



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.02.2021

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CORAM:

THE HON'BLE MR. JUSTICE D.KRISHNAKUMAR

CIVIL MISCELLANEOUS APPEAL NOS.1540, 1541, 1542 & 1543 OF 2011
M.P.NO.1 + 1 + 1 + 1 OF 2011 & C.M.P.NO.10389, 10390, 10391 &
10392 OF 2018

The Oriental Insurance Co. Ltd.,
No.12, Katpadi Road,
Gudiyatham.

...Appellant in all the appeals /
2nd Respondent

..Vs..

1.Chinnattu,
S/o.Nanjappa Gounder

...Respondent No.1 / Petitioner
in C.M.A.No.1540/2011

1.Chinnasamy,
S/o.Kariappan

...Respondent No.1 / Petitioner
in C.M.A.No.1541/2011

1.Palani,
S/o.Kariappan

...Respondent No.1 / Petitioner
in C.M.A.No.1542/2011

1.Chinnasamy,
S/o.Kathirvel

...Respondent No.1 / Petitioner
in C.M.A.No.1543/2011

2.C.J.Murali

...Respondent No.2 in all the appeals

C.M.A.No.1540 of 2011 :

Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgement and decree dated 08.09.2010 made in M.C.O.P.No.200 of 2003 on the file of Motor Accidents Claims Tribunal (Additional District Judge, F.T.C.), Dharmapuri.



C.M.A.No. 1541 of 2011 :

Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgement and decree dated 08.09.2010 made in M.C.O.P.No.204 of 2003 on the file of Motor Accidents Claims Tribunal (Additional District Judge, F.T.C.), Dharmapuri.

C.M.A.No. 1542 of 2011 :

Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgement and decree dated 08.09.2010 made in M.C.O.P.No.205 of 2003 on the file of Motor Accidents Claims Tribunal (Additional District Judge, F.T.C.), Dharmapuri.

C.M.A.No. 1543 of 2011 :

Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgement and decree dated 08.09.2010 made in M.C.O.P.No.239 of 2003 on the file of Motor Accidents Claims Tribunal (Additional District Judge, F.T.C.), Dharmapuri.

For Appellant/Ins.Co. : Mr.S.Arun Kumar
in all appeals

For Respondent No.1 / : Mr.M.Selvam
Claimants in all appeals

For Respondent No.2 : Notice unserved
in all appeals

COMMON JUDGMENT

All the appeals are arises out of an accident occurred on 04.02.2002 at about 3.30 a.m. at Mangalore - Bangalore road near Kodalukalls, Siradi Village, Pattur Taluk challenging the award passed by the tribunal, dated 08.09.2010. Therefore, all the appeals are heard together and disposed of by common judgment.

2. The first respondent in all the appeals are claimants before the tribunal. The second respondent herein is the owner of the vehicle.



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3. Brief facts of the case is as follows:

The claimants who were chick merchants used to sell chicks in various places in large scale in Karnataka. On 3.2.2002 night, a lorry bearing registration No.KA-01-D-9115 engaged by the claimants at Mangalore carried the claimants viz., Chinnattu S/o.Nanjappa Gounder, Chinnasamy S/o.Kariappan, Palani S/o.Kariappan and Chinnasamy S/o.Kathirvel along with their chicks and proceeded to Bangalore. On 04.02.2002 at about 3.30 a.m., while the lorry proceeding towards Mangalore - Bangalore road near Kodalukalls, Siradi Village, Pattur Taluk, the driver of the lorry drove the vehicle in a rash and negligent manner, thereby the lorry overturned and caused accident, resulting in the claimants sustained grievous injuries and they were admitted in Puttur hospital. A case was registered in Cr.No.21 of 2002 under Sec.279, 337, 338 and 304 (A) of I.P.C. The victims have filed separate claim petition before the Court below claiming compensation from the owner of the vehicle and the appellant/Insurance Company.

4. The Tribunal, based on the oral and documentary evidence Exs.P1 to P.10, has awarded a compensation of Rs.8,500/- to the claimant in M.C.O.P.No.200 of 2003, Rs.1,11,000/- to the claimant in M.C.O.P.No.204 of 2003, Rs.1,31,000/- to the claimant in M.C.O.P.No.205 of 2003 and Rs.8,500/- to the claimant in M.C.O.P.No.239 of 2003. The tribunal while awarding compensation, directed the appellant Insurance Company and the owner of the vehicle, Respondent No.2 herein, to pay the compensation jointly or severally to the claimants along with interest at the rate of 7.5% P.a from the date of filing the Claim Petition till the date of Payment of Compensation.

5. Dissatisfied with the said award, the appellant / Insurance Company has filed the present appeals on the ground that unauthorised passengers who travelled in a goods vehicle or non-passenger vehicle, Insurer is not statutorily required to cover the liability in respect of such passengers carried in goods vehicle.

6. Heard the learned counsel appearing for the appellant/Insurance Company and the learned counsel appearing for the claimants/first respondent herein and perused the materials available on record.



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7. The challenge made in all these appeals is only with regard to the liability fixed by the tribunal. The Tribunal had directed the Insurance Company and the owner of the vehicle jointly or severally, to pay the compensation as determined by it in all the Original Petitions to the claimants

8. Written submission has been filed on behalf of the appellant wherein it is stated that it was pointed out before the tribunal that as per F.I.R. They have got into the vehicle on the way and the F.I.R. was marked as Ex.P-1. On the side of the appellant, R.W.1 was examined and the policy copy was marked as Ex.P-3. The tribunal without appreciating the evidence let in on the side of the appellant and the fact that the injured have travelled as passengers in a goods vehicle held that appellant is liable to pay the compensation. It is further stated that admittedly, 8 persons have travelled and the seating capacity does not permit to carry excess persons even if they are connected to the journey. Hence, the tribunal failed to note that any persons travelling outside the cabin is prohibited under 'Rule 236 of the Tamil Nadu Motor Vehicles Rules, states that no person shall be carried in the cabin of a goods carriage beyond the number for which there is a seating accommodation at the rate of thirty eight centimeters measured along the seat, excluding the space reserved for the driver, for each person, and not more than six persons in all in addition to the driver shall be carried in any goods carriage. Thirty eight Centimeters space may accommodate one passenger.' Further, it is submitted that NFPP was paid for one person on sympathetic approach the appellant was advised to accommodate the said claim and accordingly, it was satisfied. Therefore, it cannot be a ground to resist these appeals which are individual cause of action. In support of his contention, he placed reliance on the Division Bench judgment of this Court in BHARTI AXA vs. AANDI [2018 (2) TNMAC 731 (DB)] to contend that insurer is not liable in respect of gratuitous passengers.

9. The learned counsel appearing for the appellant/Insurance Company would vehemently contend that the claimants have travelled in a goods vehicle as unauthorised passengers and therefore, the award of the Tribunal is against the judgment of the Hon'ble Supreme Court in NEW INDIA ASSURANCE COMPANY LTD., VS. ASHA RANI AND OTHERS reported in 2003 ACJ 1 (SC), wherein, the Hon'ble Supreme Court had while disagreeing



with the view expressed by the Hon'ble Supreme Court in NEW INDIA ASSURANCE COMPANY VS. SHRI SATPAL SINGH AND OTHERS reported in 2000 ACJ 2 (SC) had referred the matter to a larger bench. The learned counsel appearing for the appellant also placed reliance on the decision of the Apex Court in NATIONAL INSURANCE COMPANY LTD., VS. BALJIT KAUR AND OTHERS reported in 2004 (2) SCC 1 to contend that the Insurance Company cannot be made liable to pay compensation for gratuitous passengers who were neither contemplated at the time when the contract of insurance was entered into nor any premium was paid to the extent to extend the insurance to such category of people.

10. The learned counsel appearing for the appellant/Insurance Company also placed reliance on the decision of the Hon'ble Supreme Court NATIONAL INSURANCE CO. LTD., VS. CHINNAMMA & OTHERS (2004 (8) SCC 697) to contend that in a case where the victims travelled in a Tractor fitted with trailer, Insurer is not statutorily required to cover the liability in respect of such passengers carried in goods vehicle.

11. Following the decision made in NEW INDIA ASSURANCE CO.LTD. VS. ASHA RANI (2003(2) SCC 223), the Hon'ble Supreme Court in NATIONAL INSURANCE CO. LTD., VS. CHINNAMMA & OTHERS (2004 (8) SCC 697) wherein the victims travelled in a Tractor fitted with Trailer, has held as follows:-

"Furthermore, a tractor is not even a goods carriage. The "goods carriage" has been defined in Section 2(14) to mean "any motor vehicle constructed or adapted for use solely for the carriage of goods, or any motor vehicle not so constructed or adapted when used for the carriage of goods" whereas "tractor" has been defined in Section 2(44) to mean "a motor vehicle which is not itself constructed to carry any load (other than equipment used for the purpose of propulsion); but excludes a road-roller". The "trailer" has been defined in Section 2(46) to mean "any vehicle, other than a semi-trailer and a side-car, drawn or intended to be drawn by a motor vehicle". A tractor fitted with a trailer may or may not answer the definition of goods carriage



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contained in Section 2(14) of the Motor Vehicles Act. The tractor was meant to be used for agricultural purposes. The trailer attached to the tractor, thus, necessarily is required to be used for agricultural purposes, unless registered otherwise. It may be, as has been contended by Mrs. K. Sharda Devi, that carriage of vegetables being agricultural produce would lead to an inference that the tractor was being used for agricultural purposes but the same by itself would not be construed to mean that the tractor and trailer can be used for carriage of goods by another person for his business activities. The deceased was a businessman. He used to deal in vegetables. After he purchased the vegetables, he was to transport the same to market for the purpose of sale thereof and not for any agricultural purpose. The tractor and trailer, therefore, were not being used for agricultural purposes. However, even if it be assumed that the trailer would answer the description of the "goods carriage" as contained in Section 2(14) of the Motor Vehicles Act, the case would be covered by the decisions of this Court in Asha Rani (supra) and other decisions following the same, as the accident had taken place on 24.11.1991, i.e., much prior to coming into force of 1994 amendment."

12. In ORIENTAL INSURANCE CO. LTD., V. BRIJ MOHAN AND OTHERS (2007 (2) TN MAC 66 (SC), the Hon'ble Supreme Court held that when labourers sustained injuries while travelling in a Trolley attached to a Tractor which was engaged to remove earth for a brickyard, for the purpose of manufacturing the bricks, the Hon'ble Supreme Court has held that it is not an agricultural purpose and held that the Tribunal ought not to have fasten the liability on the Insurer. The passengers travelled in the Trolley attached to Tractor being gratuitous passengers, the Insurer can deny liability since, it is a violation of contractual condition.



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13. The Full Bench of this Court in UNITED INDIA INSURANCE COMPANY VS. NAGAMMAL AND OTHERS reported in 2009 (1) CTC 2 has held as follows:

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

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

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

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

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

(v) Where, by relying upon the decision of the Supreme Court in Satpal



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

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

(vii) Where, however, the matter has already been decided by the Trial Court before the decision in Baljit Kaur's case. It would be in the discretion of the Appellate Court, depending upon the facts and circumstances of the case, whether the doctrine of "pay and recover" should be applied or as to whether the claimant would be left to recover the amount from the person liable i.e., the driver or the owner, as the case may be."

14. In THE MANAGER, IFFCO - TOKYO GENERAL INSURANCE CO. LTD., V.G.RAMESH, (2012 (1) TN MAC 820) this Court referring Asha Rani's case and other judgments, has held as follows:-

".....the question as to whether the Insurance Company is statutorily liable to cover the liability in respect of risk of gratuitous passenger, is clearly laid down by Hon'ble Apex Court in Asha Rani's case by reversing the earlier



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decision in Saptal Singh's case and further question as to whether the doctrine of "Pay and Recover" theory, which is applied till then, by directing the Insurer to satisfy the award and to recover the amount from the insured even though the Insurer was not statutorily required to cover the liability in respect of such passengers carried in goods vehicle, is clarified in Full Bench judgment of our High Court. As per which, after the decision of Baljit Kaur's case rendered on 06.01.2004 no such direction can be issued by the Trial Court to the Insurance Company on the principle of "Pay and Recover" relating to the liability in respect of risk of gratuitous passengers traveling in a goods vehicle and no Trial Court is expected to decide contrary to the decision made thereon."

15. The lorry specifically meant for transport of goods, cannot be used for carrying passengers as transport vehicle. On careful perusal of the judgment, though lorry was engaged for transport of chicks from Mangalore to Bangalore, the persons were not permitted to travel in a goods vehicle. Whereas, in the instant case, the victims who are the claimants have engaged the lorry in question for transporting their chicks from Mangalore to Bangalore for sale. The claimants also boarded in the lorry as unauthorised passengers. Under Section 147 of the Motor Vehicles Act, the Insurance Company is not statutorily required to cover the liability in respect of a passenger in a goods vehicle unless such passenger is the owner or agent of the owner of the goods accompanying such goods in the concerned goods vehicle.

16. In view of the dictum laid down by the Hon'ble Supreme Court and following the judgments of this Court, this Court holds that the appellant /Insurance Company is absolved from liability for the reason stated supra.

17. In the result, all the appeals stand allowed only in respect of the question of liability of the Insurance Company to



pay compensation. The quantum of compensation awarded by the tribunal is confirmed. There will be an award only against the owner of the vehicle viz., first respondent in all the Original petitions and the award against the appellant/Insurance Company will stand set aside. No costs. Connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

// True Copy //

Sub Assistant Registrar

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To

The Additional District Judge,
F.T.C. (Motor Accidents Claims Tribunal),
Dharmapuri.

Copy To

The Section Officer,
V.R.Section,
Madras High Court,
Chennai-104.

+1cc to Mr.S.Arunkumar, Advocate SR.No.6850

+4ccs to Mr.M.Selvam, Advocate SR.No.7448 to 7451

Civil Miscellaneous Appeal
No.1540, 1541, 1542 & 1543 of 2011
M.P.No.1 + 1 + 1 + 1 of 2011 &
C.M.P.No.10389, 10390, 10391 & 10392 of 2018

CA(CO)
RVM(25/10/2021)