
(1979) 03 AP CK 0024

In the Andhra Pradesh High Court

Case No : A.A. No"s. 187 of 1977 and 179 of 1978

Meesala Suryanarayana

APPELLANT

Vs

Goli Satyavathi and Others

RESPONDENT

Date of Decision : 09-03-1979

Acts Referred:

Andhra Pradesh Motor Vehicles Rules, 1989 — Rule 213, 277
Motor Vehicles Act, 1988 — Section 110A, 42, 95(1), 95(2), 96

Citation : (1979) 03 AP CK 0024

Hon'ble Judges : Gangadhara Rao, J;Amareswari, J

Bench : Division Bench

Advocate : R. Venugopala Reddy, for the Appellant; C. Poornaiah and M. Shanker Ram, for the Respondent

Final Decision : Allowed

Judgement

Amareswari, J.—These two Civil Miscellaneous Appeals and Cross-objections in Civil Miscellaneous Appeal No. 187 of 1977 arise out of a common order passed by the District Judge and Motor Accidents Claims Tribunal, Visakapatnam dated 17-1-1977 allowing the petition filed by the Respondents herein awarding a sum of Rs. 20,000/- in all towards compensation u/s 110A of the Motor Vehicles Act. Civil Miscellaneous Appeal No. 187 of 1977 is filed by the owner of the vehicle which caused the death of the deceased and Civil Miscellaneous Appeal No. 179 of 1978 is filed by the claimants of the deceased. The cross-objections in Civil Miscellaneous Appeal No. 187 of 1977 are also filed by the claimants of the deceased.

2. A lorry bearing registration No. A.P.S. 2521 belongs to the Appellant one Suryanarayana. The said lorry was insured with the 7th Respondent, the Oriental Fire and General Insurance Company Limited, Madras. One late Dorabbai, who was carrying on Timber business went to Jayapore in Orissa State to purchase timber. The timber that was purchased was loaded into lorry A.P.S. 2521 for being transported to Peddapuram in East Godavari District. The driver of the lorry

was one Peketi Someswara Rao an employee of the lorry owner Suryanarayana. As the goods belong to Dorabbai, he was travelling in the lorry along with the load. On 16-6-1974 at about 9-30 p.m. while the lorry was reaching Anakapalli, it dashed against the culvert No. 2/3 and then against a mango tree near the same place, as a result of which Dorabbai died on the spot. As the deceased was the only bread-winner of the family, his dependants filed O.P. No. 128 of 1974 before the Motor Accidents Claims Tribunal, Visakhapatnam of Rs. 90,030/-. According to the claimants, the deceased was hale and healthy and would have earned a lakh of rupees in his business had he survived. The claimants are six in number. They are his wife, mother, two sons and two daughters.

3. The petition was resisted by the Appellant-lorry owner contending that he was not aware that the deceased was returning from Jayapore to Peddapuram or was travelling in the lorry or that he died in the accident, that the lorry was intended to carry only goods and not passengers, that the driver was not authorised either directly or indirectly to carry any passengers and that if the deceased travelled by the said lorry he must have done it on his volition and at his risk. Since the driver was unauthorised to carry passengers, he (owner) is not vicariously responsible for the act of the driver. He also denied that the lorry was driven rashly and negligently by the driver Someswara Rao and that the death occurred due to rash and negligent act of the driver. He also contended that in any event the compensation claimed is highly excessive and exaggerated.

4. The insurance company which was made as 7th Respondent also filed a counter on the same lines as that of the lorry owner. It further contended that since the person who died was unauthorised to travel in the lorry, the insurance company is not liable to pay any compensation.

5. On the basis of these pleadings, the Tribunal framed two issues namely, whether the accident was due to rash and negligent act on the part of the driver of the vehicle and to what damages the claimants, are entitled. In this context it may be also stated that along with Dorabbai whose heirs are the claimants herein, three other persons, who were in the vehicle at that time also died on the spot. We are not concerned with the other three persons because no claim petition has been filed. There are no witnesses to the accident as it happened on a road at about 9-30 p.m. in the night. The cleaner of the lorry A.P.S. 2521, who was also injured in the same accident gave a report Ex. A--7 at Anakapalli Police Station and on the basis of the said report a case u/s 304-A, I.P.C. was registered and the F.I.R. was marked as Ex. A-8. The statement of the cleaner was to the effect that a man from Peddapuram whose name he did not know loaded timber pieces into the lorry at Jayapore and on the way the lorry met with an accident. On the basis of this report the Inspector of Police P.W. 3 visited the scene of accident and enquired about the name of the owner of the goods and the timber pieces and they were delivered to the legal representatives of the deceased Dorabbai. P.W. 3, the Inspector of Police in his evidence stated that he found four dead bodies at the scene of occurrence and they were sent for

postmortem examination at the Government Hospital at Anakapalli, that the cleaner was also sent to the said hospital for treatment for the injuries sustained by him. that he held the inquest and that in the course of the inquest he came to know the names of the other three persons, who included the driver of the lorry. Thereafter the lorry was delivered to the owner Suryanarayana. P.W. 2 is the Doctor attached to the Government Hospital, Anakapalli. In his evidence he stated that one Lakshmana cleaner of the lorry A.P.S. 2521 was produced before him for treatment of injuries, that he was admitted as an in-patient in the Hospital, and since he found his injuries were not serious he was discharged from the hospital next morning He also deposed that all the dead bodies were produced on 17-6-1974, for postmortem examination. Ex. A-6 the Postmortem certificate of the deceased shows that the skull was fractured on the left side and ribs 5 to 9 were fractured and the right side liver is ruptured and spine also fractured. This shows that the accident was a very serious one Ex. B-2 dated 17-6-74, the report of the Motor Vehicle Inspector shows that there were no skid marks. P.W. 4, is the owner of a saw mill at Peddapuram and he is the father-in-law of the deceased and his evidence was that he came to know of the death of his son-in-law through a telegram and he and his brother went to Anakapalli and took the dead body of the deceased and the timber loaded in the lorry was brought by one of their clerks by another lorry to Peddapuram. P.W. 1. is the wife of the deceased and she merely speaks of the age of her husband as 38 years, that the deceased was earning a net income of Rs. 400/- per month, that he left no property and that after his death she and her children are living on the bounty of her father. On behalf of the Appellant lorry owner three witnesses have been examined. R.W. 1 is the owner of the lorry, R.W. 2 is the cleaner of the lorry, who made a report immediately after the accident Ex. A-7 and R.W. 3 is a person belonging to Salur and he states that if there is a person wants a lorry he has to apply to that association and then only the driver and the cleaner of the lorry can travel by the lorry but not the owner of the goods carried in the lorry or any other person.

6. R.W. 1 is the owner of the lorry. He admits his ownership of the lorry and also admits that the vehicle was driven at the relevant point of time by his driver, who has a licence to drive. He stated according to the practice providing there the lorry owners association office at Jayapore allots a lorry whenever a customer comes and the association had allotted to use the vehicle A.P.S. 2521 to the deceased. He has no personal knowledge of his lorry being loaded with the goods of the Appellant, that he learnt of the accident on 17-6-1974, that on 18-6-1974 he went to Anakapalli and met the police and that the lorry was delivered to him on 20-6-1974 after obtaining a receipt Ex. X-3. He further stated in his evidence that he specifically instructed his driver not to carry passengers in the lorry. He deposed that he obtained a certificate dated 31-10-1976 Ex. B-3 from the Tahsildar of Anakapalli, that there was rain on 16-6-1973 at Anakapalli and he filed the same into Court. He stated in cross-examination that the owner of the goods will be present only when the goods are loaded and it is not the practice to

allow the owner of the goods to travel by the lorry to the place of destination. He admits in his evidence that he did not give any written instructions to the driver of the lorry not to allow owner of the goods in the lorry. He also admitted in his evidence that Ex. B-3 the report of the Tahsildar does not bear the seal of the Tahsildar.

7. R.W. 2 is the cleaner of the vehicle, who was the first person to give the report Ex. A-7 to the Police at Anakapalli about the accident. He stated that he was in the lorry, that the Sahukar of Peddapuram, who is the owner of the goods, boarded the lorry at Jayapore saying that he would get down at Salur that he was allowed to get into the lorry by the driver and himself as the deceased said that he had urgent work at Peddapuram and would take the train at Salur. After the lorry reached Salur, the Peddapuram Sahukar said that he would go by lorry only and hence he and the driver agreed. He stated in his evidence that the lorry reached Anakapalli by 8 or 8-30 p.m., that it was raining on that day at that time, and ten people were on that road, that they stopped the lorry with a request to carry as they were drenched in the rain, that the driver did not agree but two of those persons begged the driver and made him yield and he agreed to carry them. He further deposed that while the lorry was reaching the railway gate the left side wheel struck against a culvert and the driver swerved the lorry to the right. Then the top of the lorry struck against the branch of a tree and the lorry fell down to the right. Shortly thereafter another lorry came from behind. The persons in that lorry noticed the accident. They pulled him and one of the men who got into the lorry near Sabbavaram out of the lorry and that they also told him that the driver, the Peddapuram Sahukar and the other two persons from Sabbavaram died. He stated that at the place of the accident the road was slushy and the wheel of the lorry therefore slipped before it struck the culvert. He further stated that he was taken to Anakapalli Hospital by the police and they wrote something and took his signature, that the statement was not read out to him and the statement was taken from him by the police at Anakapalli Hospital. He admitted in the cross-examination that rain started at Salur and in spite of the same the lorry travelled but after passing Vizianagaram the rain had increased and it was dark when the lorry struck against the culvert and that they did not stop the journey as the rain was not very heavy at Salur. He also stated that the lorry was not going at much speed and he denied the suggestion that there was no heavy rain at the time of the accident.

8. On basis of this evidence, the trial Court found that the accident was the result of rash and negligent driving on the part of the driver of the lorry A.P.S. 2521 and that the lorry owner is liable to pay compensation for the death of Dorabbai as the driver of the lorry did not do any forbidden act in giving a lift to the owner of the goods namely Dorabbai. So far as the insurance company is concerned the Tribunal held that the insurance company is liable to pay compensation to a passenger only if he has been carried for hire or reward or by reason of or in pursuance of a contract of employment and therefore, the owner of the goods who travels in a goods vehicle is not entitled to claim compensation for any

accident which causes him injury or death Therefore, the Tribunal held that the insurance company has no liability to pay any compensation for the death of the deceased. As regards the quantum, the Tribunal after considering in detail, the age, the average income and the number of the members of the family determined the quantum of compensation as Rs. 20,000/- in all. The trial Court further apportioned the said amount to the wife, mother and the four children of the deceased.

9. In Civil Miscellaneous Appeal No. 187 of 1977 preferred by the owner of the lorry, the learned Counsel for the Appellant Mr. R. Venugopala Reddy has raised two contentions. (1) That the claimants have not established satisfactorily that the accident was due to the rash and negligent driving of drive of the vehicle and that the finding of the lower court is based on no evidence; and (2) Since the driver has been specifically instructed not to take any passengers, the act of the driver cannot be said to be in the course of his employment. In a feeble way he also argued that the deceased himself got into the lorry on his own volition and at his risk knowing fully well that the lorries are meant only for carrying goods and not for carrying passengers and hence the lorry owner cannot be made liable for the death of the deceased which occurred due to his own illegal act of traveling in a lorry.

10. On the other hand it is contended by Mr. C. Poornaiah, the learned Counsel for the claimants Respondents that the reasoning of the trial court is based on proper appreciation of evidence on record, that the things speak for themselves, that the very fact that four people died on the spot reveals that there was rash and negligent driving on the part of the driver, that the evidence discloses that the left wheel of the lorry hit the culvert and that the lorry driver has no business to go to the extreme left and then swerve to the right in such a manner that it went and hit a tree and that the lorry fell down, these facts themselves show that the lorry was driven in a rash and negligent manner. He further contended that the accident occurred due to the act of the driver in the course of his employment and hence the owner is vicariously liable. He also contended that since the vehicle in question has been admittedly insured with the Oriental Fire and General Insurance Company Limited Madras, the insurance company is also liable. As regards the finding that the insurance company is not liable, he submitted that the order of the lower Court is erroneous and contrary to law and that the award of Rs. 20,000/- as compensation is too low having regard to the circumstances of the case. These two contentions in fact are the subject matter of cross-objection preferred by the claimants and the main contentions advanced in Civil Miscellaneous Appeal No. 179 of 1978.

11. We will first take up the contentions raised on behalf of the Appellants in Civil Miscellaneous Appeal No. 187 of 1977. As already stated earlier there were no eye witnesses to the accident as it took place at 9-30 p.m. on a highway. In the lorry there were altogether five people including the driver and the cleaner. There is no dispute that four of them died, including the driver. The cleaner who was

sitting to the left was also injured though he sustained only minor injuries. From the evidence of the cleaner R.W. 2 it is clear that the vehicle was going on the extreme left side that it hit the culvert and that the driver swerved it to the right, and it went and dashed against a tree as a result of which the lorry fell down and four people died immediately on the spot. It is true that the lorry was going on the right side as it was keeping to the left, but if it was driven at the normal speed it would not have hit the culvert which is on the extreme left and thereafter when it swerved to the right it must have been done in a very rash manner as otherwise it would not have struck a tree in such a way that the lorry itself fell down involving the death of 4 persons including the driver. This is a clear case of *res ipsa loquitur* i.e. the accident speaks for itself and it tells its own tale. The lorry owner R.W. 1 was not an eye witness to the incident, but he produced a certificate Ex. B-3 from the Tahsildar to the effect that there was rain at Anakapalli on 16-6-1974 but in his evidence he admitted that the said certificate does not contain the seal of the Tahsildar. The said certificate does not show that at the time when the incident took place the rain was very heavy. The evidence of R.W. 2 the cleaner to the effect that there was rain and it became heavy when the vehicle was reaching Anakapalli and it was dark at that time, is clearly an after thought. Admittedly he is an interested witness because being the cleaner of the vehicle he is the employee of the Appellant, the lorry owner. More than anything else Ex. A-7 is a statement given by him immediately after the incident took place at the Police Station, Anakapalli. The said report does not mention that the road was slushy on account of the rain or that tyres of the lorry slipped. Hence we have no hesitation in disbelieving the evidence of R.W. 2 that there was heavy rain on that night and the road was slushy and the accident, had happened due to circumstances beyond the control of the driver. The manner in which the accident occurred in our opinion is clear evidence of rash and negligent driving on the part of the driver and that the deceased died due to the accident which is the out come of rash and negligent driving on the part of the driver. We therefore, agree with the reasoning and conclusion of the Tribunal below in this regard.

12. The second contention of the learned Counsel for the Appellants was that the driver was been specifically instructed not to take any passengers in the vehicle and further the lorry is meant only to carry goods and not passengers and therefore, if the driver has acted contrary to his instruction and contrary to law it cannot be said that the driver was in the course of his employment in which case alone the owner would be vicariously responsible. He further argued that the deceased got into the lorry at his own risk and responsibility and hence he is not liable to pay any damages. P.W. 4 in his evidence has stated that it is the practice of the timber merchants to arrange with the drivers and owners of the lorries to travel with the lorry along with the load though he admits in his cross-examination that he has no personal knowledge of the transactions between the deceased son-in-law and the driver of the lorry. R.W. I, the owner of the lorry has stated that he instructed the driver not to carry any passengers in the lorry.

But in the cross-examination he admits that there are no such written instructions. The evidence of R.W. 2, the cleaner of the lorry reveals that he and the driver permitted the deceased Dorabbai to travel in the vehicle and he also admits in his cross-examination that two passengers are authorised to sit in the cabin of the lorry besides the driver and can conveniently sit in the cabin of the lorry. R.W. 3, who is a lorry owner at Salur has stated that a lorry will have a route permit and that "C book and the route permit will allow to carry three persons. But the lorry owners do not allow more than two persons. The lorry involved in the accident is A.P.S. 2521. It is governed by the provisions of the Motor Vehicles Act and the Andhra Pradesh Motor Vehicles Rules. Rules 213 (v) says that not more than 6 persons in all in addition to the driver shall be carried in the vehicle except with the permission of the Transport Authority. Rule 277 of the Rules states that no person shall be carried in the cabin of a goods vehicle beyond the number for which there is seating accommodation at the rate of 381 milli metres measured along the seat, excluding the space reserved for the driver for each person and not more than six persons in all in addition to the driver shall be carried in any goods vehicle. This rule clearly shows that it is permissible to carry not more than six persons in a goods vehicle subject to the measurements as to the seating accommodation in the cabin given in the rule. Therefore, there is no prohibition, to carry not more than six persons in a goods vehicle. The evidence of R.W. 2 shows that two persons can sit conveniently in the cabin of the lorry besides the driver. R.W. 3 also stated that the lorry permit allows three persons to be carried, but the lorry owners do not allow more than two persons. From this itself, it is clear that the lorry owners allow atleast one person in addition to the driver and the cleaner to travel by the lorry. A suggestion was also made by R.W. 1, the owner of the vehicle that it is a practice to allow the owner of the goods or his representative to travel by the lorry to place of the destination for the sake of safety of the goods and it is quite probable that the owner of the goods or his employee was allowed to travel by the lorry, R.W. I the owner of the lorry admitted that there are no written instructions to the driver to not allow the owner of the goods or his representative to travel in the lorry, although he claims that he has oral instructions in that behalf. We are not prepared to place much reliance upon the evidence of R.W. 1 being the lorry owner himself and further if he has given such instructions R.W. 2 and the driver would not have allowed two more persons of Sabbavaram to board the lorry. Under these circumstances the statement of P.W. 4 that the timber merchants arrange with the owner of the lorry to travel in the lorry appears to be more probable. Since there is no prohibition in the Act and the Rules framed thereunder to carry less than six persons and in the absence of the production of the registration certificate of the vehicle by the owner, which certainly contains information regarding the number of persons to be carried in the vehicle, we are of the opinion that it was permissible to carry not more than six persons at and any rate at least one person. In this connection the learned Counsel for the Appellant relied upon the following decisions namely, Mohiddin Sab Gaffarsab Kundgol v. Rohidas Had Kindalkar 1973 A.C.J. 424; Bhaiyalal

Godre and Others Vs. Smt. Rajrani and Others, ; M. Visalakshi v. Treasurer, Luthern Church Mission 1978 A.C.J. 314; Conway v. George Wimpey and Co. Ltd. (1951) 1 All E.R.363; and Sitaram v. Santanuprasad 1966 A.C.J. 89.

13. In Sitaram v. Santanuprasad" the facts are entirely different. In that case it was found on facts that the vehicle was driven by an unauthorised person and on his own business. The de facto driver was not the driver or the agent of the owner, but he who had obtained the car for his own business not even from the master, but from servant of the master. The owner would not be liable in such circumstances. This case is easily distinguishable from the facts of the present case. In the present case the de facto driver was the driver and the agent of the owner of the lorry and was driving the lorry for the business of the owner. Therefore, this decision has no application to the facts of the present case. We think it is unnecessary to refer to the other decisions because the matter is concluded by a judgment of the Supreme Court in Pushpabai v. Ranjit G. and. P. Co.1977 A.C.J. 343, Kailasam, J., speaking for the Supreme Court has held as follows:

For the master's liability to arise the test is whether the act was done on the owner's business or that it was proved to have been impliedly authorised by the owner. The law is settled that master is vicariously liable for the acts of his servants acting in the course of his employment. Unless the act is done in the course of employment the servant's act does not make the employer liable.

The recent trend in law is to make the master liable for acts which do not strictly fall within the term "in the course of the employment" as ordinarily understood. The owner is not only liable for the negligence of the driver if that driver is his servant acting in the course of his employment but also when the driver is, with the owners consent, driving the car on the owner's business or for the owner's purpose.

14. Applying the principles laid down in this case, we have no doubt that the deceased died due to the accident caused by the driver during the course of his employment as he was driving the lorry on the master's business. Further as stated by us there is no prohibition in law to carry persons in the lorry, but the only prohibition is that not more than six persons can be carried in the lorry under Rule 213, Sub-rule (V) Clauses (iv) and (v). In the above case it is also laid down that the normal rule is that it is for the Plaintiff to prove negligence, but as in some cases considerable hardship is caused to the Plaintiffs if the true cause of the accident is not known to him, but it is solely within the knowledge, of the Defendant, who caused it. The Plaintiff can prove the accident, but cannot prove how it happened to establish negligence on the part of the Defendant. This hardship is sought to be avoided by applying the principle of *res ipsa loquitur*. The general purport of the words *res ipsa loquitur* is that the accident speaks for itself or tells its own story. There are cases in which the accident speaks for itself so that it is sufficient for the Plaintiff to prove the accident and nothing more. It will then be for the Defendant to establish that the accident happened due to

some other cause than his own negligence. Applying this principle also we hold that the incident on the face of it shows that there was rash and negligent driving on the part of the driver and that the act was done by the driver in the course of his employment as admittedly he was carrying goods for the owner of the vehicle.

15. We will now take up the cross-objections in Civil Miscellaneous Appeal No. 187 of 1977 and Civil Miscellaneous Appeal No. 179 of 1978 filed by the claimants. The subject matter of the cross-objections and Civil Miscellaneous Appeal No. 179 of 1978 is one and the same. The Counsel for the cross-objector and the Appellants in Civil Miscellaneous Appeal No. 179 of 1978 has mainly contended that the trial Court erroneously held that the insurance company is not liable for the payment of compensation. Admittedly the vehicle in question A.P.S. 2521 was insured with the Oriental Fire and General Insurance Company, Madras. Hence when it is found that the owner of the vehicle is liable to pay compensation for causing the death of the deceased due to the rash and negligent driving by the authorised driver of the vehicle the insurance company is equally liable. He next contended that a sum of Rs. 20,000/- awarded towards compensation by the Motor Accidents Claims Tribunal is very meagre having regard to the circumstance of the case, the deceased was hale and healthy at the time of the accident and would have lived up to the age of 70 years and earned more than a lakh of rupees in his business. The dependants are as many as six as the deceased has four children, two sons and two daughters, a wife and a mother. In view of these circumstances the lower Tribunal should have awarded a sum of Rs. 90,000/- as claimed by the claimants.

16. The counsel for the insurance Company contended that it is liable to pay compensation u/s 95(1)(b) of the Motor Vehicles Act in respect of death or bodily injury to a passenger only if he has been carried for hire or reward or by reason of or in pursuance of a contract of employment and therefore, the owner of the goods, who travels in a goods vehicle, is not entitled to compensation for any accident which causes him injury or death. We are unable to agree with this contention of the learned Counsel for the insurance company, the Respondent in the Civil Miscellaneous Appeal. It is true that u/s 95(1)(b) a policy of insurance must be a policy which insures the person or classes of persons specified in policy to the extent specified in Sub-section (2).

Sub-section (2) of Section 95 is as follows:

(2) 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 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.

Section 96 of the Motor Vehicles Act prescribes the defences open to the insurance company to resist the claim for compensation in case of a death of a person caused by the vehicle which was insured.

Section 96(2) is as follows:

96(2): No sum shall be payable by an insurer under Sub-section (1) in respect of any judgment unless before or after the commencement of the proceedings in which the judgment is given the insurer had notice through the Court of the bringing to the proceedings, or in respect of any judgment so long as execution is stayed thereon pending an appeal; and an insurer to whom notice of the bringing of any such proceedings is so given shall be entitled to be made a party thereto and to defend the action on any of the following grounds, namely,

(a) that the policy was cancelled by mutual consent.

(b) that there has been a breach of a specified condition of the policy, being one of the following conditions, namely:

(i) a condition excluding the use of the vehicle.

(a) for hire or reward, where the vehicle is on the date of the contract of insurance a vehicle not covered by a permit to ply for hire or reward.

The other Clauses (b), (c) and (d) are not relevant.

17. Section 95(1) (b) merely says that a policy of insurance must be policy which insures the person or classes of persons specified in the policy to the extent specified in Sub-section (2) and Sub-section (3) provides for covering a liability incurred in an accident by fixing the limits under Clause (a) if the vehicle is a goods vehicle a limit of Rs. 50,000/- is imposed including the liabilities, if any, arising under the Workmen's Compensation Act and under Clause (b) if a vehicle in which passengers are carried for hire or reward or by reason of or in pursuance of a contract of employment. Admittedly in the present case the vehicle is not a vehicle in which passengers are carried for hire. It is a goods vehicle which comes under Clause (a) and a goods vehicle is required to be covered by a public carriage permit u/s 42 of the Motor Vehicles Act. According to the conditions of the permit as contemplated under Rule 213 (V) (iv) no person shall be carried with the vehicle upon the goods or the number for which there is seating accommodation at the rate of 381 millimetres measured along with the seat, excluding the space reserved for the driver, for each person. Rule 213 (V) (v) prohibits any condition to be attached to the permits permitting more than six persons in addition to the driver except with the permission of the Transport Authority. In the instant case the lorry was admittedly insured with the insurance company. The registration certificate and the permit of the vehicle are not produced either by the owner of the vehicle or by the insurance company in

order to know how many persons were allowed to be carried in the vehicle. From the evidence it transpires that there were altogether five persons in the vehicle including the driver out of whom four persons died on the spot. It is also revealed in the evidence that the deceased was the owner of the goods and he was permitted by the driver and the cleaner to travel in the vehicle. So it is not a case where the deceased was travelling unauthorisedly. There is evidence also to show that he was allowed to travel in the lorry as he happened to be the owner of the goods which the lorry was carrying. In the absence of non-production of the permit and the registration book, it may be safely assumed that not more than six persons are allowed in the vehicle or atleast two in addition to the driver. It is also common knowledge that owner of the goods or his representative travels in the lorry to see that goods reach their destination in a safe condition. Further the driver as the agent of the owner has permitted the deceased to travel in the vehicle. Under these circumstances it is not open to the insurance company to contend that they are not liable to pay compensation. The only defences open to the insurance company u/s 96 of the Motor Vehicles Act are:

(1) that the policy was cancelled by mutual consent or by virtue of any provision contained therein before the accident giving rise to the liability.

(2) that there has been a breach of a specified condition of the policy, being one of the following conditions, namely:

(i) a condition excluding the use of the vehicle--

(a) for hire or reward, where the vehicle is on the date of the contract of insurance a vehicle not covered by a permit to ply for hire or reward, or

(b) for organised racing and speed testing, or

(c) for a purpose not allowed by the permit under which the vehicle is a transport vehicle, or

(d) without side-car being attached, where the vehicle is a motor cycle; or

(ii) a condition excluding driving by a named person or persons or by any person who is not duly licenced, or by any person who has been disqualified for holding or obtaining a driving licence during the period of disqualification; or

(iii) a condition excluding liability for injury caused or contributed to, by conditions of war, civil war, riot or civil commotion; or

(3) that the policy is void on the ground that it was obtained by the non disclosure of a material fact or by a representation of fact which was false in some material particular.

18. These are the only defences open to the insurance company to resist the claim of persons in respect of vehicles insured regarding third party risks. The finding of the lower Tribunal that the insurance company is liable to pay compensation in respect of death or bodily injury to a passenger only if he has

been carried for hire or reward or by a reason of or in pursuance of a contract of employment and therefore the owner of the goods, who travels in a goods vehicle is not entitled to claim compensation is unsustainable. In the present case, the deceased was travelling in the vehicle which is permitted by the conditions of the permit and with the permission of the driver who was doing the business of his master. The policy of insurance has not been filed in the Court. Therefore there is no evidence that, the policy which is the result of a contract between the lorry owner and the insurance company prohibits the carriage of any person in the goods vehicle in spite of the same being permitted, by the conditions of the goods vehicle permit. The insurance company could have produced the policy as the contract of insurance was between the company and the owner of the vehicle. The claimants-Appellants are not in a position to produce the same. In the absence of the best evidence on the part of the insurance company by non-production of the insurance policy, which, if according to them prohibits the carriage of any person in the goods vehicle even though the same is permitted by the conditions of the lorry permit, it can be presumed that the policy contains no such condition. The decision reported in *H.L.C. Corporation. v. M. Chimperamma* 1974 A.C.J. 13 relied upon by the lower Tribunal in support of its proposition that the compensation is payable only in respect of death or bodily injury to a passenger if he had been carried for hire or reward or by reason of or in pursuance of a contract of employment has no application to the facts of the present case. In that case a person was carried for hire in a goods vehicle. The insurance company resisted the claim on the ground that there was a condition in the policy that the vehicle should be used only under a public carrier permit within the meaning of the Motor Vehicles Act and that the policy does not cover for the use of the vehicle for conveyance of the passengers for hire or reward. In the present case the facts are entirely different. There is no evidence that the deceased was carried for hire or reward nor was the policy produced to show that there was a condition that the policy does not cover the use of the vehicle for conveyance of persons though permitted by the permit.

19. In this connection, we may refer to a decision of the Madras High Court in *The Vanguard Insurance Co. v. Chinnammal* 1969 A.C.J. 226. That was a case in which a servant of the owner of the goods who was carried in the lorry died on account of the accident of the lorry. The contention raised before the learned Judge was that the contract of employment contemplated by Section 5 of the Act should be only a contract of employment with the insured, but not with the owner of the goods. The said contention was repelled by Alagiriswami, J., (as he then was) in the following terms:

Though on superficial view of the section it might appear that the words "contract of employment" found in Section 95 of the Motor Vehicles Act would cover only a contract of employment with the owner of the insured vehicle, there is a preponderance of authority in favour of the other view that it would cover not only such persons but also person who are on the vehicle in pursuance of a

contract of employment with the owner of the goods carried in it. What is necessary is that for sufficient practical or business reasons, the person must be on the vehicle in pursuance of a contract of employment. If he is such a person, any injury caused to him would also be covered by the section.

20. The facts of this case are exactly similar to the facts of the present case. Instead of the servant as in the Madras case, here the owner of the goods himself was travelling in the vehicle. Applying the principle contained in the said decision the contract of employment found in Section 95 covers not only a contract with the owner of the insured vehicle, but also persons who are on the vehicle in pursuance of a contract of employment with the owner of the goods carried in it. All that is necessary is that the person must be on the vehicle in pursuance of a contract of employment and if he is such a person any injury caused to him would also be covered by the section. We are in complete agreement with this view. The owner of the goods was travelling in the vehicle with the permission of the driver and the cleaner, who are the agents of the owner in the course of their employment and under the contract of employment.

21. We may also refer to a decision of the Supreme Court in *Sheikhupura Transport Co. v. N.I.T. Ins. Co.* 1971 A.C.J. 206. It was held that in the absence of any contract to the contrary, the statutory liability of the insurer to indemnify the insured in the case of a vehicle allowed to carry more than six passengers, extends only up to Rs. 2,000/- in respect of each passenger. Though the learned Judges were concerned with the quantum of compensation the principle underlying the said observation is that there is a statutory liability of the insurer to indemnify the insured if the permit allow the carrying of passengers. As observed earlier, in the present case neither the permit was produced nor the insurance policy was produced. Under the constitutions of the permit six persons can be permitted to travel in the goods vehicle. In the absence of production of the policy by either the owner of the vehicle or the insurance company, we presume that there is no condition in the policy that no person shall be carried in the vehicle under any circumstances i.e., whether the public carrier permit empowers them or not. In these circumstances, we find that the insurance company is also equally liable for payment of compensation to the claimants. The finding of the lower Tribunal in this regard is therefore, set aside.

22. We now take up the contention regarding the quantum of compensation award. According to P.W. 1 the widow, the deceased was aged about 38 years at the time of his death. He was a healthy person that his father died at the age of 70 years, that her husband was earning a net income of Rs. 400/- in his business and that he left no property. Considering the evidence adduced in this behalf and after examining the accounts, the lower Tribunal held that the deceased was engaged in a totally, what he got out of his business. Considering the members of the family, the deceased might have been spending on the family around Rs. 3,000/- a year. The expenditure the deceased would have incurred upon himself would be about Rs. 600/-, rest on his mother, his wife and four children and

hence the loss sustained by the claimants is about Rs. 2,400/- per year. According to the wife, the deceased was aged about 38 years. Taking the uncertainties of life i.e., of his suffering premature death in any other manner, the trial Court has awarded a sum of Rs. 20,000/- to be paid in a lumpsum which will fetch them a definite sum by way of interest, if the compensation amount is invested in any nationalised bank as a fixed long-term deposit. We are not persuaded to come to a different conclusion on the question of compensation. We therefore, confirm the finding of the lower court that the claimants are entitled to a sum of Rs. 20,000/- towards compensation to be apportioned between the claimants as stated by the lower Court. In view of the foregoing discussion the insurance company is also liable to pay the compensation of Rs. 20,000/- to the claimants.

23. Consequently, Civil Miscellaneous Appeal No. 187 of 1977 is dismissed with costs. Civil Miscellaneous Appeal No. 179 of 1978 and the cross-objections in Civil Miscellaneous Appeal No. 187 of 1977 are partly allowed, but in the circumstances without costs.