

**AFR**

**IN THE HIGH COURT OF ORISSA, CUTTACK**

**W.P.(C) No.14495 of 2006**

Orissa State Civil Supplies Corp.  
Ltd., Khurda ..... Petitioner

-Versus-

Soni Husen & ors. .... Opposite Parties

**For Petitioners : Mr. A.K. Mishra,  
Advocate**

**For Opposite Parties :**

**CORAM: JUSTICE SANJAY KUMAR MISHRA**

**Date of Hearing and Judgment: 11.01.2024**

**S.K. MISHRA, J.**

1. The present Writ Petition has been preferred seeking modification/setting aside of the judgment dated 28.01.2005 passed by the learned District Judge-cum-M.A.C.T, Phulbani as at Annexure-1, vide which the Opposite Party No.3-Insurance Company (Opposite Party No.2 before the Court below) was directed to pay the compensation of Rs.2,000/- each to Opposite Party Nos.1 & 2 (Petitioner before the Court

below) within two months and reimburse the same from the Petitioner (Opposite Party No.1 before the Court below).

2. Mr. Mishra, learned Counsel for the Petitioner submits, vide the impugned judgment dated 28.01.2005, the court below, though ordered that the Insurance Company (present O.P. No.3) shall pay the compensation, but illegally it was observed that the same shall be reimbursed from the present Petitioner, who was Opposite Party No.1 before the court below.

3. Paragraph Nos. 7 & 8 of the impugned judgment, being germane to the present lis, are extracted below for ready reference:-

7. In absence of any injury report, it is to be presumed that both the injured persons have sustained some simple injuries and as such each of the petitioners are entitled to get Rs.2000/- as compensation. From the seizure list Ext-3, it appears that the insurance policy of the vehicle was seized and the same was valid till 14.4.2001. **So at the time of accident, the vehicle had valid insurance policy. Moreover, the learned Counsel for O.P. No.2 has filed a copy of the insurance policy. As such I am of the opinion that the offending vehicle had valid insurance policy at the time of accident.**

8. It is contended by the learned Counsel for the O.P. No.2 that the injured persons were travelling in the offending vehicle **in violation of the conditions of the policy and as such, the Opp. Party No.2 is not liable to pay the compensation.** No doubt, the injured persons were travelling as gratuitous passengers in the offending vehicle. **As the offending vehicle is a goods carrier, it was not permitted to carry any passenger. So the O.P. No.1**

**owner of the offending vehicle is liable to pay the compensation. Since the offending vehicle had valid insurance policy, the Opp. Party No.2 is liable to pay the compensation and reimburse the same from the Opp. Party No.1. Both the issues are answered accordingly. Hence ordered.**

**(Emphasis Supplied)**

4. Law is well settled that if the offending vehicle is having valid license as on the date of accident, but the Insurance Company denies to pay the compensation on the ground of violation of the policy conditions, still the Insurance Company is liable to pay the compensation to the claimants at the first instance with a right of recovery of the said amount from the owner of the vehicle.

5. In *Anu Bhanvara Etc. Vs. Iffco Tokio General Insurance Company Limited*, reported in AIR 2019 SC 3934, the apex Court held as follows:

“9. The next question is as to which of the respondents, that is the owner and driver, or the insurer of the vehicle, would be liable for payment of such compensation. As regard the liability for payment of compensation, it has been contended by the learned counsel for the appellants that since the vehicle was admittedly insured with the respondent no.1 insurance company, the principle of pay and recover would be invoked even in case of a gratuitous passenger in a goods vehicle. The insurance company should thus be made liable for the payment of compensation to the appellants and in turn they would have the right to realise/recover the same from the owner and driver of the vehicle. In

support of his submission, learned counsel for the appellants has relied on the following decisions of this Court, namely, *Manuara Khatoon v. Rajesh Kumar Singh* (2017) 4 SCC 796, *Puttappa v. Rama Naik* Civil Appeal No.4397 of 2016, disposed of on 2nd April, 2018); *Manager, National Insurance Co. Ltd. v. Saju P. Paul* (2013) 2 SCC 41; *New India Assurance Co. Ltd. v. Vimal Devi* (Civil Appeal Nos.15781579 of 2004, disposed of on 5th October, 2010); *National Insurance Co.Ltd. v. Challs Upendra Rao* (2004) 8 SCC 517; *New India Assurance Co. Ltd. v. C. M. Jaya* (2002) 2 SCC 278; *Amrit Lal Sood v. Kaushalya Devi Thapar* (1998) 3 SCC 744.

10. Per contra, learned counsel for the respondent insurance company has contended that since the claimants were gratuitous passengers in a goods vehicle, in which case the liability for payment of compensation for death or body injury to the passengers of such goods vehicle would not be covered, hence the principle of pay and recover would not apply. It has thus been contended that the order of the High Court is perfectly justified in law and calls for no interference by this Court. In support of her submission, learned counsel has relied on following decisions, namely, *New India Assurance Co. Ltd. v. Asha Rani* (2003) 2 SCC 223; *National Insurance Co. Ltd. v. Baljit Kaur* (2004) 2 SCC 1; *National Insurance Co. Ltd. v. Kaushalya Devi* (2008) 8 SCC 246; *National Insurance Co. Ltd. v. Rattani* (2009) 2 SCC 75; *National Insurance Co. Ltd. v. Prema Devi* (2008) 5 SCC 403; *Bharat AXA General Insurance Co. Ltd. v. Adani MANU/TN/6503/2018*; *Bajaj Allianz General Insurance Co. Ltd. v. Lal Singh* (2015) SCC Online Del 7508.

11. We have heard learned counsel for the parties and perused the record as well as the various decisions cited by learned counsel for the parties. **The insurance of the vehicle, though as a goods vehicle, is not disputed by the parties.** The claimants in the present case are young children who have suffered permanent disability

on account of the injuries sustained in the accident. Thus, keeping in view the peculiar facts and circumstances of this case, we are of the considered view that the principle of “pay and recover” should be directed to be invoked in the present case.

12. Accordingly, these appeals are disposed of with the direction that the respondent no.1 – insurance company shall be liable to pay the awarded compensation to the claimants in both the appeals. However, respondent no.1 – insurance company shall have the right to realize the said amount of compensation from the respondents no. 2 and 3 (driver and owner of the vehicle) in accordance with law.”

(Emphasis supplied)

6. In a recent decision, in *National Insurance Company Ltd. Jodumarga Vs. Netty D 'Souza*, reported in AIR ONLINE 2022 KAR 502, referring to the Decisions of the Hon'ble Supreme Court in *Shamanna and another Vs. Divisional Manager Oriental Insurance Co. Ltd. and others*, reported in AIR 2018 SC 3726 and *Pappu and Others Vs. Vinod Kumar Lamba and Another*, reported in AIR 2018 SC 592, the Karnataka Court held as follows:

“8. The decisions of the Hon'ble Supreme Court in Shamanna and another Vs. Divisional Manager Oriental Insurance Co. Ltd., and others reported in AIR 2018 SC 3726 and Pappu and Others Vs. Vinod Kumar Lamba and Another reported in AIR 2018 SC 592 are on the point. **The Hon'ble Supreme Court in the said decisions has clearly held that in the cases where the victim is a third party and there is violation of the policy condition without**

involving fraud or misrepresentation on the Insurance Company in taking out policy of insurance, the Insurance Company cannot totally absolve itself from the liability to pay the compensation, but in the first instance it has to pay the compensation awarded and subsequently recover the same from the owner insured in the same proceedings. On consideration of these two decisions and several other decisions, on the subject, the Full Bench of this Court in New India Assurance Company Limited, Bijapur by its Divisional Manager Vs. Yallavva and Another reported in ILR 2020 KAR 2239 : (2020 (2) AKR 484 (FB), has reiterated the same. In that view of the matter, there is no merit in this appeal and it is liable to be dismissed.”

(Emphasis supplied)

7. Similarly in *Sulakha Pandit v. National Insurance Company Ltd.*, reported in AIR ONLINE 2023 CAL 1383, the Calcutta High Court held as follows:

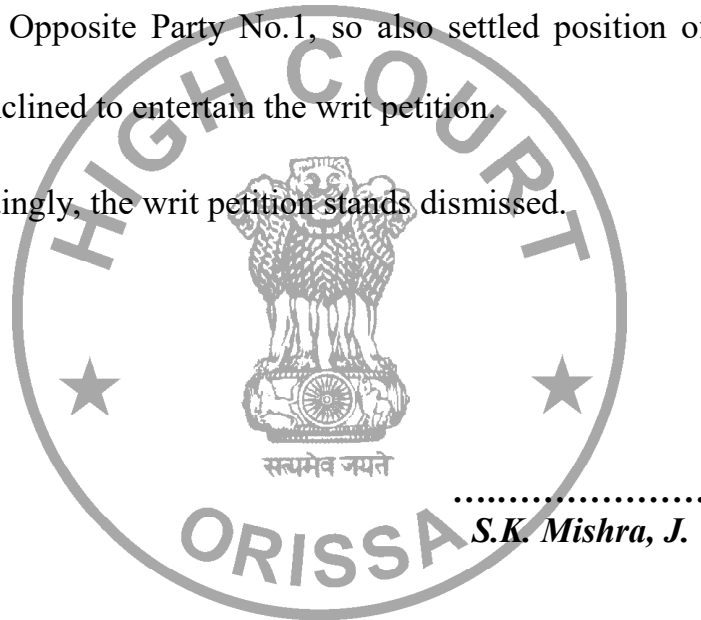
“9. Having heard the submission and on perusal of the record and judgments as referred by the appellants, **this Court finds there is no dispute regarding the findings of the learned Tribunal regarding the victim Pratap Pandit was a gratuitous passenger of an offending vehicle i.e. pickup van on the date of accident.** Accordingly, the condition of Insurance Policy was flouted by the owner of the offending vehicle. It is true that when the insurance policy was violated by the owner of the offending vehicle, the Insurance Company is not liable to pay compensation. **However, the Hon'ble Supreme Court time and again on similar facts and circumstances of the present case directed the Insurance Policy to pay the compensation to the claimants at the first instance, when it is found that the insurance policy was valid on the date of accident and further given liberty**

**to recover the amount from the owner of the offending vehicle in accordance with law.** The Hon'ble Supreme Court further observed that there is no need to file a separate suit or fresh proceeding for recovery of the compensation amount awarded by the Id. Tribunal from the owner or driver of the offending vehicle.

**(Emphasis supplied)**

8. In view of the reasons assigned by the court below, as extracted above, vide which liberty was granted to the Opposite Party No.2 (Insurance-Company) to seek for reimbursement of the compensation amount from Opposite Party No.1, so also settled position of law, this court is not inclined to entertain the writ petition.

9. Accordingly, the writ petition stands dismissed.



*Orissa High Court, Cuttack.  
Dated, 11<sup>th</sup> January, 2024/ Banita*