**(2008) 08 AHC CK 0082**

**In the Allahabad High Court**

The New India Assurance Company Limited — APPELLANT

Vs

Smt. Prabhawati Devi and Others — RESPONDENT

**Date of Decision :** 29-08-2008

**Acts Referred:**
Motor Vehicles Act, 1988 — Section 147

**Citation :** (2008) 08 AHC CK 0082

**Hon'ble Judges :** Shishir Kumar, J;Amitava Lala, J

**Bench :** Division Bench

**Final Decision :** Dismissed

## Judgement

Amitava Lala, J.—This appeal filed by the Insurance Company arises out of judgment and order dated 21.01.2008 passed by the concerned Motor Accidents Claims Tribunal, Mirzapur awarding a sum of Rs. 3,20,200.00 alongwith interest @ 7% per annum from the date of presentation of claim petition till its realisation payable to the claimants on account of death of the deceased.

2. The fact remains that the deceased was travelling by a truck No. U.A.N. 8427 as owner of cattle being cows and buffaloes alongwith son, a trader, driver and cleaner sitting in cabin. The vehicle was allegedly driven rashly and negligently by the driver which hit a tree and met with an accident as a result whereof the deceased died and his son become injured. The version of the driver is that he wanted to save some stray cattle on the road when the truck hit a tree and met with an accident. The tribunal accepted the version of the eye witness i.e. son of the deceased and held that the driver was rash and negligent at the time of driving the vehicle. It has also been held by the tribunal that the opposite parties not cross examined the witness on that score. From the analysis of the evidence, as made by the tribunal, it appears that the vehicle was carrying cattle i.e. cows and buffaloes and the driver rashly and negligently driven the vehicle. There was no violation of insurance policy, Before the tribunal at no point of time neither any issue was framed nor any discussion was held as to whether the deceased was "gratuitous passenger" or not. However, the appellant has raised such issue

before the Court of appeal for the first time.

3. Against this background we have to see what is the meaning and import of the "gratuitous passenger" and its applicability in the present case. Meaning of "gratuitous passenger" is not available in the Motor Vehicles Act, 1988. As per Black''s Law Dictionary, Sixth Edition, in a motor vehicle law, a person riding at invitation of owner or authorised agent without payment of a consideration or fare is a "gratuitous passenger". "Gratuitous passenger" is comparable with gratuitous guest Therefore, we have to go by the meaning of "guest". A "guest" in an automobile is one who takes ride in automobile driven by another person, merely for his own pleasure or on his own business, and without making any return or conferring any benefit on automobile driver. "Guest" is used to denote one whom owner or possessor of vehicle invites or permits to ride with him as gratuity, without any financial return except such slight benefits as are customarily extended as part of ordinary courtesies of road. See Rothwell v. Transmeier 206 Kan. 199.

4. According to us, "gratuitous passenger" is neither authorised passenger nor unauthorised passenger. A "gratuitous passenger" is a passenger who has been carried out on account of grace.

5. Section 147 of the Act contemplates policy of insurance against any liability which may be incurred by a person 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 etc.

6. Therefore, the legal position is to be analysed hereunder. Previously, u/s 147 of the Act question of death or bodily injury to "any person" was incorporated in such Section. By an amendment w.e.f. 14.11.1994 it has been incorporated as "injury to any person", including owner of the goods or his authorised representative carried in the vehicle...." Therefore, the expanded scope of "any person" even towards the "gratuitous passenger" was restricted to owner of the goods or his authorised representative carried in the vehicle. Hence, in accordance with law if they are being carried in the vehicle they should not be seem to be "gratuitous passenger". Such person includes the nomenclature "any person" as per the law itself. Therefore, as and when in a case it is proved beyond doubt that the owner was carried by vehicle he can not refuse in making compensation.

7. According to us, "any person" means valid occupier of the vehicle and also outside the vehicle being "third party" by the analysis of the Supreme Court reported in New India Assurance Company Vs. Shri Satpal Singh and Others, any person" includes gratuitous passenger. In (2003) 2 SCC 223 : (2003) SCC (Cri) 493 (New India Assurance Co. Ltd. v. Asha Rani and Ors.) Supreme Court said ''no'', "any person" does not include "gratuitous passenger". In National Insurance Co. Ltd. Vs. Baljit Kaur and Others, three Judges Bench of the

 

Supreme Court held that there is no ambiguity u/s 147 of the Act. Earlier the words "any person" could be held not to include the owner of the goods or his authorised representative travelling in the goods vehicle. Parliament has now made it clear that such a construction is no longer possible. Now we find from the interpretation of the Supreme Court that the words "any person" as used in Section 147 of the Act, would be rendered otiose by an interpretation that removed "gratuitous passengers" from the ambit of the same. In other words, the owner of the goods and his authorised representative carried in the vehicle can not be said to be gratuitous passenger.

8. In National Insurance Co. Ltd. Vs. Bommithi Subbhayamma and Others, and National Insurance Co. Ltd. Vs. Cholleti Bharatamma and Others, repeatedly this question arose before the Supreme Court. In the latest judgment, as aforesaid, Supreme Court has clarified that it well settled that the owner of the goods means only the person who travels in the cabin of the vehicle. According to us, law does not say that whether owner of the goods or his authorised representative carried in the vehicle means only the person travelled in the cabin of the vehicle.. Therefore, this aspect of the matter is yet open for the discussion. However, since in the present case owner of the vehicle carried in the cabin he can not be said a "gratuitous passenger".

9. Hence, we do not find any merit in the appeal and as such the same is dismissed even at the stage of admission, however, without imposing any cost.

10. Incidentally, the appellant-insurance company prayed that the statutory deposit of Rs. 25,000/- made before this Court for preferring this appeal be remitted back to the concerned Motor Accidents Claims Tribunal as expeditiously as possible in order to adjust the same with the amount of compensation to be paid to the claimants, however, such prayer is allowed.