

(1983) 01 BOM CK 0028
In the Bombay High Court
Case No : First Appeal No. 480 of 1980

Nasibdar Suba Fakir

APPELLANT

Vs

Adhia and Company and Others

RESPONDENT

Date of Decision : 25-01-1983

Acts Referred:

Bombay Motor Vehicles Tax Rules, 1940 — Rule 118
Motor Vehicles Act, 1939 — Section 95, 95(1)

Citation : (1984) 1 ACC 105 : AIR 1984 Bom 1 : (1983) 1 BomCR 520 : (1983) 85 BOMLR 373 : (1985) 58 CompCas 449 : (1984) ILR (Bom) 1714 : (1983) MhLj 647

Hon'ble Judges : Shard Manohar, J; C.S. Dharmadhikari, J

Bench : Division Bench

Advocate : R. Kudrolli, for the Appellant; M.J. Bhatia, R.J., S.J., K.A.J. Merchant and A.K. Chaphekar, for the Respondent

Judgement

Shard Manohar, J.—The question involved in this appeal is of quite some importance. It relates to the inter action of the provisions of Section 95(1)(b), Motor Vehicles Act, (hereafter, the Act), & of Rule 118, Bombay Motor Vehicle Rules; and their impact on the liability of the Insurance Company for the death or bodily injury to the hirer of a goods vehicle when he is a passenger in the same vehicle.

2. The Accidents Claim Tribunal has taken the view that when a person hires a goods vehicle for transport of his goods and when he is a passenger on the vehicle, then the Insurance Policy taken by the owner of the goods vehicle need not cover the loss caused to such passenger by virtue of the goods vehicle need not cover the loss caused to such passenger by virtue of the negligence of his driver and hence the Insurance Company is not liable to such passenger for payment of compensation to him. We are required to examine the correctness of this view.

3. The facts of the case are more or less admitted. When some of the facts are in

dispute, we will indicate the nature of the dispute at the appropriate place. The facts are as follows :

The appellant (who will be referred to hereafter as the "claimant") had taken on hire a truck belonging to respondent 2. That was Motor Lorry No. MRT 3987. For the sake of convenience, we will call this truck as "Truck A". It is not disputed that the truck was hired by the claimant in Bombay and it was being taken by the claimant from Bombay to Thana for picking scrap materials from Thana to Bombay. The vehicle was being driven by the driver who was the employee of respondent 2. The claimant was accompanying the driver and was sitting next to him. As the vehicle "A" was being driven. At a speed which was evidently excessive, it collided against another motor lorry No. MRR 7557 at a point on Bombay-Agra road at Bhandup. The latter truck, coming from the opposite direction, from north to south, belonged to respondent 1 and was being driven by his driver. One Shirke, who was the cleaner, was sitting next to the driver in that vehicle. For the sake of convenience, we will call the said latter vehicle as "Vehicle B". It is to be noted that it was not a case of a head-on collision between the two vehicles "A" & "B". the facts found are, and about these facts there exist no dispute any longer, that vehicle "A" swerved right, suddenly, while it was being driven at the excessive speed along the Bombay-Agra Road and as it swerved right the vehicle "B" coming from the opposite direction had to swerve left.

But this protective swerving by the truck "B" was of no avail. The collision could not be avoided. This was principally because vehicle "A" was being driven on the wrong side and was very much to the right of the road and in addition to this it swerved to its right even further. Vehicle "A" brushed against the right side of vehicle "B" and damaged it extensively. When both the vehicles collided and stopped, vehicle "B" in fact mounted the eastern foot-path on the road so much so that both its wheels rested on the foot-path. The driver of vehicle "B" received serious injuries. Even the cleaner on the said vehicle got injuries. So far as the driver of vehicle "A". in which the claimant was the passenger, was concerned the driver escaped unhurt but in the said truck one more person besides the claimant was travelling; that person got killed by virtue of the said collision whereas the claimant, with whom we are concerned in the present appeal, was injured seriously so much so that he was hospitalised for a period of about one month and a half and was discharged only after his left leg had been amputated below the knee. It may be mentioned here that the driver of the vehicle was prosecuted and even convicted in criminal proceedings. The driver of the other vehicle "B" was not even prosecuted but in the criminal proceedings against the driver of vehicle "A" he was one of the witnesses for the prosecution.

4. It was in these circumstances that the application for compensation was filed by the claimant before the Accidents Tribunal for recovery of compensation totally amounting to Rs. 77,500/-. Out of this compensation, a sum of Rupees 9,953.25 ps. Was claimed as special damages for the medical expenses and

expenses connected with the medical expenses such as conveyance charges etc. The balance of the amount was claimed as damages for pains and sufferings, loss of income and general damages for loss of life-enjoyment. The claim was made against respondent 1 being the owner of vehicle "B" and against the Insurance Company with whom the said truck "B" was insured. They were arrayed as Opposite Parties Nos. 1 and 3 respectively. The claim was made also against the owner of truck "A" and the Insurance Company who were arrayed as respondents 1 to 4, respondents 1 & 2 being the owners of vehicles "B" & "A" respectively and respondents 3 & 4 being the insurers of vehicles "B" & "A" respectively. The claimant's contention in the application was that the collision between the two vehicles was the result of the negligence on the part of the part of the drivers of both the vehicles. Hence he claimed the said amount of Rs. 7,500/- jointly and severally from both the owners and from both the Insurance Companies concerned..

5. Both respondents 1 and 2 denied the allegation of negligence on the part of their respective drivers. On these pleadings, issues were framed by the Tribunal and parties went to trial and led their evidence. The claimant examined him-self as also the police officer who had made panchanama of also got duly proved through the said officer. On behalf of respondent 1, the cleaner who was accompanying the driver of the truck "B" at the relevant time was examined. No evidence was led on behalf of respondent 2. Even the drive of truck "A" was not examined.

6. After examining all the above mentioned evidence, oral and documentary, the tribunal found that the collision between the two vehicles was the direct result of the gross negligence on the part of the driver of truck "A". He absolved the driver of truck "B" of negligence. As regards the quantum of compensation, the tribunal held that damages, both general as well as special, to the extent of Rs. 33,000/- were proved by the claimant. Hence, he passed and award for the said sum of Rs. 33,00/- in favour of the claimant together with costs which were quantified at Rupees 200/-.

7. However, the tribunal further held that the policy of insurance given by respondent 4 was not required to cover the risk to life or body of the owner of the goods, who had hired the truck for transportation of the goods and who was the passenger in the truck. This conclusion was arrived at by the tribunal principally upon the reasoning that under S. 95, Motor Vehicles Act, the risk to a bona fide employee of he hirer of the truck for his goods was required to*****

*****this reasoning that the above mentioned conclusion vis-a-vis the liability of the Insurance Company, respondent 4, was arrived at by the trial Court. A decree for the said sum of Rs. 33,000/- was, therefore, made executable by the Tribunal against respondent 2 and against no one else.

8. It may be mentioned here that about one factual position there existed no dispute before us. The factual position resulting from the nature of the decree passed by the tribunal is that the decree obtained by the claimant is more or less a paper decree. As stated by Shri Kudrolli, the learned Advocate appearing for the claimant before us, and not seriously disputed by Mr. Chaphekar appearing for the Insurance Company, respondent 4, truck "A" which met with the accident was an old, dilapidated, worn out truck even at the time of the accident itself. It was further damaged by virtue of the accident. Respondent 2 sold away the same almost as junk after the date of the accident. The resultant position as at present is that there is no property which respondent 2 is known to be having against which property the decree obtained by the claimant, can be executed. Unless, there-fore, the decree obtained by the claimant, can be executed. Unless, therefore, the decree is passed either against respondent 4, the decree becomes nothing but a paper decree in the hands of the maimed claimant.

9. The last mentioned fact probably explains the reason why respondent 2 against whom the decree is passed has not cared to file any appeal against the same. Even before the Tribunal, no apperance was filed on behalf of him. Opposite Party 4, the Insurance Company, with whom said truck "A" was insured took part in the cross-examination of the material witness but only to the extent of their liability under the policy. As regards appeal against the award of the Tribunal, only to the extent of their liability under the policy. As regards appeal against the award of the Tribunal, only the claimant has filed appeal against the above order contending that the amount of compensation awarded to the claimant is extremely inadequate.

10. Mr. Kudrolli, the learned Advocate appearing for the appellant urged three points before us.

11. They are:

that the quantum of compensation awarded by the Tribunal was exfacie inadequate;

that the exoneration of respondent 4 who was the insurer for the liability incurred by respondent 2 was unjustified having regard to the provisions of law.

12. It may be mentioned that the last mentioned point was the main point on which extensive and elaborate arguments were advanced and that is the point which is referred to at the outset of this judgment. However, we will deal with all the points in the order mentioned above.

13. So far as the first question relating to the quantum of liability is concerned,

Mr. Kudrolli was fair enough to concede that the Tribunal's Award does not suffer from any error so far as the Award relates to re-compensating the claimant for the expense incurred on medical and allied grounds. His main grievance was relating to:

the compensation for loss of income;

the compensation of Rs. 15,000/- awarded for pains and sufferings and general loss of enjoyment of life.

14. As regards compensation for loss of income was concerned, Mr. Kudrolli pointed out that the claimant's statement that his monthly income was Rs. 500/- was accepted by the tribunal. Likewise, he pointed out that he had no quarrel with the Tribunal's finding that once the shop which the claimant was running was let out or given over by the claimant to some one else for running the same, and once it was established that the claimant was receiving Rupees 300/- per month as rent or compensation as the case may be for the said shop, the reduction in the claimant's monthly income was only by Rs. 200/- and that would be the quantum that could be claimed by him as the future monthly income. He had also no quarrel with the proposition that the period of 8 years taken by the tribunal as the future period of earning is reasonable period. However, Mr. Kudrolli, pointed out that as per the evidence on record, which had gone unchallenged, the claimant was successful in letting out the shop only about 4 years after the date of the accident; the accident took place on 19-8-1973. He invited our attention to the claimant's evidence where he has stated that the tribunal has awarded compensation for the loss of income for the first year from the date of the accident at Rs. 5000/- per year and he had no quarrel with that finding. But according to him, the reduction of Rupees 300/- per month, that is to say, Rupees 3600/- per year has been made by the tribunal from the very second year. Mr. Kudrolli contended that there exists no evidence on record to hold that the claimant had given over the shop and had started earning income from the same at the rate of Rs. 300/- per month immediately from the next year. He contended that for the further period of 3 years the loss of income should have been computed not at the rate of Rupees 1400/- per year as was done by the tribunal, but at the rate of Rs. 5000/- per year as was done for the first year. He had no quarrel with the finding that for the further period of 4 years the loss should be computed at Rs. 1400/- per annum. Thus, he claims Rs. 3600/- per year for 3 more years which amount was denied to him by the Tribunal, meaning thereby, he claims an additional sum of Rs. 10,800/- for the loss of income for the total period of 4 years from the date of the accident.

15. We have gone through the evidence on record. From the claimant's admission in the evidence, we find that according to him he himself was in possession of the shop till the year 1976. This means that not for 4 years but for 3 years from the date of the accident the claimant was losing the monthly income of Rs. 5000/-. If the evidence on record is believed, it cannot be said that till the end of the year 1976 the claimant was earning anything from the shop,

because the possession of the shop was given over by him after the year 1976. It will be, therefore, reasonable to hold that till the year 1976 the claimant was deprived of the income which he was earning. This makes the total period at the most to 3 years, if not less. To err on the safer side, we hold that it would be for the period of 3 years and not less. But even then, the total loss that can be computed would be Rupees 15,000/-. Out of this, a sum of Rupees 7,800/- is claimant, therefore, should be entitled to a sum of Rs. 7,200/- on this account.

16. We may state here that Mr. Chaphekar, the learned Advocate for respondent 4, the Company who had insured truck "A", fairly stated before the Court that the evidence on record relied upon by Mr. Kudrolli must lead the Court to this conclusion. In this view of the matter. It must be held that the claimant is entitled to an additional compensation of rs. 7,200/-.

17. So far as the second point urged by Mr. Kudrolli is concerned, we do not find any material with which we can find fault with the view taken by the Tribunal, namely that for pains and sufferings and for loss of enjoyment of life the amount of Rs. 15,000/- would be adequate. It can hardly be gainsaid that while computing these general damages some element of arbitrariness is inescapable. It is true that the Tribunal has not given any indication as to upon what principle the amount of Rupees 15,000/- was fixed by it. But from the very nature of things, no hard and fast rule can be laid down for fixing such compensation. Mr. Kudrolli was unable to indicate any principle upon which we could interfere with the finding recorded and conclusion arrived at by the tribunal. With all the sympathy for the claimant, we find no legal basis on which we can find fault with the finding. We are, therefore, unable to interfere with this finding of the Tribunal.

18. This brings us to the main question arising in this appeal which is referred to at the outset in the judgment. The question as to whether the Tribunal was justified in reading the Act in such a manner that the Insurance Company, respondent 4, was exonerated of its liability for the negligence committed by the driver of truck "A" which was insured with the Company towards one of the passengers of the truck.

19. We may briefly state here the reasoning that prevailed upon the tribunal for absolving respondent 4 of its liability. When we say that the tribunal absolved respondent 4 of its liability as per its insurance policy at all, towards the claimant for any act of negligence committed by the driver of truck "A" in which the claimant as a hirer of the truck was a passenger. Briefly speaking, the Tribunal relied upon the provisions of Clause (ii) of the proviso to S. 95 (1) of the Act and has held that the risk involved for the hirer of the vehicle hired by him for carriage of his goods was not required to be covered by any insurance policy if the hirer was one of the passengers in the truck. The Tribunal has construed the said proviso to mean that if the hirer's employees were being carried by truck "A" at the time when the truck was hired by the claimant, the insurance policy would have to cover the risk to such employees of the hirer, but for the hirer himself, if he was one of the passengers of the truck, there was no statutory

obligation upon the owner of the truck to insure the risk so far as the death or bodily injury to such hirer was concerned.

20. For coming to this conclusion, the tribunal has mainly relied upon certain decisions of the other High Courts to which we will presently refer. We have to examine whether the said authorities lead to any such conclusion and if any one of them does lead to any such conclusion, then whether such conclusion could be agreed with by us.

21. Before examining the said authorities, however, it is necessary to refer to and analyse the statutory provision which, it is contended, gives rise to such a result. The most relevant provision which, it is contended, gives rise to such a result. The most relevant provision which, it is contended, gives rise to such a result. The most relevant provision in this connection is Section 95 of the Act. The relevant part of the same can be fruitfully set out here. The relevant portion of the same is as follows:-

"In order to comply with the requirements of this chapter, a policy of insurance must be a policy which-

Insures the person or classes of persons specified in the policy to the extent specified in sub-section.

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against any liability which may be incurred by him in respect of the death of or bodily injury to any person or damage to any property of a third party caused by or arising out of the vehicle in a public place;

against the death of or bodily in-jury to any passenger of a public service vehicle caused by or arising out of the use of the vehicle in a public place; Provided that a policy shall not be required-

to cover liability in respect of the death, arising out of and in the course of his employment of the employee of a person insured by the policy or in respect of bodily injury sustained by such an employee arising out of and in the course of his employment other than a liability arising under the Workmen's Compensation Act, 1923, in respect of the death of, or bodily injury to, any such employee -

engaged in driving the vehicle, or

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

If it is a goods vehicle, being carried in the vehicle, or

except where the vehicle is a vehicle in which passengers are carried for hire or reward or by reason of for in pursuance of contract of employment, to cover liability in respect of the death of or bodily injury to persons being carried in or

upon or entering or mounting or alighting from the vehicle at the time of the occurrence of the event out of which a claim arises..."

22. From the above provision, it is clear that certain risks which are inevitably involved in the transport of motor vehicles are compulsorily required to be insured under the Act by the owner of the vehicle concerned. The analysis of the above section shows that as per Clause (b) (I) of said Section 95 (1) the policy of insurance which is compulsory for owner to take must insure any person against any liability which may be incurred by the owner of the vehicle for death or bodily injury to such person. In other words, if said Clause (b) (I) of said S. 95 (1) remains as it is, the owner of the truck "B" in which the claimant who was the hirer of the truck was the passenger, would be under the statutory obligation to insure the risk involved to the claimant even as a passenger of the truck. So far as this much legal position is concerned, we may state here that there can be no doubt about this position and in fact there was no dispute about this legal position before us. The only question that arises is as to whether there is any exception to this statutory obligation contained in said Clause (b) (i) of Section 95 (1) carved in any other provision of the Act. Contention before the tribunal, and before us as well as before the various other High Courts was that Clause 9ii0 of the proviso to said Section 95 (1) carved out such exception. The proviso is already set out, above. It states that unless a 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, it will not be necessary to insure against the death or bodily injury of any passenger in the vehicle. In other words, said Clause (ii) of the said proviso not only carves out an exception to the general rule contained in sub-clause (ii) of Clause (b) to Section 95 (1) but it also carves out an exception to the exception. The first exception is that so far as the passengers in the vehicle are concerned, there need not be any coverage for the risk to their lives or bodies. If this exception stood all by itself, then it would mean that sub-clause (ii) to Clause (b) of S. 95 (1) did not require any insurance policy being taken for the passengers of the vehicle concerned. This would mean that the risk insured against was the risk to the outsider or what in popular parlance (is) known as third party and not to the passengers carried in the vehicle. This would perhaps be in consonance with the earlier well-known maxim of Roman Law of Volenti Non Fit Injuria, meaning thereby, that the passenger who had undertaken to travel with the owner of the car or with the owner's agent could not make complaint about the injury caused to himself by virtue of the latter's negligence because he had voluntarily accepted the risk. But as it is well known, this maxim of Volenti Non Fit Injuria has not been now accepted as the universal Rule of Law and the Courts have found it necessary to make it subject to numerous exceptions depending upon the facts of each case involving various facts of justice in common law. Probably in tune with the said development, the instant statute has carved out exception to the exception and the latter exception provides that (if) the vehicle is the one in which passengers are carried for hire or reward, or Passengers are carried by reason of or in pursuance of a contract of

employment, the liability of the owner of the truck to insure the risk involved to such passengers would subsist and the exception to the general rule incorporated in sub-clause (ii) of clause (b) to S. 95 (1) would not apply to the rights of such passengers or to the liability incurred by the owner of the vehicle towards such passengers.

23. The question is as to whether when a hirer of the truck for transport of the goods is himself a passenger in the same he is being carried for reward or not. Evidently, the word "reward" in the instant provision connotes consideration. No other meaning is capable of being ascribed to it. A paraphrase of the said proviso clause (ii) can be that if the passenger is being carried for some consideration being received by the owner of the truck, such owner is under a statutory obligation to insure against the risk involved to such passenger.

24. The next question then arises is as to whether it could be ever held that the hirer of a truck for carriage of his goods can even contend that he was being taken as a passenger for some "consideration". Prima facie, our view was that there should be no legal impediments in coming to the conclusion that he was such a passenger, meaning thereby, a passenger who was being allowed by the owner of the truck to travel as a passenger of the truck as against the consideration received by the owner of the truck. After hearing fully Shri Chaphekar against this view, we are of the opinion that this prima facie view taken by us stands fully confirmed. We found nothing in the arguments made by him which could persuade us to take a different view.

25. The question is of quite some importance and some detailed discussion relating to the rationale of the said question would not be out of place.

26. When the owner of the goods hires a vehicle for transportation of his goods, it becomes necessary for him that along with the goods the vehicle should carry some persons for :

supervision of the carriage of goods;

for loading and unloading of the goods, and

for similar other purposes.

27. He may do so by engaging special employees for the above purposes; he may do so by accompanying the vehicle himself along with some of its employees; he may do so by accompanying the vehicle all by himself. From the very nature of things, the question as to which of the courses would be followed by him would depend upon various factors including his own financial and social position. A Managing Director of a big Company hiring a vehicle for transportation of his goods will not be expected to accompany the employees for supervision over loading or unloading. A transporter who is a small fry may not have sufficient manual assistance for doing the job and hence he may be required to go all by himself with the goods. Naturally he will be one of the passengers of the vehicle. This is so to say, a phenomenon of common

knowledge. What is contemplated by Cl. (ii) of the proviso is that a person going on a joy-ride on a motor vehicle cannot make a claim about the fact that the driver of the vehicle was negligent. To this extent, the maxim *Volenti Non Fit Injuria* is recognised by the statute. But once the owner of the truck or his agent lawfully expects consideration from his passenger, the application of the said maxim ceases. The passenger is no longer going on his frolics : he is no longer going for a joy-ride. There comes into existence the business relation between the two and no person carrying another for consideration can contend that he can be negligent, vis-a-vis the passenger, with impunity. That is the precise reason why the statute contemplates that once the passenger is being carried for consideration, there should be a liability of the carrier towards the passenger under the law of torts and it is this liability which is sought to be covered by said Section 95 (1) by grafting an exception to the exception found in Clause (ii) of the proviso. Normally speaking, therefore, an analysis of the statutory provision should not lead one to the conclusion that a hirer of a vehicle who is a passenger in the vehicle should not be entitled to have the risk to himself covered by the insurance policy.

28. But certain authorities have taken contrary view and those were the authorities relied upon by the Tribunal. Those authorities have taken the view that only the employees of the view that only the employees of the hirer who are the passengers on the vehicle at the relevant time would be entitled to the coverage of the insurance policy and not by the hirer himself. We will examine the said authorities, but before examining the authorities it would be worthwhile examining the answers sought to be given by Mr. Chaphekar, the learned Advocate for respondent 4 to the above mentioned analysis of said Section 95 (1). He wanted to answer the said analysis and the conclusion arising out of the said analysis by reference to Clause 9b) to the proviso in the first instance and by reference to Rule 118, Motor Vehicles Rules in the second instance.

29. As regards said Clause (ii) to the proviso, his contention was that the hirer, the claimant in the instant case, who was travelling along with the vehicle was not being carried by the owner of the vehicle (respondent 2 in the instant case) for reward at all. His contention was firstly on the basis of the evidence obtaining in the instant case and secondly with reference to the general principles of law. With reference to the evidence on record, Mr. Chaphekar contended that there is no evidence in this case to show that any separate consideration was ear-marked or received by either respondent 2 or by his driver from the claimant for allowing him to be carried in the vehicle along with the goods. In the first place, he pointed out that when the accident took place, the vehicle was not carrying the goods belonging to the claimant at all. The factual position is that the claimant was going to some place at Thana on the Bombay-Agra Road for bringing his goods at Thana. The goods were to be loaded at Thana. They were to be brought back to Bombay and presumably were to be unloaded at Bombay. He contends that there was no necessity for the claimant of the goods to accompany the vehicle to reach the place where the goods were lying. Secondly, even if he was

accompanying the goods, the contract could be for the carriage of goods, not for the carriage of the owner of the goods. The consideration that the owner of the goods was paying to the owner of the truck was for the carriage of the goods. The contention was that in any event there was no evidence in the present case to show that any separate consideration was ear-marked for the owner of the goods transported in the vehicle concerned. If this is the position, the claimant could not be said to have satisfied the requirement of being a passenger who was being carried for reward. It is common ground before us that the words "vehicle in which passengers are carried for reward" are the relevant words. The contention was that there was no evidence in the instant case to show that the claimant who was hiring the vehicle at the relevant time was being carried for reward or for consideration. This being the position, the exception to the exception did not come into play, but only the exception remains. If the exception remains, the application of the general rule contained in Cl. (b) (I) to Sec. 95 (1) is ruled out and hence the general rule in Clause (ii) of said Section 95 (1) did not come into operation at all.

30. The above submission was with reference to the evidence on record: The submission with reference to the general principles of law was that when a vehicle is hired for transport of goods, there need be no term of carrying the hirer or his employees along with the goods. If, therefore, the hirer does travel along with the goods, his travel must be held to be without consideration unless it is specifically proved. In other words, the submission was twofold :-

31. What must be proved is the additional consideration for transport of the hirer.

32. Carriage of the hirer incidentally with the goods cannot be taken as an implied term of the contract of carriage of the goods.

33. Prima someone should accompany the goods and go in the vehicle as a passenger along with the goods. Likewise, it becomes necessary that someone should go as passenger in the first instance for bringing the goods from some place and carrying them to some other place. This may be for loading or unloading of the goods or for many other purposes incidental to the transportation of the goods. For instance, owner of the goods "X" may be having his office in Bombay. He wants his goods to be transported. The goods may be lying in Thana, He would engage a truck in Bombay, but for loading the goods from Thana he would require some employees. He was employed in his office at Bombay. Naturally, he would take those employees to Thana. The goods would be loaded in the truck by the employees and the goods would be brought back to Bombay. While coming back, naturally the employees would accompany the goods as passengers in the truck. Their coming back would be necessary so that the goods may be unloaded in Bombay. When the owner of the goods enters into the contract of the carriage of goods in this manner the contract is of a composite character. The contract is not for carriage of the goods; the contract is for safe and convenient transport of the goods from the beginning till the end and the process of contract involves loading and unloading and safe carriage. For

all this purpose, the accompniment of some other persons, other than the driver of the vehicle, along with the vehicle is imperative. This is a matter of common knowledge and of everyday life. Elaborate evidence is unnecessary for such conclusion. The doctrine of judicial notice looks after the evidential requirement for such judicial conclusion. The point is that the consideration which is paid by the owner of the goods for the transport of the goods is a composite consideration. It is a consideration for the transport of goods as well as for the incidental transport of the passengers accompanying. The goods or those going for fetching the goods. If this is so,, then the owner of the goods can legitimately contend that though he was having his office in Bombay, he was going to Thana for bringing his own goods and he entered into a contract with the owner of the truck by agreeing to pay the composite consideration; consideration for carriage of the goods and consideration for carriage of the passenger necessary for supervision etc., of the goods. He can further legitimately contend that if his employees could be legitimate passengers of the vehicle for supervising the transport of the goods. He himself could as well be a passenger whose presence on the vehicle at the relevant time is as much necessary and as much part of a contract for which he paid the consideration. Once it is accepted that the consideration paid by him included the consideration for his own carriage, it cannot be said that he was not carried by the driver of the truck for reward at the relevant time.

34. The plea that the claimant was not accompanying the goods and hence must be deemed to be one not being carried for reward need not detain us long. The plea is in fact answered by the above analytical discussion. When a vehicle is hired for bringing goods from a place away from the place of office or residence of the hirer, as also of the owner of the vehicle, it is natural that the hirer and or his employees will, quite often, go by the vehicle to the place where the relevant goods are lying. Their transport to that place is as much a part of the contract and, hence, for "reward" or consideration.

35. The plea that for carriage of the hirer along with the goods or for fetching the goods must be backed by special or additional consideration and that his carriage cannot be read as an implied term of all such contracts is unacceptable for the same reasons as mentioned above. The consideration is normally a composite consideration. Moreover, the carriage of the hirer or his employees along with the goods or for fetching the goods is essentially an incidental part of the contract of carriage; for such incidental services. No special consideration is expected. That incidental services . no special consideration is expected. That incidental services is an implied term of the contract, for instance a passenger in an omnibus can carry with him a small brief-case. For carrying that brief -case no special or additional ticket is necessary. But that does not mean that no consideration is paid. The price already paid for the ticket is itself the consideration.

36. To our mind, the above analysis answers both the submissions; "the submission based on the evidence on record as well as the submission based upon

the general law". We do not think that there exists any necessity for any special evidence on record for any special evidence on record for coming at the above mentioned conclusion.

37. Mr. Chaphekar further posed a question to himself and he would like the Court to consider it. Question was: If the owner of the truck stated to the owner of the goods that he would not allow anybody to accompany the goods in the truck. If such a condition was put by the owner, would it not be a valid condition? A simple answer to this question is that it might be perfectly open for the owner of the goods either to accept that condition or not to engage him as a the very fact that the owner of the truck carrier of the goods. But the point is that allowed the owner of the goods to go with the vehicle as a passenger in the truck means that there was no such condition put by the owner of the truck. The very fact that the owner of the goods was allowed to be carried by the owner of the truck serves as the evidence to the contrary of the fact that he allowed the owner of the goods to travel as a passenger of the truck and this permission was a part and parcel of the entire contract of carriage .

38. The analysis of said Clause (b) to the proviso sought to be made by Mr.Chaphekar cannot, therefore, be accepted by us.

39. The next ground on which Mr. Chaphekar wanted us to read said Clause (b) of the proviso otherwise is based upon the provisions of Rule 118, Motor vehicles Rules. The relevant portion of said Rule 118 is clause (1) of the same which runs as follows:-

"Subject to the provisions of this rule, no person shall be carried in a goods vehicle:

Provided that the owner or the hirer or a bona fide employee of the owner or the hirer of the vehicle carried free of charge or a police officer in uniform travelling on duty may be carried in a goods vehicle. The total number of persons so carried (i) in light transport goods vehicle having registered laden weight less (990 kg), not more than one; (ii) in any other than light transport vehicle, not more than seven." Relying upon this rule, Mr. Chaphekar contended that as per the said rule no owner or hirer or bona fide employee of the owner could be carried by a goods vehicle unless the carriage was free of charge. Contention is that if according to the hirer, in the instant case, he was being carried for reward, then his carriage was itself illegal. He pointed out the fact that the vehicle in question, namely , truck "A" was a goods vehicle is not in dispute, u/s 2 (8) of the Act, a goods vehicle is defined as follows:-

" "Goods vehicle" means any motor vehicle constructed or adapted for use for the carriage of goods, or any motor vehicle not so constructed or adapted when used for the carriage of goods solely for in addition to passengers."

There is no dispute that truck "A" answered to this description and hence it was a goods vehicle. But the construction sought to be put by Mr. Chaphekar upon

Rule 118 is difficult to be accepted. Said Rs. 118 allows the carriage of passengers of goods vehicle in certain circumstances but, that does not mean that there is any prohibition against the hire for goods vehicle from travelling in said goods vehicle by virtue of anything contained in said Rule 118. In the first place, the persons who are to be carried free of charge, as per the said Rule, are the only bona fide employees of the owner or the hirer of the vehicle. The words "Carried free of charge" do not apply to or describe the owner or hirer of the vehicle. They apply to or describe only the employees of the said owner or hirer. If this was not so and if it was sought to be contended that they apply to the hirer as well, by the same logic and reasoning it could be said to apply to the owner as well. But it should be meaningless to contend that the owner should be carried on the vehicle free of charge. The owner could not be expected to charge anything to himself. In other words, as per the said Rule 118, the following persons can travel by a goods vehicle:

the owner;

the hirer;

(c) the police officers in uniform travelling on duty; and

the bona fide employees of the owner or hirer who are being carried by the goods vehicle free of charge.

40. Some arguments were advanced relating to the words "free of charge". The contention was that if a person was to be carried free of charge. Then it could not be said that they were carried for reward under clause (ii) of the proviso to Section 95 (1). To our mind, this is a confused reasoning. In the first place, Rule 118 could not have an overriding effect over the section for the very simple reason that the Rule cannot have dominance over the Act. Moreover, the Rule is a regional provision whereas the Act is of all India application. But more important than the above considerations is the fact that there exists no conflict whatsoever between Rs. 118 and Clause (b) of proviso to Section 95 (1). Under the said clause (b) to the proviso, the persons to be carried for hire or reward are the passengers other than the employees concerned. The employees may be the employees of the owner or the hirer. The employees need not be carried for reward." The words "carried for reward" apply to the passengers other than the employees. This is clear from the fact that the words "passengers carried for hire or reward" are used in contradistinction with the words "by reason of contract of employment". Moreover, we are of the view that the word "reward" used in clause (b) of the proviso to the section has a distinctly separate connotation from the words "free of charge" in Rule 118. The reward that is paid within the contemplation of the proviso to the section is the reward by the owner of the goods to the owner of the goods to the owner of the vehicle. The charge contemplated by Rule 118 is by the owner or hirer of the vehicle to his own employees. In other words, if the owner or the hirer charges any consideration even to his own employees for

being carried by the goods truck, such carriage is not permitted by rule 118. In order that the hirer or the owner of the goods vehicle can allow his bona fide employees to travel by the vehicle. It is imperative that they should not be required to pay any special charge at all for the said carriage.

41. To our mind, this is perfectly in keeping with the general tenor of the law. A goods vehicle is essentially meant for carriage of the goods. As mentioned above, along with the goods vehicle passengers sometime are required to be transported for the purpose of, say, loading or unloading of the goods. From the very nature of the things, the owner or the hirer of the truck cannot tell such employees that they should pay charges for their conveyance. The goods vehicle is not intended for earning monies by transportation of human beings on the goods vehicle. The goods vehicle is engaged essentially for transportation of goods and goods only and the employees are transported along with it because the transportation of the goods itself would be rendered difficult if such employees do not accompany the goods. In other words, the transportation of the employees is incidental. It can be only without consideration and that is the reason why we find that unless the employees are carried in such goods vehicle free of charge, it would not be a goods vehicle. If the employees are charged for transportation by goods vehicle, it would cease to be a goods vehicle, it would cease to be a goods vehicle. It would become a public service vehicle within the meaning of the Act. The said term "public service vehicle" is defined in Sect. 2 (25) of the Act as follows:

" " public service vehicle" means any motor vehicle used or adapted to be used or adapted to be used for the carriage of passengers for hire or reward, and includes a motor cab, contract carriage, and stage carriage".

42. If any amount is to be charged to the passengers in any vehicle, then such vehicle must be adapted for carriage of passengers. Passengers can be carried for hire or reward only by a public service vehicle and not by a goods vehicle. This is all that said Rule 118 contemplates. It is wrong to find any conflict between said Rule 118 and said proviso (b) (ii) to Section 95 of the Act.

43. 15A This brings us to the authorities which are relied upon by both the learned advocates in support of their respective contentions. It must be stated here that the view taken by the tribunal does find support from certain authorities. However, there are other authorities which have taken the contrary view which supports the view which we have taken in this case.

44. The first authority that needs to be examined is the judgment of the Division Bench of the Gujarat High Court in the case of the Gujarat High Court in the case of Sakinabibi, (1947) 15 Guj LR 428. This authority had given rise to certain controversies as a result of which some of the questions considered by the said authority were required to be re-examined by a Full Bench of the Gujarat High Court subsequently to which we will presently, refer. The fact of the above

mentioned gujarat authority were as follows:-

The deceased was supplying milk from Amul dairy, Anand, to the Umerth consumers Co-operative society. For this job, he was paid stipulated remuneration. On the date in question. The deceased was travelling in a motor truck belonging to respondent 1 driven by respondent 3 and was insured with respondent 2. Owing to the negligence of the truck driver, the truck met with an accident resulting in almost instantaneous death of the deceased. The negligence of the driver respondent 3 and the owner-responsible 1 was also established. But the question arose whether the insurance policy taken from the insurance Company covered the liability towards such passenger in the truck. The insurance company repudiated the liability on various grounds. The first ground was that the deceased was not a bona fide employee of the owner of the truck. The legality of the truck carrying deceased as a passenger was also questioned and it was contended that whatever may be the liability of the owner or driver of the truck towards the passenger, the Insurance company in any event, had not agreed to cover the said liability and in fact the insurance cover did not extend to such liability.

45. These arguments were repelled by the Gujarat High court.

46. We do not propose to refer to the elaborate reasoning of the said Court while arriving at the conclusion, because this judgment has been toned down by the subsequent judgment of the Supreme court and hence the law has been restated in that perspective by a subsequent full Bench judgment of the Gujarat High court and secondly because the question with which we are concerned did not directly arise in that case. In our case, there is no contention that the insurance cover would not extend to any passenger of a goods vehicle whatsoever. The limited contention in our case is as to whether the owner of the goods who has hired the truck and who is a passenger on the truck is covered by the insurance policy given by the Insurance company or not /

47. After this judgment came the decision of the Supreme court in the case of Pushpabai Purshottam Udeshi and Others Vs. Ranjit Ginning and Pressing Co. (P) Ltd. and Another, . In the said case, the Manager of the respondent company was driving the car belonging to the company. He gave lift to deceased Udeshi and while the car was being driven by him it met with an accident owing to the negligence of the said driver-Manager. The Insurance company with whom the car was insured repudiated its liability under the policy contending that deceased Udeshi was not being carried in the car for hire or reward. After construing clause (ii) of the proviso to section 95 (1). The Supreme Court observed as follows (at p. 1746):-

"Therefore it is not required that a policy of insurance should cover risk to the passengers who are not carried for hire or reward. As u/s 95 the risk to a passenger in a vehicle who is not carried for hire or reward is not required to be insured the plea of the counsel for the insurance company will have to be

accepted and the insurance company held not liable under the requirements of the Motor vehicles Act". However the Supreme Court further held that all the same it was open for the insured to take policy covering the risk which are not statutorily required to be covered. The Supreme court found that as a matter of fact the policy taken out by the insurer-respondent 1 covered the risk towards all the passengers of the vehicle to the extent of Rs. 15,000/- On the construction of the insurance policy, therefore, the Supreme court held that the Insurance company's liability extended to a sum of rupees 15,000/- for the death or bodily injury of any passenger of the vehicle.

In the subsequent case which came before the Gujarat High court, the division Bench took the view that having regard to the above mentioned decision of the Supreme court, in Pushpabai Purshottam Udeshi and Others Vs. Ranjit Ginning and Pressing Co. (P) Ltd. and Another, the earlier Gujarat High Court's decision in Sakinabibi's case 1974 1 G LR 428 was suitably toned down if not overruled. The subsequent division Bench, therefore, referred the question to a full Bench of the Court. The operative part of the referring order was as follows:-

Refer to Full Bench as the decision of this Court in (1974) 15 G Lr 428 is admittedly toned down by the decision of the Supreme Court in Pushpabai Purshottam Udeshi and Others Vs. Ranjit Ginning and Pressing Co. (P) Ltd. and Another, and the question raised is important and arises in many pending cases."

48. This reference was considered by the Full bench of the Gujarat High court and is Ambaben and Others Vs. Usmanbhai Amirmiya Shaikh and Others, After examining the various authorities as also the judgment of the supreme Court as also the previous view of the Gujarat High Court in Sakinabibi's case, the full Bench answered the reference as follows (at p. 14)

"The decision in Sakinabibi's case, (1974) 15 G LR 428, is toned down to the extent we have indicated in our judgment above, by the decision of the Supreme Court in Pushpabai Purshottam Udeshi and Others Vs. Ranjit Ginning and Pressing Co. (P) Ltd. and Another, and in the light of that decision, it is obvious that so far as the policy contemplated by Section 95 (1) (b) is concerned, it does not cover the risks to (A) persons other than those who were carried for hire or reward at the time of occurrence of event which gives rise to the claim against the insurer and (B) passengers other than those who were bona fide employees of the owner or hirer of the vehicle not exceeding six in number, carried in pursuance of or by reason of a contract of employment.

49. Considerable reliance was placed upon this full Bench Judgment on behalf of the respondents in this Court as well as before the tribunal. The Tribunal was of the view that according to the Gujarat Full Bench the hirer of the truck who is the passenger in the goods vehicle hired by him for carriage of goods does fall in the exception to the main rule contained in Section 95 (1) (b) (I) and does not fall in the exception to the exception. In other words the view of the Tribunal appears to be that according to the Gujarat full Bench's view such owner of the goods

who is a passenger of the truck hired by him is not "any person" contemplated by clause (I) of Section 95 (1) (b) but he belongs to the category of persons who are excepted from the operation of said clause (I) of Section 95 (I) (b) of the Act.

50. We have examined the said authorities fully and we are of the view that the explanation sought to be given to the said Full Bench authority by the Tribunal is not justified at all. To our mind, the view taken by the Full Bench of the Gujarat High Court, with great respect, fully supports the view which we have Full supports the view which we have taken above. To our mind, all that the Full Bench has done is that it has found the earlier Division Bench ruling of the Gujarat High Court to be of a too very broad and sweeping character. By virtue of the said view, every passenger in the goods vehicle was likely to be covered by the insurance risk and if that was the position, then the exception clause contained in clause (b) of the proviso to Section 95 (1) would be rendered meaningless. That view of the Gujarat High Court was certainly at variance with or in conflict with the view expressed by the Supreme Court in the above mentioned Pushpabai Purshottam Udeshi and Others Vs. Ranjit Ginning and Pressing Co. (P) Ltd. and Another, But the Gujarat Full Bench has not gone to the extent of stating that in no case a hirer of the goods vehicle for transport of his own goods vehicle for transport of his own goods vehicle for transport of his own goods would be covered by the insurance policy required to be taken by said Section 95. The Full Bench takes the view that certain categories of passengers travelling in the goods vehicle would be required to be covered by the insurance policy, whereas the other category of passengers need not be covered. The Full Bench gives a clear indication of the fact that if the passenger in a goods vehicle was being carried for hire or reward, then such passenger in a goods vehicle was being carried for hire or reward, then such passenger would be required to be covered by the insurance policy, whereas the other category of passengers need not be covered. The Full Bench gives a clear indication of the fact that if the passenger in a goods vehicle was being carried for hire or reward, then such passenger would be required to be covered by the insurance policy.

51. The question, however, remains as to whether a person who has hired a goods vehicle for transport of his goods and who is also a passenger on the vehicle can be said to be travelling by the vehicle for hire or reward or not. This question did not directly arise for the consideration of the Full Bench of the Gujarat High Court because the Full Bench was deciding an abstract question referred to it by the Division Bench not with reference to the facts of the particular case but with reference to the provisions of law with particular reference to the provision of the Motor Vehicles Act in the context of the above mentioned Supreme Court's judgment in Pushpabai Purshottam Udeshi and Others Vs. Ranjit Ginning and Pressing Co. (P) Ltd. and Another, . We are unable to see anything in the Full Bench decision which supports the view that the risk involved to the owner of the goods who has hired the vehicle for transport of his goods and who is a passenger on the vehicle at the time of the said transport is never required to be taken by the owner of the goods vehicle in question. But a

direct authority in support of the proposition which we have expounded above is to be found in the judgment of the Karnataka High Court in the case of Channappa Chanavirappa Katti and Another Vs. Laxman Bhimappa Bajantri and Others, . The relevant facts in the case with which the Karnataka High Court was concerned were practically identical with the facts in the present case. Deceased Somappa Mallappa had hired a truck which was a goods vehicle for carriage of his goods and while the goods were being carried, he was one of the passengers in the truck. On account of the negligence of the driver of the truck it met with an accident in which deceased Somappa Mallappa died. Negligence of the driver having been proved and vicarious liability of the owner of the truck also being proved, question arose as to whether the owner of the truck owed any liability to the owner of the goods who was the hirer of the truck and who was the passenger in the truck at the relevant time which truck was carrying the goods at the same time. The Karnataka High Court held that Section 95 of the Act made it compulsory for the owner to cover the risk for such liability to such passenger-hirer. In this connection, the Karnataka High Court observation, the Karnataka High Court observed in para 17 of its judgment as follows.

"The Legislature by the enacting the exception contained in the second part of the proviso excludes a specific category of persons from the requirement of compulsory insurance against liability which may be incurred by the insured in respect of the use of the vehicle insured. Such category of persons are those carried in or upon or entering or mounting or alighting from the vehicle at the time of the occurrence of the event (accident) out of which the claim arises. From this it would follow that passengers carried in or upon or entering or mounting or alighting from the vehicle at the time of the occurrence of the event out of which the claim arises are excluded from the coverage of compulsory insurance contemplated in Chap, VIII of the Act. If we remember that on the construction of the provisions contained in Chapter VIII of the Act, the Supreme Court has held, as already pointed out, that the policy should be taken in respect of the vehicle so as to provide insurance against any liability to third party incurred by the person using the vehicle; by reason of the exception referred to by us, the policy need not be taken in respect of the vehicle so as to provide insurance against any liability to passengers incurred by the person using the vehicle. But enacting a further exception in the first part of the proviso to the exception contained in the second part thereof, the Legislature imposes a duty on the insured to take out a policy of compulsory insurance in respect of the vehicle so as to provide insurance against any liability to passengers carried for hire or reward or by reason of or in pursuance of a contract of employment, incurred by the person using the vehicle. In our opinion, therefore, passengers carried for hire or reward or by reason of or in pursuance of a contract of employment falling under the class of passengers within the meaning of the exception contained in the first part of the proviso, are thrown back or restored to the status of "any person" found in section 95 (1) (b) (I) of the Act. Thus, if a

passenger carried for hire or reward or by reason of or in pursuance of a contract of employment in a vehicle which is compulsorily insured, dies or suffers bodily injury by the use of the insured vehicle making the insured liable in damages, it must necessarily be construed as a liability which requires to be reimbursed by the insurer by reason of the policy of compulsory insurance taken in respect of the insured vehicle by the insured."

52. With respect, we are in complete agreement with the above analysis and reasoning of the learned Judges of the Karnataka High Court.

53. The proposition expounded by us above finds support, to some extent, also from the judgment of the Andhra Pradesh High Court in the case of Meesala Suryanarayana v. Goli atuavathi 1979 Acc CJ 513 . In that case also the owner of the goods who had hired the goods vehicle in question and who was the passenger in the goods vehicle at the time when his goods were being carried met with an accident on account of the negligent driving of the driver of the truck as a result of which he died. Unfortunately, in that case the insurance policy was not produced by the Insurance Company who sought to repudiate its liability and a general contention was raised that the liability of the owner of the goods vehicle towards the hirer of the goods vehicle when the hirer was personally travelling in the truck for transport of his goods vehicle towards the hirer of the goods vehicle when the hirer was personally traveling in the truck for transport of his goods was not compulsorily required to be insured against. This contention was negated by the Division Bench of the High Court. While discussing this question the Court referred to the judgment of the Madras High Court in the case The Vanguard Insurance Co. Ltd., Madras Vs. Chinnammal and Others, with particular reference to the following passage of the judgment given by Alagiriswami J., which is as follows (at p. 237):-

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

54. Relying upon the above observation, the Andhra Pradesh High Court observed in Para 20 of its judgment as follows:-

"The facts of this case are exactly similar to the facts of the present case. Instead of the servant as in 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 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."

55. It will be thus seen that the principle that the Andhra Pradesh High Court and the Madras High Court located in this connection is the principle of practical or business reasons. The owner of the goods was travelling in the goods vehicle not for any fun or for a joy-ride. He was travelling for the business purpose. This principle of business purpose is evolved out of the underlying principle of the proviso to Section 95 (1) indicated by the words "for hire or reward".

56. With respect, we are in complete agreement with this view of the matter.

57. It is true that the Andhra Pradesh High Court in the above mentioned Meesala Suryanarayana's case 1979 A CJ 513 arrived at the above mentioned conclusion also by virtue of the fact that the policy of insurance was not produced before the Court and hence the Court proceeded to take the view that the policy contained no prohibition against the carrying of such passengers as the owner of the goods. In this view of the matter, it was probably not necessary for the Court to consider as to whether it was open for the Insurance Company to exclude its liability to wards such passenger. But we are satisfied that having regard to the observation in para 20 of the said judgment which is extracted above, the High Court was of the view that there existed a statutory liability upon the owner of the goods vehicle to insure his own liability towards the hirer of the truck for goods transport when the hirer is himself one of the passengers on the truck with the consent of the owner of the truck or his agent.

58. There were other authorities which were also sought to be relied upon. But it is unnecessary to refer to all of them.

59. We may now refer to the authorities which have been relied upon by the tribunal. The main authority is the judgment of a learned single Judge of the High Court of Punjab and Haryana in the case of Oriental Fire & General Insurance Co. Ltd. v. Kasturi Lal 1968 A CJ 227 . In that case, the deceased, one Shamlal was carrying wheat belonging to M/s. Roshan Lal Kasturi Lal in the goods vehicle which the said firm had hired for transport of the said wheat. The deceased was one of the partners of the firm. While the firm. While the truck was being driven, it met with an accident on account of the negligence of the driver of the truck in which accident Sham Lal died. His father Kasturi Lal filed an application, making claim u/s 110 of the Act for compensation on account of the negligence of the driver of the truck. The claim was made against not only the driver and the owner of the truck but also against the Insurance Co., which had

insured the said truck as required by Section 95 of the Act. The negligence of the driver was held proved and hence the liability of the owner of the truck also could not be denied. But the question arose as to whether such liability was covered by the Insurance policy taken by the owner of the truck from the Insurance Company. The Company contended that it owed no liability under the policy, inter alia, because deceased Sham Lal was not being carried in the truck for hire or reward or by reason of or in pursuance of a contract of employment. In this connection the judgment of the same High Court in the case of Oriental Fire and General Insurance Co. Ltd. Vs. Smt. Gurdev Kaur and Others, was relied upon. The reply to this contention, on behalf of the claimant, was that the deceased Sham Lal was in the employment of M/s. Roshan Lal Kasturi Lal when their goods were being carried on hire in the truck to Delhi. This contention of the claimant was negatived by the Punjab High Court and the Court held that the deceased was not an employee of the hirer firm at all. The learned single Judge, therefore, relied upon the above mentioned earlier Full Bench Judge, therefore relied upon the above mentioned earlier Full Bench judgment of the same High Court reported in 1967 A CJ 158. In that case, the Full Bench judgment of the same High Court reported in 1967 A CJ 158. In that case, the Full Bench had taken the view that the hirer of a goods vehicle, when he is travelling as a passenger in the vehicle carried for hire or reward nor is he a passenger who is being carried in the said vehicle by reason of or in pursuance of a contract of employment. Taking this view of the matter the Punjab High Court upheld the contention of the Insurance did not cover the liability of the owner of goods vehicle towards the hirer of the same while the latter was travelling by the vehicle.

60. With great respect, we are unable to agree with the above reasoning. We are unable to agree with the above reasoning. We have examined the earlier Full Bench decision of the Punjab High Court. To our mind, the learned Judges addressed themselves more to the question as to whether the passenger in the goods vehicle was required to be in the employment of hirer or owner of the vehicle or not. We do not find that the Court addressed itself to the question as to whether, in given circumstances," the hirer of the goods vehicle could be said to be travelling by the "practical or business reasons" on the basis of which the words "for hire or reward" in the said proviso to Section 95 (1) are construed does not appear to have been urged before the Full Bench of the Punjab High Court at all not does it seem to have been urged before the learned single Judge of the same Court in the subsequent case of Oriental Fire & General Insurance Co. Ltd. v. Kasturi Lal, 1968 A. C. J. 227 which we have referred to above. To our mind, the fact that the hirer of the goods vehicle who is the owner of the goods carried by the vehicle and who is a passenger of the vehicle at the time of the carriage, does not answer the description of being an employee either of the owner or hirer of the truck does not mean that he does not fall in the other category of passengers who are required to be covered by the insurance.

61. The above authority of the Punjab High Court in Kasturilal's case was

followed by the Madras High Court in the case of The Common Wealth Assurance Co. Ltd., Bombay Vs. V.P. Rahim Khan Sahib and Others, . The Court held that a owner of the goods accompanying the goods in a truck cannot be said to be travelling in the truck by virtue of any contract of employment. But as we see, even before the Madras High Court the point that the owner of the goods accompanying the goods in the truck hired by him answered the description of the passenger who was being carried for hire or reward was not urged before the learned single Judge.

62. With great respect, therefore, we are unable to concur wwith the ultimate conclusion arrived at by the said Court.

63. We are of the view that the better view as between the two sets of authorities is the one to which we have arrived upon the analysis of the statutory provisions. We are of the view that when a hirer of a goods vehicle for carriage of his goods is travelling by the said vehicle in connection with the carriage of the goods with the consent of the driver or owner of the goods vehicle in question, he must be deemed to be a passenger on the vehicle for reward within the meaning of Clause (ii) of the proviso to Section 95 (1) of the Act and hence the tortious liability of the owner towards him must be covered by the insurance policy contemplated by the said section.

64. We are of the view that the view of the Gujarat High Court and Karnataka High Court on this point is in consonance and in keeping with the provisions of the statute. We do not agree with the view expressed by the Tribunal that the earlier view expressed by the Tribunal that the earlier view expressed by the Gujarat High Court in (1974) 15 G LR 426 (Sakinabibi's case) is overruled by the Full Bench of the Gujarat High Court. The fact that it is toned down does not mean that its view is completely overruled. To our mind, the essential part of the earlier Gujarat decision still holds good and it is the correct exposition of law.

65. Having this view of the matter, we are of the opinion that this appeal must be allowed. We hold that the claimant is entitled to an additional amount of Rs. 7,200/- from respondent 2. In view of the fact that the Tribunal had held the liability of respondent 2 to be extending to Rs. 32,800/- only and in view of the fact that according to us he was entitled to a sum of Rs. 7,200/- the total amount he becomes entitled from respondent 2 is Rs. 40,000/-. We are also of the view that the claimant is entitled to recover the said amount from respondent 4 also and hence the decree can be executed against respondent 4 as well. It is however, made clear that the liability of respondents 2 and 4 shall be joint and several. So far as respondents 1 and 3 are concerned, the appeal against them fails and it stands dismissed so far as they are concerned. Respondents 2 and 4 shall pay the cost of this appeal to the appellant. The decretal amount shall pay the cost of this appeal to the appellant. The decretal amount shall carry interest at the rate of 6% p. a. from the date of the application till the date of satisfaction.

66. Appeal allowed.