BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 09.09.2025

Pronounced on : 13.11.2025

CORAM:

THE HONOURABLE MS.JUSTICE R.POORNIMA

C.M.A.(MD)No.923 of 2010
and
M.P.(MD)Nos.1 & 2 of 2010

The Manager,
National Insurance Company Ltd.,
Branch Office II,
Ferome builing I Floor,
Fort Station Road,
Trichy – 2. ... Appellant/ 2nd Respondent

Vs.

1.R.Chandrasekar ...1st Respondent / Petitioner

2.D.Devendran ...2nd Respondent/ 1st Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 30 of the Workmen's Compensation Act, 1923, to set aside the award passed by the learned Workmen's Compensation Commissioner-cum-Deputy

Commissioner of Labour, Dindigul in W.C.No.35 of 2007 dated 29.01.2009 and allow this Civil Miscellaneous Appeal.

For Appellant : Mr.D.Sivaraman

For Respondents : No appearance

JUDGMENT

The Appellant / 2nd Respondent / Insurance Company has filed this Civil Miscellaneous Appeal against the award dated 29.01.2009 passed in W.C.No.35 of 2007 by the learned Workmen's Compensation Commissioner-cum-Deputy Commissioner of Labour, Dindigul.

2. Brief facts of the petition filed by the petitioner before the Tribunal are as follows:

(a) The petitioner was employed with the 1st respondent as a driver of an auto bearing Registration No.TN 57 J 3538 belonging to the 1st respondent and received a salary of Rs.4500/- and batta Rs.50/- per day. On 15.01.2006, while he was driving the auto carrying material for hire plying, the vehicle capsized at Dindigul-Batlagundu bye-pass road near roundana. As a result of the accident the petitioner sustained grievous injuries on his head and sustained bone fracture on his head and suffered a blood clot to the skull .

(b) A case was registered before Dindigul Taluk Police Station in Crime No.39 of 2006 and the same is pending. At the time of accident, he was aged about 28 years. Since the accident occurred during the course of employment, the petitioner was admitted as inpatient in the Government Hospital, Dindigul and underwent treatment from 15.01.2006 to 24.01.2006. He has therefore claimed a sum of Rs.6,00,000/- towards compensation.

3. Brief averments contained in the counter filed by the second respondent, are as follows :

(i) The 2nd respondent denied all the averments contained in the petition contending that it is for the petitioner to prove that the vehicle was insured with the 2nd respondent, to establish his employment and income and to prove the injuries were sustained during the course of employment with the 1st respondent. On the date of accident the petitioner was carrying 15 passengers in the mini auto and lost control of the vehicle, resulting in the accident which occurred due to his negligence. The 2nd respondent is not liable to pay any compensation for the said accident arising out of the petitioner's carelessness.

4. During the trial, on the side of the petitioner, the petitioner was examined as P.W.1 and Ex.P1 to Ex.P5 were marked and one Dr.Vijayakumaran was examined as P.W.2 and through him Ex.P.6 and Ex.P.7 were marked. On the side of the 2nd respondent, R.W.1 was examined and Ex.R1 was marked.

5. After hearing the parties, the Tribunal allowed the petition and awarded a sum of Rs.1,12,162/- towards compensation. The Tribunal directed the appellant/2nd respondent/Insurance Company to pay the entire award amount within a period of thirty days.

6. Aggrieved by the said order, the present Civil Miscellaneous Appeal has been filed by the Insurance Company, who is the 2nd respondent before the Tribunal against the negligence and

quantum on the following among other grounds :

a) The learned Commissioner failed to note that the Insured/owner of the vehicle has allowed the goods carriage to be used as a passenger vehicle by allowing 15 persons to travel, thereby violated the statutory provisions as well as the policy conditions.

b) The learned Commissioner failed to note that the Hon'ble Apex Court in ***National Insurance Company Ltd., Vs. Mastan & another*** reported in ***2006 (2) SCC 461*** has held that a person who has chosen to file a claim under the workmen's compensation act cannot fall back under the provisions of the Motor Vehicles Act to contend that the defences available to the insurer is not available to them. The Apex Court has categorically held that the defences available under the workmen's compensation claim are subject to the limitation of the workmen compensation Act.

c) The learned Commissioner has failed to note that there is no restriction in the Workmen's Compensation Act, 1923 for an insurer to take certain defences available to them. Therefore, the Insurer can take any defence available to them in case of violation of the statutory provisions or the policy conditions.

Hence, the appellant seeks to set aside the award of the Tribunal and allow the Civil Miscellaneous Appeal.

7. Heard the learned counsel on either side and perused the material available on records.

8. Now, this court has to decide the following points for consideration :

> *(1) Whether the Deputy Commissioner of Labour is correct in holding that the defenses available to the Insurer under Section 149(2) of the Motor Vehicles Act, 1988 cannot be raised in a proceeding under Workmen's Compensation Act, 1923 ?*

9.Point No.1 :

As far as the statutory defences available to insurer under Section 149(2) of the Motor Vehicles Act, 1988 cannot be invoked in proceedings instituted under the Workmen Compensation Act 1923. The liability under the Workmen Compensation Act, is statutory and arises out of contract of employment between the employer and employee, whereas the defences under Section 149(2) are confined to claim under the Motor Vehicles Act.

10. This Court rely upon the judgment in ***Oriental Insurance co. Ltd., v. Mohd. Nasir and another*** reported in ***2009(6) SCC280,*** wherein the Apex Court held as follows :

> "*the insurers liability under the workmen compensation act is flows from the contract of insurance and not from the statutory defence under section 149(2) MV Act*"

11. The learned counsel for the appellant referred the Section 3(1) (b) (ii) Employees Compensation Act, 1923, which reads as follows :

> *3. Employer's liability for compensation.-*
>
> *(1) (b) in respect of any injury, not resulting in death or permanent total disablement caused by an accident which is directly attributable to—*
>
> *(i) ......*
>
> *(ii) the wilful disobedience of the *[employee] to an order expressly given, or to a rule expressly framed, for the*

*purpose of securing the safety of *[employees].*

12. He also referred Rule 236 of Motor Vehicles Rules, 1929, which reads as follows :

> "*236. **Limit of persons in goods carriage**.— No person shall be carried in the cabin of a goods carriage beyond the number for which there is a seating accommodation at the rate of thirty eight centimeters measured along the seat, excluding the space reserved for the driver, for each person, and not more than six persons in all in addition to the driver shall be carried in any goods carriage.*"

13. The appellant/2nd respondent admitted that the 1st respondent/claimant was employed under the 2nd respondent.

14. In the FIR-Ex.P1 which was lodged by one of passengers travelling in the auto, it was specifically stated that the claimant had carried 15 passengers in his auto at the time of accident. This fact was not in dispute. Therefore, this Court finds that the permit conditions were violated.

15. It is the specific contention of the insurance company that the accident occurred due to the violation of the policy conditions by the driver, as he had carried passenger in excess of the permitted capacity. Such an act according to the insurer, amounts to a fundamental breach of terms and conditions insurance contract. Consequently, the insurance company has disowned its liability, contending that the responsibility, if any would with the employer /owner of the vehicle.

16. However it is admitted that the claimant is the employee of 1st respondent and the accident occurred during his course of employment. Under section 3 of the Women's Compensation Act, 1923, the employer is primarily liable to pay compensation to a workman who sustains injury by an accident arising out of and in the course of employment, irrespective of negligence or breach of policy condition.

17. Even if the driver was negligent or had violated permit condition, the employer would nevertheless remain liable under the provision of the Workmen Compensation Act provided the injury occurred during the course of employment. Since the insurance policy

was in force at the time of accident, the insurer cannot escape its liability directly against the workmen. The insurance company is bound to satisfy the award first instance and thereafter entitled to recover the amount from the insured according with law.

18. This Court relied upon the judgement reported in A***kula Narayana vs. Oriental insurance Company and another [2025 SCC Online SC 280]*** wherein it was held as follows:

> *"11. At the outset, we may observe that there is no appeal by the insured against High Court's order holding him not entitled to the benefit of insurance. In such circumstances, we have only to consider whether the High Court should have completely absolved the insurer of its liability or ought to have directed the insurer to pay with liberty to recover the same from the vehicle owner.*
>
> *12. Where the contract of insurance is not disputed, even on breach of insurance conditions, this Court had allowed recovery of compensation from the insurer by giving right to the insurer to recover the same from the vehicle owner. The pay and recover principle has been consistently followed even though it was doubted in a reference which remained unanswered.*

Taking a conspectus of various pronouncements, this Court recently in Rama Bai v. Amit Minerals (2025 SCC Online SC 2067) again applied the said principle and while allowing the appeal of the claimant directed that the insurance company shall satisfy the award and may recover from the insured. Following the aforesaid decisions, we deem it appropriate to allow the appeal by directing that the first respondent (l.e., the insurer) shall satisfy the award, though, however, it can recover the amount so paid from the insured (i.e., owner of the vehicle).”

19. However, the Tribunal fastened the entire liability upon the insurance company alone which is not proper and liable to be modified. Accordingly, this Court directs the insurance company to pay the compensation to the claimant first and thereafter, recover the same from the second respondent employer. Point is answered accordingly.

19. In the result, the Civil Miscellaneous Appeal is **partly allowed.** This Court directs the insurance company to pay the award amount to the claimants at the first instance and thereafter, recover it from the owner of the auto in the manner known to law. The

appellant/insurance company shall deposit the compensation within a period of eight (8) weeks from today, if not already deposited. On such deposit being made, the claimant is permitted to withdraw the entire amount by filing formal application before the Tribunal. No costs. Consequently, connected miscellaneous petitions are closed.

13.11.2025

Index : Yes / No
NCC : Yes / No

RM

To

1.The Additional District and Sessions Court,
(FTC), Motor Accident Claims Tribunal,
Theni.

Copy to

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

R.POORNIMA, J.

RM

Judgment in
C.M.A.(MD)No.923 of 2010

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