BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reserved	28/10/2025
Date of Pronounced	25/11/2025

CORAM

The Hon'ble Ms.Justice **R.POORNIMA**

CMA(MD)Nos.1113 & 1114 of 2013

(1) CMA(MD)No.1113 of 2013 :-

The Branch Manager,
Iffco Tokyo General Insurance Company Ltd.,
Sakthikanth Nadar, Ponmayni,
Madurai. : Appellant/2nd Respondent

Vs.

1.S.Mariappan ... 1st Respondent/ Petitioner

2.A.Arokiam ... 2nd Respondent/ 1st Respondent

PRAYER :- Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the order and decretal order dated 28/02/2011 passed in MCOP No.49 of 2007 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate, Dindigul.

For Appellant : Mr.V.Sakthivel

For Respondents : Mr.A.Hariharan–for R1 (no appearance)
ex parte – R2

(2) CMA(MD)No.1114 of 2013 :-

The Branch Manager,
Iffco Tokyo General Insurance Company Ltd.,
Sakthikanth Nadar, Ponmayni,
Madurai. : Appellant/2nd Respondent

Vs.

1.Paulpandi ... 1st Respondent/ Petitioner

2.A.Arokiam ... 2nd Respondent/ 1st Respondent

PRAYER :- Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the order and decretal order dated 28/02/2011 passed in MCOP No.75 of 2007 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate, Dindigul.

For Appellant : Mr.V.Sakthivel
For Respondents : Mr.A.Hariharan–for R1 (no appearance)
ex parte – R2

COMMON JUDGMENT

Since both the Civil Miscellaneous Appeals arise out of the common award, dated 28.02.2011 made in MCOP Nos.49 & 75 of 2007 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate, Dindigul, they are taken up together for final disposal and disposed of by a common judgment.

2. For the sake of convenience, the parties are referred to according to their litigative status before the Tribunal.

3.These Civil Miscellaneous Appeals are preferred seeking to set aside the common order and decretal order, dated 28.02.2011 made in MCOP Nos.49 & 75 of 2007 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate, Dindigul.

4.**<u>The facts in brief:-</u>**

(i) On 14.12.2006, during the early hours, the petitioners travelled as owners of the goods viz., flowers in a Mini door Auto bearing Registration No.TN 57 F 1595 in Madurai-Dindigul Main road. When the Auto was nearing the Vellode Kallarai Thottam road, the driver of the vehicle drove the vehicle in a rash and negligent manner, as a result the said auto was overturned. In the accident both the petitioners sustained grievous injuries including fractures. They were immediately taken to City Hospital, where they were admitted as inpatient and underwent treatment for their injuries. Surgery was performed and plates were implanted. The accidental injuries have resulted in permanent disability to both of them and reducing their earning capacity.

(ii) In this connection, Ambathurai Police registered a case against the driver of the 1st respondent and conducted an investigation. The Mini door Auto belongs to the 1st respondent and is insured with the 2nd respondent. The petitioners in M.C.O.P.No.49 of 2007 and M.C.O.P.No.75 of 2007 claims a sum of Rs.2,00,000/- each as compensation.

5. The claim was resisted by the Insurance Company disputing the manner of the accident and its liability to pay compensation. According to the insurance company, the vehicle involved in the accident is a goods-carrying vehicle and is intended solely for the purpose of carrying goods alone. The injured persons were unauthorised and were travelling gratuitously in the Mini door auto. Further, more than the permitted number of persons were travelling in the goods Auto at the time of the accident and thereby, violating the terms of the insurance policy and permit conditions. Hence, the respondent is not liable to pay any compensation to the petitioners and therefore, prayed to dismiss the petition with costs.

6. Before the Tribunal, on the side of the claimants, 4 witnesses were examined and 11 documents marked. On the side of the respondents, one witness was examined and one document marked.

7. At the conclusion of the trial, the Tribunal found that the accident occurred due to the negligent act of the driver of the auto belonging to the 1st respondent. Since the auto was insured with the second respondent, Tribunal directed the second respondent to pay the compensation and awarded a total compensation of Rs.88,410/-, in respect of MCOP No.75 of 2007; and a sum of Rs.95,800/- in respect of MCOP No.49 of 2007. Aggrieved by the award, the appellant insurance company has preferred these appeals.

8. About the first aspect of negligence, the Tribunal based on the evidence let in by the claimants and based on the FIR registered against the driver of the mini door auto bearing Registration No.TN 57 F 1595 belongs to the first respondent insured with the second respondent, concluded that the occurrence took place due to the negligence on the part of the driver of the auto belonging to the first respondent.

9. Aggrieved by the award, the appellant insurance company has preferred these appeals by disputing the findings of negligence and contending that the victims of the road accident were not permitted to travel in the cargo area of the goods carriage and are therefore deemed to be unauthorised passengers in the eyes of the law. The tribunal failed to take into consideration the fact that only one person can travel in the cabin of the vehicle and there is no proof that the victims of the road accident had travelled in the insured vehicle at the time of the accident in the cabin.

10. Now, this Court has to decide the following points for consideration:

(1) Whether the petitioners have travelled as gratuitous passengers and whether the accident occurred due to the rash and negligent act of the 1st respondent's driver?

(2) Whether the order of the Tribunal is proper or liable to be set aside?

11. Heard the learned counsel on either side and perused the materials available on record.

12. Point Nos.1 & 2:

The learned counsel for the appellant submitted that the claimant was not travelling in the vehicle as the owner but as a gratuitous passenger and the insurance company is not liable to pay the compensation, in support of his contention, he relied upon the following judgment in ***New India Assurance Company Ltd., Vs. Kohamudha Fajila and others*** reported in ***2020 (2) TN MAC 777***.

13. However, the insurance company admitted that the vehicle is a goods vehicle intended solely for transporting purposes. FIR-Ex.P.1 was registered in Crime No.261 of 2016 dated 14.12.2006, In the said first information report, the claimant Paulpaundi stated that they travelled along with bags of flowers to sell the same in the flower market at Dindugal. PW1, the complainant during his chief examination clearly stated that he along with Mariappan, (claimant in MCOP.No.49 of 2007) was travelling in the goods auto carrying flowers to the flower market and at that time, the accident occurred during the journey. PW2 also clearly stated that they travelled in the auto carrying flowers. Both PW1 and PW2 are farmers and it cannot be expected, both of them to produce document proof of their flower business as they are engaged in the cultivation and sale of flowers. There is no contradiction between Ex.P1,

FIR and the evidence of P.W.1 and P.W.2. The driver of the auto did not enter the witness box and did not adduce any contra evidence, to rebut the claimants' version. RW1, is not an eyewitness to the occurrence and therefore, is not a competent witness to state that the claimants were travelling as gratuitous passengers.

14. Section 147 of the Motor Vehicle Act, 1988 defines as follows :

> *"**Section 147 Requirements of policies and limits of liability** - 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 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:*
>
> *Provided that a policy shall not be required—*

(i) to cover liability in respect of the death, arising out of and in the course of his employment, of the employee of a person insured by the policy or in respect of bodily injury sustained by such an employee arising out of and in the course of his employment other than a liability arising under the Workmen's Compensation Act, 1923 (8 of 1923) in respect of the death of, or bodily injury to, any such employee—

(a) engaged in driving the vehicle, or

(b) if it is a public service vehicle engaged as conductor of the vehicle or in examining tickets on the vehicle, or

(c) if it is a goods carriage, being carried in the vehicle, or

(ii) to cover any contractual liability.

Explanation

For the removal of doubts, it is hereby declared 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.

Subject to the proviso to sub-section (1), a policy of insurance referred to in sub-section (1), shall cover any *liability incurred in respect of any accident, up to the following limits, namely—*

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

(b) in respect of damage to any property of a third party, a limit of rupees six thousand:

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.

(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) Where a cover note issued by the insurer under the provisions of this Chapter or the rules made thereunder is not followed by a policy of insurance within the prescribed 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 in whose records the vehicle to which the cover note relates has been registered or to such other authority as the State Government may

prescribe.

(5) Notwithstanding anything contained in any 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.

15. It is established that the claimants were the owners of the goods, and were travelling along with the goods when they met with an accident and sustained injuries. As per the mandate of Section 147 of the Motor Vehicles Act, the policy of insurance is required to cover the risk of the owner of the goods travelling in the goods vehicle. In the present case, the injured being the owner of the goods and having sustained injuries during the course of travel, the insurance company/appellant is statutorily liable to indemnify the insured and satisfy the award. The insurance company failed to prove that the claimants were travelling as gratuitous passengers.

16. The Tribunal considered the facts and rightly held that the claimants were travelling with their goods, capacity as owners of the goods and not as gratuitous passengers. At the relevant point of time, as

the insurance policy was in force at the time of accident, holding the insurance company liable to pay compensation. The insurance company did not dispute that the policy was in force, nor that it covered the owner of the goods, it only contended that the claimants were not owners of the goods, but contended that they are gratuitous passengers, which contention was not established. Since this Court is of the view that the findings of the Tribunal are proper and do not warrant any interference. The judgment relied upon by the insurance company is not applicable to the facts of the present case.

17. Based on the available record, the Tribunal rightly held that the mini door auto driver was liable for the accident, as the vehicle was duly insured with the appellant insurance company fastened the liability to pay the compensation to the injured, which need no interference. The Tribunal awarded only just compensation and this Court find no reason to interfere with the well considered findings of the Tribunal. Therefore, the Civil Miscellaneous appeals have no merit and are liable to be dismissed. Point Nos.1 and 2 are answered accordingly.

18. CMA(MD)No.1113 of 2013

In the result, Civil Miscellaneous Appeal is dismissed and the order dated 28/02/2011 passed in MCOP No.49 of 2007 on the file of the Motor Accident Claims Tribunal/ Chief Judicial Magistrate, Dindigul, is hereby confirmed. No costs.

19. CMA(MD)No.1114 of 2013

In the result, Civil Miscellaneous Appeal is dismissed and the order dated 28/02/2011 passed in MCOP No.75 of 2007 on the file of the Motor Accident Claims Tribunal/ Chief Judicial Magistrate, Dindigul, is hereby confirmed. No costs.

25.**11.2025**

Index:Yes/No
NCC :Yes/No
RM

To

1.The Chief Judicial Magistrate,
Motor Accident Claims Tribunal,
Dindigul.

2.The Section Officer,
ER/VR Section,
Madurai Bench of Madras High Court,
Madurai.

R.POORNIMA, J.

RM

<u>CMA(MD)Nos.1113 & 1114 of 2013</u>

25.11.2025