**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**FAO No. 4287 of 2005(O&M) and
XOBJC No. 57-CII of 2013
Decided on: 27.11.2017**

Shiv Lochan Singh @ Bhola ...Appellant

versus

National Insurance Co. Ltd. and others ....Respondents

Coram: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present: Mr. Zorawar Singh Chauhan, Advocate
for the appellant.

Mr. R.C.Kapoor, Advocate
for respondent No. 1.

Mr. Arun Jindal, Advocate for
Mr. Rishav Jain, Advocate
for respondents No. 2 to 6/Cross Objectors.

Rajbir Sehrawat, J.(Oral)

This order shall dispose of FAO No. 4287 of 2005 and the Cross Objections No. 57-CII of 2013, filed in the appeal.

The appeal and the cross objections arise from the award passed by the Motor Accidents Claim Tribunal, Patiala, whereby the compensation of ₹3,90,000/- was awarded to the claimants, on account of death of Jai Singh, in a motor vehicle accident. In the award, the Insurance Company was given the recovery rights against the owner and the driver. Therefore, the owner and the driver has filed the present appeal. On getting notice of the appeal, the claimants have filed Cross Objections and have claimed the enhancement of compensation; on the ground that the compensation awarded in the case was grossly insufficient.

The brief facts of the case are that on 29.08.1999, Jai Singh was travelling in Maruti Car; bearing Registration No. CHK-1488, belonging to respondent No. 1 and also being driven by him. When the car reached near village Budhmore, a cow was seen coming on the road. Respondent No. 1; who was driving the car negligently and carelessly; at a very high speed, struck the car against the culvert on the right side of the road. As a result thereof, the accident happened and Jai Singh received multiple injuries. He was rushed to a private hospital at Patiala. Since the injuries were serious therefore, later; he was admitted in Rajindra Hospital, Patiala, where he was kept in Intensive Care Unit till 13.09.1999. However, he succumbed to the injuries and expired on 13.09.1999.

On account of this accident, the claimants, who are the widow and the minor sons and daughters of the deceased; filed a claim petition. It was averred in the claim petition that the deceased was 25 years of age. He was a photographer by profession. It was further pleaded that he was earning monthly income of ₹7,500/- from the photography work and ₹3,000/- from the agriculture work. Hence the compensation was claimed.

On getting notice, respondent No. 1 filed his written statement. Respondent No. 1 denied that the deceased was travelling in his car. It was denied that respondent No. 1 has ever driven the car in question in rash and negligent manner; as alleged. It was further denied that the deceased suffered injuries or was admitted in hospital. It was denied that the respondent No.1 was liable to pay the amount of compensation. It was further averred that, in any case, if the accident is proved, then; the vehicle was duly insured with respondent No. 2, the insurance company. In that eventuality, it is the Insurance Company which shall be liable to pay the

compensation.

Respondent No. 2, the Insurance Company filed separate written statement and denied the accident as such. It was further denied that the deceased died as a result of the accident with the offending vehicle. It was further claimed that the respondent No. 1 was not holding the valid and effective driving license and further that he was plying the offending vehicle on hire/taxi, by violating the terms and conditions of the policy. As such it was claimed that the insurance company was not liable to pay the compensation. It was further claimed that the respondent No. 1 was carrying the passengers in the offending car. Since the premium was charged for '*Act Policy*' only, as such respondent No. 1 had violated the terms and conditions of the policy. It was further claimed that respondent No. 1 was not authorised to carry the passengers in the car in question.

The claimants led the evidence to substantiate their claim. The respondent driver produced the Registration Certificate of the car as Ex:R3 and the Insurance Policy of the offending vehicle was produced on record as Ex:R4. Respondent Insurance Company did not lead any evidence in the case.

After hearing the parties and perusing the record, the Tribunal held respondent No. 1 to be negligent in driving the offending vehicle which resulted in death of Jai Singh. However, while dealing with the liability to make payment the Tribunal held that the driving license; Ex:R2 has not been issued to respondent No. 1, therefore, respondent No. 1 was not holding the valid and effective driving license at the time of accident. Hence it was ordered that though the insurance company would make the payment in the first instance, however, it shall have the recovery rights to

recover the amount from the owner.

While assessing the quantum the Tribunal assessed the income of the deceased to be ₹4,000/- per month. 1/3rd deduction was made on account of personal expenses. Multiplier of 13 was applied. Therefore, total compensation of ₹ 3,90,000/-(2500 x 12 x 13) was awarded to the claimants.

It deserves mention here that in the appeal the present appellants/driver-cum-owner of the vehicle had moved an application for additional evidence. After considering that; this Court had sought an evidence based report from the Tribunal. Accordingly the Tribunal sent its report dated 10.04.2009, after taking the evidence from the parties. The Tribunal has held that the driver/appellant herein was having a valid and effective driving license; issued, by the Licensing Authority, Samana. The licensee was duly authorised to drive the scooter and the car. This report is not even disputed by the learned counsel for the Insurance Company. Accordingly the issue whether the driver of the car had a valid and effective driving license on the date of accident or not, stands proved in favour of the driver.

Since the only reason for granting the recovery rights to the Insurance Company was; that the driver was not having a valid and effective driving license, therefore, that finding of the Tribunal has to be set aside and the insurance company has to be held liable; for making the payment of the amount of compensation.

Faced with this situation, learned counsel for the respondent-insurance company submits that in the present case it was an "*Act only Policy"*. Therefore, the occupants of the private car of the insured were not

covered by the policy. It is his submission that the occupant of the private car is covered only in the case of *"Comprehensive*" and "*Package Policy"*. Still further, it is submitted that the passenger travelling in a motor car is not a '*Third Party'*. It is submitted that the term '*Third Party'* means only a person who gets injury/damage due to being hit by the insured vehicle. According to learned counsel, the passengers of insured vehicle shall be covered only if extra premium is paid for their cover, as per directions of IRDA/IMT Advisory Committee. To buttress his argument learned counsel for the respondent Insurance Company relies upon the judgment of the Delhi High Court rendered in the case of ***Yashpal Luthra and another vs. United India Insurance Co. Ltd. and another; 2011 ACJ 1415*** and on the judgments of the Hon'ble Supreme Court rendered in the case of ***Oriental Insurance Company Ltd. vs. Surendra Nath Looomba and others; 2013 ACJ 321*** and ***National Insurance Co. Ltd. vs. Balakrishnan and another; 2013 ACJ 199.***

On the other hand, learned counsel for the appellant submits that since the policy of insurance is issued as compulsory insurance under the provisions of the Motor Vehicles Act, 1988 therefore, the policy would cover all liabilities qua '*third party'*, as per the provisions of Sections 147 and 149 of the Act. It is his submission that in all the judgments referred by the counsel for the Insurance Company, the Courts had proceeded on the ground that, in any case, the package policy would cover the liability qua the occupant of the car; even in case of a private passenger car. It is his further submission that in none of the judgments, the so called '*Act only Policy'* was held to be a ground for not covering the liability qua third party. Hence it is his submission that the judgments referred to by learned counsel

for the respondent Insurance Company, do not stand in the way of the appellant.

Having heard learned counsel for the parties and perusing the record with their able assistance, this Court is of the considered opinion that the argument raised by learned counsels for the parties are of fundamental nature which has to be decided and tested on the anvil of the statutory provisions. The present Motor Vehicles Act, 1988(hereinafter referred to as the New Act) replaced the earlier Motor Vehicles Act, 1939(hereinafter referred to as the Old Act). Both the Acts contained provisions for Insurance of Motor Vehicles for the purpose of payment of compensations to the injured or dependents of the person who dies in a motor vehicle accident. Hence, it shall be of immense significance to compare and analyse the provisions of the Old Act and of the New Act; governing the Insurance of the Motor Vehicles and Liability of the insurance company to understand the evolution of law on this point.

Still further, the net question involved in the present case is as to whether a passenger travelling in a private passenger car is entitled to compensation in case of injury or death arising out of accident involving no other vehicle. Conversely, the proposition is not being examined in this case from the perspective of a passenger travelling in a goods vehicle.

Under the Old Act, the provision was contained in Section 95 of the Act and in the New Act the same are contained in Section 147 and 149 of the Act. It is apposite to reproduce the same here:-

> ***<u>Section 95 of the Old Act(Motor Vehicles Act, 1939)</u>***
>
> ***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 by a co-operative society allowed under Section 108 to transact the business of an insurer, and

(b) insures the person or classes of persons specified in the policy to the extent 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 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 vehicle, being carried in the vehicle, or

(ii) <u>except</u> where the vehicle is a vehicle in which passengers are carried for hire or reward or by reason of or in pursuance of a contract of employment, <u>to cover</u> liability in respect of the death of or bodily injury to persons being carried in or upon or entering or mounting or alighting from the vehicle at the time of the occurrence of the event out of which a claim arises, or

(iii) to cover any contractual liability.

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

(a) where the vehicle is a goods vehicle, a limit of fifty thousand rupees in all, including the liabilities, if any, arising under the Workmen's Compensation Act, 1923 (8 of 1923), in respect of the death of, or bodily injury to, employees (other than the driver), not exceeding six in number, being carried in the vehicle;

(b) Where the vehicle is a vehicle in which passengers are carried for hire or reward or by reason of or in pursuance of a contract of employment,-

(i) in respect of persons other than passengers carried for hire or reward, a limit of fifty thousand rupees in all;

(ii) in respect of passengers,-

(1) a limit of fifty thousand rupees in all where the vehicle is registered to carry not more than thirty passengers;

(2) a limit of seventy-five thousand rupees in all where the vehicle is registered to carry more than thirty but not more than sixty passengers;

(3) a limit of one lakh rupees in all where the vehicle is registered to carry more than sixty passengers; and

(4) subject to the limits aforesaid, ten thousand rupees for each individual passenger where the vehicle is a motor cab, and five thousand rupees for each individual passenger in any other case;

(c) save as provided in Clause (d), where the vehicle is a vehicle of any other class, the amount of liability incurred;

(d) irrespective of the class of the vehicle, a limit of rupees two thousand in all in respect of damage to any property of a third party.

* * * * *

(4) 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 conditions 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-A) 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 elsewhere contained in any law, a person issuing a policy of insurance under this section shall be liable to indemnify the person or classes of person specified in the policy in respect of any liability which the policy purports to cover in the case of that person or those classes or persons.

Under the New Act the relevant provisions are contained in Section 147 and 149 of the Act which are reproduced below:-

Section 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 authorised insurer; and

(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 1 [injury to any person, including owner of the goods or his authorised 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 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.

(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.

149. Duty of insurers to satisfy judgments and awards against persons insured in respect of third party risks.

(1) If, after a certificate of insurance has been issued under sub-section (3) of section 147 in favour of the person by whom a policy has been effected, judgment or award in respect of any such liability as is required to be covered by a policy under clause (b) of sub-section (1) of section 147 (being a liability covered by the terms of the policy) 1 [for under the provisions of section 163A] is obtained against any person

insured by the policy, then, notwithstanding that the insurer may be entitled to avoid or cancel or may have avoided or cancelled the policy, the insurer shall, subject to the provisions of this section, pay to the person entitled to the benefit of the decree any sum not exceeding the sum assured payable thereunder, as if he were the judgment debtor, in respect of the liability, together with any amount payable in respect of costs and any sum payable in respect of interest on that sum by virtue of any enactment relating to interest on judgments.

(2) No sum shall be payable by an insurer under sub-section (1) in respect of any judgment or award unless, before the commencement of the proceedings in which the judgment of award is given the insurer had notice through the Court or, as the case may be, the Claims Tribunal of the bringing of the proceedings, or in respect of such judgment or award so long as execution is stayed thereon pending an appeal; and an insurer to whom notice of the bringing of any such proceedings is so given shall be entitled to be made a party thereto and to defend the action on any of the following grounds, namely:-

(a) that there has been a breach of a specified condition of the policy, being one of the following conditions, namely:-

(i) a condition excluding the use of the vehicle-

(a) for hire or reward, where the vehicle is on the date of the contract of insurance a vehicle not covered by a permit to ply for hire or reward, or

(b) for organised racing and speed

testing, or

(c) for a purpose not allowed by the permit under which the vehicle is used, where the vehicle is a transport vehicle, or

(d) without side-car being attached where the vehicle is a motor cycle; or

(ii) a condition excluding driving by a named person or persons or by any person who is not duly licensed, or by any person who has been disqualified for holding or obtaining a driving licence during the period of disqualification; or

(iii) a condition excluding liability for injury caused or contributed to by conditions of war, civil war, riot or civil commotion; or

(b) that the policy is void on the ground that it was obtained by the nondisclosure of a material fact or by a representation of fact which was false in some material particular.

(3) Where any such judgment as is referred to in sub-section (1) is obtained from a Court in a reciprocating country and in the case of a foreign judgment is, by virtue of the provisions of section 13 of the Code of Civil Procedure, 1908 (5 of 1908) conclusive as to any matter adjudicated upon by it, the insurer (being an insurer registered under the Insurance Act, 1938 (4 of 1938) and whether or not he is registered under the corresponding law of the reciprocating country) shall he liable to the person entitled to the benefit of the decree in the manner and to be the extent specified in sub-section (1), as if the judgment were given by a Court Bin India: Provided that no sum shall be payable by the insurer in respect of any such judgment unless,

before the commencement of the proceedings in which the judgment is given, the insurer had notice through the Court concerned of the bringing of the proceedings and the insurer to whom notice is so given is entitled Hinder the corresponding law of the reciprocating country, to be made a party to he proceedings and to defend the action on grounds similar to those specified in Hub-section (2).

(4) Where a certificate of insurance has been issued under sub-section (3) of section 147 to the person by whom a policy has been effected, so much of the policy as purports to restrict the insurance of the persons insured thereby by reference to any condition other than those in clause (b) of sub-section (2) shall, as respects such liabilities as are required to be covered by a policy under clause (b) of sub-section (1) of section 147, be of no effect: Provided that any sum paid by the insurer in or towards the discharge of any liability of any person which is covered by the policy by virtue only of this subsection shall be recoverable by the insurer from that person.

(5) If the amount which an insurer becomes liable under this section to pay in respect of a liability incurred by a person insured by a policy exceeds the amount for which the insurer would apart from the provisions of this section be liable under the policy in respect of that liability, the insurer shall be entitled to recover the excess from that person.

(6) In this section the expression "material fact" and "material particular" means, respectively a fact or particular of such a nature as to influence

> *the judgment of a prudent insurer in determining whether he will take the risk and, if so, at what premium and on what conditions, and the expression "liability covered by the terms of the policy" means a liability 112 which is covered by the policy or which would be so covered but for the fact that the insurer is entitled to avoid or cancel or has avoided or cancelled the policy.*
>
> *(7) No insurer to whom the notice referred to in sub-section (2) or sub-section (3) has been given shall be entitled to avoid his liability to any person entitled to the benefit of any such judgment or award as is referred to in sub-section (1) or in such judgment as is referred to in sub-section (3) otherwise than in the manner provided for in sub-section (2) or in the corresponding law of the reciprocating country, as the case may be."*

A bare comparative perusal of the provisions of the two Acts makes it clear that the Compulsory Insurance of a vehicle qua the claims of third party is provided for in both, the Old Act as well as in the New Act. The difference is only of scope of compulsory insurance in terms of '*subjects'* of the risk cover and of the '*extent'* of cover of liabilities qua third parties. Since the New Act holds the filed now, sot it is beneficial to analyse the meaning of certain terms as used or purported to be used, in relation to the third party Insurance under the New Act, by comparing the same with the Old Act, wherever possible.

Third Party:

The term '*Third Party'* has not been defined in exact terms in the New Act, same was the position under the Old Act as well. The Act has

used the '*inclusive*' definition qua the term *third party* by prescribing that it includes the '*government'*. So to decipher the meaning of third party one has to fall back to the basics. The Act makes the Insurance compulsory. The Insurance is, essentially, a contract between two parties to cover the risk of the insured by the insurer by charging the premium as the consideration. Hence, in the contract of Insurance, the promiser and the promisee are the two parties, namely the Insured and the Insurer. With reference to the Contract of Insurance, the person or entity against the risk of whose possible claim; the Insurer insures the Insured is the '*third party'*. Seen in terms of the provisions of the New Motor Vehicle Act it is clear that whosoever is entitled to raise a claim against the owner/Insured or the insurer is the third party. Further, in a more practical terms, a combined reading of Sections 146, 147, 149, 150 to 155, 163-A and particularly Section 166 clearly spell out that the *Third Party;* for contract of Insurance; under the Motor Vehicle Act is:-

(a) Any person or entity whose property is damaged in the accident.

(b) Any person who gets injuries in an accident or his authorised agent

(c) Legal representatives of the deceased person who died in the accident or the authorised agent of such legal representatives.

There can not be any limitation or dilution of the definition of the term '*Third Party'* as used in the Act, since such limitation or dilution shall run counter to the provisions of the Act itself.

However, the question as to who is entitled to raise a claim against the owner or insurer under compulsory insurance policy is, further, dependent upon scope of Sections 147 and 149 of the New Act. However,

while considering the definition of '*Third Party'* it has to be kept in mind that the law does not recognise any postulate of '*one-ness'* between two living persons, inter-vivoce. Any two individuals are separate and distinct legal entities with independent rights and liabilities. So viewed in terms of liabilities arising from contract, including a contract of Insurance even a father and son would be distinct entites. If due to his negligence in driving a vehicle father causes the death of his own son, the dependents of such deceased son can very well raise a claim against the negligent father of such deceased. Their claim can not be thrown away merely because they happen to be family members of such negligent father of deceased son.

Scope of Compulsory Insurance:-

The scope of Compulsory Insurance qua the *third party* claims is defined by Section 95 of the Old Act and Section 147 of the New Act. A comparative reading of these two provisions would show that Section 95(1)(a) of the Old Act has been changed qua defining the authorised Insurer. Section 147(1)(a) of the Act has restricted it to the authorised insurer. Section 95(1)(b) of the Old Act and Section 147(1)(b) of the New Act deal with the 'subjects' of Insurance. One more fact needs to be noted is that earlier the original Old Act contained only a single clause in Section 95(1)(b) and it was the same as is contained in latest amended Section 95(1)(b)(i). However, the Old Act was amended vide Amendment Act No. 56 of 1969 and the original clause(b) of Section 95(1) was re-numbered as Section 95(1)(b)(i) and another **clause (ii)** was added to Section 95(1)(b). The clause (i) and (ii) of Section 95(1)(b) in Old Act and the original Section 147(1)(b) clauses (i) and (ii) in New Act are identical. Under **clause (i)** of these provision the Compulsory Insurance Policy is prescribed to cover-

(A) 'Any Liability' of Insured arising from death of 'any person'
(B) 'Any Liability' of Insured arising from bodily injury to 'any person' or damage to property of third party,

where such liability has arisen due to mere, *use of the vehicle* mentioned in the policy in public place or where the liability has arisen due to the above said death, injury or damage *caused by* the Insured Vehicle in public place.

By any linguistic extrapolation or any legal interpretation the term '*Any person'* can not mean anything *'less than any person'*. Likewise *'Any liability'* can not mean anything '*less than Any liability'*. Hence this clause covers every liability of insured qua every person. Only thing; which can be interpreted with reference to this clause, *per se,* is the term '*vehicle'*. There is nothing in this clause, *per se,* to restrict the meaning of '*any person'* or '*any liability*'. To find any restrictive provision or restrictive interpretation of the terms '*Any person'* or '*Any liability'* one has to look somewhere else; either in this Section of the Old and the New Act, or to some other provision of this Act or to some other statute, for example Workman's Compensation Act. In their attempt to decipher the true intent and any restrictive meaning of this clause, if any, the Courts have taken recourse to other provisions of this Act, like defences available to the Insurance Company under Section 149 of this Act. But the defence available to the Insurance company or the bar created by some other statute are only grounds to defend and defeat the claim of a person and they are not in itself the exclusion of the person; raising such claim; from scope of the sub-clause(i) of Section 95(1)(b) or the clause (i) of Section 147(1)(b), *per*

se. For any possible *per se* exclusion one has to look within the other parts of Section 95(1)(b) of Old Act and Section 147(1)(b) of the New Act only.

Clause (ii) of the Section 95(1)(b) of the Old Act and clause (ii) of Section 147(1)(b) of the New Act did not provide for any exclusion or substraction from the **clause(i)** of these sections. Rather clause (ii) of these sections specifically included and clarified the position regarding passengers in Public Service Vehicles to be included in the scope of compulsory insurance.

However under the Old Act, the exclusion from sub-section 95 (1)(b) were contained in the Provisos to this sub-Section. The **Proviso (i)** to Section 95(1)(b) excluded from the scope of the compulsory Insurance policy; contemplated under clause (i) of this sub-Section:-

> *(A) The driver of a vehicle except upto the extent of liability under Workman Compensation Act.*
> *(B) Even the conductor or the Ticket Examiner if the vehicle happens to be a public service vehicle.*
> *(C) And even the employee of the owner if he is carried in a Goods vehicle.*

So by virtue of this proviso, under clause(i) of Section 95(1)(b) the Old Act these three categories were not included in the compulsory insurance. Resultantly these three categories were not entitled to raise claim as third party under compulsory Insurance Policy.

Further, the most important exclusion from the compulsory insurance policy required under Section 95(1)(b)(i) was contained in **Proviso(ii)** of Section 95(1)(b) of the Old Act. As is clear from the bare perusal of this proviso, it excluded from compulsory insurance passengers

travelling in a vehicle except the vehicles where passengers were carried for hire or reward. Hence this proviso excluded from the scope of compulsory insurance all the passengers travelling in a private passenger car and on motor cycle; which otherwise would be required to be compulsorily covered under Section 95(1)(b)(i). It deserves to be mentioned here that this proviso existed in the original Old Act even before the clause(ii) of Section 95(1)(b) regarding public service vehicles was added through amendment Act No. 56 of 1969 and this Proviso (ii) continued in this section even after addition of clause (ii) in Section 95(1)(b). So this proviso contained exclusion relating only to clause(i) of Section 95(1)(b) of the Old Act. Hence, it is by virtue of this proviso only that the passengers travelling in a private passenger car and on motor cycle were excluded from the scope of the compulsory insurance prescribed under clause(i) of Section 95(1)(b). It was these passengers in private car or a pillion rider on a motor cycle which were referred to as the *'Gratuitous Passengers'* in the terminology used under the Old Act. **Clause (ii)** of Section 95(1)(b) was added much later in 1969 only and it only added specifically in the scope of compulsory insurance the passengers travelling in Public Service Vehicle; by way of clarification with some liberlization, as would be seen in following paragraphs of this judgment. This clause(ii) did not exclude anything from the existing provision of clause(i) of Section 95(1)(b) of the Act. Hence except the passengers excluded by **Proviso(ii)** mentioned above; all passengers in all the vehicles were required to be covered for Compulsory Insurance under Section 95(1)(b) of the Old Act.

However, then comes the New Motor Vehicle Act, 1988. In this Act; while retaining the provisions of Section 95(1)(b)(i) as the Section

147(1)(b)(i); as such, the **Proviso(ii)** mentioned above was not retained. So the exclusion of passengers travelling in private passenger car and pillion rider of a motorcycle was not carried forward in the New Act. Hence with the omission to exclude the passengers travelling in private passenger car and motorcycle, the scope of Section 147(1)(b)(i) stood extended automatically, to include even the passengers travelling in private passenger car and pillion rider of a motorcycle. Needless to say that the omission to legislate is always to be taken as intentional on the part of the legislature. Hence the intention of the legislature became clear that it intended to include in the scope of Section 147(1)(b)(i) all the vehicles and all the passengers travelling in all passenger vehicles, and all the liabilities, except as excluded somewhere else in this Section or in other Section of this Statute. However, there is no other provision in the New Act to exclude the passengers travelling in a private passenger vehicle or a pillion rider on a motorcycle from the scope of Compulsory Insurance under Section 147(1)(b)(i). Hence in a way with this omission of **Proviso (ii)** of Section 95(1)(b); the clause(ii) of Section 95(1)(b) of Old Act or the clause (ii) of Section 147(1)(b) of New Act appeared to be redundant. But was it so rendered?

As found above, since even the unpaid passengers in any vehicle; including passengers in Private Passengers vehicle also; are covered under clause(i) of Section 147(1)(b) so the clause(ii) of Section 147(1)(b), which related to only the paid passengers in public service vehicle appeared to be superfluous. Hence the Law Commission of India at one point of time intended to recommend deletion of clause (ii) of Section 147(1)(b). Although the report of Law Commission can not be taken into consideration for interpretation of a statute, however, to understand the

evolution of a concept of law it can be helpful. Only for that purpose relevant part of the 149th Report of Law Commission is reproduced below:-

> *"3.2 An examination of Section 147 of the 1988 Act reveals that sub-clause(ii) of clause (b) of sub-section(1) suffers from infelicitous drafting, want of clarity and avoidable overlapping. The language of the sub-clause which seems to require the taking out of an insurance policy which insures the specified persons "against the death of or bodily injury to any passenger ----------" is clearly infelicitous as, obviously, no insurance policy can insure any one against death or bodily injury. One would, therefore, think that what the sub-clause intends to say is that the specified persons should be insured "against any liability which may be incurred by them in respect of the death of, or bodily injury to, any passenger--------" and that the sub-clause should be recast accordingly.*
>
> *3.3 Quite apart from the infelicitous wording of the sub-clause, there is apparently an overlapping between sub-clauses (i) and (ii) of clause (b) in their scope. Sub-clause(i), read by itself, is very wide. It requires the owner or user of a vehicle to take out an insurance policy to cover any liabilaity which he may incur "in respect of the death of, or bodily injury to <u>any person</u> or damage to any property of a <u>third party</u> caused by or arising out of the use of his vehicle in a public place." This clause, <u>prima facie</u>, is applicable to all motor vehicles including public service vehicles. Likewise, the use of the expression "any person" and the reference to any "third party" (which obviously*

takes in any person other than the insurer and the insured) makes the requirement all embracing. Sub-clause (i) is, therefore, comprehensive enough to require the owner of user of any motor vehicle including a "public service vehicle" to take out an insurance policy that would cover the risk of death or injury to the person or damage to the property of any person including any passenger in such a vehicle. In this view, since the language of sub-clause(i) is wide enough to include cases covered by sub-clause(ii) as well sub-clause(ii) seems redundant.

3.4 However, before recommending the omission of sub-clause(ii), we may examine the question whether the legislature has inadvertently framed the aforesaid clauses or whether there is some other way to reconcile the two clauses, making them meaningful. An answer to this question requires a study of the legislative history of Section 95 of the 1939 Act, which corresponds to the present Section 147.

3.5 Section 95(1) of the 1939 Act was amended by Act No. 56 of 1969. Clause (b) was substituted by a new clause consisting of sub-clauses (i)and (ii) in the same terms as sub-clauses(i) and (ii) of clause (b) of Section 147(1) of the 1988 Act, earlier extracted. There was a minor amendment in the opening words of the proviso (which is irrelevant for our present purposes), clause (ii) of the proviso was omitted and clause (iii) redesignated a clause (ii). The Statement of objects and reasons for this amendment reads as under:

"This amendment requires that a policy of

insurance of a motor vehicle under Chapter VIII covers the following additional matters, namely:-

(1) damage to any property of a third party;

(2) death or bodily injury to any passenger of a public service Vehicle even though the owner or the driver of the vehicle may not be responsible for the accident, provided there is no contributory negligence on the part of the passenger."

While the amendment made it clear that the insurance policy had---

(a) To cover the liability of the insured in respect of death of, or injury to, or damage to the property of, third parties by vehicles; and

(b) to compensate passengers to whom death or injury was caused where the vehicle was a public service vehicle and the passengers were carried on it for hire or reward,

the substitution of two sub-clauses in the place of the earlier single one created some ambiguity.

3.6 The Supreme Court had occasion to interpret the amended provisions of Section 95 of the Motor Vehicles Act, 1939 and to examine the difference between the scope of sub-clauses (i) and (ii) of S.95(1)(b) in the case of Minu B.Mehta v. Bal Krishna. It overrules the general principle emunciated by the High Court that the insurance company would be liable to compensate a person who died or was injured in any motor vehicle accident irrespective of any fault or negligence on the part of the driver of the vehicle.

The Supreme Court observed---

"Under Section 95(1)(b)(i) of the Act, it is required that policy of insurance must be a policy 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 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. It may be noted that what is intended by the policy of insurance is insuring a person against any liability which may be incurred by him. The insurance policy is only to cover the liability of a person which he might have incurred in respect of death or bodily injury. The accident to which the owner of the person insuring is liable to the extent of his liability in respect of death or bodily injury and that liability is covered by the insurance. It is therefore, obvious that, if the owner has not incurred any liability in respect of death or bodily injury to any person, there is no liability and it is not intended to be covered by the insurance. The liability contemplated arises under the law of negligence and under the principle of vicarious liability. The provisions as they stand do not make the owner or

insurance company liable for any bodily d injury caused to a third party arising out of the use of the vehicle unless the liability can be fastened on him. It is significant to note that under sub-clause(ii) of Section 95(1)(b) of the Act the policy of insurance must insure a person against the death 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. Under Section 95(1)(b) clause(ii) of the Act, the liability of the person arises when bodily injury to any passenger is caused by or use of the vehicle in a public place. So far as the bodily injury caused to a passenger is concerned it need not be due to any act or liability incurred by the person. It may be noted that the provisions of Section 95 are similar to Section 36(1) of the English Road Traffic Act, 1930, the relevant portion of which is to the effect that a policy of insurance must be a policy which insures a person in respect of any liability which may be incurred by him in respect of death or bodily injury to any person caused by or arising out of the use of the vehicle on road. The expression "liability" which may be incurred by him is

meant as covering any liability arising out of the use of the vehicle. It will thus be seen that the person must be under a liability and that liability alone is covered by the insurance policy.: (underlining added).

It is evident from the aforesaid decision that the purpose of the insurance policy visualised under the Act is only to indemnify the insured against a liability which he has incurred in law towards third parties, and that where there is no such liability incurred by the insured the insurer can not also be fixed with any liability. However, it would appear that the Supreme Court attached importance to the difference in language between sub-clauses (i) and (ii) and, by the words underlined in the above extract, interpreted sub-clause (ii) of Section 95(1)(b) of the 1939 Act(as amended by Act No. 56 of 1969) to mean that the policy of insurance taken by the owner of a public service vehicle should provide compensation to any passenger of the vehicle for death or bodily injury caused by or arising out of the use of the vehicle in a public place irrespective of whether there was any fault on the part of its owner, agent or driver, or not.

3.7 As earlier pointed out, one view could have been that the opening words of sub-clause (ii) reflect ambiguous and inept drafting, as there can be no insurance against death or injury and that there is nothing in the difference in language between the two sub-clauses which requires sub-clause(ii) to be interpreted as making the owner or user of the vehicle liable to

> *pay compensation even without any fault on his part. This would tantamount to something more that what a policy of indemnity to the insured, insuring him only against a liability incurred by him, can achieve. However, since the sub-clause has now been interpreted by the Supreme Court in Minu B.Mehta's case (supra), the question does not remain res integra . Sub-clauses (i) and (ii) have, therefore, now to be understood as explained by the Supreme Court and the apparent overlapping in the two-sub-clauses, referred to earlier, disappears."*

So the Law Commission refrained from recommending deletion of clause (ii) of Section 147(1)(b) because the Hon'ble Supreme Court in the case reported in ***1997 AIR(SC) 1248*** titled as ***Minu B.Mehta vs. Bal Krishna*** had explained that there was a difference between two clause i.e. clause (i) and clause (ii) of Section 147(1)(b), so far as the basis of sustaining a claim by a person is concerned. Although in this judgment the Hon'ble Supreme Court did not hold that there was any difference between two clause in terms of '*persons'* covered under the policy, however, the Hon'ble Supreme Court held that under **clause (i)** of Section 147(1)(b) the claimant shall be required to prove the negligence of the owner and thus incurring a liability by him. But under **clause(ii)** of Section 147(1)(b) a claimant can maintain the claim even if the owner/driver of Public Service Vehicle had not been negligent. So while a passenger travelling in a private car or a pillion rider would be required to prove the negligence of the driver or owner of such private passenger car or of motorcycle to claim compensation; being included in Section 147(1)(b)(i), but in case of passenger travelling in a Public Service Vehicle; negligence of driver or

owner may not be required to be proved by him to maintain his claim; being covered under Section 147(1)(b)(ii). The relevant para of this judgment is already referred to above in the Report of Law Commission. So the matter stands clarified by the Hon'ble Supreme Court itself.

Hence it becomes clear that; although the passenger travelling in Private Passenger Car/Pillion rider on a Motorcycle is covered under the scope of the Compulsory Insurance Policy, being included in **clause(i)** of Section 147(1)(b) of the New Motor Vehicles Act, yet to succeed in his claim petition against against owner of such private passenger car/motor cycle or its insurer; he shall be required to prove the Negligence of the owner/driver of such private passenger car or the motorcycle, as the case may be.

Later on in 1994, the Motor Vehicle Act, 1988 was further amended on recommendations of the Law Commission and even the owner of goods and his authorised representative travelling in goods vehicle were included in the persons required to be covered under clause(i) of Section 147(1)(b) of the Act.

Given the above said proposition there can be an illusion that all passengers in all types of vehicles, irrespective of type of vehicle, are now covered in the scope of Compulsory Insurance contemplated under Section 147(1)(b)(i) of the New Act. In fact such an interpretation had even come from the Hon'ble Supreme Court in the judgment reported in ***2000(1) RCR(Civil) 274*** titled as ***New India Assurance Company vs. Satpal Singh*** which is reproduced below:-

> *"The result is that under the New Act an insurance policy covering third party risk is not required to exclude gratuitous passengers in a*

> *vehicle, no matter that the vehicle is of any type or class. Hence the decisions rendered under the old Act vis-a-vis gratuitous passengers are of no avail while considering the liability of the insurance company in respect of any accident which occurred or would occur after the new Act came into force."*

However, this unrestricted interpretation has not found favour in the subsequent judgments of the Hon'ble Supreme Court. In subsequent judgments, the Hon'ble Supreme Court held that the scope of **clause(i)** of Section 147(1)(b) of the New Act has to be considered in view of the restrictions contained in the proviso to this Section; which has been carried forward in the New Act, as well as, by keeping in view the defences available to the Insurer under Section 149 of the New Act. Accordingly the Hon'ble Supreme Court in the judgment reported in ***2001(4)R.C.R.(Civil) 294*** titled as ***New India Assurance Co. Ltd. vs. Asha Rani(Asha Rani-I)*** has held that since the '*Goods Carriage'* vehicle is not permitted to carry any passengers under the New Act and the plea that the vehicle was being operated in violation of the definition of the '*Goods Carriage'* under the Act and was being operated for the purpose other than what was allowed under the permit for that vehicle under the provisions of the Act, is one of the defences available to the Insurer under Section 149 of the New Act, therefore, the passengers carried in '*goods carriage'* vehicle shall not be covered in requirement of the compulsory Insurance provided for under Section 147(1)(b)(i) of the Act. The relevant part of the judgment is reproduced below:-

> *"13. It is because of this deletion of clause (ii) to the proviso to Section 95 (1)(b) of the old Act has*

been interpreted in Satpal Singh (Supra) to bring liability on the insurer to pay both for the gratuitous passengers and the owner or his representative of the goods travelling in a goods carriage.

14. We feel as some of the striking features of the new Act were not brought to the notice of this Court which we are recording hereunder may have bearing to the conclusion which was arrived at in Satpal Singh (Supra), Viz., (a) Difference between the definition of Goods Vehicle under the old and Goods Carriage under the new Act. Under the old Act goods vehicles is defined under Section 2(8) and under the new Act Section 2(14) defines goods carriage. The significant difference is, under the old Act the goods vehicle could be used for the carriage of goods or in addition to passengers while in definition of goods carriage the words or in addition to passengers stand deleted. The submission is, now goods carriage cannot carry any passenger. The other striking feature is with reference to Section 149(2) of the new Act. It is submitted that the defence available to the insurer under it would be obliterated in view of the declaration of law in Satpal Singh (Supra). Under New Act, it would be a breach of condition in case vehicle is used for a purpose other than for which permit has been issued. Thus in a case a permit is issued for a goods carriage it would not include any passengers and in case they travel it would be contrary to the mandate of the statute and thus in view of Section 149(2) no liability could be passed on to the insurance company. This apart, the effect of the ***deletion of sub-clause (ii) to the proviso to Section 95(1)(b)***

in the new Act also requires reconsideration.

15. Accordingly we feel it appropriate in view of what we have recorded above, Satpal Singh (Supra) requires reconsideration by a larger Bench. Let this matter be placed before Honble the Chief Justice for constituting a larger Bench."

Hence the matter regarding effect of deletion of **Proviso (ii),** which existed in the Old Act and which was not carried forward in the New Act; was required to be referred to larger Bench. Accordingly, the matter was again taken up by the Hon'ble Supreme Court in case reported in ***2003 (1)R.C.R.(Civil)671*** titled as ***New India Assurance Co. Ltd. vs. Asha Rani (Asha Rani-II)***. However, significantly the judgment of the Hon'ble Supreme Court in ***Asha Rani-II*** case also restricted to considering the matter qua the passengers travelling in '*Goods Vehicles'* and was considering only the matter regarding the owner and the authorised representative of owner travelling in Goods Vehicle before 1994 amendment of clause(i) of Section 147(1)(b). Even this consideration was qua owner and his representative travelling in Goods Vehicle only. So only qua the passengers travelling in Goods Vehicles; before 1994 amendment; the judgment of Satpal Singh's case(supra) was under consideration and decision in ***Asha Rani-II(supra)*** case. So the Hon'ble Supreme Court in this case also held that passengers, including owner or his representative, before 1994 amendment, travelling in a goods vehicle were not covered in the scope of Section 147(1)(b)(i) of the New Act. The relevant part of this judgment is reproduced below:-

*"**8.** Under the Motor Vehicles Act of 1939 the requirements of policies and limits of liability*

had been provided in section 95. Proviso to section 95(1) of the said Act unequivocally states that the policy shall not be required in case of a goods vehicle for passengers being carried in the said vehicle. In ***Mallawwa*** *(smt.) and Others v. Oriental Insurance Co. Ltd. and Others (supra) while approving the earlier decision 170 of the Court in Pushpabai Purshottam Udeshi's case, the Court construed the provisions of section 95 (1)(b) of the Motor Vehicles Act, 1939 and held that while the expression 'any person' and the expression 'every motor vehicle' are in wide terms but by proviso (ii) it restricts the generality of the main provision by confining the requirement to cases where the vehicle is a vehicle in which passengers are carried for hire or reward or by reason of or in pursuance of a contract of employment, therefore, the vehicle had to be vehicle in which passengers are carried. The Court further held that the goods vehicle cannot be held to be a passenger vehicle even if the vehicle was found to be used on some stray occasions for carrying passengers for hire or reward. Undoubtedly Mallawwa's case (supra) was dealing with a situation under the Motor Vehicles Act, 1939 .*

9. *In Satpal's case (supra) 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 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 Amended Act of 1994 is examined, particularly section 46 of Act 6 of 1994 by which 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 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 states 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-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 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's case, therefore must be held to have not been correctly decided and the impugned Judgement 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 goods or his authorised representative on being carried in a goods vehicle when that vehicle meets with an accident and the owner of goods or his representative dies or suffers any bodily injury."

Hence it is abundantly clear that the matter of *Passengers Trvelling* in Private Passenger Car or a Pillion Rider on a Motor Cycle was not even involved or considered in ***Asha Rani-I*** or in ***Ahsa Rani-II***case.

Nor the effect of deletion of **Proviso(ii)** of old Section 95(1)(b)in the Section 147(1)(b) of the New Act, qua the Passengers Travelling in Private Passenger Car or Motor Cycle was involved or was considered by the Hon'ble Supreme Court in either of these cases.

Subsequently the Hon'ble Supreme Court in the judgment rendered in ***2006(3) RCR(Civil) 168*** titled as ***United India Insurance Co. Ltd. Shimla vs. Tilak Singh and others,*** though observed that it appeared to it that what was held in ***Asha Rani's case(supra)*** qua Goods Carriage Vehicle would be applicable to Passenger Vehicles as well. However, neither any reasoning is discernible for this proposition nor a detailed consideration. Relevant part of judgment is reproduced below:-

> *"In our view, although the observation made in Asha Rani's case (supra) were in connection with carrying passengers in a goods vehicle, the same would apply with equal force to gratuitous passengers in any other vehicle also. Thus, we must uphold the contention of the appellant-insurance company that it owed no liability toward the injuries suffered by the deceased Rajinder Singh who was a pillion rider, as the insurance policy was a statutory policy, and hence it did not cover the risk of death of or bodily injury to gratuitous passenger."*

It appears that at the time of argument of that case the definitions of '*Motor Car*', *'Motor Cycle'* and the '*Goods Carriage'* and the defences available to insurance company in case of use of Motor Car and Motor Cycle as provided under the New Act, were not brought to the specific notice of the Hon'ble Supreme Court. In the New Act the definition of '*Goods Carriage*' has been changed from that as was given under the Old

Act and whereas now the '*Goods Carriage'* is not authorised to carry any passengers, gratuitous or paid ones, the private passenger car is fully entitled to carry passengers and is registered as passenger carrying vehicle with the registered carrying capacity of the private gratuitous passengers.

This dichotomy of the definition of the '*Goods Carriage'* on one hand and '*Motor Car*'/'*Motor Cycle'* on the other, makes the entire differences. The definitions of these terms as given in the New Act are reproduced below:-

Section(2)

14. "***Goods Carriage*** *means any motor vehicle constructed or adapted for use solely for the carriage of goods, or any motor vehicle not so constructed or adapted when used for the carriage of goods;*

26. ***Motor Car*** *means any motor vehicle other than a transport vehicle, omnibus, road-roller, tractor, motor cycle or invalid carriage;*

27. ***Motor Cycle*** *means a two-wheeled motor vehicle, inclusive of any detachable side-car having an extra wheel, attached to the motor vehicle;*

29. ***omnibus*** *means any motor vehicle constructed or adapted to carry more than six persons excluding the driver;*

47. ***transport vehicle*** *means a public service vehicle, a goods carriage, an educational institution bus or a private service vehicle;*"

So as per these definitions, while carrying, illegally, the passengers in the '*Goods Carriage'* would be a defence available to the Insurer under Section 149 of the Act, carrying passengers in Private Motor

car, in accordance with the provisions of the Act is no defence available to the Insurer. Entire basis of excluding the passengers in '*Goods Carriage'* from the scope of compulsory Insurance in ***Asha Rani's cases(supra)*** has been the definition of '*Goods Carriage'* as given in the New Act. Whether the same can be said about definition of the Private Motor Car or of the Motorcycle was not raised and argued before and therefore, was not explored by the Hon'ble Supreme Court either in ***Tilak Singh's case(supra)*** or in any subsequent judgment, which are following only ***Tilak Singh's case(supra)*** like the judgments rendered in case of ***Bhagyalakshmi vs. United Insurance Co. Ltd; (2009) 7 SCC 148*** or ***Oriental Insurance Co. Ltd. vs. Sudhakaran K.G., 2008 ACJ 2045(SC).*** In the case of ***Oriental Insurance Co. Ltd. vs. Jhuma Saha, 2007 ACJ 818(SC)*** owner himself was the negligent and his dependents as claimants. So this judgment is not having any bearing on the point as considered in the present case. Similarly, even the controversy involved in the case of ***National Insurance Co.Ltd. vs. Laxmi Narain Dhut, 2007 ACJ 721(SC)*** was not as is involved in the present case**.** Keeping in view the definition of *'Motor Car' and* '*Motor Cycle'* on one hand and that of '*Goods Carriage'* on the other hand, as given in the New Act, it is highly doubtful that these can be kept in the same category and can be treated at par qua the legality of their entitlement to carry the passengers thereon.

Even the defences made available under Section 149 of the New Act create strikingly different provisions for the '*goods carriage'* on one hand and the private passenger vehicles and the Motor Cycle on the other hand. In case of '*Goods Carriage' i*f passengers are carried in it then the Hon'ble Supreme Court has held in ***Asha Rani-I case(supra)*** that such a

situation shall be covered by sub-Section(2)(a)(i)(c) of Section 149 i.e. the insurance company can take a defence that vehicle was being plied for a purpose for which it was not granted any permit. But for carrying passengers in a private passenger car or pillion rider on motor cycle no separate permit is required; nor carrying passengers in private car or pillion rider on motor cycle is prohibited by any provision of Motor Vehicle Act. Rather under the provisions of the Act the private passenger car is meant to be a vehicle for carrying passengers upto 6 persons besides its driver. Therefore, only defence available to Insurance Company in case of private passenger car would be under Sub-Section(2)(a)(1)(a) of Section 149 of the Act; if the passengers are carried in it for hire or reward without getting permit to ply such a vehicle for carrying passenger for hire or reward; Hence if the passengers are carried in private passenger car without charging anything, i.e. as gratuitous passengers then the insurance company can not take any defence that private passenger car was carrying passengers in it; because by carrying passengers in it the private passenger car is not voilating any provision of Motor Vehicles Act. Rather the Motor Car/Private Passenger Car has been given a residual definition under the Act as **other than** *Omnibus* and *transport vehicles* etc. which are meant to carry specific number of passengers or for carrying passengers for hire or reward. So the Private Passenger Car is meant only to carry passengers without hire or reward. Similar is the situation qua the defense available to the Insurance Company in case of use of Motor Cycle. The Motor Cycle has been given an '*inclusive'* definition under the Act to include any '*Side Car'*. The defense available to Insurance Company in case of use of Motor Cycle is given in sub-Section(2)(a)(i)(d) of Section 149 of the Act. Under this

provision it is not any defence available to the Insurance Company that a person was a pillion rider on a Motor Cycle. Nor can this be any defence because Motor Cycle is not prohibited from carrying one pillion rider under any provision of the Act. The only defence available in case of Motor Cycle is that if the Motor Cycle in question was registered as Motor Cycle with side car attached to it; then if the same is plied without a side car being attached to it then the Insurance Company can take a defence that the use of the said Motor Cycle without the side car being attached to it was excluded. But as is seen above all Motor Cycles are not required to have a side car attached to it. So this defense have a very limited application.

In view of the above said striking difference between the statutory definitions and defences available to Insurance Company regarding the '*Goods Carriage'* on one hand and the Private Passenger Car/Motor Cycle on the other hand, this Court finds itself totally unable not to follow the statutory provisions and not to recognise the said statutory difference. Hence it has to be held that the passenger travelling in private passenger car and a pillion rider on a Motor Cycle are entitled to raise a claim against the owner/insurer for the injury sustained while travelling in such car or as a pillion rider on such Motor Vehicle. However, to sustain their claim as third party such passenger in private passenger car or such pillion rider shall have to plead and prove that the owner/driver of such private passenger car or the Motor Cycle has been negligent in driving the said car or the motor cycle at the time of accident. So the question culled out in the beginning of this discussion is answered accordingly.

Act Policy and Comprehensive Policy

The provisions of Motor Vehicle Act, 1988 make a positive

provision of compulsory insurance of a motor vehicle before bringing it on the road. Still further the Act makes a compulsory provision for covering of all claims qua third party in case of damages arising from an accident involving such an insured vehicle. Hence the attempt of the insurance companies to avoid statutory liability by creating artificial distinction of *Comprehensive/Package policy* and the alleged '*Act only policy'* does not stand legal scrutiny under the provisions of the New Act. Needless to say that qua the claim for damages to third party liability; every policy has to be taken as '*Act Policy'* only, since it is mandatory to be issued by the Insurance Company and it is mandatory to be obtained by the owner of the vehicle under the provisions of the Motor Vehicle Act. In that sense every policy, qua third party, can be said to be and has to be only an '*Act Policy'*. Under the provisions of the Old Act since the vehicles other than the vehicles for carrying passengers for hire or reward(i.e. private passenger car/motor cycle) were excluded from the Compulsory Insurance. So the Insurance *Companies* were very much right in creating category of '*Act Policy'* and *'Comprehensive Policy';* where separate premium was charged for covering the unpaid or gratuitous passengers in private passenger car and pillion rider on a motor cycle. But since under the provisions of the New Act, as discussed above, due to not carrying forward the **Proviso (ii)** of Section 95 (1)(b)(i) of Old Act in Section 147(1)(b)(i) of the New Act, even the unpaid passengers in private passenger car and a pillion rider on a Motor Cycle are also covered within the scope of *Compulsory Insurance* required by Section 147(1)(b)(i) of the Act, therefore, to cover such unpaid passengers and pillion rider, no separate premium is required to be paid and hence no distinction can be made on the basis of description of policy as

'Comprehensive Policy/Package Policy' or '*Act only policy'*. May be, the insurance company can created another class of policy called as '*Comprehensive*' or '*Package Policy*' for covering some extra risk like qua the driver, conductor or employee of the owner, which are still excluded from Compulsory Insurance by virtue of Proviso(i) of Section 147(1)(b), by charging some extra premium. But that classification created by the insurance company can not be made a ground by it for avoiding liability arising from an insured vehicle, qua the damages to the third party, including passengers in private passenger car/pillion rider on a Motor Cycle. Needless to say that insurance company can charge only a single consolidated premium for covering all risks qua third party, since it is compulsory and consolidated insurance for covering all third party claims under the provisions of the Motor Vehicles Act. Insurance company is not entitled and authorised to create differential policies even for third party claim cover, by categorizing the separate amounts of premium to be charged from the insured. Once the third party insurance is compulsory, it is compulsory for all purposes and for all persons falling in definition of *third party*. Hence the distinction of '*Act only Policy'* and '*Package Policy'* do not hold good; qua covering the claim for the damage caused to third party, which include the passengers in a private passenger car and a pillion rider on a Motor Cycle.

Concept of Gratuitous Passengers:-

As seen and held above, under the Old Act the vehicles carrying unpaid/Gratuitous Passengers i.e., (except the vehicles where the passengers were carried for hire or reward) were not required to compulsorily covered under Section 95(1)(b)(i) of the Old Act due to the

Proviso(ii) to the Section. But with not carrying forward this exception/proviso in the Section 147(1)(b)(i) of the New Act; even the unpaid/Gratuitous Passengers in private passenger cars/pillion rider on motor cycle are required to be compulsorily covered under Compulsory Insurance. The passengers carried for hire or reward in public service vehicles has always been covered under the Compulsory Insurance qua *third party*. Therefore, under the *New Act,* so far as the passenger vehicles are concerned, the concept of exclusion of Gratuitous Passengers and thus the distinction between Gratuitous and Non-Gratuitous passengers do not survive anymore. Rather, conversely, the claim of paid/non-Gratuitous Passengers in private passenger car is excluded due to this being a defense available to Insurance Company under the Section 149 of the New Act. Even in case of *Goods Carriage'* the concept of *Gratuitous Passengers* does not survive anymore. In their case also it is carrying the passengers, *per se,* whether Gratuitous or paid, which is not permissible. Hence the distinction of Gratuitous Passenger is no more any plea in case of Goods Carriage as well. Hence it is fallacious to fall back on concept of Gratuitous Passengers and upon the distinction between the Gratuitous and Non-Gratuitous Passenger, after coming into force of the New Act. The concept of '*Gratuitous Passengers'* does not survive under the New Motor Vehicle Act.

Circulars of IRDA and IMT Advisory Committee

Since under the Old Act, as seen and held above the passengers in private passenger car/pillion rider were not required to be necessarily covered under Compulsory Insurance, therefore, the then existing dispensation of IMT Advisory Committee prescribed the '*Comprehensive*

Policy' to cover all persons in all vehicles by charging some extra premium. This step of the IMT Advisory Committee was only as a Welfare Measure to cover even those persons who, othewise, might have been excluded from the benefit of compensation. After the advent of the New Act the IMT Advisory Committee was replaced by IRDA. Since even in the claim petitions which arose when the Old Act was in force, the Insurance Companies had started raising plea of Gratuitous Passengers even in those case where the policy purchased by the Insured was a '*Comprehensive Policy',* therefore, the IRDA had to issue clarifications vide its circulars dated 16.11.2009 and dated 03.12.2009, wherein by giving reference of earlier circulars dated 18.09.1978 and dated 02.06.1986(of the time when New Act had not come) it was clarified that, in any case, the *Comprehensive or Package Policy* would cover all the persons in all the vehicles, including the passengers in the private passenger car and the pillion rider. These circulars nowhere prescribed that under the provisions of the New Act there can be a separate '*Act Policy'* or that under the New Act the passengers in private passengers vehicles or the Pillion rider shall not be covered under the '*Act Policy'*. These circulars only advised the Insurance Companies not to make attempts to avoid liability even in those cases where, admittedly, the policy was a *Comprehensive or Package Policy.* The circulars are reproduced herein below:-

> ***"IRDA***
> ***Ref: IRDA/NL/CIR/F&U/073/11/2009***
> ***16.11.2009***
> *To*
>
> *CEOs of all general insurance companies*

Re: *Liability of insurance companies in respect of occupants of a Private car and pillion rider on a two-wheeler under Standard Motor Package Policy (also called Comprehensive Policy).*

Insurers' attention is drawn to wordings of Section (II) 1 (ii) of Standard Motor Package Policy (also called Comprehensive Policy) for private car and two-wheeler under the (erstwhile) India Motor Tariff. For convenience the relevant provisions are reproduced hereunder:-

'Section II - Liability to Third Parties

1. Subject to the limits of liabilities as laid down in the Schedule hereto the company will indemnify the insured in the event of an accident caused by or arising out of the use of the insured vehicle against all sums which the insured shall become legally liable to pay in respect of -

(i) death or bodily injury to any person including occupants carried in the vehicle (provided such occupants are not carried for hire or reward) but except so far as it is necessary to meet the requirements of Motor Vehicles Act, the Company shall not be liable where such death or injury arises out of and in the course of employment of such person by the insured.'

It is further brought to the attention of insurers that the above provisions are in line with the following circulars earlier issued by the TAC on the subject:

(i) Circular M.V. No. l of 1978 - dated 18th March, 1978 (regarding occupants carried in Private Car) effective from 25th March, 1977.
(ii) MOT/GEN/10 dated 2nd June, 1986 (regarding pillion riders in a two-wheeler) effective from the date of the circular.

The above circulars make it clear that the insured liability in respect of occupant(s) carried in a private car and pillion rider carried on two-wheeler is covered under the Standard Motor Package Policy. A copy each of the above circulars is enclosed for ready reference.

The Authority vide circular No. 066/IRDA/F&U/Mar-08 dated March 26, 2008 issued under File & Use Guidelines has reiterated that pending further orders the insurers shall not vary the coverage, terms and conditions wording, warranties, clauses and endorsements in respect of covers that were under the erstwhile tariffs. Further the Authority, vide circular No. 019/IRDA/NL/F&U/Oct-08 dated November 6, 2008 has mandated that insurers are not permitted to abridge the scope of standard covers available under the erstwhile tariffs beyond the options permitted in the erstwhile tariffs. All general insurers are advised to adhere to the afore-mentioned circulars and any non- compliance of the same would be viewed seriously by the Authority.
This is issued with the approval of competent authority.

Sd/-

(Prabodh Chander)

Executive Director"
[emphasis supplied]"

IRDA/NL/CIR/F&U/078/12/2009
3.12.2009.

To

All CEOs of All general insurance companies (except ECGC, AIC, Staff Health, Apollo)

Re: *Liability of insurance companies in respect of occupant of a private car and pillion rider in a two-wheeler under Standard Motor Package Policy (also called Comprehensive Policy).*

Pursuant to the Order of the Delhi High Court dated 23.11.2009 in MAC APP No. 176/2009 in the case of Yashpal Luthra v. United India and Ors., the Authority convened a meeting on November 26, 2009 of the CEOs of all the general insurance companies doing motor insurance business in the presence of the counsel appearing on behalf of the Authority and the leaned amicus curie.

Based on the unanimous decision taken in the meeting by the representatives of the general insurance companies to comply with the IRDA circular dated 16th November, 2009 restating the position relating to the liability of all the general insurance companies doing motor insurance business in respect of the occupants in a private car and pillion rider on a two wheeler <u>under the comprehensive/package policies</u> which was

communicated to the court on the same day i.e. November 26, 2009 and the court was pleased to pass the order (dt. 26.11.2009) received from the Court Master, Delhi High Court, is enclosed for your ready reference and adherence. In terms of the said order and the admitted liability of all the general insurance companies doing motor insurance business in respect of the occupants in a private car and pillion rider on a two-wheeler under the comprehensive/package policies, you are advised to confirm to the Authority, strict compliance of the circular dated 16th November, 2009 and orders dt. 26.11.2009 of the High Court. Such compliance on your part would also involve:

i) withdrawing the plea against such a contest wherever taken in the cases pending before the MACT, and issue appropriate instructions to their respective lawyers and the operating officers within 7 days;

ii) with respect to all appeals pending before the High Courts on this point, issuing instructions within 7 days to the respective operating officers and the counsel to withdraw the contest on this ground which would require identification of the number of appeals pending before the High Courts (whether filed by the claimants or the insurers) on this issue within a period of 2 weeks and the contest on this ground being withdrawn within a period of four weeks thereafter;

iii) With respect to the appeals pending before the Hon'ble Apex Court, informing, within a

period of 7 days, their respective advocates on record about the IRDA Circulars, for appropriate advice and action. Your attention is also drawn to the discussions in the CEOs meeting on 26.11.2009, when it was reiterated that insurers must take immediate steps to collect statistics about accident claims on the above subject through a central point of reference decided by them as the same has to be communicated in due course to the Honorable High Court. You are therefore advised to take up the exercise of collecting and collating the information within a period of two months to ensure necessary & effective compliance of the order of the Court. The information may be centralized with the Secretariat of the General Insurance Council and also furnished to us.

IRDA requires a written confirmation from you on the action taken by you in this regard.

This has the approval of the Competent Authority.

Sd/-
(Prabodh Chander)
Executive Director"
[emphasis added]"

Otherwise also under the provisions of the New Act the IRDA has no authority to create categories of policies even to cover the *third party* risk. The counsel for the Insurance Company had specifically sought time on 30.10.2017 to bring to the notice of this Court any provision, if any, contained in Motor Vehicle Act, 1988 or in the IRDA Act which might have authorised the IRDA to create category of '*Act Policy*' or '*Package Policy*'

by prescribing differential premiums to cover even the risk qua those persons which are necessarily required to be covered in Compulsory Insurance Policy under Section 147(1)(b)(i) of the New Act. However, the counsel has admitted today that there is no such provision either under the Motor Vehicle Act, 1988 or under IRDA Act. No doubt as a regulatory authority to regulate and develop the Insurance business the IRDA has every power to decide the premium to be charged by insurance companies, including the premium for third party risk cover. However, the premium to be prescribed for third party risk has to be only a consolidated and single amount. IRDA does not have any authority to prescribe extra and separate amount even to cover the third party risk because that would tantamount to violation and dilution of the scope of compulsory Insurance prescribed under Section 147(1)(b)(i); qua third party by taking such an insurance in the realm of optional insurance. IRDA can not issue any direction which makes the prescribed Compulsory Insurance an optional Insurance by giving option to the owner whether to purchase it or not by paying extra premium.

In view of the above, it is held that the Insurance Company shall be liable to pay the amount of compensation in the present case. The recovery right granted by the Tribunal to the Insurance Company are set aside. The judgments relied upon by the counsel for the Insurance Company are distinguishable on the facts of the present case and thus, of no help to the case of the Insurance Company. In the judgment of Delhi High Court in the case of ***Yashpal Luthra and another(supra)*** the only point for consideration was regarding '*Comprehensive Policy'* or '*Package Policy'* and the Delhi High Court held that even as per the directions of IRDA the

Insurance Company could not avoid liability in case of Comprehensive or Package Policy. The *'Act only policy'* was not even involved in that case. Same was the situation in the cases of judgment of Hon'ble Supreme Court in case of ***National Insurance Company Ltd. vs. BalaKrishnan(supra)***. Additionally, in this case even the claimant was the Managing Director of the Company and had signed the Registration Book of vehicle and, therefore, was treated as the owner of the car himself. Moreover, even the nature of the policy was not clear in that case. Same was situation in case of ***Oriental Insurance Co. Ltd. vs. Surender Nath Loomba(supra)*** where even the policy of insurance was not on record. So in both these cases, the matter was remanded to the Tribunal. The effect of deletion of Proviso (ii) of Section 95(1)(b)(i) of Old Act i.e. the same not having been carried forward in the New Act, the effect of difference of definition of '*Goods Carriage'* on one hand and Motor Car/Motor Cycle on other hand; as given under the New Act and the effect of difference of defences available to Insurance Company under Section 149 of the New Act; in case of *Goods Carriage, Motor Car and the Motor Cycle* and therefore, the requirement of '*Act Policy'* under the New Act were not specifically raised and brought to the notice of the Hon'ble Supreme Court. Hence in these cases the scope of '*Act Policy'* under the New Act was neither involved nor was considered and decided by the Hon'ble Supreme Court. The Hon'ble Supreme Court in these cases had considered and decided that, in any case, under Comprehensive Policy the passengers shall be covered as per directions of IRDA.

While arguing the cross objections, learned counsel for the claimants has submitted that the Tribunal has gone wrong in law in so far as

it has assessed the income of the deceased to be on lower side. Still further it is his submission that multiplier of 18 should have been applied as per the judgment of the Hon'ble Supreme Court rendered in the case of ***Sarla Verma vs. Delhi Transport Corporation and another, 2009 ACJ-1298***. Further it is his submission that the Tribunal has wrongly applied the deduction of 1/3rd, whereas, as per the judgment of ***Sarla verma's case (supra)*** it should have been 1/4th. It is further submission of learned counsel that no benefit of future prospects have been granted to the claimants in the present case; which is against the judgment of the Hon'ble Supreme Court rendered in the case of ***National Insurance Company Limited vs. Pranay Sethi and others 2017 ACJ 2700.*** Still further learned counsel submits that nothing has been awarded to the claimants on account of funeral expenses, loss of consortium and loss of estate. It is his submission that the claimants deserve to be compensated on all these counts.

On the other hand, Learned counsel for the Insurance Company has submitted that since any particular figure of income has not been proved by the claimants by leading the evidence, therefore, on the income assessed by the Tribunal no future prospects can be granted in terms of the judgment of ***National India Insurance Company Ltd.(supra)***. Still further is his submission that the income has rightly been assessed by the Tribunal and deduction and multiplier has also been rightly applied by the Tribunal.

Having heard learned counsel for the parties, this Court is of the considered opinion that the submissions made by learned counsel for the cross objectors/claimants deserve to be accepted. So far as the income assessed by the Tribunal is concerned, that is rightly assessed by the Tribunal, keeping in view the facts and circumstances of the case, as proved

on record by the claimants. However, the Tribunal has definitely faltered in not applying the multiplier and the deductions, as per the judgment of Hon'ble Supreme Court in the case of ***Sarla Verma's case (supra).*** Since the number of dependents in the present case is 5 therefore, the deduction of 1/4th only has to be applied and not 1/3rd. Still further the multiplier of 18 has to be applied as per the above said judgment. Not only this, the deceased, having been proved to be a self-employed person by the claimants, they are entitled to the increase of compensation on account of future prospects to the extent of 40%, as per the judgment of the Hon'ble Supreme Court in case of ***National India Insurance Company Ltd.(supra).*** The submission of learned counsel for the respondent Insurance Company that since the income taken by the Tribunal is only on notional basis, therefore, the benefit of future prospects cannot be granted to the claimants is noticed only to be rejected. This Court has already held in ***FAO No. 4695 of 2013*** titled as ***Smt. Lalita Rani and others vs. Vishwajit Singh Minhas and another decided on 22.11.2017,*** that even in case of assessment of the income by the Tribunal on the so called, notional basis, the claimants would be entitled to the benefit of the increase of compensation on account of future prospects of the deceased. It has further been held that the Tribunal never awards any compensation to the claimants either arbitrarily or gratuitously by way of obliging the claimants. Whatever income the Tribunal takes, it takes only as a proved income of the deceased as per the provisions of the Indian Evidence Act.

The relevant part of the judgment in case of Smt. Lalita Rani (supra) is reproduced hereinbelow:-

"So far as the future prospects is concerned, this

point has already been considered by the Hon'ble Supreme Court in the case of ***National Insurance Company limited(supra)*** and it has been held that the benefit of future prospects cannot be denied to a self-employed person. The Hon'ble Supreme Court has further held that in case of a person of the age of 50 to 60 years; the benefit of future prospects @ 10% of the established income is to be given. The objection of learned counsel for the respondent that the benefit of future prospect can be granted only if the income is established by the claimants by leading the documentary evidence is to be noticed only to be rejected. Although, the Hon'ble Supreme Court has used the word '*established income'* in its judgment rendered in the case of ***National Insurance Company Limited (supra)***, however, the Hon'ble Court itself has explained the meaning of '*established income'* to mean '*an income which is minus the income tax'*. Therefore, this shows that the Hon'ble Supreme Court has used the word '*established income'* only to clarify that the income of the deceased, if it exceeds the taxable limit would be taken after the deduction of the applicable taxes. Nothing more can be read in the word "*established income"* than what has already been clarified by the Hon'ble Supreme Court.

The objection of learned counsel for the respondent Insurance Company that in case the notional income is taken by the Tribunal in a case of a self-employed person, then the future prospects cannot be granted; because the income is not established by leading the documentary

evidence; is not sustainable in law. The Hon'ble Supreme Court has not used the word '*established income'* as any specified term of the jurisprudence or as a rule of law of evidence. The Hon'ble Supreme Court has used this phrase only as a linguistic expression to clarify that income to be taken by the Tribunal/Court; for the purpose of calculation of benefit of future prospects; has to be an income assessed by the Tribunal/Court minus the applicable taxes. So far as the notional income assessed by the Tribunal is concerned; that also has to be treated as the '*established income'* for the purpose of future prospects. If the notional income of the deceased exceeds taxable limits then income to be taken by the Tribunal for calculation of benefit of future prospects has to be the notional income minus the applicable taxes.

The benefit of future prospects cannot be denied on the ground that the Tribunal has assessed the income of the deceased on notional basis and that the claimants has not proved, by documentary evidence, the exact figure of that notional income. Once an income is assessed by the Tribunal for the purpose of calculation of the compensation then it cannot be said that the same income is not the established income for the purpose of grant or calculation of future prospects. The Tribunal cannot award any compensation to the claimants unless an income is proved before it as per the requirements of the Evidence Act, may be some approximation has to be done by the Tribunal on the basis of evidence. Needless to say that the Evidence Act permits the oral evidence as well.

As stated above, the Hon'ble Supreme Court has used the phrase *'Established Income*' only as a phrase of liguistic expression and not as any rule of evidence, except, as it has specifically clarified the same; as meaning the assessed income minus the tax. It is well established that the judgment of Constitutional Court is a precedent only to the extent it clearly expresses it to be so. It is never a precedence qua that what could be logically deducted from the judgment. Still further the judgment of a Court is not to be interpreted like a statute; so as to make an attempt to assign meaning to each and every word used in the judgment as part of judgment writing skills. No attempt can be made to find out the intention or to impute intention to the Court which writes a judgment; beyond what is expressly written or clarified by the Court. Anything more than that would be governed by the relevant statutory law. Hence the term '*Established Income*' or '*Income Established*' used in the judgment of the Hon'ble Supreme Court has to be read in context of the provisions of Evidence Act. Linguistically '*Established*' would mean as - something in existence for long time. In terms of law of evidence it would mean as – something proved by evidence. The Evidence Act defines the term '*proved'* in Section 3 which is reproduced herein as under:-

"Evidence" *– "Evidence" means and includes*

(1) all statements which the Court permits or requires to be made before it by witnesses, in relation to matters of fact under inquiry; such statements are called oral evidence;

(2) [8A][all document including electronic records produced for the inspection of the Court], such statements are called documentary evidence;

"Proved" *– A fact is said to be proved when, after considering the matters before it, the Court either believes it to exist, or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists.*

"Disproved"*– A fact is said to be disproved when, after considering the matters before it, the Court either believes that it does not exist, or considers its non-existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it does not exist.*

"Not proved"– *A fact is said not to be proved when it is neither proved nor disproved."*

So, it is clear from the statutory provisions that '*proved*' means a fact what a Court believes to exist on the basis of the evidence led before it. Evidence includes oral deposition as well. Needless to say that exact figure of income of a person is not always a documented fact. In our country, as per the statistics of the Reserve Bank of India, more than 90% of total transactions of money are 'cash' transactions. Still further, even the established employees/business entities resort to cash payments to manipulate tax incidence. Even the labour intensive department of Government are found to be manipulating their Muster Rolls by repeatedly changing the name of the same labourer working with them; so as to deprive the said labourer of the benefit qua regularisation of

his service in Government department under the Regularisation Policy of the State. In such a situation the poor person, who is compelled to receive the undocumented cash salary or who being self-employed is not earning enough to reach the taxable height of income, cannot be blamed for non-documentation of the exact figure of his income. In such a situation, the claimants can prove the employment or self employment of the deceased even by the oral evidence and through oral evidence can lay down a factual basis for an inference qua the particular figure of the income of the deceased. After appreciating that oral evidence, showing the attendant facts and circumstances of the case; and by taking judicial notice of some facts, the Tribunal comes to believe the particular figure of the income of the deceased, what sometimes is also called the notional figure of income of deceased. However, this figure is not a gratuitous figure arbitrarily arrived at by Court just to oblige the claimants. It is a figure proved before the Court as per the Evidence Act. After all the oral evidence is also the evidence and the presumptions and judicial notice of certain facts are also the statutory tools of evidence.

In view of the above, once the Tribunal has awarded the compensation by taking the so called notional income, it believes the income of the deceased to be existing at that level. Needless to say that as per the Act, the fact is said to be proved when the Court believes it to be existing and if the Tribunal is granting compensation on the basis of the said notional income, it cannot be said that the Tribunal does

> not believe the same to be existing. Hence, even the income of the deceased assessed by the Tribunal on so called notional basis has to be treated as the established income for grant and calculation of benefit of future prospects. If the respondent insurance company desired the Tribunal not to believe the existence of income, as taken by the Tribunal, then it could have '*disapproved'* the factum by leading the evidence, as required under the Act or it would have been within its right to bring the factum of the income within the term '*not proved'* as defined under Section 3 of the Evidence Act; by leading some evidence or by discrediting the evidence of the claimants."

Therefore, any income assessed by the Tribunal shall be the established income for the purpose of grant of future prospects in terms of the judgment of the ***National India Insurance Company Ltd.(supra).*** Hence, in the present case, the claimant shall be entitled to enhancement of compensation to the extent of 40% of income on account of future prospects as well.

In view of the above, while keeping the income assessed at ₹4000/- per month, as was assessed by the Tribunal; 1/4th should be deducted towards personal expenses. Accordingly, the loss of dependency of dependency to the claimants is assessed at ₹4,000 - 1000(4000 x ¼) = ₹ 3000/- per month. Annually, the same would come to ₹3000 x 12 = ₹36000/-. On this amount the claimant shall be entitled to 40% increase on account of future prospects. Hence the loss of dependency comes to ₹36000 + 14400(36000 x 40%) = ₹50,400/- per annum. Multiplier of 18 is held to

be applicable in the case. So the total loss of dependency to the claimant comes to ₹50,400 x 18 = ₹9,07,200/-. Beside this the claimants are also entitled to the benefit of compensation on account of Loss of Consortium to the extent of ₹40,000/-, Loss of Estate to the extent of ₹ 15,000/-, funeral expenses of ₹15000/- as per the judgment in case of ***National India Insurance Company Ltd.(supra).***

As a result thereof, the claimants are held entitled to the compensation as follows:-

Sr. No.	*Heads*	*Amount(₹)*
1	**Loss of Dependency**	**9,07,200/-**
2	**Loss of Estate**	**15,000/-**
3	**Loss of Consortium**	**40,000/-**
4	**Funeral Expenses**	**15,000/-**
	Total	**9,77,200/-**

However, the interest on these amounts is retained at the same rate as was awarded by the Tribunal.

No other argument was raised by learned counsel for the parties.

In view of the above, the appeal filed by the owner and driver is allowed. The recovery rights granted to the Insurance Company are set aside. The cross objections filed by the claimants are also allowed. The findings and the award passed by the Tribunal is modified to the above said extent.

27th November, 2017 **[RAJBIR SEHRAWAT]**
Shivani Kaushik **JUDGE**

Whether speaking/reasoned Yes/No

Whether Reportable Yes/No