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**(2002) 07 KAR CK 0027**

**In the Karnataka High Court**

**Case No :** C.R.P. No's. 2407, 2408, 2410, 2411, 2412 and 2413 of 2001

Oriental Insurance Co. Ltd.

APPELLANT

Vs

Veerappa and Others

RESPONDENT

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**Date of Decision :** 29-07-2002

**Acts Referred:**

Motor Vehicles Act, 1988 — Section 146, 147 (5), 149 (1), 149 (2), 176

**Citation :** (2003) ACJ 1259

**Hon'ble Judges :** V. Gopala Gowda, J

**Bench :** Single Bench

**Advocate :** S.P. Shankar, for the Appellant;

**Final Decision :** Dismissed

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## **Judgement**

V. Gopala Gowda, J.—These revision petitions are filed by petitioner company as it is aggrieved of the judgment and award dated

19.3.2001 passed in M.V.C. Nos. 282, 283, 284, 288, 289 and 306 of 1997 in awarding compensation of Rs. 1,000, Rs. 3,000, Rs. 2,000, Rs.

3,000, Rs. 2,000 and Rs. 3,000 respectively. The petitioner has also filed M.F.A. Nos. 3039-3043 of 2001 aggrieved of the judgment and

awards passed in M.V.C. Nos. 281, 285, 286, 287 and 290 of 1997 awarding compensation of Rs. 1,50,000, Rs. 15,000, Rs. 55,000, Rs.

17,364 and Rs. 65,387 respectively in favour of the claimants therein. Thereby the total compensation awarded by the M.A.C.T., Koppal, against

the petitioner company is Rs. 3,16,751. It is contended by Mr. S.P. Shankar, the learned Counsel appearing on behalf of the petitioner company

that as per the policy issued to the insured in respect of the lorry bearing registration No. KA 26-1632 the liability of the company is limited to 6+1

persons who were travelling in the lorry along with the goods. The M.A.C.T.,

Koppal has fastened liability on the insurer to satisfy all the 11 awards passed by it. Therefore, it is urged by the learned Counsel that the same is contrary to Rules 100 and 101 of the Karnataka Motor Vehicles Rules, 1989 (in short called as "the Rules"), as the State Government is empowered to frame rules in exercise of its power u/s 176 of the Motor Vehicles Act, 1988 (in short "M.V. Act") in regard to carrying of persons in a goods vehicle. Further, it is contended by learned Counsel that depending on the unladen weight of the vehicle a certain number of coolies are allowed to be carried, intra city but not intercity. Light goods vehicle (in short "L.G.V.") can carry 3+1 persons while Heavy Goods Vehicle (in short "H.G.V.") can carry 6+1 persons. Further, he has contended that in view of the rules referred to supra framed under the provisions of the M.V. Act by the State Government, insured alone is made liable to pay the compensation to the claimants in the event of death or personal injury to them either more than 3+1 or 6+1 persons depends upon the vehicle in question involved in the accident. In support of his submission, he has placed strong reliance upon a judgment of this court rendered in National Insurance Co. Ltd. Vs. Dundamma and others, and unreported judgment in W.P. No. 6839 of 1999, M.F.A. No. 1575 of 1996 and other appeals.

2. The offending vehicle in these cases is the H.G.V. Therefore, the liability of the insurer to pay the compensation amount to the claimants is for 6+1 persons. Nearly 160 persons of a marriage party were found travelling in the vehicle on the date when the accident has occurred as per Exh.

P-1, F.I.R. The company has already satisfied three awards passed by the Workmen's Compensation Commissioner in respect of 3 employees of

the insured arising under the workmen compensation cases under the provisions of the Workmen's Compensation Act, 1923 and Rules framed

thereunder. In the present common judgment, there are 12 awards in favour of the family of marriage party under the M.V. Act, totally there are

15 awards passed by the M.A.C.T., Koppal against the company, it is contended by the learned Counsel for the company that under the

provisions of M.V. Act, passengers travelling in a goods vehicle are not covered u/s 147 of the Act and, therefore, they are not entitled for

compensation amount awarded by the M.A.C.T. from the company. In support of

this submission, he has placed reliance upon the judgment rendered in Smt. Mallawwa Etc. Vs. The Oriental Insurance Co. Ltd. and Others, . Further, in view of law laid down by the Apex Court in New India Assurance Company Vs. Shri Satpal Singh and Others, and in The New India Assurance Company Limited, Bangalore Vs. Rajendra Singh and others, , an insurer is liable to pay compensation amount in respect of gratuitous passengers who will be the claimants irrespective of the limited liability as agreed between the petitioner company and insured in view of omission of Clause (ii) of the proviso to Section 95(1)(b) of the old Act from the corresponding Section 147 of the new M.V. Act of 1988. Therefore, it is urged that there is no coverage for passengers in a goods vehicle in the policy issued by the insurer, the liability to satisfy 6+1 persons under Rule 100 of the Rules and, therefore, it is liable to pay the same and the same is honoured, and it is liable to satisfy the said awards in respect of the claimants only. Since three awards passed under the Workmen's Compensation Act, the same are already satisfied by the company, the remaining extent of liability of the insurer is for 4 persons and best this court can direct it to pay the remaining 4 persons claims, whose awards are the highest amount of compensation awarded by the M.A.C.T., Koppal. Therefore, the company has approached this court for issuing a direction to choose 4 out of 12 awards passed by the M.A.C.T. so that the remaining liability of the insurer as per the common judgment and awards passed by M.A.C.T., Koppal in the aforesaid claim petitions of the claimants can be discharged by it.

3. The above said legal contentions urged by the learned Counsel on behalf of the company are examined by this court with reference to the various provisions of the M.V. Act, namely, Sections 146, 147 particularly Sections 147(5), 149(1), 149(2) and 149(4) read with Rule 100 of the Rules. This court has also examined the law laid down in the following cases by the Apex Court after interpretation of the provisions of the repealed M.V. Act, 1939 and the terms and conditions incorporated in the policies issued by the insurer in favour of the insured in the following judgments with a view to find out and answer the legal questions raised in these cases by urging legal submissions by the learned Counsel on behalf of petitioner company:

New Asiatic Insurance Co. v. Pessumal Dhanamal Aswani 1958 ACJ 559.

Guru Govekar v. Filomena F. Lobo 1988 ACJ 585.

Skandia Insurance Co. Ltd. v. Kokilaben Chandravadan 1987 ACJ 411.

G. Govindan Vs. New India Assurance Co. Ltd. and Others, .

New India Assurance Co., Shimla Vs. Kamla and Others etc. etc., .

Amrit Lal Sood and Another Vs. Smt. Kaushalya Devi Thapar and Others, .

4. The provision of Section 146 of the M.V. Act, 1988 casts mandatory duty on the part of the owner of the vehicle to insure the vehicle

compulsorily to cover the risk arising out of the use of such vehicle or vehicles on the public roads. The provision of Section 147 of the M.V. Act

of 1988 provides for requirements of the policy and limits the liability of the insurer. Section 147(5) of the Act prescribes that no scope for

avoiding liability is assured to either the victims or dependants of the victims of total immunity. In view of the above said provisions of M.V. Act,

the insurer cannot escape liability to pay compensation amount either to the victims or dependants of the victims even if it could avoid or cancel or

has avoided or cancelled the policy as per the provisions of Section 149(1) of the M.V. Act. Under the provisions of Section 149(4) of the Act a

policy of insured vehicle cannot contain a stipulation enumerating the terms and conditions in the policy which are inconsistent with the provisions of

Section 149(2) of the M.V. Act. Rule 100 of the Karnataka Motor Vehicles Rules provides for carrying passengers up to 6+1 persons maximum

travelling in the heavy goods vehicle. The above said rule shall not control the substantive provision of Section 147 of M.V. Act, as it confers a

substantive statutory right upon either the victims or the dependants to prefer claim against the insurer claiming compensation amount by them either

on account of sustaining injuries or death in a road accident of the motor vehicle insured and, therefore, the said rule cannot take away the liability

assured to them under the said provision of the Act invoking the aforesaid rule.

5. In a judgment of the Supreme Court in Skandia Insurance Co. Ltd. v. Kokilaben Chandravadan 1987 ACJ 411, the law has been succinctly

laid down at paras 12, 13 and 14 after interpretation of the provisions u/s 95 of the repealed M.V. Act, holding that compulsory insurance of the

motor vehicle is based on the public policy spelt out in the provision of the Act.

Therefore, third party claim cannot be defeated by the insurer

under the guise that Rule 100 of Rules permit to carry 6+1 passengers in the insured heavy goods vehicle and the liability of the insurer is gratuitous

for 6+1 passengers only and not beyond such number of passengers. The paras 12, 13 and relevant portion of para 14 of the aforesaid judgment

is extracted as hereunder for appreciation and consideration with a view to answer the legal questions raised in these civil revision petitions by the

learned Counsel on behalf of the company:

(12) The defence built on the exclusion clause cannot succeed for three reasons, viz.;

(1) On a true interpretation of the relevant clause which interpretation is at peace with the conscience of Section 96, the condition excluding driving

by a person not duly licensed is not absolute and the promisor is absolved once it is shown that he has done everything in his power to keep,

honour, and fulfil the promise and he himself is not guilty of a deliberate breach.

(2) Even if it is treated as an absolute promise, there is substantial compliance therewith upon an express or implied mandate being given to the

licensed driver not to allow the vehicle to be left unattended so that it happens to be driven by an unlicensed driver.

(3) The exclusion clause has to be "read down" in order that it is not at war with the "main purpose" of the provisions enacted for the protection of

victims of accidents so that the promisor is exculpated when he does everything in his power to keep the promise.

(13) In order to divine the intention of the legislature in the course of interpretation of the relevant provisions there can scarcely be a better test than

that of probing into the motive and philosophy of the relevant provisions keeping in mind the goals to be achieved by enacting the same. Ordinarily,

it is not the concern of the legislature whether the owner of the vehicle insures his vehicle or not. If the vehicle is not insured any legal liability arising

on account of third party risk will have to be borne by the owner of the vehicle. Why then has the legislature insisted on a person using a motor

vehicle in a public place to insure against third party risk by enacting Section 94. Surely the obligation has not been imposed in order to promote

the business of the insurers engaged in the business of automobile insurance. The provision has been inserted in order to protect the members of

the community travelling in vehicles or using the roads from the risk attendant upon the user of motor vehicles on the roads. The law may provide for compensation to the victims of road accidents who sustain injuries in the course of an automobile accident or compensation to dependants of the victims in the case of a fatal accident. However, such protection would remain a protection on paper unless there is a guarantee that the compensation awarded by the courts would be recoverable from the persons held liable for the consequences of the accident. A court can only pass an award or a decree. It cannot ensure that such an award or decree results in the amount awarded being actually recovered, from the person held liable who may not have the resources. The exercise undertaken by the law courts would then be an exercise in futility. And the outcome of the legal proceedings which by the very nature of things involve time, cost and money cost invested from the scarce resources of the community would make a mockery of the injured victims, or the dependants of the deceased victim of the accident, who themselves are obliged to incur not inconsiderable expenditure of time, money and energy in litigation. To overcome this ugly situation the legislature has made it obligatory that no motor vehicle shall be used unless a third party insurance is in force. To use the vehicle without the requisite third party insurance being in force is a penal offence. The legislature was also faced with another problem. The insurance policy might provide for liability walled in by conditions which may be specified in the contract of policy. In order to make the protection real, the legislature has also provided that the judgment obtained shall not be defeated by the incorporation of exclusion clauses other than those authorized by Section 96 and by providing that except and save to the extent permitted by Section 96, it will be the obligation of the insurance company to satisfy the judgment obtained against the persons insured against third party risks (vide Section 96). In other words, the legislature has insisted and made it incumbent on the user of a motor vehicle to be armed with an insurance policy covering third party risks which is in conformity with the provisions enacted by the legislature. It is so provided in order to ensure that the injured victims of automobile accidents or the dependants of the victims of fatal accidents are really compensated in terms of money and not in terms of promise. Such a benign provision enacted by the legislature having regard to the fact that in the modern age the use of

motor vehicles notwithstanding the attendant hazards, has become an inescapable fact of life, has to be interpreted in a meaningful manner which

serves rather than defeats the purpose of the legislation. The provision has therefore to be interpreted in the twilight of the aforesaid perspective.

(14) ...In a way the question is as to whether the promise made by the insured is an absolute promise or whether he is exculpated on the basis of

some legal doctrine. The discussion made in para 239 of Breach of Contract by Carter, 1984 Edn. under the head Proof of Breach, gives an

inkling of this dimension of the matter.

Exculpation of a promisor.-Given a presumption of absoluteness of obligation, a promisor who is alleged to have failed to perform must either

prove performance or establish some positive excuse for any failure on his part. In other words, he must find exculpation from what is presumed to

be a breach of contract, either in the contract itself or in some external rule of law. These are five grounds for exculpation; construction of the

contract; the doctrine of frustration; the existence of an implied term; the presence of an exclusion clause and the application of a statutory rule or

provision. These will be considered later.

In the present case even if the promise were to be treated as an absolute promise the grounds for exculpation can be found from Section 84 of the

Act which reads this:

84. Stationary vehicles.-No person driving or in charge of a motor vehicle shall cause or allow the vehicle to remain stationary in any public place,

unless there is in the driver's seat a person duly licensed to drive the vehicle or unless the mechanism has been stopped and a brake or brakes

applied or such other measures taken as to ensure that the vehicle cannot accidentally be put in motion in the absence of the driver.

In view of this provision apart from the implied mandate to the licensed driver not to place a non-licensed person in charge of the vehicle there is

also a statutory obligation on the said person not to leave the vehicle unattended and not to place it in charge of an unlicensed driver. What is

prohibited by law must be treated as a mandate to the employee and should be considered sufficient in the eyes of law for excusing non-

compliance with the conditions. It cannot therefore in any case be considered as a breach on the part of the insured. To construe the provision

differently would be to rewrite the provision by engrafting a rider to the effect that in the event of the motor vehicle happening to be driven by an

unlicensed person regardless of the circumstances in which such a contingency occurs, the insurer will not be liable under the contract of insurance.

It needs to be emphasised that it is not the contract of insurance which is being interpreted. It is the statutory provision defining the conditions of

exemption which is being interpreted. These must therefore be interpreted in the spirit in which the same have been enacted accompanied by an

anxiety to ensure that the protection is not nullified by the backward looking interpretation which serves to defeat the provision rather than to fulfil

its life-aim. To do otherwise would amount to nullifying the benevolent provision by reading it with a non-benevolent eye and with a mind not tuned

to the purpose and philosophy of the legislation without being informed of the true goals sought to be achieved. What the legislature has given, the

court cannot deprive of by way of an exercise in interpretation when the view which renders the provision potent is equally plausible as the one

which renders the provision impotent. In fact it appears that the former view is more plausible apart from the fact that it is more desirable. When

the option is between opting for a view which will relieve the distress and misery of the victims of accidents or their dependants on the one hand

and the equally plausible view which will reduce the profitability of the insurer in regard to the occupational hazard undertaken by him by way of

business activity, there is hardly any choice. The court cannot but opt for the former view. Even if one were to make a strictly doctrinaire

approach, the very same conclusion would emerge in obedience to the doctrine of "reading down" the exclusion clause in the light of the "main

purpose" of the provision so that the "exclusion clause" does not cross swords with the "main purpose" highlighted earlier. The effort must be to

harmonize the two instead of allowing the exclusion clause to snipe successfully at the main purpose. This theory which needs no support is

supported by Carter. Breach of Contract vide para 251. To quote:

Notwithstanding the general ability of contracting parties to agree to exclusion clauses which operate to define obligations there exists a rule, usually

referred to as the "main purpose rule", which may limit the application of wide exclusion clauses defining a promisor's contractual obligations. For

example, in *Glynn v. Margetson & Co.* (1893) AC 351 at p. 357, Lord Halsbury, L.C. stated:

It seems to me that in construing this document, which is a contract of carriage between the parties, one must in the first instance look at the whole

instrument and not at one part of it only. Looking at the whole instrument, and seeing what one must regard...as its main purpose, one must reject

words, indeed whole provisions, if they are inconsistent with what one assumes to be the main purpose of the contract.

6. The Supreme Court in the cases reported in *New Asiatic Insurance Co. Ltd. v. Pessumal Dhanamal Aswani* 1958 ACJ 559 and *G. Govindan*

*Vs. New India Assurance Co. Ltd. and Others*, , after interpretation of the relevant provisions of the repealed M.V. Act has observed that on

technical interpretation of the provisions of beneficial legislation of the Motor Vehicles Act, which enactment provides for social security measure

to either the victims or to the dependants of the victims of the accident or to the insured persons their claim that they are third parties and,

therefore, the same cannot be defeated. In this regard the Apex Court in the case referred to supra after interpreting the provisions of Sections 94,

95, 96, 97 and 99 of Chapter VIII of the repealed M.V. Act of 1939 and also Sections 146, 147, 150 and 157 of the M.V. Act of 1988 at para

15 of the judgment has laid down the law holding that the insurer is liable to pay the compensation to third parties as the insurance of motor

vehicles also covers against third party risk. Further, the provisions of Section 145(g) of the M.V. Act of 1988 has comprehensively defined as to

"who is third party". The third party includes "Government". By a careful reading of the above said comprehensive definition provision of the Act

the third parties are also included in the policy of the vehicle insured and, therefore, it makes very clear that persons who will be travelling in the

motor vehicle even if it is beyond maximum number of 6+1 persons will be travelling in the heavy goods vehicle, which is contrary to the Rule 100

of Rules they have to be treated as third parties and the insurer is liable to pay compensation amount to them when they prefer claim on account of

suffering either bodily injuries or death of the victims or dependants of the victims of road accident of the vehicle irrespective of the fact of terms

and conditions of the policy issued to the vehicle insured.

7. The Apex Court in *Amrit Lal Sood and Another Vs. Smt. Kaushalya Devi Thapar and Others*, , has examined the provisions of Sections 94

and 95 of the repealed Act and law has been succinctly laid at paras 13 and 14 and the phrase "any person" has been interpreted at para 8 which

paras are extracted as hereunder:

(13) In the policy in the present case also, there is a clause under the heading:

Avoidance of certain terms and right of recovery.-Which reads thus: Nothing in this policy or any endorsement here upon shall affect the right of

any person indemnified by this policy or any other person to recover an amount under or by virtue of the provisions of the Motor Vehicles Act,

1939, Section 96. But the insured shall repay to the company all sums paid by the company which the company would not have been liable to pay

but for the said provisions.

(14) The above clause does not enable the insurance company to resist or avoid the claim made by the claimant. The clause will arise for

consideration only in a dispute between the insurer and the insured. The question whether under the said clause the insurer can claim repayment

from the insured is left open. The circumstance that the owner of the vehicle did not file an appeal against the judgment of single Judge of the High

Court under the Letters Patent may also be relevant in the event of a claim by the insurance company against the insured for repayment of the

amount. We are not concerned with that question here.

(8) Thus u/s II(1)(a) of the policy the insurer has agreed to indemnify the insured against all sums which the insured shall become legally liable to

pay in respect of death of or bodily injury to "any person". The expression "any person" would undoubtedly include an occupant of the car who is

gratuitously travelling in the car. The remaining part of Clause (a) relates to cases of death or injury arising out of and in the course of employment

of such person by the insured. In such"" cases the liability of the insurer is only to the extent necessary to meet the requirements of Section 95 of the

Act. Insofar as gratuitous passengers are concerned there is no limitation in the policy as such. Hence under the terms of the policy, the insurer is

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

terms of the policy are unambiguous.

The Queen's Bench in the case of Barnet Group Hospital Management Committee v. Eagle Star Insurance Co. Ltd. 1960 (1) QB 107 at page

111 interpreted the words "any person" as hereunder:

The words "any person" in Section 36(1) mean "any person" and not "any person" within the classes required to be "covered by the Sub-section".

The words "any person" are as wide as can be and there is no reason for limiting their meaning unless strong reasons can be adduced for so doing.

Had it been the intention of the legislature to limit the right of hospitals to recover payment in respect of persons within the classes required to be

covered by Section 36(1), words to that effect would have been used. This point was considered by the Court of Appeal in Northern Ireland in

Royal Victoria Hospital v. London Guarantee and Accident Corporation. That case was exactly on this point... There is no ground for an artificial

restriction of the plain words of the Sub-section. Parliament has not enacted that payment is to be made in connection only with a liability arising

under the Act, and there would have to be the plainest indication within or outside the Act that the provisions related only to third parties

compulsorily required to be insured to permit the court to modify the plain meaning of the words "any person."

8. The Apex Court in New India Assurance Company Vs. Shri Satpal Singh and Others, , has laid down the law at paras 6, 7 and 10 as

hereunder:

(6) In fact the said ratio has been approved by the three-judge Bench in Smt. Mallawwa Etc. Vs. The Oriental Insurance Co. Ltd. and Others, .

At the same time learned Judges pointed out that the old Act is now repealed by the new Act and Section 147 of the new Act corresponding to

Section 95 of the old Act has been substantially altered and hence the above interpretation of Section 95 of the old Act will govern the cases which

have arisen under the old Act.

(7) Proviso to Section 147(1) of the new Act shows that it is a recast provision by placing the erstwhile Clause (iii) as the present Clause (ii). In

other words, Clause (ii) of the proviso to Section 95(1) of the old Act is totally non-existent in the proviso to Section 147(1) of the new Act.

(10) The result is that under the new Act an insurance policy covering third party risk is not required to exclude gratuitous passenger in a vehicle,

no matter that the vehicle is of any type or class. Hence the decisions rendered under the old Act vis-a-vis gratuitous passengers are of no avail

while considering the liability of the insurance company in respect of any accident which occurred or would occur after the new Act came into

force.

9. The Apex Court in the case reported in *New India Assurance Co., Shimla Vs. Kamla and Others etc. etc.*, , has held that if insurer is made

liable to pay in excess of its admitted liability as incorporated in the policy of the motor vehicle, such excess can be recovered from the insured but

the third party claim against the insurer cannot be defeated by interpreting the relevant rule, terms and conditions of the policy issued to the vehicle

of the insured and further held that legislature while enacting the law has prohibited for motor vehicles being used in public places without covering

third party by a policy of insurance, otherwise the members of the community will become sufferers on account of accident arising from the use of

motor vehicles, if such protection is not given to them, the same would have remained only a paper protection if the compensation awarded by the

courts were not recoverable by the victims (or dependants of the victims) on account of motor vehicle accidents. The relevant paras 21, 22 and 23

of the aforesaid case are extracted as hereunder:

(21) A reading of the proviso to Sub-section (4) as well as the language employed in Sub-section (5) would indicate that they are intended to

safeguard the interest of an insurer who otherwise has no liability to pay any amount to the insured but for the provisions contained in Chapter XI

of the Act. This means, the insurer has to pay to the third parties only on account of the fact that a policy of insurance has been issued in respect of

the vehicle, but the insurer is entitled to recover any such sum from the insured if the insurer were not otherwise liable to pay such sum to the

insured by virtue of the conditions of the contract of insurance indicated by the policy.

(22) To repeat, the effect of the above provisions in this; when a valid insurance policy has been issued in respect of a vehicle as evidence by a

certificate of insurance the burden is on the insurer to pay to the third parties, whether or not there has been any breach or violation of the policy

conditions. But the amount so paid by the insurer to third parties can be allowed

to be recovered from the insured if as per the policy conditions the insurer had no liability to pay such sum to the insured.

(23) It is advantageous to refer to a two Judges Bench of this court in *Skandia Insurance Co. Ltd. v. Kokilaben Chandravadan* 1987 ACJ 411.

Though the said decision related to the corresponding provisions of the predecessor Act (Motor Vehicles Act, 1939) the observations made in the judgment are quite germane now as the corresponding provisions are materially the same as in the Act. The learned Judges pointed out that

insistence of the legislature that a motor vehicle can be used in a public place only if that vehicle is covered by a policy of insurance is not for the purpose of promoting the business of the insurance company but to protect the members of the community who become sufferers on account of

accidents arising from the use of motor vehicles. It is pointed out in the decision that such protection would have remained only a paper protection

if the compensation awarded by the courts were not recoverable by the victims (or dependants of the victims) of the accident. This is the *raison*

*d'etre* for the legislature making it prohibitory for motor vehicles being used in public places without covering third party risks by a policy of insurance.

10. The Apex Court in the case reported in *Guru Go'vkar v. Filomena F. Lobo* 1988 ACJ 585, after proper interpretation of Sections 94 and

95 of the repealed Act 1939, the Apex Court has held that by reason of Section 95(2) of the Act it covers the claim of third party and, therefore,

their right of claiming compensation in the said judgment is held to be legal and valid by laying down the law at para 8, which reads thus:

(8) The portion of Section 95 of the Act, extracted above, requires every person, who is the owner of a motor vehicle to take out a policy against

any liability which may be incurred by him in respect of the death of or injury to any person or damage to any property of a third party caused by

or arising out of the use of the vehicle in a public place, from an authorised insurer or a cooperative society allowed u/s 108 of the Act to transact

the business of an insurer, u/s 95(2)(c) of the Act in the case of motor vehicles other than those referred to in Clause (a) or (b) of Section 95(2) the

policy of insurance should cover the amount of liability incurred. u/s 125 of the Act whoever drives a motor vehicle or causes or allows a motor

vehicle to be driven in contravention of the provisions of Section 94 of the Act shall be punishable with imprisonment which may extend to three months, or with fine which may extend to one thousand rupees, or with both. Thus if a policy is taken in respect of a motor vehicle from an insurer in compliance with the requirements of Chapter VIII of the Act, the insurer is under an obligation to pay the compensation payable to a third party on account of any injury to his/her person or property or payable to the legal representatives of the third party in case of death of the third party caused by or arising out of the use of the vehicle at a public place. The liability to pay compensation in respect of death of or injury caused to the person or property of a third party undoubtedly arises when such injury is caused when the insured is using the vehicle in a public place. It also arises when the insurer has caused or allowed any other person (including an independent contractor) to use his vehicle in a public place and the death of or injury to the person or property of a third party is caused on account of use of the said vehicle during such period unless such other person has himself taken out a policy of insurance to cover the liability arising out of such an accident.

11. Further the Apex Court in the case of Amrit Lal Sood and Another Vs. Smt. Kaushalya Devi Thapar and Others, , after proper interpretation of the provisions u/s 95 of the repealed Motor Vehicles Act, 1939 has observed that the liability of the insurer under the said provision in a car accident, the insurer has agreed to indemnify the insured against all sums which the insured shall become legally liable to pay in respect of death or bodily injury to "any person". The expression "any person" has been interpreted by giving comprehensive interpretation holding that it would include an occupant of the car who is gratuitously travelling in the car. The law has been laid down at para 8 of the judgment in this regard which para is extracted in the preceding para 7 of this order.

12. In view of the proper interpretation of the relevant provisions of the repealed M.V. Act which are similar to the provisions of the M.V. Act, 1988 and also considering the various parts, the terms and conditions of the policies and the law laid down by the Apex Court in catena of cases referred to supra held that the same are binding on both the insurer and insured. The legal questions raised in these cases are already answered in

favour of the victims claimants and dependants of victims of the accident by the Apex Court. Therefore the legal submissions made in these

C.R.Ps. by the learned Counsel on behalf of the company are wholly untenable in law, hence the same do not call for consideration and answer the

same again by this court. Hence, submissions of the learned Counsel for the insurance company are rejected. Accordingly, the revision petitions

are dismissed without costs.