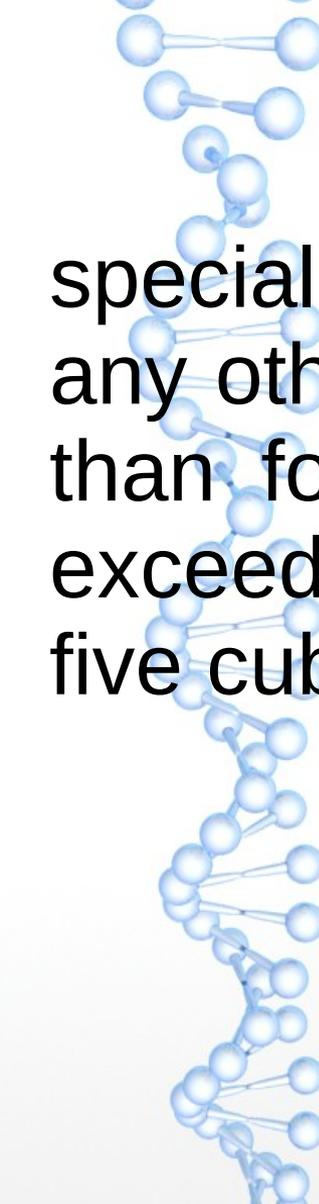




What is Motor Vehicle

Sec.2(28) M V Act defines Motor Vehicle or vehicles as-

“motor vehicle” or “vehicle” means any mechanically propelled vehicle adapted for use upon roads whether the power of propulsion is transmitted thereto from an external or internal source and includes a chassis to which a body has not been attached and a trailer; but does not include a vehicle

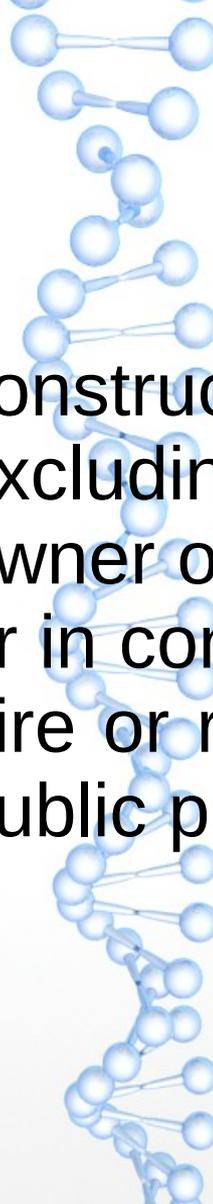


running upon fixed rails or a vehicle of a special type adapted for use only in a factory or in any other enclosed premises or a vehicle having less than four wheels fitted with engine capacity of not exceeding 4 [twenty-five cubic centimetres]; 1[twenty-five cubic centimetres].



Sec 2(35) defines Public service vehicle as-

Public service vehicle” means any motor vehicle used or adapted to be used for the carriage of passengers for hire or reward, and includes a maxicab, a motorcab, contract carriage, and stage carriage.



Sec 2(33) defines private service vehicle as-

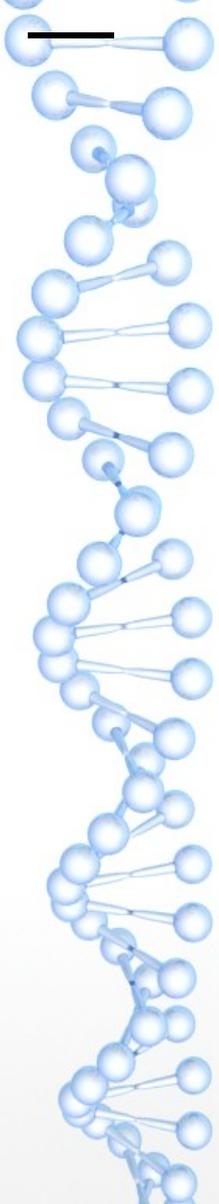
private service vehicle” means a motor vehicle constructed or adapted to carry more than six persons excluding the driver and ordinarily used by or on behalf of the owner of such vehicle for the purpose of carrying persons for, or in connection with, his trade or business otherwise than for hire or reward but does not include a motor vehicle used for public purposes.



Types of Passenger Vehicle under Motor Vehicle Act

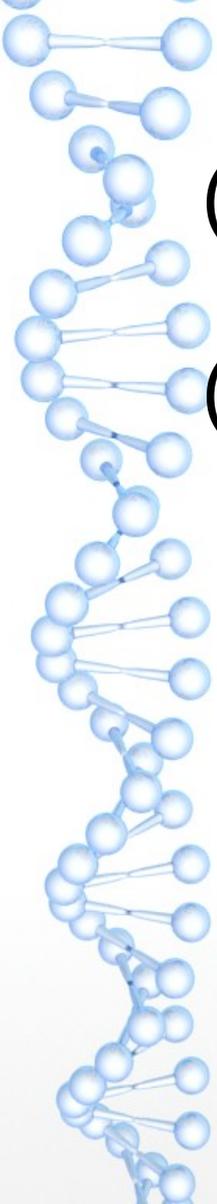
contract carriage

Sec 2(7) of M V Act defines contract carriage as a motor vehicle which carries a passenger or passengers for hire or reward and is engaged under a contract, whether expressed or implied, for the use of such vehicle as a whole for the carriage of passengers mentioned therein and entered into by a person with a holder of a permit in relation to such vehicle or any person authorised by him in this behalf on a fixed or an agreed rate or sum—



(a) on a time basis, whether or not with reference to any route or distance; or

(b) from one point to another, and in either case, without stopping to pick up or set down passengers not included in the contract anywhere during the journey, and includes—



(i) a maxicab; and

(ii) a motorcab notwithstanding the separate fares are charged for its passengers;



Sec 2(22) defines maxicab as-

maxicab means any motor vehicle constructed or adapted to carry more than six passengers, but not more than twelve passengers, excluding the driver, for hire or reward.

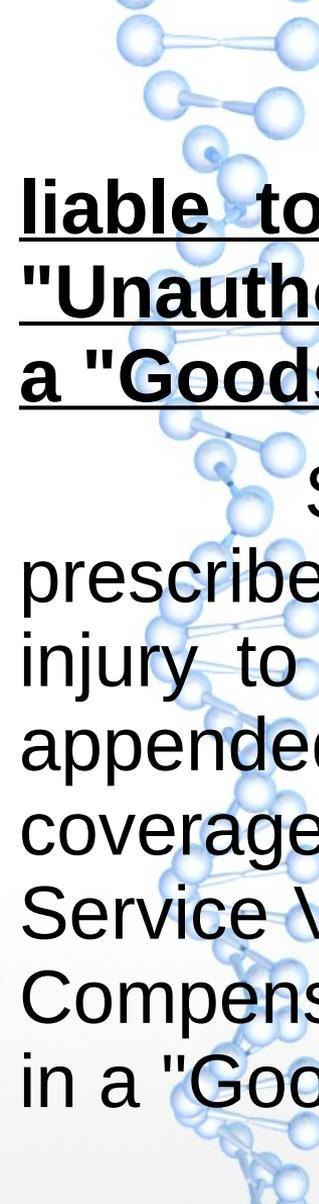
Sec 2(25) defines Motorcab as-

motorcab” means any motor vehicle constructed or adapted to carry not more than six passengers excluding the driver for hire or reward.



Sec 2(40) defines stage carriage as-

stage carriage” means a motor vehicle constructed or adapted to carry more than six passengers excluding the driver for hire or reward at separate fares paid by or for individual passengers, either for the whole journey or for stages of the journey

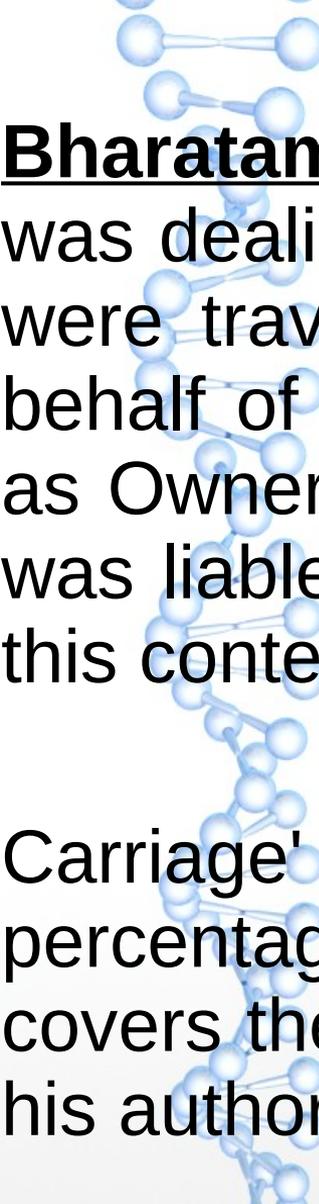


"Whether the Insurance Company can be held liable to answer the claims of persons who are either "Unauthorized Passengers" or "Gratuitous Passengers" in a "Goods Vehicle"?"

Section 147 of the Motor Vehicles Act, 1988 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" will be limited to liability under the Workmen's Compensation Act, 1923. It does not speak of any passenger in a "Goods Carriage".

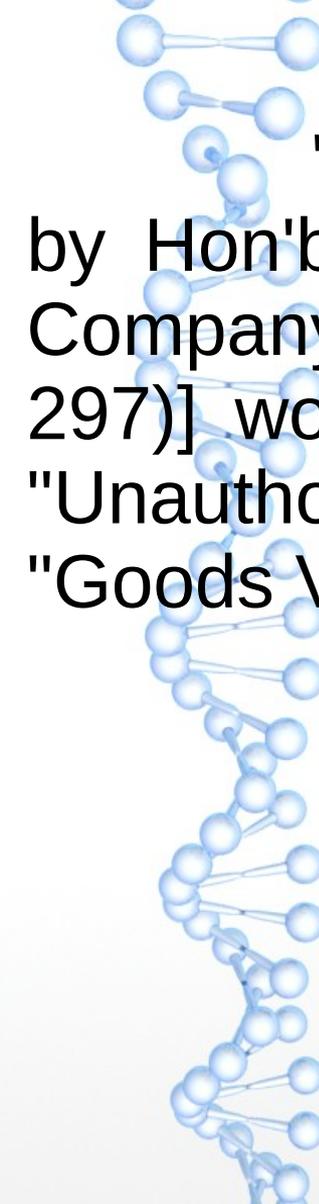
A Three Judge Bench of the Apex Court in ['New India Assurance Co. Ltd. Versus Asha Rani & Ors.', (2003) 1 SCC 223], considered the question whether it is compulsory for the Insurance Company to cover the liability in respect of passengers traveling in a 'Goods Vehicle'. This decision was in context of the un-amended Act. The Apex Court overruled its earlier Judgment in ["New India Assurance Co. Ltd. v/s Satpal Singh", (2000) 1 SCC 237] and held as follows:

” It is held that the insurer will not be liable for paying compensation to the owner of the goods or his authorized representative on being carried in a goods vehicle when that vehicle meets with an accident and the owner of the goods or his representative dies or suffers any bodily injury.”



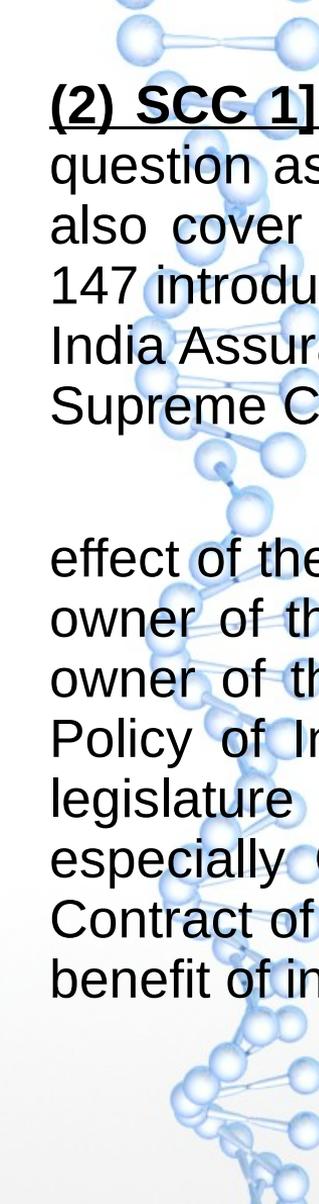
In 'National Insurance Co. Ltd. v/s Cholleti Bharatamma & Others', (2008) (1) SCC 423, the Apex Court was dealing with a matter in which a large number of persons were traveling in a "Goods Carriage". It was contended on behalf of the Claimants that all these persons were traveling as Owners of the Goods and hence, the Insurance Company was liable to pay the compensation. The Apex Court rejected this contention and held as follows:

"8. The Act does not contemplate that a 'Goods Carriage' shall carry a large number of passengers with small percentage of Goods as considerably the Insurance Policy covers the death or injury either of the Owner of the Goods or his authorized representative.



"Whether the doctrine of "pay and recover" evolved by Hon'ble Supreme Court of India in ["National Insurance Company Limited v/s Swaran Singh & Ors.", (2004) 3 SCC 297] would apply to the claims of persons who are either "Unauthorized Passengers" or "Gratuitous Passengers" in a "Goods Vehicle"?"

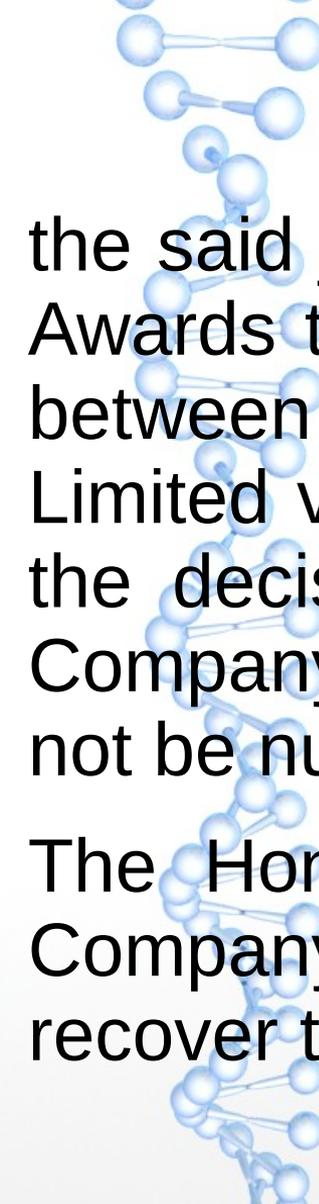
In ["New India Assurance company Ltd. v/s. Asha Rani & Ors.", 2003 ACJ 1 (SC)], a Two Judge Bench of the Hon'ble Supreme Court doubted the correctness of the conclusion reached by another Two Judge Bench in ["New India Assurance Company v/s. Shri Satpal Singh & Ors.", 2000 ACJ 2 (SC)] and placed the matter before a Larger Bench for reconsideration. The question referred to by the Judgment in ["New India Assurance Company Ltd. v/s. Asha Rani & Ors.", 2003 ACJ 1 (SC)], was decided by a Larger Bench consisting of Three Judges of the Hon'ble Supreme Court in ["New India Assurance Company Ltd. v/s. Asha Rani and & Ors.", 2003 (2) SCC 223]. The Larger Bench of the Hon'ble Supreme Court after an elaborate consideration of the provisions of Sections 147 and 149 of the Motor Vehicles Act, 1988 as amended by the Amendment Act 54 of 1994 **held that the Judgment in ["New India Assurance Company v/s. Shri Satpal Singh & Ors.", 2000 ACJ 2 (SC)] has not been correctly decided.**



In **National Insurance Company Ltd. v/s. Baljit Kaur & Ors.**, 2004

(2) SCC 11, a Three Judge Bench of the Hon'ble Supreme Court again went into the question as to "whether an Insurance Policy in respect of the "Goods Vehicle" would also cover "Gratuitous Passengers" in view of the legislative amendment to Section 147 introduced by Act 54 of 1994. After referring to the Larger Bench decision in ["New India Assurance Company Ltd. v/s. Asha Rani & Ors.", 2003 (2) SCC 223], the Hon'ble Supreme Court observed as follows:

"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 any premium was paid to the extent of the benefit of insurance to such category of people."



However, the Hon'ble Supreme Court clarified that the said judgment will have only prospective effect so that the Awards that were made against the Insurer during the period between the decision in ["New India Assurance Company Limited v/s. Shri Satpal Singh & Ors.", 2000 ACJ 2 (SC)] and the decision of the Larger Bench in [New India Assurance Company Ltd. v/s. Asha Rani & Ors.", 2003 (2) SCC 223] will not be nullified.

The Hon'ble Supreme Court also permitted the Insurance Company in the said case to pay the Award amount and recover the same from the Owner of the Vehicle insured.