IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.12.2025

CORAM:

THE HONOURABLE MRS.JUSTICE T.V.THAMILSELVI

C.M.A.No.549 of 2023
and
CMP.No.4705 of 2023

Branch Manager
The New India Assurance Co. Ltd.,
Thir.Vi.Ka Street,
Villupuram. ... Appellant

Vs.

1.Mangavaram
W/o.Nagappan

2.Amutha
D/o. Nagappan

3.Veeraputhiran
S/o.Nagappan

4.Karunanithi
S/o.Ayyakannu ... Respondents

PRAYER : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, prays to set aside the order dated 09.11.2022 made in MCOP.No.22 of 2021, on the file of Motor Accident Claims tribunal, Special District Court, Villupuram.

For Appellant : Mr.S.Dhakshanamoorthy

For R1 to R3 : Mr.A.P.Neelamegavannan
For R4 : No appearance

JUDGMENT

Challenging the pay and recovery order passed by the Tribunal, in MCOP.No.22 of 2021, on the file of Motor Accident Claims Tribunal, Special District Court, Villupuram, dated 09.11.2022, the appellant / 2nd respondent has preferred this appeal.

2. The learned counsel for the appellant submitted that, at the time of the alleged accident, the victim was travelling on the mudguard of the insured tractor. There is no provision permitting any person, other than the driver, to travel in a tractor. Therefore, the deceased, being an unauthorized passenger, was not covered under the policy, and there is no statutory mandate under the Motor Vehicles Act to cover such unauthorized passengers. If at all any liability arises, only the owner of the vehicle/4th respondent herein is liable to pay compensation. However, the Tribunal fastened the liability on the insurer under the principle of pay and recovery. Without properly appreciating that the insurance company

cannot be made liable to compensate an unauthorized passenger, the Tribunal improperly directed pay and recovery. Hence, he prayed for setting aside the findings of the Tribunal insofar as the pay and recovery liability imposed upon the appellant.

3. In support of his submissions, the learned counsel for the appellant relied upon the judgment of the Hon’ble Division Bench of this Court, in the case of United India Insurance Co. Ltd., Vs.Lakshmamma and others, reported in MANU TN 4553 of 2023, in paragraphs 11 and 16, which reads as follow:

> *“11.We must hasten to add that the attention of two Judge Bench, which decided Shivaraj Vs. Rajendra and Another was not drawn to the dictum of the larger Benches in New India Assurance Co. Ltd., Vs. Asha Rani and Others reported in2004 (2) TN MAC 387 and National Insurance Co. Ltd., Vs. Baljit Kaur and others reported in MANU/SC/0009/2004: 2004 (1) CTC 210 wherein, Hon'ble Supreme Court had after detailed discussions held that the pay and recover would arise only there is a valid contract of insurance and there is a statutory requirement for coverage of the risk.*
>
> *16.We further find that there is no discussion on the scope of the risk that should be covered by the Insurance Company in such cases. As rightly pointed out by the Full Bench of the Karnataka High Court with which, we concur with respect to a person travelling in the mud-guard of the Tractor is not covered by the policy, irrespective of the capacity in which, he travels in the said vehicle. Rule 28 of the Central Motor*

Vehicle Rules contains a direct prohibition on persons, being allowed to travel in the mud-guard of the Tractor. When there is a statutory violation that persons, who travels in the mud-guard is unauthorized passenger, we cannot burden the Insurance Company with liability when it is not required to cover the risk of an unauthorized passenger. The First Information Report in the case on hand shows that the deceased has travelled in the mud-guard of the Tractor. A perusal of the RC Book of the Tractor as well as the Trailer shows that it is an agriculture vehicle. The facts revealed that it was used for non-agricultural purpose. Therefore, the very user of the vehicle, being in violation of the framed conditions would also entail the Insurance Company to avoid its liability."

4. The learned counsel appearing for the respondents 1 to 3 submitted that, on considering the entire evidence, the Tribunal passed a well-reasoned award and rightly fixed the liability on the 4th respondent, whose vehicle was insured with the appellant-insurance company.

5. Considering the fact that, at the time of the accident, the deceased was travelling on the mudguard of the tractor belonging to the 4th respondent, and that he fell down and died due to the rash and negligent driving of the tractor driver, the Tribunal observed that the seating capacity of the tractor permitted two persons including the driver. Therefore, the deceased was concluded to be an unauthorized person.

Relying upon the ratio laid down in *2018 (2) TANMAC 273 (SC)*, the Tribunal directed the insurance company to pay the compensation and thereafter recover the same from the owner of the vehicle. The Tribunal, therefore, rightly granted relief to the claimant. It was further argued that the family of the deceased had no source of income and the award requires no interference.

6. In support of his submissions, the learned counsel for the respondents relied upon the decisions reported in *SCC 7179 of 2022, V.Renganathan& another Vs. The Branch Manager, United India Insurance company Ltd. and another,* wherein in similar circumstances, though the deceased travelled on the mudguard of the tractor as an unauthorized passenger, the Tribunal directed the insurance company to pay the compensation with liberty to recover the same from the owner.

7. On considering the submissions made on both sides and the materials placed on record, it is revealed that the deceased was travelling on the mudguard of the tractor belonging to the 4th respondent at the time of the accident. The vehicle was insured with the appellant insurance company, which is an undisputed fact. The contention of the appellant is

that an unauthorized passenger is not covered under the policy, and therefore, the question of pay and recovery does not arise. It was also contended that there was a violation of the policy conditions and that the insurer cannot be fastened with liability.

8. However, in the authority relied upon by the claimants, the Hon'ble Apex Court, in a similar factual scenario where the deceased travelled on the mudguard of the tractor, directed the insurance company to pay the compensation and granted liberty to recover the same from the owner of the vehicle.

9. In the present case also, the deceased travelled on the mudguard of the tractor and met with an accident. The vehicle belonging to the 4th respondent was duly insured with the appellant. Therefore, the Tribunal has rightly directed the insurance company to pay the compensation and granted liberty to recover the same from the owner. The findings of the Tribunal are sustainable and do not require interference. The findings of the Tribunal are confirmed.

10. In the result, this Civil Miscellaneous Appeal is dismissed.

Consequently, the connected miscellaneous petition is closed.

11. If the compensation amount has already been deposited by the appellant/insurance company, the claimant is permitted to withdraw the same, in the manner known to the law.

15**.12.2025**

Index:Yes/No
Speaking/non Speaking order
Neutral Case citation: yes/no
rri

To

1. The Motor Accident Claims tribunal, Special District Court,
Villupuram.
2.The Section Officer, V.R. Section,
High Court of Madras.

T.V.THAMILSELVI, J.

rri

C.M.A.No.549 of 2023
and
CMP.No.4705 of 2023

15.12.2025