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**(2005) 11 MAD CK 0071**  
**In the Madras High Court**

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|---------------------------------------------|------------|
| United India Insurance Co. Ltd. and Another | APPELLANT  |
| Vs                                          |            |
| Selvam and Others                           | RESPONDENT |

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**Date of Decision :** 30-11-2005

**Acts Referred:**

**Citation :** (2006) 2 ACC 353

**Hon'ble Judges :** S.R. Singharavelu, J;M. Karpagavinayagam, J

**Bench :** Division Bench

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### **Judgement**

S.R. Singharavelu, J.—All these three appeals arise out of a single accident and hence, this common judgment.

2. United India Insurance Company Limited/second respondent in M.A.C.T.O.P. Nos. 525 to 527 of 1999 on the file of Motor Accidents Claims Tribunal, Tiruvannamalai is the appellant in all the appeals.

3. The brief case of the claimants is as follows:

In respect of an accident that took place on 12th/13th April, 1999 at 3.00a.m., the claimants in the said petitions and others were travelling as labourers in an open goods van (goods carriage vehicle) bearing registration No. TN-25-B-1441 belonging to the first respondent from Chengam to Erode. Near Kanagagiri, due to the rash and negligent driving of van driver, the van was capsized, in which one d person died on the spot and others have sustained grievous injuries. On account of injuries sustained, claimants in M.A.C.T.O.P. Nos. 525 to 527 of 1999 have filed separate petitions, praying for a compensation of Rs. 1,00,000 each. In M.A.C.T.O.P. No. 527 of 1999, the claimant was examined as PW 1 and one Government doctor was examined as PW 2 besides making Exts. P-1 to P-3 and one x-ray as M.O.1 in support of his claim before the Tribunal. In M.A.C.T.O.R Nos. 525 and 526 of 1999 and other connected petitions, PWs 1 to 7 were examined and Exts. P-1 to P-17 were marked. On the side of the respondents, no witness was examined and no document was marked. The Tribunal on appreciation of evidence, both oral and documentary, after holding that accident

was caused due to negligence of the driver of the van in question, passed an award for Rs. 45,800, Rs. f 42,000 and Rs. 1,00,000 respectively as compensation for the claimants in M.A.C.T.O.P. Nos. 525 to 527 of 1999 respectively and directed the respondents 1 and 2 to pay the said compensation amount jointly or severally to the claimants. Questioning the said awards, the Insurance Company has preferred these appeals.

4. The claimants are injured in a motor accident, in which a goods vehicle bearing registration No. T.N.-25-B-1441 was involved. The date of accident is 12th 13th April, 1999. Upon perusing the evidence, the Tribunal has rightly found that the driver of the van was negligent in his driving and so, fastened the liability to pay compensation upon the owner of the vehicle. In this respect, there is no dispute.

5. The vital question in these appeals is regarding the liability of the Insurance Company to reimburse the owner of the vehicle, upon whom the liability to pay h compensation was fixed. The main contention of the appellant/Insurance Company is that gratuitous passengers in a goods vehicle are not entitled for compensation from the Insurance Company, since the policy did not cover use for carrying passengers in the vehicle except employees (other than driver) not exceeding six in number and that, even the permit issued is only for carriage of goods. The factual aspect of the contention of the Insurance Company is not controverted effectively. In issue No. 1, the Tribunal came to the conclusion that the injured claimants were considered to be load men employed by the owner of the vehicle. Factually, there is no evidence to hold that the injured were under the employment of the second respondent/ owner of the vehicle. Govindarajan, the owner of the vehicle remained exparte and failed to support the case that the injured claimants were his employees; nor did he produce the insurance policy. It is in these circumstances, the learned Counsel for the appellant contended that the Insurance-Company is not liable to pay any amount and that the owner alone is liable. Thus, the" question arises, whether a gratuitous passenger in the goods vehicle is entitled for compensation at the hands of the Insurance Company. In this connection, the proviso to Section 147 of Motor Vehicles Act is to be perused. Sub-clause (i) of Clause (b) of Sub-section (1) of Section 147 of the Motor Vehicles Act, 1988:

(1)...a policy of insurance must be a policy of which

(a) xxx xxx xxx (b) insures the person or classes of persons specified in the policy to the extent specified in Sub-section (2) (i) against any liability which may be incurred by him in respect of the death of or bodily injury to any person, including owner of the goods or his authorised 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.

Before amendment, it was u/s 95(1)(b)(ii) in the old Act.

6. Originally, the legal position as stated in New India Assurance Company Vs.

Shri Satpal Singh and Others, , was different and that was overruled in New India Assurance Co. Ltd. Vs. Asha Rani and Others, . The same was reiterated in a subsequent decision reported in Oriental Insurance Company Ltd. Vs. Devireddy Konda Reddy and Others etc. etc. and Jogi Subbamma and Others etc. etc., , wherein it was held that the Tribunal and High Court were not justified in placing reliance upon New India Insurance Co. Limited v. Satpal Singh (supra), and it was further held that the insurer would not be liable to pay compensation to the family of the victim who was travelling in a goods vehicle.

7. Later on a decision reported in National Insurance Co. Ltd. Vs. Bommithi Subbhayamma and Others, , the Hon"ble Apex Court after referring the following decisions viz., (i) National Insurance Co. Ltd. Vs. Ajit Kumar and Others, , (ii) National Insurance Co. Ltd. Vs. Baljit Kaur and Others, , (iii) National Insurance Co. Ltd. Vs. V. Chinnamma and Others, , (iv) New India Assurance Co. Limited v. Asha Rani (supra), (v) New India Assurance Co. Limited v. Satpal Singh (supra), (vi) Oriental Insurance Co. Limited v. Devireddy Konda Reddy (supra) and (vii) Sri Pramod Kumar Agrawal and Another Vs. Smt. Mushtari Begum and Others, , has allowed the appeal preferred by the Insurance Co. and directed the claimants to recover the amount of compensation granted in their favour by the Motor Accident Claims Tribunal from the owner of the vehicle. The following was observed in that case:

It is, therefore, manifest that inspite of the amendment of 1994, the effect of the provision contained in Section 147 with respect to persons other than x the owner of the goods or his authorised representative remains the same. Although the owner of the goods or his authorised representative would now be covered by the policy of insurance in respect of a goods vehicle, it was not the intention of the Legislature to provide for the liability of the c insurer with respect to passengers, especially gratuitous passengers, who were neither contemplated at the time the contract of insurance entered into, nor any premium was paid to the extent of the benefit of insurance to such category of people.

7. In a judgment of Division Bench of this High Court reported in Kalavathy Vs. Annammal and Others, , it was held as follows:

In the light of what is stated above and in view of the fact that deceased travelled in a goods vehicle, which is contrary to the statutory provision of Rule 238 and also of the fact that no additional premium was paid to cover the risk of non-fare paying passengers and also in the light of legal position as it stood prior to the amendment in 1994, we sustain the objection raised by the Insurassnce Company. The same was rightly accepted by the Tribunal by directing the owner appellant herein to pay the compensation amount to the claimants. We do not find any merit in the appeal; consequently, the same is dismissed. No costs.

8. In the case reported in National Insurance Co. Ltd. Vs. Baljit Kaur and Others, ,:the judgment of the Full Bench was pronounced on 6th January, 2004, wherein the question whether the insurance policy in respect of a goods vehicle,

covered gratuitous passengers was dealt with. Before the Supreme Court, the driver and owner of the vehicle contended that the insertion of the words "including owner of the goods or his authorised representative carried in the vehicle" in Section 147, Motor Vehicles Act, 1998 by the 1994 amendment led to the inference that gratuitous passengers were also covered by the said provision. Rejecting the said contention of the respondents, the Supreme Court held that:

The effect of 1994 amendment on Section 147 is unambiguous. Earlier, the words "any person" could be held not to include the owner of the goods or his authorised representatives travelling in the goods vehicle. Parliament has now made it clear that such a construction is no longer possible. The scope of this rationale does not, however, extend to cover the class of cases where gratuitous passengers for whom no insurance policy was envisaged, and for whom no insurance premium was paid, employed the goods vehicle, as a medium of conveyance.

It is relevant that a statutory liability enjoined upon an owner of the vehicle to compulsorily insure it so as to cover the liability in respect of a person who was travelling in a vehicle pursuant to a contract of employment in terms of Proviso (ii) to Section 95 of the 1939 Act does not occur in Section 147 of the 1988 Act. The changes effected in the 1988 Act vis-a-vis the 1939 Act as regards definition of "goods vehicle", "public service vehicle" and "stage carriage" have also bearing on the subject inasmuch as the concept of any goods carriage carrying any passengers of any other person was not contemplated.

In a situation of this nature, the doctrine of suppression of mischief rule as adumbrated in *Heydon's case* (1584) 3 Co. Rep. 7-A, shall apply. Such an amendment was made by Parliament consciously. Having regard to the definition of "goods carriage" vis-a-vis "public service vehicle", it is clear that goods carriage carrying any passenger is not contemplated under the 1988 Act as the same must be used solely for carrying the goods. The intention of Parliament could not have been that the words "'any person" occurring in Section 147 would cover all persons who were travelling in a goods carriage in any capacity whatsoever."

9. Although the above view was taken in favour of the Insurance Company, it was ultimately held that the law was not clear so long and so the legal position as clarified in the judgment shall have only prospective effect. Therefore, it was held in that case, the interest of justice will be subserved if the appellant is directed to satisfy the awarded amount in favour of the claimant and recover the same from the owner of the vehicle.

10. Thus it is made clear that even though the position of law is in favour of the Insurance Company, that may have only prospective effect from the date of judgment of this case, viz., 6th January, 2004 and for cases of erstwhile accidents, the position of law is that the Insurance Company shall have to pay and recover from the owner of the vehicle.

11. In this case also, the accident has taken place much prior to the above said judgment viz, 6th January, 2004, and the accident was on 12th/13th April, 1999. Without filing any suit even by way of filing an execution petition, the Insurance Company is entitled to recover from the owner.

12. For the reasons stated above, all the appeals are partly allowed and the appellant Insurance Company is directed to satisfy the award amount and recover the same from the owner of the vehicle simply by initiating a proceeding before the Executing Court without filing a separate suit. Consequently, connected C.M.Ps. are closed.