IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 18.12.2020

PRONOUNCED ON : 25.01.2021

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

C.M.A.No.3200 of 2011

(Through Video Conferencing)

C.Rajappan .. Appellant/Petitioner

vs.

1.J.Subramani
2.The Branch Manager,
United India Insurance Company Ltd.,
Old No.1028, New No.768, Avinashi Road,
1st Floor, United India Building,
Coimbatore 18. .. Respondents/Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and Decree made in M.C.O.P.No.351 of 2008 dated 23.08.2010 on the file of the Motor Accident Claims Tribunal (Sub Court) Krishnagiri .

For Appellant : Mr.K.Prasanna for Mr.M.Sriram

For R1 : No Appearance

For R2 : M/s.I.Malar

J U D G M E N T

The appellant was the claimant before the Motor Accident Claims Tribunal, (Sub Court), Krishnagiri in M.C.O.P.No.351/2008. He is aggrieved by the impugned Judgment and Decree dated 23.08.2010 passed by the said Tribunal.

2. In this appeal, the appellant is not only seeking for enhancement of the compensation but also for fixation of liability on the 2nd respondent insurance company.

3. By the impugned Judgment and Decree, the Tribunal has awarded a sum of Rs.5,80,450/- as compensation together with interest at 6% per annum from the date of claim petition till the date of deposit to the appellant/claimant.

4. The case of the appellant/claimant is that he suffered grievous injuries in a motor accident. The accident is said to have taken place on 06.10.2006 at about 16.30 hrs., when the appellant was travelling in the insured Bajaj Mini Door Pick-up Van (insured van) bearing Reg.No.TN-24-A-3202 as a loading and unloading coolie along with the driver and another person to pick an idol of a deity.

5. It was alleged that the 1st respondent driver of the insured Van had driven it in a rash and negligent manner and in an uncontrollable speed and capsized it while negotiating a curved road and thus the appellant sustained fractures on his right hand and left leg and other multiple injuries. Therefore, the appellant/claimant filed a claim petition before the Tribunal for compensation of Rs.7,00,000/-.

6. The Tribunal after considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving of the 1st respondent driver cum owner of the insured van and directed the 1st respondent driver cum owner of the insured vehicle to pay a sum of Rs.5,80,450/- as compensation to the appellant herein who was the claimant before the Tribunal. The breakup of the amount awarded by the Tribunal are summarised below:-

Heads	Amount
For loss of earning power	Rs.3,26,700/-
For continuing permanent disability	Rs. 55,000/-
Pain and suffering and mental agony	Rs. 25,000/-
Partial loss of earning	Rs. 18,000/-
Transport to hospital and extra nourishment	Rs. 10,000/-
Medical expenses	Rs.1,38,242/-
Attender charges	Rs. 7,500/-

Total	Rs.5,80,442/- rounded off to Rs.5,80,450/-

7. Aggrieved by the said order, the appellant/claimant has filed this Civil Miscellaneous Appeal for enhancement of compensation and for fixing the liability on the 2nd respondent Insurance Company.

8. The learned counsel for the appellant/claimant submits that the Tribunal ought to have fixed the liability on the 2nd respondent/Insurance Company to pay the compensation.

9. It is submitted that even if the driver cum owner of the insured vehicle did not possess a valid driving licence, the appellant cannot be denied of just compensation and in any event, the 2nd respondent Insurance Company has also not taken any steps to prove the same.

10. It is submitted that in the alternative, the Tribunal ought to have directed the 2nd respondent Insurance company to pay the compensation and recover the same from the 1st respondent viz., driver cum owner of the vehicle.

11. The learned counsel appearing for the 2nd respondent/Insurance Company contended that the driver of the offending vehicle did not possess a valid licence at that time of accident and the same amounted to violation of the policy condition.

12. It is therefore submitted that the 2nd respondent Insurance Company is not liable to pay any compensation to the appellant as the appellant travelled in the insured vehicle as a gratitious passenger/unauthorised passenger. Therefore, he prayed for dismissal of this appeal.

13. I have considered the arguments advanced by the learned counsel for both sides and also perused the evidence on record.

14. In the present case, the appellant has not only questioned the amount awarded by the Tribunal for the injuries suffered by him but also finding of the Tribunal exonerating the 2nd respondent Insurance Company.

15. The Tribunal has concluded that the appellant had travelled as an unauthorised passenger in the goods vehicle and therefore under these circumstances, the Tribunal has directed the compensation to be paid by the 1st respondent driver cum owner of the insured van to the appellant. What has influenced

the Tribunal in the impugned order is that the 1st respondent of the insured van did not possess a valid licence.

16. From a reading of the impugned order, it is noticed that the 2nd respondent Insurance Company sent a notice to the 1st respondent to produce the copy of the licence vide Ex.R4. However, the said notice was returned.

17. In Shamanna and Another Vs. Divisional Manager, Oriental Insurance Company Limited and Others, (2018) 9 SCC 650 the High Court of Karnataka, Dharwad Bench in Shamanna v.Laxman [Shamanna v. Laxman, 2016 SCC OnLine Kar 6928] had reversed the award passed by the Tribunal for "pay and recover" holding that the owner of the vehicle is liable to pay the compensation to the appellant claimants.

18. There the Division Bench of the High Court referred to two-Judge Bench in National Insurance Co. Ltd. v. Parvathneni [National Insurance Co. Ltd. v. Parvathneni, (2009) 8 SCC 785 : (2009) 3 SCC (Civ) 568 : (2009) 3 SCC (Cri) 943] which had doubted the correctness of the decisions which in exercise of jurisdiction under Article 142 of the Constitution of India had directed the insurance company to pay the compensation amount even though insurance company has no liability to pay.

19. In Parvathneni case [National Insurance Co. Ltd. v. Parvathneni, (2009) 8 SCC 785 : (2009) 3 SCC (Civ) 568 : (2009) 3 SCC (Cri) 943], the Supreme Court pointed out that Article 142 of the Constitution of India does not cover such type of cases and observed as follows:-

> "5. If the insurance company has no liability to pay at all, then, it cannot be compelled by order of the court in exercise of its jurisdiction under Article 142 of the Constitution of India to pay the compensation amount and later on recover it from the owner of the vehicle."

20. Thus, the High Court had reversed the decision of the Tribunal. Disposing the appeal, the Hon'ble Supreme Court in Shamanna and Another Vs. Divisional Manager, Oriental Insurance Company Limited and Others, (2018) 9 SCC 650 observed that "Since the reference to the larger Bench in Parvathneni case [National Insurance Co. Ltd. v. Parvathneni, (2009) 8 SCC 785 : (2009) 3 SCC (Civ) 568 : (2009) 3 SCC (Cri) 943] has been disposed of by keeping the questions of law open to be decided in an appropriate case, presently the decision in Swaran Singh case [National Insurance Co. Ltd. v. Swaran Singh, (2004) 3 SCC 297 : 2004 SCC (Cri) 733] followed in Laxmi Narain Dhut [National Insurance Co. Ltd. v. Laxmi Narain Dhut, (2007) 3 SCC

700 : (2007) 2 SCC (Cri) 142] and other cases hold the field. The award passed by the Tribunal directing the insurance company to pay the compensation amount awarded to the claimants and thereafter, recover the same from the owner of the vehicle in question was held is in accordance with the judgment passed by this Court in Swaran Singh [National Insurance Co. Ltd. v. Swaran Singh, (2004) 3 SCC 297 : 2004 SCC (Cri) 733] and Laxmi Narain Dhut [National Insurance Co. Ltd. v. Laxmi Narain Dhut, (2007) 3 SCC 700 : (2007) 2 SCC (Cri) 142] cases."

21. There the son of the appellant claimants was travelling in the insured jeep which was found to be driven negligently due to which door of the jeep suddenly opened and the deceased was thrown out of the vehicle and sustained grievous injuries and died in the hospital. The Tribunal awarded compensation of Rs 3,55,500 with interest at 6% per annum from the date of claim petition till realisation and since the driver of the jeep had no valid driving licence at the time of the accident and since there was violation of the terms of the insurance policy, the Tribunal directed the insurance company to pay the compensation to the claimants and granted liberty to the insurance company to recover the same from the owner of the offending vehicle.

22. R-3 in his deposition has stated that the 1st respondent did not possess a valid licence. Therefore, it stands concluded that the 1st repondent cum owner of the insured van did not possess a licence on the date of the accident.

23. Therefore, there can be an order for pay and recovery if the compensation was otherwise payable in terms of the decision of the Hon'ble Supreme Court in Oriental Insurance Co. Ltd. Vs. Nanjappan and Others, (2004) 13 SCC 224.

24. Therefore, the question that remains to be examined is whether the appellant is entitled to fix the liability on the 2nd respondent Insurance Company. If the appellant travelled either as an employee of the owner of the insured vehicle or as the owner of the goods or his representative he would be entitled to say he was not a gratuitous passenger.

25. If he had travelled as a gratuitous passenger, he is not entitled to get compensation from the 2nd respondent and therefore to that extent, the impugned order is liable to be sustained.

26. There is no dispute that the insured vehicle was hired for bringing a idol/statue of the deity which he proposed to bring from Veppanampalli. At the time accident, there was no statue /idol of a deity in the insured vehicle. The accident

had taken place before the alleged purchase of statue /idol of the deity.

27. In Ex.A1 FIR dated 16.10.2006, the appellant has also stated that he was an agriculturist and that on the date of accident, he had hired and travelled in the Mini-door pick-up to bring statute / idol of a deity.

28. Section 146 (1) of the Motor Vehicles Act, 1988 enjoins an owner of a passenger motor vehicle to obtain an insurance policy covering a third-party risk. Section 147 of the said Act sets out the requirements of the policies and limits of liability. The expression "third-party" defined in Section 145 (g) of the Act includes the Government.

29. Under Section 147 of the Motor Vehicles Act, 1988, the insurer is liable to pay the compensation to a person who meets with an accident while travelling either as an employee of the owner of the insured vehicle or as the owner of the goods or as a representative of the owner of the goods.

30. Earlier in Amrit Lal Sood Vs. Kaushalya Devi Thapar, (1998) 3 SCC 744: 1999 SCC (Cri) 158, the Hon'ble Supreme Court had held that the term "any person" would include an occupant of the car and observed as follows:-

> "4. The liability of the insurer in this case depends on the terms of the contract between the insured and the insurer as evident from the policy. Section 94 of the Motor Vehicles Act, 1939 compels the owner of a motor vehicle to insure the vehicle in compliance with the requirements of Chapter VIII of the Act. Section 95 of the Act provides that a policy of insurance must be one which insures the person against any liability which may be incurred by him in respect of death or bodily injury to any person or damage to any property of third party caused by or arising out of the use of the vehicle in a public place. The section does not however require a policy to cover the risk to passengers who are not carried for hire or reward. The statutory insurance does not cover injury suffered by occupants of the vehicle who are not carried for hire or reward and the insurer cannot be held liable under the Act. But that does not prevent an insurer from entering into a contract of insurance covering a risk wider than the minimum requirement of the statute whereby the risk to gratuitous passengers could also be covered. In such cases

where the policy is not merely a statutory policy, the terms of the policy have to be considered to determine the liability of the insurer."

31. The above view of the Hon'ble Supreme Court in Amrit Lal Sood Vs. Kaushalya Devi Thapar, (1998) 3 SCC 744: 1999 SCC (Cri) 158, was later re-affirmed by another decision of the Hon'ble Supreme Court in T.V. Jose (Dr.) Vs. Chacko P.M., (2001) 8 SCC 748. In para 19, it was held as under:-

> 19. In this case only the first sheet of the policy is on record. This clearly shows that the policy is a third-party policy. The terms and conditions governing this policy are not on record. What was shown to the Court were terms and conditions of a comprehensive policy relating to private cars. These cannot apply to this policy. In the absence of terms and conditions governing this policy it is not possible to accept the submission of Mr Iyer that this policy covered liability to occupants of the car. As has been set out hereinabove, the law on this subject is clear, a third-party policy does not cover liability to gratuitous passengers who are not carried for hire or reward. The 8th respondent Company will, therefore, not be liable to reimburse the appellant.

32. Again in National Insurance Co. Ltd., Vs. Lakshmi NarainDhut, (2007) 3 SCC 700, the Hon'ble Supreme Court upheld the order of the Tribunal directing the insurance company to pay and recover the compensation awarded to the claimants from the owner of the vehicle and thus reversed the decision of the Karnataka High Court from which the said appeal was filed.

33. In India Assurance Company Vs. Satpal Singh and Ors., (2000) 1 SCC 237, the Hon'ble Supreme Court after contrasting the language of Section 95 (1) of the 1939 Act, with the provisions of Section 147 (1) of the 1988 Act, held as follows:-

> "The result is that under the new Act an insurance policy covering third party risk is not required to exclude gratuitous passengers in a vehicles, no matter that the vehicle is of any type or class. Hence the decisions rendered under the old Act vis-a-vis gratuitous

passengers are of no avail while considering the liability of the insurance company in respect of any accident which occurred or would occur after the new Act came into force."

34. The above view expressed in Satpal Singh's case (supra) was however overruled in the subsequent Judgment of a Bench consisting of three Judges in New India Assurance Company Vs. Asha Rani and Ors., (2003) 2 SCC 223.

35. In that case, the discussion arose in connection with carrying passengers in a goods vehicle. The Court after referring to the terms of Section 147 of the 1988 Act, as contrasted with Section 95 of the 1939 Act, held that the Judgment in Satpal Singh's case (supra) had been incorrectly decided therefore the insurer will not be liable to pay compensation.

36. In United India Insurance Co. Ltd., Vs. Tilak Singh And Ors., (2006) 4 SCC 404 the concurring view of Sinha, J. reads as follows:

> "25. Section 147 of 1988 Act, inter alia, prescribes compulsory coverage against the death of or bodily injury to any passenger of "public service vehicle". Proviso appended thereto categorically states that compulsory coverage in respect of drivers and conductors of public service vehicle and employees carried in a goods vehicle would be limited to the liability under the Workmen's Compensation Act. It does not speak of any passenger in a `goods carriage'.
>
> 27. Furthermore, sub-clauses (i) of Clause (b) of sub-section (1) of Section 147 speaks of liability which may be incurred by the owner of a vehicle in respect of death of or bodily injury to any person or damage to any property of a third caused by or arising out of the use of the vehicle in a public place. Whereas sub-clause (ii) thereof deals with liability which may be incurred by the owner of a vehicle against the death of or bodily injury to any passenger of a public service caused by or arising out of the use of the vehicle in a public place."

37. In Tilak Singh's case (supra), the Hon’ble Supreme Court held that although the observation in Asha Rani's case (supra) was rendered in the context of passengers in a goods

vehicle, the same would apply with equal force to a gratuitous passengers in any other vehicle also.

38. The Court upheld the contention of the insurance company that it owed no liability towards the injuries suffered by the deceased pillion rider, as the insurance policy was a statutory policy, and hence it did not cover the risk of death or bodily injury to gratuitous passenger.

39. Reference may be made to few of the recent decisions of the Courts in the following cases:-

" i) Shivawwa and Another Vs. Branch Manager, National India Insurance Company Limited and Another, (2018) 5 SCC 762.
i.ShivarajVs. Rajendra and Another, (2018) 10 SCC 432.

ii.Bharati AXA General Insurance Co. Ltd. Vs. Aandi and Others, 2018 SCC OnLine Mad 13295".

40. In Shivawwa raj Vs. National Insurance Co Ltd., (2018) 5 SCC 762, the Hon'ble Supreme Court in paragraph 13 observed that even assuming for the sake of argument that the insurance company was not liable to pay compensation amount awarded to the claimants, as the offending tractor was duly insured, the insurer would be still liable to pay compensation amount in the 1st instance with liberty to recover the same from the owner of the vehicle in the light of the decision of the Hon'ble Supreme Court in National Insurance Co. Ltd. Vs. Swaran Singh, (2004) 3 SCC 297.

41. In Shivawwa raj Vs. National Insurance Co Ltd., (2018) 5 SCC 762, the High Court had held that at the time of the accident, deceased was not travelling along with his goods and thus held that the insurance company cannot be saddled with liability. However, the Supreme Court reversed the said finding of the High Court and directed the insurer to pay the compensation. Thus, whether the injured or the deceased in the case of death, should have travelled in the insured vehicle along with the goods.

42. In this case, the appellant did not travel with any goods. He had allegedly hired the insured vehicle to bring goods news namely a idol of a deity from Veppanapalli.

43. Again in Shivaraj Vs. Rajendra and Another, (2018) 10 SCC 432, the claimant travelled in a tractor as a coolie. The driver of the tractor drove it at a high speed, in a rash and negligent manner and dashed the tractor against a big mud stone,

resulting in the tractor turning turtle and the appellant suffering grievous injuries.

44. The Tribunal held that the claimant was able to prove the facts that the accident occurred on 23.02.2010 at 8.30 a.m. while he was going in the said tractor, due to rash and negligent driving of the driver of the tractor. The Tribunal held that the appellant was travelling as a load man in the tractor and not as a gratuitous passenger.

45. On further appeal by the Insurance Company, the High Court concluded that the claimant travelled in the tractor in breach of policy terms and conditions and therefore, the insurance company cannot be made liable to compensate the owner or the claimant. Accordingly, the appeal preferred by the insurance company was allowed by the High Court and the insurer was absolved from the liability to pay compensation.

46. There, the Hon'ble Supreme Court further observed as follows:-

> " 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 appellant claimant with liberty to recover the same from the tractor owner, in view of the consistent view taken in that regard by this Court in National Insurance Co. Ltd. v. Swaran Singh [National Insurance Co. Ltd. v. Swaran Singh, (2004) 3 SCC 297 : 2004 SCC (Cri) 733], Mangla Ram v. Oriental Insurance Co. Ltd. [Mangla Ram v. Oriental Insurance Co. Ltd., (2018) 5 SCC 656 : (2018) 3 SCC (Civ) 335 : (2018) 2 SCC (Cri) 819], Rani v. National Insurance Co. Ltd. [Rani v. National Insurance Co. Ltd., (2018) 8 SCC 492 : (2018) 3 SCC (Cri) 599] and including Manuara Khatun v. Rajesh Kumar Singh [Manuara Khatun v. Rajesh Kumar Singh, (2017) 4 SCC 796 : (2017) 2 SCC (Civ) 710 : (2017) 2 SCC (Cri) 492] . In other words, the High Court should have partly allowed the appeal preferred by Respondent 2. The appellant may, therefore, succeed in getting relief of direction to Respondent 2 insurance company to pay the compensation amount to the appellant with liberty to recover the same from the tractor owner, Respondent 1."

47. Though these two decisions have taken conflicting views and the recent drift of the Hon'ble Supreme Court appears

to direct the insurance company to pay and recover the amount from the owner of the vehicle under similar circumstances, it appears that these reliefs were given by the Hon'ble Supreme Court in the exercise of its power under Article 142 of the Constitution of India.

48. The decision of the Larger Bench of the Hon'ble Supreme Court in Asha Rani's case (supra) was not drawn in some of these cases. Though Motor Vehicles Act, 1988 is a beneficial legislation and is intended to give just compensation to the injured or to the dependents and/or the legal heirs of deceased person, yet an insurer cannot be directed to pay and recover the compensation if there is no liability on it under the policy in terms of Section 147 of the Act.

49. Though the Hon’ble Supreme Court has taken note of the plight of the unfortunate claimants, who suffer either debilitating injury or suffer due to the death bread winner of the family due to a motor accident, such orders have been passed by it only in the exercise of its power under Article 142 of the Constitution of India. Such powers have not been vested with the High Courts either under the Constitution or under the statute.

50. Merely because an Insurance Company is endowed with the finances and wherewithal, with investigation and panel of lawyers and can initiate proceedings to recover the amount from the owner of the insured vehicles the liability cannot be artificially fastened on it by this Court.

51. Recently, the Division Bench of this Court in Bharati AXA General Insurance Co. Ltd. Vs. Anandi and Others, (2018) SCC OnLine Mad 13295, has answered the issue in favour of the Insurance Company with the following observation:-

> “ 51. .... We are therefore of the considered opinion that the judgment of the two Judge bench in Shivarajv. Rajendra referred to supra cannot be taken as a precedent to conclude that the Insurance Company would be liable to pay the compensation even in respect of an unauthorized passenger, in a goods vehicle, in the light of categorical pronouncement of larger bench of the Hon'ble Supreme Court in New India Assurance Company v. Asha Rani and National Insurance Company Ltd. v. Baljit Kaur referred to supra. We therefore conclude that the Tribunal, in the case on hand, was not right in directing the Insurance Company to pay the compensation and giving it the liberty

to recover the same from the owner."

52. Therefore, I find no reasons to interfere with the impugned judgment and decree of the Tribunal insofar as the impugned judgment and decree exonerates the 2nd respondent insurance company.

53. The appellant had neither travelled as the owner of goods or as the representative of the owner of the goods or as an employee of the 1st respondent. In the result, present appeal against the 2nd respondent fails as the 2nd respondent cannot be made liable to pay compensation to the appellant.

54. As far as the quantum of compensation awarded to the appellant in the impugned judgment and decree is concerned, it is noticed that the Tribunal has not followed the decision of the Hon'ble Supreme Court in Rajkumar Vs Ajay Kumar (2011) 1 SCC 343. Therefore, the case deserves to be remanded back to the Tribunal for arriving at a just compensation by applying the ratio of the above case with reference to the functional disability of the appellant.

55. However, in absence of a challenge to the impugned judgment and decree passed by the Tribunal, by the 1st respondent in the form of an appeal or cross appeal/cross-objection, this court is inclined to confirm the amount awarded to the appellant in the impugned judgment and decree passed by the Tribunal.

56. In the light of the above observation, the present appeal is liable to be dismissed and is accordingly dismissed. No Cost.

Sd/-
Assistant Registrar(CS-IV)

//True Copy//

Sub Assistant Registrar

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Notes:-In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

To

The Motor Accidents Claims Tribunal,
Subordinate Judge, Krishnagiri .

Copy to: The Section Officer,
V.R.Section, High Court,
Madras-104.

+1cc to Mr.Mukund R.Pandian, Advocate, S.R.No.4773

C.M.A.No.3200 of 2011

MG(CO)
CB(01/09/2021)