

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.46 of 2018

=====

The New India Assurance Company Ltd., Purnia, through its Chief Regional Manager and the constituted Attorney, Regional Office, New India Assurance Company Ltd., 6th Floor, B.S.F.C. Building, Fraser Road, Distt.- Patna.

... O.P. No.2/ Appellant

Versus

1. Most. Rupali Devi, W/o:- Late Dharmendra Kumar.
2. Tanniya Kumar, D/o:- Late Dharmendra Kumar.
3. Baniya Kumari, D/o:- Late Dharmendra Kumar.
4. Smt. Anuradha Devi, W/o Rash Mohan Mishra.
5. Rash Mohan Mishra, S/o:- Late Chokelal Mishra.

All Residents of Mohalla:- Prabhat Colony, near Bhoot Nath Mandir, P.S.- K. Hat, Distt.- Purnia

..... Claimants/Respondent 1st Set

6. Anil Kumar, S/o:- Biranchi Mandal, Resident of:- Prabhat Colony, near Bhootnath Mandir, P.S.- K. Hat, Distt.- Purnea, Bihar.
- (Owner of the offending vehicle bearing Reg. No. BR-11R/3303).

.....O.P. No.1/Respondent 2nd Set

=====

Appearance :

For the Appellant	:	Mr. Raj Kumar Singh Vikram, Advocate
For the Respondent Nos.1 to 5	:	Mr. Md Fazle Karim, Advocate
For the Respondent No.6	:	None.

=====

CORAM: HONOURABLE MR. JUSTICE JITENDRA KUMAR

CAV JUDGMENT

Date : 12-12-2025

The present Miscellaneous Appeal under Section 173 of the Motor Vehicles Act has been preferred against the judgment/award dated 25.04.2017 passed by learned District



Judge-cum-Chairman, M.A.C.T, Purnea in Claim Case No. 4 of 2016, whereby learned Tribunal has directed the Appellant, Insurance Company to pay compensation of Rs. 26,45,836/- to the Claimants who are Respondent nos. 1 to 5 herein along with the interest @ 8 per cent *per annum*.

2. The factual background of the case is that the claim case bearing No. 4 of 2016/C.I.S. No. 4 of 2016 was filed against the two persons, Anil Kumar (O.P. No.1)/owner of the vehicle and New India Assurance Company Limited/O.P. No.2/insurer of the offending vehicle, by the Claimants (Respondent nos. 1 to 5 herein) for compensation, arising out of death of one Dharmendra Kumar, son of Rash Mohan Mishra, who is the Respondent No.5 herein.

3. As per the averment made in the claim petition, the son of the informant, Dharmendra Kumar met with an accident involving an Indica car bearing registration no. BR-11R/3303 near cold storage situated in Sadar Muffasil police station in Purnea district, Bihar. On account of the injury sustained during the accident, Dharmendra Kumar died in course of treatment. Subsequently, Sadar (Muffasil) P.S. Case No. 3 of 2016 was registered on 5.01.2016 for the offences punishable under Sections 279, 337, 338 and 334 of the Indian



Penal Code against the driver of the offending car. It was further stated that the offending vehicle was insured by the Appellant herein, New India Assurance Company Limited. As per the further claim of the Claimants, the deceased was aged about 33 years, having monthly income of Rs. 17,500/- as being employee of Alkem Laboratories Limited, Wivision Alpha. Total Rs. 37,80,000/- was claimed by the Claimants towards their compensation.

4. On notice the owner of the vehicle, Anil Kumar, who is the Respondent No.6 herein, appeared and filed his written statement contesting the claim petition of the Claimants pleading that the accident had taken place on account of rash and negligent driving of the driver, Rajiv Kumar Mandal. He also pleaded that he was owner of the vehicle and the vehicle was being plied with authorization and it was insured with the Appellant, New India Assurance Company Limited at the relevant time vide policy no. 54080431150100001785 valid from 14.08.2015 to 13.08.2016 and the driver, Rajiv Kumar Mandal was also holding a valid driving license. Hence, the owner of the vehicle has claimed that he is not liable to pay compensation. The liability of paying compensation is that of the Insurance Company.



5. The insurance company, New India Assurance Company Limited also appeared and filed its written statement contesting the claim petition pleading that the claim petition is not maintainable on account of mis-joinder and non-joinder of the parties. However, insurance of the vehicle by the insurance company was admitted. It was also pleaded that the insurance company is not liable to pay the compensation because there was violation of the terms and conditions of the insurance policy. It was also pleaded that the driver of the vehicle was not holding valid driving license. It was also pleaded that on account of non-impleadment of the driver, the claim petition was not maintainable and the claimed compensation was on the higher side.

6. It is also relevant to mention that the application of the insurance company under Section 170 of the Motor Vehicles Act was allowed by the Claim Tribunal to contest the claim petition, vide order dated 07.04.2017.

7. On the basis of the pleadings of the parties, the following five issues were framed:

- “(i) Whether the applicants have got any cause of action or right to file the claim case?
- (ii) Whether the claim case, as filed is legally maintainable ?
- (iii) Whether the deceased Dharmendra Kumar died in an accident caused due to rash and negligent driving of car bearing Registration No. BR-11R/3303?
- (iv) Whether the applicants are entitled to compensation and if



so, upto what extent and from whom?
(v) Whether the applicants are entitled to any other relief or reliefs?”

8. During the trial the Claimants have examined five witnesses, namely, A.W.1-Most. Rupali Devi, A.W.-2, Arjun Rishi, A.W.-3, Rash Mohan Mishra, A.W.-4, Nagendra Sharma, A.W.-5 is Manoj Rishi.

9. The applicants have also brought on record the following documents: **Ext. 1** - the certified copy of FIR of bearing Sadar (Muffasil) P.S. Case No. 03 of 2016, **Ext. 2** - the certified copy of charge sheet, **Ext. 3** - the photocopy of certificate of registration of the offending vehicle, **Ext. 4** - the photocopy of insurance policy of the offending vehicle, **Ext. 5** - the photocopy of M.V.I. report of the offending vehicle, **Ext. 6** - the photocopy of the post-mortem report of the deceased, Dharmendra Kumar, **Ext. 7** - the photocopy of death certificate of the deceased, **Ext. 8** - the photocopy of the appointment letter of the deceased issued by the Director Alkem laboratories Limited (II), **Ext. 9** - the statement of salary of the deceased issued by the General Manager, HR Alkem Laboratories Limited and **Ext. 10** - the photocopy of driving license of the driver of the offending vehicle.

10. However, neither any witness has been examined, nor any document has been adduced on behalf of the



the Opposite Party, the appellant herein.

11. After trial, learned Tribunal came to the conclusion that the deceased, Dharmendra Kumar died in a road accident due to rash and negligent driving of the driver of the car bearing registration No.BR-11R/3303. It is also found by learned Tribunal that the claim petition filed by the Claimants had cause of action to file claim petition and the claim petition was maintainable. Learned Tribunal also came to the conclusion that the deceased Dharmendra Kumar was aged 34 years at the time of accident and the owner of offending vehicle was having all the valid documents to ply the car on road and the driver of the offending vehicle was possessing valid driving license to drive the vehicle. It was also found by learned Tribunal that at the time of accident, the deceased was working as a Medical Representative in Alkem Laboratories Limited getting annual salary of Rs. 2,36,412/-. It was also held that the accident took place on account of rash and negligent driving of the driver of the car and the said car was insured by the Opposite Party No.2, the insurance company, which is the Appellant herein.

12. Hence, after calculation, learned Tribunal found that the Claimants are entitled to get Rs. 26,45,836/- towards their compensation. It was also held that on account of the



offending vehicle being insured by the O.P. No.2, Insurance Company, which is the Appellant herein, was liable to pay the entire compensation amount to the applicants, and accordingly, the Appellant herein was directed to pay the compensation amount to the Claimants.

13. I heard learned counsel for the Appellant and Learned counsel for the Respondent Nos.1 to 5. However, nobody has appeared on behalf of the Respondent No.6/the owner of the vehicle, despite valid service of notice.

14. Learned counsel for the Appellant submits that there is no liability of the insurance company in the alleged facts and circumstances of the case. To substantiate his submission, he submits that the insurance company has insured the car bearing no. BR-11R-3303 under Private Car Package Policy. In other words, as per the Appellant, the vehicle was not meant for using it for commercial purpose or to earn from the vehicle by putting it on hire. But admittedly, as per the deposition of the wife of the deceased, the vehicle was hired to the deceased and during that course of hire, the accident had taken place. As such, the owner of the vehicle has clearly violated the terms and conditions of the insurance. The terms and conditions of the insurance policy of the vehicle clearly provide that the policy



covers use of the vehicle for any purpose other than : (a) Hire or Reward, (b) Carriage of goods (other than samples or personal luggage), (c) Organized racing, (d) Pace making, (e) Speed testing, (f) Reliability Trials and (g) Any purpose in connection with Motor Trade. As such, no liability is made out against the insurance company to pay any amount to the Respondents/Claimants.

15. He further submits that the insurance company has no liability at all because no vehicle other than the car bearing registration no. BR-11R-3303 was involved in the accident, and the deceased does not come under “third party”. The vehicle was also a private service vehicle and not a public service vehicle. Hence, the deceased entered into the shoes of the owner and therefore, he is not a third party. As such, there no liability of the insurance company to pay any compensation to the legal representatives of the deceased.

16. He also submits that the maximum liability as per the insurance coverage is Rs. 7,50,000/- which means that any liability above Rs. 7,50,000/- should be paid by the owner of the vehicle.

17. He also submits that the statutory amount of Rs. 25,000/- has already been deposited by the Insurance Company



and the same should be given back to the company.

18. He also submits that for non-joinder of the driver of the vehicle, the claim petition was not maintainable.

19. Learned counsel for the Respondent Nos.1 to 5 submits that there is no illegality or infirmity in the impugned judgment/award, and hence, the present appeal is liable to be dismissed. He further submits that the deceased was a third party and hence, the legal representative of the deceased are entitled to get compensation on account of the motor accident involving the offending vehicle. He also submits that there is no substance in the submission of learned counsel for the insurance company that the deceased was the second party and not the third party.

20. He also submits that even if there is violation of terms and conditions as per the submission of learned counsel for the insurance company, the insurance company is first liable to pay and at most he can get right to recover the same from the owner of the vehicle.

21. He also submits that the owner of the vehicle is vicariously liable for the tort committed by his driver of the vehicle and hence, the liability of the owner and driver of the vehicle is joint and several. Hence, non-joinder of the driver was not fatal to the claim petition.



Points for determination by this Court

22. In view of the aforesaid facts and circumstances and submissions of the parties, the following points arise for determination by this Court;

(i) Whether the claim petition was not maintainable for non-joinder of the driver of the vehicle involved in the accident.

(ii) The claimants who are respondents herein are entitled to get compensation and if the answer is in positive, from whom – owner of the vehicle or the Insurance Company/Appellant herein?

Relevant Law

23. Before I proceed, it would be pertinent to find out the relevant law on the subject.

24. There is difference between private service vehicle and public service vehicle. As per Section 2(33) of the Motor Vehicles Act, 1988, 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. However, as per Section 2(35) of the Motor Vehicles Act, 1988, 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 maxi-cab, a motor-cab, contract carriage and stage carriage.

25. As per Sections 146 and 147(i)(b)(i), it is mandatory requirement for the owner of the vehicle to get third-party insurance. Here, there is no distinction made between the private service vehicle or public service vehicle. It means irrespective of types or kinds of the vehicle, the owner is required to get third-party insurance to ply his vehicle on road. Again, as per Section 147(i)(b)(ii), public service vehicle is also required to get insurance policy for death or bodily injury to any passenger of the vehicle.

26. As such, it is optional for owner of any vehicle to enter into contract of insurance to cover the risk of the owner and driver of the vehicle. It is also optional for the owner of private service vehicle to enter into any contract of insurance to cover the risk of any other occupant of the vehicle.

27. It is also important to note that in view of the aforesaid statutory provisions, insurance policy are of two types – Act policy and comprehensive/package policy. Act policy



refers to such insurance policy which covers the risk which is mandatorily required under the Motor Vehicles Act as provided under Section 147 of the Act, whereas package policy or comprehensive policy covers the risk not only as required under the Act, but also it may cover the risk related to owner, driver or any occupant of private vehicle.

28. In National Insurance Co. Ltd. v. Balakrishnan, (2013) 1 SCC 731, Hon'ble Supreme Court has held that as per the command of Section 146 of the Act, the owner of a vehicle is obliged to obtain an insurance for the vehicle to cover the third-party risk. Section 147 also deals with the requirements of policies and limits of liability, besides stipulating any contractual liability where there is no mandatory requirement of a policy.

29. Now coming to the liability of the insurance company, it would be profitable to refer to **Oriental Insurance Co. Ltd. Vs. Jhuma Saha, (2007) 9 SCC 263**, wherein the owner of the vehicle himself was driving his vehicle and met with an accident without involvement of any other vehicle. The accident took place on account of the steering of the vehicle failing and the vehicle dashing with tree on the roadside in order to save a goat which was running across the road. Here,



Hon'ble Supreme Court held that as per Section 147(b) of the Motor Vehicles Act, the insurance company covers only the risk of a third party and in regard to cover the risk of death or bodily injury of the owner of the vehicle, additional premium was required to be paid, but that was not shown in that case. Hence, the insurance company was absolved of its liability to indemnify the insured i.e. owner of the vehicle.

30. It would be also pertinent to refer to **Dhanraj v. New India Assurance Co. Ltd., (2004) 8 SCC 553**, wherein the appellant along with certain other persons was traveling in his own jeep which met with an accident in which the appellant as well as other passengers received injuries. The appellant had filed a claim petition seeking compensation against the Insurance Company. Here, Hon'ble Supreme Court held that it was not shown that the policy covered any risk for injury to the owner himself. Hon'ble Apex Court did not accept the contention that the premium of Rs. 4989/- paid under the heading "Own damage" was for covering liability towards personal injury. From the Insurance Policy, it was held that the premium was towards damage to the vehicle and not for injury to the person of the owner and hence, it was held that owner of a vehicle can only claim provided a personal accident insurance



has been taken out, but there was no such insurance in the case. Hence, the appeal was dismissed. Before passing the aforesaid order, Hon'ble Supreme Court held that Section 147 of the Motor Vehicles Act does not require an insurance company to assume risk for death or bodily injury to the owner of the vehicle. Hence, the Insurance Policy covers the liability incurred by the insured in respect of death of or bodily injury to any person (including an owner of the goods or his authorized 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.

31. In National Insurance Co. Ltd. v. Laxmi Narain Dhut, (2007) 3 SCC 700, the issue before Hon'ble Supreme Court was whether the principles laid down by Hon'ble Supreme Court in **National Insurance Co. Ltd. v. Swaran Singh** as reported in **(2004) 3 SCC 297** was applicable even to claims other than the third-party claims. Here Hon'ble Supreme Court has held that when the claim relates to own damage, it cannot be adjudicated by the Motor Vehicle Tribunal. It has to be decided by another forum and that is forum created under the Consumer Protection Act, 1986. Before the Motor Vehicle Tribunal, there should be essentially three parties i.e., the Insurer, the insured and the claimants. On the contrary,



before the Consumer Forum, there are only two parties i.e., owner of the vehicle and the insurer. The claimant does not come into the picture. Therefore, these are cases where there is no third party involved.

32. In Laxmi Narain Dhut (supra), Hon'ble Supreme Court also held that there is no contractual relation between the third party and the insurer. Only because of the statutory intervention, in terms of Section 149, the same becomes operative in essence and Section 149 provides complete insulation. Here it was also held that the said statutory provisions is beneficial one qua third party, but that cannot be extended to the owner of the offending vehicle. The logic of fake license has to be considered differently in respect of a third party and in respect of own damage claims.

33. In Oriental Insurance Co. Ltd. v. Meena Variyal, (2007) 5 SCC 428, a Regional Manager of the company, which was the owner of the vehicle, was himself driving a vehicle of the company and met with an accident and eventually succumbed to the injuries. Here, Hon'ble Apex Court held that the object of the insistence on insurance under Chapter XI of the Act seems to be to compulsorily cover the liability relating to the person or the property of third parties and in



respect of employees of the insured employer, the liability that may arise under the Workmen's Compensation Act, 1923 in respect of the driver, the conductor and the one carried in a goods vehicle carrying goods. Hence, Hon'ble Court found it difficult to hold that the Insurance Company, in the case on the hand, was liable to indemnify the owner, the employer Company/the insured, in respect of the death of one of its employees, who according to the claim, was not the driver and it was also held that on a plain reading of Section 147 of the Act, the Insurance Company was not liable to indemnify the insured in the case on hand.

34. It was further held by Hon'ble Supreme Court in **Meena Variyal case** (supra) that the victim was the Regional Manager of the Company that owned the car. He was using the car given to him by the Company for use. Whether he is treated as the owner of the vehicle or as an employee, he is not covered by the insurance policy taken in terms of the Act—without any special contract—since there is no award under the Workmen's Compensation Act that is required to be satisfied by the insurer. In these circumstances, Hon'ble Supreme Court held that the appellant Insurance Company was not liable to indemnify the insured and was also not obliged to satisfy the award of the



Tribunal/Court.

35. In Oriental Insurance Co. Ltd. v. Sudhakaran K.V., (2008) 7 SCC 428, the issue was whether the pillion rider on a scooter would be a third party within the meaning of Section 147 of the Act. Here, Hon'ble Supreme Court, after referring to judicial precedents, held that (i) the liability of the insurance company in a case of this nature is not extended to a pillion rider of the motor vehicle unless the requisite amount of premium is paid for covering his/her risk; (ii) the legal obligation arising under Section 147 of the Act cannot be extended to an injury or death of the owner of vehicle or the pillion rider; (iii) the pillion rider in a two-wheeler was not to be treated as a third party when the accident has taken place owing to rash and negligent riding of the scooter and not on the part of the driver of a vehicle.

36. In New India Assurance Co. Ltd. v. Sadanand Mukhi, (2009) 2 SCC 417, the son of the owner of the insured while driving the motorcycle met with an accident and died. The accident took place as a stray dog came in front of the vehicle. Here, it was held by Hon'ble Supreme Court that the deceased was not a third party. Referring to various judicial precedents held that the insurance company was not liable to



indemnify the owner.

37. In Bhagyalakshmi v. United Insurance Co. Ltd., (2009) 7 SCC 148, Hon'ble Supreme Court held that policy in question was a package policy. The contract of insurance if given its face value covers the risk not only of a third party but also of persons travelling in the car including the owner thereof. The question is as to whether the policy in question is a comprehensive policy or only an Act policy.

38. In National Insurance Co. Ltd. Vs. Balakrishnan, (2013) 1 SCC 731, Hon'ble Supreme Court also concurred with Bhagyalakshmi case (supra), referring to distinction between the Act policy and comprehensive policy/package policy. Referring to **Yashpal Luthra Vs. United Indian Insurance Co. Ltd. 2011 ACJ 1415 (Del)**, Hon'ble Supreme Court also held that there is no scintilla of doubt that a "comprehensive/package policy" would cover the liability of the insurer for payment of compensation for the occupant in a car. There is no cavil that an "Act policy" stands on a different footing from a "comprehensive/package policy". As the circulars have made the position very clear and IRDA, which is presently the statutory authority, has commanded the insurance companies stating that a "comprehensive/package policy"



covers the liability, there cannot be any dispute in that regard. Hon'ble Court also clarified that the earlier pronouncements were rendered in respect of the "Act policy" which admittedly could not cover a third-party risk of an occupant in a car. But, if the policy is a "comprehensive/package policy", the liability would be covered. These aspects were not noticed in *Bhagyalakshmi* case (supra) and therefore, the matter was referred to a larger Bench. However, Hon'ble Apex Court did not find any necessity to refer the Balakrishnan case (supra) to larger Bench, because IRDA, which is presently the statutory authority, has clarified the position by issuing circulars which have been reproduced in the judgment by the Delhi High Court and reproduced in Balakrishnan case.

39. This view was reiterated by Hon'ble Apex Court in **Jagtar Singh v. Sanjeev Kumar, (2018) 15 SCC 189** wherein, the High Court had absolved the insurance company on the ground that the victim was a gratuitous passenger in the car. However, Hon'ble Supreme Court set aside the order of High Court and concurring with the view as expressed by Hon'ble Apex Court in Balakrishnan Case (supra) remitted the matter to the High Court to pass fresh order after examining whether the policy in question was a comprehensive/package



policy or exclusively an Act policy.

40. In Ramkhiladi v. United India Insurance Co., (2020) 2 SCC 550, the deceased was traveling and the accident occurred on account of rash and negligent driving of the driver of another motorcycle. However, the claimant had filed claim petition only against the owner of the motorcycle and its insurance company on which the deceased was riding and met with the fatal accident. He had borrowed the vehicle from the registered owner of the motorcycle. Here, he was not held to be third party. It was held even in the **Ningamma v. United India Insurance Co. Ltd., (2009) 13 SCC 710** and **New India Assurance Co. Ltd. v. Sadanand Mukhi, (2009) 2 SCC 417**, Hon'ble Supreme Court had held that borrower of the vehicle steps into the shoes of the owner and therefore, the borrower of the vehicle or his legal representative are not third party and hence, not entitled to compensation from the insurer under the Act.

Present Case

41. Coming to the case on hand, I find that as per the evidence on record, it is established fact that an Indica car bearing registration no. BR-11R/3303 met with an accident on road near cold storage situated in Sadar Muffasil police station



in Purnea district by flipping over on account of rash and negligent driving of the vehicle. No other vehicle was involved in the accident. The deceased/Dharmendra Kumar and Nagendra Sharma were sitting in the car, whereas the vehicle was being driven by its driver. As per the deposition of A.W.-1/Rupali Devi (wife of the deceased), the vehicle was taken on hire for fare from the owner of the vehicle, Anil Kumar, who is Respondent No. 6 herein. It is also on record that Anil Kumar was friend of the deceased/Dharmendra Kumar, who died in the accident. However, no receipt of payment of fare was produced by wife of the deceased, nor any evidence has been adduced by the Insurance Company that the vehicle was hired for fare.

42. It is also to be noted that driver of the vehicle has not been impleaded by the claimants as opposite party before the learned Tribunal. The claim petition was filed only against the owner of the vehicle and the Insurance Company. The insurance of the vehicle is also not in dispute by the Insurance Company. As per the insurance cover note, the car was insured under private car package policy. The premium of Rs. 1,748/- is also paid on damage for covering the owner and driver of the vehicle and net premium was paid Rs. 10,010/-. After including the service tax, the total payment was made Rs.



11,412/-. However, as per the stipulation, the liability was limited up to Rs.7,50,000/- and it was stipulated that for individual covers, the liability was up to Rs. 4,04,513/-. In regard to limitation as to use, it has been stipulated that the policy covers use of the vehicle for any purpose other than : (a) Hire or Reward (b) Carriage of goods (other than samples or personal luggage) (c) Organized racing (d) Pace making (e) Speed testing (f) Reliability Trials (g) Any purpose in connection with Motor Trade.

43. Now coming to the first question for determination by this Court regarding maintainability of the claim petition and non-joinder of the driver of the vehicle, it would be relevant to point out that owner and driver of the offending vehicle are tortfeasors and their liability is joint and several. Hon'ble Supreme Court in **Machindranath Kernath Kasar v. D.S. Mylarappa, (2008) 13 SCC 198**, has clearly held in para-42 of the judgment that employer and employee, the former being vicariously liable while the latter being primarily liable are joint tortfeasors and are, therefore, jointly and severally liable. Allahabad High Court in **Babu Singh Vs. Smt. Champa Devi & Ors., 1973 SCC OnLine All 137**, has held that the driver was only a servant of the owner and the owner's



vicarious liability does not cease, because the servant has not been made a party to the claim. The Motor Vehicles Act contemplates relief against an owner only. As such, non-joinder of the driver of the vehicle in question cannot be a fatal to the claim petition filed by the victim or his/her legal representatives.

44. Hence, I find that the claim petition was maintainable even when the driver of the vehicle in question was not impleaded as Opposite Party before the Tribunal.

45. Now, the second question is whether Legal Representative of the deceased who were claimants before the Tribunal and Respondents herein were entitled to get compensation and if the answer would be in positive, who would be liable to pay it to the claimants - the owner of the vehicle or the Insurance Company, who is the Appellant herein.

46. As per the statutory provision and judicial precedents as discussed above, it clearly transpires that as per the Act Policy, the Insurance Company is liable to indemnify the insured/owner of the vehicle and as per the Act Policy, the owner is required to take policy to cover risk of the third party as well as the passengers of Transport Service Vehicle. But, in case of private service vehicle, there is no requirement of Act to take policy to cover risk of the occupant except the third party. It



also transpires that in case of private service vehicle, anybody traveling in the private service vehicle enters into shoes of the owner of the vehicle. {(Refer to **Ningamma Case** (supra) and **Sadanand Mukhi Case** (supra)}

47. It also transpires that taking policy to cover risk of owner and driver of the vehicle is optional for the owner of the vehicle by payment of additional premium. Such policy is also called as comprehensive policy or package policy. Hence, for liability of the Insurance Company towards the owner or driver, there is requirement of comprehensive policy covering the risk of the owner and driver or any occupant of the private vehicle.

48. Coming to the case on hand, I find that the vehicle was insured under Private Car Package Policy. The maximum liability stipulated in the policy was up to Rs. 7,50,000/- and the maximum liability for risk of individual was up to Rs. 4,04, 513/-.

49. From the Insurance Policy, it also transpires that as per the conditions, the vehicle was not to be used for hire or reward besides other things.

50. In view of the facts and circumstances of the case on hand, it transpires that the deceased had taken the



vehicle on hire from the owner of the vehicle. However, no proof was filed on record to show that the hire was for reward or any rent/charge. Hence, I find no breach of insurance policy. As such, at most, the deceased would be deemed to have been permitted to use the vehicle by the owner, and hence, the deceased would enter into the shoes of the owner of the vehicle. Hence, the liability of the Insurance Company to indemnify the owner is only up to Rs. 4,04, 513/- in view of the package policy, wherein the maximum liability for individual cover is stipulated as Rs. 4,04,513/-. As such, out of total compensation of Rs.26,45,836/- as directed by learned Tribunal, to be paid to the Claimants or Legal Representatives of the deceased is not payable by the Insurance Company, who is the Appellant herein. Only Rs. 4,04,513/- out of the total compensation of Rs.26,45,836/- is payable by the Insurance Company to the claimants/respondents herein. The rest amount has to be paid by the owner of the vehicle himself.

51. However, in view of the principle of “Pay and Recover”, the Insurance Company/Appellant herein may be directed to pay the whole compensation amount and recover the same minus Rs.4,04,513/-.

52. Here it is also pertinent to note that there is no



third party in the case. The matter was only between the insured and the insurer because the deceased was not the third party. But he has stepped into the shoes of the owner of the vehicle. As such, the case was not fit for adjudication by the Motor Vehicles Tribunal. The claim petition should have been filed before the Consumer Forum under the Consumer Protection Act, 1986. {Refer to **Swaran Singh case** (supra)}.

53. But it is pertinent to note that such objection was not raised by the Insurance Company before the Tribunal, and hence, the matter was adjudicated by learned Tribunal and now at this stage sending the matter to Consumer Forum would be travesty of justice for the victim after a lapse of nine years.

54. Hence, the appeal is part allowed, directing the Insurance Company to pay the total compensation amount to the claimants/Respondents herein and recovery an amount of Rs.22,41,323/- i.e. (Rs.26,45,836 – Rs.4,04,513/-). The payment must be paid to the Claimants/Respondents herein within two months, failing which the Appellant would be liable to pay penal interest @ 9% *per annum*.

55. The statutory amount of Rs.25,000/- as deposited by the Appellant/Insurance Company in the office of this Court be returned to the Appellant.



56. The record of the Motor Vehicle Tribunal be
sent back forthwith.

(Jitendra Kumar, J.)

Chandan/Shoaib

AFR/NAFR	A.F.R.
CAV DATE	16.09.2025
Uploading Date	12.12.2025
Transmission Date	12.12.2025

