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**(2000) 09 SC CK 0012**

**In the Supreme Court Of India**

**Case No : Civil Appeal No's. 4842-47 of 2000**

Oriental Insurance Co.

APPELLANT

Vs

Imlineken and Others

RESPONDENT

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**Date of Decision : 01-09-2000**

**Acts Referred:**

Motor Vehicles Act, 1939 — Section 95(1), 95(2)

**Citation :** (2000) 3 AWC 3328 : (2000) 1 JT 224 Supp

**Hon'ble Judges :** S. S. M. Quadri, J;S. N. Phukan, J

**Bench :** Division Bench

**Final Decision :** Allowed

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## **Judgement**

S.S. Mohammed Quadri and S.N. Phukan, JJ.—Leave granted.

2. Heard learned Counsel for the parties.

3. The point raised in these appeals is covered by the decision of this Court in New India Assurance Co. v. Satpal Singh and Ors. 2000 (1) SCC 237. Following that judgment, these appeals are dismissed. No costs.

SLP (C) Nos. 3763 of 1998, 23706 of 1997, 6124 of 1998

4. Leave is granted.

5. Heard learned Counsel for the parties.

6. All these appeals arises out of a common judgment of the High Court of Madhya Pradesh, dated August 11, 1997. The Insurance Company is in appeal before us.

7. A truck (No. MBA-4245) owned by the first respondent - South Eastern Coal fields Ltd. was on its way between Jai Singh Nagar and Khannodi. Near the river, the truck turtled as a result of head-on-collision with another vehicle, leaving five labourers dead on the spot and two injured. Among them were three passengers who were being carried for hire or reward.

8. We shall refer to facts in Civil Appeal No. 4843 of 2000 (SLP No. 3763 of 1998) to appreciate the question which arises in these cases. Respondents 4 to 6 are the legal representatives of one late Bihari Kole, who was one of the passengers who died in the accident. They filed claim for damages before the Motor Accident Claims Tribunal. The Tribunal found that the passengers were permitted by the driver of the truck to travel on payment of some fare. The Tribunal awarded compensation of Rs. 63,000 to the said respondents. It was also held that the Insurance Company was not liable to pay compensation as the passengers were being carried in the truck in breach of the terms of the policy. The owner and the driver filed the appeal in the High Court which was disposed of by the impugned Judgment, holding the Insurance Company liable in the light of the judgment of this Court in *B.V. Nagarju v. Oriental Insurance Co. Ltd.* 1996 (4) SCC 617. Against the said judgment, the Insurance Company has filed these appeals before us.

9. Learned Counsel for the Appellant in these appeals contends that the point raised in these appeals is covered by the judgment of this Court in *Smt. Mallawwa Etc. Vs. The Oriental Insurance Co. Ltd. and Others*, . Learned Counsel for the respondent disputes this submission. He however, argues that a casual use of the goods vehicle for carrying passengers would not convert the vehicle into a passenger vehicle and, therefore, the Insurance Company would be liable to pay the compensation. The learned Counsel for the claimants-respondents, in the other appeals, supported (he impugned order on the authority of Nagarju's case (*supra*)).

10. In view of the above contentions, the short question that arises for consideration is whether the Insurance Company is liable to indemnify the owner of the goods vehicle in which passengers were carried for hire or reward or otherwise if as a result of the accident the owner of the vehicle incurs liability to the heirs of the deceased passengers.

11. The accident in these cases occurred on December 3, 1985, which was long before coming into force of Motor Vehicles Act, 1988. The rights of the parties are, therefore, governed by the Act policy which is required to be taken u/s 95(2) of 1939 Act. An identical question arose for consideration of this Court in *Mallawa's case* (*supra*). A three-Judge Bench of this Court laid down the law as follows:

Person travelling in goods vehicles, whether owners of the goods or passengers, on payment of fare or gratuitous passengers who died in accident met with by such vehicle not covered by proviso (ii) to Section 95(1) of the 1939 Act.

The points, therefore, squarely covered by the decision of this Court in *Mallawa's case* (*supra*).

12. In Nagarju's case, the claim for damages to the vehicle involved in the accident was under consideration of this Court. The pertinent question there was whether the unauthorized passenger contributed to the accident for applying

exclusion clause. It was observed.

The National Consumer Disputes Redressal Commission went for the strict construction "of the exclusion clause. The reasoning that the extra passengers being carried in the goods vehicle could not have contributed, in any manner, to the occurring of the accident, was barely noticed and rejected sans any plausible account, even when the claim confining the damage to the vehicle only was limited in nature. We, thus, are of the view that in accord with the Skandia case, the aforesaid exclusion term of the insurance policy must be read down so as to serve the main purpose of the policy that is to indemnify the damage caused to the vehicle which we hereby do.

13. Therefore, reliance of Nagarju's case is out of place.

14. Consequently, the Insurance Company cannot be made liable to indemnify the owner of the vehicle. The impugned common order of the High Courts is set aside and the appeals are accordingly allowed. There shall be no order as to costs.