

(1986) 09 RAJ CK 0052

In the Rajasthan High Court

Case No : Civil Miscellaneous Appeal No's. 215, 226, 228, and 230 of 1984 and 138, 139, 140, 141 and 142 of 1985

Darshani Devi and Others

APPELLANT

Vs

Sheo Ram and Others

RESPONDENT

Date of Decision : 11-09-1986

Acts Referred:

Motor Vehicles Act, 1939 — Section 95

Citation : (1989) 65 CompCas 353 : (1987) RLW 197 : (1987) 1 WLN 332

Hon'ble Judges : G.M. Lodha, J

Bench : Single Bench

Advocate : G.C. Mathur, S.C. Srivastava and H.M. Bhargava, for the Appellant; Dalip Singh, G.K. Bhartiya and R.M. Lodha, for the Respondent

Judgement

G.M. Lodha, J.—These nine appeals, bearing Nos. 226 of 1984, 230 of 1984, 228 of 1984, 215 of 1984, 141 of 1985, 42 of 1985, 139 of 1985, 140 of 1985 and 138 of 1985, all arise from one accident in which a number of persons were injured and two, including the driver-cum-owner, were fatally injured. All the claimants have filed appeals for increase of the compensation awarded by the Accidents Claims Tribunal. The owner of the truck, M/s. Oriental Road Lines and the claimants, who are legal representatives of the deceased driver-cum-owner of the car have also filed appeals. None of the insurance companies have come in appeal.

2. The unfortunate accident happened on January 28, 1978, at about 5.30 a.m. when the car bearing registration No. RSG 214 collided with a trailer No. RSR 3125 in front of the residence of the Collector on Jai Singh Highway, Jaipur. The result was the death of the taxi driver and the occupants of the taxi also sustained grievous injuries and one Shankari Devi died.

3. The first point which requires consideration is as to who was responsible for the accident. The evidence recorded shows that PW 1, Nawal Kishore, stated that the car No. RSG 214 was running when a truck came from the opposite side. The

car driver, on noticing the truck from the opposite side, diverted the car to the left side. At that time, a trailer came in the reverse direction and collided with the car. The trailer was not having the back light nor was there any person to give any signal or indication that the trailer was coming in the reverse direction. The reason for the accident was that the trailer came in the reverse side without any signal or light and the car had no wiper. Gopi Ram's statement is also similar. According to him, the trailer came in the reverse direction without a light or signal and that resulted in the accident with the car. He also mentioned that the car had no wiper and that it was raining at that time. According to him, the responsibility lies more on the driver of the trailer than on the driver of the car. AW 4, Sulochana, has stated that the car was going fast. Anup Agarwal, AW 7, has stated that the car was going fast. Anup Agarwal, AW 7, has also stated that the car had no wiper, and the driver drove the car in spite of the absence of wiper even when it was pointed out by the grandfather.

4. The trailer had no horn, no light in the back and no indication that it was coming on the reverse side. According to this witness, both are equally liable.

5. Bhagchand, khalasi of the trailer, had tried to fix the responsibility on the car driver by saying that the car came rashly and negligently with high speed. Wazid Ali had supported him.

6. Now, after "analysing the evidence, it is obvious that the accident happened primarily on account of the fact that the trailer came on the reverse side without a light and without there being any person giving a signal nor was any horn given. It is significant that when a heavy vehicle like a trailer decides to go on the reverse side and no signal is given, no horn is given, no light in the shape of back light, then it is bound to create problem for the incoming vehicle whose driver would notice it at such a time and occasion when the accident would become imminent and there would be no escape. The fact that the truck was coming on the front side and that the car driver had no option but to divert the car to the left side would show that the car driver was not at all at fault. However, his fault was that he was driving the vehicle without a wiper. It has come in evidence that there were rains although it was not the rainy season, because it was January. Even then, not having wiper and that too in a taxi is certainly negligence, though it may be of very minor significance.

7. The Tribunal has apportioned the negligence, rashness and responsibility of this accident equally, i.e., 50 : 50. I am of the opinion that it is not correct. Primary responsibility and liability for this accident was on the driver of the trailer who took the trailer on the back side in the reverse direction without signal or any person to indicate it. I would put it at 90% so far as the trailer driver is concerned. The taxi driver would be responsible and liable only for 10%. Thus, the liability is apportioned as 90% to the trailer driver and 10 per cent. to the car driver.

8. This would automatically result in the apportionment of the claim amount

between the two vehicles, when the claim amount is discussed and decided.

9. Now, the question arises as to whether the passengers who were travelling in the car were also liable. Mr. Singh submitted that, according to English law, the principle is that when passengers sit in a car or a vehicle which has got some defect and which is being driven negligently and it has come to their observation, then they are also responsible for contributing negligence. This principle is too difficult to be accepted in Indian conditions. It is well-known that passengers have to travel in very difficult conditions. Mostly, they have got no control over the taxi driver or bus driver or the train or the plane in which they travel. It would be too much to expect in Indian conditions, that the passengers who travel in air-bound plane or in a seat of a bus, or of a railway would first inspect the vehicle and find out whether everything is in order, then control or supervise or regulate the speed at which it is to be driven.

10. It is well-known that, mostly, the passengers in Indian conditions are packed in these vehicles like chattels and particularly in buses where they have got no option but to travel on account of exigencies, emergencies, paucity of transport, and they have to accept whatever is provided. They are not even allowed to sit because the sitting space is too small and meant only for a few passengers and most of the vehicles are overloaded. It is true that, that would not absolve them from the legal aspect. However, all laws, interpretation of which have been done in English courts, cannot be accepted in India. It is well-known that the interpretation of law should also be done according to the conscience of society, the State, the particular area and the manner in which things are developing. The transport and conveyance in Indian conditions particularly where the passengers cannot have any choice or option because these being scarce and very rare, cannot be regulated by the passengers. I would have no hesitation in rejecting the contention that the interpretation in the law of torts regarding negligence or rashness or contributory negligence or composite negligence in the matter of driving of the vehicles or upkeep of the vehicles or condition of the vehicles would be accepted in India. In my opinion, we have to be alive to the felt necessity of time in the social conditions and, therefore, in Indian conditions, no passenger can be held liable for contributory negligence for the omission or the commission of the car driver or of the truck driver or the bus driver or the Indian railway driver or aeroplane pilot.

11. That being so, we are now to consider whether the compensation allowed by the Tribunal is just and proper and calls for no interference or must be increased suitably as claimed by Mr. Bhargava and Mr. Srivastava, appearing for the various claimants.

12. I would now take up the individual cases of the claimants. Gopi Ram was the occupant of the car and was injured and he was 65 years of age at that time. He got a fracture in his forearm, his teeth were also shattered and he was hospitalised for twenty days. His forearm was operated.

13. The Tribunal awarded Rs. 2,000 for the fracture, Rs. 3,000 for general pain and agony and Rs. 1,000 for loss of happiness. Mr. Bhargava relied upon the judgment in Prakash Chandra Jain v. Alladin [1986] ACJ 343 (Raj) where an award of Rs. 33,320 was given. He then referred to Gyan Prakash Bhargava Vs. Baboo Lal and Another, where an award of Rs. 40,500 was given. According to him, the award should be Rs. 40,544.

14. I am unable to accept this contention because there has been no permanent disability. Of course, the amount awarded is inadequate and should be enhanced reasonably. In my opinion, as, for about four or five months, the injured, Gopi Ram, could not attend to his business and was also slightly impaired on account of a steel plate having been inserted in his hand during the operation, the Tribunal should have awarded Rs. 5,000 for loss of business and for fracture looking to the permanent slight handicap in the strength of the hand to pick up things, an amount of Rs. 5,000 should have been allowed in addition to the amount of Rs. 2,000, which has been allowed for fracture treatment. Similarly, for the diet and medical treatment, Rs. 2,000 should have been allowed. Thus, these amounts should be added and they would come to Rs. 18,544,

15. In the case of Anjana, an award has been given of Rs. 30,331. She had fracture of both the legs. There has been disfiguration of the face.

16. In my opinion, as per the statement of Dr. Chandalia, since, in spite of plastic surgery even if it is attempted, the disfiguration would be reduced only 50 per cent. and there would be permanent disfiguration, the girl should have been allowed Rs. 40,000 for this serious handicap in her life. Similarly, for the amount allowed in the circumstances and the manner in which the injuries were caused, the Tribunal should have allowed Rs. 5,000 for medicines and diet.

17. Anjana, on account of the disfiguration and on account of the injuries in the laws and nose and on account of fractures of both the legs, suffered serious mental agony and pain and that too for a considerable time. I, therefore, deem it proper, looking to her age, the nature of the injuries, the suffering which she had, that she must get compensation of Rs. 10,000 for mental agony, pain and suffering on account of this accident.

18. In other respects, the award of the Tribunal is confirmed.

19. Nawal Kishore had bilateral fracture of hips and dislocation on both sides. He also had fracture of the pelvis and his jaws were broken near the eye resulting in an operation for the removal of teeth. His left hand was also fractured.

20. According to medical evidence, replacement of the dislocated hips may result in operation by an expert which may be at a cost of Rs. 50,000. The dislocation of hips in both the sides is a serious handicap for the injured. Nawal Kishore is only 36 years of age. He is the son of Gopi Ram and doing business with him. The family business brings income of about Rs. 1,000 per month but now with this handicap, it will be difficult for him to do normal business. According to Dr.

Kasliwal, his impairment and disablement is 75 per cent. Mr. Bhargava has placed reliance upon the decision in State of Gujarat Vs. Dushyantbhai Nagjibhai Patel and Another in support of his contention that the compensation allowed is inadequate in the facts and circumstances of the present injured. I am inclined to accept that, looking to the seriousness of the injuries and the fact that there would be disablement of 75 per cent. permanently, the compensation allowed is inadequate. The Tribunal should have allowed compensation treating that the permanent impairment in working capacity was on account of 75 per cent. disablement and for that the estimates should have been made. As Nawal Kishore was only 36 years of age at the time, he has been permanently disabled and that too for a period of about 35 years. In my opinion, the loss of future capacity to earn should be calculated and then compensation should be allowed for that purpose. Even if it is assumed that the impairment would be Rs. 200 per month then for each year it would be Rs. 2,400 and for 24 years it would be Rs. 57,600. Since Rs. 6,000 has been allowed towards loss of business, I would allow Rs. 50,000 as additional compensation.

21. Regarding replacement by operation, it is difficult to make a forecast because no operations have taken place so far and what amount would be spent and whether at all Nawal Kishore would be going in for the operation is still a doubtful question. The accident took place in 1979, I enquired from Mr. Bhargava whether Nawal Kishore has been sent for operation to Bombay or any other place or any operation has been done for dislocated hips so far. Mr. Bhargava submitted that so far it has not been done but in future, according to the opinion and advice of Dr. Kasliwal, it will have to be done. I am unable to allow any compensation since I am convinced that if a person for six long years has not undergone any operation in spite of dislocated hips, it is highly doubtful whether at all he would like to undergo an operation for replacement now. Consequently, in the case of Nawal Kishore, an amount of Rs. 50,000 is increased and will be added in the compensation already allowed by the Tribunal to him.

22. Sulochna aged 35 years got a fracture in the right hand. An amount of only Rs. 1,000 has been allowed for this injury in addition to Rs. 35 for the medicine. There is no evidence that on account of this fracture, there will be a permanent impairment. Even then, I deem it proper and she being a household lady and the right hand is the most important organ of the body for its functioning, though it may not be substantial, consequently, the amount is increased to Rs. 5,035.

23. Shankari, wife of Gopi Ram, died in this accident. She was 63 years of age. Gopi Ram was 68 years. The Tribunal has awarded an amount of Rs. 2,500 only. In particular, the amount for loss of love and affection, on account of parting with life partner awarded is Rs. 2,000 only. Similarly, loss of consortium allowed is Rs. 500. In my opinion, in spite of the fact that Gopi Ram is 68 years and Shankari was 63 years, the amounts allowed on these two counts are inadequate. The basic fact is that at his age, the loss of a life partner cannot be undermined as the requirement of a life partner assumes much more importance. Consequently,

I increase the amount for loss of consortium to Rs. 5,000 instead of Rs. 500 and on account of mental pain and agony and loss on account of love and affection and services rendered which should have been rendered by Shankari to Gopi Ram at Rs. 10,000. Thus, Rs. 15,000 would be allowed in compensation to Gopi Ram for the death of Shankari Devi.

24. In the case of Darshani Devi and other claimants who have filed a claim for the death of Munish Kumar, driver-cum-owner of the car, Mr. Srivastava's submission is that the multiplier applied should be at least 35 years, since he was only 30 years at the time of death. The Tribunal has applied different multipliers for the claimants. In my opinion, the distribution of the compensation may depend upon the different claimants but a common multiplier should be applied so far as overall compensation is concerned. In view of this, since he was the driver of the vehicle and always has to lead a hazardous life as such, I adopt a multiplier of 30 years. The amount of compensation shall be as follows $\text{Rs. } 650 \times 12 \times 30 = \text{Rs. } 2,34,000$. Besides this, the claimants are entitled to Rs. 1,000 each towards loss of love and affection, Thus, the claimants shall get Rs. 2,40,000. As I have held that the deceased, Munish Kumar, was guilty of 10% rashness and negligence, this amount is deducted by the extent of 10%.

25. The result is that the claimants shall get Rs. 2,16,000 as compensation on account of the death of Munish Kumar.

26. The amount of the compensation may be paid to all the claimants in the proportion that half of the amount shall be given to the wife and the rest would be distributed equally amongst the father and other claimants of the deceased.

27. The amount would be paid and procedure for its realisation and deposit would be adopted as laid down in Rajasthan State Road Transport Corporation Vs. Pista Aggarwal and Others,

28. Having decided the main controversy about the quantum of compensation in individual cases, another important facet of these appeals and much more important for the claimants, from the point of view of realisation of the compensation which becomes real only when it is realised and remains illusory even if it is awarded but cannot be realised, is the question of liability of the two insurance companies.

29. The truck was insured with National Insurance Company and the car was insured with New India Assurance Company. The liability of the National Insurance Company is alleged to be unlimited by the claimants. The controversy is based on two grounds. One, that the insurance policy is comprehensive and, therefore, the liability is comprehensive and not limited to Rs. 20,000. The other ground is that according to conditions Nos. 13 and 16, the liability is unlimited because the column for the amount has been kept blank. So far as New India Assurance Company is concerned, I would deal with the question of New India Assurance Company a little later. The National Insurance Company has also undertaken to mention at the top that the policy is comprehensive and (sic.)

have held in Smt. Chand Kanwar Vs. Mannaram and Others, that the liability is comprehensive and the relevant discussion is contained in paras 30 to 41.

30. Mr. Bhartiya, learned counsel for the National Insurance Company, submitted that a Division Bench of this court in Sohan Lal v. Bal Swaroop Bal Bhatnagar [1981] ACJ 113 (Raj), held that the interpretation of the comprehensive policy of the single Bench in Smt. Chand Kanwar Vs. Mannaram and Others, is not correct.

31. Mr. Dalip Singh, Mr. G.C. Mathur as intervener and Mr. Bhargava appearing for the various claimants/parties in the case have argued that the Division Bench has not overruled the judgment in Smt. Chand Kanwar Vs. Mannaram and Others, and the observations made in the Division Bench case are only obiter as the question never arose nor was argued pointedly nor adjudicated upon. It was pointed out that before the Division Bench of the case in which the judgment was given, there was no question of interpretation about what is the meaning of a comprehensive policy and that neither before the Tribunal nor before the single Bench nor before the Division Bench, was this question authoritatively considered and adjudicated, as it was never involved. In this connection, reference was made to some of the paragraphs in the judgment wherein the question of limit upon the liability of the insurance company in respect of any one claim was considered with respect to the specific clause in the policy. The covenant in that case mentions specifically that the limit on the amount of liability in respect of any one claim or series of claims arising out of one event is Rs. 50,000.

32. Mr. Singh pointed out that, in the present case, there is no such clause that the liability is limited to Rs. 50,000 and to this effect, a clause is added as per the Motor Vehicles Act. At page 123, the following observations of the Division Bench are every pertinent: " It may be mentioned here that this ground was not raised by the appellant in the memo of appeal or before the single judge and it is only because of the decision in Smt. Chand Kanwar Vs. Mannaram and Others, that this argument has been put forth before us for the first time by learned counsel for the appellant ". The learned Division Bench then observed that "comprehensive" cannot be taken to mean unlimited liability because it refers to different types of liability and not to the extent of liability in financial terms and then left the matter there without elaborating and deciding whether the decision given in Smt. Chand Kanwar Vs. Mannaram and Others, , about the implication of the liability according to award or the liability according to the provision of the Act only, would hold good now or not. Mr. Singh then pointed out that the casual manner in which the argument was raised before the Division Bench resulted in a casual manner of making observations without adjudication about the correctness of the proposition laid down in Smt. Chand Kanwar Vs. Mannaram and Others, Mr. Singh submitted that the Division Bench has not overruled the decision of Smt. Chand Kanwar Vs. Mannaram and Others, in terms nor declared it as no longer good law. According to learned counsel, the casual observations in respect of the nature of the liability and reference to Chand Kanwar's case [1988] 63 Comp Cas 721 (Raj) mentioned therein would only mean that the

Division Bench had its own doubt about the correctness of the proposition laid down in Smt. Chand Kanwar Vs. Mannaram and Others,

33. In this connection, the following paragraph which occurs at page 122 may be referred:

" This limit, when it fixes the liability for such amount as is necessary to meet the requirements of the Motor Vehicles Act, means that the limit is the statutory limit prescribed by Section 95(2)(b) of the Act. Even if it can be said that it means the whole of the amount which is awarded to a claimant, then Section 110B of the Act provides that the Claims Tribunal shall specify the amount which shall be paid by the insurer."

34. I have given my anxious consideration to the present controversy and I must mention that since it concerns the question whether Smt. Chand Kanwar Vs. Mannaram and Others, has been overruled or not, I have given my thoughtful consideration to the entire matter. There is no doubt that stray observations were made in the Division Bench judgment and certainly there is doubt about the correctness of Smt. Chand Kanwar Vs. Mannaram and Others, in the judgment when it interprets a comprehensive policy and the liability under it. However, it is equally correct that except expressing some doubt and making some stray observations in the nature of obiter, the Division Bench, since it was not seized of the case, did not prefer to overrule it or reverse it. It would be seen from the decision in Smt. Chand Kanwar Vs. Mannaram and Others, that various facets have been considered to come to the conclusion that the comprehensive liability would mean liability as per the award, and not limited to statutory liability only. All these facets are supported by various decisions and various canons of interpretation adopted in that judgment. The Division Bench was neither required to consider them thoroughly nor learned counsel appearing before the Division Bench persuaded the court to examine Smt. Chand Kanwar Vs. Mannaram and Others, to that extent for the purpose of overruling it or declaring it bad law, or no longer good law.

35. In such circumstances, I am inclined to accept the contention of Mr. Singh, Mr. Mathur and Mr. Bhargava that Smt. Chand Kanwar Vs. Mannaram and Others, has not been overruled nor has it been declared no longer good law by the Division Bench and the observations made by the Division Bench are in the nature of "obiter" only.

36. It would be for the Division Bench or a larger Bench in a proper case to consider again whether the observations laid down in this respect, about Smt. Chand Kanwar Vs. Mannaram and Others, would be confirmed or overruled, so that the clouds which have gathered on the horizons are cleared in either case and no confusion is left and the law becomes certain, specific and clear on this point.

37. Be that as it may, so far as that judgment has not been overruled, I would hold that the policy is having comprehensive liability of the National Insurance

Company and the liability would be unlimited and would be as per the award given by the Tribunal, as modified by this court subject to other limitations and conditions mentioned above.

38. So far as New India Assurance Company is concerned, it is not liable in the case of Darshani Devi and others who are claimants so far as the death of the owner-driver of the taxi is concerned. I must mention that since Munish Kumar himself was the owner and the claimants step into his shoes, so far as his own widow and children are concerned, they cannot claim any amount from New India Assurance Company for the death of Munish Kumar, because it is only when Munish Kumar is required to pay compensation, that the question of indemnifying by the insurance company can arise.

39. However, so far as other passengers are concerned, namely, Sulochana, Anjana, Nawal Kishore and Gopi Ram, they would certainly be entitled to receive compensation from this company also. It may be clarified that though I have already held that the driver of the car was also responsible partially for the accident and it was a case of contributory negligence by him in the accident, for the passengers, it would be a case of composite negligence.

40. I have held in Sohan Lal and Another Vs. Bal Swaroop Bal Bhatnagar and Others that in case of composite negligence, the party can realise the amount from owners of both the vehicles. In that view of the matter, the liability of New India Assurance Company in the case of passengers would not be limited. This being a case of composite negligence, the claimants would be entitled to realise the whole amount from this company also.

41. In this respect, Mr. Lodha who appeared on behalf of the New India Assurance Company argued that the liability is limited to Rs. 10,000 per passenger as per the judgment of the Full Bench. However, the claimants' counsel pointed out that the present one is a case where an additional premium is given and the policy of the New India Assurance Company Limited dated December 13, 1978, shows that the additional premium was given for four passengers in addition to the basic premium. I am also persuaded to consider the contention of Mr. Singh that in the policy it is mentioned that endorsements Nos. 15 and 13 would apply and the policy is subject to these endorsements. It is significant that endorsement No. 13 with regard to passengers reads as under:

"In consideration of an additional premium of Rs.....and notwithstanding anything to the contrary contained in general exception No. 4 but subject otherwise to the terms, exceptions, conditions and limitations of this policy, the company will indemnify the insured against liability at law for compensation (including law costs of any claimant) for death of, or bodily injury to, any person other than a person excluded under general exception No. 3 being carried in or upon or entering or mounting or alighting from the vehicle described in the Schedule hereto but such indemnity is limited to the sum of Rs.....in respect of any one person and subject to the aforesaid limit in respect of any one person to

Rs.....in respect of any number of claims in connection with any one such vehicle arising out of one cause :

Provided always that in the event of an accident occurring whilst such motor vehicle carrying more than the number of persons mentioned in the Schedule hereto as being the licensed carrying capacity of that vehicle in addition to the conductor, if any, then the insured shall repay to the company by reason of this endorsement if not more than the said number of persons were carried in the motor vehicle :

Provided further that in computing the number of persons for the purpose of this endorsement, any three children not exceeding 15 years of age will be reckoned as two persons and any children in arms not exceeding three years of age will be disregarded:

Provided further that in the event of the policy being cancelled at the request of the insured, no refund of premium paid in respect of this endorsement will be allowed, subject otherwise to the terms, exceptions, conditions and limitations of the policy.

42. Obviously, these two clauses are blank and, therefore, the liability has been unlimited. Endorsement No. 13 forms part of the policy and since it has been mentioned that the limit to the sum in respect of any one person as a whole has been left blank, it would mean that it is unlimited liability as held by the Gujarat High Court in *Bomanji Rustomji Ginwala Vs. Ibrahim Vali Master and Others*, where paras 28 to 30 read as under:

" In view of the aforesaid legal position, the terms of the insurance policy will have to be scrutinised. At exhibit 100 is found the insurance policy in question and exhibit 97 is a copy thereof. In the said policy, the limits of liability of the insurance company have been provided for.

Mr. Amin pointed out to me that in that column, limits of the amount of insurance company's liability u/s II(1) (i) is mentioned at Rs. 50,000 while the limit of liability u/s II(1)(i) is found to have been kept blank. The insurance policy, exhibit 100, has to be read subject to the attached clause C.V. Clause C.V. forming part of the policy shows Section II as bearing the heading " liability to third parties ". Section II(1) of clause C.V. so far as relevant for our purpose, reads as under:

(1) Subject to the limits of liability, the company will indemnify the insured against all sums including claimant's costs and expenses which the insured shall become legally liable to pay in respect of:

(i) death of, or bodily injury to, any person caused by or arising out of the use (including the loading and/or unloading) of the motor vehicle.

(ii) damage to property caused by the use (including the loading and/or unloading) of the vehicle.

43. The limit of liability, as prescribed by the policy, exhibit 100 when read with the aforesaid Clause II(I)(i) and (ii) of clause C.V. clearly shows that the company's liability for meeting the claims of third parties on account of death or bodily injuries, is limited to Rs. 50,000 but so far as its liability to answer the claim of third parties for damage to property caused by the use of the motor vehicle is concerned, the column opposite to the said limit clause is kept blank.

44. Mr. Amin's contention was that a clear inference which arises therefrom is that the company wanted to limit its liability regarding the claims arising out of the damage to third party's property, to " Act liability " only. It is not possible to raise the said inference as Mr. Amin wanted me to do. The very fact that the company has expressly limited its liability for meeting the claims of third parties in case of personal injuries to Rs. 50,000 and the further fact that it has not so restricted its liability so far as claims arising out of damage to property of third parties are concerned will clearly lead to the conclusion that so far as the latter types of claim are concerned, the company's liability was intended to be kept unlimited. It is trite to say that if the company wanted to limit its liability in respect of claims arising out of the damage to property of third parties to Act liability only, the company would have expressly stated so in the blank column opposite the printed particulars regarding the nature of damage to property as found in the policy. May be it was an error on the part of the insurance company or it may be that by some inadvertent mistake, the concerned officers of the company, while issuing the policy, forgot to mention the limit on the company's liability regarding claims arising out of damage to property of third parties, because of the use of the motor vehicles. But if there is any such error or omission, the benefit thereof should go to the insured and the claimant rather than to the insurance company. It must thank itself for the negligence of its concerned clerks and/or officers who issued the policy in question to the insured. However, it is impossible to presume from the blank column of company's liability that the company wanted to insert an endorsement restricting its liability to " Act liability" so far as its limit of liability u/s II(1) (ii) was concerned. It would be a wild conjecture and not based on any evidence. The company must thank itself for not being precise or accurate. The fact remains that as the recitals in the policy stand, there is an upper limit of Rs. 50,000 so far as limit of company's liability u/s II(1)(i) of clause C.V. is concerned while there is no upper limit of the company's liability so far as claims arising u/s II(1) (ii) of clause C.V. are concerned, meaning thereby, on the terms of the policy, the company has not chosen to restrict its liability to meet the claims of third parties regarding damage caused to their properties on account of the use of the insured motor vehicle. Mr. Amin submitted that in the column mentioning details of premium, it is not shown that any additional premium was charged by the insurance company regarding any wider coverage which it wanted to provide for the insured vehicle against claims for damages arising out of accidental damage caused to properties of third parties by use of the insured vehicle. If a specific item was clearly mentioned in the premium column, it could have been easy to

decipher as to what type of extra coverage was sought to be contemplated by the insurance company by charging additional premium. But, merely because no such specification is mentioned in the premium column, it cannot necessarily be presumed that the company did not want to cover any liability in addition to the "Act liability" so far as the claim falling u/s II(1) (ii) of clause C.V. was concerned. The very fact that the limit of the company's liability pertaining to such a claim was expressly provided for in the terms of the policy itself leads to the necessary inference that the company did not want to restrict its liability for such a claim. In this view of the matter, the second contention of Mr. Amin has got to be repelled. It must be held that the company, by an express term of the insurance policy, had effected a wider and unlimited coverage regarding claims of third parties pertaining to damage caused to their properties by use of the insured vehicle. It must, therefore, be held that the insurance company will remain fully liable to satisfy the entire claim of the claimant in the present case. "

45. In this view of the matter, it is held that so far as New India Assurance Company is concerned, its liability would be unlimited for all passengers and there would not be any liability for this on account of death of Munish Kumar, driver-cum-owner. The resultant position is that Darshani Devi and sons and daughters, etc., would not be entitled to receive any amount from this company, on account of the fact that there is composite negligence and whereas the policy of the National Insurance Company is comprehensive. The policy of New India Assurance Company is also comprehensive with unlimited liability.

46. The result of the above discussion is that these appeals are decided as indicated above. The claimants would get interest at the rate of 12% from the date of application till the date of realisation and from the date the amounts have been deposited by the insurance company or owners of the vehicles, the interest would cease on that amount only. So far as this court is concerned, the parties would bear their own costs.