



MAJESTY LEGAL
Advocates & Solicitors

EVEN IF INSURER NOT LIABLE, IT CAN BE ASKED TO PAY & RECOVER : SC

“KAMINIBEN & ORS. V. ORIENTAL INSURANCE COMPANY LIMITED & ORS.”

Hon’ble Apex Court in the case of *Kaminiben & Ors. v. Oriental Insurance Company Limited & Ors.*¹, held that even where an insurance company is not liable to pay compensation for an accident involving a passenger travelling in a goods vehicle, it may still be directed to first pay the compensation to the claimants and thereafter recover the amount from the vehicle owner, if the vehicle was hired primarily for carrying goods and the travel was only incidental. In the present case, the Insurance Company challenged the portion of Ld. Tribunal’s award directing it to pay first and recover later from the vehicle owner. However Hon’ble High Court set aside the Tribunal’s direction, holding that the Insurance Company was not liable to pay compensation at all.

Hon’ble Court noted that the deceased was travelling in the tempo along with a Ganesh idol, which was being carried for immersion in the Narmada River. Therefore, the dominant purpose of hiring the vehicle was not passenger travel but the transportation of the idol. Since the travel was merely incidental, the deceased could at best be treated as a gratuitous passenger travelling with his goods.

Accordingly, Hon’ble Court allowed the appeal, set aside Hon’ble High Court’s order, and restored the Tribunal’s award directing the Insurance Company to pay and recover.

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¹ SLP (Civil) No. 21802/2023

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**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

CIVIL APPEAL NO. _____ OF 2026
(Arising out of SLP (Civil) No.21802/2023)

KAMINIBEN & ORS.

APPELLANT(S)

VERSUS

THE ORIENTAL INSURANCE COMPANY LIMITED & ORS.

RESPONDENT(S)

O R D E R

1. Leave granted.
2. The short question arising for decision making in this appeal is whether in the facts and circumstances of the case the High Court was justified in reversing the finding of the Motor Accident Claims Tribunal (for short 'the Tribunal'), which had directed the Insurance Company to first pay the amount of compensation to the claimants and thereafter, recover the same from the owner of the vehicle.
3. As per the claim petition, the deceased was travelling in the tempo which was taken on rent on the occasion of Ganesh Immersion festival and was heading to immerse the idol into the Narmada River.

4. Indisputably, the tempo was a goods vehicle and was insured with the respondent Insurance Company on the date of accident. The Tribunal *vide* its award dated 11.01.2010 held that the claimants would be entitled for compensation of ₹13,23,000/- (Rupees Thirteen Lakhs Twenty Three Thousand), which shall be deposited by the Insurance Company, and the same shall be recovered from the owner of the vehicle.

5. The Insurance Company preferred an appeal against the said part of the award wherein the Tribunal had directed to first pay and, thereafter, recover the same from the owner of the vehicle.

6. In the impugned order, the High Court has set aside the order of the Tribunal to hold that the Insurance Company is not liable to first pay and then recover the amount of compensation from the owner of the vehicle.

7. Shri Md. Tahir M. Hakim, learned counsel appearing for the appellants-claimants would refer to this Court's judgment reported in *Manuara Khatun & Ors. Vs. Rajesh Kumar Singh & Ors.*¹ which, in turn, placed reliance on *National Insurance Company Limited vs. Saju P. Paul & Anr.*², to argue that when the deceased was a gratuitous passenger in a goods vehicle, the Insurance Company can be directed to pay the amount and recover the same from the owner of the vehicle.

8. *Per contra*, learned counsel appearing for the respondent Insurance Company would refer to this Court's judgment

1 .(2017) 4 SCC 796

2 .(2013) 2 SCC 41

reported in *Amudhavalli & Ors. vs. HDFC Ergo General Insurance Company Ltd. & Ors.*³ to submit that this Court having referred to *Saju P. Paul* (supra) has held that in a case where the deceased was travelling in a goods vehicle on rent, the Insurance Company cannot be fastened the liability even to the extent of first pay and then recover.

9. We have heard learned counsel for the parties and perused the record.

10. In the present case, the deceased was travelling in the subject tempo along with Ganesh Idol, which was taken for immersion in Narmada River. Thus, the dominant purpose for hiring the vehicle was not for travelling but for carrying the Ganesh idol for immersion. Travelling in the vehicle was only incidental, therefore, at best, the deceased can be treated as gratuitous passenger travelling with his goods (Ganesh idol). This being the circumstance, we rely on the judgment in the matter of *Manuara Khatun & Ors.* (supra), wherein this Court has held thus in paragraph Nos. 15 and 16:-

"15. This question also fell for consideration recently in *National Insurance Co. Ltd. v. Saju P. Paul* [*National Insurance Co. Ltd. v. Saju P. Paul*, (2013) 2 SCC 41 : (2013) 1 SCC (Civ) 968 : (2013) 1 SCC (Cri) 812 : (2013) 1 SCC (L&S) 399] wherein this Court took note of entire previous case law on the subject mentioned above and examined the question in the context of Section 147 of the Act. While allowing the appeal filed by the insurance company by reversing the judgment [*Saju P. Paul v. National Insurance Co.*, 2011 SCC OnLine Ker 3791:2012 ACJ 1852] of the High Court, it was held on facts that

since the victim was travelling in offending vehicle as "gratuitous passenger" and hence, the insurance company cannot be held liable to suffer the liability arising out of accident on the strength of the insurance policy. However, this Court keeping in view the benevolent object of the Act and other relevant factors arising in the case, issued the directions against the insurance company to pay the awarded sum to the claimants and then to recover the said sum from the insured in the same proceedings by applying the principle of "pay and recover".

16. R.M. Lodha, J. (as his Lordship then was and later became CJI) speaking for the Bench held in paras 20 and 26 as under : (*Saju P. Paul case* [*National Insurance Co. Ltd. v. Saju P. Paul*, (2013) 2 SCC 41 : (2013) 1 SCC (Civ) 968 : (2013) 1 SCC (Cri) 812 : (2013) 1 SCC (L&S) 399] , SCC pp. 52 & 55)

"20. The next question that arises for consideration is whether in the peculiar facts of this case a direction could be issued to the Insurance Company to first satisfy the awarded amount in favour of the claimant and recover the same from the owner of the vehicle (Respondent 2 herein).

26. The pendency of consideration of the above questions by a larger Bench does not mean that the course that was followed in *Baljit Kaur* [*National Insurance Co. Ltd. v. Baljit Kaur*, (2004) 2 SCC 1 : 2004 SCC (Cri) 370] and *Challa Upendra Rao* [*National Insurance Co. Ltd. v. Challa Upendra Rao*, (2004) 8 SCC 517 : 2005 SCC (Cri) 357] should not be followed, more so in a peculiar fact situation of this case. In the present case, the accident occurred in 1993. At that time, the claimant was 28 years old. He is now about 48 years. The claimant was a driver on heavy vehicle and due to the accident he has been rendered permanently disabled. He has not been able to get compensation so far due to the stay order passed by this Court. He cannot be compelled to struggle further for recovery of the amount. The Insurance Company has already deposited the entire awarded amount pursuant to the order of this Court passed on 1-8-2011 [*National Insurance Co. Ltd. v. Saju P. Paul* [*National Insurance Co. Ltd. v. Saju P. Paul*, (2013) 2 SCC 41, 55 (footnote 14)]] and the said amount has been invested in a fixed deposit account. Having regard to these peculiar facts of the case in hand, we are satisfied that the

claimant (Respondent 1) may be allowed to withdraw the amount deposited by the Insurance Company before this Court along with accrued interest. The Insurance Company (the appellant) thereafter may recover the amount so paid from the owner (Respondent 2 herein). The recovery of the amount by the Insurance Company from the owner shall be made by following the procedure as laid down by this Court in *Challa Upendra Rao* [*National Insurance Co. Ltd. v. Challa Upendra Rao*, (2004) 8 SCC 517 : 2005 SCC (Cri) 357].”

11. Thus, in *Manuara Khatun & Ors.* (supra), this Court has referred and approved *Saju P. Paul* (supra) case to hold that when the victim was a gratuitous passenger, this Court issued directions against the insurer of the offending vehicle to first satisfy the awarded sum, and then to recover the same from the insured in the same proceedings.

12. In the case of *Amudhavalli & Ors.* (supra), referred by learned counsel for the respondent Insurance Company, the deceased hired a goods vehicle for travelling and thus, it was not a case where the goods vehicle was taken on rent for carrying the goods, and travelling was incidental as gratuitous passenger. Thus, the said case of *Amudhavalli & Ors.* (supra), is distinguishable on facts; and the facts of the present case is similar and closer to the one in the case of *Saju P. Paul* (supra) and *Manuara Khatun & Ors.* (supra).

13. In the above view of the matter, we allow the Appeal and set aside the impugned order of the High Court and restore the award passed by the Tribunal.

14. No order as to costs.

15. If the respondent-Insurance Company has satisfied any part of the award, the same shall be set off while calculating the amount to which the Insurance Company shall be liable to pay consequent upon our order.

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

.....J.
[PRASHANT KUMAR MISHRA]

.....J.
[N.V. ANJARIA]

NEW DELHI;
11th February, 2026

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (C) No(s). 21802/2023

[Arising out of impugned final judgment and order dated 23-12-2021 in FA No. 913/2011 passed by the High Court of Gujarat at Ahmedabad]

KAMINIBEN & ORS.

Petitioner(s)

VERSUS

THE ORIENTAL INSURANCE COMPANY LIMITED & ORS.

Respondent(s)

Date : 11-02-2026 This petition was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE PRASHANT KUMAR MISHRA
HON'BLE MR. JUSTICE N.V. ANJARIA

For Petitioner(s) :Mr. Md. Tahir M. Hakim, Adv.
Mr. Ejaz Maqbool, AOR
Mr. Mohsin M. Hakim, Adv.
Mr. Zain Maqbool, Adv.
Mr. Meeran Maqbool, Adv.
Mr. Saif Zia, Adv.

For Respondent(s) :Ms. Sakshi Mittal, AOR

UPON hearing the counsel the Court made the following
O R D E R

1. Leave granted.
2. The Appeal is allowed in terms of the signed order placed on the file.
3. Pending application(s), if any, shall stand disposed of.

(MINI)
COURT MASTER (SH)

(CHETNA BALOONI)
COURT MASTER (NSH)