IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.10.2023

C O R A M

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

C.M.A.No.747 of 2014
M.P.No.1 of 2014

M/s.National Insurance Co.Ltd,
Rep by its Branch Manager,
Branch Office,
Bharmapuri. ... Appellant/Respondent-II

Vs

1.Siva Basamma ... Respondent-I/Petitioner-I

2.Sundaresan (Minor) ... Respondent-II/Petitioner-II

3.Dhinesan (Minor) ... Respondent-III/Petitioner-III
(Minor Petitioners 2 & 3 are Rep by Mother/
Next friend 1st Petitioner Siva Basamma)

4.A.Pouna ... Respondent-IV/Respondents-I

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the Judgement and Decree passed in M.C.O.P.No.587 of 2008 on 07.02.2012 on the file of the Learned Motor Accident claims Tribunal (Principal District Judge) at Krishnagiri District.

For Appellant ... M/s.J.Chandran

For Respondents ... No Appearance for R1 to R4

JUDGEMENT

Aggrieved by the impugned award 07.02.2012 passed by the Motor Accident Claims Tribunal, Principal District Judge, Krishnagiri District made in M.C.O.P.No.587 of 2008, the Insurance Company has filed the present appeal.

2. On 09.02.2006, at about 9 P.M, when the deceased Buddalingappa along with one Koorappa were travelling as passengers in a Lorry bearing Reg.No.T.N.29 A 9180, which was driven by its driver in a rash and negligent manner, the Lorry capsized on the left side of the road due to which, the deceased died on the spot. Aggrieved by the death of the deceased in the said accident, the Respondents/claimants who are the dependants of the deceased filed a claim petition before the Motor Accident claims Tribunal, Principal District Judge, Krishnagiri District in M.C.O.P.No.587 of 2008 seeking compensation towards the death of the deceased. After adjudication, the

Tribunal has awarded a sum of Rs.5,39,000/- as compensation to the claimants and has directed the 2nd Respondent/Insurance Company to pay and recover the compensation amount from the 4th respondent/owner of the vehicle. Challenging the said order dated 07.02.2012, the present appeal has been filed by the Insurance Company questioning the said order.

3. Learned counsel appearing for the 2nd Respondent/Insurance Company denied their liability to compensate the respondents/claimants stating that the deceased along with one Koorappa were travelling as gratuitous passengers in the said Lorry which is in violation of policy conditions as no premium was paid by the 4th respondent/owner of the vehicle to cover third party risk. The deceased having travelled as an unauthorized passenger, cannot claim any compensation from the 2nd respondent and thus the Insurance Company is not liable to pay any compensation to the claimants. Further, the compensation awarded by the Tribunal is highly excessive which requires reconsideration. Accordingly, he prayed for allowing this appeal.

4. Though notice was sent to Respondents 1 to 4 and their name printed in the causelist, none appeared on behalf of the respondents today. Considering the pendency of the Appeal which is of the year 2014, this Court is inclined to dispose of the same based on the materials available on record.

5. The major issue that arises for consideration in the present appeal is whether the Insurance Company is liable to compensate the claimants towards the death of the deceased who travelled in a goods vehicle as a gratuitous passenger.

6. The issue which is raised in the present appeal 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.
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> *“ 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:-*
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> > *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.*
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> *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:*
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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).*
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> *(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.*

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

8. 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. In fact, the Tribunal has rendered a finding that the deceased is a gratuitous passenger, but 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. Therefore, to the extent that the order directs the insurance company to pay the compensation and recover the same from the owner of the vehicle cannot be sustained.

9. In view of the observations made above, the decision of the Division Bench being squarely attracted to the case on hand, the appeal deserves to be allowed and the order of the Tribunal insofar as directing the insurance company to pay the compensation and recover the same from the owner of the vehicle is liable to be set aside. However, the compensation quantified and ordered to be paid to the claimants is affirmed. Liberty is granted to the

respondents/claimants to recover the compensation quantified by the Tribunal from the owner of the vehicle.

10. For the reasons aforesaid, the civil miscellaneous appeal is allowed with the aforesaid observations and directions. However, there shall be no order as to costs. Consequently, the miscellaneous petition is closed.

06.10.2023

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

NHS

To

1.The Motor Accident Claims Tribunal,
Principal District Judge,
Krishnagiri District.

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

M.DHANDAPANI, J

NHS

C.M.A.No.747 of 2014

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