



**IN THE HIGH COURT OF HIMACHAL PRADESH AT  
SHIMLA**

**FAOs No. 87 to 90 of 2013**  
**Reserved on: 28.02.2026**  
**Date of decision: 05.03.2026**

**1. FAO No. 87 of 2013:**

United India Insurance Company Ltd. ....Appellant.

Versus

Puran Chand & others .....Respondents.

**2. FAO No. 88 of 2013:**

United India Insurance Company Ltd. ....Appellant.

Versus

Govind Ram & others .....Respondents.

**3. FAO No. 89 of 2013:**

United India Insurance Company Ltd. ....Appellant.

Versus

Geeta Devi & others .....Respondents.

**4. FAO No. 90 of 2013:**

United India Insurance Company Ltd. ....Appellant.

Versus

Gulab Singh & others .....Respondents.

*Coram*

**The Hon'ble Mr. Justice Sushil Kukreja, Judge.**

<sup>1</sup>*Whether approved for reporting? Yes.*

For the appellant: Mr. P.S. Chandel, Advocate, for  
the appellant, in all the appeals.

For the respondents: Mr. Jaidev Thakur, Advocate,

<sup>1</sup> *Whether reporters of Local Papers may be allowed to see the judgment?*

vice Mr. H.S. Rangra, Advocate, for respondents No. 1 to 7, in FAO No. 87 of 2013, and for respondent No. 1 in FAOs No. 88 and 89 of 2013.

Mr. Ashok Kumar, Advocate, for respondents No. 8(a) to 8(c) in FAO No. 87 of 2013 and for respondents No. 2(a) to 2(c) in FAOs No. 88, 89 and 90 of 2013.

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**Sushil Kukreja, Judge.**

Since all these appeals are the offshoots of impugned award, dated 26.11.2012, passed by learned Motor Accidents Claims Tribunal (II), Mandi, District Mandi, H.P. (hereinafter for the sake of brevity referred to as “the learned Tribunal”), they are taken up together for consideration and disposal.

2. The instant appeals have been maintained by appellant-United India Insurance Company Ltd., who was respondent No. 2 before the learned Tribunal below, under Section 173 of the Motor Vehicles Act, 1988 (for short ‘the Act’) against impugned awards, dated 26.11.2012, passed by learned Tribunal below, whereby Claim Petitions No. 26 to 29 of 2005, filed by the petitioners-claimants, under Section 166 of the Act, were allowed and they were held entitled for compensation and respondent No. 2-United India Insurance

Company (appellants herein) was directed to pay the compensation amount to the claimants and then to recover it from the owner of the offending vehicle, i.e., respondent No. 1-Shri Yadav Singh.

3. The brief facts of the case are that on account of death of Smt. Gindu Devi and Smt. Geeta Devi (wife of Shri Gulab Singh), and injuries suffered by Shri Govind Ram and Smt. Geeta Devi in a motor vehicle accident involving pick-up, bearing registration No. HP-49-0297, the petitioners/claimants (including the injured petitioners i.e., Shri Govind Ram and Smt. Geeta Devi) filed claim petitions under Section 166 of the Act seeking compensation from the respondents, i.e., respondent No. 1-owner-cum-driver and respondent No. 2-Insurer of vehicle No. HP-49-029.

3(a). As per the petitioners, Smt. Gindu Devi, Smt. Geeta Devi (deceased persons) and injured persons Shri Govind Ram and Smt. Geeta Devi, on 23.01.2005 boarded the offending vehicle, bearing registration No. HP-49-0297, from village Nau to village Jalla alongwith their grocery items, as care taker of the goods being owned and driven by respondent No. 1. When the offending vehicle reached village Basni Nalla, around 05:30 p.m., it met with an

accident due to the rash and negligent driving of respondent No. 1 and all the occupants of the vehicle, suffered injuries. Two persons, namely Gindu Devi and Geeta Devi died on the spot and other sustained multiple injuries. The offending vehicle was on its way from Panarsa to Jawalapur and it was insured with respondent No. 2. The claimants, i.e., legal representatives of the deceased persons and the injured persons were held entitled for compensation alongwith interest at the rate of 12% per annum from the respondents.

4. Respondent No. 1-Shri Yadav Singh, owner-cum-driver of the offending vehicle, in his reply took preliminary objections qua maintainability, non-joinder of the necessary parties, cause of action and estoppel. On merits, it was averred that the deceased as well as the injured neither boarded his vehicle nor any accident took place in the manner as pleaded by the claimants. As per the replying respondent, the accident had not occurred due to his rash and negligent driving. It was averred that the claimants are not entitled to any compensation. Lastly, dismissal of the petition was sought.

5. Respondent No. 2-United India Insurance Company (appellant herein) in its reply took preliminary

objections of maintainability, breach of the terms and conditions of the insurance policy, collusion between the claimants and respondent No. 1 and that the deceased persons, i.e., Smt. Gindu Devi and Smt. Geeta Devi, and injured persons, i.e., Shri Govind Ram and Smt. Geeta Devi, were travelling in the offending vehicle as gratuitous passengers. On merits, it was averred that the offending vehicle was being driven in breach of the terms and conditions of the insurance policy and the driver of the offending vehicle was not holding valid and effective driving licence at the time of the accident. Lastly, the replying respondent prayed for dismissal of the claim petition.

6. After hearing the learned counsel for the parties, the learned Tribunal below had allowed the claim petitions and the petitioners/claimants were held entitled for compensation from the date of filing of the petitions till its realization and the amount was directed to be paid by respondent No. 2-Insurer and thereafter to recover the same from the owner of the offending vehicle, i.e., respondent No. 1-Shri Yadav Singh

7. Feeling aggrieved and dissatisfied, the appellants-Insurance Company preferred the instant appeals

against the impugned award dated 26.11.2012, with a prayer to allow the instant appeals by exonerating the appellants from the liability to pay the compensation and interest etc. and to fasten the entire liability alongwith up-to-date interest only upon the owner of the vehicle by setting aside/modifying the impugned award.

8. The learned counsel for the appellants (insurance company) contended that since the offending vehicle was being driven in contravention of the insurance policy and it has been proved on record that the deceased persons-Gindu Devi, Geeta Devi and injured persons Govind Ram and Geeta Devi were travelling as gratuitous passengers in the vehicle in question, therefore, the learned Tribunal below has committed illegality by not fastening any liability directly on the owner of the vehicle, rather the learned Tribunal below has erroneously fastened the liability for the payment of the compensation at the first instance upon the appellants-Insurance Company and then to recover it from the owner of the vehicle.

9. Conversely, learned counsel for the respective respondents supported the impugned award. They contended that the impugned award is the outcome of proper

appreciation of both law and facts, thus the same does not need any interference. They prayed that the appeals, being devoid of merits, be dismissed.

10. It is not in dispute that the vehicle, bearing registration No. HP-49-0297 (pick-up), was owned and being driven by respondent No. 1-Shri Yadav Singh, who during the pendency of the instant appeals died and now his cause is being defended by his legal representatives. On 23.01.2005, deceased persons Gindu Devi and Geeta Devi and injured persons Govind Ram and Geeta Devi were travelling in the aforesaid vehicle and at about 05:30 p.m., when the vehicle reached village Basni Nalla, it met with an accident, resultantly Gindu Devi and Geeta Devi died on the spot and Govind Ram and Geeta Devi suffered multiple injuries.

11. 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 offending vehicle, bearing registration No. HP-49-0297 by its driver and the same had resulted into the death of Gindu Devi and Geeta Devi whereas Govind Ram and Geeta Devi suffered injuries.

12. Neither rash and negligent act of driving on the

part of the driver of the offending vehicle nor the amount of compensation assessed by the Claims Tribunal have been assailed by the appellant-insurance company in the instant appeals. It has also been clearly established that the deceased-Gindu Devi and Geeta Devi and injured-Govind Ram and Geeta Devi were gratuitous passengers in the offending vehicle which was a goods vehicle. None of the other parties i.e. either the claimants, the owner and/or the driver has/have assailed the said findings of the Claims Tribunal. Therefore, it is not necessary to dilate further on those aspects. However, it is the direction of the Claims Tribunal to the insurance company to pay the compensation to the claimants first with liberty to recover the same from the owner of the vehicle, which is impugned in the instant appeals.

13. Now the question which arises for consideration before this court is as to whether the Tribunal below had erred in applying the principle of "pay and recover" against the appellants-insurance company as the insurer is entirely absolved from paying compensation to the injured persons as well as to the dependents of the deceased who allegedly were gratuitous passengers travelling in a goods vehicle,

which met with an accident and the claimants are only entitled to recover the awarded amount from the owner-cum-driver only.

14. Before proceeding further, it may be pertinent to refer to the definitions of "goods" and "goods carriage" as provided in the Motor Vehicles Act, 1988. 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 maxi-cab, a motor-cab, 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, it has been established that the deceased-Gindu Devi and Geeta Devi and injured-Govind Ram and Geeta Devi were travelling in the offending vehicle, bearing registration No. HP-49-0297 which admittedly was a goods carrier. At that time, the vehicle in question was not used for carriage of any goods. They were, therefore, gratuitous passengers travelling in the vehicle and at the time of accident, it was not carrying any goods belonging to the owner.

16. At this stage, it would be relevant to refer to Section 147 of the Motor Vehicles Act, 1988. For ready reference, the relevant part 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 authorized insurer; or Page No.# 7/19
- (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 authorized 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 aforesaid 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 portion of the aforesaid judgement reads

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 Page No.# 8/19 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 authorized 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 authorized 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 authorized 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 authorized 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 authorized 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 authorized 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 authorized 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 authorized representative on being carried in a goods vehicle when that vehicle Page No.# 9/19 meets with an accident and the owner of goods or

his representative dies or suffers any bodily injury.

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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 of Hon'ble Supreme Court in *National Insurance Company Limited vs. Baljit Kaur and others*, reported in

**(2004) 2 SCC 1.** The Supreme Court upon consideration of the affect 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's* case (supra) 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 authorized representative and not any passenger carried in a goods vehicle whether for hire or reward or otherwise.

20. It is, therefore, clear 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. In the instant case, the deceased as well as the

injured persons were admittedly gratuitous passengers travelling in the vehicle 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 vehicle or the claimants, has attained finality. It transpires that no additional premium was paid for such passengers travelling by the vehicle in question. For all the aforesaid reasons, the deceased persons as well as the injured persons 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.

22. The learned counsel for the legal representatives of owner of the offending vehicle submitted that since the vehicle was duly insured with the appellant-United India Insurance Company, the learned Tribunal below has rightly directed the insurance company to pay the compensation amount to the petitioners and then to recover it from the owner of the vehicle. In this respect he has also placed reliance upon ***National Insurance Company Limited vs. Baljit Kaur & others, reported in (2004) 2 SCC 1, National Insurance Company vs. Saju P. Paul & another, reported in (2013) 2 SCC 41 and***

***Manuara Khatun & others vs. Rajesh Kumar Singh & others, reported in (2017) 4 SCC 796.*** However, the perusal of the aforesaid decisions of the Hon'ble Supreme Court shows 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. From a close perusal of the aforesaid decisions, it is discernible that the direction of pay and recover made in ***Baljit Kaur, Saju P. Paul & Manuara Khatun's*** cases (supra) by the Apex Court was in exercise of its extra-ordinary jurisdiction vested in it under Article 142 of the Constitution of India. However, in ***National Insurance Company Ltd. vs. Parvathneni, (2018) 9SCC 657,*** the Hon'ble Supreme court has kept the question of law open on the issue whether the Supreme Court in exercise of powers under Article 142 of the Constitution can direct the insurer to pay and recover, where the liability otherwise does not arise in case of gratuitous passenger. In such situation, the question that arises in the instant appeals 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. 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, this court is of the considered opinion that the learned Tribunal below has committed grave illegality by not fastening any liability directly on the owner of the vehicle, but, by fastening the liability for the payment of the compensation at the first instance upon the appellant-Insurance Company and then to recover it from the owner of

the vehicle. In view of the settled position of the law, the insurance company cannot be held liable to indemnify the insured. Consequently, the direction of the Claims Tribunal to the insurance company to pay the compensation awarded first to the claimants and thereafter, to recover the same from the owner later on is not sustainable and therefore, is liable to be set aside. The owner is liable to satisfy the award and to pay the compensation to the respondent-claimant.

23. In view of what has been discussed hereinabove, the appeals filed by the insurance company are allowed. The impugned awards stand modified and the legal representatives of respondent No. 1-owner, Shri Yadav Singh, are liable to satisfy the award and to pay the compensation to the petitioners-claimants. The remaining terms of the impugned award, shall remain the same. The appeals stand disposed of in the above terms, so also the pending applications, if any.

( Sushil Kukreja )  
Judge

**5<sup>th</sup> March, 2026**  
(virender)