



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 8.02.2021

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CORAM:

THE HON'BLE Mr. JUSTICE D.KRISHNAKUMAR

Civil Miscellaneous Appeal No.2239, 2240 & 2241 of 2012
and M.P.No.1 + 1 + 1 of 2012

The Divisional Manager,
United India Insurance Co. Ltd.,
No.46, Katpadi Salai,
Vellore.

... Appellant/R2 in all the appeals
..Vs..

- | | |
|--------------|--|
| 1. Malliga | ... Claimant/ Respondent No.1 in
C.M.A.No.2239/2012 |
| Manonmani | ... Claimant/ Respondent No.1 in
C.M.A.No.2240/2012 |
| Thilliakannu | ... Claimant/Respondent No.1 in
C.M.A.No.2241/2012 |
| 2. Kumari | ... Respondent No.1/Respondent
No.2
in all the appeals |

C.M.A.No.2239 of 2012 :

Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgement and decree dated 30.12.2011 made in M.C.O.P.No.143 of 2007 on the file of Chief Judicial Magistrate Court (Motor Accidents Claims Tribunal) Thiruvannamalai.

C.M.A.No.2240 of 2012 :

Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgement and decree dated 30.12.2011 made in M.C.O.P.No.190 of 2007 on the file of Chief Judicial Magistrate Court (Motor Accidents Claims Tribunal) Thiruvannamalai.

C.M.A.No.2241 of 2012 :

Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgement and decree dated 30.12.2011 made in M.C.O.P.No.180 of 2007 on the file of Chief Judicial Magistrate Court (Motor Accidents Claims Tribunal) Thiruvannamalai.



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For Appellant/Ins.Co. : Mr.D.Bhaskaran

For Respondent : Mr.Dili Kumar,
for Mr.R.Jajarajan

COMMON JUDGMENT

All the appeals are arises out of an accident occurred on 11.8.2002 at about 11.00 a.m. at Tiruvannamalai - Chengam road Dhanagoundarpudur Village, Pallakollai junction, challenging the award passed by the tribunal, dated 30.12.2011, directing the Insurance Company to pay and recover from the owner of the vehicle. 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.

3. It is the case of the claimants that on 11.08.2002 at about 11.00 a.m., Thillaikannu, Malliga and Manonmani who are the claimants before the tribunal, while travelling in a tractor with trailer bearing registration No.TN-25 2302 as Coolies towards Tiruvannamalai - Chengam road, Dhanagoundarpudur village, at Pallakollai junction, the driver of the tractor drove the vehicle in a rash and negligent manner turned the vehicle, thereby trailer of the tractor overturned and caused accident, resulting in the claimants sustained grievous injuries and they were treated in Chengam Government hospital. A case was registered in Cr.No.346 of 2002 under Sec.279, 337 and 338 of I.P.C. The injured 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.5, has awarded a compensation of Rs.60,000/- to the claimant in M.C.O.P.No.180 of 2007, Rs.40,000/- to the claimant in M.C.O.P.No.143 of 2007 and Rs.8,000/- to the claimant in M.C.O.P.No.190 of 2007. The tribunal while awarding compensation, directed the appellant/ Insurance Company to pay the compensation first to the claimants and recover the same from the owner of the vehicle.

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 direction, directing the appellant / Insurance Company to pay and recover from the owner of the vehicle. The Tribunal had directed the Insurance Company to pay the compensation as determined by it in all the Original Petitions to the claimants and had given the liberty to recover the same from the owner of the vehicle, second respondent herein.

8. The learned counsel appearing for the appellant/Insurance Company would vehemently contend that the direction to pay and recover issued by 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.

9. 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 injured 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.

10. 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 injured travelled in a Tractor fitted with Tractor, 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



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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 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."

11. 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.

12. 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.



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

13. 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 decision in Saptal Singh's case and further question as to whether the doctrine of "Pay and



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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."

14. The Tractor specifically meant for agricultural purposes, cannot be used for carrying passengers as transport vehicle. On careful perusal of the judgment, there is no material to show that the Tractor was engaged for agricultural purpose or the Tractor was permitted to use for activities other than agricultural purpose. Whereas, in the instant case, as per Ex.P1 First Information Report, the Tractor fitted with trailer was engaged by one Subramani, on hire from the second respondent/owner of the vehicle in question, and the Tractor was used as passenger vehicle carrying 50 persons as unauthorised passengers, to pay homage to the death of father-in-law of Subramani. Further, Subramani who drive the tractor without having valid driving licence. The trailer fitted with tractor in which the victims travelled is not covered under the Insurance policy. 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.

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

16 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.

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Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The Chief Judicial Magistrate Court
(Motor Accidents Claims Tribunal)
Thiruvannamalai.
2. The Section Officer,
V.R.Section,
Madras High Court,
Chennai-104.

+1cc to Mr.G.Rajan, Advocate Sr.6995

Civil Miscellaneous Appeal
No.2239, 2240 & 2241 of 2012
and M.P.No.1 + 1 + 1 of 2012

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