[243] IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

[1] FAO-1386-2023 (O&M)
Date of Decision : 02.07.2025

Cholamandalam MS General
Insurance Company Limited …Appellant

versus

Sonam and others ….Respondents

[2] FAO-5301-2023 (O&M)

Soman and others …Appellants

versus

Jaibir and another ….Respondents

Coram : **HON'BLE MR. JUSTICE PANKAJ JAIN**

Present: Mr. Punit Jain, Advocate for the appellant in FAO-1386-2023 and for respondent No.2 in FAO-5301-2023.

Mr. Sandeep Kumar Bhardwaj, Advocate for respondent No.1 in FAO-1386-2023 and for the appellant in FAO-5301-2023.

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PANKAJ JAIN, J. (ORAL)

FAO-1386-2023 (O&M)

[1] Insurance Company is in appeal.

[2] The primary issue raised by Mr. Jain, counsel for the appellant in FAO-1386-2023 is that deceased-Suresh Kumar was travelling as a gratuitous person sitting on mudguard. There being no premium grade and the status of deceased being nothing more than a gratuitous passenger, the Tribunal ought not have entertained the claim petition under Section 166 of the Motor Vehicles Act, 1988 to grant compensation. Reliance is being placed upon ration of law laid down in **'Shivraj versus Rajendra and**

another', reported as 2018(5) RCR (Civil) 406.

[3] I have heard counsel for the appellant and have carefully gone through records of the case.

[4] In the considered opinion of this Court, the issue stands fully covered under Section 147 of the Motor Vehicles Act, 1988, which reads as under:-

> ***"147. Requirements of policies and limits of liability. - (1) In order to comply with the requirements of this Chapter, a policy of insurance must be a policy which –***
>
> *(a) is issued by a person who is an authorised insurer; and*
>
> *(b) insures the person or classes of persons specified in the policy to the extent specified in sub-section (2) –*
>
> *(i) against any liability which may be incurred by him in respect of the death of or bodily injury to any person including owner of the goods or his authorised representative carried in the motor vehicle or damage to any property of a third party caused by or arising out of the use of the motor vehicle in a public place;*
>
> *(ii) against the death of or bodily injury to any passenger of a transport vehicle, except gratuitous passengers of a goods vehicle, caused by or arising out of the use of the motor vehicle in a public place.*
>
> ***Explanation**. - For the 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 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.*
>
> *(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.

(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.*

(5) *Where a cover note issued by the insurer under the provisions of this Chapter or the rules or regulations made thereunder is not followed by a policy of insurance within the specified 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 or to such other authority as the State Government may prescribe.*

(6) *Notwithstanding anything contained in any other law for the time being in force, an insurer issuing a policy of insurance under this section shall be liable to indemnify the person or classes of persons specified in the policy in respect of any liability which the policy purports to cover in the case of that person or those classes of persons. "*

[5] The issue regarding application of Section 147 of 1988 Act *qua* claim of owner of goods travelling in goods carriage vehicle alongside the goods has cropped up repeatedly before Supreme Court. 03 Judges Bench in **'New India Assurance Co. Ltd. versus Asha Rani', 2003(1) RCR (Civil) 671,** observed as under:-

"9. In Saptal'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 its 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 Act of 1994 is examined, particularly Section 46 of Act 6 of 1991 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 o 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 that Legislature amends the law by way of application 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 clarification 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, 2000(1) RCR (Civil) 274 (SC) therefore must be held to have not been correctly decided and the impugned judgments of the Tribunal as well 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."

[6] Same was further clarified in **'M/s National Insurance Co. Ltd. Versus Baljit Kaur and others',** 2004(1) RCR (Civil) 722, observing as under:-

"19. In Asha Rani (supra), it has been noticed that sub-clause (i) of clause (b) of sub-section (1) of Section 147 of the 1988 Act speaks of liability which may be incurred by the owner of a vehicle in respect of death of or bodily injury to any person or damage to any property of a third party caused by or arising out of the use of the vehicle in a public place. Furthermore, an owner of a passenger-carrying vehicle must pay premium for covering the risks of the passengers travelling in the vehicle. The premium in view of the 1994 Amendment would only cover a third party as also the owner of the goods or his authorised representative and not any passenger carried in a goods vehicle whether for hire or reward or otherwise.

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."*

[7] In the considered opinion of this Court, ratio of law laid down in **'Shivraj's** case (*supra*) is not applicable to the present case. In **'Shivraj's** case (*supra*), the issue was with respect to a person travelling in trailer attached with the tractor, which was being used for agriculture purpose. Here is a case wherein the tractor was being used for carrying sugarcane and it has come on record that deceased-Suresh Kumar was travelling on tractor being owner of the sugarcane crop.

[8] Faced with the situation, Mr. Jain, counsel for the appellants submits that the version given in the present petition is an improved version as elaborated from Para No.2 of the Award passed by the Tribunal.

[9] Having gone through Para No.2 of the Award, this Court does not find that there is any improvement in the version as claimed by Mr. Jain. The version of the claimants was the same in the earlier petition as well, that deceased-Suresh Kumar was loading sugarcane in trolley and suddenly Jaibir turned the tractor in a rash and negligent manner. So far as deceased-Suresh Kumar being owner of sugarcane and using the tractor for carrying the sugarcane to market, remains undisputed.

[10] In view thereof, this Court does not find any merit in the present appeal. The same is ordered to be **dismissed**.

[11] All pending miscellaneous application(s), if any, stands *disposed off*.

<u>FAO-5301-2023</u> (O&M)

[12] This appeal is preferred by the claimants. They seek enhancement of the compensation awarded by Tribunal on account of death

of deceased-Suresh Kumar.

[13] Counsel for the claimants-appellants submits that the income of the deceased has been wrongly assessed @ Rs.5821/-. He submits that for the relevant time, the minimum wages notified for a skilled worker by the State of Haryana was Rs.9900/- and the same ought to have been taken in to consideration to assess the compensation as the deceased was agriculturist by profession.

[14] Mr. Jain, counsel for respondent No.2-Insurance Company however, submits that there is no evidence regarding any land holding of the deceased and thus, the Tribunal is right in assessing the deceased as unskilled labour.

[15] In the considered opinion of this Court, in the absence of any evidence on record to show that the deceased had a land holding, this Court does not find any reason to interfere in the award passed by the Tribunal. The present appeal is hereby ordered to be **dismissed**.

[16] The Statutory amount deposited by the Insurance Company is ordered to be remitted to the Tribunal.

[17] All pending miscellaneous application(s), if any, stands *disposed off*.

[18] Photocopy of this order be placed on the file of connected case.

(PANKAJ JAIN)
JUDGE

02.07.2025
'R. Sharma'

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