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C.M.A.Nos.2984 to 2987 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.10.2023

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

C.M.A.Nos.2984 to 2987 of 2013

And

M.P.Nos.1 to 1 of 2013

The National Insurance Co. Ltd.,
Branch Office,
No.333, Bangalore Road,
Anuradha Complex,
III Floor,
Krishnagiri 635 001.

... Appellant in all the C.M.As.

Vs.

1.R.Malathi
2.Minor.Sakthivel
3.Minor.Pavithra
4.Periyasamy
5.Ellammal

Minors represented by NF Mother
R.Malathi

N.Saravanan (died)

6.Thavamani
7.Natarajan
8.B.Parvathi

9.The New India Assurance Co. Ltd.,
Branch Office, 1/164,
Dr.Prakasam Road,
Tirupathi 517 501.

... Respondents in C.M.A.2984/2013



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1.Chinnasamy (Died)

[Respondent – 1 Died. Respondent -2 who is already on record as LR of the deceased viz. Chinnasamy as per the memo dated 8/6/23 and vide court order dated 8/6/2023 made in CMA No. 2985/2013 by KRSJ (Recorded)]

2.Yashodha

N.Saravanan (died)

3.Thavamani

4.Natarajan

5.B.Parvathi

6.The New India Assurance Co. Ltd.,
Branch Office, 1/164,
Dr.Prakasam Road,
Tirupathi 517 501.

... Respondents in C.M.A.2985/2013

1.Ponnusamy

2.Kamala

N.Saravanan (died)

3.Thavamani

4.Natarajan

5.B.Parvathi

6.The New India Assurance Co. Ltd.,
Branch Office, 1/164,
Dr.Prakasam Road,
Tirupathi 517 501.

... Respondents in C.M.A.2986/2013

1.Chitra

2.Murali

3.Minor Karthik

Represented by N.F.Mother
Chithra

2/16



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N.Saravanan (died)

4.Thavamani

5.Natarajan

6.B.Parvathi

7.The New India Assurance Co. Ltd.,
Branch Office, 1/164,
Dr.Prakasam Road,
Tirupathi 517 501.

... Respondents in C.M.A.2987/2013

Prayer in C.M.A.No.2984 of 2013:

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 17.02.2012 and made in M.A.C.T.O.P.No.1317 of 2008 on the file of the Court of the Additional District Judge, Krishnagiri.

Prayer in C.M.A.No.2985 of 2013:

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 17.02.2012 and made in M.A.C.T.O.P.No.67 of 2010 on the file of the Court of the Additional District Judge, Krishnagiri.

Prayer in C.M.A.No.2986 of 2013:

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 17.02.2012 and made in M.A.C.T.O.P.No.1318 of 2008 on the file of the Court of the Additional District Judge, Krishnagiri.



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Prayer in C.M.A.No.2987 of 2013:

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Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 17.02.2012 and made in M.A.C.T.O.P.No.1316 of 2008 on the file of the Court of the Additional District Judge, Krishnagiri.

For Appellant : M/s.S.Vadivel
in all the C.M.As.

For Respondents : Mr.Mukund R.Pandian for R4 & R5
R1 to R3, R6 to R8 – No Appearance
Ms.S.R.Sumathy for R9
in C.M.A.No.2984 of 2013

R1 – Died
Mr.Mukund R.Pandian for R2
R3 to R5 – No Appearance
Ms.S.R.Sumathy for R6
in C.M.A.No.2985 of 2013

Mr.Mukund R.Pandian for R1 & R2
R3 to R5 – No Appearance
Mr.C.Prabakaran for R6
for M/s.N.Anand
in C.M.A.No.2986 of 2013

Mr.Mukund R.Pandian for R1 & R3
R2, R4, R5 & R6 – No Appearance
Mr.C.Prabakaran for R7
for M/s.N.Anand
in C.M.A.No.2986 of 2013

COMMON JUDGMENT

The fourth respondent Insurance Company before the Motor Accidents Claims Tribunal (Additional District Court), Krishnagiri, is



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the appellant herein. These appeals have been filed seeking to set aside the common order dated 17.02.2012 passed by the Motor Accidents Claims Tribunal (Additional District Court), Krishnagiri in M.C.O.P.Nos.1317 of 2008, 67 of 2010, 1318 of 2008 and 1316 of 2008 respectively.

2.The brief facts of the case is that on 06.08.2008 at about 10.00 p.m., Chinnasamy (deceased in M.C.O.P.No.67/2010) started with another Chinnasamy (deceased in M.C.O.P.No.1316/2008), Rajamanickam (deceased in M.C.O.P.No.1317/2008) and Gnanavel (deceased in M.C.O.P.No.1318/2008) in Eicher Lorry bearing Registration No.T.N.43/3632 from their village – Kudimenahalli to go to Anaikattu Village near Vellore for harvesting mangoes. When the said lorry was going near Ambur Sugar Mills in the National Highway Road, driver of the Lorry bearing Registration No.AP.16/1206 which was going in front of the Eicher lorry, suddenly slowed down without giving any signal or indication. The driver of the Eicher lorry has not anticipated the above said act, hence Eicher lorry driver dashed on the back side of another lorry. Due to the impact, the aforesaid Chinnasamy, Chinnasamy, Rajamanickam and Gnanavel sustained fatal injuries and died on the spot.



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3. Thereafter, the dependants of the deceased/ claimants filed claim petitions before the Motor Accidents Claims Tribunal (Additional District Court), Krishnagiri, claiming compensation of Rs.5,25,000/- in each claim petition.

4. N. Saravanan (died) is the first respondent in the claim petitions. Thavamani is the second respondent in the claim petitions. Natarajan is the third respondent in the claim petitions. The National Insurance Co. Ltd./ Appellant herein is the fourth respondent in the claim petitions. B. Parvathi is the fifth respondent in the claim petitions. The New India Assurance Co. Ltd., Tirupathi is the sixth respondent in the claim petitions.

5. After adjudication, the Motor Accidents Claims Tribunal (Additional District Court), Krishnagiri, awarded the following compensation to the claimants/ petitioners therein and aggrieved by the same, the appellant Insurance Company has filed these appeals.

(i) In M.C.O.P.No.67/2010 the tribunal directed the respondents 4 and 6 therein to pay a sum of Rs.3,49,000/- as compensation to the claimants at the first instance in 80 : 20 ratio respectively and to



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recover the same from the respondents 2, 3 and 5 therein with interest at the rate of 6% p.a., from the date of petition till realisation.

(ii) In M.C.O.P.No.1316/2008 the tribunal directed the respondents 4 and 6 therein to pay a sum of Rs.3,76,000/- as compensation to the claimants at the first instance in 80 : 20 ratio respectively and to recover the same from the respondents 2, 3 and 5 therein with interest at the rate of 6% p.a., from the date of petition till realisation.

(iii) In M.C.O.P.No.1317/2008 the tribunal directed the respondents 4 and 6 therein to pay a sum of Rs.4,29,000/- as compensation to the claimants at the first instance in 80 : 20 ratio respectively and to recover the same from the respondents 2, 3 and 5 therein with interest at the rate of 6% p.a., from the date of petition till realisation.

(iv) In M.C.O.P.No.1318/2008 the tribunal directed the respondents 4 and 6 therein to pay a sum of Rs.3,11,000/- as compensation to the claimants at the first instance in 80 : 20 ratio



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respectively and to recover the same from the respondents 2, 3 and 5 therein with interest at the rate of 6% p.a., from the date of petition till realisation.

6.The learned counsel appearing for the appellant submitted that in the claim petitions, the claimants have stated the occupation of the deceased as, tailor and borewell job; coolie and cattle broker; diploma holder in sidha and studied yoga and did his examination at Chidambaram and is also an experienced and efficient conductor; and coconut business and milk business respectively. Hence, the deceased are not the employees of the owner of the vehicle and hence they were not travelling in the Eicher lorry as owner of goods or representatives of owner of goods and the Tribunal also arrived at the conclusion that the deceased were travelling in the Eicher lorry as unauthorised passengers and there is clear violation of policy.

7.The learned counsel appearing for the appellant further submitted that though the Tribunal held that the deceased were travelling in the Eicher lorry as unauthorised passengers, the Tribunal relied upon the decision of this Court reported in 2011 (1) TNMAC 441 (SC) [United India Insurance Co. Ltd., Vs. K.M.Poonam and others]



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and held that the appellant has collected a premium of Rs.150/- for six employees as per Ex.R.1 policy and if the number of persons were more, they should be treated as third parties and the concept of pay and recover can be adopted in the case, directing the insurer to pay at the first instance with liberty to recover the same from the owner of the vehicles and awarded the compensation, which is not sustainable one.

8.The learned counsel appearing for the appellant further submitted that in the decision of the Hon'ble Division Bench of this Court reported in 2018 (2) TNMAC 731 (Mad) [Bharati Axa General Insurance Co. Ltd., Rep. by its Manager Vs. Aandi and others], the Hon'ble Division Bench has held that the decision in Shivaraj Vs. Rajendra and another [2018 2 TNMAC 273] cannot be taken as a precedent to conclude that the Insurance Company would be liable to pay the compensation in respect of an unauthorized passenger in a goods vehicle in the light of the categorical pronouncement of larger bench of the Hon'ble Supreme Court in New India Assurance Company Vs. Asha Rani and others [2004 2 TNMAC 387] and National Insurance Co. Ltd., Vs. Baljit Kaur and others [2004 1 CTC 210] and concluded that the Tribunal in that case was not right in directing the



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Insurance Company to pay the compensation and giving it the liberty to recover the same from the owner. Hence, the order impugned in these appeals also warrant interference.

9.Per contra, the learned counsel appearing for the claimants submitted that in the decision of this Court reported in 2011 (1) TNMAC 441 (SC) [United India Insurance Co. Ltd., Vs. K.M.Poonam and others] it was held that if the number of persons were more, they should be treated as third parties and the concept of pay and recover can be adopted in the case, directing the insurer to pay at the first instance with liberty to recover the same from the owner of the vehicle and accordingly, the Tribunal awarded compensation, which warrants no interference.

10.Heard the arguments advanced by the learned counsel appearing on either side and perused the materials available on record.

11.The appellant Insurance Company has filed these appeals on the ground whether the un-authorised passengers are entitled to claim compensation. In the decision of the Hon'ble Division Bench of



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this Court reported in **2018 (2) TNMAC 731 (Mad) [Bharati Axa General Insurance Co. Ltd., Rep. by its Manager Vs. Aandi and others]**, the Hon'ble Division Bench has held that the decision in Shivaraj Vs. Rajendra and another [2018 2 TNMAC 273] cannot be taken as a precedent to conclude that the Insurance Company would be liable to pay the compensation in respect of an unauthorized passenger in a goods vehicle in the light of the categorical pronouncement of larger bench of the Hon'ble Supreme Court in New India Assurance Company Vs. Asha Rani and others [2004 2 TNMAC 387] and National Insurance Co. Ltd., Vs. Baljit Kaur and others [2004 1 CTC 210] and concluded that the Tribunal in that case was not right in directing the Insurance Company to pay the compensation and giving it the liberty to recover the same from the owner.

12.It is useful to extract hereunder the relevant portion of the decision of the Hon'ble Division Bench of this Court reported in **2018 (2) TNMAC 731 (Mad) [Bharati Axa General Insurance Co. Ltd., Rep. by its Manager Vs. Aandi and others]**:

"47.However, the Hon'ble Supreme Court invoked the power under Article 142 taking note of the peculiar facts of the case and directed the Insurance Company to pay the



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compensation with liberty to recover. Therefore, in our considered opinion the judgment in National Insurance Company Ltd., Vs. Saju P. Paul reported in MANU/SC/0006/2013 : 2013 (2) SCC 41 cannot also be taken as a precedent, as contended by Mr.N.Vijayaraghavan, to impose the obligation to indemnify the insured in respect of death or bodily injury caused to the persons who are unauthorized passengers in a goods vehicle.

48. *Coming to the latest judgment viz., Shivaraj Vs. Rajendra and another dated 05.09.2018, made in Civil Appeal Nos. 8278 and 8279 of 2018, there again the Hon'ble Supreme Court affirmed the conclusion of the High Court to the effect that the Insurance Company was not liable for the loss or injuries suffered by the appellant or to indemnify the owner of the tractor. However, the Hon'ble Supreme Court taking note of the peculiar circumstances of the case directed the Insurance Company to pay the compensation with liberty to recover the same. Unfortunately, the decisions of the larger bench in New India Assurance Company Vs. Asha Rani and others or National Insurance*



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Company Ltd., Vs. Baljit Kaur and others were not brought to the notice of the two Judge Bench which decided Shivaraj Vs. Rajendra and another referred to supra.

49. *We find that the judgments relied upon by the Hon'ble Supreme Court in Shivaraj Vs. Rajendra and another referred to supra in support of its conclusion that the Insurance Company can be directed to pay the compensation with liberty to recover the same even in respect of a gratuitous passenger or an unauthorized passenger in a goods vehicle, do not support the said conclusion.*

50. *In fact, we find that in none of the judgments referred to viz., National Insurance Co. Ltd. Vs. Swarn Singh & Ors. reported in MANU/SC/0021/2004 : (2004) 3 SCC 297, Mangla Ram Vs. Oriental Insurance Co. Ltd. reported in MANU/SC/0332/2018 : (2018) 5 SCC 656, Rani & Ors. Vs. National Insurance Co. Ltd. & Ors. reported in MANU/SC/0794/2018 : 2018 (9) Scale 310 and Manuara Khatun and Others Vs. Rajesh Kumar Singh And Others reported in MANU/SC/0194/2017 : (2017) 4 SCC 796, the question regarding the liability of the Insurance Company to pay the*



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compensation in respect of an unauthorized passenger in the goods vehicle did arise for consideration. We are therefore of the considered opinion that the judgment of the two Judge bench in Shivaraj Vs. Rajendra and another 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 Vs. Asha Rani and others and National Insurance Company Ltd., Vs. Baljit Kaur and others 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.

51. *No doubt true that in many cases the claimants may not be able to realise the award amount from the owners of the vehicles involved in the accident. But, the said factual situation alone cannot impel us to do something against the provisions of the statute and the decisions of the larger benches of the Hon'ble Supreme Court of*



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India.”

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13.Applying the ratio laid down by the Hon'ble Division Bench of this Court reported in **2018 (2) TNMAC 731 (Mad) [Bharati Axa General Insurance Co. Ltd., Rep. by its Manager Vs. Aandi and others]**, the order impugned in these civil miscellaneous petitions warrants interference.

14.These civil miscellaneous petitions are allowed only in respect of the appellant. The common order dated 17.02.2012 passed by the Motor Accidents Claims Tribunal (Additional District Court), Krishnagiri in M.C.O.P.Nos.1317 of 2008, 67 of 2010, 1318 of 2008 and 1316 of 2008 respectively, is set aside only in respect of the appellant herein/ fourth respondent therein. Liberty is granted to the claimants to recover the compensation amount from the owner of the vehicles and other Insurance Company i.e., respondents 2, 3, 5 and 6 in the claim petitions. The appellant Insurance Company is permitted to withdraw the amount, if any, already deposited by them. No costs. Consequently, the connected miscellaneous petitions are closed.



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Speaking Order/ Non Speaking Order

Index: Yes/ No Internet: Yes/ No

To

1.The Motor Accidents Claims Tribunal
(Additional District Court), Krishnagiri.

M.DHANDAPANI,J.
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And
M.P.Nos.1 to 1 of 2013



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