

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 18.09.2020

Pronounced on: 25.09.2020

CORAM

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

C.M.A.No.1105 of 2015
& M.P.No.1 of 2015

United India Insurance Co. Ltd.,
No.42, Mutt Road, Kumbakonam.

... Appellant

/versus/

1. Natarajan, 50 years,
S/o.Manian,
2. Palaniammal, 45 years,
W/o.Natarajan,
3. Menaka, 19 years,
D/o.Natarajan,
4. Minor. Premkumar, 17 years,
S/o.Natarajan,
Father Natarajan,
All are residing at Eachanpoondi Village,
Now at 25, Duraimangalam,
Perambalur Taluk & District.
5. Manohar,
S/o.Kalyanasundaram,
No.1/4, Elaperumal Nallur,
Udayarpalayam Taluk.

6. Pazhamalainathan,
S/o.Ramasamy,
Eachanpoondi, Shandan Post,
Kattumannarkudi Taluk.

... Respondents

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the award and decree dated 25.09.2014 made in M.C.O.P.No.646 of 2013 on the file of the Motor Accidents Claims Tribunal, Principal District Judge, Perambalur.

For Appellant : Mr.S.Arun Kumar,

For R1 to R4 : Mr.C.Jagadish

For R5, R6 : No appearance

J U D G M E N T

(The case has been heard through video conference)

Heard the Learned Counsel for the Appellant and the Learned Counsel for the respondent Nos.1 to 4.

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2. Aggrieved by the award of the Tribunal which has fastened the liability to indemnify the insured, despite violation of policy condition, this

Appeal is preferred by the insurer.

3. On 29.05.2013, at about 01.00 hours, Muthu who was sitting next to the driver of the tractor bearing registration No.TN-31-AU-7672, with trailer bearing registration No.TN-46-7714 was thrown out from the moving tractor due to the rash driving of the tractor driver. The wheels of the trailer ran over him and caused instant death. A criminal case was registered against the driver of the tractor based on the First Information Report given by Natarajan, the father of the deceased. As per the F.I.R, when he along with his family members proceeding in the trailer attached tractor to attend a marriage, the driver drove the tractor very fast and rashly. So his son Muthu, who was sitting on the engine guard asked the driver to stop the vehicle. When the driver applied break suddenly, his son was thrown out from the tractor. The right side wheels of the trailer ran over his son and his son died on the spot. However, the version about the accident as found in the F.I.R was changed by the claimants. Alleging the police had drafted the F.I.R to fit their convenience and to exonerate the vehicle owner, gave a different version in the Court as if the accident occurred when the deceased was travelling in the tractor as a cleaner carrying tools for the first respondent field.

4. Claim petition was filed against the owner of the trailer, its insurer and the owner of the tractor. A sum of Rs.15,00,000/- was sought as compensation, based on the factors that the deceased was 20 years old Bachelor earning a sum of Rs.7,500/- per month as cleaner. His parents and younger brother and sister were dependants on his income.

5. In the counter filed by the insurer of the trailer, who is the appellant herein contended that the deceased and his family were travelling in the tractor attached trailer as unauthorised passengers. The deceased was sitting next to the tractor driver fell and died. In a tractor, only the driver is permitted and no passenger is permitted to travel. If any person accompany the driver in a tractor, he is not an authorised passenger. The Insurance Company is not liable to indemnify the owner of the vehicle for the claim of unauthorised/gratuitous passenger travelling in violation of policy condition. The new version of the accident contrary to the F.I.R is far from truth. Anyhow, the trailer alone cannot run. The tractor driver alone is responsible for the accident and failure to implead the insurer of the tractor is fatal to the claim. Further, it was contended that the tractor is to be used only for agricultural purpose. The trailer can be used for

carrying agricultural and forest products and not human beings. When there is no coverage for the passengers, the Insurance Company cannot be held responsible to indemnify the trailer owner.

6. The Tribunal rejected the version found in the F.I.R. Accepted the altered version of the claimants that, the deceased was travelling in the tractor as cleaner to unload the motor accessories in the land of the 1st respondent. Relying upon Ex.R-1, the Insurance policy copy, held that both the tractor and the trailer were insured under the 2nd respondent and there is no violation of policy condition. Having held so, awarded a sum of Rs.10,97,000/- as compensation with 7.5% p.a interest.

7. Aggrieved, the present Appeal is filed by the insurance company on the ground that the Tribunal erred in rejecting the content of F.I.R. It failed to rely upon the Hon'ble Supreme Court judgment reported in **2003 AIR SCW 3591**. It failed to note that in a tractor except the driver, no other person is authorised to travel. The insurer is not liable to pay for the claim of an unauthorised passengers, as per the dictum of the Courts. In the absence of documents to show that the

tractor was insured under the appellant, the entire liability cannot be fastened on the appellant, who had collected premium and insured only the trailer. Further, the quantum of compensation is also excessive. The income fixed notionally at Rs.6,000/- and Rs.3,000/- for future prospects and deducting only 1/3rd instead of ½ (50%) for personal expenditure though the deceased was a bachelor were all pointed as errors in the Tribunal award.

8. The Learned Counsel for the respondents/claimants submitted that, the liability has been fixed against the Insurance Company based on the insurance policy, evidence of P.W-1 eye witness and the evidence of R.W-1. The Tribunal has rightly appreciated the law and facts in the light of the judgements rendered by the Hon'ble High Courts and Hon'ble Supreme Court. Hence sought for dismissal of the appeal.

9. The Learned Counsels appearing for either side relied on the following judgements to buttress their submissions:

(i). ***New India Assurance Company Ltd Vs. Asha Rani and others*** reported in ***2003 ACJ 1***.

(ii). *United India Insurance Company Ltd Vs. Chinnakannan and another* reported in *2004 (2) TN MAC 146*.

(iii). *Manager, National Insurance Company Limited Vs. Saju P.Paul and another* reported in *(2013) 2 SCC 41*.

(iv). *Lakshmi Chand Vs. Reliance General Insurance* reported in *(2016) 3 SCC 100*.

(v). *Manuara Khatun and others reported in Rajesh Kumar Singh and others reported in (2017) 4 SCC 796*.

(vi). *Rani and others Vs. National Insurance Company* reported in *(2018) 8 SCC 492*.

(vii). *Shivaraj Vs. Rajendra and another* reported in *(2018) 10 SCC 432*.

(viii). *Halappa Vs. Malik Sab* reported in *(2018) 2 SCC 15*.

(ix). *Anu Bhanvara etc Vs. Iffco Tokio General Insurance Company Limited and others* reported in *2019 SCC OnLine 1006*

10. The facts undisputed in this case is that, the deceased was travelling on the engine guard of the tractor and died when he fell from the tractor. Whether he was travelling as an unauthorised person along with others as found in

the F.I.R or he was travelling as cleaner as deposed by the claimant is under dispute, the bare fact that he travelled in the tractor and fell down is admitted and supported by documents.

11. The point for this Court is to decide whether travelling in the tractor along with the driver is violation of policy condition. If so, whether the insurance company still liable to indemnify.

12. Ex.R-1 is the Insurance policy issued by the respondent in respect of the Tractor bearing registration No.TN-46-E-5266 and the trailer bearing registration No.TN-46-F-7714. The period of coverage is between 17.02.2013 to 16.02.2014 midnight. The policy indicates the coverage is only for the driver and not for passengers. As per the complaint leading to F.I.R and the claim petition, the registration Number of the tractor on which the deceased Muthu travelling was TN-31-AU-7672. This was not the tractor insured under the Appellant/Insurance Company. The case of the claimant as spoken through witnesses is that, Muthu fell from the tractor bearing Registration No.TN-31-AU-7672, while travelling on its engine guard. He was run over by the trailer bearing registration No.TN-46-F-

7714 attached to the tractor TN-31-AU-7672. The specific case of the claimants is that, the deceased was carrying tools to the field of Pazhamalainathan (3rd respondent in the claim petition), who is the owner of the un-insured tractor.

13. Thus, in this case, an un-insured tractor attached to an insured trailer was carrying an unauthorised passenger. When the driver of the uninsured tractor drove the Tractor rash and negligently, the unauthorised passenger fell and ran over by the wheels of the trailer attached to the tractor. Considering the citations relied by the respective counsels with the facts peculiar to this case, this Court finds that the version in the F.I.R and the later altered version of the claimants whichever is true, either way does not satisfy the legal requirement to claim compensation from the insurer of the trailer for falling from an un-insured tractor. The Tribunal has wrongly held that the tractor and the trailer were insured under the appellant without noticing the registration number of the tractor which was insured under the appellant and the tractor involved in the accident.

14. In *Halappa Vs. Malik Sab* reported in (2018) 2 SCC 15, the Hon'ble Supreme Court held that, the Court should consider the material aspects of

the evidence available on record and not pursue purely on the basis of F.I.R, containing a version which was at variance with the evidence which emerged before the Tribunal. In the above case cited, the insurer took a defence that, according to the F.I.R, the injured was riding on the mudguard and fell from the Tractor. Hence, the policy does not covers the risk of anyone other than the driver of the Tractor. Whereas, the court found that the accident occurred when tractor turn turtle and collided with the claimants who was witnessing a demonstration. In the said factual scenario, the Hon'ble Supreme Court held that the evidence emerged during the trial will prevail upon the version found in the F.I.R.

15. The facts of the instant case, the F.I.R as well the evidence emerged from the trial consistently indicates that the victim fell from the tractor and run over by the wheels of the trailer and the tractor was not insured.

16. In *Lakshmi Chand Vs. Reliance General Insurance* reported in (2016) 3 SCC 100, the Hon'ble Supreme Court observed that, the insurer has to establish the fundamental breach of the policy condition, to avoid its liability. The insurance company has to establish the breach of policies was so fundamental that

it will repudiate the contract. In this case, overloading of passengers in goods carrier vehicle came up for consideration. The Hon'ble Supreme Court has held that:-

“16.It becomes very clear from a perusal of the above mentioned case law of this Court that the insurance company, in order to avoid liability must not only establish the defence claimed in the proceeding concerned, but also establish breach on the part of the owner/insured of the vehicle for which the burden of proof would rest with the insurance company. In the instant case, the respondent-Company has not produced any evidence on record to prove that the accident occurred on account of the overloading of passengers in the goods carrying vehicle. Further, as has been held in the case of B.V. Nagaraju (supra) that for the insurer to avoid his liability, the breach of the policy must be so fundamental in nature that it brings the contract to an end”

17. In ***Rani and others Vs. National Insurance Company*** reported in (2018) 8 SCC 492, considering the provisions of Section 149 of Motor Vehicles Act and its effect, the Hon'ble Supreme Court has held that, it is duty of the insurer to satisfy the judgment and then recover from the person insured following this

judgment, in respect of third party risk, even in case, the insurer successfully raise the defence under Section 149 of the Motor Vehicle Act, the Hon'ble Supreme Court in ***Shivaraj Vs. Rajendra and another*** reported in (2018) 10 SCC 432, has observed as under:-

“10. The High Court, however, found in favour of respondent No.2 (insurer) that the appellant travelled in the tractor as a passenger which was in breach of the policy condition, for the tractor was insured for agriculture purposes and not for carrying goods. The evidence on record unambiguously pointed out that neither was any trailer insured nor was any trailer attached to the tractor. Thus, it would follow that the appellant travelled in the tractor as a passenger, even though the tractor could accommodate only one person namely the driver. As a result, the Insurance Company (respondent No.2) was not liable for the loss or injuries suffered by the appellant or to indemnify the owner of the tractor. That conclusion reached by the High Court, in our opinion, is unexceptionable in the fact situation of the present case.

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

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.

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.”

18. The principal of “pay” and “recover” came for consideration in *Anu Bhanvara etc., Vs. Iffco Tokio General Insurance Company Limited and others* reported in **2019 SCC OnLine 1006**. The Hon'ble Supreme Court considering the principle of “pay” and “recover” has listed cases when pay and recovery should be ordered and when pay and recovery should be declined. Finally, taking note of the claimants, who are young children and in view of the peculiar facts and circumstances of the case, the Hon'ble Supreme Court applied the principal of “pay” and “recover.” after recording reasons.

“9.The next question is as to which of the respondents, that is the owner and driver, or the insurer of the vehicle, would be liable for payment of such compensation. As regard the liability for payment of compensation, it has been

contended by the learned counsel for the appellants that since the vehicle was admittedly insured with the respondent no.1-insurance company, the principle of pay and recover would be invoked even in case of a gratuitous passenger in a goods vehicle. The insurance company should thus be made liable for the payment of compensation to the appellants and in turn they would have the right to realise/recover the same from the owner and driver of the vehicle. In support of his submission, learned counsel for the appellants has relied on the following decisions of this Court, namely, Manuara Khatoon v. Rajesh Kumar Singh (2017) 4 SCC 796, Puttappa v. Rama Naik (Civil Appeal No.4397 of 2016, disposed of on 2 nd April, 2018); Manager, National Insurance Co. Ltd. v. Saju P. Paul (2013) 2 SCC 41; New India Assurance Co. Ltd. v. Vimal Devi (Civil Appeal Nos.15781579 of 2004, disposed of on 5th October, 2010); National Insurance Co. Ltd. v. Challs Upendra Rao (2004) 8 SCC 517; New India Assurance Co. Ltd. v. C. M. Jaya (2002) 2 SCC 278; Amrit Lal Sood v. Kaushalya Devi Thapar (1998) 3 SCC 744.

10. Per contra, learned counsel for the respondent-insurance company has contended that since the claimants were gratuitous passengers in a goods vehicle, in which case the liability for payment of compensation for death or body injury to the passengers of such goods vehicle would not be covered, hence the principle of pay and recover would not

apply. It has thus been contended that the order of the High Court is perfectly justified in law and calls for no interference by this Court. In support of her submission, learned counsel has relied on following decisions, namely, New India Assurance Co. Ltd. v. Asha Rani (2003) 2 SCC 223; National Insurance Co. Ltd. v. Baljit Kaur (2004) 2 SCC 1; National Insurance Co. Ltd. v. Kaushalya Devi (2008) 8 SCC 246; National Insurance Co. Ltd. v. Rattani (2009) 2 SCC 75; National Insurance Co. Ltd. v. Prema Devi (2008) 5 SCC 403; Bharat AXA General Insurance Co. Ltd. v. Adani MANU/TN/6503/2018; Bajaj Allianz General Insurance Co. Ltd. v. Lal Singh (2015) SCC Online Del 7508.”

19. In *United India Insurance Company Limited Vs. K.M.Poonam and others reported in (2015) 15 SCC 297*, the Hon'ble Supreme Court, while dealing with the claim petition involving violation of policy condition by overloading the vehicle with excess number of passengers over and above the permitted limit of six, held that,

“36. The liability of the insurer, therefore, is confined to the number of persons covered by the insurance policy and not beyond the same. In other words, as in present case, since the insurance policy of the owner of the vehicle covered six

occupants of the vehicle in question, including the driver, the liability of the insurer would be confined to six persons only, notwithstanding the larger number of persons carried in the vehicle. Such excess number of persons would have to be treated as third parties, but since no premium had been paid in the policy for them, the insurer would not be liable to make payment of the compensation amount as far as they are concerned. However, the liability of the Insurance Company to make payment even in respect of persons not covered by the insurance policy continues under the provisions of sub-section (1) of Section 149 of the Act, as it would be entitled to recover the same if it could prove that one of the conditions of the policy had been breached by the owner of the vehicle.”

20. On close reading of all these judgments, it is clear as crystal that whenever there is a fundamental violation of the policy condition, the Court has totally exonerated the Insurance Company. If there is a breach in the policy condition, in appropriate cases, invoking their power under Articles 142 & 136 of the Constitution of India, has ordered pay and recover. However, always the Court has upheld the principal that the victims should be compensated with fair and just award at the same time, the accident cannot be a moonshine for the claimants. It all depends on the facts of the respective cases. It is not that in all cases of

mudguard travel in the tractor, court awarded compensation.

21. In cases of *New India Assurance Company Limited Vs. Vedwat and others* reported in (2007) (3) SCALE 397 and *National Insurance Company Vs. Chinnamma and others* reported in 2004 8 SCC 697, the Supreme Court has held that, in the absence of collecting any extra premium for the passengers, the unauthorised gratuitous passengers in a tractor is not entitled for any compensation or the advantage of 'pay' and 'recover'.

22. It may be argued that though the victim travelled unauthorisedly in a uninsured tractor, he died because the insured trailer wheel run over him and therefore, the insurer of the trailer is bound to compensate. This argument, though may superficially appear to be logic but bristles with the following fallacy.

(i). A trailer as such is not a motor vehicle. It has to be fitted with any motor propelled vehicle to move. Only if it is attached to the tractor or any vehicle fitted with motor engine, it will be fit to run on the road. Once the trailer is attached to a tractor or any motor vehicle, they become a composite single unit.

(ii). Even if the ownership of the tractor and trailer stands on different person and even if the insurer are different, a trailer attached tractor becomes part of the tractor to termed it as motor vehicle. In the instant, the owner of the trailer under whom the deceased alleged to have been employed, allowed his trailer to be attached to a tractor, which is not insured. An uninsured tractor coupled with the trailer for all reason should be considered as an uninsured motor vehicle because, in isolation, the trailer cannot be termed as motor vehicle. The trailer gets inertia to move only from the tractor, which is fitted with motor engine. The compliance of policy condition has to be looked from the angle of the motor vehicle i.e., Engine and not from the angle of the trailer.

23. In the instant case, as narrated above, the victim has travelled unauthorisedly in an uninsured tractor, attached to an insured trailer. Having invited the accident on his own, the responsibility to compensate solely falls on the tractor owner and not on the insurer of the trailer. Therefore, this Court finds that the Tribunal has erred in wrongly applying the law. To fix the liability on the Insurance Company, even without conferring them their right to 'pay' and 'recover.'

is contrary to Supreme Court judgment. On facts, this Court finds that the Insurance company/appellant herein is no way responsible for the accident occurred to the unauthorised passenger of an uninsured Tractor. The Insurance Company/appellant is exonerated from liability. The liability to pay is on the tractor owner, who is arrayed as 6th respondent. The claimant is entitled to recover the award against the tractor owner. Hence, the ***Civil Miscellaneous Appeal is Allowed.*** The award passed by the Tribunal in M.C.O.P.No.646 of 2013, dated 25.09.2014 is set-aside. Consequently, connected Miscellaneous Petition is closed. No costs.

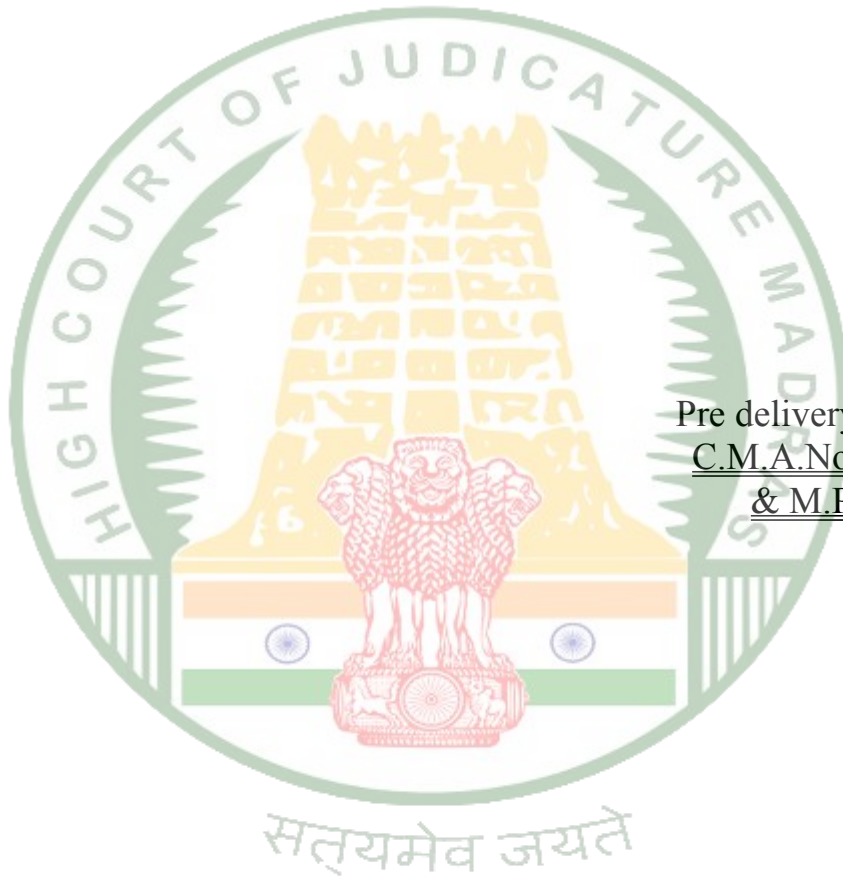
Index : Yes/No
Speaking order/Non-speaking order
bsm

25.09.2020

To,
1. The Motor Accidents Claims Tribunal, Principal District Judge, Perambalur.
2. The Section Officer, VR Section, Madras High Court.

Dr.G.JAYACHANDRAN,J.

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Pre delivery Judgment in
C.M.A.No.1105 of 2015
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