



2026:DHC:9254



* IN THE HIGH COURT OF DELHI AT NEW DELHI

% *Reserved on : 14th September 2026*
Pronounced on : 16th October 2026
Uploaded on : 17th October 2026

CNR No. DLHC011805322013

+ MAC.APP. 1166/2013

NATIONAL INSURANCE CO LTD Appellant

Through: Ms. Seema Gulati, Advocate.

versus

NADESHWAR YADAV & ORS Respondents

Through: Mr. Kamal Kant Jha, Mr. Nikhil
Pandey and Ms. Aakriti, Advocates
for Respondent no.1.
Mr. Sumit Kumar, Advocate for
Respondent no.2

CORAM:
HON'BLE MR. JUSTICE ANISH DAYAL

JUDGMENT

ANISH DAYAL, J.

1. This appeal has been filed by appellant/Insurance Company assailing award dated 27th August 2013 passed by MACT, Central District, Tis Hazari Courts, Delhi (*'MACT/Tribunal'*), in Suit No. 435A/10, whereby compensation of Rs.6,13,760/- along with interest at 9% per annum was awarded in favour of respondent no. 1/claimant.

2. The accident in question occurred on 19th June 2007 at about 5:45 a.m., when claimant was travelling in vehicle No. DL-1LB-2297, being driven by



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respondent no.2 in a rash and negligent manner. Vehicle hit the central divider and overturned, resulting in grievous injuries to claimant and other occupants. Respondent's version was that the accident was caused due to negligent act of one *Suresh Dass*, who was a pedestrian and had jumped from the railing on the other side of the road and in order to save the said *Suresh Dass* the vehicle had hit the central divider.

3. Claimant was taken to hospital, where his MLC was prepared; he was initially recorded as an unknown injured person and was declared unfit to make a statement, but was subsequently identified. FIR was registered, and chargesheet filed for offences under Sections 279, 337, 338 and 304-A IPC.

4. Respondent no.2 is driver of the offending vehicle, respondent no.3 is subsequent/present owner, and respondent no.4 is the previous/erstwhile owner of offending vehicle.

Impugned award

5. Insurance Company contended before the Tribunal that the claimant was travelling as a gratuitous passenger in offending vehicle; consequently, Insurance Company was not liable to compensate him.

6. MACT noted that as per the chargesheet and FIR various persons boarded offending vehicle with their vegetables and were travelling towards Shahdara Subzi Mandi. Statement of *Rajesh (Mark A)*, recorded that respondent no. 1 along with other persons had boarded truck with their goods. Reliance was placed on Suit No. 44/09 titled as "*Pramila Devi & Ors. v. Bijender Kumar & Ors.*", arising out of same accident, wherein liability had been fastened upon respondent no. 3/Insurance Company.



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7. The Court decided the issue in favour of claimant observing that the claimant was travelling as owner of goods and, plea of Insurance Company that claimant was a gratuitous passenger was rejected.

8. Accordingly, respondent nos. 1, 2 and 4 were held jointly and severally liable to pay compensation and directed respondent no. 3/Insurance Company to indemnify the claim.

Submissions on behalf of appellant/Insurance Company

9. *Ms. Seema Gulati*, counsel for Insurance Company, challenges the award on the ground that the Tribunal failed to take into account that the claimant was travelling as a gratuitous passenger and liability should not have been fastened upon them.

10. She contended that respondent no.2 and respondent no.3 stated that accident had occurred when one *Suresh* suddenly jumped over the railing from the opposite side of the road. In an attempt to avoid hitting him, vehicle struck the central divider, resulting in accident.

11. Further, she categorically denied that respondent no.1 was travelling in vehicle as a passenger; there is no evidence on record to show that respondent no.1 was travelling in the offending vehicle.

12. She further submitted that even if assuming the claimant was travelling in the offending vehicle, since claimant failed to establish that he was owner of vegetables loaded in the offending vehicle, he would at best be considered as a gratuitous passenger and ought not to have been awarded compensation. In support of her contention, she relies upon the decision of the Supreme Court in *National Insurance Co. Ltd. v Baljit Kaur* 2004 (2) SCC 1.



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13. She further submitted that claimant, in his claim petition, described himself as a salesman and had not disclosed his source of income.

14. Accordingly, counsel for insurance company seeks complete exoneration.

Submissions on behalf of respondent no. 1/claimant

15. *Mr. K.K. Jha*, counsel for claimant contended that the claimant was travelling in offending vehicle along with his own vegetables and that material on record sufficiently established his presence in vehicle for that purpose. It was submitted that statement of eyewitness, *Rajesh*, expressly recorded that respondent no. 1 and other persons were in the offending vehicle. *Mr. K.K. Jha* contended that a person travelling with his own goods cannot be called a gratuitous passenger merely because vehicle is a goods carriage.

16. On the issue that the claimant's name was not there in the chargesheet, counsel for respondent no. 1 stated that due to injuries sustained in the accident, he was unconscious. He relies upon MLC, wherein it is stated that claimant was unfit for statement. That is the reason why he was not stated as a witness in FIR.

17. Counsel for claimant also drew attention of the Court to the proceedings in Suit no. 44/2009, arising out of same accident/FIR in the case of deceased *Suresh Das*. It was submitted that in connected proceedings, the Court had considered status of person travelling with goods and had held that person travelling as owner of goods was not a gratuitous passenger and the driver of the tempo was held to be negligent. In the said proceeding, a witness



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stated that many persons were travelling in the offending vehicle with their vegetables to the *mandi* as they were vendors of those vegetables. The order was also challenged, however, no order to the contrary was passed.

18. It was further submitted that MLC explains absence of name of respondent no. 1 from FIR, since injured person was initially brought to hospital as an '*unknown person*' and was recorded as '*unfit for statement*'. Subsequent identification of injured person as respondent no. 1 therefore provides an explanation for the omission being relied upon by appellant.

19. He relies upon the decision of the Supreme Court in ***Akula Nayana v. The Oriental Insurance Company Limited & Anr.*** 2025 INSC 1301, to state that even otherwise, at the least, direction of pay and recovery can be given. The Supreme Court in this case was dealing with a case where the offending vehicle was a five-seater but was carrying nine persons. The Supreme Court, while accepting that the policy did not cover the risk of a gratuitous passenger and that there was a breach of the policy conditions, held that the insurer could not be completely absolved of liability and thereby granted recovery rights to the Insurance Company.

20. He further submitted that, nevertheless, where the owner/driver of the offending vehicle breaches any of the conditions of the insurance policy, the Insurance Company is not completely exonerated from its liability and may be granted the recovery rights *qua* owner/driver. In support of his contention, he relied upon the judgment of the Supreme Court in ***Rama Bai v. M/s Amit Minerals Through Incharge Officer/Competent Officer and Anr.***, 2025 INSC 1162, wherein the Court was dealing with a case where the driver did



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not possess a valid driving licence on the date of the accident and observed as under:

“7. In the above circumstances, going by the series of decisions of this Court, it is only proper that the insurer be directed to satisfy the award, which however can be recovered by the insurer from the insured-owner of the vehicle. The appeal stands allowed.”

(emphasis added)

Submissions on behalf of respondent no. 2/owner

21. Counsel for respondent no. 2/owner further challenged that the claimant was travelling as a passenger in the offending vehicle.

22. However, counsel for respondent no. 2/owner submitted that, even if it is assumed that claimant was travelling in the vehicle, he was travelling along with his goods.

Analysis

23. Section 147 of the MV Act mandates compulsory insurance coverage in respect of third parties, including the owner of the goods or his authorised representative carried in the vehicle. A gratuitous passenger is a person travelling in a vehicle without statutory or contractual coverage under the insurance policy, i.e. a person not being carried in accordance with the provisions of the Motor Vehicles Act, 1988 (“*MV Act*”), permit conditions, or the terms of the insurance policy.

24. This provision has been interpreted to mean that, apart from those specifically covered under the insurance policy, the owner of the goods



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travelling in the vehicle with his goods is definitely entitled to statutory insurance coverage.

25. The insurer, therefore, bears no statutory liability in respect of such occupants unless there is specific coverage in the contract under the policy or the Court issues a direction to “pay and recover”. The Court, therefore, needs to examine the status of the occupant, i.e. whether the person falls within the statutory protection under Section 147 of the MV Act, the nature of the vehicle and the purpose of travel, as well as the applicability of the principle of “pay and recover”.

26. This Court, in *National Insurance Co. Ltd. v. Kusum Kumari & Ors.* 2026:DHC:1644, was dealing with a case in which the deceased was travelling in a truck along with the driver when the truck collided with a stationary vehicle. The Insurance Company contended that the deceased was a gratuitous passenger, as the truck was owned by *M/s Pushpa Trading Corporation* whereas the deceased was an employee of *M/s Kuber Enterprises*. The claimants, on the other hand, argued that the deceased was accompanying and transporting goods of *M/s Kuber Enterprises* in the truck and was therefore travelling as the owner of the goods or its authorised representative. While dealing with the expression “gratuitous passenger”, this Court observed as under:

“14. The term “gratuitous passenger” though not defined by the MV Act, means an individual who travels in a vehicle without paying a fare or providing any economic benefit to the driver or owner, often riding by invitation, or having been given a lift. However, Section 147 (1) (b) (ii) of the MV Act expressly exempts the case of a “gratuitous passenger” in a goods vehicle in a



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public place.”

16. In *New India Assurance Co. Ltd. v. Asha Rani* (2003) 2 SCC 223, the Supreme Court clarified that a goods vehicle is not meant for carrying passengers and "gratuitous passengers" are not covered under the statutory policy. However, the statutory scheme underwent a material change with the 1994 amendment to Section 147 of the MV Act, whereby the policy is required to cover the owner of goods or his authorised representative travelling in the vehicle. Relevant paragraphs are extracted as under:

"25. Section 147 of the 1988 Act, inter alia, prescribes compulsory coverage against the death of or bodily injury to any passenger of "public service vehicle". Proviso appended thereto categorically states that compulsory coverage in respect of drivers and conductors of public service vehicle and employees carried in a goods vehicle would be limited to the liability under the Workmen's Compensation Act. It does not speak of any passenger in a "goods carriage"

26. In view of the changes in the relevant provisions in the 1988 Act vis-à-vis the 1939 Act, we are of the opinion that the meaning of the words "any person" must also be attributed having regard to the context in which they have been used i.e. "a third party". Keeping in view the provisions of the 1988 Act, we are of the opinion that as the provisions thereof do not enjoin any statutory liability on the owner of a vehicle to get his vehicle insured for any passenger travelling in a goods vehicle, the insurers would not be liable therefor.

27. Furthermore, sub-clause (i) of clause (b) of sub-section (1) of Section 147 speaks of liability which may be incurred by the owner of a vehicle in respect of death of or bodily injury to any person or damage to any property of a third party caused



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by or arising out of the use of the vehicle in a public place, whereas sub-clause (ii) thereof deals with liability which may be incurred by the owner of a vehicle against the death of or bodily injury to any passenger of a public service vehicle caused by or arising out of the use of the vehicle in a public place.” (emphasis added)

17. This position was further explained in *National Insurance Co. Ltd. v. Baljit Kaur* (2004) 2 SCC 1, wherein the Supreme Court recognized that, after the amendment, the risk of the owner of goods or his authorised representative carried in a goods vehicle stands statutorily covered, though “gratuitous passengers” remain excluded. Thus, the determinative question is whether the occupant had a nexus with the goods or the business purpose of the vehicle. Relevant paragraphs are extracted as under:

“12. We find ourselves unable, furthermore, to countenance the contention of the respondents that the words “any person” as used in Section 147 of the Motor Vehicles Act, would be rendered otiose by an interpretation that removed gratuitous passengers from the ambit of the same. It was observed by this Court in the case concerning *New India Assurance Co. Ltd. v. Asha Rani* [(2003) 2 SCC 223 : 2003 SCC (Cri) 493] that the true purport of the words “any person” is to be found in the liability of the insurer for third-party risk, which was sought to be provided for by the enactment.

17. By reason of the 1994 amendment what was added is “including owner of the goods or his authorised representative carried in the vehicle”. The liability of the owner of the vehicle to insure it compulsorily, thus, by reason of the aforementioned amendment included only the owner of the goods or his authorised



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representative carried in the vehicle besides the third parties. The intention of Parliament, therefore, could not have been that the words “any person” occurring in Section 147 would cover all persons who were travelling in a goods carriage in any capacity whatsoever. If such was the intention, there was no necessity of Parliament to carry out an amendment inasmuch as the expression “any person” contained in sub-clause (i) of clause (b) of sub-section (1) of Section 147 would have included the owner of the goods or his authorised representative besides the passengers who are gratuitous or otherwise.

20. It is, therefore, manifest that in spite of the amendment of 1994, the effect of the provision contained in Section 147 with respect to persons other than the owner of the goods or his authorized representative remains the same. Although the owner of the goods or his authorized representative would now be covered by the policy of insurance in respect of a goods vehicle, it was not the intention of the legislature to provide for the liability of the insurer with respect to passengers, especially gratuitous passengers, who were neither contemplated at the time the contract of insurance was entered into, nor was any premium paid to the extent of the benefit of insurance to such category of people.

(emphasis added)

27. In the facts of this case, the injured had stated by way of evidence that he, along with his colleagues, boarded the offending vehicle from *Azadpur vegetable Mandi* to *Shahdara vegetable Mandi* “for supply of vegetable items” when the accident took place. He had stated that he was a salesman and was self-employed.



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28. In the cross-examination, he denied that he was not employed and that he was a gratuitous person. No evidence was otherwise placed by the Insurance Company. As regards the plea that the statement of the injured was not recorded in the FIR, the MLC was adverted to by counsel for the claimant, wherein the patient/claimant was stated to be unconscious and unfit to make a statement.

29. Statement under Section 161 Cr.P.C. was recorded of *Rajesh* (co-occupant), who stated that, for several days, they had been going with vegetables to *Azadpur Mandi* at about 5:00 or 6:00 a.m. On 19th June 2007, at about 5:15 a.m., he, along with several other occupants, including *Nadeshwar Yadav* (claimant herein), was travelling with their vegetables in the tempo driven by *Vijender*. He further stated that the occupants, along with their vegetables, were seated either in the rear portion of the vehicle or in the driver's cabin, where *Rajesh* himself was seated.

30. *Mr. Jha* had also pointed out to the award passed by the Sessions Judge relating to the same accident and pointed out that the Insurance Company had itself taken the stand that the deceased was travelling in the offending tempo as the owner of the vegetables being transported and, therefore, the insurer could not be absolved of liability. This aspect was recorded in the said order and was subsequently referred to in *paragraph 10* of the impugned award while adverting to Suit No. 44/2009 titled as “*Pramila Devi & Ors. v Bijender Kumar & Ors.*”

31. In the testimonies therein, there is no evidence produced by the Insurance Company to rebut the claimant's assertion that he was not



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travelling in connection with the transportation of his vegetables and was not a gratuitous passenger.

32. The testimonies of *Rajesh* and the injured claimant are consistent to the extent that they were transporting their vegetables for sale, along with other vendors.

33. The MACT noted that, during cross-examination, the claimant admitted that his name was not mentioned in the FIR or in the list of witnesses. However, a charge sheet was filed against the driver of the offending vehicle. The Tribunal further noted that, as per the medical record dated 21st May 2011, the claimant was suffering from memory loss. The MACT rightly relied upon the charge sheet, the statement of the eyewitness recorded during the investigation, the FIR, and the MLC to conclude that the claimant had also sustained injuries in the accident in question.

34. The MLC notes that the patient was brought as '*unknown person*'. The discharge summary dated 27th June 2007 notes his date of admission as 19th June 2007 with a history of '*road traffic accident*'. The MLC's date is 19th June 2007, as well, corroborating the claimant's case regarding the occurrence of the accident and the injuries sustained by him. The plea of the appellant in this regard is untenable.

35. Accordingly, the appeal is dismissed. Pending applications are rendered infructuous.

36. Statutory deposit, if any, be refunded to the Insurance Company only if the order of deposit has been complied with.



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37. Copy of this judgment be sent to the concerned MACT/bank for information and necessary compliance.
38. Judgment be uploaded on the website of this Court.

(ANISH DAYAL)
JUDGE

OCTOBER 16, 2026/ak/bp