

(2016) 01 PAT CK 0141

In the Patna High Court

Case No : Miscellaneous Appeal No. 578 of 2012

Mehjabin

APPELLANT

Vs

The New India Assurance Company Ltd.

RESPONDENT

Date of Decision : 12-01-2016

Acts Referred:

Motor Vehicles Act, 1988 — Section 147, Section 173

Citation : (2016) 2 TAC 31

Hon'ble Judges : Mr. Shivaji Pandey, J.

Bench : Single Bench

Advocate : Mr. Raj Kumar Singh Vikram, Advocate, for the Respondents; Mr. Madhurendra Kumar, Advocate, for the Appellants

Final Decision : Allowed

Judgement

Mr. Shivaji Pandey, J. - Heard the parties.

2. In the present appeal appellants are challenging the order dated 16.4.2012 passed in Claim Case No.14 of 2008 by the District Judge-cum-Claims Tribunal, East Champaran, Motihari by which he has dismissed the claim case against the Insurance Company with a liberty to the appellants to claim compensation against owner of the vehicle.

3. Brief facts of the case is that on 26.2.2008 the deceased Md. Asalam was going from his Sasural Dhaka to Dharmuhana with his relatives on Bolero vehicle bearing registration no. BR-05-P-1116 and in course of taking side from one Pick-up Van resulted into turned turtle resulted in, deceased Md. Asalam sustained serious injury on different parts of his body. He was admitted in nursing home for treatment but died on the same day. In that accident certain other persons also sustained injuries. The accident took place on account of rash and negligent driving of the driver of the vehicle led to institution of criminal case vide Chakia P.S. Case no.25 of 2008 dated 26.2.2008 under Sections 279, 337, 338 and 304A of the Indian Penal Code. Subsequently claim case was filed by claimants

for compensation from the owner of vehicle in turn sought relief for indemnification by the Insurance Company.

4. In the claim application it has been stated that the deceased was Munshi of a contractor was earning Rs.5,000/- per month, in order to substantiate the case, driving licence, as well as insurance paper were submitted along with claim application, claiming that Tribunal should make proper compensation amount in terms of the Motor Vehicle Act.

5. The owner and driver of the vehicle appeared but he did not file any written statement. The Insurance Company filed application dated 31.8.2009 stating therein that owner and driver are not contesting the case hence Insurance Company be allowed to contest the case on all grounds available to the owner and driver. The application of the Insurance Company was allowed. The Insurance Company filed a detailed objection stating therein that the aforesaid vehicle was insured by the Insurance Company as private vehicle but the vehicle in question was being used for carrying passengers as a commercial vehicle in violation of terms and conditions of the insurance policy and the Insurance Company is not liable to indemnify the owner of the vehicle. A plea was taken that the insurance policy does not cover the passengers as no extra premium was paid to the Insurance Company. So much so a plea was taken that there was no permit of the vehicle. In nutshell the Insurance Company has said that the vehicle was insured for private use. It was taken on hire which is nothing but use of commercial purposes. The status of the occupants was completely gratuitous not liable to indemnify owner or driver of vehicle as they are primarily liable to pay the compensation amount.

6. The Tribunal framed altogether six issues. Issue no. (iv) is as follows: "(iv) Whether the Bolero Jeep No. BR-05-1116 was insured at the time of accident and there is any violation of terms and condition of Insurance Policy?"

7. Issue no.(vi) is as follows: "(vi) Whether the claimants are entitled for a compensation, if so what extent from whom?"

8. The Motor Vehicle Tribunal believed the story of getting the wage of Rs. 5,000/- over and above he was getting Rs.50/- per day. Most important issue was decided that the deceased and other occupants used the vehicle not on rent, but from own evidence, admitted position is, deceased along with other occupants were gratuitous passenger contrary to the terms and conditions of the insurance policy as the claims are not consul as a relative of the insurer.

9. Learned counsel for the appellants has claimed that father-in-law of the deceased requested his friend to provide Bolero in question for the purposes of going from Dhaka to another destination i.e. Dharmuhana and as such it will not be treated that the vehicle was being used for the commercial purposes nor occupants would be treated as gratuitous passenger. He has further submitted that the insurance policy shows that the vehicle was insured under the package policy which is apparently clear from the statement recorded at the top of the

insurance policy on the right hand side where it has been mentioned in policy of insurance of private Car package. On that strength counsel for the appellants submits that the occupants of the vehicle including deceased will be covered under the insurance policy. He has also drawn the attention about the liability of the Insurance Company under the private package policy, placed reliance on Clause I deals with the liability relates to occupant of vehicle. It runs as follows:

"Subject to the limits of liability as laid down in the Schedule hereto the Company will indemnify the insured in the event of an accident caused by or arising out of the use of the vehicle against all sums which the insured shall become legally liable to pay in respect of death of or bodily injury to any person including the occupants carried in the vehicle provided such occupants are not carried for hire or reward but except so far as this necessary to meet the requirements of Motor Vehicle Act, the Company shall not be liable where such death or injury arises out in course of the employment of such person by the insured.

He has submitted, in entire statement made before the Tribunal, the appellants have specifically stated that the vehicle in question was belonging to the friend of the father-in-law of victim and for the purposes of going from Dhaka to Dharmuhana the vehicle was used. Learned counsel for the appellants submits that this statement has been made by all the witnesses who appeared before the Tribunal in support of the claim application and as such even if there is no specific statement in the claim application about the nature of use of vehicle cannot be a basis to hold occupants were gratuitous passenger and reject the claim petition. He has further submitted, had the vehicle been used for the commercial purposes certainly claim petition would be fit to be rejected out rightly. But the fact is quite different and the court below has wrongly treated these appellants as gratuitous passengers depriving the right of compensation.

10. Learned counsel for the Insurance Company submits that the vehicle in question was used for commercial purposes. Insurance policy covers 7+1 i.e. 8 persons but from the First Information report and other material shows that the occupants were more in number which is nothing but is violation of terms of licence. So much so the vehicle was not used for the private use but was being used for commercial purposes, in result violated the terms and conditions of the insurance policy, will not make the owner of vehicle to be entitled to be indemnified and claimant will not be entitled to claim compensation from Insurance Company. He further submits that the status of the occupants of the vehicle was gratuitous. Hon''ble Supreme Court and this Court have repeatedly held that gratuitous passengers are not entitled to any compensation.

11. Having considered the rival contentions of the parties, FIR is the first document in which it has been mentioned that on 26.2.2008 from the native house the father of the informant and other members of the family members boarded the Bolero vehicle for Dharmuhana. That vehicle met with an accident in which brother-in-law Md. Asalam was seriously injured and was admitted in the

clinic of Dr. Rahman where he died and other persons have received injury. In the claim application it has been stated that on 26.2.2008 deceased Md. Asalam was going from his Sasural Dhaka to Dharmuhana with his relatives by a Bolero vehicle bearing registration no. BR-05P-1116. At about 9 AM near Chakya it met with an accident in which, Md. Asalam received serious injuries and was admitted in Rahman Nursing Home where he has ultimately died. The cause of accident has been shown of driving the vehicle rashly and in negligent manner. Neither in the First Information Report nor in the claim application any averment has been made that vehicle in question was taken by the father of the informant from his friend for going from his house to Dharmuhana but all will witness, in one tone claimed the vehicle in question was taken by the father from his friend and accident took place due to rash and negligent driving of the driver. The question would arise, in absence of deposition of owner of the vehicle competent to unravel, has not come forward to make any statement with respect to the claim application that the vehicle in question was taken by his friend. So the claim is, the vehicle was given on the request of her father. So important witness owner is, friend of her father is not coming forward to support the claim but in equivocally all the witnesses supported the claim have made statement about taking of the vehicle from the friend of the father whereas the claim application is completely silent on this point. It is well known principle of law that the evidence would not to be taken into consideration in absence of pleading in the claim application as it is improvement of story at the subsequent stage. Even in the FIR which is first statement where the informant, nowhere stated about using vehicle of the friend of the father. Even at second stage in the claim application could have mentioned about the vehicle belongs to the friend of her father but this is not there. Any statement in deposition not the complaint petition is hardly helpful to claimant to prove the case by the statement of witnesses but the court below has recorded a finding that the vehicle was not taken on rent, but held occupants were gratuitous passengers.

12. It will be appropriate to examine Section 147 of the Motor Act before and after the amendment. It will be relevant to quote Section 147(1)(b)(i) of the Motor Vehicle Act before amendment.

"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) xxxxxxxxx

(b) insurers 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 or damage to any property of a third party caused by or arising out of the use of the vehicle in a public place."

After 1994 amendment the provision of Section 147(1)(b) is as follows:

"(1)In order to comply with the requirements of this Chapter, a policy of insurance must be a policy which-

(b) insurers the person or classes of persons specified in the policy to the extent specified in sub-section(2)-

(i) against any liability which may be incurred by him in respect of the death of or bodily injury to any person, including owner of the goods or his authorised representative carried in the 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"

13. The issue of gratuitous passenger and their entitlement came for consideration on different occasion before Hon"ble Supreme Court it will be relevant to examine those judgments dealing with issue of gratuitous passenger. In *New India Assurance Company v. Asha Rani and others*, reported in (2003) 2 SCC 223 Hon"ble Supreme Court has elaborately dealt with Section 95(2) of 1939 Act and 1988 Act later on amendment of 1994 and its effect on coverage. The Court has considered in the case of *New India Assurance Co. v. Satpal Singh*, (2000)1 SCC 237, held that Satpal case was decided prior to amendment and at that time the insurer was not obliged to ensure the owner of the goods or his authorised representative being carried in a goods vehicle. But after the amendment 1994 the scenario changed, looking to the nature of amendment and its aims and objects engrafted in the statute, the court held, Section 147 envisages a compulsory insurance coverage to owner of the goods or his authorised representative carried in the vehicle. It will be appropriate to quote paragraph 9 and 28 of the judgment reported in *Asha Rani* (supra):

"9 In *Satpal* case the Court assumed that the provisions of Section 95(1) of the Motor Vehicles Act, 1939 are identical with Section 147(1) of the Motor Vehicles Act, 1988, as it stood prior to its amendment. But a careful scrutiny of the provisions would make it clear that prior to the amendment of 1994 it was not necessary for the insurer to insure against the owner of the goods or his authorised representative being carried in a goods vehicle. On an erroneous impression this Court came to the conclusion that the insurer would be liable to pay compensation in respect of the death or bodily injury caused to either the owner of the goods or his authorised representative when being carried in a goods vehicle the accident occurred. If the Motor Vehicles Amendment Act of 1994 is examined, particularly Section 46, by which the 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 the 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 state 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 police. 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-existing expression "injury to any person" is either clarificatory or amplification of the preexisting 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 a 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 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 the goods or his authorised representative or being carried in a goods vehicle when that vehicle meets with an accident and the owner of the goods or his representative dies or suffers any bodily injury.

28. An owner of a passenger-carrying vehicle must pay premium for covering the risks of the passengers. If a liability other than the limited liability provided for under the Act is to be enhanced under an insurance policy, additional premium is required to be paid. But if the ratio of this Court's decision in *New India Assurance Co. v. Satpal Singh* is taken to its logical conclusion, although for such passengers, the owner of a goods carriage need not take out an insurance policy, they would be deemed to have been covered under the policy where for even no premium is required to be paid."

14. In *Asha Rani* case (supra) the fact was that the accident took place of goods vehicle which resulted into death and bodily injury of the person travelling as passenger. In the batch of cases question arose as to whether the Insurance Company will be liable to compensate the insurance amount. In that case the Court has considered, three situations, (i) Being those cases which are covered by the Motor Vehicle Act, 1939 (ii) the cases which are covered under Motor Vehicle Act, 1988 prior to 1994 amendment, and (iii) the cases which fell after amendment of 1994. When the matter was finally heard the Hon'ble Court decided the issues with respect to category nos. (i) and (iii) vide order dated 17.8.2001 which has been reported in *Ramesh Kumar v. National Insurance Company*, (2001) 6 SCC 713 and *Asha Rani* (supra) but the cases falling under category (ii), namely which are covered under Motor Vehicle Act, 1988 prior to 1994 amendment, it was felt that decision of the Court in *Satpal* case (supra) required consideration by a larger Bench. In *Asha Rani* case (supra) the court has considered the statutory provision of Section 147 of the Act before 1994

amendment and effect of amendment after 1994. Even after giving widest interpretation prior to amendment of 1994 the expression "to any person" it does not comprehend either the owner of the goods or his authorised representative being carried in the vehicle but the amendment has brought a change which clearly demonstrates that the legislature wanted to bring aforesaid cases of category within the sweep of Section 147 making it compulsory insurance even in case of a goods vehicle, the owner of goods or his authorised representative being carried in a goods vehicle when that vehicle meets with an accident in which the owner of the goods or his representative either dies or suffers bodily injury and in that manner the court has held in *Satpal Singh*, reported in (2000)1 SCC 237 was not rightly decided and accordingly the said judgment has been over ruled.

15. In another judgment the Hon"ble Supreme Court in the case of *National Insurance Co. Ltd. v. Baljit Kaur and others*, reported in (2004)2 SCC 1 dealt with the issue of liability of insurer with regard to gratuitous passengers carried in the vehicle and affect of 1994 amendment in Section 147(1)(b) of the Act. In the aforesaid case the fact is that claim application was filed on account of death of son, namely, Sukhwinder Singh, due to the alleged reckless driving by the driver of goods vehicle. The Tribunal recorded a finding that the victim was returning in the truck from a marriage ceremony, died as a result of the rash and negligent driving by the driver of the goods vehicle but it was an admitted fact that the said vehicle was insured with the Insurance Company. The Tribunal and High Court recorded a finding in favour of the claimant and liability was fixed on the Insurance Company to indemnify insured by making payment of compensation amount. The Court has considered the effect of 1994 amendment in Section 147 of the Act making addition with respect to the person other than the owner of the goods or his authorised representative, it has been held that the owner of the goods or his authorised representative, would be covered by the policy of insurance in respect of a goods vehicle but it was not the intention of the legislature, the insurer would indemnify the owner of vehicle with respect to the passengers especially gratuitous passengers who has not been mentioned in the term of contract nor premium paid. It will be relevant to quote paragraph nos. 19, 20 and 21 of the aforesaid judgment:

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

20. It is, therefore, manifest that in spite of the amendment of 1994, the effect of the provisions 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 was any premium paid to the extent of the benefit of the insurance to such category of people.

21. The upshot of the aforementioned discussions is that instead and in place of the insurer the owner of the vehicle shall be liable to satisfy the decree. The question, however, would be as to whether keeping in view the fact that the law was not clear so long such a direction would be fair and equitable. We do not think so. We, therefore, clarify the legal position which shall have prospective effect. The tribunal as also the High Court had proceeded in terms of the decision of this Court in Satpal Singh. The said decision has been overruled only in Asha Rani. We, therefore, are of the opinion that the interest of justice will be subserved if the appellant herein is directed to satisfy the awarded amount in favour of the claimant, if not already satisfied, and recover the same from the owner of the vehicle. For the purpose of such recovery, it would not be necessary for the insurer to file a separate suit but it may initiate a proceeding before the executing court as if the dispute between the insurer and the owner was the subject-matter of determination before the Tribunal and the issue is decided against owner and in favour of the insurer. We have issued the aforementioned directions having regard to the scope and purport of Section 168 of the Motor Vehicles Act, 1988 in terms whereof, it is not only entitled to determine the amount of claim as put forth by the claimant for recovery thereof from the insurer, owner or driver of the vehicle jointly or severally but also the dispute between the insurer on the one hand and the owner or driver of the vehicle involved in the accident inasmuch as can be resolved by the Tribunal in such a proceeding."

16. Identical issue came up for consideration before Hon"ble Supreme Court in the case of Oriental Insurance Co. Ltd. v. Brij Mohan and others, reported in (2007) 7 SCC 56. In that case the tractor was carrying the soil. A plea was taken, carrying the soil is an agricultural purposes and the said tractor was insured for agricultural purposes but trolley was not insured but the Tribunal after examining the fact on record arrived to a conclusion that the said tractor and its trolley was carrying the soil for brick kiln and not for agricultural purpose. The labourer travelling on the trolley met with an accident and died. The Court has held labourer will not be entitled to compensation amount from the Insurance Company. It will be relevant to quote paragraph nos. 8, 9, 10 and 11 of the aforesaid judgment:

"8. The Tribunal in its award has, inter alia, noticed that the appellant herein had

raised a specific defence, namely, the trolley was not insured. It does not appear that the said contention of the appellant had been gone into. There is nothing on records to show that the owner of the tractor had produced any insurance cover in respect of the trolley. It is furthermore not disputed that the tractor was insured only for the purpose of carrying out agricultural works. The representative of the Insurance Company Mr. Hari Singh Meena on cross-examination merely accepted the suggestion that cutting the earth and levelling the field with earth would be an agricultural work but respondent no.1 himself categorically stated in his claim petition before the Tribunal stating that the earth had been dug and was being carried in the trolley to the brick-klin. Evidently the earth was meant to be used only for the purpose of manufacturing bricks. Digging of earth for the purpose of manufacture of brick-klin indisputably cannot amount to carrying out of the agricultural work.

9. In National Insurance Co. Ltd. v. V. Chinnamma & Ors. [(2004) 8 SCC 697], this Court held :-

"14. An insurance for an owner of the goods or his authorised representative travelling in a vehicle became compulsory only with effect from 14-11-1994 i.e. from the date of coming into force of amending Act 54 of 1994.

15. Furthermore, a tractor is not even a "goods carriage". The expression goods carriage has been defined in Section 2(14) to mean "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"

(emphasis supplied)

whereas "tractor" has been defined in Section 2(44) to mean

"a motor vehicle which is not itself constructed to carry any load (other than equipment used for the purpose of propulsion); but excludes a road-roller".

"Trailer" has been defined in Section 2(46) to mean

"any vehicle, other than a semi-trailer and a sidecar, drawn or intended to be drawn by a motor vehicle".

16. A tractor fitted with a trailer may or may not answer the definition of goods carriage contained in Section 2(14) of the Motor Vehicles Act. The tractor was meant to be used for agricultural purposes. The trailer attached to the tractor, thus, necessarily is required to be used for agricultural purposes, unless registered otherwise. It may be, as has been contended by Mrs K. Sharda Devi, that carriage of vegetables being agricultural produce would lead to an inference that the tractor was being used for agricultural purposes but the same by itself would not be construed to mean that the tractor and trailer can be used for carriage of goods by another person for his business activities. The deceased was a businessman. He used to deal in vegetables. After he purchased the vegetables, he was to transport the same to the market for the purpose of sale

thereof and not for any agricultural purpose. The tractor and trailer, therefore, were not being used for agricultural purposes. However, even if it be assumed that the trailer would answer the description of "goods carriage" as contained in Section 2(14) of the Motor Vehicles Act, the case would be covered by the decisions of this Court in *Asha Rani* and other decisions following the same, as the accident had taken place on 24-11-1991 i.e. much prior to coming into force of the 1994 amendment."

10. Furthermore, respondent was not the owner of the tractor. He was also not the driver thereof. He was merely a passenger travelling on the trolley attached to the tractor. His claim petition, therefore, could not have allowed in view of the decision of this Court in *New India Assurance Co. Ltd. v. Asha Rani & Ors.* [(2003) 2 SCC 223] wherein the earlier decision of this Court in *New India Assurance Co. v. Satpal Singh* [(2000) 1 SCC 237] was overruled. In *Asha Rani* (supra) it was, inter alia, held :-

"25. Section 147 of the 1988 Act, inter alia, prescribes compulsory coverage against the death of or bodily injury to any passenger of "public service vehicle". Proviso appended thereto categorically states that compulsory coverage in respect of drivers and conductors of public service vehicle and employees carried in a goods vehicle would be limited to the liability under the Workmen's Compensation Act. It does not speak of any passenger in a "goods carriage".

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 therefor.

27. Furthermore, sub-clause (i) of clause (b) of sub-section (1) of Section 147 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, whereas sub-clause (ii) thereof deals with liability which may be incurred by the owner of a vehicle against the death of or bodily injury to any passenger of a public service vehicle caused by or arising out of the use of the vehicle in a public place."

[See also *National Insurance Co. Ltd. v. Bommithi Subbhayamma and Others* [(2005) 12 SCC 243 and *United India Insurance Co. Ltd., Shimla v. Tilak Singh and Ors.* [(2006) 4 SCC 404].

11. Although the effect in 1994 amendment in the Motor Vehicles Act did not call for consideration in *Asha Rani* (supra), a three Judge Bench of this Court had the occasion to consider the said question in *National Insurance Co. Ltd. v. Baljit Kaur & Ors.* [(2004) 2 SCC 1] in the following terms :

"17. By reason of the 1994 amendment what was added is "including" 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 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 Parliament to carry out an amendment inasmuch as the 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 to which one of us, Sinha, J., was a party, however, bear repetition: (SCC p. 235, para (26)

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 therefor.

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

17. Similar issue came up for consideration before Hon"ble Supreme Court in the case of New India Assurance Co. Ltd. v. Vedwati and others, reported in (2007) 9 SCC 486. In that case the deceased Paras Ram Agnihotri was returning in tractor after delivering certain goods there. The tractor overturned due to rash and negligent driving by the driver with the result the deceased has lost his life. The deceased was working as priest of agricultural farmer from whom he was earning about Rs.7,000/- per month. Plea was taken by the Insurance Company was not liable to indemnify the insurer. It was found that tractor was ensured for the agricultural purposes as the same was used for carrying passengers. Claim was made that responsibility cannot be attached to indemnify for any award and to

pay any amount to the claimants. Tribunal and High Court rejected the plea of the Insurance Company and ultimately the matter came to Hon'ble Supreme Court and the Court has accepted the plea of the Insurance Company. The tractor was ensured for agricultural purposes, not for carrying the passengers in such situation the liability to indemnify by the Insurance Company would not be legal and justified. It will be relevant to quote paragraph no.6 of the aforesaid judgment:

6.....The difference in the language of "goods vehicle" as appearing in the old Act and "goods carriage" in the Act is of significance. A bare reading of the provisions makes it clear that the legislature intent was to prohibit goods vehicle from carrying any passenger. This is clear from the expression "in addition to passengers" as contained in the definition of "goods vehicle" in the old Act. The position becomes further clear because the expression used is "goods carriage" is solely for the carriage of "goods". Carrying of passengers in a goods carriage is not contemplated in the Act. There is no provision similar to clause (ii) of the proviso appended to Section 95 of the old Act prescribing requirement of insurance policy. Even Section 147 of the Act mandates compulsory coverage against death of or bodily injury to any passenger of "public service vehicle". The proviso makes it further clear that compulsory coverage in respect of drivers and conductors of public service vehicle and employees carried in goods vehicle would be limited to liability under the Workmen's Compensation Act, 1923 (in short "the WC Act"). There is no reference to any passenger in "goods carriage".

The inevitable conclusion, therefore, is that provisions of the Act do not enjoin any statutory liability on the owner of a vehicle to get his vehicle insured for any passenger travelling in a goods carriage and the insurer would have no liability therefore.

Out view gets support from a recent decision of a three-Judge Bench of this Court in *New India Assurance Co. Ltd. v. Asha Rani* in which it has been held that *Satpal Singh* case was not correctly decided. That being the position, the Tribunal and the high Court were not justified in holding that the insurer had the liability to satisfy the award."

This position was also highlighted in *Oriental Insurance Co. Ltd. v. Devireddy Konda Reddy*, SCC pp.341-43, paras 4-11. Subsequently also in *National Insurance Co. Ltd. v. Ajit Kumar*, in *National Insurance Co. Ltd. v. Baljit Kaur* and in *National Insurance Co. Ltd. v. Bommithi Subbhayamma* the view in *Asha Rani* case was reiterated."

18. This question again came for consideration before Hon'ble Supreme Court in the case of *National Insurance Co. Ltd. v. Cholleti Bharatamma and others*, reported in (2008) 1 SCC 423. The question involved for consideration about liability of insurer to indemnify the owner of the vehicle in respect of death of passenger travelling in goods vehicle. The Court has held that even after 1994 amendment in section 147 of the Motor Vehicle Act injury to any person would

only mean a third party and not a passenger travelling on a goods carriage vehicle whether gratuitous or otherwise. It will be relevant to quote paragraph nos. 9, 10, 11 and 12 of the aforesaid judgment:

"9. Correctness of the decision in Satpal Singh (supra) came up for consideration before a three Judge Bench of this Court in New India Assurance Co. Ltd. v. Asha Rani and Others [(2003) 2 SCC 223].

10. In Asha Rani (supra), having regard to various definitions involving the legal question, it was held :

"23. The applicability of the decision of this Court in Mallawwa v. Oriental Insurance Co. Ltd. in this case must be considered keeping that aspect in view. Section 2(35) of the 1988 Act does not include passengers in goods carriage whereas Section 2(25) of the 1939 Act did as even passengers could be carried in a goods vehicle. The difference in the definitions of "goods vehicle" in the 1939 Act and "goods carriage" in the 1988 Act is significant. By reason of the change in the definitions of the terminology, the legislature intended that a goods vehicle could not carry any passenger, as the words "in addition to passengers" occurring in the definition of goods vehicle in the 1939 Act were omitted. Furthermore, it categorically states that "goods carriage" would mean a motor vehicle constructed or adapted for use "solely for the carriage of goods". Carrying of passengers in a "goods carriage", thus, is not contemplated under the 1988 Act.

24. We have further noticed that Section 147 of the 1988 Act prescribing the requirements of an insurance policy does not contain a provision similar to clause (ii) of the proviso appended to Section 95 of the 1939 Act. The decision of this Court in Mallawwa case must be held to have been rendered having regard to the aforementioned provisions.

25. Section 147 of the 1988 Act, inter alia, prescribes compulsory coverage against the death of or bodily injury to any passenger of "public service vehicle". Proviso appended thereto categorically states that compulsory coverage in respect of drivers and conductors of public service vehicle and employees carried in a goods vehicle would be limited to the liability under the Workmen's Compensation Act. It does not speak of any passenger in a "goods carriage".

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 therefor.

27. Furthermore, sub-clause (i) of clause (b) of sub-section (1) of Section 147 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, whereas sub-clause (ii) thereof deals with liability which may be incurred by the owner of a vehicle against the death of or bodily injury to any passenger of a public service vehicle caused by or arising out of the use of the vehicle in a public place.

28. An owner of a passenger-carrying vehicle must pay premium for covering the risks of the passengers. If a liability other than the limited liability provided for under the Act is to be enhanced under an insurance policy, additional premium is required to be paid. But if the ratio of this Court's decision in *New India Assurance Co. v. Satpal Singh* is taken to its logical conclusion, although for such passengers, the owner of a goods carriage need not take out an insurance policy, they would be deemed to have been covered under the policy where for even no premium is required to be paid".

11. The effect of 1994 amendment came up for consideration in *National Insurance Co. Ltd. v. Baljit Kaur & Ors.* [(2004) 2 SCC 1], wherein this court following *Asha Rani (supra)* opined that the words "injury to any person" would only mean a third party and not a passenger travelling on a goods carriage whether gratuitous or otherwise. The question came up for consideration again in *National Insurance Co. Ltd. v. Bommithi Subbhayamma & Ors.* [(2005) 12 SCC 243] wherein upon taking into consideration a large number of decisions, the said view was reiterated.

12. Yet again in *New India Assurance Co. Ltd. v. Vedwati & Ors.* [(2007) 3 SCALE 397] this Court held :

"13. The difference in the language of "goods vehicle" as appear in the old Act and "goods carriage" in the Act is of significance. A bare reading of the provisions makes it clear that the legislative intent was to prohibit goods vehicle from carrying any passenger. This is clear from the expression "in addition to passengers" as contained in definition of "good vehicle" in the old Act. The position becomes further clear because the expression used is "good carriage" is solely for the carriage of goods. Carrying of passengers in a goods carriage is not contemplated in the Act. There is no provision similar to Clause (ii) of the proviso appended to Section 95 of the old Act prescribing requirement of insurance policy. Even Section 147 of the Act mandates compulsory coverage against death of or bodily injury to any passenger of "public service vehicle". The proviso makes it further clear that compulsory coverage in respect of drivers and conductors of public service vehicle and employees carried in goods vehicle would be limited to liability under the Workmen's Compensation Act, 1923 (in short "WC Act").

There is no reference to any passenger in "goods carriage".

14. The inevitable conclusion, therefore, is that provisions of the Act do not enjoin any statutory liability on the owner of a vehicle to get his vehicle insured for any passenger travelling in a goods carriage and the insurer would have no liability therefor.

[See also *Oriental Insurance Co. Ltd. v. Brij Mohan & Ors.* 2007 (7) SCALE 753] CA @ SLP (C) Nos.7237-7239 of 2003"

19. The indemnification by the Insurance Company with respect to the liability related the person travelling in the trolley of the tractor came for consideration before Hon''ble Supreme Court in the case of *United India Insurance Company Limited v. Serjerao and others*, reported in 2008(1) PLJR 127 (SC) and it has been held that Insurance Company is not liable to indemnify the owner of vehicle for compensation amount arising out of motor vehicle accident as in that case Serjerao was driving the trolley attached to the tractor as labourers suffered injuries because tractor met with an accident. The compensation under Section 147 of the Motor Vehicle Act was filed on the principle of no fault liability. The Insurance Company took a stand that it had no liability in respect of person travelling in trolley and owner of the tractor is liable to pay compensation. The plea was rejected by the Motor Vehicle Tribunal which was affirmed by the High Court. The matter came for consideration before Hon''ble Supreme Court and the Court has held that Insurance Company does not have a liability to indemnify the insured. It will be relevant to quote paragraph 8 of the aforesaid judgment:

"8. So far as the question of liability regarding labourers travelling in trollies is concerned, the matter was considered by this Court in *Oriental Insurance Company Ltd. v. Brij Mohan and others* (2007(7) SCALE 753) and it was held that the Insurance Company has no liability. In view of the aforesaid two decisions of this Court, we set aside the impugned order in each case and remit the matters to the High Court to consider the matters afresh in the light of what has been stated by this Court in *Smt. Yallwwa's* case (supra) and *Brij Mohan's* case (supra)."

20. This Court in the case of *United India Insurance Company v. Satiya Devi @ Sundri Devi*, reported in 2008(3) BBCJ 280 considered indemnification by the Insurance Company to the insured in which the fact was that the deceased Udit Yadav was travelling in a truck and due to rash and negligent driving the truck turned turtle which led to his death. The Court has arrived to a conclusion that Insurance Company was not liable to pay any compensation as the Insurance Company had not insured any person except the driver and Khalashi of the truck and accordingly rejected the claim application. It will be relevant to quote paragraph 12 of the aforesaid judgment:

"The sum and substance of the citations referred to above and relied upon would go to show that the Insurance Company is not at all responsible to pay any compensation, when the commercial vehicle was being plied by the driver, in the manner in which FIR seems to have been drawn, and the deceased met his end, while he was sitting on the back portion of the truck. The Insurance Company had not insured any person except the driver and khalasi of the truck and even then in compliance of the Tribunal's order, appellant has made payment to the claimants which may be returned and, if any liability is there for compensation to the deceased, it is the owner of the truck."

21. The issue of liability to pay compensation by the Insurance Company with regard to the gratuitous passenger travelling in a truck was subject matter for consideration in the case of National Insurance Company Limited v. Rattani and others, reported in (2009)2 SCC 75. The fact of the case is that the victim was travelling in Tata 407 which was goods vehicle was being driven rashly and negligently at a very high speed in spite of the warning, the vehicle turned turtle, several persons suffered grievous injuries including death of one Sunil and one Hazari. The Court has held that the claimant was travelling in goods vehicle as gratuitous passenger and Insurance Company was not liable to indemnify the owner to pay compensation amount to the claimant. It will be relevant to quote paragraph nos. 14 to 19 of the aforesaid judgment:

"14. The question as to whether burden of proof has been discharged by a party to the lis or not would depend upon the facts and circumstances of the case. If the facts are admitted or, if otherwise, sufficient materials have been brought on record so as to enable a court to arrive at a definite conclusion, it is idle to contend that the party on whom the burden of proof lay would still be liable to produce direct evidence to establish that the deceased and the injured passengers were gratuitous passengers.

15. As indicated hereinbefore, the first information report as such may or may not be taken into consideration for the purpose of arriving at a finding in regard to the question raised by the appellant herein, but, when the first information report itself has been made a part of the claim petition, there cannot be any doubt whatsoever that the same can be looked into for the aforementioned purpose.

16. An admission made in the pleadings, as is well known, is admissible in evidence proprio vigore. We, thus, are of the opinion that the Tribunal as also the High Court committed a serious error in opining that the Insurance Company was liable.

17. Reliance placed by the learned counsel on a decision of this Court in National Insurance Co. Ltd. v. Baljit Kaur is misplaced. The question which arose for consideration therein was as to whether the words "any person" shall include a gratuitous passenger despite the amendment made in Section 147 of the Act by reason of the Motor Vehicles (Amendment) Act, 1994.

18. Following New India Assurance Co. Ltd. v. Asha Rani, it was categorically held: (Baljit Kaur case, SCC p.8, para 20)

"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, not was any premium paid to the extent of the benefit of insurance to such category of people"

19. In *National Insurance Co. Ltd. v. Cholleti Bharatamma* this Court categorically held: (SCC p.433, paras 27-28

"27. The learned counsel appearing for the respondent, submitted that from the aforementioned finding, it is evident that the respondent was traveling as the owner of the goods. We do not think that the said submission is correct. P.W.2, in his evidence, stated:

"I am doing tamarind business. I witnessed the accident which took place about 3 years back at about 6 a.m. at Borrampalem Junction beyond Talluru. At the time of the accident I was in the crime lorry by the side of the driver. Myself and 6 others were carrying tamarind in that lorry belonging to us. We boarded the lorry along with our load of tamarind at Dharamavaram to go to Rajanagaram. We were selling the tamarind at Rajanagaram in retail by taking the tamarind there in our lorry from our village of Dharamavaram."

28. The Tribunal, therefore, correctly recorded that according to PW 2, he was travelling with his goods as owner thereof and not the deceased."

We, therefore, in the facts and circumstances of the case, have no hesitation to hold that the victims of the accident were travelling in the truck as gratuitous passengers and in that view of the matter, the appellant herein was not liable to pay the amount of compensation to the claimants."

22. The same issue came up for consideration about the entitlement of gratuitous passengers of the truck in the case of *United India Insurance Company Limited v. Sahanaz Khatoon and others*, reported in 2010(2) BBCJ 595. In that case the deceased husband Md. Akbar aged about 35 years was sitting on the top of the truck. The truck was carrying Barat party. Due to rash and negligent driving the deceased Md. Akbar propelled out from the truck and succumbed to the injuries. The Court has made discussion to the earlier judgment of the Hon'ble Supreme Court as well as the High Court held that Insurance Company is not liable to pay any compensation to any person. It will be relevant to quote paragraph nos. 4, 8, 9 and 13 of the aforesaid judgment:

"4. The claimant, Shahanaz Khatoon filed the aforesaid Claim Case No. 40 of 2000 claiming compensation to the tune of Rs.4,10,000/- (four lacs then thousand only). According to the case of the claimant, the husband of the claimant i.e. the deceased, Md. Akbar who was aged about 35 years was sitting on the top of the truck bearing Registration No. BR-30/G-4182 on 05.05.2000. On the said truck, the barat party was sitting. According to her further case, her deceased husband was a tailor master. Due to rash and negligent driving of the driver, the deceased, Md. Akbar fell from the truck and succumbed to the injuries. On the basis of her fardbeyan, a police case was registered being Jale P.S. Case no. 05 of 2000 u/Ss 279, 304A of the IPC. In the said claim application,

the owner of the truck was made Opposite Party No.1 whereas the driver was made O.P.No.2 and this appellant-insurance company was made O.P. No. 3.

8. The learned counsel in support of his contention relied upon a decision of the Hon"ble Supreme Court reported in 2004(2) PLJR page 59 (SC) (M/S National Insurance Company Ltd. v. Baljeet Kaur and Ors.). The Hon"ble Supreme Court in the aforesaid decision, at paragraphs 13 and 14 has held as follows:-

"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-a-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.

In a situation of this nature, the doctrine of suppression of mischief rule as adumbrated in Heydon's case (3 Co. Rep 7a 76 ER 637) shall apply. Such an amendment was made by the parliament consciously. Having regard to the definition of "goods carriage" vis-a-vis "public service vehicle", it is clear that whereas the goods carriage carrying any passenger is not contemplated under the 1988 Act as the same must be used solely for carrying the goods."

At paragraph-20 in the same judgment, the Hon"ble Supreme Court has held as follows:

"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."

9. The learned counsel for the appellant next relied upon another decision reported in 2008 (1) PLJR page 127(SC) (United India Insurance Company Limited v. Serj Rao & others) In the said case, at paragraph 8 the Hon"ble Supreme Court has held as follows:-

"8. So far as the question of liability regarding labourers travelling in trollies is concerned, the matter was considered by this Court in Oriental Insurance Company Ltd. v. Brij Mohan and others (2007(7) SCALE 753) and it was held that the Insurance Company has no liability. In view of the aforesaid two decisions of this Court, we set aside the impugned order in each case and remit the matters to the High Court to consider the matters afresh in the light of what

has been stated by this Court in Smt. Yallwwa's case (supra) and Brij Mohan's case (supra)."

13. Admittedly, in the present case, the deceased, Md. Akbar was a tailor master and was sitting on the top of the truck at the time of the accident. In the said truck, Barat party was also boarding. In view of the above facts and circumstances of the case and the decisions cited on behalf of the appellant, in my opinion, the insurance company i.e. the appellant is not liable to pay any compensation to the claimant. The learned court below has not considered this aspect of the matter and passed the award against the appellant."

23. In the case of National Insurance Company Limited v. Balakrishnan and another, reported in (2013) 1 SCC 731 was dealing with the question of entitlement of compensation in which the Managing Director of the respondent Company met with an accident while travelling in the motor vehicle belonging to the Company. The Tribunal allowed the claim of compensation for the injury sustained. The High Court treated the company to be the owner of the vehicle and repelled the contention of the insurer that though the vehicle was ensured in the name of the Company, the Managing Director was the legal owner of the vehicle and, therefore, the insurer liability was to be limited to the extent as stipulated in the policy. The Insurance Company has contended that even assuming the Managing Director is not the owner of the vehicle a non-fare paying passenger could not be covered by the policy. The Managing Director has claimed that barring the insurer and the insured, all others are third parties and, therefore, he is covered by the policy. The Hon''ble Supreme Court has found that the vehicle was under the comprehensive package policy. As the Insurance Regulatory and Development Authority (IRDA) which is presently the statutory regulatory authority has commanded the insurance companies that a comprehensive package policy fixes the liability to the insurer for payment of compensation to the occupant in a motor vehicle as the Hon''ble Supreme Court found that earlier judgments were rendered in respect of an "Act Policy" which does not admittedly cover a third party risk of an occupant in a car. But if the policy is a comprehensive/package policy the liability would be covered. IRDA has clarified the position by issuing circulars and as such comprehensive package policy would cover the liability for payment of compensation of the occupant in a car but on fact the court remitted back the matter on the question whether in that case that policy in question is a comprehensive package policy as there was no discussion on this issue by the Tribunal or the High Court. It will be relevant to quote paragraph nos. 1, 11, 12, 13, 16 and 26 of the aforesaid judgment:

"1. Leave granted. The singular issue that arises for consideration in this appeal is; whether the first respondent, the Managing Director of respondent 2, a company registered under the Companies Act, 1956, is entitled to sustain a claim against the appellant insurer for having sustained bodily injuries?

11. In United India Insurance Co. Ltd. v. Tilak Singh, 2006 (2) T.A.C. 312 this Court referred to the concurring opinion rendered in a three-Judge Bench

decision in *New India Assurance Co. Ltd. v. Asha Rani* and ruled thus (Tilak Singh case SCC p.412 para 21)

"21. In our view, although the observations made in *Asha Rani* case were in connection with carrying passengers in a goods vehicle, the same would apply with equal force to gratuitous passengers in any other vehicle also. Thus, we must uphold the contention of the appellant Insurance Company that it owed no liability towards the injuries suffered by the deceased Rajinder Singh who was a pillion rider, as the insurance policy was a statutory policy, and hence it did not cover the risk of death of or bodily injury to a gratuitous passenger."

It is worthy to note that in the said case the controversy related to a gratuitous passenger carried in a private vehicle.

12. In *Oriental Insurance Co. Ltd. v. Jhuma Saha*, 2007 (2) T.A.C. 12 the controversy related to fastening of liability on the insurer for the death of the owner of a registered vehicle. Maruti van. The Court observed that the accident did not involved any other motor vehicle than the one which he was driving and as the liability of the insurer company is to the extent of indemnification of the insured against the respondent or an injured person, a third person or in respect of damages of property, the insured cannot be fastened with any liability under the provisions of the Motor Vehicles Act, and, therefore, the question of the insurer being liable to indemnify the insured does not arise. Thereafter, the Bench referred to the decision in *Dhanraj v. New India Assurance Co. Ltd.*, 2005 (1) T.A.C. 1 and ruled thus: (*Jhuma Saha* case, SCC pp 265-66, para 13)

"13. The additional premium was not paid in respect of the entire risk of death or bodily injury of the owner of the vehicle. If that be so, Section 147(1)(b) of the Motor Vehicles Act which in no uncertain terms covers a risk of a third party only would be attracted in the present case."

13. In *National Insurance Co. Ltd. v. Laxmi Narain Dhut*, 2007 (2) T.A.C. 398 after elaborately referring to the analysis made in *Asha Rani*, the Bench stated thus: (*Laxmi Narain* case, SCC p.713, para 17)

"17. Section 149 is part of Chapter XI which is titled "Insurance of motor vehicles against third-party risks". A significant factor which needs to be noticed is that there is no contractual relation between the insurance company and the third party. The liabilities and the obligations relatable to third parties are created only by fiction of Sections 147 and 149 of the Act."

In the said case, it has been opined that although the statute is a beneficial one qua the third party, yet that benefit cannot be extended to the owner of the offending vehicle.

16. In *Oriental Insurance Co. Ltd. v. Sudhakaran K.V.*, 2008 (3) T.A.C. 1 a two-Judge Bench, while dealing with the issue whether a pillion rider on a scooter would be a third party within the meaning of Section 147 of the Act, after referring to a number of authorities, stated thus: (SCC pp.433 & 435, paras 22 &

25)

"22. The contract of insurance did not cover the owner of the vehicle, certainly not the pillion rider. The deceased was travelling as a passenger, *stricto sensu* may not be as a gratuitous passenger as in a given case she may not (sic) be a member of the family, a friend or other relative. In the sense of the term which is used in common parlance, she might not be even a passenger. In view of the terms of the contract of insurance, however, she would not be covered thereby.

* * *

25. The law which emerges from the said decisions, is (i) the liability of the insurance company in a case of this nature is not extended to a pillion rider of the motor vehicle unless the requisite amount of premium is paid for covering his/her risk; (ii) the legal obligation arising under Section 147 of the Act cannot be extended to an injury or death of the owner of vehicle or the pillion rider; (iii) the pillion rider in a two-wheeler was not to be treated as a third party when the accident has taken place owing to rash and negligent riding of the scooter and not on the part of the driver of another vehicle."

26. In view of the aforesaid factual position, there is no scintilla of doubt that a "comprehensive/package policy" would cover the liability of the insurer for payment of compensation for the occupant in a car. There is no cavil that an "Act Policy" stands on a different footing from a "comprehensive/package policy". As the circulars have made the position very clear and IRDA, which is presently the statutory authority, has commanded the insurance companies stating that a "comprehensive/package policy" covers the liability, there cannot be any dispute in that regard. We may hasten to clarify that the earlier pronouncements were rendered in respect of the "Act Policy" which admittedly cannot cover a third-party risk of an occupant in a car. But, if the policy is a "comprehensive/package policy", the liability would be covered. These aspects were not noticed in *Bhagyalakshmi* and, therefore, the matter was referred to a larger Bench. We are disposed to think that there is no necessity to refer the present matter to a larger Bench as IRDA, which is presently the statutory authority, has clarified the position by issuing circulars which have been reproduced in the judgment by the Delhi High Court and we have also reproduced the same."

24. In the case of *United India Insurance Co. Ltd. v. Tilak Singh and others*, reported in (2006)⁴ SCC 404 in paragraph 21 the Court has held that observations made in *Asha Rani* (supra) case were in connection with carrying passengers in a goods vehicle, the same would apply with equal force to gratuitous passengers in any other vehicle. In *Asha Rani* (supra) the Court has said that additional premium was not paid to respondent entire risk of the death or bodily injury of the owner of the vehicle and as such does not cover risk of third party would be attracted. In the case of *Oriental Insurance Co. Ltd. v. Meena Variyal and others*, reported in (2007)⁵ SCC 428 where the Regional Manager of the Company who was given a Car for his use, had gone in

connection with the business of the Company was himself driving the vehicle, met with an accident eventually succumbed to the injuries. The Hon''ble Supreme Court said that the object under Chapter XI of the Act, seems to be compulsory coverage of liability relating to the person and property of third party and in respect of employee of the insured employer, the liability that may arise under the Workmen''s Compensation Act, 1923 in respect of driver, the conductor and one carried in a goods vehicle carrying good. The employer Company is not entitled to be indemnified, as in terms of Section 147 employees are not compulsory covered, as deceased was not driver of vehicle could not have come under the Workmen''s Compensation Act, 1923. In the case of New India Assurance Company Limited v. Sadanand Mukhi and others, reported in (2009) 2 SCC 417 where the son of the owner of the insurer was driving the motor-cycle met with an accident it has been decided by the Hon''ble Supreme Court that Insurance Company was not liable to indemnify the owner, in view of the relationship of the deceased and owner of the vehicle.

25. In the case of Bhagya Lakshmi and others v. United Insurance Company Ltd. and another, reported in (2009) 7 SCC 148 which has been referred to a larger Bench for consideration about the liability of Insurance Company in case of death of occupant in the vehicle. There the Court has said that while referring the matter the Court has said that there is distinction of act policy, comprehensive package policy. The same issue came for consideration in the case of Balkrishnan case (supra) the Hon''ble Supreme Court without awaiting the outcome of Bhagya Lakshmi (supra) placing reliance on two letters of Insurance Regulatory and Development Authority (IRDA) dated 16.11.2009, letter dated 3.12.2009, the Court has arrived that comprehensive package policy would cover the liability for payment of compensation for the occupant in Car. The Court further said that Act Policy stand on different footing from the comprehensive package policy which has been clarified in the circular issued by IRDA. A comprehensive package policy covers the liability in terms of the contract which is different to the act-policy which admittedly covers third party risk only.

26. Let us examine the present case with regard to the entitlement to claim of compensation from the Insurance Company. Ext.10 is certified copy of the First Information Report dated 26.2.2002 which has been registered on the basis of statement of Md. Arsad where said, Aslam, the victim, along with other family members was going from his Sasurtal Dhaka to Dharmuhana, Jainagar by a Bolero vehicle bearing registration no. BR-05P 1116. It has been stated that accident has taken place as the driver driving the vehicle negligently. Altogether five witnesses have been examined on behalf of the claimant and all of them have said that the owner of the vehicle was the friend of his father-in-law of the deceased. The same was not taken on hire basis rather the same was as a complementary by the friend of father-in-law of the deceased. This statement has been reiterated by all the persons. There is no need to quote the same one by one. The court below has accepted the version, recorded that the clear cut picture emerges from the evidence of claimants that the vehicle in question was

not taken on rent, admitted position emerges that the deceased, claimants were occupants of aforesaid vehicle leading to the accident in which the deceased has died. The court below has not made an enquiry about the nature of coverage of the said vehicle whether the vehicle was covered under the act policy or under the comprehensive/package policy. In terms of package policy if the vehicle has been taken on hire or reward the occupant of the car on death, the insurer will not be liable to indemnify and also if it is out and out a Act policy, the occupant of the Car will be treated to be a gratuitous passenger and will not be entitled to any compensation. But the appellants have produced the policy of the Car claiming to be a package policy and on that strength the claim has been made for entitlement of compensation in favour of appellants.

27. Before concluding the judgment, we will have to understand, who is the gratuitous passenger. As per Chambers Dictionary meaning-gratuitous means, done or given for nothing, voluntary; benefiting one party only, without reason, ground or proof; uncalled for. As per the Law Laxicon P. Ramanatha Aiyar, gratuitous, means without valuable consideration. This situation would arise, when the vehicle is taken on hire, but this situation would not arise when vehicle is given to the friend or any of relative.

28. In view of the fact that as there is no marshaling of fact with regard to nature of coverage of the vehicle under particular policy which requires fresh consideration.

29. For making an enquiry about the coverage of vehicle under the statute policy or contract policy i.e. comprehensive policy and whether the vehicle was taken on hire or reward basis or mere was an extension of the benefit given by the friend of the father-in-law of the deceased. In such view of the matter, the order 16.4.2012 passed in Claim Case No.14 of 2008 is set aside and the matter is remanded back to the court below for fresh consideration with a direction to the court below to make an enquiry with regard to the nature of policy under which the vehicle was covered on the date of accident as Ext.3 which has been filed does not disclose about the nature of policy covering the said vehicle. The parties, I so feel necessity they may bring additional evidence in support of their respective cases.

30. I.A. No. 4334 of 2013 has been filed for condonation of delay in filing this appeal.

31. This Court is satisfied with the explanation made in the aforesaid interlocutory application.

32. Accordingly the delay in filing the appeal is hereby condoned and I.A. No. 4334 of 2013 is disposed of.

33. Accordingly this appeal is allowed to the aforesaid extent.

34. Office is directed to remit back the lower court records forthwith.