

(2010) 02 BOM CK 0019

In the Bombay High Court

Case No : First Appeal No. 1411 of 2004

The National Insurance Co. Ltd.

APPELLANT

Vs

Dayanand Margeppa Pedde, Prakash Dhanraj Soniminde and
Sudhakar Baburao Shinde

RESPONDENT

Date of Decision : 16-02-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 8 Rule 3, Order 8 Rule 5, Order 8 Rule 5(1)
Motor Vehicles (Amendment) Act, 1994 — Section 147, 46
Motor Vehicles Act, 1939 — Section 95, 95(1)
Motor Vehicles Act, 1988 — Section 147, 147(1), 169

Citation : (2011) ACJ 1499 : (2010) 3 ALLMR 159 : (2010) 2 BomCR 627 :
(2010) 112 BOMLR 677

Hon'ble Judges : R.Y. Ganoo, J; D.B. Bhosale, J

Bench : Division Bench

Advocate : S.S. Bhide, for the Appellant; D.D. Shinde, for the Respondent

Judgement

D.B. Bhosale, J.—The National Insurance Company Ltd. (for short "Insurance Company") has filed this appeal against the judgment and order dated 7.6.2004 rendered by the Motor Accidents Claims Tribunal, Pune, (for short "the Tribunal") in claim petition No. 5 15 of 1990. By the impugned judgment, the claim petition instituted by respondent No. 1 - claimant (for short "the claimant") has been allowed and the appellants and respondent No. 2 have been directed to pay the total compensation of Rs. 28, 17,000/-, inclusive of interim compensation, to the claimant. While allowing the claim petition other consequential directions have also been issued by the tribunal.

2. The facts, sans unnecessary details, are as follows: the claimant, who was hardly 23-24 years old at the time of accident, was a resident of Latur. He was in transport business and was also working as commission agent at Latur. He was also dealing in salt business. At the relevant time he had gone to Mumbai in connection with his business. The offending vehicle i.e truck No. MTQ 9031 (for short "the truck") was attached to Kiran transport at Mumbai. On 18.2.1990,

according to the claimant, he hired the truck for carrying paper/card-board boxes (for short "the goods") from Mumbai to Latur. He was also to load salt bags at Solapur for carrying them to Latur. The claimant was also travelling in the truck alongwith the goods. The truck was to go to Latur via Solapur. While the truck was near Lonavala, on Mumbai-Pune road, at about 4.30-5.00 am, according to the claimant, due to rash and negligent driving, it met with an accident. In the accident the claimant sustained serious injuries, and suffered 100% permanent disability.

3. The claimant, on 31.7.1990 filed a claim petition and prayed for compensation of Rs. 7 Lacs from the Insurance company and respondent Nos. 2 and 3. Thereafter the claimant amended the petition on 22.8.2002 and enhanced his claim from Rs. 7 Lacs to Rs. 25 Lacs. The insurance company filed their written statement dated 24.8.1992/30.10.1992, and opposed the claim contending that the claimant was travelling in the truck as unauthorised/gratuitous passenger. It was further contended that u/s 147 of the Motor Vehicles Act, 1988 (for short "the Act of 1988"), prior to the 1994 amendment, the insured was not obligated to get his vehicle insured for any passenger like the claimant, and, therefore, the insurance company was not legally liable to pay any compensation to such person. In the alternative, the insurance company also contended that in case it is held that the claimant was travelling as "authorised non fare paying passenger" with his goods, he would be at the most entitled for compensation to the extent of Rs. 20,000/-. After the amendment was carried out by the claimant the insurance company did not file additional written statement.

4. Before the Tribunal, the claimant, in support of his claim, examined himself and two doctors, namely, Dr. Dilip Deshpande, attached to Vivekanand Hospital at Latur, and Dr. Sharad Ratnaprakash Jyoti, the Orthopaedic Surgeon, attached to Sancheti Hospital, at Pune. The insurance company did not examine any witness. The Tribunal, after having considered the entire material/evidence on record, held that the driver of the truck was driving the truck in a rash and negligent manner at the relevant time, and as a result thereof he lost control and the truck met with an accident causing serious injuries to the claimant. The Tribunal, held that the claimant is entitled for the total compensation of Rs. 28,17,000/-.

5. It would be relevant to state few undisputed/admitted facts. When the accident occurred the claimant was in the truck. Respondent No. 2 was the owner of the truck, while respondent No. 3 was its driver. The appellant was insurer of the truck and the insurance policy was subsisting on the date of accident. In the accident, the claimant sustained serious injuries leading to 100% disability.

6. It is against this backdrop, before dealing with the questions of law, raised by learned Counsel for the parties, it would be relevant to record that though, in the course of hearing, the entire evidence was read, the learned Counsel for the appellant did not address the court on the first two issues, which were answered

by the Tribunal in affirmative. The first two issues read as follows: (1) Does the applicant prove that the driver of vehicle No. MTQ-903 1 was rash or negligent in driving the said vehicle ? (2) Does the applicant prove that he received injuries on account of such a driving ?".

7. Counsel for the parties, however, addressed the court on the point whether the claimants, at the relevant time, was travelling in the truck "alongwith his goods". The Tribunal, on the basis of evidence on record, has held that there is no material on record to show that the claimant was in the truck alongwith his goods. According to the insurance company, the claimant was travelling as an unauthorised passenger and he did not either hire the truck or had any goods with him when the truck met with an accident. As against this, according to the claimant, he had hired the truck for carrying his paper/card board boxes to Solapur and for loading salt bags at Solapur for carrying them to Latur. We would like to deal with this question little later.

8. The claimant examined himself as witness. His evidence is at Exhibit-45. According to the claimant on 17.2.1990, he hired the truck for carrying his paper/card-board boxes to Solapur and there he was to load salt bags in the truck and carry them to Latur. He had agreed to pay Rs. 2,500/- as rent. On their way, while the truck was at some distance from Lonavala, the driver lost control and the truck met with an accident. In the accident, he sustained serious injuries. It would be relevant to reproduce paragraph 2 of the examination in chief wherein he has stated about the nature of injuries sustained in the accident, and what medical aid/treatment was given to him at Pune and at Latur. Paragraph 2 of the examination in chief reads thus:

...2. I had taken treatment at Parmar Hospital for 1 1/2 days. Some 20 to 25 stiches were taken to my head injuries. As I had severe back bone injuries I was advised to take best treatment at Sancheti hospital, Pune. Then I was shifted to Sancheti Hospital on 19/2/90. I was there till 2/4/90. On 3rd day my admission at Sancheti hospital I was operated upon for L-1 and D-12 vertebrae. Two rods were implanted. Still the rods are there. The treatment at Sancheti hospital was costly therefore I was discharged on 2nd of Aprio. I went to Latur and was admitted in Vivekanand Hospital for further treatment. I was there till 15-6-90. There I was under treatment of Dr. Dilip Deshpande, who has treated me on the basis of the treatment given at Sancheti hospital. In the year 1995 I was to admit in Sancheti hospital for bed sole treatment. I was therefore one month. Then again in the year 2001 I was admitted in Sancheti hospital for one day. Then from 11/11/2003 to 25/11/2003 I was admitted in Sancheti hospital for the treatment. Still I am getting treatment for my accidental injuries from Sancheti hospital and Vivekanand hospital.

9. We would also like to reproduce relevant portion of paragraph 3 of his examination in chief, which read thus:

...I have lost complete sensation of the body below the waist. I am unable to

stand, fold my legs and do any work. I have no control on the chair wheel which I must use all the while. I can not do any work on my own account. All the while I need an Attendant. My daily expenses are Rs. 350/- I am required to do self catheterisation. The same cathethral can not be used for more than one time to safeguard my kidney. I am required to take medicines and use steroid daily. I am required to take Anema daily for the latrine.

10. In support of the claim, the claimant also stated how much expenditure he had incurred till his evidence was recorded, and how much more expenditure he would require in future, to which we are not making reference in view of the fact that the learned Counsel for the insurance company did not address us on the quantum of compensation. However, at this stage we observe that there is sufficient material on record which justify the total amount of compensation awarded by the Tribunal, and, in our opinion, it deserves to be confirmed. In the cross examination, it was stated that alongwith him there were 5 other persons in the truck including the driver. He, however, specifically denied the suggestion that he was not carrying any goods with him in the truck.

11. Dr. Dilip Deshpande (Exhibit-60) was attached to Vivekanand Hospital at Latur. After having considered the nature of injuries sustained by the claimant in the accident, Dr. Deshpande stated that there is no possibility of any improvement in his physical capacity. He further stated that the claimant suffered from Paraplegia and it is 100% permanent disability. In the cross examination he reiterated that recovery in this case is not possible.

12. Dr. Sharad Jyoti (Exhibit-62), the Orthopaedic Surgeon, attached to Sancheti Hospital, Pune, had operated the claimant on 22.2.1990. In paragraph 1 of the examination in chief he stated thus:

...I operated upon him on 22/2/1990. He had a fracture of spine with paraphegia. Before that I examined him and found that he was a patient of compression fracture lumbar No. 1 vertebra with paraphexia. Paraplegia means in the instant case the patient has no control over the limp below lumbper region. He had no sensation, no bladder bowel or sexual control. All these are lost. Even after the operation the patient could not recover. It is because of division of spine code was complete.

13. Even according to Dr. Sharad Jyoti the claimant is suffering from 100% permanent disability and there is no chance of improvement in his condition. He treated the claimant since 1990 till 2003. He further stated that such patients loose control over the bladder permanently and that the claimant has also lost skin sensation and, therefore, he would have to take treatment as OPD patient frequently. Even in the cross examination he reiterated that such patient has no chance of recovery in future.

14. It is against this backdrop we have heard learned Counsel for the parties at considerable length. Mr. Bhide, learned Counsel for the insurance company, at the outset, submitted that the claimant was travelling in the truck as

unauthorised/gratuitous passenger. He submitted that even if it is accepted that the claimant was travelling in the truck as owner of the goods or hirer he would not be entitled for compensation in view of the judgment of the Supreme Court in *New India Assurance Company Vs. Shri Satpal Singh and Others*, . He submitted that the case in hand falls in the category of cases, as carved out by the Supreme Court in *Asha Rani's* case, covered by the Motor Vehicles Act, 1988, prior to the amendment of 1994. According to Mr. Bhide, prior to the amendment of 1994, the insurance company was not liable to pay any compensation to the owner/hirer of goods or his authorised agent on being carried in a goods carriage, if it met with an accident causing him bodily injuries. He further submitted that though in the alternative the insurance company, in their written statement, has contended that at the most the claimant would be entitled for compensation to the extent of Rs. 20,000/- only, still in view of the judgment in *Asha Rani*, the claimant is not entitled for compensation even to that extent. He submitted that insurance company, in the present case, did take additional premium, covering the risk of non fare paying passenger, but it was subject to endorsement 14(b). As per the endorsement 14(b), he submitted, on payment of additional premium, the insurance company was obliged to indemnify the insured against his legal liability other than liability under statute in respect of death or bodily injury to any person not being an employee of the insured and not carried for hire or reward provided that the person was charterer of the truck. He then invited our attention to the dictionary meaning of the word "charterer" and submitted that in any case it cannot be stated that the claimant had hired the truck for "exclusive temporary use". He submitted that in the cross examination, the claimant has clearly stated that he was not the only hirer of the truck and there were two other persons in the truck at the relevant time with their goods. He, therefore, submitted that even though the additional premium was paid, in the present case, it was subject to the endorsement 14(b). The appellant, who was travelling in the truck, as one of the hirers of the goods in the truck, was, therefore, not covered by the policy. He submitted that looking at the case from any angle the appellant's claim cannot be allowed. In short, Mr. Bhide submitted that the insurance company would not be liable for paying compensation to the claimant being owner of the goods, in view of the admitted fact that the present case is covered by the Act of 1988, prior to the amendment of 1994. Lastly, he submitted that the omission to file additional written statement, after the amendment of the claim petition, cannot be stated to be fatal since the written statement of the Insurance company, denying their liability was already on record and the denial of the liability was contemplated by Section 147 of the Act of 1988, prior to the amendment of 1994, and not as per the clauses of the policy. He, therefore, submitted that even proving the policy in accordance with law, in the present case, was not necessary and the contents of the policy ought to have been read in evidence. In support of his contentions, Mr. Bhide placed reliance upon the following judgments: *National Insurance Co. Ltd. Vs. Baljit Kaur and Others*, ; *National Insurance Co. Ltd. Vs. V. Chinnamma and Others*, ; *National Insurance Co. Ltd. Vs. Angori Bai and Others*, ; *United India*

Insurance Co. Ltd. Vs. Krishnappa and Another, ; and the judgment of this Court in Jagannath Vishnu Kore Vs. Kamalabai Maruti Kumbhar and Others, .

15. Mr. Shinde, learned Counsel for the respondent-claimant on the other hand submitted that the claimant was not unauthorised or gratuitous passenger in the truck when it met with an accident. He submitted that he boarded the truck with the goods and even at Solapur he was to load salt bags for carrying them to Latur. He, therefore, submitted that his entry in the truck was as owner of the goods and he, therefore, was authorised non fare paying passenger in the truck, as stated by the insurance company in their written statement. Therefore, he submitted that the judgment of the Supreme Court in Asha Rani's case (supra) would not apply to the facts of the present case. Next he submitted that though the insurance policy was placed on record, it cannot be looked into as an admissible evidence since it was neither exhibited nor the contents thereof were proved. He then submitted, that in view of the admitted position that an additional premium was paid by the insured, the claimant was covered by the policy. He submitted that in any case it cannot be stated that the claimant is either entitled for compensation only to the extent of Rs. 20,000/- or was not entitled at all since he was not charterer of the truck. He then submitted that the insurer could always take policies covering risk, which were not covered by requirement of Section 147, prior to the amendment of 1994, on payment of an additional premium. The endorsement 14(b) also cannot be looked into and read in evidence since it is a part of the policy. In the alternative, he submitted that even if it is assumed that the claimant was not carrying any goods when he boarded the truck at Mumbai, the fact that he was to load salt bags at Solapur cannot be overlooked apart from the fact that it was not challenged by the insurance company in their written statement or in cross of the claimant. He submitted that it is true that the claimant in his original claim petition, that was filed in 1992, did not state that he was carrying paper/card board boxes, however, he amended the pleadings and stated that he was carrying the goods with him when the truck met with an accident. This part of the pleadings Mr. Shinde submitted, has not been denied by the insurance company by filing additional written statement and, therefore, deserved to be admitted. He further submitted that there is sufficient material on record to show that when the truck met with an accident the paper/card board boxes were there in the truck. In support of his contentions Mr. Shinde placed reliance upon the following judgments: (i) Pushpabai Purshottam Udeshi and Others Vs. Ranjit Ginning and Pressing Co. (P) Ltd. and Another, ; (ii) Amrit Lal Sood and Another Vs. Smt. Kaushalya Devi Thapar and Others, ; (iii) Nasibdar Suba Fakir Vs. Adhia and Company and Others, ; (iv) Vijayalakshmi Vs. Rajasekharan Nair, ; (v) New India Assurance Co. Ltd. Vs. C. Giramma and Others, and (vi) Chandro Devi and Others Vs. Jit Singh and Others, .

16. Before we deal with the questions raised in the appeal we would like to look into some of the judgments relied upon by the learned Counsel for the parties.

17. In *Asha Rani and Ors.* (supra) the Supreme Court was considering the question whether the insurer is liable to pay compensation to the dependants of the deceased passenger while the deceased passenger was travelling in a goods vehicle and that vehicle met with an accident, on account of which the passenger died or suffered bodily injury. This question was considered in relation to the cases falling in the category of cases which were covered by the Act of 1988, prior to the amendment of 1994. The Supreme Court after considering Section 95 of the Motor Vehicles Act, 1939 (for short "the Act of 1939") so also Section 147 of the Motor Vehicles Act, 1988 and Section 147 after the Motor Vehicles (Amendment) Act, 1994 i.e. Act of 54 of 1994 (for short "the Amending Act of 1994") held that the insurer will not be liable for paying compensation to the owner of goods or his authorised representative on being carried in a goods vehicle when that vehicle met with an accident and the owner of goods or his representative dies or suffers any bodily injury. It would be advantageous to reproduce the observations made by the Supreme Court in paragraph 9 of the judgment which reads thus:

...9. In *New India Assurance Company Vs. Shri Satpal Singh and Others*, the court assumed that the provisions of Section 95(1) of Motor Vehicles Act, 1939, are identical with Section 147(1) of the Motor Vehicles Act, 1988, as it stood prior to its amendment. But a careful scrutiny of the provisions would make it clear that prior to the amendment of 1994 it was not necessary for the insurer to insure against the owner of the goods or his authorised representative being carried in a goods vehicle. On an erroneous impression this Court came to the conclusion that the insurer would be liable to pay compensation in respect of the death or bodily injury caused to either the owner of the goods or his authorised representative when being carried in a goods vehicle the accident occurred. If the Motor Vehicles (Amendment) Act of 1994 is examined, particularly Section 46 of Act 54 of 1994 by which expression "injury to any person" in the original Act stood substituted by the expression "injury to any person, including owner of the goods or his authorised representative carried in the vehicle" the conclusion is irresistible that prior to the aforesaid Amendment Act of 1994, even if widest interpretation is given to the expression "to any person", it will not cover either the owner of the goods or his authorised representative being carried in the vehicle. The objects and reasons of Section 46 also states that it seeks to amend Section 147 to include owner of the goods or his authorised representative carried in the vehicle for the purposes of liability under the insurance policy. It is no doubt true that sometimes the legislature amends the law by way of amplification and clarification of an inherent position which is there in the statute, but a plain meaning being given to the words used in the statute, as it stood prior to its amendment of 1994, and as it stands subsequent to its amendment in 1994 and bearing in mind the objects and reasons engrafted in the amended provisions referred to earlier, it is difficult for us to construe that the expression "including owner of the goods or his authorised representative carried in the vehicle" which was added to the preexisted expression "injury to

any person" is either clarificatory or amplification of the pre-existing statute. On the other hand, it clearly demonstrates that the legislature wanted to bring within the sweep of Section 147 and making it compulsory for the insurer to insure even in case of a goods vehicle, the owner of the goods or his authorised representative being carried in a goods vehicle when that vehicle met with an accident and the owner of the goods or his representative either dies or suffers bodily injury. The judgment of this Court in Satpal's case, therefore, must be held to have not been correctly decided and the impugned judgment of the Tribunal as well as that of the High Court accordingly are set aside and these appeals are allowed. It is held that the insurer will not be liable for paying compensation to the owner of the goods or his authorised representative on being carried in a goods vehicle when that vehicle meets with an accident and the owner of goods or his representative dies or suffers any bodily injury.

18. In supplemental judgment in Asha Rani and Ors. (supra) his lordship Mr. Justice S.B. Sinha, in paragraph 28 observed that "if a liability other than the limited liability provided for under the Act is to be enhanced under an insurance policy, additional premium is required to be paid". It was further observed that if the ratio of this Court's decision in New India Assurance Company Vs. Shri Satpal Singh and Others, is taken to its logical conclusion, although for such passengers, the owner of a goods carriage need not take out an insurance policy, they would be deemed to have been covered under the policy wherefore even no premium is required to be paid."

19. In Asha Rani's case (supra) the Supreme Court has clearly held that prior to the Amendment of 1994 it was "not necessary" for the insurer to insure against the owner of the goods or his authorised representative being carried in a goods vehicle. The insurer, therefore, in the cases covered by the Act of 1988, prior to the Amendment of 1994, will not be liable for paying compensation to the owner of the goods or his authorised representative on being carried in a goods vehicle, when that vehicle meets with an accident and the owner of the goods or his authorised representative suffers any bodily injury. The Supreme Court, however, while considering the question that fell for its consideration did not have an occasion to consider the effect of the payment of an additional premium. In other words, the question whether on payment of the additional premium the insurance company, prior to amendment of 1994, was obliged to indemnify the insured against his legal liability other than liability under statute in respect of death or bodily injury to the owner/hirer of the goods or his authorised representative, was not under consideration of the Supreme Court. After the amendment of 1994, it was not necessary for the insured to pay additional premium to cover his liability in respect of death or bodily injury of the owner/hirer of the goods or his authorised representative. They would be deemed to have been covered under the policy wherefore even no premium is required to be paid.

20. By the amendment of 1994 the legislature has brought within the sweep of

Section 147 making it compulsory for the insurer to insure even in case of a goods vehicle, the owner of goods or his authorised representative being carried in a goods vehicle, when that vehicle meets with an accident and the owner of the goods or his representative either dies or suffers bodily injury. In our opinion, that by itself does not mean that prior to the amendment of 1994, there was any legal impediment to the owner of a goods vehicle in legally taking out an insurance policy covering the owner or hirer of the goods or his authorised representative on payment of an additional premium, where insurance companies were having such plan, and subject to the restriction of persons allowed to travel in such vehicle. In other words, though prior to the amendment of 1994 it was not necessary for the insurer to insure against the owner of the goods or his authorised representative being carried in a goods vehicle, does not mean that the insurance companies were not allowed to cover the owner/hirer or his authorised representative by charging additional premium, provided the number of persons being carried in such vehicle did not exceed seven. There was no legal bar as such against the insurance companies in doing so. The insurance company, in the present case, admittedly, on payment of additional premium, had covered non fare paying passenger.

21. In *Kamla and Ors.* (supra) the Supreme Court has observed that the insurer and insured are bound by the conditions enumerated in the policy and the insurer is not liable to the insured if there is violation of any policy condition. But the insurer who is made statutorily liable to pay compensation to third parties on account of the certificate of insurance issued shall be entitled to recover from the insured the amount paid to the third parties if there was any breach of the policy conditions.

22. In *Baljit Kaur and Ors.* (supra) the expression "any person" as employed in Section 147(1) (as amended in 1994) includes a third party as also the owner of goods or his authorised representative carried in a goods vehicle but does not include any passenger carried in a goods vehicle whether for hire or reward or otherwise. In short, by reason of 1994 amendment, the liability of the owner of the vehicle to insure it compulsorily included only the owner of goods or his authorised representative carried in the vehicle besides the third parties. The intention of Parliament, therefore, could not have been that the words "any person" occurring in Section 147 would cover all persons who were travelling in goods carriage in any capacity whatsoever.

23. In *V. Chinnamma and Ors.* (supra) the Supreme Court after considering the ratio laid down in *Asha Rani's* case and in *Baljit Kaur* held that an insurance for an owner of the goods or his authorised representative travelling in a vehicle became compulsory only with effect from 14.11.1994 i.e. from the date of coming into force of the amendment of 1994.

24. A bare reading of the provisions of Section 95 of the Act of 1939 and Section 147 of the Act of 1988, prior to the amendment of 1994, make the Legislature intent clear. The Legislature intended to prohibit goods vehicle from carrying any

passenger. It was not the intent of the legislature to provide for liability of the insurer with respect to passengers, especially gratuitous passengers.

25. In *National Insurance Co. Ltd. Vs. Angori Bai and Others*, the High Court of Madhya Pradesh was considering the question whether non-production of policy is fatal in the case. In this case, admittedly the deceased was travelling as a passenger. In view thereof, in paragraph 3 of the judgment it was observed that the provisions of the Act did not enjoin any statutory liability on the owner of a vehicle to get his vehicle insured for any passenger travelling in a goods carriage and the insurer would have no liability therefore. Thus, non production of policy, as it was held in that case, was not fatal and it was not necessary to prove and produce the policy.

26. The judgment of the Madhya Pradesh High Court in *Angoribai's* case, in our opinion, is of no avail to the insurance company for more than one reason. In the present case, additional premium was paid by the insured to the insurance company for covering the risk of "non fare paying passenger" which was not the case in *Angoribai's* case. Moreover, the claimant in the present case, for the reasons recorded in the judgment, was not travelling in the truck as gratuitous/unauthorised passenger. In *Angoribai's* case the deceased was travelling in a goods carriage as a passenger, apart from the fact that no additional premium was paid by the insured. It is against this backdrop non-production of policy was held to be not fatal in that case. In our opinion, having regard to the facts of the present case, the judgment in *Angoribai's* case, pressed into service is of no avail to the insurance company.

27. In *Jagannath Vishnu Kore's* case, this Court, after considering the ratio laid down by the Supreme court in *Smt. Mallawwa Etc. Vs. The Oriental Insurance Co. Ltd. and Others*, upheld the judgment of the Tribunal exonerating the insurance company from their liability to pay the compensation. In *Mallawwa's* case the Supreme court had observed that the insurance company is not liable to pay the compensation on account of death or injuries sustained by the persons travelling in a goods vehicle either alongwith the goods or by paying fare or even gratuitously. In this case, it appears, that no additional premium for carrying non fare paying passenger/owner of the goods or his representative was either paid to the insurance company and, therefore, the learned Judge relying upon the judgment of the Supreme Court in *Mallawwa's* case confirmed the view taken by the Tribunal exonerating the insurance company from the liability.

28. We would now like to examine the question whether the claimant, at the time of the accident, was in the truck alongwith the goods. In the claim petition, filed by the claimant on 31.7.1990, he did not make any reference to the paper/card board boxes. In the petition, the claimant has stated that he had informed respondent No. 2 that he wanted to carry 70 salt bags from Solapur to Latur and, therefore, he was allowed to travel in the truck. The insurance company filed their written statement on 24.8.1992/30.10.1992. Thereafter, the claimant amended the claim petition and by way of amendment he stated that at the time

of accident he was travelling in the truck alongwith the goods (paper/card board boxes) for carrying them to Solapur. After the amendment was carried out by the claimant, admittedly, the insurance company did not file additional written statement.

29. The Claims Tribunal, as contemplated by Section 169 of the Act of 1988, has all the powers of a civil court for the purpose of taking evidence, production of documents etc. In view thereof, we deem it appropriate to look into the relevant provisions of the CPC (for short "the Code"). Rule 3 of Order 8 of the CPC clearly provides that it shall not be sufficient for a defendant in his written statement to deny generally the grounds alleged by the plaintiff, but the defendant must deal with specifically with each allegation of fact of which he does not admit the truth, except damages. Similarly, Rule 5(1) provides that every allegation of fact in the plaint, if not denied specifically or by necessary implication, or stated to be not admitted in the pleading of the defendant, shall be taken to be admitted. Thus, the defendant is bound to deal specifically with each allegation of fact not admitted by him; he must either deny or state definitely that the substance of each allegation is not admitted. It does not of course mean that every allegation in the plaint should be reproduced at length in the written statement for the purpose of denial. However, the main allegation which forms the foundation of the suit should be dealt with in that way and expressly denied. As a matter of fact, such denial should be taken up separately as far as possible and they should either admit or deny or state definitely that he does not admit. As provided under Order 8 Rule 5, the facts not specifically dealt with or denied will be otherwise taken to be admitted. Even where denial of fact is not specific but evasive or ambiguous or general in nature the said fact shall be taken to be admitted. In such event, the admission itself being proof, no other proof is necessary. (See *Badat and Co. Vs. East India Trading Co.*, and the judgment of this Court in *Sambhaji Laxmanrao Pawar Vs. Abdul Wahed*,). In other words, where the denial is general, evasive, vague and not specific or where there is no denial, the allegations made in the plaint shall be taken to be admitted. (See *Radhabai Krishnanand Vernekar Vs. Gourawwabai Sharnappa Bukka and Others*,). Thus, the law is well settled that if there is no specific denial of the fact/allegation, which forms foundation of the suit/claim petition, such fact/allegation shall be taken to be admitted and in that event there is no duty cast on the plaintiff to prove that allegation. (See *Sushil Kumar Vs. Rakesh Kumar*,). Keeping this position of law in view, the question raised by the insurance company in this appeal will have to be examined.

30. In the present case the learned Counsel for the insurance company submitted that even if the policy was not exhibited or contents thereof were proved still the insurance company can rely upon the policy in view of the judgment of the High Court of Madhya Pradesh in *Angoribai's* case, wherein it was held that it was not necessary to prove the policy. The provisions of Rule 3 and 5 of Order 8 of the CPC provide that the opponent/defendant is bound to deny/dealt with specifically in the written statement every allegation and more

particularly the allegation which forms the foundation of the claim petition. In the present case, the claimant, in the claim petition, has specifically stated that he boarded the truck at Mumbai with the goods, which is a foundation of the claim. On the basis of this averment in the petition, he contends that he was authorised non fare paying passenger. Admittedly, there is no specific denial of this averment and/or it was not dealt with in the written statement. After the claimant amended his pleading the insurance company had ample opportunity to file its additional written statement but they fail to do so.

31. We now proceed to examine the question whether the claimant was in the truck as owner of the goods. The Tribunal in paragraph 10 of the judgment has made reference to the police statement of the claimant at Exhibit-44. The advocate for the claimant, before the Tribunal, had placed on record three documents with the list of documents/application dated 12.1.2001 (Exhibit-36). The following three documents were mentioned in the list at Exhibit-36: (a) Original disability certificate from Sancheti Hospital; (b) Certified copy of the FIR; and (c) Certified copy of the panchnama.

32. Out of the three documents placed on record with the application at Exhibit-36, the two documents i.e. serial No. (b) and (c) were admitted by the learned Counsel for the insurance company. Therefore, in the margin of the application at Exhibit-36, the Tribunal marked the documents at serial No. (b) and (c) as Exhibit-43 and 44 respectively. We have perused the statement of Gyanu Darekar dated 21.2.1990 which was marked as Exhibit-43. This seems to be a certified copy of the FIR. In the FIR, Gyanu Darekar had stated that paper/card board boxes were there in the truck. The other document at serial No. (c) was a certified copy of the panchnama. When we perused the panchnama, we did not find any marking much less the marking as Exhibit-44. There is a statement of the claimant dated 18.2.1980 on record. The said statement was marked as Exhibit-44. The claimant was confronted with certain portions of that statement and they were marked as "A" to "G". From the actual marking of the documents as Exhibit-43 and 44 and the marking made in the margin (as Exhibit-43 and 44) of the list of documents/application dated 12.1.200 1 (Exhibit-36), it is clear that the learned Judge while marking the documents undoubtedly committed some error and seems to have wrongly marked the statement of the claimant as Exhibit-44 instead of marking the panchnama as Exhibit-44, which was admitted by the advocate for the insurance company or the other way round. That apart, the learned member of the Tribunal in paragraph 10 of the impugned judgment has made reference only to the statement of the claimant (Exhibit-44) and completely overlooked the other two documents, namely, the FIR - (Exhibit-43) and the panchnama. Both these documents, if read alongwith the statement of the claimant, in our opinion, would clearly show that the paper/card board boxes, as claimed/stated by the claimant, were there in the truck when it met with an accident. It is not the case of the insurance company, either in their written statement or in the cross of the claimant, that the goods were not of the claimant or they were of any other

party. The learned Member of the Tribunal has not made any reference to these documents while recording the finding that the claimant was not travelling at the relevant time alongwith the goods.

33. The learned member of the Tribunal in the judgment as well as while recording the evidence has used the expression "paper cartons". The expression used in the FIR (Exhibit-43) and in the panchnama, in Marathi, for describing the goods is "Kagdi Puthyache Khoke" (paper/card-board cartons or boxes). We have also perused the statement of the claimant dated 18.2.1990, which is marked as Exhibit-44. It is a short statement, which, it seems, was recorded immediately after the occurrence. That could be the reason why it was not giving all the details. In any case, the omission on the part of the claimant in making reference to the card-board boxes in this statement (dated 18.2.1990), in our opinion, loses its significance in view of the non-traversed pleadings, and contents of the FIR and the panchnama, which clearly show that the card-board boxes were there in the truck and they were of the claimant. In the circumstances we set aside the finding recorded by the tribunal in paragraph 10 of the judgment holding that there is no evidence to show that at the relevant time the claimant was travelling alongwith his goods. We are satisfied that the claimant was in the truck with his goods.

34. Even if it is assumed that the claimant was not travelling in the truck alongwith his goods, as submitted by the learned Counsel for the appellant, the case that he was to load 70 salt bags at Solapur for carrying them to Latur, as stated by the claimant in the claim petition and in his examination in chief, cannot be overlooked. As a matter of fact the case regarding salt bags had not been specifically challenged/denied in the cross/written statement by the insurance company. The claimant states that he boarded the truck as hirer with clear understanding and/or agreement with the driver of the truck that he would load 70 salt bags at Solapur for carrying them to Latur. Thus, it is clear that he entered into a contract of carriage of the goods in this manner, the contract was of composite character and hence it cannot be said that he was not travelling in the truck at the relevant time as the owner of the goods. At this stage it would be relevant to reproduce the observations made by this Court in Nasibdar Suba Fakir's case (supra) wherein this Court was considering somewhat similar situation and after considering the facts on record rejected the similar contention that the claimant was not accompanying the goods and must be treated to be one not being carried for reward. The relevant observations read thus:

...But deeper examination of law in general would show that this is not the correct analysis of the law. It is seen above that when the owner of the truck hires a vehicle for the transport of his goods, it is imperative, for him that someone should accompany the goods and go in the vehicle as a passenger along with the goods. Likewise, it becomes necessary that someone should go as passenger in the first instance for bringing the goods from some place and carrying them to some other place. This may be for loading or unloading of the

goods or for many other purposes incidental to the transportation of the goods. For instance, owner of the goods "X" may be having his office in Bombay. He wants his goods to be transported. The goods may be lying in Thana. He would engage a truck in Bombay, but for loading the goods from Thana he would require some employees. He has employees in his office at Bombay. Naturally, he would take those employees to Thana. The goods would be loaded in the truck by the employees and the goods would be brought back to Bombay. While coming back, naturally the employees would accompany the goods as passengers in the truck. Their coming back would be necessary so that the goods may be unloaded in Bombay. When the owner of the goods enters into the contract of the carriage of goods in this manner the contract is of a composite character. The contract is not for carriage of the goods; the contract is for safe and convenient transport of the goods from the beginning till the end and the process of contract involves loading and unloading and safe carriage. For all this purpose, the accompaniment of some other persons, other than the driver of the vehicle, along with the vehicle is imperative. This is a matter of common knowledge and of everyday life. Elaborate evidence is unnecessary for such conclusion. The doctrine of judicial notice looks after the evidential requirement for such judicial conclusion. The point is that the consideration which is paid by the owner of the goods for the transport of the goods is a composite consideration. It is a consideration for the transport of goods as well as for the incidental transport of the passengers accompanying the goods or those going for fetching the goods. If this is so, then the owner of the goods can legitimately contend that though he was having his office in Bombay, he was going to Thana for bringing his own goods and he entered into a contract with the owner of the truck by agreeing to pay the composite consideration; consideration for carriage of the goods and consideration for carriage of the passenger necessary for supervision etc., of the goods. He can further legitimately contend that if his employees could be legitimate passengers of the vehicle for supervising the transport of the goods, he himself could as well be a passenger whose presence on the vehicle at the relevant time is as much necessary and as much part of a contract for which he paid the consideration. Once it is accepted that the consideration paid by him included the consideration for his own carriage, it cannot be said that he was not carried by the driver of the truck for reward at the relevant time.

The plea that the claimant was not accompanying the goods and hence must be deemed to be one not being carried for reward need not detain us long. The plea is in fact answered by the above analytical discussion. When a vehicle is hired for bringing goods from a place away from the place of office or residence of the hirer, as also of the owner of the vehicle, it is natural that the hirer and/or his employees will, quite often, go by the vehicle to the place where the relevant goods are lying. Their transport to that place is as much a part of the contract and, hence, for "reward" or consideration.

35. The insurance company vide their application dated 10.2.2004 placed on

record two documents, namely, the insurance policy and a photocopy of the statement of the claimant recorded by the police on 18.2.1990. The advocate for the claimant did not admit these documents and hence they were not marked as Exhibits. Mr. Bhide, learned Counsel for the insurance company made a feeble attempt in submitting that though the documents were not exhibited by the court, the application dated 10.2.2004 itself was marked as Exhibit-50 by the tribunal and, therefore, the policy ought to have been read in evidence. He then submitted that if the policy is not admitted in evidence then the insurance company has to be discharged from the proceedings. The submissions of Mr. Bhide deserve to be rejected outright.

36. Admittedly, the insurance company did not examine any witness nor did they make any attempt to prove the document in accordance with law. There is no dispute that the insurer had insured the truck and the policy, at the relevant time, was subsisting. The insurance policy, being the best available evidence in their hand, ought to have been produced on record, in accordance with law. It was neither exhibited nor the contents thereof were proved by the insurance company. Mere production of the policy without getting it admitted in evidence in accordance with law would not enable the insurance company to place any reliance on it. In fact, in a claim petition where the insurance company wishes to take a defence that its liability is not in excess of the statutory liability and/or it is not more than a particular limit, it should file a copy of the policy on record in the legally recognised manner in order to prove their defence. If the insurance company fails to do so, in our opinion, the policy or contents thereof cannot be looked into or relied upon as admissible evidence either for denying or for limiting the claim. The Motor Vehicles Act being a social legislation, the procedure contemplated by law for production of any document should be strictly followed by the insurance company while conducting the trial. If the document, which has not been proved in accordance with law, is looked into and if the claim is rejected on the basis thereof the very object of the Act or insurance policy would be defeated. In other words, if the court accepts such type of evidence in the case of compensation under the Act of 1988, then, the very object of the insurance will be defeated. We find support for the view in the decision of the Supreme Court in *National Insurance Co. Ltd., New Delhi Vs. Jugal Kishore and Others*, . This judgment of the Supreme Court has been relied upon by the High Court of Kerala in *Vijayalaxmi's case* (supra). The observations made by the Supreme Court in *Jugal Kishore's case* in paragraph ten, in our opinion, deserves to be noticed at this stage. The relevant observations read thus:

10. Before parting with the case, we consider it necessary to refer to the attitude often adopted by the Insurance Companies, as was adopted even in this case, of not filing a copy of the policy before the Tribunal and even before the High Court in appeal. In this connection what is of significance is that the claimants for compensation under the Act are invariably not possessed of either the policy or a copy thereof. This Court has consistently emphasised that it is the duty of the party which is in possession of a document which would be helpful in doing

justice in the cause to produce the said document and such party should not be permitted to take shelter behind the abstract doctrine of burden of proof. This duty is greater in the case of instrumentalities of the State such as the appellant who are under an obligation to act fairly. In many cases even the owner of the vehicle for reasons known to him does not choose to produce the policy or a copy thereof. We accordingly wish to emphasise that in all such cases where the Insurance Company concerned 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. Even in the instant case had it been done so at the appropriate stage necessity of approaching this Court in civil appeal would in all probability have been avoided. Filing a copy of the policy, therefore, not only cuts short avoidable litigation but also helps the court in doing justice between the parties. The obligation on the part of the State or its instrumentalities to act fairly can never be over-emphasised.

37. The High Court of Delhi in Chandro Devi's case (supra) and the High Court of Kerala in Vijayalaxmi's case have also taken the similar view. In the present case, the insurance policy, in our opinion, cannot be relied upon by the insurance company as admissible evidence to contend that their liability is not in excess of the statutory liability contemplated by Section 147 of the Act of 1988, prior to the amendment of 1994 or at the most, it is only to the extent of Rs. 20,000/- or they are not liable at all since it was subject to the endorsement 14(b). In view of the admitted position that an additional premium was paid by the insured, we have no hesitation in holding that the insurance company had undertaken the liability to pay compensation to "authorised non fare paying passenger", such as the claimants, who was in the truck as the owner of the goods.

38. In the course of arguments, when it transpired that the insurance policy on record has not been proved by the insurance company in accordance with law, we hinted to the learned Counsel for the insurance company to consider whether he would like to apply for leading additional evidence in order to prove the insurance policy. The response of learned Counsel for the insurance company was not positive. He, on the contrary, placed reliance upon the judgment of the High Court of Madhya Pradesh in Angoribai's case to contend that it was not necessary for the insurance company to prove the policy. We have already considered the Angoribai's case and held that the said judgment is of no avail to the insurance company. In our opinion, the insurance company cannot take or be allowed to take advantage/benefit of its own wrong. While dealing with the case arising from the motor accident claims petition, in fact, benefit of the wrong, if any, committed by the insurance company while conducting the case, whether procedural or otherwise, should be given to the claimant. The insurance company, in motor accident claims petitions, should be more diligent while dealing with claim petitions and in following the procedure as contemplated by law for proving the documents on which they seek to rely upon. In other words, the procedure contemplated by law should to be followed strictly and if there is any lapse on the part of insurance company in following the procedure laid down

by the law, it should not, under any circumstances, be allowed to take benefit thereof.

39. In the light of the observations made in the foregoing paragraph, we would now like to consider the submissions of Mr. Bhide that even if the insured had paid additional premium still the claimant cannot take benefit of the same to seek unlimited compensation from the insurance company. He submitted that the additional premium was taken for covering the risk only to the extent of Rs. 20,000/- and it was subject to endorsement 14(b). He then submitted that as per the endorsement 14(b), on payment of additional premium, the insurance company had agreed to indemnify the insured against his legal liability other than liability under statute in respect of death or bodily injury to any person not being an employee of the insured or not carried for hire or reward, provided that such person is charterer of the truck. The endorsement 14(b) on which the insurance company is relying upon is not on record as admissible evidence. The endorsement 14(b) is a part of the insurance policy. The endorsement, therefore, cannot be looked into and/or relied upon since the policy itself is not admissible in evidence. In the circumstances the submission of Mr. Bhide that the claimant is at the most entitled for compensation to the extent of Rs. 20,000/- or he is not entitled at all because he was not charterer of the truck must be rejected.

40. In the present case admittedly the insurance company had agreed to indemnify the insured against his legal liability other than liability u/s 147 of the Act of 1988, prior to 1994 by accepting the additional premium. The submission of Mr. Bhide, learned Counsel for the insurance company that the claimant, who was travelling in the truck, in view of the judgment of the Supreme Court in Asha Rani's case (supra), is not entitled for any compensation from the insurance company, for the reasons recorded in the foregoing paragraphs must be rejected. The ratio laid down by the Supreme Court in Asha Rani's case cannot be disputed. However, in our opinion, it would not apply to the facts of the present case.

41. It is well settled that the policy can always cover higher risk to third party on payment of additional premium. Prior to the amendment in 1994, the insurance company had every right to indemnify the insured against his legal liability other than the liability u/s 147 of the Act of 1988 in respect of death or bodily injury to any person not being an employee including the driver and cleaner of the insured and not carried for hire or reward. In the present case, the insurance company had admittedly collected additional premium, and had thereby undertaken liability to non fare paying passenger, who was otherwise not covered by the provisions of Section 147. Thus, the right of the claimant, in the present case, to seek compensation would not get affected by the provisions of Section 147 of the Act, prior to the amendment of 1994 or by the judgment of the Supreme Court in Asha Rani's case.

42. Once having taken this view of the matter it will have to be presumed that the liability of the insurance company is unlimited. It is not open to the insurance

company, in such a situation, to contend that their liability is limited having failed to prove the policy in accordance with law or to contend that the claimant is not entitled for compensation since he was not charterer of the truck as contemplated by the endorsement 14(b).

43. Insofar as the finding on the issue whether the driver was rash and negligent at the relevant time is concerned, though the learned Counsel for the insurance company did not either challenge or address the court, from perusal of evidence and other material on record we are satisfied that the affirmative finding recorded by the Tribunal deserve no interference in the appeal. Insofar as injuries sustained and permanent disability suffered by the claimant is concerned, there is ample evidence on record, as discussed earlier, in support of the findings recorded by the Tribunal in respect thereof.

44. In the result, the appeal is dismissed, however, there shall be no order as to the costs.