**NAFR**

**HIGH COURT OF CHHATTISGARH AT BILASPUR**

**MAC No. 1732 of 2016**

- H.D.F.C. Ergo General Insurance Company Limited, Through Branch Manager, Third Floor, Chawla Complex, Devendra Nagar, Raipur, Police Station Devendra Nagar, Civil & Revenue District Raipur, Chhattisgarh ................(Insurer Of Tractor No. C.G.-06-E-3187 Along With Trolley Baring No.3201)

**… Appellant**

**Versus**

1. Smt. Kumari Bai Wd/o Late Harakh Ram, Aged About 33 Years
2. Ku. Nmarata D/o Late Harakh Ram, Aged About 10 Years (Minor)
3. Ku. Pinki D/o Late Harakh Ram, Aged About 6 Years (Minor)
4. Meya Ram S/o Late Harakh Ram, Aged About 63 Years,
5. Smt. Brinda Bai W/o Late Harakh Ram, Aged About 61 Years, Respondents no. 2 and 3 are minor and hence representing through their mother Res. No.1 Smt. Kumari Bai, all R/o Santoshi Nagar, Police Station Tikrapara, Raipur, Tahsil And District Raipur, Chhattisgarh ................(Claimants)
6. Parmeshwar Nayak S/o Chenu Ram Nayak, Aged About 25 Years, R/o Village Bharvamura, Police Station Chhura, Dist. Gariyabandh, Chhattisgarh ................(Driver Of Tractor No. C.G.-06-E-3187 Along With Trolley Baring No.3201)
7. Ishwar Lal Niyal S/o Khhusi Ram Gara, Aged About 46 Years, R/o Villlage Nawapara Koshmi, Police Station Chhura, Distt. Gariyabandh, Chhattisgarh ................(Onwer Of Tractor No.C.G.-06-E-3187 Along With Trolly Bearing No. 3201)

**... Respondents**

**MAC No. 1689 Of 2016**

- H.D.F.C. Ergo General Insurance Company Limited, Through Branch Manager, Third Floor, Chawla Complex, Devendra Nagar, Raipur, Police Station Devendra Nagar, Civil & Revenue District Raipur, Chhattisgarh ................(Insurer Of Tractor No. C.G.-06-E-3187 Along With Trolley Baring No.3201)

**... Appellant**

**Versus**

1. Smt. Kazai Bai, W/o Pardeshi Ram, Aged About 40 Years, R/o Durga Chowk, Santoshi Nagar, Police Station Tikrapara, Raipur, Tahsil And District Raipur, Chhattisgarh ..............(Claimant)

2. Parmeshwar Nayak S/o Chenu Ram Nayak, Aged About 25 Years R/o Village Bharvamura, Police Station Chhura, Dist. Gariyabandh, Chhattisgarh ................(Driver Of Tractor No. C.G.-06-E-3187 Along With Trolley Baring No.3201)

3. Ishwar Lal Niyal W/o Khhusi Ram Gara, Aged About 46 Years, R/o Village Nawapara Koshmi, Police Station Chhura, District Gariyabandh, Chhattisgarh ................(Owner Of Tractor No. C.G.-06-E-3187 Along With Trolley Baring No.3201)

**... Respondents**

**MAC No. 1691 Of 2016**

- H.D.F.C. Ergo General Insurance Company Limited, Through Branch Manager, Third Floor, Chawla Complex, Devendra Nagar, Raipur, Police Station Devendra Nagar, Civil & Revenue District Raipur, Chhattisgarh ................(Insurer Of Tractor No. C.G.-06-E-3187 Along With Trolley Baring No.3201)

**... Appellant**

**Versus**

1. Smt. Kumari Bai, W/o Khuman Singh, Aged About 40 Years, R/o Durga Chowk, Santoshi Nagar, Police Station Tikrapara, Raipur, Tahsil And District Raipur, Chhattisgarh ..............(Claimant)
2. Parmeshwar Nayak S/o Chenu Ram Nayak, Aged About 25 Years R/o Village Bharvamura, Police Station Chhura, Dist. Gariyabandh, Chhattisgarh ................(Driver Of Tractor No. C.G.-06-E-3187 Along With Trolley Baring No.3201)
3. Ishwar Lal Niyal W/o Khhusi Ram Gara, Aged About 46 Years, R/o Village Nawapara Koshmi, Police Station Chhura, District Gariyabandh, Chhattisgarh ................(Owner Of Tractor No. C.G.-06-E-3187 Along With Trolley Baring No.3201)

**... Respondents**

**MAC No. 1692 Of 2016**

- H.D.F.C. Ergo General Insurance Company Limited, Through Branch Manager, Third Floor, Chawla Complex, Devendra Nagar, Raipur, Police Station Devendra Nagar, Civil & Revenue District Raipur, Chhattisgarh ................(Insurer Of Tractor No. C.G.-06-E-3187 Along With Trolley Baring No.3201)

**... Appellant**

**Versus**

1. Smt. Hara Bai, W/o Atma Ram, Aged About 25 Years, R/o Durga Chowk, Santoshi Nagar, Police Station Tikrapara, Raipur, Tahsil And District Raipur, Chhattisgarh ..............(Claimant)
2. Parmeshwar Nayak S/o Chenu Ram Nayak, Aged About 25 Years R/o Village Bharvamura, Police Station Chhura, Dist. Gariyabandh, Chhattisgarh ................(Driver Of Tractor No. C.G.-06-E-3187 Along With Trolley Baring No.3201)
3. Ishwar Lal Niyal W/o Khhusi Ram Gara, Aged About 46 Years, R/o Village Nawapara Koshmi, Police Station Chhura, District Gariyabandh, Chhattisgarh ................(Owner Of Tractor No. C.G.-06-E-3187 Along With Trolley Baring No.3201)

**... Respondents**

**MAC No. 1695 Of 2016**

- H.D.F.C. Ergo General Insurance Company Limited, Through Branch Manager, Third Floor, Chawla Complex, Devendra Nagar, Raipur, Police Station Devendra Nagar, Civil & Revenue District Raipur, Chhattisgarh ................(Insurer Of Tractor No. C.G.-06-E-3187 Along With Trolley Baring No.3201)

**... Appellant**

**Versus**

1. Ku. Ganeshwari, D/o Panna Lal, Aged About 18 Years, R/o Durga Chowk, Santoshi Nagar, Police Station Tikrapara, Raipur, Tahsil And District Raipur, Chhattisgarh ..............(Claimant)
2. Parmeshwar Nayak S/o Chenu Ram Nayak, Aged About 25 Years R/o Village Bharvamura, Police Station Chhura, Dist. Gariyabandh, Chhattisgarh ................(Driver Of Tractor No. C.G.-06-E-3187 Along With Trolley Baring No.3201)
3. Ishwar Lal Niyal W/o Khhusi Ram Gara, Aged About 46 Years, R/o Village Nawapara Koshmi, Police Station Chhura, District Gariyabandh, Chhattisgarh ................(Owner Of Tractor No. C.G.-06-E-3187 Along With Trolley Baring No.3201)

**... Respondents**

**MAC No. 1696 Of 2016**

- H.D.F.C. Ergo General Insurance Company Limited, Through Branch Manager, Third Floor, Chawla Complex, Devendra Nagar, Raipur, Police Station Devendra Nagar, Civil & Revenue District Raipur, Chhattisgarh ................(Insurer Of Tractor No. C.G.-06-E-3187 Along With Trolley Baring No.3201)

**... Appellant**

**Versus**

1. Sarju Ram, aged about 25 years, S/o Bunu Ram, R/o Santoshi Nagar, Police Station Tikrapara, Raipur, Tahsil And District Raipur, Chhattisgarh ..............(Claimant)
2. Parmeshwar Nayak S/o Chenu Ram Nayak, Aged About 25 Years R/o Village Bharvamura, Police Station Chhura, Dist. Gariyabandh, Chhattisgarh ................(Driver Of Tractor No. C.G.-06-E-3187 Along With Trolley Baring No.3201)
3. Ishwar Lal Niyal W/o Khhusi Ram Gara, Aged About 46 Years, R/o Village Nawapara Koshmi, Police Station Chhura, District Gariyabandh, Chhattisgarh ................(Owner Of Tractor No. C.G.-06-E-3187 Along With Trolley Baring No.3201)

**... Respondents**

**MAC No. 1697 Of 2016**

- H.D.F.C. Ergo General Insurance Company Limited, Through Branch Manager, Third Floor, Chawla Complex, Devendra Nagar, Raipur, Police Station Devendra Nagar, Civil & Revenue District Raipur, Chhattisgarh ................(Insurer Of Tractor No. C.G.-06-E-3187 Along With Trolley Baring No.3201)

**... Appellant**

**Versus**

1. Punit Ram Rawat, S/o Shyam Lal Rawat, Aged About 25 Years, R/o Santoshi Nagar, Police Station Tikrapara, Raipur, Tahsil And District Raipur, Chhattisgarh ..............(Claimant)
2. Parmeshwar Nayak S/o Chenu Ram Nayak, Aged About 25 Years R/o Village Bharvamura, Police Station Chhura, Dist. Gariyabandh, Chhattisgarh ................(Driver Of Tractor No. C.G.-06-E-3187 Along With Trolley Baring No.3201)

3. Ishwar Lal Niyal W/o Khhusi Ram Gara, Aged About 46 Years, R/o Village Nawapara Koshmi, Police Station Chhura, District Gariyabandh, Chhattisgarh ................(Owner Of Tractor No. C.G.-06-E-3187 Along With Trolley Baring No.3201)

**... Respondents**

**<u>MAC No. 1698 Of 2016</u>**

- H.D.F.C. Ergo General Insurance Company Limited, Through Branch Manager, Third Floor, Chawla Complex, Devendra Nagar, Raipur, Police Station Devendra Nagar, Civil & Revenue District Raipur, Chhattisgarh ................(Insurer Of Tractor No. C.G.-06-E-3187 Along With Trolley Baring No.3201)

**... Appellant**

**Versus**

1. Smt. Satrutin Bai, W/o Ganga Ram, Aged About 42 Years, R/o Durga Chowk, Santoshi Nagar, Police Station Tikrapara, Raipur, Tahsil And District Raipur, Chhattisgarh ..............(Claimant)
2. Parmeshwar Nayak S/o Chenu Ram Nayak, Aged About 25 Years R/o Village Bharvamura, Police Station Chhura, Dist. Gariyabandh, Chhattisgarh ................(Driver Of Tractor No. C.G.-06-E-3187 Along With Trolley Baring No.3201)
3. Ishwar Lal Niyal W/o Khhusi Ram Gara, Aged About 46 Years, R/o Village Nawapara Koshmi, Police Station Chhura, District Gariyabandh, Chhattisgarh ................(Owner Of Tractor No. C.G.-06-E-3187 Along With Trolley Baring No.3201)

**... Respondents**

**<u>MAC No. 1699 Of 2016</u>**

- H.D.F.C. Ergo General Insurance Company Limited, Through Branch Manager, Third Floor, Chawla Complex, Devendra Nagar, Raipur, Police Station Devendra Nagar, Civil & Revenue District Raipur, Chhattisgarh ................(Insurer Of Tractor No. C.G.-06-E-3187 Along With Trolley Baring No.3201)

**... Appellant**

**Versus**

1. Smt. Shallendri Bai Vishwakarma, W/o Tula Ram, Aged About 25 Years, R/o Durga Chowk, Santoshi Nagar, Police Station Tikrapara, Raipur, Tahsil And District Raipur, Chhattisgarh ..............(Claimant)
2. Parmeshwar Nayak S/o Chenu Ram Nayak, Aged About 25 Years R/o Village Bharvamura, Police Station Chhura, Dist. Gariyabandh, Chhattisgarh ................(Driver Of Tractor No. C.G.-06-E-3187 Along With Trolley Baring No.3201)
3. Ishwar Lal Niyal W/o Khhusi Ram Gara, Aged About 46 Years, R/o Village Nawapara Koshmi, Police Station Chhura, District Gariyabandh, Chhattisgarh ................(Owner Of Tractor No. C.G.-06-E-3187 Along With Trolley Baring No.3201)

**... Respondents**

**MAC No. 1700 Of 2016**

- H.D.F.C. Ergo General Insurance Company Limited, Through Branch Manager, Third Floor, Chawla Complex, Devendra Nagar, Raipur, Police Station Devendra Nagar, Civil & Revenue District Raipur, Chhattisgarh ................(Insurer Of Tractor No. C.G.-06-E-3187 Along With Trolley Baring No.3201)

**... Appellant**

**Versus**

1. Smt. Kamla Bai, W/o Makhan Lal, Aged About 45 Years, R/o Durga Chowk, Santoshi Nagar, Police Station Tikrapara, Raipur, Tahsil And District Raipur, Chhattisgarh ..............(Claimant)
2. Parmeshwar Nayak S/o Chenu Ram Nayak, Aged About 25 Years R/o Village Bharvamura, Police Station Chhura, Dist. Gariyabandh, Chhattisgarh ................(Driver Of Tractor No. C.G.-06-E-3187 Along With Trolley Baring No.3201)
3. Ishwar Lal Niyal W/o Khhusi Ram Gara, Aged About 46 Years, R/o Village Nawapara Koshmi, Police Station Chhura, District Gariyabandh, Chhattisgarh ................(Owner Of Tractor No. C.G.-06-E-3187 Along With Trolley Baring No.3201)

**... Respondents**

**MAC No. 1701 Of 2016**

- H.D.F.C. Ergo General Insurance Company Limited, Through Branch Manager, Third Floor, Chawla Complex, Devendra Nagar, Raipur, Police Station Devendra Nagar, Civil & Revenue District Raipur, Chhattisgarh ................(Insurer Of Tractor No. C.G.-06-E-3187 Along With Trolley Baring No.3201)

**... Appellant**

**Versus**

1. Smt. Manki Bai, W/o Late Sukalu Ram, Aged About 50 Years, R/o Durga Chowk, Santoshi Nagar, Police Station Tikrapara, Raipur, Tahsil And District Raipur, Chhattisgarh ..............(Claimant)
2. Parmeshwar Nayak S/o Chenu Ram Nayak, Aged About 25 Years R/o Village Bharvamura, Police Station Chhura, Dist. Gariyabandh, Chhattisgarh ................(Driver Of Tractor No. C.G.-06-E-3187 Along With Trolley Baring No.3201)
3. Ishwar Lal Niyal W/o Khhusi Ram Gara, Aged About 46 Years, R/o Village Nawapara Koshmi, Police Station Chhura, District Gariyabandh, Chhattisgarh ................(Owner Of Tractor No. C.G.-06-E-3187 Along With Trolley Baring No.3201)

**... Respondents**

**And**

**MAC No. 1702 Of 2016**

- H.D.F.C. Ergo General Insurance Company Limited, Through Branch Manager, Third Floor, Chawla Complex, Devendra Nagar, Raipur, Police Station Devendra Nagar, Civil & Revenue District Raipur, Chhattisgarh ................(Insurer Of Tractor No. C.G.-06-E-3187 Along With Trolley Baring No.3201)

**... Appellant**

**Versus**

1. Smt. Kumari Bai, W/o Rameshwar, Aged About 35 Years, R/o Santoshi Nagar, Police Station Tikrapara, Raipur, Tahsil And District Raipur, Chhattisgarh ..............(Claimant)
2. Parmeshwar Nayak S/o Chenu Ram Nayak, Aged About 25 Years R/o Village Bharvamura, Police Station Chhura, Dist. Gariyabandh, Chhattisgarh ................(Driver Of Tractor No. C.G.-06-E-3187 Along With Trolley Baring No.3201)
3. Ishwar Lal Niyal W/o Khhusi Ram Gara, Aged About 46 Years, R/o Village Nawapara Koshmi, Police Station Chhura, District Gariyabandh, Chhattisgarh ................(Owner Of Tractor No. C.G.-06-E-3187 Along With Trolley Baring No.3201)

**... Respondents**

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| For Appellant-Insurance Company | : | Mr. N.K. Thakur and Mr. Shokie Yadav, Advocates. |
| For Respondents-Claimants in M.A.(C) No. 1732/2016 & M.A.(C) No. 1702/2016 | : | Mr. R.K. Pali, Advocate. |
| For Respondents-Driver/Owner | : | Mr. Shivendu Pandya, Advocate. |

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**Hon'ble Shri Justice P. Sam Koshy**

**C A V Order**

**Reserved on : 08/08/2017**

**Delivered on : 22/08/2017**

**1.** These are the bunch of appeals under Section 173 of the Motor Vehicles Act, 1988 as amended by the Act of 1994, preferred by the Appellant-Insurance Company, assailing the award passed on 30th September, 2016 by IIIrd Additional Motor Accident Claims Tribunal, Raipur, in 12 separate claim petitions those are: Claim Petition Nos. 125/2013, 123/2013, 58/2013, 122/2013, 126/2013, 120/2013, 119/2013, 118/2013, 56/2013, 60/2013, 121/2013 and 59/2013.

**2.** All the claim petitions arise out of the same accident and the vehicle involved in the accident is a Tractor-Trolley, bearing Registration No. CG06-E/3187 & 3201, owned by Respondent-Ishwar Lal Niyal, driven by Respondent-Parmeshwar Nayak and insured with the Appellant-Insurance Company at the relevant point of time.

**3.** Out of the aforementioned 12 claim petitions, two pertains to a death case while the other claims petitions are in respect of injuries sustained by the claimants.

**4.** Some of the facts which are not in dispute, are that the policy being issued for agriculture purposes, the policy being for miscellaneous and special type of vehicles and the rick covered in addition to third-party was only covering the risk of driver of the tractor, no extra premium for covering the risk of any further persons had been paid.

**5.** Brief facts of the case relevant for the adjudication of the case are that, while the two deceased persons Harakh Ram and Kaushalya Bai and the injured persons were travelling on the tractor-trolley belonging to Respondent-Ishwar Lal Niyal on 20.4.2012, because of rash and negligent driving of Respondent-Parmeshwar Nayak the said tractor-trolley overturned. As a result of the accident, two persons died and 12 persons sustained injuries.

**6.** The legal representatives of the deceased Harakh Ram and Kaushalya Bai and the injured persons filed their respective claim petitions under Sections 166 & 140 of the Motor Vehicles Act, 1988, before the Tribunal.

**7.** The owner and driver of the tractor-trolley entered appearance before the Tribunal admitting the accident but denied all the other contentions so far as the rash and negligent driving part is concerned and took a stand that the accident occurred when the driver of the tractor-trolley tried to save a person coming on a motorcycle from the opposite direction and in the process the tractor-trolley turned turtle.

**8.** The Appellant-Insurance Company also entered appearance before the Tribunal denying its liability of payment of any compensation on the ground that since the tractor-trolley was insured only for agriculture purposes and admittedly 30-35 persons were travelling in the tractor-trolley for whom no premium was paid and that the insurance covering the trolley was also only covering the risk of third-party and driver of the tractor, the Insurance Company therefore was not liable for any payment of compensation. It was also the contention of the Insurance Company that the deceased as well as the injured persons would not fall within the definition of a third-party and that they would rather fall in the category of a gratuitous passenger for which also the Insurance Company cannot be saddled with the responsibility of payment of compensation.

**9.** After the completion of the pleadings and recording of the evidence, the Tribunal vide impugned awards, has awarded a compensation of Rs.11,89,496/- in Claim Petition No. 125/2013, Rs. 59,000/- in Claim Petition No. 123/2013, Rs.50,000/- in Claim Petition No. 58/2013, Rs.57,000/- in Claim Petition No.122/2013, Rs.48,000/- in Claim Petition No. 126/2013, Rs.48,000/- in Claim Petition No.120/2013, Rs.48,000/- in Claim Petition No.119/2013, Rs.50,000/- in Claim Petition No.118/2013, Rs.46,000/- in Claim Petition No.56/2013, Rs.89,000/- in Claim Petition No.60/2013, Rs.50,000/- in Claim Petition No.121/2013 and Rs. 4,22,000/- in Claim Petition No.59/2013, along with interest at the rate of 7.5% from the date of filing of the claim petition till realization of the amount of compensation. The Tribunal while passing the award has also held that in the first instance the compensation shall be paid by the Insurance Company with a liberty to recover the same from the owner of the tractor-trolley. There was also a clause of penal interest referred to in the impugned award wherein it was held that in the event if the amount of compensation is not paid within a period of 90 days then the awarded amount shall carry interest at the rate of 9% per annum instead of 7.5%.

**10.** It is this award which is under challenge in these appeals.

**11.** The appeals are by the Insurance Company and the solitary challenge is to the award of the Tribunal to the extent of fastening the liability of the payment of compensation upon the Insurance Company applying the doctrine of 'pay and recover'.

**12.** Contention of the learned Counsel for the Insurance Company is that since the factual matrix of the case so far as the accident, the involvement of the offending vehicle and the resultant death of two persons and injuries sustained by 12 persons, are not in dispute. According to the Insurance Company, the policy which has been issued was for agriculture purpose and the premium paid was for covering the risk of only third-party and in addition the risk of the driver. According to the Insurance Company, since the Insurance Company has not received any premium under any head covering the risk of the gratuitous passengers who would be travelling in the tractor-trolley, the Insurance Company cannot be fastened with the liability of payment of compensation. Further contention of the Insurance Company is that the deceased as well as the injured persons were neither workers in the said tractor-trolley nor would they fall within the ambit of third-party, rather they would come within the ambit of gratuitous passenger as is evident from the fact that the tractor-trolley being insured for agriculture purposes, premium having paid only covering the risk of third-party along with the driver alone. Since the number of persons capable to travel in a tractor is only one, coupled with the fact that no additional premium whatsoever having been paid by the owner, the Insurance Company should have been exonerated of its liability. The Insurance Company thus prayed for the appeals to be allowed to the extent that the Insurance Company may be exonerated of its liability and the liability of payment of compensation may be fastened upon the owner of the tractor-trolley.

**13.** Learned Counsel appearing for the respective Respondents submitted that the award passed by the Tribunal is fair, just and reasonable and the same does not warrant any interference. According to the Respondents, the entire award has been based upon the evidence which have come on record and since the Tribunal felt that the owner and driver of the vehicle may not honour the award of the Tribunal and the claimants would have to run from pillar to post for the execution of the award, the Tribunal thought it fit for directing the Insurance Company to comply with the order with a liberty that it may recover the same from the owner and driver. The Respondents thus prayed for the rejection of the appeals.

**14.** Having heard the counsel appearing on either side, the moot question for consideration is, whether the finding of the Tribunal in all the awards fastening the liability of payment of compensation upon the Insurance Company with liberty to recover the same, was proper, legal or justified.

**15.** The admitted position as it stands is that the policy which has been issued by the Appellant-Insurance Company in respect of the offending vehicle was covering the risk of third party along with driver alone. That is to say, the owner of the offending vehicle had not paid any premium for covering the risk of any person who would be travelling in the tractor apart from driver. In other words, it is a case where in fact there is no premium received by the Insurance Company covering the risk of any person other than the driver or a third party.

**16.** Dealing with the judicial pronouncements in this regard, the leading case on this topic is the judgment of the Hon'ble Supreme Court in the case of **New India Assurance Company Limited** v. **Asha Rani**[1] wherein in paragraph 8 and 9 it has been held as under:

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1 2003 (2) SCC 223

**“8.** Under the Motor Vehicles Act, 1939 the requirements of policies and limits of liability had been provided in Sec. 95. Proviso to Sec. 95(1) of the said Act unequivocally states that the policy shall not be required in case of a goods vehicle for passengers being carried in the said vehicle. In Mallawwa v. Oriental Insurance Co. Ltd., (supra), while approving the earlier decision of the Court in Pushpabai Purshottam Udeshi v. Ranjit Ginning & Pressing Co. (P) Ltd., 1977 (2) SCC 745, the Court construed the provisions of Sec. 95(1)(b) of the Motor Vehicles Act, 1939 and held that while the expression any person and the expression every motor vehicle are in wide terms but by proviso (ii) it restricts the generality of the main provision by confining the requirement to cases where the vehicle is a vehicle in which passengers are carried for hire or reward or by reason of or in pursuance of a contract of employment, therefore, the vehicle had to be a vehicle in which passengers are carried. The Court further held that the goods vehicle cannot be held to be a passenger vehicle even if the vehicle was found to be used on some stray occasions for carrying passengers for hire or reward. Undoubtedly, Mallawwa case (supra), was dealing with a situation under the Motor Vehicles Act, 1939.

**(9)** In Satpal case (supra), the Court assumed that the provisions of Sec. 95(1) of the Motor Vehicles Act, 1939 are identical with Sec. 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 authorised representative when being carried in a goods vehicle the accident occurred. In the Motor Vehicles Amendment Act of 1994 is examined, particularly Sec. 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 authorised 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 authorised representative being carried in the vehicle. The objects and reasons of clause 46 also state that it seeks to amend Sec. 147 to include owner of goods or his authorised representative carried in the vehicle for the purposes of liability under the insurance policy. It is not 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 authorised 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 Sec. 147 and making it compulsory for the insurer to insure even in case of a goods vehicle, the owner of the goods or his authorised 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 (supra), 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 authorised representative on 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.**"**

Further, in the said decision, in paragraphs 23, 24, 28 & 29 it was also held under:-

**"23.** The applicability of decision of this Court in **Mallawwa (Smt.) & Ors. v. Oriental Insurance Company Ltd. & Ors**. [(1999) 1 SCC 403] in this case must be considered keeping that aspect in view. Section 2(35) of 1988 Act does not include passengers in goods carriage whereas Section 2(25) of 1939 Act did as even passengers could be carried in a goods vehicle. The difference in the definitions of the "goods vehicle" in 1939 Act and "goods carriage" in 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 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 1988 Act.

**24.** We have further noticed that Section 147 of 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 1939 Act. The decisions of this Court in Mallawwa's case (supra) must be held to have been rendered having regard to the aforementioned provisions.

**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 Company v. Satpal Singh & Ors. [(2000) 1 SCC 237] 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.

**29.** We may consider the matter from another angle. Section 149 (2) of the 1988 Act enables the insurers to raise defences against the claim of the claimants. In terms of clause (c) of sub section 2 of Section 149 of the Act one of the defences which is available to the insurer is that the vehicle in question has been used for a purpose not allowed by the permit under which the vehicle was used. Such a statutory defence available to the insurer would be obliterated in view of the decision of this Court in Satpal Singh's case (supra).

**17.** The Hon'ble Supreme Court again in the case of **New India Assurance Co. Ltd.** v. **Vedwati**[2] in paragra 11 and 12 has held as follows:

**"11.** 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".

**12.** 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.**"**

**18.** The same principle was further reiterated by the Hon'ble Supreme Court again in one of its decisions in the case of **National Insurance Co. Ltd.** v. **Parvathneni & Anr**[3] wherein in paragraph 8 it has been held that:

**"8.** We have some reservations about the correctness of the aforesaid decisions of this Court. If the insurance company has no liability to pay at all, then, in our opinion, it can not be compelled by order of the Court in exercise of its jurisdiction under Article 142 of the Constitution of India to pay the compensation amount and later on recover it from the owner of

2 2007 (9) SCC 486
3 2009 (8) SCC 785

> the vehicle. In our view, Article 142 of the Constitution of India does not cover such type of cases. When a person has no liability to pay at all how can it be compelled to pay? It may take years for the insurance company to recover the amount from the owner of the vehicle, and it is also possible that for some reason the recovery may not be possible at all.

Though the said decision has been further placed to be considered by a Larger Bench.

**19.** Coming to the decisions of this High Court on the said issue, we have a couple of decisions of the Division Bench, the first among being the case of **Bajaj Allianz General Insurance Company Limited** v. **Smt. Chaiti Bai & Ors**[4] wherein the Division Bench in a case of breach of policy conditions exonerated the Insurance Company of its liability to pay and recover and hold that the responsibility of payment of compensation would be upon the owner and driver and it will be open for the claimants to recover the amount from the owner and driver.

**20.** Again, a Division Bench of this High Court in the case of **United India Insurance Co. Ltd.** v. **Smt. Kunti Bai & Others**[5] has reiterated the same proposition of law.

**21.** Further, in one of the recent decisions in the case of **Beer Narayan Singh** v. **Ghanshyam**[6] a Division Bench of this High Court has held as under in paragraphs 27 & 28:

> **"27.** As far as no passenger is permitted to be carried in the tractor or even in the trolley attached with the tractor is concerned, the tractor and the trolley were registered for agricultural purposes which only means that only agricultural produce could be carried in the tractor and trolley. A passenger is not supposed to be carried in the tractor or trolley as there is no sitting capacity available in the tractor or trolley except for the driver. Therefore, the insurance company cannot be held liable for payment of compensation in a case of suffering injury or death of a person, who was travelling in the tractor and trolley as an authorised or gratuitous passenger.

4 M.A.(C). No. 1453 of 2009, decided on 13th September, 2011.
5 2012 (4) CGLJ 128
6 2016 (4) TAC 44

> **28.** Even in the registration certificate, the sitting capacity including the driver is shown to be one. Therefore, the insurance company was rightly absolved of the liability to pay compensation.**"**

**22.** In view of the aforesaid judicial pronouncements by the Hon'ble Supreme Court as well as by this High Court, what is apparent is that the owner of the vehicle had not paid any extra premium covering the passengers who would be sitting in the trolley of the tractor. Unless there is a premium paid by the owner it cannot be said that there was a contract entered into between the insurer and the insured by accepting the extra premium covering the risk of the passengers who may travel in the trolley of the tractor. In view of the same, this Court is of the opinion that the finding given by the Tribunal to the extent of the Insurance Company first to make the payment and thereafter to recover the same from the owner is not proper, legal or justified and the same therefore deserves to be and is accordingly set aside.

**23.** So far as the judgments which have been cited by the learned counsel for the owner and driver are concerned, those are all decisions which have been rendered by the respective Courts in the factual matrix of those cases and the facts of those cases when compared to the facts of the present case it clearly would show that those decisions were passed in the peculiar facts and circumstances of each case wherein either the dispute must have been very old or stale or where the insurance company must have received some amount of premium covering the risk of such persons or are cases where the contention is that of a breach of policy conditions. Whereas, in the instant case, the breach of policy conditions does not exist rather it is a case where there is no policy covering the risk of the passengers or gratuitous passengers travelling in the trolley inasmuch as the policy covering only the risk of third party and driver alone with no extra additional premium being paid and the deceased and injured persons not falling within the definition or ambit of third party, it cannot be said that there was any sort of special contract between the insurer and the insured with which the insurer could be fastened with the liability to pay compensation.

**24.** Accordingly, the Tribunal was not justified in holding that the insurer has to satisfy the award first and then recover the amount from the driver and owner of the vehicle. The said impugned direction thus being bad in law deserves to be and is thus set aside/quashed to the extent of the Insurance Company being exonerated from its liability and the liability of payment of compensation would fall upon the driver and owner of the tractor-trolley. The claimants shall be at liberty to initiate recovery proceeding against the driver and owner of the vehicle in the event of the driver and owner of the vehicle evading to honour the awards. So far as the amount of compensation which has been already deposited by the Insurance Company before the Tribunal, if the same has not been released to the claimants then the Insurance Company shall have the right of refund. However, in the event if the amount has been released then the Insurance Company may recover the amount from the driver and owner of the vehicle.

**25.** All these appeals thus stand allowed and disposed of.

Sd/-
**(P. Sam Koshy)**
**Judge**

/sharad/