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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 28.01.2025

CORAM:

THE HONOURABLE MRS.JUSTICE R.KALAIMATHI

C.M.A.(MD)No.629 of 2020
and
C.M.P.(MD)No.3371 of 2022

The Branch Manager,
M/s.National Insurance Co. Ltd.,
Jawahar Bazar Road,
Dindigul. ... Appellant/2nd respondent

vs.

1.James Sahaya Rakkini
2.Kishore Kumar
3.Hemelatha
4.Nithiya
5.Jegan Kumar
6.Kannakai Sami
7.Samidurai Kani (died) ... Respondents 1 to 7/Claimant
8.Selvam ... 8th Respondent/1st respondent

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against judgment and decree dated 02.03.2020 passed in M.C.O.P.No.53 of 2015 on the file of the Motor Accidents Claims Tribunal/Additional District Court, Dindigul.

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For appellant : Ms.P.Malini

For Respondents
For R1 to R6 : Mr.D.Venkatesh
For R7 : Died
For R8 : No appearance

*****

JUDGMENT

This Civil Miscellaneous Appeal has been preferred by the Insurance Company against the Award dated 02.03.2020 made in M.C.O.P.No.53 of 2015 by the Motor Accidents Claims Tribunal/Additional District Court, Dindigul as regards the liability issue.

2. Despite the receipt of notice, the eighth respondent/first respondent neither appeared nor represented through his counsel.

3. Heard the learned counsel for the appellant/second respondent and the respondents 1 to 6/claimants.

4. The claim petition was filed by the dependents of the

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deceased Jeyaraman claiming compensation of Rs.10,00,000/- for the death of Jeyaraman in a motor vehicle accident that occurred on 03.08.2013.

5. At trial, on the claimants' side, two witnesses were examined and three documents were marked. On the side of the second respondent/insurance company, two witnesses were examined and three documents were marked.

6. Upon consideration, the Tribunal held that the deceased was an unauthorised passenger and though the first respondent vehicle is a goods vehicle, as the first respondent having allowed the unauthorised person to travel in the vehicle has breached the policy conditions, the Tribunal has ordered that the insurance company is liable to pay the award amount to the claimants at the first instance and recover the same from the owner of the vehicle at a later point of time. Against this finding, the Insurance Company has preferred this appeal.

7. The learned counsel for the appellant Ms.Malini would

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vehemently argue that when the deceased was an unauthorised passenger, then it is a clear violation of the policy condition by the owner of the vehicle. She would further contend that as per Section 147 of the Motor Vehicle Act, 1988, insurer is not statutorily required to cover the risk of unauthorised passenger in goods vehicle unless such passenger is owner or agent of the owner of the goods carried in the goods vehicle. As the deceased was an unauthorised passenger in the goods vehicle, the award passed invoking the principle of pay and recovery by the Tribunal, is totally incorrect. In order to substantiate her contention, she has relied upon the judgment in ***Cholamandalam MS General Insurance Company Limited vs. T.Ganesan and another*** reported in ***2022 (1) TNMAC 789.***

8. It is observed that if the owner of the vehicle has violated the policy condition and the claimant is being the third party to the contract of insurance, the liability is fastened on the insurance company and the insurance company is at liberty to recover the amount awarded from the owner there of.

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9. It is relevant to refer to the observations made by the Hon'ble Supreme Court in ***National Insurance Company Limited vs. Asha Rani and others*** reported in ***2004 (2) TNMAC 387***, wherein the Apex Court has held that in a case where the passenger who travelled in a good vehicle, met with an accident and died, the defence of the insurance company to the effect that the insurer is not liable to pay compensation, since the deceased was travelled in a good vehicle, is not accepted.

10. In a similar matter in ***Branch Manager, United India Insurance Company, Dharmapuri vs. Nagammal and others*** reported in ***(2009) 1 CTC 1 (FB)*** in similar situation, the Full Bench of this Court held as follows:

> *"31.(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.*
>
> *31.(iv) Since there is no statutory*

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> *requirement to cover the liability in respect of a passenger in a goods vehicle, the principle of "pay and recover", as statutory 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."*

11. From the evidence of P.W.2/Joseph that on 03.08.2013 in order to put up samiyana for the political partly meeting which was to be held at Natham, he along with the deceased Jeyaraman and three others travelled in mini van bearing registration No.TN-28-Y-4525 and the vehicle was driven by one Vijayakumar, son of Selvam. It is his further evidence that when the vehicle was proceeding along the Dindigul-Natham main road near Kanavaipatti, Samundeeswari Temple/Karuppu Temple, as the driver of the mini van was proceeding from west to east direction in a rash and negligent manner and applied sudden break, the deceased Jeyaraman was thrown out and sustained serious injuries. It appears that after four days, he succumbed to the injuries.

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12. As per the evidence of R.W.1/Nirmala, staff of Dindigul Road Transport Office, TN-28-Y-4525/TATA 407 is a light transport vehicle.

13. The defence of the insurance company is that it is a goods carriage vehicle and the deceased had travelled as an unauthorised passenger and as the driver of the first respondent used these goods vehicle for carrying the persons, which is violation of policy conditions, they are not liable to pay compensation.

14. Section 147 of the Motor Vehicles Act, 1988, deals with the requirements of policies and limits of liability. Section 147(1)(b)(i), which is the relevant provision, is extracted hereunder:

> *"147.(1)(b)(i) Requirements of policies and limits of liability.—(1) In order to comply with the requirements of this Chapter, a policy of insurance must be a policy which insures the person or classes of persons specified in the policy to the extent specified in sub-section (2) against any liability which may be*

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incurred by him in respect of the death of or bodily injury to any person, including owner of the goods or his authorized 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;"

15. A careful reading of the said provision clearly indicates that legislature intends that goods vehicles are prohibited from carrying any passenger. It is relevant to note that there is no reference regarding the owner of the vehicle does not have any statutory liability to get his vehicle insured for any passenger travelled in a goods carriage.

16. As per Section 147 of the Motor Vehicles Act, 1988, it is made compulsory for the insured to insure, in case of goods vehicle, the owner of the goods or his authorised representative being carried in a goods vehicle.

17. R.W.2/Gowthamanan is the staff of the insurance company. Through him, the policy of insurance/Ex.R1 is marked. It is his evidence that there is no coverage for the unauthorised

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passenger and therefore, the insurance company is not at all liable to pay compensation to the claimants herein. Absolutely, there is no coverage of liability in respect of the passenger who travelled in a goods vehicle.

18. A close perusal of the testimony of P.W.2 reveals the fact that the deceased Jeyaraman and P.W.2 travelled in the aforesaid goods vehicle in order to put up shamiyana for the purpose of conducting political meeting. From the evidence of P.W.2, it is deducible that the deceased Jeyaraman had travelled in the goods vehicle along with three others, met with an accident and died. P.W.2/Joseph would state that in order to fix the flag post and for putting up shamiyana for a public meeting, he along with three others including the deceased Jeyaraman travelled in the mini van 407 (TN-28-Y-4525) and on the way, due to rash and negligent driving of the driver of the mini van/goods vehicle, Jeyaraman was thrown away and sustained serious injuries and he died on 06.08.2013.

19. On a thorough perusal of his entire examination, no where

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he has stated whether they travelled with the goods or not. Ex.R3 policy is a liability only policy.

20. It is relevant to refer the observations made by the Hon'ble Supreme Court in ***New India Assurance Company Limited vs. Asha Rani*** reported in ***2003 (2) SCC 223***, wherein it has been held in view of the changes in the relevant provisions in 1988 Act vis--vis 1939 Act, we are of the opinion that the meaning of the words "any person" must also be attributed having regard to the context in which they have been used i.e. 'a third party'. Keeping in view the provisions of 1988 Act, we are of the opinion that as the provisions thereof do not enjoin any statutory liability on the owner of a vehicle to get his vehicle insured for any passenger travelling in a goods vehicle, the insurers would not be liable therefor.

21. As the deceased did not travel either in the capacity of owner of the goods or in the capacity of the authorised representative of the goods, as per Section 147 of the Motor Vehicles Act, 1988, insurer is not statutorily required to cover the

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risk of such person and he has to be termed as not an authorised passenger.

22. The Division Bench of this Court in ***Bharathi AXA General Insurance Company Limited vs. Aandi and others*** reported in ***2018 (2) TNMAC 731 (DB)***, in a similar matter, has held that when a person who travelled in the goods vehicle unless it is shown that he was the owner of the goods or he was an authorised representative of the goods, the Division Bench concluded as follows:

> *"The question regarding the liability of the Insurance Company to pay the compensation in respect of an unauthorized passenger in the Goods Vehicle did arise for consideration. We are therefore of the considered opinion that the Judgment of the Two-Judge Bench in* ***Shivaraj V. Rejendra and another*** *referred to supra cannot be taken as a precedent to conclude that the Insurance Company would be liable to pay the Compensation even in respect of an unauthorized Passenger, in a Goods Vehicle, in the light of Categorical*

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pronouncement of Larger Bench of the Hon-ble Supreme Court in New India Assurance Company V. Asha Rani and others; and National Insurance Co. Ltd. V. Baljit Kaur and others, referred to supra. We therefore, conclude that the Tribunal, in the case on hand, was not right in directing the Insurance Company to pay the Compensation and giving it the liberty to recover the same from the Owner.“

23. The deceased Jeyaraman, who travelled in the goods vehicle, met with an accident and died, being a gratuitous passenger. As it is a clear violation of provision of the Act, then insurer is not liable to pay compensation. In view of the above, the finding of the Tribunal to pay and recover the compensation is not sustainable in law.

24. In the result, this Civil Miscellaneous Appeal stands allowed. Sequel to this, the owner of the vehicle/eighth respondent Selvam son of Thangampillai is liable to pay compensation to the claimants herein. There is no order as to costs. Consequently,

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connected Civil Miscellaneous Petition is closed.

25. The appellant/insurance company is at liberty to withdraw award amount, if any deposited by them, with accrued interest by filing necessary application before the Tribunal.

28.01.2025

NCC : Yes/No
Index : Yes / No
Internet : Yes / No
apd

To

1. The Additional District Judge,
The Motor Accidents Claims Tribunal/Additional District Court,
Dindigul.

2.The Section Officer,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.

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R.KALAIMATHI,J

apd

Pre-delivery order made in
C.M.A.(MD) No.629 of 2020

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