**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

224 **FAO-1407-2008 (O&M)**
Reserved on: 27.08.2025
Date of Decision: 05.09.2025

UNITED INDIA INSURANCE COMPANY LIMITED
......Appellant

Vs.

KAVITA AND OTHERS
......Respondents

CORAM: HON'BLE MRS. JUSTICE SUDEEPTI SHARMA

Present: Mr. Vinod Gupta, Advocate
for the appellant.

Mr. S.K. Tripathi, Advocate
for respondent No.1 to 4.

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SUDEEPTI SHARMA J.

1. The present appeal has been filed by the appellant-Insurance company against the Award dated 07.01.2008 passed in a claim petition under Section 166 of the Motor Vehicles Act, 1988 by the Motor Accident Claims Tribunal, Faridabad (for short, 'the Tribunal'), wherein the appellant-Insurance company was fastened with the liability to pay the compensation to the claimant.

BRIEF FACTS OF THE CASE

2. Brief facts of the case are that on 17.11.2006 Sh. Sunder Singh alongwith one Raghubir Singh was travelling in crane bearing registration no.HR-388-1607 hereinafter referred to as the offending crane) which was being driven by Bal Ram-respondent no.1. He was driving in a negligent manner. The deceased and Raghubar Singh asked him to slow down the speed but he did not

listen to them. When they reached near Siddhdata Ashram at Surajkind Road, Faridabad on account of his rash driving the driver struck the offending crane against a well on Budia Nala, as a result of which the over-turned and fell into the drain (Nala). All the occupants of the crane sustained multiple injuries. They were immediately taken to hospital but Sh. Sunder Singh who had suffered grievous injuries on his vital organs succumbed to his injuries on the way.

3. Upon notice of the claim petition, respondents appeared and contested the claim petition by filing their joint written statement denying the factum of accident/compensation.

4. From the pleadings of the parties, the Tribunal framed the following issues:-

> *"1.Whether Sunder Singh had died in a vehicular accident that took place on account of rash and negligent driving of crane No.HR-388-1607 by respondent no.1 as alleged in the petition? OPP.*
> *2. If issue No.1 is proved, whether the petitioners are entitled for compensation if so to what amount and from whom? OPP.*
> *3. Whether respondent no.1 was not holding a valid and effective driving licence at the time of accident? OPR3*
> *4. Relief."*

5. Thereafter, both the parties led their evidence in support of their respective pleadings.

6. After taking into consideration the pleadings and the evidence on record, the learned Tribunal awarded compensation to the claimants. However, the liability to pay compensation was fastened upon the appellant-Insurance Company.

SUBMISSIONS OF THE LEARNED COUNSELS FOR THE PARTIES

7. Learned counsel for the appellant–insurance company submits that the learned Tribunal has committed a manifest error in fastening the liability to pay compensation upon the insurer. It is contended that the deceased, Sunder Singh, was travelling in the goods carriage as a gratuitous passenger and not in the capacity of an authorized representative of the owner of the goods accompanying the same for the purpose of ensuring their safety or proper delivery.

8. Per contra, learned counsel for the respondent No.1 to 4, however, vehemently argues that the award has rightly been passed and the amount of compensation as assessed by the learned Tribunal has rightly been granted. He, thus prays for dismissal of the appeal.

9. The relevant portion of the award is reproduced as under:-

> *"20. As regards liability of the respondent No.3-United Indian Insurance Company Ltd. it was not denied that the offending crane was insured with the said company. RW3 Arun Kumar Mehta, Senior Assistant of the said company proved the copy of the insurance policy Ex.R5 and stated that they had charged premium from the insured covering risk of third party, owner-cum-driver and one employee of the insured.*
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> *A two fold objection had been raised by the Insurance Company firstly that respondent No.1 Balram was not holding a valid and effective driving licence on the date of offending deceased crane accident and secondly that and the gratuitous breach was a commercial vehicle was travelling in the same as a gratuitous passenger and, therefore, on account of breach of terms and conditions of the insurance policy is not liable to to indemnity the insured.*
>
> *21. No evidence support was led by Insurance Company to support its first objection. In fact not a word was stated by*

RW3 Arun Kumar Mehta, Senior Assistant of the company in that direction. RW1 Balram tendered in evidence copy of his driving licence Ex.R1 which had been issued by the Licensing Authority and which apparently was valid and effective on the date of accident. So, in absence of evidence of the Insurance Company to rebut the same its first objection deserves to be rejected outrightly.

22. As far as the second objection is concerned, learned counsel for the Insurance Company argued that the contention of the petitioners and respondents no.1 and 2 that the deceased was travelling as a representative of M/s Unique Generator House for bringing a generator from Delhi to Mujessar is not supported by any voucher, builty or bill. If at all the offending crane had been hired by the firm named above, RW2 Ashok Singla, who was proprietor of the firm, could have produced the required documents executed in that behalf and should have placed on file the bill/receipt against which the generator set was to be brought from Delhi. While it was mentioned in the first information report and was also stated by PW3 Raghubir Singh who was travelling as conductor on the vehicle, that the generator set was to be brought from Delhi and Mujessar, the driver RW1 and the insured RW2 Smt. Vidya altogether changed the said story by stating that the generator set was to be brought from Sarai Khawaja. Learned counsel contended that deviation from the initial story had been made because the insured had no route permit for Delhi.

23. Elaborating further learned counsel pointed out that the witnesses were not consistent in stating the place from where deceased Sunder had boarded the offending crane. While according to PW3 Raghubir Singh he was standing at hardware chowk and was picked up from there. RW1 Balram the driver, stated that the deceased had accompanied him from the shop of Ashok Singla situated at Nehru Ground, N.I.T., *Faridabad. Apart from that PW3 as well as RW1 stated that they were employeees of Amar Singh, Thekedar. It means that the driver and the conductor were not taking the offending crane under the authority or permission of the insured. So, this also amounted to violation of the terms and conditions of the insurance policy and it proves that the deceased was a gratuitous-passenger who was travelling with the permission of the driver or some third person and not the insured. Submitting that the Insurance Company is not liable to pay compensation for a gratuitous passenger travelling in a commercial vehicle, learned counsel relied upon (i) Dhar Singh and others Vs. Ajit singh and others, 2005 (2) The Punjab Law Reporter 337; (ii) Ramesh Kumar Versus National Insurance C. Ltd. And others, 2001 Accident Claims Journal 1565; and (iii) Oriental Insurance C. Ltd. Versus Meena Variyal and others, 2007 Accident Claims Journal 1284.*

24. I feel neither convinced with the argument of learned counsel for the Insurance Company nor they have any force. Irrespective of the fact whether the generator set was to be brought from Delhi or Sarai Khawaja, the fact remains that the offering crane was being driven in the area of Faridabad when it met with the accident and it is not the allegation of the Insurance Company that the insured was not having a route permit of the said area. The place from where the deceased boarded the offending crane is also not of much importance when it is established that he was travelling in the crane as representative of the firm which had hired the offending crane for bringing the generator set. The fact that he was the representative of the owner of the generator set was mentioned by PW3 Raghubir Singh in the first information report itself, which was lodged by him within 2-1/2 hours of the accident. He hardly had any time to manipulate anything before the report was lodged. As already motioned above, PW2 Ashok

Singla had stated that the deceased was employed for the purpose of delivery and re-delivery of generator sets and that he used to install generator sets on rent. It means that the deceased used to go for installation and also for bringing back the generator sets of PW2. He is not proved to be a permanent employee of the firm but he certinaly used to be hired by the said firm. Indeed, there is a discrepancy with regard to place from where he boarded the offending crane and the capacity in which he was travelling in the same. Such like discrepancies commonly occur in the statement of witnesses, when they are examined and asked about minute details they the occurrence after lapse of considerable long time.

25. It was the allegation of the Insurance Company that the deceased was travelling as a gratuitous passenger in the offending crane. Not an iota of evidence has been led by the company to prove the said objection. In other words there is no evidence of the Insurance Company to rubut the statement PW3 Raghubir Singh as well as statement of RW1 Balram driver and RW2 Smt. Vidya, owner/insured and the relevant contents of the FIR that the deceased was the representative of the owner of the generator set which was to be brought from Sarai Khawaja or Delhi. If there was any doubt in the matter, the Insurance Company could have asked PW2 Ashok Singla to produce the concerned bill/challan vide which the generator set was to be brought from the specified destination. On the contrary not even a suggestion was put to him that the deceased was not travelling in the offending crane as his representative. No suggestion to that effect was given to RW1 and Rw2 also.

26. Through her affidavit Ex.RW2/A Smt. Vidya stepped in the witness box and deposed that she had instructed respondent no.1 Balram to bring the generator in the offending crane. She also stated that conductor Raghubir Singh and deceased Sh.

Sunder Singh representative of Ashok Singla whose generator set was to be carried were travelling in the crane under her instructions and permission. Amar Singh, Thekedar is her husband. As per statement of RW2 Smt. Vidya, they had three cranes in the name of her husband and only the offending crane was in her name. Meaning thereby that it was a family business being managed by husband and the meployeees were common for both. So, it cannot be said that the repondent No.1 was not driving under the authority of the insured.

27. It has been laid down by the Hon'ble Supreme Court in ***Parmod Kumar Agrawal Versus Mushtari Begum, 2004(4) Recent Civil Reports 239*** *that the liability of the Insurance Company extends to the owner of the goods or his authorized representative travelling with the goods in a goods vehicle.*

Same is the proposition of law laid down in ***M.G. Sasi and another Versus Saidali and others, 2006(1) Recent Civil Reports 385****.*

28. Indeed, at the time of accident the goods were not being carried in the offending crane and the deceased the was travelling in the offending crane as representative of of the owners of the goods who had hired the vehicle for bringing the goods from specified destination. The proposition of law laid down in National Insurance Company Ltd. Versus Smt. Urmila and others, 2006(2) Recent Civil Reports 268 applies to the case in hand on all its fours. In the said case the vehicle was duly insured with the appellant at the time of accident. It was also well proved on the file that the driving of the offending vehicle was having valid and effective driving licence at the time of occurrence. It was further apparent on the file that the deceased had hired the offending vehicle from his village for the purpose of selling his animals at Jaipur and on the day of occurrence of the accident after selling his animals, he was returning to his village in the same vehicle when the vehicle *met with an accident. It was held by a Division Bench of our Hon'ble High Court that:-*

> *"It is nowhere pleaded or proved by the appellant that return-Journey of owner of the goods/animals, after selling the same, would amount to any violation of the terms and conditions of the insurance policy especially when the owner of the goods was coming to the place from where he bad hired such goods vehicle."*
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> *It was further held that deceased cannot be termed to be an authorized/gratuitous passenger in the insured vehicle till he reaches the place from wher ehe had hired the insured vehicle."*

10. I have heard the learned counsel for the parties and perused the whole record of this case.

11. A perusal of the impugned award reveals that the learned Tribunal has meticulously appreciated the entire evidence on record and has rightly returned its finding that the deceased, Sh. Sundar Singh, was not travelling as a gratuitous passenger. On the contrary, he was travelling in the offending vehicle as the duly authorised representative of the owner of the goods, having been deputed for the safe custody of the generator set which was being transported in the said vehicle.

12. The record abundantly bears out this conclusion. The unimpeachable testimony of PW-3 Raghubir Singh finds complete corroboration from the equally credible depositions of RW-1 Balram (the driver of the offending vehicle) and RW-2 Smt. Vidya (the owner of the vehicle). Their version also stands fortified by contemporaneous documentary evidence, namely, the First Information Report. Collectively, this evidence unmistakably establishes that the deceased was

travelling in the vehicle in his capacity as the representative of the owner of the goods.

13. Significantly, the testimonies of Raghbir Singh (PW-3), Balram (RW-1) and Vidya (RW-2) are consistent, coherent and remain unshaken in cross-examination. There is nothing on record to suggest that the deceased was travelling in the offending vehicle as an unauthorised or gratuitous passenger. The Insurance Company, despite raising such an objection, failed to lead any evidence whatsoever to rebut or discredit the said consistent and reliable testimonies. The presumption that the deceased was a gratuitous passenger, therefore, stands wholly dislodged.

14. It is also relevant to note that RW-2 Smt. Vidya, the owner of the offending crane, categorically deposed that she had expressly authorised respondent Balram, the driver, to carry the generator set in the crane, and that both Raghubir Singh (conductor) and the deceased Sundar Singh, as representative of the owner of the goods, were travelling in the vehicle under her instructions. This vital testimony, which establishes due authorisation, has neither been shaken in cross-examination nor disproved by any evidence on behalf of the Insurance Company.

15. This Court, in ***FAO No. 3027 of 2007, titled as Karambir and another Vs. Suresh and others, decided on 29.04.2025***, has already adjudicated upon an identical issue and unequivocally held that the Insurance Company is liable to indemnify the insured in respect of injuries or death sustained by the owner of the goods or his duly authorised representative when such person travels along with the goods in a goods carriage. The relavant extract of the same is reproduce as under:

"12. It is trite law that that the Insurance Company is liable to indemnify the insured and compensate for injuries or death suffered by the owner of the goods or his duly authorized representative when such a person travels along with the goods in a goods carriage. In this regard, reference may be made to the judgment of the Hon'ble the Supreme Court in ***New India Assurance Co. Ltd. v. Asha Rani, AIR 2003 SC 607****, wherein it has been held as under:-*

> *"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 VehiclesAct 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 of 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 Vehicle Amended Act of 1994 is examined, particularly Section 46 of the 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 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 judgment 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."

13. Further, in ***National Insurance Co. Ltd. v. Baljit Kaur & Ors., (2004) 2 SCC 1****, Hon'ble the Supreme Court, while reaffirming the ratio in* ***Asha Rani****, clarified the scope of liability of insurer under such circumstances and held as under:*

> *" 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 authoirsed representative remains the same. Although the owner of the goods or his authoirsed representative would now be covered by the policy of insurance in respect of a good 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 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."*

14. The above legal position has also been followed by Division bench of this court in ***National Insurance Co. Ltd. v. Ram Chander & Anr., 2007 (2) RCR (Civil) 51,*** *wherein the Hon'ble Court held as under :*

" We have heard the learned counsel for the parties at length. The only question that has to be determined is whether the claimants were the gratuitous passengers so as to exclude the insured from the purview of the policy as it amounted to a breach of a condition thereof. To establish the factum of the status of the claimants in the light of the provisions of the amended provisions of Section 147(1), we have also perused the evidence with specific reference to the cross-examination of the witnesses who had testified before the Tribunal. The claimants, whose cases were the subject matter of the

aforementioned appeals, were the persons who were accompanying their goods to be carried to the fair. PW2, PW5, PW6, PW7, PW11 and PW12 had testified that bags of fodder, shoes, wooden planks and cattle feed were the goods which were being ferried in the offending vehicle to the accompaniment of the claimants. They could, therefore, not be gratuitous passengers so as to absolve the insurance company of its liability to pay the amount of compensation as determined by the Tribunal since they were all owners of the goods travelling in the vehicle at the time of accident."

16. In light of the above legal position and the unimpeached evidence on record, the findings returned by the learned Tribunal are sound, well-reasoned and fully justified. No infirmity, either factual or legal, is discernible so as to warrant interference by this Court.

17. Consequently, the present appeal, being devoid of merit, is hereby dismissed.

18. The statutory amount of Rs.25,000/- deposited by the appellants at the time of admission of the appeal, is ordered to be refunded to them.

19. Pending application(s), if any, also stand disposed of.

(SUDEEPTI SHARMA)
JUDGE

05.09.2025
Ayub

Whether speaking/non-speaking : Speaking
Whether reportable : Yes/No