



Non-Reportable

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

Special Leave Petition (C) No.6117 of 2020

Amudhavalli & Ors.

...Petitioners

Versus

**HDFC Ergo General Insurance
Company Ltd. & Ors.**

...Respondents

ORDER

1. The issue agitated here is that which comes up frequently before this Court; on the question of 'pay and recover', the appellants before this Court being either the claimants or the owner of the offending vehicle, depending upon whether the amounts were paid by the insurance company or not. In the instant case, the claimants who have not received the award amounts are before this Court.

2. The Tribunal made the award after computing the compensation for the death of the husband of the first petitioner and mulcted the liability on the insurance company, brushing aside the contention that the insured vehicle is a goods vehicle,

and the deceased was a travelling passenger on fare. An appeal was filed before the High Court by the insurance company which resulted in the impugned judgment, which assailed both the quantum and the liability to indemnify the insured, the latter ground raised on the breach of conditions of policy, when the goods vehicle carried passengers on fare. The quantum as awarded by the Tribunal was confirmed by the High Court. However, the pay and recovery directed by the Tribunal was set aside.

3. Mr. Mohan Raj, learned counsel for the petitioners relied on two decisions of this Court in ***Manager, National Insurance Company Ltd. v. Saju P. Paul and Anr.***¹ and ***Shamanna and Another Vs. Divisional Manager, Oriental. Insurance Company Limited and Others***².

4. Mr. Joy Basu, learned Senior Counsel appearing for the insurance company, however, pointed out that the earlier view regarding a third-party coverage to a goods vehicle, including the gratuitous passengers has been reversed by this Court in

¹ (2013) 2 SCC 41

² (2018) 9 SCC 650

New India Assurance Co. Ltd. v. Asha Rani³. In the present case, there is a clear admission that the deceased had travelled in a vehicle on payment of fare.

5. We cannot but observe that the witness of the claimants, PW-2, who was also an eye-witness stated unequivocally before the Tribunal that while the deceased and others were standing at the bus stand, the offending vehicle which was a three wheeler, came to the spot and the deceased and others travelled in it as passengers after paying fare. The deposition clearly absolves the liability of the insurance company to indemnify the owner. The goods vehicle is not allowed to carry passengers, unless he is the owner of the goods carried therein or his authorised representative.

6. Now the only issue is as to whether, the insurance company should be directed to pay the amounts and then recover it from the owner, which measure this Court adopted in various cases to avoid hardship to the claimants.

7. A reading of ***Saju P. Paul*** (supra) would indicate that therein the injured/claimant was travelling in a vehicle as a

³ (2003) 2 SCC 223

spare driver, as contended by the claimant himself. The claimant was stated to be the driver of another vehicle of the owner, and a spare driver was not covered under a third-party insurance policy which along with the third-party coverage included only the driver and cleaner of the vehicle.

8. In considering the measure of pay and recover, this Court in **Saju P. Paul** (supra) noticed a number of decisions where such measure was employed. **National Insurance Co. Ltd. v. Baljit Kaur and Others**⁴ was a case in which the Tribunal and the High Court proceeded in terms of the decisions of this Court in **New India Assurance Company v. Satpal Singh and Others**⁵ which was overruled in **Asha Rani** (supra). Since the Tribunal and the High Court had allowed the compensation based on **Satpal Singh** (supra), the measure of pay and recover was adopted in the said case. **National Insurance Co. Ltd. v. Challa Bharathamma & Ors.**⁶ is yet another case in which 'pay and recover' was ordered. Therein the breach of condition of policy was projected insofar as the vehicle having not been

⁴ (2004) 2 SCC 1

⁵ (2000) 1 SCC 237

⁶ (2004) 8 SCC 517

covered by a permit to ply for hire or reward. The finding of the High Court as to the absence of permit not leading to violation of policy condition, was reversed by this Court. Therein also the measure of pay and recover was adopted.

9. *National Insurance Company Limited v. Kaushalaya Devi and Others*⁷ was a case in which an identical condition of gratuitous passenger being carried in a good carriage vehicle had resulted in the liability being mulcted on the owner and the insurer absolved of its liability to indemnify. Therein it was directed that the amount deposited by the insurer if withdrawn, it would be recovered from the owner and if not returned, it would be refunded to the insurance company, and the claimants would be entitled to proceed against the owner for recovery of the award amounts.

10. This is a case in which there was a fundamental breach noticed and the deceased claimant, being a person who travelled in the goods carriage after paying fare, the damages for his death was not entitled to be indemnified by the insurer. There was no amount deposited or paid by the insurance

⁷ (2008) 8 SCC 246

company. In the above circumstances, we find absolutely no reason to interfere with the order of the High Court, especially, when it was passed before **Satpal Singh's** case (supra) which stood overruled in **Asha Rani** (supra). **Shamanna** (supra) was a case in which the driver did not have a valid driving licence at the time of the accident in which the pay and recover direction was issued, relying on the decision in **National Insurance Co. Ltd. v. Swaran Singh and Others**⁸.

11. The Special Leave Petition is dismissed.

12. Pending application, if any, shall stand disposed of.

..... J.
(K. VINOD CHANDRAN)

..... J.
(N. V. ANJARIA)

New Delhi;
September 26, 2025.

⁸ (2004) 3 SCC 297