



C.M.A.(MD).No.489 of 2012

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : 06.12.2023

Delivered On : 05.01.2024

CORAM:

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

C.M.A.(MD)No.489 of 2012

and

M.P.(MD)No.1 of 2012

The Branch Manager,
The New India Assurance Company Ltd.,
Periyakulam Road,
Theni.

... Appellant

Vs.

1.Murugeshwari
2.Dhanam

... Respondents

PRAYER : Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, to set aside the award and decree dated 09.12.2011 made in M.C.O.P.No.53 of 2011 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate Court, Theni.

For Appellant	: Mr.B.Vijay Karthikeyan
For R1	: Mr.K.Suresh Kumar
For R2	: Dismissed



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JUDGMENT

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This Civil Miscellaneous Appeal is directed as against the judgment and award on certain counts passed by the learned Motor Accident Claims Tribunal cum Special Sub Court, at Tirunelveli in M.C.O.P.No.53 of 2011 dated 09.12.2011, by the appellant/second respondent/insurance company.

2.For the sake of convenience, the parties are addressed herein as per the rank in M.C.O.P.No.53 of 2011.

3.The brief facts leading to the filing of the Civil Miscellaneous Appeal is as follows:-

This is the case of injured. On 16.09.2004, the petitioner having attended her friend's marriage travelled in a van bearing registration No.TN-51-Y-7652 along with many others from her village. While the said van was returning from Srivilliputhur at about 04.45 p.m., at Periyur to Usilampatti road near Hanuman temple at P.Chettipatti Vilakku, the said van capsized upside down. As the result of which, the petitioner had sustained grievous injuries across her body including complete



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destruction of six of her tooth. A FIR in Crime No.450 of 2004 was registered by the jurisdictional Police against the driver of the van. Seeking a compensation of Rs.1,00,000/- for the injuries, the petitioner has filed the claim petition.

4.The first respondent is the owner of the van and the second respondent is the insurance company with which the van was insured. The second respondent had filed a counter refuting all the allegations set forth in the claim petition. It was also pleaded in the said counter that the driver of the first respondent was not in possession of a valid driving licence. It was also pleaded that the insured vehicle was a goods carrier and without the knowledge of the owner, the driver had allowed passengers including this petitioner to travel in the goods carriage for hire purpose. Hence, there was a violation of policy condition. That apart no premium was paid for the passengers by the first respondent. Hence, the second respondent's counsel categorically pleaded that it is not necessary to indemnify the first respondent.



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5.The learned Tribunal had framed two issues. Two witnesses were examined P.W.1 and P.W.2 on the side of the petitioner and five documents were marked as Ex.P1 to Ex.P5 and two witnesses were examined R.W.1 and R.W.2 and three documents were marked as Ex.R1 to Ex.R3 on the side of the respondents. On the basis of oral and documentary evidence and arguments putforth by respective parties, the learned Tribunal has proceeded to conclude that the accident had happened due to the rash and negligent driving of the driver of the first respondent. The said conclusion was arrived by the learned Tribunal on the basis of the evidence deposed by the first respondent and also by the document Ex.R1 I.e. the insurance policy of the first respondent. Ex.R1 insurance policy of the vehicle involved in the accident and Ex.R2 is the RC book of the goods carrier and Ex.R3 is the permit of the goods carrier. Since the currency of the insurance policy which was marked as Ex.R1 was prevailing at the time of accident, the learned Tribunal passed order directing the second respondent to pay the compensation awarded and recover the same from the first respondent.



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6.As far as the compensation is concerned, on the basis of disability certificate marked as Ex.P1 and X ray was marked as Ex.P5 and on the basis of the evidence of P.W.2, Dr.Pappusamy, the learned Tribunal proceed to fix the partial permanent disability of the petitioner as 25% and had passed an order of compensation of Rs.2,000/- per percentage at Rs.50,000/- and proceeded to pass an award under following heads:-

Head	Compensation awarded
(I)Partial Permanent Disability:	Rs.50,000/-
(ii)Pain and suffering	Rs.8,000/-
(iii)Transportation, Extra Nourishment and Attendant charges:	Rs.8,000/-
(iv)Loss of earning for three months:	Rs.4,500/- (Rs.1500/- each month)
Total compensation awarded:	Rs.70,500/- with interest @ 7.5 % from the date of the claim until the realization and costs.

7.Challenging the same, this Civil Miscellaneous Appeal has been filed by the appellant/second respondent/insurance company.

8.The learned counsel for the appellant/second respondent



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vehemently submitted that the petitioner travelled as a gratuitous passenger in a goods vehicle and hence, the appellant/second respondent is not liable to pay compensation. He further submitted that it was held by various Court including the Hon'ble Apex Court that it is not necessary to indemnify the insurer for the cause of gratuitous passenger. It was also substituted that the learned Tribunal arrived at 25% partial permanent disability without any basis and the same is exorbitant and hence, pressed for setting aside the award passed by the learned Tribunal.

9.The learned counsel for the respondent/petitioner submitted that the award amount is only Rs.70,500/- and the vehicle was duly insured and the currency of the insurance policy which was marked as Ex.R1 was prevailing at the time of accident and hence, the award need not interfered.

10.The learned counsel for the appellant/second respondent vehemently submitted that the order of pay and recovery passed by the learned Tribunal is not maintainable, since the petitioner had travelled after attending function along with many others in a goods vehicle not



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along with goods. Already a sum of Rs.35,000/- was withdrawn by the petitioner and hence, the balance amount has to be returned to the second respondent insurance company and the first respondent be directed to pay the same to the petitioner.

11. In the case on hand, no doubt, the petitioner is a gratuitous passenger who travelled in a goods vehicle not along with goods but after attending a function at Srivilliputhur. The Hon'ble Division Bench of this Court in the case of ***Royal Sundaram Alliance General Insurance CO. Ltd., v. P.Ayyakannu and others*** reported in ***2012 (1) TNMAC (DB)***, has dealt with a case of gratuitous passengers and the relevant portion of which, is extracted as follows:-

“6. In National Insurance Co. Ltd. v. Cholleti Bharatamma, 2008 (2) TN MAC 29 (SC) : [2008 \(1\) SCC 423](#), it is held as follows:

“19. It is now well settled that the owner of the goods means only the person who travels in the cabin of the vehicle.

20. In this case, the High Court had proceeded on the basis that they were gratuitous passengers. The admitted plea of the respondents themselves was that the deceased had boarded the lorry and paid an amount of Rs. 20 as transport charges. It has



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not been proved that the deceased was travelling in the lorry along with the driver or the cleaner as the owner of the goods. Travelling with the goods itself does not entitle anyone to protection under Section 147 of the Motor Vehicles Act.”

10. Rule 236 provides that no person shall be carried in the cabin of a goods carriage beyond the number for which there is a seating accommodation. In the paragraph extracted above from Anjana Shyam's case, the Supreme Court held that Section 149, cannot be understood as imposing a liability on the Insurer to make payment even in respect of those who have been loaded into the vehicle against the terms of the permit and against the terms of the condition of registration of the vehicle and that though the Insurer is bound to cover the third party risks in respect of passengers, the risks can only be understood to mean risks of passengers authorized or permitted to be carried in the said vehicle. We are bound by this judgment and therefore, we hold that the Insurer is liable to indemnify the liability only with regard to Ayyakannu who sat in the cabin of the vehicle and along with the driver and whose liability alone the Insurer was bound to cover.

12.No doubt the petitioner along with others was loaded in the goods carrier against the terms of permit and against the terms of conditions of registration of vehicle. That apart no premium had been



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paid by the first respondent for passengers. Hence, the insurer is not bound to cover an unauthorized passenger, who is not permitted to travel in the goods carrier.

13. In yet another case of this Court in ***United India Insurance Co. Ltd., v. M.Thangavel and another*** reported in ***2011 (2) TNMAC 774***, this Court has dealt with the case of gratuitous passenger and the relevant portion of which is extracted as follows:-

“10. It is the submission of the learned counsel for the appellant that the owner of the vehicle, by permitting the 1st respondent to travel in the goods carriage vehicle as an unauthorised passenger, has committed statutory violation. Therefore, under section 147(b)(1) of the Motor Vehicles Act, the insurance company cannot be held responsible to pay the compensation, whereas it is the submission of the learned senior counsel for the 1st respondent, as on date, there is an award in favour of the 1st respondent/claimant and hence, under section 149, it is the duty of the insurer to satisfy the award. In these circumstances, the scope to make an interference in the award is very limited. Therefore, the insurance company could be directed to recover the award amount from the owner of the vehicle, after making payment to the respondent/claimant.



1. *In view of the submissions made by the learned counsel on either side, now the question that arises for consideration is, whether, in case of injuries sustained by the unauthorised passenger while travelling in the goods carriage vehicle, can a direction be given to the insurance company to pay the amount to the victim and recover the same from the owner of the vehicle ?*

13. *It is to be noted that in Section 147(b)(1), the expression "injury to any person including, owner of the goods or his authorised representative carried in the vehicle" was substituted by Act 54 of 1994 with effect from 14.11.1994. In view of the said amendment, the insurance company is liable to pay compensation in respect of the persons travelling in goods vehicle accompanying the goods or the authorised representative. Except the 'persons' classified in the said clause, the insurance company is not statutorily liable to pay the compensation. In I (2000) ACC 1 (SC), which was decided on 02.12.1999, when the question came up before the Hon'ble Supreme Court in the case of NEW INDIA ASSURANCE COMPANY .vs. SATPAL SINGH AND OTHERS with regard to the liability of insurance company in paying the compensation to the gratuitous passengers under section 147(2), the Hon'ble Supreme Court has held as follows:*

"8. Proviso to Section 147 (1) of the new Act shows that it is a recast provision by placing the erstwhile clause (iii) as



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the present clause (ii). In other words, clause (ii) of the proviso in Section 95(1) of the old Act is totally non-existent in the proviso to Section 147 (1) of the new Act.

9. Under Section 147 of the new Act, the policy must be a policy which 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 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:

(ii) against the death of or bodily injury to any passenger of a public, service vehicle caused by or arising out of the use of the vehicle in a public place.

10. The proviso to the said sub-section is not relevant here as it pertains to death or bodily injury to the employee mentioned therein. Sub-section (2) provides that a policy of insurance shall cover any liability incurred in respect of any accident, up to the following limits, namely:-

(i) save as provided in clause (b) the amount of liability incurred;

(ii) in respect of damage to any property of a third party, a



limit: of rupees six thousand:

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Provided that any policy of insurance issued with any limited liability and in force, immediately before the commencement of this Act, shall continue to be effective for a period of four months after such commencement or till the date of expiry of such policy whichever is earlier.

Hence, under sub-section(2), there is no upper limitation for the insurer regarding the amount of compensation awarded in respect of death or bodily injury of a victim of the accident. It is therefore, apparent that the limit contained in the old Act has been removed and the policy should insure the liability incurred and cover injury to any person including owner of the goods or his authorised representative carried in the vehicle. The Legislature has also taken care even the policies which were in force on the date of commencement of the Act by specifically providing that any policy of insurance containing any limit regarding insurer's liability shall continue to be effective of a period of four months from commencement of the Act or till the date of expiry of such policy, whichever is earlier. This means, after the said period of four months a new insurance policy consistent with the new Act is required to be obtained.

11. The result is that under the new Act an insurance policy covering third party risk is not required to exclude gratuitous passengers in a vehicle, no matter that the vehicle



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is of any type or class. Hence the decisions rendered under the old Act vis-a-vis gratuitous passengers are of no avail while considering the liability of the insurance company in respect of any accident which occurred or would occur after the new Act came into force".

24. A reading of the above judgments would show that only in a case, where the insurance company is successful in its defence under section 149, it may yet be required to pay the amount to the claimant and thereafter, it may recover from the owner of the vehicle. When the insurance company is not statutorily required to cover the liability in respect of a passenger in a goods vehicle under section 147 unless such passengers is the owner or agent of the owner of the goods accompanying such goods absolutely there is no need for the insurance company to pay compensation since there is no contractual liability under the statute to pay the amount to the gratuitous passenger travelling in the goods carriage vehicle. Under such circumstances, in my considered opinion, a direction could not be given to the insurance company to pay the owner and recover from the owner of the vehicle.

25. Now, coming to the decisions relied upon by the learned senior counsel for the 1st respondent, I find that in all those cases, the driver of the vehicle did not have the valid driving licence, such as without badge endorsement in the licence to drive the commercial vehicle, etc. The facts in



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PREMKUMARI .vs. PRAHLAD DEV (2008)3 MLJ 568 (SC) would show that the insurance company was exonerated from its liability in paying compensation on the ground that the driver of the offending vehicle did not have a valid and effective driving licence on the date of accident and the same was confirmed by the High Court; but the Hon'ble Supreme Court set aside the finding of the Tribunal stating that though the conclusion was in favour of the insurance company, the appellants, being the widow and minor children of the deceased, need not repay the amount claimed to have been paid to the appellants and only in those circumstances, when the insurance company succeeded in its defence available to them under section 149, permission was given to the insurance company to recover the same from the owner of the vehicle.

26. But, so far as this case is concerned, there is a statutory violation under section 147 of the Act. Therefore, following the principles laid down in *BALJIT KAUR's* case (*supra*), which was decided on 06.01.2004, I am of the view that the insurance company is not liable to pay compensation. Therefore, the judgments relied on by the learned senior counsel for the 1st respondent cannot be made applicable to the facts of this case. When there is no statutory liability to pay compensation by the insurance company to the victim, who has travelled as unauthorised passenger in the vehicle, the insurance company cannot be directed to pay the



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compensation amount and recover the same from the owner of the vehicle and, hence, I am not inclined to accept the submission made by the learned senior counsel for the 1st respondent that since there was an award in favour of the claimant, the insurance company is bound to satisfy the said award and the scope of interference in such an award by the High Court is limited.”

14.Hence, I have not hesitation to hold that there is no statutory liability to pay compensation by the second respondent/insurance company to the gratuitous passenger, who had travelled in the goods carriage violating the permit conditions and the policy conditions. The quantum fixed by the learned Tribunal is very reasonable.

15.In view of the same, I am inclined to set aside the award passed by the learned Tribunal by fixing the liability on the appellant/insurance company and modified that the liability is fixed on the side of the second respondent/owner. Therefore, the second respondent/owner is directed to pay compensation amount before the learned Tribunal within a period of eight weeks from the date of receipt of copy of this order and the appellant/insurance company is permitted to withdraw the amount if any

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deposited already. On such deposit, the first respondent/claimant is permitted to withdraw the award amount with proportionate interest after deducting any amount received by them earlier without filing any formal petition before the Tribunal. The petitioner/claimant is not entitled for interest for the default period, if there is any.

16. Accordingly, the Civil Miscellaneous Appeal stands partly allowed. There shall be no order as to costs. Consequently connected miscellaneous petition is closed.

05.01.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes
Mrn
To

1. Motor Accident Claims Tribunal
Special Sub Judge,
Tirunelveli.
2. The Section Officer,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.



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L.VICTORIA GOWRI, J.

Mrn

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