

(2011) 11 MAD CK 0136

Madras High Court

Case No: Civil Miscellaneous Appeal No. 84 of 2010

The United India
Insurance Company
Ltd., Third Party Claims
Office, No. 38, Anna
Salai, Chennai-2

APPELLANT

Vs

M. Thangavel and K.S.
Kumar

RESPONDENT

Date of Decision: Nov. 4, 2011

Acts Referred:

- Constitution of India, 1950 - Article 136, 142
- Motor Vehicles Act, 1988 - Section 147, 147(1), 147(2), 147(3)

Hon'ble Judges: R. Subbiah, J

Bench: Single Bench

Advocate: D. Bhaskaran, for the Appellant; R. Thiagarajan, for Ms. M. Malar for R1, for the Respondent

Final Decision: Allowed

Judgement

R. Subbiah, J.

The United India Insurance Company Limited has come up with the present appeal, feeling aggrieved by the award dated 12.09.2008 passed by the Motor Accidents Claims Tribunal (Subordinate Judge), Ponneri, in M.C.O.P. No. 24 of 2006, whereby the Tribunal has directed the insurance company to pay compensation to the victim, indemnifying the owner of the vehicle in question.

2. The case, in brief, is as follows:

The 1st respondent is the claimant before the Tribunal and according to him, on 01.04.2005, he travelled in alorry bearing registration No. TME 2777 insured with the appellant insurance company and the driver stopped the lorry in a junction in order to

facilitate the appellant to get down from the lorry. While he was getting down from the lorry, the driver moved the vehicle in a rash and negligent manner and in that process, the victim lost the balance and fell down and sustained injuries. Hence, the claimant has filed a claim petition before the Tribunal, claiming a sum of Rs. 3,00,000/- as compensation contending that the driver of the lorry was solely responsible for the accident and as such, the owner of the vehicle, the 2nd respondent herein and the insurer of the vehicle, the appellant herein, are jointly and severally liable to pay compensation.

3. The case of the claimant was resisted by the insurance company, which contended that the victim was an unauthorised passenger in the goods vehicle. Moreover, the driver of the lorry did not have a valid licence and hence, there is a statutory violation on the part of the owner of the vehicle since he had allowed the 1st respondent to travel in the goods vehicle as an unauthorised passenger. Therefore, the insurance company is not liable to pay compensation.

4. The Tribunal framed necessary issues and the claimant examined himself as P.W.1 besides examining one doctor as P.W.2 and marked Exs.P-1 to P-9 and on the side of the insurance company, neither oral nor documentary evidence was adduced. The Tribunal rejected the plea raised by the insurance company and held that the claimant was entitled for compensation. The Tribunal awarded a total compensation of Rs. 1,52,500/- together with interest at 7.5% and directed the insurance company to pay the same on behalf of the owner of the vehicle. This award is subject matter of challenge in this appeal.

5. Learned counsel appearing for the appellant insurance company submitted that Ex.P-1, copy of the first information report marked on the side of the 1st respondent/claimant would show that the victim had travelled as a passenger in the goods carriage, which is in violation of the provisions of Section 147(b)(1) of the Motor Vehicles Act. But the Tribunal has not chosen to consider the contents of the first information report while fixing liability on the part of the appellant insurance company. In this regard, the learned counsel further submitted that u/s 147 of the Motor Vehicles Act, the insurance company is not statutorily liable to pay compensation to the passengers travelling in the goods vehicle since it is an admitted fact that the victim was a passenger in goods vehicle, the appellant insurance company is not liable to pay compensation in this case. In support of his contentions, the learned counsel has relied on the decisions reported in *New India Assurance Co. Ltd., vs. Asha Rani And Others* (2003 ACJ 1), [Oriental Insurance Company Ltd. Vs. Devireddy Konda Reddy and Others etc. etc. and Jogi Subbamma and Others etc. etc.](#), *M/s. National Insurance Co. Ltd., vs. Baljit Kaur and Others* (2004 (1) CTC 210), *New India Assurance Co. Ltd., vs. Vedwati And Others* (2007 ACJ 1043), *Oriental Insurance Co. Ltd., vs. Meena Variyal And Others* (2007 (3) Supreme 136), *Thokchom Ongbi Sangeeta @ Sangi Devi vs. Oriental Insurance Co. Ltd.*, (CDJ 2007 SC 1163), *National Insurance Co. Ltd., vs. Prema Devi & Others* (CDJ 2008 SC 354), *National Insurance Co. Ltd., vs. Rattani And Others* (2009 ACJ 925), [Shanker Raju Vs. Union of India \(UOI\)](#), Branch Manager, United India

Insurance Co. Ltd., Dharmapuri Town vs. Nagammal And Others (2009 (1) TN MAC 1) and New India Assurance Co. Ltd., Thanjavur vs. Vinayaga Moorthi and Others (CDJ 2008 MHC 4293).

6. Per contra, Mr. Thyagarajan, learned Senior Counsel appearing for the 1st respondent/claimant submitted that as on date, there is an award in favour of the 1st respondent/claimant by the Tribunal. When there is an award in favour of the claimant by the Tribunal, u/s 149, the insurer shall pay to the person entitled to the benefit of the decree and even if there is any violation, the appellant, after paying the amount to the victim, recover the same from the owner of the vehicle. Under such circumstances, the scope of the interference in the award is very limited. In support of his contentions, the learned senior counsel has relied upon the judgment reported in [B.C. Chaturvedi Vs. Union of India and others](#), , New India Assurance Co. Ltd.,vs. Satpal Singh I (2000) ACC 1 (SC), National Insurance Co. Ltd., vs. Swaran Singh And Others 2004 (1) TN MAC 104 (SC) and Premkumari And Others.vs. Prahlad Dev And Others (2008) 3 MLJ 568 (SC).

7. By way of reply, the learned counsel appearing for the appellant submitted that the principle of "pay and recover" will arise only in the circumstances where the insurance company is successful in its defence available to them u/s 149, it may yet be required to pay the amount to the victim and thereafter to recover the same from the owner of the vehicle. If there is any statutory violation u/s 147 by allowing a person to travel in a goods carriage vehicle as an unauthorised passenger, then absolutely there is no contract between the insured and the insurer to pay the amount. Therefore, the doctrine of "pay and recover" does not arise in the cases of statutory violation. The learned counsel for the appellant further submitted that the Supreme Court in certain cases under Article 142, on discretion, directed the insurance company to pay the amount and recover the same from the owner of the vehicle. Therefore, the same cannot be followed by this Court in all the cases.

8. Per contra, the learned senior counsel for the 1st respondent, by relying upon the decision reported in [B.C. Chaturvedi Vs. Union of India and others](#), submitted that in the said judgment, it has been held that though there is no provision parallel to Article 142 relating to the High Courts, the High Court too can exercise power of review, which in hers in every court of plenary jurisdiction and, hence, this Court, by exercising its inherent power, can order for payment of the amount to the victim and recover the same from the owner of the vehicle.

9. Heard the learned counsel for the parties and perused the materials.

10. It is the submission of the learned counsel for the appellant that the owner of the vehicle, by permitting the 1st respondent to travel in the goods carriage vehicle as an unauthorised passenger, has committed statutory violation. Therefore, u/s 147(b)(1) of the Motor Vehicles Act, the insurance company cannot be held responsible to pay the compensation, whereas it is the submission of the learned senior counsel for the 1st

respondent, as on date, there is an award in favour of the 1st respondent/claimant and hence, u/s 149, it is the duty of the insurer to satisfy the award. In these circumstances, the scope to make an interference in the award is very limited. Therefore, the insurance company could be directed to recover the award amount from the owner of the vehicle, after making payment to the respondent/claimant.

11. In view of the submissions made by the learned counsel on either side, now the question that arises for consideration is, whether, in case of injuries sustained by the unauthorised passenger while travelling in the goods carriage vehicle, can a direction be given to the insurance company to pay the amount to the victim and recover the same from the owner of the vehicle ?

12. Before discussing the issue with regard to the doctrine of "pay and recover", it could be appropriate to extract the relevant provisions of the Motor Vehicles Act.

S.147. 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

(a) is issued by a person who is an authorised insurer; and

(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

149. Duty of insurers to satisfy judgments and awards against persons insured in respect of third-party risks.

(1) If, after a certificate of insurance has been issued under sub-section (3) of Section 147 in favour of the person by whom a policy has been effected, judgment or award in respect of any such liability as is required to be covered by a policy under clause (b) of sub-section (1) of Section 147 (being a liability covered by the terms of the policy) or under the provisions of section 163-A is obtained against any person insured by the policy then, notwithstanding that the insurer may be entitled to avoid or cancel or may have avoided or cancelled the policy, the insurer shall, subject to the provisions of this section, pay to the person entitled to the benefit of the decree any sum not exceeding the sum assured payable there under, as if he were the judgment debtor, in respect of the liability, together with any amount payable in respect of costs and any sum payable in respect of interest on that sum by virtue of any enactment relating to interest on judgment.

(2) No sum shall be payable by an insurer under sub-section (1) in respect of any judgment or award unless, before the commencement of the proceedings in which the judgment or award is given the insurer had notice through the Court or, as the case may be the Claims Tribunal of the bringing of the proceedings, or in respect of such judgment or award so long as execution is stayed thereon pending an appeal; and an insurer to whom notice of the bringing of any such proceedings is so given shall be entitled to be made a party thereto and to defend the action on any of the following grounds, namely;

(a) that there has been a breach of a specified condition of the policy, being one of the following conditions, namely:

(i) a condition excluding the use of the vehicle

(a) for hire or reward, where the vehicle is on the date of the contract of insurance a vehicle not covered by a permit to ply for hire or reward, or

(b) for organised racing and speed testing, or

(c) for a purpose not allowed by the permit under which the vehicle is used, where the vehicle is a transport vehicle, or

(d) without side-car being attached where

the vehicle is a motor cycle; or

(ii) a condition excluding driving by a named person or persons or by any person who is not duly licensed, or by any person who has been disqualified for holding or obtaining a driving licence during the period of disqualification; or

(iii) a condition excluding liability for injury caused or contributed to by conditions of war, civil war, riot or civil commotion; or

(b) that the policy is void on the ground that it was obtained by the non-disclosure of a material fact or by a representation of fact which was false in some material particular....

(4) Where a certificate of insurance has been issued under sub-section (3) of Section 147 to the person by whom a policy has been effected, so much of the policy as purports to restrict the insurance of the persons insured thereby by reference to any conditions other than those in clause (b) of sub-section (2) shall, as respects such liabilities as are required to be covered by a policy under clause (b) of sub-section (1) of Section 147, be of no effect:

Provided that any sum paid by the insurer in or towards the discharge of any liability of any person which is covered by the policy by virtue only of this sub-section shall be recoverable by the insurer from that person.

(5) If the amount which an insurer becomes liable under this section to pay in respect of a liability incurred by a person insured by a policy exceeds the amount for which the insurer would apart from the provisions of this section be liable under the policy in respect of that liability, the insurer shall be entitled to recover the excess from that person.

13. It is to be noted that in Section 147(b)(1), the expression "injury to any person including, owner of the goods or his authorised representative carried in the vehicle" was substituted by Act 54 of 1994 with effect from 14.11.1994. In view of the said amendment, the insurance company is liable to pay compensation in respect of the persons travelling in goods vehicle accompanying the goods or the authorised representative. Except the "persons" classified in the said clause, the insurance company is not statutorily liable to pay the compensation. In I (2000) ACC1 (SC), which was decided on 02.12.1999, when the question came up before the Hon"ble Supreme Court in the case of New India Assurance Company vs. Satpal Singh And Others with regard to the liability of insurance company in paying the compensation to the gratuitous passengers u/s 147(2), the Hon"ble Supreme Court has held as follows:

8. Proviso to Section 147(1) of the new Act shows that it is a recast provision by placing the erstwhile clause (iii) as the present clause (ii). In other words, clause (ii) of the proviso in Section 95(1) of the old Act is totally non-existent in the proviso to Section 147(1) of the new Act.

9. u/s 147 of the new Act, the policy must be a policy which 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:

(ii) against the death of or bodily injury to any passenger of a public, service vehicle caused by or arising out of the use of the vehicle in a public place.

10. The proviso to the said sub-section is not relevant here as it pertains to death or bodily injury to the employee mentioned therein. Sub-section (2) provides that a policy of insurance shall cover any liability incurred in respect of any accident, up to the following limits, namely:

(i) save as provided in clause (b) the amount of liability incurred;

(ii) in respect of damage to any property of a third party, a limit: of rupees six thousand: Provided that any policy of insurance issued with any limited liability and in force, immediately before the commencement of this Act, shall continue to be effective for a period of four months after such commencement or till the date of expiry of such policy whichever is earlier.

Hence, under sub-section(2), there is no upper limitation for the insurer regarding the amount of compensation awarded in respect of death or bodily injury of a victim of the accident. It is therefore, apparent that the limit contained in the old Act has been removed and the policy should insure the liability incurred and cover injury to any person including owner of the goods or his authorised representative carried in the vehicle. The Legislature has also taken care even the policies which were in force on the date of commencement of the Act by specifically providing that any policy of insurance containing any limit regarding insurer's liability shall continue to be effective of a period of four months from commencement of the Act or till the date of expiry of such policy, whichever is earlier. This means, after the said period of four months a new insurance policy consistent with the new Act is required to be obtained.

11. The result is that under the new Act an insurance policy covering third party risk is not required to exclude gratuitous passengers in a vehicle, no matter that the vehicle is of any type or class. Hence the decisions rendered under the old Act vis-a-vis gratuitous passengers are of no avail while considering the liability of the insurance company in respect of any accident which occurred or would occur after the new Act came into force.

14. In the above case, the Supreme Court has held that under the new Act, an insurance policy covering third party risk is not required to exclude gratuitous passengers in vehicle of any type or class. Following the said dictum, the Tribunals, in the case of gratuitous passengers travelling in a goods vehicle, directed the insurance company to pay the compensation to the victims and permit them to recover the same from the owner of the vehicle. But, subsequently, the Hon'ble Supreme Court in the case of New India Assurance Co. Ltd., vs. Asha Rani and Others (2003 (I) ACC 1) has held that the decision rendered in SATPAL SINGH's case has not laid down the correct law and thus, overruled the same. The dictum laid down in the ASHARANI's case was upheld as a correct law in the judgment reported in M/s. National Insurance Co. Ltd., vs. Baljitkaur and Others (2004 (1) CTC 210) delivered by a Full Bench of the Supreme Court, wherein the relevant paragraphs are extracted hereunder:

17. By reason of the 1994 Amendment what was added as "including the owner of the goods or his authorised representative carried in the vehicle". The liability of the owner of the vehicle to insure it compulsorily, thus, by reason of the aforementioned amendment included only the owner of the goods or his authorised representative carried in the vehicle besides the third parties. The intention of the Parliament, therefore, 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. If such was the intention there was no necessity of the Parliament to carry out an amendment inasmuch as expression "any person" contained in sub-clause (i) of clause (b) of sub-section (1) of Section 147 would have included the owner of the goods or his authorised representative besides the passengers who are gratuitous or otherwise.

18. The observations made in this connection by the Court in Asha Rani case (supra) to which one of us, Sinha, J, was a party, however, bear repetition:

26. In view of the changes in the relevant provisions in the 1988 Act vis-a-vis the 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 the 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 traveling in a goods vehicle, the insurers would not be liable therefor.

19. In Asha Rani (supra), it has been noticed that sub-clause (i) of clause (b) of sub-section (1) of Section 147 of the 1988 Act speaks of liability which may be incurred by the owner of a vehicle in respect of death of or bodily injury to any person or damage to any property of a third party caused by or arising out of the use of the vehicle in a public place. Furthermore, an owner of a passenger-carrying vehicle must pay premium for covering the risks of the passengers travelling in the vehicle. The premium in view of the 1994 Amendment would only cover a third-party as also the owner of the goods or his authorised representative and not any passenger carried in a goods vehicle whether for hire or reward or otherwise.

20. It is therefore, manifest that in spite of the amendment of 1994, the effect of the provision contained in Section 147 with respect to persons other than the owner of the goods or his authorized representative remains the same. Although the owner of the goods or his authorized 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 insurer with respect to passengers, especially gratuitous passengers, who were neither contemplated at the time the contract of insurance was entered into, nor any premium was paid to the extent of the benefit of insurance to such category of people.

21. The upshot of the aforementioned discussions is that instead and in place of the insurer the owner of the vehicle shall be liable to satisfy the decree. The question, however, would be as to whether keeping in view the fact that the law was not clear so long such a direction would be fair and equitable. We do not think so. We, therefore, clarify the legal position which shall have prospective effect. The Tribunal as also the High Court had proceeded in terms of the decisions of this Court in Satpal Singh(supra). The said decision has been overruled only in Asha Rani (supra).

15. The Hon"ble Supreme Court, in [Oriental Insurance Company Ltd. Vs. Devireddy Konda Reddy and Others etc. etc. and Jogi Subbamma and Others etc. etc.](#), has also held that the Tribunal and the High Court were not justified in holding that the insurer had the liability to satisfy the award in the case of persons travelling in a goods carriage. The relevant paragraph reads as follows:

11. Our view gets support from a recent decision of a three-Judge Bench of this Court in *New India Assurance Co. Ltd. vs. Asha Rani* (2003) 2 SCC223 in which it has been held that [New India Assurance Company Vs. Shri Satpal Singh and Others](#), was not correctly decided. That being the position, the Tribunal and the High court were not justified in holding that the insurer had the liability to satisfy the award.

16. Subsequently, the issue with regard to the liability of the insurance company in paying compensation to the persons travelling in a goods vehicle is settled in the case of *New India Assurance Co. Ltd., vs. Vedwati and Others* (2007 ACJ 1043), wherein the Hon"ble Apex Court has held as follows:

14. The inevitable conclusion, therefore, is that provisions of the Act do not enjoin any statutory liability on the owner of a vehicle to get his vehicle insured for any passenger travelling in a goods carriage and the insurer would have no liability therefor.

15. Our view gets support from a recent decision of a three-Judge Bench of this Court in *New India Assurance Company Limited v. Asha Rani and Ors.*, 2003 ACJ 1 (SC), in which it has been held that *Satpal Singh's* case, 2000 ACJ 1 (SC) was not correctly decided. That being the position, the Tribunal and the High Court were not justified in holding that the insurer had the liability to satisfy the award.

17. Thereafter, in several cases, various High Courts have held that the insurance company is not liable to pay the compensation in respect of the persons travelling in the goods carriage vehicle. Some of the judgments relied on by the learned counsel for the appellant are as follows: In 2007 (3) Supreme 136, it reads as under:

10. ...Section 149(1), which casts an obligation on an insurer to satisfy an award, also speaks only of award in respect of such liability as is required to be covered by a policy under clause(h) of sub-section (1) of Section 147, (being a liability covered by the terms of the policy). This provision cannot therefore be used to enlarge the liability if it does not exist in terms of Section 147 of the Act.

11. The object of the insistence on insurance under Chapter XI of the Act thus seems to be to compulsorily cover the liability relating to their person or properties of third parties and in respect of employees of the insured employer, the liability that may arise under the *Workmen's Compensation Act, 1923* in respect of the driver, the conductor and the one carried in a goods vehicle carrying goods. On this plain understanding of Section 147, we find it difficult to hold that the insurance company, in the case on hand, was liable to indemnify the owner, the employer Company, the insured, in respect of the death of one of its employees, who according to the claim, was not the driver. Be it noted that the liability is not one arising under the *Workmen's Compensation Act, 1923* and it is doubtful, on the case put forward by the claimant, whether the deceased could be understood as a workman coming within the *Workmen's Compensation Act, 1923*. Therefore, on a plain reading of Section 147 of the Act, it appears to be clear that

the insurance company is not liable to indemnify the insured in the case on hand.

18. The Hon"ble Apex Court in Thokchom Ongbi Sangeeta @ Sangi Devi.vs. Oriental Insurance Co. Ltd., (CDJ 2007 SC 1163), has held as follows:

9. The difference in the language of "goods vehicle" as appearing in the Old Act and "goods carriage" in the Act is of significance. A bare reading of the provisions makes it clear that the legislative intent was to prohibit goods vehicle from carrying any passenger. This is clear from the expression "in addition to passengers" as contained in definition of "goods vehicle" in the Old Act. The position becomes further clear because the expression used is "goods carriage" is solely for the "carriage of goods". Carrying of passengers in a goods carriage is not contemplated in the Act. There is no provision similar to clause (ii) of the proviso appended to Section 95 of the Old Act prescribing requirement of insurance policy. Even Section 147 of the Act mandates compulsory coverage against death of or bodily injury to any passenger of "public service vehicle". The proviso makes it further clear that compulsory coverage in respect of drivers and conductors of public service vehicle and employees carried in goods vehicle would be limited to liability under the Workmen's Compensation Act, 1923. There is no reference to any passenger in "goods carriage".

19. In National Insurance Co. Ltd., vs. Prema Devi & Others (CDJ 2008 SC 354), the Hon"ble Apex Court, after extracting the relevant paragraphs reported in (2007) ACJ 1043), has held as under:

7. ...

14. The inevitable conclusion, therefore, is that provisions of the Act do not enjoin any statutory liability on the owner of a vehicle to get his vehicle insured for any passenger travelling in a goods carriage and the insurer would have no liability therefor.

15. Our view gets support from a recent decision of a three-Judge Bench of this Court in New India Assurance Company Limited v. Asha Rani and Ors. (2002 (8) Supreme 594) in which it has been held that Satpal Singh's case (supra) was not correctly decided. That being the position, the Tribunal and the High Court were not justified in holding that the insurer had the liability to satisfy the award.

16. This position was also highlighted in [Oriental Insurance Company Ltd. Vs. Devireddy Konda Reddy and Others etc. etc. and Jogi Subbamma and Others etc. etc.](#), .

Subsequently also in [National Insurance Co. Ltd. Vs. Ajit Kumar and Others](#), , in [National Insurance Co. Ltd. Vs. Baljit Kaur and Others](#), and in [National Insurance Co. Ltd. Vs. Bommithi Subbhayamma and Others](#), , the view in Asha Rani's case (supra) was reiterated.

8. Above being the position, the impugned order of the High Court is not sustainable and is set aside. It is open to the claimant to recover the amount awarded from the owners of the offending vehicles.

20. In [National Insurance Co. Ltd. Vs. Rattani and Others](#), it has been held as follows:

14. An admission made in the pleadings, as is well-known, is admissible in evidence proprio vigore. We, thus, are of the opinion that the Tribunal as also the High Court committed a serious error in opining that the insurance company was liable....

We, therefore, in the facts and circumstances of the case, have no hesitation to hold that the victims of the accident were travelling in the truck as gratuitous passengers and in that view of the matter, the appellant herein was not liable to pay the amount of compensation to the claimants.

21. The Apex Court in [Shanker Raju Vs. Union of India \(UOI\)](#), has held as follows:

18. The second observation we wish to make is, the doctrine of binding precedent has the merit of promoting certainty and consistency in judicial decisions. The pronouncement of law by a larger Bench of this Court is binding on a Division Bench of this court, especially where the particular determination by this Court not only disposes of the case, but also decides a principle of law. We further add that it would be inappropriate to reagitate the very issue or a particular provision, which this Court had already considered and upheld.

22. In Branch Manager, United India Insurance Co. Ltd., Dharmapuri Town.vs. Nagammal and Others 2009 (1) TN MAC 1, a Full Bench of this Court has held 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 u/s 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).

(iii) u/s 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 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.

(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.

(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 the 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.

23. In *The Divisional Manager, The New India Assurance Company Limited, Thanjavur vs. Vinayaga Moorthi & Others* (CDJ 2008 MHC 4293), it has been held by a Madurai Bench of this Court, as follows:

24. Article 136 read with Article 142 of the Constitution of India, confers an extraordinary jurisdiction on the highest court of the country to issue any direction and exercise their power to do complete justice and Tribunals do not have the power, similar to that conferred under Article 142 and any attempt to follow the exercise of such power will lead to incongruous and disastrous results.

25. Therefore, the decision of the Tribunal to follow a direction issued by the Supreme Court in exercise of its extraordinary jurisdiction under Article 142 of the Constitution of India, to the present claim petitions is not in accordance with law, and therefore, I have no hesitation to hold that there is an excess of jurisdiction. In the light of the decisions of the Supreme Court on the issue, the finding of the Tribunal fastening the liability on the appellant insurance Company to pay compensation to all the victims and to recover the same from the owner is liable to be set aside and accordingly set aside. The insured, third respondent is liable to compensation each of the victims. It is for the

respondents/claimants to take up appropriate proceedings before the Tribunal to recover the compensation from the insured. The amount deposited by the appellant insurance company in respect of each of the claim petitions shall be refunded to them to the Company, within two weeks from the date of receipt of this order. The common judgment and decree of the Tribunal in M.C.O.P.Nos.277/2003 etc., dated 14.8.2007 are set-aside. The Civil Miscellaneous Appeals are allowed. No costs.

24. A reading of the above judgments would show that only in a case, where the insurance company is successful in its defence u/s 149, it may yet be required to pay the amount to the claimant and thereafter, it may recover from the owner of the vehicle. When the insurance company is not statutorily required to cover the liability in respect of a passenger in a goods vehicle u/s 147 unless such passenger is the owner or agent of the owner of the goods accompanying such goods absolutely there is no need for the insurance company to pay compensation since there is no contractual liability under the statute to pay the amount to the gratuitous passenger travelling in the goods carriage vehicle. Under such circumstances, in my considered opinion, a direction could not be given to the insurance company to pay the owner and recover from the owner of the vehicle.

25. Now, coming to the decisions relied upon by the learned senior counsel for the 1st respondent, I find that in all those cases, the driver of the vehicle did not have the valid driving licence, such as without badge endorsement in the licence to drive the commercial vehicle, etc. The facts in Premkumari vs. Prahlad Dev (2008) 3 MLJ 568 (SC) would show that the insurance company was exonerated from its liability in paying compensation on the ground that the driver of the offending vehicle did not have a valid and effective driving licence on the date of accident and the same was confirmed by the High Court; but the Hon'ble Supreme Court set aside the finding of the Tribunal stating that though the conclusion was in favour of the insurance company, the appellants, being the widow and minor children of the deceased, need not repay the amount claimed to have been paid to the appellants and only in those circumstances, when the insurance company succeeded in its defence available to them u/s 149, permission was given to the insurance company to recover the same from the owner of the vehicle.

26. But, so far as this case is concerned, there is a statutory violation u/s 147 of the Act. Therefore, following the principles laid down in BALJITKAUR's case (supra), which was decided on 06.01.2004, I am of the view that the insurance company is not liable to pay compensation. Therefore, the judgments relied on by the learned senior counsel for the 1st respondent cannot be made applicable to the facts of this case. When there is no statutory liability to pay compensation by the insurance company to the victim, who has travelled as unauthorised passenger in the vehicle, the insurance company cannot be directed to pay the compensation amount and recover the same from the owner of the vehicle and, hence, I am not inclined to accept the submission made by the learned senior counsel for the 1st respondent that since there was an award in favour of the claimant, the insurance company is bound to satisfy the said award and the scope of

interference in such an award by the High Court is limited.

27. Lastly, I deal with the submission made by the learned Senior counsel for the 1st respondent, who, after placing his reliance on para 23 of the judgment referred to in [B.C. Chaturvedi Vs. Union of India and others](#), , advanced his argument that the dictum laid down in that case describing the principle of law by the Supreme Court in the light of Article 142 of the Constitution shall be taken into consideration for exercising a power of review and on that basis, the insurance company may be directed to pay the amount and recover the same from the owner of the vehicle. The above argument may not be availed of by the learned Senior Counsel for the 1st respondent in the instant case for the reason that the view expressed by one of the Hon"ble Judges of the Bench is without the concurrence of the Full Bench and hence, the above opinion cannot be termed as a decision of the Bench. It is only an opinion of one of the Hon"ble Judges, but not the principle of law laid down by the entire Bench. Hence, I do not find any force in the submission made by the learned Senior Counsel for the 1st respondent.

28. Further, a reading of above judgment relied upon by the learned senior counsel for the 1st respondent would show that the inherent power of the High Court is not as wide as which the Hon"ble Supreme Court has under Article 142. Moreover, the said dictum was laid down by the Hon"ble Supreme Court in a case related to service law and as such, the opinion expressed in the said decision cannot be made use of for directing the insurance company to pay the amount and recover the same from the owner of the vehicle since there is no statutory liability on the part of the insurance company to pay compensation to the injuries sustained by the unauthorised passengers or to the legal heirs of the deceased, who had travelled as unauthorised passengers in the goods carrying vehicle. The doctrine of "pay and recover" would be ordered only in the case where the insurance company is successful in its defence available u/s 149 it may yet be required to pay the amount to the victim and thereafter, to recover the same from the owner of the vehicle and not in the case where there is no statutory liability to pay compensation by the insurance company to the victim. Under such circumstances, I am of the view that no direction could be given to the insurance company to pay compensation to the claimant and recover the same from the owner of the vehicle and hence, the finding of the Tribunal is not legally sustainable and is liable to be set aside.

For the reasons stated above, the award dated 12.09.2008 is set aside and the civil miscellaneous appeal is allowed. No costs. The insurance company is permitted to withdraw the award amount deposited if any and the 1st respondent is permitted to proceed and recover the award amount from the 2nd respondent, the owner of the vehicle, in accordance with law.