IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

FAO No. 321 of 2025

Reserved on: 29.10.2026
Date of decision: 05.11.2026
Date of uploading on website: 05.11.2026

The Oriental Insurance Company Ltd. .....Appellant.

Versus

Sumitra Devi & others .....Respondents.

Coram
The Hon'ble Mr. Justice Sushil Kukreja, Judge.
[1]*Whether approved for reporting? Yes*.

For the appellant:	Mr. Jagdish Thakur, Advocate.
For respondents No. 1 to 4:	Mr. Arvind Negi, Advocate.
For respondent No. 5:	Dr. Rajesh K. Parmar, Advocate.
For respondent No. 6:	Mr. Rajesh K. Sharma, Advocate.

Sushil Kukreja, Judge.

The instant appeal has been maintained by appellant-The Oriental Insurance Company Limited, 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 award, dated 28.08.2025, passed by learned Tribunal below, in MAC Petition No. 44-MAC/2 of

[1] *Whether reporters of Local Papers may be allowed to see the judgment?*

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2021, filed by the petitioners-claimants, under Section 166 of the Act, wherein they were held entitled for compensation in the sum of Rs.14,79,080/- and respondent No. 1-Shri Atma Ram, owner of the offending vehicle, was held liable to pay the compensation amount to the claimants. However, respondent No. 2, i.e., Insurance Company (appellant herein), under the principle of "pay and recover" was directed to pay the compensation amount to the claimants with a right to recover the same from respondent No. 1/ owner of the offending vehicle, in accordance with law. The petitioners/claimants were also held entitled to interest at the rate of 6% per annum on the aforesaid amount from the date of filing of the petition till its realization.

2. The facts giving rise to the instant appeal, in brief, are that petitioner No. 1-Smt. Sumitra Devi, being wife, and petitioners No. 2 to 4, i.e., Kumari Archana, Kumari Antra and Master Sagar Thakur, being daughters and son, respectively, of Shri Abhimanyu @ Pappu (deceased), preferred a petition under Section 166 of the Act, seeking compensation on account of death of the deceased in a motor vehicle accident involving Mahindra Pick-up, bearing registration No. HP-71-4783 (offending vehicle). As per the

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petitioners, on 31.05.2017, the deceased had hired the offending vehicle for transporting his agricultural produce to Dadahu and around 03:15 p.m., when the said vehicle reached near PWD Rest House, Sangrah, it met with an accident due to rash and negligent driving of its driver, i.e., respondent No. 3- Ved Parkash (respondent No. 6 herein). Consequently, the deceased sustained serious injuries and ultimately succumbed to his injuries. The petitioners averred in their claim petition that the deceased used to earn Rs.25,000/- per month by growing cash crops and in addition to this, he also used to earn Rs.10,000/- per month by selling milk. The petitioners further averred that they were dependent upon the income of the deceased.

3. The owner of the offending vehicle, Shri Atma Ram (respondent No. 1) filed his reply, wherein he averred that the vehicle was hired to transport the agricultural produce to Dadahu by the deceased and one Shri Krishan Kumar and they, being the owners of the goods, were travelling in the offending vehicle. As per the replying respondent, suddenly due to mechanical failure, the vehicle went off the road and there was no negligence on part of respondent No. 3, Shri Ved Parkash, i.e., driver of the

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offending vehicle. The petitioners have sought excessive compensation and as the offending vehicle was insured with respondent No. 2-Insurance Company, the Insurance Company was liable to pay the compensation, if any.

4. Respondent No. 2-Insurance Company, in its separate reply, took preliminary objections that the driver of the vehicle was not having any valid and effective driving licence on the date of the accident and the owner of the vehicle was willfully negligent in committing breach of the terms and conditions of the insurance policy. It was further averred that the owner of the offending vehicle, in connivance with the petitioners, had changed the driver as Ved Parkash from late Krishan Kumar, who was actually driving the vehicle at the time of the accident and had no driving licence and in order to escape from liability, the name of Ved Parkash was introduced as driver of the vehicle. As per the replying respondent, the offending vehicle was being plied in the area of Himachal Pradesh without any valid and effective permit. The claim petition was filed by the petitioners in collusion with respondents No. 1 and 3 and the deceased was travelling in the offending vehicle as gratuitous passenger and respondent No. 3 had no concern

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with the alleged accident. The replying respondent denied that the offending vehicle was hired for transportation of agricultural produce, thus the petitioners were not entitled for any compensation from the replying respondent. Moreover, the compensation sought was highly excessive.

5. Respondent No. 3, Shri Ved Parkash, in his separate reply, denied that the deceased was travelling in the offending vehicle on the date of the accident. He also denied that the offending vehicle had met with an accident due to his rash and negligent driving. As per the replying respondent, the accident had occurred due to some mechanical failure in the vehicle.

6. After hearing the learned counsel for the parties, the learned Tribunal below had allowed the claim petition and the petitioners/claimants were held entitled for compensation of Rs.14,79,080/- and respondent No. 1, i.e., owner of the offending vehicle, was held liable to pay the said compensation amount to the petitioners. However, respondent No. 2-Insurance Company, under the principle of “pay and recover” was directed to pay the compensation amount to the petitioners with a right to recover the same from respondent No. 1. The petitioners were also held

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entitled to interest @ 6% per annum on the aforesaid amount from the date of filing of the petition till its realization.

7. Feeling aggrieved and dissatisfied, the appellant-Insurance Company preferred the instant appeal against the impugned award dated 28.08.2025, with a prayer to allow the instant appeal by quashing and setting-aside the impugned award.

8. The learned counsel for the appellant (insurance company) contended that once the learned Tribunal has come to the conclusion that the deceased was travelling in the offending vehicle in question as a gratuitous passenger, the learned Tribunal below could not have directed the appellant-Insurance Company to pay the awarded amount to the claimants with the right to recover the same from the insured, as such the impugned award deserves to be quashed and set-aside.

9. Conversely, learned counsel for respondents No. 1 to 4 (petitioners/claimants) as well as learned counsel for respondent No. 5, i.e., Shri Atma Ram, owner of the offending vehicle in question, supported the impugned award. They contended that the impugned award is the outcome of proper appreciation of both law and facts, thus

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the same does not need any interference. They prayed that the appeal, being devoid of merits, deserves to be dismissed.

10. I have heard the learned counsel for the appellant, learned counsel for the respective respondents and examined the entire records carefully.

11. It has specifically been held by the learned Tribunal below that the deceased Abhimanyu @ Pappu died in the accident in question on 31.05.2017 due to the rash and negligent driving of its driver and in paras No. 37 and 39 of the impugned award, the learned Tribunal below has specifically held that the deceased was travelling in the vehicle in question as an unauthorized/gratuitous passenger at the time of the accident and the claim petition was allowed with the direction to the appellant-Insurance Company to pay the award amount to the claimants and recover the same from the owner of the offending vehicle in question under the principle of “pay and recover”. So far as these findings of the learned Tribunal qua the negligence of the driver of the offending vehicle and also qua the fact that the deceased was travelling in the offending vehicle as an unauthorized/gratuitous passenger at the time of the accident, the same have attained finality, having not been

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assailed by the owner/driver of the offending vehicle.

12. Now the question which arises for consideration before this Court is that once the Tribunal below has held that the deceased was travelling in the vehicle in question as a gratuitous passenger at the time of the accident, could it direct the appellant-Insurance Company to pay the awarded amount of compensation to the claimants with the right to recover the same from the owner of the offending vehicle in question under the principle of “pay and recover”.

13. 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**

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> **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"**

14. 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 judgment 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***

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"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

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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.

15. 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 authorized 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 authorized representative carried in the vehicle besides the third parties. The intention of the Parliament, therefore, could not have

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> ***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 authorized 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."***

16. 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

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or reward or otherwise.

17. 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.

18. In the instant case, on appreciation of the evidence on record, the Tribunal below had arrived at the conclusion that the deceased was gratuitous passenger travelling in the vehicle in question and the said findings have attained finality in the absence of any challenge either by the owner/driver of the vehicle or by the claimants. Thus, in view of the aforesaid judicial pronouncements by the Hon'ble Supreme Court, the insurance company has no

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liability under the law to pay the amount of compensation to the petitioners/claimants for the death of Abhimanyu @ Pappu (deceased) who was travelling as gratuitous passenger.

19. The learned counsel for the owner of the offending vehicle submitted that since the vehicle was duly insured with the appellant-Oriental 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

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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 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. 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

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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 claimants.

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20. In view of what has been discussed hereinabove, the appeal filed by the insurance company is allowed. The impugned award stands modified and the owner of the offending vehicle, is 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 appeal stands disposed of in the above terms, so also the pending applications, if any.

(Sushil Kukreja)
Judge

5th November, 2026
(virender)

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