



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

203-2

FAO-1199-2006

Date of decision: 14.05.2025

Jai Singh

...Appellant

Versus

Subhash and others

...Respondents

CORAM: HON'BLE MRS. JUSTICE SUDEEPTI SHARMA

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

Mr. Paul Singh Saini, Advocate,
Mr. Vinod Gupta, Advocate,
Mr. Lalit Garg, Advocate (Through VC)
for the Insurance Company.

SUDEEPTI SHARMA, J. (ORAL)

1. The present appeal has been filed by the appellant-owner of the offending vehicle against the Award dated 23.04.2003 passed in the claim petition under Section 166 of the Motor Accident Claims Tribunal, Bhiwani (for short, 'the Tribunal'), wherein, the Ld. Tribunal allowed the claim petition filed by the claimants and held the Insurance Company liable to pay compensation at first instance and recovery rights were granted to Insurance Company to recover the said amount from the appellant-owner.

BRIEF FACTS OF THE CASE

2. As per the claimants, on 8.7.2000, Suresh Kumar son of Sardara, Inder, Roshan, Sant Lal, Kumar son of Mani Ram, all residents of village Dulheri. Mukesh son of Ram Krishan. Ramesh son of Indrai. Ram Chander son of Mange. Suresh son of of Shri Ram Kalan and some other



persons were standing at Hansi Chowk, Tosham in the wait of a conveyance for reaching to their place of work i.e. a Crusher in Khanak. In the meanwhile, a vehicle bearing registration No. HR-22-GA-3016 (hereinafter referred as to offending vehicle), being driven by either Pehlad Singh Yadav, respondent No.1 or by Subhash respondent No.4 came there and offered them a ride in a vehicle. All the persons took their seats in the vehicle. Some sat in the body i.e. Cabin and some sat on the trailer. But the above-named driver was driving the same in a rash and negligent manner and with high speed. He was asked by the occupants of the cabin many a times to restrain himself from driving the vehicle in such a manner but he did not pay any heed to their advice. Ultimately, when the said vehicle reached near Raja Stone Crusher, the driver of the vehicle lost the control over the same because of speed, speed breaker and hilly type of the area. Consequently, the vehicle turned turtle and took about 2/3 turns. In this process, some of its occupants fell down at some distance but some of them came under the vehicle. All the above named persons sustained injuries and out of them Suresh Kumar husband of petitioner Rajwanti Satbir son of petitioner Kaitabo and Ram Chander husband of petitioner Smt. Santosh, died.

3. Upon notice of the claim petition, appellant appeared and contested the claim petition by filing written reply denying the factum of compensation/accident.

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

1. Whether the accident in question took place due to rash and negligent driving of vehicle No.HR-22-GA-0316 by Pehlad Singh respondent No.1 or by Subhash s/o Ram Singh



respondent No.1 of claim petition titled Ramesh Vs. Subhash and Santosh Vs. Subhash. Etc. ? OPP

2. Whether the accident caused death/injuries to different persons as mentioned in the petitions ? OPP.

3. Whether the petitioners being the legal heirs of deceased/injured persons are entitled to the compensation if so to what amount and from whom ? OPP.

4. Whether the petitions are not maintainable ? OPP.

5. Whether the driver of the offending vehicle was not having any valid and effective driving licence at the time of accident? OPR.

6. Whether the insured had violated the terms and conditions of the insurance company, if so to what amount? OPR.

7. Relief.

5. After taking into consideration the pleadings and the evidence on record, the learned Tribunal awarded compensation to the claimants. Further, the Ld. Tribunal has held the Insurance Company liable to pay the compensation at first instance and recovery rights were granted to Insurance Company to recover the amount from owner/present appellant of the offending vehicle. Hence, the present appeal.

SUBMISSIONS OF LEARNED COUNSELS FOR THE PARTIES

6. Learned counsel for the appellant/owner contends that the learned Tribunal erred in holding that the claimants were traveling in a goods carrying vehicle as a gratuitous passengers. It is further argued that the Insurance Company led no evidence to establish that the deceased was a gratuitous passenger. Therefore, he prays that the present appeal be allowed and award dated 23.04.2003 be set aside.

7. Per contra, learned counsel for the respondent/Insurance Company argues on the lines of the award and prays for dismissal of the



present appeal.

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

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

“30. So far as the liability of the New India Assurance Company Ltd. respondent No.3 is concerned the Insurance policy Ex.R1 shows that on the day of this accident the offending vehicle was insured with it Though Subhash respondent No.4 has furnished his driving licence Ex.R1 but it has been held above that it was Prahlad Singh and not Subhash son of Ram Singh who was driving the vehicle, in question, at the time of the accident. Whereas Prahlad Singh has neither come present in the witness box nor even sent his driving Licence to prove that he was holding a valid and effective driving licence at the relevant time of accident. It was contended by the owner of the vehicle that his vehicle was duly insured. Its driver namely Subhash was holding a valid and effective driving licence and Prahlad Singh have never remained either his driver or as a conductor on his any vehicle. His counsel next contended that the insurer will have to establish that the insured is guilty of an infringement or violation of a promise that a person who has not duly licensed will have to in charge of the vehicle. In support of his contention he has cited a law laid down by Hon'ble Supreme Court of India, in a case reported as Skandia Insurance Co.Ltd. Vs. Kokilaben Chandravedan and Others 1 (1997) ACC. 413 Sohan Lal Passi Vs. P. Sesh Reddy and Others II (1996) ACC. 617 (S.C.).

31. On the other hand Learned counsel for Insurance Company has contended that first of all the offending vehicle was a goods vehicle. It was not meant to carry the passengers



and, therefore insurer would have no liability. In support of his contention he has cited the law laid down by Hon'ble Apex Court in a case reported as New India Assurance Co. Ltd. Vs. Asha Rani and Others AIR 2003 Supreme Court 607 Oriental Insurance Company Ltd. Vs. Devirdy Konda Reddy and Ors. 2002(3) C.C.J.797.

32. On authorities perusing the law laid down in (supra), there is no dispute that if the Insured does not violate the terms and conditions of the insurance policy then he is not liable for compensation to be given for travelling in the his vehicle. But it is only when insured himself allows or places the vehicle in the charge of a person who does not hold a driving licence then he would be certainly hold to be guilty of the breach of promise that vehicle will be driven by the licensed driver.

33. Now reverting to the facts of the present case the offending vehicle was being driven by Prahlad Sinah respondent No.1 who was not holding effective driving licence, rather the witness of the owner of the vehicle, namely Subhash himself admitted that Prahlad Singh was the driver of another vehicle of the same owner. Even the owner of the vehicle i.e. respondent No.2 also admitted that Prahalad Singh was working as a conductor on his vehicle meaning thereby the owner allows a person who was not holding a valid and effective licence to drive his vehicle. Thus he violated the terms and conditions of the insurance policy. There is no doubt that the burden lies upon the Insurance Company to prove that the victims were travelling in his vehicle without his consent. But at the same time learned counsel for respondent No.3 has vehemently argued that the owner of the vehicle carrying the passenger is also required to pay extra premium for covering the risk of the passengers. He next contended that the earlier decision made by Hon'ble Apex Court in Satpal's case stood over-ruled by the law laid down by Hon'ble Apex Court in Asha



Rani's case (supra). On perusing the latest law laid down by Hon'ble Apex Court. in the authorities (supra) there is no dispute that the earlier law laid in Satpal's case (supra) stood abrogated by the latest law laid down in Asha Rani's (supra). In the said authority, it was observed that prior to the amendment of 1994 made in the Motor Vehicle Act of 1998. It was not necessary for the insurer to insure the owner of the goods or his authorized representative being carried in a goods vehicle. But after making the amendment of Section 147. Legislature wanted to make it compulsory for the insurer to insure even in a case of goods vehicle, the owner of the goods or his authorized representative being carried in a goods vehicle when that vehicle met with an accident and owner goods or his representative either dies or of the suffers bodily injuries. Thus. in Asha Rani's case (supra). it was concluded that the insurer will not be liable for paying the compensation to the owner of the goods vehicle when the vehicle meets with an accident and the owner of the goods of his representative dies or suffers any bodily injury. Thus the latest law of the country on this point is that the owner of the vehicle carrying the passengers must pay extra premium covering the risk of the passengers.

34. Now reverting to the facts of the present case it is quite evident that the insurance policy does not cover the risk of passengers because the vehicle was not meant for carrying passengers and therefore. Insurance Company i.e. New India Assurance Company Ltd. is not liable to pay the compensation. However. as per the law laid down by Hon'ble Apex Court. in a case reported as New India Assurance Co.Ltd. Vs. Kamla. 2001(3) RCR (Civil) 716 the Insurance Company is liable to indemnify the insured for the payment to be made by him to the claimants. This is one time liability of the Insurance Company and after its discharge the company may recover the same from



the owner of the vehicle.

35. In view of my above observation, along with respondents No.1 & 2, the Insurance Company is also liable to make the payment of the compensation.

36. Thus all the issues are decided in favour of the petitioners and against respondent No.1 to 3 whereas no liability can be fastened upon the remaining respondents because there was no fault on their part in causing the accident.”

10. A perusal of the impugned award reveals that the learned Tribunal has rightly concluded that the passengers were travelling as gratuitous passengers in a goods-carrying vehicle at the time of the accident. The record clearly establishes that the offending vehicle was a goods transport vehicle, and there is no contention from the owner/appellant that the passengers were either employed in connection with the vehicle or were accompanying the goods for their safety or custody.

11. The documentary evidence, including the insurance policy and witnesses testimonies, clearly supports the conclusion of the learned Tribunal that the vehicle in question was neither designed nor authorized to carry passengers. Furthermore, it has not been shown that any additional premium had been paid to the insurer for covering the risk of such passengers. Therefore, in the absence of any contractual or statutory obligation to carry passengers, their status is conclusively that of gratuitous passengers.

12. The legal position governing such circumstances has been authoritatively laid down by the Hon'ble Supreme Court in ***Manura Khatun and Others v. Rajesh Kumar Singh and Others 2017 ACJ 1031*** wherein it



was reiterated that in the event of an accident caused due to the negligence of the driver of a goods vehicle carrying gratuitous passengers, the insurer is not liable to indemnify claims made by such passengers. However, it was also held that the insurer may be directed to satisfy the compensation awarded to the claimants initially and may subsequently recover the amount from the owner of the vehicle in accordance with law. Relevant extract of the same is reproduced as under:-

18) The facts of the case at hand are somewhat identical to the facts of the case mentioned supra because here also we find that the deceased were found travelling as “gratuitous passengers” in the offending vehicle and it was for this reason, the insurance companies were exonerated. In Saju P. Paul’s case (supra) also having held that the victim was “gratuitous passenger”, this Court issued directions against the Insurer of the offending vehicle to first satisfy the awarded sum and then to recover the same from the Insured in the same proceedings.

19) Learned counsel for respondent No. 3 (United India Insurance Company Ltd.), however, contended that the facts of the case at hand are not identical to the one involved in the case of Saju P. Paul (supra) and hence the law laid down therein cannot be applied to the facts of the case at hand. Learned counsel pointed out that firstly, the awarded compensation in this case is quite substantial and secondly, it is not yet paid to the claimants. Learned counsel also submitted that since the question involved herein is referred to a larger Bench and hence this Court should not give such directions, as prayed by the appellants, against the Insurance Company.

20) We find no merit in any of the submissions. Firstly, as mentioned above, we find marked similarity in the facts of this case and the one involved in Saju P. Paul’s Case (supra).



Secondly, merely because the compensation has not yet been paid to the claimants though the case is quite old (16 years) like the one in Saju P. Paul's Case (supra), it cannot be a ground to deny the claimants the relief claimed in these appeals. Thirdly, this Court has already considered and rejected the argument regarding not granting of the relief of the nature claimed herein due to pendency of the reference to a larger Bench as would be clear from Para 26 of the judgment in Saju P. Paul's case (supra). That apart, learned counsel for the appellants stated at the bar that the reference made to the larger Bench has since been disposed of by keeping the issue undecided. It is for this reason also, the argument does not survive any more.

21) It is for all these reasons, we find no good ground to take a different view than the one consistently being taken by this Court in all previous decisions, which are referred supra, in this regard.

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.”

13. Applying the aforesaid legal principles to the facts of the instant case, it is apparent that the insurance company, i.e., New India Assurance Co. Ltd., cannot be held liable to compensate the claimants since the risk of passengers was not covered under the policy. However, in accordance with the dictum laid down in ***Manura Khatun's case (supra)*** the insurer may be directed to satisfy the award amount as a matter of indemnification, with



liberty to recover the amount from the insured i.e. owner.

14. In sequel of the legal principles enumerated above and upon applying the same to the facts of the present case, this Court finds no infirmity in the findings returned by the learned Tribunal. The Tribunal has correctly fastened joint and several liability on owner, driver, and insurer, with a direction to the insurer to first pay the compensation and subsequently recover it from the insured i.e. owner/appellant.

15. Accordingly, the findings of the learned Tribunal are affirmed. The present appeal being devoid of any merit is dismissed.

16. The Insurance Company is hereby directed to disburse the current scheduled fee to Mr. Paul Singh Saini, Advocate within a period of 20 days from the date of receipt of the copy of this judgment, in view of the order dated 18.07.2024 passed in FAO No.1682 of 2007, by this Court.

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

14.05.2025

Yogesh

**(SUDEEPTI SHARMA)
JUDGE**

**Whether speaking/reasoned:-
Whether reportable:-**

**Yes/No
Yes/No**