

(2007) 08 BOM CK 0035
In the Bombay High Court
Case No : First Appeal No. 879 of 2002

Oriental Insurance Co. Ltd.	Vs	APPELLANT
Aruna and Others		RESPONDENT

Date of Decision : 04-08-2007

Acts Referred:

Motor Vehicles Act, 1939 — Section 95, 95(2)
Motor Vehicles Act, 1988 — Section 147, 147(1), 156, 166
Penal Code, 1860 (IPC) — Section 304A, 337, 427

Citation : (2008) ACJ 2356 : (2007) 6 ALLMR 626

Hon'ble Judges : N.V. Dabholkar, J; M.G. Gaikwad, J

Bench : Division Bench

Advocate : V.N. Upadhye, for the Appellant; S.S. Ladda, for S.G. Ladda and M.B. Gangwal, for the Respondent

Judgement

M.G. Gaikwad, J.—Heard the learned Counsel appearing on behalf of respective parties.

2. The insurance company, original respondent No. 2 in Motor Accident Claim Petition (M.A.C.P.) No. 428 of 1997 has preferred the present appeal challenging the award dated 21.6.2002, passed by the learned Member, Motor Accidents Claims Tribunal, Aurangabad, granting compensation of an amount of Rs. 32,65,000 to the claimants with future interest at the rate of 9 per cent per annum.

3. Respondent Nos. 1 and 2, the mother and sister of the deceased Swapnil alias Pappu Kalamkar filed M.A.C.P. No. 428 of 1997 u/s 166 of the Motor Vehicles Act and claimed compensation of an amount of Rs. 90,00,000 on account of death of deceased Swapnil occurred in an accident that took place on 22.5.1996 on Jalna-Aurangabad Road. Deceased Swapnil was travelling in a car bearing No. MP 09-N 4519. Respondent No. 1 in the petition was driving the said car. The car was owned by respondent No. 3. It was insured with the respondent No. 2 (present appellant) under policy No. 1500/000/06036/ 31/96/03257. The car was coming

towards Aurangabad. At a distance of 20 to 25 km from Aurangabad, the car dashed against a neem tree near Primary Health Centre at Karmad, resulting in instantaneous death of deceased Swapnil on the spot. Another occupant in the car by name Sharad sustained severe injuries and died after a couple of months. After this accident, Crime No. 1-45 of 1996 under Sections 304-A, 337 and 427 of the Indian Penal Code, came to be registered in Karmad Police Station. At the time of accident, deceased Swapnil was 26 years old. He was engaged in the business of plying luxury buses and tankers. He was a commerce graduate. His monthly earnings were Rs. 26,000. His longevity was alleged to be up to 70 years of age and on all these counts, the claimants preferred the claim for an amount of Rs. . 90,00,000. The father of the deceased, respondent No. 4, was joined as respondent in the claim petition; however, he died during the pendency of petition.

4. The driver, respondent No. 1, did not contest the claim petition; however, the insurance company (present appellant), respondent No. 2 and the owner of the car, respondent No. 3, contested the petition before learned Claims Tribunal. The owner of the car, respondent No. 3, admitted his ownership as well as deceased Swapnil travelling in his car, which, at the time of accident, was driven by respondent No. 1. Admitting all the contentions including the age and income of the deceased, respondent No. 3 came with a defence that the car being insured with the insurance company, respondent No. 2, it is liable to pay entire amount of compensation.

Insurance company (present appellant) came with a defence that the deceased was one of the passengers in the car involved in the accident which car was insured with them. According to them, the claim was settled on payment of Rs. 1,00,000 to the claimants. The insurance company denied the income of the deceased as claimed by them and according to them, his monthly income was Rs. 4,000 to Rs. 6,000. The written statement came to be amended and a contention was raised that the status of the deceased who was travelling in the car cannot be termed to be a third party, but he was a gratuitous passenger. Hence, for the risk of such a passenger, the insurance company is not liable. The claim petition against the insurance company is liable to be dismissed.

5. Both the parties led evidence before the Claims Tribunal. Both the claimants were examined in support of their respective contentions and they did produce the documents, i.e., certificate of insurance at Exh. 50, copies of spot panchnama and F.I.R. and copies of income tax returns of the deceased, Exhs. 56 and 57. On behalf of the present appellant insurance company, Assistant Manager, one Ambulgekar and one Inquiry Officer Robert had been examined who had investigated the claim. After considering that evidence, learned Member of the Tribunal recorded finding that the accident did occur because of rash and negligent driving by the car driver and the claimants were held entitled to the compensation. Contention of the insurance company, respondent No. 2, that the risk of the deceased is not covered, is negatived and the insurance company is

held liable to pay compensation on account of death of the deceased who was a gratuitous passenger in the car. Specific finding is recorded that the risk of such gratuitous passenger being a third party is covered under the policy. All three respondents were ordered to pay compensation of Rs. 32,65,000 to the claimants along with interest thereon at the rate of 9 per cent per annum.

Feeling aggrieved with this award of the Claims Tribunal, the insurance company, original respondent No. 2, has preferred the present first appeal. The appeal came to be admitted by this Court by order dated 30.11.2002.

6. On behalf of the appellant insurance company, the submission advanced is that under the policy, the liability of the insurance company was restricted/limited and the restricted claim is satisfied on payment of Rs. 1,00,000 to the claimants. From the terms of the policy, it is pointed out that under the policy, insured made payment of additional premium of Rs. 200. The capacity of the vehicle was of four passengers. For each passenger, an additional premium of Rs. 50 was paid. The deceased was a gratuitous passenger. Hence, in terms of policy, liability of insurance company is limited to Rs. 1,00,000 and the said claim is satisfied.

On the point of quantum, submission is advanced that the income of the deceased was shown on higher side. The age of the claimants is not considered while applying the multiplier on higher side. Hence, the compensation granted is alleged to be exorbitant. According to the appellant, claimant No. 2, who is sister of the deceased, was married. Father of the deceased is dead. Hence, sole dependent is the mother of the deceased. While applying the multiplier, the age of the dependent needs to be taken into consideration and in support of this contention, reliance is placed on the decision of the Supreme Court in the case of Maharashtra State Road Transport Corpn. Vs. Lalnipuui, . In support of the contention that the liability is restricted in terms of the policy and insurance company is not liable to pay more compensation than the restricted liability, reliance came to be placed on a decision of the Apex Court in the case of United India Insurance Co. Ltd., Shimla Vs. Tilak Singh and Others, .

7. On behalf of the original claimants, referring the terms of the policy, Exh. 50, submission is advanced that in terms of the policy, by a special contract, the insurance company's liability is not limited or restricted. Placing reliance on the decision of the Apex Court in the case of Amrit Lal Sood and Another Vs. Smt. Kaushalya Devi Thapar and Others, , contention is raised that though deceased was a gratuitous passenger, his risk is covered and the said risk is 100 per cent. As an alternative submission, it is contended that at the trial, the insurance company has not specifically pleaded the case of their limited liability. Original policy is also not produced on record. Hence, adverse inference may be drawn against the insurance company. The third contention advanced on this point is that in the certificate of insurance, produced at Exh. 50, the space is kept blank in respect of alleged liability. Hence, the lacuna cannot be filled in by mere reference to Indian Motor Tariff provisions and the liability cannot be said to be

restricted.

On the point of quantum, submission is advanced that the income tax returns of the deceased produced on record show the income of deceased to be Rs. 3,00,000 per annum. By deducting 1/3rd amount for personal expenses, the yearly income comes to Rs. 2,00,000. Deceased was a young man of 26 years. Hence, considering his age and the dependency of claimants, the trial court has applied proper multiplier. The compensation granted, therefore, cannot be said to be exorbitant. An alternative submission has been made that in case this Court concludes that liability of the insurance company is restricted, then in that case, insurance company may be directed to pay the entire amount and may be asked to recover the same from the insured.

8. On behalf of the owner of the vehicle, the respondent No. 4, submission is advanced that the owner had paid additional premium under the policy and the risk of the occupants of the car is covered and the liability of the insurance company cannot be said to be a limited liability. The owner also raised a contention that there was no pleading from the insurance company about limited liability, nor any issue is framed at the trial in that respect. Hence, the insurance company may not be allowed to raise contention and the contention of the insurance company that their liability is restricted may not be accepted. Hence, according to the owner of the vehicle also, on account of payment of additional premium, under the terms of policy, the case is governed by contract and the liability of the insurance company is unlimited. It is also submitted that the provisions in Indian Motor Tariff are only guidelines, but in terms of the contract, the liability of insurance company is unlimited. On the point of quantum, submission is advanced that the compensation granted is exorbitant. Hence, the award to the extent of quantum of compensation needs to be modified.

9. None of the parties challenged the finding of the Tribunal that death of the deceased occurred in this motor accident and it was because of negligence on the part of the car driver. Though the driver of the vehicle was a party to the claim petition, he did not contest the petition, nor was examined at the trial. No evidence was led on behalf of the insurance company or owner of the vehicle on the point of negligence. As such, it is undisputed that the accident is the result of rash and negligent driving of the driver of the motor vehicle. There is also no dispute that the deceased died in this motor accident.

As regards the status of the deceased, also there is no dispute. He was one of the occupants in the vehicle and he was a gratuitous passenger. Only contention advanced is about the liability, i.e., whether the liability of the insurance company is restricted in terms of insurance policy and about the quantum of compensation to be granted.

10. In view of the rival submissions advanced on behalf of the parties, the first material point for our consideration in the present case is about the liability of the insurance company, as to whether it is unlimited in terms of special contract

between the parties. In case, the parties are found to have entered into special contract in terms of policy, then the case will be governed by the contractual terms and the liability needs to be fixed in terms of a contract.

11. The certificate of insurance is produced before the Tribunal at Exh. 50. On perusal of this certificate, it appears that this certificate is issued in Form No. 51 of the Central Motor Vehicles Rules, 1989. Section 156 of the Motor Vehicles Act, 1988, specifies the effect of certificate of insurance, and in terms of Sub-section (a) of Section 156, when an insurer issues a certificate of insurance, the insurer shall be deemed to have issued to the insured person a policy of insurance confirming in all respects with the description and particular stated in such a certificate so long as the policy described in the certificate has not been issued by insurer to the insured. In terms of Sub-section (b) of Section 156, if the insurer has issued to the insured the policy described in the certificate, but the actual terms of the policy are less favourable to persons claiming under or by virtue of the policy against the insurer either directly or through the insured than the particulars of the policy as stated in the certificate, the policy shall, as between the insurer and any other person except the insured, be deemed to be in terms conforming in all respects with the particulars stated in the said certificate.

These provisions u/s 156 are the deeming provisions that the policy issued is in conformity with the terms incorporated in the certificate. There is no dispute that the vehicle in question in the present case was insured. The insurer as well as insured did not produce on record the original policy. Hence, as per the provisions of Section 156, it shall be deemed that the policy issued is as per terms and conditions incorporated in this certificate of insurance, Exh. 50.

12. On behalf of claimants, the learned advocate Mr. Ladda advanced submission that in this certificate of insurance, the columns are kept blank without mentioning the amount for which the liability is restricted. Hence, the insurance company cannot place reliance on the provisions of Indian Motor Tariff and contend that their liability is restricted. According to Mr. Ladda, non-production of insurance policy by the insured or insurer results in drawing adverse inference against them and they cannot be permitted to fill up the lacunae to claim their liability as restricted one. In support of this contention, Mr. Ladda placed reliance on the decision of the Apex Court in the case of *New India Assurance Co. Ltd. Vs. Kiran Singh and Others*, , as well as the decision of the Apex Court in the case of *National Insurance Co. Ltd. v. Jugal Kishore* 1988 ACJ 270 . In the case of *Jugal Kishore*, the Apex Court observed that it is the duty of the party which is in possession of a document which would be helpful in doing justice in cause to produce the said document and such party should not be permitted to take shelter behind the abstract doctrine of burden of proof and when the insurance company wishes to take a defence in a claim petition that its liability is not in excess of the statutory liability it should file a copy of the insurance policy along with its defence.

In the case of New India Assurance Co. Ltd. Vs. Kiran Singh and Others, , the insurance company had filed a copy of the policy purporting to be a true copy of insurance policy in which there was an endorsement "I.M.T. 13", which endorsement was not appearing in another document produced by the bank. The insurance company failed to lead any evidence to prove that copy of the policy filed by the insurance company was genuine. The Tribunal as well as High Court held that copy of the policy produced by the insurance company cannot be treated as a policy document and cannot be relied upon. The Supreme Court refused to interfere with the said concurrent finding and the policy produced by the Bank Manager is held to be genuine. As there was no endorsement "I.M.T. 13", the contention of the insurance company of their restricted liability is not accepted.

The third decision relied upon by the learned advocate Mr. Ladda is the decision of the Apex Court in the case of Rajendra Kumari v. Shanti Trivedi 1989 ACJ 517 , wherein the Apex Court held that "company must file policy in case it claims that company"s liability is not in excess of statutory liability". However, it has been held that "this rule does not apply where the claimant has admitted that company"s liability was only statutory".

The ratio in the above referred cases as laid down by the Apex Court is clear that the insurance company when claims their liability as restricted in terms of policy, they are under obligation to produce the original insurance policy before the court. The ratio is also clear that the terms under the policy need to be read as it is. To find out as to whether the liability in terms of a contract is restricted or limited, copy of insurance policy is not produced on record. The claimants did produce certificate of insurance at Exh. 50. Assistant Manager of the insurance company examined before the Tribunal gave statement that the policy in the present case is a comprehensive policy and according to him, Exh. 64 produced by him is a certified copy of the policy and risk of passenger is covered by paying additional premium of Rs. 50 per passenger. On perusal of Exh. 64 also, it is clear that it is not a certified copy of the policy, but it is a certificate of insurance. Exh. 50 produced by the claimants as well as Exh. 64 produced by the insurance company, the certificates of insurance, make it clear that additional premium of Rs. 200 has been paid and this premium is the payment towards the risk coverage of the passengers in terms of "I.M.T. 5". In both these documents, Exh. 50 and Exh. 64, the columns for mentioning the figure of capital benefits in rupees is kept blank. Hence, the point for consideration is as to whether by the payment of additional premium of Rs. 200 towards risk of capacity of vehicle, i.e., of four passengers, the liability can be said to be restricted to any specific amount. The ratio in the case of New India Assurance Co. Ltd. Vs. Kiran Singh and Others, , cannot be held to be applicable to the facts of the present case, because in that case, clause "I.M.T. 13" itself was not appearing in the document produced by the Bank Manager and the document produced by the insurance company which was containing such a term was held not proved. In the case at hand, in both the documents relied upon by the claimants as well as insurance

company, Exh. 50 and Exh. 64, as stated above, additional premium of Rs. 200 covering risk of four passengers found paid and the same is referred as the additional premium towards capital benefit under "I.M.T. 5". Now, therefore, reference to clause "I.M.T. 5" is essential.

13. On behalf of the insurance company, a model form of insurance policy (blank prescribed format of insurance policy) is produced on record wherein clause "I.M.T. 5" deals with the cases of personal accident cover to unnamed passengers other than the insured and his paid driver or cleaner. In case of death, the scale of compensation is specified to be 100 per cent. Proviso of this clause "I.M.T. 5" lays down that compensation shall be payable under only one of the items (a) to (d) specified under clause "I.M.T. 5" and the total liability of the insurance company shall not in the aggregate exceed the sum as specified in Schedule during any one period of insurance. However, note No. (1) of this clause "I.M.T. 5" states that the sum to be inserted is calculated by multiplying the death benefit by the full seating capacity of the vehicle. Note No. (2) states that the scale of compensation must be inserted on the endorsement. In the certificate, Exh. 50, such columns are kept blank though there is mention of payment of additional premium as per clause "I.M.T. 5". The liability under these sub-clauses of "I.M.T. 5" are subject to the terms, exceptions and conditions and limitation of the "policy". Thus, this clause "I.M.T. 5" makes it clear that the case will be governed as per the terms of the contract. As the columns are kept blank without specifying the amount of capital benefit, same needs to be assessed on the basis of premium paid and additional premium of Rs. 200 was found to have been paid towards the risk of four passengers. It can, therefore, be said that additional sum of Rs. 50 was paid covering the risk of each unknown passenger. Admittedly, deceased in this case was one of the unnamed passengers or occupants in the car who was travelling in the car at the time of accident. In terms of the certificate of insurance, Exh. 50, it can be said that his risk is covered by payment of additional premium of Rs. 50.

Now it has to be seen as to whether said risk is restricted or limited to any specific sum or it is 100 per cent coverage. On this point, the learned advocate Mr. Upadhye, for the insurance company placed reliance on the provisions of Indian Motor Tariff, which are the guidelines for payment of premiums under the insurance policy. The learned advocate Mr. Ladda contended that the provisions in the Indian Motor Tariff are general guidelines which cannot be termed to be contracted term and same cannot be accepted as an evidence for answering the issue as to whether the liability of the insurance company is restricted or limited.

14. In view of the above submissions, it has to be seen as to whether the provisions of Indian Motor Tariff can be considered to find out the liability of the insurance company on the basis of additional premium found to have been paid as appeared in the certificate of insurance, Exh. 50 referred above.

15. The contention that the liability of insurance company was restricted/limited is negated by the Tribunal on the ground that deceased was a gratuitous

passenger and his risk is covered being a third party, separate premium also for that purpose was paid as appeared in the certificate of insurance, Exh. 50. On perusal of the judgment of the Tribunal, it appears that both the parties did place reliance on the decisions of the Apex Court in support of their contentions. Relying upon the decision in the case of Amrit Lal Sood and Another Vs. Smt. Kaushalya Devi Thapar and Others, , the Tribunal held that the risk of gratuitous passenger, the occupant of a car is covered and the insurance company is not exempted from the liability. It has been held that after the new Act of 1988 came into force, the liability of the insurance company is unlimited. Decision in the case of New India Assurance Co. Ltd. Vs. Smt. Shanti Bai and others, , was relied upon before the Tribunal on behalf of the insurance company in support of their contention that their liability is restricted. However, the Tribunal observed that the ratio in that case is not applicable to the present case as that was a decision before the Amending Act of 1988. The insurance company aggrieved with this finding of the Tribunal, preferred this appeal. It is contended that their liability is restricted in terms of insurance policy. In support of that contention, reliance has been placed before us on the decision of the Apex Court in the case of United India Insurance Co. Ltd., Shimla Vs. Tilak Singh and Others, . In the case of Tilak Singh, the accident was alleged to have occurred on 31.10.1989. A pillion rider on the scooter of respondent No. 1 died as a result of accident. Respondent Nos. 2 to 4, the legal heirs preferred claim u/s 166 of the Motor Vehicles Act. The insurance company opposed the claim on two grounds, i.e. (a) the deceased was a pillion rider and the insurance policy did not cover the liability towards a pillion rider; and (b) although, the original insurer respondent No. 5 had sold the scooter to the respondent No. 1 before the accident, neither was any intimation of such sale given, nor was the insurance policy got transferred in favour of the respondent No. 1. The Tribunal granted compensation to the respondent Nos. 2 to 4. However, the insurance company was absolved from liability on the ground that notice of transfer of the insured vehicle had not been given to the insurance company. The owner, respondent No. 1, only was held liable for compensation. Owner preferred appeal before the High Court and the High Court set aside the finding of the Tribunal and held that the insurance company was jointly and severally liable along with the owner. Said decision of the High Court was challenged before the Apex Court. Before the Apex Court, contention was raised that risk of pillion rider was not covered under the policy. Referring to its earlier decisions and considering the scope of Section 147 of the new Act, particularly Sub-clause (ii) of Clause (b) of Sub-section (1) thereof, which refers to the liability of an owner in relation to death or bodily injury to any passenger, the Supreme Court held that the ratio in New India Assurance Co. Ltd. Vs. Asha Rani and Others, , is applicable to such gratuitous passengers and the insurance company is held under no liability towards the risk of gratuitous passenger, as the insurance policy was found to be a statutory policy not covering the risk of gratuitous passengers.

Thus, the ratio in the above case, United India Insurance Co. Ltd., Shimla Vs.

Tilak Singh and Others, , is clear that in terms of statutory policy, the risk of gratuitous passenger does not arise unless by special contract, same is covered.

16. In the case of The Oriental Insurance Company Limited Vs. Meena Variyal and Others, , the Apex Court has held that term or phrase "any person appearing in Section 147 is to be understood as a third party. In that case, on behalf of insurance company, contention was raised that the deceased was not a third party in terms of policy and the Act did not provide for statutory coverage of such a person. On behalf of the claimants, contention was raised that the deceased was not driving the vehicle. The deceased was found to be an employee of the owner and in terms of Section 147 of the Act, the insurance company was held not liable. It has been observed that in a claim by third party, there cannot be much dispute that once the liability of owner is found, the company is liable to indemnify the owner. Referring to the decision in United India Insurance Co. Ltd., Shimla Vs. Tilak Singh and Others, , it has been held that a policy in terms of Section 147 is not intended to cover persons other than third parties. In terms of Section 147, it is held that the object of Chapter XI is recognised as one intended to protect third parties as understood in the context of the Act unless of course there is a special contract in respect of protection to others.

On behalf of the claimants before us also, reliance is placed on the decision on Amrit Lal Sood and Another Vs. Smt. Kaushalya Devi Thapar and Others, , contending that risk of gratuitous passenger is covered by the provisions of the Act and it is unlimited. In this case, the policy was found to be a comprehensive policy. Referring to Section II(1)(a) of the policy, it has been held that the insurer has agreed to indemnify the insured against all sums which shall become legally liable to pay in respect of death or bodily injury to any person and the expression "any person" includes a gratuitous passenger travelling in the car. It has been held that in such cases, liability of insurer is only to the extent necessary to meet the requirement of Section 95 and in the policy, no limitation being prescribed, the insurer is held liable to satisfy the award passed in favour of the claimants.

17. Learned advocate Mr. Ladda for the claimants, relying upon the certificate of insurance, Exh. 50, submitted that in this case also, extent of liability is specified to be liability u/s II(1)(ii) in respect of any one claim and restricted to Rs. 6,000. It is thus a policy as in the case of Amrit Lal Sood and Another Vs. Smt. Kaushalya Devi Thapar and Others, and in terms of the policy, insurer agreed to indemnify the insured against all sums. Hence, the liability is not limited.

In the case of New India Assurance Co. Ltd. Vs. C.M. Jaya and Others, , the Supreme Court considered the extent of liability of insurance company and it has been held that in terms of Section 95(2) of the Motor Vehicles Act, 1939, liability of the insurance company is limited in the Act policy, but it is open to the insured to make payment of additional premium and get higher risk covered in respect of third party. In that case, in terms of policy, the risk was found limited to Rs. 50,000 as per the statute and no higher premium was found to have been paid

to cover unlimited or higher liability. It has been held that under a comprehensive policy, liability of insurance company is not unlimited to a third party. Referring to Clause (a) of Sub-section (1) of Section II, the decision in the case of Amrit Lal Sood (*supra*) is held to be a decision in the light of specific clause contained in the policy and same cannot be said to be a ratio that the liability of insurance company is unlimited even though it is limited to statutory requirement. It is observed that a statutory liability cannot be more than what is required under the statute itself. However, there is nothing in Section 95 which prohibits the parties to create unlimited or higher liability to cover wider risk. On perusal of the certificate of insurance, Exh. 50, in the case at hands, we noticed that there is specific clause restricting the liability of Rs. 6,000 in respect of any one claim or series of claims arising. However, additional premium of Rs. 200 was found to have been paid covering the risk of four passengers. Thus, in view of these facts, it cannot be said that the liability is not restricted. The ratio in the case of Amrit Lal Sood, therefore, will not help the present claimants, but liability of the insurance company is found to be limited in terms of "I.M.T. 5" on making payment of additional premium of Rs. 200.

In terms of a contract incorporated in the insurance policy, the insurance company's claim is found to have been restricted to "I.M.T. 5" and the risk to the extent of additional premium of Rs. 50 for each passenger is found restricted.

18. As regards the terms of insurance policy, the claimants are not expected to have any knowledge; however, during the cross-examination, claimant Aruna admitted that the insurance company, respondent No. 2, made payment of Rs. 1,00,000 to her after this accident. According to insurance company, their liability is restricted to Rs. 1,00,000. Witness Ambulgekar, the Assistant Manager of the insurance company relying upon the terms of the policy incorporated in the certificate of insurance has stated that risk of passenger is covered and additional premium of Rs. 50 per passenger is accepted and their liability is restricted to Rs. 1,00,000 per passenger and same is paid to the claimants. He admits that in the certificate of insurance relied upon, there is no reference that additional premium of Rs. 50 is taken for each passenger restricting liability to Rs. 1,00,000. Aggregate amount of Rs. 200 is accepted to be additional premium for four passengers. No doubt, the column is kept blank in this certificate which relates to capital benefit. However, as discussed above, the additional premium of Rs. 50 came to be accepted for each passenger and this certificate of insurance supports the statement of the witness. Hence, the policy in the present case is found to have covered a limited liability. The Indian Motor Tariff was revised and additional premium of Rs. 50 per passenger instead of Rs. 100 was to be charged. This revision was made with effect from 1.4.1990. It is thus clear that additional premium is accepted as per the rates specified in Indian Motor Tariff. When the insured relies on the certificate, Exh. 50, which contains clauses of Indian Motor Tariff (I.M.T.), it can be said that by entering into contract insured agreed to the terms of Indian Motor Tariff.

As per Indian Motor Tariff, additional premium of Rs. 5 is to be paid for capital sum insured of Rs. 10,000 per person. In the certificate of insurance, the additional premium is shown as Rs. 200 for four unnamed passengers. Thus, for each passenger, the additional premium paid is Rs. 50. By the above rate of Rs. 5 towards capital sum insured of Rs. 10,000, by additional premium of Rs. 50, insured sum comes to Rs. 1,00,000. In terms of the policy, therefore, the liability was found restricted to Rs. 1,00,000. As such, the insurance company in terms of policy by special contract was found liable to pay compensation of Rs. 1,00,000. This payment has been made by them to the claimants as admitted by PW 1, the claimant Aruna. Thus, for any additional compensation, the insurance company will not be liable, but whatever compensation which may be determined, the owner of the vehicle is liable to satisfy that claim.

19. The liability of the insurance company (present appellant) is found restricted to Rs. 1,00,000. The Tribunal passed award against the driver, owner and the insurance company and directed them to pay compensation of Rs. 32,65,000 and the liability is held joint and several. The finding that accident did occur because of rash and negligent driving of the driver of the vehicle is not challenged. Dilip, present respondent No. 3, was driving the vehicle. The vehicle was owned by present respondent No. 4. The car in question was dashed to a neem tree on the side of road. Claimant Aruna has stated that Dilip was driving the vehicle in a rash and negligent manner. Driver Dilip remained ex parte. No efforts were made to examine him on behalf of the owner or the insurance company. On the circumstances appearing in the spot panchnama, Exh. 51 and as there was no serious challenge, Tribunal concluded that accident was the result of rash and negligent driving of the driver. Because of negligent driving of the vehicle, by the driver, the owner of the vehicle is vicariously liable and the insurance company was to indemnify the owner. As stated above, in terms of the insurance policy, the liability of the insurance company to indemnify the owner was found to the extent of Rs. 1,00,000, but the owner and driver are liable for the entire claim of damages/compensation for the death of the deceased.

The owner as well as insurance company challenged the finding of the Tribunal as regards the extent of compensation. The Tribunal on the basis of income tax returns, Exh. 56 and Exh. 57, arrived at the conclusion that annual income of the deceased was Rs. 3,00,000 and after deduction of 1/3rd income towards the own expenses, the annual dependency is accepted to the tune of Rs. 2,00,000. Considering the age of the deceased, a multiplier of 17 was applied and the compensation was determined at Rs. 34,00,000. An amount of Rs. 10,000 is granted for loss to estate. An amount of Rs. 5,000 has been granted for the funeral expenses and the total compensation determined was to the extent of Rs. 34,15,000. After deducting an amount of Rs. 50,000 deposited towards "no fault liability" and the payment of Rs. 1,00,000 made by the insurance company, compensation to the tune of Rs. 32,65,000 came to be granted. This finding is challenged as incorrect, challenging the income as well as the multiplier applied.

20. It has been contended that the age of the dependants while applying multiplier is not at all considered. The evidence about the income is also not properly considered. Hence, the compensation granted is alleged to be exorbitant. In view of this contention, the evidence needs to be scanned about the age and income of the deceased and the multiplier to be applied.

Claimant Aruna who is mother of the deceased has stated that the deceased was 26 years of age at the time of his death. In support of this contention, the certificate issued by the S.S.C. Board is produced at Exh. 6. The date of birth of the deceased Swapnil as appearing in this certificate is 17.7.1969. The accident did occur on 22.5.1996. As such, deceased Swapnil was 26 years and 10 months of age at the time of accident. This evidence about the age is not disputed.

21. The next question for our consideration is about the income of the deceased. Deceased Swapnil was a commerce graduate. As per the statement of his mother, claimant Aruna, he was engaged in the business of travel agency. His income was Rs. 22,000 per month. In support of this contention, the income tax returns for the years 1995-1996 and 1996-1997 are produced at Exhs. 56 and 57. According to claimant Aruna, mother of the deceased, longevity of the family is more than 70 years of age. She gave a statement that the deceased used to pay Rs. 20,000 to Rs. 22,000 per month to the family as his contribution for maintenance of the family. By way of cross-examination, an attempt was made to challenge this income. It was asked to her that she was unable to explain as to who has signed the income tax returns and she pleaded ignorance. She admitted that for some occasions, deceased Swapnil used to take money from her to the extent of Rs. 10,000 to Rs. 12,000 per month. On perusal of Exhs. 56 and 57, it is clear that these are the certified true copies of the income tax returns, issued by Income Tax Department. In Exh. 56, his gross annual income was shown to be Rs. 3,39,630. This return came to be filed prior to his death and there are no circumstances to doubt this income tax return. Exh. 57 is the income tax return for the broken period filed on 27.9.1996 wherein his income has been shown as Rs. 1,65,350. Considering these income tax returns, the finding that his annual income was Rs. 3,00,000 as held by the Tribunal cannot be doubted. On the basis of the statement of claimant Aruna that the deceased Swapnil used to take an amount of Rs. 10,000 to Rs. 12,000 per month from her, it cannot be said that he was not an earning member, because the mother gave a positive statement that deceased Swapnil used to pay entire amount of income to her every month and out of it, he used to take certain amounts from her.

On behalf of the insurance company, Branch Manager Ambulgekar has stated that the insurance company appointed an Investigator who has collected the income tax returns wherein salary of the deceased Swapnil was shown to be Rs. 36,000 and Rs. 48,000 per annum and other income shown is from his business. By this statement, an attempt is made to show that only salary income of the deceased needs to be taken into consideration. However, this contention cannot be accepted when this witness admitted in his cross-examination that deceased

had other sources of income and there is clear admission that annual income of the deceased was Rs. 3,00,000.

The Investigator appointed by the insurance company by name Robert Rodrigues confirmed that he had investigated the claim on behalf of the insurance company. He has not collected the copies of income tax returns. However, he has ascertained the gross income as Rs. 1,31,000 for the year 1994-1995 and Rs. 1,80,000 for the year 1995-1996. He admits that there was no hurdle to him to obtain copies of income tax returns. He also admitted that he has not examined the account books maintained about the business of the deceased.

Thus, in view of these admissions of the Investigator, the income determined by him cannot be accepted to be a genuine and correct income of the deceased. The income as shown in the income tax returns cannot be said to be exorbitant and there was also no reason for the deceased to show exorbitant income in the returns because on that income, he was required to pay income tax. As such, the evidence on record justified the finding of the Tribunal that annual income of the deceased was Rs. 3,00,000.

As a general rule, 1/3rd amount out of the income needs to be deducted towards personal expenses of the deceased. By that deduction, the dependency of the dependants comes to an amount of Rs. 2,00,000 and the Tribunal has also correctly determined the same. As such, the finding of the Tribunal on the point of dependency of the claimants that it was Rs. 2,00,000 per annum is found to be perfectly correct.

22. The next contention raised on behalf of appellant insurance company and the owner is that the Tribunal has not applied the correct multiplier while determining the compensation. According to them, the age of the deceased alone cannot be a criteria while selecting the multiplier, but the age of the dependants also needs to be taken into consideration.

Learned advocate Mr. Ladda appearing on behalf of the claimants submitted that the Tribunal has applied the proper multiplier considering the age of the deceased. On behalf of the owner of the vehicle, the learned advocate Mr. Gangwal submitted that the multiplier applied is incorrect as the age of the claimants is not at all taken into consideration. She has made alternative submission that whatever compensation the court determines, may be directed to be paid by the insurance company and the insurance company may recover the same from the insured.

There is no dispute that deceased was 26 years of age at the time of death in the accident. The Tribunal applied multiplier of 17 while determining the compensation. Admittedly, the age of the claimants is not taken into consideration while choosing the multiplier. Claimant No. 1 Aruna is the mother of the deceased. At the time of filing claim petition, she was 47 years of age. In the witness-box, she has stated her age to be 51 years. Claimant No. 2 is the sister of the deceased. When the claim petition was preferred, she was

unmarried and claiming to be a dependant, she was impleaded as a party. That time, her age was shown to be 16 years. There is no dispute that now she is married and is no more dependent on the deceased. Respondent No. 4 was the father of the deceased and he is dead. Thus, claimant No. 1 Aruna, the mother of the deceased, is the only dependant.

Relying upon the judgment of the Apex Court in the case of Maharashtra State Road Transport Corpn. Vs. Lalnipuii, , the submission advanced is that the age of the claimants is relevant for selecting the multiplier. In that case, the mother had filed claim petition claiming compensation on account of death of her only daughter and the Tribunal selected multiplier of 17 on the basis of age of the deceased and granted compensation accordingly. The Apex Court held:

(11) It is fairly a settled position in law that while parents are the claimants, the age of the deceased is not relevant and it is the age of the claimants which would determine the multiplier to be adopted...

In the case of The Managing Director, TNSTC Vs. Sripriya and Others, , the Apex Court held that choice of multiplier is determined by the age of the deceased or that of the claimants whichever is higher. The deceased in the said case was of 37 years of age. The claim petition was preferred by the widow of the deceased, his minor daughters and parents. Multiplier of 12 is held to be appropriate multiplier.

In view of the decision of the Supreme Court in the case of Maharashtra State Road Transport Corpn. Vs. Lalnipuii, , when the claimants are the parents, the age of the deceased is not relevant, but the age of the claimant would determine the multiplier. Hence, the multiplier of 17 selected by the Tribunal on the basis of age of the deceased is on higher side. The claimant mother Aruna at the time of filing the claim petition was 47 years of age. Hence, considering her age, multiplier of 13 would have been a proper multiplier. However, we are selecting multiplier of 11 as the compensation in lump sum is being granted in her favour. By applying multiplier of 11 with dependency of Rs. 2,00,000 per annum, the compensation comes to Rs. 22,00,000. The learned Tribunal awarded an amount of Rs. 10,000 for loss to estate and Rs. 5,000 for funeral expenses. We are not inclined to interfere with the said award of compensation. Thus, by adding those amounts of award towards loss to the estate and funeral expenses, total compensation to which the claimant is entitled comes to Rs. 22,15,000, i.e., multiplier of 11 x Rs. 2,00,000 + Rs. 10,000 + Rs. 5,000.

Learned advocate Mr. Ladda submitted that there is no necessity to reduce the compensation by deducting the amount of "no fault liability". For this submission, he tried to place reliance on the decision of the Apex Court in the matter of Deepal Girishbhai Soni v. United India Insurance Co. Ltd. 2004 ACJ 934 . However, on perusal of the judgment of the Apex Court, contention of Mr. Ladda that the amount paid towards "no fault liability" cannot be reduced/ deducted from the compensation determined on account of fault u/s 166 of the

Motor Vehicles Act, does not get supported. The compensation thus determined in the case at hands is inclusive of the entire claim. The amount of Rs. 50,000 paid towards "no fault liability" needs to be deducted out of compensation of Rs. 22,15,000. The insurance company has already satisfied its liability to the extent of Rs. 1,00,000. Thus, the owner and driver of the vehicle are liable to pay compensation of Rs. 20,65,000, that is, Rs. 22,15,000 - (Rs. 1,00,000 + Rs. 50,000). To that extent, award needs to be confirmed as against respondent Nos. 3 and 4 in this appeal.

23. The last submission advanced on behalf of the owner, according to us, is not sustainable. On behalf of the owner, submission is made that insurance company be directed to pay the entire compensation as granted against the owner with liberty to the insurance company to recover the same from the owner. Under the terms of insurance policy, the liability of the insurance company was limited/restricted to Rs. 1,00,000 and they have made payment of the same. Hence, the insurance company cannot be directed to pay the entire amount of compensation with further direction to it to recover the same from the owner.

24. In the result, the appeal is partly allowed. Award dated 21.6.2002 passed by the learned Member, Motor Accidents Claims Tribunal, Aurangabad in Motor Accident Claim Petition No. 428 of 1997, granting compensation of Rs. 32,65,000 to the claimants, is hereby modified. It is hereby ordered that instead of compensation of Rs. 32,65,000, the claim of the claimants is allowed for compensation of Rs. 22,15,000, inclusive of an amount of Rs. 50,000 towards "no fault liability".

25. We hereby declare that the liability of appellant insurance company is limited to the extent of Rs. 1,00,000 (which claim is already satisfied by the insurance company).

26. We further direct that the driver and owner, i.e., respondent Nos. 3 and 4, respectively in the appeal shall pay an amount of Rs. 20,65,000, i.e., Rs. 22,15,000 -(Rs. 1,00,000 + Rs. 50,000) towards compensation to the claimants with interest thereon at the rate of 9 per cent per annum from the date of M.A.C. Petition till the date of payment of compensation.

27. The liability of respondent Nos. 3 and 4 to pay compensation as ordered above is joint and several. In case the insurance company has paid amount of "no fault liability" compensation of Rs. 50,000 over and above Rs. 1,00,000, the insurance company shall have a right to recover the same from respondent Nos. 3 and 4 by virtue of this judgment itself. No order as to costs.