

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO No. 333 of 2017 (O&M)
Date of Decision: May 28, 2019

New India Assurance Co. Ltd.

.....Appellant

versus

Seema Devi and others

.....
Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present: Mr. R.C. Gupta, Advocate,
for the appellant.

Mr. Ashwani Arora, Advocate,
for respondents no. 1 to 4.

AMOL RATTAN SINGH, J.

This is an appeal filed by the insurance company as has been held liable to pay compensation to respondents no. 1 to 4 herein by the learned Motor Accidents Claims Tribunal, Chandigarh, vide its Award dated 18.10.2016, such compensation being of an amount of Rs. 18,89,640/- + interest @ 6% per annum on the aforesaid amount, running from the date of the filing of the claim petition, till the realization of the amount.

Such interest was however ordered to be increased to 12% per annum, starting from the date of the filing of the claim petition till realization, if the amount was not paid within two months of the date of the Award.

Other than that, costs of Rs. 2,000/- have also been awarded to the said respondents, who were the claimants before the Tribunal.

The claimants had sought compensation on account of the

unfortunate death of Pawan Kumar, husband of the first respondent, father of respondents no. 2 and 3 and son of respondent no. 4.

2. The facts giving rise to the institution of the claim petition under Section 166 of the Motor Vehicles Act, 1988, are that (as per the respondent-claimants), Pawan Kumar was going from Mullanpur Garibdass to village Nada, seated pillion on a motor-cycle bearing registration no. PB-65-L-2335, owned and driven by respondent no. 5 herein, i.e. Jarnail Singh, who is contended to have been driving the motor-cycle in a rash and negligent manner.

As per the claimants, when the motor-cycle reached near the Gurdwara Sahib in the area of village Shingariwala, an unknown car came at a fast speed from village Jayanti Majra from the opposite side, and struck against the motor-cycle, which, as already said, was alleged to have been driven in a rash and negligent manner.

Due to the accident, Pawan Kumar received serious injuries and upon being taken to the hospital, was declared to have been brought dead.

Thus, as per the respondents-claimants, the accident took place due to the negligence of both, respondent no. 5, as also the driver of the unknown car.

3. It was further contended that Pawan Kumar was 37 years old, a labourer earning about Rs. 12,000/- per month and that the claimants therefore, being completely dependent upon him for their livelihood, Rs. 75,00,000/- was payable as compensation by the respondents.

4. The registration number and identity of the car and its driver not having been known, it was only respondent no. 5 herein, i.e. Jarnail Singh, rider (driver) of the motor-cycle, who was impleaded as a respondent in the

claim petition, along with the insurance company that had insured the motor-cycle, the said company being the appellant in this appeal, i.e. the New India Assurance Company Ltd.

5. Upon notice having been issued by the learned Tribunal, respondent no. 5 herein filed a written statement admitting therein that the accident in question took place, however denying that it was due to any negligence on his part, further stating that the amount of compensation sought was highly exaggerated.

He also stated that the accident had actually taken place due to the negligence of the driver of the car that had come from the opposite direction and had hit the motor-cycle, with the car having been then driven away from the spot.

Yet further, it was contended by respondent no. 5 that he had a valid and effective driving licence and with the motor-cycle being duly insured, it was the liability of the insurance company to pay any compensation, if it was found payable by the Tribunal.

6. The present appellant, i.e. the aforesaid insurance company, filed a separate written statement taking preliminary objections on lack of cause of action against it, there being collusion between the claimants and the rider/driver of the motor-cycle, and that the 'driver' (respondent no. 5 herein) was not holding a valid and effective driving licence and therefore there was a violation of the terms of the insurance policy.

It was further contended by the present appellant in its written statement, that the insured had failed to exercise reasonable care in fulfilling the conditions of the policy and that the policy was a "liability only policy", the limits of such liability being to the extent of Rs. 1,00,000/- in respect of a

'3rd party property', for damage, with a pillion rider not covered by the policy.

7. It was next stated that the deceased was a gratuitous passenger and consequently, in terms of the judgment of the Supreme Court in United India Insurance Company vs. Tilak Singh and others 2006 (3) RCR (Civil) 168, the claimants are not entitled to any compensation from the insurer.

Still further, it was contended that an FIR having been registered against the driver of an unknown vehicle, it was a hit and run case, with the motor-cycle owned by respondent no. 5 herein having been wholly falsely involved in the accident, just to ensure that compensation was received from the insurance company.

8. Other pleas with regard to information not having been given on the accident having taken place, the petition being bad for non-joinder of necessary parties etc., were also taken by the present appellant in its written statement before the Tribunal.

9. On the basis of the aforesaid pleadings, the following issues were framed by the learned Tribunal:-

“1. Whether deceased Pawan Kumar died as a result of injuries suffered in a motor vehicle accident which was caused due to rash and negligent driving of motor-cycle no. PB-65-L-2335 which was being driven by respondent no. 1? OPP

2. Whether claimants are entitled to compensation on account of death of deceased Pawan Kumar in a motor vehicle accident, if so to what extent and from whom? OPP

3. Whether respondent no. 1 was not having a valid driving licence at the time of accident? OPR

4. Relief.”

10. To support their claim, the respondent-claimants examined one Mohinder Singh, an eye witness of the accident, with respondent no. 1 herein having testified as PW-2, documentary evidence also having been tendered by them, including a copy of an FIR registered in respect of the accident (Ex.P-9).

The 5th respondent herein, i.e. the owner and driver of the motor-cycle, tendered in evidence his driving licence as Ex. R-1, a copy of the insurance policy as Ex. R-2 and a copy of the registration certificate in respect of the motor-cycle, as Ex. R-3.

He also tendered, as Ex. R-4, a copy of the memo proving seizure of his driving licence and registration certificate by the police.

11. The present appellant, i.e. respondent no. 2 before the Tribunal, also tendered a copy of the insurance policy as Ex. R-5, with no oral testimony led by either of the two respondents, before that forum.

12. Upon consideration of the evidence, the learned Tribunal found that PW-1 had testified that an unknown car had come at a fast speed from the side of Jayanti Majra from the opposite direction and while coming on the road, it had struck against the motor-cycle driven by respondent no. 5 herein, with the motor-cycle also being driven at a fast speed in a rash and negligent manner.

The said witness also testified that the accident therefore took place due to the composite negligence of the drivers of both the vehicles, with the Tribunal recording that even in lengthy cross-examination, the testimony could not be said to be that of a “false witness”.

Hence, recording a finding that simply because the witness belonged to the village of the claimants, his testimony could not be discarded, especially with no evidence led to the contrary by the respondents, the first

issue was decided in favour of the respondents claimants, holding that the accident due to which Pawan Kumar died, took place due to the negligence of both, respondent no. 5 as also the driver of the “unknown car”.

13. On the question of compensation, the contention that the deceased was earning Rs. 12,000/- per month as a skilled labourer was discarded, even though an identity card showing that he was working with Keshav Security Services was produced as Ex. P-7; but with no salary certificate actually produced in evidence, the deceased was held to be an unskilled labourer earning Rs. 8,220/- per month, as per the minimum wages prevailing on the date of the accident, with the claimants all held to be dependent upon him.

14. There being four claimants, a 1/4th deduction from that income was made towards the personal expenses of the deceased and with his age accepted to be 37 years, as per his postmortem examination report and his Aadhar card, a multiplier of 15 was applied to the loss of income suffered by the claimants.

The total loss of income to the claimants was calculated to be Rs. 16,64,640/-, by also adding 50% of the assessed income towards loss of future prospects of an increased income.

For the loss of love and affection of the deceased, Rs. 1,00,000/- was awarded and another Rs. 1,00,000/- was awarded towards loss of consortium to respondent no. 1, i.e. the widow of the deceased.

Funeral expenses to the tune of Rs. 25,000/- were also awarded, thereby bringing the total compensation payable to be Rs. 18,89,640/-, upon which, as already noticed, 6% interest per annum was also awarded, running from the date of the filing of the claim petition, till the realization of the amount if it was paid within two months of the pronouncement of the Award,

failing which interest was to be calculated @ 12% per annum for the entire period.

15. Thus, aggrieved of the aforesaid findings, this appeal has been filed by the insurance company that had insured the motor-cycle belonging to respondent no. 5, and though in the grounds of the appeal the Award has been challenged on all aspects, including the finding on negligence at the time of arguments, learned counsel for the appellant could not refute the fact that no evidence whatsoever was led to refute the testimony of the eye witness, i.e. PW-1 Mohinder Singh, and therefore that finding of the Tribunal would be difficult to dislodge, holding that despite extensive cross-examination, such testimony could not be 'dented'.

16. Mr. Gupta, learned counsel for the appellant, however did submit that there was collusion between the claimants and respondent no. 5, for which even an application under Section 170 of the Motor Vehicles Act, 1988, had been filed before the Tribunal by the present appellant. However, other than that 'bare argument', he could not show that the testimony of PW-1 was a tutored testimony in any manner.

Consequently, on issue no.1 framed, I would find no ground to dislodge the finding of the Tribunal, that there was composite negligence of both, the driver of the 'unknown car' as also of respondent no. 5 herein, that led to the accident which unfortunately resulted in the death of Pawan Kumar.

17. As regards the compensation payable, Mr. Gupta could not refute the assessment of the income of the deceased or the fact that a multiplier of 15 was applicable as has been applied by the Tribunal, in consonance with what has been held in Smt. Sarla Verma and others vs. Delhi Transport Corporation and another, (2009) 6 SCC 121.

However, he submitted that in terms of the judgment of the five Judges Bench in **National Insurance Company Ltd. vs. Pranay Sethi** (2017) 16 SCC 680, instead of 50% of the income of the deceased, 40% thereof should have been added on account of loss of future prospects of an increased income, and further, the maximum amount payable towards loss of consortium, loss of estate and on account of last rites, would be Rs. 70,000/- and not Rs. 2,25,000/- as has been awarded by the Tribunal.

18. Other than that, the main ground of challenge by the insurance company, to the impugned Award, is that the deceased being a gratuitous passenger riding pillion on the motor-cycle owned and driven by respondent no. 5, the insurance company is not liable to pay any compensation at all, because the policy (Ex. R-5) did not cover any liability for such a passenger. On that argument he drew attention to the clause contained in the policy on limitations as to the use of the vehicle insured, which reads as follows:-

“The policy covers use for any purpose other than: a) Hire or reward b) Organized racing, OR c) Speed testing.”

He further drew attention to the fact that the total premium paid was Rs. 464/-, covering “Own Damage”, with the liability restricted to “Basic T.P. Cover.”

He submitted that “T.P.” being an abbreviation referring to a “third party”, such third party cannot include any injury to, or any liability in respect of, a gratuitous passenger.

In that context, he referred to a judgment of the Supreme Court in **United India Insurance Co. Ltd. Shimla vs. Tilak Singh and others** 2006 (3) RCR (Civil) 168, wherein after referring to an earlier judgment in **New**

India Assurance Co. vs. **Asha Rani and others** 2003 (1) RCR (Civil) 671, it was held that even where a gratuitous passenger is traveling in a vehicle other than a goods vehicle, an insurance company cannot be held liable to indemnify the owner of the vehicle that it has insured.

Learned counsel for the appellant insurance company submitted that therefore, in the face of the ratio of that judgment, that a policy issued does not cover a gratuitous passenger, there can be no liability in the present case on the insurance company, to pay the compensation and consequently the finding of the Tribunal that all respondents in the claim petition were jointly and severally liable to pay it, is an unsustainable finding.

19. It is to be noticed here that even before this appeal was filed, respondents no. 1 to 4, i.e. the claimants before the Tribunal, were already on caveat to any such appeal being filed, with notice of motion having therefore been issued to respondent no. 5 on 01.02.2017 and operation of the impugned Award having been stayed by this Court at that time itself.

Thereafter, despite service upon him, respondent no. 5 chose not to appear and defend the appeal, as has been duly recorded in the order dated 02.11.2017.

Hence, with him having not appeared till date thereafter, he is to be treated as having been proceeded against *ex parte*.

20. As regards respondents no. 1 to 4, Mr. Ashwani Arora, learned counsel appearing for them, relied upon various judgments of this Court, as also on one of a Division Bench of the Himachal Pradesh High Court, to counter the argument of Mr. Gupta on non-liability of the appellant-insurance company, as are enumerated hereinbelow:-

(i) **United India Insurance Company** vs. **Prem Singh and others**

2000 (1) SimLJ 527; (DB-HP High Court);

- (ii) **Oriental Insurance Co. Ltd.** vs. **Daniel** 2000 ACJ 1391 (DB-Kerala High Court);
- (iii) **National Insurance Co. Ltd.** vs. **Smt. Surjit Kaur and others** 2017 (1) RCR (Civil) 640 (SB-Punjab and Haryana High Court).
- (iv) **Shiv Lochan Singh alias Bhola** vs. **National Insurance Co. Ltd. and others** (in FAO No. 4287 of 2005), decided on 27.11.2017 (SB-Punjab and Haryana High Court).

21. Learned counsel specifically pointed to the last judgment cited hereinabove, passed by a co-ordinate Bench of this Court, wherein after discussing the differences between an “Act only Policy” as also a comprehensive and a package policy, it was held that the insurance company as had insured the vehicle involved in the accident in that case, was not entitled to recover compensation paid by it to the claimants.

Mr. Arora specifically pointed to the fact that the said judgment duly notices the judgment passed by the Supreme Court in **Tilak Singhs'** and **Asha Ranis'** cases (both *supra*), to eventually come to a conclusion that as there can be no separate “Act only policy” in terms of the Motor Vehicles Act, 1988, even compensation payable in respect of gratuitous passengers would be the liability of the insurer of the vehicle involved in the accident.

Hence, learned counsel for the respondents-claimants submitted that the learned Judge having gone into every single aspect of the liability of an insurer, in terms of the Motor Vehicles Act, as also having considered circulars issued by the Insurance Regulatory and Development Authority (IRDA) and the India Motor Tariff (IMT) Advisory Committee, and having eventually concluded that liability to pay compensation in respect of gratuitous passengers is also that of the insurance company, the appellant herein cannot escape such liability.

22. As regards however, the amount of compensation payable, learned counsel naturally could not refute that such compensation has to be in terms of the ratio of the judgment in Pranay Sethis' case (supra).

23. Having considered the arguments of both learned counsel, as also the impugned Award, also having gone through the contents of the policy, first of all, as regards the issue on negligence in causing the accident, as already observed earlier in this judgment, I see no reason to disagree with what has been held by the Tribunal, in view of the fact that even before this Court, it could not be shown from the evidence led before the Tribunal, that PW-1 was a planted witness, he having duly testified to the effect that the accident took place before his eyes, with the drivers of both the vehicles equally responsible in causing it.

Hence, with no evidence to refute the aforesaid eye witness account having been produced by the respondents, I do not find any reason to disagree with that finding of the Tribunal, even though it may otherwise be possible that respondent no. 5 did not step into the witness box to testify, on the presumption that it would not be him but the insurance company with which his vehicle was insured, that would eventually be liable to pay any compensation awarded by the Tribunal.

Yet, that also only being a presumption not successfully proved at any stage, the finding of the Tribunal that the accident was caused due to the composite negligence of respondent no. 5 herein and the driver of the untraceable car as had collided with the motor-cycle driven by respondent no. 5, is upheld.

24. As regards the compensation payable to the respondent-claimants, I agree with learned counsel for the appellant, that in terms of the ratio of the

judgment in **Pranay Sethis'** case (supra), the deceased being a self employed person aged 37 years, it is 40% of the income assessed (of the deceased), that is to be added by way of loss of future prospects of an increased income, and not 50% thereof as has been done by the Tribunal.

25. As regards the minimum wage of Rs. 8,220/- per month assessed to be the wages of the deceased, learned counsel for the appellant insurance company has not proved or shown any notification of the Government to refute that income assessed by the Tribunal.

Hence, accepting that to be the correct minimum wage notified by the Chandigarh Administration as regards an unskilled labourer in the month of November 2015, 40% thereof (Rs. 3,288/-) is to be added to the said amount, thereby bringing the monthly income of the deceased (including loss of future prospects thereof) to be Rs. 11,508/-, from which a 1/4th deduction is to be made towards his personal expenses, with the loss of monthly income to the respondents-claimants coming to be Rs. 8,631/-, or Rs. 1,03,572/- annually.

Applying a multiplier of 15 to the said sum, the deceased being 37 years of age, the total loss of income to the respondents-claimants works out to be Rs. 15,53,580/-.

As regards compensation payable under the 'conventional heads', Rs. 40,000/- is to be paid towards loss of consortium (including filial consortium as defined by the Supreme Court in **M/s Magma General Insurance Co. Ltd. v. Nanu Ram @ Chuhru Ram and others** Civil Appeal no.9581 of 2018, decided on 18.10.2018), Rs. 15,000/- is to be paid towards loss of estate and Rs. 15,000/- towards funeral expenses and last rites.

Hence, adding the said amounts to the loss of income, the total

compensation payable to respondents no. 1 to 4 herein is Rs. 16,23,580/- and not Rs. 18,89,640/- as awarded by the Tribunal.

The said compensation now assessed would carry an interest of 6% per annum, running from the date of the filing of the claim petition till the date of realization thereof, with the penal clause of 12% interest imposed by the Tribunal in case of default of payment within three months, set aside.

26. Coming then to the crucial question of as to on whom the liability of payment eventually falls, i.e. whether it would be the appellant insurance company which would be bound to pay the compensation, or it would be only respondent no. 5 and the driver of the unknown vehicle (if traced out by the company or respondent no. 5), who would be jointly and severally liable to do so.

Undoubtedly, in Tilak Singhs' case (supra) the Supreme Court after considering the judgment in Asha Ranis' case (supra), held as follows:-

“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.”

The main issue involved in Tilak Singhs' case (supra), as described by their Lordships in paragraph 1 of the said judgment, was:-

“Whether a statutory insurance policy under the Motor Vehicles Act, 1988, intended to cover the risk of

life or damage to properties of third parties, would cover the risk of death or injury to gratuitous passenger carried in a private vehicle.”

In that case, the owner of the scooter had insured it with the United India Insurance Company but had not paid the premium covering liability to a pillion passenger, in terms of the “endorsement of IMT 70”.

It was held by the Supreme Court, after discussing various previous judgments of that Court (including those pertaining to a period covered under the Motor Vehicles Act, 1939), that sub-clause (i) of clause (b) of sub-section (1) of Section 147 of the Act of 1988, speaks of a liability that may be incurred by the owner of a vehicle against the death of, or bodily injury to, any passenger of a public service vehicle and therefore there was a distinction between the 1939 Act and the 1988 Act.

Quoting from Asha Ranis' case (supra), it was held by their Lordships that Satpal Singhs' case [New India Assurance Co. vs. Satpal Singh and others 2000 (1) RCR (Civil) 274], was incorrectly decided and that whereas the 1939 Act did not differentiate between a 3rd party and a gratuitous passenger, the language of the new Act suggested a specific differentiation between the two.

As already noticed, it was further held by their Lordships in Tilak Singhs' case, that even though what was held in Asha Rani was in the context of a public service vehicle/goods vehicle, it would be equally applicable in the case of other vehicles also.

27. However, this Court (co-ordinate Bench) in Shiv Lochan Singhs' case (supra), has held that what is applicable in respect of a goods vehicle cannot be held to be applicable in the case of a private vehicle, and therefore a

pillion rider on a two wheeled vehicle insured with an insurance company, would be covered within the term “third party”, because Section 147(1)(b)(i) of the Act of 1988 simply refers to the death of or bodily injury to any person, which distinction (between the case of a goods vehicle and any other vehicle), was not clearly brought out before the Supreme Court in **Tilak Singhs'** case (supra).

28. Upon reproducing Section 147 of the Motor Vehicles Act, 1988, as also Section 149 thereof, it was held by this court that the term “third party” has not been defined in exact terms in the said Act, which was the same as was the case under the Act of 1939. Thereafter, it has been held as follows:-

“The Act has used the '*inclusive*' definition qua the term *third party* by prescribing that it includes the '*government*'. So to decipher the meaning of third party one has to fall back to the basics. The Act makes the Insurance compulsory. The Insurance is, essentially, a contract between two parties to cover the risk of the insured by the insurer by charging the premium as the consideration. Hence, in the contract of Insurance, the promiser and the promisee are the two parties, namely the Insured and the Insurer. With reference to the Contract of Insurance, the person or entity against the risk of whose possible claim; the Insurer insures the Insured is the '*third party*'. Seen in terms of the provisions of the New Motor Vehicle Act it is clear that whosoever is entitled to raise a claim against the owner/Insured or the insurer is the third party. Further, in a more practical terms, a combined reading of Sections 146, 147, 149, 150 to 155, 163-A and particularly Section 166 clearly spell out that the *Third Party*; for contract of Insurance; under the Motor Vehicle Act is:-

- (a) Any person or entity whose property is damaged in the accident.
- (b) Any person who gets injuries in an accident or his authorised agent

(c) Legal representatives of the deceased person who died in the accident or the authorised agent of such legal representatives.

There can not be any limitation or dilution of the definition of the term 'Third Party' as used in the Act, since such limitation or dilution shall run counter to the provisions of the Act itself.”

(Emphasis applied is as applied in that judgment)

29. For the purpose of reference to the said provisions, the relevant part of Section 147 of the Act of 1988, is reproduced as follows:-

“Section 147: Requirements of policies and limits of liability

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

(a) is issued by a person who is an authorised insurer; and

(b) insures the person or classes of persons specified in the policy to the extent specified in sub-section(2)-

(i) against any liability which may be incurred by him in respect of the death of or bodily 1 [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;

(ii) 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:”

XXXXXX

XXXXXX

XXXXXX

(Emphasis applied in this judgment only)

Thus, what has been interpreted by this court from the aforesaid provision [S.147(i)(b)(i)] is that the insurance policy must cover any liability incurred by the insured in respect of the death of or bodily injury to any person, and therefore exclusion of a gratuitous passenger does not flow from the language of the provision.

30. Thereafter, discussing other judgments of the Supreme Court, the judgment in *Asha Ranis'* case (supra) has also been referred to, to hold that “since a goods carriage vehicle is not permitted to carry any passengers under the New Act”, therefore any person being carried contrary to that provision is one of the defences available to the insurer under Section 145 of the Act of 1988 and consequently such a person is not to be covered in the policy as is compulsorily required to be subscribed to by a vehicle owner and compulsorily to be issued by an insurer.

Having noticed the above from the judgment in *Asha Rani*, it was held by this court (co-ordinate Bench) in *Shiv Lochan Singh*, that the said judgment of the Supreme Court is actually restricted to the question of passengers travelling in goods vehicles being covered by an insurance policy or not (and therefore any such gratuitous passenger travelling on in any other vehicle would not come within the ambit of the ratio laid down in that case).

31. The judgment in *Tilak Singhs'* case has also been referred to, wherein their Lordships had held that what is applicable to a gratuitous passenger in a goods vehicle is also applicable to such a passenger in other vehicles.

Yet, having noticed the above, it was further held in *Shiv Lochan Singh*, that the definitions of “motor car”, “motorcycle” and “goods carriage” were obviously not brought to the notice of the Supreme Court, specifically the fact that in the new Act (of 1988), where the definition of goods carriage has been changed from that given in the old act; and therefore a goods carriage vehicle is not authorised to carry any passengers, either gratuitous or paying passengers.

Hence, it has been held that what is applicable to a goods carriage,

cannot be held applicable to a motor car or a motorcycle.

32. The judgment of this court thereafter goes on to discuss the concept of 'gratuitous passengers', with the circulars issued by the Insurance Regulatory and Development Authority (IRDA) and the Advisory Committee, Institute of Management Technology (IMT) also discussed, to hold that the said circulars nowhere prescribe that there can be a separate "Act policy", or that under the new Act, passengers in private vehicles, or pillion riders, would not be covered by the policy.

Thus (though the judgment is a very elaborate one containing extensive discussion on various aspects of the relevant provisions of the Act of 1988 as also the aforesaid circulars), the essence thereof is that in view of the fact that a passenger travelling in a goods vehicle is to be treated on completely different parameters to a passenger or a pillion rider on motor vehicle or a motorcycle.

Hence, the appeal of the owner and driver of the vehicle in that case, against recovery rights awarded to the insurance company as had insured his vehicle, was allowed.

33. Having thus considered the entire matter in the present *lis*, including the judgment of the Supreme Court in *Tilak Singhs'* case and of this court in *Shiv Lochan Singhs'* case, of course the first issue that I would face would be that with the judgment of the Supreme Court specifically holding that what has been held in *Asha Ranis'* case as regards a gratuitous passenger travelling in a goods vehicle, would be equally applicable to such a passenger in any other vehicle, would it be appropriate for this Bench to yet follow the ratio of what has been held by a co-ordinate Bench (learned Single Judge) of this court, even if I subscribe to that reasoning.

Very obviously, a judgment of the Supreme Court would be binding on this court, wherein it is laying down a principle.

However, what I cannot ignore, is the fact that very detailed reasoning differentiating between a goods vehicles and other vehicles has been given by this court in *Shiv Lochan Singhs'* case, after specific reference to Section 147 of the Act of 1988, which would be very difficult to ignore. In *Tilak Singhs'* case, though their Lordships have referred to various judgments pronounced in relation to the 1939 Act, as also in relation to the 1988 Act, and have specifically quoted from *Asha Ranis'* case (supra), yet, the difference in the rationale pertaining to passengers (gratuitous or otherwise) travelling in goods vehicles, as opposed to those travelling in other vehicles, was not brought to their Lordships' specific notice, which also cannot be ignored by this court, especially as the effect of it being ignored would result in the claimants, i.e. respondents no.1 to 4 herein, not receiving compensation for a very long time, if they have to seek it from the owner of the vehicle instead of from the appellant insurance company.

More importantly, it needs specific notice here that the judgment of this court in *Shiv Lochan Singhs'* case having been appealed against before the Supreme Court, the following order has been passed by their Lordships in Special Leave to Appeal (C) No.9593-9594/2018, on 19.04.2018:-

“Leave granted to consider the question of law VI proposed in the petition.

No stay.”

(Emphasis as regards the Supreme Court order, applied in this judgment only).

Thus, very obviously, despite the fact that the judgment of this court holds something contrary to what has been held in *Tilak Singhs'* case by

the Supreme Court, their Lordships still did not grant any interim relief to the insurance company as had appealed against this courts' judgment, with the question of law involved still to be considered by the Apex court.

34. Hence, the operation of the judgment of this court in *Shiv Lochan Singhs'* case not having been stayed by the Supreme Court, I would eventually find no hesitation in dismissing this appeal qua the prayer of the appellant insurance company seeking to be absolved of any liability to pay compensation to the respondent claimants; but in view of what has been held in paragraphs 24 and 25 hereinabove, the compensation amount of Rs.18,89,640/- awarded by the Tribunal to the respondent claimants, is reduced to Rs.16,23,580/-, with the clause on penal interest of 12% also set aside as already said, the amount awarded by this court to therefore carry interest upon it @ 6% per annum, running from the date of the filing of the claim petition till the date of realization thereof.

The appeal is allowed to the aforesaid extent only, with the parties however left to bear their own costs as regards the appeal.

May 28, 2019
nitin/dinesh

(AMOL RATTAN SINGH)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No.