

(2009) 08 GUJ CK 0041

In the Gujarat High Court

Case No : First Appeal No's. 781, 782 of 1993 and 117 of 1994

Kantibhai Valjibhai Shah

APPELLANT

Vs

Kokilaben Patel and Others

RESPONDENT

Date of Decision : 24-08-2009

Acts Referred:

Motor Vehicles Act, 1939 — Section 95, 95(2), 96

Citation : (2009) 3 GLH 692 : (2009) 3 GLR 2416 : (2011) 3 TAC 112

Hon'ble Judges : H.K. Rathod, J

Bench : Single Bench

Advocate : S.H. Sanjanwala,s 1, 1.2.1, 1.2.2, 1.2.3 and 1.2.4, for the Appellant; Y.N. Ravani, for Defendants 1 - 2 and A.V. Trivedi, for Defendant 7, for the Respondent

Final Decision : Dismissed

Judgement

H.K. Rathod, J.—Heard learned advocate Mr. MTM Hakim for learned Senior Advocate Mr. S.H. Sanjanwala on behalf of appellants, learned advocate Mr. T. P. Satta for learned advocate Mr. A.V. Trivedi appearing for respondent No. 7-United India Insurance Co. Ltd., learned advocate Ms. Renu Singh for learned advocate Mr. Y. N. Ravani appearing for respondents-claimants.

2. The appellant being a owner of vehicle-Visat Travels-a partnership firm through its partner challenging common award passed by Motor Accident Claims Tribunal, Mehsana in respect to Motor Accident Claim Petition Nos. 426 of 1986 and 427 of 1986, Exh.135,decided on 18/1/1993.

3. Brief facts of present appeals are as under:

3.1 The deceased Haribhai Ambalal was driving scooter No. GAL-3614 and deceased Babubhai Ambalal was a pillion rider of that scooter and both of them were going from Shertha to Kalol on 11/5/1986. The scooter was being driven by Haribhai on correct side of road with moderate speed and when scooter reached near IFFCO, opponent No. 1 who was driving luxury bus bearing registration No.

GRX-1313 in a rash and negligent manner and with full speed lost his control on steering and dashed with scooter from behind. Due to said dash scooter went ahead up to a distance of 50 feet and because of fact that driver of luxury bus lost control on steering said bus went off the road and at that time some passengers were standing near S.T. Stand for getting S.T. Bus and one boy namely Dilipkumar was dashed with bus and then he has died and four persons were injured seriously and then bus went ahead and knocked down neem tree. Thereafter bus was halted. Haribhai and Dilipkumar died on the spot whereas Babubhai Ambalal has died when he was being taken to hospital for treatment. So accident has happened due to rash and negligent driving on part of driver of luxury bus.

3.2 Dependents of deceased Babubhai has filed MACP No. 426 of 1986 claiming compensation of Rs. 5,00,000/- and dependents of Haribhai has filed MACP No. 427 of 1986 claiming compensation of Rs. 5,00,000/-.

3.3 So far as quantum of compensation in MACP No. 426 of 1986 is concerned, deceased Babubhai Ambalal was aged about 33 years and he was owner of in factory manufacturing bangles and plastic pipes and he was earning Rs. 2,500/- per month. He was a very energetic and expiring man for expansion of his business and in that case his earning potentiality and prospective of earning income would have increased in future. Because of his premature death, claimants in present claim petition become shelter-less. The factory is now closed and machinery shall have to be sold away by loss and consequently claim of Rs. 5,00,000/- has been filed against all opponents.

3.4 So far as quantum of compensation in MACP No. 427 of 1986 is concerned, deceased Haribhai Ambalal was aged about 37 years and serving in ONGC and he was getting Rs. 1,902/- as a salary and had he remained alive and had he served in ONGC till superannuation he would have maximum salary of Rs. 4,000/- per month. Over and above salary, he was getting bonus, LTC, clothes, shoes etc. Because of sad demise of Haribhai, his family become shelter-less. On above said basis claimants of present MACP also claimed compensation of Rs. 5,00,000/-.

3.5 Against above said demand of compensation made by claimants, Claims Tribunal has awarded Rs. 2,20,000/- in respect to MACP No. 426 of 1986 and awarded Rs. 2,84,000/- in respect to MACP No. 427 of 1986. Being aggrieved by said award appellant owner herein has filed present appeals before this Court.

4. Before Claims Tribunal, written statement is filed by opponent No. 3-United India Insurance Co. Ltd. vide Exh.19 denying averments made in both claim petitions. Driver of luxury bus was acquitted in criminal case before Kalol Court and negligence of luxury bus driver was disputed by insurance company. The allegations were made against driver of scooter means deceased Haribhai.

5. Thereafter issues have been framed by Claims Tribunal vide Exh.27. Issue Nos. 1 to 5 are decided together and Claims Tribunal has come to conclusion that due to said accident three persons have lost their lives i.e. a person who was

driving scooter, pillion rider and one minor boy Dilipkumar and four persons have received serious injuries. Therefore, accident is occurred due to sole negligence on part of luxury bus driver. The important question which has been raised before this Court by owner-appellant that insurance policy which was obtained by insured-appellant-owner covering risk of third party being an unlimited even though Claims Tribunal, Mehsana has come to conclusion considering Section 95(2)(b)(i) of old Act of Motor Vehicles Act. Insurance Company having limited liability of Rs. 50,000/- for third party. Accordingly in both MACP Nos. 426 and 427 of 1986, Claims Tribunal has awarded Rs. 50,000/- each being a liability of insurance company. Rest of liability is of owner of vehicle and driver of luxury bus. This question has been discussed and decided by Claims Tribunal in para-15 while considering insurance policy produced at Exh.127. Para-15 of impugned award reads as under:

15. Regarding the liability of the Insurance Company, the policy is produced at Ex. 127 and it is eloquent that the opponent No. 2 is the owner and insured of the vehicle. The premium is paid and the risk is fully covered. So far as passengers are concerned, the liability of the Insurance Company is limited to Rs. 30,000/- and so far as the liability of the third party that is the present claimants, it is restricted to Rs. 50,000/- only. It is submitted by the learned Advocate for the opponent No. 2 and the learned Advocate for the applicants that the liability of the Insurance Company is unlimited and in order to substantiate their allegation they had relied upon the judgment of the Gujarat High Court in the case of United India Insurance Company v. Revaben reported in 1986 GLP 1078. I am of the opinion that this judgment does not apply to the facts of the present case because this is a policy of Statute and Section 95(2)(b)(i) it is crystal clear that in respect of the persons other than the passengers carried for hire and reward meaning thereby third parties as limited of Rs. 50,000/- in all is the liability of the Insurance Company. So the liability of the Insurance Company is limited to Rs. 50,000/- only that would apply Company is limited to Rs. 50,000/- only that would apply in the case of M.A.C.P. Nos. 426/86 and 427/86 only. Other Claim Petitions are of Rs. 50,000/- and up to Rs. 50,000/-. Therefore, I answer Issue No. (3) in the affirmative accordingly.

6. In First Appeal Nos. 781 and 782 of 1993, only question is raised by learned advocate Mr. MTM Hakim appearing for appellant-owner that looking to insurance policy Exh.127, Section 95 of Old Act and additional premium of Rs. 240/- which has been paid by insured policy covered risk of third party being an unlimited. Therefore, finding given by Claims Tribunal, Mehsana is erroneous and contrary to law. He has submitted that Claims Tribunal has committed gross error in deciding said issue merely relying upon Section 95(2)(i)(b) but Claims Tribunal has not considered at all that for third party Rs. 240/- premium was paid and said amount is accepted by insurance company which amounts to acceptance of liability for third party as unlimited. This aspect was totally ignored by Claims Tribunal, Mehsana. In support his submissions, he has referred tariffs advisory circulars and referring tariff advisory in respect to commercial vehicle schedule of

premium for passenger carrying vehicle including passengers risk liability to public risk is Rs. 240/- and act only liability is Rs. 200/- to be paid by insured to insurance company. He submitted that insured-owner has paid Rs. 240/-. Liability of public risk covering unlimited liability and act only liability is limited liability. This aspect has been totally ignored by Claims Tribunal, Mehsana. He also annexed tariff means India Motors Tariffs attached with schedule of premium with effect from 1/2/1982. For passenger vehicle liability to public risk is Rs. 240/- and act liability Rs. 200/- according to tariff. In support of said contention, he has relied upon several decisions which are stated as under:

Decision of Division Bench of this Court in First Appeal No. 2819 of 1993 in case of New India Insurance Co. Ltd. v. Surajmal Virumal Mulchandani decided on 24/7/2000.

Decision of this Court in case of National Insurance Co. Ltd. Vs. Kokilaben Joshi and Others, .

Decision of this Court in First Appeal No. 169 of 2000 decided on 15/9/2008 in case of United India Insurance Co. Ltd. v. Bhikhaben-wd/o Chhotabhai Mansukhbhai Harijan.

Decision of Delhi High Court in case of New India Assurance Co. Ltd. Vs. Pushpa Kakkar and Others, .

Decision of Patna High Court in case of Dilip Kumar Saha Vs. Runnu Sarkar and Another .

Decision of Rajasthan High Court in case of Draupadi Devi and Others Vs. Inder Kumar and Another, 8.

Decision of Delhi High Court in case of Meena Devi Vs. Sh.Ramesh Kumar and Others, .

Decision of Rajasthan High Court in case of Hastimal Lodha Vs. Shakuntala Kumari and Others, .

Decision of Rajasthan High Court in case of Oriental Insurance Co. Ltd. Vs. Sunita Dhanda and Others, .

Decision of Rajasthan High Court in case of Tulsiram Agarwal Vs. Manjinder Singh and Others, .

Decision of Rajasthan High Court in case of Vishnu Veer alias Bhola Vs. Hari Kishan and Others, .

Decision of Delhi High Court in case of Lado Devi Vs. Shri Satvir Sharma and Others, .

Decision of Rajasthan High Court in case of Navyug Oil and Dal Mills Vs. Nathi Devi and Others, .

Decision of Rajasthan High Court in case of National Insurance Company Ltd. Vs. Smt. Kamla Kanwar and Others, .

Decision of Rajasthan High Court in case of Sarla and Others Vs. Ashok Kumar Sharma and Others, .

Decision of Delhi High Court in case of Oriental Insurance Co. Ltd. v. Zile Singh and Ors. reported in 2003 ACJ 645.

Decision of Rajasthan High Court in case of National Insurance Co. Ltd. Vs. Laxmi and Others, .

Decision of Delhi High Court in case of Sita Devi and Others Vs. Raghuveer Singh and Others, .

7. Learned advocate Mr. MTM Hakim submitted that in aforesaid decisions referred and relied by him, Rs. 240/- premium is paid by insured-owner to insurance company and therefore in respect to third party is unlimited liability of insurance company. Therefore according to his submission, Claims Tribunal has committed gross error and come to conclusion that insurance company is having limited liability for third party of Rs. 50,000/-.

8. Learned advocate Mr. Tejas Satta appearing for insurance company raised contention that appellant has not produced on record India Motor Tariff which has been produced before this Court after considering insurance policy Exh.127 and therefore such tariff should not have to be considered. He also raised contention that no separate agreement was arrived at between appellant-insured and insurance company for unlimited liability. He submitted that accident occurred on 11/5/1986 i.e. prior to amendment made in Section 95 i.e. 1/7/1989 and therefore old Act is applicable and amended act is not applicable. He submitted that beyond Section 95 of Motor Vehicles Old Act insurance company cannot accepted unlimited liability because by statutory provision there was a limited liability. He also referred tariff and pointed out from tariff that there is no unlimited liability is mentioned or not mentioned that policy covers unlimited liability when Rs. 240/- premium is paid by insured-owner. Therefore according to him Claims Tribunal has rightly examined claim petitions while considering insurance policy Exh.127 and rightly appreciated provisions of Section 95(2) of Motor Vehicles Act. He has relied upon Section 95(2)(a)(b) covering (i)(ii) which is quoted as under:

(2) Subject to the provisio to Sub-section (1), a policy of insurance shall cover any liability incurred in respect of any one accident up to the following limits, namely:

(a) where the vehicle is a goods vehicle, a limit of [fifty] thousand rupees in all, including 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;

(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 to persons other than passengers carried for hire or reward, a limit of fifty thousand rupees in all;

in respect of passengers -

(1) a limit of fifty thousand rupees in all where the vehicle is registered to carry not more than thirty passengers;

(2) a limit of seventy-five thousand rupees in all where the vehicle is registered to carry more than thirty but not more than sixty passengers;

9. Learned advocate Mr. Tejas Satta has relied upon three decisions of Hon''ble Apex Court in case of Jameskutty Jacob Vs. United India Insurance Co. and Others, , in case of National Insurance Co. Ltd. Vs. Keshav Bahadur and Others, and in case of United India Insurance Company Ltd. Vs. A.N. Subbulakshmi and Others, . Relying upon aforesaid three decisions he has submitted that Section 95(2)(a) where even in case of comprehensive insured vehicle the liability of insured was limited to Rs. 50,000/-. He also relied upon terms and conditions of insurance policy Exh.127. He has relied upon following terms of policy:

SECTION N- LIABILITY TO THIRD PARTIES

1. Subject to the Limits of Liability the Company will indemnify the insured against all sums including claimant's cost 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 Motor Vehicle,

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

10. There is no dispute between parties that on date of accident i.e. 11/5/1986, insurance policy was in existence and policy covers date of accident. Except above said contention of learned advocate Mr. Tejas Satta no other contention has been raised by him before this Court.

11. First Appeal No. 117 of 1994 is filed by claimants of MACP No. 427 of 1986 on ground that pay revision of deceased Haribhai was not considered by Claims Tribunal and while awarding amount of compensation to claimants only 5 multiplier has been applied. For same, according to learned advocate Ms. Renu Singh appearing for learned advocate Mr. Ravani instead of income of Rs. 2,500/- per month, Claims Tribunal must have to assess future prospective income of Deceased Haribhai Rs. 4,000/- in MACP No. 427 of 1986 and therefore, according to said submission, claimants are entitle some more amount of compensation which has not been awarded. Therefore, for enhancement of compensation separate appeal is preferred by claimants of MACP No. 427 of 1986.

12. I have considered submissions made by learned advocates for respective parties and perused impugned award passed by Claims Tribunal, Mehsana. I have also considered para-15 of impugned award in which question of limited liability is decided relying upon insurance policy Exh.127 and Section 95(2)(b)(i). Against that question which was not considered by Claims Tribunal, Mehsana while referring Section 95(2)(a) that insured has paid additional premium of Rs. 240/- for liability to public risk, it is not a case of insurance company that Exh.127 policy is act policy but it was a public risk policy issued by insurance company. Tariff as referred above suggested Rs. 200/- for act only liability and Rs. 240/- liability to public risk. Section 95(a) of Motor Vehicles Act deal with statutory policy means act policy but not deal with comprehensive policy having separate agreement or separate premium being additional premium accepted by insurance company. Therefore, additional premium accepted by insurance company over and above act policy which covered risk of third party unlimited. This aspect has been considered by Division Bench of this Court in First Appeal No. 2819 of 1993 decided on 24/7/2000. Relevant discussion of said decision is quoted as under:

6. We have examined the apex court judgments carefully. In the case of New India Assurance Co. Ltd. v. Shanti Bai, the apex court has made reference to the earlier pronouncement of National Insurance Co. v. Jugal Kishor (supra) and has also referred the another verdict of the apex court in M.K. Kunhimohammed Vs. P.A. Ahmedkutty and Others, .

7. Before enumerating the ratio of the two cases of the apex court referred to above, it would be desirable to reproduce Section 95(2) of the Motor Vehicles Act, 1939 It provides that subject to the proviso to sub section (1), a policy of insurance shall cover any liability incurred in respect of any one accident up to the following limits, namely:

(a) where the vehicle is goods vehicle, limit of 1,50,000/- rupees in all including liabilities, if any, arising under the Workmen's compensation and in respect of death or bodily injury to employees (other than driver) not exceeding six in number being carried in the vehicle;

(b) where the 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 fifty thousand rupees in all;

in respect of passengers, a limit of fifteen thousand rupees for such individual passengers.

8. Thus, Section 95(2)(b)(i) is relevant for our purpose which applies to the facts of the case before us for the obvious reason that the insured was not a passenger in the truck nor he was carried for hire or reward in the truck. The initial liability under this provision was 50,000/- rupees but now Shri Nanavaty has admitted that consequent upon the amendment in the Act of 1939 which

came into force in October, 1982, the maximum liability in such cases is raised to Rs. 1,50,000/-. Relying upon this statutory liability, Shri Nanavaty has contended that the tribunal could not have awarded compensation exceeding Rs. 1,50,000/- .

9. It is now to be seen what is the ratio of the apex court in the aforesaid two cases of *New India Assurance Co. Ltd. v. Smt. Shanti Bai* and *National Insurance Co. Ltd. v. Jugal Kishore* (supra).

In our opinion, the following ratio can be deduced from the above two cases.

(1) The motor vehicle can not be used by the owner unless it is covered at least "act only" class. Policy.

(2) Owner of the vehicle cannot ply the same on public road unless it is insured.

(3) Insurance may be under "an act policy" only or it may be under comprehensive policy.

(4) It is the choice of the owner of the vehicle to get his vehicle insured as an "act only" policy and it is also his choice to get it comprehensively insured.

(5) If it is a case of insurance under "an act only" policy, premium as prescribed in the tariff has to be paid by the owner of the vehicle to the insurer.

(6) If it is comprehensively insured, then, mere use of "comprehensive" in the insurance policy or use of the words "unlimited liability" in the insurance policy will not render the insurance company liable to an unlimited extent.

(7) If the vehicle is comprehensively insured, higher premium than that for "act policy" is payable depending on the estimated value of the vehicle.

(8) Comprehensive insurance entitles the owner to claim reimbursement of the entire amount of loss or damage suffered up to the estimated value of the motor vehicle calculated according to the rules and regulations framed in this behalf.

(9) Comprehensive insurance of the vehicle and payment of higher premium on this score, however, does not mean that the limit of the liability with regard to third party risk becomes unlimited or higher than the statutory liability fixed under sub Section (2)) of Section 95 of the Motor Vehicles Act, 1939. For this purpose, a specific agreement has to be arrived at between the owner and the insurance company and separate premium has to be paid on the amount of liability undertaken by the insurance company in this behalf.

(10) Likewise, if the risk of any other nature for instance with regard to the driver or passengers etc. in excess of the statutory liability, if any, is sought to be covered, it has to be clearly specified in the policy and separate premium paid therefore. This is the requirement of tariff regulations framed for the purpose.

10. In *New India Assurance CO. Ltd. v. Smt. Shanti Bai* (supra), these principles were applied by the apex court and it was again reiterated that the

comprehensive policy only entitles the owner to claim reimbursement of the entire amount of loss or damage suffered up to the estimated value of the vehicle. It does not mean that the limit of liability with regard to third party risk becomes unlimited or higher than the statutory liability. For this purpose, specific agreement is necessary which was found absent in the case of New India Assurance Company v. Smt. Shanti Bai (supra).

11. Keeping in view the above ratio of the apex court in the two cases, we have examined the insurance policy in this appeal. Xerox copy of the insurance policy is on the record of the tribunal and since it is not very legible, slightly legible Xerox copy was supplied to us for our perusal. After examining the Xerox copy so supplied, we found that in the end regarding limit of the amount of compensation liability u/s 95 in respect of any accident, it was Rs. 50000/- only. The insurance policy was issued on 17.12.1988. The accident occurred on 20.10.1984. The Act was amended in October, 1982 and maximum statutory liability on the date of accident was Rs. 1,50,000/-. Consequently, recital in the insurance policy that the limit of the amount of compensation liability was Rs. 50,000/- is irrelevant and deserves outright rejection. Presuming that it should have been Rs. 1,50,000/-, we have examined whether there was any specific agreement between the owner and the insurer making the liability of the insurance company unlimited or that the insurance company was to remain statutorily liable to the extent of Rs. 1,50,000/- only. The apex court in the above two cases has clearly laid down that mere use of the word "unlimited liability" or "comprehensive insurance" will not make any difference. If it is claimed that the policy was comprehensive, separate agreement between the owner of the vehicle and the insurance company has to be established. However, in both the cases, the apex court has not laid down that separate agreement should be on separate document bearing requisite stamp paper. Such an agreement has to be inferred if the insurance company charged additional or extra premium from the insured. That is what is precisely laid down in National Insurance CO. v. Jugal Kishore and Ors. (supra) when it was observed that for this purpose, specific agreement has to be arrived at between the owner and the insurance company and separate premium has to be paid on the amount of liability undertaken by the insurance company in this behalf. It was further observed that this is the requirement of the tariff regulations framed for the purpose. The tariff regulations were not produced before us in the course of arguments. However, we have extracted relevant tariff agreement quoted in the case of Dilip Kumar Saha Vs. Runnu Sarkar and Another which we believe that it was tariff prevalent on the relevant date when the insurance policy was issued by the appellant in the case before us.

12. The schedule of tariff prescribing premiums for insurance of goods carrying vehicle based on their capacity and extent of such coverage as in force at the material time as per the "India Motor Tariff", for the commercial vehicles of the capacity in question, schedule of premium was as follows:

-----	Licenced	Own
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damage Liability "Act carrying to pay only" capacity of public liability. the vehicle risk. ----- (2)Not exceeding Rs.550/- Rs. 240/- Rs.200/- 3048kg +1.10% on IEV -----

13. From the above tariff, it is clear that the licensed vehicle having carrying capacity of 3048 kg. (10 tons) schedule of premium for damage to the vehicle is Rs. 550+1.10% IEV. Likewise, for liability to the public risk, schedule of premium is Rs. 240/- and the premium for "act only" is Rs. 200/- only.

14. Keeping in view this tariff schedule, if the premium was charged for "act only" liability, it should have been Rs. 200/- only. But if the premium was charged at Rs. 240/-, then, it will be deemed that there was specific agreement between the insured and the insurer to undertake the liability to pay the public risk. This is nothing but an agreement between the owner of the vehicle and the insured to charge additional and extra premium covering public risk.

15. If in the light of this schedule, we examine the policy issued by the appellant in the instant case, we find that the premium of Rs. 240.00 has been charged for third party premium described as TPP. Another additional premium of Rs. 100/- has been charged which is styled as TPP Insurance. We interpret "TPP Insurance" as "Third Party Property Insurance" for which additional premium of Rs. 100/- was charged. Therefore, keeping tariff schedule in mind, we find that Rs. 240/- were charged for Third Party Insurance which is nothing but premium for liability to the public risk. In addition to this, premium of Rs. 100/- was charged for third party property insurance. This is also extra and additional premium charged by the insurance company. Charging of these two amounts will clearly indicate that there was separate agreement between the parties namely the insured and insurer that in case of any accident where damage is caused to the property of the third party, the insurance company will be liable to compensate for the whole damage. Likewise, if the injury is caused to the third party or third party dies, then the compensation has to be worked out keeping in view the provisions of the Motor Vehicles Act and limit of statutory liability will not be of any rescue to the insurance company. We are, therefore, unable to agree with the contention of Shri P.V. Nanavaty that no extra or additional premium was charged by the insurance company.

16. On Similar facts, before the Delhi High Court in the case of New India Assurance Co. Ltd. Vs. Pushpa Kakkar and Others, where the controversy was different in the sense that the insurance policy or its copy was not filed, still from the statement of the witness examined by the insurance company it emerged that the insurance company charged premium of Rs. 240.00 covering third party risk. According to the Delhi High Court, in view of the schedule of premium in the tariff for "act only" liability, sum of Rs. 200/- has been prescribed to be the premium and in case of liability to third party public risk, sum of Rs. 240.00 has been provided. Since in that case, premium of Rs. 240.00 was charged by the insurance company, it was held that the premium is more than "act only"

premium of Rs. 200.00. As such, unlimited liability of the insurance company was upheld in this case. We do not find any force in the contention of Shri P.V. Nanavaty that this case runs contrary to the ratio of the two apex court's verdict cited by us above. On the other hand, the view taken by the Delhi High Court is in consonance with the ratio laid down by the apex court wherein it has been observed that in case separate agreement is established or extra premium is charged by the insurance company, the liability of the insurance company will not be limited to the statutory liability only.

17. Similar view was taken in the case of Dilip Kumar Saha v. Runnu Sarkar and Anr. (supra). In this case also, the insured had paid Rs. 240.00 as premium for coverage of the liability of public risk. The Patna High Court observed that as against this for coverage of liability to the extent of minimum statutorily fixed liability which has been defined under the tariff as "act only" liability is only Rs. 200/-. It was further observed that, therefore, there is no escape from holding that the respondent company is liable to indemnify the owner of the vehicle for the entire liability arising in respect of the claims by the public under the Act because of any accidental personal injury. This case also does not run contrary to the apex court verdict in the two cases cited by us in the foregoing paragraphs of this judgment.

18. Yet in another case of Oriental Insurance company v. Smt. Sunita Dhanda and Anr. 1998 (1) TAC 621 the Rajasthan High Court was also of the View that in such cases, liability of the insurance company is to pay the entire amount of compensation awarded by the tribunal. Here also, the truck was insured by the insurance company. The insurance policy indicated that the premium of Rs. 240.00 was charged for the third party risk. It was undisputed that at the relevant time, premium for "act only" policy was Rs. 200/- whereas for third party liability or liability of public risk, premium was Rs. 240/-. Since Rs. 240/- were charged as premium by the insured to cover the third party risk which was more than "act only" premium of Rs. 200/-, hence, the liability of the insurance company was found and held to be unlimited. This case also does not run counter to the view taken by the apex court in the two cases cited by Shri P.V. Nanavaty.

19. No other point has been pressed before us. We, therefore, do not find force in the contention of Shri P.V. Nanavaty that the insurance company is liable only to the extent of Rs. 1,50,000/- as statutory liability u/s 95(2) (b) (i) of the Motor Vehicles Act, 1939. On the other hand, we find from the above analysis that the insurance company having charged additional premium is liable to compensate for the entire loss and damage caused to the third party.

20. Before parting with this judgment, we would like to mention again that in National Insurance Company v. Jugal Kishore (supra) the apex court further observed that likewise if the risk of any other nature for instance with regard to the driver or passengers etc. in excess of statutory liability if any is sought to be covered it has to be clearly specified in the policy and separate premium paid

therefore. If this observation of the apex court is kept in mind and the policy produced before us is examined, we find that for the limit of liability to two drivers and one coolie additional premium of Rs. 24/- was charged and further limit of liability to three coolies another amount of Rs. 24/- was charged by the insurer. Thus, the insurer not only charged additional premium for third party risk but also charged additional premium for loss likely to be caused to the third parties property and also additional premium was charged for two drivers and four coolies. This is nothing but separate agreement charging additional and extra premium. As such, it is difficult to hold that the insurance company is liable statutorily to the extent of Rs. 1,50,000/- only.

We, therefore, do not find any merit in this appeal which is hereby dismissed with no order as to costs.

13. In reported decision of this Court in case of National Insurance Co. Ltd. Vs. Kokilaben Joshi and Others, , Hon"ble Court has observed in head note that: "Motor Vehicles act, 1939 (IV of 1939) - Section 95(2) - Interpreting terms of the policy, held that policy was neither "Comprehensive" nor "Act only" policy - Policy found to be "Public Risk Policy" - Held, liability of the Insurance Company was unlimited." In para-6 and 7 of said decision this Court has also observed as under:

6. As can be seen from the policy Ex. 70, as far as Limits of Liability are concerned, limit of the amount of the Company"s liability u/s II-1(i) in respect of any one accident is, "Such amount as is necessary to meet the requirements of the Motor Vehicles Act, 1939." The real controversy between the parties is as to which of the three policies will govern the policy Ex. 70. It is the contention of the appellant Insurance Company that it is an Act Liability Insurance Policy, but the contention of the respondent- Gujarat Electricity Board is that it is Covering Public Risk Third Party Liability Insurance Policy. The learned Counsel for the appellant submitted that use of words "Such amount as is necessary to meet the requirements of Motor Vehicles Act, 1939" shall mean the amount of liability stated in Section 95 of the Act and Rs. 1.50 lacs being the outer limit stated as the liability under the said provision, the limits of liability as far as the appellant Insurance Company is concerned, is only Rs. 1.5 lacs. To make good this submission, the learned Counsel invited our attention to the decisions of the Supreme Court in the case of National Insurance Co. Ltd. v. Jugal Kishore 1988 ACJ 270 (SC), National Insurance Co. Ltd. v. C.M. Jaya 1954 ACJ 271, Oriental Insurance Co. Ltd. v. T.P. Joshi 2001 (1) GLH 227 , United India Fire and General Insurance Co. Ltd. Vs. Bachu Kaba Satrotia and Others, , United India Insurance Co. Ltd. Vs. Revaben Ranchhodbhai Patel and Others, and Sheikhpura Transport Co. Ltd. v. Northern India Transporters Insurance Co. Ltd., 1971 ACJ 206 (SC).

7. Before considering the aforesaid authorities cited before us, we would once again like to highlight the facts by stating that the policy in question Ex. 70 and more particularly as far as the limits of liability are concerned, they only provide limit of the amount of Company"s liability u/s II(1)(i) i.e. death or bodily injury

to any person caused by or arising out of the use (including loading and/or unloading) of a motor vehicle. It is to be noted here that there is no reference to any amount. However, the policy further states that "such amount as is necessary to meet the requirements of Motor Vehicles Act, 1939". We are, therefore, required to find out as to whether such a clause has been interpreted by the Court in the aforesaid decision cited by the learned Counsel for the appellant.

14. In decision of this Court in case of United India Insurance Company Ltd v. Bhikhaben in First Appeal No. 169 of 2000 dated 15/9/2008 in para-3 to 7, this Court has observed as under:

3. Learned advocate Mr. Nanavati raised contention before this Court that Claims Tribunal has committed gross error by not appreciating the terms and conditions of Insurance Company, where, policy is having the premium of Rs. 240/- which suggests a limited liability of Rs. 1,50,000/- and not beyond that. This contention was raised by Insurance Company before the Claims Tribunal in Para 12 and that contention has been discussed by the Claims Tribunal in Para 12 to 15 which are quoted as under:

12. So far as the question of liability is concerned, it is proved that the accident happened due to negligent act on the part of opponent No. 1 i.e. driver of Truck No. GRQ and the said vehicle was involved in the accident. It is also proved that the opponent No. 1 is the driver of alleged truck and opponent No. 2 was the owner of the said truck at the time of accident. The applicant has also produced policy at Exh.67 which shows that the truck No. GRQ 6858 was insured with opponent No. 3 i.e. United Insurance Co. Ltd. for the period from 19.12.88 to 18.12.88 and the accident happened on 30/4/89. Hence, the policy period was in force at the time of accident. Thus in short, all the opponents are jointly and severally liable to pay the compensation.

13. It was argued on behalf of the petitioners that the liability of the insurance Co. is unlimited. It was argued on behalf of the petitioners that the owner of the truck paid Rs. 240/- covering liability of public risk whereas for coverage of "Act only liability" the premium payable under tariff was Rs. 200/-. Hence, the liability of Insurance Co. is unlimited and for which he relies on Dilip Kumar Saha Vs. Runnu Sarkar and Another reported in case of Dilip Kumar Saha v. Runnu Sarkar and Ors. and also he relies on New India Assurance Co. Ltd. Vs. Pushpa Kakkar and Others, reported in case of New India Insurance Co. Ltd. v. Pushpa Kakkar and Ors. I am fully agree with this citation. Owner paid Rs. 240/- covering liability to public risk whereas for coverage of "Act only liability" the premium payable under the tariff was Rs. 200/-. Hence, the liability company is unlimited.

14. It was argued on behalf of the opponent No. 3 that the liability of Insurance Company is limited. It was argued on behalf of the insurance Company that policy is Act policy. Hence, the liability of Insurance Company is limited and for that he relies on Kacharabhai L. Limbachia Vs. Ratansinh J. Rathod-Patelia and

Others, , and (2) National Insurance Co. Ltd. Vs. Nathilal and Others, . and (3) New India Assurance Co. Ltd. Vs. Archana Kumari and Others, . I am fully agree with this citation but this citation does not help the opponent No. 3.

15. The owner of the truck has paid Rs. 240/- covering liability to public risk whereas for coverage of "Act only liability" the premium payable under the tariff was Rs. 200/-. The owner has paid the premium for the third party risk and the witness No. 1 Dipsinh Vashram on behalf of the opponent No. 3 has admitted in his deposition that owner of the truck has paid Rs. 240/- for the third party risk. Hence, the liability of the Insurance Company is unlimited. Hence, the arguments advanced by the advocate of the Insurance Company is not acceptable and I am of the view that all the opponents are jointly and severally liable to pay the compensation to the petitioners.

4. In view of aforesaid discussion made by Claims Tribunal, one fact is undisputed that owner has paid Rs. 240/- premium for third party risk.

5. Learned advocate Mr. Nanavati raised contention that in premium of Rs. 240/-, a third party risk is covered a limited coverage of Rs. 1,50,000/-. For increasing their risk, some more premium is necessary which was not paid. Therefore, Claims Tribunal has not considered this aspect and committed an error in awarding compensation in favour of respondent claimant.

6. Learned advocate Mr. Hakim appearing on behalf of respondent claimant raised contention that according to the tariff, Rs. 240/- premium covers the risk of owner of unlimited liability of Insurance Company. The said question has been decided by this Court in case of National Insurance Co. Ltd. Vs. Kokilaben Joshi and Others, and the decision of this Court in case of New India Assurance Company Limited v. Surajmal Virumal Mulchandani in First Appeal No. 2819 of 1993 decided on 24th July 2000 (Coram: D.C. Srivastava and H.K. Rathod, JJ.).

7. I have considered the submissions made by both the learned advocates and also perusing the relevant Para 12 to 15 as referred above. The contention which has been raised by learned advocate Mr. Nanavati that Insurance Company is having limited liability of third party in premium of Rs. 240/-, but, a witness of Insurance Company Dipsinh Vashram admitted in his deposition that owner of the truck has paid Rs. 240/- for the third party risk. But, before the Claims Tribunal, Insurance Company has not made clear that Rs. 240/- covers the risk of third party which is limited up to Rs. 1,50,000/- and beyond that, if, risk is to be covered, then, some more premium is necessary. Such kind of submission was not made before the Claims Tribunal by the Insurance Company and therefore, Insurance Company has not examined that in detail. But, apart from that, the decisions of this Court as referred above which have been relied upon by learned advocate Mr. Hakim, according to my opinion, Claims Tribunal has rightly examined the issue and for that, Tribunal has not committed any error which requires interference by this Court.

15. In decision of Delhi High Court in case of New India Assurance Co. Ltd. v.

Pushpa Kakkar and Ors. (supra), Delhi High has observed under head note as under:

Motor Vehicles act, 1939, Section 95(2) (a) - Motor insurance - Goods vehicle - Extent of liability of insurance company - Death of scooterist when he was hit by a truck - Contention that insurance company is liable up to Rs. 1,50,000/- as per terms and conditions of policy - Premium paid was more than the "Act only" premium - No evidence that the liability of insurance company is limited as per Act despite payment of additional premium - Whether liability of insurance company is unlimited - Held: yes.

16. In decision of Patna High Court in case of Dilip Kumar Saha v. Runu Sarkar and Anr. (supra), Patna High Court has observed under head note as under:

Motor Vehicles Act, 1939, Section 95(2) (a) - Motor insurance - Policy - Limits of liability of insurance company - Insurance company had undertaken to indemnify the owner of such amount as is necessary to meet the requirements of the Act - Owner paid Rs. 240/- covering liability to public risk whereas for coverage of "Act only liability" the premium payable under the tariff was Rs. 200/- - Whether the liability of the insurance company is unlimited - Held: yes. [1989 ACJ 169 (MP) followed].

17. In decision of Rajasthan High Court in case of Draupadi Devi and Ors. (supra), Rajasthan High Court has observed under head note as under:

Motor Vehicles Act, 1939, Section 95(2) - Motor insurance - Policy - Extent of liability of insurance company - Truck dashed against a scooter and both the scooterist and pillion rider sustained fatal injuries - Column in the policy regarding limits of liability for death of a or bodily injury to third party was left blank - Contention that premium of Rs. 240/- charged covered Rs. 200/- for third party risk and Rs. 40/- for unlimited liability - Insurance company contended that Rs. 40/- were charged for covering risk of property of third party and not for personal injury or death but no tariff applicable to the relevant period was produced in support of the contention despite directions of the court - Evidence on behalf of the insurance company that no extra premium was charged for damage to property - Whether it could be inferred that extra premium was charged for covering liability for death or bodily injury or a third party and liability of insurance company was unlimited - Held: yes.

18. In decision of Delhi High Court in case of Meena Devi and Ors. (supra), Delhi High Court has observed under head note as under:

Motor Vehicles Act, 1939, Section 95(2) - Motor insurance - Policy - Limits of liability of insurance company - Policy covering higher risk for which the insurance company had charged additional premium more than the premium payable for "Act only" policy - Insurance company failed to explain for what purpose higher premium was charged - Whether the liability of insurance company was limited as per statute - Held: No. Amrit Lal Sood and Another Vs.

Smt. Kaushalya Devi Thapar and Others, followed.

19. In decision of Rajasthan High Court in case of Hastimal Lodha (supra), Rajasthan High Court has observed under head note as under:

Motor Vehicles Act, 1939, Section 95(2)(b)(i) - Motor insurance - Policy - Limits of liability of insurance company - Death of scooterist and pillion rider when a bus hit the scooter from behind - Premium paid in the policy of the bus to cover the liability to third party public risk is higher than the premium payable for "Act only" policy - Whether the liability of insurance company is limited to Rs. 50,000 as per statute - Held: no; insurance company is liable for the amount awarded. Draupadi Devi and Others Vs. Inder Kumar and Another, and New India Assurance Co. Ltd. Vs. Pushpa Kakkar and Others, followed.

20. In decision of Rajasthan High Court in case of Oriental Insurance Company Ltd. v. Sunita Dhanda and Ors. (supra) Rajasthan High Court has observed under head note as under:

Motor Vehicles Act, 1939, Section 95(2) - Motor insurance - Damage to property of third party - Limits of liability of insurance company - Taxi car was damaged when it was hit by a truck - Tribunal allowed damages of Rs. 1,00,300/- and mulcted liability on the insurance company of the truck - Contention that maximum liability under the insurance policy in respect of damage to property was Rs. 50,000/- Truck was insured to cover third party risk with premium more than the "Act only" premium - Whether the liability of insurance company of the truck was unlimited - Held: yes; liability of insurance company would not be as per the Act but would be unlimited.

21. In decision of Rajasthan High Court in case of Tulsiram Agarwal (supra), Rajasthan High Court has observed under head note as under:

Motor Vehicles Act 1939, Section 95(2) (a) - Motor insurance - Goods vehicle - Limits of liability of insurance company - Truck "B" collided with truck "A" resulting in the death of an occupant in truck "A" - Insurance company of truck "B" charged premium to cover liability to public risk which is higher than the "Act only" premium - Whether liability of the insurance company is limited to Rs. 1,50,000 as per statute - Held: no; liability is unlimited. Draupadi Devi and Others Vs. Inder Kumar and Another, and New India Assurance Co. Ltd. Vs. Pushpa Kakkar and Others, followed.

22. In decision of Rajasthan High Court in case of Vishnu Veer alias Bhola (supra), Rajasthan High Court has observed under head note as under:

Motor Vehicles Act, 1939, Section 95(2) - Motor insurance - Extent of liability of insurance company - Bus hit a person standing near bus stand and he sustained serious injuries - Premium of Rs. 240 was charged for third party public risk whereas for "Act only" policy the premium was Rs. 200 - Whether liability of insurance company was unlimited - Held: yes. New India Assurance Co. Ltd. Vs. Pushpa Kakkar and Others, and Draupadi Devi and Others Vs. Inder Kumar and

Another, followed.

23. In decision of Delhi High Court in case of Lado Devi and Ors. (supra), Delhi High Court has observed under head note as under:

Motor Vehicles Act, 1939, Section 95(2) (a) [prior to its amendment in 1982] - Motor insurance - Goods vehicle - Limits of liability of insurance company - Death of pillion rider on scooter when it was hit by a tanker - Claimants and owner of the vehicle contended that there was no limit of liability mentioned in the policy - Insurance company contended that a stamp was affixed limiting the liability of the insurance company as per requirements of Motor Vehicles Act but neither carbon copy was produced, nor true copy was proved nor the original policy was called from the insured by the insurance company - Premium of Rs. 125 was paid when the basic premium for "Act only" policy was Rs. 84 - Whether the liability of insurance company was limited to Rs. 50,000 as per statute - Held: no; policy was not "Act only" policy and the liability of insurance company was not limited. (Paras 8, 9)

24. In decision of Rajasthan High Court in case of Navyug Oil and Dal Mills (supra), Rajasthan High Court has observed under head note as under:

Motor Vehicles Act, 1939, Section 95(2) - Motor insurance - Extra premium paid - Extent of liability of insurance company - Premium more than payable under "Act only" policy for third party liability was paid - Whether the liability of insurance company is unlimited - Held: yes.

25. In decision of Rajasthan High Court in case of National Insurance Co. Ltd. v. Kamla Kanwar and Ors. (supra), Rajasthan High Court has observed under head note as under:

Motor Vehicles Act, 1939, Section 95(2) (b) (i) - Motor insurance - Limits of liability of insurance company - Bus hit an autorickshaw coming from opposite direction resulting in the death of its driver - Contention that liability of insurance company is limited to Rs. 50,000 as per Act - Insurance company has not placed relevant record relating to contract of insurance, proposal form and cover note nor led any evidence with regard to limit of its liability - Extra premium of Rs. 40 over and above Rs. 200 as tariff provided for "Act only liability" was charged covering third party liability beyond the limit provided in the Act - Whether the liability of insurance company is limited to Rs. 50,000 - Held: No.

26. In decision of Rajasthan High Court in case of Dr. (Mrs.) Sarla Devi (supra), Rajasthan High Court has observed under head note as under:

Motor Vehicles Act, 1939, Section 95(2) - Motor insurance - Limits of liability of insurance company - Matador hit moped resulting in the death of moped rider - Premium of Rs. 240 was paid as against premium of Rs. 200 for "Act only" policy - Whether liability of insurance company is limited as per statute - Held: no; insurance company is liable for the amount awarded. (Paras 11, 13)

27. In decision of Delhi High Court in case of Oriental Insurance Co. Ltd. v. Zile Singh and Ors. (supra), Delhi High Court has observed under head note as under:

Motor Vehicles Act, 1939, Section 95(2) - Motor insurance - Limits of liability of insurance company - Premium paid was more than the premium required for "Act only" policy - Extra premium was paid to cover liability to public risk and for increase in third party limit - Witnesses produced by insurance company could not explain why enhanced premium was charged if the liability was limited - Whether the findings of the Tribunal and single Judge in appeal that liability of insurance company was not limited is perverse - Held: No.

28. In decision of Rajasthan High Court in case of National Insurance Co. Ltd. v. Laxmi and Ors. (supra), Rajasthan High Court has observed under head note as under:

Motor Vehicles Act, 1939, Section 95(2) - Motor insurance - Limits of liability of insurance company - Insurance company had charged premium more than the premium for "Act only policy" - Tribunal held that insurance company charged additional premium towards public risk and its liability towards third party risk was unlimited - Appeal by insurance company contending that merely charging of higher premium does not lead to any conclusion that its liability in respect of third party risk is unlimited - Insurance company provided various provisos in the policy to limit its liability to act only liability in respect of various matters but none of the provisos restrict the liability towards bodily injury to or death or third party to statutory liability - Whether the liability of insurance company was unlimited towards third party under the terms of the policy - Held: yes.

29. In decision of Rajasthan High Court in case of Sita Devi and Ors. (supra), Rajasthan High Court has observed under head note as under:

Motor Vehicles Act, 1939, Section 95(2) - Motor insurance - Limits of liability of insurance company - Minibus hit a pedestrian and he sustained fatal injuries - Premium paid was in excess of "Act only policy" and premium of Rs. 240 was indicated under the heading "Liability to Public Risk" - Policy indicates that under principal clause of the policy insurance company has accepted its liability towards third party co-extensive with legal liability of owner of vehicle; various clauses under provisos limit liability of insurance company to Act only but none of the provisos limit liability towards injury or death caused to a third party - Tribunal held insurance company liable to the extent of Rs. 50,000 - Whether liability of the insurance company is unlimited - Held: yes. National Insurance Co. Ltd. Vs. Laxmi and Others, followed.

30. Learned advocate Mr. Tejas Satta relied upon three decisions of Hon"ble Apex as referred above. In case of A. N. Subbulakshmi (supra) a question has been arise whether there is separate contract for payment by owner of vehicle and amount according to same has been paid or not. For the same, Hon"ble Apex Court has observed that: Motor Vehicles Motor Vehicles Act, 1939 - Section 95(2) (a) - u/s 95(2)(a) of the Act even in case of a comprehensive insured vehicle the

liability of the insurer was limited to Rs. 50,000/- - An unlimited or a higher liability than the statutory liability of the insurer would arise only in case there is a separate contract and payment of additional premium by the owner of the vehicle. Therefore, facts of that case is altogether different to present case because here insured owner has paid additional premium of Rs. 240/- covering public risk which is more than premium of act policy. Therefore said decision is not applicable to facts of present case. In case of Keshav Bahadur (supra) as referred above it is observed that in respect to third party risk liability of insured has been considered on ground that in absence of any specific agreement undertaking liability in excess of statutory limit and payment of additional premium therefore insurer's liability would be confirmed to that provided in the statute. This decision is also not applicable to facts of present case because here additional premium having specific agreement undertaking liability by insurance company has been accepted. In case of Jameskutty Jacob (supra) question was that insured vehicle was "motor cab" which was being used for hire or reward and was thus covered by Section 95(2)(b)(i) of the Act which prescribes a limited liability of Rs. 50,000/- only in respect of persons other than passengers carried for higher or reward. In case of Hon'ble Apex Court the child insured was not a passenger. The question which has been raised in these appeals are not raised before Hon'ble Apex Court because it relating to only legal liability to passenger not in respect to third party and policy was act only policy not covering public risk policy. Therefore that decision is also not applicable to facts of these cases. Therefore, contention of learned advocate Mr. Tejas Satta relying upon Section 95(2) as referred above cannot be accepted. Learned advocate Mr. Satta not pointed out before this Court even before Claims Tribunal that risk of insurance company is limited by leading proper evidence before Claims Tribunal. The contention raised by insurance company before Claims Tribunal that insurance policy Exh.127 is issued while accepting limited liability. That contention is not proved by insurance company before Claims Tribunal while leading proper evidence of any officer who can explain terms and conditions of policy. Therefore in absence of such evidence merely reading Section 95(2) the Claims Tribunal has come to conclusion that insurance company having limited liability and said finding is erroneous finding while ignoring Rs. 240/- additional premium paid by insured-owner and what would be the effect of additional premium has not been considered by Claims Tribunal, Mehsana. Therefore, contention raised by learned advocate Mr. Satta cannot be accepted.

31. Insurance company has not produced any evidence regarding limited liability and amount of liability not mentioned on insurance covered.

32. Before Claims Tribunal, Mehsana, original respondent No. 3-insurance company has filed written statement Exh.19 and opponent No. 2 owner of vehicle has filed written statement Exh.133 which is narrated in para-11 of award. Para-11 of impugned award is quoted as under:

11. The Written Statement Ex.19 is filed by the opponent No. 3. The Written

Statement Ex.133 is filed by the opponent No. 2 and it was presented at the time of arguments. It is contended by the owner and Insurance Company of the Luxury Bus that it is not believable that before dashing with the scooter the bus driver lost the control over the steering and after accident he has acted as a prudent man and has put Luxury Bus in a correct condition to condone his negligence. It is very clear that the scooterist was rash and negligent in driving the scooter as well without observing the Road Traffic Rules and to save the scooterist who was driving his scooter negligently and rashly and luxury bus driver has tried all his level best to avoid the accident. So the accident has happened because of the sole negligence and rashness on the part of the scooterist and hence the driver of the luxury bus was acquitted in the Criminal Case before the Kalol Court. So the deceased scooterist cannot take advantage of wrong committed by him. Alternatively it is pleaded that there was a greater contributory negligence on the part of the deceased scooterist in causing the accident. It is denied that the scooterist who was driving the scooter with moderate speed and on the correct side of the road and when Babubhai Ambalal was a pillion rider on that scooter and that the opponent No. 1 was driving the Luxury bus in full speed and in rash and negligent manner and has lost the control over the steering and has dashed his bus on the back portion of the scooter which was going ahead of the luxury bus and dragged the scooter up to 50 feet and thereafter the bus came on the wrong side and it dashed with one tree and the persons on the side of the road who were waiting for the bus for Lambha were also dashed. All the Petitions are excessively and exorbitantly claimed and they are speculative and hence they deserve to be dismissed.

33. In aforesaid paragraph, original respondent No. 3-insurance company has not raised any contention in respect to having limited liability of insurance company on basis of insurance policy issued by insurance company to insured owner Exh.127. After perusing finding given by Claims Tribunal in respect to issue No. 1 to 5, question of limited liability has been discussed by Claims Tribunal in para-15 as referred above. Nowhere advocate of respondent No. 3-insurance company has raised contention before Claims Tribunal that insurance company having limited liability as per policy Exh.127 and no such submission made before Claims Tribunal by insurance company. The insurance company has not lead any oral evidence before Claims Tribunal to establish said fact that insurance company is having limited liability as per policy Exh.127. The insured-owner has also not lead any oral evidence before Claims Tribunal. The Claims Tribunal has examined issue as discussed in para-15 where advocate of claimants raised submission that insurance company having unlimited liability and in support of their submission one decision of this Court in case of United India Insurance Company Ltd. v. Revaben reported in 1986 GLH 1078 has been cited but that decision has not been properly considered by Claims Tribunal and simply relying upon Section 95(2)(b)(i) Claims Tribunal came to conclusion that insurance company is having limited liability but not discussed the issue how Claims Tribunal has come to conclusion that insurance company is having limited

liability. Claims Tribunal has also observed that decision of this Court referred in impugned award is not applicable to facts of present case but no reasons have been given by Claims Tribunal as to how same has not been applicable. Not only that but no issue has been framed by Claims Tribunal in respect to limited liability whether insurance company having limited liability or not because there was no such contention raised by insurance company before Claims Tribunal in written statement as referred above and no submission made by advocate of insurance company before Claims Tribunal. Therefore no such issue has been framed vide Exh.27 and Claims Tribunal himself has considered question without raising by insurance company and half heartedly decided said issue as if that such issue has been raised by insurance company before Claims Tribunal. In such circumstances apparently it seems that Claims Tribunal has committed gross error in not examining properly issue of liability of insurance company and examined it without raising any submission on behalf of insurance company. Therefore finding given by Claims Tribunal, Mehsana in para-15 is erroneous as well as it amounts to non-application of mind on part of Claims Tribunal and without giving detail reasons Claims Tribunal has erroneously come to conclusion that insurance company is having limited liability. In insurance policy Exh.127 there is no specific condition incorporated which suggests limited liability. Merely referring section that section suggests act policy, Claims Tribunal has decided question of liability of insurance company. But it is not a case of insurance company before Claims Tribunal, Mehsana that policy which was issued for insured-owner was act policy on the contrary policy which was issued Exh.127 being a public risk policy covering liability of public risk by receiving Rs. 40/- premium including additional premium from insured owner. So without pleadings and without submissions from insurance company Claims Tribunal, Mehsana has committed gross error in deciding issue of limited liability of insurance company merely relying upon Section 95 as referred in policy limits of liability but ignored additional premium paid by insured owner Rs. 40/- over and above Rs. 200/- which meant for act policy. Therefore, view taken by this Court as well as various High Courts as discussed by this Court that when Rs. 240/- premium for liability to public risk is accepted it amounts to accepting being an independent agreement between insured-owner and insurance company accepting unlimited liability in case of public risk include third party. In this case both persons those who were died in accident are third parties. Therefore according to my opinion insurance company is liable to pay complete amount of compensation being an unlimited liability. Therefore finding given by Claims Tribunal, Mehsana in respect to limited liability of insurance company is required to be quashed and set aside.

34. Considering tariff which has been placed on record by learned advocate Mr. MTM Hakim and various decisions as referred above including three decision of Division Bench of this Court question raised by learned advocate Mr. MTM Hakim consequently covered the issue and looking to facts which is being undisputed before this Court that passenger vehicle for act liability is Rs. 200/- premium is there and for liability of public risk Rs. 240/- premium is there which covers

unlimited liability or risk by insurance company. That aspect has not been properly dealt with by Claims Tribunal, Mehsana. Therefore, according to my opinion Claims Tribunal has committed gross error in deciding issue of limited liability of insurance company in para-15. That part of impugned is required to be quashed and set aside and it is required to be held that respondent no-7 i.e. United India Insurance Co. Ltd. is having unlimited liability to cover risk of third party and therefore entire awarded amounts together with costs and interest in respect to MACP No. 426 of 1986 and MACP No. 427 of 1986 is required to be paid by United India Insurance Co. Ltd. and there is no liability of appellant-owner to pay amount of compensation to claimants beyond Rs. 50,000/-.

35. The question of liability of insurance company has been considered in one decision of Division Bench of Calcutta High Court in case of New India Assurance Company Vs. Smt. Uma Jhunjhunwala and Others, . Relevant discussion is made in paragraph Nos. 6, 7 and 10 and said paragraph Nos. 6, 7 and 10 are quoted as under:

6. The question which thus requires our consideration in this appeal is as to whether the Tribunal erred in law in fastening the liability upon the appellant for the entire awarded amount and as to whether it should have confined such liability to the restricted amount of Rs. 1,50,000/- as to how has been claimed by the appellant before us in this appeal.

7. As would appear from a reading of para 6 of the written statement filed by the appellant, the defence of the appellant with regard to the extent of its liability has been couched in general terms and in an ambiguous and vague manner. Actually para 6 appears to be a mere iteration of the general, routine, run of the mill defences usually available and taken in all types of cases, without advertng to particular facts of the individual case or specifying in material particulars and in details, the exact nature of the defences. That is why, from the avermetns in para 6 of the written statement we have failed to notice any specific defence with regard to any limited statutory liability, the extent of such limit and the reasons as to why the liability is limited. The appellant has merely iterated Sections 95 and 96 of the Motor Vehicles Act, 1939 and has not specifically averred as to how and in what manner, and why its liability limited, and to what extent. Despite the aforesaid vague and ambiguous pleadings, the onus in any event to prove and establish that the appellant's liability was in fact limited rested squarely upon the appellant and it was for the appellant to discharge this onus. If a particular defence is raised, it is for the party raising such defence to prove it by leading evidence.

8. xxx

9. xxx

10. According to Mr. Das this policy clearly contained a stipulation that the limit of liability of the appellant in respect of any claim or series of claims irrespective of any one event was restricted to Rs. 1,50,000/-. We have seen the original

record of the Tribunal and we do find that a true copy of an insurance policy indeed formed a part of the record of the Tribunal and unfortunately this policy has neither been brought into evidence, nor admitted into evidence by any legitimately prescribed mode or method under the Evidence Act. More so, admittedly the appellant did not choose to lead any evidence, oral or otherwise, before the Trial Court to prove or establish its contention that the policy of insurance as issued by it covered only the statutory limited liability. If the appellant had raised a defence, even though in ambiguous, vague and bald terms that its liability was limited and not unrestricted, it was for the appellant and it was its duty to put forth before the Tribunal, by adducing legal and legally admissible evidence, the said fact of its liability being limited. According to us the only legally permissible way of doing so, was by leading oral evidence before the Tribunal and by proving through such oral evidence the contents of the policy of insurance, suggestive of the fact that the liability was indeed limited. Unfortunately however, the appellant did not choose to do so. It did not lead any evidence at all. Merely filing a true copy of a document, without either proving the document itself or its contents by any recognised mode of proof or, without admitting the same into evidence, does not serve any purpose. The document filed in such a manner does not become evidence. In the absence of any evidence therefore, both oral or documentary, the Tribunal was justified in coming to a finding that the appellant was liable to satisfy the award in its entirety. We must clearly observe that the appellant was under a legal and statutory obligation to discharge the onus or proving the fact about its liability being limited, and this onus having not been discharged by the appellants, this fact cannot be said to have been proved in any manner, directly or indirectly.

36. Therefore, award passed by Claims Tribunal, Mehsana is hereby modified to the effect that opponent Nos. 1 to 3 are jointly and severally liable to pay compensation to respondents-claimants with running interest at the rate of 12% and direction issued by Claims Tribunal, Mehsana subject to limited liability of Rs. 50,000/- so far as opponent No. 3-insurance company, the same is hereby quashed and set aside and it is held that original respondent No. 3-United India Insurance Company Limited is having unlimited liability on basis of insurance policy issued by original respondent No. 3-Exh.127.

37. In result both First Appeals i.e. First Appeal Nos. 781 and 782 of 1986 filed by insured owner are allowed with a direction to original respondent No. 3-United India Insurance Co. Ltd. to deposit remaining amount of compensation before Claims Tribunal, Mehsana with 12% interest as directed by Claims Tribunal, Mehsana from date of filing claim petition till realisation with proportionate cost thereon within a period of two months from date of receiving copy of present order. After realising said amount of compensation from original respondent No. 3-insurance company, it is directed to Claims Tribunal, Mehsana to pay aforesaid amount deposited by insurance company to respondents-claimants by account payee cheque or disburse as per award passed by Claims Tribunal, Mehsana in respect to MACP No. 426 and 427 of 1986 after adjusting payments in cash paid

by Appellant Rs. 2 Lacs to claimants and refund said amounts to Appellant from amounts deposited by Insurance company Respondent No. 3.

38. The appellant-insured-owner may file necessary application before Claims Tribunal, Mehsana for refund of amount which was deposited including and cash paid Rs. 2 Lacs to claimants. As and when appellant-insured-owner file such application and receive by Claims Tribunal, it is directed to Claims Tribunal to consider said application filed by appellant-insured-owner and refund principal amount deposited by account by cheque in name of appellant-insured after proper verification. The amount which already disbursed in favour of respondents-claimants not to recover by Claims Tribunal but that should be subject to further adjustment means it should have to be considered while paying amount of compensation to claimants whatever amount is already disbursed in favour of claimants should be adjusted by Claims Tribunal, Mehsana after hearing respective parties. No order as to costs.

39. It is made clear in respect to aforesaid direction made by learned advocate Mr. Hakim, who is appearing on behalf of appellant. The appellant has paid in cash Rs. 1 Lacs in each appeal total comes to Rs. 2 Lacs and remaining amount as per award passed by claims Tribunal, Mehsana in both MACPs case together with costs and interest after adjusting Rs. 1 Lacs in each case deposited before claims Tribunal, Mehsana which has been invested in FDR which are lying with claims Tribunal, Mehsana. Therefore, he requests that aforesaid amount which are lying with claims Tribunal may be refunded to appellant and from amounts which will be deposited by insurance company as per direction issued by this Court, from that amounts Rs. 2 Lacs may be paid by way of refund to appellant owner. I have considered his submission and directed to claims Tribunal, Mehsana that after realizing entire awarded amounts together with costs and interest after adjusting Rs. 50,000/- in both cases which deposited by insurance company before claims Tribunal, Mehsana and after realizing it, it is directed to claims Tribunal, Mehsana to refund amount which are lying in FDR with accruing interest to appellant owner by A/c payee cheque in their names and after realizing amount from insurance company deducted Rs. 2 Lacs and to be paid by A/c payee cheque in name of appellant owner. Rest and remaining amount is directed to be paid to respective claimant in both MACPs with accruing interest in their respectively favour after proper verification.

40. In respect to First Appeal No. 117 of 1994 filed by claimants for enhancement of amount of compensation in respect to MACP No. 427 of 1986 in case of Haribhai, the contention raised by learned advocate Ms. Renu Singh for learned advocate Mr. Ravani that Claims Tribunal has committed error in applying 5 multiplier for deciding quantum of compensation and also committed error in considering income of deceased as Rs. 2,500/- per month and not considered pay revision and promotion of deceased.

41. For said contention raised by learned advocate Ms. Renu Singh for enhancement of compensation, I have considered his submission and also

considered submission made by learned advocate Mr. Hakim and learned advocate Mr. Satta. According to my opinion this contention cannot be accepted in light of recent decision in case of Oriental Insurance Co. Ltd. v. Jasuben and Ors. reported in 2008 (2) SCALE 474 of Hon''ble Apex Court where Hon''ble Apex Court has held that while calculating compensation in case of deceased whatever actual income on date of death is to be taken into account by Claims Tribunal. No revision of pay or promotion avenue up to date of retirement is to be considered by Claims Tribunal while deciding quantum of compensation. Therefore contention raised by learned advocate Ms. Renu Singh for learned advocate Mr. Ravani cannot be accepted looking to age of parents of deceased i.e 72 years age of father and 62 years age of mother and 5 multiplier has also been rightly applied and for that Claims Tribunal has not committed any error which requires interference of this Court. Therefore First Appeal No. 117 of 1994 has no merits and there is no substance in same and same requires to be dismissed. Accordingly First Appeal No. 117 of 1994 is dismissed. No order as to costs.