BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 02.02.2024

CORAM :

THE HONOURABLE Mr. JUSTICE C.KUMARAPPAN

C.R.P(MD)No.187 of 2006
and
C.M.A(MD)Nos.270 to 273, 339 to 345 of 2006 and
C.M.P(MD)Nos.1555 to 1558 and 1795 to 1802 of 2006

<u>C.R.P(MD)No.187 of 2006</u>

Oriental Insurance Company Ltd.,
6A, North Cotton Road,
Tuticorin, by its Regional
Manager

... Petitioner/2nd Respondent

Vs.

1.Annaselvam ...Respondent/Petitioner

2.Alagar Salt Works
Office at 247, W.G.C. Road,
Tuticorin,
V.O.C.District. ...Respondent/1st Respondent

Prayer:This Civil Revision Petition is filed under Article 227 of the Constitution of India, against the decree and judgment dated 20.12.2002 made in M.C.O.P.No.488 of 1996 on the file of the Motor Accident Claims Tribunal (II Fast Track Court) Tuticorin.

For Petitioner : Mr.C.Jawahar Ravindran

For R1 : Mr.T.Selvakumaran

C.M.A(MD)No.271 of 2006

Oriental Insurance Company Ltd.,
6A, North Cotton Road,
Tuticorin, by its Regional
Manager

... Appellant/2nd Respondent

Vs.

1.Sesi ...Respondent/Petitioner

2.Alagar Salt Works
Office at 247, W.G.C. Road,
Tuticorin,
V.O.C.District. ...Respondent/1st Respondent

Prayer:This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the decree and judgment dated 30.12.2002 made in M.C.O.P.No.489 of 1996 on the file of the Motor Accident Claims Tribunal (II Fast Track Court) Tuticorin.

For Petitioner : Mr.C.Jawahar Ravindran

For R1 : Mr.T.Selvakumaran

COMMON JUDGMENT

The above Civil Revision Petition and the Civil Miscellaneous Appeals are arising out of the accident that has taken place on 20.05.1996.

2. These Civil Miscellaneous Appeals have been filed by the appellant, Insurance Company against the award, dated 30.12.2002 passed in M.C.O.P.Nos.489, 490, 513, 487, 486, 500, 512, 557 and 491 of 1996 by the Motor Accident Claims Tribunal (II Fast Track Court) Tuticorin, challenging the liability.

3. For the sake of convenience, the parties will be referred to herein according to their litigative status as mentioned before the Tribunal.

The brief facts which are necessary for the disposal of these appeals are as follows:

4. On 20.05.1996, the petitioners of the respective MCOPs travelled in a lorry bearing Registration No.TN-69-4339 as gratuitous

passengers. While so, when the vehicle was plying at Thoothukudi to Tirunelveli Main Road, it had capsized and some of the petitioners sustained simple injuries and some of them sustained grievous injuries. When the petitioners preferred MCOPs, the Tribunal vide order dated 13.12.2002 directed the Insurance Company to pay the compensation. Aggrieved over the same, the Insurance Company preferred these Civil Miscellaneous appeals before this Court.

5.The award details and nature of injury in the respective MCOPs and the corresponding CRP and C.M.A(MD)Nos.271 to 273, 340 to 345 of 206 are as follows:

S.No.	M.C.O.P.No.	Name of the claimant	Injuries	Award amount	C.M.A & C.R.P Nos.
1.	485/96	Antony Mary	Lacerate over left & right side of fore head, Curt injury over chin, Abrasion over right shoulder of fore arm, Abrasion over left hand joint and back, Front upper jaw two teeth broken into half.	Rs.30,000/-	339/2006

2.	486/96	Kodi Muthu Kani	Contusion on the left leg knee, Contusion on the right leg knee, lacerated on the left fore arm, Lacerated over the left hand wrist, Abrasion over right hand fracture of IV & V rib bone.	Rs.30,000/-	341/2006
3.	487/96	Thomas	Long cut injury over head, Long cut injury over fore arm, cut injury over chin, upper jaw five teeth fallen, lacerated over left and right arm	Rs.30,000/-	340/2006
4.	488/96	Anna Selvam	Cut injury over forehead, Lacerated over left wrist, lacerated over left back of the body	Rs.6,000/-	187/2006
5.	489/96	Sasi	Fracture over index finger of right hand, Abrasion over left hand, contusion over left leg knee	Rs.15,000/-	271/2006
6.	490/96	Antony Raj	Lacerated injury over left knee, lacerated injury over right knee, Abrasion over left cheek	Rs.8,000/-	272/2006
7.	491/96	Kala	Lacerated injury over left hand wrist, Fracture over left rip, a deep cut injury over left side back of the body	Rs.10,000/-	345/2006

8.	499/96	Pon Thangam	Lacerated injury over left hand wrist, Cresh injury over left ear, Fracture injury over left clavical bone, Upper jaw two teeth shaking condition.	Rs.15,000/-	270/2006
9.	500/96	Minor Sudalaimuthu	Abrasion over right hand wrist, Lacerated injury over back of the body, lacerated injury over left leg knee, Abrasion over left hand and right hand, Abrasion over right side cheek, Abrasion over above left eye brow.	Rs.18,000/-	342/2006
10.	512/96	Thanga Vijaya Kumari	Contusion over left neck knee, amputation of big toe over left hand, abrasion over left hand fore arm.	Rs.26,000/-	434/2006
11.	513/96	Mary	Fracture over index finger of right hand, lacerated injury over the back right side of head, lacerated over left hand, lacerated over the back of the body, lacerated over left hand elbow.	Rs.12,000/-	273/2006
12.	557/96	Selvaraj	Fracture of left leg, Thigh muscle pealed off, blunt injury over abdominal area, left ear thorn off, lacerated over left forehead.	Rs.52,000/-	344/2006

6.Before the Tribunal, on the side of the petitioners, thirteen witnesses were examined as P.W.1 to P.W.13 and twenty eight documents were marked as Ex.P.1 to Ex.P.28. On the side of the respondents, one witness was examined as R.W.1 and thirteen documents were marked as Ex.R.1 to Ex.R.13.

7.The Tribunal has found that the accident had occurred only upon the negligence on the part of the driver of the first respondent, who drove the vehicle in a rash and negligent manner. The second respondent before the Tribunal being the Insurance Company of the vehicle, was directed to satisfy the award. Admittedly, no appeal has been filed by the claimants as well as the owner of the vehicle and all these appeals have been filed by the Insurance Company.

8.The learned counsel appearing on behalf of the appellant/Insurance Company would contend that all the claimants were gratuitous passengers in the insured vehicle bearing Registration No.TN-69-4339 and that, they are neither the owners of the goods nor the employees of the first respondent. Therefore, strenuously contended that carrying persons in a goods vehicle, is a violation of the policy condition. Hence, he has submitted that the order passed by the Tribunal directing the Insurance Company to pay the award amount, is contrary to the provisions of Section 147 of the Motor Vehicles Act. Hence, he prayed to set aside the fair and final order of the respective MCOPs.

9. Despite the name printed, the first respondent viz., the owner of the Insured Vehicle, bearing Registration No.TN-69-4339 has not appeared before this Court.

10.The learned counsel appearing for the claimants would submit that the order passed by the Tribunal is perfectly in order and there are no ground to interfere with the same.

11.I have given my anxious consideration on the submission made by either side.

12.From the submissions of the learned counsel for the appellant/Insurance Company, what would emerge is that, the order to the extent of the direction against the Insurance Company to pay the award amount has been put on challenge. It is the submission of the second respondent/Insurance Company that the claimants were neither the owners of the goods carried in the lorry nor the employees of the first respondent owner of the vehicle. However, all the claimants have contended that they are the employees of the first respondent owner of the vehicle. In this regard, this Court has perused the certified copy of the First Information Report-Ex.P.1, which has been lodged immediately on the next day of the accident. Wherein the persons those who have travelled in the lorry, were referred to as the employees of the second respondent.

13.The learned counsel for the second respondent, Insurance Company would contend that in the goods vehicle, passengers should not be permitted to travel. Fortunately, the second respondent/Insurance Company has marked the Insurance Policy-Ex.R.1, pertains to the lorry bearing Registration No.TN-69-4339. Wherein it comes to our light that the first respondent owner has taken policy for Limited liability of non-paying passengers as per I.M.T 13, and Limited liability to persons employed in connection with the operation and/or maintenance and/or loading or unloading of Motor Vehicles I.M.T 17. Therefore, *prima facie,* there is a policy covered for the employees those who worked in the first respondent/owner of the vehicle. Even while cross examination of the Senior Assistant of the second respondent, Insurance Company, he has stated that he has no knowledge whether the claimants are the employees of the first respondent/owner of the vehicle or not.

14.When all the claimants have examined before the Court, they deposed that they are the employees of the first respondent and that, in Ex.P.1-First Information Report, which was registered on the next day of the accident, has also reference that these claimants were the employees of the first respondent. Though the first respondent has paid premium to their employees, who have been working in connection with the operation and for non-fair paying the passengers, the Tribunal arrived at a conclusion that these claimants are the gratuitous passengers, on the ground that these claimants were working under the employment of one Mastry and wherever, the said Mastry gets work, these claimants would attend the same. Therefore, held that the claimants are the employees of Mastry and also held that they are the gratuitous passengers. Therefore, in the absence of any challenge to the said finding, this Court could not find any ground to deviate from the findings of the Tribunal.

15.While perusing the order of the Tribunal, the Tribunal followed the ruling of Hon'ble Supreme Court in ***New India Assurance Co., Ltd-Vs-Satpal Singh & Others***, reported in ***2000 A.C.J. 1***, and held that the Insurance Company is liable to indemnify the owner for the injuries sustained by the gratuitous passengers. But the said ruling was subsequently overruled in ***National Insurance Co. Ltd-Vs-Baljit Kaur and Others***, reported in ***(2004) 2 Supreme Court Cases 1***.

16.The learned counsel for the respondents has submitted as many as 20 judgments mentioned infra to substantiate his arguments that in respect of the gratuitous passengers, there cannot be any order for pay and recovery. All the following judgments cited by the second respondent/appellant have stated and restated the proposition laid down in ***New India Assurance Co., Ltd-Vs-Asha Rani & Others,*** reported in 2004(2) ***TN MAC 387(SC)*** and ***Baljit Kaur*** case (cited supra).

1.In ***National Insurance Co., Ltd-Vs-Ajith Kumar and Ors.,*** reported in ***2004(1) TNMAC (SC)9***.

2.In ***Mr.Hydhras-Vs-P.P.Kunhavaa and Anr.,*** reported in ***2004(1) TN MAC 68(DB)***

3.In ***Tamil Nadu Transport Corporation, represented by its Managing Director, Railway Station New Road, Kumbakonam Town and District Munsif-Vs-Rajathi Thangamani & Others***, reported in ***2004(1) TN MAC 70(DB)***

4.In ***United India Insurance Company Ltd., Vellore-Vs-Chinnakannan and others,*** reported in ***2004(2) TN MAC 146(DB)***.

5.In ***Oriental Insurance Company Ltd-Vs-Devireddy Konda Reddy & Others***, reported in ***2004(2) TN Mac 383(SC)***

6.In ***New India Assurance Co., Ltd-Vs-Asha Rani and Others,*** reported in ***2004(2) TN MAC 387(SC).***

7.In ***National Insurance Co., Ltd-Vs-Bommithi Subbhayamma & Ors.,*** reported in ***2005(1) TN MAC 169(SC)***

8.In ***United India Insurance Company Ltd-Vs-United India Insurance Company Ltd.***, reported in ***2005(2) TN MAC(DB) 345.***

9.In ***New India Assurance Co., Ltd-Vs-Vedwati & Ors.,*** reported in ***2007(1) TN MAC 205(SC)***.

10.In ***Smt.Thokchom Ongbi Sangeetha alias Sangi-Vs-Oriental Insurance Co., Ltd., and Others***, reported in ***2008(1) TN MAC 59(SC)***.

11.In ***National Insurance Co., Ltd-Vs-Cholleti Bharatamma and Others***, reported in ***2008(2) TN MAC 29(SC)***.

12.In The ***Divisional Manager, The New India Assurance Company Limited, Thanjavur-Vs-Vinayaga Moorthi,*** reported in ***2008(2) TN MAC 355***.

12.In ***Branch Manager, United India Insurance Co., Ltd., Branch Office, Nethaji Bye Pass Road, Dharmapuri Town,*** reported in ***2009(1)TN MAC 1 (FB)***

13.In ***National Insurance Co., Ltd-Vs-Kaushalaya Devi & Ors.,*** reported in ***I(2009) ACC 52(SC)***

14.In ***National Insurance Co., Ltd-Vs-Rattani and Others,*** reported in ***2009(1) TN MAC 103(SC)***

15.In ***Royal Sundaram Alliance General Insurance Co., Ltd-Vs-P.Ayyakannu and others***, reported in ***2012(1) TN MAC 89(DB)***

16.In ***United India Insurance Co., Ltd-Vs-D.Tamilarasi and others,*** reported in ***2012(1)TN MAC 646.***

17.In ***United India Insurance Co., Ltd-Vs-Annamalai & Ors.,*** reported in ***III(2012) ACC 484.***

18.In ***Iffco-Tokio General Insurance Co, Ltd-Vs-Muthumani,*** reported in ***2014(2)TN MAC 442.***

19.In ***The Branch Manager, United Indian Insurance Co., Ltd-Vs-K.Chandran,*** reported in ***2015(2) TN MAC 544.***

20.In ***Bharati AXA General Insurance Co. Ltd-Vs-Aandi,*** reported in ***2018(2) TN MAC 731(DB).***

17.Serendipitously, the appellant has relied upon the Full Bench decision of this Court in ***Branch Manager, United India Insurance Co.,***

Ltd, Branch Office, Nethaji, Bye Pass Road, Dharmapuri Town-Vs-Nagammal and 2 others, reported in ***2009(1)CTC1*** and the judgment of the Division Bench of this Court in ***Bharati AXA General Insurance Co., Ltd-Vs-Aandi,*** reported in ***2018(2) TN MAC 731(DB)***.

18.Though all the above judgment settled the legal position that the Insurance Company is not liable to pay or indemnify the owner, to the gratuitous passengers the Full Bench decision of this Court in ***Nagammal's case(cited supra)*** has clarified that the application of the ratio of ***Baljit Kaur case(cited supra)*** in respect of the award passed prior to the pronouncement of order in ***Baljit Kaur case(cited supra)***. This Court deems it appropriate to extract para No.31 of the above judgment, the same is as follows;

> *"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 envisages under Section 147, but 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 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 claimant would be left to recover the amount from the person liable i.e., the driver or the owner, as the case may be."

(emphasis supplied by this Court)

19.The Full Bench, in the above judgment, has succinctly held that the Insurance Company is not liable to cover the gratuitous passengers. However in para 31(vii), has held that if any award has already been passed by the Tribunal prior to the passing of the order of ***Baljit Kaur's case(cited supra)***, then it would be subject to the discretion of the appellate Court to order pay and recovery, or left the burden to recover the amount from the person liable, that is the driver or the owner, as the case may be.

20.In the instant cases, which is under challenge, the award has been passed by the Tribunal vide, order dated 13.12.2002. Whereas the ***Baljit Kaur(cited supra)***, judgment was pronounced on 06.01.2004, qua subsequent to the order of the Tribunal. Therefore, by virtue of Full Bench decision of this Court in ***Nagammal case(cited supra)***, there is a discretion available to the appellate Court either to order pay and recovery or to direct the owner to satisfy the award.

21.Now, the only point to be determined is whether the appellant/Insurance Company is liable to indemnify on behalf of the first respondent. As per the various judgments mentioned supra, the gratuitous passengers are not liable to be covered by the Insurance Company. Therefore, the contention put forth by the learned counsel for the appellant that the Insurance Company is not liable to satisfy the award is well merited and liable to be accepted.

22.However, whether such ratio is applicable to the instant case is a question still left to be answered. As extracted hereinabove, the Full Bench Judgment of this Court in ***Nagammal case***, has given a window to the appellate Court that if any award has been passed prior to the pronouncement of the order by the Hon'ble Supreme Court in ***Baljit Kaur case(cited supra)***, then a discretion was left to the appellate Court either to award pay and recovery or otherwise.

23.As extracted hereinabove, in the instant case, award was passed on 13.12.2002, prior to the pronouncement of the ***Baljit Kaur case*** (cited supra) on 06.01.2004. The learned counsel for the claimant would submit that in some of the cases they have withdrew 50% of the award amount. Further the learned counsel for the Insurance Company would submit that they already deposited the entire award amount before the Court. Therefore, in such peculiar circumstances of the case and also considering the date of the accident and the socio economic status of the claimants, by invoking the discretion given to this Court in the Full Bench judgment of this Court in ***Nagammal's case***, this Court inclined to order pay and recovery, while confirming the quantum in all the C.M.As and C.R.P.

24.Hence, this Court, while confirming the quantum of award, is inclined to modify the order only to the extent directing the second respondent Insurance Company to pay the entire award amount before the Tribunal, if the amount so far not deposited before the Court and recover the same from the first respondent/owner of the vehicle.

25.In the result, all the Civil Miscellaneous Appeals and Civil Revision Petition are partly allowed. The quantum of the amount awarded by the Tribunal is confirmed. The appellant/Insurance Company is directed to deposit the respective award amounts along with interest and costs before the Court, after adjusting any amount if already deposited.

26.On such deposit being made, the claimants are entitled to withdraw their respective award amount along with accrued interest and costs, less the amount, if any already withdrawn. The appellant/Insurance Company is permitted to recover the award amount along with interest from the owner of the vehicle, who is the second respondent herein. No costs. Consequently, the connected Civil Miscellaneous Petitions are closed.

02.02.2024

NCC:Yes/No
Index:Yes/No
Internet:Yes/No

C.KUMARAPPAN,J.

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To

1.The Motor Accident Claims Tribunal
(II Fast Track Court)
Tuticorin.
2.The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

C.R.P(MD)No.187 of 2006
and
C.M.A(MD)Nos.271 to 273, 340 to 345 of 2006

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