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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 4/11/2024

C O R A M

THE HONOURABLE Mr.JUSTICE **M.DHANDAPANI**

C.M.A.No.161 of 2013
a n d
M.P.No.1 of 2013 and C.M.P.No.5253 of 2018

The Divisional Manager
United India Insurance Company Ltd
Katpadi Road
Vellore 632 004. ... Appellant

Vs

1. T. Thangalakshmi
2. Muniammal (died)
3. K. Vijayan
4. Mahendran
5. Selvarani ... Respondents

(Respondents 4 and 5 brought on record as Lrs of the deceased R.2 Viz., Muniammal, vide Court order dated 19/12/2022 made in C.M.P.No.13465 to 13467 of 2020 in C.M.A.No.161 of 2013 by AANJ)

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PRAYER : Appeal filed under Section 173 of the Motor Vehicles Act, against the award and decree dated 6/9/2012 made in O.P.No.15 of 2008 on the file of the Motor Accidents Claims Tribunal (Principal District Judge), Vellore.

For appellant	...	Mr.D. Bhaskaran
For respondents	...	Mr.P.Jagadeesan for R.1
		R.R.2 and 4 – died
		Mr.N.Murali for R.3
		No appearance for R.5

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<u>J U D G M E N T</u>

This Civil Miscellaneous Appeal has been filed against the award and decree dated 6/9/2012 made in O.P.No.15 of 2008 on the file of the Motor Accidents Claims Tribunal (Principal District Judge), Vellore.

2. The facts leading to filing of this Civil Miscellaneous Appeal are as follows:-

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The first respondent is the wife and second respondent is the mother of the deceased Teekaaraman. On 17/6/2007 at about 11.30 a.m., when the deceased Teekaraman was travelling in a lorry bearing Registration No.TN-01-D-6843 from Vellore to Neelakandarayanpettai, near Arapakkam-Ammundi Kootu road, link of the lorry door was suddenly dropped, resulting to the fallen of the deceased and others, thereby, sustained grievous injuries all over the body and the deceased died on the spot.

3. In this connection, a case has been registered in Crime No.392 of 2007, on the file of Arcot Town Police Station, for the offence under Section 304 (A) of the Indian Penal Code as against the driver of the lorry.

4. Thereafter, the first and second respondents/claimants had filed a claim petition under Section 166 of the Motor Vehicles Act, 1988, claiming compensation of Rs.20,00,000/- before the Motor Accident Claims Tribunal, Vellore and the same was taken on filed in M.C.O.P.No.15 of 2008.

5. Before the Tribunal, in order to prove the case, the first and second respondents/claimants have examined two witnesses, viz., P.W.1 and P.W.2 and marked Exs.P.1 to P.6. On the side of the appellant and third

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respondent, two witnesses have been examined, viz., R.W.1 and R.W.2 and maarked Exs.R.1 to R.4.

6. The Tribunal, after considering the pleadings, oral and documentary evidence, allowed the petition in part and awarded a sum of Rs.6,04,000/- as compensation to the claimants under various heads. Aggrieved by the same, the appellant/Insurance Company has filed this appeal before this Court for reconsideration of the compensation awarded by the Tribunal.

7. Heard Mr.D.Bhaskaran, learned counsel for the appellant, Mr.P.Jagadeesan, learned counsel for the first respondent and Mr.N.Murali, learned counsel for the third respondent. There is no appearance for the fifth respondent.

8. The learned counsel appearing for the appellant would submit that the Insurance Company cannot be made liable to pay the compensation for gratuitous passengers. He would further submit that the doctrine of pay and recover evolved by the Courts in ***NATIONAL INSURANCE COMPANY LTD Vs SWARAN SINGH AND OTHERS reported in (2004) 3 SCC 297,***

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would apply only to cases where there is a subsisting contract of insurance convering the risk and there is a violation of a certain condition in the contract of insurance and not to cases where there is no contract covering the risk.

9. Per contra, the learned counsel appearing for the first and second respondents/claimants submitted that the trial Court without appreciating the facts and legal submissions passed an award and recovery of the amount from the owner of the vehicle which cannot be given and hence prays for dismissal.

10. The only question that needs to be addressed in this appeal is

> "Whether the Insurance Company could be held liable to answer the claim of person who is either unauthorised passenger or gratuitous passenger in a goods vehicle?"

11. The facts in this appeal are not in dispute. It is a clear case of the claimants that the deceased had travelled in a lorry bearing Registration

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No.TN-01-D-6843 to attend ear boring ceremony at Nellakandarayanpettai. The deceased was travelled in a lorry as unauthorised passenger. The Tribunal had directed the Insurance Company to pay the compensation as determined to the claimants and had given the liberty to recover the same from the owner of the vehicle, who figured as third respondent herein. It is the correctness of this direction made by the Tribunal that is being challenged by the Insurance Company.

12. Relying upon Section 147 of the Motor vehicles Act, the learned counsel appearing for the appellant would submit that the Insurance Company is not required to cover the risk in respect of a person who is travelling in a goods vehicle unless he is shown to be the owner of the goods or his authorised representative, which were also carried in the vehicle at the time of the accident.

13. While Section 147 (1) deals with the matters which will have to be covered by the policy proviso to Section 147(1) sets out exemptions. Section 147(1)(b) which requires the policy to insure the person or classes of persons specified in the policy to the extent specified in sub-Section 2 against any liability which may be incurred by him in respect of the death or

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bodily injury to any person, including owner of the goods or his authorized representative carried in the vehicle or damage to any property of a third party caused by or arising out of the use of the vehicle in a public place.

14. A reading of the above provision makes it clear that an insurance policy which is a mandatory statutory requirement is required to cover only certain classes of persons and not every person who chooses to travel in any type of vehicle. Therefore, there is no mandatory requirement for the Insurance Company to cover persons who are travelling as passengers in a non-passenger vehicle/goods vehicle.

15. A Division Bench of this Court in BHARATI AXA GENERAL INSURANCE CO LTD., rep. BY ITS MANAGER, BANGALORE 560 037 Vs. 1. AANDI AND 2 OTHERS (C.M.A.Nos.1529 to 1533 of 2015), wherein it is 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

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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.*

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

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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 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 did arise for consideration. We are therefore of the considered opinion that the judgment of the two Judge bench in ***Shivaraj Vs. Rajendra and***

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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

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provisions of the statute and the decisions of 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 are not before us. We do not impose any costs. Consequently, the connected Miscellaneous Petitions are closed."

16. Thus, the law came to be settled to the effect that the Insurance Company is not bound to indemnify the insured for the loss or injury caused to a person who had travelled as a passenger in a goods vehicle.

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M.DHANDAPANI,J

mvs.

17. In the result, this Civil Miscellaneous Appeal is 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., third respondent and the award against the Insurance Company will stand set aside. Consequently, the connected Miscellaneous Petitions are closed.

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mvs.

Index : Yes / No
Neutral Citation: Yes/No

To

The Motor Accidents Claims Tribunal (Principal District Judge), Vellore.

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