2025 INSC 1301

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 013509 OF 2025
(Arising out of SLP (C) No. 8434/2023)

AKULA NARAYANA **...APPELLANT (S)**

VERSUS

THE ORIENTAL INSURANCE COMPANY LIMITED & ANR.

...RESPONDENT (S)

J U D G M E N T

MANOJ MISRA, J.

1. Leave granted.

2. This is Claimant's appeal against the judgment and order of the High Court for the State of Telangana at Hyderabad[1] dated 08.06.2022 whereby the High Court allowed the appeal of the first-respondent (i.e., the Insurer) and set aside the award passed by the Motor Accidents Tribunal[2] to the extent it made the insurer liable along with the owner of the vehicle to pay compensation to the appellant.

[1] The High Court
[2] The Tribunal

3. There is no dispute *inter se* parties regarding liability of the second respondent (i.e., owner of the vehicle with which accident was caused). There is also no dispute that the vehicle was insured with the first respondent. The only dispute is whether the insurer should have been absolved totally from its liability to pay the compensation or that the insurer should have been directed to pay and recover the same from the vehicle owner.

4. The Tribunal *vide* its award dated 29.04.2021 held first and second respondent (i.e., insurer and owner, respectively) jointly and severally liable for the compensation payable to the claimant. Tribunal's conclusion in that behalf rests on the statement of administrative manager of the insurer, made during cross-examination, that insurer had collected additional premium for carrying conductor and cleaner. Based on that, the Tribunal concluded that since the owner had paid additional premium, the deceased, a passenger in the vehicle, would be a third party in terms of the policy.

5. The High Court on an appeal by the insurer held that though the insurer might have collected additional

premium for driver, conductor and cleaner, the policy would not cover the risk of any other person or passenger. Besides that, the vehicle being a five-seater was carrying nine persons, therefore, there was a clear breach of the terms and conditions of the policy and as such the insurer cannot be held liable.

6. Aggrieved by the order of the High Court, the claimant is before us because it finds it difficult to recover the compensation from the vehicle owner.

7. We have heard learned counsel for the parties.

8. The learned counsel for the appellant submitted that it is a clear case where additional premium was collected by the insurer for covering the risk of driver, conductor and cleaner. The claim was in respect of death of one person and therefore, even though the policy may not cover the risk of passengers, it covered the risk of at least three persons which may or may not be passengers. In support of its submission, the learned counsel for the appellant has placed reliance on a decision of this Court in ***Mata Ram versus National Insurance Company***

Limited & Another[3]. In the alternative, the learned counsel for the appellant submitted that since the insurer had taken additional premium to cover risk of three persons who travel in the vehicle, even if there has been a violation of the policy conditions, the insurer cannot be relieved of its liability to make good the compensation though it may recover the same from the owner in light of the pay and recover principle recognized by this Court in ***National Insurance Company Limited versus Swaran Singh***[4] and ***Shamanna & Anr. versus Divisional Manager, Oriental Insurance Company Limited & Others***[5].

9. Per contra, learned counsel for the insurer submitted that the policy in question was a statutory policy; a gratuitous passenger, other than driver, conductor and cleaner, is not a third party and, therefore, the insurer would not be liable. In addition, the vehicle was a five-seater vehicle, admittedly carrying nine passengers, there was thus breach of condition of insurance. As such the insurer cannot be held liable. Hence, no

[3] (2018) 18 SCC 289
[4] (2004) 3 SCC 297
[5] (2018) 9 SCC 650

interference with the judgment of the High Court is called for.

10. We have considered the rival submissions and have perused the materials on record including the decisions cited before us.

11. At the outset, we may observe that there is no appeal by the insured against High Court's order holding him not entitled to the benefit of insurance. In such circumstances, we have only to consider whether the High Court should have completely absolved the insurer of its liability or ought to have directed the insurer to pay with liberty to recover the same from the vehicle owner.

12. Where the contract of insurance is not disputed, even on breach of insurance conditions, this Court had allowed recovery of compensation from the insurer by giving right to the insurer to recover the same from the vehicle owner[6]. The pay and recover principle has been consistently followed even though it was doubted in a reference which remained unanswered. Taking a conspectus of various pronouncements, this Court

[6] See decisions cited in Footnote 4 and 5.

recently in **Rama Bai v. Amit Minerals**[7] again applied the said principle and while allowing the appeal of the claimant directed that the insurance company shall satisfy the award and may recover from the insured. Following the aforesaid decisions, we deem it appropriate to allow the appeal by directing that the first respondent (i.e., the insurer) shall satisfy the award, though, however, it can recover the amount so paid from the insured (i.e., owner of the vehicle).

13. The appeal stands allowed to the aforesaid extent.

14. Pending application(s) if any, shall stand disposed of.

.....**J.**
(Sanjay Karol)

.....**J.**
(Manoj Misra)

New Delhi;
November 10, 2025

[7] 2025 SCC OnLine SC 2067