



C.M.A.Nos.856 and 946 of 2022

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 24.02.2026

Pronounced on: 30.04.2026

CORAM

THE HONOURABLE MRS.JUSTICE K.GOVINDARAJAN THILAKAVADI

C.M.A.Nos.856 and 946 of 2022 and
C.M.P. Nos.6298 and 7030 of 2022

Royal Sundaram Alliance General Insurance
Company Limited,

No.14, Whites Road, Royapettah,

Nungambakkam, Chennai 600 014. ...Appellant in both the appeals

Vs.

1. J. Stella Mery @ Stella

2. F. Abrahamlingam ...Respondents in CMA No.856/2022

1. J. Reeta Mery

2. F. Abrahamlingam ...Respondents in CMA No.946/2022

Common Prayer: These Civil Miscellaneous Appeals are filed under Section 173 of the Motor Vehicle Act 1988, against the Common Award dated 13.09.2019 made in M.C.O.P. Nos.8224 of 2013 and 597 of 2014 on the file of the Motor Accident Claims Tribunal, Special Sub Judge No.1, Court of Small Causes, Chennai.

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Appearance in both the appeals

For Appellant : Mr. G. Vasudevan
For Respondents : Mr.P. Chinnaraj for R1
R2 served – No appearance.

COMMON JUDGMENT

The present Civil Miscellaneous Appeals have been filed by the Appellant / Insurance Company Common Award dated 13.09.2019 made in M.C.O.P. Nos.8224 of 2013 and 597 of 2014 on the file of the Motor Accident Claims Tribunal, Special Sub Judge No.1, Court of Small Causes, Chennai.

2. Both the appeals arise out of the same accident and the same Award and hence, disposed of by this common judgment.

3. For the sake of convenience, the parties are referred to as per their ranking in the claim petition.



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4. Shortly stated , on 16.06.2013, at about 16.00 hours, when Stella Mery (petitioner in MCOP No.8224/2013) and J. Reeta Mery (Petitioner in MCOP No.597/2014) were travelling in a Van bearing Registration No.TN-31-AH-4711 along with cooking materials and fire wood, in Thamaraikulam at Panruti-Kumbakonam National Highway, the van capsized due to the rash and negligent driving of the driver, as a result of which the petitioners sustained grievous injuries.

5. The petitioners filed MCOP No.8224/2013 and MCOP No.597/2014 claiming compensation of Rs.15,00,000/- and Rs.10,00,000/- respectively for the injuries sustained by them in the said accident.

6. The claim was resisted by the 2nd respondent / Insurance Company stating that the petitioners were travelling in a goods vehicle as passengers at the time of accident and that the driver of the van had only a Light Motor vehicle and Motor Cycle with Gear license and was not authorised to drive transport vehicle. Hence, they are not liable to pay any compensation to the petitioners and prayed for dismissal of the claim petitions.

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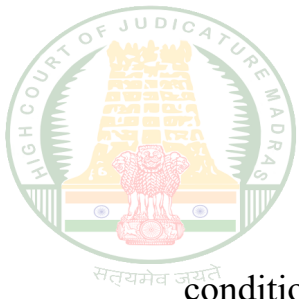
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7. The Claims Tribunal framed necessary issues and came to the conclusion that the accident occurred due to the rash and negligence driving of the driver of the van, awarded a compensation of Rs.10,39,950/- to the petitioner in MCOP No.8224/2013 and a sum of Rs.2,95,000/- to the petitioner in MCOP No.597/2014, and directed the 2nd respondent Insurance Company to pay the said amount together with interest at the rate of 7.5% per annum from the date of petition till the date of realization at the first instance and then recover the same from the 1st respondent / owner of the offending vehicle, since the 1st respondent violated the terms and conditions of the insurance policy.

8. Aggrieved over the same, the present Civil Miscellaneous Appeals are preferred by the Insurance Company.

9. Mr. G. Vasudevan, learned counsel for the appellant / Insurance Company would submit that the Tribunal erred in holding that the Insurance Company is liable to pay the compensation with a liberty to recover the same from the 1st respondent / owner of the vehicle since there was breach of policy



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conditions by allowing the petitioners to travel in a Goods Vehicle and by allowing a person, who had no valid driving license to drive the said vehicle. He would further submit that the Tribunal erred in accepting Ex.C1 and Ex.C2 Disability certificate and awarding Rs.9,07,200/- towards pecuniary loss to the petitioner in MCOP No.8224/2013 and Rs.1,50,000/- towards disability to the petitioner in MCOP No.597 of 2014 and that exorbitant amounts were awarded under the other heads. Hence, prayed for setting aside the common award passed by the Tribunal.

10. Per contra, Mr.P. Chinnaraj, learned counsel appearing for the 1st respondent/petitioner would contend that, the Tribunal has rightly ordered for 'pay and recover', which warrants any interference.

11. Heard the submissions of the counsel appearing on either side.

12. The short question arising for decision making in this appeal is whether in the facts and circumstances of the case, the Tribunal was right in directing the Insurance Company to first pay the amount of compensation to the claimants and thereafter, recover the same from the owner of the vehicle.

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13. As per the claim petition, the deceased were travelling a Van bearing Registration No.TN-31-AH-4711 along with cooking materials and fire wood, in Thamaraikulam at Panruti-Kumbakonam National Highway, the van capsized due to the rash and negligent driving of the driver, as a result of which the petitioners sustained grievous injuries. Indisputably, the van was a goods vehicle and was insured with the appellant / Insurance Company on the date of accident. The Tribunal vide its award dated 13.09.2019 awarded a compensation of Rs.10,39,950/- to the petitioner in MCOP No.8224/2013 and a sum of Rs.2,95,000/- to the petitioner in MCOP No.597/2014, and directed the 2nd respondent Insurance Company to pay the said amount together with interest at the rate of 7.5% per annum from the date of petition till the date of realization at the first instance and then recover the same from the 2nd respondent / owner of the offending vehicle, against which the present appeal has been preferred by the Insurance Company.

14. The learned counsel appearing for the appellant Insurance Company contended that in a case where the injured was travelling in a goods vehicle on rent, the Insurance Company cannot be fastened liability even to the extent

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of first pay and then recover. In support of his contentions he would rely on the following judgments:

- 1. Bharati Axa General Insurance Co. Limited vs. Aandi and others reported in 2018 (2) TN MAC 731 (DB)***
- 2. New India Assurance Company Limited vs. Asha Rani and others reported in (2003) 2 SCC 223.***

15. In this regard, it is pertinent to refer to the order of the Hon'ble Supreme Court, in Civil Appeal arising out of SLP (Civil) No.21802/2023, wherein it has been held as follows:

“10. In the present case, the deceased was travelling in the subject tempo along with Ganesh Idol, which was taken for immersion in Narmada River. Thus, the dominant purpose for hiring the vehicle was not for travelling but for carrying the Ganesh idol for immersion. Travelling in the vehicle was only incidental, therefore, at best, the deceased can be treated as gratuitous passenger travelling with his goods (Ganesh idol). This being the circumstance, we rely on the judgment in the matter of Manuara Khatun & Ors. (supra), wherein this Court has held thus in paragraph Nos. 15 and 16:-

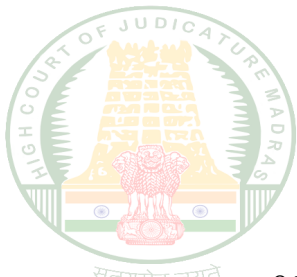
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“15. This question also fell for consideration recently in *National Insurance Co. Ltd. v. Saju P. Paul* [*National Insurance Co. Ltd. v. Saju P. Paul*, (2013) 2 SCC 41 : (2013) 1 SCC (Civ) 968 : (2013) 1 SCC (Cri) 812 : (2013) 1 SCC (L&S) 399] wherein this Court took note of entire previous case law on the subject mentioned above and examined the question in the context of Section 147 of the Act. While allowing the appeal filed by the insurance company by reversing the judgment [*Saju P. Paul v. National Insurance Co.*, 2011 SCC OnLine Ker 3791:2012 ACJ 1852] of the High Court, it was held on facts that 3 .2025 INSC 1219 3 since the victim was travelling in offending vehicle as “gratuitous passenger” and hence, the insurance company cannot be held liable to suffer the liability arising out of accident on the strength of the insurance policy. However, this Court keeping in view the benevolent object of the Act and other relevant factors arising in the case, issued the directions against the insurance company to pay the awarded sum to the claimants and then to recover the said sum from the insured in the same proceedings by applying the principle of “pay and recover”.

16. *R.M. Lodha, J.* (as his Lordship then was and later became CJI) speaking for the Bench held in paras 20 and 26 as under : (*Saju P. Paul case* [*National Insurance Co. Ltd. v. Saju P. Paul*, (2013) 2 SCC 41 : (2013) 1 SCC (Civ) 968 : (2013) 1 SCC (Cri)



812 : (2013) 1 SCC (L&S) 399] , SCC pp. 52 & 55)

“20. The next question that arises for consideration is whether in the peculiar facts of this case a direction could be issued to the Insurance Company to first satisfy the awarded amount in favour of the claimant and recover the same from the owner of the vehicle (Respondent 2 herein).

26. The pendency of consideration of the above questions by a larger Bench does not mean that the course that was followed in Baljit Kaur [National Insurance Co. Ltd. v. Baljit Kaur, (2004) 2 SCC 1 : 2004 SCC (Cri) 370] and Challa Upendra Rao [National Insurance Co. Ltd. v. Challa Upendra Rao, (2004) 8 SCC 517 : 2005 SCC (Cri) 357] should not be followed, more so in a peculiar fact situation of this case. In the present case, the accident occurred in 1993. At that time, the claimant was 28 years old. He is now about 48 years. The claimant was a driver on heavy vehicle and due to the accident he has been rendered permanently disabled. He has not been able to get compensation so far due to the stay order passed by this Court. He cannot be compelled to struggle further for recovery of the amount. The Insurance Company has already deposited the entire awarded amount pursuant to the order of this Court passed on 1-8-2011 [National



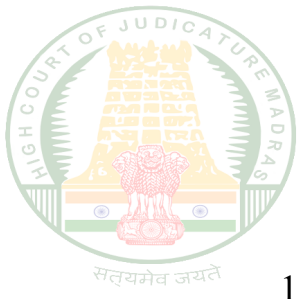
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Insurance Co. Ltd. v. Saju P. Paul [National Insurance Co. Ltd. v. Saju P. Paul, (2013) 2 SCC 41, 55 (footnote 14)] and the said amount has been invested in a fixed deposit account. Having regard to these peculiar facts of the case in hand, we are satisfied that the 4claimant (Respondent 1) may be allowed to withdraw the amount deposited by the Insurance Company before this Court along with accrued interest. The Insurance Company (the appellant) thereafter may recover the amount so paid from the owner (Respondent 2 herein). The recovery of the amount by the Insurance Company from the owner shall be made by following the procedure as laid down by this Court in Challa Upendra Rao [National Insurance Co. Ltd. v. Challa Upendra Rao, (2004) 8 SCC 517 : 2005 SCC (Cri) 357].”

11. Thus, in Manuara Khatun & Ors. (supra), this Court has referred and approved Saju P. Paul (supra) case to hold that when the victim was a gratuitous passenger, this Court issued directions against the insurer of the offending vehicle to first satisfy the awarded sum, and then to recover the same from the insured in the same proceedings.



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16. In the above view of the matter, this Court is of the view that the Tribunal has rightly ordered the appellant/Insurance Company to pay the compensation to the petitioners in the first instance and then recover the same from the 2nd respondent herein / owner of the vehicle and also awarded just compensation under all the heads, which warrants any interference. Accordingly, the Civil Miscellaneous Appeals are dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

30.04.2026

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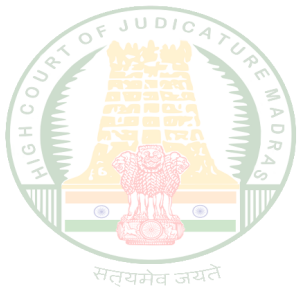
Index: Yes/No

Speaking/Non-speaking order

To

1. The Special Sub Judge No.1, Motor Accident Claims Tribunal,
Court of Small Causes, Chennai.
2. The Section Officer,
VR Section,
High Court, Madras.

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K.GOVINDARAJAN THILAKAVADI, J.

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**Pre-delivery judgment in
C.M.A.Nos.856 and 946 of 2022 and
C.M.P. Nos.6298 and 7030 of 2022**

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