IN THE HIGH COURT OF JUDICATURE OF BOMBAY BENCH AT NAGPUR

FIRST APPEAL NO. 915 OF 2009

The New India Assurance Company Limited,
Through its Branch Office, Yavatmal,
presently through its Chief Regional Manager,
Regional Office, 4th Floor, Dr. Ambedkar Bhawan,
M.E.C.L. Premises, Seminary Hills, Nagpur **... Appellant**

VERSUS

1. Smt. Parwatabai wd/o. Arvind Kanake,
Age : 30 years, Occ. : Household

2. Rahul s/o. Arvind Kanake,
Age : 14 years, Occ. : Nil

3. Hiraman @ Nilesh s/o. Arvind Kanake,
Age : 10 years, Occ. : Nil

4. Ku. Dipali d/o. Arvind Kanake,
Age : 8 years, Occ. : Nil

5. Suraj s/o. Arvind Kanake,
Age : 2 years, Occ. : Nil

All R/o. Shantinagar, Ralegaon, Tahsil–Ralegaon,
Dist. Yavatmal

[Respondent Nos.2 to 5 being minors, through their natural guardian mother Respondent no.1]

6. Dilip s/o. Rajaramji Nagrale,
Age : Major, Occ. : Owner,

R/o. : Ward No.5, Ralegaon, Tahsil Ralegaon,
Dist. Yavatmal

7. Deorao s/o. Shrawan Kanake,
Age : 70 years, Occ. : Agriculture

8. Smt. Kasabai w/o. Deorao Kanake,
Age : 62 years, Occ. : Agriculture,

Both residents of Shivaji Nagar, Ralegaon,
Tahsil, Ralegaon, Dist. Yavatmal **... Respondents**

[The original Non-applicant No.1 is not being arrayed as a party Respondent, he being driver, and not a necessary party]

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Ms. Anita Mategaonkar – Advocate for Appellant
Mr. S.P. Chintakuntalwar – Advocate for Respondent Nos.1 to 5, 7 and 8

….

CORAM : SANDIPKUMAR C. MORE, J.
RESERVED ON : 21st January, 2025
PRONOUNCED ON : 29th January, 2025

JUDGMENT :

1. The appellant/Insurance Company who is original respondent No.3 in M.A.C. No. 379 of 2005, has preferred this appeal against the judgment and award dated 01.04.2009 passed by the learned M.A.C.T. Pandharkawada [Kelapur] *(hereinafter referred to as* ***"the learned***

Tribunal"). Under the impugned award the learned Tribunal has granted compensation of Rs.6,36,100/- alongwith interest @ 8% from the date of application till its realization to the present respondent Nos.1 to 5/claimants. The aforesaid claim had filed for compensation in respect of accidental death of one Arvind Kanake. On 23.04.2002 deceased Arvind Kanake was returning home in Jeep No. MH–29/F–352 owned by present respondent No.6. At about 1:15 a.m. when said jeep reached near Deoli – Kalamb road near Kalamb, the jeep fell in the pit by the side of the road due to rash and negligent driving by its driver i.e. original respondent No.1. In the said accident Arvind Kanake died on the spot and hence, aforesaid claim petition was filed. The learned Tribunal after conducting the enquiry/trial held the driver and owner of the said jeep alongwith present appellant – Insurance Company, jointly and severally liable for paying compensation of Rs.6,36,100/-. Hence, this appeal.

2. Learned Counsel for appellant – Insurance Company submits that, the learned Tribunal has definitely erred in holding the Insurance Company liable for payment of compensation despite the deceased was gratuitous passenger. She pointed out that, the learned Tribunal despite

observing that the deceased was gratuitous passenger, wrongly fastened the liability on the appellant – Insurance Company. She also placed reliance on the judgment of this Court bench at Aurangabad in the case of **New India Assurance Company Ltd. Vs. Ranglal Punju Nikam and Ors.**, passed in *First Appeal No.1252 of 2005* decided on 23.03.2007.

3. On the contrary, learned Counsel for respondent Nos.1 to 5 and 7 and 8 strongly opposed the submissions made on behalf of appellant and supported the impugned judgment. In the alternative he submits that, if this Court comes to the conclusion that the appellant – Insurance Company needs to be exonerated from the liability of payment of compensation then pay and recover order is to be passed. In support of his submissions he placed reliance on the judgments of Hon'ble Apex Court in the cases of **National Insurance Company Ltd. Vs. Baljit Kaur and Ors.**, reported in *2004 (2) Mh.L.J.* and **Manuara Khatun and Ors. Vs. Rajesh KR Singh and Ors.**, reported in *2017 (4) SCC 796*.

4. Heard rival submissions. Perused the documents on record alongwith impugned judgment and also considered the citations relied

upon by both the learned Counsel appearing for the rival parties.

5. It is significant to note that, the present appeal is filed mainly on the two grounds by the appellant – Insurance Company. (i) the rate of interest granted by the learned Tribunal is exorbitant, and (ii) the Insurance Company is not liable to pay the compensation in respect of accident of gratuitous passenger. So far as first ground is concerned, the learned Tribunal granted rate of interest on compensation amount @ 8% per annum from the date of filing of petition till its realization. Though the learned Counsel for appellant – Insurance Company is claiming the aforesaid rate to be exorbitant, but it is important to note that the learned Tribunal has decided the petition in the year 2008 and by taking judicial note the said rate was very much equivalent to the prevailing rate of interest at the relevant time. As such, there is no force in the first ground raised by the appellant – Insurance Company.

6. So far as the second ground of challenge is concerned, it is the submission of learned Counsel for appellant – Insurance Company that, since the deceased was gratuitous passenger at the time of accident in

the offending jeep, the Insurance Company should have been exonerated by the learned Tribunal. Admittedly, in the case of New India Assurance Company Ltd. Vs. Ranglal Punju Nikam and Ors. (*supra*), the Division Bench of this Court has observed as follows :

> *As a result of amendment by Act 54 of 1994, brought into force with effect from 14-11-1994, Section 147 has not undergone extensive amendment. In Section 147(1)(b)(i) words "injury to any person" are substituted by "injury to any person, including owner of the goods or his authorised representative carried in the vehicle". Thus it is clarified that Act only policy would cover the risk of owner of the goods or his authorised agent travelling in a goods vehicle carrying his goods for hire would be covered. This has not brought any change in the position of a gratuitous passenger travelling in a private vehicle. Because Section 147 as it stood prior to 1994 amendment and as it stands after said amendment, as applicable to a gratuitous passenger in a private vehicle, has not undergone any change. In thepresent case the Insurance Company is not liable to cover the risk of claimant as he was a gratuitous passenger.*

7. Therefore the main issue involved in the appeal is that, whether the gratuitous passenger is covered and if such passenger is not covered, can the Insurance Company is asked to satisfy the award first and recover the same from owner of offending vehicle later on in the same proceeding ?

8. Admittedly, the evidence on record shows that the deceased was gratuitous passenger at the time of accident. Even the learned Tribunal

has also confirmed the same. So far as main issue involved in this appeal as aforesaid is concerned, the Hon'ble Apex Court in the case of National Insurance Company Ltd. Vs. Baljit Kaur and Ors. (*supra*) has made following observations :

> *In the case of* ***New India Assurance Company Ltd. Vs. Asha Rani*** *(2003) 2 SCC 223, it was held that the previous decision in Satpal Singh case (supra) was incorrectly rendered, and that the words "any person" as used in Section 147 of the Motor Vehicles Act, 1988, would not include passengers in the goods vehicle, but would rather be confined to the legislative intent to provide for third party risk. The question in the subsequent judgment in* ***Oriental Insurance Company Ltd. Vs. Devireddy Konda Reddy****, 2003(2) Mh.L.J. (SC) 116 = (2003) 2 SCC 339, involved, as in the present case, the liability of the insurance company in the event of death caused to a gratuitous passenger traveling in a goods vehicle. The Court held that the Tribunal and the High Court were not justified in placing reliance upon Satpal Singh case, in view of its reversal by Asha Rani, and that, accordingly, the insurer would not be liable to pay compensation to the family of the victim who was traveling in a goods vehicle.*

9. Thus, the Hon'ble Apex Court is also of the opinion that, in case of accident involving gratuitous passenger the Insurance Company cannot be held liable for paying the compensation. However, the Hon'ble Apex Court in the same judgment has made following observations :

> (20) It is therefore, manifest that in spite of the amendment of 1994, the effect of the provision contained in Section 147 with respect to persons other than the owner of the goods or his authorized representative

remains the same. Although the owner of the goods or his authorized representative would now be covered by the policy of insurance in respect of a goods vehicle, it was not the intention of the legislature to provide for the liability of the insurer with respect to passengers, especially gratuitous passengers, who were neither contemplated at the time the contract of insurance was entered into, nor any premium was paid to the extent of the benefit of insurance to such category of people.

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

> thereof from the insurer, owner or driver of the vehicle jointly or severally but also the dispute between the insurer on the one hand and the owner or driver of the vehicle involved in the accident inasmuch as can be resolved by the tribunal in such a proceeding.

10. The Hon'ble Apex Court considering benevolent nature of enactment has held that in appropriate cases pay and recover order can be passed. Further, the Hon'ble Apex Court in the case of Manuara Khatun and Ors. Vs. Rajesh KR Singh and Ors. (*supra*) relied upon by the learned Counsel for the respondents discussed the various earlier judgments on this issue and finally supported the principle of pay and recover. The Hon'ble Apex Court in the said judgment (*supra*) has made following observations :

> (16) This question also fell for consideration recently in Manager, National Insurance Company Limited Vs. Saju P. Paul and Anr., wherein this Court took note of entire previous case law on the subject mentioned above and examined the question in the context of Section 147 of the Act. While allowing the appeal filed by the Insurance Company by reversing the judgment of the High Court, it was held on facts that since the victim was travelling in offending vehicle as "gratuitous passenger" and hence, the Insurance Company cannot be held liable to suffer the liability arising out of accident on the strength of the insurance policy. However, this Court keeping in view the

> benevolent object of the Act and other relevant factors arising in the case, issued the directions against the Insurance Company to pay the awarded sum to the claimants and then to recover the said sum from the insured in the same proceedings by applying the principle of "pay and recover".
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> (22) In view of the foregoing discussion, we are of the view that the direction to United India Insurance Company (respondent No.3) – they being the insurer of the offending vehicle which was found involved in causing accident due to negligence of its driver needs to be issued directing them (United India Insurance Company – respondent No.3) to first pay the awarded sum to the appellants (claimants) and then to recover the paid awarded sum from the owner of the offending vehicle (Tata Sumo) – respondent No.1 in execution proceedings arising in this very case as per the law laid down in Para 26 of Saju P. Paul's case quoted supra.

11. The Hon'ble Apex Court in the case of **Shamanna and Anr. Vs. Divisional Manager Oriental Insurance Company Ltd. and Ors.**, reported in *2018 (7) JT 498* also relied on the principle of pay and recover and made following observation :

> (12) Since the reference to the larger bench in Parvathnemi case has been disposed of by keeping the questions of law open to be decided in an appropriate case, presently the decision in Swaran Singh case followed in Laxmi Narain Dhut and other cases hold the field. The award passed by the Tribunal directing the insurance company to pay the

> compensation amount awarded to the claimants and thereafter, recover the same from the owner of the vehicle in question, is in accordance with the judgment passed by this Court in Swaran Singh and Laxmi Narain Dhut cases. While so, in our view, the High Court ought not to have interfered with the award passed by the Tribunal directing the first respondent to pay and recover from the owner of the vehicle. The impugned judgment of the High Court exonerating the insurance company from its liability and directing the claimants to recover the compensation from the owner of the vehicle is set aside and the award passed by the Tribunal is restored.

12. Thus, considering all these judgments it has been emerged that, though the Insurance Company is not liable for paying compensation to the gratuitous passenger involved in the accident, but the same can be directed to satisfy by paying compensation to the claimants and recover the same from the owner of offending vehicle.

13. In view of the same, the present appeal stands partly allowed. Though there is no interference in the judgment of the learned Tribunal so far as it relates to award of compensation to the respondents/claimants, but the Insurance Company needs to be exonerated with direction to satisfy the award first by paying compensation as awarded to the respondents/claimants and then to recover the paid amount from the

owner of the offending vehicle i.e. present respondent No.6 – Dilip Rajaramji Nagrale by filing execution petition against respondent No.6 in the same proceeding, before the concerned learned M.A.C.T.

14. The part amount, if paid by the appellant – Insurance Company is allowed to be withdrawn by the present respondents/claimants alongwith accrued interest thereon till date.

15. The Insurance Company shall deposit the balance amount of compensation and on depositing such amount the respondents/claimants shall be entitled to withdraw the same.

16. The appeal is accordingly disposed of.

[SANDIPKUMAR C. MORE]
JUDGE