

IN THE HIGH COURT OF KARNATAKA
KALABURAGI BENCH

DATED THIS THE 22ND DAY OF APRIL 2016

BEFORE

THE HON'BLE MRS. JUSTICE S.SUJATHA

MFA NO.31114/2012 (MV)

C/w.

MFA NOS.31111/2012, 31120/2012, 31112/2012,
31113/2012, 31115/2012, 31116/2012, 31117/2012,
31118/2012, 31119/2012 (MV)

MFA NO.31114/2012

BETWEEN:

SUJATA
D/O BASAYYA HIREMATH
AGE: 23 YEARS, OCC: H.H.WORK & TAILORING
R/O MUDDEBIHAL, TQ: MUDDEBIHAL
DIST: BIJAPUR – 586 101.

...APPELLANT

(BY SRI HARSHAVARDHAN R. MALIPATIL, ADVOCATE)

AND:

1. SHARANAPPA
S/O NAGAPPA INDI
AGE: 39 YEARS, OCC: BUSINESS,
R/O KAKKALMELI, TQ: SINDAGI
DIST: BIJAPUR – 586 101.
2. THE DIVISIONAL MANAGER,
ORIENTAL INSURANCE CO., LTD.,
N.G.COMPLEX, II FLOOR,

OPPOSITE MINI VIDHAN SOUDHA
GULBARGA – 585 101.

...RESPONDENTS

(BY SRI BASAVARAJ R. MATH, ADVOCATE FOR R1;
SRI J. AUGUSTIN, ADVOCATE FOR R2)

THIS MISCELLANEOUS FIRST APPEAL IS FILED U/S. 173(1) OF MV ACT, AGAINST THE JUDGMENT AND AWARD DATED 21.06.2011 PASSED IN MVC NO.144/2008 ON THE FILE OF THE ACCIDENT CLAIMS TRIBUNAL NO. VIII AT MUDDEBIHAL, PARTLY ALLOWING THE CLAIM PETITION AND SEEKING ENHANCEMENT OF COMPENSATION.

**

MFA NO.31111/2012

BETWEEN:

KAVITA
D/O HANAMANTARAYA KAMANAKERI
AGE: 23 YEARS, OCC: H.H.WORK & COOLIE
R/O MUDDEBIHAL, TQ: MUDDEBIHAL
DIST: BIJAPUR – 586 101.

...APPELLANT

(BY SRI. HARSHAVARDHAN R. MALIPATIL, ADVOCATE)

AND:

1. SHARANAPPA
S/O NAGAPPA INDI
AGE: 39 YEARS, OCC: BUSINESS,
R/O KAKKALMELI, TQ: SINDAGI
DIST: BIJAPUR – 586 101.
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MFA NO.31120/2012

BETWEEN:

SEETADEVI
D/O SHIVAGONDAPPA KAMANAKERI
AGE: 22 YEARS, OCC: H.H.WORK & TAILORING
R/O MUDDEBIHAL, TQ: MUDDEBIHAL
DIST: BIJAPUR – 586 101.

...APPELLANT

(BY SRI HARSHAVARDHAN R. MALIPATIL, ADVOCATE)

AND:

1. SHARANAPPA
S/O NAGAPPA INDI
AGE: 39 YEARS, OCC: BUSINESS,
R/O KAKKALMELI, TQ: SINDAGI
DIST: BIJAPUR – 586 101.
2. THE DIVISIONAL MANAGER,
ORIENTAL INSURANCE CO., LTD.,
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OPPOSITE MINI VIDHAN SOUDHA
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...RESPONDENTS

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THIS MISCELLANEOUS FIRST APPEAL IS FILED U/S. 173(1) OF MV ACT, AGAINST THE JUDGMENT AND AWARD DATED 21.06.2011 PASSED IN MVC NO.150/2008 ON THE FILE OF THE ACCIDENT CLAIMS TRIBUNAL NO. VIII AT MUDDEBIHAL, PARTLY ALLOWING THE CLAIM PETITION AND SEEKING ENHANCEMENT OF COMPENSATION.

MFA NO.31112/2012

BETWEEN:

JAYASHREE
D/O YAMANAYYA ALMATTI
AGE: 30 YEARS, OCC: H.H.WORK & COOLIE
R/O MUDDEBIHAL, TQ: MUDDEBIHAL
DIST: BIJAPUR – 586 101.

...APPELLANT

(BY SRI HARSHAVARDHAN R. MALIPATIL, ADVOCATE)

AND:

1. SHARANAPPA
S/O NAGAPPA INDI
AGE: 39 YEARS, OCC: BUSINESS,
R/O KAKKALMELI, TQ: SINDAGI
DIST: BIJAPUR – 586 101.
2. THE DIVISIONAL MANAGER,
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...RESPONDENTS

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CLAIMS TRIBUNAL NO. VIII AT MUDDEBIHAL, PARTLY ALLOWING THE CLAIM PETITION AND SEEKING ENHANCEMENT OF COMPENSATION.

MFA NO.31113/2012

BETWEEN:

SHREEDHAR
S/O SHARANAYYA HIREMATH @ MATH
AGE: 12 YEARS, OCC: STUDENT
MINOR REPRESENTED BY M/G MOTHER
JYOTI
W/O SHARANAYYA HIREMATH @ MATH
AGE: 28 YEARS,
R/O MUDDEBIHAL, TQ: MUDDEBIHAL
DIST: BIJAPUR – 586 101.

...APPELLANT

(BY SRI HARSHAVARDHAN R. MALIPATIL, ADVOCATE)

AND:

1. SHARANAPPA
S/O NAGAPPA INDI
AGE: 39 YEARS, OCC: BUSINESS,
R/O KAKKALMELI, TQ: SINDAGI
DIST: BIJAPUR – 586 101.
2. THE DIVISIONAL MANAGER,
ORIENTAL INSURANCE CO., LTD.,
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CLAIM PETITION AND SEEKING ENHANCEMENT OF COMPENSATION.

MFA NO.31115/2012

BETWEEN:

SAVITA
W/O BASAYYA ALAMATTI
AGE: 27 YEARS, OCC: H.H. WORK & TAILORING
R/O MUDDEBIHAL, TQ: MUDDEBIHAL
DIST: BIJAPUR – 586 101.

...APPELLANT

(BY SRI HARSHAVARDHAN R. MALIPATIL, ADVOCATE)

AND:

1. SHARANAPPA
S/O NAGAPPA INDI
AGE: 39 YEARS, OCC: BUSINESS,
R/O KAKKALMELI, TQ: SINDAGI
DIST: BIJAPUR – 586 101.
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...RESPONDENTS

(BY SRI BASAVARAJ R. MATH, ADVOCATE FOR R1;
SRI J. AUGUSTIN, ADVOCATE FOR R2)

THIS MISCELLANEOUS FIRST APPEAL IS FILED U/S. 173(1) OF MV
ACT, AGAINST THE JUDGMENT AND AWARD DATED 21.06.2011
PASSED IN MVC NO.145/2008 ON THE FILE OF THE ACCIDENT
CLAIMS TRIBUNAL NO. VIII AT MUDDEBIHAL, PARTLY ALLOWING THE
CLAIM PETITION AND SEEKING ENHANCEMENT OF COMPENSATION.

MFA NO.31116/2012**BETWEEN:**

MANJUNATH
 S/O BASAYYA HIREMATH
 AGE: 11 YEARS, OCC: STUDENT
 MINOR, REPRESENTED BY HIS
 M/G MOTHER REKHA
 W/O BASAYYA HIREMATH
 AGE: 37 YEARS,
 R/O MUDDEBIHAL, TQ: MUDDEBIHAL
 DIST: BIJAPUR – 586 101.

...APPELLANT

(BY SRI HARSHAVARDHAN R. MALIPATIL, ADVOCATE)

AND:

1. SHARANAPPA
 S/O NAGAPPA INDI
 AGE: 39 YEARS, OCC: BUSINESS,
 R/O KAKKALMELI, TQ: SINDAGI
 DIST: BIJAPUR – 586 101.
2. THE DIVISIONAL MANAGER,
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MFA NO.31117/2012**BETWEEN:**

BASAMMA
 D/O SHARANAYYA GONALMATH
 AGE: 24 YEARS, OCC: H.H. WORK & COOLIE,
 R/O MUDDEBIHAL, TQ: MUDDEBIHAL
 DIST: BIJAPUR – 586 101.

...APPELLANT

(BY SRI HARSHAVARDHAN R. MALIPATIL, ADVOCATE)

AND:

1. SHARANAPPA
 S/O NAGAPPA INDI
 AGE: 39 YEARS, OCC: BUSINESS,
 R/O KAKKALMELI, TQ: SINDAGI
 DIST: BIJAPUR – 586 101.

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...RESPONDENTS

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MFA NO.31118/2012**BETWEEN:**

SAVITRI
 D/O GURUSWAMY HIREMATH

AGE: 22 YEARS, OCC: H.H. WORK & TAILORING,
R/O MUDDEBIHAL, TQ: MUDDEBIHAL
DIST: BIJAPUR – 586 101.

...APPELLANT

(BY SRI HARSHAVARDHAN R. MALIPATIL, ADVOCATE)

AND:

1. SHARANAPPA
S/O NAGAPPA INDI
AGE: 39 YEARS, OCC: BUSINESS,
R/O KAKKALMELI, TQ: SINDAGI
DIST: BIJAPUR – 586 101.

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...RESPONDENTS

(BY SRI BASAVARAJ R. MATH, ADVOCATE FOR R1;
SRI J. AUGUSTIN, ADVOCATE FOR R2)

THIS MISCELLANEOUS FIRST APPEAL IS FILED U/S. 173(1) OF MV ACT, AGAINST THE JUDGMENT AND AWARD DATED 21.06.2011 PASSED IN MVC NO.148/2008 ON THE FILE OF THE ACCIDENT CLAIMS TRIBUNAL NO. VIII AT MUDDEBIHAL, PARTLY ALLOWING THE CLAIM PETITION AND SEEKING ENHANCEMENT OF COMPENSATION.

MFA NO.31119/2012

BETWEEN:

VIDHYA
D/O MADIWALAYYA NADIMATH
AGE: 23 YEARS,
OCC: H.H. WORK & TAILORING,

R/O MUDDEBIHAL, TQ: MUDDEBIHAL
DIST: BIJAPUR – 586 101.

...APPELLANT

(BY SRI HARSHAVARDHAN R. MALIPATIL, ADVOCATE)

AND:

1. SHARANAPPA
S/O NAGAPPA INDI
AGE: 39 YEARS, OCC: BUSINESS,
R/O KAKKALMELI, TQ: SINDAGI
DIST: BIJAPUR – 586 101.
2. THE DIVISIONAL MANAGER,
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THESE APPEALS BEING HEARD AND RESERVED ON 6TH APRIL 2016, COMING ON FOR PRONOUNCEMENT OF JUDGMENT THIS DAY, THE COURT DELIVERED THE FOLLOWING:-

J U D G M E N T

All these appeals arise out of the common Judgment of the Motor Accident Claims Tribunal, Muddebihal in MVC Nos.141 to 150 of 2008. Hence, the appeals are clubbed, heard together and disposed of by this common Judgment.

2. Briefly stated the facts are:

That the claimants were travelling in the offending vehicle bearing registration No. KA-28-M-5305 from Sindagi to Moratagi. It is alleged by the appellants that due to the rash and negligent driving of the driver of the offending vehicle, they met with the road traffic accident. It is contended that on account of the motor vehicle accident, all the claimants have sustained grievous injuries. Based on these facts, the claim petitions were filed before the Motor Accident Claims Tribunal, Muddebihal. The Tribunal, on appreciating the evidence on record, awarded the compensation as under along with interest at 6% per annum from the date of petition till the amount is realized:

Sl. No.	Claim Petition Numbers	Amount of compensation awarded [in Rs.]
1	141/2008	3,000
2	142/2008	45,000
3	143/2008	56,700
4	144/2008	50,000
5	145/2008	60,000
6	146/2008	3,000
7	147/2008	3,000
8	148/2008	50,000
9	149/2008	50,000
10	150/2008	40,000

Being dissatisfied, the appellants are before this Court.

3. Sri. Harshavardhan R. Malipatil, learned Counsel for the appellants contends that the Tribunal erred in exonerating the Insurer from the liability to satisfy the Award. It is submitted that no discrimination can be made between gratuitous passengers travelling in a private vehicle and the passengers travelling in a public service vehicle. Any inmate or occupant of a private vehicle is a third party and the avowed object of Chapters X and XI of the Motor Vehicles Act, 1988, [the 'Act', for short] is to safeguard the interest of the third parties. Third parties are entitled to the compensation

irrespective of any violation of terms and conditions of the policy by the owner. Mere statutory defence available to the Insurer under Section 149[2] of the Act would not absolve the Insurer from its liability unless substantially proved. The fact that the offending vehicle was hired by the appellants for hire or reward would not assist the Insurer to deny the liability on the ground of breach of terms and conditions of the insurance policy unless such breach contributes to the occurrence of the accident. This vital aspect was not noticed by the Tribunal in a right perspective.

4. Learned Counsel for the Appellants invited my attention to Section 149[4] of the Act and the proviso thereof to contend that 'pay and recover' is the object of the insurance policy and for any violation of the terms and conditions of the insurance policy, third parties' right should not be obliterated.

5. It is vehemently contended that if the object of the beneficial legislation is defeated on technicalities, Section

149[4] and the proviso thereof would be rendered otiose and redundant. In support of his contentions, learned Counsel placed reliance on the following Judgments.

- [a] **'K.G. SRINIVASAMURTHY Vs. HABIB KHATHUN AND OTHERS' [2002 ACJ 557]**
- [b] **'UNITED INDIA INSURANCE CO., LTD., REP. BY ITS DM Vs. KALAWATHI AND OTHERS' [ILR 2011 KAR 1191].**

6. After making elaborate submissions on the liability of the Insurer, learned Counsel also challenges the quantum of compensation awarded by the Tribunal as inadequate. Learned Counsel points to the evidence led by the Doctor who had assessed the disability, submits that the Tribunal erred in outrightly rejecting the Doctor's evidence, thus failed to consider the permanent disability sustained by the appellants due to the accidental injuries. Learned Counsel seeks to enhance the quantum of compensation awarded by

the Tribunal and to foist the liability on the Insurer to satisfy the Award.

7. Per contra, learned Counsel Sri. J. Augustin, appearing for second respondent-Insurer justifies the Judgment and Award passed by the Tribunal, inter alia, contending that the Tribunal has extensively considered the evidence available on record to arrive at a conclusion that the appellants were travelling as occupants in the jeep involved in the accident. The learned Counsel would draw my attention to the cross examination of the appellants wherein, it is admitted that the offending vehicle was hired by the appellants. It is thus contended that in view of such categorical admission of the claimants, the Insurer has proved the permissible defence available under Section 149[2] of the Act which provides to defend the action on the ground of condition, excluding the use of the vehicle for hire or reward where the vehicle is on the date of the contract of insurance, not covered by a permit to ply for hire or reward.

8. It is contended that the Tribunal based on the evidence on record exonerated the Insurer from its liability to indemnify the owner of the vehicle for the breach of the terms and conditions of the policy. As regards the quantum of compensation, the learned Counsel would contend that the Doctor, examined by the appellants was not a treated Doctor and no credence would be given to the disability certificate issued by the non treated Doctor. All the injuries sustained by the claimants were simple in nature as per the wound certificate and the medical records. In the given circumstances, the Tribunal is justified in awarding just and reasonable compensation which does not call for any interference by this Court.

9. Learned Counsel Sri. Basavaraj R. Math, appearing for the first respondent-Owner adopts the arguments advanced by the learned Counsel for the appellants as far as challenge made to the liability is concerned. Learned Counsel would contend that the

Judgment and Award passed by the Tribunal would lead to miscarriage of justice as the Insurer cannot escape the liability to indemnify the owner as long as the vehicle was covered by the insurance policy.

10. Heard the rival submissions of the parties and perused the material on record.

11. It is discerned from the records that the claim petitions were resisted by the respondents, filing separate written statements. The Tribunal has framed five common issues and the second issue relates to the breach of terms and conditions of the insurance policy and the conditions of the permit.

12. The claimants have examined eleven witnesses PW.1 to PW.11 and marked Ex.P1 to Ex.P40. Respondent No.2 –Insurer has been examined as RW.1 and marked Ex.R1 to Ex.R8. At this juncture, it is beneficial to refer to the cross examination portion of the claimants. In the cross

examination, it is categorically admitted by the claimants that they were travelling in the offending vehicle on the fateful day of accident as the occupants of the vehicle hired by them. i.e., the offending vehicle was hired. The complaint marked at Ex.R4 also reveals that the offending vehicle was hired by the claimants to attend a wedding function of their relative.

13. Even accepting the version of the claimants that the owner of the vehicle was a relative of the claimants, it is noteworthy to observe that the owner was not travelling along with the claimants in the offending vehicle. The specific admission of the appellants that the vehicle was hired, establishes the breach of the permit conditions besides the policy conditions. It is not in dispute that the offending vehicle was a private vehicle and had no permit to ply for hire or reward. The owner knowing fully well the conditions of permit of the vehicle had given the vehicle on hire basis contrary to the permit conditions. The said conduct of the owner discloses the negligence and the cavalier nature in not

following the terms and conditions of the insurance policy in its strict sense.

14. Section 149[4] of the Act on which much emphasis is placed by the learned Counsel for the Appellants would not come to the assistance of the appellants to harp upon the pay and recover method as far as the third parties are concerned. Sub-section [4] of Section 149 and the proviso thereto was elaborately considered by the Apex Court in the case of **‘NATIONAL INSURANCE CO., LTD., Vs. SWARAN SINGH AND OTHERS** reported in **2004 ACJ 1**. The Division Bench of this Court in the case of **‘THE ORIENTAL INSURANCE CO., LTD., Vs. SRI. K.C. SUBRAMANYAM AND ANOTHER’** reported in **ILR 2012 KAR 5241** had an occasion to extensively examine the scope and ambit of ‘pay and recover’ in the context of Section 149[2], [4] and [7] of the Act read with Section 147 of the Act. The Division Bench of this Court has considered the legislative history of the enactment, from the period of its inception in the light of various Judgments

rendered by the Apex Court on the subject matter and has held thus:

“91. This piece of legislation is enacted by the parliament with a social obligation of providing solace to the victims of the accident or to the legal representatives of persons who died in the accident. Therefore, the Courts have been placing such interpretation which would advance the cause of justice and liberal construction has been placed with a view to implementing the legislative intent. In this background under the scheme, as contained in Chapter XI and XII, the legislature has expressly provided for the principle of 'pay and recover' in Sub Sections (4) and (5) of Section 149. However, the same is not provided in Section 149(2). At the same time, the express provision like sub section (7) of Section 149 is enacted by the Legislature making it very clear that the insurer has a right to avoid the liability on the grounds specified under Section 149(2) of the Act. The question is whether the Courts by an interpretive process read into sub-section (7) of Section 149 of the Act, the principle of "pay and recover", to come to the rescue of third parties for whose benefit the aforesaid scheme is introduced by the Parliament. The law on the point is fairly well settled.”

“100. In the background of this well settled legal principles we have to approach this human problem, a victim of an accident, who had no control over the vehicle which is involved in the accident and who is not a party to the insurance is looking at the society, State, Government and Courts for relief for survival, in a country governed

by rule of law, which has accepted Democracy as the way of life. Chapter XI of the Act was introduced for the benefit of the third party. The Parliament has passed this beneficial legislation providing for compulsory insurance to all vehicles before they are brought on roads. They also introduced the concept of 'liability without fault' as contained in Section 140 of the Act. They also provided for 'no fault liability' and payment of compensation on structured formula basis u/s.163-A of the Act. Further they have introduced the principle of 'pay and recover' in Sub Section (4) and (5) of Section 149 of the Act. It provides for payment of the amount awarded as compensation notwithstanding the restrictive clause in the policy of insurance. But the benefit extended under that Chapter is taken away by introduction of Section 149(2) read with sub-section (7) of Section 149, without expressly providing the principle of pay and recover as was done in the case falling under sub-sections (4) and (5) of Section 149 of the Act. When the Parliament expresses its intention by express words, in particular sub-Section (4), (5) and (7) of Section 149 of the Act, the Court has to presume that the legislature inserted every part thereof for a purpose and the legislative intention is that every part of the statute should have effect. The legislature is deemed not to waste its words or to say anything in vain and a construction which attributes redundancy to the legislature is to be avoided. The legislative intention is to be gathered from the language used, which means that attention should be paid to what has been said as also to what has not been said. The Courts cannot reframe the legislation to make up deficiencies, as it has no power to legislate. Therefore, when the Parliament has expressly provided for the principle

of pay and recover in cases falling under sub-Section (4) and (5) and has omitted to extend the said benefit to cases falling under sub-Section (7) or sub-Section (2) of Section 149 of the Act, the Court cannot read the said principle into the said provisions and extend the benefit. It amounts to the Court supplying "casus omissus", which is not permissible. It amounts to the Court reframing the section, and legislating, for which it has no power. That is why the Supreme Court in order to do complete justice between the parties, even after holding that there is no liability on the part of the insurance company to indemnify or pay in terms of the decree or the award passed by the Tribunal, has been issuing directions to the insurance company to pay the claim and recover the said amount from the insured, by virtue of its power under Article 142 of the Constitution and extending the said benefit while making it clear that it would not be a precedent. Thus it has demonstrated the judicial restraint and respected the concept of separation of power as enunciated in the Constitution."

15. The Division Bench of this Court in the case of **‘ORIENTAL INSURANCE CO., LTD., Vs. KUM. G. NAVYA AND ANOTHER’** reported in [**2011 KANT MAC 409 (Kant)**] while considering an identical issue has held thus:

"9. From the pleadings of the parties and the deposition of P.W.3 it is clear that the vehicle in question was hired by the parties to travel from Bangalore to Tirupathi, which met with the accident

near Bangarupalem. We have seen Ex.R1 – the policy issued by the insurance company. It has collected premium of Rs.700/- under the head basic liability. It is not extra premium towards 3rd party. The passengers in a vehicle cannot be considered as 3rd party. Therefore, we are of the opinion that the tribunal has committed an error in interpreting Ex.R1 in order to hold that the appellant/company is liable to pay the compensation.”

16. Sub-section [4] of Section 149 of the Act cannot be imported into Clause [b] of sub-section [2] of Section 149 of the Act unless the legislature expressly provides to extend the benefit of the principle of pay and recover even in cases falling under Section 149[2] of the Act. Apparently, the claimants were travelling as an occupant/inmate in the offending vehicle jeep. i.e., a private vehicle. No extra premium towards third party is collected by the Insurer under the insurance policy Ex.R1. It is trite law that an occupant/passenger/inmate of a private vehicle is not a third party. This Court in the case of **‘THE BRANCH MANAGER, THE NEW INDIA ASSURANCE CO., LTD., Vs. MAHADEV PANDURANG PATIL AND ANOTHER’** reported in **ILR 2012 KAR 1841** has held that Section 147 does not require a

policy to cover the risk to passengers who are not carried for hire or reward. Statutory insurance does not cover injuries suffered by the occupants of the vehicle who are not carried for hire or reward and the Insurer cannot be held liable under the Act. The occupants/passengers/inmates of a private vehicle do not fall within the definition of the word 'third party'. Therefore, the legal obligation arising under Section 147 of the Act cannot be extended to an injury or death of the owner of the vehicle, passengers in such private vehicle or pillion rider in the case of a two wheeler. Gratuitous passengers who are not carried for hire or reward in a vehicle other than a public service vehicle cannot be construed as third parties.

17. Even if the arguments advanced by the learned Counsel for the Appellants is examined in the angle of the third party, the passengers travelling in a private vehicle cannot be construed as a third party. No statutory obligation can be extended to cover the risk of third parties unless terms

and conditions of the insurance policy issued under Section 146 of the Act covers the risk of such passengers.

18. The Judgment in **Kalawathi's** case [supra] relied upon by the learned Counsel for the Appellants no doubt refers to the gratuitous passengers travelling in a private vehicle, it makes it clear that when the policy issued is a comprehensive policy covering risk of the inmates of a private vehicle, the Insurer cannot avoid liability on the ground that the inmate is a paid passenger. In that context, it is held that the terms in the policy which discriminates the liability of the Insurer for the paid inmate and gratuitous inmate is discriminatory and illegal. Admittedly, in the instant case, no policy covering the risk of inmates of a private vehicle was in effect. Thus, the said Judgment is not applicable to the facts of the present case.

19. The Judgment of **K.G. Srinivasamurthy's** case [supra] referred to by the learned Counsel for the Appellants

was rendered while considering the Judgment of the Apex Court in the case of '**NEW INDIA ASSURANCE COMPANY LIMITED Vs. KAMLA**' reported in **2001 ACJ 843**. The Judgment in **Kamla's** case [supra] was considered by the subsequent Judgment of the Apex Court in **Swaran Singh's** case [supra]. The Apex Court in the case of '**ORIENTAL INSURANCE COMPANY LIMITED Vs. ZAHARULNISHA AND OTHERS**' reported in **2008 AIR SCW 3251** after setting out the summary of the findings rendered by the Apex Court in **Swaran Singh's** case [supra], has categorically held that the Insurance Company is not liable to pay the third party and recover it from the insured, in view of Section 149[1] and [2] read with Section 149[7] as the said case did not fall under Section 149[2] read with Sub-Sections 4 and 5. The Division Bench of this Court in **K.C. Subramanyam's** case (supra), further placing reliance on the Judgment in **ZAHARULNISHA's** case [supra] has held that the Insurance Company is not liable to pay third party and recover it from the Insured in view of sub-sections [1], [2] and [7] of Section

149 of the Act. In view of the settled principles of law as set out by the Apex Court and the Division Bench ruling of this Court in **K.C. Subramanyam's** case (supra), the Judgment of **K.G. Srinivasamurthy's** case [supra] is not applicable to the facts of the present case. Accordingly, the challenge made by the appellants to saddle the liability on the Insurer is wholly unsustainable and is negated.

20. As regards the quantum of compensation awarded, the Tribunal has analyzed the evidence in extenso and awarded the global compensation of Rs.3,000/- to the simple injury cases in MVC Nos.141/2008, 146/2008 and 147/2008. The injuries sustained by the appellants in these cases are simple injuries such as cut lacerated wound. The wound certificate and the discharge card supports the said simple injuries sustained by the appellants. However, considering the totality of circumstances of the case, I am of the considered view that the compensation awarded in these

three cases deserves to be enhanced to Rs.10,000/- each globally.

21. As regards MVC No.142/2008, it has come on record that the appellant herein has sustained grievous injuries which has caused permanent disability. The Tribunal disbelieved the evidence of PW.11 – Doctor only for the reason that he was not a treated Doctor and as a result, the disability assessed by the Doctor is totally ignored. It is noticed that the respondents have not made any attempt to obtain second opinion of the disability assessed by the Doctor. It is the case of the appellant that she has sustained disability to the extent of 25% to the whole body which is based on the assessment made by the Doctor. Even assuming it is an exaggeration of the factual aspects, the fracture of ankle joint and the injured being admitted to the Hospital for medical treatment is not disputed. In the circumstances, considering the totality of circumstances of the case, I am of

the considered view that the total compensation deserves to be enhanced globally to Rs.75,000/-.

22. Similarly, the total compensation deserves to be enhanced globally to the amounts mentioned below to the corresponding claim petitions considering the disability assessed by the doctor in the following cases, not contradicted by any substantial evidence by the insurer.

Thus, the total compensation awarded by the Tribunal is modified and enhanced as under:

Sl. No.	Claim Petition Numbers	Amount of compensation enhanced globally to
1	141/2008	10,000
2	142/2008	75,000
3	143/2008	87,000
4	144/2008	80,000
5	145/2008	90,000
6	146/2008	10,000
7	147/2008	10,000
8	148/2008	80,000
9	149/2008	80,000
10	150/2008	70,000

23. The amount awarded shall carry interest at 6% per annum from the date of the petition till the date of realization. The Respondent No.1-Owner shall satisfy the Award amount.

24. Accordingly, the appeals are partly allowed to the extent indicated above.

**Sd/-
JUDGE**

AN/-