IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 14.10.2020	Pronounced on: 22.10.2020

Coram::

The HONOURABLE Dr. JUSTICE G.JAYACHANDRAN

C.M.A.No.1663 of 2015
& Cross Objection No.30 of 2019

M/s.Reliance General Insurance Co. Ltd.,
No.12, New Hospital Road,
Gobichettipalayam,
Erode District. ...Appellant
in C.M.A.No.1663 of 2015

/versus/

1. Kathir @ J.Kathiravan,
S/o.Jayem Nadar,
Door No.13/6, Subramaniyar Street,
Modachur Post, Gobichettipalayam Taluk, Erode District.

2. Mr.C.Palanisamy,
S/o.Chinna Sengodan,
Door No.124, Siruvankattuvalasu,
V.Vellode Post, Perundurai Taluk.
Erode District. ... Respondents
in C.M.A.No.1663 of 2015

Kathir @ Kathiravan,
S/o.Jayam Nadar, Door No.13/6, Subramaniyar Street,
Chinna Modachur, Modachur Post,
Gobichettipalaym (TK),
Erode District. ...Appellant
in Cross Objector.No.30 of 2015

/Versus/

1. M/s.Reliance General Insurance Co. Ltd.,
No.12, New Hospital Road,
Gobichettipalayam, Erode District.

2. Mr.C.Palanisamy,
S/o.Chinna Sengodan,
Door No.124, Siruvankattuvalasu,
V.Vellode Post, Perundurai Taluk.
Erode District. ... Respondents
in Cross Objector No.30 of 2019

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(The 2nd respondent remained ex-parte before the Tribunal, Hence, notice may be Dispensed with for the 2nd respondent in this Cross Appeal)

Prayer in C.M.A.No.1663 of 2015: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, praying against the judgment and decree in M.C.O.P.No.609 of 2009 dated 02.04.2012 on the file of the Motor Accidents Claims Tribunal, Additional District Court, Fast Track Court No.2, Gobichettipalayam.

Prayer in Cross Objection No.30 of 2019: Cross Appeal is filed under Order 41 Rules 22 of C.P.C., against the judgment and Decree in M.C.O.P.No.609 of 2009, dated 02.04.2012, on the file of MACT/Additional District Court, Fast Track Court No.2, Gobichettipalayam.

For Appellant : Ms.Harini,
in C.M.A.No.1663 of 2015 for M/s.M.B.Gopalan

For Appellant : Mr.Ma.P.Thagavel
in Cross Objection No. 30 of 2019

For R1 : Mr.Ma.P.Thagavel
in C.M.A.No.1663 of 2015

For R1 : Ms.Harini,
in Cross Objection No.30 of 2019 for M/s.M.B.Gopalan

For R2 : No appearance
in both cases

COMMON JUDGMENT

(The case has been heard through video conference)

Heard the Learned Counsel for the Appellant and the Learned Counsel for the respondents

2. The Motor Accidents Claims Tribunal, at Gopichettipalayam in M.C.O.P.No.609 of 2009, filed by Kathir @ Karthiravan, awarded a sum of Rs.5,01,870/- with 7.5% interest from the date of numbering (17.12.2009) till the date of realisation. The insurer was ordered to pay the compensation to the claimant and recover from the insured.

3. The insurer of the vehicle which caused the accident has filed the Appeal seeking exoneration of liability and also contend that the quantum of compensation awarded is excessive. The claimant has filed Cross Objection for

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enhancement of compensation by 25%, under future prospects and 100% functional disability instead of 85%, for the amputation of left leg below knee.

4. The averments in the claim petition is under:-

The accident occurred on 10.11.2009, when the claimant/petitioner was travelling in a Eicher van bearing Registration No.TN-72-X-5995 along with his goods. The Eicher van rash and negligently hit a lorry proceeding ahead of it. In the accident, the claimant lost his left leg. The Police has registered a case against the driver of the Eicher Van.

5. The claimant was doing plastic vessels business and earning a sum of Rs.10,000/- per month. Due to the amputation of his left leg, he has lost his earning capacity. He incurred a sum of Rs.3,00,000/- towards medical expenses. Hence, the owner of the Eicher van and its insurer are jointly and severely liable to pay Rs.15,00,000/- as compensation.

6. The owner of the vehicle remained absent set exparte. The insurer denying the liability, has filed counter stating that, the road accident as narrated in the claim petition is false. The quantum of compensation sought is excessive. The driver of the Eicher Van had no valid driving license to drive goods vehicle. The claimant is an gratuitous passenger in a goods vehicle. He is not covered under Section 147 of Motor Vehicle Act, 1988, to seek compensation under road accident. The owner of the vehicle insured only for third party risk. The owner has violated the permit condition and policy condition, hence the insurer is not liable to indemnify the insured.

7. In the additional counter, the insurer pleaded that, the Insurance Coverage for the offending goods vehicle bearing Registration No.TN-72-X-5995, is, “liable” only 'Act Policy' and no premium received to cover any other person. The contract between the owner of the vehicle and the Insurance Company is to indemnify the insured for the injury or death, to any third parties and not the owner of the goods or any other person.

8. Before the Trial Court, Three witnesses including the claimant was examined in support of the claim. 10 documents were marked. The Insurer examined two witnesses and marked 7 documents.

9. The Tribunal, relying upon the Ex.P-1 and Ex.P-8, the F.I.R and the final report respectively filed by the police against the driver of the eicher van, has held that, the accident occurred due to the negligence of the van driver. Taking note of the age mentioned in the discharge summary Ex.P-2, fixed the age of the claimant as 56 years. Based on the Accident Register Ex.P-6, the wound certificate Ex.P-9 and the

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oral evidence of PW-3, for amputation of the left leg 1/3rd below knee tribunal has assessed 85% functional disability. Since, there was no reliable evidence to prove the claimant's income through plastic vessel business, notionally fixed his income as Rs.7,500/- after deducting 1/3rd for his personal expenditure, applying multiplicand '8' computed Rs.4,08,000/- for loss of income. In addition, Rs.70,470/- as per the medical bills Ex.P-4, Rs.15,000/-, for pain and suffering, Rs.6,000/- for nutritious food, Rs.2,000/- for damages to the cloths was awarded.

10. After examining Ex.R-3 the Insurance Policy for the Eicher Van, the Tribunal has pointed that the insured has paid Rs.50/- premium for Limited Liability for driver (IMT 40)/ cleaner/conductor and two persons. Since, none other has raised claim in connection with the said accident, the Claimant is entitled for compensation. At the same time, though the MVI report Ex.P-7 mentions about the license number and batch number of the driver, for the notice issued by the Insurance Company, to produce his driving license, the driver has failed to produce the driving license, hence by drawing adverse inference, held that the driver of the offending vehicle had no valid driving license, the Tribunal applied the principle of 'pay and recovery' and ordered the insurer to pay the compensation to the accident victim and recover it from the insured/owner of the offending vehicle.

11. In the Appeal, under consideration, the learned counsel for the appellant/insurer submitted that, the Tribunal has grossly erred in holding the insurer liable to pay the compensation and later recover from the insured. Ignoring the dictum laid by the Hon'ble Supreme Court, in case of gratuitous passenger in the goods vehicle. No goods was transported in the vehicle at the time of accident and the claimant was not travelling with goods. In the absence of proof that the claimant travelled with goods, the Tribunal ought not to have concluded that the claimant was travelling in the goods vehicle as owner of the goods. The Tribunal also wrongly understood that the premium of Rs.50/- paid for driver/cleaner/conductor will cover gratuitous passenger/owner of the goods etc. In any event, the award of compensation is excessive. The injury sustained does not have any bearing on the earning capacity of the claimant. According to the claimant, he was doing plastic goods business. There is no proof for the same. Even assuming he is earning, his livelihood by doing business, the amputation of left leg does will not cause any impairment in his earning capacity more so, when the doctor PW-3 admits in his deposition that the claimant has fixed artificial limb and by that, his impairments substantially mitigated.

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12. Contradicting the appellants submission, the learned counsel for the cross objector/claimant state that, the claimant was only 45 years old at the time of accident but the Tribunal has wrongly fixed his age as 56 years without assigning any reason. The claimant is doing plastic vessel business and earning Rs.10,000/- per month but the Tribunal erroneously fixed his income as Rs.7,500/- per month only and wrongly reduced 1/3rd for personal expenses, which is not permissible in case of injury claims. The amputation of leg below knee had totally affected the earning capacity of the claimant. The Tribunal failed to take note of the said fact and had fixed only 85% loss of future earning capacity instead of 100%. Also he contended that, under other non-conventional heads like pain and suffering, Extra Nourishments and Attender Charges, the Tribunal ought to have awarded Rs.1,00,000/-, Rs.50,000/- and Rs.2,00,000 respectively.

13. Before adverting to the respective submissions and the decisions, this Court is of the view that the Tribunal while considering the claim petition had miserably failed to take note of the three factors, which are essential for the decisions. Those factors are:-

(i). In F.I.R, in this case reporting the accident was given by one Selvaraj, who is the brother of the injured Karthi. He claims that, he and his brother and the driver of the Eicher van were sitting in the cabin. Two other persons were travelling in the backside of the closed body. He has not furnished the details of the lorry on which the Eicher van driver hit.

(ii). In the F.I.R, the informant has specifically stated that they are returning back after selling the plastic goods at Kolar, Karnataka State. There was no goods in the van at the time of accident. No evidence to presume the claimant was carrying on business in plastic goods.

(iii). The R.C book marked as Ex.R.7 indicates that the seating capacity of the MMV goods vehicle is three in all including the driver. At the time of accident, three in the cabin and two in the body were travelling. Earlier, this vehicle was fitted with rig compressor and necessary endorsement made in the R.C Book on 24.08.2004. Later, it has been reconverted into closed goods vehicle with unladen weight of 3290 kg. This reconversion was made on 20.02.2006.

14. The above said facts are becomes very relevant for the case in hand. Since the argument of the respective counsels centres around both liability and quantum. The R.C Book (Ex.P.7) and the Insurance Policy (Ex.R.3) indicates that in the said eicher van, besides driver, only two persons can travel and the Insurance Coverage is for basic liability, Compulsory P.A

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coverage to owner and driver [IMT 15], Limited Legal Liability paid drivers [IMT 40], number of persons 2, Legal Liability Premium to paid driver/cleaner/conductor [IMT 39], number of person 1. Thus, under basic liability the Insurance Company has collected Rs.5,920/- as premium. Under compulsory P.A coverage collected Rs.100/- as premium and under Legal Liability premium under [IMT 40] for two persons collected Rs.50/- and for one person under [IMT-39] have collected Rs.75/-. Totally, they have collected Rs.6,728/-. The insurance is subject to IMT Endorsement Nos.21, 15, 28, 39 and 40.

15. The specific case of the claimant is that, the injured was carrying on business in plastic goods and he was returning in the eicher van along with others as owner of the goods. The Tribunal has failed to note that there was no goods in the vehicle at the time of accident. There is no evidence to show the injured is a dealer or businessman in plastic goods. No piece of evidence to show where he is having his business or from where he procured plastic goods for his business, to whom he sold his goods at Kolar, Karnataka and returning back. These are the basic materials required to determine that the injured travelled in the goods vehicle as owner of the goods and also to determine that he had income by doing plastic goods business. When not even a piece of evidence placed before the Tribunal, the Tribunal has gone ahead to accept the case of the claimant that the injured was travelling in the goods vehicle as owner of the goods and injured was carrying on business in plastic goods and earning Rs.7,500/- per month.

16. In this context, it is also necessary to consider the plea of the claimant's counsel that the Hon'ble Supreme Court in some of the judgments has held that the owner of the goods returning in the empty goods vehicle, after disposing the goods in the market should be treated as owner of the goods and compensation should be awarded. There can be no alternate view in this regard. However, the claimant has to basically prove that the injured was a Trader and travelling in the goods vehicle after Trading his goods.

17. The error in the Tribunal award is that, the informant Selvaraj, in the F.I.R, has stated that, he has also sustained injury and for cut injury near eyebrow was sutured. The Tribunal, on his own, presumed that there is no other claim petition in connection with this accident, since there is coverage for two persons, the claimant is entitled for compensation. It has failed to note that in a goods vehicle when only three persons including the driver can travel, admittedly, in this case, five persons were travelling. When the Legal Liability premium collected for two persons namely paid driver/cleaner/conductor, the injured, who is neither a driver

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nor cleaner nor conductor, does not fall under the Insurance Coverage.

18. The IMT Endorsement as per the Insurance coverage is for Nos.21, 15, 28 39 and 40, those endorsement are extracted below for better understanding of this case.

IMT. 21. SPECIAL EXCLUSIONS AND COMPULSORY DEDUCTIBLE (Applicable to all Commercial Vehicles excluding taxis and motorized two wheelers carrying passengers for hire or reward.) Notwithstanding anything to the contrary contained herein it is hereby understood and agreed that

(a) Special Exclusions. except in the case of Total Loss of the vehicle insured, the insurer shall not be liable under Section I of the policy for loss of or damage to lamps tyres tubes mudguards bonnet side parts bumpers and paint work.

(b) Compulsory Deductible. in addition to any amount which the insured may be required to bear under para (a) above the insured shall also bear under section I of the policy in respect of each and every event (including event giving rise to total loss/constructive total loss) the first Rs.......* of any expenditure(or any less expenditure which may be incurred) for which provision is made under this policy and/or of any expenditure by the insurer in the exercise of its discretion under Condition No.4 of this policy.

If the expenditure incurred by the insurer shall include any amount for which the insured is responsible hereunder such amount shall be repaid by the insured to the insurer forthwith.

For the purpose of this Endorsement the expression "event" shall mean an event or series of events arising out of one cause in connection with the vehicle insured in respect of which indemnity is provided under this policy.

Subject otherwise to the terms conditions limitations and exceptions of this Policy.

.* to insert amount as appropriate to the class of vehicle insured as per GR.40 of

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the tariff.

IMT 15. PERSONAL ACCIDENT COVER TO THE INSURED OR ANY NAMED PERSON OTHER THAN PAID DRIVER OR CLEANER (Applicable to private cars including three wheelers rated as private cars and motorized two wheelers with or without side car [not for hire or reward]) In consideration of the payment of an additional premium it is hereby agreed and understood that the Company undertakes to pay compensation on the scale provided below for bodily injury as hereinafter defined sustained by the insured person in direct connection with the vehicle insured or whilst mounting and dismounting from or travelling in vehicle insured and caused by violent accidental external and visible means which independently of any other cause shall within six calendar months of the occurrence of such injury result in:- Details of Injury Scale of Compensation i) Death 100% ii) Loss of two limbs or sight of two eyes or one limb and sight of one eye 100% iii) Loss of one limb or sight of one eye 50% iv) Permanent Total Disablement from injuries other than named above 100% Provided always that

(1) compensation shall be payable under only one of the items (i) to (iv) above in respect of any such person arising out of any one occurrence and total liability of the insurer shall not in the aggregate exceed the sum of Rs.........* during any one period of insurance in respect of any such person.

(2) no compensation shall be payable in respect of death or injury directly or indirectly wholly or in part arising or resulting from or traceable to (a) intentional self injury suicide or attempted suicide physical defect or infirmity or (b) an accident happening whilst such person is under the influence of intoxicating liquor or drugs.

(3) such compensation shall be payable only with the approval of the insured named in the policy and directly to the injured

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person or his/her legal representative(s) whose receipt shall be a full discharge in respect of the injury of such person. Subject otherwise to the terms exceptions conditions and limitations of this policy.

IMT. 28. LEGAL LIABILITY TO PAID DRIVER AND/OR CONDUCTOR AND/OR CLEANER EMPLOYED IN CONNECTION WITH THE OPERATION OF INSURED VEHICLE (For all Classes of vehicles.)

In consideration of an additional premium of Rs. 25/- notwithstanding anything to the contrary contained in the policy it is hereby understood and agreed that the insurer shall indemnify the insured against the insured's legal liability under the Workmen's Compensation Act, 1923 , the Fatal Accidents Act, 1855 or at Common Law and subsequent amendments of these Acts prior to the date of this Endorsement in respect of personal injury to any paid driver and/or conductor and/or cleaner whilst engaged in the service of the insured in such occupation in connection with the vehicle insured herein and will in addition be responsible for all costs and expenses incurred with its written consent.

Provided always that:-

(1) this Endorsement does not indemnify the insured in respect of any liability in cases where the insured holds or subsequently effects with any insurer or group of insurers a Policy of Insurance in respect of liability as herein defined for insured's general employees;

(2) the insured shall take reasonable precautions to prevent accidents and shall comply with all statutory obligations;

*(3) the insured shall keep record of the name of each paid driver conductor cleaner or persons employed in loading and/or unloading and the amount of wages and salaries and other earnings paid to such employees and shall at all times allow the insurer to inspect such records on demand.

(4) in the event of the Policy being cancelled at the request of the insured no refund of the premium paid in respect of this Endorsement will be allowed.

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Subject otherwise to the terms conditions limitations and exceptions of the Policy except so far as necessary to meet the requirements of the Motor Vehicles Act, 1988.

*In case of Private cars/ motorised two wheelers (not used for hire or reward) delete this para.

IMT. 39. Legal Liability to persons employed in connection with the operation and/or maintaining and/or Loading and/or Unloading of Motor Vehicles. (For GOODS VEHICLE)

In consideration of the payment of an additional premium of *..….. it is hereby understood and agreed that notwithstanding anything contained herein to the contrary the insurer shall indemnify the insured against his legal liability under the Workmen's Compensation Act, 1923 and subsequent amendments of that Act prior to the date of this Endorsement, the Fatal Accidents Act, 1855 or at Common Law in respect of personal injury to any paid driver (or cleaner or conductor or person employed in loading/or unloading but in any case not exceeding seven in number including driver and cleaner) whilst engaged in the service of the insured in such occupation in connection with the .... and not exceeding seven in number and will in addition be responsible for all costs and expenses incurred with its written consent. Provided always that :-

(1) this Endorsement does not indemnify the insured in respect of any liability in cases where the insured holds or subsequently effects with any insurer or Group of Underwriters a Policy of Insurance in respect of liability as herein defined for his general employees.

(2) the insured shall take reasonable precautions to prevent accidents and shall comply with all statutory obligations.

(3) the insured shall keep a record of the name of each driver cleaner conductor or person employed in loading and/or unloading and the amount of wages salary and other

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earnings paid to such employees and shall at times allow the insurer to inspect such record.

(4) in the event of the Policy being cancelled at the request of the insured no refund of the premium paid in respect of this Endorsement will be allowed.

The premium to be calculated at the rate of Rs.25/- per driver and/or cleaner or conductor and/or person employed in loading and/or unloading but not exceeding the number permitted by the Motor Vehicles Act 1988 including driver and cleaner.

Subject otherwise to the terms exceptions conditions and limitations of this Policy except so far as necessary to meet the requirements of the Motor Vehicles Act, 1988.

IMT 40 Legal Liability to paid driver and/or Conductor and/or cleaner employed in connection with the operation of Motor vehicle. (For buses, taxis and motorized three/four wheelers under commercial vehicles tariff)

In consideration of the payment of an additional premium it is hereby understood and agreed that notwithstanding anything contained herein to the contrary the insurer shall indemnify insured against his legal liability under the Workmen's Compensation Act, 1923 and subsequent amendments of that Act prior to the date of this endorsement, the Fatal Accidents Act, 1855 or at Common Law in respect of personal injury to any paid driver and/or conductor and/or cleaner whilst engaged in the service of the insured in such occupation in connection with the vehicle insured and will in addition be responsible for all costs and expenses incurred with its written consent. The premium to be calculated and paid while taking insurance of the vehicle concurred at the rate of Rs. 25/- per driver and/or conductor and/or cleaner. Provided always that :-

(1) this Endorsement does not indemnify

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the insured in respect of any liability in cases where the insured holds or subsequently effects with any insurer or Group of Underwriters a Policy of Insurance in respect of liability as herein defined for his general employees.

(2) the insured shall take reasonable precautions to prevent accidents and shall comply with all statutory obligations.

(3) the insured shall keep a record of the name of each driver cleaner conductor or person employed in loading and/or unloading and the amount of wages salary and other earnings paid to such employees and shall at all times allow the insurer to inspect such record.

(4) in the event of the Policy being cancelled at the request of the insured no refund of the premium paid in respect of this Endorsement will be allowed.

Subject otherwise to the terms exceptions conditions and limitations of this Policy except so far as necessary to meet the requirements of the Motor Vehicles Act, 1988.

19. The Tribunal ought to have ascertained the character of the injured, who travelled in the goods vehicle. Certainly, he is not the paid driver, cleaner or conductor of that vehicle. It is case of the claimants that, after selling the plastic goods at Kolar, Karnataka State, the injured and his brother along with their two labourers were returning in the empty goods vehicle. Whether they carried the goods in the same vehicle, is not spoken by any witnesses. Whether they are really Traders in plastic goods, there is no evidence. Merely on surmises and on sympathy, despite lacuna in the case of the claimant, the Tribunal has fixed the responsibility of paying on the insurer the compensation. The policy and permit violation in this case are very fundamental.

20. No doubt, Courts have held that the owner of the goods travelling in the cabin of a goods vehicle is entitled for compensation. To extend this benefits, the claimants should prove that goods were transported in the vehicle and the victim is the owner of the said goods. Further, there cannot be fundamental breach of permit and policy condition by transporting excess passengers in the vehicle meant for transporting goods.

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21. In New India Assurance Vs. Asha Rani reported in (2003) 2 SCC 223, In the said judgment, the Hon'ble Supreme Court has held as below:-

> "26...that the meaning of the words "any person" must also be attributed having regard to the context in which they have been used i.e. 'a third party'. Keeping in view the provisions of 1988 Act, we are of the opinion that as the provisions thereof do not enjoin any statutory liability on the owner of a vehicle to get his vehicle insured for any passenger travelling in a goods vehicle, the insurers would not be liable therefore."

22. In Ningamma and others Vs. United India Insurance Company reported in (2009) 13 SCC 710, the Hon'ble Supreme Court, after referring the Asha Rani case cited supra, Section 147 of Motor Vehicle Act and Oriental Insurance Company Limited Vs. Rajni Devi, reported in (2008) 5 SCC 736, has held, the entitlement of compensation by an accident victim, travelled in the goods vehicle depends on the terms and conditions of the insurance policy. Whether or not the provisions of under Section 147 of Motor Vehicle, 1988, would apply is governed by the contract qua contract.

23. The Hon'ble Supreme Court in United India Insurance Company Limited Vs. Tilak Singh, reported in 2006 4 SCC 404, has held the Insurance Company is not liable to compensate in respect of gratuitous passengers, who are not carried for hire or reward. It is also true that they are line of judgments were Courts have held that, the owner of the goods is entitled for compensation, even if the accident occurs after delivery of goods.

24. As pointed by the Hon'ble Supreme Court in Rajni Devi case cited supra followed by Ningamma case cited supra, it all depends upon the terms of the contract and coverage of the insurance. When the policy specifically covers only for the paid Driver, Conductor and Cleaner and no other person, the benefit of the judgments, which has extended the coverage for the owner of the goods travelling in cabin cannot be provided. More particularly, when there is no evidence to show that the injured was owner of the goods, which was not in the vehicle.

25. In this case, this Court finds that the lorry on which the eicher van hit, remains a ghost. No particulars about the lorry available either in the F.I.R or in the claim petition

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or in any other documents. There is no evidence to show that any goods was transported in that vehicle either at the time of accident or prior to that accident. Four persons were travelling in the vehicle apparently without any goods can be termed only as gratuitous passengers. Whether others have filed claim petition or not is immaterial. The entitlement of filing claim petition itself is not available in view of Section 147 of Motor Vehicles Act, 1988, which reads as under:-

Section 147 Requirements of policies and limits of liability. —

(1).In order to comply with the requirements of this Chapter, a policy of insurance must be a policy which —

(a).is issued by a person who is an authorised insurer; and

(b).insures the person or classes of persons specified in the policy to the extent specified in sub-section (2)—

(i).against any liability which may be incurred by him in respect of the death of or bodily· [injury to any person, including owner of the goods or his authorised 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;

(ii).against the death of or bodily injury to any passenger of a public service vehicle caused by or arising out of the use of the vehicle in a public place:

Provided that a policy shall not be required—

(i).to cover liability in respect of the death, arising out of and in the course of his employment, of the employee of a person insured by the policy or in respect of bodily injury sustained by such an employee arising out of and in the course of his employment other than a liability arising under the Workmen's Compensation Act, 1923 (8 of 1923) in respect of the death of, or bodily injury to, any such employee—

(a).engaged in driving the vehicle, or

(b).if it is a public service vehicle engaged as conductor of the vehicle or in examining tickets on the vehicle, or

(c).if it is a goods carriage, being carried in the vehicle, or

(ii).to cover any contractual liability.

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Explanation. —For the removal of doubts, it is hereby declared that the death of or bodily injury to any person or damage to any property of a third party shall be deemed to have been caused by or to have arisen out of, the use of a vehicle in a public place notwithstanding that the person who is dead or injured or the property which is damaged was not in a public place at the time of the accident, if the act or omission which led to the accident occurred in a public place.

(2). Subject to the proviso to sub-section (1), a policy of insurance referred to in sub-section (1), shall cover any liability incurred in respect of any accident, up to the following limits, namely:—

(a). save as provided in clause (b), the amount of liability incurred;

(b). in respect of damage to any property of a third party, a limit of rupees six thousand:

Provided that any policy of insurance issued with any limited liability and in force, immediately before the commencement of this Act, shall continue to be effective for a period of four months after such commencement or till the date of expiry of such policy whichever is earlier.

(3). A policy shall be of no effect for the purposes of this Chapter unless and until there is issued by the insurer in favour of the person by whom the policy is effected a certificate of insurance in the prescribed form and containing the prescribed particulars of any condition subject to which the policy is issued and of any other prescribed matters; and different forms, particulars and matters may be prescribed in different cases.

(4). Where a cover note issued by the insurer under the provisions of this Chapter or the rules made thereunder is not followed by a policy of insurance within the prescribed time, the insurer shall, within seven days of the expiry of the period of the validity of the cover note, notify the fact to the registering authority in whose records the vehicle to which the cover note

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relates has been registered or to such other authority as the State Government may prescribe.

(5). Notwithstanding anything contained in any law for the time being in force, an insurer issuing a policy of insurance under this section shall be liable to indemnify the person or classes of persons specified in the policy in respect of any liability which the policy purports to cover in the case of that person or those classes of persons.

26. The Learned Counsel appearing for the respondents/claimants, who is the respondent in the Appeal and petitioner in the Cross objection would rely upon the following judgments.

(i). National Insurance Company Vs. Lakhuben Punabhai Vaghari and others reported in 2006 SCC Online Gujarat 241.

(ii). National Insurance Company Limited Vs. Smt. Urmila and others reported in 2008 ACJ 1381.

(iii). The New India Assurance Company Limited Vs. Jameela and others reported in 2012 ACJ 1522.

(iv). Erudhaya Priya Vs. State Express Transport Corporation reported in 2020 SCC Online SC 601.

(v). Pappu Deo Yadav Vs. Naresh Kumar and others reported in 2020 SCC Online SC 752.

27. The Division Bench judgment of the Kerala High Court in New India Assurance Company Limited Vs. Jameela reported in 2012 ACJ 1522 , to some extend, similar to the case in hand, where the accident occurred after unloading the goods. The Hon'ble Kerala High Court has held that the insured should be treated as owner of the goods and benefit must be extended and compensation must be awarded. In this case, paragraph No.10, the evidence has been discussed by the Division Bench to hold that the victim was returning in the offending vehicle after unloading the goods. The relevant passage is extracted for better understanding of the paragraph No.10.

"10. The learned counsel for the 3rd respondent in the O.P. was not able to shake his evidence in cross-examination. Further Ext.A7 agreement dated March 25, 2005 shows that deceased had taken the right for slaughter tapping in a rubber estate. Ext.A9 is the receipt issued from Anna Weigh Bridge, Kalady which shows that on June 25, 2005 at about 4 p.m. the offending vehicle had come there for weighment. It is clear

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from the above evidence that the deceased was returning in the tempo van after unloading the wooden logs. That being so, his risk is covered by policy issued in respect of the offending vehicle in the light of the principles laid down in the above decisions. Finding of the Tribunal on this point is confirmed.”

28. In the instant case, as pointed out earlier, there is no iota of evidence which could help this Court to extend the Insurance coverage to the victim claim by holding him as the owner of the goods returning in the goods vehicle, after selling the goods.

29. In respect of the Cross objection, the specific plea taken by the claimant is that having lost his left leg, his entire earning capacity is being lost and therefore, the compensation fixed by the Tribunal has to be enhanced. The claimant, though, not produced any documents to support his avocation, claims to be a businessman. He has lost his left leg below the knee. This will certainly have impediments in his movement and earning capacity. Whether it has caused 100% impediment for his earning as claimed by him in the Cross objection has to be tested through the evidence of Doctor and from his disability certificate.

30. Schedule – I, Part - II of the Act provides List of Injuries deemed to result in permanent partial disablement, Entry No.20 of the Employees Compensation Act, 1923, for amputation of below knee with stump exceeding 8.89c.m but not exceeding 12.70c.m, the loss of earning capacity is fixed as 50%.

31. In the instant case, the Disability Certificate (Ex.A.9) indicates that the amputation is 11.5c.m stump length. Therefore, as per statute, for loss of earning capacity is to be fixed as 50%. Whereas, the Tribunal has fixed the loss of earning capacity as 80%. Though, there is no evidence to prove the earning capacity and income of the claimants, the Tribunal has fixed Rs.7,500/- as monthly income but has erroneously deducted $1/3^{rd}$ towards the personal expenditure.

32. The Learned Counsel appearing for the appellant/Cross objector would also point out that there is no addition towards future prospects. The accident occurred on 10.11.2009, 8 years prior to Pranay Sethi case, which has fine-tuned the structured formula. However, to the extend possible, for old cases, this Court taken lead from Pranay Sethi judgment and awarded compensation as per Pranay Sethi case, to the old cases also. Since, there is no evidence to prove the earning

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capacity of the claimants Rs.7,500/- fixed by the Tribunal is accepted without deducting 1/3rd towards personal income. As far as the loss of earning capacity, fixation of 80% is highly excessive and contrary to Schedule and evidence. Therefore, same is reduced to 50%.

33. Regarding the age, there is no documentary evidence except the entry in the discharge summary (Ex.P.2). In the F.I.R given by the young brother of the claimant, (who has not come forward to give evidence before the Tribunal in support of his brother's case), the informant who is the young brother of the victim is 45 years old. So, the claimant must be above 46 years. In the discharge summary, the age of the claimant is shown as 56 years. By that time, the claimant got discharged, he has recovered from the injury and conscious. Without his statement, there is no need for the Hospital Authority to enter a wrong age. If it is a wrong entry, the claimant ought to have produced some other documents to prove his age. In the absence of contrary documents other than the discharge summary (Ex.P.2), the Tribunal has rightly fixed the age of the claimant between 55 to 60 years. As per Sarala Verma case, multiplier 9 has to be applied and 10% has to be added towards the future prospects, as per the Pranay Sethi case. Therefore, this Court modified the award passed by the Tribunal is under:-

Loss of earning capacity for the claimant (Rs.7,500 + 10% FP) x 9 x 12 x ½	Rs.4,45,500/-
Medical bills	Rs.70,470/-
Pain and sufferings	Rs.25,000/-
Loss of amenity	Rs.50,000/-
Nutritious Food	Rs.10,000/-
Damage to cloths	Rs.2,000/-
Attender's Charges (Rs.2,000 x 5 months)	Rs. 10,000/-
Total	Rs.6,12,910/-

Rounded off to Rs.6,13,000/-

34. Accordingly, the total compensation is enhanced to Rs.6,13,000/- payable by the owner of the vehicle, who is the 1st respondent in the claim petition, with interest at the rate of 7.5% payable from the date of petition (17.12.2009) till the date of realisation, within a period of 12 weeks, from the date of receipt of a copy of this judgment, since he has not paid any additional premium to cover the passengers and also violated the permit conditions by loading more than the seating capacity, the Insurance Company is not liable to indemnify the owner.

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35. For the reasons stated above, this Court extending sympathy to the unfortunate victim, who has lost his leg in the said accident has to allow this Appeal. Since, the offending van had no coverage for passengers and any award on sympathetical ground contrary to the terms of policy conditions and breach of permit conditions are against the law and pronouncement of Apex Court judgments. Therefore, the liability fastened on the Insurance Company has to be set aside. Accordingly, the Insurance company is exonerated from the liability. Any amount deposited pursuant to the interim order passed by this Court in M.P.No.1 of 2015, dated 18.08.2015, shall be refunded back to the Appellant/Insurance Company.

36. Accordingly, the Civil Miscellaneous Appeal No.1663 of 2015 is Allowed, exonerating the insurer and fixing the liability on the owner of the vehicle. Cross Objection No.30 of 2019 filed for enhancement is Party-Allowed. No costs.

bsm

Sd/-

Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

To:-

1.The Motor Accidents Claims Tribunal,
Additional District Court,
Fast Track Court No.2,
Gobichettipalayam.

2.The Section Officer,
V.R.Section, High Court,
Madras.

+1cc to Mr.Sarvabhauman Associates, Advocate, S.R.No. 34803

C.M.A.No.1663 of 2015
& Cross Objection No.30 of 2019

RLD(CO)
GN(10/05/2021)

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