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**(1997) 09 BOM CK 0006**  
**In the Bombay High Court**  
**Case No : F.A. No. 36 of 1989**

Chowgule and Co. Pvt. Ltd. APPELLANT  
Vs  
Oriental Insurance Co. Ltd. and Others RESPONDENT

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**Date of Decision :** 24-09-1997

**Acts Referred:**

Motor Vehicles Act, 1939 — Section 94, 95

**Citation :** (1998) 1 ACC 526 : (1999) ACJ 257

**Hon'ble Judges :** R.M.S. Khandeparkar, J; R.K. Batta, J

**Bench :** Division Bench

**Advocate :** S.D. Lotlikar, for the Appellant; H.R. Bharne, for the Respondent

**Final Decision :** Dismissed

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## **Judgement**

R.M.S. Khandeparkar, J.—The present appeal is preferred against award dated 28.4.1988 passed by the Presiding Officer, Motor Accidents Claims Tribunal, South Goa, Margao in Claim Petition No. 2 of 1983. By the impugned award, the compensation awarded was ordered to be shared in equal proportion by the owners of both the vehicles involved in the accident along with their drivers. As regards the insurance company, only the insurer in relation to the truck, i.e., respondent No. 2 herein was held to be liable whereas the respondent No. 1 who is the insurer for the owner of the Tempo GDZ 5487, i.e., appellant herein, was absolved from responsibility of being liable to pay any compensation on the ground that the deceased was travelling in the Tempo as a passenger. It was held that the deceased was neither an employee of the appellant company nor any person connected with the transportation of goods carried by the said Tempo and therefore there was a breach of the conditions of the policy on the part of the appellant in carrying the said passenger and therefore the insurance company was not liable to contribute towards the compensation.

2. Mr. S.D. Lotlikar, learned advocate appealing for the appellant, while drawing our attention to Sections 94 and 95 of the Motor Vehicles Act, 1939 submitted that neither the quantum of compensation nor the apportionment of liability is

challenged in the present appeal and that the challenge is limited to the point regarding absolvment of insurer of the appellant company from paying the compensation awarded in the matter. He further submitted that it was for the insurance company to establish that the deceased was travelling in the vehicle in question in breach of the conditions of the policy and that he was allowed to travel in the said vehicle on the specific instructions by the insured, i.e., the appellant, In view of failure on the part of the insurance company to establish this fact it was not permissible for the Claims Tribunal to absolve the insurance company from the liability of paying the compensation awarded in favour of the claimants and against the appellant.

3. Mr. H.R. Bharné, learned advocate appearing for the respondent No. 1, on the other hand, submitted that the dispute in question is fully covered by the decision of the Full Bench of this Court in the matter of Oriental Fire and General Insurance Co. Ltd. Vs. Hirabai Vithal Nikam and others, , wherein it has been held that the passengers carried in goods vehicle in the absence of specific terms of contract of insurance permitting the same, the insurer is not liable for any injury or death of such a passenger. He further submitted that in the instant case it was not disputed by the appellant that the appellant had allowed the driver of the concerned vehicle to carry passengers on the assumption that the terms and conditions of the insurance policy permitted the insured to carry passengers through the transport vehicles. He further submitted that the terms of policy nowhere provide for such eventuality and therefore no fault can be found with the award passed by the Tribunal absolving the respondent No. 1 from the liability towards contributing the compensation awarded in favour of the claimants.

4. Upon hearing the advocates and on perusal of records it is seen that the claim for compensation in the present case arose on account of the accident involving two vehicles, namely, Tempo bearing No. GDZ 5487 belonging to the appellant and truck bearing registration No. GDS 3565 belonging to respondent No. 10. In reply to the claim for compensation, the respondent No. 1 herein specifically raised the defence to the effect that the deceased was a gratuitous passenger and was allowed to travel through the vehicle in violation of the terms of the policy obtained by the appellant herein and as such, there was a breach of the conditions of insurance policy allowed the company to transport the pick-up passengers other than the company employees and that they were entitled to carry such passengers under endorsement contained in the slip attached to the policy and further that the deceased was neither an employee nor a loader of the company. However, the appellant failed to establish from the contents of the policy obtained by it that the insurance policy did permit the appellant to carry passengers through the goods vehicle like the one which was involved in the accident. Moreover, the statement on behalf of the appellant clearly discloses that the driver of the vehicle was permitted by the appellant to carry the passengers, like the deceased, to travel through the said vehicle at the relevant time. In view of the fact that the policy obtained by the appellant did not contain

any such term permitting the appellant to carry passengers through the goods vehicle, it was in clear breach of the said policy to allow the deceased to travel in the said vehicle at the relevant time and in this view of the matter we find that the present case is fully covered by the decision of the Full Bench of this Court in the matter of Oriental Fire and General Insurance Co. Ltd. Vs. Hirabai Vithal Nikam and others, .

5. The Full Bench decision of this High Court in the matter of Oriental Fire and General Insurance Co. Ltd. Vs. Hirabai Vithal Nikam and others, , is directly on the point as to whether the insurer is liable to pay compensation for death or injury to a passenger carried in a goods vehicle either for hire or reward and contrary to the terms of the insurance policy or in the absence of any provision in the insurance policy permitting such passengers being carried in a goods vehicle for hire or reward and the terms of the contract of insurance do not cover such carriage, the insurer is not liable to pay compensation for the death of or bodily injury to such a passenger. From the facts disclosed on the face of the record, it is clear that the appellant was not permitted under the insurance policy to carry any passenger through the goods vehicle like the Tempo involved in the accident at the relevant time and hence applying the said decision of Full Bench of this Court the insurance company cannot be held liable for the compensation awarded against the appellant and in favour of the claimants on account of the accident in question.

6. The grievance of Mr. S.D. Lotlikar, learned advocate for the appellant, that the insurance company had not established that the appellant had specifically permitted to carry the passengers through the goods vehicle cannot be accepted since the witness of the appellant himself has stated before the Tribunal that the insurance policy permitted the company to carry passengers other than employees of the company through the transport vehicles which statement clearly discloses that the company permitted its driver to carry the passengers through the goods vehicle.

7. Since no other point is canvassed in the present appeal, the appeal is liable to be rejected. The appeal is accordingly dismissed with no order as to costs.