**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

| Date of Reserving the Judgment | Date of Pronouncing the Judgment |
|---|---|
| 16.02.2024 | 28.02.2024 |

**CORAM:**

**THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN**

**C.M.A.(MD)Nos.397 to 403 of 2008 & 359 of 2012**
**and**
**M.P.(MD)Nos.1, 1, 1, 1, 1, 1 & 1 of 2008**
**and**
**C.R.P.(MD)No.483 of 2008**

C.M.A.(MD)Nos.397 to 403 of 2008 & C.R.P.(MD)No.483 of 2008:-

United India Insurance Co. Ltd.,
924-A, Main Road, CCC Complex,
Kovilpatti. ... Appellant in all the C.M.As. and
Petitioner in C.R.P.(MD)No.483 of 2008

vs.

1.Selvaraj
2.Thenmathi ... Respondents in C.M.A.(MD)No.397 of 2008

1.Packiasamy
2.Thenmathi ... Respondents in C.M.A.(MD)No.398 of 2008

1.Jeganathan
2.Thenmathi ... Respondents in C.M.A.(MD)No.399 of 2008

1.Therisamy
2.Thenmathi ... Respondents in C.M.A.(MD)No.400 of 2008

1.Chellathai
2.Minor Velthuraichi, D/o.Late.Andavar
3.Minor Balamurugan, S/o.Late.Andavar
4.Minor Velmuguran, S/o.Late.Andavar
[Minor respondents 2 to 4 rep. by
Mother and next friend, 1st respondent]
5.Thenmathi ... Respondents in C.M.A.(MD)No.401 of 2008

1.Shanmugathai, W/o.Late.Ramasamy
2.Minor Ramesh, S/o.Ramasamy
3.Minor Indirani, D/o.Late.Ramasamy
4.Minor Gurunathan, S/o.Late.Ramasamy
[Minor respondents 2 to 4 rep. by Mother
and next friend, 1st respondent]
5.Guruvammal, W/o.Palani Thevar
6.Thenmathi ... Respondents in C.M.A.(MD)No.402 of 2008

1.R.Antony
2.Thenmathi ... Respondents in C.M.A.(MD)No.403 of 2008

1.Selvaraj
2.Thenmathi ... Respondents in C.R.P.(MD)No.483 of 2008

**PRAYER in all the C.M.As.:-** Civil Miscellaneous Appeals filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree, dated 31.10.2006, in M.C.O.P.Nos.424, 425, 539, 540, 871 and 872 of 2004 and 298 of 2005, on the file of the MACT (II Additional District Judge), Tirunelveli.

**PRAYER in C.R.P.(MD)No.483 of 2008:-** Civil Revision Petition filed under Article 227 of the Constitution of India, against the judgment and decree, dated 31.10.2006, in M.C.O.P.No.788 of 2005, on the file of the MACT (II Additional District Judge), Tirunelveli.

| | |
|---|---|
| For Appellant in all the C.M.As. & For Petitioner in C.R.P.(MD) No.483 of 2008 | : Mr.J.S.Murali for Mr.T.R.Subramanian |
| For R1 in C.M.A.(MD)Nos.397 & 398 of 2008 | : Mr.T.Selvakumaran |
| For R1 to R4 in C.M.A.(MD)Nos. 401 & 402 of 2008 | : Mr.V.Kannan |
| For R1 in C.M.A.(MD)No.403 of 2008 | : Mr.V.Balaji |
| For R1 in C.M.A.(MD)No.400 of 2008 | : No Appearance |
| For R2 in C.M.A.(MD)Nos.397 to 400 & 403 of 2008 | : No Appearance |
| For R1 & R2 in C.R.P.(MD)No.483 of 2008 | : No Appearance |
| For R5 in C.M.A.(MD)No.401 of 2008 | : No Appearance |
| For R6 in C.M.A.(MD)No.402 of 2008 | : No Appearance |

C.M.A.(MD)No.359 of 2012:-

The Branch Manager,
United India Insurance Co. Ltd.,
924-A, Main Road, CCC Complex,
Kovilpatti – 628 501. ... Appellant

vs.

1.Kanagaraj
2.Thenmathi ... Respondents

**PRAYER:-** Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree, dated 12.11.2010, in M.C.O.P.No.182 of 2006, on the file of the MACT (Chief Judicial Magistrate), Tirunelveli.

For Appellant : Mr.J.S.Murali

For R1 and R2 : No Appearance

**COMMON JUDGMENT**

The above Civil Miscellaneous Appeals are preferred by the Insurance Company and they are directed against the award passed in the batch of claim petitions filed in connection with the motor accident happened on 29.02.2004 when a goods carrier (mini lorry), bearing Registration No.TCT-5968 capsized, causing death of two persons and injuries to 6 others, who were travelling in the vehicle along with load of vegetables.

**2**. The Insurance Company contested the claim petitions denying it's liability. Though they admit the accident and the insurance coverage of the vehicle with them, the liability to indemnify the owner of the vehicle was denied, for the reason that the policy issued does not cover unauthorised passengers. Terming the claimants as gratuitous / unauthorised passengers and relying upon the judgment of the Hon'ble Supreme Court in **National Insurance Co. Ltd.** vs. **Boomithi Subbhayamma and others (2005 (12) SCC 243 : 2005 ACJ 721)**, the claim petitions were resisted contending that the Insurance Company is not liable to pay compensation for gratuitous passengers. Also, the Insurance Company denied the averment that the accident victims were owners of the goods transported in the vehicle. According to the Insurance Company, what they carried with them was their luggage and not goods. Pointing the fact that in the goods vehicle, 17 persons were travelling at the time of accident, it was contented that allowing more than 6 persons to accompany the goods is violation of policy condition.

**3**. The Tribunal considering the language used in Section 147(1) of Motor Vehicles Act and the evidence of P.W.1 along with the F.I.R. [Ex.P1], accepted the case of the claimants that all the victims of the accident travelled in the goods vehicle carrying their goods. They were farmers carrying their agricultural produce to the market. From the Observation Mahazar marked as Ex.P3, which shows vegetable scattered around the capsized vehicle and from the evidence of R.W.1 the cleaner of the vehicle, it is proved that along with the load of vegetables, the owners were travelling in the vehicle. Therefore, relying on the judgment of the Hon'ble Supreme Court in **Ramesh Kumar** vs. **National Insurance Co. Ltd. and others** [**2001 (6) SCC 713 : 2001 ACJ 1565**] and the judgment of this Court in **United India Insurance Company Ltd., Dharmapuri** vs. **A.Govindan and another [2002 ACJ 539]**, allowed the claim petitions and passed award as below in the respective claim petitions.

| M.C.O.P. & C.M.A. Nos. | Claimant's name | Amount |
|---|---|---|
| M.C.O.P.No.424 of 2004 [C.M.A.(MD)No.397 of 2008] | Selvaraj [Injured claimant] | Rs.69,830/- |
| M.C.O.P.No.425 of 2004 [C.M.A.(MD)No.398 of 2008] | Pacikasamy[Injured claimant] | Rs.86,170/- |
| M.C.O.P.No.539 of 2004 [C.M.A.(MD)No.399 of 2008] | Jeganathan [Injured claimant] | Rs.44,000/- |
| M.C.O.P.No.540 of 2004 [C.M.A.(MD)No.400 of 2008] | Therisamy [Injured claimant] | Rs.48,500/- |

| | | |
|---|---|---|
| M.C.O.P.No.871 of 2004 [C.M.A.(MD)No.401 of 2008] | LRs. of the deceased Andavar | Rs.2,41,200/- |
| M.C.O.P.No.872 of 2004 [C.M.A.(MD)No.402 of 2008] | LRs. of the deceased Ramasamy | Rs.2,84,600/- |
| M.C.O.P.No.298 of 2005 [C.M.A.(MD)No.403 of 2008] | R.Antony [Injured claimant] | Rs.88,900/- |
| M.C.O.P.No.182 of 2006 [C.M.A.(MD)No.359 of 2012] | Kanagaraj [Injured claimant] | Rs.12,500/- |
| M.C.O.P.No.788 of 2005 [C.R.P.(MD)No.483 of 2008] | Selvaraj [Injured claimant] | Rs.7,000/- |

**4**. In the appeals, reiterating the defence, the learned counsel for the appellant/ Insurance Company contended that, the Tribunal failed to take note of the fact that the insurance policy does not cover the passengers travelling in the goods vehicle. The judgment reported in **2005 ACJ 768** [**Deddula Padmavathi and others** vs. **Maddala Srinivasa Rao and another**] not properly appreciated by the Tribunal. The vegetable bags carried by the victims can only be construed as luggage and not as goods. The judgment of the Hon'ble Supreme Court in **National Insurance Co. Ltd.** vs. **Boomithi Subbhayamma and others** (cited supra) not properly appreciated. The Tribunal erred in relying on **New India Assurance Company** vs. **Satpal Singh and others [2000 (1) SCC 237 : 2001**

**ACJ 1],** which was subsequently overruled by the Hon'ble Supreme Court in **New India Assurance Co. Ltd.** vs. **Asha Rani and others** [**2003 (2) SCC 223**]. Assuming the victims are owners of the goods, then, for overloading the goods vehicle with 17 passengers along with the goods, the vehicle owner has violated the policy condition. Therefore, the Tribunal ought to have ordered pay and recovery.

**5**. The leaned counsels appearing for the claimants/respondents submitted that the after the amendment to Section 147 of the Motor Vehicles Act in the year 1994, the liability of the Insurance Company to pay the owners of the goods travelling along with their goods is made mandatory. The issue of their liability to the owners of the goods is no more *res integra*. Judgments of this Court and the Hon'ble Supreme Court has clarified this legal position. In the following judgments of this Court, this issue had been dealt in depth and held that in case of owners of the goods travelling along with their goods in a goods vehicle, the owner of the goods vehicle is liable to pay compensation for the injuries sustained by the owners of the goods, since they are protected by Section 147(1) of Motor

Vehicles Act as well as Rules 234, 236 and 237 of Tamil Nadu Motor Vehicles Rules. Thus, the learned counsel for the respondents/claimants cited,

(1) **Royal Sundaram Alliance Insurance Company Limited** vs**. D.Gunasekaran** reported in **2014 (2) TN MAC 79**

(2) **Manjula and others** vs. **M.Sakthivel** reported in **2019 (2) TN MAC 188**

(3) **C.Rajappan** vs. **J.Subramani and another** reported in **CDJ 2021 MHC 1814**

**6**. Heard the learned counsels appearing for the parties and perused the records. Facts of the case tested in the light of the following judicial pronouncements:-

(i) **Royal Sundaram Alliance Insurance Company Limited** vs**. D.Gunasekaran** reported in **2014 (2) TN MAC 79,** wherein, this Court has held as follows:-

*"31.Learned counsel for the Appellant heavily contended that the vehicle was not hired or chartered with any specific destination and therefore, the Claimants are not entitled to any Compensation, whereas*

*RW.1, witness examined, has specifically deposed that as per IMT 37-A, there is nothing to indicate that the vehicle should not be stopped in the midway and transport goods.*

*44.Admittedly, the vehicle involved in the accident, is a goods carriage vehicle and not a Contract Carriage Vehicle. Insofar as the goods carriage vehicle is concerned, Section 147 makes an exception, to the passengers, who accompany the goods, as owners or their representatives. As per Section 147 of the Motor Vehicles Act, liability to pay compensation to the owner of the goods or his authorised representatives, travelling in a Goods Vehicle, is covered under Act Policy. The provision amply makes it clear that there is no total prohibition, as to the coverage of liability for the persons travelling in a Goods Vehicle, other than the owner of the goods or his representative. The insurer is absolved of its liability from payment of Compensation only, in the case, where the injuries or death occurred to an individual, travelling in the goods carriage vehicle, not in the capacity as owner of goods.*

*45.In the light of Section 147 of the Act, a non-fare paying passenger is different from the owner of the goods. If we look at the IMT 37-A, it speaks about both, non-fare paying passengers and the owner of the goods. This Court is of the view that no additional premium is required to be paid by the insured for covering the owner of the goods or* *his representative or an employee of the insured, if he was engaged in driving, and carried in a goods carriage vehicle. In IMT 37-A of the Tariff, there is a clear distinction between the owner of goods, who is statutorily covered under the Act Policy and a non-fare paying passenger, for whom, a sum of Rs.75/- has to be collected by the Company, if he has to be covered under the Policy. It means that the owner of a vehicle can pay an additional premium of Rs.75/- for a non-fare paying passenger, which is not required, in the case of owner/owners of the goods.*

*63.Rule 236 of the Tamil Nadu Motor Vehicles Rules, states that no person shall be carried in the cabin of a goods carriage beyond the number for which there is a seating accommodation at the rate of thirty eight centimeters measured along the seat, excluding the space reserved for the driver, for each person, and not more than six persons in all in addition to the driver shall be carried in any goods carriage. Thirty eight Centimetres space may accommodate one passenger.*

*74.IMT 37-A, would cover persons, falling under Section 147(1)(c), i.e., to cover any contractual liability, which is provided under IMT.37-A, which states that, other than statutory liability. As per Rule 236 of the Motor Vehicles Rules, if six persons are permitted to travel in a goods carriage vehicle, then it cannot be expected that all the six persons can sit in the cabin. Inevitably, they have to travel only in the back portion of* *the vehicle, along with the goods. The argument of the learned Counsel for the Appellant that the owner of the vehicle has to travel only in the cabin and if not, he is not entitled to any Compensation, cannot be accepted in the case of a goods carriage vehicle, when Rule 236 of the Tamil Nadu Motor Vehicles Rules, permit carrying 7 persons, including a driver. No where in the Motor Vehicles Act, 1988, there is a prohibition that the owner cannot travel in the back portion of a goods carriage vehicle.*

*160.As per Section 147 of the Act read with Rule 236 of the Tamil Nadu Motor Vehicles Rules, six persons, can travel in the goods vehicle, apart from the Driver. As regards the alterative plea of the learned Counsel for the Appellant-Insurance Company that as per IMT.37-A, Rs. 75/- alone has been collected and on the facts and circumstances of the case, it is applicable to only passenger, this Court is not in agreement with the said contention. Even assuming that one of the women travelled as a Non-Fare Paying Passenger, apart from the statutory liability, in terms of Section 147 r/w. Rule 236 of the Tamil Nadu Motor Vehicles Rules, that one person may fall under the head, legal liability, other than the statutory liability, this Court is inclined to follow National Insurance Co. Ltd. Vs. Anjana Shyam [2007 (2) TN MAC 193 (SC)]."*

(ii) **Manjula and others** vs. **M.Sakthivel** reported in **2019 (2) TN MAC 188,** wherein, this Court has held as follows:-

*"26. The Tribunal has failed to consider Section 147(1) of the Motor Vehicles Act and Rule 236 of Tamil Nadu Motor Vehicles Rules and IMT.37-A. As per the above provision, the owner of goods, even if he travels in the backside of the goods vehicle along with his goods, is entitled to claim compensation from the Insurance Company for the injuries and his legal heirs are entitled to claim compensation from the Insurance Company for the death."*

(iii) The Andhra Pradesh High Court in **Muram Mohan** vs. **Gundumogula Venkata Rama Rao and another** reported in **2014 ACJ 505**, has held as follows:-

*"11.A reading of the above provisions of the Act would show that carrying couple of bags of sweet potatoes by a passenger and boarding the vehicle midway, as admitted by him, would not become goods within the meaning of Section 2(13) of the Act, as the luggage carried do not fall within the meaning of goods as defined in Section 2(13) of the Act. A reading of Section 2(13) of the Act would indicate that weight and volume of bags carried by the passenger would have relevance to find out whether they are luggage or goods. Further, Section 147(1)(b)(1) of the Act reads as "including owner of the goods or his authorised*

*representative carried in the vehicle". The intention of the lawmakers appears to be cover the risk of owner of the goods or his representative, who actually engages the goods vehicle for transport of goods from one destination to anther, but does not include persons boarding the goods vehicle midway with a baggage of goods or luggage by paying some money to the driver of the vehicle. Few bags potatoes carried by the injured are not of such a volume which cannot be carried either in a bus, train or small van. The said baggage does not require a goods vehicle, more so a lorry."*

**7**. Thus, it is clear as crystal that the liability of the insurer depends on the terms of the contract between the insured and the insurer as evident from the policy. Section 94 of the repealed Motor Vehicles Act, 1939, compels the owner of a motor vehicle to insure the vehicle in compliance with the requirements of Chapter VIII of that Act. Section 95 of that Act provides that a policy of insurance must be one which insures the person against any liability which may be incurred by him in respect of death or bodily injury to any person or damage to any property of third party caused by or arising out of the use of the vehicle in a public place. The said Section does not however require a policy to cover the risk to passengers who are not carried for hire or reward. The statutory insurance does not cover injury suffered by occupants of the vehicle who are not carried for hire or reward and the insurer cannot be held liable under the Act. But, that does not prevent an insurer from entering into a contract of insurance covering a risk wider than the minimum requirement of the statute whereby, the risk to gratuitous passengers could also be covered.

**8**. After repealing the 1939 Act, the Motor Vehicles Act, 1988 came into force. Section 147 of the new Act deals with the requirements of insurance policy and limits of liability. In the year 1994, amendment was brought in to Section 147(2) and further amendment in the year 2019. The provision as it stands now reads as below:-

> ***"147. Requirements of policies and limits of liability. –***
>
> *(1) In order to comply with the requirements of this Chapter, a policy of insurance must be a policy which -*
>
> *(a) is issued by a person who is an authorised insurer; and*
>
> *(b) insures the person or classes of persons specified in the policy to the extent specified in sub-section (2)-*
>
> *(i) against any liability which may be incurred by him in*

*respect of the death of or bodily injury to any person including owner of the goods or his authorised representative carried in the motor vehicle or damage to any property of a third party caused by or arising out of the use of the motor vehicle in a public place;*

*(ii) against the death of or bodily injury to any passenger of a transport vehicle, except gratuitous passengers of a goods vehicle, caused by or arising out of the use of the motor vehicle in a public place.*

***Explanation.****- For the removal of doubts, it is hereby clarified that the death of or bodily injury to any person or damage to any property of a third party shall be deemed to have been caused by or to have arisen out of, the use of a vehicle in a public place, notwithstanding that the person who is dead or injured or the property which is damaged was not in a public place at the time of the accident, if the act or omission which led to the accident occurred in a public place.*

*(2) Notwithstanding anything contained under any other law for the time being in force, for the purposes of third party insurance related to either death of a person or grievous hurt to a person, the Central Government shall prescribe a base premium and the liability of an insurer in relation to such premium for an insurance policy under sub-section (1) in consultation with the Insurance Regulatory and Development Authority.*

*(3) A policy shall be of no effect for the purposes of this Chapter unless and until there is issued by the insurer in favour of the*

*person by whom the policy is effected, a certificate of insurance in the prescribed form and containing the prescribed particulars of any condition subject to which the policy is issued and of any other prescribed matters; and different forms, particulars and matters may be prescribed in different cases.*

*(4) Notwithstanding anything contained in this Act, a policy of Insurance issued before the commencement of the Motor Vehicles (Amendment) Act, 2019 shall be continued on the existing terms under the contract and the provisions of this Act shall apply as if this Act had not been amended by the said Act.*

*(5) Where a cover note issued by the insurer under the provisions of this Chapter or the rules or regulations made thereunder is not followed by a policy of insurance within the specified time, the insurer shall, within seven days of the expiry of the period of the validity of the cover note, notify the fact to the registering authority or to such other authority as the State Government may prescribe.*

*(6) Notwithstanding anything contained in any other law for the time being in force, an insurer issuing a policy of insurance under this section shall be liable to indemnify the person or classes of persons specified in the policy in respect of any liability which the policy purports to cover in the case of that person or those classes of persons."*

**9**. It is to be noted that an important change brought in by way of amendment by Act 54 of 1994 with effect from 14.11.1994. After the said amendment, the insurer is required to insure the liability in respect of the death or bodily injury to the owner of the goods or his authorised representative carried in the vehicle.

**10**. When the effect of the amendment to Section 147 of the Motor Vehicles Act in the year 1994 came for consideration before the Hon'ble Supreme Court in **National Insurance Co. Ltd.** vs. **Baljit Kaur and others** reported in **2004 (1) CTC 210**, the Hon'ble Supreme Court observed as under:-

> *"20. 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 was any premium paid to the extent of the benefit of insurance to such*

*category of people.*

*21. The upshot of the aforementioned discussions is that instead and in place of the insurer the owner of the vehicle shall be liable to satisfy the decree. The question, however, would be as to whether keeping in view the fact that the law was not clear so long such a direction would be fair and equitable. We do not think so. We, therefore, clarify the legal position which shall have prospective effect. The Tribunal as also the High Court had proceeded in terms of the decision of this Court in Satpal Singh [(2000) 1 SCC 237 : 2000 SCC (Cri) 130] . The said decision has been overruled only in Asha Rani [(2003) 2 SCC 223 : 2003 SCC (Cri) 493] . We, therefore, are of the opinion that the interest of justice will be sub-served if the appellant herein is directed to satisfy the awarded amount in favour of the claimant, if not already satisfied, and recover the same from the owner of the vehicle. For the purpose of such recovery, it would not be necessary for the insurer to file a separate suit but it may initiate a proceeding before the executing court as if the dispute between the insurer and the owner was the subject-matter of determination before the Tribunal and the issue is decided against the owner and in favour of the insurer. We have issued the aforementioned directions having regard to the scope and purport of Section 168 of the Motor Vehicles Act, 1988, in terms whereof, it is not only entitled to determine the amount of claim as put forth by the* *claimant for recovery thereof from the insurer, owner or driver of the vehicle jointly or severally but also the dispute between the insurer on the one hand and the owner or driver of the vehicle involved in the accident inasmuch as can be resolved by the Tribunal in such a proceeding."*

**11**. Even in cases where sub-section (5) of Section 147 of the Motor Vehicles Act, applicable, the Hon'ble Supreme Court applied the doctrine of "pay and recover". The ratio of the said decision has been applied in some of the later decisions and in few decisions, the doctrine of "pay and recover" in respect of matters which are not strictly covered under Section 147(5) of the Motor Vehicles Act has not been applied by the Hon'ble Supreme Court depending upon the facts and circumstances of those cases.

**12**. Later, in **Branch Manager, United India Insurance Co. Ltd.** vs. **Nagammal and others** [**2009 (1) CTC 1**], the liability of the insurer under Section 147(2) of the Motor Vehicles Act further clarified as below:-

*"14. Let us now take stock of the discussions so far made. It is now apparent that under the Motor Vehicles Act, 1939, the Insurance*

*Company was not required to cover the liability in respect of a passenger, whether gratuitous or otherwise travelling in a goods vehicle. Of course the liability in respect of a driver, cleaner or coolie was required to be covered to the extent envisaged under the Workmen Compensation Act. Though there was some doubt regarding extension of coverage to owner of the goods or the agent of the owner of the goods accompanying the goods in a goods vehicle, it was held in Mallawwa's case that the Insurance Company was not required to cover such liability. The position underwent a slight change after 1988 Act came into force, particularly after the amendment effected in the year 1994. After such amendment, the Insurer is required to cover the liability in respect of owner of the goods or his agent accompanying the goods in a goods vehicle. The doubt, which was created in Satpal Singh's case, relating to requirement of covering the liability in respect of a passenger travelling in a goods vehicle, was laid to rest in Asha Rani's case and in more emphatic terms in Baljit Kaur's case and several other cases noticed above. The position of law is now clear that the Insurer is not liable to pay compensation in respect of a liability arising on account of death or injury to a passenger in a goods vehicle other than the liability in respect of such accident where the owner of the goods or its authorised agent is travelling in such goods vehicle."*

**13**. From a conspectus of the decisions, thus far analysed, it is apparent that,

(1) In claims covered under the provisions of the Motor Vehicles Act, 1939, the Insurance Company is not liable to pay any compensation for injury sustained or death caused to gratuitous passengers, fare paying passengers, and owner of the goods or his representative, who travels in the goods vehicle, when that vehicle meets with an accident.

(2) In claims covered under the provisions of the Motor Vehicles Act, 1988, arising from 1.7.1989 till 14.11.1994, the day the Amendment Act came into force, the Insurance Company shall not be liable to pay any compensation for the injury sustained or death caused to gratuitous passenger, fare paying passengers and owner of the goods or his authorised representative on being carried in goods vehicle, when that vehicle meets with an accident.

(3) In claims covered under the provisions of the Motor Vehicles Act, 1988, after amendment *i.e.,* from 14.11.1994 onwards, the Insurance Company is liable to pay compensation for the injury sustained or death caused to owner of the goods or his authorised representative carried in a goods vehicle.

**14**. In other words, under Section 147 of the Motor Vehicles Act, 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.

**15**. The above said observation is well fortified by two judgments of this Court (**Royal Sundaram Alliance Insurance Company Limited** vs**. D.Gunasekaran** (cited supra) and **Manjula and others** vs. **M.Sakthivel** (cited supra)), wherein with the aid of Rule 236 of the Tamil Nadu Motor Vehicles Rules, 1989, Section 147 of the Motor Vehicles Act interpreted and held that, by virtue of the statutory fiction under Section 147 of the Motor Vehicles Act, the owner of the goods or the representative of the owner of the goods is covered by the Policy without additional premium.

**16**. For the sake of convenience, Rule 236 of the Tamil Nadu Motor Vehicles Rules, 1989, is extracted below: -

> "**236. Limit of persons in goods carriage.**— *No person shall be carried in the cabin of a goods carriage beyond the number for which*

*there is a seating accommodation at the rate of thirty eight centimeters measured along the seat, excluding the space reserved for the driver, for each person, and not more than six persons in all in addition to the driver shall be carried in any goods carriage."*

**17**. Therefore, the appellant herein *i.e.,* the Insurance Company has to fail in their appeals on the sole ground that the claimants are road accident victims, who were not gratuitous passengers, but owners of the goods or representatives of the owners of the goods. The policy violation of entertaining more than 6 persons to accompany the goods as owners/representatives is the fault of the insured. Also, a clear violation of the policy condition. Therefore, the appellant shall entitle to exercise the right of pay and recovery. Accordingly, while confirming the awards passed by the Motor Accident Claims Tribunal in these batch of claim petitions, liberty is given to the appellant/Insurance Company to recover the compensation paid to the claimants from the vehicle owner *i.e.*, the second respondent.

**18**. Accordingly, with liberty to recover the compensation from the vehicle owner, the appeals and the C.R.P. are disposed of. No order as to costs. Consequently, connected Miscellaneous Petitions are closed.

Index : Yes
NCC : Yes / No **28.02.2024**
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To

1.The II Additional District Judge,
Motor Accident Claims Tribunal,
Tirunelveli.

2.The Chief Judicial Magistrate,
Motor Accident Claims Tribunal,
Tirunelveli.

3.The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.

**DR.G.JAYACHANDRAN, J.**

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**PRE-DELIVERY COMMON JUDGMENT MADE IN
C.M.A.(MD)Nos.397 to 403 of 2008 & 359 of 2012
and C.R.P.(MD)No.483 of 2008**

**28.02.2024**