM POST, ARIYALUR TALUK, PERAMBALUR DISTRICT.
... Respondent NO.2 in CMA(MD). 222/ 2011 /R1
- 1.SAMINATHAN .. R1/PETITIONER
- 2.A.MAHARAJAN, S/O.APPADURAI NO.2/16-A, HAYAHARPALAYAM,
REDDIPALAYAM POST, ARIYALUR TALUK, PERAMBALUR DISTRICT.
... Respondent NO.2 in CMA(MD). 223/ 2011/R1
- 1.TMT.MANGAYARKARASI W/O.RAVI @ RAVICHANDRAN,
2/135-A,PUDUPPALAYAM, VELIPRINGIUM, LALKUDI TALUK,
TRICHY DISTRICT .. R1/PETITIONER
- 2.A.MAHARAJAN,S/O.APPADURAI NO.2/16-A, HAYAHARPALAYAM,
REDDIPALAYAM POST, ARIYALUR TALUK, PERAMBALUR DISTRICT.
... Respondent NO.2 in CMA(MD). 224/ 2011/R1
- 1.ULAGANATHAN S/O.PITCHAI PILLAI, NO,2/135-A,
PUDUPALAYAM, VELIPRINGIUM, LALKUDI TALUK,
TRICHY DISTRICT .. R1/PETITIONER
- 2.A.MAHARAJAN, S/O.APPADURAI NO.2/16-A,
HAYAHARPALAYAM, REDDIPALAYAM POST, ARIYALUR TALUK,
PERAMBALUR DISTRICT. ...Respondent NO.2 in CMA(MD). 225/ 2011/R1
- 1.JOTHI W/O.SAMIVEL, VELIPRINGIUM, PUDUPALAYAM,
LALKUDI TALUK, TRICHY DISTRICT. .. R1/PETITIONER
- 2.A.MAHARAJAN S/O.APPADURAI, 2/16-A, HAYAHARPALAYAM,
REDDIPALAYAM POST, ARIYALUR TALUK, PERAMBALUR DISTRICT.
... Respondent NO.2 in CMA(MD). 226/ 2011 /R1
- 1.LAKSHMI W/O.PITCHAI PILLAI, VELIPRINGIUM, PUDUPALAYAM,
LALKUDI TALUK, TRICHY DISTRICT. .. R1/PETITIONER
- 2 A.MAHARAJAN S/O.APPADURAI, 2/16-A, HAYAHARPALAYAM,
REDDIPALAYAM POST, ARIYALUR TALUK, PERAMBALUR DISTRICT.
... Respondent NO.2 in CMA(MD). 227/ 2011 /R1
- 1.POWNAMMAL W/O.PALANISAMY, VELIPRINGIUM, PUDUPALAYAM,
LALKUDI TALUK, TRICHY DISTRICT. .. R1/PETITIONER
- 2.A.MAHARAJAN S/O.APPADURAI, 2/16-A, HAYAHARPALAYAM,
REDDIPALAYAM POST, ARIYALUR TALUK, PERAMBALUR DISTRICT.
... Respondent NO.2 in CMA(MD). 228/ 2011/R1
- 1.PALANIAMMAL@ANJAMMALW/O.CHELLAKANNU,VELIPRINGIUM,
PUDUPALAYAM, LALKUDI TALUK, TRICHY DISTRICT. .. R1/PETITIONER



2.A.MAHARAJAN S/O.APPADURAI, 2/16-A, HAYAHARPALAYAM,
REDDIPALAYAM POST, ARIYALUR TALUK, PERAMBALUR DISTRICT.
... Respondent NO.2 in CMA(MD). 229/ 2011 /R1

1.TMT.SELVI, W/O.THIRUMAL, VELIPRINGIUM, PUDUPALAYAM,
LALKUDI TALUK, TRICHY DISTRICT. .. R1/PETITIONER

2 A.MAHARAJAN, S/O.APPADURAI, 2/16-A, HAYAHARPALAYAM,
REDDIPALAYAM POST, ARIYALUR TALUK, PERAMBALUR DISTRICT.
... Respondent NO.2 in CMA(MD). 230/ 2011 /R1

1.BALAKRISHNAN, S/O.MURUGESAN, 2/135-A, PUDUPALAYAM,
VELIPRINGIUM, PERIATHIRUKKONAM POST, LALKUDI TALUK,
TRICHY DISTRICT. .. R1/PETITIONER

2 A.MAHARAJAN, S/O.APPADURAI, 2/16-A, HAYAHARPALAYAM,
REDDIPALAYAM POST, ARIYALUR TALUK, PERAMBALUR DISTRICT.
... Respondent NO.2 in CMA(MD). 231/ 2011 /R1

1.VIJAYALAKSHMI, W/O.CHINNADURAI, 2/149, VELIPRINGIUM,
PUDUPALAYAM, LALKUDI TALUK, TRICHY DISTRICT. .. R1/PETITIONER

2 A.MAHARAJAN, S/O.APPADURAI, 2/16-A, HAYAHARPALAYAM,
REDDIPALAYAM POST, ARIYALUR TALUK, PERAMBALUR DISTRICT.
... Respondent NO.2 in CMA(MD). 232/ 2011/R1

1.VADIVEL MOOPPANAR, S/O.KAILASAM,, 2/484,
PUDUPALAYAM, VELIPRINGIUM, PERIATHIRUKKONAM POST,
LALKUDI TALUK, TRICHY DISTRICT. .. R1/PETITIONER

2 A.MAHARAJAN, S/O.APPADURAI, 2/16-A, HAYAHARPALAYAM,
REDDIPALAYAM POST, ARIYALUR TALUK, PERAMBALUR DISTRICT.
... Respondent NO.2 in CMA(MD). 233/ 2011/R1

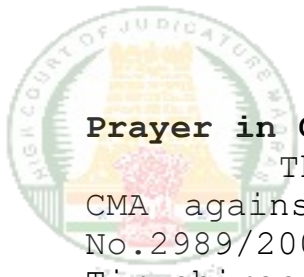
1.CHINNADURAI, S/O.KARUPPIAH 2/135-A, VELIPRINGIUM,
PUDUPALAYAM, PERIATHIRUKKONAM POST, LALKUDI TALUK,
TRICHY DISTRICT. .. R1/PETITIONER

2 A.MAHARAJAN, S/O.APPADURAI, 2/16-A, HAYAHARPALAYAM,
REDDIPALAYAM POST, ARIYALUR TALUK, PERAMBALUR DISTRICT.
... Respondent No.2 in CMA(MD). 234/ 2011 /R1

PRAYER: Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 19.12.2008 made in M.C.O.P.No.2987 of 2002 on the file of the on the file of the Motor Accident Claims Tribunal - III Additional Subordinate Judge, Tiruchirappalli.

Prayer in CMA(MD). 217/ 2011 :

The appellant herein prefer this Memorandum of Grounds of CMA against the Judgement and Decree dated 19.12.2008 in MCOP No.2988/2002 on the file of the MACT, (III Subordinate Judge), Tiruchirappalli.



Prayer in CMA(MD). 218/ 2011 :

The appellant herein prefer this Memorandum of Grounds of CMA against the Judgement and Decree dated 19.12.2008 in MCOP No.2989/2002 on the file of the MACT,(III Subordinate Judge), Tiruchirappalli.

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Prayer in CMA(MD). 219/ 2011 :

The appellant herein prefer this Memorandum of Grounds of CMA against the Judgement and Decree dated 19.12.2008 in MCOP No.2991/2002 on the file of the MACT,(III Subordinate Judge), Tiruchirappalli.

Prayer in CMA(MD). 220/ 2011 :

The appellant herein prefer this Memorandum of Grounds of CMA against the Judgement and Decree dated 19.12.2008 in MCOP No.2992/2002 on the file of the MACT,(III Subordinate Judge), Tiruchirappalli.

Prayer in CMA(MD). 221/ 2011 :

To be urged at the trial, the award dated 19.12.2008 passed in MCOP No.2993 of 2002 on the file of the Motor Accidents Claims Tribunal (III Additional Subordinate Judge), Tiruchirappalli required to be set aside and justice rendered.

Prayer in CMA(MD). 222/ 2011 :

The appellant herein prefer this Memorandum of Grounds of Civil Miscellaneous Appeal against the judgment and decree dated 19.12.2008 in MCOP No.2994 of 2002 on the file of the Motor Accidents Claims Tribunal (III Additional Subordinate Judge), Tiruchirappalli.

Prayer in CMA(MD). 223/ 2011 :

To be urged at the trial, the award dated 19/12/2008 passed in MCOP.No.2995/2002 on the file of the Motor Accidents Claims Tribunal (III Additional Subordinate Judge) Tiruchirappalli, required to be set aside and justice rendered.

Prayer in CMA(MD). 224/ 2011 :

To be urged at the trial, the award dated 19/12/2008 passed in MCOP.No.2996/2002 on the file of the Motor Accidents Claims Tribunal (III Additional Subordinate Judge) Tiruchirappalli, required to be set aside and justice rendered.

Prayer in CMA(MD). 225/ 2011 :

To be urged at the trial, the award dated 19/12/2008 passed in MCOP.No.2997/2002 on the file of the Motor Accidents Claims Tribunal (III Additional Subordinate Judge) Tiruchirappalli, required to be set aside and justice rendered.



Prayer in CMA(MD). 227/ 2011 :

The appellant herein prefer this Memorandum of Grounds of Civil Miscellaneous Appeal against the judgment and decree dated 19.12.2008 in MCOP No.2999 of 2002 on the file of the Motor Accidents Claims Tribunal (III Additional Subordinate Judge), Tiruchirappalli.

Prayer in CMA(MD). 228/ 2011 :

The appellant herein prefer this Memorandum of Grounds of Civil Miscellaneous Appeal against the judgment and decree dated 19.12.2008 in MCOP No.3000 of 2002 on the file of the Motor Accidents Claims Tribunal (III Additional Subordinate Judge), Tiruchirappalli.

Prayer in CMA(MD). 229/ 2011 :

The appellant herein prefer this Memorandum of Grounds of Civil Miscellaneous Appeal against the judgment and decree dated 19.12.2008 in MCOP No.3001 of 2002 on the file of the Motor Accidents Claims Tribunal (III Additional Subordinate Judge), Tiruchirappalli.

Prayer in CMA(MD). 230/ 2011 :

The appellant herein prefer this Memorandum of Grounds of Civil Miscellaneous Appeal against the Judgement and Decree dated 19.12.2008 in MCOP No.3003/2002 on the file of the MACT, (III Subordinate Judge), Tiruchirappalli.

Prayer in CMA(MD). 231/ 2011 :

The appellant herein prefer this Memorandum of Grounds of Civil Miscellaneous Appeal against the Judgement and Decree dated 19.12.2008 in MCOP No.3004/2002 on the file of the MACT, (III Subordinate Judge), Tiruchirappalli.

Prayer in CMA(MD). 232/ 2011 :

The appellant herein prefer this Memorandum of Grounds of Civil Miscellaneous Appeal against the Judgement and Decree dated 19.12.2008 in MCOP No.3005/2002 on the file of the MACT, (III Subordinate Judge), Tiruchirappalli.

Prayer in CMA(MD). 233/ 2011 :

The appellant herein prefer this Memorandum of Grounds of Civil Miscellaneous Appeal against the Judgement and Decree dated 19.12.2008 in MCOP No.3006/2002 on the file of the MACT, (III Subordinate Judge), Tiruchirappalli.

Prayer in CMA(MD). 234/ 2011 :

The appellant herein prefer this Memorandum of Grounds of Civil Miscellaneous Appeal against the Judgement and Decree dated 19.12.2008 in MCOP No.3007/2002 on the file of the MACT, (III Subordinate Judge), Tiruchirappalli.



For Appellant : Mrs.K.R.Shiva Shankari
for Mr.V.R.Subramaniam

For Respondents : No appearance

* * * * *

COMMON JUDGMENT

C.M.A(MD)Nos.216 to 234 of 2011 have been filed by the appellant-Insurance Company against the common award dated 19.12.2008 passed in M.C.O.P.Nos.2987, 2988, 2989, 2991, 2992, 2993, 2994, 2995, 2996, 2997, 2998, 2999, 3000, 3001, 3003, 3004, 3005, 3006 and 3007 of 2002, by the Motor Accident Claims Tribunal - III Additional Subordinate Judge, Tiruchirappalli.

2. Nutshell facts necessary for the disposal of all these appeals, are as follows:

2.1. On 30.04.2001 at about 10.00 hours, a Mini Lorry bearing Registration No.TN-46-5960 belonging to the second respondent herein insured with the appellant-Insurance Company was driven by its driver from Thiruvaiyaru to Vellipringium in a rash and negligent manner and when it reached near Naickkar Palayam, the driver of the Mini Lorry suddenly overturned the same and hence, it got topsy-turvy, resulting in all the persons travelled in it, sustaining grievous injuries all over their bodies. A case was registered against the driver of the Mini Lorry by Vikkiramangalam Police Station. Some of the persons who sustained multiple injuries were taken to Tanjore Medical College Hospital, Tanjore and others were taken to Ariyalur Government Hospital. According to the claimants, the accident occurred only due to the rash and negligent driving of the driver of the Mini Lorry and therefore, they filed the respective claim petitions seeking compensation.

2.2. The second respondent herein/owner of the Mini Lorry filed the counter statements denying the averments made in the respective claim petitions and stated that the claimants are unauthorised passengers and that the driver of the Mini Lorry without consent and authorisation of the second respondent herein, carried the passengers in the Mini Lorry and in those circumstances, the second respondent/owner of the Mini Lorry is not liable to pay any compensation and therefore, prayed for the dismissal of the claim petitions.

2.3. The appellant-Insurance Company filed the counter statement and denied all the averments made in the claim petitions and stated that in a goods vehicle, the claimants and others, totalling 60 persons were travelling as paid passengers contrary to the Permit and policy conditions and in view of the said

violation, the appellant-Insurance Company is not liable to pay the compensation.

2.4. Before the Tribunal, P.W.1 to P.W.21 were examined and Exs.A.1 to A.34 were marked on behalf of the claimants. R.W.1 and R.W.2 were examined and Exs.B.1 to B.4 were marked on behalf of the appellant-Insurance Company as well as the second respondent/owner of the Mini Lorry.

2.5 The Tribunal, considering the pleadings, oral and documentary evidence let in by the parties, more particularly, Ex.A.1 - F.I.R and also the statements given by the claimants under Section 161(3) of the Code of Criminal Procedure, wherein they have admitted that 60 persons had travelled in the Mini Lorry as paid passengers, held that the accident occurred only due to the rash and negligent driving of the driver of the Mini Lorry and directed the appellant-Insurance Company to pay the compensation at the first instance and recover the same from the second respondent herein/owner of the Mini Lorry and also considering the nature of injuries suffered by the claimants, awarded various amounts as compensation.

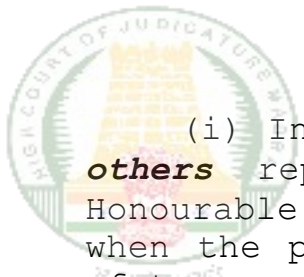
2.6. Aggrieved by the same, the appellant-Insurance Company filed all these appeals.

3. Heard the learned Counsel for the appellant-Insurance Company and perused the materials available on record. Despite notice served on the respondents, there is no representation either in person or through Counsel.

4. The only point urged by the learned Counsel for the appellant-Insurance Company is that the Tribunal having held that the claimants are unauthorised/paid passengers travelling in a goods vehicle, erred in directing the appellant-Insurance Company to pay the compensation to the claimants at the first instance and recover the same from the second respondent herein/owner of the Mini Lorry.

5. The learned Counsel for the appellant-Insurance Company further contended that the Tribunal ought to have seen that the judgments relied on by the learned Counsel for the claimants before the Tribunal are not applicable to the facts of the present case and that the Honourable Supreme Court as well as this Court repeatedly held that the gratuitous passengers travelling in a goods vehicle are not entitled to get any compensation from the Insurance Company and the Insurance Company is not liable to pay any compensation for the unauthorised passengers and the Insurance Company cannot be ordered to pay the compensation and recover the same from the owner of the offending vehicle.

6. In support of his contentions, the learned Counsel for the appellant-Insurance Company relied on the following judgments:



(i) In **National Insurance Company Limited v. Savitri Devi and others** reported in (2013) 11 Supreme Court Cases 554, the Honourable Supreme Court has considered the liability of insurer, when the passengers were carried in a goods vehicle in violation of terms of policy and held as follows:

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"8. After having gone through the award of the Claims Tribunal and the judgment and order passed by the learned Single Judge of the High Court, we are not able to understand as to how it has been found that the appellant Insurance Company can still be held liable to pay the amount of compensation as there has been a categorical finding by both the courts recording that the vehicle in question was insured only as "goods carrying vehicle". The custom of carrying barat in the village on the said truck will not be sufficient to hold the appellant Insurance Company liable to pay the amount of compensation. Admittedly, the appellant Insurance Company would not know unless the accident takes place as to for what purpose the vehicle in question was being used. The terms and conditions of the insurance policy are very clear and categorical and it creates a specific bar on carrying of any passengers, except the employees other than the driver, not exceeding six (6) in number, who should also come under the purview of the Workmen's Compensation Act.

9. The specific case of the claimants was that the barat was being taken in the said open truck on 12-11-1996 when the accident had taken place. Thus, according to us, it clearly violates the terms and conditions of the policy.

10. Dealing with similar circumstance, this Court has held in *National Insurance Co. Ltd. v. Bommithi Subbhayamma* (2005) 12 SCC 243, as under: (SCC p.246, paras 9-11)

"9..... '.....20. It is, therefore, manifest that in spite of the amendment of 1994, the effect of the provision contained in Section 147 with respect to persons other than the owner of the goods or his authorised representative remains the same. Although the owner of the goods or his authorised representative would now be covered by the policy of insurance in respect of a goods vehicle, it was not the intention of the legislature to provide for the liability of the insurer with respect to passengers, especially gratuitous passengers, who were neither contemplated at the time the contract of insurance was entered into, nor was any premium paid to the extent of the benefit of insurance to such category of people.'

10. The same view was reiterated in *National Insurance Co. Limited v. Challa Upendra Rao* (2004) 8 SCC 517, *Pramod Kumar Agrawal v. Mushtari Begum* (2004) 8 SCC 667 and also in *National Insurance Co. Limited. v. Chinamma* (2004) 8 SCC 697.

11. In view of the aforementioned authoritative pronouncements of this court, the impugned judgment of the High Court cannot be sustained which is set aside, accordingly. This Appeal is allowed.



We, however, make it clear that the claimant respondents will be entitled to recover the amount of compensation granted in their favour by the Motor Vehicles Accidents Claims Tribunal from the owner of the vehicle. No costs."

11. Similar view has been reiterated in *National Insurance Co. Limited v. Rattani*, (2009) 2 SCC 75, paras 14 and 15 of which are reproduced hereunder: (SCC p.79)

"14. The question as to whether burden of proof has been discharged by a party to the lis or not would depend upon the facts and circumstances of the case. If the facts are admitted or, if otherwise, sufficient materials have been brought on record so as to enable a court to arrive at a definite conclusion, it is idle to contend that the party on whom the burden of proof lay would still be liable to produce direct evidence to establish that the deceased and the injured passengers were gratuitous passengers.

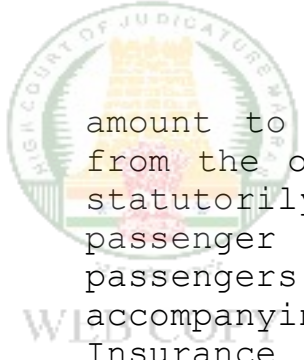
15. As indicated hereinbefore, the first information report as such may or may not be taken into consideration for the purpose of arriving at a finding in regard to the question raised by the appellant herein, but, when the first information report itself has been made a part of the claim petition, there cannot be any doubt whatsoever that the same can be looked into for the aforementioned purpose."

12. In the light of the aforesaid judgments, we have no doubt in our minds that the impugned judgment and order of the learned Single Judge dated 28-7-2005 cannot be sustained. The same is hereby set aside and quashed. No liability can be fastened on the appellant Insurance Company. The appeals of the appellant Insurance Company are allowed to this extent.

13. However, it is clarified that if any amount has already been paid by the Insurance Company, it shall not be permissible for it to recover the amount from the claimants. It is also clarified that the claimants, in any case, would be entitled to recover the balance amount of the compensation awarded to them vide impugned judgment and order of the learned Single Judge dated 28-7-2005 from the estate of the deceased owner. The appeals are allowed to this extent. The award and the finding of the learned Single Judge fastening the liability on the appellant Insurance Company is set aside. The parties to bear their own costs."

(ii) ***Iffco-Tokio General Insurance Co. Ltd. v. Muthumani reported in 2014 (2) TN MAC 442***, wherein this Court held as follows:

"8. In fact, I had an occasion to deal with the same issue in the case of ***United India Insurance Company Ltd., Vs. M. Thangavel***, 2011 (2) TN MAC 774. In the said case, by relying upon various judgments of the Hon'ble Supreme Court, it has been held that only in a case, where the Insurance Company is successful in its defence under Section 149, it may yet be required to pay the



amount to the Claimant and thereafter, it may recover the same from the owner of the vehicle. When the Insurance Company is not statutorily required to cover the liability in respect of a passenger in a goods vehicle under Section 147, unless such passengers is the owner or agent of the owner of the goods accompanying such goods absolutely, there is no need for the Insurance Company to pay compensation since there is no contractual liability under the statute to pay the amount to the gratuitous passenger travelling in the goods carriage vehicle. Under such circumstances, a direction could not be given to the Insurance Company to pay the owner and recover from the owner of the vehicle.

9. Now, it is the submission of the learned Counsel for the Claimants that if the matter has already been decided by the Trial Court by directing the Insurance Company to pay the Compensation amount to the Claimant and to recover the same from the owner of the vehicle, it is in the discretion of the appellate Court to decide as to whether the doctrine of 'Pay and Recover' could be applied, depending upon the facts and circumstances of the case. In this regard, the learned Counsel for the Claimants relied upon the judgment of a Full Bench of this Court reported in **Branch Manager, United India Insurance Co. Ltd. Vs. Nagammal**, 2009 (1) TN MAC 1 : 2009 (1) CTC 1. In that case, the Full Bench of this Court by relying upon various judgments of the Hon'ble Supreme Court, has held as follows:

"31(vii). Where, however, the matter has already been decided by the Trial Court before the decision in *Baljit Kaur's case*, it would be in the discretion of the Appellate Court, depending upon the facts and circumstances of the case, whether the doctrine of 'Pay and Recover' should be applied or as to whether the claimant would be left to recover the amount from the person liable ie., the driver or the owner, as the case may be."

The learned Counsel for the Claimants has also produced number of judgments delivered by this Court and submitted that in all those cases, this Court has confirmed the order passed by the Tribunal, with regard to the doctrine of 'Pay and Recovery', in the case of gratuitous passengers travelling in a Goods Carriage vehicle."

10. But, a careful perusal of the judgment of the Full Bench of this Court in **Branch Manager, United India Insurance Co. Ltd. Vs. Nagammal**, cited supra, I find that in the said case, the Full Bench has held that if the matter has already been decided by the Trial Court before the decision of **National Insurance Co. Ltd. v. Baljit Kaur**, 2004 (1) TN MAC 1 (SC) and it would be in the discretion of the appellate Court, depending upon the facts and circumstances, to determine as to whether the doctrine of 'Pay and Recover' could be applied.

11. The Judgment in **Baljit Kaur case**, cited supra, was delivered by the Hon'ble Supreme Court in the year 2004. But, in the case on hand, the Award has been passed by the Tribunal only in the year 2012. Therefore, the dictum laid down in the above



said judgment of the Full Bench of this Court, cannot be made applicable to this case.

12. In fact, in the judgment reported in the case of **National Insurance Company Ltd Vs. Savitri Devi and others**, 2013 (11) SCC 554, the Hon'ble Supreme Court has set aside the order of the High Court, where the High Court had directed the Insurance Company to pay the compensation amount to the victims and to recover the same from the owner of the vehicle in the case of gratuitous passengers travelling in goods vehicle. Therefore, in my considered opinion, in the case of gratuitous passengers travelling in goods carriage vehicle, absolutely there is no need to pay compensation by the Insurance Company, since there is no contractual liability under the statute to pay the amount to the gratuitous passengers travelling in the Goods Carriage vehicle.

13. Therefore, the order of the Tribunal to the extent of directing the Insurance Company to pay the Compensation amount to the Claimants and to recover the same from the owner of the vehicle alone is set aside and the Insurance Company/appellant herein is exonerated from its liability to pay the Compensation amount. The Claimants can work out their remedy to get the Compensation amount from the owner of the vehicle in the manner known to law. The appellant / Insurance Company is permitted to withdraw the amount deposited by them if any before the Tribunal."

7. The learned Counsel for the appellant submitted that in **National Insurance Co. Ltd. v. Baljit Kaur** reported in (2004) 2 SCC 1, the Honourable Supreme Court exercised the power under Article 142 of the Constitution of India and directed the Insurance Company to pay the compensation to the claimants at the first instance and recover the same from the owner of the offending vehicle.

8. It is the admitted case of all the parties that the vehicle involved in the instant case, is a goods vehicle and 60 persons travelled as unauthorised/paid passengers. The claimants travelled in a goods vehicle in violation of the Permit and policy conditions and therefore, it is contended by the learned Counsel for the appellant-Insurance Company that the claimants are not entitled to get any compensation from the appellant-Insurance Company if they are gratuitous passengers.

9. The issue as to whether the Insurance Company is liable to pay compensation to the gratuitous passengers at the first instance and recover the same from the owner of the offending vehicle is no longer *res integra*.

10. The Insurance Company is not liable to pay compensation for the injuries sustained or death of gratuitous passengers in an accident as well as the Insurance Company is not liable to pay compensation at the first instance and recover the same from the owner of the offending vehicle.



11. The Motor Vehicles Act with regard to payment of compensation is a benevolent legislation. The Honourable Supreme Court taking into consideration the same has directed the Insurance Company to pay compensation to the claimants at the first instance and recover the same from the owner of the offending vehicle and this order has been passed in exercise of powers under Article 142 of the Constitution of India.

12. As rightly pointed out by the learned Counsel for the appellant-Insurance Company, this Court as well as the Tribunal do not have such a discretionary power to direct the Insurance Company to pay compensation to the gratuitous passengers at the first instance and recover the same from the owner of the offending vehicle.

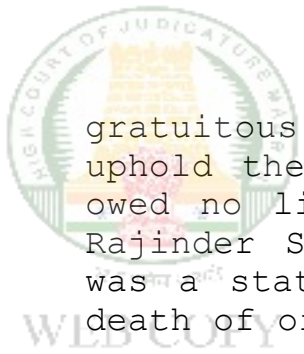
13. In **United India Insurance Co. Ltd., v. Tilak Singh and others** reported in **2006 ACJ 1441**, the Honourable Supreme Court held as follows:

"20. The view expressed in Satpal Singh's case, 2000 ACJ 1 (SC), however, has been specifically overruled in the subsequent judgment of a Bench of three judges in New India Assurance Company v. Asha Rani, 2003 ACJ 1 (SC). In that case the discussion arose in connection with carrying passengers in a goods vehicle. This Court after referring to the terms of Section 147 of the 1988 Act, as contrasted with Section 95 of the 1939 Act, held that the judgment in *Satpal Singh's* case (supra) had been incorrectly decided and that the insurer will not be liable to pay compensation. In the concurring judgment of Sinha, J. after contrasting the language used in the 1939 Act with that of the 1988 Act, it has been observed (vide paras 25 and 27):

"(25) Section 147 of 1988 Act, *inter alia*, prescribes compulsory coverage against the death of or bodily injury to any passenger of 'public service vehicle'. Proviso appended thereto categorically states that compulsory coverage in respect of drivers and conductors of public service vehicle and employees carried in a goods vehicle would be limited to the liability under *Workmen's Compensation Act*. It does not speak of any passenger in a 'good carriage'.

(27) Furthermore, sub-clause (i) of clause (b) of sub-section (1) of Section 147 speaks of liability which may be incurred by the owner of a vehicle in respect of death of or bodily injury to any person or damage to any property of a third party caused by or arising out of the use of the vehicle in a public place. Whereas sub-clause (ii) thereof deals with liability which may be incurred by the owner of a vehicle 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."

21. In our view, although the observations made in *Asha Rani's* case, 2003 ACJ 1 (SC), were in connection with carrying passengers in a goods vehicle, the same would apply with equal force to



gratuitous passengers in any other vehicle also. Thus, we must uphold the contention of the appellant-insurance company that it owed no liability towards the injuries suffered by the deceased Rajinder Singh who was a pillion rider, as the insurance policy was a statutory policy, and hence it did not cover the risk of death of or bodily injury to gratuitous passenger."

14. In **National Insurance Co. Ltd., v. Cholleti Bharatamma and others** reported in **2008 (2) TN MAC 29 (SC)**, the Honourable Supreme Court elaborately dealt with the scope of Section 147 of the Motor Vehicles Act, 1988 and held as follows:

"20. The accident in this case took place on 3rd January, 1991. Twenty persons were travelling in the truck. The policy covered the risk only of the owner of the goods. Before the learned Tribunal, it was contended that the risk of the owners of the goods is covered by the policy. It was held:

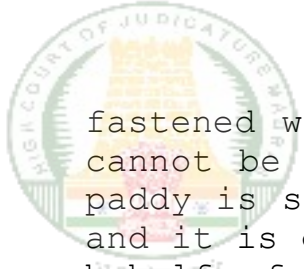
"On a careful consideration of the various authorities cited by the learned Counsels for both the parties, Sections 147, 149 Rules 277(3) and 252 of Rules framed under M.V.Act, I have no hesitation to conclude that the risk of the owner of the goods is also covered by the policy issued by the insurance companies, from the evidence of R.W.1 who is no other than the employee of R-2 as well as terms of Ex.B-2 Policy, it is obvious that the risk of the owner of the goods is covered, but it is restricted only to one person as owner of the goods. Thus, there can be no doubt that the owner of the goods can travel in the goods vehicle and if they are involved in the accident, their risk is covered subject to the terms and conditions of the policy issued by the Insurance Companies."

21. The learned Tribunal, however, noticed:

".... Thus, the claim form corroborate the testimony of the petitioners that deceased or the injured as the case may be travelled in the vehicle as owner of goods. But it is mentioned in Ex.B-3 claim form as well as in Ex.B1 permit that the seating capacity of the lorry is only 3 including driver and cleaner which would go to show that only one passenger can travel in it ..."

22. Upon considering the evidence on record, it was held :

"As the permitted seating capacity of the lorry is only 3 including the driver and cleaner and as only one non-fare paying passenger as owner of goods can travel in the cabin and as the deceased has admittedly travelled in the cabin beyond seating capacity and contrary to the terms of the permit as well as Rule 252(2) of the Motor Vehicles Act. I am of the view that R-2 cannot be fastened with the liability to pay compensation along with R-1 to all the injured and legal representatives of deceased. At best it is liable to pay compensation jointly and severally along with R-1 only in respect of one non-fare paying passengers, who is the owner of the goods. As per the endorsement I.M.T. 14(b) unless additional premium is paid for the number of persons who travelled in the lorry, as owners. I am of the view that R-2 cannot be



fastened with liability. Further all the petitioners and deceased cannot be deemed to have travelled as owners of the paddy as the paddy is said to be in bags and orally kept in loose in the lorry and it is enough if any one of them have travelled in the lorry on behalf of all, as owner of the lorry Rule 277(3) of A.P. Motor Vehicles Rules, clearly shows that no person shall be carried in the goods vehicle except as provided in the Rule under the statute and as the only person, who are permitted to carry in goods vehicles are the owner of hirer or bona fide employee of owner of hirer and total number of such persons, who could be carried in goods vehicles is not more than seven including the driver. As per Rule 252(2) person shall be carried in the cab of the vehicle beyond the seating capacity as per clause (2). No person shall be carried on the load or otherwise. Rule 4 empowers the R.T.A. to allow large number of persons to be carried. As the seating capacity of the lorry is only 3 as per Ex.B-1 and B-3 and as the risk of only owner of goods is covered by Ex.B-2 policy, whereas about 40 to 42 persons travelled in the lorry by sitting on the load, which is not permitted and as there is no material to show that R.T.A. permitted carriage of more seating capacity but on the other hand the permit is cancelled. I am in agreement with the contention of the learned Counsel for the respondent that it cannot be fastened with the liability for compensation."

23. The High Court, however, dismissed the appeals preferred by the respondents relying upon **Satpal Singh** (supra). Submission of the learned Counsel appearing on behalf of the respondent is that within the aforementioned twenty persons, it is the respondents having preferred an appeal, this Court should hold that at least the claimants-respondents are entitled to compensation as the deceased was travelling as owner of the goods. The learned Tribunal discussed the matter in great details. It is not in dispute that premium has been paid only for one person.

24. In the facts and circumstances of this case, we are of the opinion that the contention of the respondent should be accepted. This appeal is, thus, dismissed."

15. In **Royal Sundaram Alliance General Insurance Co. Ltd. v. P.Ayyakannu** reported in **2012 (1) TN MAC 89 (DB)**, the Division Bench of this Court held that the insurer cannot be held liable to cover risk of passengers not authorised or not permitted to be carried in vehicle and further held as follows:

"8. In **Cholletti Baratamma case**, 2008 (2) TN MAC 29 (SC) : 2008 (1) SCC 423, the Supreme Court held thus:

"10. The effect of 1994 amendment came up for consideration in **National Insurance Co. Ltd. v. Baljit Kaur and Ors.** 2004 ACJ 428 (SC), wherein this Court following **Asha Rani's case**, 2003 ACJ 1 (SC), opined that the words 'injury to any person' would only mean a third party and not a passenger travelling on a goods carriage whether gratuitous or otherwise. The question came up for consideration again in **National Insurance Co. Ltd. v. Bommithi**

Subbhayamma and Ors. 2005 ACJ 721 (SC), wherein upon taking into consideration a large number of decisions, the said view was reiterated."

The FIR marked as Ex- that Ayyakannu was working as a loadman in the mini door auto and he was sitting in the front in the cabin along with the driver. The FIR reads thus:

"I am working as a loadman in the mini door auto bearing Registration No. TN.55/K.4584 belonging to Neethipathi S/o. Nallakounder of Thonadipatti. Sukumar of Sevalpatti is employed as a driver of the above auto. On 18-01-2005 at 2.00 p.m. we went to Koduppanur Chatram, loading the vegetables. We loaded the vegetables in the mini door auto and proceeded to Manaparai. I sat in the cabin in the front of the mini door auto. In the rear, Tirupati, Subramani, Makali and Murugan belonging to Tulappanoor were seated."

Then the FIR speaks of the accident and finally the complainant has recorded that 'since my left thumb has been severed I have affixed my right thumb impression.'

9. Therefore, clearly the other two claimants viz., Murugan and Sukumaran were not travelling as the owner of the goods. They were clearly gratuitous passengers. The vehicle in which they were travelling can only carry a driver plus one person, two in all. Only Ayyakannu was seated in the cabin.

10. Rule 236 provides that no person shall be carried in the cabin of a goods carriage beyond the number for which there is a seating accommodation. In the paragraph extracted above from **Anjana Shyam's case**, the Supreme Court held that Section 149, cannot be understood as imposing a liability on the insurer to make payment even in respect of those who have been loaded into the vehicle against the terms of the permit and against the terms of the condition of registration of the vehicle and that though the insurer is bound to cover the third party risks in respect of passengers, the risks can only be understood to mean risks of passengers authorized or permitted to be carried in the said vehicle. We are bound by this judgment and therefore, we hold that the insurer is liable to indemnify the liability only with regard to Ayyakannu who sat in the cabin of the vehicle and along with the driver and whose liability alone the insurer was bound to cover."

16. In view of the well settled judicial pronouncement, the award of the Tribunal in directing the appellant-Insurance Company to pay compensation at the first instance and recover the same from the owner of the offending vehicle, alone, is set aside. In all other respects, the award of the Tribunal is confirmed.

17. In the result, C.M.A(MD)Nos.216 to 234 of 2011 are allowed to the extent indicated above. The appellant-Insurance Company is entitled to withdraw the respective award amounts from the **Services account**. If, in the case, the claimants had already withdrawn their respective award amounts, the appellant-Insurance Company is not



entitled to recover the same from the claimants. No costs.
Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CO)

/ True Copy \

WEB COPY

Sub Assistant Registrar

To

1.The Motor Accident Claims Tribunal - cum -
III Additional Subordinate Judge,
Tiruchirappalli.

2.The Record Keeper,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.

+19 ccs to Mr.V.R.Subramaniam, Advocate, Sr.No.17254

rsb

MAS/KP/SAR3:16.06.2017:16P-22C

C.M.A(MD)Nos.216 to 234 of 2011

and

M.P(MD)Nos.1 of 2011 (in all appeals)

22.03.2017