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C.M.A.No.1962 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.07.2023

CORAM:

THE HONOURABLE MR. JUSTICE K.RAJASEKAR

Civil Miscellaneous Appeal No.1962 of 2014
and
Miscellaneous Petition No.1 of 2014

The National Insurance Company Ltd.,
No.7, Rajaveedi,
Erode Main Road,
Gobi Town and Taluk.

... Appellant / 2nd respondent

Vs.

1. Sakthivel
2. P.Prakash
[R2 remained ex-parte before Tribunal.
Hence, notice to R2 dispensed with]

... Respondent / Petitioner

... Respondent/1st Respondent

Civil Miscellaneous Appeal filed under Section 173 of the
Motor Vehicles Act, 1988, against the Judgment and decree dated
20.03.2014 made in M.C.O.P.No.335 of 2011 on the file of the Motor
Accidents Claims Tribunal, Sub Court, Sathyamangalam.

For Appellant	:	Mr. D. Bhaskaran
For R1	:	Mr. B. Manibharathi For Mr. N. Chinnaraj
For R2	:	Dispensed with



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JUDGMENT

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This Civil Miscellaneous Appeal has been filed by the Insurance Company, challenging the Award passed in M.C.O.P.No.335 of 2011, dated 20.03.2014 by the Motor Accidents Claims Tribunal, Sub Judge, Sathyamangalam, whereby, the Tribunal has directed the Insurance Company to pay the compensation to the claimant and to recover the same from the owner of the vehicle by following the principle of “Pay and Recover”.

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

3. The case of the claimant is that on 10.05.2011 at about 5.00 pm., the claimant, namely Sakthivel, along with his brother Kandasamy and uncle Sathyamoorthi were travelled in a goods Van bearing Registration No.TN 67 A 8515, for the purpose of bringing paddy bags, while their vehicle reached near T.N. Palayam, on the West to East direction, due to the rash and negligent driving of the driver of the goods van resulted in van being capsized, resulted causing injuries to the persons, who were inside the van. Based on the complaint given by one T.K.Kuppusamy, a criminal case was registered in Crime No.154/2011, under Sections 279, 337 and 338 of



IPC on the file of the Bangalapudur Police Station. The claimant was an agricultural labour and suffered injuries on his right leg, back and right ear resulting permanent disabilities and hence, filed Claim Petition claiming compensation for a sum of Rs.4,50,000/-.

4. The owner of the van has not contested the claim and remained ex-parte.

5. The Insurance Company filed counter and contended that the claimant has travelled in the goods vehicle as a gratuitous passenger hence, the Insurance Company is not liable to indemnify the owner of the van. The Insurance Company has not disputed the injuries sustained by the claimant and loss of income claimed by the claimant.

6. Before the Tribunal, on the side of the claimant, P.W.1 and P.W.2 were examined and Exs.P1 to P14 were marked. On the side of the respondents, R.W.1 was examined and Ex.R1 was marked.

7. After hearing both sides, the Tribunal has passed an award holding that the claimant has travelled in the van only as a gratuitous



passenger. However, by relying on the Judgment of the Hon'ble Supreme Court in ***National Insurance Company Ltd., vs. Saju B Paul and Another*** reported in ***2013 (2) SCC 41*** and ***S.Iyyapan vs. United India Insurance Co., Ltd and Another*** in ***Civil Appeal 4834 of 2013, dated 01.07.2013***, held that the Insurance Company is liable to pay the compensation and permitted to recover the same from the owner of the vehicle-first respondent and also awarded a sum of Rs.1,39,750/- for the injuries sustained by the claimant as a compensation under various heads.

8. Aggrieved over the Award, the Insurance Company has filed the present appeal, on the ground that since the claimant is a gratuitous passenger, the Tribunal has erred in following the principle of pay and recover and he has also relied on the Judgment of the Division Bench of this Court in ***Bharati AXA General Insurance Company Ltd., vs. Anandi and two others*** reported in ***2018(2) TN MAC 731 (DB)***. He further submitted that the Judgment of the Hon'ble Apex Court in ***National Insurance Company Ltd., vs. Saju B Paul and Another***, cited above, is not applicable to the present case and prays to absolve the liability fixed on the Insurance Company.



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9. The learned counsel appearing on behalf of the claimant has submitted that the claimant has travelled in the van for bringing paddy bags and he was engaged as a coolie to bring the paddy bags and that he was travelled inside the cabin, there is no violation of any statutory rule and that he shall not be a gratuitous passenger. He further submitted that the vehicle is permitted to carry 3 persons in the cabin hence there is no violation under Section 147(2) of the Motor Vehicles Act, the Insurance Company is liable to pay the compensation.

10. I have considered the rival submissions on both sides and also perused the materials placed on record.

11. The evidence of P.W.1 shows that the claimant had travelled along with his family members, for the purpose of procuring the paddy bags from Chinna Vaikalpochi Thottam, he was seated next to the driver, inside the cabin. In the cross examination, he has also admitted that totally 5 persons travelled inside the cabin at the time of accident. The evidence of P.W.1 itself is sufficient to hold that, he has not travelled along with goods, travelled only for the purpose of bringing paddy bags. Hence, he cannot be claimed himself as a load man. Similarly, it is a settled law that



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no persons are permitted to travel in the goods vehicle as a gratuitous passenger. The Tribunal has also rendered specific finding that, the claimant has travelled in the vehicle only as gratuitous passengers. The claimant have accepted the same by not filing any appeal against such finding.

In *National Insurance Company Ltd., vs. Sajan Paul case* cited supra, the Hon'ble Apex Court has considered the point whether spare driver who was engaged to drive another vehicle is entitled for claim compensation and it is held that, the claimant who was admittedly not driving the lorry or not no coverage for second driver, or spare driver, Insurer is not liable to indemnify the owner of the lorry. This Judgment is not applicable to the case in hand and the Tribunal wrongly applied the same.

12. In this case, the petitioner was travelled along with 4 other persons in the cabin, which itself sufficient to hold that he has travelled in the goods vehicle as a gratuitous passenger and as per the settled principles of law stated in *New India Assurance Company Limited vs. Asha Rani* reported in **2001 (6) SCC 724** , and also the Judgment of the Division Bench of this Court in *Bharati AXA General Insurance Company Ltd., vs.*



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Aandi and two others reported in **2018(2) TNMAC 731 (DB)**, that, the Insurance Company is not liable to pay compensation as they are not covered under Section 147(1) of the Motor Vehicles Act. Accordingly, the contention of the claimant is liable to be rejected and the order passed by the Tribunal adopting the principle of pay and recovery is erroneous and the same is hereby set aside. Accordingly the claimant is entitled to claim compensation only from the first respondent, the Insurance Company is not liable to pay the compensation amount to the claimant.

13. Accordingly, the Civil Miscellaneous Appeal is allowed. The Judgment and the Decree made in M.C.O.P.No.335 of 2011, dated 20.03.2014, by the Motor Accidents Claims Tribunal, Sub Judge, Sathyamangalam is hereby confirmed and the portion that the Insurance Company is directed to pay the compensation on behalf of the Owner of the vehicle at the first instance and recover the same from the owner is modified, that the second respondent-Owner of the vehicle 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 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.335



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of 2011, 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.

27.07.2023

ssi

Index:Yes/No

Speaking Order:Yes/No

Neutral Citation Case: Yes/No

To:

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



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K.RAJASEKAR,J.
ssi

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