IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On	13.07.2020
Pronounced On	21.07.2020

CORAM

THE HON'BLE **MR.JUSTICE C.SARAVANAN**

C.M.A.No.2343 of 2010
and
M.P.No.1 of 2010

(Through Video Conferencing)

The New India Assurance Co. Ltd.,
No.92, G.N.Chetty Road,
East Coast Chambers, 'N' Floor,
T.Nagar, Chennai – 600 017. ... Appellant

Vs.

1.Ananda Kumar @ Suresh Kumar

2.G.M.S.Rao

(2nd respondent exparte in lower court) ... Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and Decree in M.C.O.P.No.107 of 2005, dated 19.03.2010, on the file of the Motor Accident Claims Tribunal, III Court of Small Causes, Chennai.

For Appellant : Mr.M.B.Raghavan
& M/s.Harini

For R1 : Mr.Varada Kamaraj

****

JUDGMENT

The 2nd respondent had remained exparte before the Tribunal. Therefore, after hearing of the learned counsel for the appellant and the 1st respondent, this Civil Miscellaneous Appeal was taken up for hearing and reserved for pronouncing orders.

2. This Civil Miscellaneous Appeal has been filed by the appellant Insurance Company, against the impugned Judgment and Decree dated 19.03.2010 passed by the Motor Accident Claims Tribunal, (III Court of Small Causes, Chennai), Chennai, in M.C.O.P.No.107 of 2005.

3. By the impugned Judgment and Decree, the Tribunal has awarded a sum of Rs.1,22,700/- together with interest at 7.5% per annum from the date of the numbering of the claim petition till the date of deposit, to the 1st respondent/claimant.

4. The compensation awarded by the Tribunal has been challenged in this Civil Miscellaneous Appeal by the Insurance Company on the ground that it is not liable to pay the compensation as the policy was an Act Policy (3rd party policy).

5. It is stated that the 1st respondent/claimant was not covered by the policy and therefore, the Tribunal erred in awarding compensation to him under the policy. It is further submitted that the Tribunal erred in directing the appellant Insurance Company to pay and recover the amount from the 2nd respondent owner of the vehicle as there is no coverage under the policy.

6. I have considered the arguments of the learned counsel for the appellant and the 1st respondent. I have also considered the evidence on record and the case laws and the grounds of the appeal.

7. The question that arises for consideration in this appeal is whether 1st respondent, a passenger and an occupant in the insured car

driven by the 2nd respondent was a 3rd party or not so as to fasten liability on the appellant?

8. Section 146 (1) of the Motor Vehicles Act, 1948 enjoins an owner of a passenger motor vehicle to obtain an insurance policy covering a 3rd third-party risk. Section 147 of the said Act sets out the requirements of the policies and limits of liability. The expression "third-party" has been defined in Section 145(g) of the Act. It includes the Government.

9. By the impugned Judgment and Decree, the Tribunal has concluded that the 2nd respondent driver of the insured car drove the car in a rash and negligent manner and hit a lorry parked on the road side, as a result of which, the 1st respondent an occupant travelling in the insured car, sustained injuries.

10. Since the insured car was insured with the appellant only for third-party risk/employees and not for the injury of the co-passengers, the Tribunal has directed the appellant insurance company to pay the

compensation to the 1st respondent/claimant and to recover the same from the 2nd respondent without filing separate suit. The learned counsel for the appellant submits that this is impermissible and the issue is squarely covered by several decisions of the Hon'ble Supreme Court.

11. The learned counsel for the appellant Insurance Company submitted that the insured car was covered only by an Act Policy (Private Car-Zone A-Policy A Liability Only) and the premium that was collected only for third-party injury and damage to the property of 3rd party and for compensation to employees and no extra premium was collected to cover the injury or death of the occupant travelling in the insured car.

12. It is submitted that the 1st respondent/claimant was not a 3rd party within the meaning of Section 145 of the Motor Vehicles Act, 1988. It was further submitted that the injury was on account of gross negligence on the part of the driver of the lorry bearing registration number AP-03-U-2333 with which the insured car collided due to the negligence of the 2nd respondent driver.

13. The learned counsel for the appellant Insurance Company relied on the following decision of the Hon'ble Supreme Court and that of this Court:-

i. **General Manager, United Insurance Company Limited** Vs. **M.Laxmi and Others**, (2009) 17 SCC 301.
ii. **United India Insurance Company Limited** Vs. **Sathis kumar and Another**, 2019 SCC OnLine Made 16849.
iii. **United India Insurance Company Limited** Vs. **Mohan and Others**, Judgment dated 25.03.2019, passed by this Court in C.M.A.Nos.795 to 797 of 2016.
iv. **Oriental Insurance Company Limited** Vs. **Ruben @ Ruben Dhinesh Kumar and Another**, Judgment dated 21.06.2019, passed by this Court in C.M.A.No.2467 of 2006.
v. **Oriental Insurance Company Limited** Vs. **Ramalingam and Others**, Judgment dated 17.03.2020, passed by this Court in C.M.A.Nos.1982 to 1984 of 2016.
vi. **United India Insurance Co. Ltd.,** Vs. **Tilak Singh And Ors.**, (2006) 4 SCC 404.

14. Though elaborate arguments were advanced to sustain the impugned Judgment and Decree by the learned counsel for the 1st respondent, I am of the view that the present appeal is liable to be

allowed.

15. In **India Assurance Company** Vs. **Satpal Singh and Ors.**, (2000) 1 SCC 237, where after contrasting the language of section 95 (1) of the 1939 Act with the provisions of section 147 (1) of the 1988 Act the Hon'ble Supreme Court held as follows:-

> "The result is that under the new Act an insurance policy covering third party risk is not required to exclude gratuitous passengers in a vehicles, no matter that the vehicle is of any type or class. Hence the decisions rendered under the old Act vis-a-vis gratuitous passengers are of no avail while considering the liability of the insurance company in respect of any accident which occurred or would occur after the new Act came into force."

16. The view expressed in **Satpal Singh**'s case (supra) was however, overruled in the subsequent judgment of a Bench of three judges in **New India Assurance Company** Vs. **Asha Rani and Ors.,** (2003) 2 SCC 223. In that case the discussion arose in connection with carrying passengers in a goods vehicle. The 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 **United India Insurance Co. Ltd.,** Vs. **Tilak Singh And Ors**., (2006) 4 SCC 404 the concurring view of Sinha,J. reads as follows:

> "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 the Workmen's Compensation Act. **It does not speak of any passenger in a `good carriage'.**
> 27. Furthermore, sub-clauses (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 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 caused by or arising out of the use of the vehicle in a public place."

17. In **Tilak Singh**'s case (supra), the Hon'ble Supreme Court held that although the observation in **Asha Rani**'s case (*supra*), rendered in the context of passengers in a goods vehicle, the same would apply with equal force to gratuitous passengers in any other vehicle also. The Court

upheld the contention of the insurance company that it owed no liability towards the injuries suffered by the deceased 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.

18. Earlier in **Amrit Lal Sood** Vs. **Kaushalya Devi Thapar**, (1998) 3 SCC 744: 1999 SCC (Cri) 158, the Hon'ble Supreme Court had held that the term "any person" would include an occupant of the car and observed as follows:-

> "*4*. The liability of the insurer in this case depends on the terms of the contract between the insured and the insurer as evident from the policy. Section 94 of the Motor Vehicles Act, 1939 compels the owner of a motor vehicle to insure the vehicle in compliance with the requirements of Chapter VIII of the Act. Section 95 of the Act provides that a policy of insurance must be one which insures the person against any liability which may be incurred by him in respect of death or bodily injury to any person or damage to any property of third party caused by or arising out of the use of the vehicle in a public place. **The section does not however require a policy to cover the risk to passengers who are not carried for hire or reward. The statutory insurance does not cover injury suffered by occupants of the vehicle who are not carried for hire or reward and the insurer cannot be held liable under the Act.** But that does not prevent an insurer from

entering into a contract of insurance covering a risk wider than the minimum requirement of the statute whereby the risk to gratuitous passengers could also be covered. In such cases where the policy is not merely a statutory policy, the terms of the policy have to be considered to determine the liability of the insurer."

The finding that the term "any person" would include an occupant who is gratuitously travelling in the car is clearly in respect of a comprehensive policy and not in respect of a third-party policy.

19. Section 95 of the old Act is akin to Section 147 of the Motor Vehicle Act, 1988.

20. The above view of the Hon'ble Supreme Court in **Amrit Lal Sood** Vs. **Kaushalya Devi Thapar**, (1998) 3 SCC 744: 1999 SCC (Cri) 158, was later re-affirmed by another decision of the Hon'ble Supreme Court in **T.V. Jose (Dr.)** Vs. **Chacko P.M.,** (2001) 8 SCC 748. In para 19, it held as under:-

19. In this case only the first sheet of the policy is on record. **This clearly shows that the policy is a third-party policy.** The terms and conditions governing this policy are not on record. What was shown to the Court were terms and conditions of a comprehensive policy relating to private cars. These cannot apply to this policy**. In the absence of terms and conditions governing this policy it is not**

> **possible to accept the submission of Mr Iyer that this policy covered liability to occupants of the car. As has been set out hereinabove, the law on this subject is clear, a third-party policy does not cover liability to gratuitous passengers who are not carried for hire or reward. The 8th respondent Company will, therefore, not be liable to reimburse the appellant.**

21. Recently, however there are conflicting views of the Hon'ble Supreme Court on the subject. Perhaps, taking note of the plight of the claimant, the Hon'ble Supreme Court passed orders under Article 142 of the Constitution of India by directing the insurance company to satisfy the award by paying the compensation to the insured/claimant and recover the same from the owner following the view of its views in **Oriental Insurance Co Ltd** Vs. **Brij Mohan**, (2007) 7 SCC 56.

22. In **National Insurance Co Ltd** Vs. **Parvathneni**, (2009) 8 SCC 785, the Hon'ble Supreme Court observed that if the insurance company has no liability to pay at all, then, it cannot be compelled by an order of the court in the exercise of its jurisdiction under Article 142 of the Constitution of India to pay the compensation amount and later recover it from the owner of the vehicle. Thus, a reference was made to a

Larger Bench. The Larger Bench by an order dated 17.09.2013 disposed the appeal by keeping the question of law open to be decided in an appropriate case.

23.The Supreme Court in **Shamanna** Vs. **Oriental Insurance Co. Ltd.**, (2018) 9 SCC 650 applied the ratio of the Hon'ble Supreme Court in **National Insurance Co. Ltd.**, Vs. **Swaran Singh**, (2004) 3 SCC 297. Again in **National Insurance Co. Ltd.**, Vs. **Lakshmi Narain Dhut**, (2007) 3 SCC 700, the Hon'ble Supreme Court upheld the order of the Tribunal directing the insurance company to pay and recover the compensation awarded to the claimants from the owner of the vehicle and thus reversed the decision of the Karnataka High Court from which the said appeal was filed.

24. There under somewhat similar circumstances, the son of the claimant was travelling in the jeep which was driven negligently due to which the door of the jeep suddenly opened and the claimant's son was thrown out of the vehicle and sustained grievous injury and eventualy died in the hospital. The Tribunal awarded compensation and since a

driver had no valid license at the time of the accident and since it was in violation of the terms of the insurance policy, the Tribunal directed the insurance company to pay and recover the amount and granted liberty to the insurance company to recover the same from the owner of the offending vehicle.

25. In **Shivawwa raj** Vs. **National Insurance Co Ltd.**, (2018) 5 SCC 762, the Hon'ble Supreme Court in paragraph 13 observed that even assuming for the sake of argument that the insurance company was not liable to pay compensation amount awarded to the claimants, as the offending tractor was duly registered, the insurer would be still liable to pay compensation amount in the 1st instance with liberty to recover the same from the owner of the vehicle in the light of the decision of the Supreme Court in **National Insurance Co. Ltd.** Vs. **Swaran Singh**, (2004) 3 SCC 297.

26. Again in **Shivaraj** Vs. **Rajendra and Another**, (2018) 10 SCC 432, the claimant travelled in a tractor as a coolie. The driver of the tractor drove it at a high speed, in a rash and negligent manner and

dashed the tractor against a big mud stone, resulting in the tractor turning turtle and the appellant suffering grievous injuries. The Tribunal held that the claimant was able to prove the facts that the accident occurred on 23.02.2010 at 8.30 a.m. while he was going in the stated tractor, due to rash and negligent driving of the driver of the tractor. The Tribunal held that the appellant was travelling as a loader in the tractor and not as a gratuitous passenger.

27. On further appeal by the Insurance Company, the High Court concluded that the claimant travelled in the tractor in breach of policy terms and conditions and therefore, the insurance company cannot be made liable to compensate the owner or the claimant. Accordingly, the appeal preferred by the insurance company was allowed by the High Court and the insurer came to be absolved from the liability to pay compensation. The Supreme Court further observed as follows:-

> **11.** 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 appellant claimant 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.* v. *Swaran Singh* [*National Insurance Co. Ltd.* v. *Swaran Singh*, (2004) 3 SCC 297 : 2004 SCC (Cri) 733], *Mangla Ram* v. *Oriental Insurance Co. Ltd.* [*Mangla Ram* v. *Oriental Insurance Co. Ltd.*, (2018) 5 SCC 656 : (2018) 3 SCC (Civ) 335 : (2018) 2 SCC (Cri) 819], *Rani* v. *National Insurance Co. Ltd.* [*Rani* v. *National Insurance Co. Ltd.*, (2018) 8 SCC 492 : (2018) 3 SCC (Cri) 599] and including *Manuara Khatun* v. *Rajesh Kumar Singh* [*Manuara Khatun* v. *Rajesh Kumar Singh*, (2017) 4 SCC 796 : (2017) 2 SCC (Civ) 710 : (2017) 2 SCC (Cri) 492] . In other words, the High Court should have partly allowed the appeal preferred by Respondent 2. The appellant may, therefore, succeed in getting relief of direction to Respondent 2 insurance company to pay the compensation amount to the appellant with liberty to recover the same from the tractor owner, Respondent 1.

28. Though there are conflicting views and the recent drift of the Hon'ble Supreme Court has been to direct the insurance company to pay and recover the amount from the owner of the vehicle under similar circumstances, these orders were passed by the Hon'ble Supreme Court in the exercise of its power under Article 142 of the Constitution of India. Further, the attention to the decision of the Larger Bench of the Hon'ble Supreme Court in **Asha Rani's** case (*supra*) was not drawn. Though Motor Vehicles Act, 1988 is a beneficial legislation and is intended to give just compensation to the injured or to the dependents and/or the legal heirs of deceased person, yet an insurer cannot be directed to pay

and recover the compensation if there is no liability on it under the policy in terms of Section 147 of the Act. Though the Honourable Supreme Court has taken note of the plight of the unfortunate claimants, who suffer either debilitating injury or suffer due to the death bread winner of the family due to a motor accident, such orders have been passed by it only in the exercise of its power under Article 142 of the Constitution of India. Such powers have not been vested with High Courts either under the Constitution or under the statutory.

29. Merely because an Insurance Company is endowed with the finances and wherewithal, with panel of lawyers and can initiate proceedings to recover the amount from the owner of the insured vehicles the liability cannot be artificially fastened on it by this Court. The Hon'ble Supreme Court in **Oriental Insurance Co. Ltd.** Vs. **Nanjappan and Others**, (2004) 13 SCC 224, has made it clear that the Insurance Company can be directed to pay and recover the amount from the owner of the vehicle only where there is a violation of terms of the policy's conditions. In paragraph Nos.7 and 8, it was observed as follows:-

> **7**. .... We, therefore, are of the opinion that the interest of justice will be subserved if the appellant herein is directed to satisfy the awarded amount in favour of the claimant, if not already satisfied, and recover the same from the owner of the vehicle. **For the purpose of such recovery, it would not be necessary for insurer to file a separate suit but it may initiate a proceeding before the executing court as if the dispute between the insurer and the owner was the subject-matter of determination before the Tribunal and the issue is decided against the owner and in favour of the insurer.**
> **8**.........Before release of the amount to the claimants, owner of the vehicle shall be issued a notice and he shall be required to furnish security for the entire amount which the insurer will pay to the claimants. The offending vehicle shall be attached, as a part of the security. If necessity arises the executing court shall take assistance of the Regional Transport Authority concerned. The executing court shall pass appropriate orders in accordance with law as to the manner in which the insured, owner of the vehicle shall make payment to the insurer. In case there is any default it shall be open to the executing court to direct realization by disposal of the securities to be furnished or from any other property or properties of the owner of the vehicle, the insured.

30. Recently, by the Division Bench of this Court in **Bharati AXA General Insurance Co. Ltd.** Vs. **Anandi and Others**, (2018) SCC OnLine Mad 13295, has answered the issue infavour of the Insurance Company with the following observation:-

> 51. .... We are therefore of the considered opinion that the judgment of the two Judge bench in *Shivaraj* v. *Rajendra* 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* v. *Asha Rani* and *National Insurance Company Ltd.* v. *Baljit Kaur* 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.

31. In the light of the above observations of the Hon'ble Supreme Court and the Division Bench of this Court, I am inclined to follow the above view to partly set aside the order of the Tribunal.

32. The 1st respondent/claimant shall be entitled to receive a sum of Rs.50,000/- together with interest at 7.5% per annum from the date of filing of the claim petition till the date of such deposit out of the compensation awarded by the Tribunal, under Section 140 of the Motor Vehicles Act, 1988.

33. Liberty is given to the 1st respondent / claimant to recover the

balanced amount from the 2nd respondent without filing a separate proceedings in line with the principle in **Oriental Insurance Co. Ltd.** Vs. **Nanjappan and Others**, (2004) 13 SCC 224. Therefore, the 2nd respondent owner is directed to deposit the balance amount of compensation of Rs.72,700/- (1,22,700 – 50,000) together with interest at 7.5% per annum from the date of filing of the claim petition till the date of deposit, before the Tribunal, within a period of six weeks from the date of receipt of a copy of this Judgment.

34. If the entire amount of compensation awarded by the Tribunal has been deposited by the appellant Insurance Company, it is permitted to withdraw the amount of Rs.72,700/- (1,22,700 – 50,000) together with interest, by filing suitable application before the Tribunal. In case, if the amount of compensation has not been deposited by the appellant Insurance Company, it is directed to deposit the amount of Rs.50,000/- together with interest at 7.5% per annum from the date of filing of the claim petition till the date of such deposit, less the amount already deposited if any, within a period of six weeks from the date of receipt of a copy of this Judgment.

35. The 1st respondent/claimant may file appropriate application to withdraw the amount of compensation before the Tribunal.

36. The present Civil Miscellaneous Appeal therefore stands partly allowed in the light of the above observations. No cost. Consequently, connected, Miscellaneous Petition is closed.

21.07.2020

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Index : Yes / No
Internet : Yes / No

Notes:-In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

To:
1.The Motor Accident Claims Tribunal,
(III Court of Small Causes, Chennai).
Chennai.

2.G.M.S.Rao,
No.8/2-A, Thulasi Street,
Venkatapuram,
Chennai – 600 017.

C.SARAVANAN, J.

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Pre-delivery Judgment made
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