(1996) 07 J&K CK 0002

In the Jammu And Kashmir High Court

Case No : L.P.A. No. 19 of 1995

New India Assurance Company APPELLANT

Vs

Smt. Shakuntla Devi and Others RESPONDENT

Date of Decision : 10-07-1996

Acts Referred:
Motor Vehicles Act, 1988 — Section 147, 95

Citation : (1998) 2 ACC 418 : (1998) ACJ 195 : AIR 1997 J&K 40

Hon'ble Judges : M.Y. Kawoosa, J;Bhawani Singh, J

Bench : Division Bench

Advocate : R.K. Gupta, for the Appellant; J.P. Singh and Surinder Singh, for the Respondent

Final Decision : Dismissed

Judgement

Bhawani Singh, J.—This letters patent appeal assails the judgment of learned single Judge in C.I.M.A. No. 16/94 dated April 28, 1995

whereby the appeal preferred by New India Assurance Company (hereafter the 'appellant') has been dismissed.

2. On March 2, 1993 at 5,00 a.m., truck bearing registration No. JKO 2B-7093 turned turtle with the result that labourer Raj Pal, travelling in the

truck, died on the spot leaving behind his widow and three minor children. Claim petition was filed before the Motor Accident Claims Tribunal

(hereafter shortly 'Tribunal'), Jammu claiming compensation of rupees ten lacs from the respondents alleging that the accident was the result of rash

and negligent driving by driver Joginder Singh. The respondents have admitted the accident but the allegation that the accident was attributable to

the rash and negligent driving, has been denied. It has been stated that the accident took place due to sudden application of brakes for saving a buffalo which came in front of it. The appellant has admitted that the vehicle was insured with it on the date of accident but liability to pay the

compensation for the death of the deceased has been denied.

3. On the pleadings of the parties, the Tribunal framed the following issues:

1. Whether the death of the deceased Raj Paul had occurred by use of the offending vehicle No. JKO2B-7093 driven rashly and negligently by

responent 1 on 2-2-1993? OPP

2. In case issue No. 1 is proved what is the extent of compensation payable to the petitioners and by whom? OPP

3. Whether the Insurance Company is not liable to indemnify the insured as the offending vehicle was driven without a valid driving licence?

4 Whether the deceased as labourer is not covered under the insurance policy, if so, what is its effect on the liability of the insurer to indemnify the

insured? OPR-3.

5 Relieif

3A. The parties went to trial. The Tribunal found that the accident was the result of negligent driving of the offending vehicle by its driver.

Consequently, compensation of Rs. 2.88 lac was awarded to the widow and three minor children with interest at the rate of 12% per annum, by

application of multiplier of sixteen, and fixing the age of the deceased at 30 years. The appellant could not prove the issues, onus of which was on

it, with the result that these issues have been decided against it.

4. The appellant confined the challenge to issue No. 4 before the learned single Judge as well as this Court. Precisely, the challenge was that there

is marked difference between labourer engaged by the hirer of the truck for the carriage of his goods and the labourer of the insured for

accompanying the goods at his instance. This being so, deceased Raj Pal, being the labourer of the insured, was not covered under the insurance

policy, therefore, the appellant could not have been burdened with the liability to pay the compensation awarded by the Tribunal in this case. It was

also contended that the learned single Judge gave wrong interpretation to Section 147 of the Motor Vehicles Act, 1939 by holding that once

accident has taken place, ail kinds of persons travelling through it, are covered under the policy of insurance and the Insurance Company has to bear the liability of payment of compensation. In the absence of comprehensive policy or any stipulation covering such a risk, labourer of the

insured is not covered, although, it was candidly admitted by the learned counsel for the appellant that in case it is found that deceased Raj Pal was

the labourer engaged by the hirer of the truck, the appellant has no case. In support of his main submission, reliance was placed on National

Insurance Co. Ltd. v. Punabhai Zerabhai Koli. 1986 ACJ 215 (Guj); Kishori v. Gulabkhan 1988 ACJ 860 (Madh Pra); and New India

Assurance Co. Ltd. Vs. Ashok Singh and Others,

5. From the other side. Shri J.P. Singh defended the judgment and referred to New India Assurance Co. Ltd. Vs. Kamlaben Sultansinh Jadav and

Others, .

6. First of all, it is important to establish the employer of deceased Raj Pal. In the claim petition it has been stated that the deceased was working

for different transport companies as such there was no permanent employer of the deceased. He was not an ordinary labourer but was trained in

delivering the consignments to destination: by accompanying the carriers/ vehicles and as such was working for different transport companies in

Delhi. Smt. Shakuntala Devi, claimant (widow of the deceased) has also stated that the deceased had been working with trucks for loading and

unloading of consignments and also looking after the safe custody and delivery of goods at the destination on behalf of the owner. Her statement is

supported by Panna Lal and Rajeshwar Dayal.

7. On the basis of evidence and material available on record, the Tribunal found that the deceased was accompanying the goods for their safe

custody on behalf of the owner who had hired the vehicle. The appellant has not been able to prove satisfactorily that the deceased was labourer

of the insured, by production of record pointing out his employment and payments to the deceased from time to time. The insured has not stated

anywhere that deceased Raj. Pal was his employee. Legitimately, it can be concluded that the deceased used to be engaged by the hirers of the

vehicle for the safe consignment of their goods. This finding of the Tribunal is supported by evidence and material on record and we do not see any

justification for taking a contrary view and reverse this finding.

8. Section 95 of the Motor Vehicles Act, 1939 deals with the requirements of""

policies and limits of liability. This Act has been amended by the

Motor Vehicles Act, 1988 in which Section 147 deals with the subject matter covered by old Section 95. In order to appreciate the question

involved in this case, it is necessary to quote the provisions of Section 95 (old) and Section 147 (new) below.

NEW OLD

147. Requirements of policies and limits ""95. Requirements of policies and limits

of liability.â?" (1) In order to comply with of liability. -â?" (1) In order to comply

the. requirements of this Chapter, a with the requirements of this Chapter, a

policy of insurance must be a policy policy of insurance must be a policy

which â?" whichâ?

(a) is issued by a person who is an autho- (a) is issued by a person who is an

rised insurer; and auhorised insurer or by a cooperative

society allowed under Sec. 108 to

transact the business of an insurer, and

(b) insures the person or classes of (b) insures the person or classes of

persons specified in the policy to the persons specified in the policy to ihe

extent specified in sub-sectiop (2)â?" extent specified in sub-section (1) ...

(i) against any liability which may be (i) against any liability which may be

incurred by him in respect of the death of incurred by him in respect of the death

or bodily injury to any person or damage of, or bodily injury to, any person or

to any property of a third party caused damage to any property of a bodily-

by or arising out of the use of the vehicle injury to, any person or damage to any

in a public place. 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 (ii) against the death of or bodily injury

any passenger of a public service vehicle to any passenger of a public service

caused by or arising out of the use of the vehicle caused by or arising out of the

vehicle in a public place: use of the vehicle in a public place:

Provided that a policy shall not be Provided that a policy shall not be

required â?" required â?

(i) to cover liability in respect of the (i) to cover liability in respect of the

death, arising out of and in the course of death, arising out of and in the course of

his employment, of the employee of a his employment, of the employee of a

person insured by the policy or in respect person insured by the policy or in

of bodily injury sustained by such an respect of bodily injury sustained by

employee arising out of and in the course such an employee arising out of and in

of his employment other than a liability the course of his employment other than

arising under the Workmen's a liability arising under the Workmen's

Compensation Act, 1923 (8 of 1923), in Compensation Act, 1923 (8 of 1923), in

respect of the death of, or bodily injury respect of the death of, or bodily injury

to, any such employee â?" to, any such employee â?

(a) engaged in driving the vehicle, or (a) engaged in driving the vehicle, or

(b) if it is a public service vehicle engaged (b) if it is a public service vehicle,

as a conductor of the vehicle or in engaged as a conductor of the vehicle or

examining tickets on the vehicle, or in examining tickets on the vehicle, or

(c) if it is a goods carriages, being carried (c) if it is a goods vehicle, being carried

in the vehicle, or in the vehicle, or

(ii) to cover any contractual liability. (ii) except where the vehicle is a vehicle

in which passengers are carried for hire

Explanation. â?" For the removal of or reward or by reason of or in

doubts, it is hereby declared that the pursuance of a contract of employment,

death of or bodily injury to any person or to cover liability in respect of the death

damage to any property of a third party of or bodily injury to persons being

shall be deemed to have been caused by carried in or upon entering or mounting

to have arisen out of, the use of a vehicle of alighting from the vehicle at the time of

in a public place notwithstanding that the the occurrence of the event out of which person who is dead or injured or the a claim arises, or

property which is damaged was not in a

public place at the time of the accident, if (iii) to cover any contractual liability.

the act or omission which led to the Explanation. â?

accident occurred in a public place.

For the removal of doubts it is hereby

(2) Subject to the proviso to sub-section declared that the death of, bodily injury

(1), a policy of insurance referred to in to, any person or damage to any

subsection (1), shall cover any liability property of a third party, shall be

incurred in respect of any accident, up to deemed to have been caused by, or to

the following limits, namely : have arisen out of, the use of a vehicle in

a public place, notwithstanding that the

(a) save as provided in cl. (b), the person, who is dead or injured, or the

amount of liability incurred property which is damaged, was not in a

public place at the time of the accident, if

(b) in respect of damage to any property

the act, or omission which led to the

of a third party, a limit of rupees six

accident, occurred in a public place.

thousand ;

(2) Subject to the proviso to sub-section

Provided that any policy of insurance

(1), a policy of insurance shall cover any

issued with any limited liability and in

liability incurred in respect of any one

force, immediately before the

accident up to the following limits,

commencement of this Act, shall continue

namely :

to be effective for a period of four

months after such commencement or till (a) where the vehicle is a goods vehicle,
the date of expiry of such policy a limit of fifty thousand rupees in all,
whichever is earlier. including the liabilities, if any, arising
under the Workmen's Compensation
(3) A policy shall be of no effect for the
Act, 3923 (8 of 1923), in respect of the
purposes of this Chapter unless and until
death of, or bodily injury to, employees
there is issued by the insurer in favour of
(other than the driver), not exceeding six
the person by whom the policy is effected
in number, being carried in the vehicle;
a certificate of insurance in the prescribed
form and containing the prescribed (b) where the vehicle is a vehicle in
particulars of any condition subject to which passengers are carried for hire or
which the policy is issued and of any reward or by reason of, or in pursuance
other prescribed matters, and different of, a contract of employment : â?
forms, particulars and matters may be
prescribed in different cases. (i) in respect of persons other than
passengers, carried for hire or reward, a
(4) Where a cover note issued by the limit of fifty thousand rupees in all,
insurer under the provisions of this
Chapter or the ruies made thereunder is (ii) in respect of passengers â?
not followed by a policy of insurance
within the pre-scribed time, the insurer (I) a limit of fifty thousand rupees in all,
shall, within seven days of the expiry of where the vehicle is registered to carry
the period of the vali-dity of the cover not more than thirty passengers;
note, notify the i'act to the registering
(2) a limit of seventy five thousand
authority in whose records the â?¢vehicle

rupees in all, where the vehicle is
to which the cover note relates has been
registered to carry more than thirty but
registered or to such other authority as
not more than sixty pas-sengers;
the State Government may prescribe.
(3) a limit of one lakh rupees in all,
(5) Notwithstanding anything contained-
where the vehicle is registered to carry
in any law for the time being in force, an
more than sixty passengers; and
insurer issuing a policy of insurance under
this section shall be liable to indemnify the
(4) subject to the limits as said, ten
person or classes of persons specified in
thousand rupees for each individual
the policy in respect of any liability which
passen-ger, where the vehicle is a
the policy purports to cover in the- case
motorcab and five thousand rupees for
of that person or those classes of
each individual pas-senger, in any other
persons.
case;
(c) save as provided in cl. (d) where the
vehicle is a vehicle of any other class, the
amount of liability incurred;
(d) irrespective of the class of the
vehicle, a limit of rupees two thousand in
all in re-spect of damage to any property

of a third party.

(4) A policy shall be of no effect for the purposes of this Chapter unless and until there is issued by the insurer in favour of the person by whom the policy is effected a certificate of insurance **** in the pre-scribed form and containing the prescribed particulars of any conditions subject to which the policy is issued and of any other pre-scribed matters; and different forms, particulars and matters may be prescribed in different cases.

(4-A) Where a cover-note issued by the insurer under the provisions of this Chapter or the rules made thereunder is not followed by a policy of insurance within the prescribed time, the insurer shall, within seven days of the expiry of the period of the validity of cover note, notify the fact to the registering authority in whose records the vehicle to which the cover-note relates have been re-gistered or to such other authority as the State Government mav prescribe.

(5) Notwithstanding anything elsewhere contained in any law, a person issuing a policy of insurance under this section shall he liable to indemnify the person or classes of persons specified in the policy

in respect of any liability which the policy

purports to cover in the case of that

person or those classes of persons.

9. Irrespective of the conclusion that deceased Raj Pal was not employee of the insured but was engaged by the hirer of the vehicle, we intent to

examine the question in two facets, namely, the liability of the appellant in the case the deceased happened to be labourer of the insured or labourer

of the hirer of the vehicle. There has been divergence in the view expressed by various High Courts with respect to the liability of Insurance

Company in case of the owner of the goods travelling in the goods vehicle along with the goods whether his case would be covered under the

provisions of clause (ii) of proviso to Sub-section (1) of Section95, or whether his case would fall under any other provision. High Courts of

Allahabad, Andhra Pradesh, Bombay, Gujarat, Karnataka, Kerala and Orissa took the view that the hirer of goods vehicle, for the carriage of

goods, when, travelling in the 'said vehicle in connection with the carriage of goods with the consent of the driver or the owner of the goods vehicle

in question, would be covered by word 'passenger' in the vehicle within the meaning of Clause (ii) of proviso to Sub-section (1) of Section 95 of

the Act and, as such, the tortuous liability of the owner towards him must be covered by the insurance policy contemplated by the said Section.

Clause (ii) of the proviso to sub-section (1) would also cover the persons who are travelling in the goods vehicle as employees of the owner of

goods, since they are travelling in the vehicle in pursuance of contract of employment. As such, contract of employment need not be with the

insured but may be with the hirer of the vehicle.

10. Kerala High Court in State Insurance Department, State Insurance Officer, Trivandrum Vs. Sosamma Mani and Others, held that employees

of the owner of goods, who are being carried, go out on the lorry with the goods and return home in the lorry after the goods are delivered, such

employees may properly be regarded as 'passengers' carried in pursuance of a contract with someone other than the insured and their case will be

covered by part (ii) of the proviso. In para 6 of the judgment, the Court held :

.... In the the case of a public service vehicle the liability is in respect of the death of or bodily injury to any"" passenger of that vehicle. But the insistence for insurance by Sub-section (1) is subject to the proviso to that sub-section. The proviso consists of three parts and as per the proviso,

in the case of three kinds of liabilities mentioned therein there need not be any insurance coverage. The proviso itself if an exception to the general

rule regarding insurance coverage and the second part of the proviso provides for exceptions to the exception made by the proviso itself by

insisting that the policy should cover the liability of person carried where the vehicle is a vehicle in which passengers are carried for hire or reward

or by reason of or in pursuance of a contract of employment. The first part of the proviso deals with the employees of the insured. So the mention

in the second part need not be about those employees. The only other kind of employees who can be expected to be carried by a goods vehicle is

the employees of the owner of the goods carried by it. They accompany the goods in pursuance of a contract of employment because they are

asked to do that by their employer to safeguard the goods. So, as per the exception contained in part (ii) of the proviso to the exceptions provided

for by the proviso an employee of the owner of the goods who accompanies the goods in the vehicle gets insurance coverage u/s 95 of the

Act...........

10A. The High Court of Karnataka in Channappa Chanavirappa Katti and Another Vs. Laxman Bhimappa Bajantri and Others, held that the

goods vehicle, which carries the owner of goods as a passanger, can be construed as a vehicle in which passengers are carried for hire or reward

as would answer the exception contained in the first part of the second proviso so as to make the coverage of risk of such a person compulsory

under Chapter VIII of the Act. It was held that:

...... The policy of the law in making provision for compulsory insurance of vehicles, is to cover the risk of innocent third parties. The owner of the

goods (hirer of goods vehicle) who wants to convey his goods through a public goods vehicle will be an innocent third party when he dies or

suffers injury while accompanying his goods carried by a public goods vehicle, in the course of the user of the vehicle. The simple reason is that, in

the normal course of things, it would not be possible for him to ascertain beforehand the financial stability of the user of the vehicle, the expertise of

the driver of the vehicle in driving it, or the roadworthy condition of the vehicle, as would ensure his safety. When such person travels as a

passenger in a goods vehicle which is used used advance the business interests of its owner and is permuted by law, it cannot be said that it is not a

vehicle meant for carrying passengers for hire or reward, provided for in the exception to the first pan of the second proviso to Section 95(1)(b).

This derision was later followed in United India Insurance Co. Ltd. Vs. Gangamma and Another etc.,

11. The Gujarat High Court in Ambaben and Others Vs. Usmanbhai Amirmiya Shaikh and Others, held that

.... so far as the policy contemplated by Section 95(1)(b) is concerned, it does not cover the risk to (A) persons other than those who were

carried for hire or reward at the time of occurrence of event which gives rise to the claim against the insurer and (B) passengers other than those

who were bona fide employees of the owner or hirer of the vehicle not exceeding six in number, carried in pursuance of or by reason of a contract

of employment.

12. Another Full Bench of the same Court held in National Insurance Co. Ltd., Ahmedabad v. Nathibai Chaturabhuj 1982 ACJ 153 that:

the liability in respect of the death of or bodily injury to a passenger carried for hire or reward on the insured vehicle when the accident giving rise

to the claim occurred, including the liability in respect of the owner or hirer of the insured vehicle or his bona fide employees within the permissible

limit will be covered by the statutory insurance either by virtue of Section 91 (l)(b)(i) read with the second clause of the proviso or by reason of

Section 95(l)(b)(ii) of the Act. In such a case the insurer will have to pay to the person entitled to the benefit of the award the sum-assured, which

shall not be less than the sum specified in Section 92(2), subject, however, to the right of the insurer to disclaim the liability, inter alia, u/s 96(2)(b)

(i)(a) ......

It was further held that in order to successfully disclaim its liability the insurer will have to establish the following facts and if the facts are

established, the benefit of statutory insurance will not he available in respect of such passenger:

(1) 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;

(2) 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; and .

(3) 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.

12A. Similar view was taken by Allahabad High Court in Abdul Razaq v. Sharifunnisa 1984 ACJ 44 : AIR 1983 All 400 holding that the first part

of proviso (ii) to Section 95 (I)(b) of the Act relates to carrying of passengers for hire or reward in the vehicle, while the second part contemplates

carriage of passengers by reason of or in pursuance of a contract of employment. Placing reliance upon the judgment of Supreme Court in

Pushpabai Purshottam Udeshi and Others Vs. Ranjit Ginning and Pressing Co. (P) Ltd. and Another, , the Bench held that a gratuitous passenger

being carried in a vehicle is not covered by the compulsory policy of insurance but in a goods vehicle which permits carriage of owner of goods for

hire or reward falls within the exception contained in the first part of second proviso so as to require the coverage of the risk of the persons

travelling as passengers by compulsory insurance. On the second part of proviso (ii) to Section 95 (l)(b) of the Act, the Court held:

...... if a person hires a vehicle for the transport of his goods and his employee accompanies the goods in the vehicle, he would be covered by the

expression 'by reason of or in pursuance of a contract of employment' and his risk will be covered by compulsory policy.

In para 15 of the judgment, it has been recorded that:

.... There is, however, a significant difference in the two provisions. Under the proviso (ii) to Section 91 (l)(b) the expression used is 'by reason

of or in pursuance of a contract of employment' which, according to some of the High Courts, means that the person travelling in the vehicle must

be doing so in pursuance of an employment with the insured or with some other reason. Clause (l)(c) of Section II of the policy, however, uses a

different phraseology; it states that the company shall not be liable in respect of death of or bodily injury to any person other than a passenger being

carried ""by reason of or in pursuance of a contract or employment' in the vehicle at the time of the occurrence. The use of the word 'or' between

the words 'contract' and 'employment' is significant. The policy does not insist on a contract of employment.

Under the terms of the policy the insurance company has undertaken to cover risk of a passenger carried by reason of or in pursuance of a

contract or employment, thus if a person is being carried in the vehicle in pursuance of a contract or he is being carried in pursuance of

employment, in both the cases the company has undertaken to indemnify the owner for the liabilities arising against the owner. The terms contained

in the policy do not necessarily require that the passenger being carried in the vehicle should be travelling in pursuance of a contract of employment,

instead the company has undertaken to indemnify the owner for the death of a passenger who may be travelling in the vehicle in pursuance of

contract also. Owner of goods is entitled under the rules to be carried in the goods vehicle by reason of his contract of hiring the vehicle for the

transport of his goods. His risk is thus covered by the terms of the policy. Under the aforesaid terms the insurance company has clearly undertaken

to indemnify the owner for his liability for the death of owner if travelling in the vehicle as a passenger in pursuance of a contract of hiring. We are,

therefore, of the opinion that even if there be any doubt relating to the liability of the insurance company on the interpretation of proviso (ii) to

Section 95(l)(b), it is fully liable in view of the express terms and conditions of the policy.

13. In Oriental Fire and General Insurance Company Ltd. Vs. B. Parvathamma and Others, the Division Bench of the Karnataka High Court,

reiterating the view expressed in the case of Channappa Chanavirappa Katti and Another Vs. Laxman Bhimappa Bajantri and Others, , which was

followed in later judgments of the same Court in T.M. Renukappa Vs. Fahmida and Others, ; Nagappaiah and etc. Vs. Bhaskara and Others, and

United India Insurance Co. Ltd. Vs. Gangamma and Another etc., and by the High Court of Bombay in Nasibdar Suba Fakir Vs. Adhia and

Company and Others, and by the High Court of Orissa in Oriental Fire and General Insurance Company Ltd. and etc. Vs. Smt. Narayanibai and

Others, that the risk of the owner of the goods, travelling in the goods vehicle along with the goods, would be covered by the compulsory insurance in respect of the vehicle, held that where the vehicle is permitted to run as a goods vehicle and not a public service vehicle, it does not

cover the risk' of fare paying passengers in general, apart from the passengers contemplated under Rule 161 of the Karnataka Motor Vehicles

Rules. The rule prohibited use of the goods vehicle for the conveyance of passengers for hire or reward. It was held that endorsement in the policy

covers only an employee and any other person who is a non-fare paying passenger. Thus 'bona fide employees' were held to be covered within the

ambit of passengers carried in the goods vehicle in pursuance to the contract of employment, whose risk is required to be statutorily covered by

the second proviso to Section 95(l)(b) of the Act.

14. The contrary view held by the High Courts of Punjab and Haryana, Madras, Madhya Pradesh and Calcutta is to the effect that the hirer of a

truck, being the owner of the goods carried on in the goods vehicle, cannot be said to be on the vehicle in pursuance of a contract of employment

since he will not be a person employed by anybody but he being only the owner of the goods carried by it. In other words, the view has been that

there cannot be any contract of employment between hirer of the truck or the owner of the goods with the owner of the vehicle. The question

whether such persons could be considered as passengers carried for reward or not, has not been decided.

15. The judgment of the Punjab and Haryana High Court holding such a view is of its Full Bench in Oriental Fire and General Insurance Co. Ltd.

Vs. Smt. Gurdev Kaur and Others, It was a case of hirer of the goods vehicle in which the owners of the goods being carried in the goods vehicle

along with their goods died as a result of the accident. The question about the liability of the insurer had arisen. It was held that Rule 460(l) of the

Punjab Motor Vehicles Rules recognises that the hirer of the vehicle may travel as a passenger in a goods carrier but proviso to Sub-rule (2) of the

rule limits the number of such persons to ,a maximum of six. The liability of the insurer was not considered vis-a-vis the owners of the goods as a

passenger carried for reward. It was held that the terms 'are carried for hire or reward' or 'are carried by reason of or in pursuance of a contract of

employment' go with the word 'passengers' and not with the vehicle. After observing that:

.... The normal and the ordinary meaning and the scope of the expression 'a contract of employment' points to a person being employed to do

something or to carry out something for another person. It has the element of rendition of some service in one shape or another for the employer.

So it cannot refer to the hiring of a goods carrier as a contract of employment or to the owner of such a carrier as the person with whom a contract

of employment has been made.....

Insurer was held not liable on the ground that there cannot be any contract of employment between the hirer of the vehicle/the owner of goods with

the owner of vehicle.

16. Similar view was held by a Division Bench of Madhya Pradesh High Court in South India Insurance Co. Ltd. v. Heerabai 1967 ACJ 65 (MP).

The decision in Oriental Fire and General Insurance Co. Ltd. Vs. Smt. Gurdev Kaur and Others, was relied in a later judgment of the same High

Court in Oriental Fire and General Insurance Co. v. Kasturi Lal 1968 ACJ 227 (P&H). Following the view held by Full Bench of Punjab and

Haryana High Court relied on in Kasturi Lal's case (supra) and that of Madhya Pradesh High Court in Heerabai's case (supra), learned single

Judge of Madras High Court in the The Common Wealth Assurance Co. Ltd., Bombay Vs. V.P. Rahim Khan Sahib and Others, recorded a

similar reasoning to the effect that hirer of a vehicle for carriage of goods while accompanying the goods cannot be said to be a passenger carried

by reason of or in pursuance of a contract of employment within the ambit of Clause (ii) of proviso to Sub-section (1) of Section 95 of the Act.

Similar view was held in a later judgment of the High Court of Madras in South Indian Insurance Co. Ltd. Vs. P. Subramaniam and Another,

17. A Division Bench of Calcutta High Court in Indian Mutual General Insurance Society Ltd. Vs. Manzoor Ashan and Others, also held the view

that a hirer of a vehicle is not a person who enters into a 'contract of employment' with the owner of the vehicle and as such the insurance company

is not liable, which was by following the decision in Oriental Fire and General Insurance Co. Ltd. Vs. Smt. Gurdev Kaur and Others,

18. The employees of the hirer of the goods vehicle being carried in the vehicle have been held to be covered by the wider term used in Clause (ii)

of the proviso to Sub-section (1) of Section 95 'being the passengers carried by reason of or in pursuance of a contract of employment', in which

case the insurer was required to indemnify the insured for covering the liability in respect of death of or bodily injury to such persons carried in the

vehicle. This view taken by various High Courts is founded on the ratio of the judgment of House of Lords in Izzard v. Universal Insurance Co.

Ltd. 1937 AC 773 , which in turn has also been followed in Oriental Fire and General Insurance Co. Ltd. Vs. Smt. Gurdev Kaur and Others, .

The preponderance of the view is that the employees of the owner of the goods or hirer of the vehicle would be the persons carried for hire or

reward or by reason of a contract of employment and the act requires that the "" policy of insurance should cover the risk of such persons, who are

carried for hire or reward or by reason of the contract of employment.

19. In Pushpabai Purshottam Udeshi and Others Vs. Ranjit Ginning and Pressing Co. (P) Ltd. and Another, , the Apex Court dealing with the case

of a passenger, who was allowed free lift in the vehicle, while referring to the first part of Clause (i) of proviso to Sub-section (1) of Section 95 of

the Act observed that it is not required that a policy of insurance should cover the risk to passengers, who are not carried for hire or reward. In

case of gratuitous passengers unless there is a special contract of insurance, their, cases would not be covered as well by Clause (ii) of the proviso

to Sub-section (I) of Section 95 of the Act.

20. In the case of the employees of the hirer of the goods vehicle, reference may be made to the Izzard's case 1937 AC 773, in which a

commercial policy of the lorry was taken by the owner of vehicle containing a proviso that the insurance company shall not be liable in respect of

death of or bodily injury to any person in the employment of the insured in the course of such employment and the death of or bodily injury to any

person (other than a passenger carried by reason of or in pursuance of a contract of employment) being carried in or by the said vehicle. It was

held that the language in Clause (ii) of policy to the effect that the company shall not be liable in respect of death of or bodily injury to any person

(other than a passenger carried by reason of or in pursuance of a contract of employment), being carried in or upon such vehicle was riot to be

construed as applying only to the death of or bodily injury to a person in the employment of the owner while being carried in the vehicle. It applied to any person being carried in pursuance of a contract of employment with another employer and, therefore, when such a person, while being

carried on in the vehicle was killed, due to negligence of driver, the insurance company was bound to indemnify the owner in respect of his liability

to the representative of deceased person. In term 'contract of employment was construed thus :

I cannot accept the respondent's contention that 'contract of employment' should be construed in the Act as subject to the implied limitation 'with

the person insured by the policy'. Such a departure from the clear language used cannot, I think, be justified. I think the Act is dealing with persons

who are on the insured vehicle for sufficient practical or business reasons, and has taken a contract of employment in pursuance of which they are

on the vehicle as the adequate criterion of such reasons. But there is no sufficient ground for holding that this criterion should be limited to

employees of the insured person. Such employees, if injured or killed, would ordinarily fall under exception (1), though I am not prepared to say

that there might not be in certain events an employee of the assured who could claim as a passenger. But such cases must be rare. The most

probable case is where the man killed or injured was on the vehicle in pursuance of a contract not with the owner of the vehicle but with someone

else, for instance, with the person whose goods were being carried on the vehicle: thus a commercial vehicle carrying a contractor's or merchant's

goods would frequently and perhaps even normally have on it an employee of the goods owner to see to loading or unloading or delivering the

goods or caring for them in transit. For these purposes such a man may be carried as a passenger.

21. The Karnataka, Bombay and Gujarat High Courts, in view of the specific rules in the respective States, permitting carriage of the employees of

the owners of the vehicle upto a particular limit, in Oriental Fire and General Insurance Company Ltd. Vs. B. Parvathamma and Others, held the

employees of the owners of the vehicle to be covered under Clause (ii) of the proviso to Section 95(l)(b) of the Act on account of wide

interpretation of the words 'passengers carried by reason of or in pursuance of a contract of employment'. A Full Bench of the Rajasthan High

Court in Smt. Santra Bai and Vs. Prahlad and Others, etc. etc., held that the policy is not required in three categories of cases falling in Subclauses (a), (b) and (c) of clause (i) of the proviso to Sub-section (1) (b) of Section 95 of the Act but in other cases of the employees of owner of

vehicle, it must be treated as covered by Clause (ii) of the proviso to Section 95(l)(b) of the Act thereby making the insurer liable.

22. Similar view has been taken by the High Court of Himachal Pradesh in New India Assurance Company Ltd. v. Usha Rani 1990 ALJ 785 and

Raghbar Datta Pyare Lal and Others Vs. Malka Rani and Others, .

23. In National Insurance Co. Ltd. v. Punabhai Zerabhai Koli 1986 ACJ 215 (Guj), it has been held that Insurance Company can be made liable

to pay compensation for the death of the employees of the insured travelling in a goods vehicle involved in an accident resulting in death or injuries,

provided, by charging additional premium the insured has undertaken to discharge the liability in addition to compulsory liability u/s 95 of the Act.

24. The contention of the appellant that the policy of insurance in respect of the vehicle in question did not cover the liability of the labourer for

want of payment of additional premium within the meaning of Section 147 of the Motor Vehicles Act, 1988, has hardly any substance in view of

the object and intendment of amended Section 147 of the Motor-Vehicles Act, 1988 statutorily covering all kinds of persons travelling by the

vehicle without payment of additional premium. A bare reading of Section 147 demonstrated plainly that it is quite comprehensive in scope and

meaning. It has to be given wider, effective and practical meaning so that the object of the legislature which was faced with divergent views of

various Courts of the country giving different interpretation to the provisions of Section 95 (old) causing immense harm to many categories of

persons by disentitling them from claiming ompensation either from the insurer or the insured or both, in the facts and circumstances of the case.

New provision, therefore, covers such kind of cases as well. The decisions referred to by the learned counsel for the appellant, turn on their own

facts and have hardly any application under the amended Section 147 of the Motor Vehicles Act, 1988 which applies to the present case since the

accident took place after this Act had come into force.

25. The, learned single Judge has rightly said that the legislature clearly intended that every policy of insurance statutorily required to cover the risk

of liability in respect of classes of persons relating to all types of vehicles without exception and with no defence to the Insurance Company

disclaiming the liability with respect to particular class or persons or particular kind of vehicles.

26. Therefore, the deceased Raj Pal, being a labourer travelling in the truck, engaged by either of the parties, is covered u/s 147 of the Motors

vehicles Act, 1988 and the liability to pay the compensation has to fall on the appellant.

27. It was 'faintly urged that Section 149(2) of the Act has not been examined either by the Tribunal or by the learned single Judge while dealing

with the liability of the appellant u/s 147 of the Act. Such a plea has neither been raised in the pleadings nor before the Tribunal and the learned

single Judge. Hence, it cannot be permitted to be raised for the first time.

28. No other point was urged by the learned counsel for the parties.

29. Consequently, there is no merit in this appeal and the same is accordingly dismissed. The appellant will pay Rs. 200/- by way of cost to each

of the claimants.