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C.M.A.Nos.2641 and 2642 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.08.2023

CORAM:

**THE HONOURABLE MR.JUSTICE K.RAJASEKAR**

Civil Miscellaneous Appeal Nos.2641 and 2642 of 2014  
and  
Miscellaneous Petition Nos.1 and 1 of 2014

C.M.A.No.2641 of 2014:

The United India Insurance Company Ltd.,  
Divisional Office,  
Vellore Town.

... Appellant/2<sup>nd</sup> respondent

Vs.

1. C. Varadharajulu

... Respondent/Petitioner

2. Venugopal

... Respondent/1<sup>st</sup> Respondent

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Award and Decree dated 29.04.2014 made in M.C.O.P.No.331 of 2009 on the file of the Motor Accidents Claims Tribunal, Sub Court, Gudiyattam, Vellore District.

|               |   |                       |
|---------------|---|-----------------------|
| For Appellant | : | Mr. D. Bhaskaran      |
| For R1        | : | Mr. G. Vinodh Kumar   |
| For R2        | : | Mr. Swami Subramanian |



C.M.A.Nos.2641 and 2642 of 2014

C.M.A.No.2642 of 2014:

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The United India Insurance Company Ltd.,  
Rep. by its Branch Manager,  
No.17, G.P.M. Street, Ambapuram,  
Gudiyattam, Vellore District.

... Appellant / 3<sup>rd</sup> respondent

Vs.

1. N. Subramanian

... Respondent/Petitioner

2. Venugopal

3. N. Sivaji

... Respondents/Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Common Award and Decree made in M.C.O.P.No.231 of 2010, dated 29.04.2014, on the file of the Motor Accidents Claims Tribunal, Sub Court, Gudiyattam, Vellore District.

|               |   |                       |
|---------------|---|-----------------------|
| For Appellant | : | Mr. D. Bhaskaran      |
| For R1        | : | Mr. G. Vinodh Kumar   |
| For R2        | : | Mr. Swami Subramanian |
| For R3        | : | Died                  |

### COMMON JUDGMENT

These appeals arising out of Common Award passed by the Tribunal in M.C.O.P.Nos.331 of 2009 and 231 of 2010, on the file of the Motor Accidents Claims Tribunal, Sub Court, Gudiyattam, Vellore District, whereby, the Tribunal has granted compensation of Rs.1,78,569/- and Rs.1,93,000/- respectively in favour of the claimants therein.

2. The parties are referred to hereunder according to status and



ranking before the Tribunal.

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3. The case of the claimants are as follows:

On 15.07.2009 at about 3.00 p.m., the claimants were travelled in the Tractor bearing Registration No.TN 23 M 8438 for unloading mangoes from Dhanagundapalli to Bangarupalem, while the Tractor reached near Keeramandhai Village, due to the rash and negligent driving, the driver lost control and Tractor capsized, resulted in injuries to the claimants. The accident had taken place due to rash and negligent driving of the driver of the Tractor. Hence the claimants filed Claim Petitions separately to the tune of Rs.5,00,000/- and Rs.10,00,000/- respectively for the injuries sustained by them.

4. The owner of the vehicle has not appeared before the Tribunal and remained ex-parte in both M.C.O.Ps. The Driver who is arrayed as first respondent in M.C.O.P.No.231 of 2010, remained ex-parte.

5. The third respondent-Insurance Company filed counter and contended that the accident was not occurred due to rash and negligent driving of the driver of the Tractor. The owner and driver of the Tractor have



violated the policy conditions and the vehicle is used for commercial purposes. The claimants have also travelled in the Trailer as a gratuitous passengers. Hence, the Insurance Company is not liable to indemnify the owner of the vehicle and also disputed the compensation fixed by the Tribunal.

6. Both the Claim Petitions were taken up together by the Tribunal for enquiry and common evidence was recorded in M.C.O.P.No.331 of 2009.

7. Before the Tribunal, on the side of the claimants, P.W.1 to P.W.3 were examined and Exs.P1 to P12 were marked. On the side of the respondent-Insurance Company R.W.1 was examined and Ex.R1 was marked.

8. After considering oral and documentary evidence, the Tribunal in Point No.1 has held that the negligent driving of the second respondent i.e., the driver of the Tractor is responsible for the accident. In Point No.2, the Tribunal has considered the liability to pay compensation on the part of the Insurance Company and held that the Tractor was used for commercial purposes and there is a violation of policy conditions. However,



after terming the claimants as third parties, directed the Insurance Company to pay compensation with right to recover the same from the first and second respondents. Thereafter, the Tribunal has considered the quantum of compensation to be awarded and passed an award, granting a sum of Rs.1,78,569/- to the claimant in M.C.O.P.No.331 of 2009 and a sum of Rs.1,93,000/- to the claimant in M.C.O.P.No.231 of 2010 for compensation.

9. Aggrieved over the compensation awarded by the Tribunal that directing the Insurance Company to pay compensation to the petitioners and recover the same from the first and second respondents, this appeal has been filed by the Insurance Company.

10. Mr. D. Bhaskaran, learned counsel for the Insurance Company has submitted that the claimants herein have travelled as an unauthorized passengers in the Trailer attached with Tractor. This aspect has not been considered by the Tribunal and since the Tractor was used for commercial purpose for transporting the mangoes which is not agricultural activity, the Insurance Company shall be absolved from indemnify the owner of the vehicle.

11. The learned counsel also relied on the Judgment of this



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Court in ***C.M.A.No.2649 of 2017, the United India Insurance Company***

***Limited vs. Saraswathi and two others***, wherein, this Court has considered the issue, whether the persons who travelled in the Trailer as loadmen are entitled to claim compensation or not. This Court, after considering the Judgments of the Hon'ble Apex Court in ***New India Assurance Co., Ltd., vs. Asha Rani and Ors., [2001 (6) SCC 724]***; ***National Insurance Co., Ltd., vs. Baljit Kaur [2004 (2) SCC 1 : AIR 2004 SC 1340]*** and the Judgment of this Court in ***Bharti Axa General Insurance Company Limited vs. Aandi and Others*** reported in ***2018 (2) TN MAC 731 (DB)*** has to set aside the award of the Tribunal, directing the Insurance Company to indemnify the owner of the vehicle for payment of compensation to the gratuitous passengers who travelled in the Tractor/ Trailer.

12. The contention of the claimants is that, they have travelled in the Trailer as a loadmen to unload the mangoes and since the Trailer is also insured with the Insurance Company herein, the Tribunal has rightly awarded compensation and since the vehicle is used for commercial purpose, the Tribunal has adopted the principle of “Pay and Recover” hence, prays to confirm the award.



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13. In the case in hand, it is an admitted case of the claimants that they travelled in the Trailer, while carrying mangoes. They claim compensation terming themselves as loadmen travelled in goods vehicle and according to them, the Insurance Company has Statutory Obligation to pay compensation if the loadmen travelled in goods vehicle suffered bodily injury as per Section 147 (1) of the Motor Vehicles Act.

14. Recently, the Full Bench of Karnataka High Court in **2021 SCC Online Karnataka 12137 [Gandhilingappa @ Gandhilinga and Another vs. K.Guleppa and Others]** in paragraph No.21 by following the judgment of the Hon'ble Apex Court passed in **2004 (8) SCC 697 National Insurance Company Ltd., vs Chinnama and others** held that the person travelled in the Tractor Trailer would not fall within the category of persons travelled along with the goods and they could not be termed as third parties.

15. In paragraph No.21 which reads as under:

*“21. In fact, the issue whether a tractor is a goods carriage arose for consideration before a Bench of three Hon'ble Judges of the Apex Court in the case of V.Chinnamma, (supra). In paragraph 15 and 16, the Apex Court has dealt with the issue. In categorical terms, it has been held that a tractor by itself is not a*



*goods carriage. However, in paragraph 16, the Apex Court observed that a tractor fitted with a trailer may or may not answer the definition of goods carriage contained in Section 2(14) of the M.V.Act. The observations made by the Apex Court in paragraphs 15 and 16 are relevant which read thus:*

*“15. Furthermore, a tractor is not even a goods carriage. The expression “goods carriage” has been defined in Section 2(14) to mean*

*“any motor vehicle constructed or adapted for use solely for the carriage of goods, or any motor vehicle not so constructed or adapted when used for the carriage of goods”*

*whereas, “tractor” has been defined in Section 2(44) to mean.*

*“a motor vehicle which is not itself constructed to carry and load (other than equipment used for the purpose of propulsion); but excludes a roadroller”.*

*“Trailer” has been defined in Section 2(46) to mean*

*“any vehicle, other than a semi-trailer and a sidecar, drawn or intended to be drawn by a motor vehicle”.*

*16. A tractor fitted with a trailer may or may not answer the definition of goods carriage contained in Section 2(14) of the Motor Vehicles Act. The tractor*



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*was meant to be used for agricultural purposes. The trailer attached to the tractor, thus, necessarily is required to be used for agricultural purposes, unless registered otherwise. It may be, as has been contended by Mrs.K.Sharda Devi, that carriage of vegetables being agricultural produce would lead to an inference that the tractor was being used for agricultural purposes but the same by itself would not be construed to mean that the tractor and trailer can be used for carriage of goods by another person for his business activities. The deceased was a businessman. He used to deal in vegetables. After he purchased the vegetables, he was to transport the same to the market for the purpose of sale thereof and not for any agricultural purpose. The tractor and trailer, therefore, were not being used for agricultural purposes. However, even if it be assumed that the trailer would answer the description of “goods carriage” as contained in Section 2(14) of the Motor Vehicles Act, the case would be covered by the decisions of this Court in Asha Rani and other decisions following the same, as the accident had taken place on 24.11.1991 i.e., much prior to coming into force of the 1994 amendment.”*

16. In this case, the Tribunal has recorded a finding, based on the evidence of P.W.2 (Claimant in M.C.O.P.No.231 of 2010) that, the Tractor was hired by Sivaji (Driver of Tractor) from the owner of vehicle, to



Transport Mangoes from a Mango Farm. Since the Tractor and Trailer has been used for hire and also to transport mangoes, the Tribunal has held that the same was used for commercial purpose. This Court in ***C.M.A.No.2649 of 2017, the United India Insurance Company Limited vs. Saraswathi and two others***, has considered the case of the claim made for the death of person travelled in the Trailer, and after considering the Judgments of the Hon'ble Apex Court in ***New India Assurance Co. Ltd., v. Asha Rani and Ors.***, reported in ***2001 (6) SCC 724***; ***National Insurance Co. Ltd., v. Baljit Kaur*** reported in ***2004 (2) SCC 1*** and ***Bharti Axa General Insurance Co. vs Smt. Poonam And Anr.***, this Court has held in Paragraph No.26, as follows:

*“26. The issue is thus settled in case of compensation to be paid for sufferings of gratuitous passenger and it would be extremely inappropriate, if this issue were to again meander around and be held otherwise than as laid down. The law laid down is that the Tribunal was not right in directing the insurance company to pay the compensation and then recover the same from the owner of the offending vehicle.”*

17. The Judgment of the Full Bench of Karnataka High Court cited above, is squarely apply this Court, since the claimants have travelled in the goods vehicle by sitting in the Trailer which is not having any



permissible seating capacity enabling the loadmen to travel in the Trailer.

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They are not entitled to travel in the Trailer on the ground that they are loadmen. As per the policy condition, the transporting any person in the Trailer is not permissible. Hence, the claimants shall be termed only as a gratuitous passengers and the Insurance Company is not liable to indemnify the owner of the vehicle as held by the Hon'ble Apex Court in ***Asha Rani and Baljit Kaur*** cases cited above.

18. Accordingly, both the appeals filed by the Insurance Company is allowed. The Award and Decree passed by the Tribunal in M.C.O.P.Nos.331 of 2009 and 231 of 2010 is hereby modified that the claimants are entitled to claim compensation only against the Respondent No.1 in MCOP No.331 of 2009 and in MCOP No.231 of 2010 and that the Insurance Company is not liable to pay any compensation to the claimants. In other aspects the award of the Tribunal shall stand confirmed. The Insurance Company is permitted to withdraw the compensation amount if any, already deposited in both M.C.O.Ps. There shall be no order as to costs. Consequently, connected miscellaneous petitions stands closed.



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Index: Yes/No

Speaking Order: Yes/No

Neutral Citation Case: Yes/No

To:

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

K.RAJASEKAR,J.

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