

(2006) 10 GUJ CK 0027
In the Gujarat High Court

Case No : First Appeal No. 136 of 1984 in Cross Objection No. 39 of 2006

Naynesh H. Nanavati

APPELLANT

Vs

Dashrath R. Bhagat and Others

RESPONDENT

Date of Decision : 03-10-2006

Acts Referred:

Motor Vehicles (Passenger Insurance) Act, 1971 — Section 203(4)
Road Traffic Act, 1972 — Section 145

Citation : (2008) ACJ 61 : (2007) 1 GLR 567

Hon'ble Judges : Akshay H. Mehta, J

Bench : Single Bench

Advocate : M.D. Pandya, No. 1, for the Appellant; T.S. Nanavati, for Defendant Nos. 1 - 2 and Uday R. Bhatt, for Defendant No. 3, for the Respondent

Judgement

Akshay H. Mehta, J.—The original claimant has preferred this appeal for enhancement of the compensation granted by the Motor Accident Claims Tribunal [Main], Surat in M.A.C.P. No. 426/1980. He has been awarded a sum of Rs. 40,000/- together with running interest at the rate of 6% p a from the date of the application till realization and proportionate costs. The Tribunal has, however, held that in the instant case respondent No. 3 i.e., Oriental Fire and General Insurance Co. Ltd. was not liable to pay compensation to the appellant but respondents Nos. 1 and 2, namely driver and owner of the offending vehicle were saddled with the liability to satisfy the award. The judgment and award are dated 28/2/1983.

2. The appellant, at the relevant time, was working with C K Pithawala, contractor of Gujarat Narmada Valley Fertilizers. He received monthly salary of Rs. 300/-. On 16/6/1980 he was required to go to Surat. However, the condition of the car of the company in which he was supposed to travel, was not roadworthy and, therefore, he hired the car of respondent No. 2 by paying Rs. 175/-. Thereafter, the applicant, the Resident Engineer of the company one Mr. Chaudhary and one Mr. Mohanbhai Patel and the driver started at about 8.00 a m

on 16/6/1980. Respondent No. 1 was driving the car. They reached Surat and after finishing work at Surat they started to return to Bharuch. It was around 11.45 p.m. It is the say of the appellant that respondent No. 1 drove the car with excessive speed and despite repeated warnings, he did not slow it down. When the car was about to approach the Kim cross roads, on the curve, it dashed with one stationary truck. As a result of the same, the appellant received serious injuries on face. His two teeth were uprooted and one was broken. He had also received other injuries on the face. He was immediately removed to Bharuch hospital and kept as indoor patient for about 14 days. Thereafter he was taken to Jaslok Hospital at Bombay for further treatment and plastic surgery. He was thrice operated upon and thereafter he was advised regular follow up treatment once in a month. It is averred in the application by the appellant that even after he was discharged from the hospital, he had to take physiotherapy treatment at SSG Hospital, Vadodara. According to him, because of the injuries received on his face, there was disfiguration of the face and the permanent disability was caused. He, therefore, approached the Claims Tribunal to obtain compensation. Before the Tribunal he initially claimed Rs. 52,000/- but subsequently claim was raised to Rs. 99,999/-.

2.1. Respondent No. 1 resisted the claim by filing written statement at Exh. 34. According to him, he was not rash and negligent while driving the vehicle on the date of accident. He also denied that the vehicle was hired at the rate of Rs. 175/-. According to him, the accident did not occur on account of his negligence or rashness. He averred that amount of Rs. 175/- was fixed for petrol, oil, etc. He also stated that the to and fro fare for Bharuch to Surat would be ordinarily Rs. 250/- to Rs. 300/-. So far respondent No. 2 is concerned, he did not file any written statement.

2.2. Respondent No. 3 the Insurance Company filed two written statements i.e., at Exh. 12 and at Exh. 40. The main contention of the respondent No. 3 was that the Insurance Company was not liable to indemnify the insured because the car was used in violation of the terms and conditions of the policy. It was alternatively contended that the appellant was gratuitous passenger in a car and, therefore, the Insurance Company was not liable.

2.3. At the hearing, so far the appellant is concerned, he examined himself as well as Dr. Buch, who, at the relevant time, was Hon. Plastic Surgeon at Bombay. The appellant also placed reliance on documentary evidence. These documents pertained mainly to his injuries and the medical treatment received by him. Respondent No. 3 produced the policy in respect of the offending vehicle. The Tribunal on the basis of the material produced before it as well as the oral evidence, reached the conclusion that the accident occurred on account of the sole negligence of respondent No. 1. It also held that since respondent No. 1 had caused the accident in the course of the employment of respondent No. 2, respondent No. 2 was vicariously liable for the negligent act of respondent No. 1. The Tribunal assessed the compensation payable to the appellant at Rs. 40,000/-

against the claim of Rs. 99,999/-. It also came to the conclusion that since the offending vehicle was used for hire, respondent No. 2 had violated the conditions of the policy and the Insurance Company was not liable to satisfy the award.

2.4. The appellant has, therefore, approached this Court for enhancement of the compensation as well as to challenge the finding of the Tribunal exonerating the Insurance Company.

2.5. Respondents No. 1 and 2 have not preferred any substantive appeal before this Court but they have filed their cross objections dated 2/1/1985 to challenge the award to the extent the Insurance Company was exonerated and they were saddled with the liability to pay the compensation. 3. I have heard Ms. Maya Desai, learned advocate appearing for the appellant, Mr. Ankur Y Oza, learned advocate appearing for Mr. TS Nanavati for respondents No. 1 and 2 and Mr. Uday Bhatt, learned advocate appearing for respondent No. 3. The record and proceedings of the case are kept present. It is the submission of Ms. Desai that the award of the Tribunal is very conservative and it is required to be modified. According to her, the compensation awarded to the appellant is hopelessly inadequate and it is required to be enhanced substantially. She has submitted that considering the nature of the injuries and also the medical treatment, which the appellant was required to undergo, the appellant deserved the grant of entire claim, but the Tribunal has grievously erred in curtailing it considerably. She has taken me through the evidence of the appellant as well as Dr. Buch.

3.1. Mr. Oza has vehemently submitted that the finding given by the Tribunal with regard to liability of respondents No. 1 and 2 to satisfy the award, is erroneous. He has submitted that the evidence clearly showed that the vehicle was not used for hire or reward and no violation of the conditions of the policy was committed by respondents No. 1 and 2. He has also submitted that the reliance placed by the Tribunal on the decision cited by the Insurance Company is not proper. According to him, it is the liability of respondent No. 3 to satisfy the entire award. He has, therefore, submitted that the cross objections filed by respondents No. 1 and 2 be allowed.

3.2. As against that, Mr. Uday Bhatt, learned advocate appearing for the Insurance Company has fully supported the judgment of the Tribunal. He has submitted that the evidence on record clearly showed that the offending vehicle was hired by the appellant for travelling from Bharuch to Surat and back and, therefore, the insured had committed breach of the conditions of the policy and, therefore, the Insurance Company was not liable to pay compensation to the appellant. He has further submitted that even otherwise in view of the decision of the Apex Court rendered in the case of Pushpabai Purshotam Udeshi v. Ranjit Ginning and Pressing Co. reported in 1977 ACJ .343, the Insurance Company is absolved from discharging the liability to reimburse the insured. He has, therefore, submitted that this appeal has no merit and it is required to be dismissed.

4. It is not in dispute that the offending vehicle belonged to respondent No. 2 and it was insured with respondent No. 3. It is also not in dispute that on the relevant date, the appellant travelled in the said vehicle. They went to Surat and while they were returning at night, the vehicle dashed with a stationary truck near Kim cross roads causing the accident. The appellant received serious injuries on his face and initially was admitted in the Bharuch Hospital but subsequently removed to Jaslok Hospital at Bombay. It is an evidence that respondent No. 1 while returning from Surat, drove the vehicle at an excessive speed. He was warned repeatedly by the other inmates of the car including the appellant, but he did not pay any heed to the warnings and he did not slow down the car. When they approached Kim cross roads, the car dashed against the stationary truck parked on the side of the road. The Tribunal has considered the evidence on what actually happened at night and thereafter it has come to the conclusion that the accident was caused on account of the negligence of the appellant. Naynesh Harshad Nanavati i.e., appellant, has examined himself and his evidence is at Exh. 54. He has in detail stated that respondent No. 1 was driving the vehicle at an excessive speed and he did not slow down the car in spite of repeated warnings. He has stated that he was sitting by the side of the driver. When they approached the Kim cross roads, he saw one stationary truck facing Bharuch. The truck had rear lights. He shouted to stop the car but respondent No. 1 could not control it. As a result of this, the car dashed against the stationary truck. On this aspect, there is no effective cross-examination.

4.1. Respondent No. 1 has examined himself at the proceedings and his evidence is at Exh. 56. He has stated that he drove the vehicle at a moderate speed and when they were approaching the Kim cross roads, the light of the offending vehicle failed so also the brake. He has further stated that ahead of them, a truck was parked which did not have any back lights. Because of this, the front portion of the vehicle driven by him dashed against the stationary truck. It is difficult to accept this version of respondent No. 1. On the face of it, it does not sound plausible and appears to have been cooked up to save his own skin. As against that, the appellant's evidence on this aspect seems to be more reliable and acceptable. Hence, I do not see any error having been committed by the Tribunal while concluding that it was respondent No. 1 who was totally negligent and the accident occurred solely on account of his negligence.

5. This brings me to the question whether the compensation awarded by the Tribunal is just and proper.

The appellant has claimed a global amount of Rs. 99,999/- by way of compensation. The detailed break-up in the petition is not given. However, the Tribunal has discussed various relevant aspects for determining the compensation under different heads. The Tribunal has awarded Rs. 12,000/- for pain and suffering. For medical expenses, transport and sundry expenses, it has awarded Rs. 5,000/-. It has also awarded Rs. 1,000/- for the loss of wages of the attendant who looked after the appellant during his hospitalization. The

appellant, at the relevant time was the student and on account of the injuries suffered by him, he had lost one term of his studies. The Tribunal has awarded Rs. 2,000/- for the same. It has also awarded Rs. 2,000/- for loss of actual income. For diminishing the marriage prospects the Tribunal has awarded Rs. 4,000/- and for future medical expenses, it has awarded Rs. 5,000/-. It has also awarded Rs. 8,000/- for future loss of income on account of the disability suffered by the appellant. The total comes to Rs. 39,000/-. However, the Tribunal has awarded round figure of Rs. 40,000/-. According to Ms. Desai, the Tribunal's assessment of the compensation is very conservative and that has resulted into award of inadequate amount of compensation. She has submitted that almost on all counts the amount of compensation is required to be enhanced.

5.1. The relevant discussion in the judgment of the Tribunal shows that it has in detail dealt with various aspects. But the grievance of the appellant is that the amount awarded under each head by the Tribunal is on lower side. The question, therefore, is whether the compensation awarded by the Tribunal can be said to be just and proper.

5.2. It is not in dispute that in the accident the appellant suffered most of the injuries on his face. There were deep scars caused on the face. After initial treatment in a hospital at Bharuch, he was shifted to Jaslok Hospital at Bombay. His two teeth had fallen; whereas one was broken. He had suffered residuary facial palsy on right side. This fact is brought out from the certificate issued by Dr. Hudani at Exh. 64. He is an Ophthalmic Surgeon. The certificate shows that he was advised plastic surgery to remove the ugly scar on his face. This certificate is also endorsed by Dental Surgeon attached to Civil Hospital at Bharuch and the Medical Officer, Civil Hospital, Bharuch. At Jaslok Hospital in Bombay the appellant was operated upon five times for the purpose of plastic surgery. To support this fact, the appellant has examined Dr. Buch, who performed the plastic surgery on the appellant. He has stated that in the month of July 1980 the appellant had contacted the witness at his clinic in Shantacruz. On examining him, he advised the appellant to have the plastic surgery done. Following his advice, the appellant took treatment of the witness at Jaslok Hospital. When he examined the appellant he had found the following injuries:

- i. He had a deep ugly scar on right side of the face. The scar extended from cheek bone to lower jaw bone,
- ii. His facial nerve which moves the muscles of the face was divided due to the injuries. Because of this injury, he could not close his right eye. His lower face was without any expression and it was expressionless. His mouth was deviated to the left side because of the paralysis of the muscles.
- iii. He had sustained injury to his right upper eyelid. Because of this injury he could not close his upper eyelid.
- iv. He had vertical scar on the left side of the face almost at the similar sight as on the right. But there was no injury to the deeper tissues-muscles.

v. He had a scar on the lower lip and chin.

He has also stated that the appellant had to undergo five operations and the first operation was carried on 22/7/1980 and the last operation was performed on 30/3/1981. According to the witness, the appellant had lost two teeth and one tooth was half broken. He has further stated that on the upper part of the eye lashes of the appellant, new skin was grafted and the scares on the face were removed. He has further stated that the sensation of the right side face had decreased and in his opinion the appellant would not be in a position to work properly as he was doing prior to the date of accident. He has also stated that the appellant would require denture of two teeth. After the surgical treatment was over, he was advised physiotherapy by the witness. The witness has further stated that in pursuance of his advice the physiotherapy treatment was obtained by the appellant at Vadodara. In the opinion of the witness, for restoring the original look, the patient i.e., the appellant would require to undergo yet one operation in future and for that he would be required to stay in the hospital for one full week as an indoor patient and he would not be in a position to expose himself to the sun light. In the cross-examination the witness has stated that after the plastic surgery, the face look was more or less like the before. In his opinion, the sensation of the right cheek had lessened to the extent of 40%. Nothing much has been brought out in the cross-examination.

5.3. The aforesaid evidence of Dr. Buch as well as the certificate issued by Dr. Hudani clearly showed that serious injuries were suffered by the appellant on face and for the repeated operations performed during the plastic surgery treatment, the face of the appellant would have remained ugly. With five operations undertaken at Jaslok Hospital, the face of the appellant could be restored almost to its original looks barring some faint scar on the face. According to Dr. Buch, even that could be removed by future surgery and polishing. The aforesaid discussion would, therefore, show that the amount of Rs. 12,000/- awarded by the Tribunal was very much less, even by the standard prevailing then. The Tribunal ought to have assessed the compensation under this head atleast at Rs. 25,000/-. Thus, under this head, additional amount of Rs. 13,000/- is required to be awarded to the appellant.

5.4. Under the head of medical expenses, the Tribunal has assessed the compensation at Rs. 5,000/-. The Tribunal has mainly taken into consideration the fact that inspite of the fact that the appellant had taken treatment at Bharuch hospital and at Jaslok hospital, no documentary proof has been produced by him to substantiate his say. It is true and at the same time it is surprising also that why the appellant did not produce the bills pertaining to medical treatment, however, in light of the certificate of Dr. Hudani as well as the evidence of Dr. Buch, it is crystal clear that the appellant had taken extensive medical treatment and only as a result of that the original look of his face could be restored. Even when the documentary evidence is not produced by the appellant, this Court can take judicial notice of the fact that the appellant had

taken treatment in the Jaslok Hospital at Bombay and to have treatment at Jaslok Hospital is a expensive proposition. The appellant had to undergo operations five times and the skin grafting had to be done. Naturally the appellant would have spent substantial amount for the same. Rs. 5,000/- awarded by the Tribunal is, therefore, hopelessly inadequate. It is to be noted here that as a result of the accident, the appellant had lost two teeth and one tooth was half broken for which he had to get the special denture of two teeth. He also took the physiotherapy treatment at Baroda for considerably long period. Even considering the standards prevailing in those days, the medical expenses would not have been less than Rs. 22,000/-. He is, therefore, required to be granted additional amount of Rs. 17,000/- on that count.

5.5. The evidence of Dr, Buch shows that the appellant was required to undergo one more surgery and for that he would be required to remain in the hospital for about a week or so. The Tribunal has awarded only Rs. 5,000/- for such future expenses. The Tribunal has, however, completely overlooked the fact that the appellant will not only incur the expenses for treatment, but will also suffer the pain as well as loss of actual wages. On this count the Tribunal has awarded Rs. 5,000/-. The same is required to be enhanced to Rs. 12,000/-. Hence, additional compensation of Rs. 7,000/- on this count is required to be given to the appellant.

5.6. The Tribunal, for the future loss of earning and discomfort, has awarded Rs. 8,000/-. But considering the disability suffered by the appellant, compensation under this head is required to be enhanced to Rs. 12,000/- i.e. Additional amount of Rs. 4,000/- is required to be given to the appellant.

5.7. According to Ms. Desai, the Tribunal ought to have awarded higher amount for the loss of marriage prospects and also substantial amount for disfiguration. Her submission cannot be accepted mainly because the evidence of Dr. Buch as well as the photographs of the appellant, which have been taken immediately after the accident and before the treatment and also the photographs which are taken after the completion of the treatment, show that the original looks of the appellant have been restored almost completely. Now there is no obvious disfiguration. It can also be visualized that on account of the treatment and restoration of the original looks the marriage prospects of the appellant would not decrease. The Tribunal has, however, awarded a sum of Rs. 4,000/- under the head of decrease of marriage prospects. So far the disfiguration is concerned, it is included in the amount under the head of pain, shock and suffering. No additional amounts are therefore required to be given on these counts. The future loss of actual income, etc., has also been assessed properly. In view of the same, no additional amount is required to be granted to the appellant except under the heads which have been discussed above.

6. Another important question that is required to be considered at this juncture is whether the Tribunal was right in exonerating the Insurance Company i.e., respondent No. 3. The appellant has challenged this finding in this appeal. So far

respondents No. 1 and 2, who are the driver and owner of the offending vehicle are concerned, they have also challenged this finding by filing cross objections. The defence of the Insurance Company was, as revealed from its written statement, that the owner had committed breach of the conditions of the policy by using the vehicle for hire or reward and, therefore, the Insurance Company was not liable to satisfy the award. It was also contended in the alternative that since the appellant was gratuitous passenger in a private vehicle, his risk was not covered and, therefore, Insurance Company was not liable to pay the amount of compensation. The Tribunal on the basis of the evidence adduced before it, arrived at a conclusion that the vehicle was used for hire or reward and, therefore, there was clear breach of the terms of the policy which absolved the Insurance Company of its liability to satisfy the award. It also came to the conclusion that in view of the judgment of the Apex Court rendered in the case of Pushpabai Purshottam Udeshi v. Ranjit Ginning & Pressing Co. Ltd. [supra], the risk of the appellant was not covered since he was a gratuitous passenger travelling in a private vehicle and for that reason the Insurance Company was not liable to satisfy the award. The Tribunal further referred to the judgment rendered by the Division Bench of this Court in the case of Oriental Fire and General Insurance Co. Ltd. v. Gandhi Ramanlal Kantilal reported in 1979 ACJ .65 and held that in the instant case the appellant was not travelling in the offending vehicle by virtue of the contract of employment and, therefore, his risk was not covered.

6.1. Ms. Desai, learned advocate for the appellant as well as Mr. Ankur Oza, learned advocate for respondents No. 1 and 2 submitted that the finding of the Tribunal is erroneous. They submitted that the evidence on record, and in particular that of the appellant and his father, namely Harshadrai Nanavati, clearly shows that the vehicle was not hired and whatever amount that was paid was meant only for the fuel charges and for the daily wage of the driver. Neither hire charges nor any reward was paid. In their submission there was no breach of the condition of the policy and therefore, the Insurance Company was liable. They also submitted that the reliance placed by the Tribunal on the decision of the Apex Court in the case of Pushpabai [supra] was not proper. They, therefore, submitted that the Insurance Company is liable to satisfy the award. As against that, Mr. Uday Bhatt, has vehemently submitted that the finding of the Tribunal on both the counts is just and proper. He also placed reliance on the averments made in the claim petition as well as the evidence of the appellant and of respondent No. 1 to show that the vehicle was hired. He drew attention of the Court to the policy and in particular to the prohibition on the use of the vehicle for hire or reward and submitted that since there is breach of the terms of the policy, the Insurance Company is not liable to satisfy the award.

6.2. It is true that in the claim petition averment has been made to the effect that for going to Surat appellant had hired offending vehicle i.e., motor car bearing registration No. GRA 8266 from respondent No. 2 for a sum of Rs. 175/-. This averment has been extensively relied on by the Tribunal to hold that the

vehicle was hired by the appellant. However, the appellant in his evidence, in examination-in-chief, has clearly stated on oath that amount of Rs. 175/- was paid to the driver for meeting the expenses and the said amount was not given as hire charges. The appellant has also rendered explanation in the evidence that on account of bonafide mistake on the part of father of the appellant, the aforesaid averment in the petition was made. He has further stated that he had cursorily glanced through the petition since there was a bandage on one eye and at that time he did not realize the mistake and it was not corrected. In the cross-examination he has stated that he was told by Mr. Chaudhari co-passenger that Rs. 175/- were to be paid for petrol, oil and the daily wage of driver. No further cross-examination has been done on this count. In other words, this version of the appellant has not been seriously challenged by the respondent Insurance Company. In support of the say of the appellant, his father Harshadrai Bhogilal Nanavati has given his evidence at Exh. 55. He has stated that when the petition was prepared, the appellant was undergoing treatment at Jaslok Hospital. It was prepared in accordance with the instructions given by the witness. He has stated that his son i.e., the appellant had told him that Rs. 175/- were given to the driver of the vehicle and he thought that it was for the hire charges. He accordingly instructed the learned advocate to make that statement in the petition. He has clarified that the appellant had never told him that this amount was not hire charges or reward. Even this witness has not been seriously cross-examined on this aspect. The only question relating to this issue that has been put to him is in the form of a suggestion which he has denied that it was not true that after collecting all the details he had stated the aforesaid fact in the petition. He has also stated that when appellant read the petition, he did not take any objection. So far respondent No. 1 the driver is concerned, he has categorically stated that he was working in the garage of respondent No. 2. He owned the motor car which was being used for the motor workshop, which was run by respondent No. 2. He has stated that the said car was never given on hire. According to him, the car was giving average of 9 Kms for one litre and on the date of incident it had travelled around 196 Kms. In the cross-examination he has denied that hire charges were paid to him. Of-course he has further stated that if any hire charges were paid to respondent No. 2 he had no knowledge about it.

6.3. Respondent No. 2 has also given evidence, which is at Exh. 58. He is the owner of the offending vehicle. He has stated that the appellant, Mr. Chaudhari and driver Rajabhai had approached him on 16/6/1980. At that time their car was under repairs in his workshop. He has stated that he had purchased the offending vehicle about six months prior to the date of incident. He has categorically stated that he never rented his car. He gave the car to the appellant and Mr. Chaudhari only because he had good relations with them and their car was under repairs in his workshop. He has also stated that Rs. 175/- were given to him only for the purpose of meeting the expenses of petrol, oil and the daily wage of the driver. He has stated that from Gujarat Narmada Valley Fertilizer,

Surat is at the distance of about 80 Kms and to and fro hire charges would be around Rs. 350/- plus the waiting charges. In the cross0examination, he has stated that he did not have any permit for using the car for hire or reward. He has denied that the amount that was paid was by way of hire charges.

6.4. When this is the state of evidence, it clearly appears that the averment that was made in the petition was on account of bonafide mistake. There is no challenge to the fact that the instructions were given by the father of the appellant to their learned advocate, who drafted the petition. It is, therefore, very natural that when he was told by the appellant that Rs. 175/- were paid, he would have presumed that it was paid as rent for hiring the vehicle. It is also natural that when the appellant glanced through the petition he was already having one bandage on his eye and he had not fully recovered from his injuries. At that time it would not strike him that the amount was not paid to respondents No. 1 and 2 as hire charges. He might not have even understood the significance of the same at that time. But the evidence clearly shows that the amount of Rs. 175/- was paid only for the petrol and oil as well as the daily wage of the driver. This is very natural because a person would not burden the owner of the car who was offering his car for travelling to pay for petrol, oil and driver also. One would not like to exploit the relations to that extent. Therefore, it is most probable that the amount that was paid by the appellant was for meeting the expenses of petrol, oil and the daily wage of the driver. According to respondent No. 2, in those days the taxi fare would have been in the vicinity of Rs. 350/- considering the distance between the Narmada Fertilizer Company and Surat. So far Rs. 175/- is concerned, it is much less than the prevailing rate at which the vehicle of the type of the offending vehicle could be hired. Therefore, there is no element of profit in the amount that was paid by appellant to either respondent No. 1 or 2. The hire charges or reward would always involve the element of profit over and above the actual expenses incurred by the owner. In the instant case, that element appears to be wanting. In view of the same, in my opinion, the finding given by the Tribunal that the vehicle was used for hire or reward and for that reason the owner had committed breach of the conditions of the policy is erroneous. There is no breach committed by the owner of the terms of the policy and, therefore, on that count the Insurance Company cannot escape its liability to satisfy the award.

7. The second aspect of it is that the Tribunal has placed reliance on the judgment of the Apex Court rendered in the case of Pushpabai [supra] and has held that even if the appellant is considered to be passenger in a private vehicle without hire or reward i.e., a gratuitous passenger, the Insurance Company would be absolved from its liability to pay the compensation. In the said decision the Apex Court has turned down the contention advanced on behalf of the original claimant that a gratuitous passenger travelling in a private vehicle would be considered as a third party and the Insurance Company would be liable to cover such risk. In para. 20 of the said judgment the Apex Court has held as under:

20. It is unnecessary to refer to the subsequent development of the English law and as the subsequent charges have not been adopted in the Indian statute. Suffice it to say that the Motor Vehicles [Passenger Insurance] Act, 1971, made insurance cover for passenger liability compulsory by repealing paragraph (a) and the proviso of Sub-section 203(4). But this Act was repealed by Road Traffic Act, 1972 though u/s 145 of 1972 Act the coming into force of the provisions of Act 1971 covering passenger liability was delayed under December 1, 1972.

Thus, according to the Apex Court, when the passenger, who is not travelling in the private vehicle for hire or reward, his risk is not covered. However, the Apex Court has said that the Insurance Company is always at liberty to cover such risk by way of contract with the insured. In that case, the Apex Court directed the Insurance Company to satisfy the liability to the extent of Rs. 15,000/- since that was the amount agreed to be covered by the Insurance Company with the insured. The Tribunal, however, has not considered the development which has taken place after the rendition of this judgment by the Apex Court. Had that development been taken into consideration, on this issue the conclusion of the Tribunal would have been different.

7.1. The Tariff Advisory Committee has taken a decision relating to Clause 1 of Section II (a) of Motor Car Comprehensive Policy. As per the said decision all the insurers were asked to add the following words after the words "death of or bodily injury to any person", "including occupants carried in the motor car provided that such occupants are not carried for hire or reward. The direction of the Tariff Advisory Committee to all the insurers was that said amendment would come into force automatically from 17/2/1978. The present accident took place on 16/6/1980. Therefore, due to the retrospective effect given to this amendment, the present accident would also stand covered in the amended clause. In the case of Oriental Insurance Co. Ltd. v. Renu Acharya the High Court of Himachal Pradesh at Simla has dealt with this aspect. The decision is reported in Oriental Insurance Co. Ltd. Vs. Renu Acharya, Whether the effect of the amendment is retrospective is also considered by the said High Court in this decision by referring to the decisions of various other High Courts. In para. 21 it has said as under:

21. This question came up before a Bench of five Judges of the Gauhati High Court in New India Assurance Co. Ltd. v. Satyanath Hazarika 1989 ACJ 685 (Gauhati), in which the above instructions of the Tariff Advisory Committee were considered and it was held that this clause will have a retrospective effect in all cases pending before the Claims Tribunals or the appellate authorities on or before 25/3/1977. We are in respectful agreement with the above law laid down. The same view was also expressed by the learned single Judge of the Orissa High Court in Oriental Fire and General Insu. Co. Ltd. v. Sanatan Pradhan 1988 ACJ 792 (Orissa) and also by the learned single Judge of the Delhi High Court in Sagar Chand Phool Chand Jain v. Santosh Gupta 1985 ACJ 585 (Delhi).

Unfortunately, the learned Single Judge of Karnataka High Court in the case of

United India Insurance Co. Ltd. Vs. P.V. Lakshmanan, has taken the same view. The learned Judge has placed reliance on the decision rendered by Punjab & Haryana High Court in the case of Kailash Kumar v. Bhola 1989 ACJ 845. It has observed in paras. 11 and 12 as under:

11. The identical point came up for consideration in appeal before the High Court of Punjab and Haryana in Kailash Kumar v. Bhola 1989 ACJ 845 (P&H). In the case of Kailash Kumar the claimants therein were granted compensation by the Tribunal on the death of the deceased bread-winner of their family who died in a motor accident. In that case also the deceased was travelling in a private car as a gratuitous passenger when it met with the accident resulting in his death. The insurance company which had issued the policy in respect of the said car therein was not held liable by the Tribunal to pay compensation to the claimants on the ground that the said policy did not cover the risk to gratuitous passenger travelling in a private car. In appeal the High Court of Punjab and Haryana disagreed with the view taken by the Tribunal in absolving the insurance company of its liability and held otherwise on the basis of the relevant instructions of the Tariff Advisory Committee issued to all insurance companies subsequent to the Supreme Court decision in Pushpabai Purshottam Udeshi's case 1977 ACJ 343 (SC). In the case of Kailash Kumar v. Bhola 1989 ACJ 845 (P&H), the High Court of Punjab and Haryana made the following material observation:

Learned Counsel for the respondents placed reliance on Pushpabai Purshottam Udeshi v. Ranjit Ginning and Pressing Co. 1977 ACJ 343 (SC), in support of the proposition that the insurance company is not liable when the passenger is carried without hire or reward. This judgment does not render any assistance to the learned Counsel. The decision of the Apex Court makes it clear that although there is no statutory liability of the insurance company to pay compensation to a passenger, a contract of insurance can provide otherwise. The instructions of the Tariff Advisory Committee which is a statutory body will be deemed to have been incorporated in every contract of insurance. Even if it is not expressly mentioned in the contract by the deeming provisions, the court will so read it in the insurance policy that the directions given by the Tariff Advisory Committee were incorporated in the insurance policy. After reading the directions in the insurance policy, the court will give effect to it. The judgment of the Supreme Court was rendered on the same date, when the instructions of the Tariff Advisory Committee came into force. Moreover, in the Supreme Court case, the accident had taken place on 18/12/1960 prior to the issuance of the directions of the said Committee.

So, concluding, the learned Judge has further proceeded to observe:

... after issuance of the instructions of the Tariff Advisory Committee, the insurance company cannot avoid liability. The owner of the vehicle can legitimately say that under the policy, the insurance company was bound to pay to the claimants for the death of the passenger. The insurance company has not

let any evidence on record that its liability is limited. In the absence of any evidence, it has to be held that the liability of the insurance company is unlimited.

12. The fact that the Tariff Advisory Committee has issued the said relevant instructions dated 13/3/1978 is not disputed by Mr. O. Mahesh, learned Counsel for the appellant insurance company. As such I am in respectful agreement with the aforesaid observations of the learned Judge of the Punjab & Haryana High Court made in Kailash Kumar's case 1989 ACJ 845 (P&H), to the effect that the said instructions of the Tariff Advisory Committee must be deemed to have been incorporated in all the existing policies of the insurance company on and with effect from 13/3/1978. These instructions will have the statutory force. By virtue of the said Tariff Advisory Committee instructions it logically follows that the Act policy also governs the risk to the gratuitous passengers travelling in a private motor car at the time of accident. Therefore, the finding of the Tribunal holding the appellant insurance company also liable to pay the compensation to the respondent-claimant cannot be held illegal or invalid. On the other hand, I find the Tribunal legally justified in its said finding.

When this is the position after amendment has been brought about in the policy by the Tariff Advisory Committee, risk of gratuitous passenger travelling in a private vehicle stands adequately covered. On that count also the decision of the Tribunal is not proper and it is required to be quashed and set aside. In my opinion, on facts as well as on law, the conclusion has to be against the Insurance Company. In other words, there is no breach of conditions of the policy since in the present case the vehicle was not given for hire or reward and by virtue of the recommendation of the Tariff Advisory Committee and the amendment brought in the policy, the Insurance Company is now required to recover the risk of even the passengers travelling not for hire or reward in a private car. In view of the same, the decision of the Tribunal on both these counts is required to be quashed and set aside.

In the result, the Insurance Company is directed to satisfy the entire award including the additional amount awarded by this Court together with proportionate costs and interest at the rate of 6% per annum from the date of the petition till realization. It appears that the appellant by some mistake claimed additional amount of Rs. 75,000/-. Original claim is of Rs. 99,999/-. Additional amount of Rs. 41,000/- has been awarded to the appellant, which would bring the total amount of compensation payable to the appellant to Rs. 81,000/- which is within original claim. In view of the same, the appeal is partly allowed together with costs as stated above.

In view of the above, Cross Objection is disposed of accordingly.