IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	**04.06.2025**
Pronounced on	**30.06.2025**

CORAM

THE HONOURABLE MRS.JUSTICE K.GOVINDARAJAN THILAKAVADI

C.M.A.No.1784 of 2022 and

C.M.P. No.12895 of 2022

M/s. National Insurance Company Limited,
L.R.N. Colony,
Saradha College Main Road,
Hasthampatti, Salem-7. …Appellant

Vs.

1. Radha
2. P. Elumalai …Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act,1988, praying to set aside the decree and judgment passed in MACT O.P. No.69 of 2018 dated 03.01.2022 on the file of the Motor Accident Claim Tribunal, Special District Court, Salem.

For Appellant : Ms.N.B.Surekha
For Respondents : Mr.T. Saikrishnan for R1
No Appearance for R2

JUDGMENT

The above Civil Miscellaneous Petition is directed against the judgment and decree dated 03.01.2022 in MACT O.P. No.69 of 2018 on the file of the Motor Accident Claim Tribunal, Special District Court, Salem.

2. The brief facts of the case are as follows:

2.1. On 28.06.2012, at about 16.30 hours, when the deceased minor Selvam was travelling in a tractor bearing Registration No. TN 28-L-3622 with Trailer bearing Registration No. TN 27 T 1936 as a non fare paying passenger, near Chinnagoundampatti burial ground, the driver of the tractor drove the same in a rash and negligent manner and applied sudden brake, due to which the tractor capsized, the said Selvam fell down and the tractor ran over him. On account of the same, the said Selvam died on the spot. The deceased was aged about 12 years and was studying in 5th standard at the time of accident.

2.2. The mother of the deceased filed a Claim Petition before the Tribunal claiming compensation of Rs.10,00,000/-.

2.3. The appellant Insurance Company contested the case by filing a counter, wherein it is stated that the deceased Selvam was sitting on the "mudguard" of the tractor. The tractor is a goods vehicle. The driver of the tractor allowed the deceased to sit in the tractor as a non fare paying passenger and thus violated the policy conditions. Hence, the appellant/Insurance Company prayed for dismissal of the said petition with costs.

2.4. On the side of the claimant, the claimant examined herself as P.W.1 and one another witness as P.W.2 and marked Ex.P1 to Ex.P8. On the side of the second respondent/Insurance Company R.W.1 to R.W.4 were examined and Ex.R1 to Ex.R3 were marked. Ex.X1 to Ex.X5 were also marked.

2.5. The Tribunal, based on the oral and documentary evidence, has come to the conclusion that the driver of the tractor is responsible for the accident and awarded a compensation of Rs.5,00,000/- to the claimant along with interest at the rate of 7.5% per annum. The Tribunal while awarding the compensation to the claimant, directed the appellant Insurance Company to pay the compensation amount to the claimant in the first instance, and then recover the same from the second respondent herein, the owner of the tractor.

3. Dissatisfied with the said Award, the appellant Insurance Company has filed the present appeal on the ground that, in cases where an unauthorised passenger travels in a goods vehicle or non passenger vehicle, the insurer is generally not statutorily obligated to cover the liability for such passenger. The learned counsel for the appellant/ Insurance Company, in support of her contention, has relied upon the following judgements.

1) C.M.A. No.3817 of 2011 dated 15.02.2021.
2) C.M.A.(MD) No.963 of 2016 dated 23.03.2021
3) C.M.A.(MD) No.417 of 2019 dated 15.07.2021.
4) C.M.A. No.2649 of 2017 dated 10.03.2022.

5) C.M.A. No.789 of 2024 dated 02.07.2024.

6) C.M.A. No. 2617 of 2014 dated 02.09.2021.

7) C,M.A. No.3414 of 2013 dated 25.02.2021

8) C.M.A. No.1893 of 2020 dated 19.07.2023.

The learned counsel for the appellant thus submitted that the appellant Insurance Company has proved the violation of policy conditions by the owner of the vehicle and therefore, the Insurance Company is not liable to pay any amount.

4. On the other hand, the learned counsel for the first respondent/claimant contended that as per the judgment of the Hon'ble Supreme Court as well as this Court, the Insurance Company is liable to pay the compensation at the first instance and then recover the same from the owner, in the case of violation of policy conditions. In support of his contentions, the learned counsel for the first respondent relied on the following judgments.

1) *2016 SCC Online Mad 16691(V. Karuppiah (died) and others vs. B.Muthulakshmi and Oriental Insurance Co. Ltd.,)*
2) *2017 SCC Online Mad 34617 (New India Assurance Company Limited represented by its Branch Manager vs. Lakshmi Ammal and another).*
3) *C.M.A. No.96 of 2013 dated 24.03.2022.*

5. Despite notice, the second respondent/owner f the vehicle failed to appear before this Court.

6. It is seen that the deceased travelled as an unauthorised passenger in a goods vehicle, which is in violation of policy conditions. However, the Tribunal has held that the Insurance Company is liable to pay the compensation at the first instance and then recover the same from the owner of the vehicle.

7. The Full Bench of this Court in ***UNITED INDIA INSURANCE COMPANY VS. NAGAMMAL AND OTHERS*** reported in ***2009 (1) CTC 2*** has held 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 pictures emerges:

(i)The Insurance Policy is required to cover the liability envisaged 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."

8. In ***THE MANAGER, IFFCO – TOKYO GENERAL INSURANCE CO. LTD., V.G.RAMESH, (2012 (1) TN MAC 820)*** this Court referring Asha Rani's case and other judgments, has held as follows:

> *"......the question as to whether the Insurance Company is statutorily liable to cover the liability in respect of risk of gratuitous passenger, is clearly laid down by Hon'ble Apex Court in Asha Rani's case by reversing the earlier decision in Saptal Singh's case and further question as to whether the doctrine of "Pay and Recover" theory, which is applied till then, by directing the Insurer to satisfy the award and to recover the amount from the insured even though the Insurer was not statutorily required to cover the liability in respect of such passengers carried in goods vehicle, is clarified in Full Bench judgment of our High Court. As per which, after the decision of Baljit Kaur's case rendered on 06.01.2004 no such direction can be issued by the Trial Court to the Insurance Company on the principle of "Pay and Recover" relating to the liability in respect of risk of gratuitous passengers travelling in a goods vehicle and no Trial Court is expected to decide contrary to the decision made thereon."*

9. Coming to the present case on hand, the deceased travelled in mudguard of the Tractor, which cannot be used for carrying passengers as transport vehicle. Therefore, owner of the vehicle, respondent No.2 herein is liable to pay compensation to the first respondent/claimant.

10. In view of the dictum laid down by the Hon'ble Supreme Court and taking note of the judgments of this Court, the question involved in the present appeal is answered in favour of the appellant/Insurance Company.

11. In the result, the appeal stands allowed only in respect of the liability fastened by the tribunal against the appellant/Insurance Company to pay compensation. The quantum of compensation awarded by the tribunal is confirmed. There will be an award only against the owner of the vehicle viz., respondent No.2 and the award against the appellant/Insurance Company will stand set aside. It is made clear that the first respondent/claimant is entitled to recover compensation from the owner of the vehicle, respondent No.2 herein. No costs. Consequently, connected miscellaneous petition is closed.

30.06.2025

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Internet:Yes/No
Index:Yes/No
Speaking/Non-speaking order

K.GOVINDARAJAN THILAKAVADI, J.

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To

1. Motor Accident Claim Tribunal, Special District Court, Salem.
2. The Section Officer,
   VR Section,
   High Court, Madras.

Pre-delivery Judgment made in

C.M.A.No.1784 of 2022 and

C.M.P. No.12895 of 2022

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