



*C.M.A.No.420 of 2019 &
C.M.A.Nos. 2116 to 2123 of 2012*

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.11.2023

C O R A M

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

C.M.A.No.420 of 2019 & C.M.A.Nos.2116 to 2123 of 2012
and M.P.Nos.1 of 2012
and Cross.Obj.No.83 of 2012

C.M.A.No.420 of 2019

Kesavan

... Appellant/Petitioner

Vs

1.Ibrahim

2.Divisional Manager

... Respondents/Respondents

Cross.Obj.No.83 of 2012
in C.M.A.No.2119 of 2012

Divisional Manager,
The New India Assurance Company Ltd.,
No.42, Big Street,
Thiruvannamalai.

... Cross Objector

Vs.

1.Rajamani

2.Ibrahim

... Respondents



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C.M.A.Nos. 2116 to 2123 of 2012*

Prayer in CMA in 420 of 2019: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and decree dated 29.07.2011 and made in M.A.C.T.O.P.No.1174/2006 on the file of the Motor Accident Claims Tribunal, Additional Subordinate Judge, Thiruvannamalai.

Prayer in Cross Objection : Cross Objection filed under Order 41 Rule 22 of the Civil Procedure Code against the award dated 29.07.2011 and made in M.C.O.P.No.1055/2006 on the file of the Motor Accident Claims Tribunal (Additional Subordinate Judge).

In all CMAs :

For Appellant	... M/s.A.Subadra for M/s.M.Malar (In CMA.No.420 of 2019)
	... Mr.K.Vinod (In CMA Nos.2116 to 2123 of 2012)
For Respondents	... Given up - [R1] ... Mr.K.Vinod - [R2] (In C.M.A.No.420 of 2019)
	... M/s.A.Subadra for M/s.M.Malar [R1] ... Given up – [R2] (In CMA Nos.2116 to 2123 of 2012)



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Cros.Obj.No.83 of 2012

For Cross Objector ... M/s.A.Subadra
for M/s.M.Malar

For Respondents ... Mr.K.Vinod [R1]
... Given up [R2]

COMMON JUDGMENT

All the appeals arise out of a single Accident.

2. C.M.A.Nos.2116 to 2123 of 2012 have been filed by the Appellant/Insurance Company challenging the common impugned award dated 29.07.2011 passed by the Motor Accident Claims Tribunal, Additional Subordinate Judge, Thiruvannamalai in M.A.C.T.O.P.Nos.1048, 1049, 1050, 1055, 1058, 1149 & 1174 of 2006 & M.A.C.T.O.P.No.354 of 2007 questioning the liability of the insurer while C.M.A.No.420 of 2019 has been filed by the claimant in M.A.C.T.O.P.No.1174 of 2006 seeking enhancement of compensation awarded by the Tribunal.



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3. The Cross Objection has been filed by the 1st Respondent/Claimant in C.M.A.No.2119 of 2012 seeking enhancement of compensation.

4. It is the case of the claimants that on 11.06.2006, at about 2.30 P.M., when the claimants were travelling as passengers in share auto bearing regn.No.25 E 1616 belonging to the first respondent/owner of the vehicle in C.M.A.No.420 of 2019, it was driven in a rash and negligent manner and when the driver of the said vehicle applied sudden brake, the auto capsized as a result of which, the claimants sustained grievous injuries for which the case was registered against the driver of the said vehicle in Crime No.249 of 2006. Thereafter, the respective claim petitions were filed by the claimants claiming compensation towards the injuries sustained by them. After adjudication, the Tribunal vide the common impugned award dated 29.07.2011 has awarded a sum of Rs.12,500/-, Rs.12,500/-, Rs.10,000/-, Rs.88,000/-, Rs.7,500/-, Rs.37,500/-, Rs.1,24,000/- & Rs.1,02,000/- to the claimants in respective claim petitions and directed the Appellant/Insurance Company to pay the respective claim amounts to the claimants. Aggrieved by the said award, the present



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appeals have been filed.

5. Learned counsel appearing for the Appellant/Insurance Company in C.M.A.Nos.2116 to 2123 of 2012 denied their liability to indemnify the owner of the vehicle stating that the vehicle involved in the said accident is not a share auto as alleged by the claimants and that it is a goods carriage and the seating capacity of the said vehicle is only two however, the claimants were travelling in the said vehicle as gratuitous/unauthorized passengers which is in violation of policy conditions and no additional premium was paid by the 1st respondent/owner of the vehicle to cover third party risk. Therefore, the claimants being gratuitous passengers cannot claim any compensation at the hands of the Appellant/Insurance Company. However, the Tribunal, without properly adjudicating the aforesaid issue, had erroneously fastened the liability against the Insurance Company to pay the compensation quantified by the Tribunal which is not sustainable. Hence, the said findings rendered by the Tribunal is liable to be interfered with.



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6. Per Contra, learned counsel appearing for the respondents/claimants would submit that admittedly, the claimants were employed as coolie with the 1st respondent/owner of the vehicle and that the claimants were travelling in the said vehicle along with the goods. In view of Rule 236 of the Tamil Nadu Motor Vehicle Rules, six persons can travel along with the goods in the cabin of the vehicle. Applying the said rule and after considering the oral and documentary evidence, the Tribunal has categorically held that the claimants were travelling along with the goods from which it is evident that the claimants were not travelling as gratuitous passengers and accordingly, the liability is fastened against the Insurance/company. The said findings rendered by the Tribunal does not require any interference.

7. Learned counsel appearing for the claimant in C.M.A.No.420 of 2019 would submit that when the Tribunal had accepted that it was the driver who had driven the vehicle in a rash and negligent manner which was the cause for the said accident and when the doctor viz., P.W.10 had clearly



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deposed about the injuries suffered by the claimant and has assessed the partial permanent disability at 50%, the compensation amount of Rs.1,24,000/- awarded by the Tribunal is grossly inadequate which requires enhancement. Further, the compensation awarded under other heads is also minimal. Accordingly, she prayed for appropriate enhancement of the award amount.

8. This Court gave its anxious consideration to the learned counsel appearing for the appellant-Insurance Company and learned counsel for the respondents/claimants and perused the materials available on record.

9. The major issue that arises for consideration in C.M.A.Nos.2116 to 2123 of 2012 is whether the Insurance Company is liable to compensate the claimants who travelled in a vehicle which is alleged to be a goods vehicle as gratuitous passengers towards the injuries sustained by them on account of the said accident.



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10. The issue raised with regard to the liability of the insurer of the vehicle in respect of gratuitous passengers in a goods vehicle, 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***



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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.*

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.**



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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**



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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 picture emerges:

(i)The Insurance Policy is required to cover the liability envisaged under Section 147, but



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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



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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*



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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.*

11. 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.

12. 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 passengers. In fact, the Tribunal has rendered a finding that the claimants are gratuitous passengers, but had erroneously directed the insurance company to pay the compensation on behalf of the owner of the vehicle, which is against



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the ratio laid down in the aforesaid decision. Therefore, to the extent that the order directing the insurance company to pay the compensation on behalf of the owner of the vehicle cannot be sustained.

13. In view of the ratio laid down above, the appeals filed by the Insurance Company in C.M.A.Nos.2116 to 2123 of 2012 deserves to be allowed and the order of the Tribunal insofar as directing the insurance company to pay the compensation is liable to be set aside. Accordingly, the liability is fastened on the 1st respondent/owner of the vehicle in C.M.A.No.420 of 2019. 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.

14. Insofar as the question of compensation awarded by the Tribunal, this Court, on perusal of the impugned award, is of the view that considering the age, income and the nature of injuries sustained by the individual



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claimants, the Tribunal has rightly fixed the quantum of compensation to be paid on account of the said accident which does not require any interference.

15. In the result, C.M.A.Nos.2116 to 2123 of 2012 filed by the Insurance Company are allowed and C.M.A.No.420 of 2019 filed by the claimants is dismissed. However, the impugned award passed by the Tribunal insofar as the quantum of compensation stands confirmed. Accordingly, the 1st Respondent in C.M.A.No.420 of 2019 directed to deposit the compensation amount awarded in the respective claim petitions to the credit of M.A.C.T.O.P.Nos.1048, 1049, 1050, 1055, 1058, 1149 & 1174 of 2006 & M.A.C.T.O.P.No.354 of 2007 along with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and costs within a period of four (4) weeks from the date of receipt of a copy of this judgment. On such deposit being made, the Tribunal is directed to transfer the amount directly to the bank account of the respondents/claimants in C.M.A.Nos.2116 to 2123 of 2012 through RTGS within a period of two weeks thereafter. The respondents/claimants are directed to pay the necessary Court fee for



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respective compensation amount. The Tribunal below shall disburse the compensation affirmed by this Court upon proof of payment of necessary additional Court fee by the respondents/claimants. In case the owner of the vehicle fails to deposit the compensation as affirmed by this Court, the claimants are at liberty to recover the same in the manner known to law. The Appellant/Insurance Company is at liberty to withdraw the amount if any, already deposited. In view of this Court not interfering with the quantum of compensation awarded by the Tribunal, the cross objection filed by the claimant deserves to be dismissed. Accordingly, the cross objection No.83 of 2012 stands dismissed. There shall be no order as to costs in these appeals. Consequently, the connected Miscellaneous Petitions are closed.

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

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M.DHANDAPANI, J

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To

- 1.The Motor Accident Claims Tribunal,
Additional Subordinate Judge,
Thiruvannamalai.
- 2.The Section Officer,
V.R. Section,
High Court, Madras.

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