IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.10.2023

C O R A M

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

C.M.A.Nos.3009, 3010 & 3011 of 2009

M.P.No.1 of 2009

C.M.A.No.3009 of 2009

The United India Insurance co.Ltd.,
Palani ... Appellant/4th Respondent

Vs

1.Karuppasamy
2.Sikamani
3.P.Govindaraj
4.Eswaran

(Respondents 2 to 4 ex-parte before Lower Court and hence notice may be dispensed with) *... Respondents 2 to 4 /Respondents 1 to 3*

Prayer in C.M.A.No.3009 of 2009: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the Judgement and Decree passed in M.C.O.P.No.337 of 2001 dated 17.08.2004 on the file of the Motor Accident claims Tribunal, Subordinate Court, Pollachi.

C.M.A.No.3010 of 2009

The United India Insurance co.Ltd.,
Palani ... Appellant/4th Respondent

Vs

1.Lalitha
2.Sikamani
3.P.Govindaraj
4.Eswaran

(Respondents 2 to 4 ex-parte before Lower Court and hence notice may be dispensed with) ... Respondents 2 to 4 /Respondents 1 to 3

Prayer in C.M.A.No.3010 of 2009: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the Judgement and Decree passed in M.C.O.P.No.483 of 2001 dated 17.08.2004 on the file of the Motor Accident claims Tribunal, Subordinate Court, Pollachi.

C.M.A.No.3011 of 2009
The United India Insurance co.Ltd.,
Palani ... Appellant/4th Respondent

Vs

1.Arumugam (Died)
2.Asmarathal

(Respondents-I died. Respondent-II who is already on record as LR of the deceased viz., Arumugam as per the memo dated 12.06.2023 and vide Court order dated 24.08.2023 made in CMA Nos.3009 to 3011/2009)

3.Sikamani
4.P.Govindaraj
5.Eswaran

(Respondents 3 to 5 ex parte before Lower Court and hence notice may be dispensed with)

... Respondents 2 to 4
/Respondents 1 to 3

Prayer in C.M.A.No.3011 of 2009: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the Judgement and Decree passed in M.C.O.P.No.336 of 2001 dated 27.02.2004 on the file of Motor Accident claims Tribunal, Subordinate Court, Pollachi.

In all CMAs

For Appellant ... M/s.E.Rajadurai
for Mr.M.B.Gopalan
(In all CMAs)

For Respondents ... No Appearance [R1]
Ex-parte [R2 to R4]
(In C.M.A.Nos.3009 & 3010 of 2009)

... Mr.K.Sudhakar [R2]
Ex-parte [R3 to R5]
(In C.M.A.No.3011 of 2009)

COMMON JUDGMENT

The above appeals arise out of a single accident.

2. These appeals have been filed by the Appellant-Insurance Company, challenging the impugned award passed by the Motor Accident Claims Tribunal, Subordinate Court, Pollachi in M.C.O.P.Nos.337 & 483 of 2001 dated 17.08.2004 and M.C.O.P.No.336 of 2001 dated 27.02.2004 questioning its liability.

3. It is the case of the claimants that on 06.06.1998, at about 7.00 P.M, when the claimants in M.C.O.P.Nos.337 & 483 of 2001 and the deceased Thangammal in M.C.O.P.No.336 of 2001 were travelling as passengers in a Van bearing Reg.No.T.N.69 A 3625 as the said van was driven in a rash and negligent manner by its driver, the van capsized, resulting in the claimants in M.C.O.P.Nos.337 & 483 of 2001 sustaining grievous injuries and the death of deceased Thangammal in M.C.O.P.No.336 of 2001. Aggrieved by the loss incurred in view of the said accident, the respective claimants have filed the

claim petitions in M.C.O.P.Nos.337 & 483 of 2001 while the claim petition in M.C.O.P.No.336 of 2001 has been filed by the dependants of the deceased Thangammal claiming compensation towards the death of the deceased. After adjudication, the Tribunal based on the oral and documentary evidences, has awarded a sum of Rs.8,000/- to the claimant in M.C.O.P.No.337 of 2001, Rs.20,000/- in M.C.O.P.No.483 of 2001 and Rs.1,97,504/- in M.C.O.P.No.336 of 2001 as compensation and has directed the appellant/insurance company to pay the compensation to the claimants and to recover the same from the owner of the vehicle. Aggrieved by the award passed in respective cliam petitions, the present appeals have been filed by the Appellant- Insurance Company.

4. Learned counsel appearing for the Appellant/Insurance Company denied their liability to compensate the respondents/claimants stating that the claimants along with one deceased Thangammal were travelling as gratuitous passengers in the said Van which is in violation of policy conditions as the policy conditions does not cover gratuitous passengers. The claimants having travelled as unauthorized passengers, cannot claim any compensation from the

Appellant-Insurance Company and thus the Insurance Company is not liable to pay any compensation to the claimants. Accordingly, he prayed for allowing these appeals.

5. Though notice was sent to the respective 1st Respondent/claimants in M.C.O.P.Nos.3009 & 3010 of 2009 and their name printed in the causelist, none appeared on behalf of the claimants today. Considering the pendency of the Appeals which is of the year 2009, this Court is inclined to dispose of the same based on the materials available on record.

6. The major issue that arises for consideration in the present appeals is whether the Insurance Company is liable to compensate the claimants who travelled in a goods vehicle as gratuitous passengers.

7. The issue which is raised in the present appeals is no longer *res integra,* as similar issue has already been considered by the Hon'ble Division Bench of this Court in the case of ***Bharati AXA General Insurance Co.Ltd***

Vs. Aandi & Ors reported in ***MANU/ TN/ 6503/ 2018*** in CMA Nos.1529 to 1533 of 2015 vide order dated 24.10.2018 wherein, the Division Bench has categorically held that the unauthorized or gratuitous passenger in goods vehicle cannot claim compensation from the Insurance Company. The relevant portion of the order is extracted here as under :-

> " 36. In ***New India Assurance company Ltd., Vs. Asha Rani and others***reported in ***2003 ACJ 1 (SC),*** a two Judge bench of the Hon'ble Supreme Court doubted the correctness of the conclusion reached by another two Judge bench in ***New India Assurance Company Vs. Shri Satpal Singh and others*** reported in ***2000 ACJ 2 (SC)*** and placed the matter before a larger bench for reconsideration. The question referred to by the judgment in ***New India Assurance company Ltd., Vs. Asha Rani and others*** reported in ***2003 ACJ 1 (SC),*** was decided by a larger bench consisting of three Judges of the Hon'ble Supreme Court in ***New India Assurance Company Ltd., Vs. Asha Rani and others*** reported in ***2003 (2) SCC 223.*** The larger bench of the Hon'ble Supreme Court after an elaborate consideration of the provisions of Sections 147 and 149 of the Motor Vehicles Act, 1988 as amended by the amendment Act 54 of 1994 held that the judgment in ***New India Assurance Company Vs. Shri Satpal Singh and others*** reported in ***2000 ACJ 2 (SC)*** has not been correctly decided.
>
> *" 37. However, in* **National Insurance Company Ltd., Vs. Baljit Kaur and others** *reported in* **2004 (2) SCC 1,** *a three Judge bench of the Hon'ble Supreme Court again went into the question as to whether an insurance policy in respect of the goods vehicle would also cover gratuitous passengers in view of the legislative amendment to Section 147 introduced by Act 54 of 1994. After referring to the larger bench decision in* **New India**

Assurance Company Ltd., Vs. Asha Rani and others *reported in* ***2003 (2) SCC 223,*** *the Hon'ble Supreme Court observed as follows:-*

> *It is therefore, manifest that in spite of the amendment of 1994, the effect of the provision contained in Section 147 with respect to persons other than the owner of the goods or his authorized representative remains the same. Although the owner of the goods or his authorized representative would now be covered by the policy of insurance in respect of a goods vehicle, it was not the intention of the legislature to provide for the liability of the insurer with respect to passengers, especially gratuitous passengers, who were neither contemplated at the time the contract of insurance was entered into, nor any premium was paid to the extent of the benefit of insurance to such category of people.*

38. However, the Hon'ble Supreme Court clarified that the said judgment will have only prospective effect so that the awards that were made against the insurer during the period between the decision in ***New India Assurance Company Vs. Shri Satpal Singh and others*** *reported in* ***2000 ACJ 2(SC)*** *and the decision of the larger bench in* ***New India Assurance Company Ltd., Vs. Asha Rani and others*** *reported in* ***2003 (2) SCC 223*** *will not be nullified.*

39. The Hon'ble Supreme Court also permitted the Insurance Company in the said case to pay the award amount and recover the same from the owner of the vehicle insured. From the above, it is clear that the policy of insurance which is mandatory under the provisions of Motor Vehicles Act is not required to cover the risk in case of an unauthorized or a gratuitous passenger in the goods vehicle after the amendment of Section 147 by Act 54 of 1994 and it will be the liability of the *insured only to satisfy such awards and not the Insurance Company.*

40. The question again was dealt with by a Full Bench of this Court in ***United India Insurance company Vs. Nagammal and others*** *reported in* ***2009 (1) CTC 1 (Full Bench).*** *The Full Bench after elaborate reference to the judgments of the Hon'ble Supreme Court in* ***New India Assurance Company Vs. Asha Rani and others*** *reported in* ***2003 (2) SCC 223 (Larger Bench),*** ***New India Assurance Company Vs. Shri Satpal Singh and others*** *reported in* ***2000 ACJ 2 (SC)*** *and* ***National Insurance Company Ltd., Vs. Baljit Kaur and others*** *reported in* ***2004 (2) SCC 1*** *concluded as follows:-*

> *"30. From a conspectus of the decisions,thus analysed, it is now apparent that before* ***Asha Rani's*** *case was decided, the decision in* ***Satpal Singh's*** *case was holding the field and such latter decision was overruled only in* ***Asha Rani's*** *case. Under such peculiar circumstances in* ***Baljit Kaur's*** *case it was observed, that even though the Insurance Company was not liable to pay the compensation in respect of a passenger in a goods vehicle, yet since the law was not clear before* ***Asha Rani's*** *case was decided, the doctrine of prospective overruling was applied and a direction was issued in the interest of justice directing the Insurance Company to satisfy the award and recover the same from the owner of the vehicle. In other words, even though the statutory provision under Section 149(4) and Section 149(5) was not applicable, the Supreme Court applied the Doctrine of "pay and recover". The ratio of the said decision has been applied selectively in some of the later decisions and in some of the subsequent decisions, the doctrine of*

"pay and recover" in respect of matters which are not strictly covered under Sections 149(4) and 149(5) has not been applied by the Supreme Court depending upon the facts and circumstances of a particular case.

Therefore, it cannot be said as an inexorable principle of law that in each case where the liability is in respect of a passenger in a goods vehicle, which is not required to be covered under Section 147 of the Act, the Insurance Company would be directed to first pay the amount and thereafter recover the same from the owner and such discretion is obviously with the Court either to apply such principle or not.

31.Thus from an analysis of the statutory provisions as explained by the Supreme Court invarious 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 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."*

*41. Therefore, in view of the authoritative pronouncement of the Full Bench of this Court in **United India Insurance company Vs. Nagammal and others** referred to supra, it is to be seen as to whether the law laid down in **New India Assurance Company Vs. Asha Rani and others** reported in **2003 (2) SCC 223 (Larger Bench), National Insurance Company Ltd., Vs. Baljit Kaur and others** reported in **2004 (2) SCC 1** and **United India Insurance company Vs. Nagammal and others** reported in **2009 (1) CTC 1 (Full Bench)** has been faulted subsequently by the Hon'ble Supreme Court.*

8. From the aforesaid decision, it is clear that gratuitous passengers in a goods vehicle are not entitled to any compensation at the hands of the insurance company in the absence of any additional premium being paid.

9. In the case on hand, it is the claim of the insurance company that the policy is an Act Only Policy, which does not cover the risk of gratuitous passenger and that the Tribunal had erroneously directed the insurance company to pay the compensation and recover the same from the owner of the vehicle, which is against the ratio laid down in the aforesaid decision.

10. Though the insured is not liable to indemnify the insured as the claimants are gratuitous passengers, on the basis of the aforesaid decision, however, not withstanding the said fact, the Motor Vehicles Act being a benevolent legislation which is aimed at providing relief to the parties who have suffered in the accident by applying the ratio laid down by the Apex Court, the Tribunal has invoked the pay and recovery option and had directed the insurer to pay and recover the same from the owner of the vehicle. In

effect, while the liability has been fastened only on the owner of the vehicle however, to ease out the claimants from facing stress on account of injury/death, the insurer has been directed to pay the compensation and recover the same from the owner of the vehicle. The said course adopted by the Tribunal cannot be said to be unreasonable or perverse and therefore, this Court is not inclined to interfere with the impugned award passed by the Tribunal in respective claim petitions.

11. For the reasons aforesaid, these civil miscellaneous appeals deserves to be dismissed and accordingly the same are dismissed and the award passed in M.C.O.P.Nos.337 & 483 of 2001 & M.C.O.P.No.336 of 2001 stands confirmed. However, it is open for the Appellant-Insurance Company to recover the amount from owner of the vehicle in the manner known to law.

12. The Appellant-Insurance Company is directed to deposit the amount of compensation quantified by the Tribunal to the credit of M.C.O.P.Nos.337 & 483 of 2007 and M.C.O.P.No.336 of 2001 along with interest at the rate of

7.5% per annum from the date of claim petition till the date of deposit and costs as awarded by the Tribunal, less the amount, if any already deposited, within a period of six (6) weeks from the date of receipt of a copy of this judgment. On such deposit being made, the Tribunal is directed to transfer the amount directly to the bank account of the claimants as per the ratio of apportionment ordered, through RTGS within a period of two weeks thereafter. There shall be no order as to costs in this appeal. Consequently, the connected Miscellaneous Petition stands closed. There shall be no order as to costs. Consequently, the miscellaneous petition is closed.

20.10.2023

Index : Yes / No
Speaking Order / Non-speaking order
Neutral Citation Case : Yes / No

NHS

M.DHANDAPANI, J

NHS

To

1.The Motor Accident Claims Tribunal,
Subordinate Court,
Pollachi.

2.The Section Officer,
V.R. Section,
High Court, Madras.

C.M.A.Nos.3009, 3010 & 3011 of 2009

20.10.2023