BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 15.07.2019

CORAM

THE HONOURABLE MR.JUSTICE **S.S.SUNDAR**

C.R.P.(NPD)(MD)No.749 of 2008
and
C.M.A.(MD)Nos.586 to 588 of 2008
and
M.P.(MD)Nos.1, 1, 1 and 1 of 2008

C.R.P.(NPD)(MD)No.749 of 2008:-

The New India Assurance Company Limited,
represented by its Branch Manager,
No.674, Periyakulam Road, Theni. :Petitioner/2nd Respondent

Vs.

1.Liagat Alikhan : 1st Respondent/Petitioner
2.S.Abbas :2nd Respondent/1st Respondent

PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India to set aside the decree and judgment dated 15.11.2007 made in M.C.O.P.No.339 of 2005 on the file of the Motor Accidents Claims Tribunal (Additional Subordinate Court), Dindigul.

For Petitioner :Mr.B.Vijay Karthikeyan
For R1 : No Appearance
For R2 : Mr.V.Sundararajan
for M/s.Ajmal Associates

C.M.A.(MD)No.586 of 2008:-

The New India Assurance Company Limited,
represented by its Branch Manager,
No.674, Periyakulam Road, Theni. :Appellant/2nd Respondent

Vs.

1.K.Nehru : 1st Respondent/Petitioner
2.S.Abbas :2nd Respondent/1st Respondent

PRAYER: Civil Miscellaneous Petition filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the decree and judgment dated 15.11.2007 made in M.C.O.P.No.70 of 2005 on the file of the Motor Accidents Claims Tribunal (Additional Subordinate Court), Dindigul.

For Appellant :Mr.B.Vijay Karthikeyan
For R1 : No Appearance
For R2 : Mr.V.Sundararajan
for M/s.Ajmal Associates

C.M.A.(MD)No.587 of 2008:-

The New India Assurance Company Limited,
represented by its Branch Manager,
No.674, Periyakulam Road, Theni. :Appellant/2nd Respondent

Vs.

1.Palanichamy : 1st Respondent/Petitioner
2.S.Abbas :2nd Respondent/1st Respondent

PRAYER: Civil Miscellaneous Petition filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the decree and judgment dated 15.11.2007 made in M.C.O.P.No.429 of 2005 on the file of the Motor Accidents Claims Tribunal (Additional Subordinate Court), Dindigul.

For Appellant :Mr.B.Vijay Karthikeyan
For R1 : No Appearance
For R2 : Mr.V.Sundararajan
for M/s.Ajmal Associates

C.M.A.(MD)No.588 of 2008:-

The New India Assurance Company Limited,
represented by its Branch Manager,
No.674, Periyakulam Road, Theni. :Appellant/2nd Respondent

Vs.

1.Mustafa : 1st Respondent/Petitioner
2.S.Abbas :2nd Respondent/1st Respondent

PRAYER: Civil Miscellaneous Petition filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the decree and judgment dated 15.11.2007 made in M.C.O.P.No.314 of 2005 on the file of the Motor Accidents Claims Tribunal (Additional Subordinate Court), Dindigul.

For Appellant : Mr.B.Vijay Karthikeyan

For R1 : No Appearance

For R2 : Mr.V.Sundararajan
for M/s.Ajmal Associates

COMMON JUDGMENT

All these cases have been preferred by the Insurance Company, as against the Award of Motor Accidents Claims Tribunal (Additional Subordinate Court), Dindigul, in a batch of case, arises out of same accident.

2.The claimants in all these cases are gratuitous passengers, who was permitted to travel in a goods carrier, which was involved in the accident. The Tribunal has awarded compensation to the injured claimants. Though the Tribunal has held that the appellant/Insurance Company is not liable to pay compensation to the claimants, directed the appellant/Insurance Company to pay the amount of compensation to the claimants and then recover the same from the owner of the vehicle. Aggrieved by the Award of Motor Accidents Claims Tribunal, the Insurance Company, namely, the second respondent before the Motor Accidents Claims Tribunal, has preferred all these cases.

3.The learned Counsel for the appellant submitted that there is no dispute with regard to the status of the claimants as unauthorised or gratuitous passengers travelling in a goods carrier without permit. It is also stated by the learned Counsel for the appellant that the unauthorised passengers in goods vehicle are not covered as per the policy and that as per the terms and conditions of the policy, the Insurance Company is not liable in case of violation of policy condition.

4.The learned Counsel for the appellant also relied upon few judgments of Honourable Supreme Court and the Division Bench of this Court to advance his arguments.

5.No doubt, it is true that in the case of ***Shivraj vs Rajendra and another***, reported in ***2018 (2) TN MAC 273 (SC)***, the Honourable Supreme Court reversed the judgment of High Court, and held that the injured, who travelled in a tractor, in breach of terms and conditions of the policy, are entitled to get compensation from the owner of the vehicle. In the said case, the Honourable Supreme Court further directed the Insurance Company to pay compensation amount to the claimants, but reserved liberty to Insurance Company to recover the same from the owner of the vehicle. However, several other judgments of Honourable Supreme Court and the High Courts have not been considered in the said judgment. It has been consistently held on earlier and later occasions by Honourable Supreme Court that pay and recovery can be ordered, only where there is subsisting contract of insurance covering risks and there is a violation of a certain condition in the contract of insurance. The principle is not applicable, when there is no contract covering risk.

6.A Division Bench of this Court in the case of ***Bharathi Axa General Insurance Company Limited vs Aandi and others***, reported in ***2018 (2) TN MAC 731 (DB),*** considered the issue on this subject after referring to several precedents. The issue whether the Court can direct the Insurance Company to pay and recover in a case of this nature was answered by referring to the judgments of the Honourable Supreme Court in several precedents. The Division Bench agreed with the Insurance company that the principle to pay and recover the quantum of compensation from the owner of the vehicle later would apply only when there is a subsisting contract of insurance covering risks and that the principle does not apply to cases, where there is no contract covering the risks. After referring to yet another judgment of Larger Bench of this Court in the case of ***United India Insurance Company Limited vs Nagammal,*** reported in ***2009 (1) CTC 1,*** the Division Bench accepted the view that unless gratuitous passengers in a goods vehicle travelled either as owner or Agents of owner of goods accompanying in vehicle, the Insurance Company will not be held liable to pay compensation. It is also pointed out that there is no statutory requirements to cover the liability in respect of a passengers in a goods vehicle.

7.In the case of ***United India Insurance Company Limited vs Nagammal***, reported in ***2009 (1) CTC 1***, a Full Bench of this Court has concluded that there is no statutory requirement to cover the liability in respect of gratuitous passenger in a goods vehicle and that therefore, the principle of pay and recovery is not applicable to such cases and that originally, the Court is not expected to issue such a direction to the Insurance Company to pay to the claimant and thereafter recover from the owner. Since the Insurance Company is not statutorily liable in respect of gratuitous passengers in a goods vehicle, unless, such passenger is a owner or agent of the owner accompanying such goods. It is held that the Insurance Company is not liable. It is admitted even in the present case that the claimants are all gratuitous passengers travelled in a goods vehicle. This factual finding is not challenged by the claimants before this Court. There is no statutory requirement to cover gratuitous passengers in a goods vehicle and it is not the case of claimants that the policy covers such risk by agreement.

8.Since the passengers are not permitted in a goods carriage, there is no statutory liability on the owner of the vehicle to get his vehicle insured for any passenger travelled in goods carrier. In the said circumstances, the Tribunal has awarded a compensation by directing the Insurance Company to pay and then recover the same from the owner of the vehicle. Since the Insurance Company is not liable, the Award of the Tribunal is liable to be set aside. Accordingly all the cases are partly allowed and the Award of the Motor Accidents Claims Tribunal (Additional Subordinate Court), Dindigul, in M.C.O.P.Nos.339, 70, 429 and 314 of 2005, dated 15.11.2007 are set aside as against the Insurance Company and the

Award will be only against the owner of the vehicle, namely, the second respondent in all these cases. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS-III)

// True Copy //

Sub Assistant Registrar(CS)

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To

The Additional Subordinate Court,
Motor Accidents Claims Tribunal
Dindigul.

COPY TO
The Section Officer,
V.R.Section,Madurai Bench of Madras High Court,
Madurai. (2 copies)

+1CC TO MR.AJMAL ASSO., Advocate Sr. No.75470
+1CC TO MR.B.VIJAY KARTHIKEYAN, Advocate Sr. No.75280

C.R.P.(NPD)(MD)No.749 of 2008
and
C.M.A.(MD)Nos.586 to 588 of 2008
15.07.2019

PK(CO)
TR (07.08.2019) 5P 6C