IN THE HIGH COURT OF MADHYA PRADESH AT INDORE

BEFORE

HON'BLE SHRI JUSTICE PAVAN KUMAR DWIVEDI

MISC. APPEAL No. 3065 of 2011

DIVISIONAL MANAGER ORIENTAL INSURANCE CO.LTD.

Versus

SARITA @ JULI AND 5 ORS. AND OTHERS

Appearance:

Shri Bhaskar Agrawal,learned counsel for the appellant / Insurance Company.

Shri K.K. Kaushal, learned counsel for respondents No 1 and 2.

Shri J.M. Poonegar, learned counsel for respondents No.3 and 4.

ORDER

Heard on : 21.11.2025

Pronounced on : 21.01.2026.

.....

This appeal has been filed under Section 173(1) of the Motor Vehicles Act, 1988 being aggrieved by the award dated 20.10.2011 passed by the learned VIII Additional Member, Motor Accident Claims Tribunal, Indore (M.P.) in Claim Case No.84/2009.

1.1 The present appeal has been filed by the Insurance Company on the ground that it is not liable to pay compensation as there was no valid driving licence with the driver of the tractor at the time of the accident.

2. Short facts of the case are that the deceased Vijay Kaushal was sitting in the trolley on 28.01.2009 in the capacity of a labourer employed by

the owner of the tractor and trolley, which were carrying potato sacks. The deceased was employed for unloading the said sacks. When the tractor-trolley reached Maledy road Naya Kua Tiraha at Village Kodariya, the driver of the tractor drove the vehicle in rash and negligent manner as a result of which Vijay fell from the tractor-trolley and suffered grievous injuries due to which he died on the spot.

2.1 The claimants / respondents No.1 and 2 filed claim petition under Section 166 of the Motor Vehicles Act claiming compensation for the death of Vijay. The Claims Tribunal after recording evidence, held that the accident was caused due to the rash and negligent driving of the tractor driver and accordingly, awarded total compensation of Rs.7,75,000/- along with interest at the rate of 8% *per annum*. While awarding the compensation, the Tribunal held that the Insurance Company is liable to pay the compensation amount.

3. However, learned counsel for the appellant would argue that the findings of the Claims Tribunal are contrary to the material available on record. He would first contend that the labourer was never covered under the insurance policy, which was produced before the Tribunal as Ex. D-7. Even the Insurance Policy of the trolley marked as Ex. D-8 does not cover labourer. He further submits that the deceased was sitting in the trolley and therefore, the Insurance Company is not liable to pay compensation as the trolley has no sitting capacity and was not meant for carrying passengers. He also submits that in view of the statement of NAW-2, the Insurance Company has clearly proved that the labourer was not covered under the

Insurance Policy. He further submits that the owner of the vehicle who deposed as NAW-4 has categorically stated that the deceased fell from the trolley due to his own mistake, therefore, the finding of rash and negligent driving has wrongly been recorded by the Tribunal.

3.1 Learned counsel thus submits that since the labourer was not covered under the policy, the Insurance Company ought not to have been held liable to indemnify the owner for payment of compensation.

3.2 In support of his submissions, learned counsel for the appellant / Insurance Company has placed reliance on the judgment of the Hon'ble Apex Court in the case of ***Oriental Insurance Company Limited vs. Brij Mohan and Others*** reported in ***(2007) 7 SCC 56*** as well as the Full Bench judgment of this Court in the case of ***Bhav Singh vs. Smt. Savirani and Others*** in ***2008 (1) MPLJ 72***.

4. *Per contra*, learned counsel for the claimants / respondents No.1 and 2 support the findings recorded in the award and submits that in view of the clear pleadings in the written statement, particularly para 16 thereof, it is evident that the labourer was a third party and was clearly covered under the terms of the Insurance Policy, especially in view of the fact that an extra premium of Rs.75/- was charged for an employee / driver. The deceased Vijay Kaushal was indisputably an employee of the owner of the vehicle and therefore, was clearly covered under the Insurance Policy.

4.1 In support of his submissions, learned counsel for the claimants has placed reliance on the judgment of the Hon'ble Apex Court passed in the case of ***Amrit Lal Sood vs. Kaushalya Devi Thapar*** in ***(1998) 3 SCC 744***.

5. Learned counsel for the owner reiterated the arguments advanced by learned counsel for respondents No.1 and 2. However, he added that the driving licence of the driver was found to be available and valid by the Tribunal as recorded in para 13 of the award. As such, no interference with the findings of the award is warranted and the appeal deserves to be dismissed.

6. Heard learned counsel for the parties and perused the record.

7. The main thrust of the arguments advanced by learned counsel for the appellant / Insurance Company is that there is no statutory or contractual liability on the Insurance Company to indemnify the owner in the present case. However, before adverting to the said contention, it would be apposite to first deal with the issue regarding the availability of valid driving licence. The Tribunal considered this aspect in paras 12 and 13 of the impugned award.

7.1 While dealing with this issue, the Tribunal referred to the statement of Sanjay Sharma (NAW-1), On the basis of document Ex. D-2, the Insurance Company sought to establish that the driver of the tractor was not holding a valid licence and it passed only an LMV licence. However, the Tribunal recorded that the said witness admitted that he was no the investigator; rather, one Vitthal Katare was the investigator and due to his death, Sanjay Sharma had appeared to depose before the Tribunal.

7.2 The Tribunal further recorded clear finding that neither any dispatch number nor the date of issuance was mentioned on the said document and therefore, the same appeared to be a doubtful document. It was

also recorded that the driver had placed on record a photocopy of his driving licence.

8. A perusal of the same would show that the tractor was duly covered under the insurance policy. These findings of fact were assailed; however, the Court has also perused the driving licence i.e. Ex. D-5 as well as document Ex. D-2 and finds no perversity in the findings recorded by the Claims Tribunal. As such, it is hereby held that the finding recorded by the Tribunal that the driver of the tractor was holding a valid driving licence is proper and justified.

9. As regards the issue of liability of the Insurance Company, the main thrust of the argument advanced on behalf of Insurance Company is that the policy in question did not cover the labourer, as he was not a third party in view of the fact that he was a labourer engaged by the owner of the tractor. By referring to the Insurance Policy (Ex. D-7), learned counsel for the appellant / Insurance Company submits that the policy covers basic liability and that an additional premium of Rs.100/- was paid towards P.A. (Personal Accident) cover and a further sum of Rs.75/- was paid towards legal liability for an employee / driver.

10. He submits that the labourer would not fall within the definition of an 'employee'. He further submits that the Tribunal has incorrectly recorded that the labourer would be covered under the term 'employee' as he was not a salaried employee receiving a monthly salary from the owner.

11. The Full Bench of this Court in the case of ***Bhav Singh (Supra)*** held in paras 5, 8 and 12 as under :

"5. We find on a perusal of the decision of the Full Bench in Jugal Kishore (supra) and particularly paragraphs 17 and 18 of the judgment that the Full Bench has taken a view that the expression 'third party' would mean a party other than the contracting parties to the insurance policy and would include everyone, be it a person travelling in another vehicle, one walking on the road or a passenger in the vehicle itself which is the subject-matter of the insurance policy. In a Full Bench judgment delivered by us in Smt. Sunita Lokhande and others vs. The New India Assurance Company Limited and others, 2008(1) MPLJ 54 = I.L.R. (2007) M. P. 1145, we have quoted paragraph 17 of the judgment of the Full Bench in Jugal Kishore (supra) to hold that the insured who is a party to the insurance is not a third party for the purpose of Chapter XI of the Act, particularly section 147 thereof. Thus, any person other than the insurer and the insured who are parties to the insurance policy is a "third party'. The insurer, however, would not be liable for any bodily injury or death of a third party in an accident unless the liability is fastened on the insurer under the provisions of section 147 of the Act or under the terms and conditions of the policy of insurance. Hence, the mere fact that a passenger is a third party would not fasten liability on the insurer unless such liability arises under section 147 of the Act or under the terms and conditions of the insurance policy.

8. Similarly, an employee is a third party inasmuch as he is not a party to the insurance policy. But merely because an employee is a third party, the insurance company would not be liable to compensate in case such employee suffers bodily injury or dies in an accident in which the motor vehicle is involved unless section 147 of the Act fixes such liability on the insured or unless the terms and conditions of the contract of insurance fixes liability on the insurer. Section 147(1) (b) of the Act provides that in order to comply with the requirements of Chapter XI of the Act, a policy of insurance must be a policy which insures the person or classes of persons specified in the policy to the extent specified in sub-section (2) against the liabilities mentioned in clauses (i) and (ii) thereunder. The Proviso to sub-section (1) of section 147 of the Act, however, states that a policy shall not be required to cover liability other than the liability arising under the Workmen's Compensation Act, 1923 in respect of the death of, or bodily injury to any of the three categories of employees mentioned in sub-clauses (a), (b) and (c) of clause (i) of the proviso to sub-section (1) of section

147 of the Act. Hence, even if an employee is a passenger or a person travelling in a motor vehicle which is insured as per the requirements of sub-section (1) of section 147 of the Act, the insurer will not be liable to cover any liability in respect of death or bodily injury of such employee unless such employee falls in one of the categories mentioned in sub-clauses (a), (b) and (c) of clause (i) of the Proviso to sub-section (1) of section 147 of the Act and further in cases where such employees fall under categories mentioned in sub-clauses (a), (b) and (c) of clause (i) of the Proviso to sub-section (1) of section 147 of the Act, the insurer is liable only for the liability under the Workmen's Compensation Act, 1923.

12. Regarding the Division Bench judgment in Sarvanlal and others (supra), we find that the Division Bench has relied on not only the judgment of the Full Bench in Jugal Kishore (supra) but also clause (vii) of Rule 97 of the Motor Vehicles Rules, 1994 (for short 'the Rules of 1994') made by the State of M. P. So far as the judgment of the Full Bench in Jugal Kishore (supra) is concerned, we have already clarified the position of law. Regarding clause (7) of Rule 97 of the Rules of 1994, we find that the Rules of 1994 have been made by the State of M. P. under section 96 of the Act and in particular sub-section (2)(xxxi) which provides that without prejudice to the generality of the foregoing power, rules under section 96 may be made with respect to the carriage of persons other than the driver in goods carriages. Section 96 is placed in Chapter- V of the Act which relates to 'Control of Transport Vehicles'. Sub-section (1) of section 96 of the Act states that the State Government may make rules for the purpose of carrying into effect the provisions of Chapter-V. Hence, Rule 97 of he Rules of 1994 has been made by the State Government to give effect to the provisions of Chapter-V of the Act, which, as we have seen, relates to 'control of transport vehicles'. These rules obviously cannot have a bearing in interpreting the provisions of Chapter-XI of the Act including sections 145 and 147 of the Act. As we have indicated above, the liability of the insurer to indemnify the insured in respect of death or bodily injury suffered by a passenger or an employee would be covered by the provisions of section 147 of the Act or the terms and conditions of the insurance policy. Thus, the decision of the Division Bench in Sarwan Lal (supra) insofar as it relies on Rule 97 of the Rules of 1994 to hold the insurer liable for death or bodily injury suffered by the passenger does not lay down the correct law."

12. Again the Hon'ble Apex Court in the case of ***Amrit Lal Sood (Supra)*** held in paras 4 and 8 as under :

> *"4. The liability of the insurer in this case depends on the terms of the contract between the insured and the insurer as evident from the policy. Section 94 of the Motor Vehicles Act, 1939 compels the owner of a motor vehicle to insure the vehicle in compliance with the requirements of Chapter VIII of the Act. Section 95 of the Act provides that a policy of insurance must be one which insures the person against any liability which may be incurred by him in respect of death or bodily injury to any person or damage to any property of third party caused by or arising out of the use of the vehicle in a public place. The section does not however require a policy to cover the risk to passengers who are not carried for hire or reward. The statutory insurance does not cover injury suffered by occupants of the vehicle who are not carried for hire or reward and the insurer cannot be held liable under the Act. But that does not prevent an insurer from entering into a contract of insurance covering a risk wider than the minimum requirement of the statute whereby the risk to gratuitous passengers could also be covered. In such cases where the policy is not merely a statutory policy, the terms of the policy have to be considered to determine the liability of the insurer.*
>
> *8. Thus under Section II(1)(a) of the policy the insurer has agreed to indemnify the insured against all sums which the insured shall become legally liable to pay in respect of death of or bodily injury to "any person". The expression "any person" would undoubtedly include an occupant of the car who is gratuitously travelling in the car. The remaining part of clause (a) relates to cases of death or injury arising out of and in the course of employment of such person by the insured. In such cases the liability of the insurer is only to the extent necessary to meet the requirements of Section 95 of the Act. Insofar as gratuitous passengers are concerned there is no limitation in the policy as such. Hence under the terms of the policy, the insurer is liable to satisfy the award passed in favour of the claimant. We are unable to agree with the view expressed by the High Court in this case as the terms of the policy are unambiguous."*

13. It is thus clear that there can be statutory policy or comprehensive policy meaning thereby that the insurer while entering into a contract of insurance may charge an extra premium for covering a risks wider then the minimum required under the statute as held by the Full Bench. A 'third party' would mean a party other than the contracting parties to the Insurance Policy and would include everyone else.

14. Be it a person travelling in another vehicle, a pedestrian walking on the road or a passenger in the vehicle itself which is the subject matter of the Insurance Policy, all such contingencies are covered *vis-a-vis* a third party.

15. In the present case, the deceased was travelling in the insured vehicle itself. The question that arises for consideration is whether such a person was covered under the Insurance Policy or not. The Full Bench of this Court in the case of ***Bhav Singh (Supra)*** has held that the insurer would not be liable for death or bodily injury to a third party in an accident unless such liability is fastened on the insurer either under the provisions of Section 147 of the Motor Vehicles Act or under the terms and conditions of Insurance policy. Thus, the mere fact that a passenger is a third party would not fasten liability on the insurer unless such liability arises either in terms of Section 147 of the Act or under the terms of the Insurance Policy.

15.1 Therefore, it is required to be examined whether under the terms of the present policy, the deceased was covered or not. It has come on record that the vehicle was being used for transportation of potato sacks. It is thus established that the vehicle was being used for agricultural purposes for

which it was insured. The next question to be considered is whether the deceased was travelling in connection with the goods being transported or was merely a gratuitous passenger having no relation with the owner of the vehicle.

15.2 In view of the clear evidence that has come on record, the Tribunal has correctly found that the deceased was travelling as an employee of the owner of the vehicle for the purpose of unloading potato sacks. It is thus evident that the deceased was sitting in the tractor-trolley in the capacity of an employee of the owner. The Insurance Policy (Ex. D-7) specifically provides for payment of an additional premium of Rs.75/- towards coverage to an employee / driver. Therefore, in the considered view of this Court, the Tribunal has rightly recorded its finding in para 6 of the award that the Insurance Company is liable to pay the compensation as the vehicle was not being operated in breach of the terms of the Insurance Policy.

16. As regards the judgment cited by the appellant / Insurance Company in the case of ***Brij Mohan (Supra)***, the facts of that case were different. The Court found that the labourer was injured while travelling in trolley attached to tractor carrying earth to brick kiln. The vehicle was not being used for agricultural purposes, which was the only purpose for which the tractor was insured. The Court held that the tractor was being used in breach of the Insurance Policy, which is not the case in the present matter.

17. It is also to be kept in mind that it has indisputably come on record that the vehicle was being driven in a rash and negligent manner, which was the cause of the accident. Therefore, it was the tractor which caused the

accident and not the trolley as the driver of the tractor was driving it in rash and negligent manner. Accordingly, the Tribunal has correctly held the insurer of the tractor liable to indemnify the owner of the vehicle and pay compensation. In the considered view of this Court, there is no infirmity in the impugned award of the Tribunal. Resultantly, the appeal fails and is hereby dismissed.

Certified copy as per rules.

(PAVAN KUMAR DWIVEDI)
JUDGE

Anushree