



**HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR**

S.B. Civil Miscellaneous Appeal No. 2916/2025
CNR: RJHC010787742025 | URN: CMA / 6929U / 2025

Yar Mohammad S/o Shri Rahim Khan, Aged About 38 Years, R/o
Gawar Ki Dhani, Mandai, Tehsil Fatehgarh, District Jaisalmer.

-----Appellant

Versus

1. Khudabaksh S/o Shri Kabal Khan, Aged About 18 Years,
R/o Village Rawdi Chak (Mandai) District Jaisalmer.
2. Amin Khan S/o Shri Rahim Khan, R/o Gawar Ki Dhani,
Mandai, Tehsil Fatehgarh, District Jaisalmer. (Driver)
3. Shri Ram General Insurance Company Ltd., Sagun
Bachhraj Ji Bag, Sardarpura 9th Road, Jodhpur. (Insurer)

-----Respondents

For Appellant(s) : Mr. Leela Dhar Khatri
For Respondent(s) : Mr. Vishal Singhal

HON'BLE MR. JUSTICE FARJAND ALI

Judgment

Reportable

Date of Conclusion of Arguments : 07/07/2026

Date on which Order is Reserved : 07/07/2026

Full Order or Operative Part : Full Order

Date of Pronouncement : 24/09/2026

BY THE COURT :

1. This appeal under Section 173 of the Motor Vehicles Act has been preferred by the appellant-owner of the offending vehicle, assailing the judgment and award dated 16.02.2024 passed by the learned Motor Accident Claims Tribunal, Jaisalmer in MACT Case No.45/2017, whereby compensation of ₹4,81,000/- along



with interest @ 6% per annum from 13.11.2017 has been awarded in favour of the claimant against non-claimant Nos.1 and 2 (driver and owner), while non-claimant No.3–Insurance Company has been exonerated from liability to satisfy the award.

2. Briefly stated, the facts giving rise to the present appeal are that the claimant Khudabakhsh, aged about 10 years at the time of the accident, was travelling in Bolero Camper bearing registration No. RJ-15-GA-4945 along with his relatives and acquaintances for visiting the Dargah at Madhala Sharif. On 11.05.2017, after staying overnight, they were returning on 12.05.2017 at about 9:00 a.m. It is alleged that respondent No.2–Amin Khan was driving the aforesaid vehicle at a high speed and in a rash and negligent manner. Near the border of village Devikot, the vehicle allegedly went out of control and overturned, as a result whereof the claimant sustained injuries on his abdomen and other parts of the body. The accident was reported to the police and, after investigation, a charge-sheet came to be filed against respondent No.2 for offences under Sections 279, 337 and 338 of the Indian Penal Code. The claimant claimed compensation on account of the injuries suffered by him and the treatment undergone at different hospitals.

3. The appellant–owner and respondent No.2–driver contested the claim petition. While denying the allegations for want of knowledge, they disputed the manner of accident and the injuries claimed by the claimant. In the alternative, it was pleaded that, if



any liability for payment of compensation was found, the vehicle was insured with respondent No.3-Insurance Company and the driver was holding a valid driving licence; hence, the liability ought to be fastened upon the Insurance Company.

4. Respondent No.3-Insurance Company also contested the claim petition. It denied the occurrence as alleged and pleaded, inter alia, that the claimant was not an insured passenger; that the offending vehicle was a goods vehicle; that passengers were being carried therein unauthorisedly and without payment of any premium towards passengers; that the driver was not holding a valid and effective licence to drive the vehicle; and that the vehicle was being operated in breach of the terms and conditions of the insurance policy. It was accordingly pleaded that the Insurance Company was not liable to indemnify the owner or satisfy the claim.

5. On the basis of the pleadings of the parties, the learned Tribunal framed five issues, including as to whether the accident occurred on 12.05.2017 on account of rash and negligent driving of the offending vehicle by non-claimant No.1; whether non-claimant No.1 was driving the vehicle in the course of his employment and for the benefit of Non-claimant No.2-owner; whether the claim petition was liable to be rejected on the grounds pleaded by the non-claimants; and whether the claimant was entitled to compensation of ₹12,00,000/- from the respondents jointly and severally.



6. In support of his claim, the claimant examined his father as AW-1 and himself as AW-2 and produced documentary evidence, including the police record, site plan, injury report, seizure memo, mechanical inspection report, registration certificate, insurance policy, fitness certificate, driving licence and discharge/treatment documents. The owner examined himself as NAW-2, while the Insurance Company examined its witness Gajendra Jain as NAW-1.

7. The learned Tribunal, upon appreciation of the evidence, held the first two issues in favour of the claimant and against the respondents. It found that the accident occurred on account of the rash and negligent driving of the offending vehicle by non-claimant No.1 and that he was driving the vehicle under the instructions and for the benefit of non-claimant No.2-owner.

8. While considering the liability of the Insurance Company, the learned Tribunal noticed that the offending vehicle was registered as a goods vehicle. It further noticed that the insurance policy was valid from 06.02.2017 to 05.02.2018 and that no separate premium towards passengers was shown to have been paid under the policy. The Tribunal also recorded that passengers were being carried in the goods vehicle at the time of the accident.



9. The learned Tribunal further held that non-claimant No.1 was not holding a licence to drive a transport vehicle and, on that basis, concluded that there was a breach of the conditions of the insurance policy. It accordingly exonerated non-claimant No.3-Insurance Company from liability and fastened the liability upon non-claimant Nos.1 and 2.

10. Aggrieved by the aforesaid finding, particularly the complete exoneration of non-claimant No.3-Insurance Company, the present appeal has been preferred by non-claimant No.2-owner of the offending vehicle.

11. Learned counsel appearing for the appellant-owner submitted that the learned Tribunal has erred in completely exonerating the Insurance Company. It was submitted that the vehicle was duly insured with respondent No.3 on the date of the accident and that the driver was holding a valid driving licence. It was further submitted that the Insurance Company had accepted the premium and issued the policy in respect of the offending vehicle and, therefore, it could not avoid its obligation towards the third-party claimant merely on the basis of the alleged breach. It was alternatively submitted that, even if any breach of the policy conditions is found to have been committed by the owner, the same would not justify leaving the injured minor claimant to recover the awarded amount from the owner and driver. At the highest, the Insurance Company may be directed to satisfy the



award in the first instance, with liberty to recover the amount so paid from the owner and driver in accordance with law. In support of his contentions, learned counsel for the appellant has relied upon the following judgments :-

(i) *Shyam Lal Vs. Shriram General Insurance Co. Ltd. & Ors. [2025 INSC 1078]*

(ii) *Haris Marine Products Vs. Export Credit Guarantee Corporation (ECGC) Ltd. [2022 LiveLaw (SC) 432]*

12. Per contra, learned counsel appearing for respondent No.3- Insurance Company supported the award to the extent of its exoneration. It was submitted that the offending vehicle was a goods vehicle; the claimant was travelling therein as an unauthorised passenger; no premium had been paid for covering passengers; and the vehicle was being used in breach of the conditions of the policy. It was further submitted that the owner himself had admitted that no permit for carrying passengers had been obtained. On these grounds, dismissal of the appeal was prayed for. In support of his submissions, learned counsel for the respondent No.3 has relied upon the following judgments:-

(i) *New India Assurance Co. Ltd. Vs. Asha Rani & Ors. [(2003) 2 SCC 223]*

(ii) *Oriental Insurance Co. Ltd. Vs. Shri Nanjappan & Ors. [(2004) 13 SCC 224]*

(iii) *Oriental Insurance Co. Ltd. Vs. Devireddy Konda Reddy & Ors. etc. etc. [(2003) 2 SCC 339]*

(iv) *United India Insurance Co. Ltd., Shimla Vs. Tilak Singh & Ors. [(2006) 4 SCC 404]*



13. I have considered the rival submissions, examined the record and gone through the evidence and documents available on record as well as the judgments cited.

14. In view of the rival submissions, the controversy in the present appeal, insofar as the liability of respondent No.3-Insurance Company is concerned, lies within a narrow compass. The question which requires consideration is whether the learned Tribunal was justified in completely exonerating the Insurance Company from liability to satisfy the award on the grounds that the claimant was travelling as a passenger in a goods vehicle, no passenger premium had been paid, the driver (respondent No.2) was not holding a transport vehicle licence and the vehicle was being used without the requisite permit for carrying passengers.

15. So far as the finding of the learned Tribunal regarding the driving licence of respondent No.2-driver (non-claimant No.1 in the claim petition) is concerned, the same requires reconsideration. The learned Tribunal, while considering the said aspect, has noticed Ex.12, the driving licence of respondent No.2, and has observed that the licence authorised him to drive a vehicle other than a transport vehicle and that no licence to drive a transport vehicle was produced. On this basis, the learned Tribunal concluded that respondent No.2 was not holding a valid licence to drive the offending vehicle. The aforesaid finding,



however, proceeds essentially on the absence of a separate transport-vehicle authorisation. The driving licence placed on record specifically contains the authorisation to drive "MCW with Gear LMV". Further, the insurance policy relating to the offending vehicle records its gross vehicle weight as 2750 kg. Thus, the vehicle in question falls within the weight category of a Light Motor Vehicle. The Supreme Court in **Mukund Dewangan v. Oriental Insurance Co. Ltd., (2017) 14 SCC 663**, has held that a holder of a driving licence to drive a Light Motor Vehicle is competent to drive a transport vehicle falling within the class of Light Motor Vehicle, and that no separate transport-vehicle endorsement is required. The said position has subsequently been affirmed by the Constitution Bench of the Supreme Court in **Bajaj Allianz General Insurance Co. Ltd. v. Rambha Devi, 2024 INSC 840**. In view of the aforesaid legal position, merely because the licence records its validity for driving a vehicle other than a transport vehicle, it cannot, by itself, lead to the conclusion that respondent No.2 was not authorised to drive the vehicle in question. Consequently, the finding of the learned Tribunal that the Insurance Company was entitled to be exonerated on the ground that respondent No.2 did not possess a valid driving licence to drive the offending vehicle cannot be sustained. The absence of a separate transport endorsement, in the facts of the present case, cannot be treated as an independent breach of the conditions of the insurance policy.



16. The question of liability of respondent No.3-Insurance Company, however, does not conclude with the aforesaid finding, since the Insurance Company has also relied upon the alleged unauthorised carriage of passengers and, in particular, the absence of a permit authorising such carriage. That aspect requires separate consideration.

17. The position regarding the permit stands on a different footing. The learned Tribunal has recorded that the offending vehicle was registered as a goods vehicle. More importantly, non-claimant No.2-owner (the appellant herein), while appearing in evidence, admitted in his cross-examination that the vehicle was not a passenger vehicle and that he had not obtained any permit for carrying passengers. The aforesaid admission assumes significance. The vehicle was admittedly being used for carrying persons at the time of the accident, whereas no permit authorising carriage of passengers had been obtained by the owner. The learned Tribunal has also noticed that the vehicle was registered as a goods vehicle and that the claimant and other persons were travelling therein. Thus, notwithstanding the finding recorded hereinabove with regard to the driving licence, the breach arising from the use of the insured vehicle for carriage of passengers without the requisite permit stands established on the evidence available on record. The appellant-owner, therefore, cannot seek complete indemnification from the Insurance Company by



contending that there was no breach whatsoever of the conditions governing the use of the insured vehicle.

18. The next question, therefore, is whether the aforesaid breach, by itself, entitled respondent No.3-Insurance Company to be completely exonerated from the obligation to satisfy the award, or whether, having regard to the nature of the claim and the circumstances in which the accident occurred, the appropriate direction would be to require the Insurance Company to satisfy the award in the first instance with liberty to recover the amount from the owner and driver. Before answering that question, the terms and scope of the insurance policy placed on record require consideration.

19. The insurance policy placed on record as Ex.10 shows that the offending vehicle was insured with respondent No.3 for the period from 06.02.2017 to 05.02.2018. The policy relates to the Bolero Camper in question. The learned Tribunal has noticed that no separate premium towards passengers was shown to have been paid under the policy. At the same time, the insurance policy records the seating capacity of the vehicle as 4+1 including the driver. The policy, however, also contains a limitation as to use, under which the vehicle was to be used for carriage of goods within the meaning of the Motor Vehicles Act, 1988. Thus, the policy documents, when read as a whole, do not establish that passengers travelling in the vehicle in breach of the permitted use



were contractually covered by the policy. The mere mention of the seating capacity of 4+1 cannot, in the facts of the present case, be treated as an independent contractual undertaking by the Insurance Company to cover every person travelling in the vehicle, irrespective of whether such carriage was authorised under the permit and the permitted use of the vehicle. The absence of a permit authorising carriage of passengers, as noticed hereinabove, remains an established circumstance against the appellant-owner.

20. In this regard, the decision rendered by the Hon'ble Supreme Court in ***Shyam Lal v. Shriram General Insurance Co. Ltd., 2025 INSC 1078***, requires to be considered. In that case, the vehicle was registered as a Utility Van, the permit issued in respect thereof was a contract carriage permit authorising carriage of five persons, and the insurance policy also reflected a seating capacity of 4+1. On those facts, the Hon'ble Supreme Court held that the limitation relating to carriage of goods could not be applied in the manner contended by the Insurance Company. The factual position in the present case is materially different. Here, there is no passenger-authorising permit; rather, the owner has himself admitted that no permit for carrying passengers had been obtained. Therefore, the decision in *Shyam Lal* cannot be applied to hold that the Insurance Company is ultimately liable to indemnify the appellant notwithstanding the established breach relating to the permitted use of the vehicle. The policy position,



therefore, shows that the appellant-owner has not established an absolute contractual right to indemnification from respondent No.3-Insurance Company.

21. The question which remains is the legal consequence of this breach in relation to the third-party claim of the injured minor, and whether complete exoneration of the Insurance Company was nevertheless warranted.

22. The legal effect of the aforesaid breach now requires consideration. The fact that the claimant was travelling in the goods vehicle, coupled with the absence of a permit authorising carriage of passengers, cannot be ignored. The Hon'ble Supreme Court in ***New India Assurance Co. Ltd. v. Asha Rani & Ors., (2003) 2 SCC 223***, has held that the statutory requirement under Section 147 of the Motor Vehicles Act, 1988 does not extend to compulsory coverage of passengers carried in a goods vehicle. The earlier view taken in ***New India Assurance Co. Ltd. v. Satpal Singh, (2000) 1 SCC 237*** was accordingly overruled. Thus, in the facts of the present case, the appellant-owner cannot contend that the mere existence of a valid insurance policy in respect of the vehicle necessarily makes respondent No.3-Insurance Company ultimately liable for the risk of an unauthorised passenger travelling in the goods vehicle. The established breach relating to the use of the vehicle without a



permit authorising carriage of passengers has a direct bearing upon the contractual liability of the Insurance Company.

23. However, the aforesaid principle does not by itself answer the question whether the Insurance Company should be completely absolved from satisfying the award in favour of the injured third-party claimant. The distinction between the ultimate liability of the insurer and its obligation to satisfy an award in the first instance is material in the context of the present appeal.

24. The claimant in the present case was a minor child, aged about 10 years at the time of the accident. The award has already been passed in his favour. The question, therefore, is whether the breach established against the owner should result in the claimant being required to recover the awarded amount directly from the owner and driver, or whether the Insurance Company can be directed to satisfy the award first, while preserving its right to recover the amount from the persons responsible for the breach. This question has to be examined in the light of the principles governing "pay and recover", to which the Court now turns.

25. The principle of "pay and recover" has been recognized by the Hon'ble Supreme Court in cases where, despite a breach of the policy conditions by the insured, the insurer is directed to satisfy the award in the first instance, with liberty to recover the amount so paid from the owner and/or driver in accordance with



law. In such cases, the direction to satisfy the award in the first instance does not amount to fastening the ultimate liability upon the insurer.



26. In ***Oriental Insurance Co. Ltd. v. Nanjappan & Ors., (2004) 13 SCC 224***, the Hon'ble Supreme Court, while dealing with the liability of the insurer in the presence of a breach of the policy conditions, directed the insurer to satisfy the award in the first instance and granted liberty to recover the amount from the insured in accordance with the procedure indicated therein. The said decision also makes it clear that, for such recovery, the insurer need not necessarily be relegated to a separate civil suit.

27. The said principle was also applied by the Hon'ble Supreme Court in ***Amrit Paul Singh & Anr. v. Tata AIG General Insurance Co. Ltd. & Ors., (2018) 7 SCC 558***, where the offending vehicle was being used without the requisite permit. While holding that such use constituted a fundamental statutory infraction, the Hon'ble Supreme Court directed the Insurance Company to satisfy the award in the first instance and granted liberty to recover the amount from the owner and driver.

28. The principle is, therefore, that the existence of a breach may entitle the insurer to avoid the ultimate burden of indemnification, but the consequence of such breach, in an



appropriate case, may be moulded by directing the insurer to first satisfy the award in favour of the third-party claimant and thereafter recover the amount from the person responsible for the breach.

29. The aforesaid principle assumes particular significance in the present case because the claimant was a minor child at the time of the accident. In **Anu Bhanvara & Ors. v. IFFCO Tokio General Insurance Co. Ltd. & Ors., Civil Appeal Nos. 6231-6232 of 2019, decided on 09.08.2019**, the Hon'ble Supreme Court, in the case of gratuitous passengers who were young children travelling in a goods vehicle, directed the Insurance Company to satisfy the award in the first instance, with liberty to recover the amount so paid from the owner and driver. Though the said decision was rendered on its own facts, the principle therein supports the course of directing respondent No.3-Insurance Company to satisfy the award in the first instance in the circumstances of the present case, while preserving its right to recover the amount from the persons responsible for the breach.

30. Applying the aforesaid principles to the facts of the present case, this Court finds that the learned Tribunal was justified in noticing a breach on the part of the appellant-owner inasmuch as the vehicle was being used for carrying passengers without a permit authorising such use. The said breach, therefore, cannot be completely ignored while determining the ultimate liability of the



Insurance Company. At the same time, the learned Tribunal proceeded to exonerate respondent No.3–Insurance Company on more than one ground. As noticed hereinabove, the finding regarding absence of a valid driving licence cannot be sustained merely on account of absence of a separate transport endorsement, having regard to the class and gross vehicle weight of the offending vehicle. The remaining breach relates to the unauthorised carriage of passengers without the requisite permit.

31. In these circumstances, complete exoneration of the Insurance Company from the obligation to satisfy the award would not be the appropriate course. The claimant was a minor child of about 10 years of age at the time of the accident and has already obtained an award of compensation from the learned Tribunal. The interest of the claimant, who was a minor at the time of the accident, can adequately be protected by directing respondent No.3–Insurance Company to satisfy the award in the first instance, while at the same time preserving its right to recover the amount so paid from the appellant–owner and respondent No.2–driver on account of the established breach.

32. Such a direction would neither amount to holding the Insurance Company ultimately liable to indemnify the appellant–owner nor would it efface the breach established against the appellant. It would only regulate the manner in which the awarded compensation is to be satisfied, leaving the Insurance Company at



liberty to recover the amount from the persons responsible for the breach in accordance with law.

33. Consequently, the appellant-owner is entitled to succeed in the appeal to this limited extent. The finding of the learned Tribunal completely exonerating respondent No.3-Insurance Company from the obligation to satisfy the award deserves to be modified by directing respondent No.3-Insurance Company to first satisfy the award, with liberty to recover the amount so paid from the appellant-owner and respondent No.2-Driver in accordance with law.

34. Consequently, the appeal is partly allowed. The finding recorded by the learned Tribunal exonerating respondent No.3-Insurance Company from the obligation to satisfy the award is modified. Respondent No.3-Insurance Company shall first satisfy the award of ₹4,81,000/- along with interest @ 6% per annum from 13.11.2017, as awarded by the learned Tribunal, in favour of the claimant.

35. It is, however, made clear that respondent No.3-Insurance Company shall be at liberty to recover the amount so paid from the appellant-owner and respondent No.2-driver, in accordance with law. For the purpose of such recovery, the Insurance Company shall be entitled to proceed before the learned Tribunal/



Executing Court in accordance with law, without being required to institute a separate civil suit.

36. The remaining findings of the learned Tribunal, including the quantum of compensation and the rate and period of interest, shall remain unaltered.

37. The appeal stands partly allowed in the aforesaid terms. No order as to costs.

(FARJAND ALI),J

Mamta