IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

FAOs No. 593 of 2016 with FAO No. 334 of 2018

Reserved on: 22.04.2026

Date of decision: 24.04.2026

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1. FAO No. 593 of 2016:
Shriram General Insurance Company Limited.
.....Appellant.

Versus
Nikki Devi & others .....Respondents.

2. FAO No. 334 of 2018:
Nikki Devi & others. .....Appellant.

Versus
Nirmal Singh & others .....Respondents.

Coram
The Hon'ble Mr. Justice Sushil Kukreja, Judge.
[1]*Whether approved for reporting?*

In FAO No. 593 of 2016:

For the appellants: Mr. Jagdish Thakur, Advocate.

For respondents No. 1 to 3: Mr. Sanjeev Kuthiala, Senior Advocate, with Ms. Tamanna Sharma, Advocate.

For respondents No. 4 & 5: Ms. Kamlesh Kumari, Advocate, vice Mr. A.S. Rana, Advocate.

For respondent No. 6: Mr. Raman Sethi, Advocate.

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[1] *Whether reporters of Local Papers may be allowed to see the judgment?*

In FAO No. 334 of 2018:

For the appellants:	Mr. Sanjeev Kuthiala, Senior Advocate, with Ms. Tamanna Sharma, Advocate.
For respondents No. 1 & 2:	Ms. Kamlesh Kumari, Advocate, vice Mr. A.S. Rana, Advocate.
For respondent No. 3:	Mr. Raman Sethi, Advocate.
For respondent No. 4:	Mr. Jagdish Thakur, Advocate.

Sushil Kukreja, Judge.

Since both these appeals are the offshoots of impugned award, dated 30.12.2015, passed by learned Motor Accidents Claims Tribunal, Bilaspur, H.P. (hereinafter for the sake of brevity referred to as “the learned Tribunal”), they are taken up together for consideration and disposal.

2. The appellants in FAO No. 334 of 2018, who were petitioners (claimants) before the learned Tribunal below (hereinafter referred to as “the petitioners/claimants”) maintained appeal under Section 173 of the Motor Vehicles Act, 1988 (for short ‘the Act’) against impugned award, dated 30.12.2015, passed by learned Tribunal below, whereby the petitioners were held entitled to compensation of Rs.13,30,000/-, alongwith interest @ 9% per annum from the date of filing of the petition till actual realization of the

amount, with a prayer to allow their appeal and the amount of compensation be enhanced.

3. Conversely, appellant-Shriram General Insurance Company, respondent No. 4 before the learned Tribunal below, also maintained appeal, i.e., FAO No. 593 of 2016, under section 173 of the Act, against the aforesaid impugned award passed by the learned Tribunal below, with a prayer to quash and set-aside the impugned award by dismissing the claim petition filed by the petitioners/claimants.

4. The facts giving rise to the appeal are that the petitioners/claimants, i.e., Smt. Nikki Devi, Mr. Sunil, wife and son, respectively, of Shri Suresh Kumar (deceased) and Smt. Roshani Devi, mother of the deceased, filed a claim petition under Section 166 of the Act, claiming compensation. As per the petitioners, the deceased was running a hotel at Delag and he was an agriculturist as well. The monthly income of the deceased was around Rs.30,000/-. On the evening of 10.09.2011 the deceased was going from village Delag to village Bhurali in three-wheeler, having registration No. HP-23B-4002, for attending a function in the house of the daughter of Shri Sukh Dev. S/Shri Sukh Dev, Rajinder Kumar, Jagdish Chand and Abhishek were also travelling

with the deceased in the same three-wheeler. The aforesaid three-wheeler was owned by respondent No. 2-Shri Rashila Ram and it was being driven by respondent No. 1-Shri Nirmal Singh. The three-wheeler was being driven on a high speed by respondent No. 1 and when the vehicle reached village Bhurali, due to high speed, vehicle went out of control and rolled down into the *Khud.* In the accident the deceased suffered severe injuries and he was rushed to Sunder Nagar Hospital, where he was declared dead. As per the petitioners, the accident had occurred due to the rash and negligent driving of respondent No.1.

5. In response to the claim petition filed by the petitioners, the respondents filed separate replies. Respondent No. 1 took preliminary objection of maintainability of the claim petition. On merits, the age, income and avocation of the deceased was denied, however, it was admitted that the deceased was travelling in the aforesaid three-wheeler and it was being driven by the replying respondent. As per the replying respondent, he was driving the vehicle with care and caution and near village Bhurali a big stone fell on the vehicle, due to rainy season and despite his best efforts, the vehicle tumbled on the road.

The accident occurred due to natural calamity, in which he too suffered injuries. The vehicle was duly insured with respondent No. 4, thus he was not liable to pay the compensation. He prayed for dismissal of the claim petition.

6. Respondent No. 2, i.e., owner of the offending vehicle, in his reply, took preliminary objections qua maintainability of the claim petition that the petition was bad for non-joinder and mis-joinder of the necessary parties. The replying respondent averred that he had sold the vehicle to respondent No. 3-Shri Rajesh Kumar on 13.05.2005 and he had handed over possession of the vehicle alongwith its documents to respondent No. 3. He further averred that as per clause-III of the sale agreement, respondent No. 3 was responsible for all civil and criminal liabilities qua the aforesaid vehicle. The replying respondent, on merits, denied the age, income etc. of the deceased due to lack of knowledge. He also disputed the occurrence of the accident and averred that the compensation claim was highly excessive. He also averred that as he was not owner of the offending vehicle at the time of the accident and he was not liable to pay any compensation. He prayed for dismissal of the claim petition.

7. Respondent No. 3, in his reply, took preliminary objection qua maintainability of the claim petition, *locus standi* and the petition was bad for non-joinder and mis-joinder of the necessary parties. On merits, the age, profession and income of the deceased was denied and it was admitted that respondent No. 2 was the registered owner of the Auto and he had sold the same to him. The vehicle was hypothecated with ICICI Bank, Bilaspur and he (respondent No. 3) had paid the total loan amount to the concerned bank, thereafter he approached respondent No. 2 to execute a sale affidavit in his favour, but of no avail. The replying respondent sold the vehicle in question to Shri Jagdish, (late father of respondent No. 1), vide agreement to sell dated 21.01.2011. After the death of Shri Jagdish the vehicle remained in possession of respondent No. 1. He prayed that proceedings against him be dropped.

8. Respondent No. 4-Insurance Company, in its reply, raised preliminary objections of maintainability of the petition and averred that no accident took place. It was further averred that the vehicle was being plied in violation of the terms and conditions of the insurance policy as well as the provisions of the Act. Respondent No. 1 was not having

valid and effective driving licence to drive three-wheeler and it was being plied without valid documents, i.e., registration certificate, route permit, fitness certificate etc.. As per the replying respondent, there was no contract of insurance between it and the owner of the offending vehicle. It was averred that the deceased was travelling in the vehicle as an unauthorized/gratuitous passenger. Avocation of the deceased was denied and it was disputed that income of the deceased was Rs.30,000/- per month. It was averred that respondent No. 2 was not owner of the vehicle and the petitioners were not entitled for compensation.

9. After hearing the learned counsel for the respective parties, the learned Tribunal below had allowed the claim petition and the petitioners/claimants were held entitled for compensation of Rs.13,30,000/- against respondents No. 1 & 4 jointly and severally from the date of filing of the petitions till its realization alongwith interest @ 9% per annum. However, respondent No. 1, being owner-cum-driver of the offending vehicle, was held liable to pay the compensation money and in turn he was to be indemnified by respondent No. 4 (insurer).

10. Feeling aggrieved and dissatisfied, appellant

(insurance company) preferred appeal, i.e., FAO No. 593 of 2016, against the impugned award passed by the learned Tribunal below with prayer to quash and set-aside the same by dismissing the claim petition, whereas appellants (claimants) preferred appeal, i.e., FAO No. 334 of 2018, against the impugned award, with prayer to allow their appeal and the amount of compensation be enhanced.

11. Learned Senior Counsel for the claimants contended that the learned Tribunal below had failed to appreciate the documentary evidence and wrongly assessed the income of the deceased @ Rs.6000/- per month, whereas his monthly income was Rs.30,000/- per month. He further contended that by taking the income of the deceased as Rs.30,000/- per month, the amount of compensation deserves to be enhanced.

12. Conversely, the learned counsel for respondent-Insurance Company contended that the deceased was travelling as a gratuitous passenger in the offending vehicle, therefore, the learned Tribunal below has wrongly fastened the liability on the respondent-Insurance Company. However, the learned vice counsel for respondent No. 5-Shri Rashila Ram (owner of the offending vehicle) supported the

impugned award passed by the learned Tribunal below.

13. I have heard the learned Senior Counsel/counsel for the parties and carefully examined the entire records.

14. The first question which arises for consideration before this Court is as to what amount of compensation, the petitioners/claimants are entitled? The petitioners are the legal representatives of the deceased Suresh Kumar, who died in a motor vehicle accident on 10.09.2011, which occurred due to the rash and negligent driving on the part of driver of the vehicle (respondent No. 1 Shri Nirmal Singh) which was owned by respondent No. 2-Shri Rashila Ram. On appraisal of the evidence led before it, the Claims Tribunal reached a finding that the accident had occurred due to rash and negligent driving of the offending vehicle, bearing registration No. HP-23B-4002 by its driver and the same had resulted into the death of Suresh Kumar. The rash and negligent act of driving on the part of the driver of the offending vehicle has not been assailed by any of the parties in the instant appeals.

15. The case of the petitioners is that the deceased-Suresh Kumar was running a hotel at Delag and he also used to work as an agriculturist. As per the petitioners, the

monthly income of the deceased was Rs.30,000/-, i.e., Rs.10,000/- from agriculture and Rs.20,000/- by running the hotel.

16. It is the settled position of law that while assessing the income of the deceased/claimant some guesswork has to be done by the court, however, such guesswork cannot be detached from reality. In ***Chandra v. Mukesh Kumar Yadav, (2022) 1 SCC 198*** the Hon'ble Supreme Court held that in absence of proof with respect to the income of the deceased/claimant some guesswork has to be done by the court in order to assess the income of the deceased/claimant. However, this guesswork cannot be detached from the reality. The relevant paragraph of the said judgment is reproduced as under:

> ***"9. It is the specific case of the claimants that the deceased was possessing heavy vehicle driving licence and was earning Rs 15,000 per month. Possessing such licence and driving of heavy vehicle on the date of accident is proved from the evidence on record. Though the wife of the deceased has categorically deposed as AW 1 that her husband Shivpal was earning Rs 15,000 per month, same [2024:RJ-JD:38752] (6 of 11) [CMA-1352/2016] was not considered only on the ground that salary certificate was not filed. The Tribunal has fixed the monthly income of the deceased by adopting minimum wage notified for the skilled labour in the year 2016. In absence of salary certificate the minimum wage notification can be a yardstick but at the same time cannot be an absolute one to fix the income of the deceased. In absence of documentary evidence on record some amount of guesswork is required to be done. But at the same time the guesswork for assessing the income of the deceased should not be totally detached from reality. Merely because the claimants were unable to produce documentary evidence to show the monthly income of Shivpal, same***

> ***does not justify adoption of lowest tier of minimum wage while computing the income. There is no reason to discard the oral evidence of the wife of the deceased who has deposed that late Shivpal was earning around Rs 15,000 per month."***

17. On the bedrock of above legal proposition and considering the case in hand, this Court is of considered view that the deceased was running a *dhaba* and was also working as an agriculturist, but the claimants failed to produce the proof of the actual income of the deceased before the Tribunal and the Tribunal on the basis of the oral evidences came to the finding that the deceased was earning monthly income of Rs. 6,000/-.

18. One of the petitioners, i.e. Smt. Nikki Devi, wife of the deceased, appeared in the witness-box as PW-1, and deposed that her husband (deceased) was running a *dabha* and he was also having 11 bighas of land in which he was doing work of agriculture. She further deposed that her husband had also kept one cook and one helper in the *dabha* and he used to pay a sum of Rs.5,000/- per month to the cook and Rs.2,500/- per month to the helper. She also deposed that they were completely dependent on the income of the deceased and after his death the *dabha* was closed. PW-2 Shri Dalip Singh deposed that he used to work as a cook in the Dhaba of the deceased from January, 2011 till his

death and he was being paid Rs.5000/- per month by the deceased. Similarly, PW-3 Shri Sagar Chand deposed that he used to work as helper in the Dhaba of the deceased and he was being paid Rs.2500/- per month as salary. PW-6 Smt. Sunita Devi deposed that she knew the deceased Suresh Kumar and he used to run a *dabha* from the year 2009 and he was earning a good income from the *dabha.*

19. Therefore, in view of the evidence led by the petitioners, it can safely be held that the deceased was running a *dabha* and also doing agriculture work. Hence, this Court is of considered view that it would be appropriate in the absence of proof of income, to hold that the deceased was earning income of Rs 7000/- per month at the time of accident.

20. In ***Sarla Verma & others vs. Delhi Transport Corporation and another, (2009) 6 SCC 121,*** the Apex Court, on the question of deduction towards the personal and living expenses of the deceased held that, the personal and living expenses of the deceased should be deducted from his monthly income, to arrive at the contribution to the dependents. Where the deceased was married, the deduction towards personal and living expenses of the

deceased should be one-third where the number of dependent family members is 2 to 3; one-fourth where the number of dependent family members is 4 to 6; and one-fifth where the number of dependent family members exceeds 6. In regard to bachelors, normally, 50% is deducted as personal and living expenses, because it is assumed that a bachelor would tend to spend more on himself.

21. In the instant case, since there were three family members who were dependent upon the income of the deceased at the time of accident, 1/3rd of his income is required to be deducted towards personal and living expenses, in view of the law laid down by the Hon'ble Supreme Court in ***Sarla Verma's case (supra).***

22. In ***National Insurance Company Limited vs. Pranay Sethi & others, (2017) 16 SCC 680***, it has been held that while determining the income, in case the deceased was self-employed or on a fixed salary and below the age of 40 years, an addition of 40% of the established income to the income of the deceased towards future prospects should be made. Paras 59.4 of the said judgment read as follows:

> ***"59.4 In case the deceased was self-employed or on a fixed salary, an addition of 40% of the established income should be the warrant where the deceased was below***

> ***the age of 40 years. An addition of 25% where the deceased was between the age of 40 to 50 years and 10% where the deceased was between the age of 50 to 60 years should be regarded as the necessary method of computation. The established income means the income minus the tax component."***

23. While considering Rs. 7,000/- as the monthly income of the deceased and by addition of 40% as future prospects as deceased being self employed and 37 years of age, the income of the deceased comes out to Rs 9800/- per month (Rs.7000/- + Rs.2800/-). Thus, after the deduction of 1/3rd of the income towards the personal expenses of the deceased, his contribution to family comes out to Rs Rs.6534/-per month (Rs.9800/- Rs.3266/-) and his annual contribution comes out to Rs.78,408/-(Rs.6534/- x 12).

24. In ***Sarla Verma's case (supra),*** it has further been held by the Hon'ble Supreme Court that the multiplier to be used should be as mentioned in column (4) of the Table above (prepared by applying Susamma Thomas, Trilok Chandra and Charlie), which starts with an operative multiplier of 18 (for the age groups of 15 to 20 and 21 to 25 years), reduced by one unit for every five years, that is M-17 for 26 to 30 years, M-16 for 31 to 35 years, M-15 for 36 to 40 years, M-14 for 41 to 45 years, and M-13 for 46 to 50 years, then reduced by two units for every five years, that is, M-11

for 51 to 55 years, M-9 for 56 to 60 years, M-7 for 61 to 65 years and M-5 for 66 to 70 years. The relevant portion of the aforesaid judgment is as under:-

> ***"42. We therefore hold that the multiplier to be used should be as mentioned in column (4) of the Table above (prepared by applying Susamma Thomas, Trilok Chandra and Charlie), which starts with an operative multiplier of 18 (for the age groups of 15 to 20 and 21 to 25 years), reduced by one unit for every five years, that is M-17 for 26 to 30 years, M-16 for 31 to 35 years, M-15 for 36 to 40 years, M-14 for 41 to 45 years, and M-13 for 46 to 50 years, then reduced by two units for every five years, that is, M-11 for 51 to 55 years, M-9 for 56 to 60 years, M-7 for 61 to 65 years and M-5 for 66 to 70 years."***

25. Since the deceased was 37 years of age, as such by applying the multiplier of '15' as per the settled law, the compensation under the head, loss of dependency is re-fixed ***as Rs.11,76,120/- (78408/- x 15).***

26. Now, coming to the last aspect, i.e., the amount under conventional heads. In ***Pranay Sethi's*** case (supra), the Hon'ble Supreme Court has held that for the conventional heads, namely, "Loss of Estate", "Loss of Consortium" and "Funeral Expenses" amount of compensation is fixed as Rs.15,000/-, Rs.40,000/- and Rs.15,000/- respectively and the aforesaid figures quantified by the Apex Court have to be enhanced on percentage basis, at the rate of 10%, in a span of every three years. The relevant portion of the aforesaid judgment is as under:

> ***"52. … … …It seems to us that reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses should be Rs.15,000, Rs.40,000 and Rs.15,000 respectively. The principle of revisiting the said heads is an acceptable principle. But the revisit should not be fact centric or quantum-centric. We think that it would be condign that the amount that we have quantified should be enhanced on percentage basis in every three years and the enhancement should be at the rate of 10% in a span of three years. We are disposed to hold so because that will bring in consistency in respect of those heads."***

27. In ***Magma General Insurance Company Limited vs. Nanu Ram alias Chuhru Ram & others,*** reported in ***(2018) 18 Supreme Court Cases 130***, the Hon'ble Supreme Court has laid down that consortium is not limited to spousal consortium and it also includes parental consortium as well as filial consortium. The relevant portion of the aforesaid judgment reads as under:-

> ***"21. A Constitution Bench of this Court in Pranay Sethi dealt with the various heads under which compensation is to be awarded in a death case. One of these heads is loss of consortium. In legal parlance, "consortium" is a compendious term which encompasses "spousal consortium", "parental consortium", and "filial consortium". The right to consortium would include the company, care, help comfort, guidance, solace and affection of the deceased, which is a loss to his family. With respect to a spouse, it would include sexual relations with the deceased spouse:***
>
> ***21.1. Spousal consortium is general defined as rights pertaining to the relationship of a husband-wife which allows compensation o the surviving spouse for loss of "company, society, cooperation, affection, and aid of the other in every conjugal relation".***
>
> ***21.2. Parental consortium is granted to the child upon the premature death of a parent, for loss of "parental aid, protection, affection, society, discipline, guidance and training".***
>
> ***21.3. Filial consortium is the right of the parents to compensation in the case of an accidental death of a child. An accident leading to the death of a child causes great shock and agony to the parents and family of the deceased. The greatest agony for a parent is to lose***

> ***their child during their lifetime. Children are valued for their love affection, companionship and their role in the family unit.***
>
> ***22. Consortium is a special prism reflecting changing norms about the status and worth of actual relationships. Modern jurisdictions world-over have recognized that the value of a child's consortium far exceeds the economic value of the compensation awarded in the case of the death of a child. Most jurisdictions therefore permit parents to be awarded compensation under loss of consortium on the death of a child. The amount awarded to the parents is a compensation for loss of love, affection, care and companionship of the deceased child."***

28. While placing reliance upon the judgment passed by the Hon'ble Apex Court in ***Pranay Sethi's case (supra),*** the Hon'ble Supreme Court in ***Sunita & ors. Vs. United India Insurance Co. Ltd. & ors.,*** Civil Appeal No.9538 of 2025, decided on July 17, 2025, had enhanced the compensation under the conventional heads @ 10% after a span of every three years w.e.f. the year 2017 and held as follows:-

> ***"20. Regarding the monthly income of the deceased, we concur with the view taken by the Courts below in assessing the same to be Rs.12,000/- per month, for there being no error therein. Hence, in awarding compensation which is just and fair, we are inclined to increase the amount awarded under the conventional heads, namely, loss of estate, loss of consortium, and funeral expenses by 10% adverting to the settled principle of law laid down by this Court in National Insurance Co. Ltd. v. Pranay Sethi, that such amount should be revised every three years."***

29. Accordingly in view of the law laid down by the Hon'ble Supreme Court in ***Pranay Sethi's*** as well as ***Sunita's*** cases (supra), by enhancing the compensation under the conventional heads @ 10%, after every three

years from the year 2017, the petitioners are entitled to loss of estate at Rs.19,965/-, funeral expenses at Rs.19,965/-, petitioner No.1, being widow of the deceased, is entitled to spousal consortium of Rs.53,240/-, and petitioners No.3 and 4, being children, are entitled to parental consortium of Rs.53,240/- each. Accordingly, the total amount of compensation comes out as under:

	Head	**Amount**
(i)	Loss of dependency	Rs.11,76,120/-
(ii)	Funeral expenses	Rs.19,965,/-
(iii)	Loss of estate	Rs.19,965/-
(iv)	Spousal consortium	Rs.53,240/-(payable to petitioner/ respondent No.1)
(v)	Parental consortium	Rs.1,06,480/-(Rs.53,240/- Payable to each of petitioners/ respondents No.3 & 4)

Total compensation awarded ***Rs.13,75,770/-***

30. Now, the next question which arises for consideration is as to whether the deceased was travelling in the offending vehicle as gratuitous passenger at the time of the accident?

31. Before adverting to the facts of the present case, this

Court deems it appropriate to examine the law evolved with respect to unauthorized/gratuitous passengers travelling in the goods vehicle. Section 147 of the 1988 Act is *pari materia* to Section 95 of the 1939 Act. One of the major differences between the two enactments was that 1939 Act defines the expression “goods vehicle” whereas 1988 Act defines the term “goods carriage”. As per 2(8) of the 1939 Act, “goods vehicle” means any motor vehicle constructed or adapted for use for the carriage of goods, or any motor vehicle not so constructed or adapted when used for the carriage of goods solely or in addition to passengers'. However, as per 2(14) of the 1988 Act, 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. The Hon’ble Supreme Court examined the liability of unauthorized/gratuitous passengers in the goods vehicle in ***New India Assurance Company vs. Satpal Singh*** reported as ***(2000 (1) SCC 237).*** While examining the said question, the Hon’ble Supreme Court held that an insurance policy covering third party risk is not required to exclude gratuitous passenger in a vehicle no matter the vehicle is of any type or

class. Hence in view of the law laid down by the Hon'ble Supreme Court in ***Satpal Singh's*** case (supra), the Insurance Company is held liable to pay compensation even for gratuitous passengers of the goods vehicle.

32. Subsequently, the Hon'ble Supreme Court in ***New India Assurance Company Ltd vs. Asha Rani*** reported as ***2003 (2) SCC 223*** examined the correctness of its earlier Judgment ***Satpal Singh's*** case (supra) and overruled the said Judgment and held as follows:

> ***"26. In view of the changes in the relevant provisions in 1988 Act vis-a-vis 1939 Act, we are of the opinion that the meaning of the words "any person" must also be attributed having regard to the context in which they have been used i.e. 'a third party'. Keeping in view the provisions of 1988 Act, we are of the opinion that as the provisions thereof do not enjoin any statutory liability on the owner of a vehicle to get his vehicle insured for any passenger travelling in a goods vehicle, the insurers would not be liable therefor."***
>
> ***27. Again, the 1988 Act was amended and Motor Vehicles (Amendment) Act, 1994 came into effect. The material portion of the provision contained in Section 147 of the 1988 Act, as amended by the Motor Vehicles (Amendment) Act, 1994, reads as follows:***
>
> ***"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) xxx xxx xxx***
> ***(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 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 in a public place;"***

33. In ***National Insurance Company vs. Baljit Kaur reported as 2004 (2) SCC 1,*** the Hon'ble Supreme Court

examined the issue of whether an insurance policy in respect of a goods vehicle would also cover gratuitous passengers, in view of the legislative amendment in 1994 to Section 147 of the 1988 Act. The Hon'ble Supreme Court held that 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'. The relevant portion of the aforesaid judgement, inter alia, reads as follows:

> ***"11. Admittedly, it is incumbent upon a Court of law to eschew that interpretation of a statute that would serve to negate its true import, or to render the words of any provision as superfluous. Nonetheless, we find no merit in the above submissions proffered by the learned counsel for the respondent. The effect of the 1994 amendment on Section 147 is unambiguous. Where earlier, the words "any person" could be held not to include the owner of the goods or his authorized representative travelling in the goods vehicle, Parliament has now made it clear that such a construction is no longer possible. The scope of this rationale does not, however, extend to cover the class of cases where gratuitous passengers for whom no insurance policy was envisaged, and for whom no insurance premium was paid, employ the goods vehicle as a medium of conveyance.***
>
> ***12. We find ourselves unable, furthermore, to countenance the contention of the respondents that the words "any person" as used in Section 147 of the Motor Vehicles Act, would be rendered otiose by an interpretation that removed gratuitous passengers from the ambit of the same. It was observed by this Court in the case concerning New India Assurance Co.***

> ***Ltd. Vs. Asha Rani (supra) that the true purport of the words "any person" is to be found in the liability of the insurer for third party risk, which was sought to be provided for by the enactment.***
>
> ***13. It is pertinent to note that a statutory liability enjoined upon an owner of the vehicle to compulsorily insure it so as to cover the liability in respect of a person who was travelling in a vehicle pursuant to a contract of employment in terms of proviso (ii) appended to Section 95 of the 1939 Act does not occur in Section 147 of the 1988 Act. The changes effected in the 1988 Act vis-`-vis the 1939 Act as regard definitions of 'goods vehicle', 'public service vehicle' and 'stage carriage' have also a bearing on the subject inasmuch as the concept of any goods carriage carrying any passenger or any other person was not contemplated.***
>
> … … … … … … … …
>
> ***17. By reason of the 1994 Amendment what was added is "including the owner of the goods or his authorized representative carried in the vehicle". The liability of the owner of the vehicle to insure it compulsorily, thus, by reason of the aforementioned amendment included only the owner of the goods or his authorized representative carried in the vehicle besides the third parties. The intention of the Parliament, therefore, could not have been that the words 'any person' occurring in Section 147 would cover all persons who were travelling in a goods carriage in any capacity whatsoever. If such was the intention there was no necessity of the Parliament to carry out an amendment inasmuch as expression 'any person' contained in sub-clause (i) of clause (b) of sub-section (1) of Section 147 would have included the owner of the goods or his authorized representative besides the passengers who are gratuitous or otherwise"***

34. Hence, the legal position as it stands today is that the owner/authorized representative of the owner of the goods travelling in a goods vehicle would be covered by the insurance policy. However, a gratuitous passenger travelling in a goods vehicle will not be covered by the insurance policy.

35. Based on this legal position, this Court now proceeds to examine the facts of the present case. In the instant case, the perusal of the registration certificate of the

offending vehicle Ex. RC, shows that it was a light goods vehicle and its seating capacity was one.

36. It is the case of the petitioners themselves that on 10.09.2011 Shri Suresh Kumar (the deceased) was travelling in the three-wheeler in question, bearing registration No. HP-23B-4002 for attending a function, along with S/Shri Sukh Dev, Rajinder Kumar, Jagdish Chand and Abhishek and when the vehicle reached village Bhurali, it rolled down into a khud and the deceased died in the said accident. The owner of the offending vehicle has not specifically denied these averments. The FIR, Ex. PW-4/A, had been lodged by one of the occupants of the offending vehicle, namely, Sukh Dev and it has also been mentioned in the FIR that on the relevant day the deceased was travelling alongwith Sukh Dev, Rajender Kumar, Jagdish Chand and Abhishek and the vehicle was being driven by respondent No. 1-Nirmal Singh.

37. The copy of insurance policy placed on record, as Ex. RB, does not show that it had provided coverage to person more than authorized seating capacity of the vehicle. The vehicle details provided in the policy also mention seating capacity as of one person (including the driver). The

premium had been paid for own damage and basic third party liability. Additional sum of Rs.25/- was paid for coverage to driver and sum of Rs.100/- was paid for coverage to personal accident of owner-driver. Thus, the insurer would be liable to indemnify the insured of the vehicle involved in these cases to the extent of third-party liabilities, paid driver and the owner- driver to the extent, as noticed above. It is only by virtue of the amended provisions of Section 147 that the owner of the goods is provided coverage under the statutory insurance policy and it cannot be taken to mean that under the shadow of such statutory provision, insurer will be liable to indemnify the insured even for the claims of the persons, who were occupying the vehicle beyond its seating capacity. The coverage provided to passengers as owner of goods under Section 147 of the Act has to be read in context of the seating capacity of the vehicle. A vehicle permitting the seating of only one person cannot lawfully be allowed to carry more than one person. In fact, there will not be any space for accommodating more persons than prescribed

38. Reference can be gainfully made to the judgment passed by Hon'ble Supreme Court in ***National Insurance***

Company Ltd. vs. Cholleti Bharatamma & others, AIR 2008 Supreme Court 484, wherein it was held as under:

> ***"22. Upon considering the evidences on record, it was held:***
>
> ***"As the permitted seating capacity of the lorry is only '3' including the driver and cleaner and as only one non-fare paying passenger as owner of goods can travel in the cabin and as the deceased has admittedly travelled in the cabin beyond seating capacity and contrary to the terms of the permit as well as Rule 252(2) of the Motor Vehicles Rules. I am of the view that R-2 cannot be fastened with the liability to pay compensation along with R-1 to all the injured and legal representatives of deceased. At best it is liable to pay compensation jointly and severally alongwith R-1 only in respect of one non-fare paying passengers, who is the owner of the goods. As per the endorsement I.M.T. 14(b) unless additional premium is paid for the number of persons who travelled in the lorry, as owners. I am of the view that R-2 cannot be fastened with liability. Further all the petitioners and deceased cannot be deemed to have travelled as owners of the paddy as the paddy is said to be in bags and orally kept in loose in the lorry and it is enough if any one of them have travelled in the lorry on behalf of all, as owner of the lorry. Rule 277(3) of A.P. Motor Vehicles Rules, clearly shows that no person shall be carried in the goods vehicle except as provided in the Rule under the statute and as the only person, who are permitted to carry in goods vehicles are the owner of hirer or bona fide employee of owner of hirer and total number of such persons, who could be carried in goods vehicles is not more than seven including the driver. As per Rules 252(2) person shall be carried in the cab of the vehicle beyond the seating capacity as per clause (2) person shall be carried in the cab of the vehicle beyond the seating capacity as per clause (2). No person shall be carried on the load or otherwise. Rule 4 empowers the R.T.A. to allow large number of persons to be carried. As the seating capacity of the lorry is only '3' as per Ex.B1 and B3 and as the risk of only owner of goods is covered by Ex. B2 policy, whereas about 40 t 42 persons travelled in the lorry by sitting on the load, which is not permitted and as there is no material to show that R.T.A. permitted carriage of more than seating capacity but on the other hand the permit is cancelled. I am in agreement with the contention of the learned counsel for the respondent that it cannot be fastened with the liability for compensation.""***

39. In the instant case, as observed earlier, it has come on record that on 10.09.2011 five passengers were

travelling in the vehicle in question in addition to the driver and no additional premium was paid for such passengers travelling by the vehicle in question. Therefore, an act which otherwise is unlawful cannot be legitimized under the garb of statutory provision of Section 147 of the Act without considering such provisions in its real perspective. The coverage to the owner of the goods in case of Goods Carriage Vehicle, thus, cannot be extended to more than the persons authorized to sit in the vehicle. Therefore, it has been established on record that the deceased was travelling as an unauthorized/gratuitous passenger in the vehicle in question. The insurance company has, thus, established that it has no liability under the law to pay the amount of compensation to the claimants.

40. The next question which arises for consideration before this Court is as to who shall be liable to pay the amount of compensation to the petitioners/claimants in the facts and circumstances of the present case. The perusal of the registration certificate of the offending vehicle, bearing registration No. HP-23B-4002, reveals that respondent No. 2-Rashila Ram has been recorded as the registered owner of the offending vehicle at the time of the accident. There is no

denial of the fact that respondent No.2 had sold the three-wheeler to respondent No.3 vide agreement to sell dated 13.05.2005 (Mark-X) and its possession was delivered to the respondent No.3 by respondent No.2 on the date of sale. Ext. RA is the agreement to sell dated 21.01.2011, which reveals that respondent No. 3 further sold the three-wheeler to Shi Jagdish (father of the respondent No.1) and handed over its possession to him. It is there in evidence that after the purchase made by Shri Jagdish on 21.01.2011, the three-wheeler was being plied by his son Shri Nirmal Kumar (respondent No.1) as Jagdish had died.

41. In ***Naveen Kumar vs. Vijay Kumar & others, 2018 ACJ 677,*** the Hon'ble Supreme Court held that where the registered owner has purported to transfer the vehicle but continues to be reflected in the records of the registering authority as the owner of the vehicle, he would not stand absolved of liability. The relevant para of the aforesaid judgment reads as under:

> ***"12. The consistent thread of reasoning which emerges from the above decisions is that in view of the definition of the expression 'owner' in Section 2(3), it is the person in whose name the motor vehicle stands registered who, for the purposes of the Act, would be treated as the 'owner'. However, where a person is a minor, the guardian of the minor would be treated as the owner. Where a motor vehicle is subject to an agreement of hire-purchase, lease or hypothecation, the person in possession of the vehicle under that agreement is treated as the owner. In a situation such as the present where the registered owner***

> ***has purported to transfer the vehicle but continues to be reflected in the records of the registering authority as the owner of the vehicle, he would not stand absolved of liability. Parliament has consciously introduced the definition of the expression 'owner' in section 2(3), making a departure from the provisions of section 2(1) in the earlier Act of 1939. The principle underlying the provisions of section 2(3) is that the victim of a motor accident or, in the case of a death, the legal heirs of the deceased victim should not be left in a state of uncertainty. A claim for compensation ought not to be burdened with following a trial of successive transfers, which are not registered with the registering authority. To hold otherwise would be to defeat the salutary object and purpose of the Act. Hence, the interpretation to be placed must facilitate the fulfillment of the object of the law. In the present case, the respondent No. 1 was the 'owner' of the vehicle involved in the accident within the meaning of Section 2(30). The liability to pay compensation stands fastened upon him. Admittedly, the vehicle was uninsured. The High Court has proceeded upon a misconstruction of the judgments of this Curt in Reshma, 2015 ACJ 1 (SC) and Purnya Kala Devi, 2014 ACJ 1269 (SC)."***

42. In the instant case, since respondent No. 2-Rashila Ram continues to be reflected in the records of the registering authority as owner of the offending vehicle, therefore, in view of the judgment of the Hon'ble Supreme court rendered in ***Naveen Kumar's case (supra)*** he cannot be absolved of the liability. Therefore, legal representatives of owner of the offending vehicle i.e. respondent No. 2-Rashila Ram shall be liable to pay the amount of compensation to the petitioners/claimants, being the registered owner of the vehicle in question.

43. The learned counsel for the claimants as well as legal representatives of owner of the offending vehicle submitted that since the vehicle was duly insured with the

appellant-Shri Ram General Insurance Company, the insurance company be directed to pay the compensation amount to the petitioners in the first instance and then to recover it from the owner of the vehicle. In this respect he has also placed reliance upon ***National Insurance Company Limited vs. Baljit Kaur & others,*** reported in ***(2004) 2 SCC 1, National Insurance Company vs. Saju P. Paul & another,*** reported in ***(2013) 2 SCC 41 and Manuara Khatun & others vs. Rajesh Kumar Singh & others,*** reported in ***(2017) 4 SCC 796.*** However, the perusal of the aforesaid decisions of the Hon'ble Supreme Court shows that the insurance company is not liable to pay compensation for the death of or injury to any gratuitous passenger and, therefore, the insurance company is not liable to indemnify the award. From a close perusal of the aforesaid decisions, it is discernible that the direction of pay and recover made in ***Baljit Kaur, Saju P. Paul & Manuara Khatun's*** cases (supra) by the Apex Court was in exercise of its extra-ordinary jurisdiction vested in it under Article 142 of the Constitution of India. However, in ***National Insurance Company Ltd. vs. Parvathneni, (2018) 9SCC 657,*** the Hon'ble Supreme court has kept the question of law open on

the issue whether the Supreme Court in exercise of powers under Article 142 of the Constitution can direct the insurer to pay and recover, where the liability otherwise does not arise in case of gratuitous passenger. In such situation, the question that arises in the instant appeal as to whether it is within the purview of power vested in the High Court to make the direction of pay and recover like the directions made by the Supreme Court in the above referred cases. Since such a power is not available to this court, it cannot go against the law settled to the effect that in case of a gratuitous passenger carried in a goods vehicle, the insurance company is not liable to satisfy an award and the owner is the person who shall be liable to pay the compensation and as such, any direction to the insurance company to satisfy the award first and to recover the same from the owner of the vehicle is incongruous. Therefore, in the light of the decisions of the Supreme Court on the matter of gratuitous passenger carried in a goods vehicle, this court cannot follow a direction issued by the Supreme Court in exercise of its extraordinary jurisdiction under Article 142 of the Constitution of India. In view of the settled position of the law, the insurance company cannot be held liable to indemnify the insured. The

owner is liable to satisfy the award and to pay the compensation to the respondent-claimant.

44. Consequently, in view of detailed discussion made here-in-above and the law laid down by the Hon'ble Apex Court, the impugned award stands modified. The petitioners (claimants) are held entitled to compensation in the sum of Rs.13,75,770/- from legal representatives of respondent No. 2-Rashila Ram only. The appellant-insurance company is exonerated from the liability of indemnifying the owner of the vehicle in question. The remaining terms of the impugned award, including the interest component as well as the apportionment amongst the claimants, shall remain the same.

The appeal stands disposed of in the above terms, also the pending application(s), if any.

(Sushil Kukreja)
Judge

24th April, 2026
(virender)