

(2012) 08 AHC CK 0052
In the Allahabad High Court
Case No : F.A.F.O. No. 893 of 2009

National Insurance Co. Ltd.		APPELLANT
	Vs	
Smt. Gita Mishra and Others		RESPONDENT

Date of Decision : 06-08-2012

Acts Referred:

Constitution of India, 1950 — Article 142
Motor Vehicles Act, 1988 — Section 146, 147, 149, 173

Citation : (2013) 3 ALJ 577

Hon'ble Judges : Vishnu Chandra Gupta, J;Devi Prasad Singh, J

Bench : Division Bench

Advocate : Ravindra Pratap Singh, for the Appellant; D.P. Singh, for the Respondent

Judgement

Vishnu Chandra Gupta, J.—This appeal u/s 173 of Motor Vehicles Act, 1988 (in short "M.V. Act") has been preferred against an award delivered in Motor Accident Claim Petition No.-87 of 1998 on 12.2.2009 by Motor Accident Claims Tribunal (in short "Tribunal")/Additional District Judge, Court No. 12 Sri P.P. Tiwari, awarding compensation of Rupees 07,26,260/- with pendent lite and future interest at the rate of 7% per year to the Respondents No. 1 to 4 (Claimants). It was directed under the award that the amount of compensation shall be payable by the Appellant (insurer) with in one month and in case of default of payment within a month the rate of interest would be 9% per year. However right has been given to Appellant/insurer to recover the amount paid under award from Respondent No. 5, the owner of the vehicle.

FACTS

The facts necessary for deciding this appeal are as under.

2. That on 23.4.1998 at about 7.30 p.m. Ramesh Chandra Mishra (Deceased) was going from Billour to Unnao in DCM truck U.P. 32-T-5157. The truck met an accident due to rash and negligent driving of driver of truck. Ramesh Chandra

Mishra and some other passengers of truck got injuries. Sri Ramesh Chandra Mishra succumbed to the injuries during treatment in hospital. The wife and children of deceased (Respondent) No. 1 to 4) filed claim petition for compensation of Rs. 12,35,000/- alleging therein that deceased aged about 45 years was working as fitter in Scooter India, Lucknow and was getting Rs. 6000/- per month as salary. He was the only bread winner of the family. The respondents being wife sons and daughters of deceased were fully dependent upon the deceased.

3. Petition was contested by Appellant and respondent No. 5 by filing their separate written statements. Respondent No. 5 stated that he was the owner of the vehicle in question which was being driven by a valid and effective licenced driver. The vehicle was duly insured with Appellant under policy No. 451500 w.e.f. 25.9.97 to 24.9.98. The allegation to accident were generally denied.

4. The appellant denied generally the allegation of petition and alleged that appellant is not liable in this case because the vehicle in question was being driven at the time of accident against the terms of policy of insurance.

5. Different issues were framed by the Tribunal. After recording the oral evidence and taking documentary evidence of the parties the Tribunal held under issue No. 1 that vehicle met accident due to rash and negligent driving of the driver of the vehicle resulting into death of Ramesh Chandra Misra on account of injuries sustained in this accident. While deciding issues No. 2 and 4 the Tribunal held that driver was holding a valid and effective driving licence to drive the truck, however vehicle being goods carriage, therefore, it was not permitted to carry any passenger therein. The deceased was traveling in the truck not being owner of the goods, therefore, the truck was being plied at the time of accident in breach of terms of the policy. The tribunal under issue No. 3 determined the compensation as mentioned above and held that Appellant being insurer of the truck is not liable to pay compensation amount and interest thereon because the deceased was traveling in goods carriage being member of a marriage party (Barat). The tribunal in this regard placed reliance upon National Insurance Co. Ltd. v. Bomakshi Subhama and others, 2005 (2) TAC 1 (SC), Oriental Insurance Co. Ltd. Vs. Brij Mohan and Others, , Sri Pramod Kumar Agrawal and Another Vs. Smt. Mushtari Begum and Others, , National Insurance Co. Ltd. Vs. Baljit Kaur and Others, and New India Assurance Co. Ltd. Vs. Asha Rani and Others, However the Tribunal in the light of National Insurance Co. Ltd. Vs. Baljit Kaur and Others, held that insurer Appellant should pay the compensation to the claimants under right to recover the same from owner of the truck, the respondent No. 5.

6. Aggrieved by the impugned award this appeal has been preferred by the appellant, insurance Company.

7. Respondent No. 5 in spite of service of notice in terms of High Court Rules, 1952 as per office report dated 26.5.2010, did not put his appearance in person

or through Advocate.

8. We have heard the learned counsel for the parties and perused the record of tribunal as well as of this appeal.

Submissions of Counsel for Appellant

9. The learned Counsel for appellant would submit that the Tribunal rightly held that in the given circumstances, the Appellant insurer is not liable to pay the determined compensation to the claimants and the owner of the vehicle is under an obligation to satisfy the award by making payment of compensation to the legal heirs of the deceased, who was traveling as passengers in the goods carriage at the time of accident. He further submitted that order of tribunal directing Appellant for making the payment under award is against the law laid down by the Apex Court in *New India Assurance Co. Ltd. Vs. Vedwati and Others*, and *National Insurance Co. Ltd. Vs. Prema Devi and Others*, The Apex Court in both the authorities set aside the order directing payment by insurer with liberty to recover the amount from owner of the offending vehicle by holding that in the goods carriage the passengers could not be allowed to travel. It was further held that it would not be a case of breach of terms of policy but is a case where deceased was not covered under the policy purchased by the owner of goods carriage.

10. It was further urged by the counsel for appellant that this is not a case falling under the category of third party risk. Only in cases involving third party risk the insurer is under an obligation to pay the awarded amount to claimants and could get it recovered thereafter from the owner or driver of offending vehicle if breach of policy terms are established.

11. It has been further submitted that directions given in some authorities of Supreme Court regarding payment of awarded amount to insurer cannot be of binding nature being direction issued by Supreme Court under Article 142 of the Constitution of India.

12. It has also been argued on behalf of appellant that in other petitions arising out of the same accident, the liability to pay compensation was determined by Owner and not by Appellant. In support of his contention the certified copies of awards passed in MACP No. 79 of 1998, 80 of 1998, 81 of 1998, 86 of 1998, 89 of 1998 and 90 of 1998 were filed by an application during pendency of this appeal. It was further urged that Owner of vehicle have not chosen to file appeals, against these awards, therefore, in this case too the liability to pay compensation with recovery rights could not be passed, otherwise uniformity of decision in similar and identical matters by the courts/Tribunal could not be maintained. Therefore, propriety demands to set aside the direction contained in impugned award for appellant to pay compensation with right to recover the same.

Submissions of Counsel for Claimants/respondent No. 1 to 4

13. The learned Counsel for respondents/claimants would urge that in view of judgment in National Insurance Co. Ltd. v. Janak Dulari and others, 2010 AICC 405, (D.B.) All., Oriental Insurance Co. Ltd. Vs. Angad Kol and Others, The New Indian Insurance Company Vs. Darshana Devi and Others, and New India Assurance Co. Ltd. Vs. Rajendra Prasad Srivastava and Others, the direction given by Tribunal to pay the awarded amount to claimants under right to recover from owner of vehicle cannot be set aside and are in accordance with law.

14. It has been further urged that the deceased is covered under words "any person" which include "third party" and so legal heirs of deceased could not be deprived of the benefits available in cases of third party risk.

15. It has been further submitted that the judgments filed of other claim petitions arising out of the same accident could not operate Res-judicata, because parties of these cases are not similar and the respondents/claimants were not parties in those proceedings. Hence appeal deserves to be dismissed.

Points in issue

16. On the basis of submissions at the Bar the controversies are summarized under:

1. Who comes within the category of "Third Party"?
2. What would be the liability of insurer to pay compensation in case of death of or injury to gratuitous passenger traveling in goods carriage?
3. What would be the liability of insurer in cases of "Third Party Risk" where breach of terms of policy on the part of owner of vehicle are established?

POINT IN ISSUE NO. 1

17. What would be the true meaning of expression "third party" is the crux of the controversy in this case. The contract of insurance has two parties to it, the insurer and insured. So, any party or person, who is not contracting party to the insurance policy will referred to and called generally as "third party".

18. The expression "third party" used in the sections 146, 147 and 149 of M.V. Act is included in "any person" other than "insurer" and "insured". Therefore, the words "any person" used in S. 147 of M.V. Act includes "third party". Chapter XI of M.V. Act deals with insurance of motor vehicles against "third party" risk. Section 145 is the definition clause wherein third party has no definition. In section 145(g) it has been mentioned that "third party" includes the Government.

19. In National Insurance Co. Ltd. Vs. Faqir Chand and Others, the High Court holding the passengers of bus as third party in para 3 observed;

3. Other than the contracting parties to the insurance policy, the expression "third party" therefore, should include every one, be it a person traveling in another vehicle, one walking on a road or a passenger in vehicle it self which is the subject matter of insurance policy. Every insured takes out an insurance

policy against the third party risk, and enters into contract with insurer, only with the motive intention and purpose of covering the risks which may arise in relation to claims lodged against him by third party. By agreeing to issue the insurance policy, the insurer undertakes to insure the insured and indemnify him against all risks and in relation to all claims lodged against him by third parties. Narrowing the concept, scope and ambit of a third party, and therefore, excluding the passengers in the vehicle from operation and purview would not only defeat the very purpose of taking out the insurance policy, but the very object of Motor Vehicles Act which makes it mandatory requirement of the law that all vehicles/owners of vehicles must be compulsorily insured against third party risks

20. In *Dhanraj Vs. New India Assurance Co. Ltd. and Another*, the Apex Court after considering the observation made in *Oriental Insurance Co. Ltd. Vs. Sunita Rathi and Others*, held as under:

--that the liability of an insurance company is only for the purpose of indemnifying the insured against the liabilities incurred towards a third person or in respect of damages to property. Thus, where the insured, i.e., an owner of the vehicle has no liability to a third party the insurance company has no liability also.

21. Now it has to be looked into, is there any one who will not be covered under expression "third party" though they may not be contracting parties to a insurance policy under the provisions of M.V. Act?

22. In *New India Assurance Co. Ltd. Vs. Asha Rani and Others*, a Constitutional Bench of Hon^{ble} Supreme court while considering the amended provisions of year 1994 in section 147 of M.V. Act 1988 observed in para 9 of judgment as under:

9. ---If the Motor Vehicles Act of 1994 is examined, particularly section 46 of Act 6 of 1991 by which expression "injury to any person" in the original Act stood substituted by expression "injury to any person" including "owner of goods or his authorised representative carried in vehicle" the conclusion is irresistible that prior to the aforesaid amendment of 1994, even if widest interpretation is given to expression "to any person" it will not cover either the owner of goods or his authorised representative being carried in the vehicle. The object and reasons of Clause 46 also states that it seeks to amend section 147 to include owner of goods or his authorised representative carried in the vehicle for the purposes of liability under the Insurance Policy. It is no doubt true that sometimes the Legislature amends the law by way of amplification and clarification of an inherent position which is there in the statute, but a plain meaning being given to the words used in the statute, as it stood prior to its amendment of 1994, and as it stands subsequent to its amendment in 1994 and bearing in mind the objects and reasons engrafted in the amended provisions referred to earlier, it is difficult for us to construe that the expression "including owner of the goods or his authorised representative carried in the vehicle" which was added to per-

existed expression "injury to any person" is either clarification or amplification of per-existing statute. On the other hand it clearly demonstrates that the Legislature wanted to bring within the sweep of Section 147 and making it compulsory for the insurer to insure even in case of goods and the owner of goods or his representative either dies or suffers bodily injury. The judgment of this Court in Satpal's case, therefore must be held to have not been correctly decided and impugned judgment of the Tribunal as well as of the High Court accordingly are set aside and these appeals are allowed.

23. Section 147 deals with requirements of policies and limits of liability. Provision appended thereto, however makes an exception to the main provision which reads as under: "Provided that policy shall not required--(I) to cover liability in respect of death, arising out of and in the course of his employment of the employee of a person insured by the policy or in respect of bodily injury sustained by such an employee arising out of and in the course of his employment other than a liability arising under the Workmen's Compensation Act, 1923 (8 of 1923) in respect of death of, or bodily injury to, any such employee--

(a) engaged in driving the vehicle

(b) if it is a public service vehicle engaged as conductor of the vehicle or in examining tickets on the vehicle, or

(c) if it is a goods carriage, being carried in the vehicle, or

(ii) to cover any contractual liability

24. It make it clear that so far as employees of the owner of the Motor Vehicle are concerned Act policy is required to be taken and in case of bodily injury or death of employee, the owner would be liable to the extent of liability under the Workmen's Compensation Act The insurer would indemnify the liability to this extent even in the absence of coverage of risk under the policy taken by the owner of the vehicle, because it is an statutory requirement in the light of section 146 of M.V. Act.

25. Similarly no separate coverage for owner of goods or his authorised representative is required in view of provisions of Section 147(1)(b), if a policy is taken of a goods carriage after amendment of 1994. On similar footings if a public service vehicle is insured under the policy of insurance it would cover the risk of passengers. Sub-section 2 of section 147 makes it clear the limits of liability falls within clause (b) of sub section (1) of Section 147 of M.V. Act.

26. Section 146 of M.V. Act mandates that

(1) No person shall use, except as a passenger, or cause to allow any other person to use, a motor vehicle in a public place, unless there is in force in relation to the use of the vehicle by that person or that other person, as the case may be, a policy of insurance complying with requirements of this chapter

27. However there is an exception to this rule as contained in sub-sections 2 and 3 of section 146 which relates to vehicles owned by Central or State Government, any local authority or State transport undertaking, but of course, under certain restrictions.

28. Section 149 compel the insurer to indemnify the liability of owner of the vehicle under the insurance cover to the extent as mentioned therein subject to the statutory provisions contained in Chapter XI of M.V. Act, 1988.

29. From another angle the Apex Court has discussed in National Insurance Co. Ltd. Vs. Laxmi Narain Dhut, the third party claims which are mentioned and explained in paragraphs 11 and 12 of the judgment, quoted as under:

11. Where the claim relates to own damage claims, it cannot be adjudicated by the insurance company. But it has to be decided by an other forum i.e. forum created under the Consumer Protection Act, 1985 (in short the "CP Act"). Before the Tribunal, there were essentially three parties i.e. the insurer, insured and the claimants. On the contrary, before the consumer forums there were two parties i.e. owner of the vehicle and the insurer. The claimant does not come in to the picture. Therefore, these are cases where there is no third party involved. According to learned Counsel for the appellants, in such cases the logic i.e. let the insurer pay and recover from the insured company does not apply. As noted above, there is no contractual relation between the third party and the insurer. Because of the statutory intervention in terms of Section 149, the same becomes operative in essence and Section 149 provides complete insulation.

12. In the background of the statutory provisions, one thing is crystal clear i.e. the statute is beneficial one qua the third party. But that benefit cannot be extended to the owner of the offending vehicle. The logic of fake license has to be considered differently in respect of third party and in respect of own damage claims.

30. On the basis of aforesaid discussions made, it is clear that the cases which could be tried and decided by the Tribunal under chapter XII of Motor Vehicles Act, 1988 would be of "third party" and the cases for claim of compensation for own damage in between insured in one side and insurer on the other side would not be cognizable under Chapter XII of Motor Vehicles Act.

31. Own damage is not only related to the property of owner but also include damage occurred to himself in the form of injury or death occurred by use of Motor Vehicle. In one of the judgment of Apex Court reported in New India Assurance Company Ltd. Vs. Sadanand Mukhi and Others, it has been held that in case of "Act Policy" the son of owner who received injuries while driving the motorcycle of the father, was not treated to be third party and son's claim under Chapter XII of M.V. Act, 1988 was held to not maintainable.

13. Contract of insurance of a motor vehicle is governed by the provisions of the Insurance Act. The terms of the policy as also the quantum of the premium

payable for insuring the vehicle in question depends not only upon the carrying capacity of the vehicle but also on the purpose for which the same was being used and the extent of the risk covered thereby. By taking an "act policy", the owner of a vehicle fulfils his statutory obligation as contained in Section 147 of the Act. The liability of the insurer is either statutory or contractual. If it is contractual its liability extends to the risk covered by the policy of insurance. If additional risks are sought to be covered, additional premium has to be paid. If the contention of the learned Counsel is to be accepted, then to a large extent, the provisions of the Insurance Act become otiose. By reason of such an interpretation the insurer would be liable to cover risk of not only a third party but also others who would not otherwise come within the purview thereof. It is one thing to say that the life is uncertain and the same is required to be covered, but it is another thing to say that we must read a statute so as to grant relief to a person not contemplated by the Act. It is not for the court, unless a statute is found to be unconstitutional, to consider the rationality thereof. Even otherwise the provisions of the Act read with the provisions of the Insurance Act appear to be wholly rational.

14. Only because driving of a motor vehicle may cause accident involving loss of life and property not only of a third party but also the owner of the vehicle and the insured vehicle itself, different provisions have been made in the Insurance Act as also the Act laying down different types of insurance policies. The amount of premium required to be paid for each of the policy is governed by the Insurance Act. A statutory regulatory authority fixes the norms and the guidelines.

15. Keeping in view the aforementioned Parliamentary object, let us consider the fact of the present case so as to consider as to whether the insurer is liable to pay the amount of compensation in relation to the accident occurred by use of the vehicle which was being driven by the son of the insured. We may, for the said purpose, notice certain decisions covering different categories of the claims. In *United India Insurance Co. Ltd., Shimla Vs. Tilak Singh and Others*, this Court considered the provisions of the Motor Vehicles Act, 1939 as also 1988 Act and inter alia opined that the insurance company would have no liability towards the injuries suffered by the deceased who was a pillion rider, as the insurance policy was a statutory policy which did not cover the gratuitous passenger.

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19. In view of the aforementioned authoritative pronouncements, we have no hesitation of hold that the insurance company was not liable. The impugned judgment, therefore, cannot be sustained. It is set aside accordingly. The appeal is allowed. No costs.

32. The different provisions of M.V. Act 1988 and the different authorities of Apex Court and of High Court makes it clear that at least a policy of insurance is compulsory, which should comply the requirements of Section 147(1)(b)(i) and (ii) read with it provision to it, which may be termed as an "Act policy". Under this "Act policy" persons includes

1. Person not inside the vehicle insured, for example, person walking on road or traveling in any other vehicle.
2. Specified employees of owner according to the type of vehicle in the insured vehicle.
3. In goods carriage/vehicle, owner of goods or his authorised representative along with goods,
4. Any person covered under contractual liability
5. In public service vehicle passengers therein shall be termed as "third party" but under "Act Policy"

Persons not covered under the policy will not be included in "third party"; for example, any gratuitous passenger or any passenger for hire or reward in goods carriage or a pillion rider on two wheeler etc.

Point in issue No. 2

And

Point in issue No. 3

33. The only question to be considered in this appeal is:

whether in given fact and circumstances of this case the Insurer have any obligations to pay the compensation, even if breach of terms of policy are established?

34. The question involved in this case is no longer res integra.

35. In New India Assurance Co., Shimla Vs. Kamla and Others etc. etc., The Apex Court consider this aspect of the matter. The relevant paragraphs of the judgments are quoted below:

18. Section 149(2) of the Act says that notice regarding the suit or other legal proceedings shall be given to the insurer if such insurer is to be fastened with such liability. The purpose of giving such notice is to afford the insurer to be made a party in the proceedings for defending the action on any one of the grounds mentioned in the sub-section. Among the multiplicity of such grounds the one which is relevant in this case is extracted below:

149(2)(a) that there has been a breach of a specified condition of the policy, being one of the following conditions, namely

* *

(ii) a condition excluding driving by a named person or persons or by any person who is not duly licensed, or by any person who has been disqualified for holding or obtaining a driving licence during the period of disqualification.

19. Sub-section (4) of Section 149 of the Act says that so much of the policy as purports to restrict the insurance of the person insured by reference to any condition shall "as respects such liabilities as are required to be covered by a policy.... be of no effect". The proviso to the said sub-section is important for the purpose of considering the question involved in this case and hence that proviso is extracted below:

Provided that any sum paid by the insurer in or towards the discharge of any liability of any person which is covered by the insurer from that person.

20. Similarly, in this context sub-section (5) is equally important and hence that is also extracted below:

149. (5) If the amount which an insurer becomes liable under this section to pay in respect of a liability incurred by a person insured by a policy exceeds the amount for which the insurer would apart from the provision of this section be liable under the policy in respect of that liability, the insurer shall be entitled to recover the excess from that person.

21. A reading of the proviso to sub-section (4) as well as the language employed in subsection (5) would indicate that they are intended to safeguard the interest of an insurer who otherwise has no liability to pay any amount to the insured but for the provisions contained in Chapter XI of the Act. This means, the insurer has to pay the third parties only on account of the fact that a policy of insurance has been issued in respect of the vehicle, but the insurer is entitled to recover any such sum from the insured if the insurer were not otherwise be liable to pay such sum to the insured by virtue of the conditions of the contract of insurance indicated by the policy.

22. To repeat, the effect of the above provisions is this: when a valid insurance policy has been issued in respect of a vehicle as evidenced by a certificate of insurance the burden is on the insurer to pay to the third parties, whether or not there has been any breach or violation of the policy conditions. But the amount so paid by the insurer to third parties can be allowed to be recovered from the insured if as per the policy conditions the insurer had no liability to pay such sum to the insured.

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25. The position can be summed up thus:

The insurer and the insured are bound by the conditions enumerated in the

policy and the insurer is not liable to the insured if there is violation of any policy condition. But the insurer who is made statutorily liable to pay compensation to third parties on account of the certificate of insurance issued shall be entitled to recover from the insured the amount paid to the third parties, if there was any breach of policy conditions on account of the vehicle being driven without a valid driving licence. Learned counsel for the insured contended that it is enough if he establishes that he made all due enquiries and believed bonafide that the driver employed by him had a valid driving licence, in which case there was no breach of the policy condition. As we have not decided on that contention it is open to the insured to raise it before the Claims Tribunal. In the present case, if the Insurance Company succeeds in establishing that there was breach of the policy condition, the Claims Tribunal shall direct the insured to pay that amount to the insurer. In default the insurer shall be allowed to recover that amount (which the insurer is directed to pay to the claimant third parties) from the insured person.

36. The Hon"ble Supreme Court in National Insurance Co. Ltd. Vs. Swaran Singh and Others, had the occasion to consider this aspect. In para 108 of the judgment it has been observed that orders passed after exercising jurisdiction vested in Article 142 of constitution of India by the Apex Court cannot be treated as binding precedent. The same is quoted herein below:

108. Although, as noticed hereinbefore, there are certain special leave petitions wherein the persons having the vehicles at the time when the accidents took place did not hold any licence at all, in the facts and circumstances of the case, we do not intend to set aside the said awards. Such awards may also be satisfied by the petitioners herein subject to their right to recover the same from the owners of the vehicles in the manner laid down therein. But this order may not be considered as a precedent.

While dealing with the obligations of the insurer in established case of breach of terms of policy it was held that the insurance company cannot be absolved with its liability to pay the compensation in the cases falling in the category of "third party risk", but insurer, of course, have a right to recover the amount from the owner of the vehicle if so advised. The summary of findings given in para 110 of the judgment are reproduced herein a below:

Summary of findings

110. The summary of our findings to the various issues as raised in these petitions is as follows;

(i) Chapter XI of the Motor Vehicles Act, 1988 providing compulsory insurance of vehicles against third party risks is a social welfare legislation to extend relief by compensation to victims of accidents caused by use of motor vehicles. The provisions of compulsory insurance coverage of all vehicles are with this paramount object and the provisions of the Act have to be so interpreted as to effectuate the said object.

(x) Where on adjudication of the claim under the Act the Tribunal arrives at a conclusion that the insurer has satisfactorily proved its defence in accordance with the provisions of Section 149(2) read with sub-section (7), as interpreted by this Court above, the Tribunal can direct that the insurer is liable to be reimbursed by the insured for the compensation and other amounts which it has been compelled to pay to the third party under the award of the Tribunal. Such determination of claim by the Tribunal will be enforceable and the money found due to the insurer from the insured will be recoverable on a certificate issued by the Tribunal to the Collector in the same manner u/s 174 of the Act as arrears of land revenue. The certificate will be issued for the recovery as arrears of land revenue only if, as required by sub-section (3) of Section 168 of the Act the insured fails to deposit the amount awarded in favour of the insurer within thirty days from the date of announcement of the award by the Tribunal.

It was categorically held in *The Oriental Insurance Company Limited Vs. Meena Variyal and Others*, and *National Insurance Co. Ltd. Vs. Laxmi Narain Dhut*, that the ratio propounded in *National Insurance Co. Ltd. Vs. Swaran Singh and Others*, has no application to cases other than third party risk. In case of third party risk the insurer has to indemnify the amount and if so advised, to recover it from the insured. The Apex Court affirmed the aforementioned ratio in *New India Assurance Co. Ltd. Vs. Vedwati and Others*, *The New Indian Insurance Company Vs. Darshana Devi and Others*, and *Jawahar Singh Vs. Bala Jain and Others*,

37. Learned counsel for claimant-respondent invited our attention to some judgments of the Supreme Court wherein it has been observed that the insurance company is not liable but in spite of that insurance company is to make the payment of the awarded compensation to the claimant. The right of recovery has also been given to insurance company of the awarded amount from the owner of the vehicle. In this regard reliance has been placed by the learned counsel for respondents on the following cases.

38. The first case referred is *The New Indian Insurance Company Vs. Darshana Devi and Others*, Supreme Court The Apex Court in its judgment in para-13 held as under:

13. In this view of the matter, we are of the opinion that it is not a fit case where this court should exercise its discretionary jurisdiction under Article 136 of the Constitution of India. Even in *Oriental Insurance Co. Ltd. Vs. Brij Mohan and Others*, this court held:

(13) However, respondent No. 1 is a poor labourer. He had suffered grievous injuries. He had become disabled to a great extent. The amount of compensation

awarded in his favour appears to be on a lower side. In the aforementioned situation, although we reject the other contentions of Ms. Indu Malhotra, we are inclined to exercise our extraordinary jurisdiction under Article 142 of the Constitution of India so as to direct that the award may be satisfied by the appellant but it would be entitled to realise the same from the owner of the tractor and the trolley wherefore it would not be necessary for it to initiate any separate proceedings for recovery of the amount as provided for under the Motor Vehicles Act.

(14) It is well settled that in a situation of this nature this court in exercise of its jurisdiction under Article 142 of the Constitution of India read with Article 136 thereof can issue suitable directions for doing complete justice to the parties.

39. It shows that the Apex Court after considering the judgment in the case of Oriental Insurance Co. Ltd. Vs. Brij Mohan and Others, directed under Article 142 read with Article 136 of the Constitution of India and that too for doing the complete justice to the parties of that particular case.

40. In Oriental Insurance Co. Ltd. Vs. Angad Kol and Others, although similar direction has been issued by the Apex Court but in this case too reference of Article 142 of the Constitution has been made.

41. In United India Insurance Co. Ltd. Vs. Suresh K.K. and Another, the Apex Court categorically held that the person traveling in a goods carriage/vehicle would not be covered under the policy of insurance and insurance company could not be held liable and the liability would be of owner. However in para-16 of the judgment in exercise of its jurisdiction under Article 142 of the Constitution of India it has been observed:

16. Keeping in view the aforementioned facts and circumstances into consideration, we are of the opinion that with view to do complete justice between the parties, a direction should given to the appellant to pay the amount to the claimant and realise the same from the owner of the vehicle. Such a direction would, in our opinion, serve the ends of justice.

42. On the contrary learned counsel for appellant drawn our attention towards other cases wherein the Apex Court after holding that the gratuitous passenger in a goods vehicle could not be permitted to travel and in case of motor accident, if any injury or death is caused to such gratuitous passenger the insurance company would not be liable. The liability would be of insured and no direction could be issued to insurance company to pay the amount to the claimant under right to recover from owner. These are the cases which are referred herein above.

43. The first one is National Insurance Co. Ltd. Vs. Prema Devi and Others, In paragraph-8 of the judgment it has been categorically held that in this case gratuitous passenger was traveling in a goods vehicle and as such insurance company would not be liable to pay any compensation to the claimant. The owner was held liable to pay the compensation. It is important to mention here

that in this case the Hon''ble High Court directed the insurance company to pay the amount with right to recover from owner but the impugned order of the High Court has been set aside by the Apex Court and it was made open to the claimants to recover the amount awarded from the owners of the offending vehicle.

44. The three Judges Bench of Apex Court deciding the case of New India Assurance Co. Ltd. Vs. Asha Rani and Others, , New India Assurance Co. Ltd. Vs. Vedwati and Others, [2 Judge Bench] and in M.V. Jayadevappa and Another Vs. Oriental Fire and General Insurance Company Ltd. and Others, [3 Judges Bench] similar view has been taken. In all these cases the passenger was traveling in a goods vehicle but no direction has been issued to insurance company to make the payment of compensation to the claimant under right to recover the amount from owner.

45. It has been contended by the learned counsel for parties that there is conflict in decision, in this regard.

46. We have considered the authorities referred herein above and we are of the opinion that there is no conflict in between two type of authorities. The reason is that that the power conferred in the Apex Court by virtue of Article 142 of the Constitution of India is unique power and that power is absolute and the Apex Court can exercise that jurisdiction and would pass any order or decree as is necessary for doing complete justice in any cause or matter pending before it.

47. It is important to mention here that we are not supposed to examine the extraordinary power of the Supreme Court conferred under Article 142 of the Constitution of India. Only Supreme Court can explain its power conferred under Article 142 of the Constitution.

48. In case of State of Jharkhand and Others Vs. Bijay Kumar and Others, the scope of Article 142 of Constitution of India has been discussed in detail and it has been observed in paragraphs 17, 18 and 19 as under:

17. The Constitution of India conferred a special jurisdiction on this Court only. Although power of judicial review has been conferred on the High Courts, it had not been given any special jurisdiction as has been done on the Supreme Court in terms of Article 142 of the Constitution of India. It is, therefore, very difficult to comprehend that the High Court could issue the impugned direction which, in effect and substance, would be violative thereof.

1. Reliance placed by Amrit Lal Berry and Another Vs. Collector of Central Excise, New Delhi and Others, is not apposite. When a law is declared by this Court, it becomes the law of land in terms of Article 141 of the Constitution of India. Indisputably, therefore, such law would ensure to the benefit of the persons similarly situated but it is incomprehensible that when this Court grants some special benefits to the parties who are before it and confined the relief only to them, such a benefit can be extended by the High Court relying on or on the

basis thereof. The matter might have been different if this Court had not issued such directions, namely, the said order should be kept confined to the parties before it. When this Court declared that no further application should be entertained at the instance of other ad hoc employees in the name of parity or otherwise, the High Court could not have issued a direction which would run counter to the spirit of the said order.

19. Submission of Mr. Rao that notwithstanding the orders dated 23.7.2003 and 10.4.2006, the High Court has committed no mistake in issuing the impugned directions, is stated to be rejected. This Court intended to pass a final order. The said order should have been allowed to attain finality. If a third order can be issued, others who are waiting on the fence may be held to be entitled to file a fourth application. The process, thus, would go on-unendingly. Relaxation given for a limited purpose would become a rule and not the exception.

49. Thus, the power exercised by the Apex Court under Article 142 of the Constitution of India cannot be exercised by the High Court. In another judgment rendered by Supreme Court in the case of Dr. Monica Kumar and Another Vs. State of U.P. and Others, the scope of Article 142 of the Constitution of India has been considered by the Hon"ble Supreme Court. The Apex Court while discussing the scope of Article 142 of the Constitution of India held that this power conferred under Article 142 of the Constitution may be exercised in any "Cause" or "matter" irrespective of the fact that it is a criminal or civil matter.

50. In the matter of National Insurance Co. Ltd. Vs. Swaran Singh and Others, it was held that decision rendered by the Apex Court applicable only to the facts of the particular case and not to be treated as precedent if any order is passed in exercise of extraordinary jurisdiction under Article 142 of the Constitution of India.

51. Thus, it is crystal clear that the decision rendered by the Apex Court propounding some law would be ratio decidendi and would be binding on all courts, tribunals and authorities throughout country by virtue of Article 141 of the Constitution of India but when any direction is issued with intent to do complete justice by the Apex Court it would be binding in between the parties of that particular case and cannot be treated as binding precedent.

52. The close scrutiny of all the decisions relied upon at bar and relates to liability of insurance company reveals that in case of a person receiving injuries or died in a motor accident traveling in goods vehicle as gratuitous passenger, the ratio propounded by the Apex Court is that the insurance company cannot be held liable to pay the compensation under "Act Policy" because he would not be covered under the insurance policy and also of the fact that in a goods vehicle/ carriage no passenger would be allowed to travel. Such a passenger cannot be treated as third party. It would be a case where the person is not covered under the policy of insurance and would not be a case of breach of terms of policy. Therefore, liability cannot be fastened on the insurance company to pay the

compensation and only the owner would be statutory liable to pay the compensation to such claimants in a motor accident claim. This ratio is certainly have a binding force by virtue of Article 141 of the Constitution of India upon all the Courts and Tribunals throughout India.

53. However, in any particular case of such type, if the Apex Court exercised its extraordinary jurisdiction conferred upon it by virtue of Article 142 of the Constitution of India directed the insurer of vehicle to pay the amount to the claimants with right to recover from owner, such direction cannot be treated as binding precedent and would bind the parties of that case only.

54. Coming to the case in hand, this fact is not in dispute that deceased of this case was traveling in a goods carriage at the time of accident as a gratuitous passenger and not being the owner of the goods or his authorised representative. It is also not in dispute that owner of vehicle was having an Act Policy only where in passengers in goods vehicle were not covered. Therefore, the deceased of this case would not fall within the category of "Third party".

55. The tribunal in its award unerringly held that in this case the liability of making the compensation would be on owner of the vehicle involved in the accident, i.e. Respondent No. 5 Amarjeet Singh. However in the light of National Insurance Co. Ltd. Vs. Baljit Kaur and Others, [3 Judge Bench] the Appellant's contention, that in similar circumstances in Asha Rani's case supra, also decided by three Judges Bench of Apex Court, liability was held to of owner and no directions were given to insurance company to make the payment to claimant and thereafter recover it from the owner, has been ruled out on the ground that Baljit Kaur's judgment has been delivered by Bench of same strength after the delivery of Judgment in Asha Rani's case.

56. In another case of 3 Judges Bench of Apex Court, M.V. Jayadevappa and other v. Oriental insurance Co. Ltd. and others, 2005 (2) TAC 5 SC, which has been delivered after judgment of Asha Rani and Baljit Kaur's case supra, the Supreme Court in the similar circumstances observed in para 3 that Insurance Company would not be liable to indemnify the owner who has been found liable to pay compensation, which is being reproduced herein below:

3. The submission of the learned counsel for the appellant has been that the vehicle being a passengers vehicle, the liability should have been passed on to the Insurance Company without regard to the fact whether the passengers were gratuitous or not. Having perused the particulars of the vehicle, as given in the insurance policy, we are satisfied that the vehicle could not have carried passengers. The vehicle seems to have been a goods vehicle. The High Court has rightly exonerated the insurance Company. We are satisfied that no fault can be found with the view taken by the High Court. The appeals are devoid of merit and are dismissed

57. In view of different orders passed by Apex Court is similar facts and circumstances we thought that correct legal proposition of law should be

propounded in the light of provisions of M.V. Act, 1988 and of decisions of Apex Court alone.

58. On the basis of the provisions contained in Chapter XI and XII of M.V. Act, 1988 and the proposition of law laid down by the Apex Court it is held that where the owner of the vehicle has taken the compulsory statutory policy of Insurance of vehicle, called as "Act Policy" following consequences shall follow in motor accident claims for payment of compensation to the victims/claimants of motor vehicle accident;

--In cases of "third party risk" the insurance company would be liable to indemnify the losses of the owner of vehicle and would be liable to pay the determined compensation to the victims/claimants.

--In case of "third party risk" if Insurance Company succeeds in establishing the breach of terms of insurance policy in the light of section 149(2) of M.V. Act, 1988, though insurance company would not be liable to indemnify the losses of owner of the vehicle but concerned insurance company would pay the determined compensation to the claimants with a right to recover from the owner of the vehicle involved in the accident to the extent, the amount paid with interest to the claimants.

--The gratuitous passengers (except owner of goods or his authorised representative carried in the vehicle along with goods) in goods vehicle/carriage could not be permitted to travel. They being victim or in case of death their heirs could claim compensation from the owner of the vehicle in which they are traveling and not from the insurance company of the concern vehicle. The insurance company would not be liable to indemnify the amount of compensation paid by the owner. In such situation the insurance company could not be saddled with any liability including the liabilities to pay compensation to victim/claimants with right to recover from owner of the vehicle.

--The direction given by Apex Court in some of its authorities to insurance companies to pay the amount of compensation to the victims/claimants in cases other than those covered under "third party risk", with intent to do complete justice between the parties in any cause or matter pending before the Supreme Court in its extraordinary jurisdiction vested under Article 142 of the Constitution of India would be binding in between the parties of that cause or matter but cannot be taken as binding precedent in other matters.

59. It is also worth notice that in other claim petitions arising out of the same accident insurance company was not held responsible to indemnify the owner and liability to pay the compensation was saddled with owner of the vehicle in question.

60. In view of the facts and circumstances of the case in hand we are of the firm view that the direction given by the Tribunal to pay the compensation to the claimants-respondents with right to recover the amount could not be sustained

and is liable to be set aside. Consequently the appeal deserves to be allowed.

61. No other point or ground was pressed by the appellant.

62. The appeal is allowed. The impugned award containing the direction to pay the amount of compensation to the appellant with right to recover the same from owner of the vehicle in question is set aside.

63. The Tribunal shall recover the amount of compensation under the award from the respondent No. 5, Amarjeet Singh, the owner of the Vehicle in question and shall pay to the claimants respondent expeditiously say, within four months from the date of production of certified copy of this order. There shall be no order as to costs.