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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.02.2021

CORAM:

THE HON'BLE Mr. JUSTICE D.KRISHNAKUMAR

Civil Miscellaneous Appeal No.2318 of 2012

and M.P.No.1 of 2012

The Branch Manager,
United India Insurance Co. Ltd.,
No.171/D.R.K.S. Complex,
Nehruji Road,
Villupuram 605 602.

... 2nd Respondent/Appellant

..Vs..

1. Aariyamala

2. Sulochana

3. Minnoli

4. Umayabalan

... Petitioners/Respondents 1 to 4

5. R.Sakthivel

... Respondent No.1/Respondent No.5

Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgement and decree dated 24.04.2012 made in M.C.O.P.No.885 of 2007 on the file of Principal District Court (Motor Accidents Claims Tribunal) Puducherry.

For Appellant : Mr.D.Bhaskaran

For Respondents 1 to 4 : No appearance

For Respondent No.5 : No appearance

JUDGMENT

The matter is heard through video conferencing

Dissatisfied with the award passed by the tribunal, dated 24.04.2012 in M.C.O.P.No.885 of 2007, the Insurance Company has preferred the present appeal challenging fastening liability against the Insurance Company.



2. It is the case of the claimants that on 3.1.2007 at about 11.00 a.m., on the instruction of the first respondent, the deceased Navamani was travelling in the first respondent's tractor bearing registration No.TN-02-C-5931 as a coolie for loading the first respondent's paddy bags from Pandacholanallur Cement Kalam and while the vehicle was nearing Pandacholanallur Cement Kalam, the driver of the tractor drove the tractor in a rash and negligent manner and suddenly turned aside and applied brake, thereby, Navamani fell down and sustained multiple injuries all over his body. Immediately, he was shifted to Primary Health Centre, Nettapakkam and thereafter, to Government General hospital, Puducherry and during the treatment, he died at about 5.00 p.m. The legal heirs of the deceased have filed a claim petition before the tribunal claiming compensation of Rs.10,00,000/-. The 5th respondent being the owner of the vehicle and the appellant being the insurer of the vehicle are jointly and severally liable to pay compensation.

3. The owner of the vehicle, respondent No.5 herein remain exparte before the tribunal. Tribunal, based on the oral and documentary evidence Exs.A-1 to A-10, has awarded a compensation of Rs.2,40,000/- to the claimants along with interest at the rate of 7.5% per annum.

4. Challenging the said award, the Insurance Company has filed the present appeal on the ground that the Insurance Company is not statutorily required to cover the liability in respect of unauthorised passenger.

5. Heard the learned counsel appearing for the appellant/Insurance Company and perused the materials available on record.

6. The ground raised by the appellant/ Insurance Company is that the Insurance policy in respect of the tractor involved in the accident cover only the goods transported in the vehicle and the driver. Tractor is being utilised only for agricultural purpose. The deceased travelled in the mudguard of the tractor involved in the accident. According to the counsel for the appellant, the policy does not cover insurance as against the unauthorised passenger who travelled in the mudguard of the tractor. Learned counsel for the appellant further submitted that the owner of the vehicle has violated the terms and conditions of the policy of the insured vehicle by allowing the deceased travelled in the mudguard of the tractor. Further, as per Ex.A2 and A4, seating capacity is available only for the



driver. No other contra evidence placed before the tribunal. Tribunal placing reliance upon the decision of this Court reported in 2010 (1) TNMAC 296 [New India Assurance Co. Ltd. vs. Palani M. Samundeeswari] fastened the liability on the Insurance Company. Subsequent to the aforesaid decision, the issue was elaborately discussed in various judgments of the Hon'ble Supreme Court and this Court.

7 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 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



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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."

8 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



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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 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."

9. 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 Satpal 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."

10. Tractor is designed only for agriculture purpose and the seating capacity of the tractor is single seater and the trailer can be attached with the tractor to transport agricultural goods, provided policy of the vehicle cover trailer. Therefore, driver alone can travel in a Tractor. In the instant case, though the Tractor in question used for agricultural purpose, the victim travelled in the mud guard of the tractor. The mud guard of the tractor is not meant for carrying the passenger. Having violated the policy condition, the Insurance Company cannot be expected to indemnify the policy. Further, as per Ex.A2 and A4, seating capacity is available only for the driver. No evidence placed before the tribunal that the policy of the tractor in question would also permit a person to travel apart from driver.

11 On the identical issue, the Full Bench of this Court in Nagammal case (supra), placing reliance on the judgment of the Hon'ble Supreme Court has categorically held that 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. Therefore, the award passed by the tribunal is liable to set aside.

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



13 In the result, the appeal stands 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., 5th respondent herein and the award against the appellant/Insurance Company will stand set aside. No costs. Connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS IV)

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Sub Assistant Registrar

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To

The Motor Accidents Claims Tribunal,
The Principal District Judge,
Puducherry.

CMA No.2318 of 2012
and M.P.No.1 of 2012

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