BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reserved	27/10/2025
Date of Pronounced	12 /12/2025

CORAM

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

CMA(MD)Nos.737 to 739 of 2012
and
MP(MD)Nos.1,1 and 1 of 2012

(1)CMA(MD)No.737 of 2012:-

The Oriental Insurance Company Limited,
3217, East Main Street,
Pudukkottai-622 001. : Appellant/2nd Respondent

Vs.

1.C.Chellammal : 1st Respondent/Petitioner
2.V.Kumar : 2nd Respondent/R1
(2nd Respondent remained ex-parte before the lower court)

PRAYER:-Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the award made in MCOP No.90 of 2006, dated 29/02/2012, on the file of the Motor Accidents Claims Tribunal-cum-Chief Judicial Magistrate, Tiruchirappalli.

For Appellant : Mr.C.Jawahar Ravindran

For 1st Respondent : Mr.J.Anandkumar

For 2nd Respondent : No appearance

(2)CMA(MD)No.738 of 2012:-

The Oriental Insurance Company Limited,
3217, East Main Street,
Pudukkottai-622 001. : Appellant/2nd Respondent

Vs.

1.E,Vellaiammal : 1st Respondent/Petitioner
2.V.Kumar : 2nd Respondent/R1
(2nd Respondent remained ex-parte
before the lower court)

PRAYER:-Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the award made in MCOP No.91 of 2006, dated 29/02/2012, on the file of the Motor Accidents Claims Tribunal-cum-Chief Judicial Magistrate, Tiruchirappalli.

For Appellant : Mr.C.Jawahar Ravindran

For 1st Respondent : Mr.N.Sudhagar Nagaraj

For 2nd Respondent : No appearance

<u>(3)CMA(MD)No.739 of 2012:</u>-

The Oriental Insurance Company Limited,
3217, East Main Street,
Pudukkottai-622 001. : Appellant/2nd Respondent

Vs.

1.C.Pechiammal : 1st Respondent/Petitioner
2.V.Kumar : 2nd Respondent/R1
(2nd Respondent remained ex-parte before the lower court)

PRAYER:-Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the award made in MCOP No.92 of 2006, dated 29/02/2012, on the file of the Motor Accidents Claims Tribunal-cum-Chief Judicial Magistrate, Tiruchirappalli.

For Appellant : Mr.C.Jawahar Ravindran
For 1st Respondent : Mr.J.Anand Kumar
For 2nd Respondent : No appearance

<u>COMMON JUDGMENT</u>

These Civil Miscellaneous Appeals are directed against the common award passed in MCOP Nos.91 to 92 of 2006, dated 29/02/2012 on the file of the Motor Accidents Claim Tribunal-cum-Chief Judicial Magistrate, Trichirappalli.

2.**<u>The brief case of the claimants are as follows</u>**:-

On 17/01/2005 at about 07.00 am, the claimants along with few others, were standing on the extreme left side of the road near Vairampatti for their work. At that time, the driver of the Mahendra Van bearing Registration No.TN-45-AB-9756 drove the vehicle in a rash and negligent manner and dashed against the claimants. The vehicle then, capsized in which process, the claimants and others sustained multiple injuries all over the body including the fracture injuries. They were immediately, admitted in the Manapparai Government Hospital, on 17/01/2025 and thereafter, underwent treatment in various private hospitals. Hence, all claim petitions have been filed by the claimants seeking compensation for the injuries sustained by them in the alleged accident.

3. The 1st respondent the owner of the vehicle remained ex-parte before the Tribunal. The claim petitions were resisted by the 2nd respondent Insurance Company by contending that the claimants and others were travelling in the 1st respondent vehicle for harvesting the crops. The vehicle involved in the accident is a goods carriage having a loading capacity of only 650 kgs. However, the claimants and others (20 members) were travelled the vehicle totally 1100 kgs., at the time of

accident. Due to such overloading the accident occurred. Therefore, the 1st respondent violated the terms and conditions of the policy and hence, the insurance company is not liable to pay the compensation to the claimants.

4.Before the Tribunal, on the side of the claimants, three witnesses were examined as PW1 to PW3 and 10 documents were marked as Ex.P1 to Ex.P10. On the side of the respondents, 3 witnesses were examined as RW1 to RW3 and 2 documents were marked as Ex.R1 and Ex.R2.

5.The Tribunal, after analysing the oral and documentary evidence, awarded a sum of each Rs.80,000/- to the claimants in respect of MCOP(MD)Nos.90 and 91 of 2027 and Rs.65,000/- in respect of MCOP No.92 of 2006 and directed the 2nd respondent Insurance Company to pay the award amount and then recover the same from the 1st respondent/vehicle owner.

6.Aggrieved over the common award of the Tribunal, these Civil Miscellaneous Appeals have been preferred by the appellant.

7.The learned counsel for the appellant insurance company contended that the claimants travelled in the goods vehicle with 12 persons as gratuitous passengers. Even as per the FIR, 23 persons had travelled in the said vehicle and met with an accident. Since the Insurance Policy does not cover gratuitous passengers travelling in the goods vehicle they cannot be treated as third parties. Therefore, there is no statutory coverage in the Motor Vehicles Act. It is further submitted that the Tribunal accepted the contention of the Insurance Company and held that the claimants are gratuitous passengers travelled in the goods vehicle. However, the Tribunal erroneously ordered pay and recovery theory, by wrongly relying upon the decision of this Court, which is not applicable to gratuitous passenger. Hence, prayed for allowing the appeals by setting aside the common award passed by the Tribunal.

8.The learned counsel appearing for the 1st respondent/claimant made their submission in support of the findings of the Tribunal and prayed for dismissal of the appeals.

9.Heard the learned Counsel appearing on either side and perused the materials available on record.

10. Now, this Court has to decide whether the order of the Tribunal is sustainable or liable to be set aside?

11. Point :

In the present, case, an FIR which was lodged by Chinnappa, and registered in crime No.16 of 2005 dated 17.1.2005 by Valanadu Police Station, against driver Balu @ Balakrishnan of Mahindra & Manindra Pickup load open van bearing Registration No.TN 45 AB 9756 involved in the accident, in which it has been clearly stated that the claimant was travelling, in a goods vehicle for harvesting the paddy. It further records that when a cow suddenly crossed the road, the driver applied brake, due to which the auto capsized, as a result of which the claimants sustained injuries. During chief examination PW1, Chellammal stated that the vehicle was dashed against them while they were standing on the left side of the road. PW2 Vellaiyammal also corroborated that they were standing on the road side when the accident took place. In contrast, PW4 Pechiammal, categorically admitted, during cross-examination that they were travelled in the goods vehicle. Therefore, it clearly established that all the victims were travelling in the goods carrying van belonging to the first respondent. The policy copy was marked as Ex.R1 by the insurance company in which it was clearly indicates that it is a package policy.

There is no dispute that the first respondent being the owner of the vehicle, had permitted passengers to travel in goods carriage and thereby violating the policy conditions. Hence, the issue that now arises for consideration before this Court is whether the insurance company should be exonerated from liability.

12. In this circumstances, a reliance is placed on the judgement in ***Sunita and Others Vs. United India Insurance Company Ltd., and Others*** reported in ***2025 SCC Online SC 1464***, in which paragraph Nos.13 to 17 held as follows :

> *"13. Adverting to the facts in hand, from a bare perusal of the record, it is borne that the vehicle in question was insured with "Liability Only Policy" and no premium was paid to cover the driver, owner, or a gratuitous passenger travelling therein. However, even then, in our view, the Courts below erred in holding that the Insurance Company is not liable to pay the compensation to the claimant-appellants, for the principle of "Pay and Recover" ought to have been invoked. As such, we are inclined to interfere with the above findings of the Courts below.*
>
> *14. We must advert to the exposition of this Court in National Insurance Co. Ltd. v. Baljit Kaur7. The deceased therein was travelling as a gratuitous passenger, and due to the rash and negligent driving of the offending vehicle, lost*

his life. The Insurance Company was directed to satisfy the amount awarded by the Courts below and recover the same from the owner of the vehicle, as the premium was not paid by the owner of the vehicle towards gratuitous passenger.

15. The above position has been followed by this Court in Anu Bhanvara v. IFFCO Tokio General Insurance Co. Ltd., 8 wherein the injured person was travelling as a gratuitous passenger and was not covered under the Insurance Policy, the driver and owner of the vehicle was held liable for payment of compensation amount. This Court applied the principle of "Pay and Recover" and directed the Insurance Company to pay the amount and, thereafter, recover the same from the owner of the vehicle.

16. The aforementioned principle was adopted by this Court in various judgments of this Court in Amrit Lal Sood v. Kaushalya Devi Thapar 9 (1998(3) SCC 744); New India Assurance Co. Ltd. v. C.M. Jaya 10 (2002(2) SCC 278); National Insurance Co. Ltd. v. Challa Upendra Rao 11 (2004(8) SCC 517); New India Assurance Co. Ltd. v. Vimal Devi 12 (2010 SCC Online SC 49); National Insurance Co. Ltd. v. Saju P. Paul 13 (2013(2) SCC 41); Manuara Khatun v. Rajesh Kumar Singh 14 (2017(4) SCC 796); and Puttappa v. Rama Naik 15 (2018 SCC Online SC 3496).

17. Applying the above expositions of law, the Courts below ought to have directed the Insurance Company to indemnify the amount and thereafter recover the same."

13. The principal laid down in the said judgement applicable to the present case. The compensation awarded by the Tribunal is also meagre, considering the facts and circumstances of the case. Therefore, taking into account of the above judgement as well as overall circumstances, this Court find no infirmity in the direction issued by the Tribunal, directing the insurance company to pay the amount to the claimants and recover the same from the owner.

14. Since this Court is of the view that the findings of the Tribunal are proper and do not warrant any 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 is answered accordingly.

15. CMA(MD)No.737 of 2012

In the result, Civil Miscellaneous Appeal is dismissed and the order dated 29.02.2012 passed in MCOP No.90 of 2006 on the file of the Motor Accident Claims Tribunal cum Chief Judicial Magistrate, Tiruchirappalli, is hereby confirmed. No costs. Consequently, connected Miscellaneous Petition is closed.

16. CMA(MD)No.738 of 2012

In the result, Civil Miscellaneous Appeal is dismissed and the order dated 29.02.2012 passed in MCOP No.91 of 2006 on the file of the Motor Accident Claims Tribunal cum Chief Judicial Magistrate, Tiruchirappalli, is hereby confirmed. No costs. Consequently, connected Miscellaneous Petition is closed.

17. CMA(MD)No.739 of 2012

In the result, Civil Miscellaneous Appeal is dismissed and the order dated 29.02.2012 passed in MCOP No.92 of 2006 on the file of the Motor Accident Claims Tribunal cum Chief Judicial Magistrate, Tiruchirappalli, is hereby confirmed. No costs. Consequently, connected Miscellaneous Petition is closed.

12/12/2025

Index:Yes/No
Internet:Yes/No

To

1.The Motor Accident Claims Tribunal/
Chief Judicial Magistrate, Trichy.

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

R.POORNIMA, J

er/rm

<u>CMA(MD)Nos.737 to 739 of 2012</u>

<u>12/12/2025</u>