REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 5 OF 2013
(Arising out of SLP(C) No. 20127 of 2011)

Manager, National Insurance Co. Ltd. …… Appellant

Vs.

Saju P. Paul and Another ……Respondents

JUDGMENT

R.M. LODHA, J.

Leave granted.

2. The appellant, insurance company, is in appeal by special leave against the judgment and order dated 23.03.2011 whereby the Division Bench of the Kerala High Court allowed the review petition and reviewed its order dated 09.11.2010 and held that the insurance company was liable to pay compensation in sum of Rs. 2,88,000/- with 9% interest

thereon to the claimant awarded by the Motor Accident Claims Tribunal in its award dated 23.07.2002.

3. The question of law that arises in this appeal is as to whether having regard to the provisions of the Motor Vehicles Act, 1988 (for short, '1988 Act'), the insurance company is liable to pay compensation for the bodily injury caused to the claimant who was travelling in a goods vehicle as a spare driver though he was employed as a driver in another vehicle owned by the owner of the vehicle under the policy of insurance.

4. The above question arises in this way. Saju P. Paul, claimant (Respondent No. 1), was a heavy vehicle driver. He was employed with Respondent No. 2 as a driver in some other vehicle. On 16.10.1993, he was travelling in a goods vehicle bearing No. KL-2A/3411 in the cabin. The goods vehicle was being driven by one Jayakumar. In that vehicle, many other persons were also travelling. At Nilackal, due to rash and negligent driving of the driver Jayakumar, the goods vehicle capsized. As a result of which the claimant suffered fracture and injuries. The claimant remained under treatment for quite some time and the injuries that he sustained in the accident rendered him permanently disabled. In the claim petition filed by him before the Motor Accident Claims Tribunal, Pathanamthitta (for short, 'the Tribunal'), he claimed compensation of Rs.3,00,000/-. The owner and insurer were impleaded as respondent no. 2 and respondent no. 3 respectively in the claim petition.

5. The insurer filed its written statement and opposed the claimant's claim insofar as it was concerned. The insurer set up the plea that the vehicle was a goods vehicle and the risk of the passengers travelling in the goods vehicle was not covered under the policy of insurance. It was stated in the written statement that nearly 50 unauthorised passengers were travelling at the time of accident; they were not traveling in the vehicle in pursuance of the contract of employment, such as loading and unloading nor they were travelling as the owner of the goods or the representative of the owner of the goods and hence the insurer could not be saddled with any liability.

6. The Tribunal, after recording the evidence and hearing the parties, on 23.07.2002, passed an award in favour of the claimant holding that he was entitled to a total compensation of Rs. 3,00,000/-. The liability of the insurer was made joint and several with the owner and driver.

7. Being not satisfied with the award of the Tribunal, the insurer filed an appeal before the Kerala High Court. The Division Bench of that Court by relying upon decisions of this Court in *New India Assurance Co. Ltd.* v. *Asha Rani and others*[1] and *National Insurance Co. Ltd.* v. *Cholleti Bharatamma and Others*[2] allowed the appeal of the insurer vide judgment and order dated 09.11.2010. The Division Bench held that insurer was not liable as gratuitous passengers travelling in a goods vehicle were not

[1] (2003) 2 SCC 223
[2] (2008) 1 SCC 423

covered under the policy and the claimant shall be entitled to recover the awarded amount from the owner or driver of the vehicle.

8. The claimant sought review of the order dated 09.11.2010 and, as noted above, by the impugned order that review application has been allowed. While allowing the review application, the Division Bench held as under:

> "It has already been noticed that the petitioner was admittedly a spare driver of the vehicle. It may be true that he was not driving the vehicle at the relevant point of time; but he was directed to go to the worksite by his employer as a spare driver in the vehicle. Therefore, by no stretch of imagination, it can be said that the petitioner was not travelling in the vehicle in the course of his employment and as directed by his employer. Section 147(1)(b)(i) takes within its fold any liability which may be incurred by the insurer in respect of the death or bodily injury to any person. Therefore, the argument of the insurance company that no goods were being carried in the vehicle at the time of accident and therefore, the petitioner was only a gratuitous passenger cannot be countenanced at all. Even otherwise, the first proviso to Section147(1) will cast a liability on the insurer to indemnify the owner in respect of the injury sustained by the employee of the insured arising out of and in the course of his employment."

9. It is appropriate to quote Section 147 of the 1988 Act as was obtaining on the date of accident, i.e., 16.10.1993, which reads as follows :

> "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—
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> (*a*) is issued by a person who is an authorized insurer; and
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> (*b*) insures the person or classes of persons specified in the policy to the extent specified in sub-section (2)—
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> (*i*) against any liability which may be incurred by him in respect of the 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;

(*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 a 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.

(2) Subject to the proviso to sub-section (1), a policy of insurance referred to in sub-section (1), shall cover any liability incurred in respect of any accident, up to the following limits, namely—

(*a*) save as provided in clause (*b*), the amount of liability incurred;

(*b*) in respect of damage to any property of a third party, a limit of rupees six thousand:

Provided that any policy of insurance issued with any limited liability and in force, immediately before the commencement of this Act, shall continue to be effective for a period of four months after such commencement or till the date of expiry of such policy whichever is earlier.

(3) A policy shall be of no effect for the purposes of this Chapter unless and until there is issued by the insurer in favour of the person by whom the policy is effected a certificate of insurance in the prescribed form and containing the prescribed particulars of any condition subject to which the policy is issued and of any other prescribed matters; and

different forms, particulars and matters may be prescribed in different cases.

(4) Where a cover note issued by the insurer under the provisions of this Chapter or the rules made thereunder is not followed by a policy of insurance within the prescribed time, the insurer shall, within seven days of the expiry of the period of the validity of the cover note, notify the fact to the registering authority in whose records the vehicle to which the cover note relates has been registered or to such other authority as the State Government may prescribe.

(5) Notwithstanding anything contained in any law for the time being in force, an insurer issuing a policy of insurance under this section shall be liable to indemnify the person or classes of persons specified in the policy in respect of any liability which the policy purports to cover in the case of that person or those classes of persons."

10. By the Motor Vehicles (Amendment) Act, 1994 (for short, '1994 Amendment Act'), Section 147 came to be amended. The expression "including owner of the goods or his authorised representative carried in the vehicle" was added in Section 147. The amended Section 147 has been considered by this Court in various decisions, some of which we intend to refer a little later.

11. In *New India Assurance Company* v. *Satpal Singh and others*[3], this Court with reference to the provisions in the Motor Vehicles Act, 1939 and the provisions in 1988 Act, particularly Section 147, held that under the 1988 Act an insurance policy covering third party risk was not required to exclude gratuitous passengers in a vehicle no matter that the vehicle is of any type or class. It was also held that the earlier decisions of this Court rendered under the 1939 Act vis-à-vis gratuitous passengers were of no avail while considering the liability of the insurance company in respect of

[3] (2000) 1 SCC 237

any accident which occurred or would occur after the 1988 Act came into force.

12. The correctness of the judgment in *Satpal Singh*[3] was doubted, inter alia, in *Asha Rani*[1] . It was felt that *Satpal Singh*[3] needed re-look insofar as cases covered under the 1988 Act prior to its amendment in 1994 were concerned. A three-Judge Bench in *Asha Rani*[1] noticed Section 147 of the 1988 Act prior to its amendment in 1994 and after its amendment in 1994 and held in paragraph 9 of the Report (Pgs. 231-232) as follows :

> "In *Satpal case [(2000) 1 SCC 237]* the Court assumed that the provisions of Section 95(1) of the Motor Vehicles Act, 1939 are identical with Section 147(1) of the Motor Vehicles Act, 1988, as it stood prior to its 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 authorised 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 authorised 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 the 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 authorised 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 authorised 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 authorised 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 authorised representative carried in the vehicle" which was added to the pre-existing 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 authorised 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 authorised representative on being carried in a goods vehicle when that vehicle meets with an accident and the owner of the goods or his representative dies or suffers any bodily injury."

13. S.B. Sinha, J. in his supplementary judgment in *Asha Rani*[1] , while concurring with the above, observed as follows (Pg. 235):

"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.
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> 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.

14. *Asha Rani*[1] has been relied upon in *Oriental Insurance Co. Ltd.* v. *Devireddy Konda Reddy and Others*[4] wherein it was held as under (Pgs. 342-343):

> "….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 is "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".

[4] (2003) 2 SCC 339

14.1. Then in paragraphs 10 and 11 of the Report (Pg. 343), this Court held in *Devireddy Konda Reddy*[4] as under :

> "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.
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> 11. Our view gets support from a recent decision of a three-Judge Bench of this Court in *New India Assurance Co. Ltd.* v. *Asha Rani [(2003) 2 SCC 223]* in which it has been held that *Satpal Singh case [(2000) 1 SCC 237]* was not correctly decided. That being the position, the Tribunal and the High Court were not justified in holding that the insurer had the liability to satisfy the award."

15. In *Cholleti Bharatamma*[2], this Court was concerned with the question about the liability of the insurance company to indemnify the owner of the vehicle in respect of death of passengers travelling in goods vehicle. The Court considered the applicability of Section 147 as it originally stood under 1988 Act and after its amendment in 1994. In relation to the accident that occurred on 16.12.1993 i.e., prior to the 1994 amendment in SLP(C) 7237-39/2003, this Court set aside the judgment of the High Court and allowed the appeal of the insurance company by observing as follows (Pg. 430):

> "14. The date of accident being 16-12-1993, the amendment carried out in the year 1994 in Section 147 of the Motor Vehicles Act would not be applicable.
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> 15. The Motor Accidents Claims Tribunal, Nalgonda, by a judgment and award dated 13-11-1997 awarded various sums overruling the defence of the appellant herein that they were unauthorised passengers. The High Court, however, by reason of the impugned judgment, relying on or on the basis of a decision of this Court in *Satpal Singh [(2000) 1 SCC 237]* directed as under:

> "The learned counsel for the Insurance Company submitted that the issue involved in these appeals is squarely covered by the decision of the Supreme Court in *New India Assurance Co. Ltd.* v. *Satpal Singh [(2000) 1 SCC 237]*, wherein Their Lordships held that under the Motor Vehicles Act, 1988 all insurance policies covering third-party risks are not required to exclude gratuitous passengers in the vehicle though vehicle is of any type or class.
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> In view of the proposition of law laid down by the Supreme Court in the decision stated supra, these appeals are dismissed. No costs."
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> 16. Following the aforementioned principles, the impugned judgment cannot be sustained which is set aside. The appeals are allowed accordingly."

15.1. With reference to the accident that took place on 24.12.1993 (prior to 1994 amendment) in SLP(C) Nos. 7241-43/2003, this Court in *Cholleti Bharatamma*[2] in paragraphs 17,18,19,20 and 21 (Pgs. 430-431) held as under :

> "17. In the aforementioned case, accident took place on 24-12-1993. The respondents herein filed a claim petition claiming compensation for the death of one Kota Venkatarao who had allegedly paid a sum of Rs 20 for travelling in the lorry. The Tribunal held:
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> > "In the absence of rebuttal evidence from the deceased and some others who travelled in the said vehicle in the capacity of owner of the luggage which was carried by them at the time of accident, it cannot be said that it is a violation of the policy, since it is not fundamental breach so as to afford to the insurer to eschew the liability altogether as per the decision in *B.V. Nagaraju* v. *Oriental Insurance Co. Ltd. [(1996) 4 SCC 647 : AIR 1996 SC 2054]*"
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> 18. The High Court, however, relying upon *Satpal Singh [(2000) 1 SCC 237]* opined:
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> > "This issue raised in this appeal is covered by the decision of the Supreme Court in *New India Assurance Co. Ltd.* v. *Satpal Singh* wherein Their Lordships held that under the Motor Vehicles Act, 1988 all insurance policies covering third-party risks are not required to exclude gratuitous passengers in the vehicles though the vehicle is of any type or

> class. Following the same, the appeal is dismissed. No order as to costs."
>
> 19. It is now well settled that the owner of the goods means only the person who travels in the cabin of the vehicle.
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> 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.
>
> 21. For the reasons aforementioned, this appeal is allowed."

16. In the present case, Section 147 as originally existed in 1988 Act is applicable and, accordingly, the judgment of this Court in *Asha Rani*[1] is fully attracted. The High Court was clearly in error in reviewing its judgment and order delivered on 09.11.2010 in review petition filed by the claimant by applying Section 147(1)(b)(i). The High Court committed grave error in holding that Section 147(1)(b)(i) takes within its fold any liability which may be incurred by the insurer in respect of the death or bodily injury to any person. The High Court also erred in holding that the claimant was travelling in the vehicle in the course of his employment since he was a spare driver in the vehicle although he was not driving the vehicle at the relevant time but he was directed to go to the worksite by his employer. The High Court erroneously assumed that the claimant died in the course of employment and overlooked the fact that the claimant was not in any manner engaged on the vehicle that met with an accident but he was employed as a driver in another vehicle owned by M/s. P.L. Construction

Company. The insured (owner of the vehicle) got insurance cover in respect of the subject goods vehicle for driver and cleaner only and not for any other employee. There is no insurance cover for the spare driver in the policy. As a matter of law, the claimant did not cease to be a gratuitous passenger though he claimed that he was a spare driver. The insured had paid premium for one driver and one cleaner and, therefore, second driver or for that purpose 'spare driver' was not covered under the policy.

17. The High Court misconstrued the proviso following sub-section (1) of Section 147 of the 1988 Act. What is contemplated by proviso to Section 147 (1) is that the policy shall not be required to cover liability in respect of death or bodily injury sustained by an employee arising out of and in the course of his employment other than a liability arising under the Workmen's Compensation Act, 1923. The claimant was admittedly not driving the vehicle nor he was engaged in driving the said vehicle. Merely because he was travelling in a cabin would not make his case different from any other gratuitous passenger.

18. The impugned judgment is founded on misconstruction of Section 147. The High Court was wrong in holding that the insurance company shall be liable to indemnify the owner of the vehicle and pay the compensation to the claimant as directed in the award by the Tribunal.

19. The next question that arises for consideration is whether in the peculiar facts of this case a direction could be issued to the insurance

company to first satisfy the awarded amount in favour of the claimant and recover the same from the owner of the vehicle (respondent no. 2 herein).

20. In *National Insurance Co. Ltd.* v. *Baljit Kaur and others*[5], this Court was confronted with a similar situation. A three-Judge Bench of this Court in paragraph 21 of the Report (Pg. 8) held as under :

> "21. The upshot of the aforementioned discussions is that instead and in place of the insurer the owner of the vehicle shall be liable to satisfy the decree. The question, however, would be as to whether keeping in view the fact that the law was not clear so long such a direction would be fair and equitable. We do not think so. We, therefore, clarify the legal position which shall have prospective effect. The Tribunal as also the High Court had proceeded in terms of the decision of this Court in *Satpal Singh*. The said decision has been overruled only in *Asha Rani*. We, therefore, are of the opinion that the interest of justice will be subserved if the appellant herein is directed to satisfy the awarded amount in favour of the claimant, if not already satisfied, and recover the same from the owner of the vehicle. For the purpose of such recovery, it would not be necessary for the insurer to file a separate suit but it may initiate a proceeding before the executing court as if the dispute between the insurer and the owner was the subject-matter of determination before the Tribunal and the issue is decided against the owner and in favour of the insurer. We have issued the aforementioned directions having regard to the scope and purport of Section 168 of the Motor Vehicles Act, 1988, in terms whereof, it is not only entitled to determine the amount of claim as put forth by the claimant for recovery thereof from the insurer, owner or driver of the vehicle jointly or severally but also the dispute between the insurer on the one hand and the owner or driver of the vehicle involved in the accident inasmuch as can be resolved by the Tribunal in such a proceeding."

21. The above position has been followed by this Court in *National Insurance Co. Ltd.* v. *Challa Bharathamma & Ors.*[6], wherein this Court in paragraph 13 (Pg. 523) observed as under:

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[5] (2004) 2 SCC 1
[6] (2004) 8 SCC 517

> "13. The residual question is what would be the appropriate direction. Considering the beneficial object of the Act, it would be proper for the insurer to satisfy the award, though in law it has no liability. In some cases the insurer has been given the option and liberty to recover the amount from the insured. For the purpose of recovering the amount paid from the owner, the insurer shall not be required to file a suit. It may initiate a proceeding before the executing court concerned as if the dispute between the insurer and the owner was the subject-matter of determination before the Tribunal and the issue is decided against the owner and in favour of the insurer. Before release of the amount to the claimants, owner of the offending vehicle shall furnish security for the entire amount which the insurer will pay to the claimants. The offending vehicle shall be attached, as a part of the security. If necessity arises the executing court shall take assistance of the Regional Transport Authority concerned. The executing court shall pass appropriate orders in accordance with law as to the manner in which the owner of the vehicle shall make payment to the insurer. In case there is any default it shall be open to the executing court to direct realisation by disposal of the securities to be furnished or from any other property or properties of the owner of the vehicle i.e. the insured. In the instant case, considering the quantum involved, we leave it to the discretion of the insurer to decide whether it would take steps for recovery of the amount from the insured."

22. In *National Insurance Company Limited* v. *Kaushalaya Devi and Others*[7]. In paragraph 15 of the Report (pg. 250), the Court observed as follows:

> "15. For the reasons aforementioned, civil appeal arising out of SLP (C) No. 10694 is allowed and civil appeal arising out of SLP (C) No. 9910 of 2006 is dismissed. If the amount deposited by the Insurance Company has since been withdrawn by the first respondent, it would be open to the Insurance Company to recover the same in the manner specified by the High Court. But if the same has not been withdrawn the deposited amount may be refunded to the Insurance Company and the proceedings for realisation of the amount may be initiated against the owner of the

[7] (2008) 8 SCC 246

vehicle. In the facts and circumstances of the case, however, there shall be no order as to costs."

23. We are informed that by an order dated 19.01.2007 in National Insurance Co. v. Roshan Lal and Another [SLP (C) No. 5699/2006] in light of the argument raised before a two-Judge Bench that the direction ought not to be issued to the insurance company to discharge the liability under the award first and then recover the same from the owner, the matter has been referred to the larger Bench by the following order:

> "Having regard to the submissions urged before us, we are of the view that this petition may be placed for consideration before a larger Bench. We notice that in some of the decisions such a direction was made in cases where the compensation had already been paid by the insurer, but there are observations therein which support the view that such a direction can be made in all cases where the owner has insured his vehicle against third party risks. In Baljit Kaur's case (supra) which is a judgment rendered by three Hon'ble Judges, such a direction was made in the special circumstances noticed by the Court in paragraph 21 of the report. There are observations in Oriental Insurance Co. Ltd. Vs. Ranjit Saikia and Ors. (2002) 9 SCC 390 which may support the contention of the petitioners before us."

24. In National Insurance Company Ltd. v. Parvathneni & Another [SLP(C)….CC No. 10993 of 2009], the following two questions have been referred to the larger Bench for consideration:

> (1) If an Insurance Company can prove that it does not have any liability to pay any amount in law to the claimants under the Motor Vehicles Act or any other enactment, can the Court yet compel it to pay the amount in question giving it liberty to later on recover the same from the owner of the vehicle.

(2) Can such a direction be given under Article 142 of the Constitution, and what is the scope of Article 142? Does Article 142 permit the Court to create a liability where there is none?"

25. The pendency of consideration of the above questions by a larger Bench does not mean that the course that was followed in *Baljit Kaur*[5] and *Challa Bharathamma*[6] should not be followed, more so in a peculiar fact situation of this case. In the present case, the accident occurred in 1993. At that time, claimant was 28 years' old. He is now about 48 years. The claimant was a driver on heavy vehicle and due to the accident he has been rendered permanently disabled. He has not been able to get compensation so far due to stay order passed by this Court. He cannot be compelled to struggle further for recovery of the amount. The insurance company has already deposited the entire awarded amount pursuant to the order of this Court passed on 01.08.2011 and the said amount has been invested in a fixed deposit account. Having regard to these peculiar facts of the case in hand, we are satisfied that the claimant (Respondent No. 1) may be allowed to withdraw the amount deposited by the insurance company before this Court along-with accrued interest. The insurance company (appellant) thereafter may recover the amount so paid from the owner (Respondent No. 2 herein). The recovery of the amount by the insurance company from the owner shall be made by following the procedure as laid down by this Court in the case of *Challa Bharathamma*[6] .

26. Appeal is allowed and disposed of as above with no order as to costs.

.....J.
(R.M. Lodha)

.....J.
(Anil R. Dave)

NEW DELHI.
JANUARY 3, 2013.