IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **30.11.2022**

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THE HONOURABLE MS. JUSTICE P.T.ASHA

CMA.Nos.4497 & 4498 of 2019
and
C.M.P.Nos.25418 of 2019

[CMA.No.4497 of 2019]

Branch Manager,
The New India Assurance Co.Ltd,
Post Bo No.43, N.S.Towers, Near Stadium,
Bus Stand Palakad -13, Kerala State

... Appellant / 2nd Respondent

Vs.

1.Palanisamy

2.Karupathi

... Respondents/Petitioners

3.Subramanian

... Respondent / 1st Petitioner

[CMA.No.4498 of 2019]

Branch Manager,
The New India Assurance Co.Ltd,
Post Bo No.43, N.S.Towers, Near Stadium,
Bus Stand Palakad -13, Kerala State

... Appellant / 2nd Respondent

Vs.

1.P.A.Srinivasan ...Respondent/Petitioner

2.Subramanian ...Respondents/ 1st Respondent

PRAYER in CMA.No.4497 of 2019 : Appeal filed under Section 173 of the Motor Vehicle Act, 1988, against the Judgment and decree made in MCOP.No.1005 of 2007 on the file of the Motor Accidents Claims Tribunal (Fast Track Court No.5 at Tirupur Additional District Judge Cum Sessions Judge) at Tirupur dated 23.12.2010.

For Petitioner : Mr.M.Krishnamoorthy

For Respondents : Mr.M.Lokesh [R1 & R.2]

: No appearance [R.3]

PRAYER in CMA.No.4498 of 2019 : Appeal filed under Section 173 of the Motor Vehicle Act, 1988, against the Judgment and decree made in MCOP.No.1006 of 2007 on the file of the Motor Accidents Claims Tribunal (Fast Track Court No.5 at Tirupur Additional District Judge Cum Sessions Judge) at Tirupur dated 23.12.2010.

For Petitioner : Mr.M.Krishnamoorthy

For Respondents : Died [R.1]

: No appearance [R.2]

COMMON JUDGEMENT

The above appeals arise from out of a single accident. The two claim petitions are filed by the parents of one Thangavel (in MCOP No.1005 of 2007) and the injured, P.A.Srinivasan (in MCOP No.1006 of 2007).

2. The deceased Thangavel and the claimant (in MCOP No.1006 of 2007) were travelling in a car bearing Registration No.TN 04 C 5175 which was driven in a rash and negligent manner by its driver as a result of which the car had fallen into a pond by reason of which the said Thangavel passed away and Srinivasan the claimant (in MCOP No.1006 of 2007) had sustained grievous injuries. The parents of the said Thangavel had sought for a compensation of a sum of Rs.10,00,000/- and P.A.Srinivasan had claimed compensation of a sum of Rs.5,00,000/-.

3. The deceased Thangavel was stated to have been carrying on business in the name and style of Chinnamal Textiles apart from doing agricultural works. The claimant in the other claim petition is stated to be a Decorator (for weddings). Though in Column No. 23 it is stated that the

petitioners were travelling in the car bearing Registration No.TN 04 C 5175 belonging to the 1st respondent, however, in Column No.10 of both the claim petitions it is stated that the person involved in the accident was travelling in a two wheeler. This could be a mistake since in Column No.14 it has been clarified that the type of vehicle which was involved in the accident was a car bearing Registration No.TN 04 C 5175. This point is highlighted to show the cursory attention that is given to the preparation of the pleadings.

4. The 1st respondent remained absent and was set ex parte and it was the insurance company/appellant herein which had contested the claim petitions. In their counter to both the applications, the 2nd respondent had contended that the petitioners had to prove that the driver of the car bearing Registration No.TN 04 C 5175 was negligent in his driving. They had also questioned the age, income and occupation of the deceased as well as the claimant in MCOP No.1006 of 2007. They had further contended that the terms and conditions, limits and liabilities of the policy issued to the 1st respondent has to be considered as part and parcel of the counter statement.

Thereafter, the insurance policy was marked as Ex.P.11 by the petitioners and as Ex.R.1 by the respondent. A perusal of the policy would indicate that the same is a private car policy and a liability only policy and that it did not cover the use of the vehicle for hire or reward and therefore the occupant/gratuitous passengers in the private car are not covered by the policy. Therefore, the 2nd respondent was not liable to compensate the claimants.

5. The Tribunal below on considering Ex.R1 observed that the policy was a liability policy. However, taking into account the evidence of R.W.1 in cross examination that in case the 2nd respondent/insurance company was found liable to compensate the claimants under Ex.P.1 policy, they can pay the said sum and recover it from the 1st respondent and relying upon the judgments reported in ***2010 (6) CTC 739 - New India Assurance Co. Ltd., Thiruchirapalli Vs. Kavitha and 7 others and 2010 (8) MLJ 422 - United India Insurance Company Limited, Salem Vs. Vijayakumar rep. by his mother Kalamani and others*** the learned Judge held that since the Motor Vehicles Act is a beneficial legislation and the vehicle has been insured, the

2nd respondent insurance company shall pay the compensation and recover the same from the 1st respondent. Thereafter, the Tribunal went on to grant a compensation of a sum of Rs.6,79,000/- in the case of MCOP No.1005 of 2007 and Rs.10,000/- in the case of MCOP No.1006 of 2007. Challenging the said order the appellant/2nd respondent-insurance company is before this Court.

6. Mr. M.Krishnamoorthy, learned counsel appearing on behalf of the insurance company would submit that the deceased Thangavel and the petitioner in MCOP No.1006 of 2007 were gratuitous passengers travelling in the vehicle which was covered under an Act Only Policy. Therefore, the finding of the Tribunal below that the insurance company shall pay and recover the amount from their insured is without any basis. He would rely upon the judgement reported in ***2006 (1) TN MAC 36 (SC) - United India insurance company Limited Vs. Tilak Sing and Others*** wherein the Hon’ble Supreme Court had observed that the insurance company owed no liability to gratuitous passengers who are not covered by the policy. He would also rely upon the judgment of a Division Bench of this Court Reported in ***2015 (1) TN MAC 19 (DB) - New India Assurance Co. Ltd.,***

Vs. S.Krishnasamy and others wherein the Division Bench had held that in the case of an Act Only Policy the occupant of a private car cannot be treated as a third party of the vehicle and since the policy covered only third party risks the insurance company was not liable and further the doctrine of pay and recover cannot be applied to such cases. This judgment of the Division bench has been upheld by the Hon’ble Supreme Court by its order dated 21.08.2015 in SPL No.14843 of 2015.

7. Per contra, Mr. M.Lokesh, learned counsel appearing on behalf of the claimant would rely upon the judgment of the Hon’ble Supreme Court reported in ***2017 4 SCC page 796 - Manuara Khatun and Others Vs. Rajesh Kumar Singh and Others***. wherein the Hon’ble Supreme Court by applying the judgment in the case of ***National Insurance Company Limited Vs. Saju P. Paul - (2013) 2 SCC 41*** held that in a case of gratuitous passengers also the insurance company should pay and recover the same from the owner taking into account the fact that the Motor Vehicles Act is a beneficial legislation. He would also rely upon the judgment reported in ***2022 (2) TN MAC 593 (SC) - Balu Krishna Chavan Vs. Reliance General Insurance Co. Ltd. & Others*** wherein the learned Judges had held that in

the circumstances of that case a pay and recover could be directed even in the case of gratuitous passengers. He would therefore submit that the insurance company was therefore liable.

8. Heard both the counsels.

9. A perusal of the judgments reported on the side of the claimant would highlight the fact that the Hon'ble Supreme Court had taken into account the circumstances relevant to the facts of that case and thereupon directed the payment by the insurance company and thereafter to recover the same from the owner of the vehicle. In the case of ***Manuara Khatun and Others*** cited supra, the Hon'ble Supreme Court taking into consideration the benevolent object of the Act had directed the insurance company to pay and recover the amount. In the judgment reported in ***2022 (2) TN MAC 593 (SC) - Balu Krishna Chavan Vs. Reliance General Insurance Co. Ltd. & Others*** the Hon'ble Supreme Court had made it clear that the directions to the insurance company to deposit the amount and later recover it from the owner cannot be treated as a precedent and would only apply if relevant to the facts of that case.

10. In the judgment cited by the counsel for the appellant namely ***2006 (1) TN MAC 36 (SC) - United India insurance company Limited Vs. Tilak Sing and Others***, the learned Judges had relied upon the judgment of the 3 Judges Bench in ***New India Assurance Co. Ltd. Vs. Asha Rani and others - 2003 (2) SCC 223*** where the discussion arose in connection with carrying passengers in a goods vehicle. The Bench had relied upon the terms of Section 147 of the 1988 Act in contrast with Section 95 of the 1939 Act, where they had observed as follows :-

> *"25. Section 147 of 1988 Act, inter alia, prescribes compulsory coverage against the death of or bodily injury to any passengers 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 'good 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 party 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 vehicle caused by or arising out of the use of the vehicle in a public place."

Ultimately, the learned judges in ***Tilak Singh's case*** cited supra observed as follows:-

" In our view, although the observation made in Asha Rani's case (supra) were in connection with carrying passengers in a goods vehicle, the same would apply with equal force to gratuitous passengers in any other vehicle also. Thus, we must uphold the contention of the appellant-Insurance Company that it owed no liability towards the injuries suffered by the deceased-Rajinder Singh who was

a pillion rider, as the Insurance Policy was a statutory policy, and hence it did not cover the risk of death of or bodily injury to gratuitous passengers."

11. The division bench of our Court in the case of ***2015 (1) TN MAC 19 (DB) - New India Assurance Co. Ltd., Vs. S.Krishnasamy and others*** had after considering the march of law in respect of an Act Only Policy vis-a-vis the occupant of a private car ultimately held as follows:-

"18. In view of the rulings cited above, we are of the considered view that since, the Policy is only an Act Policy issued by the Appellant-Insurance Company to the Insurer and the deceased Palanisamy was only an occupant of the Private Car, cannot be considered as 'Third party' of the vehicle and the Policy is covered risks to the third party alone. Hence, the deceased was only the occupant of the Private Car and the said Policy will not cover the risk of the deceased. The Doctrine of Pay and Recovery cannot be applied to the facts of the case, since the Appellant-Insurance Company is not liable to pay the Compensation.

Hence, pay amount to the Claimants and then recover the same from the owner of the vehicle involved in the accident cannot be ordered and in view of the above, the rulings cited on the side of the Respondents 1 to 5/Claimants are not applicable to the facts of the present case."

12. This judgment has also been upheld by the Hon'ble Supreme Court. Therefore, in the light of this categoric pronouncement, the judgment of the Tribunal below has to necessarily be set aside and the appellant/ insurance company be exonerated. Consequently, the above Civil Miscellaneous Appeals are allowed, the 1st respondent/owner MCOP Nos. 1005 & 1006 of 2007 shall deposit the entire amounts due under the award. with proportionate accrued interest and costs, to the credit of MCOP Nos.1005 & 1006 of 2007 respectively on the file of the Motor Accidents Claims Tribunal (Fast Tract Court No.5 at Tirupur, (Additional District Judge Cum Sessions Judge) at Tirupur, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit being made, the claimants/respondents 1 and 2 herein (in CMA.No.4497 of 2019) and the 1st respondent in CMA.No.4498 of 2019 are permitted to withdraw the

entire award amount with proportionate accrued interest and costs, after adjusting the amount, if any already withdrawn as apportioned by the Tribunal below by making necessary applications. In case the claimants have withdrawn any amount then in such a case the Insurance Company shall withdraw that amount from out of the amount deposited by the 1st respondent in both the claims. The Insurance Company is permitted to withdraw the amount deposited by them to the credit of MCOP Nos.1005 & 1006 of 2007 on the file of the Motor Accidents Claims Tribunal (Fast Tract Court No.5 at Tirupur, (Additional District Judge Cum Sessions Judge) at Tirupur, if the award amount has already been deposited by them. No costs. Consequently, the connected Miscellaneous Petition is closed.

30.11.2022

Index : Yes/No
Internet: Yes/No
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To
1. The Motor Accidents Claims Tribunal,
(Fast Track Court No.5 at Tirupur
Additional District Judge Cum Sessions Judge) at Tirupur.

2.The Section Officer,
V.R.Section,

High Court, Madras.

P.T. ASHA, J,

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