



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.11.2023

CORAM:

THE HONOURABLE MR. JUSTICE K.RAJASEKAR

Civil Miscellaneous Appeal No.1517 of 2021

and

Civil Miscellaneous Petition No.7961 of 2021

The New India Assurance Co. Ltd.,
Rep. by its Branch Manager,
No.39-C, Bye-Pass Road,
Dharmapuri Town,
Dharmapuri Taluk & District – 636 701. ... Appellant / 2nd respondent

Vs.

1. Muniammal ... Respondent / Petitioner

[R1 remained ex-parte before Tribunal.
Hence, notice to R1 dispensed with]

2. S. Kumar ... Respondent/1st Respondent

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and decree dated 26.11.2019 made in M.C.O.P.No.777 of 2016 on the file of the Motor Accidents Claims Tribunal, Subordinate Judge, Dharmapuri.

For Appellant	:	Mr. K. Krishnamoorthy
For R1	:	Mr. N. Ponraj
For R2	:	No appearance



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JUDGMENT

This Civil Miscellaneous Appeal has been filed by the Insurance Company, challenging the liability fixed on them to indemnify the owner of the vehicle as per the Award in M.C.O.P.No.777 of 2016, dated 26.11.2019, on the file of the Motor Accidents Claims Tribunal, Special Sub Judge, Dharmapuri.

2. The parties are referred to hereunder according to their status and ranking before the Tribunal.

3. The case of the claimant is that on 17.08.2015, at 4.15 p.m., the petitioner was travelling in a lorry bearing Registration No.TN 39 AW 1093, from Thenpennai to Asthagiriur, after taking bath at Thenpennai River on account of death of her relative and while the lorry reached near JJ Nagar on Kambaiballur to Odasalpatti road, the driver lost control and hit on the palmyra Tree, resulting the accident. Due to the accident, the petitioner had sustained grievous injuries all over her body and for the injuries sustained, she has come forward with the claim petition claiming Rs.5,00,000/- as compensation.



4. The first respondent who is the owner of the lorry has not contested the claim and was remained ex-parte. The second respondent insurer of the lorry has contested the claim and filed counter, contended that totally 30 passengers were transported in the lorry as unauthorizedly and since they are gratuitous passengers who travelled in the goods vehicle, the claimant herein is not entitled to claim compensation from the Insurance Company.

5. Before the Tribunal, on the side of the claimant, P.W.1 was examined and Exs.P1 to P11 were marked. On the side of the second respondent, R.W.1 was examined and Ex.R1 was marked.

6. The learned counsel for the Insurance Company has submitted that it is the admitted case of the claimant that she had travelled in the lorry as gratuitous passenger in the goods vehicle. It is settled law that the passengers who travelled in the goods vehicle, need not be compensated by the Insurance Company and since it is a violation of policy condition, the owner of the vehicle alone is liable to pay the compensation to the injured. He has also relied on the following Judgments:



(1) *New India Assurance Co. Ltd., v. Asha Rani and Ors [2001 (6)*

SCC 724]

(2) *National Insurance Co. Ltd., v. Baljit Kaur [2004 (2) SCC 1]*

(3) *Bharti Axa General Insurance Company Limited vs. Aandi and Others [2018 (2) TN MAC 731 (DB)].*

7. The learned counsel for the claimant submitted that the accident had happened in the year 2016 and now seven years have lapsed and already part of amount deposited has also been withdrawn by the injured in this case. Hence prays to modify the award by following the Principle of “Pay and Recover”.

8. I have considered the submissions made on both sides and also perused the records.

9. The liability of the Insurance Company to indemnify the owner of vehicle in cases of injury or death to gratuitous passengers is well settled and no longer *res-integra*. Recently, the Division Bench of this Court in *Bharti Axa General Insurance Company Limited's* case cited supra, has considered the various previous Judgments of the Apex Court, including the



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Judgment in *National Insurance Company Ltd., vs. Saju B Paul and Another* [2013 (1) TN MAC 25 SC : 2013 (2) SCC 41] and has reiterated, based on the Judgment in *New India Assurance Co. Ltd., v. Asha Rani and Ors* case that, there is no obligation to indemnify the insured in respect of death or bodily injured persons, who are unauthorized passengers in goods vehicle. It is observed as follows:

“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.

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*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:-*



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“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 in various decisions rendered from time to time, the following pictures emerges:



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(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



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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."

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46. The next decision relied upon by Mr.N.Vijayaraghavan in support of his contention that this Court has ample power to direct the Insurance Company to pay the compensation with liberty to recover the same even in respect of a gratuitous passenger in a goods vehicle is National Insurance Company Ltd., Vs. Saju P. Paul reported in 2013 (2) SCC 41. There again the Hon'ble Supreme Court held that the High court was not right in directing the Insurance Company to pay the compensation. In fact, the Hon'ble Supreme Court while dealing with the liability of the Insurance Company to pay the



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compensation for a spare driver who was travelling in a goods vehicle observed as follows:-

“17. The High Court misconstrued the proviso following sub-Section (1) of Section 147 of the 1988 Act. What is contemplated by the proviso to Section 147(1) is that the policy shall not be required to cover liability in respect of death or bodily injury sustained by an employee arising out of and in the course of his employment other than a liability arising under the Workmen's Compensation Act, 1923. The claimant was admittedly not driving the vehicle nor he was engaged in driving the said vehicle. Merely because he was travelling in the cabin would not make his case different from any other gratuitous passenger.

18. The impugned judgment is founded on a misconstruction of Section 147. The High Court was wrong in holding that the Insurance Company shall be liable to indemnify the owner of the vehicle and pay the compensation to the claimant as directed in the award by the Tribunal.”

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 compensation with liberty to recover. Therefore, in our considered opinion the judgment in National Insurance Company Ltd., Vs. Saju P. Paul reported in 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.”

10. In this case in hand, the admitted case of claimant is that,



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she has travelled in the goods vehicle as a passenger and she is not an authorized passenger. The Tribunal has also held that, she is an unauthorized passenger however, since the driver of the vehicle allowed the claimant to travel in goods vehicle, the owner of vehicle and the Insurance Company are liable to pay compensation, which is against the law laid down by the Hon'ble Apex Court in ***New India Assurance Co. Ltd., v. Asha Rani and Ors*** case. In view of the settled Principle laid down by the ***Asha Rani case*** and followed in subsequent judgments of this Court, the award of Tribunal directing the Insurance Company to indemnify the Respondent No.1/Owner of vehicle is hereby set aside and the first respondent alone is liable to pay the compensation amount.

11. Accordingly, the Civil Miscellaneous Appeal is allowed. The Judgment and the Decree made in M.C.O.P.No.777 of 2016, dated 26.11.2019, by the Motor Accidents Claims Tribunal, Special Subordinate Judge, Dharmapuri is hereby confirmed and particular portion that the Insurance Company alone is directed to pay the compensation to the claimant is modified that, the first respondent who is the owner of the lorry is directed to pay the compensation amount awarded by the Tribunal to the claimant. On such deposit the claimant is entitled to withdraw the same, less



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the amount if any, already withdrawn. The Appellant-Insurance Company is permitted to withdraw the award amount, if any, lying in the credit of M.C.O.P.No.777 of 2016, if the award amount has already been deposited by them. In other aspects the award of the Tribunal shall stand confirmed. There shall be no order as to costs. Consequently, the connected miscellaneous petition stands closed.

06.11.2023

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Index:Yes/No

Speaking Order:Yes/No

Neutral Citation Case: Yes/No

To:

1. The Special Subordinate Judge,
Motor Accidents Claims Tribunal,
Dharmapuri.
2. The Section Officer,
V.R.Section,
High Court,
Chennai.



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