Atul

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 1058 OF 2016

WITH

CIVIL APPLICATION NO. 2807 OF 2016

Reliance General Insurance Co Ltd Through its
Manager, Amit Ashwini Sharma ...Appellant
Versus
Kumari Pratama Jintendra Sutar (minor) through
Jitendra Keshav Sutar & Anr ...Respondents

FIRST APPEAL (ST) NO. 477 OF 2016

WITH

CIVIL APPLICATION NO. 3799 OF 2016

WITH

CIVIL APPLICATION NO. 3800 OF 2016

Reliance General Insurance Co Ltd Through its
Manager, Amit Ashwini Sharma ...Appellant
Versus
Sony Rajeshkumar Gupta & Anr ...Respondents

FIRST APPEAL NO. 674 OF 2016

WITH

CIVIL APPLICATION NO. 1613 OF 2016

Reliance General Insurance Co Ltd Through its
Manager, Amit Ashwini Sharma ...Appellant

Versus
Shaebrao Namdeo Birmane & Anr ...Respondents

FIRST APPEAL NO. 723 OF 2016

WITH

CIVIL APPLICATION NO. 1705 OF 2016

Reliance General Insurance Co Ltd Through its
Manager, Amit Ashwini Sharma ...Appellant
Versus
Sahebrao Namdeo Birmane & Anr ...Respondents

FIRST APPEAL NO. 829 OF 2016

WITH

CIVIL APPLICATION NO. 1959 OF 2016

Reliance General Insurance Co Ltd Through its
Manager, Amit Ashwini Sharma ...Appellant
Versus
Milind Ramchandra Patil & Ors ...Respondents

FIRST APPEAL NO. 830 OF 2016

WITH

CIVIL APPLICATION NO. 1960 OF 2016

Reliance General Insurance Co Ltd Through its
Manager, Amit Ashwini Sharma ...Appellant
Versus
Suresh Waman Panchal & Ors ...Respondents

FIRST APPEAL NO. 831 OF 2016

WITH

CIVIL APPLICATION NO. 1961 OF 2016

Reliance General Insurance Co Ltd Through its Manager, Amit Ashwini Sharma ...Appellant

Versus

Kumari Priyanka Alias Laxmi Devendra Almenlkar Through Father and Next Friend Devendra Laxmi ...Respondents

FIRST APPEAL NO. 832 OF 2016

WITH

CIVIL APPLICATION NO. 1962 OF 2016

Reliance General Insurance Co Ltd Through its Manager, Amit Ashwini Sharma ...Appellant

Versus

Vidyadevi Ramjit Jaiswal & Anr ...Respondents

FIRST APPEAL NO. 833 OF 2016

WITH

CIVIL APPLICATION NO. 1963 OF 2016

Reliance General Insurance Co Ltd Through its Manager, Amit Ashwini Sharma ...Appellant

Versus

Hemnath Janardan Pednekar & Ors ...Respondents

FIRST APPEAL NO. 873 OF 2016

WITH

CIVIL APPLICATION NO. 2096 OF 2016

Reliance General Insurance Co Ltd Through its Manager, Amit Ashwini Sharma ...Appellant

Versus
Jagannath Shree Bhagwan Singh & Ors ...Respondents

FIRST APPEAL NO. 915 OF 2016

WITH

CIVIL APPLICATION NO. 2339 OF 2016

Reliance General Insurance Co Ltd Through its
Manager, Amit Ashwini Sharma ...Appellant
Versus
Ravindra Laxman Burla & Ors ...Respondents

FIRST APPEAL NO. 916 OF 2016

WITH

CIVIL APPLICATION NO. 2340 OF 2016

Reliance General Insurance Co Ltd Through its
Manager, Amit Ashwini Sharma ...Appellant
Versus
Shambhulal Ramniwas Gupta & Anr ...Respondents

FIRST APPEAL NO. 1017 OF 2016

WITH

CIVIL APPLICATION NO. 2679 OF 2016

Reliance General Insurance Co Ltd Through its
Manager, Amit Ashwini Sharma ...Appellant
Versus
Babu Mallesh Gollar & Anr ...Respondents

FIRST APPEAL NO. 1067 OF 2016

WITH

CIVIL APPLICATION NO. 2826 OF 2016

Reliance General Insurance Co Ltd Through its Manager, Amit Ashwini Sharma ...Appellant

Versus

Master Krishna Milind Patil (Minor) through Father and Next Friend Shri Milind Ramchandra Patil ...Respondent

FIRST APPEAL NO. 1122 OF 2016

WITH

CIVIL APPLICATION NO. 2970 OF 2016

Reliance General Insurance Co Ltd Through its Manager, Amit Ashwini Sharma ...Appellant

Versus

Narayan Subhana Lohar & Ors ...Respondents

FIRST APPEAL NO. 1208 OF 2016

WITH

CIVIL APPLICATION NO. 3367 OF 2016

Reliance General Insurance Co Ltd Through its Manager, Amit Ashwini Sharma ...Appellant

Versus

Pandurang Subhana Shimne & Ors ...Respondents

FIRST APPEAL NO. 1422 OF 2016

WITH

CIVIL APPLICATION NO. 4010 OF 2016

Reliance General Insurance Co Ltd Through its Manager, Amit Ashwini Sharma ...Appellant

Versus
Parvati Ramparag Gupta & Anr ...Respondents

FIRST APPEAL (ST) NO. 4910 OF 2016

WITH

CIVIL APPLICATION NO. 1957 OF 2016

WITH

CIVIL APPLICATION NO. 1958 OF 2016

Reliance General Insurance Co Ltd Through its Manager, Amit Ashwini Sharma ...Appellant
Versus
Nitesh Suresh Panchal & Anr ...Respondents

FIRST APPEAL (ST) NO. 5266 OF 2016

WITH

CIVIL APPLICATION NO. 1980 OF 2016

WITH

CIVIL APPLICATION NO. 1981 OF 2016

Reliance General Insurance Co Ltd Through its Manager, Amit Ashwini Sharma ...Appellant
Versus
Kumar Prathamesh Jitendra Sutar (Minor) through his father and Next Friend Jitendra Sutar ...Respondent

FIRST APPEAL (ST) NO. 5271 OF 2016

WITH

CIVIL APPLICATION NO. 2053 OF 2016

WITH

CIVIL APPLICATION NO. 2054 OF 2016

Reliance General Insurance Co Ltd Through its Manager, Amit Ashwini Sharma ...Appellant

Versus

Shradha Milind Patil (minor) through father and friend Shri Milind Ramchandra Patil ...Respondent

FIRST APPEAL (ST) NO. 6551 OF 2016

WITH

CIVIL APPLICATION NO. 2090 OF 2016

WITH

CIVIL APPLICATION NO. 2091 OF 2016

Reliance General Insurance Co Ltd Through its Manager, Amit Ashwini Sharma ...Appellant

Versus

Saahil Uttam Patil (minor) through father Uttam Patil ...Respondent

FIRST APPEAL (ST) NO. 7951 OF 2016

WITH

CIVIL APPLICATION NO. 2112 OF 2016

WITH

CIVIL APPLICATION NO. 2113 OF 2016

Reliance General Insurance Co Ltd Through its Manager, Amit Ashwini Sharma ...Appellant

Versus

Akash Narayan Lohar & Anr ...Respondents

FIRST APPEAL (ST) NO. 9294 OF 2016

WITH

CIVIL APPLICATION NO. 2880 OF 2016

WITH

CIVIL APPLICATION NO. 2881 OF 2016

Reliance General Insurance Co Ltd Through its
Manager, Amit Ashwini Sharma …Appellant
Versus
Kamal Machindra Gaikwad & Ors …Respondents

FIRST APPEAL (ST) NO. 12274 OF 2016

WITH

CIVIL APPLICATION NO. 2365 OF 2016

WITH

CIVIL APPLICATION NO. 2366 OF 2016

Reliance General Insurance Co Ltd Through its
Manager, Amit Ashwini Sharma …Appellant
Versus
Soni Rajeshkumar Gupta & Anr …Respondents

FIRST APPEAL (ST) NO. 12638 OF 2016

WITH

CIVIL APPLICATION NO. 3151 OF 2016

WITH

CIVIL APPLICATIONI NO. 3152 OF 2016

Reliance General Insurance Co Ltd Through its
Manager, Amit Ashwini Sharma …Appellant
Versus
Shriniwas Narayan Wasam & Ors …Respondents

FIRST APPEAL (ST) NO. 12716 OF 2016

WITH

CIVIL APPLICATION NO. 3153 OF 2016

WITH

CIVIL APPLICATION NO. 3154 OF 2016

Reliance General Insurance Co Ltd Through its Manager, Amit Ashwini Sharma ...Appellant

Versus

Kumari Anjali Santoshkumar Gupta minor thorugh her father and next friend Santoshkumar Gupta ...Respondent

FIRST APPEAL (ST) NO. 12725 OF 2016

WITH

CIVIL APPLICATION NO. 3687 OF 2016

WITH

CIVIL APPLICATION NO. 3688 OF 2016

Reliance General Insurance Co Ltd Through its Manager, Amit Ashwini Sharma ...Appellant

Versus

Rajeshkumar Amrutlal Gupta & Anr ...Respondents

FIRST APPEAL (ST) NO. 12726 OF 2016

WITH

CIVIL APPLICATION NO. 2959 OF 2016

WITH

CIVIL APPLICATION NO. 2960 OF 2016

Reliance General Insurance Co Ltd Through its
Manager, Amit Ashwini Sharma ...Appellant
Versus
Nagalaxmi Narendra Gentyala & Ors ...Respondents

FIRST APPEAL (ST) NO. 12736 OF 2016

WITH

CIVIL APPLICATION NO. 3082 OF 2016

WITH

CIVIL APPLICATION NO. 3083 OF 2016

Reliance General Insurance Co Ltd Through its
Manager, Amit Ashwini Sharma ...Appellant
Versus
Babutai Balku Utale & Ors ...Respondents

FIRST APPEAL (ST) NO. 12738 OF 2016

WITH

CIVIL APPLICATION NO. 3607 OF 2016

WITH

CIVIL APPLICATION NO. 3608 OF 2016

Reliance General Insurance Co Ltd Through its
Manager, Amit Ashwini Sharma ...Appellant
Versus
Suhasini Kiran Pradhan & Anr ...Respondents

FIRST APPEAL (ST) NO. 12749 OF 2016

WITH

CIVIL APPLICATION NO. 3034 OF 2016

WITH

CIVIL APPLICATION NO. 3035 OF 2016

Reliance General Insurance Co Ltd Through its
Manager, Amit Ashwini Sharma ...Appellant
Versus
Vithal Shankar Pawar & Ors ...Respondents

FIRST APPEAL (ST) NO. 14834 OF 2016

WITH

CIVIL APPLICATION NO. 3076 OF 2016

WITH

CIVIL APPLICATION NO. 3077 OF 2016

Reliance General Insurance Co Ltd Through its
Manager, Amit Ashwini Sharma ...Appellant
Versus
Binno Rakeshkumar Gupta & Anr ...Respondents

FIRST APPEAL (ST) O. 14837 OF 2016

WITH

CIVIL APPLICATION NO. 3369 OF 2016

WITH

CIVIL APPLICATION NO. 3370 OF 2016

Reliance General Insurance Co Ltd Through its
Manager, Amit Ashwini Sharma ...Appellant
Versus
Binno Rakeshkumar Gupta & Anr ...Respondents

FIRST APPEAL (ST) NO. 14994 OF 2016

WITH

CIVIL APPLICATION NO. 3447 OF 2016

WITH

CIVIL APPLICATION NO. 3448 OF 2016

Reliance General Insurance Co Ltd Through its
Manager, Amit Ashwini Sharma ...Appellant
Versus
Sushmadevi Dineshkumar Gupta & Anr ...Respondents

FIRST APPEAL (ST) NO. 28988 OF 2015

WITH

CIVIL APPLICATION NO. 1602 OF 2016

WITH

CIVIL APPLICATION NO. 1603 OF 2016

Reliance General Insurance Co Ltd Through its
Manager, Amit Ashwini Sharma ...Appellant
Versus
Hirabai Mohan Dupate & Ors ...Respondents

FIRST APPEAL (ST) NO. 30041 OF 2016

WITH

CIVIL APPLICATION NO. 1942 OF 2017

WITH

CIVIL APPLICATION NO. 1943 OF 2017

Reliance General Insurance Co Ltd Through its
Manager, Amit Ashwini Sharma ...Appellant
Versus
Shreya Narendra Gentyala n/f Nagalaxmi

Narendra Gentyala & Anr ...Respondents

FIRST APPEAL (ST) NO. 30669 OF 2015

WITH

CIVIL APPLICATION NO. 1771 OF 2016

WITH

CIVIL APPLICATION NO. 1772 OF 2016

Reliance General Insurance Co Ltd Through its
Manager, Amit Ashwini Sharma ...Appellant
Versus
Chedilal Bholanath Yadav & Anr ...Respondents

FIRST APPEAL (ST) NO. 30688 OF 2015

WITH

CIVIL APPLICATION NO. 1842 OF 2016

AND

CIVIL APPLICATION NO. 1844 OF 2016

Reliance General Insurance Co Ltd Through its
Manager, Amit Ashwini Sharma ...Appellant
Versus
Chedilal Bholanath Yadav & Anr ...Respondents

FIRST APPEAL (ST) NO. 30703 OF 2015

WITH

CIVIL APPLICATION NO. 1815 OF 2016

AND

CIVIL APPLICATION NO. 1816 OF 2016

Reliance General Insurance Co Ltd Through its
Manager, Amit Ashwini Sharma ...Appellant
Versus
Chedilal Bholanath Yadav & Anr ...Respondents

FIRST APPEAL (ST) NO. 30912 OF 2016

WITH

CIVIL APPLICATION NO. 1365 OF 2017

WITH

CIVIL APPLICATION NO. 1366 OF 2017

Reliance General Insurance Co Ltd Through its
Manager, Amit Ashwini Sharma ...Appellant
Versus
Santoshkumar Jawahar Gupta & Anr ...Respondents

FIRST APPEAL (ST) NO. 32286 OF 2015

WITH

CIVIL APPLICATION NO. 1880 OF 2016

WITH

CIVIL APPLICATION NO. 1881 OF 2016

Reliance General Insurance Co Ltd Through its
Manager, Amit Ashwini Sharma ...Appellant
Versus
Rajeshkumar Amrutlal Gupta & Anr ...Respondents

FIRST APPEAL (ST) NO. 32401 OF 2016

WITH

CIVIL APPLICATION NO. 1957 OF 2017

WITH

CIVIL APPLICATION NO. 1958 OF 2017

Reliance General Insurance Co Ltd Through its
Manager, Amit Ashwini Sharma ...Appellant
Versus
Shambulal Ramniwas Gupta & Ors ...Respondents

FIRST APPEAL (ST) NO. 32427 OF 2016

WITH

CIVIL APPLICATION NO. 462 OF 2017

WITH

CIVIL APPLICATION NO. 463 OF 2017

Reliance General Insurance Co Ltd Through its
Manager, Amit Ashwini Sharma ...Appellant
Versus
Laxmi Bhima Gollar & Anr ...Respondents

FIRST APPEAL (ST) NO. 32430 OF 2016

WITH

CIVIL APPLICATION NO. 691 OF 2017

WITH

CIVIL APPLICATION NO. 692 OF 2017

Reliance General Insurance Co Ltd Through its
Manager, Amit Ashwini Sharma ...Appellant
Versus
Jitendra Keshav Sutar & Anr ...Respondents

FIRST APPEAL (ST) NO. 32437 OF 2016

WITH

CIVIL APPLICATION NO. 1955 OF 2017

WITH

CIVIL APPLICATION NO. 1956 OF 2017

Reliance General Insurance Co Ltd Through its
Manager, Amit Ashwini Sharma ...Appellant
Versus
Shriniwas Narayan Wasam & Ors ...Respondents

FIRST APPEAL (ST) NO. 32441 OF 2016

WITH

CIVIL APPLICATION NO. 881 OF 2017

WITH

CIVIL APPLICATION NO. 882 OF 2017

Reliance General Insurance Co Ltd Through its
Manager, Amit Ashwini Sharma ...Appellant
Versus
Uttam Shankar Patil & Ors ...Respondents

FIRST APPEAL (ST) NO. 32456 OF 2016

WITH

CIVIL APPLICATION NO. 739 OF 2017

WITH

CIVIL APPLICATION NO. 740 OF 2017

Reliance General Insurance Co Ltd Through its
Manager, Amit Ashwini Sharma ...Appellant
Versus
Shriniwas Narayan Wasam & Ors ...Respondents

FIRST APPEAL (ST) NO. 32465 OF 2016

WITH

CIVIL APPLICATION NO. 737 OF 2017

WITH

CIVIL APPLICATION NO. 738 OF 2017

Reliance General Insurance Co Ltd Through its Manager, Amit Ashwini Sharma …Appellant

Versus

Asha Jitendra Sutar & Anr …Respondents

Mr Rajesh Kanojia, *i/b RES Juris, for the Appellant/Applicant in all matters.*

Mr TJ Mendon, *for the Respondents in all matters.*

CORAM: G.S. PATEL, J

DATED: 26th July 2017

PC:-

1. There is a delay in filing some of the first appeals. All the civil applications seeking condonation of delay are allowed and disposed of accordingly.

2. All appeals are admitted and, by consent, taken up for hearing and final disposal on the basis of the available compilation since the issue involved is exceedingly narrow.

3. 80 original claims before the Motor Accident Claims Tribunal (**"MACT"**) Mumbai were filed under Section 166 of the Motor

Vehicles Act, 1988 for compensation for injury or death in relation to one vehicular accident. The accident was to a tourist passenger bus. All the claimants were in that bus. Some suffered injuries. There was also several fatalities. Of the 80 claims filed, four have been withdrawn. Of the remaining 76 cases, the insurance company is in appeal in 75. In one case (original application No. 405 of 2008) no appeal has been filed. In two other cases (original application No. 2436 of 2010 and original application No. 1238 of 2008), the appeals are yet pending filing for administrative reasons; specifically the statutory deposit had lapsed and steps are being taken to rectify that.

4. In none of the cases is there a separate substantive first appeal for enhancement or cross-objections.

5. A comprehensive table of all 80 cases showing the status has been furnished by the Advocate for the Appellants. For convenience and ease of reference, this tabular statement is appended to this order.

6. I will take the facts as they appear in First Appeal St No. 30912 of 2016 which is an injury case and First Appeal St No. 12376 of 2016 which is a fatal accident case. These are at Serial Nos. 1 and 2 of the accompanying tabulation. The facts are common.

7. All these persons were travelling in a luxury bus No. MH-01-L-6956 on 20th January 2008 from Mumbai. They were on a pilgrimage. They visited Shani Shinganpur and Shirdi and, on their way back they reached Saptashrungi Ghat on the return leg to

Mumbai. By that time it was 10.15 pm. The bus was descending the ghat. According to all the claims filed, the bus driver was driving far too fast, and was being reckless, negligent and careless. At about 10 minutes past 10.00 pm, the bus reached a hairpin bend on the ghat road. The bus was travelling at great speed. The bus driver was unable to take the sharp turn properly. He lost control. The bus went over the road edge at the curve and plunged some 500 feet into the valley below. The crash was catastrophic. The bus was crushed.

8. Several passengers in the bus were injured. Their claims are those at Serial Nos. 1, 29, 39, 44 to 46, 48 to 76 of the accompanying tabulation. The cases at Serial Nos. 2 to 28, 30 to 38, 40 to 43, 47, 77 and 78 are all cases of deaths caused in the accident. The fatal accident claims in Serial Nos. 77 and 78 have been withdrawn. The injury cases at Serial Nos. 79 and 80 are also withdrawn.

9. Various amounts have been awarded in these cases and these are also noted in the tabular statement. Each case has a separate award. The fact of the accident is not in dispute. The assessment in each case has been made on the basis of established income of the deceased where applicable (some of the victims were minors; noted below), age, applicable multiplier and so on; and for the injury cases the injuries have been separately assessed.

10. The principal ground in the insurer's appeals is that the bus was loaded to over capacity. The rated capacity of the bus was for 40 passengers plus the driver, i.e., 41 aboard in total. In point of fact there were 81 persons aboard, including the driver. The insurance company, therefore, says that this is a breach of the policy and it is not liable to pay compensation to any of the victims whether in a fatal accident or a injury case.

11. The issue is no longer *res integra*. It is completely covered by the decision of the Supreme Court in *United India Insurance Co Ltd v K.M. Poonam & Ors.*[1] The facts in that case were that one Surdeep Gusain obtained an insurance policy for his jeep with a seating capacity of six persons including the driver. On 18th August 2004, this jeep was loaded with 15 passengers. While being driven by the father of the respondents in that matter, it felt into a ditch, resulting in the death of the driver and of a majority of passengers, seriously injuring the rest. Before the Tribunal, a specific issue framed was whether the vehicle was being used and plied in accordance with the conditions of the insurance policy and permit. The MACT held that the insurance company could not be fully exonerated from its liability since the policy in question was a comprehensive policy and include third party liability coverage. It held that carrying more passengers than rated did not amount to breach of conditions since the vehicle was legally insured. The insurer's appeal failed in the High Court. It however interfered to a limited extent as regards the rate of interest and slightly increased the compensation awarded.

12. Before the Supreme Court it was argued by the insurer that in view of the provisions of Section 149 of the MV Act, the insurer's liability to pay the compensation was limited to the number of passengers validly permitted to be carried in the vehicle covered by

1 (2015) 15 SCC 297.

the insurance policy. The insurance cover did not extend to the passengers in excess of this number. Reference was made before the Court hearing *Poonam* to a decision of the Supreme Court in *National Insurance Co Ltd v Anjana Shyam & Ors*.[2] In that decision, analysing Section 147(1)(b)(ii) and (2) and Section 149(1), (2) and (5) of the Act, the Supreme Court concluded that while the liability was limited to the insurance taken out for the number of permitted passengers and did not extend to others in excess of that number, on a harmonious construction of the relevant provisions, the total amount of compensation should be deposited and then proportionately distributed to all claimants with liberty to the insurer to recover the balance compensation from the owner of the vehicle. Reliance was also placed on other decision of the Supreme Court.[3] On this basis, in *Poonam* the insurer argued that it should not be required to pay for more than six passengers although it could be directed to pay the balance and be set at liberty to recover those additional amounts from the owner. In paragraphs 19 to 28, the Supreme Court said:

> 19. The law relating to the insurer's liability for payment of compensation to gratuitous passengers in a vehicle after the enactment of the Motor Vehicles Act, 1988, which replaced the Motor Vehicles Act, 1939, initially came up for consideration in *Satpal Singh* case [*New India Assurance Co. v. Satpal Singh*, (2000) 1 SCC 237 : 2000 SCC (Cri) 130] wherein this Court was called upon to consider the change

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2 (2007) 7 SCC 445.

3 *National Insurance Co Ltd v Challa Bharathaama & Ors*, 2004 AIR SCW 5301; *New India Assurance Co v Satpal Singh & Ors.*, (2000) 1 SCC 237; *New India Assurance Co Ltd v Asha Rani & Ors* (2003) 2 SCC 223; and *National Insurance Co Ltd v Nicolletta Rohtagi*, (2002) 7 SCC 456.

in the provisions relating to third-party risk, as was contained in Section 95 of the 1939 Act as against the provisions of Section 147 of the 1988 Act.

20. Their Lordships in *Satpal Singh* case held that as per the proviso to Section 95(1) when read with its clause (ii), it would be clear that the policy of insurance was not required to cover the liability in respect of the death of or bodily injury to persons who were gratuitous passengers of that vehicle. In contrast, under Section 147 of the 1988 Act, the insurance policy was required to insure the person or classes of persons specified in the policy to the extent specified in sub-section (2) against any liability which may be incurred by him in respect of the death of or bodily injury to any person, including owner of the goods or his authorised representative carried in the vehicle or damage to any property of a third party caused by or arising out of the use of the vehicle in a public place and also 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.

21. On an interpretation of the aforesaid provisions of Section 147 of the 1988 Act, it was held in *Satpal Singh* case, that under sub-section (2) there is no upper limit for the insurer regarding the amount of compensation awarded in respect of death or bodily injury of a victim of the accident. It was, therefore, apparent that the limit contained in the old Act having been removed the policy should insure the liability incurred and cover injury to any person, including the owner of the goods or his authorised representative, carried in the vehicle. Their Lordships concluded that as a result of the provisions of the new Act, the earlier decisions rendered under the 1939 Act were no longer relevant and an insurance policy covering third-party risk was not required to exclude gratuitous

passengers in a vehicle, no matter that the vehicle was of any type or class.

22. The said view which had followed an earlier three-Judge Bench decision of this Court in *Mallawwa v. Oriental Insurance Co. Ltd*. [(1999) 1 SCC 403 : 1999 SCC (Cri) 58] , came up for consideration once again in a batch of appeals filed by different insurance companies, including the present appellant Company, in the decision of this Court under the lead case of *New India Assurance Co. Ltd. v. Asha Rani (1)* [(2001) 6 SCC 724 : 2001 SCC (Cri) 1223] .

23. Upon considering the various decisions which had preceded the judgment in *Satpal Singh* case the two-Judge Bench in *Asha Rani (1)* case was of the view that some of the striking features of the new Act had not been brought to the notice of the Court which could have a bearing on the conclusion arrived at in *Satpal Singh* case i.e. that on account of the definitions of "goods vehicle" and "goods carriage" under the new Act, goods carriages were no longer used to carry any passenger. Their Lordships were also of the view that the defence available to the Insurance Company under Section 149(2) of the 1988 Act would stand obliterated on account of the law as declared in *Satpal Singh* case. Their Lordships felt that under the new Act, it would be a breach of condition in case the vehicle was used for a purpose other than for which permit had been issued. Apart from the above, the effect of the deletion of clause (ii) to the proviso to Section 95(1)(b) in the new Act also required reconsideration. The matter was, therefore, referred to the Hon'ble Chief Justice to have the various issues reconsidered by a larger Bench.

24. The aforesaid questions were, thereafter, gone into by a Bench of three Judges, where the issues decided in *Satpal Singh* case were revisited. In the decision *New India*

Assurance Co. Ltd. v. Asha Rani (2) [(2003) 2 SCC 223 : 2003 SCC (Cri) 493] the three-Judge Bench considered the provisions of Section 95 of the 1939 Act and Section 147 of the 1988 Act in detail and also the amendments effected to Section 147(1)(b)(i) by Amendment Act 54 of 1994 and came to the conclusion that in *Satpal Singh* case, this Court had proceeded on the assumption that the provisions of Section 95(1) of the Motor Vehicles Act, 1939, were identical to the provisions of Section 147(1) of the Motor Vehicles Act, 1988 as it stood before its amendment. It was held that Section 147 of the new Act deals with the requirements of the policy and limits of liability incurred to third-party risks, but the proviso thereto makes an exception to the main provision, which reads as follows:...

25. It was also noticed in *Asha Rani (2)* case that as far as employees of the owner of the motor vehicle were concerned, an insurance policy was not required to be taken in relation to their liability, other than arising in terms of the provisions of the Workmen's Compensation Act, 1923. On the other hand, proviso (ii) included under Section 95 of the 1939 Act, imposed a liability upon the owner of the vehicle to take out an insurance policy to cover the liability in respect of a person who was travelling in a vehicle pursuant to a contract of employment. The same was consciously omitted from the provisions of the 1988 Act. It was further held that the applicability of the decision in *Mallawwa* case to the facts of the case before their Lordships would have to be considered keeping that aspect of the matter in view.

26. Proceeding further, their Lordships in *Asha Rani (2)* case observed that Section 2(35) of the 1988 Act does not include passengers in goods carriages whereas Section 2(25) of the 1939 Act did, since even passengers could be carried in a goods vehicle. Noting the difference in the

definitions of "goods vehicle" in the 1939 Act and "goods carriage" in the 1988 Act, their Lordships held that carrying of passengers in a goods carriage was not contemplated under the 1988 Act. On the basis of the aforesaid findings, the three-Judge Bench overruled the decision of this Court in *Satpal Singh* case, holding that the law had not been laid down correctly therein.

27. The aforesaid issue once again surfaced in *National Insurance Co. Ltd. v. Swaran Singh* [(2004) 3 SCC 297 : 2004 SCC (Cri) 733] where the provisions of Section 149 and also Section 147 fell for consideration. While considering the liability cast upon an insurer under Section 149(1) and the limited grounds of liability in the insurance contract and third-party claims as envisaged in the proviso to Section 149(4), this Court also had occasion to refer to Section 147 relating to the statutory liability and any contractual liability under the insurance contract and whether the contractual exclusion of liability in respect of third-party claim was permissible. **The three-Judge Bench held that such a condition in the insurance policy, whereby the right of the third party is taken away would be void and that except under the situation provided for by Section 149(2)(b), the insurer would not be entitled to avoid its statutory liability, since its rights of recovery were preserved against the insured under the proviso to Section 149(4) of the 1988 Act.**

28. While the aforesaid judgment was delivered on 5-1-2004, on the very next day, another three-Judge Bench of this Court rendered a decision in *National Insurance Co. Ltd. v. Baljit Kaur* [(2004) 2 SCC 1 : 2004 SCC (Cri) 370], in the context of the provisions of Section 147(1)(b) of the 1988 Act after its amendment in 1994. While referring to the earlier decision in the reference decided in *Asha Rani (2)* case, their Lordships held that in spite of the amendment

effected to Section 147(1)(b) in 1994, the position remained the same in respect of persons other than the owner of the goods and his authorised representative being carried in the goods vehicle. It was held that:

> "20. ... 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."

It was, therefore, felt that the interest of justice would be subserved if the Insurance Company satisfied the awarded amount and recovered the same from the owner of the vehicle and for the said purpose it would not be necessary for the Insurance Company to file a separate suit, but to initiate a proceeding before the executing court as if the dispute between insurer and the owner was the subject-matter of the determination before the Tribunal which had decided in favour of the insurer and against the owner of the vehicle.

(*Emphasis added*)

13. On this basis, the Supreme Court held in paragraphs 36 TO 40:

36. **The liability of the insurer, therefore, is confined to the number of persons covered by the insurance policy and not beyond the same. In other words, as in the present case, since the insurance policy of the owner of the vehicle covered six occupants of the vehicle in question, including the driver, the liability of**

the insurer would be confined to six persons only, notwithstanding the larger number of persons carried in the vehicle. Such excess number of persons would have to be treated as third parties, but since no premium had been paid in the policy for them, the insurer would not be liable to make payment of the compensation amount as far as they are concerned. However, the liability of the Insurance Company to make payment even in respect of persons not covered by the insurance policy continues under the provisions of sub-section (1) of Section 149 of the Act, as it would be entitled to recover the same if it could prove that one of the conditions of the policy had been breached by the owner of the vehicle.

37. **In the instant case, any of the persons travelling in the vehicle in excess of the permitted number of six passengers, though entitled to be compensated by the owner of the vehicle, would still be entitled to receive the compensation amount from the insurer, who could then recover it from the insured owner of the vehicle.** As mentioned hereinbefore, in the instant case, the insurance policy taken out by the owner of the vehicle was in respect of six passengers, including the driver, travelling in the vehicle in question. The liability for payment of the other passengers in excess of six passengers would be that of the owner of the vehicle who would be required to compensate the injured or the family of the deceased to the extent of compensation awarded by the Tribunal.

38. Having arrived at the conclusion that the liability of the Insurance Company to pay compensation was limited to six persons travelling inside the vehicle only and that the liability to pay the others was that of the owner, we, in this case, are faced with the same problem as had surfaced in

Anjana Shyam case [*National Insurance Co. Ltd. v. Anjana Shyam*, (2007) 7 SCC 445 : (2007) 3 SCC (Cri) 416] .

39. The number of persons to be compensated being in excess of the number of persons who could validly be carried in the vehicle, the question which arises is one of apportionment of the amounts to be paid. Since there can be no pick and choose method to identify the five passengers, excluding the driver, in respect of whom compensation would be payable by the Insurance Company, to meet the ends of justice **we may apply the procedure adopted in *Baljit Kaur* case and direct that the Insurance Company should deposit the total amount of compensation awarded to all the claimants and the amounts so deposited be disbursed to the claimants in respect to their claims, with liberty to the Insurance Company to recover the amounts paid by it over and above the compensation amounts payable in respect of the persons covered by the insurance policy from the owner of the vehicle, as was directed in *Baljit Kaur* case.**

40. **In other words, the appellant Insurance Company shall deposit with the Tribunal the total amount of the amounts awarded in favour of the awardees within two months from the date of this order and the same is to be utilised to satisfy the claims of those claimants not covered by the insurance policy along with the persons so covered. The Insurance Company will be entitled to recover the amounts paid by it, in excess of its liability, from the owner of the vehicle, by putting the decree into execution. For the aforesaid purpose, the total amount of the six awards which are the highest shall be construed as the liability of the Insurance Company. After deducting the said amount from the total amount of all the awards**

> **deposited in terms of this order, the Insurance Company will be entitled to recover the balance amount from the owner of the vehicle as if it is an amount decreed by the Tribunal in favour of the Insurance Company. The Insurance Company will not be required to file a separate suit in this regard in order to recover the amounts paid in excess of its liability from the owner of the vehicle.**

(*Emphasis added*)

14. Clearly this is the position in law and will have to be applied to the present case as well. I note, in passing, that this is an acceptance by the Supreme Court of the pay-and-recover principle, and the Supreme Court's decision makes it abundantly clear that this is the approach to be adopted by the Tribunal and in appeal.

15. Now returning to the tabulation, I find that the total pending claims are 76 in number. I will include in this the cases where an appeal has not been filed and the two cases where the appeals are yet pending to filing. In the tabulation, these 76 cases have been ranked not by case number or by the name of the claimant or the first appeal number, but instead by the amount awarded in reducing sequence, i.e., with the highest claim listed first and so on down the line. The highest award is an injury case of Rs. 2,51,400/- and the lowest is another injury case where the award is only Rs. 20,000/-.

16. Given that the rated capacity of the bus was of 40 passengers, the liability of the insurance company will thus extended to the 40 cases where the award is maximum. For the remaining cases from serial nos. 41 to 76, the insurance company will be required to pay the amount in accordance with the awards in the respective claims and in each case the insurance company will be at liberty to recover the amounts from the insured owner of the vehicle. Each decree will stand modified accordingly, and the insurer may recover for those balance cases from Sr No 41 to 76 in execution. This will ensure not only that the distribution is done in an equitable fashion but that the interest of all sides are adequately protected, namely, the claimants, the insured and the insurance company. It may be perhaps necessary to explain this. By ranking the awards in this fashion, the exposure of the insurance company in terms of what it needs to recover from the insured is reduced. For this reason too the exposure of the insured is also kept to the lowest possible though at the same level as the exposure of the insurer. Equally the interests of the claimants are fully met.

17. The other grounds in individual cases are not seriously pressed. Each of the decrees in serial nos 41 to 76 will stand modified accordingly to permit the insurer to pay and recover.

18. The Appellant will deposit the entire amounts awarded with all accrued interest in each of these 76 cases within a period of four weeks from today. The claimants in the cases listed at serial Nos. 1 to 76 will, therefore, be at liberty to recover the entire amount deposited as per the tabulation with all accrued interest. In each first appeal, the statutory deposit will also be transferred to the MACT where it will be invested until withdrawal.

19. The MACT will permit withdrawal on production of an authenticated copy of this order.

20. The insurer/Appellant will be at liberty to recover from the insured the amounts awarded in respect of the appeals at Serial Nos. 41 to 76 of the tabulation annexed to this order. This is of course exempting Serial No. 4 where no appeal has been filed and, therefore, there will be no question of statutory deposit.

21. Mr Mendon points out and I think quite correctly that the liberty reserved to the Appellant to pay and recover will not apply to the claims listed at Serial Nos. 56, 62, 71, 74 and 75 for the simple reason that these are all claims in respect of minors. These passengers were not allotted separate seats and, therefore, will not be accounted towards the capacity of 40 seat passengers. In these five cases as well, the insurance company will be required to make payment but without recovering the same from the insured. Therefore, the liberty to the insurance company to pay and recover will exclude these five claims at the serial numbers noted above. I note, too, that all six of these claims relating to minors are listed after Sr No. 40 and hence do not affect the responsibility to make payment to the first 40 or 41 claimants.

22. Mr Mendon for the Respondents points out that in Serial No. 4 where no appeal has been filed, the amount has been deposited and received by the claimants. In that case, therefore, there is no need for any order, but the claim is correctly included in the first forty claims.

23. All the first appeals and accompanying civil applications are disposed of in these terms with no order as to costs.

(G. S. PATEL, J)

Sr No	Case No	Case Year	First Appeal Number	Name Of Claimant	Claim Type	Award amount
1	1240	2008	FAST/30912/2016	Santoshkumar Gupta	Injury	2514000
2	410	2008	FAST/12736/2016	Babutai Balku Utale	Death	1536000
3	1232	2008	FA/8136/2016	Nagalaxmi Gentyala	Death	1110000
4	405	2008	Appeal not Filed	Sumitra Kumawat	Death	786200
5	458	2008	FAST/12749/2016	Vithal Pawar	Death	750000
6	802	2008	FA/8958/2016	Sumitradevi Yadav	Death	734000
7	690	2008	FAST/32401/2016	Shambulal Gupta	Death	660000
8	641	2008	FAST/14994/2016	Shushmadevi Dineshkumar Gupta	Death	656800
9	1103	2008	FAST/12744/2017	Santoshkumar Gupta	Death	618000
10	407	2008	FA/684/2016	Babutai Utale	Death	616000
11	462	2008	FAST/32441/2016	Uttam Patil	Death	600000
12	642	2008	FA/829/2016	Milind Ramchandra Patil	Death	594000
13	493	2008	FAST/17961/2017	Bandu Jamadar	Death	570000
14	995n	2008	FA/681/2016	Narayan Subhana Lohar	Death	570000
15	1000n	2008	FAST/32437/2016	Shriniwas Narayan Wasam	Death	530000
16	584	2008	FA/873/2016	Jagannath Singh	Death	526000
17	898	2008	FAST/9294/2016	Kamal Gaikwad	Death	526000
18	423	2008	FAST/12725/2016	Rajkumar Gupta	Death	518000
19	431	2008	FA/723/2016	Sahebrao Biramane	Death	516000
20	1003	2008	FA/1208/2016	Pandurang Shimne	Death	516000
21	425	2008	FAST/14840/2016	Chaya Jakinkar	Death	489000
22	501	2008	FAST/477/2016	Sonu Gupta	Death	489000
23	530	2008	FAST/17900/2017	Kashinath Shankar Kamble	Death	489000
24	427	2008	FA/833/2016	Janardan Pednelar	Death	479000
25	1001n	2008	FAST/12638/2016	Shriniwas Narayan Wasam	Death	471800
26	433	2008	FA/674/2016	Sahebrao Biramane	Death	462000

27	428	2008	FAST/30703/2016	Chedilal Yadav	Death	452000
28	424	2008	FAST/833/2016	Janardan Pednekar	Death	447000
29	729	2008	FA/12243/2016	Mamata Gupta	Injury	386501
30	649	2008	FAST/916/2016	Shambhulal Ramniwas Gupta	Death	345000
31	409	2008	FA/695/2016	Babutai Utale	Death	310000
32	408	2008	FA/682/2016	Babutai Utale	Death	310000
33	459	2008	FAST/28988/2015	Hirabai Dupate	Death	303000
34	494	2008	FAST/14834/2016	Bino Gupta	Death	260000
35	1101	2008	FAST/18216/2016	Santosh Kumar Gupta	Death	245000
36	1102	2008	FAST/32274/2016	Santoshkumar Gupta	Death	245000
37	992	2008	FA/1122/2016	Narayan Subhana Lohar	Death	245000
38	1339	2008	FA/830/2016	Suresh Waman Panchal	Death	225000
39	644	2008	FAST/17979/2017	Deepak Shambhulal Gupta	Injury	200000
40	491	2008	FAST/12445/2016	Bino Gupta	Death	200000
					Total Amount	**22500301**
41	429	2008	FAST/30688/2016	Chedilal Yadav	Death	180000
42	422	2008	FAST/32286/2015	Rajeshkumar Gupta	Death	180000
43	994	2008	FA/710/2016	Narayan Subhana Lohar	Death	180000
44	650	2008	FAST/17964/2017	Shivam Shambhulal Gupta	Injury	160582
45	1233	2008	FAST/12726/2016	Nagalaxmi Gentyala	Injury	140000
46	461	2008	FAST/6551/2016	Sahil Patil	Injury	135000
47	1002n	2008	FAST/32456/2016	Shriniwas Narayan Wasam	Death	130000
48	440	2008	FAST/32449/2016	Ganesh Biramane	Injury	120000
49	1100	2008	FAST/8023/2016	Ravindra Burla	Injury	119000
50	430	2008	FAST/30669/2015	Chandilal Bholanath Yadav	Injury	115000
51	503	2008	FAST/32427/2016	Laxmi Bhima Gollar	Injury	110000
52	1237	2008	FA/1422/2016	Parvati Gupta	Injury	105000

53	643	2008	FAST/18025/2017	Milind Ramchandra Patil	Injury	95000
54	1358	2008	FAST/12738/2016	Suhasini Pradhan	Injury	90000
55	1235	2008	FA/832/2016	Vidyadevi Jaiswal	Injury	86000
56	1234	2008	FAST/8136/2016	Shreya Gentyala	Injury	85000
57	534	2008	FA/831/2016	Priyanka Laxmi Devendra Almelkar	Injury	70000
58	1341	2008	FAST/17905/2017	Snehakumar Narayan Shukla	Injury	60000
59	1340	2008	FAST/4910/2016	Nitesh Suresh Panchal	Injury	60000
60	404	2008	FA/724/2016	Arati Utale	Injury	60000
61	2436	2010	Matter Pending for Filing	Sayali Santosh Pednekar	Injury	60000
62	1231	2008	FAST/17909/2016	Shravan Gentyala	Injury	50000
63	645	2008	FAST/5271/2016	Shradha Patil	Injury	45000
64	1337N	2008	FAST/32465/2016	Asha Jitendra Sutar	Injury	40000
65	406	2008	FA/669/2016	Sidhant Utale	Injury	40000
66	646	2008	FA/1067/2016	Krishna Patil	Injury	36000
67	1236	2008	FA/1017/2016	Babu Gollar	Injury	35000
68	502	2008	FAST/12274/2016	Soni Rajeshkumar Gupta	Injury	33000
69	460	2008	FA/670/2016	Vishal Patil	Injury	33000
70	1338	2008	FAST/32430/2016	Jitendra Keshav Sutar	Injury	30000
71	1239	2008	FAST/12716/2016	Anjali Gupta	Injury	30000
72	492	2008	FAST/14837/2016	Binno Gupta	Injury	25000
73	993	2008	FAST/7951/2016	Akash Narayan Lohar	Injury	25000
74	1336	2008	FAST/5266/2016	Kumar Prathmesh Jitendra Sutar	Injury	20000
75	1335	2008	FA/1058/2016	Kumari Pratama Jitendra Sutar	Injury	20000
76	1238	2008	Matter Pending for Filing	Aman Gupta	Injury	20000
					Total Amount	**2822582**
77	647	2008	Claim withdrawn by claimant	Sahebrao Namdeo Biramane	Death	0
78	648	2008	Claim withdrawn by claimant	Sahebrao Namdeo Biramane	Death	0

79	832	2008	Claim withdrawn by claimant	Nitesh Panchal	Injury	0
80	897	2008	Claim withdrawn by claimant	Asha Sutar	Injury	0
					Total Amount	**25322883**