



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:15.2.2021

CORAM:

THE HON'BLE Mr. JUSTICE D.KRISHNAKUMAR

Civil Miscellaneous Appeal No.3817 of 2011
and M.P.No.1 of 2011

The Branch Manager,
New India Assurance Co. Ltd.,
163, M.G.Puram, Perambalur 621 212

...Respondent/2nd Respondent

..Vs..

1. Chinnapillai (died)
2. Dhanam
3. Minor Akilaa
4. Minor Kalaivani
5. Minor Saranya

(Minor petitioners 3 to 5 represented
by their next friend mother 2nd petitioner

...Respondents 1 to 5/Petitioners

6. S.Azhagappan

... Respondent No.6/Respondent 1

Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgement and decree dated 31.5.2011 made in M.C.O.P.No.335 of 2006 on the file of Motor Accidents Claims Tribunal (Chief Judicial Magistrate), Perambalur.

For Appellant	:	Mr.K.Mohan
For Respondent No.2 to 5	:	Mr.A.Jenasenan
For Respondent No.6	:	Notice unserved
R1	:	Died

JUDGMENT

(Heard through Physical hearing)

Brief facts of the case is as follows:

On 1.4.2006 at about 11.30 a.m. at V.Agaram village, a Tractor bearing registration No.TN 46 T 1780 belongs to the



respondent No.6 herein, driven by its driver in a rash and negligent manner and suddenly he applied break, thereby, one Kandan who travelled in the Tractor as loadman sustained grievous injuries and died in the hospital. The legal heirs of the deceased filed a claim petition before the tribunal for compensation of Rs.5,00,000/-. On the complaint, a case has been registered in Cr.No.95 of 2006 under Section 279, 304(A) of I.P.C.

2. The appellant/Insurance Company contested the case by filing counter affidavit wherein it is stated that the deceased Kandan travelled in 'Mudguard' of the Tractor. The tractor is a goods vehicle. The carrying capacity of Tractor is single seater, i.e. driver only. The deceased travelled in the Tractor as unauthorised passenger. Two persons were travelled in the Tractor apart from driver. The first respondent violated the policy conditions. The claimants have to work out their remedy before W.C. Forum. Therefore, Insurer is not liable to pay any compensation.

3. On the side of the claimants, P.W.1 and 2 were examined and Ex.P1 to P5 were marked. The Branch Manager of the appellant Insurance Company was examined as R.W.1 and Ex.R1 and 2 were marked on the side of the appellant Insurance Company.

4. The Tribunal, based on the oral and documentary evidence, has come to the conclusion that the driver of the Tractor belongs to the respondent No.6 is responsible for the accident and awarded a compensation of Rs.4,62,000/- to the claimants along with interest at the rate of 7.5% p.a. The tribunal while awarding compensation to the claimants, directed the appellant Insurance Company to pay and recover from the owner of the Tractor viz., Respondent No.6 herein.

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

6. Heard the learned counsel appearing for the appellant/Insurance Company and the learned counsel appearing for the claimants/respondents 2 to 5 herein and perused the materials available on record.



7. The appeal is only against the liability fastened against the appellant/Insurance Company by the tribunal. The short point involved in the present appeal is that the Insurance Company has preferred the appeal by raising ground that liability as against the appellant/Insurance Company fixed by the tribunal is contrary to the settled law laid down by the Hon'ble Supreme Court.

8. According to the learned counsel appearing for the appellant/ Insurance company, the vehicle involved in the accident is Tractor fitted with Trailor The deceased was travelling in the Tractor which is goods vehicle, Insurer is not liable to pay compensation and the owner of the vehicle alone liable to pay compensation. However, the tribunal has wrongly directed the appellant/ Insurance Company to 'Pay and Recover from the owner of the vehicle.

9. The learned counsel appearing for the appellant/Insurance Company would vehemently contend that the deceased travelled in a goods vehicle as unauthorised passenger 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/Insurance Company 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 Trailor, 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 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



WEB COPY

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.

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) .



WEB COPY

(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 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.



the question involved in the present appeal is answered in favour of the appellant/Insurance Company.

17 In the result, the appeal stand allowed only in respect of the liability fastened by the tribunal against the appellant/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., respondent No.6 and the award against the appellant/Insurance Company will stand set aside. It is made clear that the respondent/claimant is entitled to recover compensation from the owner of the vehicle, respondent No.6 herein. No costs. Connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

vaan

To

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

+1CC to Mr.S.Jayasankar, Advocate, Sr.No.9171

+2CCs to Mr.A.Jenasenan, Advocate, Sr.No.8775

Civil Miscellaneous Appeal No.3817 of 2011
and M.P.No.1 of 2011

PVS (CO)

K.RK. (28.09.2021)