**(2012) 02 GUJ CK 0131**

**In the Gujarat High Court**

**Case No :** First Appeal No. 5168 of 2001

Oriental Insurance Co Ltd. APPELLANT

Vs

Damyantiben Harivallabh Jani and 1 RESPONDENT

**Date of Decision :** 27-02-2012

**Acts Referred:**

Motor Vehicles Act, 1939 — Section 147, 147(1), 95(2)

**Citation :** (2012) 02 GUJ CK 0131

**Hon'ble Judges :** K. S. Jhaveri, J

**Bench :** Single Bench

**Advocate :** Dakshesh Mehta 1, for the Appellant;

**Final Decision :** Allowed

## Judgement

Honourable Mr. Justice K.S. Jhaveri

1. By way of this appeal, the appellant-original opponent No. 2 has challenged the judgement and award dated 31.05.2001, passed by the Motor Accident Claims Tribunal(Auxi), Rajkot, in M.A.C.P. No. 1890 of 1998, whereby the tribunal has awarded compensation in the sum of Rs. 73,500/- to the claimant with interest at the rate of 9% per annum from the date of filing of the petition till realization. The brief facts leading to filing of this appeal are that on 05.03.1998 one Prashant Harivallabh Jani was driving the Ambassador Car bearing registration No. GJJ 9927, owned by one Damyantiben. At that time one truck bearing registration No. GRS 5660 came from back side and dashed the said ambassador car. As a result of which Damyantiben Harivallabh Jani sustained injuries and the car also got damaged. Therefore, he filed claim petition bearing M.A.C.P. No. 1890 of 1998 before the tribunal for compensation.

2. The Tribunal after hearing learned advocates for both the parties and after recording the evidence decided the claim petition and passed the award as stated herein above against which the present appeal is filed by the appellants-original opponent No. 2.

3. Learned counsel for the appellant submitted that the Tribunal has committed an error in awarding compensation to the claimant. He further contended that in view of Section 147(i)(b), the liability of the Insurance Company to the third party damage to property is limited to Rs. 6,000/- only.

4. I have heard learned advocate for the appellant and perused the materials on record. In the case of National Insurance Co. (supra) the Honourable Supreme Court has observed as under :-

13. The insurance policy being in the nature of a contract, it is permissible for an owner to take such a policy whereunder the entire liability in respect of the death of or bodily injury to any such employee as is described in sub-clauses (a) or (b) or (c) of proviso (i) to Section 147(1)(b) may be fastened upon the insurance company and insurance company may become liable to satisfy the entire award. However, for this purpose the owner must take a policy of that particular kind for which he may be required to pay additional premium and the policy must clearly show that the liability of the insurance company in case of death of or bodily injury to the aforesaid kind of employees is not restricted to that provided under the Workmen''s Act and is either more or unlimited depending upon the quantum of premium paid and the terms of the policy.

15. Though the aforesaid decision has been rendered on Section 95(2) of the Motor Vehicles Act, 1939 but the principle underlying therein will be fully applicable here also. It is thus clear that in case the owner of the vehicle wants the liability of the insurance company in respect of death of or bodily injury to any such employee as is described in clauses (a) or (b) or (c) of proviso (i) to Section 147(1)(b) should not be restricted to that under the Workmen''s Act but should be more or unlimited, he must take such a policy by making payment of extra premium and the policy should also contain a clause to that effect. However, where the policy mentions "a policy for Act Liability" or "Act Liability", the liability of the insurance company qua the employees as aforesaid would not be unlimited but would be limited to that arising under the Workmen''s Act.

5. In view the above, I am of the opinion that the contention raised by the appellant is required to be accepted. The liability of the Insurance Company is liable upto 6,000/-. In the premises, the Insurance Company is liable to pay Rs. 6,000/- and the balance amount of Rs. 67,500/- is to be recovered from the Insurance Company of the Ambassador Car. The judgement and award of the tribunal is modified to the aforesaid extent. Decree be drawn accordingly. The present appeal is allowed to the aforesaid extent.

 