

(2008) 08 GUJ CK 0007

In the Gujarat High Court

Case No : First Appeal No. 2030 of 2008 with Civil Application No. 5492 of 2008
in First Appeal No. 2030 of 2008

National Insurance Company

APPELLANT

Vs

Shabbir Mohmad Kunjada and Others

RESPONDENT

Date of Decision : 25-08-2008

Acts Referred:

Motor Vehicles Act, 1939 — Section 95, 95(1), 95(2), 96(2)

Motor Vehicles Act, 1988 — Section 147, 147(1), 149(2)

Citation : (2009) 1 GLH 705

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

Bench : Single Bench

Advocate : Dakshesh Mehta, for the Appellant; None, for the Respondent

Judgement

H.K. Rathod, J.—Heard learned advocate Mr. Dakshesh Mehta appearing on behalf of appellant - National Insurance Company.

2. The Insurance Company has challenged the award passed by Motor Accident Claims Tribunal, Godhra in Motor Accident Claim Petition No. 2121 of 1999 Exh.85 dated 6th September 2007. The Claims Tribunal has awarded Rs. 1,57,000/- being a compensation with 7.5% interest in favour of respondents - claimants. It is a case of injury received by the claimant - Minor Sabbir Mahmmad Kunjada who was working as Mechanic. The accident occurred on 27th August 1999 when applicant and other friends and relatives were travelling in private vehicle Tata Sumo No. GJ-17-C-3428 from Dahod to Ajmer. On 27th August 1999 at about 5-00 am, when Tata Sumo was reached near Vijayvada-Bakalvada, at that occasion, opponent No. 1 who was driving the vehicle in a rash and negligent manner and turned turtle and due to that, the left hand of the applicant was crushed and he was admitted in hospital and complaint was lodged with Mina Police Station - Rajasthan and medical treatment was obtained in Baroda. The total claim was made by claimant Rs. 3 lakhs. The Insurance company - opponent No. 3 has filed reply vide Exh.19 and vide Exh.59, issues

were framed by Claims Tribunal.

3. Learned advocate Mr. Mehta raised contention before this Court that in Tata Sumo, ten passengers and one driver were not allowed as per condition, but, beyond sitting capacity they were travelling which amounts to breach of insurance policy and also raised contention that looking to the evidence of injured person, he was travelled in Tata Sumo on hire from Dahod to Ajmer. Therefore, it is a clear breach of condition of insurance policy being a private vehicle taken on hire. Therefore, insurance company is not liable to pay compensation to the claimant. The insurance company has not raised specific contention in written statement Exh.19. The insurance company has not led any oral evidence either of driver or owner - respondents No. 1 and 2. Respondents No. 1 and 2 - driver and owner of Tata Sumo remained absent before the Claims Tribunal and against them, ex-parte proceedings were initiated. Only insurance company - respondent No. 3 has filed reply vide Exh.19. So, before the Claims Tribunal, except claimant and his father's evidence was there which was cross-examined by advocate of insurance. The evidence of the claimant Exh.61 was not clear as to whether Tata Sumo was taken on hire by claimant or not. At the time when the accident was occurred, applicant Sabbirbhai was minor represented by his father Mahmmadbhai Chhotubhai Kunjada who was examined vide Exh.80. According to evidence of Sabbirbhai Exh.61, they were travelling in Tata Sumo No. GJ-17-C-3428 on 26th August 1999 along with his friends and relatives and accident occurred on early in the morning at 5-00 am on 27th August 1999 within 15 km. away from Ajmer in jurisdiction of Mina Police Station. Mahmmadbhai Chhotubhai Kunjada was examined vide Exh.80 and according to his evidence, his friend Kamleshbhai Parsottambhai Patel was having Tata Sumo and due to friendship for religious purpose, the Tata Sumo was taken from his friend. Therefore, Tribunal has considered the evidence of Mahmmadbhai Chhotubhai vide Exh.80 and come to conclusion that from the evidence of Mahmmadbhai, it was not come out the facts that Tata Sumo was taken on hire by claimant. There was no evidence from insurance company to examine the owner and driver to prove their contention before the Claims Tribunal that Tata Sumo was taken on hire by claimants. So, in absence of evidence of owner and driver, the Claims Tribunal has believed the evidence of Shri Mahmmadbhai Chhotubhai Kunjada Exh.80 and come to conclusion that Tata Sumo was not taken on hire, but, it was taken for religious purpose based on relationship of friendship. The Tata Sumo is a private vehicle and owner of the vehicle is entitled to travel with the friend for social obligation or religious purpose and without taking any fare from such friends. There was no slightest evidence on record that fare was paid by claimant to Kamleshbhai Patel, the evidence of Mahmmadbhai Kunjada Exh.80 was not rebutted by evidence of driver and owner of Tata Sumo. The insurance policy issued by insurance company is a comprehensive policy in favour of owner of Tata Sumo. In comprehensive policy, according to terms and conditions of such policy, if occupants of Tata Sumo are entitled to travel if their travelling is without paying any fare to the owner of the Tata Sumo, in this case

also, fare was not paid by claimant and there was no positive evidence contrary to the evidence of claimant produced by insurance company on record before the Claims Tribunal. The appellant company had not made any request to Tribunal to issue summons to driver and owner of Tata Sumo. No such efforts have been made. Therefore, Tribunal has rightly examined the matter as discussed in Para 7 of the award and come to conclusion that Tata Sumo was not taken by claimant on hire.

4. The other contention raised by learned advocate Mr. Mehta is that in Tata Sumo, more than sitting capacity, passengers were travelling, therefore, it amounts to breach of insurance policy. But, it was not the case of insurance company that because of travelling of more passengers in Tata Sumo, the accident has occurred. The Tribunal has relied upon the decision of Apex Court reported in National Insurance Co. Ltd. Vs. Bommithi Subbhayamma and Others, . This Court had an occasion to consider the identical question in case of United India Insurance Co. Limited v. Lalitaben Vinodbhai Punjabhai Vankar and Six Ors. in First Appeal No. 1579 of 2008 decided on 31st July 2008, where, this Court has considered the same question as to whether Jeep was hired by the deceased or not. The relevant discussions are made in Para 7 to 13, therefore, the same are quoted as under:

7. The important question raised by learned advocate Mr. Mazmudar is that according to complainant, this jeep was hired by the deceased, therefore, deceased was travelling as a passenger not as a friend or relative of the owner or driver of the jeep. It is necessary to consider Exh.34 that the complainant was examined in view of the admitting the contents of the complaint correct, but, in cross-examination, he denied the suggestions of the advocate of the insurance company that whether jeep was hired by the deceased or not. He gave answer "No". Therefore, this Court has to consider the evidence as a whole not only chief and not only cross-examination of the person. The entire evidence of Exh. 34 suggests that contents of the complaint admitting by complainant, but, he denied the fact that private jeep was hired by deceased going to attend the marriage function. Therefore, in such circumstances, it is a duty of the insurance company to prove by leading proper evidence on record that deceased and other persons those who were travelling in the jeep were travelling as a passenger on hire, but, no evidence was led by insurance company before the Tribunal. The driver was available. Notice, issued by the Claims Tribunal, was served on the driver, then, some efforts must have to be made by the insurance company to substantiate their contention before the Tribunal. Accordingly, raising the contention in written statement and to get some clue from the complaint is not enough for the insurance company to prove their contention before the Claims Tribunal. The driver and owner both are the persons who must have the knowledge as to whether jeep was hired or not, then, insurance company must have to make efforts by making an application before the Claims Tribunal to issue the summons as a witness to driver or owner for giving evidence before the Claims Tribunal in respect to the fact that whether jeep was hired or not. But, no

such efforts have been made by insurance company. Merely relying upon the contents of the complaint and admission of the complainant. That contents of the complainant are true, but, in cross-examination, he denied this fact. Therefore, in such circumstances, a duty of the insurance company to prove by cogent evidence their defence before the Claims Tribunal.

8. In this case, the jeep, where, the deceased was travelling, was a private jeep allowing the passengers upto 9 and for that, additional premium of Rs. 450/- was paid by the owner to the insurance company. Therefore, in private jeep, risk of nine passengers is covered and not disputed by insurance company, but, in such a private jeep, passengers for hire is not permitted as per insurance policy, otherwise, it amounts to breach of policy. The factual aspect is discussed by Tribunal that private jeep of friend was taken by deceased to attend the marriage function. Therefore, similarly in private car, occupants sitting in the car, their risk are covered in insurance policy. Therefore, in private jeep also, risk of nine passengers is covered as additional premium was paid. The Division Bench of Karnataka High Court has examined this question in respect to private car in case of *The Oriental Insurance Co. Limited Vs. Sri Purushotham T.M. and Others*, , where, the Division Bench has observed that while travelling in private car, one Nagendra died and claimants filed claim petition before the Tribunal. Whether the risk of such passenger travelling in private car is covered or not has been, in detail, examined. The relevant Para 3 to 8 are quoted as under:

3. In this appeal, Mr. Poonacha, learned Counsel appearing for the insurance company, while fairly did not challenge the quantum of compensation awarded by the Claims Tribunal but strongly urged that the deceased being an occupant in a private car, the Tribunal has seriously erred in law in fastening the liability on the insurance company. According to learned Counsel that in the absence of additional premium having been paid to the insurance company to cover the risk of the passengers, the insurance company could not have been made liable to satisfy the award passed by the Tribunal. In other words, it is his submission that the risk of an occupant/passenger in a private car is not compulsorily required to be covered u/s 147 of Motor Vehicles Act, 1988 (hereinafter referred to as "the Act") and there being no additional premium paid by the insured to cover the risk of the occupants, the insurance company could not have been made liable to pay compensation to the claimants, by the Tribunal. In support of his submission, the learned Counsel relied upon the decision of this Court in the case of *New India Assurance Company Vs. Smt. Kusum and Others*, and also the unreported decision of this Court rendered in the case of *Veerappa v. Sarmuddin* M.F.A. No. 2209 of 1995; decided on 26.5.1997.

4. We have gone through the judgments relied upon the learned Counsel. In our view, there is no merit in this appeal. It is necessary to point out that Tribunal in the impugned order has fastened the liability on the insurance company following the decision of this Court in the case of *Ramachandra and Another Vs. Shantaram and Others*, , rendered by one of us (H.G. Ramesh, J.). In the case of

Ramachandra (supra), this Court, after elaborately considering the law on the subject and more particularly the Full Bench decision of Oriental Insurance Co. Ltd. Vs. Ajayakumar and Others, , has held that under the provisions of Motor Vehicles Act, 1988 the insurer is compulsorily required to cover the risk of the passengers of a private car or of any passenger carrying vehicle including a two-wheeler. It is useful to refer to the observation made in the said judgment at para 15, which reads as hereunder:

(15) In view of the change in law as explained by this Court and the High Courts of Kerala, Madras and Madhya Pradesh in the above referred decisions, I hold that an insurer under the new Act is compulsorily required to cover the risk of passengers of a private car or of any passenger carrying vehicle including a two-wheeler....

5. It is also useful to refer to the observation made by Full Bench of Kerala High Court in the case of Oriental Insurance Co. Ltd. Vs. Ajayakumar and Others, of judgment, which reads as follows:

(11) It is in the light of the above we have to examine the effect of deletion of proviso (ii) while enacting Section 147 of the Motor Vehicles Act, 1988. Clause (b) (i) of Section 147 now stands limited only by proviso (i) and also the contractual liability which was incorporated originally as proviso (iii) in Section 95(1)(b), but as proviso (ii) in Section 147(1)(b). Proviso (i) deals with only the case of employees. The liability referred in Clause (i) would apply to the death of or bodily injury to "any person". Since the limitation brought under proviso (ii) that is, by excluding liability in respect of death of or bodily injury to a passenger except a passenger who is carried for hire or reward or by reason of or in pursuance of contract of employment is no longer available in the statute. Therefore, it has to be taken that the term "any person" referred in Clause (b)(i) would take in all passengers for hire or reward or otherwise. We do not find any merit in the contention raised by learned Counsel for the appellant that if the term "any person" in Clause (b)(i) would take in passengers in private vehicle carried in for hire or reward then it was unnecessary for the legislature to bring in the amendment under Act 54 of 1994 to include owner of the goods or his authorised representative carried in the vehicle in Clause (i). As was clearly observed by the Supreme Court in Smt. Mallawwa Etc. Vs. The Oriental Insurance Co. Ltd. and Others, , it would not be proper to consider a goods vehicle as a vehicle in which passengers are carried normally. It was under these circumstances, an amendment was required to include the owner of the goods or his authorised representative carried in the vehicle by specific amendment in Clause (i).

(12) In M/s. Road Transport Company Vs. Bhan Singh and Another, , a claim put forward for compensation in respect of death of 35 passengers travelling in a bus came up for consideration. The contention raised on behalf of the appellant was that the claim in respect of the death of the passengers in the bus should be considered u/s 95(1)(b)(i) and if that be so, the limitation regarding the

quantum of compensation provided u/s 95(2)(b)(ii) will not be applicable. It was submitted that wording of Section 95(1)(b)(i) is very wide to include a passenger in a bus, since the words used are "any person". This contention was rejected by the Supreme Court. It was held that Section 95(1)(b)(ii) being a specific provision made in respect of passengers of a public service vehicle, it is that provisions which is applicable in the case and not the general provision contained in Section 95(1)(b)(i), when the insured incurs liability in respect of the passengers travelling in his public service vehicle. As mentioned earlier it was proviso (ii) which excluded passengers in private vehicle from the net of Section 95(1)(b)(i), since that proviso is not available in Section 147 of the Motor Vehicles Act, 1988, the general provision in Clause (i) has to be taken as applicable to passengers carried in private vehicles not for hire or reward. A similar view was taken by Madhya Pradesh High Court in *Oriental Insurance Co. Ltd. Vs. Smt. Radharani and Others*, . It was held that an Act policy u/s 147 would cover occupant of a jeep who is carried without hire or reward.

(13) We, therefore, fully agree with the view taken in *United India Insurance Company Ltd. Vs. Appukuttan and Another*, , that a gratuitous passenger in a private vehicle is also covered by the Act policy u/s 147 of the Motor Vehicles Act, 1988....

6. We are in full agreement with the view expressed by this Court in the case of *Ramachandra and Another Vs. Shantaram and Others*, and also by the Full Bench of Kerala High Court in case of *Oriental Insurance Co. Ltd. Vs. Ajayakumar and Others*, . Further, it i also necessary to point out that the High Court of Madras in case of *New India Assurance Co. Ltd. Vs. Vijay Kumar and Others*, and also the decision of the High Court of Madhya Pradesh in the case of *Oriental Insurance Co. Ltd. Vs. Smt. Radharani and Others*, , have also taken the similar view.

7. In the light of what is stated above, we are of the view that the two single Judge decisions of this Court in the case of *New India Assurance Company Vs. Smt. Kusum and Others*, and in the case of *Veerappa M.F.A. No. 2209 of 1995*; decided on 26.5.1997, do not lay down correct law. In the case of *Kusum (supra)*, the learned single Judge has proceeded to take the view that the insurance company is not required to cover the risk of the gratuitous passenger in a private vehicle relying upon the judgment of Supreme Court in the case of *Ramesh Kumar Vs. National Insurance Co. Ltd. and Others*, ; in the case of *New India Assurance Co. Ltd. Vs. Asha Rani and Others*, and also the decision of Orissa High Court in the case of *Jibanananda Mohanty Vs. Artatrana Misra and Others*, and the decision of Andhra Pradesh High Court in the case of *Oriental Fire & Genl. Ins. Co. Ltd. v. M. Bhanumathi* 1990 ACJ 1043 (AP). In our view, the learned single Judge has failed to notice that the question that came up for consideration before the Apex Court in the case of *Ramesh Kumar (supra)* and also in the case of *Asha Rani (supra)* was with regard to the liability of the insurance company to cover the risk of a passenger travelling in a goods carrying vehicle. Similar is the position in the case of the decision in *Jibanananda Mohanty*

(supra) and in the case of M. Bhanumathi (supra). In the case of Ramachandra and Another Vs. Shantaram and Others, , this Court, as noticed by us earlier, has referred to the judgment of the Supreme Court in the case of Asha Rani (supra) and has taken the view that the said decision is of no assistance to the insurance company to avoid its liability to over the risk of a passenger travelling in a private car. Therefore, we are of the view, the decision of this Court in the case of Kusum (supra) relied upon by Mr. Poonacha, does not lay down correct law and the same is hereby overruled. Further, the decision rendered by the learned single Judge of this Court in the case of Veerappa (supra) also does not lay down the correct law, as the change in the law brought out by the provisions of new Act of 1988 was not considered by the learned single Judge in the said case. Therefore, we are unable to subscribe to the view expressed by the learned single Judge of this Court in the case of Veerappa (supra). Therefore, the view taken by this Court in the case of Veerappa (supra) that insurance company is not liable to cover the risk of passenger in a private car, does not lay down the correct law and, therefore, the same is hereby overruled.

8. In the light of the discussion made above, we have no hesitation to reiterate that the view taken by one of us (H.G. Ramesh, J.) in the case of Ramachandra and Another Vs. Shantaram and Others, , lays down the correct legal position. Therefore, the above appeal is liable to be dismissed and accordingly, it is dismissed. The amount deposited by the appellant before this Court is directed to be transferred to the Tribunal.

9. In this case, Insurance Company has not appointed investigator to inquire as to whether jeep was taken by deceased on hire or not. When the Insurance Company is having the investigator, then, such work can be entrusted by the Insurance Company to investigate, but, insurance company has not made any efforts to find out the correct facts being a rebuttal evidence against the claimant. If investigator was appointed, then, he can obtain the statement of owner and driver and thereafter, he can be examined in support of his report by the insurance company to prove the contention or defence raised by insurance company before the Claims Tribunal. But, insurance company remained silent and no evidence was led for proving their defence before the Claims Tribunal. The defence of Insurance Company is that there was a breach of condition of policy has not established that insured was responsible for the breach. Section 149(2) of Motor Vehicles Act, in case of breach of terms of policy onus is on Insurance Company to prove the breach.

The proposition of law is no longer *res integra* that the person who alleges breach must prove the same. The Insurance Company is, thus, required to establish the said breach by cogent evidence. In the event, the Insurance Company fails to prove that there has been breach of the conditions of policy on the part of the insured, the Insurance Company cannot be absolved of its liability.

Each case may post different problem which must be resolved having to a large number of factors governing the case including conduct of parties as regard duty

to inform, correct disclosure, suppression, fraud on the insurer etc. It will also depend upon the fact as to who is the owner of the vehicle and the circumstances in which the vehicle was being driven by a person having no valid and effective licence. No hard and fast rule, can therefore, be laid down. If in a given case there exists sufficient material to draw an adverse inference against either the insurer or the insured, the Tribunal may do so. The parties alleging breach must be held to have succeeded in establishing the breach of conditions of contract of insurance on the part of the insurer by discharging its burden of proof. The Tribunal, there cannot be any doubt must arrive at a finding on the basis of the materials available on records.

National Insurance Co. Ltd. Vs. Swaran Singh and Others, .

(1) National Insurance Co. Ltd. Vs. Swaran Singh and Others, , approved.

(2) V. Mepheron Vs. Shiv Charan Singh, , approved.

(3) New India Assurance Co. Ltd. Vs. Jagtar Singh and Others, , approved.

(4) National Insurance Co. Ltd. Vs. Ishroo Devi and Others, , approved.

(5) New India Assurance Co. Ltd. Vs. Latha Jayaraj and Others, , approved.

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The legislature, in its wisdom, has made insurance, at least third-party insurance, compulsory. The aim and purpose being that an Insurance Company would be available to pay. The business of the company is insurance. In all business, there is an element of risk. All persons carrying on business must take risks associated with that business. Thus, it is equitable that the business which is run for making profits also bears the risk associated with it. At the same time, innocent parties must not be made to suffer or loss. These provisions meet these requirements. We are thus in agreement with what is laid down in the aforementioned cases viz., that in order to avoid liability, it is not sufficient to show that the person driving at the time of accident was not duly licensed. The Insurance Company must establish that the breach was on the part of the insured.

United India Insurance Company Ltd. Vs. Leheru and Others, .

10. In case of private vehicle, if passengers carrying in no pleading and proof that insured authorised to the driver charged the fare from the passenger and no consent or knowledge or authority of the insured for such act of the driver, then, breach of condition of policy by the driver, then, burden lies on the insurance company to prove such breach, otherwise, insurance company will not relieve or set free from its liability. This aspect is considered by this Court in case of Oriental Insurance Co. Ltd. v. Minor Prayan Babubhai Patel Thro" Babubhai Manabhai Patni and Ors. reported in 1999 (2) GCD 898 (Guj.). The relevant Para 5 is quoted as under:

5. Babubhai Manabhai Patni, the claimant has been examined at Exh.104. Learned Counsel for the appellant does not dispute that in the examination chief he has not stated that his wife or son had paid fare to the driver, and that they were carrying baskets of vegetables. It is also not in dispute that the insurance company has not confronted this witness with his admission in the pleadings. Not only this, no suggestion has been made during the course of his examination by the insurance company that the deceased persons were travelling in the vehicle as paid passengers along with their vegetable baskets. Learned tribunal has kept in mind the settled principle that the pleadings are binding to the parties. Babubhai Manabhai was not travelling in the vehicle and he could not have personal knowledge of the fact that his wife and his son were travelling in the matador as paid passengers. He has not seen his wife and son giving fare to the driver and they were going with the vegetable baskets. In view of these facts this admission of the claimant was not taken to be an admission of the nature which normally taken to be substantive piece of evidence. The matter would have been different where he himself was a party to the payment of fare or he has seen the deceased as paying the fare to the driver. So far as the plea of carrying the vegetable baskets with them by the deceased is concerned, the Tribunal has made reference to the relevant piece of evidence and rightly reached to the conclusion that this is not the correct state of affairs. One more important fact has been noticed by the Tribunal that the driver has nowhere stated in the statement or his claim application that he has charged fare from the persons who were travelling at the time of accident in the vehicle. All the claim applications have been decided together. The learned Counsel for the appellant has failed to point out any such question put to the driver also. In this case some of the claimants who were victims of the accident and sustained injuries have been examined and from their statement it comes out that the driver of the Matador who was known to these persons permitted them to travel in the matador free of charge. So on the basis of these pleadings and the evidence which has come on record I do not find that any perversity is there in the award of the Tribunal, where it held that the deceased persons were there in the vehicle with permission of the driver out of human feelings and without payment of fare. Their status at the most was of a gratuitous person. Otherwise also even if it is taken to be a case where the driver has taken fare from these persons, still in the absence of any pleadings and proof by the appellant that this act of the driver was authorised by the insured or it was within the knowledge of the insured is of no consequence. Any act which results in violation of the breach of the condition of the policy by the driver will not relieve or set free the insurance company from its liability where it is not with the consent or knowledge or authority of the insured. The insured has not violated the terms of the policy and if the driver on his own volition did all these things the insurance company cannot be set free. In this respect reference may have to the full bench decision of this Court in the case of New India Assurance Co. Ltd. Vs. Kamlaben Sultansinh Jadav and Others, , wherein the court has held that in order to successfully disclaim its liability on the ground as set out in Section 96(2)(b) of

the Motor Vehicle Act, 1939 the insurance Company has to establish; (i) that on the date of the contract of insurance, the insured vehicle was expressly or implicitly not covered by a permit to carry any passenger for hire or reward; (ii) that there was a specified condition in the policy which excluded the use of the insured vehicle for the carriage of any passenger for hire or reward; (iii) that the vehicle was, in fact, used in breach of such specified condition on the occasion giving rise to the claim by reason of the carriage of the passenger therein for hire or reward; and (iv) that the vehicle was used by the insured or at his instance in breach of specific conditions including a condition that in the goods vehicle passengers for hire or reward were not to be carried. If it is done without knowledge of the insured, why the driver's acts or omissions, the insurer would be liable to indemnify the insured. The burden of proof that the driver has carried the passengers on hire or reward with the knowledge of the insured or the insured had permitted the driver to carry the passenger for hire or reward cannot be exonerated from its liability by virtue of nonobstantive Clause contained in the said provision. The fact that the insurance company has not proved that the insured has violated the terms of the policy or the driver at his instance, knowledge or authorisation has done it, irrespective of the fact of the admission made by the claimants, the insurance company has rightly been held to be liable to indemnify the insured for the amount of compensation awarded to the claimants in these two claim applications. Admission of the claimants is not that the driver has taken fare from the passengers with the knowledge or at the instance of the insurer. These matters are squarely covered by the aforesaid decision of this Court.

11. The similar view has been taken by this Court in case of United India Assurance Co. Limited v. Chhatrasing Parbatsing Rathod and Ors. reported in 1999 (2) GLR 1100.

6. From the contention of the learned Counsel for the appellant, the crux thereof is the fact that the tribunal has accepted that the claimants-respondents No. 1 in both these appeals were travelling in a private car as paid passengers with the knowledge of the owner. However, this contention is wholly devoid of any substance and further in total misreading of the judgment and award of the Tribunal. I find from the impugned award that the tribunal has recorded categorically finding that there is nothing on the record which proves that the driver of the jeep had allowed unauthorized persons to travel in the jeep in the knowledge of the owner. Much emphasis has been laid on the fact that the claimants-respondents have admitted that they travelled in the jeep as paid passengers. It is true that this admission is there but there is no admission of the claimants-respondents that the driver has permitted them to travel in the jeep as paid passengers under the instructions or knowledge of the owner of the jeep. The learned Counsel for the appellant is unable to show from the award of the tribunal as well as from the record of the case that there is any material evidence to show and establish that the claimants-respondents were travelling as paid passengers in the jeep with the knowledge of the owner. The insurance company

has also failed to prove and establish that the owner of the jeep has authorized or permitted the driver to carry in the jeep the paid passengers. The Full Bench of this Court in the case of New India Assurance Co. Ltd. v. Kamlaben, wd/o. Sultansinh Hukumsinh Jadav and Ors., affirming earlier decision of the Full Bench of this Court in the case of New India Assurance Co. Ltd. Vs. Kamlaben Sultansinh Jadav and Others, held that the insurer in order to successfully disclaim his liability on the ground mentioned in Section 96(2)(b) of the Motor Vehicles Act, 1939, has to establish:

(i) that on the date of the contract of insurance, the insured vehicle was expressly or implicitly not covered by a permit to carry any passenger for hire or reward,

(ii) that there was a specified condition in the policy which excluded the use of the insured vehicle for the carriage of any passenger for hire or reward,

(iii) that the vehicle was, in fact, used in breach of such specified condition on the occasion giving rise to the claim by reason of the carriage of the passenger therein for hire or reward, and

(iv) that the vehicle was used by the insured or at his instance in breach of specific conditions including a condition that in the goods vehicle passengers for hire or reward were not to be carried. If it is done without knowledge of the insured by the driver's acts or omissions, the insurer would be liable to indemnify the insured.

Reference may have to another decision of the learned single Judge of this Court in the case of National Insurance Co. Ltd. Vs. Premjibhai Manjibhai Vasava and etc. etc., , wherein it is held that in case where the insurer has no knowledge about his driver having taken passengers for hire or reward then notwithstanding the acts exclusionary Clause contained in the policy, insurer would be liable to indemnify insurer.

See: New India Assurance Co. Limited v. Kiritbhai Lalchand Shah and Ors. reported in 2002 (1) GLH 115 (DB)]

12. The Apex Court by the Hon'ble bench of three Judges has taken the said view in case of Amrit Lal Sood and Anr. v. Kaushalya Devi Thapar and Ors. reported in 1998 (2) GLR 1788. The relevant Para 8 and 12 are quoted as under:

8. Thus u/s II 1(a) of the policy the insurer has agreed to indemnify the insured against all sums which the insured shall become legally liable to pay in respect of death of or bodily injury to "any person." The expression "any person" would undoubtedly include an occupant of the car who is gratuitously travelling in the car. The remaining part of Clause (a) relates to cases of death or injury arising out of and in the course of employment of such person by the insured. In such cases the liability of the insurer is only to the extent necessary to meet the requirements of Section 95 of the Act. In so far as gratuitous passengers are concerned there is no limitation in the policy as such. Hence under the terms of

the policy, the insurer is liable to satisfy the award passed in favour of the claimant. We are unable to agree with the view expressed by the High Court in this case as the terms of the policy are unambiguous.

12. Learned Counsel for the appellants has placed reliance on the judgment in *New Asiatic Insurance Co. Ltd. Vs. Pessumal Dhanamal Aswani and Others*, in support of the claim of the first appellant. In that case, the insurer permitted another person to drive his car and while the said person was driving the car, it met with an accident. The driver of the car faced an action for damages. The question was whether the insurance policy would enable the said driver to claim indemnity from the insurance company. On a consideration of the terms of the policy, the Court held that the company would be liable to indemnify him. In the course of the judgment, the Court said (at p. 1741 of AIR):

The Act contemplates the possibility of the policy of insurance undertaking liability to third parties providing such a contract between the insurer and the insured, that is, the person who effected the policy, as would make the company entitled to recover the whole or part of the amount it has paid to the third party from the insured. The insurer thus acts as security for the third party with respect to its realising damages for the injuries suffered, but vis-a-vis the insured, the company does not undertake that liability or undertakes it to a limited extent. It is in view of such a possibility that various conditions are laid down in the policy. Such conditions, however, are effective only between the insured and the company, and have to be ignored when considering the liability of the company to third parties. This is mentioned prominently in the policy itself and is mentioned under the heading "Avoidance of certain terms and rights of recovery", as well as in the form of "An Important Notice", in the Schedule to the policy. The avoidance Clause says that nothing in the policy or any endorsement thereon shall affect the right of any person indemnified by the policy or any other person to recover an amount under or by virtue of the provisions of the Act. It also provides that the insured will repay to the company all sums paid by it which the company would not have been liable to pay but for the said provisions of the Act. The "Important Notice" mentions that any payment made by the company by reason of wider terms appearing in the certificate in order to comply with the Act is recoverable from the insured, and refers to the avoidance clause.

Thus the contract between the insured and the company may not provide for all the liabilities which the company has to undertake vis-a-vis the third parties, in view of the provisions of the Act. We are of opinion that once the company had undertaken liability to third parties incurred by the persons specified in the policy, the third parties' right to recover any amount under or by virtue of the provisions of the Act is not affected by any condition in the policy. Considering this aspect of the terms of the policy, it is reasonable to conclude that proviso (a) of para 3 of Section II is a mere condition affecting the rights of the insured who effected the policy and the persons to whom the cover of the policy was extended by the company, and does not come in the way of third parties' claim

against the company on account of its claim against a person specified in para 3 as one to whom cover of the policy was extended.

13. Therefore, according to my opinion, the insurance company has failed to discharge his burden before the Claims Tribunal by not leading proper evidence. In absence of cogent evidence, Tribunal has rightly come to conclusion that there is an additional premium paid by owner to the insurance company about Rs. 450/- covered nine passengers and therefore, insurance company is liable. According to my opinion, such conclusion of the Tribunal cannot consider to be a faulty in view of the fact that there is no cogent evidence produced on record by the insurance company to have the different conclusion. Therefore, the contention raised by learned advocate Mr. Mazmudar cannot be accepted in light of the evidence on record and also considering the failure on the part of the insurance company for not making any efforts to see that the driver and owner must have to be examined before the Claims Tribunal and no witness summons has been also applied by insurance company to the Claims Tribunal to prove this defence before the Tribunal.

5. In view of observations made by this Court in aforesaid decision and considering the facts which are on record, the insurance company has failed to prove the facts before the Claims Tribunal that on the date of accident, Tata Sumo was taken on hire by claimant. In comprehensive policy issued by Insurance Company, there is no need to pay additional premium for person those who are sitting in the Tata Sumo, means, occupants or sitting capacity, persons were travelling in Tata Sumo being a private vehicle not on hire, then, no additional premium is necessary to be paid by owner to the Insurance Company. These facts have been, in detail, discussed in one article written by Mr. S. Srinivasa Raghavan, Advocate, Madurai published in (2008) 5 MLJ 38. In this article, the advocate has taken pain to examine the question that in private vehicle if any person is travelling without any fare or hire, no additional premium is necessary in case of when comprehensive policy is issued by Insurance Company and relevant law also discussed at length including Circular No. MV 1 of 1978 Bombay dated 17.3.1978 from Tariff Advisory Committee, Bombay Regional Committee which is relevant to understand the contention raised by learned advocate Mr. Mehta. Therefore, the same is quoted as under:

Insured, no doubt, are they assured?

[By S. Srinivasa Raghavan, Advocate, Madurai]

A Critical Note on the Liability of Insurers to Compensate Occupants of Private Vehicels Under the MV Act, 1988

1. Introduction

Are my wife and children not covered by the policy of insurance of my care? Are they not third parties to my contract of insurance?

These were the queries posed to me by my friend, an once proud owner of a new

car, after his car met with an accident. His driver dashed against a roadside tree thereby wife and child of my friend who traveled in the car sustained grievous injuries. When 3 claim was before the Motor Accidents Claims Tribunal by the injured, the Counsel for the insurer of his vehicle has filed a written statement challenging the right of the injured to claim compensation from the insurer stating that she was an occupant of a private vehicle and such a person is not covered by the policy of insurance, whether statutory or comprehensive since the insured has not paid any additional premium to cover such a person or class of persons.

Well, before venturing in to an answer to the query either way, it may be stated that the liability of insurers to compensate victims of road accidents who happen to be occupants of private vehicles under the Motor Vehicles Act, 1988 (M.V. Act) has become an apple of discord of late.

2. Legal Provisions

A perusal of provision of law would be relevant. Section 147 of the Motor Vehicles Act, 1988 would read as under:

Section 147 - Requirements of Policies and Limits of Liabilities.

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

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

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

(i) against any liability which may be incurred by him in respect of death of or bodily injury to any person including owner of the goods or his authorized representatives 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;

(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.

3. Types of Coverage

In India two types of insurance policies are in vogue viz. (a) Statutory or Act Policy and (b) Comprehensive or package policy. Statutory or Act provides for coverage as per the provisions of the Motor Vehicle Act only but a comprehensive or package policy provides for wider coverage and is thus a special contract between the insurer and the insured. The insurers collect premium for such coverage as envisaged by various endorsements of the India Motor Tariff (IMT).

The term "comprehensive policy" is defined in Black's Law Dictionary as "all risk insurance" which in turn is defined as "Type of insurance policy which ordinarily covers every loss that may happen, except by fraudulent acts of the insured."

It is defined as under in *Miller v. Boston Insurance Co.* 218 A2d275 Pa.566 that the type of policy that protects against all risks and perils except those specifically enumerated.

The word comprehensive policy is defined in the *Concise Law Dictionary* of P. Ramanatha Iyer (Third Edition - Reprint 2008) as the policy that apart from the loss or damage suffered to the vehicle, it also assumes responsibility for third party liability.

Certain coverage not available under the statutory policy is made available under the package policy or comprehensive policy on payment of special or additional premium and such tariff structure is also governed by the IMT. The owner has got an obligation to obtain a policy of insurance but it is his liberty to choose between the two.

4. Settlement of issue under Statutory Policy

The issue of liability of insurers under the statutory policy came up for consideration before the Supreme Court of India in a case between *United India Insurance Co. Ltd., Shimla Vs. Tilak Singh and Others*, and it has been held that an insurer is not liable to compensate the claimants and to indemnify the owners of the vehicle when the pillion passenger of a two wheeler is either injured or dead in a road accident. The Supreme Court has reiterated this view in a case between *Oriental Insurance Co. Limited v. K.V. Suthakaran* 2008 Sccl. Com 579.

It is indisputable that the position of occupants of a private car and that of pillion passengers in two wheelers is one and the same.

Section 147 of the M.V. Act only covers passengers of public service vehicles. Definitions Clauses of the M.V. Act do not include motorcycles with or without gear and private vehicles like private cars and vans within the ambit of public service vehicles.

It is trite law that occupants of private cars and pillion passengers are not covered by the statutory policy or Act policy.

5. Dispute as to liability under Comprehensive Policy:

The moot question is as to whether insurers are liable to compensate such class of persons under a package or comprehensive policy or not.

Relevant here are the judgment of the Full Bench of Kerala High Court in *Mathew Joseph's case* 2007 1 TNMAC FB Kerala 500, Karnataka High Court in *Bhagyalakshmi's case* MFA No. 11996 of 2005(MV), Aurangabad Bench of Mumbai High Court in the *New India Assurance Co. Limited v. Ranglal Punju Nikam* F.A. No. 1252 of 2005 and that of Madras High Court in *National Insurance Company Ltd. Vs. Komalam, Mugunthan, Anitha and Salzer Electronics Ltd.*, and these cases are relied upon in support of the defense that the insurers are not liable under the comprehensive policy to cover such person or class of persons in the absence of payment of additional or special premium by the owner of the

vehicle.

So the type of policy that the insured has obtained from the insurer for the vehicle involved in the accident holds the key. The said verdicts hold that the insurers are not liable to compensate such a class of persons even under the comprehensive or package policy without payment of additional or special premium.

6. History of the dispute

This issue is not a new one altogether and in fact a useful reference to the judgment of the Supreme Court of India in Pushpabai Purshottam Udesi and Others Vs. Ranjit Ginning and Pressing Co. (P) Ltd. and Another, would be significant wherein it has held that u/s 95(1)(b)(i) of the M.V. Act 1939 that such a person or class of persons are not required to be covered.

The judgment of Supreme Court in the Pushpa Bai Purushotham Udesi and Ors. v. Ranjith Ginning & Pressing Co. Ltd. (supra) case had sent shock waves to the persons concerned as it was to the effect of undoing the practice prevalent hitherto.

7. Birth of a Circular that changed the scenario

The Tariff Advisory Committee, a statutory body constituted by the State to regulate the affairs and management of the insurers was apprised of the dispute and the Tariff Advisory Committee has come to the rescue of the insured persons by issuing a circular on 17-03-1978 which is extracted below:

Tariff Advisory Committee

Bombay Regional Committee

Circular No. MV 1 of 1978 Bombay 17.3.1978

Insurance Company's liability in respect of gratuitous passengers conveyed in a private cars - Standard form for private Car comprehensive Policy Section II - Liability to third parties.

I am directed to inform insurers that advices have been received from the Tariff Advisory committee to the effect that since the industry had all these years been holding the view on liability the same practice should continue.

In order to make this intention clear, insurers are requested to amend Clause 1(a) of Section II of the Standard Private Car Policy by incorporating the following words "death of or bodily injury to any person" appearing therein:

Including occupants carried in the motor car provided that such occupants are not carried for hire or reward.

I am accordingly to request Insurers to make the necessary amendment automatically as the above decision is being brought into force with effect from

25.3.1977.

Sd/- Regional Secretary

The circular above said has been extracted in the judgment of Division Bench of Gujarat High Court in Harshvardhatiya Rudraditya and Others Vs. Jyotindra Chimanlal Parikh and Another, .

It may not be out of context if I add that the circular above said was given retrospective effect i.e., from the date on which the Supreme Court delivered its judgment in Pushpa Bai's case.

8. Effect of the circular of TAC

From the moment onwards, all the insurance companies have carried out an amendment in the policy wordings of comprehensive policies for private vehicles thereby including the occupants of such vehicles and Section II of the Comprehensive Policy covers their risks. The result is that though not under the statutory policy, an occupant of a private vehicle is covered by comprehensive policy even without payment of additional or special premium as an in-built coverage.

Thus after the advent of the said circular, occupants of the private vehicles are also treated as third parties under comprehensive policies and as such they are entitled for unlimited coverage provided that such person is not carried for hire or reward. Unfortunately, none of the judgments above said favoring insurers have taken note of the said circular, as either party has not placed it before them.

The fact that the TAC thought fit of amending the policy wordings only and not the India Motor Tariff correspondingly is indicative of the fact that the basic premium payable for third parties encompasses coverage for such occupants of private vehicle. It is pertinent here to note that the basic premium payable for third party liability for private vehicles and commercial vehicles like a tourist taxi remains the same but the passengers of commercial vehicles are covered as such vehicles are public service vehicles.

9. Defense of the insurers

The insurers take recourse to the judgment of the Supreme Court delivered in Oriental Insurance Co. Ltd. v. Meena Variyal and Ors. 2007(2) TNMAC 9(SC) which is a case of one such employee whose risk is not required to be covered to meet with the requirements of the Motor Vehicles Act, 1988.

Pointing out that the Regional Manager of a company was not an employee whose risk under the provisions of the Workmen's Compensation Act was compulsorily required to be covered, the Supreme Court has held that the insurer was not liable to indemnify the insured. This verdict cannot be, by any stretch of imagination, construed as holding that all occupants of a private car are not covered, since the issue involved in this case is entirely different as the occupant happened to be an employee whose risk was not required to be covered under

the MV Act. Further, it has been stated that the vehicle was insured in terms of the Motor Vehicles Act, 1988 and there was no special contract.

10. Subsequent rulings pursuant to the TAC Circular

The Division Bench of Gujarat High Court in *Harshvardhatiya Rudraditya and Others Vs. Jyotindra Chimanlal Parikh and Another*, held the insurer liable under old M.V. Act on the basis of the said circular only. In fact the Karnataka High Court has held so in a case between *Bajaj Allianz General Insurance Company Limited Vs. B.M. Niranjana and Another*, and the Delhi High Court in *Ramesh Chand Tripathi Vs. Lily Joshi*, have held that the insurer is liable to compensate such a person or class of persons by placing reliance on the circular of TAC.

But the judgment of the Delhi High Court *Ramesh Chand Tripathi v. Lily Joshi* (supra), has also held that even in the statutory policy or Act policy, such persons are not covered.

The Supreme court of India in *Tilak Singh's* case and *K.V. Suthakaran's* case held on the contrary that a statutory policy does not cover such a person or class of persons.

The position of law is that ever since 1977 the insurers are liable to compensate the victims of road accidents under the comprehensive policy when such victims or injured happened to be occupants of the private vehicle.

11. More defense on the side of the insurers

There are arguments from some quarter that the present policy wordings contain something more than what the TAC had directed in 1978. In addition to the wordings as mandated by the TAC, we can find the following in the Comprehensive or Package policy:

But except so far as is necessary to meet the requirements of the Motor Vehicles Act, the company shall not be liable where such death or injury arises out of and in the course of employment of such persons by the insured.

There are interpretations that the liability is restricted to the requirements of the M.V. Act as interpreted by the Supreme Court in *Tilak Singh's* case. Here an extract of Section II(1) of the standard comprehensive policy for private vehicles would be relevant.

Section II(1)- death of or bodily injury to any person including occupants carried in the Motor Car (provided such occupants are not carried for hire or reward) but except so far as it is necessary to meet the requirements of the Motor Vehicles Act the company shall not be liable where such death or injury arises out of and in the course of the employment of such person by the insured.

The question is whether the reference to the MV Act in this Clause can be associated with the first part of the said Clause or whether it would go with the latter part only. If we adopt the former course, the Clause conveys no meaning,

as the sentence would be incomplete. If the reference to MV Act in this Clause is referred to the latter portion or part of the said clause, the sentence gets completed giving a meaningful interpretation to the intention of the lawmakers.

It means that the said reference to the Act in the said Clause applies to a situation where the occupant happens to be the employee of the owner of the vehicle insured. Because it is not the intention to cover each and every employee of the insured who travels in the insured private vehicle since the first proviso to Section 147(1)(b)(ii), the policy is not required to cover liability in respect of death arising out of and in the course of employment of an employee of the insured, other than the liability under the Workmen Compensation Act in respect of certain specified categories of employees.

Such words in the said Clause ensure that no person whose risk is specifically excluded from the purview of the Act and the policy gets within the scope and ambit of cover given to an occupant. So the plain meaning of the said Clause in the comprehensive policy for private vehicles as a whole is that all occupants other than those employees whose risk is not covered under the MV Act are covered under the policy. This view has also not been placed before the Courts while deciding the issue by either party.

12. Interpretation of the word "any Person"

It is also now settled that the words "any person" occurring in Section 147 does not bring within their fold an occupant of a private car or a pillion rider, and that the risk in respect of such persons is not required to be covered by an insurer in order to meet the requirements of Section 147(1). The reference to the term "any person" in the verdict of the Apex Court in *Amrit Lal Sood and Another Vs. Smt. Kaushalya Devi Thapar and Others*, is that of the term employed in Section II(1)(a) of the Comprehensive policy and not that of the term employed in Section 147 of the M.V. Act. In fact the same view has subsequently been taken by the Supreme Court in *T.V. Jose (Dr.) v. Chacko P.M.* 2001 ACJ 2059 SC.

The non-payment of premium of such persons, or the premium structure being the same for all policies as far as third party liability is concerned, become insignificant when the fact that the cover was granted free of cost from 1978 is viewed in the proper perspective.

The expression "any person" occurring in Section 147 has been interpreted by various Courts to be of wide connotation to include even an occupant and the expression "third party" has been interpreted to mean any person other than the insurer and the insured.

The Karnataka High Court in *New India Assurance Co. Ltd Vs. Jagdish Prasad Pandey and Another*, has held that these expressions used in Section 147 includes even a person travelling in a private car. This view may not be correct in the light of the repeated assertion of the apex Court in *Tilak Singh's* case and *K.V. Suthakaran's* case that the occupants of a vehicle cannot be construed as a

third party under the Act Policy.

Thus, an interpretation of the expression "any person" occurring in Section 147 would be governed by the law as lay down by the apex Court, but the Courts could take a different view of the matter if they were to interpret the words "any person" occurring in Section II of a comprehensive/package policy. There is nothing that could stop an insurer from contending that the risk is not covered had not the TAC brought forth the amendment in 1978.

13. Position of law

The issue relating to the liability of the insurer under the comprehensive policy was dealt with by a three member Bench of the Apex Court in 1998 in *Amrit Lal Sood and Another Vs. Smt. Kaushalya Devi Thapar and Others*, . Though the judgment was delivered much after the issuance of the said circular by the TAC, the policy in dispute in the said case was issued prior to the amendment to the said policy wordings.

The Apex Court has brought such occupants within the ambit of the term "any person" in Section II(1)(a) of the comprehensive Policy (and not in Section 147 of the MV Act) in its ruling above said *Amrit Lal Sood and Another Vs. Smt. Kaushalya Devi Thapar and Others*, and has accordingly held that under the comprehensive policy the insurer is liable to compensate the occupants of private vehicles.

The Andhra Pradesh High Court has held in *Oriental Insurance Company Ltd. Vs. Nakirikanti Narendra Babu and Others*, that the insurer is liable under comprehensive policy in the light of the specific wordings contained in Section II of the policy.

14. Applicability of the circular and decisions

The TAC circular is however applicable only to comprehensive policies only. An impression is gaining ground in the minds of insured persons and MACTs that the insurer would be liable even in a statutory policy in the light of the judgment of the Gujarat High Court in *Naynesh H. Nanavati Vs. Dashrath R. Bhagat and Others*, and in the judgment of the Delhi High Court in *Ramesh Chand Tripathi Vs. Lily Joshi*, , where the TAC circular is referred to hold the insurer liable in the case of a gratuitous passenger in a private vehicle. The discussion in paragraph 7.1 of the judgment in *Naymesh Nanavati*'s case mentions that the decision of the TAC relates to Clause (1) of Section II(a) of a Motor Car Comprehensive policy. Such a view is incorrect since the said wordings were added only to a comprehensive policy and no such addition can be attributed to a statutory policy.

The judgment of the Madras High Court in *National Insurance Company Ltd. Vs. Komalam, Mugunthan, Anitha and Salzer Electronics Ltd.*, has given raise to an impression that unless additional premium is paid to cover the risk of passengers in the vehicle, the insurer cannot be saddled with liability to pay compensation in respect of an occupant of a private car. In fact there is no provision in the IMT

that enables the owner of a private vehicle to take an unlimited cover in respect of occupants/pillion rider, and hence the question of paying additional premium to cover the risk in respect of an occupant does not arise at all. The liability of the insurer in respect of such occupants arises not on account of the collection of premium, but on account of the wordings in Section II of a comprehensive/package policy.

Occupants of a private car/pillion riders in two-wheelers do not fall within the expression "any person" occurring in Section 147. In the absence of a tariff structure to cover their risk, non payment of premium cannot be a ground to allow the insurer to wriggle out of the commitment granted u/s II(1)(a) of a comprehensive/package policy. The cover however, is not available where the death or bodily injury arises out of and in the course of the employment under the insured except to the cases required to be covered under Motor Vehicles Act. That is to say not all employees of the insured who happen to travel as occupants in the insured's vehicle would be covered u/s II(1)(a).

The only category of employee who would be covered to meet the requirement of the proviso (i) to Section 147(1)(b)(ii) is the employee engaged in driving the vehicle. So long as the words that presently occur in Section II(1)(a) of a standard package policy remain as they are, it would not be open to an insurer to take advantage of non-payment of premium to contend that the risk in respect of occupants of a private car and a pillion rider traveling on a two-wheeler is not covered under a comprehensive/package policy.

The dispute in Mathew Joseph case, and Bhagyalakshmi case rendered by Kerala and Karnataka High Courts respectively and the verdict in Kulandai Theresa and Ors. v. P. Ramalingam and Ors. (unreported case of Madras High Court in CMA No. 1137 of 1990 by Hon"ble National Insurance Company Ltd. Vs. Komalam, Mugunthan, Anitha and Salzer Electronics Ltd., have been decided in favour of insurers holding that without payment of special or additional premium no liability can be fastened upon them.

The type of policy under consideration in Kulandai Theresa's case is not mentioned therein The finding of the Madras High Court in National Insurance Company Ltd. Vs. Komalam, Mugunthan, Anitha and Salzer Electronics Ltd., that the insurer is not liable in this case is however justifiable on the grounds that the deceased was not just an occupant, but an employee of the insured whose risk is, even otherwise, not required to be covered under the MV Act.

15. Conclusion

The occupants of private vehicles are thus third parties in the eyes of law and death or bodily injury to such person or class of persons would entitle them or their dependents, as the case may be, to claim compensation from the insurers even without any additional premium by the owners of the private vehicles.

From the foregoing it may inevitably be concluded that the decision in favour of

the insurers would be justifiable only if the policy of insurance under consideration were a statutory policy and not otherwise. Such of those decisions which have held that the insurers are not liable under comprehensive policy to cover such occupants of private vehicles and pillion passengers without additional premium may be considered in the light of what is stated above.

6. In light of the law as discussed in aforesaid article and evidence on record, the contentions raised by learned advocate Mr. Mehta are not accepted and therefore, rejected.

7. No other point has been raised before this Court by learned advocate Mr. Mehta. However, looking to the award of compensation, according to my opinion, Tribunal has rightly awarded the compensation to the respondent claimant which cannot consider to be unreasonable and unjust. On the contrary, just and reasonable compensation has been awarded by the Claims Tribunal which does not require any interference by this Court while exercising the appellate powers.

8. Hence, there is no substance in the present appeal. Accordingly, present appeal is dismissed.

9. Registry is directed to transmit the amount which is deposited by Insurance Company before this Court, if any, to the concerned Claims Tribunal immediately.

10. In view of above order, Civil Application does not survive. Accordingly, Civil Application is disposed of.