

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.453 of 2012

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1. The United India Insurance Company Limited, Through Divisional Manager, Divisional Office Ramanuj Bhawan, A.P. Colony, Near Asha Singh More, Gaya, At & P.O.- Gaya, P.S.- Rampur, Distt.- Gaya Apeal And Appellant Through The Manager & Constituted Attorney, Regional Office, United India Insurance Company Limited, Chanakya Commercial Complex, 'R' Block, Patna

.... Appellant/s

Versus

1. Biltan Sao @ Biltan Prasad S/O Lt. Gopali Sao R/O Mohalla- Manpur, Sudhi Tola, P.O.- Buniyadaganj, P.S.- Mufassil, Distt.- Gaya
2. Ahima Devi @ Ahilya Devi W/O Biltan Sao R/O Mohalla- Manpur, Sudhi Tola, P.O.- Buniyadaganj, P.S.- Mufassil, Distt.- Gaya
3. Sri Kali Yadav S/O Lt. Punit Yadav R/O Village- Kukiyaasin, P.O.- Bigubigha, P.S.- Buniyadganj, Distt.- Gaya
4. The Branch Manager, Madhya Bihar Gramin Bank, Buniyadganj, Gaya

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. DURGESH KUMAR SINGH

For Respondent Nos. 1 & 2 : Mr. Rajen Sahay,

Mr. Anil kumar Saxena, Advocates.

For Respondent no.3 : Mr. Arvind Kumar Singh, Advocate.

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

CAV JUDGMENT

Date: 16.10.2015

Heard the parties.

2. In the present appeal the Insurance Company is challenging the judgment dated 28.4.2012 and award dated 8.5.2012 passed by the Additional District Judge, Fast Track Court No.II, Gaya-cum- M ACT, Gaya in MAC Case No.87 of 2009/124 of 2011 by which Motor Vehicle Tribunal directed for payment of compensation amount of Rs. 3,14,000/-.

3. Brief facts of the case is that on 6.2.2009 at about 10.30 A.M. the victim was coming from Kukiyaasin on a tractor,

whose engine number is E 3051796 and chasis no. is B3048170.

When the tractor reached 700 yards north of Alipur bazaar on main road the said tractor turned turtle due to its rash and negligent driving of its driver. The deceased fell down, came under the wheel of trailor and died on the spot. On the statement of Biltan Paswan, a police case vide Buniyadgang P.S. Case No.15 of 2009 for the offences under Sections 279, 337, 338 and 304A of the Indian Penal Code was registered against the driver of the tractor. The post-mortem of dead body of victim was conducted at A.N.M.M.C.H, Gaya, later on claim application was filed.

4. In the First Information Report it has been mentioned that on 6.2.2009 in the morning the victim had gone to bring the brick for the construction of the house and was coming along with brick. He was sitting along with the labourer met with a major accident and died.

5. The appellant in the claim application stated that the fact as mentioned in the First Information Report, made claim of compensation of Rs. 7,50,000/- including the interest at the rate of 9% per annum.

6. The Insurance Company appeared and stated that the driver of the tractor was not holding valid driving licence of the



tractor at the time of accident. The policy of insurance is covered under the farmer package and is liable to pay compensation where an accident takes place in agricultural work but in the instant case the deceased was sitting on the mudguard of the tractor and the Insurance Company is not liable to pay the compensation.

7. In support of case their respective case parties have brought documentary as well as oral evidence, produced the First Information Report that has been marked as Ext. 1. Post mortem report of victim was marked as Ext.2. Ext.3 is insurance policy and Ext.4 is sale letter of the tractor. Altogether three witnesses have been examined on behalf of the appellant. They have stated that that victim was on the tractor and on account of negligent driving the tractor turned turtle, he died at the spot. It has been stated that the victim was engaged in hawking domestic utensils on head load but in the cross-examination it has been stated that he was coming on the tractor along with brick. All the witnesses have repeated/reiterated stated the same statement. The tribunal has found that the claimant was entitled to the compensation and calculated the same.

8. Learned counsel for the Insurance Company submits that policy of the tractor was for agricultural, not for the commercial



purposes. It is apparently clear that the victim was coming on tractor with brick from the brick kiln. He has further submitted that as the accident has taken place while he was coming on the tractor which has no capacity of sitting except the driver. So much so as per the case of the claimant that he was sitting on the tailor and tailor was not ensured and as such claimant is not entitled for any compensation from Insurance Company. He has further submitted that mere coverage of tractor under insurance policy will not ipso facto will be deemed that tailor was also covers under that policy. The tractor was covered under insurance for agricultural purposes, coverage of insurance was confined to only for agricultural purposes, not for other purposes and submitted that the Tribunal has wrongly allowed the claim of the appellant and requires interference by this Court.

9. Respondent claimant resisted the claim of the appellant and submitted that the victim was carrying his brick and he was owner of the brick, will come under insurance coverage under Section 147 (1)(b)(i) of the Motor Vehicle Act, as big change has been made under Section 147(1) of the Motor Vehicle Act by 1994 amendment. As before 1994 there was no clause covering injury to any person, including the owner of the goods or his authorized representative carried in the vehicle. Both

parties have relied on long line of judgments.

10. Learned counsel for the appellant has relied on the following judgments: (i) United India Insurance Company Limited Vs. Serjerao & Ors., reported in 2008(1) PLJR 127 SC (ii) Oriental Insurance Co. Ltd. Brij Mohan and others, reported in (2007) 7 SCC 56 (iii) New India Assurance Co. Ltd. V. Asha Rani and others, reported in (2003) 2 SCC 223- that has specially dealt with effect of 1994 amendment in the Motor Vehicle Act. (iv) National Insurance Co. Ltd. V. Baljit Kaur and others, reported in (2004) 2 SCC 1 (v) National Insurance Co. Ltd. V. Cholleti Bharatamma and others, reported in (2008) 1 SCC 423 (vi) United India Insurance Company Limited V. Sahanaz Khatoon and others, reported in 2010(2) BBCJ 595 (vii) United India Insurance Company V. Satiya Devi @ Sundri Devi and others, reported in 2008(3) BBCJ 280 (viii) National Insurance Company Limited V. Rattani and others, reported in (2009) 2 SCC 75 (ix) New India Assurance Company V. Roshanben Rahemansha Fakir, (2008) 8 SCC 253 and judgment of Misc. Appeal No.64 of 2007 (National Insurance Company Ltd. Vrs. Laxminia Kuer), Misc. Appeal No.251 of 2012 (Divisional Manager, New India Assurance Company Limited V Rameshwar Yadav & others) and Misc. Appeal No.213 of 2008

(The Oriental Insurance Company Ltd. V. Most Dularo Kuwar & others).

11. Learned counsel for the claimant has also relied on the judgment in the case of Branch Manager, Oriental Insurance Company V. Devendra Singh and others, reported in 2015(2)PLJR141.

12. It will be appropriate for a proper discussion of the case to examine Section 147 of the Motor Act before amendment and its effect thereafter. It will be relevant to quote Section 147(1)(b)(i) of the Motor Vehicle Act before amendment has been effected in the Motor Vehicle Act.

“ 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) xxxxxxxxxx

(b) insurers 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 or damage to any property of a third party caused by or arising out of the use of the vehicle in a public place.”

After 1994 amendment the provision of Section 147(1)(b)

is as follows:

“ (1)In order to comply with the requirements of this Chapter, a policy of insurance must be a policy which-

(b) insurers 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 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”

13. In Asha Rani (supra) case Hon’ble Supreme Court has elaborately dealt with Section 95(2) of 1939 Act and later on amendment of 1994 and its effect on coverage. The Court has considered in the case of New India Assurance Co. V. Satpal Singh, (2000)1 SCC 237, held that Satpal case was decided prior to amendment and at that time the insurer was not obliged to ensure against the owner of the goods or his authorized representative being carried in a goods vehicle and Hon’ble Supreme Court held that under the wrong impression the Hon’ble Supreme Court has directed to pay compensation in respect of the death or bodily injury caused to either the owner of the goods or his authorized representative while he was carried in a goods vehicle met with an accident. But after the amendment 1994 the scenario changed, looking to the nature of amendment and its aims and objects engrafted in the amendment, the court has held that Section 147 envisages a compulsory insurance coverage to owner of the goods or his authorized representative

carried in the vehicle. It will be appropriate to quote paragraph 9 and 28 of the judgment reported in Asha Rani (supra):

“9 In Satpal case the Court assumed that the provisions of Section 95(1) of the Motor Vehicles Act, 1939 are identical with Section 147(1) of the Motor Vehicles Act, 1988, as it stood prior to its amendment. But a careful scrutiny of the provisions would make it clear that prior to the amendment of 1994 it was not necessary for the insurer to insure against the owner of the goods or his authorized representative being carried in a goods vehicle. On an erroneous impression this Court came to the conclusion that the insurer would be liable to pay compensation in respect of the death or bodily injury caused to either the owner of the goods or his authorized representative when being carried in a goods vehicle the accident occurred. If the Motor Vehicles Amendment Act of 1994 is examined, particularly Section 46, by which the expression “injury to any person” in the original Act stood substituted by the expression “injury to any person including owner of the goods or his authorized representative carried in the vehicle”, the conclusion is irresistible that prior to the aforesaid Amendment Act of 1994, even if the widest interpretation is given to the expression “to any person” it will not cover either the owner of the goods or his authorized representative being carried in the vehicle. The objects and reasons of clause 46 also state that it seeks to amend Section 147 to include owner of the goods or his authorized representative carried in the vehicle for the purposes of liability under the insurance policy. It is no doubt true that sometimes the legislature amends the law by way of amplification and clarification of an inherent position which is there in the statute, but a plain meaning being given to the words used in the statute, as it stood prior to its amendment of 1994, and as it stands subsequent to its amendment in 1994 and bearing in mind the objects and reasons engrafted in the amended provisions referred to earlier, it is difficult for us to construe that the



expression “including owner of the goods or his authorized representative carried in the vehicle” which was added to the pre-existing expression “injury to any person” is either clarificatory or amplification of the pre-existing statute. On the other hand it clearly demonstrates that the legislature wanted to bring within the sweep of Section 147 and making it compulsory for the insurer to insure even in a case of a goods vehicle, the owner of the goods or his authorized representative being carried in a goods vehicle when that vehicle met with an accident and the owner of the goods or his representative either dies or suffers bodily injury. The judgment of this Court in Satpal case therefore must be held to have not been correctly decided and the impugned judgment of the Tribunal as well as that of the High Court accordingly are set aside and these appeals are allowed. It is held that the insurer will not be liable for paying compensation to the owner of the goods or his authorized representative or being carried in a goods vehicle when that vehicle meets with an accident and the owner of the goods or his representative dies or suffers any bodily injury.

28. An owner of a passenger-carrying vehicle must pay premium for covering the risks of the passengers. If a liability other than the limited liability provided for under the Act is to be enhanced under an insurance policy, additional premium is required to be paid. But if the ratio of this Court’s decision in New India Assurance C.v Satpal Singh is taken to its logical conclusion, although for such passengers, the owner of a goods carriage need not take out an insurance policy, they would be deemed to have been covered under the policy wherefor even no premium is required to be paid.”

14. Learned counsel for the owner of vehicle has supported the case of the claimant and has stated that the Tribunal has rightly given direction for recovery of compensation from the

Insurance Company.

15. In Asha Rani case (supra) the fact was that the accident took place of goods vehicle which resulted into death and bodily injury of the person traveling as passenger. In the batch of cases question arose as to whether the Insurance Company will be liable to compensate the insurance amount. In that case the Court has considered, three situations, (i) Being those cases which are covered by the Motor Vehicle Act, 1939 (ii) the cases which are covered under Motor Vehicle Act, 1988 prior to 1994 amendment, and (iii) the cases which fell after amendment of 1994. When the matter was finally heard the Hon'ble Court decided the issues with respect to category nos. (i) and (iii) vide order dated 17.8.2001 which has been reported in Ramesh Kumar v. National Insurance Company, (2001) 6 SCC 713 and New India Insurance Company v. Asha Rani (supra) but the cases falling under category (ii), namely which are covered under Motor Vehicle Act, 1988 prior to 1994 amendment, it was felt that decision of the Court in Satpal case (supra) required consideration by a larger Bench. In Asha Rani case (supra) the court has considered the statutory provision of Section 147 of the Act before 194 amendment and effect of amendment after 1994. Even after giving widest interpretation prior to



amendment of 1994 the expression “to any person” it does not comprehend either the owner of the goods or his authorized representative being carried in the vehicle but the amendment has brought a change which clearly demonstrates that the legislature wanted to bring aforesaid cases of category within the sweep of Section 147 making it compulsory insurance even in case of a goods vehicle, the owner of goods or his authorized representative being carried in a goods vehicle when that vehicle meets with an accident in which the owner of the goods or his representative either dies or suffers bodily injury and in that manner the court has held in Satpal Singh, reported in (2000)1SCC 237 was not rightly decided and accordingly the said judgment has been over ruled.

16. In another judgment the Hon’ble Supreme Court in the case of National Insurance Co. Ltd. V. Baljit Kaur and others, reported in (2004)2 SCC 1 dealt with the issue of liability of insurer with regard to gratuitous passengers carried in the vehicle and affect of 1994 amendment in Section 147(1)(b) of the Act. In the aforesaid case the fact is that claim application was filed on account of death of son, namely, Sukhwinder Singh, due to the allegedly reckless driving by the driver of goods vehicle. The Tribunal recorded a finding that the victim



was returning in the truck from a marriage ceremony, died as a result of the rash and negligent driving by the driver of the goods vehicle but it was an admitted fact that the said vehicle was insured with the Insurance Company. The Tribunal and High Court recorded a finding in favour of the claimant and liability was fixed on the Insurance Company to indemnify insured by making payment of compensation amount. The Court has considered the effect of 1994 amendment in Section 147 of the Act making addition with respect to the person other than the owner of the goods or his authorized representative, it has been held that the owner of the goods or his authorized representative, would be covered by the policy of insurance in respect of a goods vehicle but it was not the intention of the legislature, the insurer would indemnify the owner of vehicle with respect to the passengers especially gratuitous passengers who has not been mentioned in the term of contract nor premium paid. It will be relevant to quote paragraph nos. 19, 20 and 21 of the aforesaid judgment:

“ 19. In Asha Rani 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 traveling 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 authorized 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 provisions 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 was any premium paid to the extent of the benefit of the 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 decision of this Court in Satpal Singh. The said decision has been overruled only in Asha Rani. We, therefore, are of the opinion that the interest of justice will be sub served if the appellant herein is directed to satisfy the awarded amount in favour of the claimant, if not already satisfied, and recover the same from the owner of the vehicle. For the purpose of such recovery, it would not be necessary for the insurer to file a separate suit but it may initiate a proceeding



before the executing court as if the dispute between the insurer and the owner was the subject-matter of determination before the Tribunal and the issue is decided against owner and in favour of the insurer. We have issued the aforementioned directions having regard to the scope and purport of Section 168 of the Motor Vehicles Act, 1988 in terms whereof, it is not only entitled to determine the amount of claim as put forth by the claimant for recovery thereof from the insurer, owner or driver of the vehicle jointly or severally but also the dispute between the insurer on the one hand and the owner or driver of the vehicle involved in the accident inasmuch as can be resolved by the Tribunal in such a proceeding.”

17. Identical issue came up for consideration before Hon'ble Supreme Court in the case of Oriental Insurance Co. Ltd. V. Brij Mohan and others, reported in (2007) 7 SCC 56. In that case the tractor was carrying the soil. A plea was taken, carrying the earth is an agricultural purposes and the said tractor was ensured for agricultural purposes but trolley was not insured but the Tribunal after examining the fact on record arrived to a conclusion that the said tractor and its trolley was carrying the earth for brick kiln and not for agricultural purpose. The labourer traveling on the trolley met with an accident and died. The Court has held labourer will not be entitled of compensation amount from the Insurance Company. It will be relevant to quote paragraph nos. 8, 9, 10 and 11 of the aforesaid

judgment:

“8. The Tribunal in its award has, inter alia, noticed that the appellant herein had raised a specific defence, namely, the trolley was not insured. It does not appear that the said contention of the appellant had been gone into. There is nothing on records to show that the owner of the tractor had produced any insurance cover in respect of the trolley. It is furthermore not disputed that the tractor was insured only for the purpose of carrying out agricultural works. The representative of the Insurance Company Mr. Hari Singh Meena on cross-examination merely accepted the suggestion that cutting the earth and levelling the field with earth would be an agricultural work but respondent no.1 himself categorically stated in his claim petition before the Tribunal stating that the earth had been dug and was being carried in the trolley to the brick-klin. Evidently the earth was meant to be used only for the purpose of manufacturing bricks. Digging of earth for the purpose of manufacture of brick-klin indisputably cannot amount to carrying out of the agricultural work.

9. In National Insurance Co. Ltd. v. V. Chinnamma & Ors. [(2004) 8 SCC 697], this Court held :-

"14. An insurance for an owner of the goods or his authorised representative travelling in a vehicle became compulsory only with effect from 14-11-1994 i.e. from the date of coming into force of amending Act 54 of 1994.

15. Furthermore, a tractor is not even a "goods carriage". The expression goods carriage has been defined in Section 2(14) to mean 'any motor vehicle constructed or adapted for use *solely* for the carriage of goods, or any motor vehicle not so constructed or adapted when used for the carriage of goods'

(emphasis supplied)

whereas "tractor" has been defined in Section 2(44) to mean

"a motor vehicle which is not itself constructed to carry any load (other than equipment used for the purpose of propulsion); but excludes a roadroller". "Trailer" has been defined in Section 2(46) to mean

"any vehicle, other than a semi-trailer and a sidecar, drawn or intended to be drawn by a motor vehicle".

16. A tractor fitted with a trailer may or may not answer the definition of goods carriage contained in Section 2(14) of the Motor Vehicles Act. The tractor was meant to be used for agricultural purposes. The trailer attached to the tractor, thus, necessarily is required to be used for agricultural purposes, unless registered otherwise. It may be, as has been contended by Mrs K. Sharda Devi, that carriage of vegetables being agricultural produce would lead to an inference that the tractor was being used for agricultural purposes but the same by itself would not be construed to mean that the tractor and trailer can be used for carriage of goods by another person for his business activities. The deceased was a businessman. He used to deal in vegetables. After he purchased the vegetables, he was to transport the same to the market for the purpose of sale thereof and not for any agricultural purpose. The tractor and trailer, therefore, were not being used for agricultural purposes. However, even if it be assumed that the trailer would answer the description of "goods carriage" as contained in Section 2(14) of the Motor Vehicles Act, the case would be covered by the decisions of this Court in Asha Rani¹ and other decisions following the same, as the accident had taken place on 24-11-1991 i.e. much prior to coming into force of the 1994 amendment."

10. Furthermore, respondent was not the owner of the tractor. He was also not the driver thereof. He was merely a passenger travelling on the trolley attached to the tractor. His claim petition, therefore, could not have allowed in view of the decision of this Court in New India Assurance Co.

Ltd. v. Asha Rani & Ors. [(2003) 2 SCC 223] wherein the earlier decision of this Court in New India Assurance Co. v. Satpal Singh [(2000) 1 SCC 237] was overruled. In Asha Rani (supra) it was, inter alia, held :-

"25. Section 147 of the 1988 Act, inter alia, prescribes compulsory coverage against the death of or bodily injury to any passenger of "public service vehicle". Proviso appended thereto categorically states that compulsory coverage in respect of drivers and conductors of public service vehicle and employees carried in a goods vehicle would be limited to the liability under the Workmens Compensation Act. It does not speak of any passenger in a "goods carriage".

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

27. Furthermore, sub-clause (i) of clause (b) of sub-section (1) of Section 147 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, whereas sub-clause (ii) thereof deals with liability which may be incurred by the owner of a vehicle 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."

[See also National Insurance Co. Ltd. v. Bommithi Subbhayamma and Others [(2005) 12 SCC 243 and United India Insurance Co. Ltd., Shimla v. Tilak Singh and Ors. [(2006) 4 SCC 404].

11. Although the effect in 1994 amendment in the Motor Vehicles Act did not call for consideration in Asha Rani (supra), a three Judge Bench of this Court had the occasion to consider the said question in National Insurance Co. Ltd. Vs. Baljit Kaur & Ors. [(2004) 2 SCC 1] in the following terms :

"17. By reason of the 1994 amendment what was added is "including" owner of the goods or his authorized 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 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 Parliament to carry out an amendment inasmuch as the 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 authorized representative besides the passengers who are gratuitous or otherwise.

18. The observations made in this connection by the Court in Asha Rani case² to which one of us, Sinha, J., was a party, however, bear repetition: (SCC p. 235, para (26)

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 travelling in a goods vehicle, the insurers would not be liable therefor.

19. In Asha Rani 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 authorized representative and not any passenger carried in a goods vehicle whether for hire or reward or otherwise.”

18. Similar issue came up for consideration before Hon’ble Supreme Court in the case of New India Assurance Co. Ltd. V. Vedwati and others, reported in (2007) 9 SCC 486. In that case the deceased Paras Ram Agnihotri was returning in tractor after delivering certain goods there. The tractor overturned due to rash and negligent driving by the driver with the result the deceased has lost his life. The deceased was working as priest of agricultural farmer from whom he was earning about rs.7,000/- per month. Plea was taken by the Insurance Company was not liable to indemnify the insurer. It was found that tractor was ensured for the agricultural purposes as the same was used for carrying passengers. Claim was made that responsibility cannot be attached to indemnify for any award and to pay any amount



to the claimants. Tribunal and High Court rejected the plea of the Insurance Company and ultimately the matter arrived to Hon'ble Supreme Court and the Court has accepted the plea of the Insurance Company. The tractor was ensured for agricultural purposes, not for carrying the passengers in such situation the liability to indemnify by the Insurance Company would not be legal and justified. It will be relevant to quote paragraph no.6 of the aforesaid judgment:

6.....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 legislature intent was to prohibit goods vehicle from carrying any passenger. This is clear from the expression “in addition to passengers” as contained in the 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 (in short “the WC Act”). There is no reference to any passenger in “goods carriage”.

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 traveling in a goods carriage and the insurer would have no liability therefore.

Out view gets support from a recent decision of a three-Judge Bench of this Court in New India Assurance Co. Ltd. Asha Rani in which it has been held that Satpal Singh case 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.”

This position was also highlighted in Oriental Insurance Co. Ltd. V. Devireddy Konda Reddy, SCC pp.341-43, paras 4-11. Subsequently also in National Insurance Co. Ltd. V. Ajit Kumar, in National Insurance Co. Ltd. V. Baljit Kaur and in National Insurance Co. Ltd. V. Bommithi Subbhayamma the view in Asha Rani case was reiterated.”

19. This question again came for consideration before Hon’ble Supreme Court in the case of National Insurance Co. Ltd. V. Cholleti Bharatamma and others, reported in (2008) 1 SCC 423. The question involved for consideration about liability of insurer to indemnify the owner of the vehicle in respect of death of passenger traveling in goods vehicle. The Court has held that even after 1994 amendment in section 147 of the Motor Vehicle Act injury to any person would only mean a third party and not a passenger traveling on a goods carriage vehicle whether gratuitous or otherwise. It will be relevant to quote paragraph nos. 9, 10,11 and 12 of the aforesaid judgment:

“9. Correctness of the decision in Satpal Singh (supra) came up for consideration before a three Judge Bench of this Court in New India Assurance Co. Ltd. v. Asha

Rani and Others [(2003) 2 SCC 223].

10. In Asha Rani (supra), having regard to various definitions involving the legal question, it was held :

“23. The applicability of the decision of this Court in Mallawwa v. Oriental Insurance Co. Ltd. in this case must be considered keeping that aspect in view. Section 2(35) of the 1988 Act does not include passengers in goods carriage whereas Section 2(25) of the 1939 Act did as even passengers could be carried in a goods vehicle. The difference in the definitions of ‘goods vehicle’ in the 1939 Act and ‘goods carriage’ in the 1988 Act is significant. By reason of the change in the definitions of the terminology, the legislature intended that a goods vehicle could not carry any passenger, as the words ‘in addition to passengers’ occurring in the definition of goods vehicle in the 1939 Act were omitted. Furthermore, it categorically states that ‘goods carriage’ would mean a motor vehicle constructed or adapted for use ‘solely for the carriage of goods’. Carrying of passengers in a ‘goods carriage’, thus, is not contemplated under the 1988 Act.

24. We have further noticed that Section 147 of the 1988 Act prescribing the requirements of an insurance policy does not contain a provision similar to clause (ii) of the proviso appended to Section 95 of the 1939 Act. The decision of this Court in Mallawwa case must be held to have been rendered having regard to the aforementioned provisions.

25. Section 147 of the 1988 Act, inter alia, prescribes compulsory coverage against the death of or bodily injury to any passenger of ‘public service vehicle’. Proviso appended thereto categorically states that compulsory coverage in respect of drivers and conductors of public service vehicle and employees carried in a goods vehicle would be limited to the liability under the Workmen’s Compensation Act. It does not speak of any passenger in a ‘goods carriage’.

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.

27. Furthermore, sub-clause (i) of clause (b) of subsection (1) of Section 147 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, whereas sub-clause (ii) thereof deals with liability which may be incurred by the owner of a vehicle 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.

28. An owner of a passenger-carrying vehicle must pay premium for covering the risks of the passengers. If a liability other than the limited liability provided for under the Act is to be enhanced under an insurance policy, additional premium is required to be paid. But if the ratio of this Court's decision in *New India Assurance Co. v. Satpal Singh* is taken to its logical conclusion, although for such passengers, the owner of a goods carriage need not take out an insurance policy, they would be deemed to have been covered under the policy wherefor even no premium is required to be paid".

11. The effect of 1994 amendment came up for consideration in *National Insurance Co. Ltd. v. Baljit Kaur & Ors.* [(2004) 2 SCC 1], wherein this court following *Asha Rani* (supra) opined that the words 'injury to any person' would only mean a third party and not a passenger travelling on a goods carriage whether gratuitous or otherwise. The question came up for consideration again in *National Insurance Co. Ltd. v. Bommithi Subbhayamma & Ors.* [(2005) 12 SCC 243] wherein upon taking into consideration a large

number of decisions, the said view was reiterated.

12. Yet again in *New India Assurance Co. Ltd. v. Vedwati & Ors.* [(2007) 3 SCALE 397] this Court held :

“13. The difference in the language of "goods vehicle" as appear 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 "good vehicle" in the old Act. The position becomes further clear because the expression used is "good 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 (in short 'WC Act'). There is no reference to any passenger in "goods carriage".

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._

[See also *Oriental Insurance Co. Ltd. v. Brij Mohan & Ors.* 2007 (7) SCALE 753] CA @ SLP (C) Nos.7237-7239 of 2003”

20. The of indemnification by the Insurance Company with respect to the liability related the person traveling in the trolley of the tractor came for consideration before Hon’ble Supreme



Court in the case of United India Insurance Company Limited V. Serjerao and others, reported in 2008(1) PLJR 127 (SC) and it has been held that Insurance Company is not liable to indemnify the owner of vehicle for compensation amount arising out of motor vehicle accident as in that case Serjerao was driving the trolley attached to the tractor as labourers suffered injuries because tractor met with an accident. The compensation under Section 147 of the Motor Vehicle Act was filed on the principle of no fault liability. The Insurance Company took a stand that it had no liability in respect of person traveling in trolley and owner of the tractor is liable to pay compensation. The plea was rejected by the Motor Vehicle Tribunal which was affirmed by the High Court. The matter came for consideration before Hon'ble Supreme Court and the Court has held that Insurance Company does not have a liability to indemnify the insured. It will be relevant to quote paragraph 8 of the aforesaid judgment:

“8. So far as the question of liability regarding labourers traveling in trollies is concerned, the matter was considered by this Court in Oriental Insurance Company Ltd. V. Brij Mohan and others (2007(7) SCALE 753) and it was held that the Insurance Company has no liability. In view of the aforesaid two decisions of this Court, we set aside the impugned order in each case and remit the matters to the High Court to consider the matters afresh in the light of what has been stated

by this Court in Smt. Yallwwa's case (supra) and Brij Mohan's case (supra)."

21. This Court in the case of United India Insurance Company V. Satiya Devi @ Sundri Devi, reported in 2008(3) BBCJ 280 considered indemnification by the Insurance Company to the insured in which the fact was that the deceased Udit Yadav was traveling in a truck and due to rash and negligent driving the truck turned turtle which led to his death. The Court has arrived to a conclusion that Insurance Company was not liable to pay any compensation as the Insurance Company had not ensured any person except the driver and Khalashi of the truck and accordingly rejected the claim application. It will be relevant to quote paragraph 12 of the aforesaid judgment:

"The sum and substance of the citations referred to above and relied upon would go to show that the Insurance Company is not at all responsible to pay any compensation, when the commercial vehicle was being plied by the driver, in the manner in which FIR seems to have been drawn, and the deceased met his end, while he was sitting on the back portion of the truck. The Insurance Company had not insured any person except the driver and khalasi of the truck and even then in compliance of the Tribunal's order, appellant has made payment to the claimants which may be returned and, if any liability is there for compensation to the deceased, it is the owner of the truck."



22. The issue of liability to pay compensation by the Insurance Company with regard to the gratuitous passenger traveling in a truck was subject matter for consideration in the case of National Insurance Company Limited V. Rattani and others, reported in (2009)2 SCC 75. The fact of the case is that the victim was traveling in Tata 407 which was goods vehicle was being driven rashly and negligently at a very high speed in spite of the warning, the vehicle turned turtle, several persons suffered grievous injuries including death of one Sunil and one Hazari. The Court has held that the claimant was traveling in goods vehicle as gratuitous passenger and Insurance Company was not liable to indemnify the owner to pay compensation amount to the claimant. It will be relevant to quote paragraph nos. 14 to 19 of the aforesaid judgment:

“14. The question as to whether burden of proof has been discharged by a party to the lis or not would depend upon the facts and circumstances of the case. If the facts are admitted or, if otherwise, sufficient materials have been brought on record so as to enable a court to arrive at a definite conclusion, it is idle to contend that the party on whom the burden of proof lay would still be liable to produce direct evidence to establish that the deceased and the injured passengers were gratuitous passengers.

15. As indicated hereinbefore, the first information report as such may or may not be taken into consideration for the purpose of arriving at a finding in regard to the question raised by the appellant herein, but, when the first information report itself has been made a part of the claim

petition, there cannot be any doubt whatsoever that the same can be looked into for the aforementioned purpose.

16. 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.

17. Reliance placed by the learned counsel on a decision of this Court in National Insurance Co. Ltd. V. Baljit Kaur is misplaced. The question which arose for consideration therein was as to whether the words “any person” shall include a gratuitous passenger despite the amendment made in Section 147 of the Act by reason of the Motor Vehicles (Amendment) Act, 1994.

18. Following New India Assurance Co. Ltd. V. Asha Rani, it was categorically held: (Baljit Kaur case, SCC p.8, para 20)

“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, not was any premium paid to the extent of the benefit of insurance to such category of people”

19. In National Insurance Co. Ltd. v. Cholleti Bharatamma this Court categorically held: (SCC p.433, paras 27-28

“27. The learned counsel appearing for the respondent, submitted that from the aforementioned finding, it is evident that the respondent was traveling as the owner of the goods. We do not think that the said submission is correct. P.W.2, in his evidence, stated:

‘ I am doing tamarind business. I witnessed the accident which took place about 3 years back at



about 6 a.m. at Borrampalem Junction beyond Talluru. At the time of the accident I was in the crime lorry by the side of the driver. Myself and 6 others were carrying tamarind in that lorry belonging to us. We boarded the lorry along with our load of tamarind at Dharamavaram to go to Rajanagaram. We were selling the tamarind at Rajanagaram in retail by taking the tamarind there in our lorry from our village of Dharamavaram.’

28. The Tribunal, therefore, correctly recorded that according to PW 2, he was traveling with his goods as owner thereof and not the deceased.”

We, therefore, in the facts and circumstances of the case, have no hesitation to hold that the victims of the accident were traveling 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.”

23. The same issue came up for consideration about the entitlement of gratuitous passengers of the truck in the case of United India Insurance Company Limited V. Sahanaz Khatoon and others, reported in 2010(2) BBCJ 595. In that case the deceased husband Md. Akbar aged about 35 years was sitting on the top of the truck. The truck was carrying Barat party. Due to rash and negligent driving the deceased Md. Akbar propelled out from the truck and succumbed to the injuries. The Court has made discussion to the earlier judgment of the Hon’ble Supreme Court as well as the High Court held that Insurance Company is not liable to pay any compensation to any person. It will be relevant to quote paragraph nos. 4, 8, 9 and 13 of the aforesaid

judgment:

“4. The claimant, Shahanaz Khatoon filed the aforesaid Claim Case No.40 of 2000 claiming compensation to the tune of Rs.4,10,000/- (four lacs then thousand only). According to the case of the claimant, the husband of the claimant i.e. the deceased, Md. Akbar who was aged about 35 years was sitting on the top of the truck bearing Registration No.BR-30/G-4182 on 05.05.2000. On the said truck, the barat party was sitting. According to her further case, her deceased husband was a tailor master. Due to rash and negligent driving of the driver, the deceased, Md. Akbar fell from the truck and succumbed to the injuries. On the basis of her fardbeyan, a police case was registered being Jale P.S. Case no.05 of 2000 u/Ss 279, 304A of the IPC. In the said claim application, the owner of the truck was made Opposite Party No.1 whereas the driver was made O.P.No.2 and this appellant-insurance company was made O.P.No.3.

8. The learned counsel in support of his contention relied upon a decision of the Hon'ble Supreme Court reported in 2004(2) PLJR page 59 (SC) (M/S National Insurance Company Ltd V. Baljeet Kaur and Ors.). The Hon'ble Supreme Court in the aforesaid decision, at paragraphs 13 and 14 has held as follows:-

“It is pertinent to note 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 traveling in a vehicle pursuant to a contract of employment in terms of proviso (ii) appended 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-à-vis the 1939 Act as regard definitions of ‘goods vehicle’, public service vehicle, and ‘stage carriage’ have also a bearing on the subject inasmuch as the concept of any goods carriage carrying any passenger or 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 (3 Co Rep 7a 76 ER 637) shall apply. Such an amendment was made by the parliament consciously. Having regard to the definition of 'goods carriage' vis-à-vis 'public service vehicle', it is clear that whereas the goods carriage carrying any passenger is not contemplated under the 1988 Act as the same must be used solely for carrying the goods."

At paragraph-20 in the same judgment, the Hon'ble Supreme Court has held as follows:

"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."

9. The learned counsel for the appellant next relied upon another decision reported in 2008 (1) PLJR page 127(SC) (United India Insurance Company Limited V. Serjerao & others) In the said case, at paragraph 8 the Hon'ble Supreme Court has held as follows:-

"8. So far as the question of liability regarding labourers traveling in trollies is concerned, the matter was considered by this Court in Oriental Insurance Company Ltd. V. Brij Mohan and others (2007(7) SCALE 753) and it was held that the Insurance Company has no liability. In view of the aforesaid two decisions of this Court, we set aside the impugned order in each case and remit the matters to the High Court to consider the matters afresh in the light of what has been stated by this Court in Smt. Yallwwa's case (supra) and Brij Mohan's case (supra)."



13. Admittedly, in the present case, the deceased, Md. Akbar was a tailor master and was sitting on the top of the truck at the time of the accident. In the said truck, Barat party was also boarding. In view of the above facts and circumstances of the case and the decisions cited on behalf of the appellant, in my opinion, the insurance company i.e. the appellant is not liable to pay any compensation to the claimant. The learned court below has not considered this aspect of the matter and passed the award against the appellant.”

24. In the case of National Insurance Company Limited V. Balakrishnan and another, reported in (2013) 1 SCC 731 was dealing with the question of entitlement of compensation in which the Managing Director of the respondent Company met with an accident while traveling in the motor vehicle belonging to the Company. The Tribunal allowed the claim of compensation for the injury sustained. The High Court treated the company to be the owner of the vehicle and repelled the contention of the insurer that though the vehicle was ensured in the name of the Company, the Managing Director was the legal owner of the vehicle and, therefore, the insurer liability was to be limited to the extent as stipulated in the policy. The Insurance Company has contended that even assuming the Managing Director is not the owner of the vehicle a non-fare paying passenger could not be covered by the policy. The Managing Director has claimed that barring the insurer and the insured, all



others are third parties and, therefore, he is covered by the policy. The Hon'ble Supreme Court has found that the vehicle was under the comprehensive package policy. As the Insurance Regulatory and Development Authority which is presently the statutory regulatory authority has commanded the insurance companies that a comprehensive package policy fixes the liability to the insurer for payment of compensation to the occupant in a motor vehicle as the Hon'ble Supreme Court found that earlier judgments were rendered in respect of an "Act Policy" which does not admittedly cover a third party risk of an occupant in a car. But if the policy is a comprehensive/package policy the liability would be covered. IRDA has clarified the position by issuing circulars and as such comprehensive package policy would cover the liability for payment of compensation of the occupant in a car but on fact the court remitted back the matter on the question whether in that case that policy in question is a comprehensive package policy as there was no discussion on this issue by the Tribunal or the High Court. It will be relevant to quote paragraph nos. 1, 11, 12, 13, 16 and 26 of the aforesaid judgment:

"1. Leave granted. The singular issue that arises for consideration in this appeal is; whether the first respondent, the Managing Director of respondent 2, a company registered under the

Companies Act, 1956, is entitled to sustain a claim against the appellant insurer for having sustained bodily injuries?

11. In *United India Insurance Co. Ltd. V. Tilak Singh* this Court referred to the concurring opinion rendered in a three-Judge Bench decision in *New India Assurance Co. Ltd. V. Asha Rani* and ruled thus (*Tilak Singh* case SCC p.412 para 21)

“21. In our view, although the observations made in *Asha Rani* case were in connection with carrying passengers in a goods vehicle, the same would apply with equal force to gratuitous passengers in any other vehicle also. Thus, we must uphold the contention of the appellant Insurance Company that it owed no liability towards the injuries suffered by the deceased *Rajinder Singh* who was a pillion rider, as the insurance policy was a statutory policy, and hence it did not cover the risk of death of or bodily injury to a gratuitous passenger.”

It is worthy to note that in the said case the controversy related to a gratuitous passenger carried in a private vehicle.

12. In *Oriental Insurance Co. Ltd. v. Jhuma Saha* the controversy related to fastening of liability on the insurer for the death of the owner of a registered vehicle. Maruti van. The Court observed that the accident did not involved any other motor vehicle than the one which he was driving and as the liability of the insurer company is to the extent of indemnification of the insured against the respondent or an injured person, a third person or in respect of damages of property, the insured cannot be fastened with any liability under the provisions of the Motor Vehicles Act, and, therefore, the question of the insurer being liable to indemnify the insured does not arise. Thereafter, the Bench referred to the decision in *Dhanraj v. New India Assurance Co.Ltd.* and ruled thus: (*Jhuma Saha* case, SCC pp 265-66, para 13)

“13, The additional premium was not paid in respect of the entire risk of death or bodily

injury of the owner of the vehicle. If that be so, Section 147(1)(b) of the Motor Vehicles Act which in no uncertain terms covers a risk of a third party only would be attracted in the present case.”

13. In *National Insurance Co. Ltd. V. Laxmi Narain Dhut*, after elaborately referring to the analysis made in *Asha Rani*, the Bench stated thus: (*Laxmi Narain case*, SCCp.713, para 17)

“17. Section 149 is part of Chapter XI which is titled ‘Insurance of motor vehicles against third-party risks’. A significant factor which needs to be noticed is that there is no contractual relation between the insurance company and the third party. The liabilities and the obligations relatable to third parties are created only by fiction of Sections 147 and 149 of the Act.”

In the said case, it has been opined that although the statute is a beneficial one qua the third party, yet that benefit cannot be extended to the owner of the offending vehicle.

16. In *Oriental Insurance Co. Ltd. V. Sudhakaran K.V.* a two-Judge Bench, while dealing with the issue whether a pillion rider on a scooter would be a third party within the meaning of Section 147 of the Act, after referring to a number of authorities, stated thus: (SCC pp.433 & 435, paras 22 & 25)

“22. The contract of insurance did not cover the owner of the vehicle, certainly not the pillion rider. The deceased was traveling as a passenger, *stricto sensu* may not be as a gratuitous passenger as in a given case she may not (sic) be a member of the family, a friend or other relative. In the sense of the term which is used in common parlance, she might not be even a passenger. In view of the terms of the contract of insurance, however, she would not be covered thereby.

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25. The law which emerges from the said decisions, is (i) the liability of the insurance company in a case of this nature is not extended

to a pillion rider of the motor vehicle unless the requisite amount of premium is said for covering his/her risk; (ii) the legal obligation arising under Section 147 of the Act cannot be extended to an injury or death of the owner of vehicle or the pillion rider; (iii) the pillion rider in a two-wheeler was not to be treated as a third party when the accident has taken place owing to rash and negligent riding of the scooter and not on the part of the driver of another vehicle.”

26. In view of the aforesaid factual position, there is no scintilla of doubt that a “comprehensive/package policy” would cover the liability of the insurer for payment of compensation for the occupant in a car. There is no cavil that an “Act Policy” stands on a different footing from a “comprehensive/package policy”. As the circulars have made the position very clear and IRDA, which is presently the statutory authority, has commanded the insurance companies stating that a “comprehensive/package policy” covers the liability, there cannot be any dispute in that regard. We may hasten to clarify that the earlier pronouncements were rendered in respect of the “Act Policy” which admittedly cannot cover a third-party risk of an occupant in a car. But, if the policy is a “comprehensive/package policy”, the liability would be covered. These aspects were not noticed in Bhagyalakshmi and, therefore, the matter was referred to a larger Bench. We are disposed to think that there is no necessity to refer the present matter to a larger Bench as IRDA, which is presently the statutory authority, has clarified the position by issuing circulars which have been reproduced in the judgment by the Delhi High Court and we have also reproduced the same.”

25. In the case of National Insurance Company Limited
Vs. Savitri and others, reported in (2013) 11 SCC 554 the issue

was considered about fixing of liability to Insurance Company with respect to passengers carried in goods vehicle. The question arose fixing of liability on Insurance Company and it was held that responsibility cannot be shifted on the Insurance Company. It will be relevant to quote paragraphs 8, 10, 11 and 12 of the aforesaid judgment:

“8. After having gone through the award of the Claims Tribunal and the judgment and order passed by the learned Single Judge of the High Court we are not able to understand as to how it has been found that the appellant Insurance Company can still be held liable to pay the amount of compensation as there has been a categorical finding by both the courts recording that the vehicle in question was insured only as “goods carrying vehicle”. The custom of carrying barat in the village on the said truck will not be sufficient to hold the appellant Insurance Company liable to pay the amount of compensation. Admittedly, the appellant Insurance Company would not know unless the accident takes place as to for what purpose the vehicle in question as being used. The terms and conditions of the insurance policy are very clear and categorical and it creates a specific bar on carrying of any passengers, except the employees other than the driver, not exceeding six (6) in number, who should also come under the purview of the Workmen’s Compensation Act.

10. Dealing with similar circumstance, this Court has held in National Insurance Co./ Ltd. V. Bommithi Subbhayamma as under (SCC p.246, paras 9-11)

“9.....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 was any premium paid to the extent of the benefit of insurance to such category of people.”:

10. The same view was reiterated in *National Insurance Co. Ltd. V. Challa Upendra Rao*, *Pramod Kumar Agrawal V. Mushtari Begum* and also in *National Insurance Co/. Ltd. Chinnamma*.

11. In view of the aforementioned authoritative pronouncements of this Court, the impugned judgment of the High Court cannot be sustained which is set aside, accordingly. This appeal is allowed. We, however, make it clear that the claimant respondents will be entitled to recover the amount of compensation granted in their favour by the Motor Vehicles Accidents Claims Tribunal from the owner of the vehicle. No costs.”

11. Similar view has been reiterated in *National Insurance Co. Ltd. V. Rattani*, paras 14 and 15 of which are reproduced hereunder: (SCCp.79)

“14. The question as to whether burden of proof has been discharged by a party to the lis or not would depend upon the facts and circumstances of the case. If the facts are admitted or, if otherwise, sufficient materials have been brought on record so as to enable a court to arrive at a definite conclusion, it is idle to contend that the party on whom the burden of proof lay would still be liable to produce direct evidence to establish that the deceased and the injured passengers were gratuitous passengers.

15. As indicated hereinbefore, the first information report as such may or may not be taken into consideration for the purpose of arriving at a finding in regard to the question raised by the appellant herein, but, when the first information report itself has been made a part of the claim petition, there cannot be any doubt whatsoever that

the same can be looked into for the aforementioned purpose.”

12. In the light of the aforesaid judgments, we have no doubt in our minds that the impugned judgment and order of the learned Single Judge dated 28.7.2005 cannot be sustained. The same is hereby set aside and quashed. No liability can be fastened on the appellant Insurance Company. The appeals of the appellant Insurance Company are allowed to this extent.”

26. In the case of Branch Manager, Oriental Insurance Company V. Devendra Singh and others, reported in 2015(2) PLJR 141 in which the award was challenged by the Insurance Company on the ground that deceased was traveling on a tractor which was insured for agricultural purpose and there was no liability of the appellant-insurer and as such the liability cannot be attached to the Insurance Company. The plea of the Insurance Company was accepted and held that if the tractor was insured for agricultural purpose any accident that has taken place doing non-agricultural purpose, liability cannot be attached to the Insurance Company but liability can be shifted to the owner of the vehicle on the ground that owner had violated the terms of conditions of the insurance policy. The Court has held that the amount will be recovered from the owner, not from the Insurance Company. It will be relevant to quote paragraph 6 of the aforesaid judgment:

“6. Besides hearing learned counsel for



the parties, I have also perused the materials available on record including lower court record. Fact remains that once the owner of the vehicle has violated terms and conditions of the Insurance Policy, while directing the Insurance Company to pay compensation amount, it was necessary to indicate regarding the right of recovery to the Insurance Company from the owner in accordance with law. The Court is of the opinion that that order of the Tribunal can be modified to the extent that by paying the compensation amount, the Insurance Company would be entitled to take steps for recovery of compensation from the owner of the vehicle in accordance with law.”

27. In view of the aforesaid discussions it emerges that even after amendment of Section 147 of the Motor Vehicle Act 1988 in the year 1994, the gratuitous passengers are not included to be entitled to the compensation amount from the Insurance Company and this also appears that if the vehicle in question is insured for particular purpose engaged in different purposes such as the truck has been ensured as a goods vehicle and having not paid extra amount insurance premium, the passengers traveling on the goods vehicle will be a gratuitous passengers will not be entitled to compensation from the Insurance Company. Similarly the tractor insured for agriculture purpose is engaged in different purpose, such as carrying passenger or other commercial activity, the person travelling on the said tractor, will not be entitled to compensation amount from Insurance Company but



from owner of vehicle. Any person that has been used in the Motor Vehicle Act, 1988 will not include the gratuitous passengers but in view of 1994 amendment, the owner of the goods or his representative are only covered not the others. In case of tractor if the tractor is insured for agricultural purpose and the said tractor meets with an accident resulting into death of a person sitting on the trailer will not be entitled for compensation from the Insurance Company rather the recovery of compensation will made from the owner of the tractor.

28. In such view of the matter, in the present case the tractor was insured for agricultural purpose, the victim was coming on the trailer of the tractor with brick for the construction of his building itself shows that the tractor was being used for commercial purposes and for that no extra premium was paid to the Insurance Company result is that the deceases was a gratuitous passenger inasmuch as the tractor owner by engaging the tractor in non-agricultural purpose itself violated the terms of the insurance policy will not liable the Insurance Company to indemnify the insurer.

29. In such view of the matter, the judgment dated 28.4.2012 and award dated 8.5.2-12 passed by the Tribunal against the Insurance Company is set aside but liberty is to

recover the amount from the owner of the vehicle.

30. Accordingly this appeal is allowed.

31. Statutory amount deposited in this Court will be released in favour of the Insurance Company. Office is directed to send the lower court records to the court below forthwith.

Vinay/-

(Shivaji Pandey, J)

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