

1  
**IN THE HIGH COURT OF MADHYA PRADESH  
AT JABALPUR**

**BEFORE  
HON'BLE SHRI JUSTICE ACHAL KUMAR PALIWAL**

**ON THE 4<sup>th</sup> OF APRIL, 2024**

**CIVIL REVISION No. 200 of 2012**

**BETWEEN:-**

**IFFCO TOKIO GENERAL INSURANCE CO. LTD. CENTRE  
PLOT NO.7 M.P. NAGAR (MADHYA PRADESH)**

**.....PETITIONER**

***(BY SHRI N.S. RUPRAH - ADVOCATE)***

**AND**

- 1. IMRAT SONKAR S/O SHRI DEELAN SONKAR,  
AGED ABOUT 36 YEARS, VILL. PAWAI PS PAWAI  
(MADHYA PRADESH)**
- 2. HAKKU ALIAS ACHYUT SHARAN YADAV S/O  
PHOOL SINGH YADAV VILL. PAWAI, PS PAWAI,  
DISTT. PANNA (MADHYA PRADESH)**
- 3. PHOOL SINGH S/O MAHIPAL SINGH YADAV VILL.  
PARRIYA, PS PAWAI, DISTT. PANNA (MADHYA  
PRADESH)**
- 4. JAGDISH SINGH S/O SARKAR SINGH  
OCCUPATION: CULTIVATION VILL. JAGDISH  
PURA, TAH. PAWAI (MADHYA PRADESH)**

**.....RESPONDENTS**

***(NONE)***

**CIVIL REVISION No. 201 of 2012**

**BETWEEN:-**

**IFFCO TOKIO GENERAL INSURANCE CO. LTD. QU.  
BUSINESS M.P. NAGAR (MADHYA PRADESH)**

**.....PETITIONER**

***(BY SHRI N.S. RUPRAH - ADVOCATE)***

**AND**

1. **BHUPENDRA SONKAR S/O SHRI UTTAM SONKAR, AGED ABOUT 14 YEARS, VILL. PAWAI (MADHYA PRADESH)**
2. **HAKKU ALIAS ACHYUT SHARAN YADAV S/O PHOOL SINGH YADAV VILL. PAWAI, PS PAWAI (MADHYA PRADESH)**
3. **PHOOL SINGH S/O MAHIPAL SINGH YADAV VILL. PARRIYA, P.S. PAWAI (MADHYA PRADESH)**
4. **JAGDISH SINGH S/O SARKAR SINGH OCCUPATION: CULTIVATION VILL. JAGDISH PURA, TEH. PAWAI (MADHYA PRADESH)**

**.....RESPONDENTS****(NONE)****MISC. APPEAL No. 1622 of 2012****BETWEEN:-**

**IFFCO TOKIO GENERAL INSURANCE CO. LTD. QU. BUSINESS CENTRE ZONE M.P. NAGAR (MADHYA PRADESH)**

**.....APPELLANT****(BY SHRI N.S. RUPRAH - ADVOCATE)****AND**

1. **SUPPA BAI W/O RAJJAN KACHI, AGED ABOUT 38 YEARS, VILL. PAWAI P.S. PAWAI (MADHYA PRADESH)**
2. **SMT. NARBADIYA W/O LACHUVA KACHI, AGED ABOUT 68 YEARS, (MADHYA PRADESH)**
3. **SAHAB S/O RAJJAN KACHI, AGED ABOUT 20 YEARS, VILLAGE KARHI, THANA PAWAI, DISTT. PANNA (MADHYA PRADESH)**
4. **KU. SULOCHANA D/O RAJJAN KACHI, AGED ABOUT 18 YEARS, VILLAGE KARHI, THANA PAWAI, DISTT. PANNA (MADHYA PRADESH)**
5. **BHUPENDRA S/O RAJJAN KACHI, AGED ABOUT 15**

**YEARS, OCCUPATION: THROUGH MOTHER AND NATURAL GUARDIAN SMT. SUPPA BAI VILLAGE KARHI, THANA PAWAI, DISTT. PANNA (MADHYA PRADESH)**

6. **HAKKU ALIAS ACHYUT SHARAN YADAV S/O PHOOL SINGH YADAV VILLAGE PAWAI, P.S. PAWAI, DISTT. PANNA (MADHYA PRADESH)**
7. **PHOOL SINGH S/O MAHIPAL SINGH YADAV VILLAGE PARRIYA, P.S. PAWAI, DISTT. SATNA, M.P. (MADHYA PRADESH)**
8. **JAGDISH SINGH S/O SARKAR SINGH OCCUPATION: CULTIVATION VILLAGE JAGDISH PURA, TEH. PAWAI, PANNA (MADHYA PRADESH)**

**.....RESPONDENTS**

*(NONE)*

*These revisions/appeal coming on for order this day, the court passed the following:*

**ORDER**

This common order shall govern the disposal of CR.No.200 of 2012 (Iffco-Tokio General Insurance Co. Ltd Vs. Imrat Sonkar), CR.No.201/2012 (Iffco-Tokio General Insurance Co. Ltd Vs. Bhupendra Sonkar & Others) and M.A.No.1622 of 2012 (Iffco-Tokio General Insurance Co. Ltd. Vs. Suppa Bai and Others) arising out of common award dated 22.03.2012 passed by Additional Member MACT Pawai, District-Panna in MACT No.20/11, 21/11 and 22/11 seeking setting aside of impugned award.

2. Learned counsel for the appellant/petitioners, after referring to paras No.17, 19 and 26 of impugned award as well as depositions of applicant witnesses Kaushalya, Suppa Bai and Uttam Singh and further, relying upon **Original Insurance Company Limited Vs. Devireddy Konda Reddy and Others, (2003) 2 SCC** and **National Insurance Company Vs. Rattani and Others, (2009) 2 SCC 75**, submits that claimant/deceased were traveling in

goods vehicle. Therefore, they, being gratuitous passengers, Insurance Company is not liable to pay the compensation.

3. Learned counsel for the appellant submits that Tribunal has wrongly fastened liability on Insurance Company to pay the compensation, therefore, petition/appeal filed by appellant be allowed and Insurance company be exonerated from liability to pay the compensation.

4. I have heard learned counsel for the party and perused the record of the case.

5. Perusal of submissions of learned counsel for the petitioner/appellant as well as grounds taken in petition as well as appeal memo reveal that primarily, present petition/appeal has been filed on the ground that offending vehicle was commercial/goods carrying vehicle and injured/deceased were traveling in the offending vehicle as gratuitous passengers/after paying fare. Therefore, Insurance Company is not liable to pay compensation.

6. Admittedly, offending vehicle is a truck Kargo King Pickup and it is commercial/goods caring vehicle. Perusal of Insurance Policy (Ex.D/3 and D/4) reveal that Insurance company has received premium for third party, PA owner-driver and legal liability to driver (IMT 28). It is evident from above insurance policy (Ex.D/3 and D/4) that no premium for passenger has been received by insurance company.

7. Perusal of principles of law laid down by Hon'ble Apex Court in the case of **Insurance Company Ltd. Vs. Rattani and Others, (2009) 2 SCC 75** and **Oriental Insurance Company Ltd. Vs. Devireddy Konda Reddy and Others**, reported in **(2003) 2 SCC 339**, and **National Insurance Company Ltd. Vs. Cholleti Bharatamma and Others, (2008) 1 SCC 423**, reveal that insurance company is not liable to pay compensation to any persons

travelling as gratuitous passengers in commercial/goods carrying vehicle but from **Rattani (supra)** and **Cholleti Bharatamma(supra)**, it evident that if persons travelling in goods carrying vehicle/commercial vehicle are owner/representative of goods, then, position would be different.

8. Perusal of depositions of applicant witness Suppa Bai, Kaushalya Bai, Uttam Sonkar and FIR (Ex.P/1), reveal that deceased Rajjan, injured Imrat and applicant witness Koshlya Bai and others were coming back after having sold their vegetables with remaining vegetables.

9. Thus, the sole issue involved in these petitions/appeal is that whether at the time of accident, deceased was travelling in the offending vehicle as owner/representative of goods and in the cabin of offending vehicle or they were travelling as gratuitous persons.

10. Present petitions/appeal relates to injured Bhupendra, Imrat and deceased Rajjan. Admittedly, injured Bhupendra was minor on the date of accident and he was travelling in goods carrying vehicle/commercial vehicle along with his mother Kaushalya Bai and not as owner/representative of goods. Hence, with respect to injuries sustained by injured Bhupendra, petitioner/Insurance Company is not liable to pay the compensation to injured Bhupendra.

11. So far as liability to pay compensation with respect to deceased Rajjan and injured Imrat is concerned, in the instant case, offending vehicle is a goods carrying vehicle/commercial vehicle. It is also well settled that no passengers/persons as passengers can be carried in the goods carrying vehicle/commercial vehicle (**Cholleti Bharatamma(supra)**, **Rattani(supra)** and **Devireddy(supra)**). Further, it is also well settled from above pronouncement,

etc. that owner of goods/representative of owner of such goods can travel in the cabin of goods carrying vehicle/commercial vehicle.

12. So far as issue involved in the case is concerned, the same has been dealt by Hon'ble Apex Court in detail in **National Insurance Company Ltd. Vs. Cholleti Bharatamma and Others, (2008) 1 SCC 423**, and it has held as under :

"4. The said provision underwent an amendment in the year 1994 by Motor Vehicles Amendment Act, 1994 which reads as under :

"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) \* \* \*
- (b) insurer 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) \* \* \*"

(emphasis supplied)

8. The Act does not contemplate that a goods carriage shall carry a large number of passengers with small percentage of goods as considerably the insurance policy covers the death or injuries either of the owner of the goods or his authorised representative.

9. Correctness of the decision in Satpal Singh [(2000) 1 SCC 237) came up for consideration before a three-Judge Bench of this Court in New India Assurance Co.

Ltd. v. Asha Rani [(2003) 2 SCC 223 : 2003 SCC (Cri) 493] .

10. In Asha Rani [(2003) 2 SCC 223) having regard to various definitions involving the legal question, it was held: (SCC pp. 234-35, paras 23-28)

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

*24. We have further noticed that Section 147 of the 1988 Act prescribing the requirements of an insurance policy does not contain a provision similar to Clause (ii) of the proviso appended to Section 95 of the 1939 Act. The decision of this Court in Mallawwa case [(1999) 1 SCC 403) must be held to have been rendered having regard to the aforementioned provisions.*

*25. Section 147 of the 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 the 1988 Act vis-à-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 travelling in a goods vehicle, the insurers would not be liable therefor.*

*27. Furthermore, sub-clause (i) of Clause (b) of sub-section (1) of Section 147 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, whereas sub-clause (ii) thereof deals with liability which may be incurred by the owner of a vehicle 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.*

*28. An owner of a passenger-carrying vehicle must pay premium for covering the risks of the passengers. If a liability other than the limited liability provided for under the Act is to be enhanced under an insurance policy, additional premium is required to be paid. But if the ratio of this Court's decision in *New India Assurance Co. v. Satpal Singh* [(2000) 1 SCC 237] is taken to its logical conclusion, although for such passengers, the owner of a goods carriage need not take out an insurance policy, they would be deemed to have been covered under the policy wherefor even no premium is required to be paid."*

11. The effect of the 1994 Amendment came up for consideration in *National Insurance Co. Ltd. v. Baljit Kaur* [(2004) 2 SCC 1] wherein this Court following *Asha Rani* [(2003) 2 SCC 223 : 2003 SCC (Cri) 493] opined that the words “injury to any person” would only mean a third party and not a passenger travelling on a goods carriage whether gratuitous or otherwise. The question came up for consideration again in *National Insurance Co. Ltd. v. Bommithi Subbhayamma* [(2005) 12 SCC 243] wherein upon taking into consideration a large number of decisions, the said view was reiterated.

12. Yet again in *New India Assurance Co. Ltd. v. Vedwati* [(2007) 9 SCC 486 : (2007) 3 Scale 397] this Court held: [Ed.: Quoting from *Oriental Insurance Co. Ltd. v. Devireddy Konda Reddy*, (2003) 2 SCC 339, pp. 342-43, paras 9-10.] (SCC p. 490, para 6)

*“9. ... The difference in the language of ‘goods vehicle’ as appearing in the old Act and ‘goods carriage’ in the Act is of significance. A bare reading of the provisions makes it clear that the legislative intent was to prohibit goods vehicle from carrying any passenger. This is clear from the expression ‘in addition to passengers’ as contained in the definition of ‘goods vehicle’ in the old Act. The position becomes further clear because the expression used ‘goods carriage’ is solely for the carriage of ‘goods’. Carrying of passengers in a goods carriage is not contemplated in the Act. There is no provision similar to Clause (ii) of the proviso appended to Section 95 of the old Act prescribing requirement of insurance policy. Even Section 147 of the Act mandates compulsory coverage against death of or bodily injury to any passenger of ‘public service vehicle’. The proviso makes it further clear that compulsory*

*coverage in respect of drivers and conductors of public service vehicle and employees carried in goods vehicle would be limited to liability under the Workmen's Compensation Act, 1923 (in short 'the WC Act'). There is no reference to any passenger in 'goods carriage'.*

*10. The inevitable conclusion, therefore, is that provisions of the Act do not enjoin any statutory liability on the owner of a vehicle to get his vehicle insured for any passenger travelling in a goods carriage and the insurer would have no liability therefor."*

19. It is now well settled that the owner of the goods means only the person who travels in the cabin of the vehicle.

20. In this case, the High Court had proceeded on the basis that they were gratuitous passengers. The admitted plea of the respondents themselves was that the deceased had boarded the lorry and paid an amount of Rs 20 as transport charges. It has not been proved that the deceased was travelling in the lorry along with the driver or the cleaner as the owner of the goods. Travelling with the goods itself does not entitle anyone to protection under Section 147 of the Motor Vehicles Act."

13. Now question arises as to how to determine whether a person is travelling in goods carrying vehicle/commercial vehicle as owner of goods/representative of owner of such goods. In this Court's opinion, in view of principles of law laid down by Hon'ble Apex Court in the case of National Insurance(supra), same broad parameters, though, not exhaustive, can be laid down to determine as to whether a person is travelling in goods carrying vehicle/commercial vehicle as owner/representative of goods being carried/transported in the goods/commercial vehicle or as gratuitous passenger with or without payment of fare. These broad parameters are as under:

- (i) It is well settled that an owner/representative of goods being carried in goods vehicle/commercial vehicle can travel only in cabin of goods vehicle/commercial vehicle and not in the back/back side of such vehicle.
- (ii) Sitting/seating capacity of cabin and number of persons found travelling in the vehicle at the time of accident.
- (iii) Quantity/amount/nature of goods being carried/transported by persons travelling in the vehicle at the time of accident.
- (iv) Whether fare/ charges were paid for the goods or for the persons travelling in the vehicle and amount paid for the same.
- (v) Naturally, in ordinary course of things, charges/fare for goods would be higher in comparison to charges/fare for person/persons travelling in the vehicle.
- (vi) Whether any goods were recovered along with the vehicle at the time of seizure of vehicle or immediately after the accident, any goods etc were found at the scene of accident.
- (vii) Whether any receipts, pertaining to payment of charges/fare for transportation of goods/purchase of goods etc. have been filed/produced by owner/representative of goods.

14. Now facts of the case would be examined in the light of above. As per deposition of applicant witness Kaushlya etc., persons travelling in the vehicle had paid Rs.10/- per person and all the persons travelling in the vehicle have paid fare accordingly. As per deposition of applicant witness Kaushlya, 10 to 12 persons were sitting in the vehicle at the time of accident and they were returning after having sold their vegetables. As per applicant witness Kaushlya, she was sitting in the cabin and as per Suppa bai, her husband was sitting in the back of vehicle.

15. Perusal of depositions of applicant witnesses including Kaushlya, reveal that they have not deposed about quantity/amount of vegetables being carried back by them at the time of accident.

16. Further, no such suggestion has been given to applicant witnesses,

including Kashalya Bai, on behalf of owner/driver of offending vehicle that persons travelling in the vehicle at the time of accident, were travelling as owner/representative of their goods and in the cabin and they did not pay any fare to driver of offending vehicle. Further, no such suggestion has been given on behalf of owner/driver of offending vehicle to applicant witnesses, including Koshalya, as to how many persons were travelling in the vehicle and in the vehicle where they were sitting at the time of accident.

17. From record of the case, it is evident that owner of offending vehicle Phool Singh has examined himself as non applicant witness but he has not examined his son/driver of offending vehicle at the time of accident and no explanation has been furnished for non-examination of most material witness i.e. driver of offending vehicle, son of owner of offending vehicle.

18. Perusal of deposition of non-applicant witness/owner of offending vehicle Phool Singh reveals that he has nowhere deposed in his evidence that at the time of accident, how many persons were travelling in the vehicle and in which capacity they were travelling i.e., whether they were travelling as owner/representative of the goods or as passengers. Phool Singh has also not deposed, in his evidence as to whether persons travelling in the vehicle did pay any fare or not and who was travelling in the vehicle with how much goods and they were travelling as owner/representative of goods being carried in the vehicle. Phool Singh has also not deposed as to who was sitting where in the vehicle at the time of accident.

19. Thus, if evidence, as referred and discussed in the preceding paras, is examined in the light of principles of law laid down in **Cholleti Bharatamma(supra)** and parameters as referred in preceding paras, in this

Court's considered opinion, from evidence on record, it is not established at all that injured/deceased were travelling in offending vehicle as owner/representative of goods and in the cabin of vehicle at the time of accident.

20. Hence, in view of discussion in the forgoing paras, in this Court's considered opinion, at the time of accident, injured/deceased were travelling in offending vehicle as gratuitous passenger after paying fare and not as owner/representative of goods in the cabin. Therefore, Insurance Company is not liable to pay the compensation. Further, in the instant case, principle of pay and recover also cannot be applied.

21. Hence, appeal/petitions filed by the appellant/petitioner are allowed and appellant/insurance company is exonerated from liability to pay the compensation and it is held that owner and driver of offending vehicle are liable to pay compensation as adjudged by the tribunal jointly and severally.

22. Civil Revision No.200/2012 (Iffco-Tokio General Insurance Co. Ltd Vs. Imrat Sonkar), Civil Revision No.201/2012(Iffco-Tokio General Insurance Co. Ltd Vs. Bhupendra Sonkar and Others) and Miscellaneous Appeal No.1622/2012(Iffco-Tokio General Insurance Co. Ltd. Vs. Suppa Bai and Others) filed by the appellant/petitioner are disposed of accordingly.

**(ACHAL KUMAR PALIWAL)**  
**JUDGE**