IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 30.06.2023

PRONOUNCED ON : .10.2023

CORAM:

THE HONOURABLE MR.JUSTICE A.A.NAKKIRAN

CMA.Nos.1921 to 1924 of 2007

United India Insurance Company Limited
Coonoor ...Appellant
(in all CMAs)

...Vs...

1. K.Rangaraj
2. K.Myilsamy
3. S.Anandaraj ...Respondents
(in CMA.1921/2007)

1. L.Natarajan
2. K.Myilsamy
3. S.Anandaraj ...Respondents
(in CMA.1922/2007)

1. P.Mohanraj
2. K.Myilsamy
3. S.Anandaraj ...Respondents
(in CMA.1923/2007)

1. Yuvaraj
2. K.Myilsamy
3. S.Anandaraj ...Respondents
(in CMA.1924/2007)

Prayer:- These Civil Miscellaneous Appeal have been filed, against the common judgement and decree, dated, 04.10.2004, made in MCOP.Nos.1547, 1350, 1351 and 1352 of 1996, by the Additional District Sessions Judge, FTC-III (MACT) Coimbatore.

For Appellant : Mr.S.Arunkumar-All CMAs

For Respondents : Mr.R.Singharavelan, SC
(for Mr.A.Kandasamy-R1-All CMAs)

:RR2 and 3-All CMAs-No Appearance

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COMMON JUDGMENT

These Civil Miscellaneous Appeal have been filed by the Insurance Company, against the common judgement and decree, dated, 04.10.2004, made in MCOP.Nos.1547, 1350, 1351 and 1352 of 1996, by the Additional District Sessions Judge, FTC-III (MACT), Coimbatore. For the sake of convenience, the parties herein are referred to as they were arrayed before the Tribunal.

2. The facts leading to filing of these appeals are as follows:-

(i) On 12.04.1996 at about 6.15 p.m., when the Petitioners/ claimants along with others, were travelling in the lorry, bearing

Reg.No.TN 37 E 0767, from Selakkarachal to Kodumudi, on the Coimbatore-Karur Road, near Nachiapalayam Pirivu, the 1st Respondent, driver of the said Lorry, in the process of overtaking another lorry, drove the lorry in a rash and negligent manner, due to which, the lorry fell upside down in a pit on the Southern side of the road. In the said accident, all the persons, including the Petitioners/ claimants travelled in the lorry sustained multiple and grievous injuries and some of them died on the spot. Hence, the above claim petitions have been filed, claiming compensation amounts of Rs.4,00,000/-, Rs.2,50,000/, Rs.3,00,000/- and Rs. 3,00,000/- by the injured claimants respectively.

(ii)The 2nd Respondent, who is the owner of the lorry and the 1st Respondent, who is the driver did not contest the claim petitions and remained ex-parte before the Tribunal. There were also other claim petitions filed by the other claimants. The claim petitions were resisted by the 3rd Respondent/Insurance Company alone, by filing a counter. Since the accident involved is one and the same in all the cases, a joint trial was conducted. On the side of the claimants, PW.1 to PW.8 were examined and Ex.P1 to Ex.P31 were marked. On the side of the Respondent Insurance Company, Ex.R1 was marked.

(iii) The Tribunal, finding that the accident had occurred only due to the rash and negligent driving of the 1st Respondent/driver of the offending Lorry, the Tribunal has awarded a total compensation of Rs.1,89,500/- in MCOP.No.1547 of 1996, Rs.67,000/- in MCOP.No.1350 of 1996, Rs.68,000/- in MCOP.No.1351 of 1996 and Rs.31,000/- in MCOP.No.1352 of 1996, respectively, with interest at 9% p.a. from the date of the petition till the date of deposit, with proportionate costs, to be deposited by the Respondents within a period of one month from the date of the impugned judgement and decree. The Tribunal directed the 3rd Respondent/Insurance Company to pay first the compensation amounts to the respective claimants and then recover the same from the insured, since there was violation of policy conditions by the insured/2nd Respondent. Aggrieved by the same, these appeals have been filed by the 3rd Respondent/ Insurance Company.

3.The learned counsel for the appellant/Insurance Company would submit that after the Claims Tribunal, having come to the conclusion that the Insured/Owner of the Vehicle has violated the Law, permit and Policy conditions by carrying more than 52 persons in the offending Goods Vehicle, the Insurance Company should not have been held liable or responsible to pay the compensation with a direction to recover the same from the owner of the vehicle without relying upon contents of the FIR and Insurance Certificate which is unsustainable and contrary to the Law. '

4. In support of his argument, he would rely on the Judgment of the Hon'ble Supreme Court in the case of *"New India Assurance Co. Ltd. Vs. Asha Rani and others",* reported in *2003 (1) ACJ* wherein the Hon'ble Supreme Court overruling with the view expressed by the Hon'ble Supreme Court in *"New India Assurance Co. Ltd. Vs. Shri Satpal Singh and others"*, reported in *2000 1 SCC 237* held that Satpal Singh's case (supra) was not correctly decided. That being the position, the Tribunal and the High Court were not justified in holding that the insurer had the liability to satisfy the award.

5. Further, he would also place reliance on the Judgment passed by this Court in the case of *"National Insurance Co. Ltd. Vs. Baljit Kaur and others"* reported in *2004 (1) CTC 210* wherein it was discussed the effect of the 1994 Amendment on Sections 147 & 149 of the Motor

Vehicle Act, pointing out that the gratuitous passengers travelling in the goods vehicle for whom no insurance premium was paid, were not covered by the Insurance Policy. Following this, in the case of "*National Insurance Co. Ltd. Vs. T. Chinnamma and others"* reported in *2005 (1) LW 92 and "Bharati AXA General Insurance Co. Ltd. Vs. Aandi and others"* reported in *2018 SCC Online Mad 13295,* wherein, it was held that the passenger in the goods vehicle is an unauthorized passenger and he will not be covered by the policy of Insurance, therefore, the Insurance Company cannot be directed to pay the compensation with liberty to recover from the owner since there is no statutory requirement to cover a person, who travels as a passenger in any type of vehicle after discussing the scope of Sections 147 & 149 of the Motor Vehicle Act, it was pointed out that the Insurance Company is liable to cover the risk in respect of death or bodily injury or damage to any property of a Third party, owner of the goods or his Authorized representative carried in a goods vehicle or against the death or bodily injury to the passenger of a Public service vehicle. While the passengers travelled in the said Goods vehicle have not come under the above category, the Insurance Company should not have been held liable for pay and recovery.

6. Further pointing out the case in *"United India Insurance Co. Ltd., Vs. Chinnakannu"* reported in 2004(2) TNMAC, the learned counsel further submitted that the while seeking direction to pay and recover in the aforesaid case, the Hon'ble Division Bench of this Court had specifically held as follows:

> *"In those cases, the Tribunal decided the matter before the Judgment in Asha Rani's case and also change of law in the said Judgment and also taking into consideration of the delay. Such direction was given. But in this case, the Tribunal has decided the issue only on the basis of "Asha Rani's case but applying the same wrongly. So, the submission made by the learned counsel for the 1st respondent cannot be countenanced."*

7.Thus, the learned counsel for the appellant has placed various Judgments in support of his contention as follows:

"*M.V. Jayadevappa and another Vs. Oriental Fire & General Insurance Co. Ltd. and other reported in 2005 ACJ 1801.*

"Thokchom Ongbi Sangeetha @ Sangi Devi and another Vs. Oriental Insurance Co. Ltd reported in CDJ 2007 SC 1163 = 2008 (1) MLJ 151 (SC)"

"New India Assurance Co. Ltd. Vs. Darshana Devi and others reported in 2008 ACJ 1388"

"National Insurance Company Vs. Kaushalaya Devi and others reported in 2008 ACJ 2144"

"National Insurance Company Ltd. Vs. Rattan and others reported in 2009 ACJ 925"

" United India Insurance Co. Ltd. Vs. Nagammal and others reported in 2009 (1) TNMAC 1"

" National Insurance Company Ltd. Vs. Savithri Devi reported in 2013(11) SCC 554"

"New India Assurance Vs. C.M. Jeya and others reported in 2002 ACJ 271"

"The Manager, United India Insurance Co. Ltd., Vs. P.Dineshkumar and others "

"United India Insurance Co. Ltd., Vs. Rajamani and others reported in 2023 (2) TN MAC 17"

8. From the aforesaid Judgments, it is made clear that while there is a specific bar on carrying of any passengers in the Goods vehicle without adhering to the terms and conditions of the Insurance Policy, the Insurance Company would have no liability. In this case, as the respective petitioners in the claim petitions travelled in the lorry as gratuitous passengers, the owner of the vehicle committed violation of policy condition and therefore, the petitioners are not entitled to any compensation from the Insurance Company.

9. The learned counsel for the appellant would further submit that the Hon'ble Supreme Court by virtue of its extraordinary powers considering the facts and circumstances of the case had issued direction to the Insurance Company to pay the compensation under pay and recovery basis. But nowhere in a claim where 52 passengers were carried in a goods vehicle as passengers stated wilfully breaching the contract of Insurance by the insured was authorized and direction to pay and recover was issued.

10.Per contra, the learned counsel for the 1st respondent would submit that the Motor Vehicle Act is one of the beneficial legislations and the object of the Act is to pay compensation to the victims of the road accident, who due to sudden and unpredictable circumstances, met with an accident. While such a beneficial Act meant for compensation to the poor victims who had injured in the road accident, the denial of the compensation to the victims even by way of pay and recover, is irrational and impermissible.

11.It has been further submitted by the learned counsel for the 1st respondent that travel of passengers in goods vehicle due to unavoidable circumstances or for the social cause itself cannot be said to be the cause of the accident to deny the compensation by the Insurer which would soon drive the Courts to fix the liability on the Insurer to pay the compensation even for such a travel in goods vehicles depending upon the facts and circumstances of the case.

12. It has been further submitted that it is not proper to deny the compensation to the road accident victims based on the pay and recover in the wake of various Judgments after *"Asha Rani reported in 2003 2 SCC 223"* such as *"Swaran Singh reported in 2004 3 SCC 297* wherein the Supreme Court interpreting the Sections 96 and 149 of the Motor Vehicles Act, 1988 held that the Insurer cannot take a different stand even to deny the benefit of "Pay and recover" for the travellers in a goods vehicle.

13. Further, the learned counsel for the 1st respondent relying upon the Judgment in " *Baljit Kaur and others reported in 2004 2 SCC 1"* wherein it has been held that after considering the both cases in *"Satpal Singh reported in 2000 1 SCC 237* and *Asha Rani reported in 2003 2 SCC 223"* held that in view of Section 168 of the Motor Vehicles Act, 1988, the

learned Tribunal can very well pass an award for pay and recover even in respect of the victims (both injured and deceased) travelling in a goods vehicle.

14. Further, the learned counsel has relied upon various Judgments in (i) *"Oriental Insurance Co. Ltd. Vs. Brij Mohan & others reported in 2007 SCC 56 (DB) (ii) "Manager National Insurance Co. Ltd. Vs. Saju P.Paul & Another, reported in 2013 2 SCC 41 (DB) (iii) Shamanna & another Vs. Divisional Manager, The Oriental Insurance Co. Ltd. and others reported in 2018 9 SCC 650 (iv) Anu Bhanvara & others Vs. Iffco Tokio General Insurance Co. Ltd. & Others reported in 2020 20 SCC 632 and (v) National Insurance Co. Ltd. Vs. Baljit Kaur and others,* wherein, it uphold the principle of Pay and recover for victims travelled in a Goods Vehicle and however, pay and recover was left open to be decided in appropriate case by the larger Bench in the case of *"National Insurance Co. Ltd. Vs. Parvathneni and another reported in 2018 9 SCC 657.*

15.Having relied upon the aforesaid Judgments, the learned counsel for the 1st respondent would submit that the claimants are very poor and the nature of injuries had made them immobile and incapable, the direction for pay and recover is absolutely unavoidable. At the same time, the pay and recover need not be ordered for an accident taken place while travelling in costly cars as the owner of such car would definitely be financially sound. Hence, the Civil Miscellaneous Appeals filed by the Insurance Company is unsustainable and liable to be set aside.

16. Heard the learned counsel for the appellant and the learned counsel for the 1st respondent as well as perused the materials available on record.

17.In these appeals, there is no serious argument raised with regard to the quantum of the compensation and other aspects except question of the liability of the Insurance Company to pay the compensation and recover the same from the owner of the vehicle despite violation of policy condition has been confirmed by the Insurance Company.

18. In the award of the Tribunal, it is confirmed that the rash and negligent driving of the first respondent who is the driver of the vehicle is

the cause for the accident. Thereafter, the offending vehicle bearing Registration No.TN 37 Z 0767 belong to the 2nd respondent, who is the owner of the vehicle, is a Goods Carrier and Clause 10(3) of the Insurance Certificate prohibits transporting passengers in the said vehicle. Whereas the respondents 1 and 2 allowed more than 52 passengers in the said offending Goods Carriage which has been corroborated with the Ex.P1-FIR and testimony of P.W.1.

19.Under such circumstances, the Tribunal has held that it is proved by 3rd respondent-Insurance Company that the 2nd respondent-Owner of the vehicle, violated the policy condition. However, relying upon the Judgment in the *Baljit Kaur'* case, the Tribunal has directed the Insurance Company to pay the amount of compensation and recover the same from the insured-owner of the vehicle.

20. On a perusal of the Judgments relied upon by the 1st respondent and the submission made by him, it can be seen that in the event of pay and recovery, each Judgment has been passed by the Hon'ble Supreme Court keeping in view of the peculiar facts and circumstances of

the case. The Judgments of the Supreme Court being cited as a precedent for passing of pay and recovery in the special circumstances of the case, are under Article 142 of the Constitution of India wherein the Supreme Court has got all the powers to pass any order or Decree as may be necessary for doing complete justice in any matter pending before it. However, in the case of *Parvathaneni*, the Supreme Court held that the questions of law with regard to pay and recover are kept open to be decided in an appropriate case. Further, in the reliance of the Judgements by the learned counsel for the 1st respondent, the number of the gratuitous passengers in the Goods vehicle is meagre but, in the instant case, more than 50 gratuitous passengers were travelled in the Goods vehicle breaching the contract of Insurance Policy which cannot be acceptable. Hence, in the case on hand, the Tribunal was not right in directing the Insurance Company to pay compensation giving it liberty to recover the same from the insured.

21.Having considered the entire Judgments relied upon by the learned counsel on either side and submission made by the learned counsel for both parties, and also considering the fact in the present case that in the offending goods vehicle, more than 52 passengers were allowed, as gratuitous passengers to whom there was no insurance coverage and also the fact that undisputedly, they have not travelled in the goods carriage in the capacity of owners of goods or representatives of owner of goods being transported in the goods carriage, this Court with no hesitation, has come to the conclusion that the appellant/Insurance Company is not liable to pay the compensation awarded to the claimants by the tribunal and the sum awarded by the Tribunal has to be paid by the owner of the vehicle, since the driver of the said goods vehicle is solely responsible for the accident.

22. In the result, the Civil Miscellaneous Appeals are allowed, setting aside the award dated 04.10.2004 made in MCOP.Nos.1547, 1350, 1351 and 1352 of 1996, on the file of the Additional District Sessions Judge, FTC-III (MACT), Coimbatore, in so far as the Appellant-Insurance Company alone is concerned. The award passed by the tribunal is modified accordingly. Consequently, connected miscellaneous petitions are closed if any. No Costs.

.10.2023

Srcm/Lbm
Index:Yes/No

A.A. NAKKIRAN., J.

Srcm/Lbm

To

1. The Additional District Sessions Judge, FTC-III (MACT) Coimbatore.

2. The Record Keeper, VR Section, High Court, Madras

Pre-Delivery Judgement in
CMA.Nos.1921 to 1924 of 2007

.10.2023