

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 1125 of 2007**

Krishna Kumar Sahu S/o Late Kachchan Sahu aged about 55 years R/o village Gopalpuri Tahsil and District Dhamtari Chhattisgarh (Owner of vehicle)

---- **Appellant**

Versus

1. Basant Kumar S/o Puran Lal Sahu aged about 31 years R/o village Shankar Dhah Thana Arjuni Tahsil and District Dhamtari Chhattisgarh (Claimant)

2. Girija Shankar Sahu S/o Krishna Kumar Sahu aged about 25 years R/o Gopalpuri Thana Arjuni Tahsil and District Dhamtari Chhattisgarh

3. Bajaj Alliance through Branch manager Bajaj General Insurance Company Limited Near by Meth Mandir Dhamtari Post and Tahsil Dhamtari Chhattisgarh

---- **Respondents**

For Appellant	:	None.
For Respondent No.1	:	Shri R.K. Pali, Advocate.

Hon'ble Shri Deepak Gupta, Chief Justice

Judgment on Board

10/02/2017

1. The short question which arises in this appeal is whether the Claims Tribunal rightly exonerated the Insurance Company from paying the compensation.

2. The undisputed facts of the case are that the accident took place on 19.9.2005 and the claimant suffered injuries. Learned Claims Tribunal awarded Rs.90,000/- as compensation but held that the Insurance Company could not be held liable to pay compensation because the claimant was a pillion rider.

3. The Learned Claims Tribunal relied upon the judgment rendered by the Apex Court in *United India Insurance Company Limited, Shimla v. Tilak Singh & Others*, (2006) 4 SCC 404 held as follows:-

"19. The argument that the risk pertaining to a third party would extend to a person other than the parties to the insurance contract was raised in *New India Assurance Company v. Satpal Singh and Ors*, [2000] 1 SCC 237 where after contrasting the language of section 95 (1) of the 1939 Act with the provisions of section 147 (1) of the 1988 Act this Court held:

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

20. The view expressed in *Satpal Singh's* case (supra) however, has been specifically overruled in the subsequent judgment of a Bench of three judges in *New India Assurance Company v. Asha Rani and Ors.*, [2003] 2 SCC 223. In that case the discussion arose in connection with carrying passengers in a goods vehicle. This Court after referring to the terms of section 147 of the 1988 Act, as contrasted with section 95 of the 1939 Act, held that the judgment in *Satpal Singh's* case (supra) had been incorrectly decided and that the insurer will not be liable to pay compensation. In the concurring judgment of Sinha, J. after contrasting the language used in the 1939 Act with that of the 1988 Act, it has been observed (vide paras 25 and 27):

"25. Section 147 of 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 'good carriage'.

* * * * *

27. Furthermore, sub-clauses (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 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 caused by or arising out of the use of the vehicle in a public place."

21. In our view, although the observation made in *Asha Rani's* case (*supra*) 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 toward 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 gratuitous passenger."

4. The law in *Tilak Singh* (*supra*) holds the field. I have carefully gone through the policy of insurance. It covers only three liabilities i.e. own damage liability for damage to the motorcycle, basic third party liability and only personal accident cover for owner-cum-driver to the extent of Rs.1 Lac. No other liability is covered.

5. In view of the judgment rendered in *Tilak Singh* (*supra*), the pillion rider is not required to be covered by the Insurance Company. Therefore, I find no merit in the appeal. It is accordingly dismissed.

Sd/-
(Deepak Gupta)
Chief Justice