

(2019) 05 GAU CK 0098

In the Gauhati High Court

Case No : Motor Accident Appeal No. 55 Of 2014

Oriental Insurance Co Ltd

APPELLANT

Vs

Arati Chik@Sik And 2 Ors

RESPONDENT

Date of Decision : 24-05-2019

Acts Referred:

Motor Vehicles Act, 1988 — Section 2(13), 2(14), 2(25), 2(35), 2(47), 46, 147, 147(1), 166, 168, 173
Indian Penal Code, 1860 — Section 279, 304A, 338, 427
Motor Vehicles Act, 1939 — Section 95(1)
Constitution Of India, 1950 — Article 136, 141, 142

Citation : (2019) 05 GAU CK 0098

Hon'ble Judges : Manish Choudhury, J

Bench : Single Bench

Advocate : D Chakraborty, S P Choudhury

Final Decision : Allowed

Judgement

1. The instant appeal under Section 173 of the Motor Vehicles Act, 1988, as amended, (hereinafter referred to as the Act) is directed against the judgment and award dated 18.06.2012 passed by the Member, Motor Accident Claims Tribunal, Dibrugarh (hereinafter also referred as the Claims Tribunal, in short) in MAC Case No. 102/2010. By the said judgment and award dated 18.06.2012, the Claims Tribunal had allowed two claim applications, MAC Case No. 101/2010 and MAC Case No. 102/2010, which were filed by two different claimants under Section 166 of the Act seeking compensation for the deaths caused to two different persons in an accident that occurred on 25.04.2010 involving the use of one vehicle bearing registration No. AS-06/F-9187, a 709 truck. The present appeal is in respect of MAC Case No. 102/2010.

2. In respect of the claim application, MAC Case No. 102/2010, the Claims Tribunal had awarded an amount of Rs. 2,74,000/- as compensation to the claimant, who is the respondent No. 1 herein, along with simple interest @ 6% per annum from the date of filing of the claim application. The appellant-insurer

was directed to pay the said amount of compensation within one month from the date of delivery of the judgment and award dated 18.06.2012.

3. The undisputed facts which have emerged in respect of the claim application, MAC Case No. 102/2012, are recapitulated hereinafter. On 25.04.2010, one Barjoram Sik, the deceased, was travelling in a vehicle, a 709 truck, bearing registration No. AS-06/F-9187 (herein after referred as the truck) along with some other persons. While so proceeding during its journey the truck capsized at about 11-00 a.m. at a place on Joypur Road, at about 5 k.m. away from Namsang Tea Estate and the deceased sustained grievous injuries. The accident stated to have happened due to the act of rash and negligent driving on the part of the driver of the truck. Besides the deceased, the truck was carrying a number of persons, who were going to attend Dangoria Baba Puja festival. Though after the accident the deceased was taken to the Assam Medical College & Hospital (AMCH), Dibrugarh by the police but the doctors at the AMCH declared him brought dead and the post-mortem examination of the deceased was carried out therein. It may be stated that in the same accident, another person viz. Binod Bibhar also died and it was in respect of his death the other claim application, MAC Case No. 101/2010, was preferred. In respect of the said accident, the police registered a case being Joypur Police Station Case No. 36/2010 against the driver of the truck under Sections 279/338/304A/427, Indian Penal Code (IPC).

4. The claimant in MAC Case No. 102/2012 was the wife of the deceased, late Barjoram Sik. The owner, the driver and the insurer of the offending truck were impleaded as opposite party No. 1, opposite party No. 2 and opposite party No. 3 respectively. On receipt of notice from the Claims Tribunal, the owner and the insurer of the offending truck appeared and contested the case by filing respective written statement. Apart from other contentions, the insurer had raised the specific plea that the deceased was travelling in the truck, a goods carrying vehicle, and thus, he was a gratuitous passenger. As such, the insurer had got no liability to indemnify the insured-owner under the policy. The liability of the insurer was subject to fulfillment of the terms and condition of the policy by the insured-owner at the relevant time. On the other hand, the insured-owner had, inter-alia, contended that as the vehicle was duly insured under a valid and effective policy of insurance, it was entitled to be indemnified by the insurer. The opposite party No. 2-driver of the truck did not appear and contest the claim application.

5. On the basis of the above pleadings of the parties, the Claims Tribunal framed the following issues :-

(1) Whether Binod Bibhar and Borjoram Sik, died in the motor vehicle accident, that took place on 25.04.2010, involving vehicle No. AS-06/F-9187 (709 truck) due to rash and negligent driving or any other fault of the driver/owner of the offending vehicle No. AS-06/F-9187?

(2) Whether the claimants are entitled to compensation as prayed for? If so,

what shall be the quantum of compensation and by whom among the opposite parties the compensation shall be paid?

6. In the course of proceeding of MAC Case No. 102/2012, 3 (three) witnesses were examined on behalf of the claimant. The claimant examined herself as C.W.1 and exhibited 3 (three) number of documents i.e. Ext.-1 - Post-Mortem Examination Report, Ext.-2 - Death Certificate and Ext.-3 - Accident Information Report in Form-54. The other 2 (two) witnesses, C.W.2 and C.W.3, were witnesses to the accident. One witness was also examined on behalf of the insured and he exhibited 2 (two) number of documents including Ext.-B - Insurance Policy in respect of the truck in question.

7. On appraisal of the evidence led before it, the Claims Tribunal reached a finding that the accident had occurred due to rash and negligent driving of the truck by its driver and the same had resulted into the death of the deceased. The Claims Tribunal adopted a multiplier of '11' taking the age of the deceased as 55 years on the basis of the age recorded in Post-Mortem Examination Report (Ext.-1) and mentioned in the claim application. The Claims Tribunal took the monthly income of the deceased as Rs. 3,000/- (Rupees three thousand). After deducting 1/3rd on account of personal and living expenses of the deceased, the Claims Tribunal assessed the annual loss of dependency at Rs. 24,000/- and the total loss of dependency at Rs. 2,64,000/-. Adding Rs. 5,000/- towards funeral expenses and Rs. 5,000/- towards loss of consortium, the Claims Tribunal had awarded an amount of Rs. 2,74,000/- as the compensation in MAC Case No. 102/2012.

8. It is not the findings about the rash and negligent act of driving on the part of the driver of the truck and the amount of compensation assessed by the Claims Tribunal which are assailed by the appellant-insurer in the instant appeal. As none of the other parties i.e. the claimant, the owner and/or the driver has/have assailed the said findings of the Claims Tribunal it is not necessary to dilate further on those aspects. It is the direction of the Claims Tribunal to the insurance company to pay the compensation to the claimant first with the liberty to recover the same from the owner of the vehicle by filling an execution petition before the very same Claims Tribunal, if it so desires, which is impugned in the instant appeal.

9. I have heard Mr. S. Dutta, learned senior counsel for the appellant-insurer and Mr. S.P. Choudhury, learned counsel for the respondent No.1-claimant. Notices on the respondent No. 2 and the respondent No. 3 who are the owner and the driver respectively of the truck involved in the accident, had been deemed to be served. When this appeal is taken up for hearing, no appearance has been made on behalf of the said respondents.

10. Mr. Dutta, learned senior counsel for the appellant-insurer has submitted that it is clearly established that the deceased was a gratuitous passenger in the offending truck, which was a goods vehicle. As a gratuitous passenger travelling

in a goods vehicle is not covered under the insurance policy, the insurer is not at all liable to pay to the claimant. The claimant is only entitled to recover the awarded amount from the owner and the driver only and in such view of the matter, the Claims Tribunal erred in applying the principle of "pay and recover" against the appellant-insurer. Therefore, the said direction is required to be interferred with. The learned senior counsel has placed reliance, in support of his submission, on the judgments of the Supreme Court and this Court in *New India Assurance Co. Ltd. vs. Asha Rani and others*, (2003) 2 SCC 223 ; *National Insurance Co. Ltd. vs. Bommithi Subbhayamma and others*, (2005) 12 SCC 243; *National Insurance Co. Ltd. vs. Mintu Debnath and others*, 2007 (2) GLT 490; *National Insurance Company Limited vs. Prema Devi and others*, (2008) 5 SCC 403; *Vishnu Dutt Sharma vs. Manju Sharma*, (2009) 6 SCC 379. He has further submitted that the direction to "pay and recover" made in the decision in *Manuara Khatun and others vs. Rajesh Kumar Singh and others*, reported in (2017) 4 SCC 796 is per incuriam. In support of his said submission, he has placed reliance in the decision in *Central Board of Dawoodi Bohra Community and another vs. State of Maharashtra and another*, reported in (2005) 2 SCC 673.

11. In response, Mr. Choudhury, learned counsel for the respondent-claimant has supported the impugned judgment and award as well as the direction made therein on the basis of the principle of "pay and recover". It is his submission that considering the beneficial nature of the Motor Vehicles Act, 1988 the principle "pay and recover" is applicable against the insurer. He has placed reliance in the decisions in *Manager, National Insurance Company Limited vs. Saju P. Paul and another*, reported in (2013) 2 SCC 41 as well as in *Manuara Khatun and others vs. Rajesh Kumar Singh and others*, reported in (2017) 4 SCC 796. He has further submitted that the decision in *Manuara Khatun* (supra) is not per incuriam notwithstanding the fact that there was breach of terms and conditions of the insurance policy on the part of the owner-insured.

12. I have duly considered the submissions made by the learned counsels for the parties as well as the materials on records including the oral and documentary evidence placed before the Claims Tribunal. I have also considered the decisions relied on by the learned counsels for the parties and also considered few other decisions relevant in the context of the issue under consideration.

13. The issue for consideration in the instant appeal is whether the insurer is entirely absolved from paying compensation to the dependents of the deceased who allegedly was a passenger travelling in a goods vehicle which met with an accident and as a result of which, the passenger expired, or whether the principle "pay and recover" adopted by the Claims Tribunal in the instant case does not require any interference.

14. Before proceeding further, the definitions of "goods" and "goods carriage" provided in the Motor Vehicles Act, 1988 may be referred to. As per Section 2(13), "goods" include livestock, and anything (other than equipment ordinarily used with the vehicle) carried by a vehicle except living persons, but does not

include luggage or personal effects carried in a motor car or in trailer attached to a motor car or the personal luggage of a passenger travelling in the vehicle. As per Section 2(14), "goods carriage" means any motor vehicle constructed or adapted for use solely for the carriage of goods, or motor vehicle not so constructed or adapted when used for the carriage of goods. Section 2 (35) defines "public service vehicle" as any motor vehicle used or adapted to be used for the carriage of passengers for hire or reward, and includes a maxicab, a motorcab, contract carriage, and stage carriage. As per the definition provided in Section 2(47), "transport vehicle" means a public service vehicle, a goods carriage, and educational institution bus or a public service vehicle. From the above definitions, it is clear that both "goods carriage" and "public service vehicle" come within a definition of "transport vehicle" but both are different. While a public service vehicle is to be used for the carriage of passengers for hire or reward, a goods carriage is to be used solely for the carriage of goods. From the definition of "goods", it is clear that "goods" does not include living person.

15. In the instant case, C.W.2, Sri Anand Sonar and C.W.3, Sri Ugra Chik also deposed on behalf of the claimant. In his deposition, C.W.2 stated that on the 25.04.2010 at about 11-00 A.M., Barjuram Sik, the deceased, and Binod Bibhar were going to attend Dangaria Papa Puja festival by the truck in question when the same met with an accident. He further stated that the accident occurred as the driver was driving the truck at a high speed and in a negligent manner for which he lost control of the vehicle and it capsized. As a result, both Barjuram Sik and Binod Bibhar fell down from the truck and sustained grievous injuries on their persons and thereafter, they died on the spot. In the cross-examination, C.W.2 stated that at that time, he was proceeding on his bicycle. The truck which crossed him at a high speed, met with the accident ahead of them after travelling a short distance. The truck was a mid-sized truck which used to carry tea leaves and belonged to Namsang Tea Estate of Dhanashree Tea Company. On that day, about 25-30 number of persons were travelling in the rear side of the truck meant for carriage of goods. Some of those persons were standing while others were sitting. As the truck turned turtle, the persons who were in the rear side fell down from the truck and while two of those persons met with death the others sustained injuries. Barjuram Sik who was a co-employee of C.W.2, died having fell down from the truck. The deposition of C.W.3 who was also travelling on bicycle alongside C.W.2, was also on similar lines. From the eye-witness accounts of C.W.2 and C.W.3, it is established that the deceased and few other persons were travelling on the truck in question in the rear side to enjoy some puja festival. At that time, the truck was not used for carriage of any goods. The deceased and the other persons were travelling in the truck were, therefore, gratuitous passengers and the truck at the time of accident, was not carrying any goods belonging to the owner. From the written statement of the owner and from the testimony of C.W.3, it is seen that the driver of the truck was an employee of the Tea Estate.

16. It is apposite to mention that Section 147 of the Motor Vehicles Act, 1988 is

of relevance in the instant case. Section 147 of the Motor Vehicles Act, 1988 was amended by the Motor Vehicles (Amendment) Act, 1994. As the accident in the instant case happened on 25.04.2010, the provision of Section 147 after the amendment is applicable and not the provision prior to 1994 amendment. For ready reference, the relevant parts of Section 147 of the Motor Vehicles Act, 1988, as amended by the Motor Vehicles (Amendment) Act, 1994, is extracted hereunder :-

"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) is issued by a person who is an authorised insurer; or

(b) insures 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;

(ii) 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 :

Provided that a policy shall not be required -

(i) to cover liability in respect of the 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 the death of, or bodily injury to, any such employee -

(a) engaged in driving the vehicle, or

(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.

Explanation - For the removal of doubts, it is hereby declared that the death of or bodily injury to any person or damage to any property of a third party shall be deemed to have been caused by or to have arisen out of, the use of a vehicle in a public place notwithstanding that the person who is dead or injured or the property which is damaged was not in a public place at the time of the accident, if the act or omission which led to the accident occurred in a public place"

17. The said provision of Section 147 of the Act, as it stood prior to its amendment in 1994 and after its amendment in 1994, came to be considered by a three-Judge Bench of the Apex Court in *New India Assurance Co. Ltd. vs. Asha Rani and others*, reported in (2003) 2 SCC 223. The relevant excerpts of the observations made therein are as under :-

"9. In *Satpal* case (*New India Assurance Co. vs. Satpal Singh*, (2000) 1 SCC 237) the Court assumed that the provisions of Section 95(1) of 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 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 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 the pre-existed expression "injury to any person" is either clarificatory or amplification of the pre-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 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 on being carried in a

goods vehicle when that vehicle meets with an accident and the owner of goods or his representative dies or suffers any bodily injury.

* * * * *

23. The applicability of decision of this Court in *Mallawwa vs. Oriental Insurance Co. Ltd.* ((1999) 1 SCC 403) in this case must be considered keeping that aspect in view. Section 2(35) of 1988 Act does not include passengers in goods carriage whereas Section 2(25) of 1939 Act did as even passengers could be carried in a goods vehicle. The difference in the definitions of the "goods vehicle" in 1939 Act and "goods carriage" in 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 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 1988 Act.

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25. Section 147 of 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 1988 Act vis-a-vis 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 1988 Act, we are of the opinion that as the provisions thereof do not enjoin any statutory liability on the owner of a vehicle to get his vehicle insured for any passenger travelling in a goods vehicle, the insurers would not be liable therefore."

It is to be borne in mind that in *Asha Rani* (supra), the provision of Section 147, as it stood prior to 1994 Amendment was considered.

18. The question whether the insurance policy in respect of a goods vehicle covered even gratuitous passengers came up for consideration before a three-Judge Bench in *National Insurance Company Limited vs. Baljit Kaur and others*, reported in (2004) 2 SCC 1 in the context of pre-1994 amendment and post-1994 amendment provision of Section 147, Motor Vehicles Act, 1988. The relevant facts therein were that the son of the claimant was returning in the offending truck from a marriage ceremony and he died as a result of the rash and negligent driving by the driver of the goods vehicle. The contention of the insurance company that the vehicle being a goods vehicle, it was not liable to incur any liability with respect to passengers transported in the vehicle was

repelled by the Claims Tribunal. The High Court in appeal had upheld the decision of the Claims Tribunal, with the further direction that in the event the owner had committed any breach, the insurance company would be entitled to recover the amount in compensation from the owner. The Supreme Court upon consideration of the effect of amendment made in Section 147 of the Motor Vehicles Act, 1988 by the 1994 amendment, observed as under :-

"17. By reason of the 1994 Amendment what was added is "including the owner of the goods or his authorised representative carried in the vehicle". The liability of the owner of the vehicle to insure it compulsorily, thus, by reason of the aforementioned amendment included only the owner of the goods or his authorised representative carried in the vehicle besides the third parties. The intention of the Parliament, therefore, could not have been that the words "any person" occurring in Section 147 would cover all persons who were travelling in a goods carriage in any capacity whatsoever. If such was the intention, there was no necessity of Parliament to carry out an amendment inasmuch as expression "any person" contained in sub-clause (i) of clause (b) of sub-section (1) of Section 147 would have included the owner of the goods or his authorised representative besides the passengers who are gratuitous or otherwise.

18. The observations made in this connection by the Court in Asha Rani case 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 traveling 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.

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 authorized representative remains the same. Although the owner of the goods or his authorized 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.

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 decisions 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 the 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."

19. In *National Insurance Company Limited vs. Bommithi Subbhayamma and others*, reported in (2005) 12 SCC 243, which has been referred to by the appellant-insurer, the facts, in a nutshell, were that the deceased was travelling in a lorry which met with an accident resulting in his death. On a claim application filed by the heirs of the said deceased, the Claims Tribunal awarded the compensation and it was of the opinion that the insurer of the lorry was not liable to pay the compensation as the deceased was travelling in a lorry as a gratuitous passenger. When the said award was appealed before the High Court, the High Court reversed the same relying on the decision of the Supreme Court in *New India Assurance Company vs Satpal Singh*, (2000) 1 SCC 237. It was observed in *Bommithi Subbhayamma* (supra) that the decision in *Satpal Singh* (supra) was overruled by a three-Judge Bench in *Asha Rani* (supra). The Supreme Court following the decisions in *Asha Rani* (supra) and *Baljit Kaur* (supra) set aside the impugned judgment of the High Court and observed that that the claimant would be entitled to recover the amount of compensation granted in their favour by the Claims Tribunal from the owner of the vehicle. Quoting paragraphs 17, 18, 19 and 20 from the decision in *Baljit Kaur* (Supra),

the Supreme Court in *Bommithi Subbhayamma* (supra) observed that the same view was reiterated in *National Insurance Co. Ltd. vs. Challa Bharathamma*, (2004) 8 SCC 517; *Pramod Kumar Agrawal vs. Mushtari Begum*, (2004) 8 SCC 667; and *National Insurance Co. Ltd. vs. V. Chinnamma*, (2004) 8 SCC 697.

20. Another decision is *New India Assurance Company Limited vs. Vedwati and others*, reported in (2009) 9 SCC 486. The said two-Judge Bench decision had set aside the decision of the High Court given on the basis of the earlier judgment in *Satpal Singh* (overruled in *Asha Rani*) wherein it was held that a gratuitous passenger travelling in a goods vehicle was entitled to claim compensation which was to be paid by the insurer. It held relying on the decision of *Asha Rani*, *Baljit Kaur* and others, that the insurer had no liability to satisfy the award.

21. Another decision, referred to by the appellant-insurer, is a two-Judge Bench decision in *National Insurance Company Limited vs. Prema Devi and others*, reported in (2008) 5 SCC 403 which relied extensively on the decision referred in *Vedwati* (supra). It also referred to *Asha Rani*, *Baljit Kaur*, *Bommithi Subbhayamma* and others to reiterate the view that the provisions of the Act do not enjoin any statutory liability on the owner of the a vehicle to get his vehicle insured for any passenger travelling in a goods carriage and the insurer would have no liability therefor. It was observed that it was open to the claimant to recover the amount awarded from the owners of the offending vehicles.

22. The fact situation obtaining in the case of *National Insurance Co. Ltd. vs. Mintu Debnath and others*, reported in 2007 (2) GLT 490, was that the claimant was travelling in a truck when it met with an accident due to rash and negligent driving of the driver of the truck. It was held that the claimant was a gratuitous passenger in the offending vehicle which was only a goods carrying truck and not a passenger carrying vehicle. After a survey of a number of decisions on the point involved including *Satpal Singh* (supra), *Asha Rani* (supra), *Baljit Kaur* (supra), it was held as per the law as it stood that day, the insurance company was not liable to indemnify an award passed in favour of a gratuitous passenger travelling in a goods vehicle, if he was not the owner or authorised representative of the goods carried in the vehicle. The appeal preferred by the appellant insurance company was allowed and it was ordered that it would be the responsibility and obligation of the owner of the vehicle to satisfy the entire sum awarded by the Claims Tribunal.

23. The decisions to which the learned counsel for the respondents-claimants has referred to are *Manager, National Insurance Company Limited vs. Saju P. Paul and another*, reported in (2013) 2 SCC 41 and *Manuara Khatun and others vs. Rajesh Kumar Singh and others*, reported in (2017) 4 SCC 796. The matter involved therein also pertain to gratuitous passenger and fastening of liability to pay compensation to the claimant. Apart from other decisions, the Supreme Court therein considered the decisions in *Satpal Singh*, *Asha Rani* and *Baljit Kaur*.

24. The question of law considered in *Saju P. Paul* (supra) was whether having regard to the provisions of the Motor Vehicles Act, 1988, the insurance company was liable to pay compensation for the bodily injury caused to the claimant who was travelling in a goods vehicle as a spare driver though he was employed as a driver in another vehicle owned by the owner of the vehicle under the policy of insurance. The accident there occurred on 16.10.1993. Many other persons besides the claimant, were also travelling in the goods vehicle, a truck. It was observed that as the accident had occurred prior to 1994 amendment, the judgment in *Asha Rani* was fully attracted. The insured-owner got insurance coverage in respect of the subject goods vehicle for driver and cleaner only and not for any other employee. The spare driver was not covered under the insurance policy and, therefore, he was a gratuitous passenger. In the backdrop of the said facts, the next question that was considered by the Apex Court was whether a direction could be issued to the insurance company to first satisfy the awarded amount in favour of the claimant and recover the same from the owner of the vehicle. The court therein specifically referred to paragraph 21 of the three-Judge Bench decision in *Baljit Kaur* (supra), *National Insurance Company Limited vs. Challa Upendra Rao*, (2004) 8 SCC 517 and *National Insurance Company Limited vs. Kaushalaya Devi*, (2008) 8 SCC 246. It was noticed therein that the direction made in *Baljit Kaur* as regards discharging the liability under the award first by the insurance company and then to recover the same from the owner was referred to a larger bench by a two-Judge Bench in *National Insurance Company Limited vs. Parvathneni*, (2009) 8 SCC 785. Taking into account the fact of reference to a larger bench, the Supreme Court in *Saju P. Paul* (supra) observed that the pendency of consideration of the question referred to a larger bench did not mean that the course that was followed in *Baljit Kaur* (supra) and *Challa Upendra Rao* (supra) were not to be followed. Accordingly having referred to the facts of the case, the claimant therein was allowed to withdraw the entire awarded amount deposited by the insurance company granting liberty to the insurance company to recover the amount so paid from the owner.

25. In *Manuara Khatun* (supra), the Supreme Court considered the earlier decisions in the subject-matter rendered by three-Judge Benches and two-Judge Bench viz. *Baljit Kaur* (supra), *Challa Upendra Rao* (supra), *Kaushalaya Devi* (supra), *National Insurance Co. Ltd. vs. Roshan Lal*, (2017) 4 SCC 803 and *Parvathneni* (supra). It has also considered the decision in *Saju P. Paul* (supra) and observed that the question had remained no more res-integra and had observed that the directions against the insurance company to pay the awarded amount to the claimants and then to recover the sum from the insured in the same proceedings by applying the principle of "pay and recover" were being made keeping in view the benevolent object of the Act. It had further noted the submission made at the Bar that the reference made to the larger bench, as indicated in *Saju P. Paul*, (supra), had since been disposed of by keeping the issue undecided. As a result, it was held that the argument that the insurance company should be entirely extricated from the liability not to make payment

first did not survive anymore and for those reasons, it did not find any good ground to take a different view than the one consistently being taken by the Court in all previous decisions in that regard.

26. The facts involved in *National Insurance Company Limited vs. Parvathneni*, (2009) 8 SCC 785, were that there was no valid insurance coverage on the date of the accident i.e. 30.11.2003 as the cheque towards premium for renewal of the policy issued on 29.11.2003 stood dishonoured. Despite that the High Court directed the insurance company to pay the compensation amount to the claimants with liberty to the insurance company to recover the same from the owner of the vehicle. Prima-facie opining that the insurance company had proved that it had no liability to pay compensation to the claimants, the two-Judge Bench by an order dated 31.08.2009 referred the matter to be considered by a larger bench on the issue that when the insurance company had no liability to pay at all, can it be compelled by an order of the Court in exercise of its jurisdiction under Article 142 of the Constitution of India to pay the compensation amount and later on recover it from the owner of the vehicle.

27. The three-Judge Bench to which the matter was referred to, did not entertain the petition under Article 136 of the Constitution keeping in view of smallness of the amount involved and by an order dated 17.09.2013, *National Insurance Company Limited vs. Parvathneni*, (2018) 9 SCC 657, it dismissed the same keeping the question of law raised in the petition open to be decided in an appropriate case. The specific two questions that were referred to for consideration were :-

"(1) If an insurance company can prove that it does not have any liability to pay any amount in law to the claimants under the Motor Vehicles Act or any other enactment, can the court yet compel it to pay the amount in question giving it liberty to later on recover the same from the owner of the vehicle?

(2) Can such a direction be given under Article 142 of the Constitution, and what is the scope of Article 142? Does Article 142 permit the Court to create a liability where there is none?"

28. In the instant case, the deceased was admittedly a gratuitous passenger of the truck in question and the Tribunal on appreciation of the evidence on record, had rightly reached the said finding which in the absence of challenge either by the owner of the truck or the claimant, has attained finality. It transpires that no additional premium was paid for such a passenger travelling by the truck in question. For all the aforesaid reasons, the deceased could not be considered to be a third party. The insurance company has, thus, established that it has no liability under the law to pay the amount of compensation to the claimants.

29. From a close perusal of paragraph 21 in *Baljit Kaur* it is discernible that there was invocation of Article 142 of the Constitution of India. The proposition before the Supreme Court in *Baljit Kaur* was as to whether or not a gratuitous passenger travelling in a goods vehicle could make a claim for compensation

against the insurer when no premium was paid for such a passenger. It was categorically held that in place of the insurer, the owner of the vehicle shall be liable to satisfy the award. Clarifying the above legal position, the Supreme Court had held that the same shall have prospective effect. It held that after the Amendment of 1994, the effect of the provision contained in Section 147 of the Act as regards a person, who is a gratuitous passenger other than the owner of the goods or his authorised representative in a goods vehicle, remained the same. While clarifying the legal position, the Supreme Court also considered the aspect that as the law was not clear till that time, what should be a fair and equitable direction. The Apex Court was of the opinion that interest of justice would be served if the appellant-insurer therein was directed to satisfy the awarded amount in favour of the claimant, if not already satisfied, and to recover the same from the owner of the vehicle.

30. In *Saju P. Paul* (supra), pending consideration of the issue before a larger bench as to whether a direction could be given under Article 142 of the Constitution to the Insurance Company to pay and recover despite having no liability, the Supreme Court made the direction to pay and recover considering the peculiar fact situation obtaining in that case. The accident therein occurred in 1993 when the claimant was 28 years old and by the time the matter was decided, he was about 48 years and did not receive any compensation despite being permanently disabled. It was of the view that the claimant could not be compelled to struggle further for the recovery of the amount. The facts involved in *Manuara Khatun* (supra) were found identical to the facts in *Saju P. Paul* (supra) and the direction made in *Saju P. Paul* was referred to in *Manuara Khatun*. It was also observed that the compensation was not received by the claimants for a period of 16 years and the direction made in *Saju P. Paul* despite pendency of the reference before a larger bench was taken into consideration. As the larger bench kept the issue undecided referred to it, the Supreme Court did not find any good enough reason to take a different view than the one consistently taken by it in all previous decisions which were referred therein, and applied the principle of "pay and recover".

31. It is seen from the decisions of the Supreme Court in *Baljit Kaur*, *Saju P. Paul* and *Manuara Khatun* that the insurance company is not liable to pay compensation for the death of or injury to any gratuitous passenger and, therefore, the insurance company is not liable to indemnify the award. That is the position of law the Supreme Court has enunciated. In such situation, the question that arises in the instant appeal as to whether it was within the purview of power vested in the Claims Tribunal to make the direction of pay and recover like the directions made by the Supreme Court in the above referred cases, by taking the directions granted by the Supreme Court in those particular cases under Article 142 of the Constitution of India as a precedent to be followed.

32. The plenary power of the Supreme Court under Article 142 is a residuary power, which is supplementary and complementary to the powers specifically

conferred on the Court by various statutes and the same is exercised for doing complete justice in any cause or matter pending before it. Article 142 of the Constitution of India reads as under :-

"142. Enforcement of decrees and orders of Supreme Court and orders as to discovery, etc. -(1) The Supreme Court in the exercise of its jurisdiction may pass such decree or make such order as is necessary for doing complete justice in any cause or matter pending before it, and any decree so passed or order so made shall be enforceable throughout the territory of India in such manner as may be prescribed by or under any law made by Parliament and, until provision in that behalf is so made, in such manner as the President may by order prescribe.

(2) Subject to the provisions of any law made in this behalf by Parliament, the Supreme Court shall, as respects the whole of the territory of India, have all and every power to make any order for the purpose of securing the attendance of any person, the discovery or production of any documents, or the investigation or punishment of any contempt of itself."

33. Article 141 of the Constitution empowers the Supreme Court to declare the law and the law declared by the Supreme Court shall be binding on all Courts within the territory of India. In *State of Punjab and others vs Rafiq Masih (Whitewasher)*, reported in (2014) 8 SCC 883, the distinction between Article 141 and Article 142 have been succinctly brought out as under :-

"12. Article 142 of the Constitution of India is supplementary in nature and cannot supplant the substantive provisions, though they are not limited by the substantive provisions in the statute. It is a power that gives preference to equity over law. It is a justice-oriented approach against the strict rigours of the law. The directions issued by the Court can normally be categorized into one, in the nature of moulding of relief and, the other, as the declaration of law. "Declaration of law" as contemplated in Article 141 of the Constitution : is the speech express or necessarily implied by the highest court of the land. This Court in *Indian Bank v. ABS Marine Products (P) Ltd.*, *Ram Pravesh Singh v. State of Bihar* and in *State of U.P. v. Neeraj Awasthi* has expounded the principle and extolled the power of Article 142 of the Constitution of India to new heights by laying down that the directions issued under Article 142 do not constitute a binding precedent unlike Article 141 of the Constitution of India. They are direction issued to do proper justice and exercise of such power, cannot be considered as law laid down by the Supreme Court under Article 141 of the Constitution of India. The Court has compartmentalised and differentiated the relief in the operative portion of the judgment by exercise of powers under Article 142 of the Constitution as against the law declared. The directions of the Court under Article 142 of the Constitution, while moulding the relief, that relax the application of law or exempt the case in hand from the rigour of the law in view of the peculiar facts and circumstances do not comprise the ratio decidendi and therefore lose its basic premise of making it a binding precedent. This Court on the *qui vive* has

expanded the horizons of Article 142 of the Constitution by keeping it outside the purview of Article 141 of the Constitution and by declaring it a direction of the Court that changes its complexion with the peculiarity in the facts and circumstances of the case."

34. In the Constitution Bench decision in *Anita Kushwaha vs Pushap Sudan*, reported in (2016) 8 SCC 509, it is held that the constitutional power under Article 142 of the Constitution was at a different level altogether and a provision contained in an ordinary statute would not affect and could not control the exercise of that power. At this stage, it is apt to refer to what has been observed in *Indian Bank vs ABS Marine Products (P) Limited*, reported in (2006) 5 SCC 72 :-

"26. One word before parting. Many a time, after declaring the law, this court in the operative part of the judgment, gives some directions which may either relax the application of law or exempt the case on hand from the rigour of the law in view of the peculiar facts or in view of the uncertainty of law till then, to do complete justice. While doing so, normally it is not stated that such direction/order is in exercise of power under Article 142. It is not uncommon to find that courts have followed not the law declared, but the exemption/relaxation made while moulding the relief in exercise of power under Article 142. When the High Courts repeatedly follow a direction issued under Article 142, by treating it as the law declared by this court, incongruously the exemption/relaxation granted under Article 142 becomes the law, though at variance with the law declared by this court. This court should therefore be careful to ascertain and follow the ratio decidendi, and not the relief given on the special facts, exercising power under Article 142. One solution to avoid such a situation is for this court to clarify that a particular direction or portion of the order is in exercise of power under Article 142. Be that as it may."

35. The decision in *Vishnu Dutt Sharma vs. Many Sharma* (supra) enunciates the same position of law as regards binding precedent. In *Central Board of Dawoodi Bohra Community* (supra), it has been stated that the law laid down by the Supreme Court in a decision delivered by a bench of larger strength is binding on any subsequent Bench of lesser or coequal strength. Situated thus, the law laid down in the two 3-Judges Benches in *Asha Rani* (supra) and *Baljit Kaur* (supra) as regards gratuitous passengers carried in goods vehicle stands as on date, notwithstanding the direction of pay and receiver made under Article 142 of the Constitution of India in the subsequent decisions by 2-Judge Benches, referred above, by moulding the relief.

36. In view of the aforesaid position of law, I am of the considered view that the direction of pay and recover made in *Baljit Kaur*, *Saju P. Paul* and *Manuara Khatun* by the Apex Court was in exercise of its extra-ordinary jurisdiction vested in it under Article 142 of the Constitution of India and either in the peculiar facts of the case or in view of uncertainty on the point of view of law till then, as have been noted therein, to do complete justice between the parties. Since such a

power is not available to a Claims Tribunal constituted under the Motor Vehicles Act, 1988, as amended, it cannot go against the law settled to the effect that in case of a gratuitous passenger carried in a goods vehicle, the insurance company is not liable to satisfy an award and the owner is the person who shall be liable to pay the compensation and as such, any direction to the insurance company to satisfy the award first and to recover the same from the owner of the vehicle is incongruous. Therefore, the decision of the Claims Tribunal to follow a direction issued by the Supreme Court in exercise of its extraordinary jurisdiction under Article 142 of the Constitution of India in the present case is not accordance with law. In the light of the decisions of the Supreme Court on the matter of gratuitous passenger carried in a goods vehicle and there being an excess of jurisdiction on the part of the Claims Tribunal, I am of the considered opinion that the direction of the Claims Tribunal to the insurance company to pay the compensation awarded first to the claimant and thereafter, to recover the same from the owner later on is not sustainable and therefore, is liable to be set aside. Accordingly, that part of the direction is set aside. Consequently, the owner-insurer is liable to satisfy the award and to pay the compensation to the respondent-claimant by depositing the awarded amount before the Claims Tribunal within a period of 3 (three) months from today. In the event of non-payment by the owner-insurer, it is for the respondent-claimant to take up appropriate proceeding before the Claims Tribunal to recover the compensation from the owner-insurer. The appellant-insurer shall be allowed to withdraw the statutory deposit made in connection with the instant appeal. To the extent above, this appeal stands allowed.

Records are to be sent back to the Claims Tribunal accordingly.

In the facts and circumstances of the case, no order as to costs.