
(2003) 12 MAD CK 0101
In the Madras High Court
Case No : C.M.A. No. 1481 of 1996

Natarajan

APPELLANT

Vs

D. Chandrasekaran and Others

RESPONDENT

Date of Decision : 24-12-2003

Acts Referred:

Motor Vehicles Act, 1939 — Section 95(1)
Motor Vehicles Act, 1988 — Section 147, 147A

Citation : (2004) 3 ACC 476 : (2004) ACJ 701 : (2004) 1 CTC 284

Hon'ble Judges : S. Sardar Zackria Hussain, J;K. Govindarajan, J

Bench : Division Bench

Advocate : P. Jagadeeswaran, for the Appellant; N.B. Surekha, for the Respondent

Final Decision : Allowed

Judgement

K. Govindarajan, J.—The Claimant filed the above Appeal aggrieved against the award passed in M.C.O.P.No. 399/1993, on the file of the Motor Accidents Claims Tribunal, Dharapuram, dated 24.1.1996; exonerating the 3rd respondent-insurance company from their liability to pay the compensation.

2. The claimant was travelling in the scooter bearing Regn. No. TN 33 Y 3994 as pillion rider and the scooter was driven by the 18th respondent. We need not traverse all the facts, as there is no dispute about the factual findings given by the Tribunal, including the fact that in the accident that took place on 5.2.1993, the appellant/claimant sustained injuries. Though the said scooter was insured by the 3rd respondent Insurance company, the Tribunal held that since the policy in question is an "Act only policy" the appellant being a pillion rider, he cannot claim any compensation from the 3rd respondent-insurance company as he is not a third party but he is a passenger in the said scooter.

3. Learned counsel for the appellant/claimant submitted that though under the Old Act, namely, 1939 Act, such a claim cannot be sustained against the Insurance Company on the basis of "Act only policy", u/s 147 of the Motor

Vehicles Act, 1988, which came into force on 1.7.1989, the 3rd respondent-Insurance Company is made liable to pay the compensation even to the pillion rider as the accident took place on 5.2.1993.

4. On the other hand, learned counsel for the 3rd respondent insurance company submitted that the policy issued is an "Act only policy" and they are not liable to pay the compensation at the instance of the pillion rider in spite of Section 147 of the Motor Vehicles Act, 1988, till 14.11.1994, on which date an amendment was made making the insurance company liable to pay compensation even to passengers,

5. So, the only question that has to be decided in this case is whether the insurance company is liable to pay the compensation to the appellant, who is a pillion rider, in view of Section 147 of the Motor Vehicles Act, 1988.

6. In the vehicle in question, namely, Bajaj Super 1991 which involved in the accident is covered by insurance policy No. 283227, is "Act only policy" which is taken only to minimum requirements of Section 147 of the Motor Vehicles Act, 1988. In the policy marked as Ex.B1 it is mentioned regarding limit of liability as "such amount as is necessary to meet the requirement of the Motor vehicles Act, 1988", Even as mentioned in Ex.B1 the carrying capacity of the said vehicle is two. In the present case, the accident took place on 5.2.1993. The insurance policy commenced from 2.12.1992 to 1.12.1993. These facts are also not in dispute.

7. The liability of Insurance Company could be statutory or contractual. A statutory liability cannot be more than what is required under the statute itself. The minimum requirements and risk compulsorily coverable under the insurance were mentioned in Section 95 of the Motor Vehicles Act, 1939, hereinafter called "the Act 1939", which reads as follows:

"95. Requirements of policies and limits of liability. (1) In order to comply with the requirements of this Chapter, a policy of insurance may be a policy which,

(a) is issued by a person who is an authorised insurer (or by a cooperative society allowed u/s 108 to transact the business of an insurer), and

(b) Insures the person or classes of persons specified in the policy to the extent specified in Sub-section (2)-

(i) 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 use of the vehicle in a public place;

(ii) against the death of or bodily injury 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 -

(i) to cover liability in respect of the death, arising out of and in the course of his

employment, of the employees 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, and such employee -

(a) engaged in driving the vehicle, or

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

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

(ii) except where the vehicle is a vehicle in which passengers are carried for hire or reward or by reason of or in pursuance of contract of employment, to cover liability in respect of the death of or bodily injury to persons being carried in or upon or entering or mounting or alighting from the vehicle at the time of the occurrence of the event out of which a claim arises, or

(iii) to cover any contractual liability.

Explanation:- For the removal of doubts, it is hereby declared that the death of or bodily injury to any person, or damage to any property of a third party shall be deemed to have been caused by or to have arisen out of the use of a vehicle in a public place notwithstanding that the person who is dead or injured or the property which is damaged was not in a public place at the time of the accident, if the act or omission which led to accident occurred in a public place."

The above said provision deals with the requirements of the policies and the extent of liability. u/s 95(1)(b)(i) of the Act 1939, the Insurance Company must indemnify the owner of the vehicle against any liability which may be incurred by him in respect of death or or bodily injury "to any person" or damage to any property of a third party caused by or arising out of the use of the vehicle in a public place. But that liability is only to the extent specified in Sub-section (2) of the said provision. Section 95(1)(b) of the Act 1939 deals with the claim of a passenger of a public service vehicle. As held in *National Insurance Co. Ltd. v. Jugal Kishore* 1988 ACJ 270 (S.C.) even though it is not permissible to use a vehicle unless it is covered at least under the "Act only policy", it is not obligatory for the owner of the vehicle to get it comprehensively insured, and if it is comprehensively insured, a higher premium than "Act only policy" is payable depending upon the estimated value of the vehicle. However, there is no prohibition u/s 95 of the Act 1939 prohibiting the parties contracting unlimited liability or higher liability to cover wider risk. In such an event, the insurer is bound by the terms of the contract as specified in the policy in regard to unlimited or higher liability as the case may be. In the absence of any such, terms of clause in the policy, the limited statutory liability cannot be expanded to make the unlimited or higher liability.

8. The Clause (ii) of the proviso to Section 95(1)(b) of the Act 1939 limits the application of the said provision to vehicle in which passengers are carried for

hire or reward or by reason of or in pursuance of contract of employment. In other words, the said Clause (ii) to the proviso would show that it excludes the liability of the Insurance Company in respect of death of or bodily injury to passengers in vehicle unless they are carried for hire or reward or they are carried for cover contractual liability if the vehicle covers by "Act only policy". So statutory insurance does not cover injury suffered by occupants of the vehicle who are not carried for hire or reward and the insurer cannot be held liable under the said provision

9. Subsequently, the Motor Vehicles Act, 1988, hereinafter called "the Act 1988" was enacted repealing the Act 1939. The Act 1988 came into force on 1.7.1989. We are concerned with Section 147 of the Act 1988. Section 147 of the Act as it stood prior to the amendment reads as follows:

"147. Requirements of policies and limits of liability:- (1) In order to comply with the requirements of this Chapter, a policy of insurance must be a policy which -

(a) is issued by a person who is an authorized insurer, and

(b) insures the person or classes of persons specified in the policy to the extent specified in Sub-section (2) -

(i) 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 use of the vehicle in a public place;

(ii) against the death of or bodily injury 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 -

(i) to cover liability in respect of the death, arising out of and in the course of his employment, of the employee of a person insured by the policy or in respect of bodily injury sustained by such an employee arising out of and in the course of his employment other than a liability arising under the Workmen's Compensation Act, 1923 (8 of 1923), in respect of the death of, or bodily injury to, any such employee -

(a) engaged in driving the vehicle, or

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

(c) if it is a goods carriage, being carried in the vehicle, or (ii) to cover any contractual liability

Explanation: For the removal of doubts, it is hereby declared that the death of or bodily injury to any person or damage to any property of a third party shall be deemed to have been caused by or to have arisen out of, the use of a vehicle in a public place notwithstanding that the person who is dead or injured or the property which is damaged was not in a public place at the time of the accident,

if the act or omission which led to the accident occurred in a public place."

So, u/s 147 of the Act 1988, Clause (ii) to the proviso of Section 95(1)(b) of the Act 1939 stands omitted and the restriction under the said proviso is totally non-existent under the new Act, namely, Act 1988. On the basis of the said omission of Clause (ii) of proviso to Section 95(1)(b) of the Act 1939, we have to deal with the scope of Section 147 of the Act 1988 with respect to the liability of the Insurer to pay compensation to a pillion rider.

10. Learned counsel for the 3rd respondent-insurance company submitted that the pillion rider is a gratuitous passenger and so they are not liable to pay compensation as the vehicle covers only by "Act only policy". According to her, no extra premium was paid to cover pillion rider. Learned counsel for the appellant/claimant submitted that in view of omission of Clause (ii) of proviso to Section 95(1)(b) of the Act 1939 in Section 147 of the Act 1988, the pillion rider would come under "any person" and even if the vehicle covers under the "Act only policy", the 3rd respondent-insurance company is liable to pay the compensation to the extent specified in Sub-section (2) of Section 147 of the Act 1988.

11. According to Sub-section (2)(a) of Section 147 of the Act, a policy of insurance referred to in Sub-section (1) of Section 147 of the Act, shall cover any liability incurred in respect of any accident, up to the amount of liability incurred, and in respect of damage to any property of a third party, a limit of rupees six thousand. On that basis, learned counsel for the appellant-claimant submitted that the Tribunal is not correct in exonerating the 3rd respondent-insurance company from their liability in paying the compensation to the claimant. Though the learned counsel for the 3rd respondent-insurance company has come forward with the plea that Section 147 of the Act came into force only on 14.11.1994, the same cannot be accepted as the said provision came into force on 1.7.1989, but the amendment to the said provision under the Act 54 of 1994 came into force on 14.11.1994. The said amendment is with respect to Sec. 147(1)(b)(i) of the Act 1988 inserting "including, owner of the goods or his authorised representative carried in the vehicle", after the words "or bodily injury to any person". The said amendment is only with respect to the goods vehicle and does not alter the scope of the provision with respect to other vehicles. The fact remains, the Clause (ii) to proviso to Section 95(1)(b) of the Act 1939 is not in existence in Section 147 of the Act 1988.

12. So, we have to decide the scope of the above said change in the provision with respect to passenger vehicles.

13. Courts have taken the view that "any person" and every "motor vehicle" contained in Section 95(1)(b) of the Act 1939 gives wider meaning but in view of restriction under proviso (ii) to the said provision, the main provision would have included all classes of vehicles including goods vehicle and all passenger vehicles were carried by hire or reward or by reason of or in pursuance of contract of

employment otherwise. As per proviso to Section 95(1) of the Act 1939, it is clear that the policy is not required to cover the liability in respect of death of or bodily injury to persons being carried in or upon entering or mounting or alighting from vehicle at the time of occurrence of the event out of which a claim arises, subject to the exception which is indicated and provided by Clause (ii) to proviso to Section 95(1) of the Act 1939, with exception to the passengers for hire or reward taken in the vehicle in which passengers are taken for hire or reward or who are taken by reason of contract, insurance policy will not be required to cover the risk of any person travelling in the vehicle who are not carried for hire or reward. This Clause (ii) to the proviso to Section 95(1) of the Act 1939 has been omitted to indicate in proviso to Section 147(1) of the Act 1988. So, it is clear that the legislature, when enacting the Act 1988 and Section 147 of the Act 1988, knowingly changed the tenor of the language and omitted the proviso (ii) to Section 95(1) of the Act 1939 and did not incorporate that clause in the proviso to Section 147 of the Act 1988 by which the legislature intended to provide something different and modified from the scope of Section 95(1) of the Act 1939, u/s 147 of the Act 1988, to that extent. Since the legislature had changed the tenor of the language and omitted certain provisions from being incorporated which existed at the time of enactment of the New Act, replacing the Old Act, the said change has to be properly understood and has to be given effect to. Had the legislature was not having different intention in enacting Section 147 of the Act 1988, it would have incorporated the entire provision of Section 95 of the Act 1939 as it did exist. Therefore, with respect to, private vehicles we are not expected to find out the intention of the legislature on the basis of the amendment under the Act 54/1994 which only deals with goods vehicle. So we cannot test the issue raised on the basis of the above said amendment and also on the basis of the decision of the Apex Court reported in *New India Assurance Co. Ltd. v. Asha Rani* 2003 (1) ACJ 1, in which the scope of amendment under the Act 54/1994 alone had been dealt with.

14. The Apex Court in the decision in *Smt. Mallawwa Etc. Vs. The Oriental Insurance Co. Ltd. and Others*, , appreciated the principles laid down in the decision in *Purshottam Udeshi v. Ranjit Ginning and Pressing Co.* AIR 1988 SC 1735 and held as follows:

"7. ... What is important to be noted is that the legislature, after providing generally in Clause (b) of Sub-section (1) in wide terms so as to include "any person" and every motor "vehicle" within its sweep, carved out certain exception by adding a proviso to the clause. By proviso (ii), it restricted the generality of the main provision by confirming the requirement to cases where "the vehicle is a vehicle in which passengers are carried for hire or reward or by reason of or in pursuance of a contract of employment." In absence of the proviso the main provision would have included all classes of vehicles including goods vehicles and all passengers whether carried for hire or reward or by reason of or in pursuance of a contract of employment or otherwise. That is the reason why there is a reference to different classes of vehicles in proviso (i). It refers to "vehicle",

"public service vehicle" and "goods vehicle". The words "any person" in the main provision would have included the employee of the person insured, and therefore, an exception was made by enacting proviso (i) so as to restrict liability of the insurer in respect of his employees. Both these exceptions were made as the legislature did not want to widen the liability of the insurer and the insured by making it more than what it was under the English Act, upon which Section 95 was based. As rightly pointed out by this Court in *Pushpabai Purshottam Udeshi and Others Vs. Ranjit Ginning and Pressing Co. (P) Ltd. and Another*, . The requirement of compulsory coverage was limited then.....

8. Again turning back to proviso (ii), we find that it in clear terms restricted the scope of the main provision by confining its application to that vehicle which is "a vehicle in which passengers are carried for hire or reward or by reason of or in pursuance of a contract of employment". In the first instance, the vehicle had to be a vehicle of that class in which passengers were carried. If that was not the intention of the Legislature, it would not have used the phraseology "the vehicle is a vehicle in which passengers are carried" and would have simply provided that "Except where passengers are carried for hire or reward...." So also the compulsory coverage was not intended for all passengers and, therefore, it was provided that "passengers are carried for hire or reward or by reason of or in pursuance of a contract of employment." Thus, the confinement of the operation of the main provision was in respect of vehicles and also passengers. And that was consistent with the English Law on which Section 95 was based."

15. The Apex Court in the decision in *National Insurance Company Ltd. Vs. Behari Lal and Others*, , while construing the scope of proviso to Section 147(2) of the Act 1988 has held as follows:

"7. A plain reading of Sub-section (1) of Section 147 of the New Act shows that to comply with the requirements of Chapter XI, it enjoins that a policy of insurance must be a policy which is issued by an authorised insurer and insures the person or classes of persons specified in the policy to the extent specified in Sub-section (2), referred to in this judgment as a statutory policy. A statutory policy covers any liability which the insured person may incur in respect of the death of or bodily injury to any person, including owner of the goods or his authorised representative carried in the vehicle or damage to any property of a third party caused by or arising out of the use of the vehicle in a public place and also against the death of or bodily injury to any passenger of a public service vehicle caused by or arising out of the use of the vehicle in a public place. The proviso thereto enumerates the liabilities which are not required to be covered by a statutory policy.

8. It is quite clear that Sub-section (2) of Section 147 of the New Act directs that subject to proviso to Sub-section (1), a statutory policy shall cover the amount of liability incurred except in respect of damage to any property of a third party for which a limit of rupees six thousand is specified. A careful reading of the proviso to Sub-section (2) discloses that any policy of insurance, issued with any limited

liability and in force immediately before the commencement of the New Act, shall continue to be effective for a period of four months after such commencement or till the date of expiry of such policy whichever is earlier.

9. Now, a policy of insurance may be a contract policy or a statutory policy. The proviso does not deal with unlimited liability which an insurer may undertake under a contract policy. It deals with a statutory policy with limited liability. The question, which, arises here is: what is the import of the phrase, "with any limited liability and in force"? To understand the meaning of this phrase, it becomes necessary to refer to Section 95 of the Old Act which deals with requirements of policies and limits of liability. Under Sub-section (2) of Section 95 a policy of insurance (a statutory policy) was required to cover any liability incurred in respect of any one accident, in the case of a vehicle in which passengers are carried for hire or reward or by reason of or in pursuance of a contract of employment; (1) in respect of persons other than passengers carried for hire or reward, a limit of one lakh and fifty thousand rupees in all; (2) in respect of passengers, a limit of fifteen thousand rupees for each individual passenger. Therefore, the phrase means a statutory policy under the Old Act with the limit prescribed therein which was valid immediately before the commencement of the New Act. The words are not employed to limit the liability of an insurance company to the amount specified in the policy by virtue of the provisions of Section 95(2) of the Old Act either for a period of four months or for a lesser period during which the policy is valid.

13. From the above discussion, it follows that the proviso to Sub-section (2) of Section 147 does not limit the liability of Insurance companies to payment of compensation to the extent specified in the policy of insurance in terms of Section 95(2) of the Old Act which is in force before the commencement of the New Act for a period of four months after commencement of the new Act or till the date of expiry of such a policy, whichever is earlier"

16. As stated already, in the recent decision of the Apex Court in *New India Assurance Co. Ltd. v. Asha Rani* 2003 (1) ACJ 1, the Apex Court had an occasion to deal with the scope of Section 147 of the Act 1988 and the amendment under the Act 54 of 1994 to the said provision. In the said decision, the Apex Court held that the decision in *New India Assurance Company Vs. Shri Satpal Singh and Others*, has not correctly decided the law. In *Asha Rani's* case (supra) the Hon"ble Judges of the Apex Court dealt with the liability of the Insurance Company with reference to goods vehicle and found that the expression "any person" will not cover either the owner of the goods or authorised representative being carried in the vehicle prior to the amendment Act 1994, even if widest interpretation could be given to the expression "to any person". This conclusion was arrived at only on the basis of the objects and reasons engrafted in the amended provisions. On that basis, it is found that it is difficult for the Court to construe that expression "include owner of the goods or his authorised representative carried in the vehicle" which was added to the pre-existing

provision "injury to any person" is either clarificatory or amplification of the preexisting statute and it clearly demonstrates that the legislature wanted to bring within the sweep of Section 147 and making it compulsory for the insurer to insure even in the case of a goods vehicle, the owner of the goods or his authorised representative being carried in a goods vehicle when that vehicle met with an accident and the owner of the goods or his representative either dies or suffers bodily injury. His Lordship, Mr. Justice S.B. Sinha, who gave separate judgment though concurred with conclusion of the other Hon'ble Judges, held as follows:

"24. We have further noticed that Section 147 of 1988 Act prescribing the requirements of an insurance policy does not contain a provision similar to Clause (ii) of the provision appended to Section 95 of 1939 Act. The decision of this Court in Smt. Mallawwa Etc. Vs. The Oriental Insurance Co. Ltd. and Others, , must be held to have been rendered having regard to the aforementioned provisions.

25. Section 147 of 1988 Act, inter alia, prescribes compulsory coverage against the death of or bodily injury to any passenger of "public service vehicle". Proviso appended thereto categorically states that compulsory coverage in respect of drivers and conductors of public service vehicle and employees carried in a goods vehicle would be limited to the liability under the Workmen's Compensation Act. It does not speak of any passenger in a "goods carriage".

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28. An owner of a passenger carrying vehicle must pay premium for covering the risks of the passengers. If a liability other than the limited liability provided for under the Act is to be enhanced under an insurance policy, additional premium is required to be paid. But if the ratio of this Court's decision in New India Assurance Company Vs. Shri Satpal Singh and Others, , is taken to its logical conclusion, although for such passengers, the owner of a goods carriage need not take out an insurance policy, they would be deemed to have been covered under the policy wherefore even no premium is required to be paid.

29. We may consider the matter from another angle. Section 147(2) of the 1988 Act enables the insurers to raise defences against the claim of the claimants. In terms of Clause (a) (i) (c) of Sub-section (2) Section 149 of the Act one of the defences which is available to the insurer is that the vehicle in question has been used for a purpose not allowed by the permit under which the vehicle was used. Such a statutory defence available to the insurer would be obliterated in view of the decision of this Court in New India Assurance Company Vs. Shri Satpal Singh and Others, . "

17. Pillion rider of a two wheeler is an authorised rider as per Section 128 of the Motor Vehicles Act, 1988. Even in the policy marked as Ex.R1, it is specifically

stated that occupants capacity is two. All such persons, whose risk on account of use of vehicle is required to be, are "third parties" in the sense that they are other than the insurer and the insured, in view of the fact that the words "third party" have not been defined in the Act or even in the Rules. In Stroud's Judicial Dictionary, the meaning of the word "third party risk" has been given as below:

"Third Party Risks (Road Traffic Act, 1930 (20 & 21 Geo. 5, c.43), Section 35) connotes that the insurer is one party to the contract, that the policy holder is another party, and that claims made by others in respect of the negligent use of the car, may be naturally described as claims by third parties". The Privy Council has also thus interpreted the words "Third Party Risk" in *Digby v. General Accidents Fire & Life Assurance Corporation*, 1943 A.C. 121".

18. The Division Bench of this Court in the decision in *National Insurance Co. Ltd., Madras Vs. V.S.R. Kumaresan and others*, , while dealing with the expression "third party", held as follows:

"3. Secondly, learned Counsel would submit that the claimant would not come within the category of "third party" so as to be covered by the policy. According to learned Counsel for the Insurance Company-appellant herein, the expression "third party" could only mean a person outside the vehicle and on the road and as such the policy would not cover the claimant. The terms of the policy, as such do not support such a theory. Nothing is stated in the policy to the above effect. But, learned Counsel would rely on a pronouncement of the Supreme Court in *Pushpabai Purshottam Udeshi and Others Vs. Ranjit Ginning and Pressing Co. (P) Ltd. and Another*, , in support of the theory advanced by him. The Supreme Court has dealt with the case of a car which was driven rashly and negligently and as a result of which the accident occurred, causing the death of a person who was travelling in the car. There was advertence to Section 95(1)(b), Proviso (ii) of the Act, to hold that it is not required that the policy of insurance should cover such a risk. That is the position evident from a reading of the said proviso. The operative or the latter portion of the proviso, as such, stated that a policy shall not be required to cover liability in respect of death or for bodily injury to a person being carried in or entering or mounting or alighting from the vehicle at the time of the occurrence of the event out of which a claim arises. But, there is an exception adumbrated in the first part of that proviso by virtue of which if 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, then it will fall outside that proviso and the general provisions requiring coverage by the policy shall govern. The vehicle with which the Supreme Court was concerned was a car and not a vehicle, in which the passengers were carried for hire or reward, as in the present case, and hence the view was expressed that it is not required that the policy of insurance should cover such risks, this would be the position, where the policy is in terms of the provisions of the Act. But, in addition to statutory terms, wider risks could be covered by what we call as a comprehensive policy. But, in our case, as we shall presently see the policy in terms of the Act itself will cover

the claimant. We do not think that this decision can be availed of by the learned Counsel for the Insurance Company-appellant herein, to wriggle out of the liability on this ground. In any event, the pronouncement of the Supreme Court relied on by the learned Counsel for the Insurance Company-appellant herein, does not at all support the theory projected by him that a third party could only mean a person outside the vehicle and on the road.

4. However, learned Counsel for the Insurance Company-appellant herein, would place reliance on the pronouncement of Swamikkannu, J. in *New India Assurance Co. Ltd. v. Kuppuswamy Naidu* 1988 ACJ 774 (Mad). That pronouncement does not express any specific opinion on this contention put forth by the learned Counsel for the Insurance Company-appellant herein, namely, that a third party would take only a person outside the vehicle and on the road. The facts of the case dealt with by the learned single Judge show that there was an unauthorised handling of the vehicle and in those circumstances it was opined that the Insurance Company cannot be made liable for the death of the pillion rider.

5. Learned Counsel for the Insurance-Company-appellant herein, thirdly wants to base a submission on the proviso (ii) to Section 95(1)(b) of the Act, to say that a policy shall not be required to cover risks for persons, who do not travel for hire or reward or in other words who are not passengers carried in the vehicle for hire or reward. This is a misconception and misconstruction of the language of the said proviso. Let us examine the relevant provisions of the Act. Chapter VIII of the Act deals with insurance of motor vehicles against third party risks. For our purpose, advertence to Sections 93 and 95 may be sufficient. Section 93(d) defines "third party" thus:

" "third party" includes the Government."

This is not very helpful and the definition is not exhaustive. But, it is now well accepted that the insurer or the Insurance Company, being one party to the contract; the insured or the policy-holder being another; the claims made by others in respect of the negligent use of the motor vehicle would be claims made by third parties. The concept entertained by the learned Counsel for the Insurance Company-appellant herein, that the expression "third party" would cover only a person, who was outside the vehicle and on the road, is too restricted a one to be accepted. Section 94 prohibits the user of a motor vehicle by any person other than a passenger, in a public place, unless there is in force in relation to the use of the said motor vehicle by the concerned person, a policy of insurance, complying with the requirements of Chap. VIII. Section sets down the requirements of policies and limits of liability. Section 95(1)(b) says that in order to comply with the requirements of Chap. VIII, a policy of insurance may be a policy, which insures the person or classes of persons, specified in the policy to the extent specified in Sub-section (2) -

"(i) 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 third party, caused

by or arising out of the use of the vehicle in a public place;

(ii) against the death of or bodily injury to any passenger of a public service vehicle, caused by or arising out of the use of the vehicle in a public place."

Section 95(1)(b) is generally couched, in respect of death or bodily injury to any person, without restricting it to any particular person or classes of persons. The person or classes of persons with reference to extent of liability in respect of such person or classes of person get exemplified by Sub-section (2), which we shall presently advert to. As per proviso (ii) to Sub-section (1), a policy shall not be required, except where the vehicle is a vehicle in which passengers are carried for hire or reward or by reason or in pursuance of a contract of employment to cover liability in respect of the death of or bodily injury to persons being carried in or upon or entering or mounting or alighting from the vehicle at the time of the occurrence or event out of which a claim arises. This proviso, as per the inbuilt exception, would not apply to the case of a vehicle, in which passengers are carried for hire or reward or by reason or pursuance of a contract of employment. The exception is with reference to the nature of the vehicle and not with reference to the persons carried in the vehicle. That the bus involved in the accident was such a vehicle is not in dispute. The contention that the accident must have occurred only in the course of and at the time of the user of the bus or the plying of the bus carrying passengers for hire or reward has been already repelled. Hence, the bus in question falls outside the said proviso, and it will come within the general provision found in Sub-section (1)(b)(i) and (ii). The position is made more clear when we advert to Sub-section (2)(b) of Section 95. It says that subject to the proviso to Sub-section (1), a policy of insurance shall cover any liability incurred in respect of any one accident, up to the following limits, namely:- (b) where the vehicle is a vehicle in which passengers are carried for hire or reward by reason or in pursuance of a contract of employment - (i) in respect of persons other than the passengers carried for hire or reward, a limit of fifty thousand rupees in all; (ii) in respect of passengers a limit of fifteen thousand rupees for each individual passenger. Here, again the reference is to the nature of the vehicle and the limitations are prescribed with reference to categories of persons carried in. It has been already found that proviso (ii) to Sub-section (1) of Section 95 would not apply to a vehicle in which passengers are carried for hire or reward. Thus, the rigour of Sub-section (2)(b) of Section 95 would fully come into play and by Clauses (i) and (ii) provision has been made to cover two categories; one in respect of persons other than the passengers carried for hire or reward; and the other in respect of passengers. This is a statutory requirement and this cannot be got over by any condition getting incorporated in the policy, militating against or abrogating from the statutory requirement."

19. The Apex Court also in the decision in *Amrit Lal Sood v. Kayushalya Devi Thapar*, AIR 1988 S.C. 1433, dealt with the said expression "third party" and found that it would include occupants of the car who had gratuitously travelled in

the car. But for the Clause (ii) of the proviso to Section 95 of the Act 1939, the "Act only policy" covers the risk of pillion rider as it comes under the definition "any person" as mentioned in Section 95(1)(b) of the Old Act. The same scope could be applied to the New Provision and the legislature, as stated above, has omitted Clause (ii) of proviso creating an obligation on the insured to specifically cover the liability with respect to the passengers other than the passengers mentioned under the proviso (ii) of Section 95(1)(b) of the Act 1939. Since the said proviso has been omitted and the restriction has been taken away thereby the insurance company which had covered third party risk under the "Act only policy" issued u/s 147 of the Act, liable to pay the claim of the pillion rider who is a gratuitous passenger.

20. In view of the above, the Tribunal is not correct in exonerating the appellant-insurance company from their liability to pay the compensation to the claimant. So, the award dated 24.1.1996 passed by the Tribunal is set aside holding that the compensation awarded by the Tribunal has to be paid by the 3rd respondent-insurance company. Hence this Appeal is allowed to that extent. No costs.