IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO-376-2021 (O&M)
Pronounced on: 03.02.2023

United India Insurance Co. Ltd. … Appellant

Versus

Guddi Devi and others …Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK GUPTA

Present:- Mr. Paul S. Saini, Advocate for the appellant.

Mr. Sanchit Punia, Advocate
for respondent Nos.1 to 3-claimants.

Mr. Manjeet Singh, Advocate for respondent No.4.

DEEPAK GUPTA, J.

Appellant is aggrieved by award dated 05.02.2021 passed by ld. Motor Accident Claims Tribunal, Hisar in MACT Petition bearing CNR N: HRHS01-006729-2017 titled as 'Guddi Devi & Others vs. Roshan Lal & Others', whereby compensation of ₹5 Lacs has been awarded to the claimants under Section 163A of the Motor Vehicle Act, 1988.

2. Respondent N: 1 to 3 – claimants are the widow & children of deceased – Mani Ram. Respondent N: 4 (through his LRs) is the driver-cum-owner of the offending Car N: HR 19 B/9786; whereas appellant is the insurer of the said car.

3. Facts of the case, in brief, are that Mani Ram (since deceased) along with respondent No.4 Roshan Lal (since deceased) was travelling in the offending car on 11.04.2017 from village Daya towards village Mangali Dhani Jatan. The car was being driven at high speed by

Roshan Lal. As they reached near Rajesh Brick Kiln, Roshan Lal could not control the car due to its high speed and struck against a *kikkar* tree. Both occupants of the car i.e. Mani Ram and Roshan Lal received multiple injuries. Mani Ram was taken to General Hospital, Hisar, where he was declared brought dead.

4. Claim petition was filed by the widow and two children of deceased Mani Ram under Section 163-A of the Motor Vehicles Act, 1988 seeking compensation of ₹50,00,000/-. Respondent Roshan Lal (through his LRs) opposed the claim petition by alleging that false DDR has been registered and that there was no negligent driving on the part of driver Roshan Lal. Respondent No.2-Insurance Company (now appellant) opposed the petition on the ground that offending vehicle was being driven in contravention of the provisions of Motor Vehicles Act and that Roshan Lal was not holding a valid driving licence; that accident did not take place with the offending vehicle and that the false DDR was lodged.

5. Necessary issues were framed. After taking evidence produced by the parties, learned Tribunal came to the conclusion that accident took place due to user of the offending car bearing registration No. HR-19B-9786. By taking into account the amended provisions of Motor Vehicles Act, compensation of ₹5,00,000/- was allowed in favour of the claimants. The plea of the Insurance Company to the effect that Mani Ram was a gratuitous passenger, whereas offending vehicle was insured by way of an 'Act policy' only and so, Insurance Company was not liable to pay compensation, was rejected in view of the legal position explained by this High Court (a co-ordinate Bench) in ***"Shiv Lochan***

Singh @ Bhola vs National Insurance Co. Ltd. and others" reported as 2018(1) R.C.R. (Civil) 559. With these findings, claim petition was allowed for ₹5,00,000/- payable by Insurance Company along with interest @ 6% per annum from the date of filing of the petition till actual realization.

6. By way of this appeal filed by the Insurance Company, it is contended that policy in question, whereby the offending vehicle was insured, was an Act / statutory policy only and not the package/ comprehensive policy; that deceased Mani Ram was a gratuitous passenger in the offending car; that learned Tribunal has wrongly placed reliance upon **Shiv Lochan's case (supra),** as Hon'ble Supreme Court besides this High Court and other High Courts have held in catena of authorities that in such circumstances, the Insurance Company cannot be made liable to pay compensation. Reliance has been placed upon the following judgments:-

- *New India Assurance Co. Ltd. vs Asha Rani, 2003 AIR (SC) 607.*

- *United India Insurance Co. Ltd. vs Tilak Singh and others, 2006(3) R.C.R.(Civil) 168.*

- *Oriental Insurance Co. Ltd. vs Sudhakaran K.V. & Ors., 2008(3) R.C.R.(Civil) 251.*

- *Ram Mehar vs Bimla Devi and others, 2010 ACJ, 2769.*

- *Divisional Controller, Chief Custodian of Internal Insurance Fund vs K.C. Roopa and others, 2010 ACJ 438.*

- *Divisional Manager, Oriental Insurance Co. Ltd. vs Arati Mishra and another, 2011 ACJ 196.*

- *Yashpal Luthra and another vs United India Insurance Co. Ltd. and another, 2011 ACJ, 1415.*

- *National Insurance Co. Ltd. vs Balakrishnan and another, 2013 ACJ, 199.*
- *Jagtar Singh vs Sanjeev Kumar, 2018(5) R.C.R.(Civil) 747.*
- *Branch Manager National Insurance Company Limited vs Dilip, 2020 ACJ, 228.*
- *Oriental Insurance Company Limited vs Shri K.M. Harish Kumar, 2020 AAC 1587.*

Still further, it is urged that amended provisions of 1988 as amended in 2019 under the no fault liability clause have not been notified so far and so, the compensation of ₹5,00,000/- could not be granted. With these submissions, prayer is made to set aside the impugned Award.

7. Refuting the aforesaid contentions, it is argued by learned counsel for the respondents – claimants that learned Tribunal has rightly placed reliance on **Shiv Lochan's case (supra)** to hold Insurance Company liable to pay the compensation amount. It is contended that said authority in Shiv Lochan's case (supra) has been further followed by the co-ordinate Benches of this Court in cases of ***"New India Assurance Co. Ltd. vs Seema Devi and others"*** (FAO No.333 of 2017 decided on 28.05.2019) and ***"The New India Assurance Company Limited vs Smt. Kaushal Virmani and others"*** (FAO NO.2264 of 2000, decided on 01.06.2022). Prayer is made for dismissal of the appeal.

8. I have considered submissions of both the sides and have perused the record carefully.

9. It has not been disputed that Mani Ram died in the motor vehicular accident involving the user of car bearing registration No. HR-19B-9786. The finding of learned Tribunal to the effect that Mani Ram

(since deceased) was a gratuitous passenger in the offending car, has also not been assailed. Once it is found that Mani Ram died on account of user of the offending car, his legal representatives i.e. claimants are entitled to compensation under Section 163-A of the Motor Vehicles Act as per structured formula contained in the 2nd Schedule to the Motor Vehicle Act, 1988. However, the 2nd schedule of the Motor Vehicles Act, 1988 was substituted by another schedule by way of a gazette notification bearing N: S.O. 2022(E) dated 22.05.2018 of Ministry of road transport and highways, as per which, compensation payable in case of death shall be ₹5 lacs.

10. It will not be out of place to mention that by virtue of Section 50 of the Motor Vehicles (Amendment) Act, 2019, Chapter X of the principal Act on 'Liability without fault in certain cases' consisting Sections 140 to 144 was omitted. By way of Section 51 of the Motor Vehicles (Amendment) Act, 2019, an altogether new Chapter-XI captioned as 'Insurance of Motor Vehicles against Third Party Risks' consisting Sections 145 to 164D, was substituted for earlier Chapter-XI of the principal Act, which also included Section 163A. 2nd schedule has been omitted by way of Section 93 of the Motor Vehicles (Amendment) Act, 2019. The newly substituted Section 164 of the Act provides for compensation of ₹5 lacs in case of death, which has occurred on account of user of a motor vehicle.

11. Although many provisions of Motor Vehicles (Amendment) Act 2019 became effective from 01.09.2019, but Section 50 to 57 and 93 of the Motor Vehicles (Amendment) Act 2019 have been notified by the

Central Government vide gazette notification bearing N: S.O. 859 (E) dated 22.02.2022 of Ministry of road transport and highways, w.e.f. 01.04.2022.

12. Thus, Section 164 as substituted in the Motor Vehicles Act 1988, has already come into force w.e.f. 01.04.2022. There is no reason to deny the benefit of this amended provision to the claimants. Therefore, in view of amended provision as above, claimants – appellants have been rightly held to be entitled to the compensation of ₹5 lacs on account of death of Mani Ram. So, finding of Ld. Tribunal on this aspect is maintained.

<u>Who is Liable to pay the compensation:</u>

13. Coming to the issue of liability of the Insurance Company, as observed earlier, deceased Mani Ram was a gratuitous passenger in the offending car. It is not disputed that the insurance policy taken by deceased Roshan Lal i.e. owner of the offending car was a statutory/Act policy and not the comprehensive/package policy. The question is as to whether the Insurance Company can escape from its liability in such facts and circumstances.

14. Offending vehicle was a private passenger car. Said term i.e. ‘private passenger car’ is not defined in the Motor Vehicles Act. One of the basis to distinguish various kinds of vehicles in the Motor Vehicle Act, is their user or the purpose for which it is meant i.e. for carrying passengers or goods or any other.

15. The term ‘motor vehicle’ or ‘vehicle’ is quiet generic, which

is defined under Section 2 (28) of the Act to mean as under:-

- any mechanically propelled vehicle adapted for use upon roads whether the power of propulsion is transmitted thereto from an external or internal source and includes
    - a chassis to which a body has not been attached and
    - a trailer;
- but does not include
    - a vehicle running upon fixed rails or
    - a vehicle of a special type adapted for use only in a factory or in any other enclosed premises or
    - a vehicle having less than four wheels fitted with engine capacity of not exceeding twenty-five cubic centimetres.

16. The definitions of 'motor car'; 'transport vehicle' and 'light motor vehicle' are inclusionary, as they provide as to what these kinds of vehicles include. These are as under:-

Section	Type of vehicle	Definition
2 (26)	"motor car"	Means: •any motor vehicle other than a •transport vehicle, •omnibus, •road-roller, •tractor, •motor cycle or •adapted vehicle;
2 (47)	"transport vehicle"	Means: • a public service vehicle, • a goods carriage, • an educational institution bus or • a private service vehicle;
2 (21)	"light motor vehicle"	Means: • a transport vehicle or • omnibus the gross vehicle weight of either of which or • a motor car or • tractor or • road-roller the unladen weight of any of which, does not exceed 7500 kilograms;

17. ‘Goods carriage’ is meant solely for the purpose of carriage of goods. Within its fold, are two type of vehicles depending upon their weight i.e. ‘heavy goods vehicle’ or ‘medium goods vehicle’, which have been defined as under:-

Section	Type of vehicle	Definition
2 (14)	“goods carriage”	Means: • any motor vehicle constructed or adapted for use solely for the carriage of goods, or • any motor vehicle not so constructed or adapted when used for the carriage of goods;
2 (16)	“heavy goods vehicle”	Means: • any goods carriage the gross vehicle weight of which, or • a tractor • or a road-roller the unladen weight of either of which, exceeds 12,000 kilograms;
2 (23)	“medium goods vehicle”	Means: •any goods carriage other than •a light motor vehicle or •a heavy goods vehicle;

18. Apart from the vehicles meant for goods carriage, the vehicles for other purposes (other than passenger vehicles), may be tractor, trailer, articulated vehicle or semi trailer, which are not meant for carrying passenger or for carrying goods. These vehicle are defined as under:

Section	Type of vehicle	Definition
2 (44)	“tractor”	Means: •a motor vehicle which is not itself constructed to carry any load (other than equipment used for the purpose of propulsion); ◦but excludes a road-roller;

2 (46)	"trailer"	Means: •any vehicle, ◦other than a semi-trailer and a side-car, drawn or intended to be drawn by a motor vehicle;
2 (39)	"semi-trailer"	Means: •a vehicle not mechanically propelled (other than a trailer), which is intended to be connected to a motor vehicle and ◦which is so constructed that a portion of it is super-imposed on, and a part of whose weight is borne by that motor vehicle;
2 (2)	"articula-ted vehicle"	Means: •a motor vehicle to which a semitrailer is attached;

19. Various kinds of passengers vehicles are as under:-

Sec-tion	**Type of vehicle**	**Definition**
2 (35)	"public service vehicle"	Means: •any motor vehicle used or adapted to be used for the carriage of passengers for hire or reward, and includes ◦a maxicab, ◦a motorcab, ◦contract carriage, and ◦stage carriage
2 (33)	"private service vehicle"	Means: •a motor vehicle constructed or adapted to carry more than six persons excluding the driver and ◦ordinarily used by or on behalf of the owner of such vehicle ▪ for the purpose of carrying persons for, or in connection with, his trade or business otherwise than for hire or reward •but does not include a motor vehicle used for public purposes;
2 (29)	"omni-bus"	Means: •any motor vehicle constructed or adapted to carry more than six persons excluding the driver;
2 (22)	"maxi-cab"	Means: •any motor vehicle constructed or adapted to carry more than six passengers, but not more than twelve passengers, excluding the driver, for hire or reward;

2 (25)	"motor-cab"	Means: •any motor vehicle constructed or adapted to carry not more than six passengers excluding the driver for hire or reward;
2 (1)	"adapted vehicle"	Means: •a motor vehicle either specially designed and constructed, or •to which alterations have been made under sub-section (2) of section 52, ◦for the use of a person suffering from any physical defect or disability, and ◦used solely by or for such person;
2 (11)	"educa-tional institution bus"	Means: •an omnibus, which is owned by a college, school or other educational institution and used solely for the purpose of transporting students or staff of the educational institution in connection with any of its activities;
2 (7)	"contract carriage"	Means: •a motor vehicle which carries a passenger or passengers for hire or reward and ◦is engaged under a contract, whether expressed or implied, for the use of such vehicle as a whole for the carriage of passengers mentioned therein and entered into by a person with a holder of a permit in relation to such vehicle or any person authorised by him in this behalf on a fixed or an agreed rate or sum— •(a) on a time basis, whether or not with reference to any route or distance; or •(b) from one point to another, and in either case, ◦without stopping to pick up or set down passengers not included in the contract anywhere during the journey, and includes— •(i) a maxicab; and •(ii) a motor cab notwithstanding that separate fares are charged for its passengers;
2 (40)	"stage carriage"	Means: •a motor vehicle constructed or adapted to carry more than six passengers excluding the driver for hire or reward at separate fares paid by or for individual passengers, either for the whole journey or for stages of the journey;
2 (43)	"tourist vehicle"	Means: •a contract carriage constructed or adapted and ◦equipped and maintained in accordance with such specifications as may be prescribed in this behalf;

2 (17)	"heavy passenger motor vehicle"	Means •any public service vehicle or •private service vehicle or •educational institution bus or •omnibus the gross vehicle weight of any of which, or •a motor car the unladen weight of which, exceeds 12,000 kilograms;
2 (24)	"medium passenger motor vehicle"	Means: •any public service vehicle or •private service vehicle, •or educational institution bus other than •a motor cycle, •adopted vehicle, •light motor vehicle or •heavy passenger motor vehicle;
2 (27)	"motor cycle"	Means: •a two-wheeled motor vehicle, inclusive of ◦any detachable side-car having an extra wheel, attached to the motor vehicle;

20. It is, thus, clear that 'private motor car' or private passengers car has not been defined. Its residual definition may be as under:-

Not defined in MV Act	"private motor car" or "private passenger car"	**Residual Def[n]:** •Any motor car meant for use by ◦private passengers, whether by ◦owner or ◦family members, relatives of the owner, or ◦friend, neighbour, unknown person taking lift etc. otherwise than for hire or reward

21. Normally, who will be using private passenger car? It will be owner, his family member, relative, friend or any other person, who may be described as 'gratuitous passenger'. Other than owner, a person occupying the car is a 'third party'.

22. So, the next question is, as to what kind of policy is required to cover such a gratuitous passenger/ third party. And whether such a

person occupying a private passenger car, may be included within the term 3rd party or not. Simply put, a third party is a person, who is not privy to the contract of the insurance i.e. other than insured and the insurer. Who can be the third party? These may be driver, an employee of the owner, family member, relative, neighbour, friend, any person taking lift, who may be termed as gratuitous.

23. The Oxford dictionary meaning of the term 'gratuitous' is: -

"done without good reason, free of charge, spontaneous"

Some of the synonyms of 'gratuitous' as provided by Google are as under:-

"spontaneous, baseless, groundless, needless, unjustified, complimentary, costless, unpaid, voluntary, willing, assumed etc".

24. It is highly doubtful that family member, relative or a friend may be included within the term 'gratuitous' but all these persons, whether family member, relative, friend or neighbour etc. will fall within the meaning of the term 'third party' for the purpose of insurance.

25. Proceeding further, Chapter XI consisting of Section 145 to 164D of the Motor Vehicles Act, 1988 (as amended by Act N: 32 of 2019) deals with 'Insurance of motor vehicles against third party risks'.

26. Apart from other terms, Section 145 (i) as amended by way of Amendment Act No.32 of 2019 provides definition of the term 'third party' as under:-

> *"145 (i) 'Third party' includes the Government, the driver and any other co-worker of a transport vehicle."*

27. Prior to its amendment in 2019, the term 'third party' was defined as under:-

"145 (g) Third party includes the Government".

28. It is clear from the above that it is only the inclusionary

definition, without providing as to what third party actually means. Said position was also noticed by this High Court (a coordinate Bench) in ***Shiv Lochan's Case (supra),*** wherein it was observed:-

> *"The term 'Third Party' has not been defined in exact terms in the New Act, same was the position under the Old Act as well. 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.*

29. Section 146 *(after its amendment in 2019)* provides for the necessity for insurance against third party risk. It reads as under:-

> *"146. (1) No person shall use, except as a passenger, or cause or allow any other person to use, a motor vehicle in a public place, unless there is in force, in relation to the use of the vehicle by that person or that other person, as the case may be, a policy of insurance complying with the requirements of this Chapter:*

Provided that in the case of a vehicle carrying, or meant to carry, dangerous or hazardous goods, there shall also be a policy of insurance under the Public Liability Insurance Act, 1991.

Explanation.—xxxxxxxx (not relevant)

(2) & (3) xxxxxxxxxxx (not relevant)

30. It is clear from the said provisions that no person can use or cause to be used a motor vehicle in a public place unless he obtains a policy of insurance complying with the requirements of the chapter.

31. Section 147 provides about requirement of policies and limits of liabilities. Said provision has undergone amendments from time to time. The following table will give an idea, as to what the provision was prior to its amendment in 1994 in the Motor Vehicles Act, 1988; as to what amendments were made in 1994 and what it now provides after Amendment Act No.32 of 2019.

Section 147 of the Motor Vehicles Act, 1988 (Prior to amendment of 1994)	**Section 147 of the Motor Vehicles Act, 1988 (Post Amendment Act N: 54 of 1994 w.e.f. 14.11.1994.)**	**Section 147 of the New Act (Motor Vehicles Act,1988) - after 2019 amendment**

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 authorized insurer and (b) insures the person or classes of persons specified in the policy to the extent specified in the policy to the extent specified in Sub-section (2)	**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 authorized insurer; and (b) insures the person or classes of persons specified in the policy to the extent specified in the policy to the extent specified in Sub-section (2)	**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 authorized insurer; and (b) insures the person or classes of persons specified in the policy to the extent 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, or damage to any property of a third party caused by or arising out of the use of the vehicle in a public place;	(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;	(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:	(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:	(ii) against the death of or bodily injury to any passenger of a ~~public service~~ **transport** vehicle, **except gratuitous passengers of a goods vehicle,** caused by or arising out of the use of the vehicle in a public place.

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-	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-	~~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 a 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	◦(a) engaged in driving the vehicle, or ◦(b) if it is a public service vehicle, engaged as a 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	~~◦(a) engaged in driving the vehicle, or ◦(b) if it is a public service vehicle, engaged as a 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.	•(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.	~~•(ii) to cover any contractual liability.~~ Explanation-For removal of doubts it is hereby clarified 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 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 accident, if the act or omission which led to the accident occurred in a public place.
(2) Subject to the proviso to Sub-section (1), a policy of insurance shall cover any liability incurred in respect of any one 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;	(2) Subject to the proviso to Sub-section (1), a policy of insurance shall cover any liability incurred in respect of any one 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;	~~(2) Subject to the proviso to Sub-section (1), a policy of insurance shall cover any liability incurred in respect of any one 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;~~

		(2) Notwithstanding anything contained under any other law for the time being in force, for the purposes of third party insurance related to either death of a person or grievous hurt to a person, the Central Government shall prescribe a base premium and the liability of an insurer in relation to such premium for an insurance policy under sub-section (1) in consultation with the Insurance Regulatory and Development Authority.
Provided that any policy of insurance issued with the 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.	Provided that any policy of insurance issued with the 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.	~~Provided that any policy of insurance issued with the 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.~~

(3) A policy shall be of no effect for the purposes of this Chapter unless and until there is issued by the insurer in favour of the person by whom the policy is effected a certificate of insurance in the prescribed form and containing the prescribed particulars of any conditions subject to which the policy is issued and of any other prescribed matters; and different forms particulars and matters may be prescribed in different cases.	(3) A policy shall be of no effect for the purposes of this Chapter unless and until there is issued by the insurer in favour of the person by whom the policy is effected a certificate of insurance in the prescribed form and containing the prescribed particulars of any conditions subject to which the policy is issued and of any other prescribed matters; and different forms particulars and matters may be prescribed in different cases.	(3) A policy shall be of no effect for the purposes of this Chapter unless and until there is issued by the insurer in favour of the person by whom the policy is effected, a certificate of insurance in the prescribed form and containing the prescribed particulars of any condition subject to which the policy is issued and of any other prescribed matters; and different forms, particulars and matters may be prescribed in different cases.
		(4) Notwithstanding anything contained in this Act, a policy of Insurance issued before the commencement of the Motor Vehicles (Amendment) Act, 2019 shall be continued on the existing terms under the contract and the provisions of this Act shall apply as if this Act had not been amended by the said Act.

(4) Where a cover note issued by the insurer under the provisions of this Chapter or the rules made thereunder is not followed by a policy of insurance within the prescribed time, the insurer shall, within seven days of the expiry of the period of the validity of the cover note, notify the fact to the registering authority in whose records the vehicle to which the cover note relates has been registered or to such other authority as the State Government may prescribe.	(4) Where a cover note issued by the insurer under the provisions of this Chapter or the rules made thereunder is not followed by a policy of insurance within the prescribed time, the insurer shall, within seven days of the expiry of the period of the validity of the cover note, notify the fact to the registering authority in whose records the vehicle to which the cover note relates has been registered or to such other authority as the State Government may prescribe.	(5) Where a cover note issued by the insurer under the provisions of this Chapter or the rules made thereunder is not followed by a policy of insurance within the prescribed time, the insurer shall, within seven days of the expiry of the period of the validity of the cover note, notify the fact to the registering authority in whose records the vehicle to which the cover note relates has been registered or to such other authority as the State Government may prescribe.
(5) Notwithstanding anything elsewhere contained in any law, a person issuing a policy of insurance under this section shall be liable to indemnify the person or classes of person specified in the policy in respect of any liability which the policy purports to cover in the case of that person or those classes or persons.	(5) Notwithstanding anything elsewhere contained in any law, a person issuing a policy of insurance under this section shall be liable to indemnify the person or classes of person specified in the policy in respect of any liability which the policy purports to cover in the case of that person or those classes or persons.	(6) Notwithstanding anything elsewhere contained in any law, a person issuing a policy of insurance under this section shall be liable to indemnify the person or classes of person specified in the policy in respect of any liability which the policy purports to cover in the case of that person or those classes or persons.

32. Section 147(1)(a) of the Motor Vehicles Act simply provides that insurance policy should be issued by the authorized insurer. Section 147(1)(b) of the M.V. Act deals with the persons, who are subject of insurance. As per Section 147(1)(b)(i) of the M.V. Act, compulsory insurance policy is prescribed to cover:-

(a) "any liability" which may be incurred by the insured person arising out of the death of "any person".

(b) "any liability" which may be incurred by the insured with respect to bodily injury to any person.

(c) "any liability" which may be incurred by the insured arising out of damage to any property of third party.

33. It is irrespective of the category of "any person", for whose death or bodily injury, the insurance cover is compulsorily prescribed. In other words, reading Sections 146 and 147(1)(b)(i) together, no vehicle can be used in a public place unless it has in force a policy of insurance in respect of such vehicle covering any liability, which may be incurred by the insured arising out of death or bodily injury to any person; or damage to the vehicle to the third party.

34. Once the words "any person" is used, there is no scope left to exclude any person of whatever category/capacity from the compulsory insurance cover, unless specifically provided.

35. Owner of goods or his authorized representative, carried in a vehicle was not specifically covered to be compulsorily insured prior to amendment in M.V. Act, 1994. Post 1994 amendment, owner of goods or authorized representative have also been specifically included within the term "any person".

36. Section 147(1)(b)(ii) of the M.V. Act, prior to its amendment in 1994, post 1994 amendment and even post 2019 amendment provides for compulsory insurance policy in order to cover liability of the insured arising out of any liability, which may be incurred by him in respect of

death or bodily injury to any passenger of a public service vehicle carried by mere user of the vehicle in the public place. Here itself, it is important to notice that any person travelling in a goods vehicle is not covered under Section 147(1)(b)(ii) of the M.V. Act, in a compulsory insurance policy. Though owner of goods or his authorized representative was not earlier specifically covered but by way of amendment in 1994, owner of the goods and his authorized representative is specifically included to be covered in the compulsory insurance policy as has been noticed above. Said provision is carried forward even after 2019 amendment.

37. As far as driver or any other employee of the vehicle is concerned, prior to 1994 amendment and post 1994 amendment, proviso to Section 147(1)(b)(ii) made it clear that compulsory insurance policy is not required except to the extent of liability covered under Workmen's Compensation Act. In other words, compulsory insurance is prescribed for driver or other employee only to the extent of liability, which may be incurred by an insured under the Workmen's Compensation Act. Beyond that separate premium is to paid and then the liability will be as per the terms of the contract. However, this position has been changed post 2019 amendment. As noticed earlier that Section 145(i) of the M.V. Act after its amendment in 2019 provides that third party includes the government, the driver and any other worker on a transport vehicle. Proviso to Section 147 (1) (b) (ii) has since been omitted.

38. Reading Section 145 (i) & Section 147 (1) (b) (ii) together, after amendment in 2019, though driver or any other co-worker/employee of a transport vehicle is specifically included under the umbrella of

compulsory insurance, but the driver or any other co-worker/employee of a non transport vehicle i.e. vehicles other than transport vehicles are not covered. Such drivers or any other co-worker/employee of a non transport vehicle shall be covered within the term 'third party'. Meaning thereby, driver or any other co-worker/employee of any kind of vehicle is included compulsorily in the insurance policy cover.

39. Coming to the issue with regard to the liability in respect of a third party, which is involved in the present case, prior to amendment of 2019, Section 147 (1) (b) (i) clearly provided for compulsory insurance cover against any liability, which may be incurred by the insured person on account of death or bodily injury to any person, or damage to any property of a third party, out of use of a vehicle in a public place. The term 'any person' includes any person of whatever capacity/ category, who may be friend, relative, family member, neighbor or even a gratuitous passenger in a private motor car, other than the insured. The words 'any person' are qualified by any other term. There is no limitation nor can there be any dilution to the term 'Third Party' as used in the Act, otherwise, it shall be contrary to the provisions of the Act itself.

40. In 1994, amendment was brought in Section 147 (1) (b) (i) and it was specifically provided that owner of goods or his authorised representative carried in a vehicle shall be included within the term 'third party'.

41. Hon'ble Supreme Court in ***New India Assurance Company vs.*** *Satpal Singh 2000(1) RCR(Civil) 274 discussed the scope of this amendment and held as under:*

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

42. As per above said ruling, an insurance policy covering third party risk was not required to exclude gratuitous passengers in a vehicle of any type or class. However, in the subsequent judgments, Hon'ble Supreme Court held that the scope of clause (i) of Section 147(1)(b) of the New Act was required to be considered in view of the restrictions contained in the proviso to this Section; which had been carried forward in the New Act and also by keeping in view the defences available to the Insurer under Section 149 of the New Act.

43. As such, in ***New India Assurance Co. Ltd. vs. Asha Rani (Asha Rani-I) 2001(4) R.C.R.(Civil) 294,***, Hon'ble Supreme Court held that since the 'Goods Carriage' vehicle is not permitted to carry any passengers under the New Act and the plea that the vehicle was being operated in violation of the definition of the 'Goods Carriage' under the Act and was being operated for the purpose other than what was allowed under the permit for that vehicle under the provisions of the Act, is one of the defences available to the Insurer under Section 149 of the New Act, therefore, the passengers carried in 'goods carriage' vehicle shall not be covered in requirement of the compulsory Insurance provided for under Section 147(1)(b)(i) of the Act. It was held by Hon'ble Supreme Court as under:

> *"14. We feel as some of the striking features of the new Act were not brought to the notice of this Court which we are recording hereunder may have bearing to the conclusion which was arrived at in Satpal Singh (Supra), Viz., (a) Difference between the definition of Goods Vehicle under the old and Goods Carriage under the new Act. Under the old Act goods vehicles is defined under Section 2(8) and under the new Act Section 2(14) defines goods carriage. The significant difference is, under the old Act the goods vehicle could be used for the carriage of goods or in addition to passengers while in definition of goods carriage the words or in addition to passengers stand deleted. The submission is, now goods carriage cannot carry any passenger. The other striking feature is with reference to Section 149(2) of the new Act. It is submitted that the defence available to the insurer under it would be obliterated in view of the declaration of law in Satpal Singh (Supra). Under New Act, it would be a breach of condition in case vehicle is used for a purpose other than for which permit has been issued. Thus in a case a permit is issued for a goods carriage it would not include any passengers and in case they travel it would be contrary to the mandate of the statute and thus in view of Section 149(2) no liability could be passed on to the insurance company. This apart, the effect of the deletion of sub-clause (ii) to the proviso to Section 95(1)(b) in the new Act also requires reconsideration.*
>
> *15. Accordingly we feel it appropriate in view of what we have recorded above, Satpal Singh (Supra) requires reconsideration by a larger Bench. Let this matter be placed before Hon'ble the Chief Justice for constituting a larger Bench."*

44. Matter was taken up by the Hon'ble Supreme Court in ***New India Assurance Co. Ltd. vs. Asha Rani (Asha Rani-II), 2003 (1) R.C.R.(Civil) 67*1**. It is very important to notice that in this case, Hon'ble Supreme Court considered only the matter qua the passengers travelling in 'Goods Vehicles' and regarding the owner and the authorised representative of owner travelling in Goods Vehicle before 1994 amendment of clause (i) of Section 147(1)(b). This too was restricted to

goods vehicle only i.e. qua owner and his representative travelling in Goods Vehicle. The matter pertaining to passengers in a private vehicle was not at all considered. Hon'ble Supreme Court held that passengers, including owner or his representative, before 1994 amendment, travelling in a goods vehicle were not covered in the scope of Section 147(1)(b)(i) of the New Act, though they were so covered post 1994 amendment. The relevant part of this judgment is as under:-

> *"8. Under the Motor Vehicles Act of 1939 the requirements of policies and limits of liability had been provided in section 95. Proviso to section 95(1) of the said Act unequivocally states that the policy shall not be required in case of a goods vehicle for passengers being carried in the said vehicle. In* ***Mallawwa (smt.) and Others v. Oriental Insurance Co. Ltd. and Others (supra)*** *while approving the earlier decision of the Court in* ***Pushpabai Purshottam Udeshi's case,*** *the Court construed the provisions of section 95 (1)(b) of the Motor Vehicles Act, 1939 and held that while the expression 'any person' and the expression 'every motor vehicle' are in wide terms but by proviso (ii) it restricts the generality of the main provision by confining the requirement to cases where the vehicle is a vehicle in which passengers are carried for hire or reward or by reason of or in pursuance of a contract of employment, therefore, the vehicle had to be vehicle in which passengers are carried. The Court further held that the goods vehicle cannot be held to be a passenger vehicle even if the vehicle was found to be used on some stray occasions for carrying passengers for hire or reward. Undoubtedly* ***Mallawwa's case (supra)*** *was dealing with a situation under the Motor Vehicles Act, 1939.*
>
> *9. In* ***Satpal's case (supra)*** *the Court assumed that the provisions of section 95(1) of Motor Vehicles Act 1939 are identical with section 147 (1) of the Motor Vehicles Act 1988, as it stood prior to its amendment. But a careful scrutiny of the provisions would make it clear that prior to the amendment of 1994 it was not necessary for the insurer to insure against the owner of the goods or his authorised*

representative being carried in a goods vehicle. 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 a goods vehicle the accident occurred. If the Motor Vehicles Amended Act of 1994 is examined, particularly section 46 of Act 6 of 1994 by which expression 'injury to any person' in the original Act stood substituted by the expression 'injury to any person including 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 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. The objects and reasons of clause 46 also states that it seeks to amend section 147 to include owner of the goods or his authorised representative carried in the vehicle for the purposes of liability under the insurance policy. It is no doubt true that sometimes the legislature amends the law by way of amplification and clarification of an inherent position which is there in the statute, but a plain meaning being given to the words used in the statute, as it stood prior to its amendment of 1994, and as it stands subsequent to its amendment in 1994 and bearing in mind the objects and reasons engrafted in the amended provisions referred to earlier, it is difficult for us to construe that the expression 'including owner of the goods or his authorised representative carried in the vehicle' which was added to the pre-existed expression 'injury to any person' is either clarificatory or amplification of the pre- existing statute. On the other hand it clearly demonstrates that the legislature wanted to bring within the sweep of section 147 and making it compulsory for the insurer to insure even in case of a goods vehicle, the owner of the goods or his authorised representative being carried in a goods vehicle when that vehicle met with an accident and the owner of the goods or his representative either dies or suffers bodily injury. ***The judgment of this Court in Satpal's 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*

> *accordingly are set aside and these appeals are allowed. It is held that the insurer will not be liable for paying compensation to the owner of goods or his authorised representative on being carried in a goods vehicle when that vehicle meets with an accident and the owner of goods or his representative dies or suffers any bodily injury."*

45. This court (a coordinate Bench) in ***Shiv Lochan's Case (supra)*** after taking into account the above cited judgments held as under:

> *"Hence it is abundantly clear that the matter of Passengers Travelling in Private Passenger Car or a Pillion Rider on a Motor Cycle was not even involved or considered in Asha Rani-I or in Asha Rani-II case. Nor the effect of deletion of Proviso (ii) of old Section 95(1)(b) in the Section 147(1)(b) of the New Act, qua the Passengers Travelling in Private Passenger Car or Motor Cycle was involved or was considered by the Hon'ble Supreme Court in either of these cases."*

46. It was further observed in ***Shiv Lochan's Case (supra)*** as under:

> *Subsequently the Hon'ble Supreme Court in the judgment rendered in* ***2006(3) RCR(Civil) 168 titled as United India Insurance Co. Ltd. Shimla vs. Tilak Singh and others,*** *though observed that it appeared to it that what was held in Asha Rani's case (supra) qua Goods Carriage Vehicle would be applicable to Passenger Vehicles as well. However, neither any reasoning is discernible for this proposition nor a detailed consideration. Relevant part of judgment is reproduced below:-*
>
> > *"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."*
>
> *It appears that at the time of argument of that case the definitions of 'Motor Car', 'Motor Cycle' and the 'Goods Carriage' and the defences available to insurance company in case of use of Motor Car and Motor Cycle as provided under the New Act, were not brought to the specific notice of the Hon'ble Supreme Court. In the New Act the definition of 'Goods Carriage' has been changed from that as was given under the Old Act and whereas now the 'Goods Carriage' is not authorised to carry any passengers, gratuitous or paid ones, the private passenger car is fully entitled to carry passengers and is registered as passenger carrying vehicle with the registered carrying capacity of the private gratuitous passengers."*

47. The view taken in ***Tilak Singh's Case supra*** was followed by Hon'ble Supreme Court in Oriental *Insurance Co. Ltd. vs Jhuma Saha, 2007 ACJ 818; National Insurance Co. Ltd. vs Laxmi Narain Dhut 2007 ACJ 721; Oriental Insurance Co. Ltd. vs Meena Variyal 2007 ACJ 1284; Oriental Insurance Co. Ltd. vs Sudhakaran K.V. & Ors., 2008 (3) R.C.R.(Civil) 251; New India Insurance Co. Ltd. vs. Sadanand Mukhi 2009 ACJ 998; and National Insurance Co. Ltd. vs Balakrishnan and another, 2013 ACJ, 199;* and also by various High Courts in *Ram Mehar vs Bimla Devi and others, 2010 ACJ, 2769 (Punjab & Haryana); Divisional Controller, Chief Custodian of Internal Insurance Fund vs K.C. Roopa and others, 2010 ACJ 438; Divisional Manager, Oriental Insurance Co. Ltd. vs Arati Mishra and another, 2011 ACJ 196 (Karnataka);* and in various other cases.

48. After considering all the abovesaid authorities, it was

concluded in ***Shiv Lochan's case*** as under:

> ***"Act Policy and Comprehensive Policy***
>
> *The provisions of Motor Vehicle Act, 1988 make a positive provision of compulsory insurance of a motor vehicle before bringing it on the road. Still further the Act makes a compulsory provision for covering of all claims qua third party in case of damages arising from an accident involving such an insured vehicle.* ***Hence the attempt of the insurance companies to avoid statutory liability by creating artificial distinction of Comprehensive/Package policy and the alleged 'Act only policy' does not stand legal scrutiny under the provisions of the New Act. Needless to say that qua the claim for damages to third party liability; every policy has to be taken as 'Act Policy' only, since it is mandatory to be issued by the Insurance Company and it is mandatory to be obtained by the owner of the vehicle under the provisions of the Motor Vehicle Act.*** *In that sense every policy, qua third party, can be said to be and has to be only an 'Act Policy'. Under the provisions of the Old Act since the vehicles other than the vehicles for carrying passengers for hire or reward (i.e. private passenger car/motor cycle) were excluded from the Compulsory Insurance. So the Insurance Companies were very much right in creating category of 'Act Policy' and 'Comprehensive Policy'; where separate premium was charged for covering the unpaid or gratuitous passengers in private passenger car and pillion rider on a motor cycle.* ***But since under the provisions of the New Act, as discussed above, due to not carrying forward the Proviso (ii) of Section 95 (1)(b)(i) of Old Act in Section 147(1)(b)(i) of the New Act, even the unpaid passengers in private passenger car and a pillion rider on a Motor Cycle are also covered within the scope of Compulsory Insurance required by Section 147(1)(b)(i) of the Act, therefore, to cover such unpaid passengers and pillion rider, no separate premium is required to be paid and hence no distinction can be made on the basis of description of policy as 'Comprehensive Policy/Package Policy' or 'Act only policy'.*** *May be, the insurance company can create another class of policy called as*

'Comprehensive' or 'Package Policy' for covering some extra risk like qua the driver, conductor or employee of the owner, which are still excluded from Compulsory Insurance by virtue of Proviso(i) of Section 147(1)(b), by charging some extra premium. But that classification created by the insurance company can not be made a ground by it for avoiding liability arising from an insured vehicle, qua the damages to the third party, including passengers in private passenger car/pillion rider on a Motor Cycle. Needless to say that insurance company can charge only a single consolidated premium for covering all risks qua third party, since it is compulsory and consolidated insurance for covering all third party claims under the provisions of the Motor Vehicles Act. Insurance company is not entitled and authorised to create differential policies even for third party claim cover, by categorizing the separate amounts of premium to be charged from the insured. ***Once the third party insurance is compulsory, it is compulsory for all purposes and for all persons falling in definition of third party. Hence the distinction of 'Act only Policy' and 'Package Policy' do not hold good; qua covering the claim for the damage caused to third party, which include the passengers in a private passenger car and a pillion rider on a Motor Cycle."***

[Bold portion emphasised by this court]

49. The contention of Ld. Counsel for the appellant – Insurance company that judgment rendered in ***Shiv Lochan's case*** should not be followed, as it has been rendered by taking a view contrary to the view expressed by Hon'ble Supreme Court in ***Tilak Singh's Case***, which has been consistently followed in subsequent judgments, has no merit.

50. Ld. Counsel referred to ***Fr. Issac Mattammel Cor-Episcopa vs. St. Mary's Orthodox Syrian Church & Others 2019 (4) RCR (Civil) 544,*** wherein it has been held by Hon'ble Supreme Court that as per Article 141 of Constitution of India, law declared by the Supreme Court

is binding on all courts and under Article 144, civil and judicial authorities within the territory of India shall act in aid of Supreme Court. Further reliance is placed on ***C.N.Rudramurthy vs. K. Barkathulla Khan. 1999 (2) RCJ 261***, wherein it has been held by Hon'ble Supreme Court that it is a matter of judicial discipline that requires that Supreme Court states as to what the law on the matter is, the same shall be binding on all the courts within the territory of India.

51. Article 141 of the Constitution of India provides that -

> *"The Law declared by the Supreme Court shall be binding on all courts within the territory of India."*

However, in order to follow the ratio of the decision of any judgment of the Supreme Court, the said decision is to be read in its entirety, as has been held by Hon'ble Supreme Court in ***Reminder vs. Union of India (2009) 13 SCC 90***. A decision, which is *per incuriam* is not the law declared in terms of Article 141 and therefore, can not operate as a binding precedent, as held by Hon'ble Supreme Court in ***State vs. Jagdish (2009) 12 SCC 49.*** It was held therein as under: -

> *"It is well settled that a decision which is per incuriam is not `law' declared in terms of Article 141 to have a binding effect. (See Prabhakar Rao v. State of A.P. (1985 Supp 2 SCR537), State of Maharashtra v. Digambar (1995 (4) SCC683), Union of India v. K.N. Sivadas (1997 (7) SCC 30), State of U.P. v. Synthetics and Chemicals Ltd. (1991 (4) SCC 139) and Punjab Land Development and Reclamation Corporation Ltd. v. Presiding Officer, Labour Court (1990 (3) SCC 682)."*

52. In ***Mamleshwar Prasad vs. Kanahaiya Lal (1975) 2 SCC 232,*** it has been held by Hon'ble Supreme Court that in exceptional circumstances, where on any obvious inadvertance a judgment fails to

notice a plain statutory provision or obligatory authority running counter to the reasoning and result reached, it may not have the sway of binding precedents. It should be a glaring case, an obstrusive omission.

53. In ***Municipal Corporation of Delhi vs. Gurnam Kaur (1989) 1 SCC 101,*** Hon'ble Supreme Court held that an order delivered without argument, without reference to the relevant provisions of the Act and without any citation of authority is per incuriam. It was held as under: -

> *"Pronouncements of law, which are not part of the ratio decidendi are classed as obiter dicta and are not authoritative. With all respect to the learned Judge who passed the order in Jamna Das' case and to the learned Judge who agreed with him, we cannot concede that this Court is bound to follow it. It was delivered without argument, without reference to the relevant provisions of the Act conferring express power on the Municipal Corporation to direct removal of encroachments from any public place like pavement or public streets, and without any citation of authority. … ……….. A decision should be treated as given per incuriam when it is given in ignorance of the terms of a statute or of a rule having the force of a statute. So far as the order shows, no argument was addressed to the Court on the question or not whether any direction could properly be made compelling the Municipal Corporation to construct a stall at the pitching site of a PG NO 939 pavement squatter. Professor P.J. Fitzgerald, editor of the Salmond on Jurisprudence, 12th edn. explains the concept of sub silentio at p. 153 in these words:*

"A decision passes sub silentio, in the technical sense that has come to be attached to that phrase, when the particular point of law involved in the decision is not perceived by the court or present to its mind. The Court may consciously decide in favour of one party because of point A, which it considers and pronounces upon. It may be shown, however, that logically the court should not have decided in favour of the particular party unless it also decided point B in his favour; but point B was not argued or considered by the court. In such circumstances, although point B was logically involved in the facts and although the case had a specific outcome, the decision is not an authority on point B. Point B is said to pass sub silentio."

54. In ***State of UP vs. Synthetics and Chemicals Ltd (1991) 4 SCC 139,*** Hon'ble Supreme Court held that -

"'Incuria' literally means 'carelessness'. In practice per incurium appears to mean per ignoratium.' English Courts have developed this principle in relaxation of the rule of stare decisis. The 'quotable in law' is avoided and ignored if it is rendered, 'in ignoratium of a statute or other binding authority'. (1944 IKB 718 Young v. Bristol Aeroplane Ltd. Same has been accepted, approved and adopted by this Court while interpreting Article 141 of the Constitution which embodies the doctrine of precedents as a matter of law. In Jaisri Sahu v. Rajdewan Dubey, [1962] 2 SCR 558 this Court while pointing out the procedure to be followed when conflicting decisions are placed before a Bench extracted a passage from Halsbury Laws of England incorprating one of the exceptions when the decision of an Appellate Court is not binding.

> *Does this principle extend and apply to a conclusion of law, Which was neither raised nor preceded by any consideration. In other words can such conclusions be considered as declaration of law? Here again the English Courts and ju have carved out an exception to the rule of precedents. It has been explained as rule of sub-silentio. A decision passed sub-silentio, in the technical sense that has come to be attached to that phrase, when the particular' point of law involved in the decision is not perceived by the Court or present to its mind' (Salmond 12th Edition).”*

55. Adverting back to the facts of this case, as already mentioned that in ***Shiv Lochan's Case (supra)***, a coordinate bench of this court, while referring to the observation of Hon'ble Supreme Court in **Tilak Singh's Case (supra)** observed as under: -

> *“It appears that at the time of argument of that case the definitions of 'Motor Car', 'Motor Cycle' and the 'Goods Carriage' and the defences available to insurance company in case of use of Motor Car and Motor Cycle as provided under the New Act, were not brought to the specific notice of the Hon'ble Supreme Court. In the New Act the definition of 'Goods Carriage' has been changed from that as was given under the Old Act and whereas now the 'Goods Carriage' is not authorised to carry any passengers, gratuitous or paid ones, the private passenger car is fully entitled to carry passengers and is registered as passenger carrying vehicle with the registered carrying capacity of the private gratuitous passengers.”*

56. Keeping in mind the principles of law of precedent as enunciated by Hon'ble Supreme Court in ***Mamleshwar Prasad's case (supra); State of UP vs. Synthetics and Chemicals Ltd's case (supra); Municipal Corporation of Delhi vs. Gurnam Kaur's case (supra); Harminder's case (supra); and State vs. Jagdish 's case (supra),*** it is

held by this court that observation of Hon'ble Supreme Court in **Tilak Singh's Case (supra),** having been made without bringing to its notice the relevant definitions of 'Motor Car', 'Motor Cycle' and the 'Goods Carriage' and the defences available to insurance company in case of use of Motor Car and Motor Cycle as provided under the New Act; and that in the New Act, the definition of 'Goods Carriage' had been changed from that as was given under the Old Act and whereas now the 'Goods Carriage' was not authorised to carry any passengers, gratuitous or paid ones; whereas the private passenger car was fully entitled to carry passengers and was registered as passenger carrying vehicle with the registered carrying capacity of the private gratuitous passengers, so those observations to the effect that "*it appeared to it that what was held in Asha Rani's case (supra) qua Goods Carriage Vehicle would be applicable to Passenger Vehicles as well*" can not be treated as a binding precedent and therefore, this court is inclined to follow the view taken by coordinate bench of this court in ***Shiv Lochan's Case (supra).***

57. Apart from above, it is important to notice that after amendment in 2019, it has been made clear that a policy of insurance should cover the liability, which may be incurred by the insured person in respect of death or bodily injury to any person including owner of goods of a vehicle or his authorised representative carried in the vehicle or damage to any property of a third party caused by or arising out of use of vehicle in the public place.

58. Further, in case of a transport vehicle, policy must cover the liability which may be incurred in respect of death or bodily injury to any passenger of such a vehicle i.e. transport vehilce. It has been made clear

that a gratitous passenger of a goods vehicle is not covered under the policy of insurance. As already observed, goods vehicle is not meant for carrying any passenger and so, any gratitous passenger occupying such vehicle, will not be covered under the policy.

59. 2019 Amendment Act has done away with the limit of liability in respect of death or bodily injury to any person, who is in employment of the insured in any capacity whatsoever, i.e. whether he is driver, conductor or cleaner etc., as earlier the liability was to the extent as provided in Workmen's Compensation Act.

60. Further, by inserting a new sub-section in Section 147, it has been provided that notwithstanding anything to be contrary in any law, Central Government in consultation with the Insurance Regulatory and Development Authority is required to prescribe a base premium for the purpose of third party insurance relating to the death of or grievous injury to any such person and also liability of the insurer. Old sub-Section (2) in Section 147 has been completely deleted, which earlier provided the limits of liability in respect of damage to any property of a third party.

61. Still further, the newly substituted sub-Section (4) in Section 147 make it further clear that amended provisions of 2019 Amendment Act shall not apply to policy of insurance, which had been issued prior to the commencement of the 2019 Act.

62. Thus, as far as the present case is concerned, it will be governed by the provisions existing prior to the 2019 Amendment Act and as discussed earlier, Insurance Company is bound to pay the amount of compensation on account of death of the deceased, even if the said

person was a third party and the policy of insurance was an Act policy because as held in **Shiv Lochans's case (supra),** there is no distinction between the Act/ Statutory Policy or the comprehensive policy, as far as third party liability is concerned.

Consequent to the entire discussion above, the petition fails and the same is hereby dismissed.

February 03, 2023 **(DEEPAK GUPTA)**
sarita **JUDGE**

Whether reasoned/speaking: Yes/No
Whether reportable: Yes/No