

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **26.04.2023**

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CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

C.M.A(MD)No.190 of 2023
and
C.M.P(MD)No.2089 of 2023

The United India Insurance Company Limited,
represented through its Branch Manager,
No.1/45, Micro Office,
164/C,Panchayat Union Road,
Valliyoor,
Tirunelveli District. :Appellant/Third respondent

.vs.

1.Selvan
2.Geetha Bai
3.Ashika :Respondents 1 to 3/Petitioners
Selvin(died)
4.Nadaraj Nadar :4th Respondent/Second Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act against the fair and decretal order made in M.C.O.P.No.32 of 2017, dated 1.12.2021, on the file of the Motor Accidents Claims Tribunal(Subordinate Judge), Kuzhithurai.



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For Appellant :Mr.N.Dilip Kumar
For Respondents :Mr.S.Sivakumar
1 to 3
For Respondent-4 :No appearance

JUDGMENT

This Civil Miscellaneous Appeal has been filed by the appellant/Insurance Company challenging the order of the Tribunal directing the Insurance Company to pay the compensation and thereafter to recover the same from the owner of the offending vehicle.

2.The parties are referred to herein as per their ranking before the Tribunal.

3.The brief facts leading to the filing of this appeal is as follows:

The deceased Anish, was aged about 19 years at the time of accident and he was a student at Sankarapuram Polytechnic College. On 8.2.2013, the deceased travelled in a tempo van bearing Registration No. TN 79 L 5954 along with 20 other members. The said van was driven by its driver in a rash and negligent manner and while negotiating in a bend, the van



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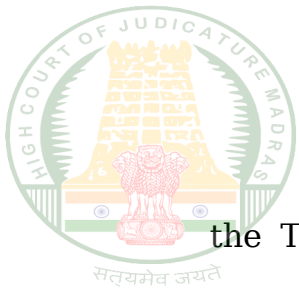
capsized and as a result, the deceased and other passengers who travelled in the tempo van sustained severe injuries and deceased and another one person died and others sustained injuries.

4. According to the second respondent/owner of the vehicle he never allowed any passengers to travel in the transport vehicle, if at all any compensation is ordered, only the third respondent is liable to pay the same.

5. The third respondent took a stand that the first respondent is not having valid driving licence and no valid policy at the time of accident and the deceased travelled as a gratuitous passenger and hence the Insurance Company is not entitled to pay any compensation.

6. On the side of the Petitioners, P.W.1 was examined and Ex.P1 to Ex.P10 were marked. On the side of the respondents, R.W. 1 was examined and Ex.R1 and Ex.R2 were marked.

7. The Tribunal after analyzing the entire evidence, has come to the conclusion that the driver of the tempo van drove the vehicle in a rash and negligent manner which resulted in the accident and



the Tribunal fixed the notional income of the deceased at Rs. 8,000/-p.m., and awarded the compensation as follows:

1.Loss of dependency	- Rs.11,26,080/-
2.Loss of love and affection	- Rs.1,00,000/-
3.Funeral expenses	-Rs.10,000/-
4.Transport Expenses	- Rs.10,000/-

total	-Rs.12,46,000/-

However, the Tribunal directed the Insurance Company to deposit the amount and then to recover the same from the owner of the vehicle. Challenging the said direction, the present appeal has been filed by the Insurance Company.

8.It is the contention of the learned counsel for the appellant that the deceased travelled as a gratuitous passenger while they were proceeding to the funeral, the accident had occurred. There are 20 people travelled in the tempo. P.W.1 himself has admitted that more than 20 people are in the tempo van and therefore submitted that once the person travelled as a gratuitous passenger, the Insurance Company is not liable to pay any compensation and according to him, pay and recovery is not permissible as per the dictum laid down by various Courts in catena of judgments. The learned counsel for the appellant relied on a Full Bench Judgment in the case of the **Branch Manager, United India Insurance**



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Company Limited, Branch Office, Nethaji Bye pass Road, Dharmapuri Town .vs. Nagammal and two others reported in 2009(1) CTC 1 and another judgement in New India Assurance Company Limited .vs. Meenakshi and others reported in 2023 SCC Online Mad 1833.

9.The learned counsel appearing for the respondents 1 to 3 would submit that the Insurance Company has not established the fact that the Petitioners travelled as gratuitous passengers and further submitted that the Honourable Apex Court in catena of judgments held that the Insurance Company to pay the award amount and relied upon the judgment in the case of the **Manager, National Insurance Company Limited .vs. Saju P.Paul and another reported in 2013 (1) TN MAC 25(SC).**

10.Now the point that arose for consideration in this appeal is as follows:

Whether the Insurance Company could be directed to pay the amount in the case of death of a gratuitous passenger?

11.The accident and the claim is not in dispute and the only



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question raised in this appeal is with regard to the direction passed against the Insurance Company to pay the award amount and then to recover from the owner of the vehicle. It is relevant to note that a reference was made to the Full Bench judgment of this Court in this issue. This Court after considering the entire judgment of the Honourable Apex Court rendered from time to time, summed up the reference in paragraph 31 and 32 which reads 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 picture emerges :

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



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(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 recognized 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.



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(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 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.

32. With the above clarifications, the reference is answered. The learned Single Judge has already categorically held that the claimant was a passenger in a goods vehicle and the contention that he was the owner of the goods travelling in the goods vehicle has not been accepted. The learned Single Judge is now required to consider as to whether in the facts and circumstances of the case, the doctrine of "pay and recover" can be applied even though the liability in respect of a person, who was travelling in a



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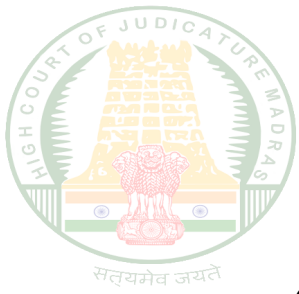


goods vehicle, was not statutorily required to be covered under the policy."

and held that such a direction cannot be issued by the Tribunal to the Insurance Company in respect of the passenger travelled in a goods vehicle after the decision of **Baljit Kaur's case**. Similarly the Division Bench of this Court in a latest judgement **New India Assurance Company Limited .vs. Meenakshi and others reported in 2023 SCC Online Mad 1833** held as follows:

36. The above judgment of the Full Bench was later relied on by a Division Bench of this Court in Bharthi Axa General Insurance Company Limited rep. by its Manager, 1 Floor, Fems Icon, Bangalore v. Aandi, reported in (2018) 2 TN MAC 731 [DB].

37. It is true that in some of the cases cited by the learned counsel for the claimants, the Hon'ble Supreme Court had occasion to direct pay and recovery having regard to peculiar facts and circumstances of the case. This Court found that in all those cases, the Hon'ble Supreme Court has not laid down as a proposition of law but in exercise of its power under Article 142 of the Constitution of India to render complete justice between parties. Therefore, this Court has no inclination to follow any of those judgments to direct pay and recovery.



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38. *Learned counsel for the claimants relied on the following judgments:-*

(a) *Judgment of the Karnataka High Court in the case of Manager, Oriental Insurance Co. Ltd. v. Nagesh reported in ILR 2011 Kar 5790;*

(b) *Judgment of the Hon'ble Supreme Court in the case of United India Insurance Co. Ltd, Shimla v. Tilak Singh reported in (2006) 4 SCC 404;*

(c) *Judgment of the Hon'ble Supreme Court in the case of Bhagyalakshmi v. United Insurance Company Limited reported in (2009) 7 SCC 148;*

(d) *Judgment of the Hon'ble Supreme Court in the case of National Insurance Company Limited v. Balakrishnan reported in (2013) 1 SCC 731;*

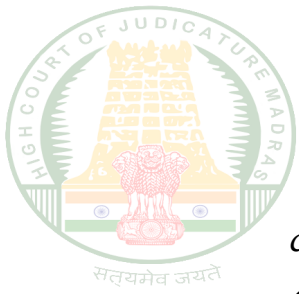
(e) *Judgment of the Hon'ble Supreme Court in the case of Oriental Insurance Co. Ltd. v. Radha Rani reported in (1998) 1 MP LJ 645;*

(f) *Judgment of the Karnataka High Court in the case of United India Insurance Co. Ltd. v. Smt. Chandramma reported in ILR 1999 Kar 523;*

(g) *Judgment of the Orissa High Court in the case of United India Insurance Co. Ltd. v. Labanyabati Dev reported in 2011 SCC OnLine Ori 83;*

(h) *Judgment of the Hon'ble Supreme Court in the case of Manuara Khatun v. Rajesh Kumar Singh reported in (2017) 4 SCC 796;*

(i) *Judgment of the Hon'ble Supreme Court in the*



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case of Anu Bhanvara v. IFFCO Tokio General Insurance Co. Ltd. reported in 2020 [20] SC 632;

(j) Judgment of the Hon'ble Supreme Court in the case of Balu Krishna Chavan v. Reliance General Insurance Co. Ltd. reported in (2022) 2 TN MAC 593 [SC];

(k) Judgment of the Hon'ble Supreme Court in the case of Pushpabai Purshottam Udeshi v. Messrs. Ranjith Ginning and Pressing Company Pvt. Ltd. reported in (1977) 2 SCC 745;

(l) A Three Judge Bench Judgment of the Hon'ble Supreme Court in the case of Oriental Insurance Company Ltd. v. Ajay Kumar reported in 1999 SCC OnLine Ker 291;

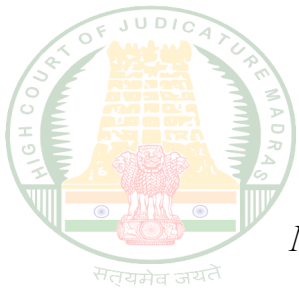
(m) A Five Judge Bench Judgment of the Hon'ble Supreme Court in the case of New India Assurance Co. Ltd. v. C.M. Jaya reported in (2002) 2 SCC 278;

(n) A Three Judge Bench Judgment of the Hon'ble Supreme Court in the case of New India Assurance Co. Ltd. v. Asha Rani reported in (2003) 2 SCC 223;

(o) A Three Judge Bench Judgment of the Hon'ble Supreme Court in the case of New India Assurance Co. Ltd. v. Baljit Kaur reported in (2004) 2 SCC 1;

(p) Judgment of the Hon'ble Supreme Court in the case of United India Insurance Co. Ltd. v. Santro Devi reported in (2009) 1 SCC 558;

(q) A Division Bench Judgment of this Court in the case of Royal Sundaram Alliance Insurance Co. Ltd. v. A.



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Meenakshi reported in (2009) 2 LW 353;

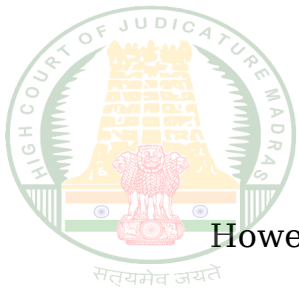
(r) Judgment of the Delhi High Court in the cse of Yashpal Luthra v. United India Insurance Co. Ltd. reported in CDJ 2009 DHC 834;

(s) Judgment of the Hon'ble Supreme Court in the case of National Insurance Co. Ltd. v. Saju P. Paul reported in (2013) 2 SCC 41; and

(t) Judgment of learned Single Judge of this Court in the case of National Insurance Co. Ltd. v. Krishnan reported in 2013 SCC OnLine Mad 992.

39. We find that none of the judgments above referred to and relied upon by the learned counsel for the claimants are applicable to the facts of the present case and therefore, this Court finds that the Appeal filed by the Insurance Company has to be allowed and the judgment and decree of the Tribunal is liable to be set aside.

12.The learned counsel for the appellant also relied on a judgment in the case of **the Manager, National Insurance Company Limited .vs. Saju P.Paul and another reported in 2013 (1) TN MAC 25(SC)** and held that no such direction could be issued in respect of the death of the gratuitous passenger and also held that merely the matter is pending consideration before the Larger Bench, it does not mean that the course as followed in Baljit Kaur and Challa Bharathamma should not be followed.



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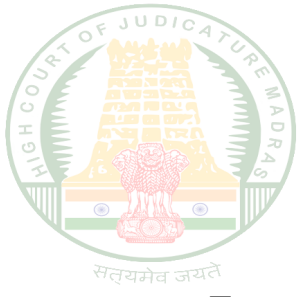
However, in the above case, the Honourable Apex Court directed the claimant to withdraw the amount as it was already deposited. But the law on the issue is well settled that gratuitous passengers are not entitled to claim compensation from the Insurance Company and the company cannot be directed to pay that amount and then to recover the said amount from the owner of the vehicle. Such being the position, particularly, in respect of the gratuitous passengers, the Tribunal has granted such a direction, which cannot be permissible under the law. Accordingly, the direction of the Insurance Company to deposit the award amount at the first instance and then to recover the same from the owner of the vehicle alone is set aside. In all other aspects, the judgment of the Tribunal is upheld. It is well open to the respondents claimants to recover the award amount from the owner of the vehicle in the manner known to law.

13. With the above directions, the Civil Miscellaneous Appeal is allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

26.04.2023

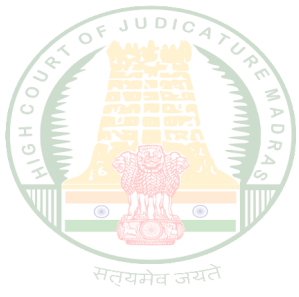
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- 1.The Motor Accidents Claims Tribunal,
(Subordinate Judge),
Kuzhithurai.
- 2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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N.SATHISH KUMAR.,J.

vsn

JUDGMENT MADE IN
C.M.A(MD)No.190 of 2023
and
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