

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

FAO No. 564 of 1995 (O&M)

Date of Decision: 17.11.2017

The Oriental Insurance Company Limited

.....Appellant

Versus

Jai Singh and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Tarun Singla, Advocate for
Mr. Subhash Goyal, Advocate
for the appellant.

Mr. B.S. Bairagi, Advocate
for respondents No. 1 to 4.

Mr. Sushil Sharma, Advocate for
Mr. Gurcharan Dass, Advocate
for respondent No.5.

AVNEESH JHINGAN, J.

The present appeal has been filed by the Insurance Company against the award dated 15.11.1994 passed by the Motor Accidents Claims Tribunal, Rohtak (for short 'the Tribunal').

The only issue raised in the present appeal is that deceased Anil Kumar was a gratuitous passenger in a goods vehicle i.e. Tata 407 HR-13-2715 (for short 'the offending vehicle') and hence, the Insurance Company is not liable to pay the compensation.

The legal position in this regard has been decided by Hon'ble the Apex Court in various decisions.

In *National Insurance Company Ltd. Versus Baljit Kaur and others, AIR 2004 SC 1340*, it has been held as under:

"20. It is therefore, manifest that inspite 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."

In *Sanjeev Kumar Samrat Vs. National Insurance Company Ltd. and others, AIR 2013 SC 1125*, it has been held as under:

"24. It is worthy to note that Sub-clause (i) (c) refers to an employee who is being carried in the vehicle covered by the policy. Such vehicle being a goods carriage, an employee has to be covered by the statutory policy. On an apposite reading of Sections 147 and 167 the intendment of the Legislature, as it appears to us, is to cover the injury to any person including the owner of the goods or his authorised representative carried in a vehicle and an employee who is carried in the said vehicle. It is apt to state here that the proviso commences in a different way. A policy is not required to cover the liability of the employee except an employee covered under the 1923 Act and that too in respect of an employee carried in a vehicle. To put it differently, it does not cover all kinds of employees. Thus, on a contextual reading of the provision, schematic analysis of

the Act and 1923 Act, it is quite limpid that the statutory policy only covers the employees of the insured, either employed or engaged by him in a goods carriage. It does not cover any other kind of employee and therefore, someone who travels not being an authorised agent in place of the owner of goods, and claims to be an employee of the owner of goods, cannot be covered by the statutory policy and to hold otherwise would tantamount to causing violence to the language employed in the Statute. Therefore, we conclude that the insurer would not be liable to indemnify the insured."

In **National Insurance Company Ltd. Versus Rattani and others, AIR 2009 SC 1499**, it has been held as under:

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

In **National Insurance Company Ltd. Versus Kaushalaya Devi and others, 2008(8) SCC 246**, it has been held as under:

"13. The deceased was not the owner of any goods which were being carried in the truck. Admitted position is that he had been travelling in the truck for the purpose of collecting the empty boxes. He was a vegetable dealer. He was not travelling in the truck as owner of the goods viz. the vegetables. He was travelling in the truck for a purpose other than the one for which he was entitled to travel in a public carriage goods vehicle.

This aspect of the matter is squarely covered by the decision of this Court in Brij Mohan (supra) wherein the Bench cited with approval the decision in **New India Assurance Co. Ltd. Vs. Asha Rani and others, 2003(1)**

RCR (Civil) 671: (2003) 2 SCC 223 wherein it was stated:

"26. In view of the changes in the relevant provision 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."

In **Manuara Khatun and others Versus Rajesh Kr. Singh and others, 2017(4) SCC 796**, it has been held as under:

"14. The only question, which arises for consideration in these appeals, is whether the appellants are entitled for an order against the Insurer of the Offending vehicle, i.e., (respondent No.3) to pay the awarded sum to the appellants and then to recover the said amount from the insured (owner of the offending vehicle-Tata Sumo)-respondent No.1 in the same proceedings."

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"22. In view of the foregoing discussion, we are of the view that the direction to United India Insurance Company (respondent No.3)-they being the insurer of the offending vehicle which was found involved in causing accident due to negligence of its driver needs to be issued directing them (United India Insurance Company-respondent No.3) to first pay the awarded sum to the appellants (claimants) and then to recover the paid awarded sum from the owner of the offending vehicle (Tata Sumo)-respondent No.1 in execution proceedings arising in this very case as per the law laid down in Para

26 of Saju P. Paul's case quoted supra."

As per the above decisions, the Insurance Company will not be liable to pay the compensation in case of a gratuitous passenger travelling in a goods vehicle. It has further been held that the Insurance Company will pay the compensation to the claimant and thereafter would have a recovery right against the owner.

In the present case Anil Kumar was gratuitous passenger in Tata 407-HR-13-2715 the offending vehicle. He lost his life in a motor vehicular accident which occurred on 28.1.1993.

There is no dispute raised by the parties on the facts of the case with regard to involvement of the offending vehicle. This is also no dispute of rash and negligent driving of the offending vehicle. Further there is no challenge to the quantum of compensation awarded.

Learned counsel for the Insurance Company states that they have already paid the compensation amount to the claimants and it is only that they are asking for a recovery right from the owner of the vehicle. He argued that it has been proved on record and not disputed by the owner that the deceased was a gratuitous passenger in the goods vehicle.

Learned counsel for the claimants states that they have received the compensation amount.

Learned counsel for the owner though tried to defend the award but could not raise any serious dispute with regard to the legal position and to the fact that the deceased was a gratuitous passenger in the goods vehicle. He only argued that the driver had not permitted him yet he was travelling in the vehicle.

Keeping in view the settled proposition of law, the appeal

deserves acceptance and the Insurance Company would have a right to recover the amount of compensation paid to the claimants from the owner of the offending vehicle.

The appeal is allowed in the above terms.

17.11.2017
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(AVNEESH JHINGAN)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable:

Yes/No