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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on
19.09.2018

Delivered on
24.10.2018

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
AND

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN
CMA.Nos.1529 to 1533 of 2015

and
MP.Nos.1, 1, 1, 1 & 1 of 2015

Bharati AXA General Insurance Co. Ltd.,
Rep. by its Manager,
1st Floor, Fems Icon, Survey No.28,
Doddannakundi, K.R.Puram Obli,
Bangalore - 560 037.

.. Appellant in all the CMAs/
2nd Respondent

-vs-

1.Aandi
2.Rajendran
3.P.Saravanan

... Respondents 1 & 2/Claimants

..3rd Respondent in CMA.No.1529 of 2015/
1st Respondent

1.Manickam
2.Murugammal
3.Govindan
4.P.Saravanan

.. Respondents 1 to 3/Claimants
...4th Respondents in CMA.No.1530 of 2015/
1st Respondents

1.Pooncholai
2.Govindammal
3.Minor. Elumalai
4.Minor. Venkatesan
Minors rep. by their Guardian/
Next Friend and mother Pooncholai.

.. Respondents 1 to 4/Claimants

5.P.Saravanan

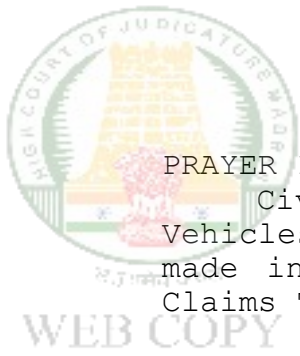
..5th Respondents in CMA.No.1531 of 2015/
1st Respondent

1.Panchalai
2.P.Saravanan

.. 1st Respondent/Claimant
... 2nd Respondent in CMA.No.1532 of 2015/
1st Respondent

1.Ponnudurai
2.P.Saravanan

.. 1st Respondent/Claimant
..2nd Respondent in CMA.No.1533 of 2015/
1st Respondent



PRAYER IN CMA.No.1529 of 2015:

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the award and decree dated 23.09.2014 made in MCOP.No.89 of 2014 on the file of the Motor Accident Claims Tribunal, Special District Court, Dharmapuri.

PRAYER IN CMA.No.1530 of 2015:

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the award and decree dated 23.09.2014 made in MCOP.No.90 of 2014 on the file of the Motor Accident Claims Tribunal, Special District Court, Dharmapuri.

PRAYER IN CMA.No.1531 of 2015:

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the award and decree dated 23.09.2014 made in MCOP.No.91 of 2014 on the file of the Motor Accident Claims Tribunal, Special District Court, Dharmapuri.

PRAYER IN CMA.No.1532 of 2015:

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the award and decree dated 23.09.2014 made in MCOP.No.103 of 2014 on the file of the Motor Accident Claims Tribunal, Special District Court, Dharmapuri.

PRAYER IN CMA.No.1533 of 2015:

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the award and decree dated 23.09.2014 made in MCOP.No.104 of 2014 on the file of the Motor Accident Claims Tribunal, Special District Court, Dharmapuri.

For Appellant : Mr.S.Arunkumar in all the CMAs

For Respondents: Respondents - served - No appearance
Mr.N.Vijayaraghavan, Amicus Curie
in all the CMAs

J U D G M E N T

R.SUBRAMANIAN, J.

1. The challenge in all these appeals is to the award of the Motor Accident Claims Tribunal, (Special District Judge), Dharmapuri made in MCOP.Nos.89 to 106 of 2014, dated 23.09.2014, in and by which, the Tribunal, while granting compensation to the victims of a road accident that occurred on 01.09.2011 directed the Insurance Company to pay the compensation with liberty to recover the same from the owner of the vehicle.



The case of the claimants before the Tribunal is as follows:-

2. On 01.09.2011, a group of persons had engaged an Eicher van (goods vehicle) bearing registration No.TN-29-AW-4232 belonging to the 1st respondent, to go to Soolakurichi from Kotapatty to attend the marriage of one Govindan with Bagyalakshmi. After the marriage, while they were returning in the same vehicle to Kotapatty, the driver of the vehicle drove the same in a rash and negligent manner, resulting in the vehicle toppling in the middle of the road. Due to the said accident, some of the persons travelling in the said Eicher van died and some of them suffered grievous injuries, which led to the filing of the above claim petitions which are 18 in number. The claimants sought for compensation on the ground that the driver of the Eicher van was negligent.

3. All the claim petitions were resisted by the Insurance Company contending that the Eicher lorry bearing registration No.TN-29-AW-4232 being a goods vehicle did not have permit to carry passengers. All the persons viz., the deceased as well as the injured claimants were unauthorized passengers in the goods vehicle and hence, the Insurance Company cannot be made liable to pay the compensation. It was also contended that it is the case of no insurance and therefore, the direction to pay with liberty to recover from the insured cannot also be granted.

4. The Tribunal which heard the Original Petitions quantified the compensation payable in each of the Original Petitions depending upon the loss of earning capacity in the injury cases and the loss of dependency suffered in fatal case and awarded various amounts as compensation. The Tribunal also directed the Insurance Company to pay the compensation and gave it liberty to recover the same by filing execution petition against the owner of the vehicle viz., 1st respondent in the Original Petitions. Aggrieved the Insurance Company is on appeal.

5. We have heard Mr.S.Arunkumar, learned counsel appearing for the Insurance Company.

6. Mr.S.Arunkumar would submit that he is not challenging the quantum of compensation. At the same time, the learned counsel would vehemently contend that the direction to pay and recover issued by the Tribunal is against the judgment of the Hon'ble Supreme Court in New India Assurance Company Ltd., Vs. Asha Rani and others reported in 2003 ACJ 1 (SC), wherein, the Hon'ble Supreme Court had while disagreeing with the view expressed by the Hon'ble Supreme Court in New India Assurance Company Vs. Shri Satpal Singh and others reported in 2000 ACJ 2 (SC) had referred the matter to a larger bench.



7. He would also invite our attention to the subsequent judgments of the Hon'ble Supreme Court in National Insurance Company Ltd., Vs. Baljit Kaur and others reported in 2004 (2) SCC 1 to contend that the Insurance Company cannot be made liable to pay the compensation for gratuitous passengers who were neither contemplated at the time when the contract of insurance was entered into nor any premium was paid to the extent to extend the insurance to such category of people.

8. The Hon'ble Supreme Court also pointed out that the Tribunal was not right in relying upon the judgment in New India Assurance Company Vs. Shri Satpal Singh and others reported in 2000 ACJ 2 (SC) which was over ruled in New India Assurance Company Ltd., Vs. Asha Rani and others reported in 2003 (2) SCC 223.

9. Mr.S.Arunkumar would also invite our attention to other judgments of the Hon'ble Supreme Court as well as the larger bench judgment of this Court in United India Insurance company Vs. Nagammal and others reported in 2009 (1) CTC 2. However, in a very recent pronouncement in Shivaraj Vs. Rajendra and another dated 05.09.2018, made in Civil Appeal Nos.8278 and 8279 of 2018, the Hon'ble Supreme Court had reversed the judgment of the High Court which had concluded that since the injured/ appellant in that case had travelled in a tractor, which is a goods vehicle, in breach of the terms and conditions of the policy, the Insurance Company cannot be made liable to compensate the owner or the claimant. While doing so, the Hon'ble Supreme Court had observed as follows:-

" 10. At the same time, however, in the facts of the present case the High Court ought to have directed the Insurance Company to pay the compensation amount to the claimant (appellant) with liberty to recover the same from the tractor owner, in view of the consistent view taken in that regard by this Court in National Insurance Co. Ltd. Vs. Swarn Singh & Ors. Reported in (2004) 3 SCC 297, Mangla Ram Vs. Oriental Insurance Co. Ltd. reported in (2018) 5 SCC 656, Rani & Ors. Vs. National Insurance Co. Ltd. & Ors. Reported in 2018 (9) Scale 310 and including Manuara Khatun and Others Vs. Rajesh Kumar Singh And Others reported in (2017) 4 SCC 796. In other words, the High Court should have partly allowed the appeal preferred by the respondent No.2. The appellant may, therefore, succeed in getting relief of direction to respondent No.2 Insurance Company to pay the compensation amount to the



appellant with liberty to recover the same from the tractor owner (respondent No.1)."

10. In view of the same, we had requested Mr.N.Vijayaraghavan, to assist us in deciding the issue relating to the liability of the Insurance Company to satisfy the awards made by the Motor Accident Claims Tribunals in cases where it is found that the deceased or the injured were unauthorized passengers in a goods vehicle.

11. Mr.N.Vijayaraghavan, learned Amicus Curie as well as Mr.S.Arunkumar made elaborate arguments, tracing the history of Motor Accident Compensation Law as well as the scope of Section 147 and 149 of the Motor Vehicles Act, 1988.

12. Even here, we wish to place on record our sincere appreciation to the efforts taken by Mr.S.Arunkumar as well as Mr.N.Vijayaraghavan, Amicus Curie to cull out the entire law relating to compensation for the victims of a motor accident and provide us with all the materials on the topic to enable us to reach a just conclusion regarding the vexed question of insurer's liability to satisfy the claims made by persons who are found to be either unauthorized passengers or gratuitous passengers in goods vehicle.

13. The only question that needs to be addressed in these appeals is,

whether the Insurance Company could be held liable to answer the claims of persons who are either unauthorized passengers or gratuitous passengers in a goods vehicle?

14. The facts in these appeals are not in dispute. It is a clear case of the claimants that they had engaged a goods vehicle to travel for a wedding, therefore, the deceased persons and the claimants in the injury cases were travelling in a goods vehicle as unauthorized passengers. The Tribunal had directed the Insurance Company to pay the compensation as determined by it in all the 18 Original Petitions to the claimants and had given the liberty to recover the same from the owner of the vehicle who figured as the 1st respondent before the Tribunal. It is the correctness of this direction made by the Tribunal that is being challenged by the Insurance Company.

15. While Mr.S.Arunkumar, learned counsel appearing for the Insurance Company would contend that the doctrine of pay and recover evolved by the Courts in National Insurance Company Ltd., Vs. Swaran Singh and others reported in (2004) 3 SCC 297, would apply only to cases where there is a subsisting contract



of Insurance covering the risk and there is a violation of a certain condition in the contract of insurance and not to cases where there is no contract covering the risk.

16. Relying upon Section 147 of the Motor Vehicles Act, Mr.S.Arunkumar would submit that the Insurance Company is not required to cover the risk in respect of a person who is travelling in a goods vehicle unless he is shown to be the owner of the goods or his authorized representative, which were also carried in the vehicle at the time of the accident. He would also draw our attention to Section 149(2)(a)(i)(c) which reads as follows:-

“ for a purpose not allowed by the permit under which the vehicle is used, where the vehicle is a transport vehicle.”

To contend that the Insurance Company is not bound to satisfy the judgments and awards against the insured in respect of 3rd party risks, if there is breach of a condition in the policy or if there is breach of a condition specified in the policy enumerated under Section 149(2)(a)(i) (a), (b), (c) or (d).

17. Mr.S.Arunkumar, would also draw our attention to the judgment of the Hon'ble Supreme Court in New India Assurance Company Ltd., Vs. Asha Rani and others reported in 2003 (2) SCC 223 to contend that the general direction to pay and recover issued in New India Assurance Company Vs. Shri Satpal Singh and others reported in 2000 ACJ 2 (SC) was doubted in New India Assurance Company Vs. Asha Rani reported in 2003 ACJ 1, and the question was referred to a larger bench and the larger bench thereafter in New India Assurance Company Ltd., Vs. Asha Rani and others reported in 2003 (2) SCC 223 concluded that the ratio laid down in New India Assurance Company Vs. Shri Satpal Singh and others reported in 2000 ACJ 2 (SC) is not correct.

18. Pointing out that a larger bench of this Court in United India Insurance Company Vs. Nagammal and others reported in 2009 (1) CTC 1 had also concluded that in case of passengers in a goods vehicle, unless it is shown that they were travelling either as the owner of the goods or as authorized representative of the owner of the goods within the permitted capacity of the vehicle alone, the Insurance Company would be liable to pay the compensation. He would also point out that the larger bench had specifically held that inasmuch as there is no statutory requirement to cover the liability in respect of a passenger in a goods vehicle, the principle of pay and recovery as statutorily recognized in Section 149(4) and 149(5) cannot be applied ipso facto to such cases and therefore, ordinarily the



Courts cannot issue a direction to pay and recover in such case.

19. Contending contra Mr.N.Vijayaraghavan, learned counsel appearing at our instance, would submit that the very purpose of a compulsory or a statutory insurance cover is meant to safeguard a member of the community travelling in the vehicles or using the roads from the risk attendant upon the users of the motor vehicles on the roads. He would draw inspiration from the judgments of the Hon'ble Supreme Court in Skandia Insurance Co. Ltd., vs. Kokilaben Chandravadan & Ors reported in 1987 ACJ 411 to buttress his submission.

20. He would also rely upon the restrictions imposed on the defences available to an insurer under Section 149(2) of the Motor Vehicle Act, which were justified by the Hon'ble Supreme Court in Skandia Insurance Co. Ltd., referred to supra and the judgment in National Insurance Company Ltd., Vs. Swaran Singh and others reported in (2004) 3 SCC 297.

21. On the question of the unauthorized passengers in a goods vehicle, Mr.N.Vijayaraghavan would contend that even though a permit issued under Section 66 is for carrying goods only, there is scope/ permission/ need to carry passengers also at times. They may be either loadmen or workmen or even the owners of the goods. He would therefore submit that not all persons travelling in a goods vehicle would automatically become unauthorized passengers not entitled to coverage. Whether the insurer is liable to pay the compensation or not or whether the Court to direct the insurer to pay the compensation with liberty to recover it from the insured would depend on the determination of the status of the victim i.e., as to whether he was an authorized passenger/ gratuitous passenger/ unauthorized passenger in a goods vehicle.

22. Arguing further Mr.N.Vijayaraghavan would submit that even assuming that the individual is found to be an unauthorized passenger or a person carried in a goods vehicle for hire or reward or a gratuitous passenger, still, in view of Section 149 (4) read in conjunction with Section 149(2)(a)(i)(c), the Courts can still treat it as a violation of the policy condition by the insured and direct the Insurance Company to pay the compensation with liberty to recover the same from the insured.

23. In support of his contentions Mr.N.Vijayaraghavan would rely upon the judgments in

- National Insurance Company Ltd., Vs. Baljit Kaur and others reported in 2004 (2) SCC 1
- Oriental Insurance Company Vs. Nanjappan and others reported in 2004 (1) TNMAC 211 (SC)
- Oriental Insurance Co. Ltd Vs. Brij Mohan & Ors



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“(i) Against any liability which may be incurred by him in respect of the 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.”

was amended by Act 54 of 1994 with effect from 14.11.1994 to read as follows:-

“(i) Against any liability which may be incurred by him in respect of the death of or bodily injury to any person, including the owner of the goods or his authorized 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.”

28. The addition of the words “including the owner of the goods or his authorized representative carried in the vehicle” introduced a class of persons who were otherwise not required to be covered statutorily. Therefore, it is only after 14.11.1994, the owner of the goods or the authorized representative of such owner were required to be covered by the Insurance Companies and not before that.

29. Therefore, a passenger in a goods vehicle even if he was the owner of the goods or the authorized representative of the owner of the goods was not covered prior to 14.11.1994 or there was no statutory requirement to cover such person. A close reading of Section 147(1) would show that a policy of insurance covering risks relating to motor accidents are required to cover the persons or classes of persons specified in the policy, against any liability incurred by him in respect of death or bodily injury or damage to any property of a

- 1) third party.
- 2) the owner of the goods or his authorized representative carried in a goods vehicle.
- 3) against the death or bodily injury to the passenger of a public service vehicle.

30. Sub-Section 2 of Section 147 lays down the limits of liability. Sub-Section 5 of Section 147 is a non-abstanti clause, which makes the insurers liable to indemnify the person or class of persons specified in the policy, in respect of the liability covered by the policy.

31. Section 149 of the Motor Vehicles Act imposes an



obligation on the Insurance Company to satisfy the judgments and awards passed against the insured. Sub-section 2 of section 149 provides that the insurer must be heard in a proceeding before the claims Tribunal seeking compensation, it also sets out the defences that are available to the Insurance Company in such claims. One of the defences that is set out in Section 149(2)(a)(i)(c) is the purpose for which the vehicle was used at the time of the accident. Under the said provision it is open to the Insurance Company to plead and prove that the vehicle was used for the purpose other than which it was permitted and extricate itself from the liability to pay compensation.

32. The Hon'ble Supreme Court considered the scope of Section 95 of the Motor Vehicles Act, 1939 which is identical to Section 147 of the 1988 Act in *Mallawva Vs. Oriental Insurance Co. Ltd.*, reported in 1999 ACJ 1. While considering the purport of Section 95(a), the Hon'ble Supreme Court had quoted the following portions from the judgment of the Full Bench of the Orissa High Court in *New India Assurance Company Ltd., Vs. Kanchan Bewa and others* reported in 1994 ACJ 138:

19. Being concerned with a beneficial legislation like the one at hand, we would have normally preferred liberal interpretation, but the question is whether, without any extra premium having been paid, the owner of a goods vehicle can claim indemnification from the insurer just because once in a year the goods vehicle had carried a passenger for hire or reward along with the goods. This would perhaps robe the third proviso dealing with coverage of contractual liability lame...

22. Thus, to find out whether an insurer would be liable to indemnify an owner of a goods vehicle in a case of the present nature, the mere fact that the passenger was carried for hire or reward would not be enough; it shall have to be found out as to whether he was the owner of the goods, or an employee of such an owner, and then whether there were more than six persons in all in the goods vehicle and whether the goods vehicle was being habitually used to carry passengers. The position would thus become very uncertain and would vary from case to case. Production of such result would not be conducive to the advancement of the object sought to be achieved by requiring a compulsory insurance policy.

23. There is another aspect of the



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matter which had led us to differ from the Full Bench decision of Rajasthan High Court. The same is what finds place in sub-section (2) of Section 95. That sub-section specifies the limits of liability and clause (a) deals with goods vehicle; and in so far as the person travelling in goods vehicles is concerned, it has confined the liability to the employees only. This is an indicator, and almost a sure indicator, of the fact that legislature did not have in mind carrying of either the hirer of the vehicle or his employee in the goods vehicle, otherwise, clause (a) would have provided a limit of liability regarding such persons also."

Though, the conclusion was arrived at after taking into consideration the Orissa Motor Vehicle Rules, in our opinion the said view is correct, even otherwise also. In view of what we have said, the contrary view expressed by other High Courts has to be regarded as incorrect.

33. Thus, the law came to be settled to the effect that the Insurance Company is not bound to indemnify the insured for the loss or injury caused to a person who had travelled as a passenger in a goods vehicle.

34. Then came the judgment in New India Assurance Company Vs. Shri Satpal Singh and others reported in 2000 ACJ 2 (SC), where the Hon'ble Supreme Court upheld the judgment of the Bombay High Court which repelled the contention of the Insurance Company that the Insurance Company is not liable to indemnify the insurer, since the deceased was a gratuitous passenger in a truck. In coming to the said conclusion, the Hon'ble Supreme Court pointed out that the case arose when the Motor Vehicles Act, 1939 was in force, therefore it is Section 95 of the said Act that would apply and not Section 147 of the New Act.

35. Even there, the Hon'ble Supreme Court pointed out that as a result of the new Act, an Insurance policy covering a third party risk is not required to exclude gratuitous passenger in a vehicle, no matter that the vehicle is of any type or class. Hence, the decision rendered under the old Act vis-a-vis gratuitous passenger are of no use, while considering the liability of the Insurance Company in respect of any accident that had occurred or would occur after the new Act came into force.



36. In New India Assurance company Ltd., Vs. Asha Rani and others reported in 2003 ACJ 1 (SC), a two Judge bench of the Hon'ble Supreme Court doubted the correctness of the conclusion reached by another two Judge bench in New India Assurance Company Vs. Shri Satpal Singh and others reported in 2000 ACJ 2 (SC) and placed the matter before a larger bench for reconsideration. The question referred to by the judgment in New India Assurance company Ltd., Vs. Asha Rani and others reported in 2003 ACJ 1 (SC), was decided by a larger bench consisting of three Judges of the Hon'ble Supreme Court in New India Assurance Company Ltd., Vs. Asha Rani and others reported in 2003 (2) SCC 223. The larger bench of the Hon'ble Supreme Court after an elaborate consideration of the provisions of Sections 147 and 149 of the Motor Vehicles Act, 1988 as amended by the amendment Act 54 of 1994 held that the judgment in New India Assurance Company Vs. Shri Satpal Singh and others reported in 2000 ACJ 2 (SC) has not been correctly decided.

37. However, in National Insurance Company Ltd., Vs. Baljit Kaur and others reported in 2004 (2) SCC 1, a three Judge bench of the Hon'ble Supreme Court again went into the question as to whether an insurance policy in respect of the goods vehicle would also cover gratuitous passengers in view of the legislative amendment to Section 147 introduced by Act 54 of 1994. After referring to the larger bench decision in New India Assurance Company Ltd., Vs. Asha Rani and others reported in 2003 (2) SCC 223, the Hon'ble Supreme Court observed as follows:-

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 authorized representative remains the same. Although the owner of the goods or his authorized 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 any premium was paid to the extent of the benefit of insurance to such category of people.

38. However, the Hon'ble Supreme Court clarified that the said judgment will have only prospective effect so that the awards that were made against the insurer during the period between the decision in New India Assurance Company Vs. Shri Satpal Singh and others reported in 2000 ACJ 2 (SC) and the



39. The Hon'ble Supreme Court also permitted the Insurance Company in the said case to pay the award amount and recover the same from the owner of the vehicle/ insured. From the above, it is clear that the policy of insurance which is mandatory under the provisions of Motor Vehicles Act is not required to cover the risk in case of an unauthorized or a gratuitous passenger in the goods vehicle after the amendment of Section 147 by Act 54 of 1994 and it will be the liability of the insured only to satisfy such awards and not the Insurance Company.

"30. From a conspectus of the decisions, thus analysed, it is now apparent that before Asha Rani's case was decided, the decision in Satpal Singh's case was holding the field and such latter decision was overruled only in Asha Rani's case. Under such peculiar circumstances in Baljit Kaur's case it was observed, that even though the Insurance Company was not liable to pay the compensation in respect of a passenger in a goods vehicle, yet since the law was not clear before Asha Rani's case was decided, the doctrine of prospective overruling was applied and a direction was issued in the interest of justice directing the Insurance Company to satisfy the award and recover the same from the owner of the vehicle. In other words, even though the statutory provision under Section 149(4) and Section 149(5) was not applicable, the Supreme Court applied the Doctrine of "pay and recover". The ratio of the said decision has been applied selectively in some of the later decisions and in some of the subsequent decisions, the doctrine of "pay and recover" in respect of matters which are not strictly covered under



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Sections 149(4) and 149(5) has not been applied by the Supreme Court depending upon the facts and circumstances of a particular case.

Therefore, it cannot be said as an inexorable principle of law that in each case where the liability is in respect of a passenger in a goods vehicle, which is not required to be covered under Section 147 of the Act, the Insurance Company would be directed to first pay the amount and thereafter recover the same from the owner and such discretion is obviously with the Court either to apply such principle or not.

31. Thus from an analysis of the statutory provisions as explained by the Supreme Court in various decisions rendered from time to time, the following pictures emerges:

(i) The Insurance Policy is required to cover the liability envisaged under Section 147, but wider risk can always be undertaken.

(ii) Section 149 envisages the defences which are open to the Insurance Company. Where the Insurance Company is not successful in its defence, obviously it is required to satisfy the decree and the award. Where it is successful in its defence, it may yet be required to pay the amount to the claimant and thereafter recover the same from the owner under such circumstance envisaged and enumerated in Section 149(4) and Section 149(5).

(iii) Under Section 147 the Insurance Company is not statutorily required to cover the liability in respect of a passenger in a goods vehicle unless such passenger is the owner or agent of the owner of the goods accompanying such goods in the concerned goods vehicle.

(iv) Since there is no statutory requirement to cover the liability in respect of a passenger in a goods vehicle, the principle of "pay and recover", as statutorily recognised in Section 149(4) and Section 149(5), is not applicable ipso facto to such cases and, therefore, ordinarily the Court is not expected to issue such a direction to the Insurance Company to pay to



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the claimant and thereafter recover from the owner.

(v)Where, by relying upon the decision of the Supreme Court in Satpal Singh's case, either expressly or even by implication, there has been a direction by the Trial Court to the Insurance Company to pay, the Appellate Court is obviously required to consider as to whether such direction should be set aside in its entirety and the liability should be fastened only on the driver and the owner or whether the Insurance Company should be directed to comply with the direction regarding payment to the claimant and recover thereafter from the owner.

(vi)No such direction can be issued by any Trial Court to the Insurance Company to pay and recover relating to liability in respect of a passenger travelling in a goods vehicle after the decision in Baljit Kaur's case merely because the date of accident was before such decision. The date of the accident is immaterial. Since the law has been specifically clarified, no Trial Court is expected to decide contrary to such decision.

(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 i.e., the driver or the owner, as the case may be."

41. Therefore, in view of the authoritative pronouncement of the Full Bench of this Court in United India Insurance company Vs. Nagammal and others referred to supra, it is to be seen as to whether the law laid down in New India Assurance Company Vs. Asha Rani and others reported in 2003 (2) SCC 223 (Larger Bench), National Insurance Company Ltd., Vs. Baljit Kaur and others reported in 2004 (2) SCC 1 and United India Insurance company Vs. Nagammal and others reported in 2009 (1) CTC 1 (Full Bench) has been faulted subsequently by the Hon'ble Supreme Court.



42. Mr.N.Vijayaraghavan would of course rely upon the judgment in Oriental Insurance Company Vs. Nanjappan and others reported in 2004 (1) TNMAC 211 (SC) :: 2004 (13) SCC 224, Oriental Insurance Co. Ltd Vs. Brij Mohan & Ors reported in 2007 (7) SCC 56, National Insurance Company Ltd., Vs. Saju P. Paul reported in 2013 (2) SCC 41.

43. In Oriental Insurance company Vs. Nanjappan and others referred to supra, the Hon'ble Supreme Court was considering a case where the High Court had made the insurance Company liable relying upon New India Assurance Company Vs. Shri Satpal Singh and others reported in 2000 ACJ 2 (SC) before the larger bench judgment in New India Assurance Company Vs. Asha Rani and others reported in 2003 (2) SCC 223 (Larger Bench). Therefore, the Hon'ble Supreme Court, in view of the judgment in National Insurance Company Ltd., Vs. Baljit Kaur and others case referred to supra affirmed the judgment of the High Court, but, however, allowed the Insurance Company the liberty to recover the compensation by initiating execution proceedings in the very same case.

44. Therefore, the judgment in Oriental Insurance company Vs. Nanjappan and others referred to supra cannot be taken as a precedent to hold that the insurer would be liable or could be made liable to pay the compensation to an unauthorized or a gratuitous passenger in a goods vehicle, even after the judgment of the Hon'ble Supreme Court in National Insurance Company Ltd., Vs. Baljit Kaur and others case referred to supra.

45. In Oriental Insurance Co. Ltd Vs. Brij Mohan & Ors reported in 2007 (7) SCC 56, the Hon'ble Supreme Court held that the intention of the parliament was that the words "any person" occurring in Section 147 will not cover all persons who are travelling in a goods carriage in any capacity whatsoever. It was also found that the tractor in question was used for non-agricultural purpose, though, it had permit for agricultural purpose only. After having held that the Insurance Company cannot be statutorily made liable, the Hon'ble Supreme Court chose to exercise its power under Article 142 of the Constitution of India to direct the Insurance Company to pay the compensation and gave liberty to it to recover the same from the Insured/ owner of the tractor. We do not think that the said decision could be used as a precedent to enable us to direct the Insurance Company to pay with liberty to recover the compensation in respect of an injury caused to a person who is found to be a gratuitous passenger or a passenger for hire or reward in a goods vehicle.

46. The next decision relied upon by Mr.N.Vijayaraghavan in support of his contention that this Court has ample power to



direct the Insurance Company to pay the compensation with liberty to recover the same even in respect of a gratuitous passenger in a goods vehicle is National Insurance Company Ltd., Vs. Saju P. Paul reported in 2013 (2) SCC 41. There again the Hon'ble Supreme Court held that the High court was not right in directing the Insurance Company to pay the compensation. In fact, the Hon'ble Supreme Court while dealing with the liability of the Insurance Company to pay the compensation for a spare driver who was travelling in a goods vehicle observed as follows:-

"17. The High Court misconstrued the proviso following sub-Section (1) of Section 147 of the 1988 Act. What is contemplated by the proviso to Section 147(1) is that the policy shall not be required to cover liability in respect of death or bodily injury sustained by an employee arising out of and in the course of his employment other than a liability arising under the Workmen's Compensation Act, 1923. The claimant was admittedly not driving the vehicle nor he was engaged in driving the said vehicle. Merely because he was travelling in the cabin would not make his case different from any other gratuitous passenger.

18. The impugned judgment is founded on a misconstruction of Section 147. The High Court was wrong in holding that the Insurance Company shall be liable to indemnify the owner of the vehicle and pay the compensation to the claimant as directed in the award by the Tribunal.

47. However, the Hon'ble Supreme Court invoked the power under Article 142 taking note of the peculiar facts of the case and directed the Insurance Company to pay the compensation with liberty to recover. Therefore, in our considered opinion the judgment in National Insurance Company Ltd., Vs. Saju P. Paul reported in 2013 (2) SCC 41 cannot also be taken as a precedent, as contended by Mr.N.Vijayaraghavan, to impose the obligation to indemnify the insured in respect of death or bodily injury caused to the persons who are unauthorized passengers in a goods vehicle.

48. Coming to the latest judgment viz., Shivaraj Vs. Rajendra and another dated 05.09.2018, made in Civil Appeal Nos.8278 and 8279 of 2018, there again the Hon'ble Supreme Court affirmed the conclusion of the High Court to the effect that the Insurance Company was not liable for the loss or injuries



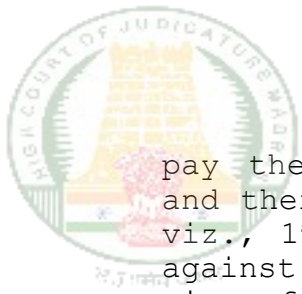
suffered by the appellant or to indemnify the owner of the tractor. However, the Hon'ble Supreme Court taking note of the peculiar circumstances of the case directed the Insurance Company to pay the compensation with liberty to recover the same. Unfortunately, the decisions of the larger bench in New India Assurance Company Vs. Asha Rani and others or National Insurance Company Ltd., Vs. Baljit Kaur and others were not brought to the notice of the two Judge Bench which decided Shivaraj Vs. Rajendra and another referred to supra.

49. We find that the judgments relied upon by the Hon'ble Supreme Court in Shivaraj Vs. Rajendra and another referred to supra in support of its conclusion that the Insurance Company can be directed to pay the compensation with liberty to recover the same even in respect of a gratuitous passenger or an unauthorized passenger in a goods vehicle, do not support the said conclusion.

50. In fact, we find that in none of the judgments referred to viz., National Insurance Co. Ltd. Vs. Swarn Singh & Ors. reported in (2004) 3 SCC 297, Mangla Ram Vs. Oriental Insurance Co. Ltd. reported in (2018) 5 SCC 656, Rani & Ors. Vs. National Insurance Co. Ltd. & Ors. reported in 2018 (9) Scale 310 and Manuara Khatun and Others Vs. Rajesh Kumar Singh And Others reported in (2017) 4 SCC 796, the question regarding the liability of the Insurance Company to pay the compensation in respect of an unauthorized passenger in the goods vehicle did arise for consideration. We are therefore of the considered opinion that the judgment of the two Judge bench in Shivaraj Vs. Rajendra and another referred to supra cannot be taken as a precedent to conclude that the Insurance Company would be liable to pay the compensation even in respect of an unauthorized passenger, in a goods vehicle, in the light of categorical pronouncement of larger bench of the Hon'ble Supreme Court in New India Assurance Company Vs. Asha Rani and others and National Insurance Company Ltd., Vs. Baljit Kaur and others referred to supra. We therefore conclude that the Tribunal, in the case on hand, was not right in directing the Insurance Company to pay the compensation and giving it the liberty to recover the same from the owner.

51. No doubt true that in many cases the claimants may not be able to realise the award amount from the owners of the vehicles involved in the accident. But, the said factual situation alone cannot impel us to do something against the provisions of the statute and the decisions of the larger benches of the Hon'ble Supreme Court of India.

52. In fine, all the appeals will stand allowed only in respect of the question of liability of the Insurance Company to



pay the compensation. The quantum of compensation is affirmed and there will be an award only against the owner of the vehicle viz., 1st respondent in all the Original Petitions and the award against the Insurance Company will stand set aside. However, in view of the fact that the claimants are not before us. We do not impose any costs. Consequently, the connected Miscellaneous Petitions are closed.

53. Once again, we place on record our sincere appreciation and gratitude to Mr.N.Vijayaraghavan who at our request assisted us in deciding the above appeals.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

dsa

To

The Motor Accident Claims Tribunal,
Special District Court, Dharmapuri.

+1cc to Mr.S.Arunkumar, Advocate, S.R.No.72653

+1cc to Mr.N.Vijayaraghavan,, Advocate, S.R.No.73140

CMA.Nos.1529 to 1533 of 2015

GJII(Co)
CS/28/11/2018