



(103)

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

FAO-873-1993 (O&M)
Reserved on:- 04.09.2025
Pronounced on:- 11th September, 2025

Neeru Nagpal **...Appellant(s)**

Versus

Sunheri Devi and others **...Respondent(s)**

FAO-880-1993 (O&M)

Neeru Nagpal **...Appellant(s)**

Versus

Raj Kumar and others **...Respondent(s)**

CORAM: HON'BLE MR. JUSTICE VIRINDER AGGARWAL

**Present:- Mr. Shailendra Jain, Senior Advocate,
with Mr. Raghav Nagpal, Advocate,
for the appellant.**

**Mr. Nitin Gupta, Advocate,
for United India Insurance Co. Ltd.**

**Mr. Suvir Dewan, Advocate,
for New India Assurance Co. Ltd.**

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VIRINDER AGGARWAL, J.

1. The present appeals are preferred by the appellant against the award dated 30.08.1990 passed by the Motor Accident Claims Tribunal, Karnal, wherein the Tribunal directed the owner and driver of the offending vehicle/tempo to pay the half share of the compensation to claimants, and exonerated the insurer from liability as the deceased and injured were

gratuitous passengers in goods vehicle. Thus, the appellant challenges this finding, seeking to fasten liability on the insurer.

2. On 1.8.1990, Hans Raj, a 24-year-old bachelor, along with Raj Kumar and other passengers, boarded a four-wheeler/tempo No. HR-05-4150 from Panipat to Karnal on payment of fare. The tempo, driven rashly and negligently by respondent no.1/driver, collided near Arpana Hospital, Madhuban, with a stationary Toyota (No. DBL-1253), as a result of which Hans Raj sustained fatal injuries and died soon after, while Raj Kumar suffered multiple grievous injuries. Hans Raj's mother, Sunehri Devi, filed a claim petition seeking ₹4,00,000 compensation for his death, while Raj Kumar filed another petition claiming ₹5,00,000 for his injuries. The owners and insurers of both vehicles were impleaded as parties, with allegations of composite negligence raised, and the insurance companies contested the claims on grounds including breach of policy conditions under Section 149(2) of the Motor Vehicles Act, 1988.

3. The learned Tribunal held that the accident to be the result of rash and negligent driving of the tempo, coupled with contributory negligence of the stationary vehicle, and directed the owner and driver of the tempo to pay half share of the compensation to the claimants, while exonerating the insurance company from liability on the ground that the deceased and injured were gratuitous passengers not covered under the policy and statutory provisions of the Act.

4. Upon careful consideration of the submissions advanced by the learned counsel for both sides and meticulously scrutinising the file, the matter now stands ripe for adjudication and I proceed to render my findings as under.

5. The central question which arises for determination in both the appeals is:

Whether the insurer can be held liable to indemnify the owner in respect of the death and injury of a passengers who had taken a lift in a goods vehicle?

6. Learned counsel for appellant relies upon the Judgment passed by co-ordinate bench of this court in ***Oriental Insurance Company Limited Jind v. Mani Kaur, 2023(3) RCR(Civil) 719***. In that case, insurance company was held liable to pay compensation to the claimants for death or injury, as the said comprehensive policy of vehicle clearly showed basic third party cover included. There, the insurance company had taken on wider liability through specific clauses in the insurance policy, and the Court fastened liability on that basis. However, in present case, Firstly the policy covering the tempo clearly states that liability is limited only to authorised non-fare paying passengers under Schedule 2. Further, Section II of the policy excludes liability for death or injury to any person other than a passenger carried in the course of employment or related to goods being carried. The deceased and injured were not such authorized passengers. Thus, in this case there is no contractual extension of liability. On the contrary, the policy itself specifically excludes passengers like them. Secondly, the said precedent cannot override the binding ratio of decisions of the Hon'ble Supreme Court, which have consistently excluded gratuitous or fare-paying passengers in goods vehicles from the scope of compulsory coverage under Section 147 of the Act.

7. Further, It is an admitted fact that the offending vehicle was a tempo classified as a goods vehicle. The Motor Vehicles Act makes a clear distinction between a vehicle authorised to carry passengers and a goods carriage meant exclusively for carriage of goods. A goods carriage cannot

lawfully be used to transport passengers, whether on payment or otherwise. Therefore, even if the deceased and injured had committed to pay an amount for the lift, such travel cannot clothe him with the legal status of a “passenger for hire or reward” under Section 147 of the Motor Vehicle Act, 1988.

8. The Hon’ble Supreme Court in *New India Assurance Co. Ltd. v. Asha Rani* (2003) 2 SCC 223 held that the statutory policy of insurance does not cover passengers travelling in a goods vehicle. The Court made it clear that such passengers are “unauthorised” and the insurer has no liability towards them. Similarly, in *United India Insurance Co. Ltd. v. Tilak Singh* (2006) 4 SCC 404, the Court held that a passenger who is not authorised to travel in a goods carriage cannot claim protection under the statutory insurance policy. Further, in *National Insurance Co. Ltd. v. Baljit Kaur & Ors.*, 2004(1) RCR (Civil) 722, three Judge Bench of Hon’ble Supreme Court following *Asha Rani* (supra) opined that as following:

“17. By reason of the 1994 Amendment what was added is "including the owner of the goods or his authorised 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 authorised 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 authorised representative besides the passengers who are gratuitous or otherwise.

18. The observations made in this connection by the Court in Asha Rani case (supra) to which one of us, Sinha, J, was a party, however, bear repetition :

"26. In view of the changes in the relevant provisions in the 1988 Act vis-a-vis the 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 the 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 therefore."

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 for 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 authorised representative remains the same. Although the owner of the goods or his authorised 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."

A similar view was taken in ***National Insurance Co. Ltd. v. Cholleti Bharatamma (2008) 1 SCC 423***, where it was held that even if a person paid some amount to travel in a goods vehicle, that fact does not convert him into a lawful passenger. The risk of such persons is outside the scope of the statutory insurance cover. Therefore, even if the deceased had committed to pay money for the lift, this cannot make his travel lawful in a goods carriage. He cannot be treated as a "passenger for hire or reward" covered under Section

147. He remained an unauthorised passenger. Hence, In the present case, both deceased and injured person cannot be covered by insurance policy being gratuitous and unauthorised passengers, and resultantly the insurer cannot be held responsible.

9. In view of the above discussion, this Court finds no ground to interfere with the Tribunal's findings. The insurer cannot be held liable for the compensation, which remains payable by the owner and driver of the offending vehicle.

10. Accordingly, the appeals are dismissed, and the award of the Tribunal is upheld subject to modifications in awards by appellate authority, if any.

11. A photocopy of the aforesaid order be placed in the connected file.

(VIRINDER AGGARWAL)
JUDGE

11th September, 2025
Amodh Sharma

Whether speaking/reasoned	√ Yes/No
Whether reportable	√ Yes/No