



C.M.A.Nos.1686 & 2789 of 2021

WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 29.11.2024

CORAM:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

C.M.A.Nos.1686 & 2789 of 2021
and C.M.P.Nos.8941 & 15911 of 2021

C.M.A.No.1686 of 2021

M/s.National Insurance Company Ltd.,
Athur, Salem District.

...Appellant

Vs.

1.Minor Naveenkumar

(Rep. by his guardian and father A.Periyasamy)

2.V.Manikandan

...Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 05.10.2018 and made in M.C.O.P.No.36 of 2014 on the file of the Special District Court, Motor Accident Claims Tribunal, Salem.

For Appellant : Mr.S.Vadivel



C.M.A.Nos.1686 & 2789 of 2021

WEB COPY

For Respondents : Mr.M.Arun for R1
for M/s.Karan & Uday
R2 – No appearance

C.M.A.No.2789 of 2021

M/s.National Insurance Company Ltd.,
Athur, Salem District.

...Appellant

Vs.

1.A.Periyasamy

2.Priyanka

3.Bharathi

*(3rd petitioner is declared as major as per order
in I.A.No.3877/2017 dated 05.10.2017)*

4.Minor Naveenkumar

*(Rep. by Next friend /Father A.Periyasamy
for minor petitioner)*

5.V.Manikandan

...Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 173 of Motor
Vehicles Act, 1988, against the Judgment and Decree dated 05.10.2018



C.M.A.Nos.1686 & 2789 of 2021

WEB COPY

and made in M.C.O.P.No.35 of 2014 on the file of the Special District Court, Motor Accident Claims Tribunal, Salem.

For Appellant : Mr.S.Vadivel

For Respondents : Mr.M.Arun for R1 to R4
for M/s.Karan & Uday

R5 – NDW vide order dated
01.11.2021

COMMON JUDGMENT

These appeals have been filed by the appellant insurance company challenging the judgment and decree passed by the Motor Vehicle Accidents Claims Tribunal, Special District Court, Salem in M.C.O.P.No.36 of 2014 dated 05.10.2018.

2.Since the parties and the issues are one and the same, these appeals are disposed of by a common judgment.

3.For the sake of convenience, the parties are referred to as per their ranking before the Tribunal.



C.M.A.Nos.1686 & 2789 of 2021

WEB COPY

4.The brief fact of the case are as follows:

On 11.12.2013 at about 7.45 p.m., the petitioner and his mother viz. Rani and others were travelling, the first respondent's Tata Ace Vehicle bearing Registration No.TN-54-A-4932 and were returning to their house after performing the third death anniversary of the deceased relative. The above said vehicle was coming near Tippi Water Odai, the driver of the first respondent vehicle has driven the same in a rash and negligent manner and capsized the vehicle in a pit and caused the accident in which, the said Rani died on the spot and her son and others also sustained grievous injuries. The deceased and the injuries were taken to the Government Hospital. A criminal case was registered in Crime No.544/2013 for offence under Section 279, 337 & 304(A) of IPC by Kalipatti Police. The claimants filed a claim petition before the Tribunal in M.C.O.P.Nos.35 & 36 of 2014, the Tribunal has awarded a sum of Rs.15,61,200/- and Rs.1,35,300/-respectively. Challenging the same, these appeal have been filed.



C.M.A.Nos.1686 & 2789 of 2021

WEB COPY

5.Learned counsel appearing for the appellant Insurance Company submitted that Tata Ace Vehicle bearing Registration No.TN-54-A-4932 is a LMV goods vehicle and as per RC book, the seating capacity of the vehicle is only two including the driver whereas at the time of the accident 7 persons were travelled in the vehicle (other than driver) as unauthorised/gratuitous passengers and they were not covered under Section 147 of the Motor Vehicles Act, the deceased was not a third party as per the provisions of the Motor Vehicles Act. He further submitted that the driver of the said vehicle was not holding a valid driving license at the time of the accident and the petitioners travelled in a goods vehicle as gratuitous passengers and hence, the appellant Insurance Company is not liable to pay any compensation. Hence, he prayed to allow the appeals.

6.Learned counsel appearing for the respondents submitted that the accident occurred due to the rash and negligent driving of the first respondent's vehicle bearing Registration No.TN-54-A-4932. The first respondent is the owner of the vehicle and the second respondent is the



C.M.A.Nos.1686 & 2789 of 2021

WEB COPY

insurer of the said Tata Ace vehicle. Hence, he prayed for dismissal of the appeal.

7.Heard learned counsel appearing for the appellant as well as the respondents 1 to 4 and perused the materials available on record.

8.Before the Tribunal, the first petitioner was examined as PW1, Mr.Ravi and Mr.Srinivasan were examined as PW2 & PW3 and on the side of the petitioners, 19 documents were marked as Exs.P1 to P19. On the side of the respondents, Mr.Muruganantham, Mr.Baskar and Mr.Kirubakaran were examined as RW1 to RW3 and 4 documents were marked as Exs.X1 to X4 and Insurance Policy was marked as Ex.R1.

9.On perusal of records, it is seen that Ex.R1 Insurance Policy clearly reveals that no premium has been paid, the seating capacity of the vehicle is only two including the driver and no passenger is allowed to travel in the said vehicle.



C.M.A.Nos.1686 & 2789 of 2021

WEB COPY

10.Learned counsel appearing for the appellant has relied upon a Division Bench judgment of this Court in ***Bharati Axa General Insurance Co. Ltd., vs. Aandi and 2 others*** reported in **2018 (2) TN MAC 731**, the Division Bench has held as follows:

48.Coming to the latest judgment viz., Shivaraj Vs. Rajendra and another dated 05.09.2018, made in Civil Appeal Nos.8278 and 8279 of 2018, there again the Hon'ble Supreme Court affirmed the conclusion of the High Court to the effect that the Insurance Company was not liable for the loss or injuries suffered by the appellant or to indemnify the owner of the tractor. However, the Hon'ble Supreme Court taking note of the peculiar circumstances of the case directed the Insurance Company to pay the compensation with liberty to recover the same. Unfortunately, the decisions of the larger bench in New India Assurance Company Vs. Asha Rani and others or National Insurance Company Ltd., Vs. Baljit Kaur and others were not brought to the notice of the two Judge Bench which decided Shivaraj Vs. Rajendra and another referred to supra.



C.M.A.Nos.1686 & 2789 of 2021

WEB COPY

49.We find that the judgments relied upon by the Hon'ble Supreme Court in Shivaraj Vs. Rajendra and another referred to supra in support of its conclusion that the Insurance Company can be directed to pay the compensation with liberty to recover the same even in respect of a gratuitous passenger or an unauthorized passenger in a goods vehicle, do not support the said conclusion.

50.In fact, we find that in none of the judgments referred to viz., National Insurance Co. Ltd. Vs. Swarn Singh & Ors. reported in (2004) 3 SCC 297, Mangla Ram Vs. Oriental Insurance Co. Ltd. reported in (2018) 5 SCC 656, Rani & Ors. Vs. National Insurance Co. Ltd. & Ors. reported in 2018 (9) Scale 310 and Manuara Bar & Bench (www.barandbench.com) 28 Khatun and Others Vs. Rajesh Kumar Singh And Others reported in (2017) 4 SCC 796, the question regarding the liability of the Insurance Company to pay the compensation in respect of an unauthorized passenger in the goods vehicle



WEB COPY



C.M.A.Nos.1686 & 2789 of 2021

did arise for consideration. We are therefore of the considered opinion that the judgment of the two Judge bench in Shivaraj Vs. Rajendra and another referred to supra cannot be taken as a precedent to conclude that the Insurance Company would be liable to pay the compensation even in respect of an unauthorized passenger, in a goods vehicle, in the light of categorical pronouncement of larger bench of the Hon'ble Supreme Court in New India Assurance Company Vs. Asha Rani and others and National Insurance Company Ltd., Vs. Baljit Kaur and others referred to supra. We therefore conclude that the Tribunal, in the case on hand, was not right in directing the Insurance Company to pay the compensation and giving it the liberty to recover the same from the owner.

51.No doubt true that in many cases the claimants may not be able to realise the award amount from the owners of the vehicles involved in the accident. But, the said factual situation alone cannot impel us to do something against the provisions of the statute and the decisions of



WEB COPY



C.M.A.Nos.1686 & 2789 of 2021

the larger benches of the Hon'ble Supreme Court of India.

52.In fine, all the appeals will stand allowed only in respect of the question of liability of the Insurance Company to pay the compensation. The quantum of compensation is affirmed and there will be an award only against the owner of the vehicle viz., 1st respondent in all the Original Petitions and the award against the Insurance Company will stand set aside. However, in view of the fact that the claimants Bar & Bench (www.barandbench.com) 29 are not before us. We do not impose any costs. Consequently, the connected Miscellaneous Petitions are closed.

11.Applying the ratio laid down by the Division Bench of this Court in respect of unauthorized/gratuitous passengers, the appellant Insurance Company is not liable to pay any compensation to the unauthorized/gratuitous passengers.



C.M.A.Nos.1686 & 2789 of 2021

WEB COPY

12. In the result, the appeals are allowed and the awards passed by the Tribunal in M.C.O.P.Nos.35 & 36 of 2014 dated 05.10.2018 are set aside. The appellant Insurance Company is permitted to withdraw the deposited amount and liberty is granted to recover the amount from owner of the vehicle in the manner known to law. No costs. Consequently, connected miscellaneous petitions are closed.

29.11.2024

Index: Yes/No

Speaking order: Yes/No

Neutral Citation: Yes/No

pam

To

1. The Motor Accidents Claims Tribunal,
Special District Court, Salem.

2. The Section Officer,
VR Section,
High Court of Madras, Chennai – 600 104.



WEB COPY



C.M.A.Nos.1686 & 2789 of 2021

M.DHANDAPANI, J.

pam

C.M.A.Nos.1686 & 2789 of 2021

29.11.2024



C.M.A.Nos.1686 & 2789 of 2021

WEB COPY

C.M.A.Nos.1686 and 2789 of 2021

M.DHANDAPANI, J.

These matters are listed today under the caption "for being mentioned" at the instance of the Registry.

2. Heard both sides.

3. In paragraph No.12 of the common judgment dated 29.11.2024, the words “liberty is granted to recover the amount from owner of the vehicle in the manner known to law”, shall be replaced with “liberty is granted to the appellant Insurance Company to recover the amount from owner of the vehicle in the manner known to law”.

4. Registry is directed to carry out the necessary correction as aforesaid in the judgment dated 29.11.2024 and issue fresh copy of the order to the learned counsel for the parties.

21.03.2025

ssb



WEB COPY



C.M.A.Nos.1686 & 2789 of 2021

M.DHANDAPANI, J.

ssb

C.M.A.Nos.1686 and 2789 of 2021

21.03.2025