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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 27.04.2021

PRONOUNCED ON : 11.06.2021

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THE HON'BLE MR.JUSTICE C.SARAVANAN

C.M.A.NO.2613 OF 2019

AND

C.M.P.NO.12651 OF 2019

(Through Video Conferencing)

M/s.Bajaj Allianz General Insurance Compay Limited,
Having Branch Office at,
No.68, SLS Towers, First Floor,
Cherry Road, Hasthampatti,
Salem 636 007.

...Appellant/2nd Respondent

vs.

1.Thangaponnu

2.Thangam

3.C.Selvam

...Respondents/Petitioners
and 1st Respondent

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and decree passed by the Motor Accidents Claims Tribunal, (2nd Additional District Court) Salem, in M.C.O.P.No.1706 of 2016 dated 26.10.2018.

For Appellant : Mr.M.B.Raghavan for
M/s.M.B.Gopalan Associates

For Respondents : No Appearance

J U D G M E N T

The Insurance Company is the appeallant in this appeal. It is aggrieved by the impugned Judgment and Decree dated 26.10.2018 passed by the Motor Accidents Claims Tribunal, Special District Court, II Additional District Court, Salem in M.C.O.P.No.1706 of 2016.

2. By the impugned Judgment and Decree, the Tribunal has awarded a sum of Rs.14,90,800/- as compensation payable to the respondent Nos.1-2 who are parents of the deceased Sathish @ Sathishkumar whose life was tragically snatched at very a tender very age of 22 years leaving these respondents with tragedy and



untold sadness.

3. Since successful claimants remain absent despite their name being printed in the cause and service of notice and despite repeated adjournments, a need for passing a detailed order arises.

4. There are least four recent decisions of the Supreme Court have answered the issue in favour of respondent claimants one of which was cited and distinguished by a Division bench of this High Court in Bharati AXA General Insurance Co. Ltd., Vs Aandi and others, (2018) SCC Online Mad 13295. I shall deal with all the case laws.

5. The point that arises for consideration in this appeal is whether the Tribunal was justified in ordering pay and recovery of the compensation in the impugned judgment. The case of the appellant insurance company in the case of a death of a gratuitous passenger who died in an accident while travelling on a goods carriage vehicle, there cannot be an order for pay and recovery.

6. Based on the submission of the learned counsel it was felt that the appeal deserves to be allowed and no contra decisions can be arrived in the light of the decisions of the Hon'ble Supreme Court and that of this Court cited by the learned counsel for the appellant which are detailed later in this Order in the course of discussion.

7. Incidentally, I have also authored two judgements on the very same issue and answered the issue in favour of the appellant in two cases.

8. It was felt that it would be prudent to revisit the case laws and provisions of the Motor Vehicles Act, 1988 and to put at rest the issue once for all, as repeatedly similar cases come up for consideration before this Court where successful claimants avoid appearing either in person or through their counsel, perhaps being aware of adverse caselaws.

9. For the purpose of the record, bare facts are narrated. The deceased was stated to be a B.Pharm student and was also doing said to be doing a part time job in a medical shop.

10. Admittedly, the deceased travelled in the insured "goods carriage" belonging to the third respondent insured with the appellant- Insurance Company.

11. The learned counsel for the appellant Insurance Company submitted that the insured vehicle was a bolero pickup truck/van (Registration No. TN-30-BZ-2592). He submits that it was licensed



12. He submits that about 10 persons travelled in the said vehicle without authorisation. It is submitted that the Tribunal erred in ordering pay and recovery inasmuch as no liability was contracted by the appellant for covering the risk of death of a gratuitous passenger.

14. The Hon'ble Supreme Court in National Insurance Co. Ltd., Vs Baljit Kaur and others, (2004) 2 SCC 1 referred to another decision rendered by it in United India Insurance Co. Ltd., Vs Suresh.K.K and another, (2008) 2 TNMAC 231 (SC) while giving its views.

16. The learned counsel also submitted that earlier a Full Bench of this Court in Branch Manager, United India Insurance Co. Ltd., Dharmapuri Town Vs. Nagammal and two others, 2009 (1) CTC1 had also categorically brought out the difference between Sections 147 & 149 of the Motor Vehicles Act, 1988 and held as under:-

(ii) Section 149 envisages the defences which are open to the Insurance Company. Where the Insurance Company is not successful in its defence, obviously it is required to satisfy the decree and the award. Where it is successful in its defence, it may yet be



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required to pay the amount to the claimant and thereafter recover the same from the owner under such circumstance envisaged and enumerated in Section 149(4) and Section 149(5).

(iii) Under Section 147 the Insurance Company is not statutorily required to cover the liability in respect of a passenger in a goods vehicle unless such passenger is the owner or agent of the owner of the goods accompanying such goods in the concerned goods vehicle.

(iv) Since there is no statutory requirement to cover the liability in respect of a passenger in a goods vehicle, the principle of "pay and recover", as statutorily recognised in Section 149(4) and Section 149(5), is not applicable ipso facto to such cases and, therefore, ordinarily the Court is not expected to issue such a direction to the Insurance Company to pay to the claimant and thereafter recover from the owner.

(v) Where, by relying upon the decision of the Supreme Court in Satpal Singh's case, either expressly or even by implication, there has been a direction by the Trial Court to the Insurance Company to pay, the appellate court is obviously required to consider as to whether such direction should be set aside in its entirety and the liability should be fastened only on the driver and the owner or whether the Insurance Company should be directed to comply with the direction regarding payment to the claimant and recover thereafter from the owner.

(vi) No such direction can be issued by any trial court to the Insurance Company to pay and recover relating to liability in respect of a passenger travelling in a goods vehicle after the decision in Baljit Kaur's case merely because the date of accident was before such decision. The date of the accident is immaterial. Since the law has been specifically clarified, no trial court is expected to decide contrary to such decision.

(vii) Where, however, the matter has already been decided by the trial court before the decision in Baljit Kaur's case, it would be in the discretion of the appellate court, depending upon the facts and circumstances of the case, whether the doctrine of "pay and



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recover" should be applied or as to whether the claimant would be left to recover the amount from the person liable i.e., the driver or the owner, as the case may be.

32. With the above clarifications, the reference is answered. The learned single Judge has already categorically held that the claimant was a passenger in a goods vehicle and the contention that he was the owner of the goods travelling in the goods vehicle has not been accepted."

17. The learned counsel for the appellant Insurance Company therefore submitted that this appeal deserves to be allowed.

18. I have heard the learned counsel for the appellant. I have also perused the impugned Judgment and Decree passed by the Tribunal and the Judgments/decisions cited by the learned counsel for the appellant.

19. The earliest decision of the Hon'ble Supreme Court after the Motor Vehicles Act, 1988 was enacted was in the case of New India Insurance Co. Ltd., vs Satpal Singh and Another, (2000) 1 SCC 237.

20. It dealt with the case of an accident of the year 1990 where the victim, again a minor travelled as a passenger on a truck. The Court dealt with a case of an accident before 1994 amendment to Section 147 of the Motor Vehicles Act, 1988.

21. The Hon'ble Supreme Court in its judgement held that "The proviso to Section 147 (1) of the new Act shows that it is a recast provision by placing the erstwhile clause (iii) as the present Clause (ii). In other words, clause (ii) of the proviso Section 95 (1) of the old Act is totally non-existent in the proviso to Section 147 (1) of the new Act".

22. Ultimately, in paragraph 11, the Hon'ble Supreme Court held that under the new Act, an insurance policy covering thirty party risk is not required to exclude "gratuitous passenger" in a vehicle, no matter that the vehicle is of any type or class. Hence, the decision rendered under the old Act vis-a-vis "gratuitous passenger" was held 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.

23. The Full Bench of the Hon'ble Supreme Court in New India Assurance Co. Ltd., Vs Asha Rani and others, (2003) 2 SCC 223 doubted reasoning of the Division Bench of the Hon'ble Supreme Court in New India Insurance Co. Ltd., vs Satpal Singh and



Another, (2000) 1 SCC 237 and in Paragraph Nos. 27 to 29 held as under:-

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

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 Co. V. Satpal Singh 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 case."

24. Though the expression "gratuitous passenger" has not been defined in Motor Vehicles Act, 1988, yet the Hon'ble Supreme Court used the said expression.

25. To me it appears the expression "gratuitous passenger" signifies a passenger who travels free of cost without payment of any hire charges to the owner or the driver of the vehicle or who travels without reward in a commercial vehicle. This expression has been used synonymously with an "unauthorized



passengers".

26. The stark reality is that despite modernization and improvement in public passenger transport system, in the unorganized sector "goods carriage" often carry work force and labour.

27. Quite often, people travel on "goods carriage" for consideration though such transport of passengers may not be strictly authorized by the owner of the vehicle.

28. The expression " goods carriage" is defined in Section 2 (14) of the Motor Vehicles Act, 1988. "Goods carriage" are those vehicles which are not designed to carry passengers on them. They are constructed or adapted for use solely for the carriage of goods. Some times, even passengers metamorphosizes into a goods carriage when it is used for carriage of goods.

29. On the other hand, public service vehicle, has been defined in Section 2(35) of the Motor Vehicles Act, 1988 to mean as any motor vehicle used or adapted to be used for the carriage of passenger for hire or reward, and includes a maxi-cap, motor cap, contract carriage, an stage carriage.

30. Strictly, not every passenger in a "goods carriage vehicle" is a "gratuitous passenger". A passenger may or may not be an "authorized passengers".

31. It will be also useful to refer to Rule 236, Rule 238 and Rule 239 of the Tamil Nadu Motor Vehicles Rules, 1988. They are reproduced below:-

"236. Limit of Persons in goods carriage - No person shall be carried in the cabin of a goods carriage beyond the number for which there is a seating accommodation at the rate of thirty eight centimetres measured along the seat, excluding the space reserved for the driver, for each person, and not more than six persons in all in addition to the driver shall be carried in any goods carriage."

32. Thus, in a cabin of a "goods carriage", persons beyond the number of seats can be carried. In all in addition to the driver not more than six persons can be carried even the cabin has more seats.

33. There is a prohibition of persons travelling on top of the goods being carried in the goods carriage. Rule 238 of the aforesaid Rules deals with it. It is reads as under:-

"238. Prohibition of persons on the top of goods carriage - No person shall be carried in



Authority or the State Transport Authority under Rule 239 of the Tamil Nadu Motor Vehicles Rules, 1989.

39. Though, the heading of Rule 238 reads as "Prohibition of Person on Top of Goods Carriage" it seems to indicate that "goods carriage vehicle" in Tamil Nadu can carry persons on its body which is otherwise meant only for carrying goods.

40. The Prohibition is confined to three categories mentioned above. However, these Rules have to be read harmoniously with the provisions of the Act as "goods carriage" are not designed to carry passengers except in the cabin. In the cabin of the goods carriage, apart from the authorised driver, employee of the owner or driver and the owner of the goods and/or his authorised representative alone can travel.

41. Section 147 of the Motor Vehicles Act, 1988 deals with the requirement of policies and limits of liability of an insurer. It is of wide import. It seems to have taken within its sweep all liabilities which the owner of the vehicle may incur due to accident though the Hon'ble Supreme Court has answered it to be contrary in Asha Rani case and Baljit Kaur's case which have been subsequently followed.

42. The first part of the definition in Section 147(1) of the Motor Vehicles Act, 1988 is reproduced as under:-

"147. Requirements of Policies and limits of liability-

147(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 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.



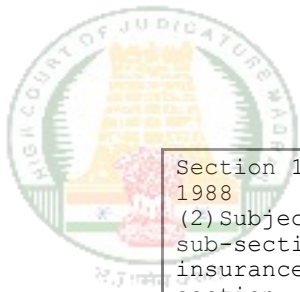
43. Exception is provided in the proviso to Sub section (1) to Section 147. It reads as under:-

44. As per Sub-Section (2) subject to provisions of Sub-Section (1), a policy of insurance shall cover any liability incurred in respect of any accident upto the following limits namely:-

“ a) save as provided in Clause (b),
b) the amount of liability in respect of damage to any property of third party, a limit of Rs.6,000/-.”

45. It must be further recalled that Section 147(1)(b)(i) was amended in the year 1994. It merely added a phrase “including, owner of the goods or his authorised representative carried in the vehicle”.

46. If Sub Section (2) to Section 147 of the Act is before Sub-Section (1), the scope of Section 147 of the Act will become clear. Following Chart will demonstrate scope of Section 147 of the Act:

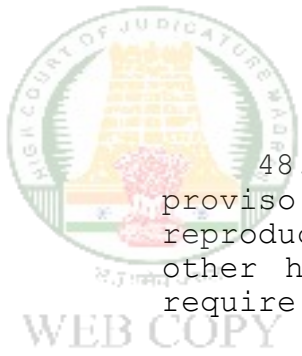


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Section 147(2) of M.V.Act, 1988 (2) Subject to the proviso to sub-section (1), a policy of insurance referred to in sub-section (1), shall cover any liability incurred in respect of any accident, up to the following limits, namely:- (a) save as provided in clause (b), the amount of liability incurred; (b) in respect of damage to any property of a third party, a limit of rupees six thousand: Section 147(1) of M.V.Act, 1988 (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 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:	Exception in Proviso to sub-section (1) to section 147 which reads as under- Provided that a policy shall not be required- (i) to cover liability in respect of the death, arising out of and in the course of his employment, of the employee of a person insured by the policy or in respect of bodily injury sustained by such an employee arising out of and in the course of his employment other than a liability arising under the Workmen's Compensation Act, 1923 (8 of 1923) in respect of the death of, or bodily injury to, any such employee- (a) engaged in driving the vehicle, or (b) if it is a public service vehicle engaged as conductor of the vehicle or in examining tickets on the vehicle, or (c) if it is a goods carriage, being carried in the vehicle, or (ii) to cover any contractual liability. Explanation. -For the removal of doubts, it is hereby declared that the death of or bodily injury to any person or damage to any property of a third party shall be deemed to have been caused by or to have arisen out of, the use of a vehicle in a public place notwithstanding that the person who is dead or injured or the property which is damaged was not in a public place at the time of the accident, if the act or omission which led to the accident occurred in a public place.	Proviso to Section 147 (2) of M.V.Act, 1988 Provided that any policy of insurance issued with any limited liability and in force, immediately before the commencement of this Act, shall continue to be effective for a period of four months after such commencement or till the date of expiry of such policy whichever is earlier.
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* Inserted vide 1994 amendment.

47. A liability under a Policy to be issued under Section 147 is subject to limitation under Sub-Section (2) to Section 147 of Act as the expression used in Section 147(1)(b) is "to the extent specified in Sub-section (2)".



48. Sub- Section (2) to Section 147 is restricted only by proviso to sub- section (1) to Section (1) which has been reproduced in the middle column. Section 147(1)(b)(ii) on the other hand expands the scope of coverage. Thus, an insurer is require to cover an insured:

(i) 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;

(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:

49. The first portion of sub section (1) to Section 147(1) (b) (i) had already made it clear that the insurer was required to cover "any liability which may be incurred by the owner of the motor vehicle in respect of the death of or bodily injury to any person".

50. The inclusion of the expression "including owner of the goods or his authorised representative carried in the vehicle" in the year 1994 to Section 147(1)(b)(i) merely expanded the scope of the coverage by an insurer.

51. Further, The addition of the phrase "owner of the goods or his authorised representative carried in the vehicle" sub section (1) to Section 147(1)(b)(i) of the Act in 1994 precedes the word "including".

52. The Hon'ble Supreme Court in several cases has explained the use function of the expression "including". It expands the scope. When the expression "including" is used in provision, it is inclusive.

53. In S.K. Gupta v. K.P. Jain (1979) 3 SCC 54], the Hon'ble Supreme Court observed as under:-

"24. The noticeable feature of this definition is that it is an inclusive definition and, where in a definition clause, the word "include" is used, it is so done in order to enlarge the meaning of the words or phrases occurring in the body of the statute and when it is so used, these words or phrases must be construed as comprehending not only such things which they signify according to their natural import, but also those things which the



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interpretation clause declares that they shall include (see *Dilworth v. Commr. of Stamps* [Dilworth v. Commr. of Stamps, 1899 AC 99 (PC)]). Where in a definition section of a statute a word is defined to mean a certain thing, wherever that word is used in that statute, it shall mean what is stated in the definitions unless the context otherwise requires. But where the definition is an inclusive definition, the word not only bears its ordinary, popular and natural sense whenever that would be applicable but it also bears its extended statutory meaning. At any rate, such expansive definition should be so construed as not cutting down the enacting provisions of an Act unless the phrase is absolutely clear in having opposite effect (see *Jobbins v. Middlesex County Council* [Jobbins v. Middlesex County Council, (1949) 1 KB 142 : (1948) 2 All ER 610 (CA)]). Where the definition of an expression in a definition clause is preceded by the words "unless the context otherwise requires", normally the definition given in the section should be applied and given effect to but this normal rule may, however, be departed from if there be something in

the context to show that the definition should not be applied (see *Khanna, J., in Indira Nehru Gandhi v. Raj Narain* [Indira Nehru Gandhi v. Raj Narain, 1975 Supp SCC 1]). It would thus appear that ordinarily one has to adhere to the definition and if it is an expansive definition the same should be adhered to. The frame of any definition more often than not is capable of being made flexible but the precision and certainty in law requires that it should not be made loose and kept tight as far as possible (see *Kalya Singh v. Genda Lal* [Kalya Singh v. Genda Lal, (1976) 1 SCC 304]).

54. In *Ramanlal Bhailal Patel v. State of Gujarat*, (2008) 5 SCC 449, it was observed that, "Where the definition is an inclusive definition, the use of the word "includes" indicates an intention to enlarge the meaning of the word used in the statute. Consequently, the word must be construed as comprehending not only such things which they signify according to their natural import, but also those things which the interpretation clause declares that they shall include. Thus,



where a definition uses the word "includes", as contrasted from "means", the word defined not only bears its ordinary, popular and natural meaning, but in addition also bears the extended statutory meaning (see S.K. Gupta v. K.P. Jain [(1979) 3 SCC 54 : AIR 1979 SC 734] following Dilworth v. Commr. of Stamps [1899 AC 99 : (1895-99) All ER Rep Ext 1576 : 79 LT 473] and Jobbins v. Middlesex Country Council [(1949) 1 KB 142 : (1948) 2 All ER 610 (CA)]).

55. In State of Bombay v. Hospital Mazdoor Sabha (1960) 2 SCR 866 : AIR 1960 SC 610, in para 10 the Hon'ble Supreme Court observed as under:-

10. There is another point which cannot be ignored. Section 2(j) does not define "industry" in the usual manner by prescribing what it means; the first clause of the definition gives the statutory meaning of "industry" and the second clause deliberately refers to several other items of industry and brings them in the definition in an inclusive way. It is obvious that the words used in an inclusive definition denote extension and cannot be treated as restricted in any sense. (Vide: Stroud's Judicial Dictionary, Vol. 2, p. 1415). Where we are dealing with an inclusive definition it would be inappropriate to put a restrictive interpretation upon terms of wider denotation.

56. A reading of Section 147 of the Motor Vehicles Act, 1988 makes it clear that the requirement to cover the risk is not circumscribed except as mentioned above. There are no limitation in the provision under Section 147(2) of the Motor Vehicles Act, 1988.

57. Thus, a policy of insurance actually should cover any liability incurred by the insured in respect of any accident from the use of the insured vehicle in a public place.

58. However, in New India Assurance Co. Ltd., vs Asha Rani and others, (2003) 2 SCC 233, the views expressed New India Insurance Co. Ltd., vs Satpal Singh and another, (2000) 1 SCC 237 was departed.

59. The Honourable Supreme Court I in New India Assurance Co. Ltd., vs Asha Rani and others, (2003) 2 SCC 233 interpreted Section 147 of the Act broadly by holding that insurer will not be liable to pay compensation to the owner of the goods or his authorised representative on being carried in the goods vehicle when the vehicle meets with an accident and the owner of the



goods or his representative dies or suffers any bodily injury.

60. There, the Hon'ble Mr. Chief Justice G.B.Pattnaik rendering a majority view that the view of the Hon'ble Supreme Court in New India Insurance Co. Ltd., vs Satpal Singhand another, (2000) 1 SCC 237 referred to supra was based on an erroneous impression. In paragraph No.9, it was observed as under:-

"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 the goods vehicle the accident occurred."

* New India Insurance Co. Ltd., vs Satpal Singhand another, (2000) 1 SCC 237."

61. In Paragraph 9, the Hon'ble Chief Justice further observed as follows:-

"If the, Motor Vehicles Amendment Act of 1994 is examined, particularly, Section 46 by which the expression "injury to any person "in the original Act stood substituted by the expression "injury to any person, including the 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."

62. Ultimately, in the same paragraph, the court further held that "The legislature wanted to bring within the sweep of Section 147, by making it compulsory for the insurer to ensure even in the case of a goods vehicle, the owner of the goods or his authorized representative being carried in a goods vehicle when that vehicle met with an accident and the owner of the goods or as representative either dies or suffers bodily injury. The judgement of the Hon'ble Supreme Court in Satpal Singh Case, therefore, must be held to have not been correctly decided and the impugned judgement of the tribunal, as well as that of the High Court was accordingly set aside".

63. Thus, after making the above observation, the Honourable Chief Justice in Paragraph No.9 held as follows:-

"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 the vehicle meets with an accident and the owner of the goods or his representative dies or suffers any bodily injury".

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64. Honourable Mr Justice S.B Sinha who gave his concurring view in a separate opinion in the above case observed that 1988 Act does not enjoin a statutory liability on the owner of the vehicle to get his vehicle insured for any passenger travelling in a goods vehicle, the insurer would not be liable therefor. That apart, few other observations were made in paragraph Nos.26 to 29 in his concurring view. Suffice to state that the said decision was applicable for the period prior to 1994.

65. Though, the Hon'ble Supreme Court has extracted the Section 147(1)(b), it has not specifically noted that the Sub-Section (1)(b) to Section 147 of the Motor Vehicles Act, 1988, merely specifies categories of the risk of person or class of persons specified in the policy to the extent specified in Sub-Section (2).

66. The amendment to the Motor Vehicles Act, 1988 vide Section 46 of the Motor Vehicles Amendment Act, 1994, merely expanded the scope of risk not only to the "owner of the goods" but also "his authorised representative". By merely inserting the words "including owner of the goods or his authorised representative carried in the vehicle" it clarified the position.

67. The Larger Bench of the Hon'ble Supreme Court in a subsequent decision in National Insurance Company Limited vs Baljit Kaur, (2004) 2 SCC 1, which currently holds the field has specifically dealt with the amendment brought to the Motor Vehicles Act, 1988 in the year 1994. There the then the Chief Justice of India Mr.Chief Justice of India V.N.Khare authored the majority views.

68. In the above case, a 16 year old died in an accident while travelling on a goods vehicle due to negligence of the driver on 19.02.1999. The Tribunal had relied on the decision of the Hon'ble Supreme Court in New India Insurance Co. Ltd., vs Satpal Singhand another, (2000) 1 SCC 237 referred to supra and awarded compensation to the legal heirs of the deceased minor.

69. The High Court also upheld the order of the Tribunal. The insurance company took up the issue before the Hon'ble Supreme Court.

70. The Full Bench of the Hon'ble Supreme Court in National Insurance Company Limited vs Baljit Kaur, (2004) 2 SCC 1 in Paragraph Nos.20 and 21 observed and concluded as follows:-

"20. It is, therefore, manifest that in spite of



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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 was any premium paid to the extent of the benefit of insurance to such category of people.

21. The upshot of the aforementioned discussions is that instead and in place of the insurer the owner of the vehicle shall be liable to satisfy the decree. The question, however, would be as to whether keeping in view the fact that the law was not clear so long such a direction would be fair and equitable. We do not think so. We, therefore, clarify the legal position which shall have prospective effect. The Tribunal as also the High Court had proceeded in terms of the decision of this Court in Satpal Singh [(2000) 1 SCC 237 : 2000 SCC (Cri) 130]. The said decision has been overruled only in Asha Rani [(2003) 2 SCC 223 : 2003 SCC (Cri) 493]. We, therefore, are of the opinion that the interest of justice will be subserved if the appellant herein is directed to satisfy the awarded amount in favour of the claimant, if not already satisfied, and recover the same from the owner of the vehicle. For the purpose of such recovery, it would not be necessary for the insurer to file a separate suit but it may initiate a proceeding before the executing court as if the dispute between the insurer and the owner was the subject-matter of determination before the Tribunal and the issue is decided against the owner and in favour of the insurer. We have issued the aforementioned directions having regard to the scope and purport of Section 168 of the Motor Vehicles Act, 1988, in terms whereof, it is not only entitled to determine the amount of claim as put forth by the claimant for recovery thereof from the insurer, owner or driver of the vehicle jointly



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or severally but also the dispute between the insurer on the one hand and the owner or driver of the vehicle involved in the accident inasmuch as can be resolved by the Tribunal in such a proceeding."

71. Though, Section 147 is of wide purport and Sub-Section (1)(b) was intended to clarify that the insurer was indeed required to issue a policy against any liability which may be incurred by an insured in respect of the death of or bodily injury to any person, including owner of the goods or his authorised representative carried in 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. It is binding on the High Court.

72. The Hon'ble Supreme Court observed that although the owner of the goods or his authorised representative would now be covered by the policy of insurance in respect of the goods 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, any liability can be fastened on the Insurance Company.

73. The Hon'ble Supreme Court also clarified that interest of justice will be served if the appellant Insurance Company therein was directed to satisfy the award amount in favour of the claimant, if not satisfied, and recover the same from the owner of the vehicle.

74. It was also clarified that for such purpose, it would not be necessary for the insurer to file a separate suit. It may initiate proceedings before the Execution Court as if a dispute between the insurer and the owner was the subject matter of the determination before the Tribunal and the issues decided against the owner and in favour of the insurer.

75. It further clarified that the above-mentioned directions were being issued, having regard to the scope and purport of Section 168 of the Motor Vehicles Act, 1988 in terms of which, it is not only entitled to determine the amount of claim as put forth by the claimant but also for recovery thereof from the insurer, owner or driver of the vehicle whether jointly or severally the dispute between the insurer on the one hand, and the owner or the driver of the vehicle involved in the accident in as much as can be resolved by the Tribunal in such a proceeding.

76. A Full Bench of this Court also had an opportunity to deal with this issue in Branch Manager, United India Insurance



iv. Anu Bhanvara etc., Vs IffcoTokio General Insurance Co., Ltd., (2019) SCC Online SC 1006.

80. In Shivraj Vs Rajendra and another, (2018) 10 SCC 432 referred to supra, the High Court had earlier declined the relief of pay and recovery and therefore, the appeal came to be filed before the Hon'ble Supreme Court. The Hon'ble Supreme Court in Paragraph Nos.11 & 14 held as under:-

"11. At the same time, however, in the facts of the present case the High Court ought to have directed the insurance company to pay the compensation amount to the appellant claimant with liberty to recover the same from the tractor owner, in view of the consistent view taken in that regard by the Court in National Insurance Co. Ltd., v. Swaran Singh, Mangla Ram v. Oriental Insurance Co. Ltd., Rani v. National Insurance Co. Ltd., and including Manuara Khatun v. Rajesh Kumar Singh. In other words, the High Court should have partly allowed the appeal preferred by Respondent 2. The appellant may, therefore, succeed in getting relief of direction to Respondent 2 insurance company to pay the compensation amount to the appellant with liberty to recover the same from the tractor owner, Respondent 1.

14. In view of the above, the appeals are partly allowed to the extent of directing Respondent 2 Oriental Insurance Company Ltd., to pay the compensation amount determined by the Tribunal and affirmed by the High Court to the appellant in the first place and with liberty to recover the same from the owner of the offending tractor, Respondent 1 in accordance with law."

81. In Shivawwa and another Vs Branch Manager, National India Insurance Company Limited and other, (2018) 5 SCC 762 referred to supra, the High Court had found merits in the contention of the appellant Insurance Company that the deceased was not travelling along with goods at the time of accident and thus held that the 1st respondent/Insurance Company could not be saddled with any liability.

82. The Hon'ble Supreme Court set aside the order to that extent and restored the order of the Tribunal by holding that pay and recovery of the amount can be ordered. In Paragraph Nos.13 & 14 the Hon'ble Supreme Court observed as follows:-

"13. Assuming for the sake of argument that the insurance company was not liable to pay compensation amount awarded to the claimants as



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the offending tractor was duly insured, the insurer would be still liable to pay the compensation amount in the first instance with liberty to recover the same from the owner of the vehicle owner (respondent No.2), in light of the exposition in the case of National Insurance Co. Vs. Swarn Singh and Ors. In paragraph 110 of the said decision, a three-Judge Bench of this Court observed thus:

"110. The summary of our findings to the various issues as raised in these petitions are as follows:

(i) Chapter XI of the Motor Vehicles Act, 1988 providing compulsory insurance of vehicles against third party risks is a social welfare legislation to extend relief by compensation to victims of accidents caused by use of motor vehicles. The provisions of compulsory insurance coverage of all vehicles are with this paramount object and the provisions of the Act have to be so interpreted as to effectuate the said object.

(ii) Insurer is entitled to raise a defence in a claim petition filed under [Section 163A](#) or [Section 166](#) of the Motor Vehicles Act, 1988 inter alia in terms of [Section 149\(2\) \(a\) \(ii\)](#) of the said Act.

(iii) xxx

(iv) The insurance companies are, however, with a view to avoid their liability must not only establish the available defence(s) raised in the said proceedings but must also establish 'breach' on the part of the owner of the vehicle; the burden of proof where for would be on them.

(v)-(ix) xxx

(x) Where on adjudication of the claim under the Act the tribunal arrives at a conclusion that the insurer has satisfactorily proved its defence in accordance with the provisions of [Section 149\(2\)](#) read with sub-Section (7), as interpreted by this Court above, the Tribunal can direct that the insurer is liable to be reimbursed by the insured for



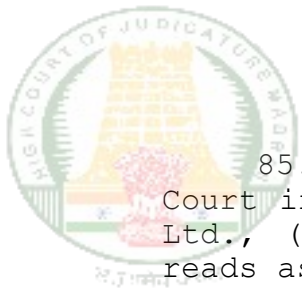
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"13. Since the reference to the larger bench in Parvathneni case has been disposed of by keeping the questions of law open to be decided in an appropriate case, presently the decision in Swaran Singh case followed in Laxmi NarainDhut and other cases hold the field. The award passed by the Tribunal directing the insurance company to pay the compensation amount awarded to the claimants and thereafter, recover the same from the owner of the vehicle in question, is in accordance with the judgment passed by this Court in Swaran Singh and Laxmi NarainDhut cases. While so, in our view, the High Court ought not to have interfered with the award passed by the Tribunal directing the first respondent to pay and recover from the owner of the vehicle. The impugned judgment of the High Court exonerating the insurance company from its liability and directing the claimants to recover the compensation from the owner of the vehicle is set aside and the award passed by the Tribunal is restored.

14. So far as the recovery of the amount from the owner of the vehicle, the insurance company shall recover as held in the decision in [Oriental Insurance Co. Ltd. v. Nanjappan and others](#) (2004) 13 SCC 224 where this Court held that

"8. For the purpose of recovering the same from the insured, the insurer shall not be required to file a suit. It may initiate a proceeding before the concerned Executing Court as if the dispute between the insurer and the owner was the subject-matter of determination before the Tribunal and the issue is decided against the owner and in favour of the insurer."

15. In the result, the impugned judgment of the High Court insofar as enhancement of the compensation to Rs.4,94,700/- is concerned is affirmed. Insofar as direction of the impugned judgment directing the appellants/claimants to recover the compensation from the owner of the vehicle is set aside and the appeal is partly allowed. The first respondent insurance company shall pay the enhanced compensation to the appellants/claimants along with the accrued interest and the insurance company shall recover the same from the owner of the vehicle. No costs."



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85. A similar view was also taken by the Hon'ble Supreme Court in Anu Bhanvara etc., Vs IffcoTokio General Insurance Co., Ltd., (2019) SCC Online SC 1006. In paragraph 11 of the order reads as under:-

"11. We have heard learned counsel for the parties and perused the record as well as the various decisions cited by learned counsel for the parties. The insurance of the vehicle, though as a goods vehicle, is not disputed by the parties. The claimants in the present case are young children who have suffered permanent disability on account of the injuries sustained in the accident. Thus, keeping in view the peculiar facts and circumstances of this case, we are of the considered view that the principle of "pay and recover" should be directed to be invoked in the present case.

86. The Hon'ble Supreme Court in the above four cases has ordered pay and recovery by following the decision of the Hon'ble Supreme Court in National Insurance Company Limited Vs. Swaran Singh, (2004) 3 SCC 297. However, it must be underlined, in Swaran Singh case, pay and recovery was ordered as there was dispute that the insurance company was statutory liable but there was a breach of contract by the insured as the driver of the insured vehicle was not in possession of a proper driving licence.

87. In Swaran Singh case referred to supra, it was held as under:-

" Conclusion

104. It is, therefore, evident from the discussions made hereinbefore that the liability of the insurance company to satisfy the decree at the first instance and to recover the awarded amount from the owner or driver thereof has been holding the field for a long time.

105. Apart from the reasons stated hereinbefore, the doctrine of stare decisis persuades us not to deviate from the said principle.

106. It is a well-settled rule of law and should not ordinarily be deviated from. (See Bengal Immunity Co. Ltd. v. State of Bihar [AIR 1955 SC 661 : (1955) 2 SCR 603] , SCR at pp. 630-32, Keshav Mills Co. Ltd. v. CIT [AIR 1965 SC 1636 : (1965) 2 SCR



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908] , SCR at pp. 921-22, Union of India v. Raghubir Singh [(1989) 2 SCC 754 : (1989) 3 SCR 316] , SCR at pp. 323, 327, 334, Gannon Dunkerley and Co. v. State of Rajasthan [(1993) 1 SCC 364] , Belgaum Gardeners Coop. Production Supply and Sale Society Ltd. v. State of Karnataka [1993 Supp (1) SCC 96 (1)] and Hanumantappa Krishnappa Mantur v. State of Karnataka [1992 Supp (2) SCC 213 : 1992 SCC (Cri) 667] .)

107. We may, however, hasten to add that the Tribunal and the court must, however, exercise their jurisdiction to issue such a direction upon consideration of the facts and circumstances of each case and in the event such a direction has been issued, despite arriving at a finding of fact to the effect that the insurer has been able to establish that the insured has committed a breach of contract of insurance as envisaged under sub-clause (ii) of clause (a) of sub-section (2) of Section 149 of the Act, the insurance company shall be entitled to realise the awarded amount from the owner or driver of the vehicle, as the case may be, in execution of the same award having regard to the provisions of Sections 165 and 168 of the Act. However, in the event, having regard to the limited scope of inquiry in the proceedings before the Tribunal it had not been able to do so, the insurance company may initiate a separate action therefor against the owner or the driver of the vehicle or both, as the case may be. Those exceptional cases may arise when the evidence becomes available to or comes to the notice of the insurer at a subsequent stage or for one reason or the other, the insurer was not given an opportunity to defend at all. Such a course of action may also be resorted to when a fraud or collusion between the victim and the owner of the vehicle is detected or comes to the knowledge of the insurer at a later stage.

108. Although, as noticed hereinbefore, there are certain special leave petitions wherein the persons having the vehicles at the time when the accidents took place did not hold any licence at all, in the facts and circumstances of the case, we do not intend to set aside the



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said awards. Such awards may also be satisfied by the petitioners herein subject to their right to recover the same from the owners of the vehicles in the manner laid down therein. But this order may not be considered as a precedent.

109. Although in most of the cases, we have not issued notices in view of the fact that the question of law has to be determined, we have heard counsel for the parties at length at this stage.

110. The summary of our findings to the various issues as raised in these petitions is as follows:

(i) Chapter XI of the Motor Vehicles Act, 1988 providing compulsory insurance of vehicles against third-party risks is a social welfare legislation to extend relief by compensation to victims of accidents caused by use of motor vehicles. The provisions of compulsory insurance coverage of all vehicles are with this paramount object and the provisions of the Act have to be so interpreted as to effectuate the said object.

(iii) The breach of policy condition e.g. disqualification of the driver or invalid driving licence of the driver, as contained in sub-section (2)(a)(ii) of Section 149, has to be proved to have been committed by the insured for avoiding liability by the insurer. Mere absence, fake or invalid driving licence or disqualification of the driver for driving at the relevant time, are not in themselves defences available to the insurer against either the insured or the third parties. To avoid its liability towards the insured, the insurer has to prove that the insured was guilty of negligence and failed to exercise reasonable care in the matter of fulfilling the condition of the policy regarding use of vehicles by a duly licensed driver or one who was not disqualified to drive at the relevant time.

(iv) Insurance companies, however, with a view to avoid their liability must not only establish the available defence(s) raised in the said proceedings but must also establish



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"breach" on the part of the owner of the vehicle; the burden of proof wherefor would be on them.

(v) The court cannot lay down any criteria as to how the said burden would be discharged, inasmuch as the same would depend upon the facts and circumstances of each case.

(vi) Even where the insurer is able to prove breach on the part of the insured concerning the policy condition regarding holding of a valid licence by the driver or his qualification to drive during the relevant period, the insurer would not be allowed to avoid its liability towards the insured unless the said breach or breaches on the condition of driving licence is/are so fundamental as are found to have contributed to the cause of the accident. The Tribunals in interpreting the policy conditions would apply "the rule of main purpose" and the concept of "fundamental breach" to allow defences available to the insurer under Section 149(2) of the Act.

(vii) The question, as to whether the owner has taken reasonable care to find out as to whether the driving licence produced by the driver (a fake one or otherwise), does not fulfil the requirements of law or not will have to be determined in each case.

(viii) If a vehicle at the time of accident was driven by a person having a learner's licence, the insurance companies would be liable to satisfy the decree.

(ix) The Claims Tribunal constituted under Section 165 read with Section 168 is empowered to adjudicate all claims in respect of the accidents involving death or of bodily injury or damage to property of third party arising in use of motor vehicle. The said power of the Tribunal is not restricted to decide the claims inter se between claimant or claimants on one side and insured, insurer and driver on the other. In the course of adjudicating the claim for compensation and to decide the availability of defence or defences to the insurer, the Tribunal has necessarily the power and jurisdiction to decide disputes inter se between the insurer and the insured. The decision rendered on the claims and disputes inter se between the insurer and insured in the course of adjudication of claim for



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SwaraSingh reported in (2004) 3 SCC 297 and few others and has held as follows:-

"50. We find that the judgments relied upon by the Hon'ble Supreme Court in Shivraj vs. Rajendra referred to supra in support of its conclusion that the Insurance Company can be directed to pay the compensation with liberty to recover the same even in respect of a gratuitous passenger or an unauthorized passenger in a goods vehicle, do not support the said conclusion.

51. In fact, we find that in none of the judgments referred to viz., National Insurance Co. Ltd., vs SwaranSingh reported in (2004) 3 SCC 297, Mangla Ram vs Oriental Insurance Co. Ltd., reported in (2018) 5 SCC 656, Rani vs National Insurance Co. Ltd reported in 2018 (9) Scale 310 and Manuara Khatun vs Rajesh Kumar Singh reported in (2017) 4 SCC 796, the question regarding the liability of the Insurance Company to pay the compensation in respect of an unauthorized passenger in the goods vehicle did arise for consideration. We are therefore of the considered opinion that the judgment of the two Judge bench in Shivraj vs. Rajendra referred to supra cannot be taken as a precedent to conclude that the Insurance Company would be liable to pay the compensation even in respect of an unauthorized passenger, in a goods vehicle, in the light of categorical pronouncement of larger bench of the Hon'ble Supreme Court in New India Assurance Company vs. Asha Rani and National Insurance Company Ltd., vs Baljit Kaur referred to supra. We therefore conclude that the Tribunal, in the case on hand, was not right in directing the Insurance Company to pay the compensation and giving it the liberty to recover the same from the owner."

"52. No doubt true that in many cases the claimants may not be able to realise the award amount from the owners of the vehicles involved in the accident. But, the said factual situation alone cannot impel us to do something against the provisions of the statute and the decisions of the larger benches of the Hon'ble Supreme Court of India.

53. In fine, all the appeals will stand allowed only in respect of the question of liability of the Insurance Company to pay the compensation.



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The quantum of compensation is affirmed and there will be an award only against the owner of the vehicle viz., 1st respondent in all the Original Petitions and the award against the Insurance Company will stand set aside. However, in view of the fact that the claimants are not before us. We do not impose any costs. Consequently, the connected Miscellaneous Petitions are closed."

89. I have also followed the views expressed by the Division Bench of this Court in Bharathi Axa General Insurance Co. Ltd. Vs. Aandi and Others, (2018) 2 TN MAC 751. Though therecent drift in the views of the Hon'ble Supreme Court to order pay and recovery, the decision of the Hon'ble Supreme Court in Swaran Singh case referred to supra cannot be applied to the "gratuitous passengers" i.e. "unauthorised passengers".

90. I have also heard the opportunity of dealing with a similar issue in The National Insurance Company Limited Vs. E.A. Palanisamy (Died) and Others in C.M.A.No.1958 of 2010 and in New India Assurance Co. Ltd. Vs Mohamudha Fajila and Others (2020) 2 TN MAC 777.

91. There, I have distinguished the decision of the Hon'ble Supreme Court in Anu Bhanvara etc., Vs IffcoTokio General Insurance Co., Ltd., (2019) SCC Online SC 1006.

92. The above two cases were disposed by me, by referring to the lamentation of the Hon'ble Supreme Court in Jai Prakash Vs National Insurance Company Limited and others, (2010) 2 SCC 607. In Paragraph Nos.13 to 17 of The National Insurance Company Limited Vs. E.A. Palanisamy (Died) and Others in C.M.A.No.1958 of 2010 reads as under:-

"13. Before parting, I would like to lay emphasis on the fact that the present legislation is working to the disadvantage of victims of road accident and their dependents. The Hon-ble Supreme Court in Jai Prakash Vs. National Insurance Company Limited and Others, (2010) 2 SCC 607 has held that to ensure that all accident victims get compensation, it is necessary to formulate a more comprehensive scheme for payment of compensation to victims of road accidents, in place of the present system of third-party insurance and an alternative scheme involving a collection of a one-time (lifetime) third-party insurance premium by a central insurance agency in respect of every vehicle sold (in a manner similar to the



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collection of lifetime road tax). The fund created by collection of such third-party insurance can be augmented/supplemented by an appropriate road accident cess/surcharge on the price of petrol/diesel sold across the country. The Hon-ble Supreme Court has further observed as follows:-

38. India has the dubious distinction of being one of the countries with the highest number of road accidents and the longest response time in securing first aid and medical treatment. There is therefore an urgent need for laying down and enforcing road safety measures and establishment of large number of trauma centres and first-aid centres. It is also necessary to consider the establishment of a Road Safety Bureau to lay down road safety standards and norms, enforce road safety measures, establish and run trauma centres, establish first-aid centres in petrol stations, and carry out research/data collection for accident prevention.

39. Several countries have comprehensive enactments dealing exclusively with accidents. In place of the provisions relating to the Accident Tribunals and award of compensation in the Motor Vehicles Act, 1988, and other statutes dealing with accidents and compensation, enacting a comprehensive and unified statute dealing with accidents may be considered.

Securing the compensation to the victims of accidents involving uninsured vehicles

41. Where there is no insurance cover for a vehicle, the owner should be directed to offer security or deposit an amount, adequate to satisfy the award that may be ultimately passed, as a condition precedent for release of the seized vehicle involved in the accident. If such security or cash deposit is not made, within a period of three months, appropriate steps may be taken for disposal of the vehicle and hold the sale proceeds in deposit until the claim case is disposed of. The appropriate Governments may consider incorporation of a rule on the lines of Rule 6 of the Delhi Motor Accidents Claims Tribunal Rules, 2008 in this behalf.

14. However, the precious little has been done



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"Section II LIABILITY TO THIRD PARTIES

1. Subject to the limits of liability as laid down in the Schedule hereto the Company will indemnify the insured in the event of an accident caused by or arising out of the use of the vehicle against all sums including claimant's cost and expenses which the insured shall become legally to pay in respect of i) death of or bodily injury to any person caused by or arising out of the use (including the loading/or unloading) of the vehicle.

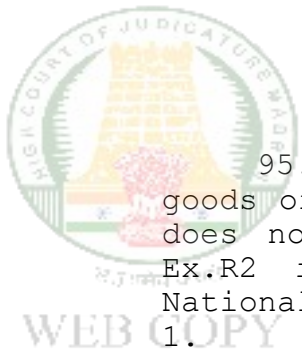
ii) damage to property caused by the use (including the loading and/or unloading) of the vehicle."

Ex,R.2 provides for exceptions. The exceptions which are relevant for consideration in this appeal, are as under:-

"(b) Except so far as is necessary to meet the requirements of the Motor Vehicle Act the Company shall not be liable in respect of death or bodily injury to any person in the employment of the insured arising out of and in the course of such employment.

(c) Except so far as is necessary to meet the requirements of the Motor Vehicle Act in relation to the liability under the Workmen's Compensation Act 1923 the Company shall not be liable in respect of death or bodily injury to any person (other than a passenger carried by reason of or in pursuance of a contract of employment) being carried in or upon entering or mounting or alighting from the insured vehicle at the time of occurrence of the event out of which any claim arises.

(f) Except so far as is necessary to meet the requirements of the Motor Vehicles Act the Company shall not be liable in respect of death and/or bodily injury to any person(s) who is/are not employee(s) of the insured and not being carried for hire or reward, other than owner of the goods or representative of the owner of goods being carried in or upon or entering or mounting or alighting from the insured vehicle described in the Schedule of this Policy."



95. Exception (f) in Exhibit R2 includes only owner of the goods or representative of the owner of goods being carried. It does not include a gratuitous passengers. This is clause in Ex.R2 in line with views of the Hon'ble Supreme Court in National Insurance Company Limited Vs. Baljit Kaur, (2004) 2 SCC 1.

96. Therefore, even though as per Rule 238 to 239 of Tamil Nadu Motor Vehicles Rules, 1989 in the State of Tamil Nadu an insured goods carriage " may given an impression that carry person on its body, nevertheless no liability can be fastened on the insurer if the insured incurs liability due to death or injuries of a "gratuitous passengers" who is not authorised to travel in it.

97. Before parting with Judgment, I shall once again refer to the lamentation of the Hon'ble Supreme Court in paragraph Nos.38 to 41 in Jai Prakash Vs National Insurance Company Limited and others, (2010) 2 SCC 607 which has been extracted in paragraph No.18.

38. India has the dubious distinction of being one of the countries with the highest number of road accidents and the longest response time in securing first aid and medical treatment. There is therefore an urgent need for laying down and enforcing road safety measures and establishment of large number of trauma centres and first-aid centres. It is also necessary to consider the establishment of a Road Safety Bureau to lay down road safety standards and norms, enforce road safety measures, establish and run trauma centres, establish first-aid centres in petrol stations, and carry out research/data collection for accident prevention.

39. Several countries have comprehensive enactments dealing exclusively with accidents. In place of the provisions relating to the Accident Tribunals and award of compensation in the Motor Vehicles Act, 1988, and other statutes dealing with accidents and compensation, enacting a comprehensive and unified statute dealing with accidents may be considered.

Securing the compensation to the victims of accidents involving uninsured vehicles

41. Where there is no insurance cover for a vehicle, the owner should be directed to offer security or deposit an amount, adequate to satisfy the award that may be ultimately passed,



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as a condition precedent for release of the seized vehicle involved in the accident. If such security or cash deposit is not made, within a period of three months, appropriate steps may be taken for disposal of the vehicle and hold the sale proceeds in deposit until the claim case is disposed of. The appropriate Governments may consider incorporation of a rule on the lines of Rule 6 of the Delhi Motor Accidents Claims Tribunal Rules, 2008 in this behalf.

98. Some of the suggestions were also discussed in the report of the Expert Committee on review of the Motor Vehicles Act, 1988 constituted on 14.09.2009 vide letter bearing Reference No.RT-11-12/2009MVL of the GOVERNMENT OF INDIA MINISTRY OF ROAD TRANSPORT & HIGHWAYS. The Committee recommended the Chapter X (Liability without fault in certain cases) Chapter XI (Insurance of Motor Vehicles against third party risks) & Chapter XII (Claims Tribunal) be taken out of the Motor Vehicle Act and the provisions relating to vehicle insurance in the MVA be restricted to the following. It recommended that other matters relating to insurance of Motor Vehicles, payment of compensation to the accident victims and the procedure in this regard etc.should be incorporated into a separate Act more appropriately drawn up by the Ministry of Finance. Matters to be dealt with by the Motor Vehicle Act:

i) Third Party Insurance for a motor vehicle shall be mandatory. " Third party should be adequately defined.

ii) The Certificate of Insurance should be co-terminus with the validity of Certificate of Registration of the motor vehicle.

iii) The motor vehicle owner/driver shall produce the Certificate of Insurance for inspection to the police officer/enforcement authorities on demand.

iv) Cash less medical treatment to the road accident victims during first 72 hours will be provided by the Insurance Companies.

99. It also recommended a new definition of third party to means any person other than the insured and the insurer, and includes the Government, the driver of the vehicle and the passengers travelling in it.

100. It further recommended as follows:



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a) Definition of authorised Insurer be modified to include all private player also, duly licensed by Insurance Regulatory Development Authority. Section 145(a).

b) The amount of compensation under "hit & run" cases and under the Structured compensation Formula should be enhanced. Further, there should be a provision to increase the amount of compensation based on the rising cost of living. Section 161(3)(a), Section 163A.

c) Provision should be made for an insurance policy to become void on the grounds of non-disclosure or misrepresentation or non-receipt of premium. Section 149(1).

d) The insurer may be relieved from the liability in case the vehicle is driven by a person not having an effective driving licence or in case of non-receipt of premium. Section 149(2).

e) The insurer may be allowed to contest the claim on any relevant ground including the quantum. New Provision.

f) There should be a cap on the liability of insurers to pay compensation under the Structured Compensation Formula on "no fault principles", of Rs.10 lakhs and on fault principle of Rs.20 lakhs. There should be a similar cap on the compensation to be awarded by the MACTs. Claims beyond this amount should be adjudicated by Civil Courts. New provision.

g) The Motor Accident Claims Tribunal (MACT) or Civil Court shall endeavour to dispose of a case within two years from the date of its filing, not to ordinarily grant adjournment unless sufficient cause and reasons of adjournment have been recorded in writing by the MACT or civil Court, New provision.

h) There should be a time limit, say 3 years for filing application from the occurrence of accident subject to general principles provided in the Limitations Act, 1963. New provision.



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i) To enable the insurer to make an endeavour to settle the claims out of Court/Tribunal directly with the claimant by mutual consent. New provision.

j) The rate of interest on the amount of compensation be linked to 200 basis points above the bank rate as notified by the Reserve Bank of India to introduce certainty and uniformity regarding the interest on amount payable as compensation. New provision.

k) Provision for interim compensation of Rs.1,00,000/- in case of death or permanent total disablement and Rs.50,000/- in case of permanent partial disablement, resulting from loss of a limb or sight of either eye or grievous hurt leading to such disablement, to the victim

within three months from the date of filing of application. New provision.

l) The Act may suitably provide for the adoption of the procedure for settlement of accident cases by MACT, as laid down by the Hon'ble High Court of Delhi and Hon'ble Supreme Court of India in the respective MACT Rules of the States. New provision."

101. Thus, what emerges from the above discussion is that an order, for pay and recovery can be made only where there is a breach of conditions of contract of insurance by the insured and not in the case where there is no liability at all that can be fastened on the Insurance Company in the light of the interpretation of the Hon'ble Supreme Court in the case of New India Assurance Co. Ltd., Vs Asha Rani and others, (2003) 2 SCC 223 and the decision in National Insurance Company Limited vs Baljit Kaur, (2004) 2 SCC 1. These decisions came to be followed by a Division Bench of this Court and in two cases which were passed by me. Therefore, the appeal filed by the Insurance Company deserves to be allowed.

102. As no liability can be fixed on the appellant Insurance Company, this Court is inclined to order payment of Rs.50,000/- only as per Section 140 of the Motor Vehicles Act, 1988 together with interest to mitigate the hardship of the claimants.

103. Therefore, the amount of compensation awarded by the Tribunal for a sum of Rs.14,90,800/- is reduced to Rs.50,000/-



under Section 140 of the Motor Vehicles Act, 1988 only with a view to mitigate the hardship the claimants.

104. Therefore, the appellant Insurance Company is directed to deposit a sum of Rs.50,000/- together with interest at 7.5% per annum from the date of claim petition till the date of deposit, less any amount already deposited, within a period of four weeks from the date of receipt of a copy of this Judgment.

105. The appellant-Insurance Company is also permitted to withdraw the amount deposited in excess of Rs.50,000/-, if any, together with interest accrued thereon, by filing suitable application before the Tribunal.

106. On such deposit being made by the appellant Insurance Company the respondents 1 and 2 are permitted to withdraw the same equally together with interest, less any amount already withdrawn directly without filing any separate applications before the Tribunal.

107. Accordingly, this Civil Miscellaneous Appeal is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Deputy Registrar (AD-II)

//True Copy//

Sub Assistant Registrar

kkd

To

The Motor Accidents Claims Tribunal,
(Additional District Court) Hosur,

Copy To

The Section Officer,
V.R Section, High Court,
Madras - 104

C.M.A.No.2613 of 2019
and
C.M.P.No.12651 of 2019

VSN-II (CO)
RGA(08/12/2021)