(1970) 09 MAD CK 0006

In the Madras High Court

Case No : A.A.O. No. 149 of 1965

Jayalakshmi and Others APPELLANT

Vs

The Ruby General Ins. Co. Ltd. and Another RESPONDENT

Date of Decision : 03-09-1970

Acts Referred:

Fatal Accidents Act, 1855 — Section 1, 2
Motor Vehicles Act, 1939 — Section 110A, 125, 4, 94, 95

Citation : (1970) 09 MAD CK 0006

Hon'ble Judges : Veeraswami, C.J;Natesan, J;Gokulakrisbnan, J

Bench : Full Bench

Advocate : Sengottian and Ganesan, for the Appellant; T. Srinivasa Ayyar, for the Respondent

Final Decision : Allowed

Judgement

1. The following order of reference to the Full Bench was passed by Mr. Justice Kailasam and Mr. Venkataraman on 25.9.1969:

This is an appeal against the order of the Motor Accidents Claims Tribunal, Madras, dismissing the petition which the Appellants filed u/s 110A of

the Motor Vehicles Act, claiming compensation of Rs. 1,50,000 on account of the death of one Krishnaswami. He was driving the car MSY 3938

in Mount Road at HMO a ra. on 24th March 1964. In the opposite direction, the lorry belonging to Mrs. R. Hamsavalli (second Respondent in

the petition in the appeal be-before us, came. The case of the Appellants was that the lorry was driven by its driver, one Munuswami in a rash and

negligent manner and it dashed against the car MSY 3938, as a result of which, Krishnaswami died. The first Respondent in the petition is the

Insurance Co. with whom the lorry had been insured [Facts Omitted]

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2. The Tribunal has commented on the fact that Krishnaswami took the driving licence in March 1964 and was a novice in driving and must have

got unnerved on seeing the lorry coming in the opposite direction. But this overlooks the actual evidence in the case. The Tribunal also comments

on the fact that the foot brake of the lorry was 63 percent efficient and that the driver of the lorry was acquitted in the criminal court. Those factors

are really not relevant. At the expense of repetition it has to be pointed out that the Tribunal''s judgment has been vitiated by its failure to appreciate

the evidence and overlooking the admissions of the driver of the lorry. We hold, therefore, that the driver of the lorry was responsible for the

collision which resulted in the death Krishnaswami and that consequently the Respondents would be liable to pay compensation.

3. The next question is the quantum of compensation. Now the deceased was aged 34 at the time of the accident. He was a contractor in the

Public Works Department. PW.2. the Assistant Engineer of the Public Works Department, states that the work of the deceased as a contractor

from 1954 to 1957 when he was there, was satisfactory. The petition itself mentions that he was getting an income of Rs. 6 500/- a year and was

an income tax assesfsee. Ex. P. 3 (the assessment order for 1962-63 shows that this income was Rs. 8641 in 1961-62. Ex. P. 2 the assessment

order for the year 1963-64 shows that the income for 1962-63 was Rs. 6500 and he paid an incometax of Rs. 415-11. It may, therefore, be

taken that he was getting a net income of about Rs. 500 a month. His widow P.W 5,''states that he used to spend Rs. 250 to Rs. 300 per month

on his familly consisting of his wife and his three children aged 8 years, 6 years and 4 1/2 years at the time of the petition. He had purchased a car

for Rs. 10,000. The question is, on these materials what is the proper amount of compensation to be paid in a lump sum ? In Gobald Motor

Service Ltd. and Another Vs. R.M.K. Veluswami and Others, their Lordships of the Supreme Court have laid down the principles governing the

award of compensation in such cases. The case arose out of a suit instituted by the dependent''s legal representatives of one Rajaratnam a

passenger in a bus whose driver drove the vehicle rashly and negligently which resulted in fatal injuries to Rajaratnam. Compensation was claimed

both u/s 1 and 2 of the Fatal Accidents Act. Their Lordships pointed out that u/s 1 the dependants would be entitled to compensation for the. loss

of pecuniary benefit sustained by the person and u/s 2 the legal representatives would be entitled to loss sustained by the estate on account of the

death of Rajaratnam. The two causes of action are different but where the claimants are the same they might overlap and compensation should not

be awarded twice over. The same principles apply to the claim u/s 110 A of the Motor Vehicles Act by the legal representatives. Now in this case

the legal representatives and the dependants are the same. We can really proceed on the basis of the net lots to the estate. The deceased could be

expected to live for about 25 years more and the net loss of income would reasonably be taken to be about Rs. 3000 per year. In this case, that

may represent the loss of pecuniary benefit to the dependants. The total loss would therefore be Rs. 75,000 but this will have to be reduced on

account of the fact that a lump sum payment is to be made. On this basis we held that a compensation of Rs. 40,000 (Rupees forty thousand only)

would be fair and reasonable. Incidentally, it would, if invested at 6 per cent, yield only a return of Rs. 200 per month for the dependents and

cannot be considered to be on the high side

4. Obviously the second Respondent will be liable to pay the compensation of Rs. 40,000 to the Appellants, because, it was the negligent driving

of the second Respondent''s driver which caused the death of Krishnaswami. The Insurance company, the first Respondent, however, contends

that u/s 95(2) (a) of the Motor Vehicles Act 1939 the liability of the insurance company must be limited to a sum of Rs. 20.000 since the vehicle

was a goods vehicle. The Appellants, however, urge that this contention cannot prevail in view of the decision of the Bench of this Court consisting

of Srinlvasan J. and Sadasivam J. in K. Gopalakrishnan Vs. Sankara Narayanan and Others, . The insurance company submits that this decision

requires reconsideration. After hearing the arguments of the counsel for the parties, we are inclined to think that the decision requires further

reconsideration by a Full Bench. We accordingly propose to refer the matter to a Full Bench (vide separate order of reference) After receipt of the

opinion of the Full Bench, the appeal will be posted before us for the final decision about the payment of compensation as between the

Respondents.

5. Kailasam, J.--I agree with the views expressed by my learned brother, Venkataraman J, that a compensation of Rs. 40,000 is payable to the

claimants before the Motor Accidents Claims Tribunal, Madras. I also agree with his conclusion that the question whether the liability of the insurer

in the case of goods vehicle regarding third parties is-limited to Rs. 20,000 in all should be referred to a Full Bench. I would state my reasons as

follows:

6. The answer of the question raised depends upon the construction of Section 95 of the Act which specifies the requirements of the policy and the

limit of liability. The section requires that the policy should insure against any liability which may be incurred in respect of death or bodily injury to

any person caused by the use of a vehicle in a public place. This requirement in certain cases of death or bodily injury to persons is exempted

under the proviso to Section 95(1) (b). Section 95(1) (b) also specifies the extent of liability under Sub-section (2) of Section 95. The limit of the

liability specified under Sub-section (2) is subject to the proviso to Sub-section (1).

7. The proviso states that a policy shaft not be required to cover liability in the following cases:

(1) In the case of death or bodily injury sustained by an employee during the course of his employment.

(2) In the case of vehicles other than hired vehicles in respect of death or bodily injury to persons being carried in or upon or entering or mounting

or alighting from the vehicle at the time of the occurrence of the event.

(3) In the case of any contractual liability.

8. The first proviso exempts from its operation the liability arising out of Workmen''s Compensation Act in respect of death or bodily injury to an

employee specified in-clauses. (a) and (b) and (c) of the first-proviso. The second proviso also excepts from its-operation vehicles in which

passengers are carried for hire or reward or by reason of or in pursuance of a contract of employment. The two exceptions are removed from the

scope of the proviso. The effect of proviso to Section 95(l)(b) that while acompulsory policy under the Chapter need not include and cover liability in respect of the death or bodily injury to an employee in the course of employment, a policy is required to cover the liability arising out of

Workmen''s Compensation Act in the course of certain employment. So also while a policy is not required to cover liability in respect of the death

or bodily injury to persons carried in or upon or entering or mounting or alighting from the vehicle, a policy is required to be taken regarding

passengers who are carried for hire or reward. No policy it required to cover any contractual liability.

9. Section 96(1) also provides that the policy shall be to the extent specified in Sub-section (2). Sub-section (2) is specifically .stated to be subject

to the proviso to Sub-section (1). The Sub-section provides that the policy of insurance shall cover any liability in respect of any one accident to

the limits specified, namely, (a) in the case of goods vehicle Rs. 20,000, (b) in the case of passenger vehicle Rs. 20,000 in respect of persons other

than passengers and in respect of passengers another Rs. 20,000 (c) in the case of a vehicle which is not a vehicle under Clause (a) or (b) the

amount of the liability incurred. In the case of goods vehicle Sub-section 2 (a) of Section 95 provides that limit of Rs. 20,000 in all including the

libability if any in respect of the death or bodily injury to employees other than the driver not exceeding six in number being carried in the vehicle.

The Sub-section 2 (a) includes within the limit of Rs. 20.000 the liability arising out of the Workmen''s Compensation Act which liability is an

exception to proviso (I) to Section 95(1) (b). Section 95(2) (b) fixes the limit in the case of passenger vehicle at Rs. 20,000 in cases other than

passengers and a limit of Rs. 20,000 in respect of passengers. Section 95(l)(b) proviso (ii) excepts passengers carried for lire or reward from its

operation. In other words, the liability as against passengers carried for hire or reward is compulsorily insurable under the Act. This liability u/s

95(2) (b) is limited to Rs. 20,000 in respect of persons other than passengers that is, third parties and Rs. 20,000 in the case of passengers. It is

only in the case of vehicles which do not fall under Clauses (a) and (b) of Sub-section (2) to Section 95, the liability is fixed as the amount of

liability incurred. Thus, it will be seen that in the case of a vehicle which is not a goods vehicle or a passenger vehicle for hire, there is no limit to the

liability by the insurance com-pany. In the case of the goods vehicle and passenger vehicle, the limit of liability is fixed.

10. Now it has to be considered how far the words ""subject to the proviso to Sub-section (l)"" in Section 95(2) would affect the construction put

upon the Sub-section. As already pointed out, the proviso to Sub-section (l) (b) of Section 95 is that a policy need not be taken in three cases

specified in provisos (i) (ii) and (iii), while it shall be taken in two cases which are excepted from the operation of provisos (i) and (ii) respectively.

The liability under the cases covered by the proviso to Section 95 (l) (b) is independent and it is not compulsorily insurable. In the two cases which

are excepted under provisos (i) and (ii) and which are compulsorily insurable, the liability is included in limits specified in Section 95(2) (a) and (b)

respectively. It is only in the three instances that are covered by the provisos which are not compulsorily insurable, the liability is not covered by

Sub-section (2) of Section 95. Now reading the words subject to the proviso to Sub-section (l) ""the applicability can only be confined to the

provisos which exempt compulsory insurance that is the liability that may arise out of the three instances which are not compulsorily insurable is

excluded from the limit, set out in Section 95(2) and any liability that may be incurred will be over and above the limits provided for u/s 95(2). As

those items are not compulsorily insurable, the insurer cannot be held liable for any amount in excess of the amount specified in seciton 95 12) that

is Rs. 20,000 in the case of goods vehicle. In this view, I am unable to agree with the decision of the Division Bench of this Court in Gopalakrishna

v. Sankaranarayana 1969 A.C.J. 34 and therefore I agree that the master should be placed before a Full Bench.

11. Venkataraman, J.--In this case, we have found that one Munuswami drove a lorry negligently in Mount road, Madras and thereby caused the

death of one Krishnaswami, who came driving a car in the opposite direction. The owner of the lorry is Srimathi R. Hamsavalli, the second

Respondent in the appeal. The lorry had been insured against third party liability with the first Respondent insurance company under the provisions

of Motor Vehicles Act, 1939. We have held that the compensation payable by the second Respondent to the Appellants who are the legal

representatives of the deceased Krishnaswami is Rs. 40,(00 (Rs. forty thousand only). The Insurance Company contends that u/s 95(2) (a) of the

Motor Vehicles Act, their liability under the policy is limited to Rs. 20,000. The Appellants contest this position and rely on a decision of Srinivasan and Sadasivam JJ. in Gopalakrishna v. Sankaranarayana 1969 A.C.J. 34 where it was held in a similar case that the liability of the Insurance Co in

respect of injury to a third party is not subject to the limit of Rs. 20,000 u/s 95(2) (a). The insurance company submits that the decision is wrong

and requires further consideration. After hearing arguments, we are of opinion that with great respect to the learned Judges that the decision

requires consideration by a Full Bench. Here are my reasons:

12. Section 94(1) states--

No person shall use except as a passenger or cause or allow any other person to use a motor vehicle in a public place, unless there is in force in

relation to the use of the vehicle by that person or that other person as the case may be, a policy of insurance complying with the requirements of

this chapter (Ch. VIII).

13. Section 95(1) in so far as it is relevant may be quoted in full:

95(1) In order to comply with the requirements of this Chapter, a policy of insurance must be a policy which

(a) ....

(b) insures the person or classes of person specified in the policy to the extent specified in Sub-section (2) against any liability which may be

incurred by him. or then in respect of the death of, or bodily injury to, any person caused by or arising out of the use of the vehicle in public place.

Provided that a policy shall not be required--(i) to cover liability in respect of the death, arising out of and in the course of his employment, of the

employee of a person insured by the policy or in respect of bodily injury sustained by such an employee arising out of and in the course of his

employment, other than a liability arising under the Workmen''s Compensation Act, 1923, in respect of the death of or bodily injury to, any such

employee--

(a) engaged in driving the vehicle, or

(b) if it is a public service vehicle, engaged as a conductor of the vehicle or in examining tickets on the vehicle, or

(c) if it is a goods vehicle, being carried in the vehicle; or

(ii) except where the vehicle is a vehicle in which passangers are carried for hire or reward or by a reason of or in pursuance of a contract of employment, to cover liability in respect of the death of or bodily injury to persons being carried in or upon or entering or mounting or alighting

from the vehicle at the time of the occurrence of the event out of which a claim arises, or

(iii) to cover any contractual liability.

(2) Subject to the proviso to Sub-section (1), a policy of insurance shall cover any liability incurred in respect of any one accident upto the

following limits, namely,

(a) Where the vehicle is a goods vehicle a limit of twenty thousand rupees in all, including the liabilities, if any, arising under the Workmen''s

Compensation Act, 1923, in respect of the death or bodily injury to employees (other than the driver) not exceeding six in number, being carried in

the vehicle.

(b) Where the vehicle is a vehicle in which passengers are carried for hire or reward or by reason of or in pursuance of a contract of employment,

in respect of persons other than passengers, carried for hire or reward, a limit of twenty thousand rupees and in respect of passengers a limit of

twenty thousand rupees in all and Rs. 4000 in respect of an individual passenger, if the vehicle is registered to carry not more than six passengers

excluding the driver, or two thousand rupees in respect of an individual passenger, if the vehicle is registered to carry more than six passengers

excluding the driver;

(c) Where the vehicle is a vehicle of any other class, the amount of the liability incurred.

14. Section 96 has also been referred to and may be quoted:

96(1) If, after a certificate of insurance has been issued under Sub-section (4) of Section 95 in favour of the person by whom a policy has been

effected, judgment in respect of any such liability as is required to be covered by a policy under Clause (b) of Sub-section (1) of Section 95 (being

a liability covered by the terms of the policy) is obtained against any person insured by the policy, then notwithstanding that the insurer may be

entitled, to avoid or cancel or may have avoided or cancelled the policy, the insurer shall, subject to the provisions of this section pay to the person

entitled to the benefit of the decree any sum not exceeding the sum assured payable thereunder, as if he were judgment debtor in respect of the liability, together with any amount payable in respect of interest on that sum by virtue of any enactment relating to the interest on judgments.

15. The contention of the Insurance Co. is that the lorry of the second Respondent is a goods vehicle, that u/s 95(2)(a) the liability of the insurer of

the policy of insurance extends only upto twenty thousand rupees in all and that is the sum payable by the insurance company u/s 96. A similar

contention was advanced before the Bench in K. Gopalakrishnan Vs. Sankara Narayanan and Others, . There a lorry belonging to the T.U. C. S.

Ltd., was driven negligently by the driver and dashed against a scooter, as a result of which one Gopalakrishnan travelling on the pillion of the

scooter, sustained severe injuries on his left leg which resulted in the amputation of that leg. The Tribunal awarded a compensation of Rs. 57,000

odd to Gopalakrishnan, only against the driver of the scooter. Gopalakrishnan preferred an appeal praying for an award against the T.U.C.S. Ltd.,

and the Insurance Co. as well, namely, the company with whom the lorry had been insured. The appeal was allowed. On behalf of the Insurance

Co. it was urged that u/s 95(2)(a) the liability of the Insurance Co. should be restricted to a sum of Rs. 20,000. That contention was repelled thus:

One other contention urged by Mr. S. Mohan is that the liability of the Insurance Co. is restricted to a sum of Rs. 20,000 under Sub-section (2) of

Section 95 of the Act. But in our opinion this contention has been rightly rejected by the Tribunal. Sub-section (2) of Section 95 of the Act clearly

governs only the proviso to Sub-section (1) of Section 95 of the Act. Thus it is clear from the terms of Sub-section (2) of Section 95 that they are

subject to the proviso to Sub-section (I). Under the proviso (i) to Sub-section (1), a policy shall not be required to cover liability of any such

employee as is referred to therein who is (a) engaged in driving the vehicle, or (b) is a conductor of the vehicle, or (c) persons carried in a vehicle.

Clause (iii) of the proviso excludes contractual liability. Subject to the said three clauses of the above proviso, Sub-section (2) of Section 95

provides the limits of liability of the insurer to Rs. 20,000 in all, in respect of the death of, or bodily injury to employees to Rs. 20,000 in respect of

all passengers and Rs. 4000 in respect of ?an individual passenger if the vehicle is registered to carry not more than six passengers excluding the

driver. In the cases of vehicles of any other class the limit is the amount of the liability incurred. Thus Sub-section (2) of Section 95 of the Act cannot be invoked to restrict the liability of the Co-operative Fire and-General Insurance Society Ltd., to Rs. 20,000 in this case. Sub-section (2)

of Section 95 of the Act can have no application to damages caused to third parties like the claimant in this case as he is not one of the class of

persons referred to in the proviso to Section 95(1) of the Act.

16. Before proceeding further, I may make it clear that the arguments before us have proceeded on the footing that the policy in force in this case

was what is for convenience termed as an ''Act policy''; that is to say, a policy conforming only to the minimum requirements of the Act.

17. At the outset I may say that in my ""view lection 95(2) imposes the limits of the liability of the Insurance Co. as contemplated 4n Section 95(1)

(b) and does it by classifying the vehicle concerned (which may conveniently be termed as the colliding vehicle) into three *categories, namely, (a)

a goods vehicle; (b) a vehicle in which passengers are carried for hire or reward or by reason of or in pursuance of a contract of employment; and

(c) a vehicle of any other class. A limit of Rs. 20,000 is prescribed in all in respect of vehicle in category (a). The same limit of Rs. 20,000 is

prescribed in respect of a vehi--cle described in category (b). No such upper limit is fixed in the case of a vehicle in category (c).

18. The decision of the Bench, however, teems to proceed on the basis that Section 95(2) only deals with the class of persons referred to in the

proviso to Section 95(1) of the Act. It seems to me that the classification u/s 95(2) is not according to the persons who were killed or injured, but

is only according to the class of vehicles. This is my first difficulty in accepting the reasoning of the Bench.

19. The second difficulty which I feel is that the reasoning of the Bench does not give full effect to the words ""in all"" occurring in Section 95(2)(a)

which provides an upper limit of the liability of the insurer in the case of a goods vehicle, being the colliding vehicle.

20. My third difficulty is, that, if the reasoning of the Bench is correct, it would mean that there is no provision at all in Section 95(2) for strangers

hit by a goods vehicle. Obviously Section 95(2)(b) and 95(2)(c) will not apply to a goods vehicle and if, as the Bench says, even in respect of

goods vehicle Section 95(2j(a) applies only to the class of persons mentioned in proviso (i), it would follow that there is no provision in Section

95(2)(a) for strangers. Merely for the absence of a provision it would not be right to infer that no upper limit at all was intended in the case of death

or injury to a stranger.

21. It may be noted that Section 95(1)(b) contemplates that the limit of the liability of the insurer would be specified in Sub-section (2) and it

would create a lacuna in the Act if we were to hold that in the case of an important category of persons, namely, third parties who are killed or

injured as a result of the negligent driving of a goods vehicle no positive provision has been made in Section 95(2). One could understand the

position if the case of strangers could be brought u/s 95(2)(c); but that could not be worked, in the case where the stranger is killed or injured as a

result of the negligent driving of a goods vehicle, because Section 95(2) (c) does not apply to a goods vehicle. The normal method of construction

seems to me to proceed on the bassis that Section 95(2) completely defines the limit of the liability of the insurer for every conceivable case and it

does so by dividing the vehicle concerned into three categories. Only in the case of a vehicle falling in class (c) there is no upper limit, but in the

other types of vehicles an upper limit is provided.

22. I may also put it negatively in another form, namely, that, if, the Bench says, the intention of Parliament was that Section 95(2) (a) would apply

only to the class of persons mentioned in the proviso to section more the intention could have been expressed 95(1), easily and in clearer language.

23. The main reason for the Bench decision is. the use of the words subject to the proviso to Sub-section (1) at the begining of Section 95(2). I

confess that the proviso is not worded in a manner easy to understand. I think, however, that the words do not lead to the interpretation placed by

the Bench. The meaning of the proviso itself is fairly clear. It means that though Section 95(1) (b) is general in its terms by requiring the insurance to

be against any liability incurred by the owner in respect of death or bodily injury to any person caused by or arising out of the use of the vehicle in

public place the proviso carves out some exceptions to the generality of the provision. Thus in the case of employees, it is sufficient if the insurance

is in respect of the liability under the Workmen''s Compensation Act for (a) the driver, (b) the conductor or ticket examiner (in the case of a bus)

and (c) the persons being carried in the vehicle if it is a goods vehicle. This is the meaning of the proviso (i).

24. Proviso (ii) means that in respect of passengers in the vehicle concerned in the accident (colliding vehicle), there need not be any insurance

except where the vehicle is a vehicle in which passengers are carried for hire or reward or by reason of or in pursuance of a contract of

employment. Thus in the case of an ordinary car used for a private purpose, there need not be any insurance for the passengers. For this purpose,

a passenger is defined not merely as a person carried in or upon the vehicle, but also as a person entering or mounting or alighting from the vehicle

at the time of collision oat of which the claim arises. Proviso (ii) also means that where the vehicle is a vehicle in which passengers are carried for

hire or reward or by reason of or in pursuance of a contract of employment, there must be insurance of the liability of those passengers as well.

There again the term, ''passengers'' must be construed as defined in the later part of proviso (ii).

25. Proviso (iii) means that there need not be an insurance to cover contractual liability-of the assured person.

26. Thus, there is not much difficulty in construing the proviso. Difficulty, however, comes in because of the words ""subject to the proviso to Sub-

section (1)"" at the beginning of Sub-section (2) of Section 95. As a matter of pure construction and without reference to the subject matter, if a

provision (B) is enacted subject to the provision (A), it would prima facie mean that the provision (A) cuts down or modifies to some extent the

provision (B). On this, method of construction, it might be felt that the words ""Subject to the proviso to Sub-section (1)"" prima facie mean that the

enactment of Section 95(2) would stand modified to some extent by the proviso to Sub-section (1). But it seems to me that this is not what the

words ""subject to the proviso to Sub-section (1)"" are intended to mean in the context. I shall explain what I have in mind. Sub-section (2) specifies

the limit of the liability of the insurer as contemplated by Section 95(1) (b). Section 95(1) itself even including the proviso does not seem to contain

any such limit of the liability of the insurer. Hence, it will not be right to construe the words ''subject to the proviso to Sub-section (1)"" as though

they modify to any extent the limit of the liability specified in Sub-section (2). I shall make this clearer by some concrete illustrations.

27. Thus take Section 95(2) (b) to start with. It means that in the case of (a) vehicle in which passengers are carried for hire or reward or by

reason of or in pursuance of a contract of employment, in respect or strangers who are killed or injured by rash or negligent driving of the vehicle

the total liability of the insurer is only Rs. 20,000. Similarly in the case of passengers (as defined in proviso (ii) to Section 95(1), the total liability of

the insurer is only Rs. 20,000/- There is a further restriction that for each passenger the limit of liability is Rs. 4000, if the vehicle it registered to

carry not more than six passengers (excluding the driver) and Rs. 2000 if the vehicle is registered to carry more than six passengers (excluding the

driver). There is nothing in the proviso to Sub-section (1) which qualifies these upper limits (total and individual). The words ""subject to the proviso

to Sub-section (1)"" should only be applied to the extent necessary without disturbing the monetary limits. Thus, in construing the words

''passengers'' in Section 95(2) (b), we will have to take into account proviso (ii) to Section 95(1).

28. Similarly, take Section 95(2) (c). There is no upper limit to the liability. But that is subject to the proviso to Sub-section (1); that is to say, there

is no liability at all in respect of passengers because of proviso

29. Now, take Section 95(2) (a). The Interpretation is not so easy. But we have to bear in mind the possibility that the draftsman introduced the

words ""subject to the proviso to Sub-section (1) merely by way of abundant caution--even without those words, the principle of harmonious

construction would demand that in construing Section 95(2) the court must have regard not merely to Section 95(1) (a) and (b) but also to the

proviso thereto. There is also the further possibility that the words ""subject to the proviso to Sub-section (1) were introduced as primarily

necessary for CI. (b) and (c) of Section 95(2) and the draftsman thought the words might as well be put in the beginning of Section 95(2) itself. On

such consideration it seems as though the ""words do not really serve any useful purpose as far as Section 95(2) (a) is concerned. Thus the proviso

itself contemplates insurance of employees in respect of the liability under the Workmen''s Compensation Act. For the driver and the persons

carried in the ''vehicle, Section 95(2) deals with that liability, bat limits it.

30. On the above considerations, it seems to us that there is no justification for

saying that Section 95(2) (a) does not deal with strangers at all.

Section 95(1) (b) requires insurance even for stranger-in fact primarily for strangers--and say [that the limits are laid down in Sub-section (2). Why

should Section 95(2) (a) be interpreted in a manner as not providing for strangers, The words in all followed by the words, ''including the liabilities,

if any, arising under the Workmen''s Compensation Act are quite apt to take in the liability for strangers also. If strangers were to be excluded from

Section 95(2) (a) and Section 95(2) (a) was intended to be confined only to the employees, the wording would have been different and the use of

the word ""including"" would not be appropriate.

31. Thiru Govinda Swaminathan, the learned Advocate General, who appeared for the Appellants, and Thiru Asker Ali who appeared for the

second Respondent, urged in this connection that, in the view which I have indicated, Section 95(2) (a) might well have stopped with the words,

in all"". The answer is that in the succeeding words Parliament has restricted the liability of the Insurance Company in respect of the employees by

limiting the number of employees to six. That has been probably done with a view not to reduce the liability of the Insurance Company to a

stranger unduly.

32. Apart from the Bench decision, it was stated before us that there was no other decision bearing on Section 95(2) (a). But on the construction

of Section 95(2) (b) the learned Counsel for the insurance company brought to our notice a decision of the Full Bench of the Punjab High Court in

Northen India Transporters Insurance Co. Ltd. v. Amrawati AIR 1065 P&H 288 : 1966 A.C.J. 13. There the driver of a passenger bus drove the

vehicle negligently as a result of which two of the passengers were killed. The Claims Tribunal found that in respect of one of the passengers a

compensation of Rs. 8,000 was payable to the widow and in respect of the other passenger a sum of Rs. 14.000 was payable to the concerned

widow. The insurance company filed appeal contending that in view of Section 95(2) (b) the limit of their liability was Rs. 2000 in the case of each

of the two passengers who were killed. This contention was accepted by the Full Bench. The actual argument which was advanced on behalf of

the widows of the victims was that Section 95(2) (b) meant that the limit of the liability of the insurance company was Rs. 20,000 plus Rs. 4000 in the case of each passenger where the bus registered to carry not more than six passengers (excluding the driver) and Rs. 20,000 in the case of

each passenger where the bus was registered to carry more that six passengers excluding the driver. This submission on behalf of the widows was

repelled. The decision was reached on the plain language of the Act. It is instructive to note the submission on behalf of the widows and how it was

repelled 1966 A.CJ. 13(15):

It is said on behalf of the passengers and the transporters that- if all that is recoverable from the insurer by an injured passenger is Rs. 2000 and no

more and even that amount may have to be reduced in case large number of persons are injured, as there is the second overall limit of Rs. 20,000,

then the provision would seem to be hardly adequate. This is, however, only looking at one side of the picture.

On the other side is the consideration that Parliament may well have thought it unreasonable to impose a heavy burden on the transporters arising

out of insurance, for obviously if the Act requires them to insure their vehicles in such a way that a large amount of compensation would become

payable by the insurer, then the burden of insurance will increase and that burden has necessarily to be borne by the transporters. That

consideration may well have led Parliament to limit the amount to Rs. 20,000 in all in connection with any one single accident and may further have

led to the limit of Rs. 2000 in respect of an individual passenger who may be injured. As I have said, the words of the Act do not seem capable of

the meaning attributed to them on behalf of the transporters-and the passengers and there seems no-justification why the plain words should be

subjected to any violence.

What Sub-section (2) of Section 95 seems to say is that where a vehicle is a goods vehicle the limit is Rs. 20,000 and that includes liability under

the Workmen''? compensation Act payable to workmen not exceeding six and where the vehicle is carrying passengers, that is, a bus carrying,

passengers, then the limit is Rs. 20,000 in all and there is a further limit in respect of individual passengers which is Rs. 4,000 if the vehicle can

carry not more than six passengers and is Rs. 2000 if the vehicle can carry more than six. passengers.

33. The observations may be applied to Section 95(2) (a) as well. In other

words, Parliament may well have thought that in the case of a goods

vehicle providing a service for the carriage of goods of the public, it may not be reasonable to impose a heavy burden on the transporter by

obliging him to take an insurance with unlimited liability in the case of strangers. In any case, we are governed by the words of the provision.

34. On account of these reasons, we direct that the papers be placed before the-Honourable the Chief Justice for constitution of a Full Bench to

consider the following question--

Where an insurance company insures, the owner of a goods vehicle u/s 95 of the Motor Vehicles Act, 193ï¿½ against the liability which the owner

may incur in respect of the death of a person (third party) caused by the use of the vehicle in the public place, the policy being simply one

conforming to the requirements of the Act (and not beyond them) is the liability of the insurance company limited to Rs. 20,000 (Rs. twenty

thousand) u/s 95(2) (a) of the Act?

OPINION

The following opinion was expressed by the Full Bench:

35. Natesan, J.--This reference to the Full Bench arises out of a proceeding before the Motor Accidents Claims Tribunal Madras, for

compensation in respect of an accident involving the death of one Krishnaswami. It is the case of the claimants for compensation, that when the

said Krishna swami was driving his car along Mount Road, the lorry belonging to the second Respondent, driven in a rash and negligent manner by

her driver Munuswami, dashed against his car, as a result of which Krishnaswami died. While the Claims Tribunal dismissed the application, for

compensation, the Division Bench (Kailasam and Venkataraman, JJ.) have taken the view that a compensation of Rs. 40,000 would be payable to

the claimants. On behalf of the Insurance company with whom the lorry had been insured, it was contended before the learned Judges that u/s

95(2)(a) of the Motor Vehicles Act, Act IV of 1939 the liability of the Insurance Company must be limited to a sum of Rs. 20,000 the vehicle

involved being a goods vehicle. The learned Judges are inclined to accept this contention and have referred the matter to the Full Bench, in view of

the Division Bench decision of this Court in Gopalakrishnan v. Sankaranarayana1 where the learned Judges Srinivasan and Sadasivan, JJ.) have held that the liability of an Insurance company in respect of injury to a third party is not subject to the limit of Rs. 20,000 u/s 95(2)(a) of the Act.

Examining the relevant provisions of the Motor Vehicles Act at length and setting out reasons for their view contrary to that taken in K.

Gopalakrishnan Vs. Sankara Narayanan and Others, the following question has been referred to the Full Bench:

Where an insurance company insures the owner Of a goods vehicle u/s 95 of the Motor Vehicles Act. 1939 against the liability which the owner

may incur in respect of the death of a person (third party) caused by the use of the vehicle in a public place, the policy being simply one conforming

to the requirements of the Act and not beyond them. is the liability of the insurance company limited to Rs. 20.000 (Rupees twenty thousand) u/s

96(2)(a) of the Act ?

36. During the hearing of the matter before us, a doubt was raised whether the insurance policy in question in the case, is what is commonly termed

as ""Act policy"" that is, a policy conforming to the minimum requirements of the Act, or a comprehensive policy which inter alia does not limit the

extent of the liability covered. The insurance policy itself has not been exhibited in the case, and, as the question referred proceeds on the

assumption that the policy in question is one limited to the terms of the Act, we examine the matter on that basis. There can be no doubt that it is

perfectly open to the owner of a vehicle to a take out an insurance policy which goes beyond the terms of the Act and covers more risk than what

is required to be covered bv the Act. The provisions for compulsory insurance against third party risks from the user of the Motor Vehicle in a

public place are placed under Ch. VIII of the Motor Vehicle* Act, 1939. By these provisions by compelling owners, users or drivers of motor

vehicles to protect themselves against financial risks arising out of accidents which they may incur, the ability of third parties to get damages is not

made wholly dependant on the financial condition of the owner, or driver of the vehicle Section 4 emphasises the necessity for Insurance agaist

third party risk by prohibiting in mandatory terms the use of a motor vehicle by any person in a. public place, unless there is in force in relation to

the use of the vehicle by that person or other person as the case may be a policy of insurance complying with the requirements of Ch. VIII. There are certain exceptions in Section 94; but a reference to them is unnecessary in the context of the question now under consideration. Section 125

which provides penalties for contravention of the provisions of Section 94, states- that whoever drivers a motor vehicle or causes or allows a motor

vehicle to be driven in contravention of the provisions of Section 94 shall be punishable with imprisonment which may extend to three months, or

with fine which may extend to one thousand rupees, or with both. In interpreting the provisions of the Chapter, we have to bear in mind both the

apparent object of the enactment and the penal consequence following the failure to make out an insurance policy in terms of the Chapter.

37. Section 95 Sub-section (1) and (2) lay down the requirements to be complied ""with by an insurance policy taken in accordance with Chapter

VIII for the use of a particular vehicle. The policy has to be issued by an authorised insurer and it must specify the person or classes of persons

who are insured against liability which may be incurred by him or them in respect of the death of or bodily injury to any person caused by or arising

out of the use of the vehicle in a public place in India or in a reciprocating territory. The policy must insure to the extent of the liability specified in

Sub-section (2). Sub-section (4) of Section 95 requires the issue by the insurance company of a certificate of insurance in the prescribed form in

favour of the person for whom the policy is effected. Sub-section (5) of Section 95 makes the insurer liable to indemnify the person or classes of

persons specified in the policy in respect of any liability which the policy purports to cover notwithstanding anything elsewhere contained in any

law. Section 96 makes it the duty of the insurer to satisfy judgments against persons insured in respect of third party risks as if he were the

judgment debtor. The provision as to insuring a person or classes of persons found in Section 95 means that the insurance policy gives to the

person or classes of persons insured the right to enforce against the insurer the undertaking which the policy gives in respect of the liability incurred

by the assured. Sub-section (2) of Section 95 is the section that really calls for interpretation now. For taking it up as it is necessary we shall set

out the relevant parts of Section 95 having a bearing on the question:

Section 95(1). In order to comply with the requirements of this Chapter, a policy of insurance must be policy which:

(a) is issued by a person who is an authorised insurer. ...

(b) insures the person or classes of persons specified in the policy to the extant specified in Sub-section (2) against any liability wh ich may be

incurred by him or them in respect of the death of or bodily injury to any person caused by or arising out of the use of the vehicle in a public place

ia India or reciprocating territory;

Provided that a policy shall not bt required:

(i) to cover liability in respect of the death arising out of and in the course of his employment, of the employee of a person insured by the policy or

in respect of bodily injury sustained by such an employee arising out of and in the course of his employment other than a liability arising under the

Workmen''s Compete sation Act, 1923 in respect of the death of, or bodily injury to, any such employee.

(a) engaged in driving the vehicle, or

(b) if it is a public service vehicle, engaged as a conductor of the vehicle or in examining tickets on the vehicle, or

(c) if it is a goods vehicle, being carried in the vehicle, or

(ii) except where the vehicle is a vehicle in which passengers are carried for hire or reward or by reason of or in pursuance of a contract of

employment to cover liability in respect of the death of or bodily injury to persons being carried in or upon or entering or mounting or alighting from

the vehicle at the time of the occurrence of the event out of which a claim arises, or

(iii) to cover any contractual liability.

(2) Subject to the proviso to Sub-section (1), a policy of insurance shall cover any liability incurred in respect of any one accident upto the

following limits namely:

(a) Where the vehicle is a goods vehicle, a limit of twenty thousand rupees in all including the liabilities, if any, arising under the Workmen''s

Compensation Act, 1923. in respect of ihe death of, or bodily injury to employees (other than the driver) not exceeding six in number being carried

in the vehicle ;

(b) Where the vehicle is a vehicle in which passengers are carried for hire or reward or by reason of or in pursuance of a contract of employment, in respect of persons other than passengers carried for hire or reward, a limit of twenty thousand rupees ; and in respect of passengers, a limit of

twenty thousand rupees in all, and four thousand rupees in respect of an individual passenger, if the vehicle is registered to carry not more than six

passengers excluding the driver or two thousand rupees in respect of an individual passenger, if the vehicle is registered to carry more than six

passengers excluding the driver;

(c) Where the vehicle is a vehicle of any oner class the amount of the liability incurred ;

(4)....

(4-A) ....

(5) ....

38. The meaning of the several expressions found in the section, ""goods vehicle"" ""public service vehicle'''' and ""passengers carried for hire or

reward"" may be gathered from the definitions in Section 2 and other provisions of the Act. '"""Goods vehicle"" is defined to mean any motor vehicle

constructed or adapted for use for the carriage of goods, or any motor vehicle not so constructed or adapted, when used for the carriage of

goods, solely or in addition to passengers. The body of Sub-section (2) of Section 95 Clauses (a), (b) and (c) limits the liability incurred in respect

of any one accident with reference to the vehicle insured. When it is a goods vehicle, the policy of insurance need cover, for compliance with

Chapter VIII. a liability to a limit of Rs. 20,000 in all including a liability, if any arising under the Workmen''s Compensation Act, 1923 in respect of

the death of, or bodily inj ry to, employees other than the driver not exceeding six in number being carried in the vehicle. In the case of vehicles

carrying passengers for hire or reward or by reason of or in pursuance of a contract of employment under Sub-section (2) Clause (b) there is an

ov limit of Rs. 20,000 in the case of persons other than passengers who are being carried for hire or reward and and Rs. 20,000 in the case of

passengers. Here if the vehicle is registered for carrying passengers not more than six the maximum liability in respect of an individual passenger is

Rs. 4000 and in any other case Rs 2000. Clause (c) of Section 2 provides that where the vehicle is a vehicle of any other class, the amount

payable as compensation will be the amount of liability incurred The learned

Advocate General appearing for the claimants lays emphasis on the

words ""subject to the proviso to Sub-section (1)"" at the, beginning of Section 95(2) and submits that the limits of liability specified in Sub-section

(2) can in the context be only with reference to the classes-of persons excepted from the proviso to Section 95(1).

39. Section 95(1) Clause (b) makes it the first requirement of a policy under the Act, in general terms that the policy must be one which insures

against any liability in respect of the death of or bodily injury to any person caused by or arising out of the use of the vehicle in a public place. The

second requirement under Clause (b) is that the person or classes of persons who effect insurance are specified in the policy and are insured

against the above liability which may be incurred by him or them, that is, the policy gives to such person or persons or to the members of the class

of persons specified in the policy the right to enforce against insurer the undertaking which the policy gives. The third requirement is that the

insurance against liability specified in the clause must be to the extent specified in Sub-section (2) of Section 95. Section 95 (l)(b) after imposing an

obligation for insurance against any liability which the insurer may incur in respect of the death of or bodily injury to-any person by proviso except

certain liabilities which because of the use of the words ""death or bodily injury to any person"" would otherwise have to be insured against.

Generally speaking provisions relating to third party insurance do not extend to persons carried in the vehicle. The proviso to Section 95(1) (b) first

brings out that feature and then engrafts exceptions on the provisos. Proviso (i) exempts from the requirements of insurance cover for liability in

respect of death arising out of and in the course of his employment, of the employee, of a person insured by the policy or in respect of bodily injury

sustained by such an employee arising out of and in the course of his employment, of the employee of a person insured by the policy or in respect

of bodily injury sustained by such an employee. Proviso (ii) exempts from requirement of insurance to cover liability in respect of the death of or

bodily injury to persons being carried in or upon or entering or mounting or alighting from the vehicle at the time of the occurrence of the event out

of which the claim arises. Proviso (iii) exempts from the requirement of insurance to cover any contractual liability. The proviso without the exceptions or savings from their operation, stated that compulsory insurance need not be effected against liability to voluntary passengers and

against liability to persons who would have a claim against the insured as their employees.

40. The saving clause introduced to proviso (i) provides for compulsory insurance in favour of three classes of persons for liability arising under the

Workmen''s Compensation Act--(1) an employee driving a vehicle. (2) conductors and ticket examiners in case of public service vehicle and (3)

an employee carried in goods vehicle. By the exception to proviso (ii), it is necessary to insure against liability to passengers in a vehicle in which

passengers are carried for hire or reward or by reason of or in pursuance of a contract of employment. Proviso (ii) which grants exemption from

compulsory insurance cover for liability to passengers, excepted from the proviso a particular class of vehicles namely, vehicles in which

passengers are carried for hire or reward or by reason of or in pursuance of a contract of employment. Insurance is compulsory where the vehicle

is a vehicle in which passengers are carried for hire or reward or by reason of or in pursuance of a contract of employment. Section 95(1) (b) thus

sets out liabilities to be covered by the compulsory insurance policy With the provisos and exceptions therefrom, it specifies ail liabilities that may

be incurred in respect of the death or bodily injury to a person arising out of th"" use of the vehicle which must be covered by insurance for due

compliance with the requirements of Ch. VIII. The monetary extent of insurance cover is then within Section 95(2). Section 95(1) (b) having

provided that the policy, to comply with the requirements of Ch. VIII, must be one which insures to the extent specified in Sub-section (2) of

Section 95, by Sub-section 2 (a) specifies the limit in respect of a goods vehicle and by Sub-section 2 (b) certain limits where the vehicle is a

vehicle in which passengers are carried for hire or reward or by reason of or in pursuance of a contract of employment. Sub-section (2) (c) says

that where the vehicle is a vehicle of any other class, the limit is the amount of the liability incurred. The first impression that one gets on a reading of

Section 95(2) is that the limit of compulsory insurance liability is fixed with reference to the vehicle.

41. The relevant provision with which this reference is concerned is Section 95(2) (a), whereby it is provided that a policy of insurance shall cover

any liability incurred in respect of any one accident where the vehicle is goods vehicle, upto the limit of Rs. 20,000 in all. This sum of Rs. 20,000

inculdes the libility, if any, arising under the Workmen''s Compensation Act, in respect of the death or bodily injury to the employee other than the

driver not exceeding six in number being carried in the vehicle.

42. A reference to Section 95 before its amendment in 1956 by Act 100 of 1956 is useful in this context. Before the amendment of Section 95,

there was no exception to the exemption from compulsory insurance granted by proviso (i). In its unamended form the proviso to Sub-section (1)

read that a policy shall not, except as may be otherwise provided under Sub-section (3) be required to cover libility in respect of the death arising

out of and in the course of his employment, of the employee of a person insured by the policy or in respect of the bodily injury sustained by such an

employee arising out of and in the course of his employment. Sub-section (3) of Section 95 left it to the State Government in their discretion to lay

down that a policy of insurance should, in order to comply with the requirements of the Chapter, cover any liability arising under the provisions of

the Workmen''s compensation Act, 1923. By the amending Act, the insurance cover for the liability arising under the Workmen''s Compensation

Act has been made compulsory by engrafting an exception on proviso (i). A consequential amendment was made to Sub-section (2) (a) which

fixed the limit of compulsory insurance liability for a goods vehicle, and Sub-section (3) was omitted. The significant part of the amendment that has

to be noticed is that the liability arising under the Workmen''s Compensation Act to be insured in respect of a goods vehicle has been restricted to

six employees other than the driver carried in the vehicle. Section 95(1) proviso (i) before its amendment, exempted from insurance cover

employer''s liability risk reflecting presumably the well established distinction in the insurance world between the public liability risk and employer''s

liability risk. The qualifying words in the beginning of Section 95(2) were the same before the amendment ""subject to the proviso to Sub-section (I)

a policy of insurance shall cover any liability incurred in respect of any one accident upto the following limits, namely, Clause (a) of Sub-section (2)

specifying the limit for a goods vehicle then ran:

Where the vehicle is a vehicle used or adapted to be used for the carriage of goods, a limit of Rs. 20,000."" Sub-section (2) (a) read with the

qualification at the beginning subjecting it to the proviso to Section 95(1) clearly cannot and so did not before the amendment, fix the limit of Rs.

20,000 to any particular class of persons. The limit was with reference to the vehicle involved in the accident and not the persons involved. By the

amendment and introduction thereby of an exception to proviso (i) insurance cover was insisted upon for certain liabilities arising under the

Workmen''s Compensation Act also. Corresponding amendment was made to Sub-section (2) (a). By the amendment the following words ware

added after ""a limit of Rs. 20,000"".

In all, inducing the liabilities, if any, arising under the Workmen''s Compensation Act 1923, in respect of the death of, or bodily injury to,

employees (other than the driver), not exceeding six in number, being carried in the vehicle.

43. The above words added by the amendment cannot by themselves after either the meaning or scope of qualifying words at the beginning of

Sub-section (2). The qualifying words apply not only to Clause (a) but also to the Clauses (b) and (c). If it had been the intendment of the

amendment to take away the existing limit in respect of third party risks, very different language should have been employed. Far from manifesting

an intention to change the law in other respects, there are two significant expressions in the amendment to Clause (a) (1) ""in all"" and (2) ""including

the liabilities, indicating that the amount specified is the overall limit that should be covered by the insurance. If the limit ofRs. 20,000 is only in

respect of liability towards employees and no limit is prescribed in respect of third party liability the words ""In all'''' and including"" would lose all

significance. The expression ""including shows that there are other liabilities covered by the limit. The word ""including"" is normally used to signify that

what is enumerated as included is not exhaustive. A liability which was not there previously is taken in under the limit What was already covered by

the limits is not excluded therefrom. In our opinion, the qualifying words at the beginning of Section 95(2) are there only to emphasise that certain

risks are exempted from compulsory insurance by the provisos, and there are exceptions there to which have to be covered by the policy. The

qualifying words are as a matter of abundant caution emphasising a sound rule of construction that the enacting part and the proviso must be read

as a whole each part throwing light on the other, as all the parts of the section are inter-related, so read, there is nothing in the provisos that would

control the plain language of clauses (a) and (b) of Sub-Section 2 that the amounts specified therein are for the total liability incurred in respect of

any one accident and not just the liability incurred in respect of the classes of persons mentioned in the clauses The proper principle of construction

to be adopted in a case like the present one is, to get at the meaning of the section on a comprehensive view of the enacting provision, that

provisions and the exceptions therefrom all are taken as a whole and interpreted together.

44. As the qualifying words at the beginning of Section 95(2) ""subject to the proviso to Sub-section (1)"" are common to both Clauses (a) and (b),

it is relevant to examine Section 95(1) (b). Section 95(2) Clause (b) provides in the case of vehicles carrying passengers for hire or reward

insurance for a limit of Rs. 20,000 in the case of persons other than passengers carried for hire or reward and Anr. sum of Rs. 20,000 in the case

of passengers. In the case of passengers, there lis a further limit on the extent of individual passenger compensation to be insured against; if the

vehicle is registered for carrying passengers not exceeding six excluding the driver, the liability in respect of an individual passenger is Rs. 4000

and, if the vehicle is registered to carry more then six passengers excluding the driver, the liability is Rs. 2000 in respect of a passenger. The phrase

in Clause (b) ""persons other than passengers"" in respect of whom a limit of Rs. 20,000 is provided, in its setting read with the other provisions of

the Chapter manifestly refers to third parties. Clause (b) indicates that the word ""passenger"" would but for the specific exclusion include also the

driver. The limits of compulsory cover specified in Section 95(2) (b) is in respect of all liabilities that have to be insured against With reference to

Section 95(2) (b) it would be misreading the qualifying words at the beginning subjecting the Sub-section to the proviso to Section 95(1) as

confining the limit of liability only to the classes of persons excepted from the proviso to Section 95 (l)(b).

45. Section 95(2) (b) has been the subject of construction by a Full Bench of Punjab High Court in Northern India Transporters Insurance Co. v.

Antra watt 1966 A.C.J. 13 : AIR 1966 P&H 288. The claim for compensation that came up for consideration before the Full Bench was by the

widows and other heirs of two passengers who were killed in an accident to a passengers bus. It was held by the Full Bench that, if an insurauce

policy is taken-out in respect of a large passenger bus and is limited to the terms of Section 95 of the Act and the bus meets with an accident

resulting in injuries to several persons, the liability or the insurer is not to exceed Rs. 20,000 in respect of all the passengers taken together and it is

not to exceed Rs. 2000 fin respect of each injured passenger. It was there argued on behalf of the passengers and the Transport company that if all

that is recoverable from the insurer by an injured passenger is Rs. 2000 and no more and even that amount may have to be reduced in case a large

number of persons are insured as there is the second over all limit of Rs. 20,000 then the provision would seem to be hardly adequate. The

argument was met by the learned Judges with the observation that it is only looking at one side of the picture and that Parliament may well have

thought it unreasonable to impose a heavy burden, on the transporters arising out of insurance, for obviously, if the Act requires them to insure their

vehicle in such a way that a large amount of compensation would become payable by the insurer, then the burden of insurance will increase and

that burden has necessarily to be borne by the transporter. Of"" course, any bus owner may voluntarily take out an insurance policy to cover more

risks than minimum required to be covered by the statute for his own protection.

46. Section 95(1), before its amendment in 1956, corresponded with Section 36(1) of the English Road Traffic Act, 1930. Section 35(1) of the

English Act corresponding to Section 94(1) of our Act. provided as an alternative to a policy of insurance that the persons using a motor vehicle or

owner may cover the risk of third party liability arising from the use of the vehicle on the road by providing security u/s 37 of the English Road

Traffic Act. The security was generally given by authorised insurers u/s 37(1) (b) and consisted of an undertaking by the giver of the security to

make good, subject to any conditions specified therein, any failure by the owner of the vehicle or such other persons or classes of persons as may

be specified, to discharge any compulsorily insurable liability which may be incurred by him or them. It is interesting to note that where security is given as an alternative to insurance, limits have been prescribed. The reason for the difference is not apparent. The security, to be valid in the case

of a public service vehicle must be for an amount not less than ï¿½.25,000 and, in any other case, for an amount not less than ï¿½ 5000. The

distinction in the compulsory limit for security is according to the character of the vehicle and the limit is an overall limit. Shawcross on Motor

Insurance, 2nd Edn., at page 226, says that the public service vehicle would generally be of the class against liability to passengers in which

insurance is required Section 36, whilst other vehicles would not generally be of that class and this, it is presumed, is why the limit is so much lower

in the case of ""vehicles other than public service vehicle. Parliament have for reasons best known to itself, may be having regard to the economic

levels in this country, has adopted different criteria for fixing limits. The English Road Traffic Act, 1930, retains the provision for security as an

alternative to a policy of insurance, and, with reference to the security, maintains the distinction between public service vehicle and other vehicles.

47. In K. Gopalakrishnan Vs. Sankara Narayanan and Others, where a goods vehicle was involved is an accident, the Division Bench of this

Court observed:

Thus Sub-section (2) of Section 95 of the Act cannot be invoked to restrict the liability of the Co-operative Fire and General Insurance Society

Ltd. to Rs. 20.000 in this case. Sub-section (2) of Section 95 of the Act can have no application to damages caused to third parties like the

claimant in this case as he is not one of the class persons referred to in the proviso to Section 95(1) of the Act.

48. There is not much discussion. The learned Judges only say that Sub-section (2) of Section 95 of the Act clearly governs only the proviso to

Sub-section (1) of Section 95 of the Act and that it is clear from the terms of Sub-section (2) of of Section 95 that they are subject to the proviso

to Sub-section (1). The learned Judges are of the view that limit of liability that has to be insured against is in relation to the persons exempted from

the proviso to Section 95(1). In our view, the effect of subjecting Sub-section (2) of Section 95 to the provisos to Sub-section (1) of the section is

to require that they all have to be read together and harmonised Effect must be given to every part of the section. The Sub-sections and provisos must all be given effect to.

49. The argument for. the claimants is that certain exceptions have been carved out from the operation of the provisos, and it is a reasonable

inference that if is the liability in respect of the excepted persons who strictly speaking are not third parties to the vehicle that is limited by Sub-

section (2). There is no basis for such an interpretation. The language of Sub-section (2) does not warrant the same and even if the Sub-sections

under consideration are not examples of legislative precision and clarity, we see no such ambiguity for the court to search for some undisclosed

intention. The plain meaning is generally the true meaning. On our reading of Sub-section (a) and (b), they do prescribe limits in respect of

compulsorily insurable risks including third party risks and are not confined only to the classes of persons who are excepted from the proviso to

Section 95 (l)(b). Section 95(2) fixes limits in relation to vehicles and makes a distinction between a goods vehicle and a vehicle in which persons

are carried. With reference to vehicle carrying passengers a further distinction is made between vehicles registered to carry, not more than six

passengers excluding the driver and vehicles registered to carry more than six passengers excluding the driver. Under Clauses (a) and (b) of

Section 95(2), the overall liability for insurance cover in respect of a vehicle involved in an accident is specified. The compulsory insurance policy,

that is, the ''Act policy'' is one which contains the bare minimum requirements of cover, if the vehicle is legally usable in a public place. But a

comprehensive third party liability for bodily injury to or death of any party, even if he is not within the limited categories provided for under the

Act, the assured is free to take out a policy for his own protection to the full extent of the liability that may be incurred, even where limits are

prescribed. We are here on the question of the liability incurred, by the insurer under a policy complying with the minimum requirements of the Act

the insured taking the policy te avoid penal consequences. It is not for the court to judge the adequacy of the compulsory cover in the changed

times, making the amounts available miserably low if large number of persons are involved in an accident. It is a matter for Parliament to consider.

50. It follows that Sub-section (2) of Section 95 has not been correctly interpreted by the Division Bench in Gopalkrishnan v. Sankaranarayana.

We are in agreement with the learned Judges who have referred the matter to the Full Bench in their interpretation of the Sub-section. It is our

opinion that where an insurance company insures the owner of goods vehicle u/s 95 of the Motor Vehicles Act, may incur in respect of the death

of a third party caused by the use of the vehicle in a public place, the policy being simply one conforming to the requirements of the Act, the liability

of the Insurance Company is limited to Rs. 20,000, u/s 95(2) of the Act. Costs of this reference would he as maybe ordered by the Division

Bench.

51. This appeal coming on for final, hearing after the opinion expressed by, the Full Bench the Court -Kallasam and Venkataraman JJ. delivered

the following judgment on 5.3.70.

JUDGMENT

52. Kallasam J:-In view of the opinion of the Full Bench, we pass the following, judgment: We find the second Respondent is liable to pay a

compensation of Rs. 40,000 to the Appellants. Out of this amount, the liability of the Insurance Company is limited to Rs. 20,000. The appeal is

accordingly allowed with costs of this Court, payable by the two Respondents. There will be no order as to costs in the Full Bench reference.