

(1986) 10 AP CK 0007
In the Andhra Pradesh High Court

The Oriental Fire and General Insurance Company Ltd.	APPELLANT
Vs	
Matta Chandra Rao and Another	RESPONDENT

Date of Decision : 18-10-1986

Acts Referred:

Motor Vehicles Act, 1988 — Section 95, 95(1)(b)(ii)

Citation : (1987) 2 ACC 28 : (1987) 1 APLJ 135

Hon'ble Judges : Jagannadha Rao, J

Bench : Single Bench

Judgement

Jagannadha Rao, J.—Several questions relating the liability of the Insurance Company u/s 95 of the Motor Vehicles Act, in respect of passengers carried for hire or reward, or gratuitously in a goods vehicle or -a passenger vehicle and of the liability of the owner under the Law of Torts, arise in these three appeals.

2. The appeals relating to passengers in a "good vehicle" are two and they are CMA Nos. 486 and 502 of 1982. They arise respectively out of OP Nos. 99/1980 and 119/1980. In both the appeals, the Insurance Company is the appellant and the respondents are the owner of the vehicle (the Andhra Pradesh Paper Mills Limited, Rajahmundry) and the legal representatives of either the deceased (in OP No. 119/1980) or the injured person (in OP No. 99/1980). The "goods vehicle" belonging to the Andhra Paper Mills was carrying bamboo belonging to the Company. While the vehicle was passing through the forests, the two police constables,--the injured one as well as the deceased one--who were in charge of the work of containing Naxalite activity in the area, were given a lift in the goods vehicle and soon thereafter the accident in question occurred. One constable died and the other was injured. There is a dispute as to whether the driver of the Company was prohibited from carrying any passengers in the goods vehicle and also a dispute as to whether these police constables were carried gratuitously or for "hire or reward".

3. The Court below passed decrees in these two OPs against the owner of the goods vehicle i.e., the Paper Mills as also against the Insurance Company. The

Company preferred these two appeals CMA Nos. 486 and 502 of 1982. The Paper Mills preferred two CMAs with delay condonation petitions. CMA SR No. 134411 of 1983 arises out of OP No. 119/80 but that appeal was dismissed on 11-3-1986 consequent to the dismissal of the delay condonation application CMP No. 14458 of 1983. However, the other CMA SR No 134405/83 filed by the Mills against OP No. 99/80 is now before me and the delay condonation petition is CMP No. 14457/83. In that CMP notice was served on the claimants. In these appeals the Insurance Company is represented by Sri S Hanumaiah while the Paper Mills is represented by Sri G. Krishna Murthy and the claimants by Sri C Sadasiva Reddi.

4. In the other CMA No. 883 of 1981, the appellant is the owner of a passenger vehicle and the deceased was a cleaner in the bus. The claimants are the legal representatives of the cleaner. They and the Insurance Company are impleaded as respondents. The appellant, owner of the vehicle is represented by Sri T Bali Reddy while the respondent-claimants are represented by M.V. Ramana Reddi and the Insurance Company by Sri S. .R. Somayajulu, Advocate. The claimants have also filed cross-objections for a higher sum.

5. In the first batch of two appeals, Sri S. Hanumaiah, counsel for the appellant-Insurance Company contends that if passengers in a "goods vehicle" are injured or die, there cannot be any statutory claim against the Insurance Company u/s 95 of the Motor Vehicles Act unless there is a special contract and further that in this case, the terms of the policy preclude any claim against the Company. In any event, it is urged that these are not passengers for "hire or reward" but are "gratuitous" passengers. It is also argued that inasmuch as there is evidence or positive prohibition by the Mills to its driver against carrying passengers, the Mills are not liable and therefore, the Insurance Company is not liable. It is argued for the Mills by Sri G. Krishna Murthy in the CMAs and CMA (SR) that the Mills are not liable because of the above said prohibition to their driver and that alternatively, the Insurance Company is liable, as held by the lower Court. Sri C. Sadasiva Reddi for the claimants contends that the claimants must have a decree both against the owners of the goods vehicle (Mills) as well as the Insurance Company.

6. In the third CMA i.e., CMA No. 883/1981, it is contended by Sri K. Raja Reddi representing Sri T Bali Reddi that in the case of a "cleaner" of the passenger vehicle, the Insurance Company is statutorily liable u/s 95 upto 5,000/- (as the law stood at the relevant time). But it is argued by Sri SVRS Somayajulu that the Insurance Company is not liable in the case of death or bodily injury of the employees of the owner of the vehicle. Sri Dharma Rao representing Mr. M.V. Ramana Reddy for the claimants claims for increase in the quantum, in the Cross-objections

7. The learned Counsel appearing in the cases have made elaborate submissions with regard to liability of the Insurance Company in cases relating to "goods vehicle" or "passenger vehicles" and also in situations where the passengers and carried for "hire or reward" or gratuitously. They dealt with cases where there is

a prohibition by the owner of the vehicle to his driver against carrying passengers ; and also cases relating to death of the owner of the goods carried, employees of the owner of the goods as a reason for making the insurance company liable in cases of death or injury to the employees of the owner of a passenger vehicle and "gratuitous" passengers of a goods vehicle. They have also argued that the cleaner of the passenger vehicle is protected as a person carried by reason of or in pursuance of a contract of employment" even though he does not come under the categories of driver or ticket collector etc.

8. It has, therefore, become necessary to deal with the provisions of Section 95 of the statute and consider what is meant by "vehicle", "passengers carried for hire or reward" or "by reason of or in pursuance of a contract of employment", in what cases passengers in a goods vehicle are covered, whether employees or owner of the vehicle are covered because the owner of the goods carried or the employees of the owner of goods are covered, what is meant by "hire or reward" or "gratuitous" passengers, whether the policy conditions can go against the statute how to construe certain policy conditions; and in what cases the "owner" is liable under the few of Torts. All these points and the reasoning therefore being inter-connected, learned Counsel on both sides have made elaborate submissions and have also tried to analyse the points under separate headings.

9. The following part of Section 95 is material and is accordingly extracted :

Section 95(1):

95. Requirements of policies and limits of liability--

(1) In order to comply with the requirements of this Chapter, a policy of Insurance may be a policy which--

(a) is issued by a person who is an authorised insurer ; and

(b) insures the person or classes of persons specified in the policy to the extent specified in Sub-section (2).

Clause (i) of Section 95(1)(b)

(i) against any liability which may be incurred by him in respect of the death of or bodily injury to any person or damage to any property of a third party caused by or arising out of the vehicle in a public place ;

Clause (ii) of Section 95(i)(b)

(ii) against the death of or bodily injury to any passenger of a public service vehicle caused by or arising out, of the cause of the vehicle in public place;

(the Proviso to Section 95(1)(b)

Provided that a policy shall not be required--

(Clause (i) of the proviso)

(i) to cover liability in respect of the death arising out of and in the course of his employment, of the employees of a person insured by the policy or in respect of bodily injury sustained by such an employee arising out of and in the course of his employment, (other than a liability arising under the Workmen's Compensation Act. 1923) in respect of the death of, or bodily injury to, any such employee--

(a) engaged in driving the vehicle ; or

(b) if it is a public service vehicle, engaged as a conductor of the vehicle, or in examining tickets on the vehicle; or

(c) if it is a goods vehicle, being carried in the vehicle or

(Clause (ii) of the proviso)

(ii) except where the vehicle is a vehicle in which passengers are carried for hire or reward or by reason of or in pursuance of a contract of employment, to cover liability in respect of the death of or bodily injury to persons being carried in or upon or entering or mounting or alighting from the vehicle at the time of the occurrence of the event out of which a claim arises, or

(iii) to cover any contractual liability.

10. The above section, to say the least, has become long and cumbersome, due to various amendments and has created several problems of interpretation for the Courts. It deals with the statutory or Act Policy, as also the contractual. During arguments, the learned Counsel analysed the points as follows under separate headings:

11. Insurance coverage under the Act is compulsory in certain cases and any provision in the policy to the contrary will be of "no effect". These cases are also described as governed by the "Act policy". Other cases can still be governed by a special contract at the option of the Insurance Companies.

12. I shall first refer to Section 95(1)(b) then to the proviso and then to Clause (i) and lastly to the controversial Clause (ii) of the proviso.

Section 95(1)(b)(i): the Act Policy:

13. It will be noticed that under Clause (i) of Section 95(1) wherein the statutory or compulsory liability is created against the Insurance Company, the death of bodily injury can be to any person caused by or arising out of the vehicle in a public place. There is no other express qualification in respect of the person or the vehicle. While Clause (ii) of Section 95(1) covers the cases of statutory liability of passengers in a public service vehicle only there is no such restriction in the clause. Accordingly, it applies to case of a "goods vehicle" also. This is subject, of course, to the proviso.

Section 95(1)(b)(ii) : the Act policy.

14. This clause has a restricted application creating compulsory liability of the Company only in case of any "passenger" in a public service vehicle". A "public service vehicle" defined in Section 2(25) of the Act as "any motor vehicle used or adopted to be used for the carriage of passengers for hire or reward and includes a motorcar, contract carriage of or stage carriage". This is also subject to the proviso.

The proviso to Section 95(1)(b) :

15. The proviso merely states that a policy shall not be required in certain cases. In other words, the proviso is an exception for the compulsory insurance mentioned in Section 95(1)(i) and Section 95(1)(ii).

16. It will be seen that the non-compulsory types of insurance are mentioned, in Clause (i) of the proviso (except the liability under the Workman's Compensation Act, which is again compulsory) while Clause (ii) of the proviso is an exception to the proviso, throwing us back to the compulsory Act-policy mentioned in the main clauses of the Section 95(1)(i) and (ii).

17. I shall first deal with Clause (i) of the proviso and then with Clause (ii).

Clause (i) of the proviso to Section 95(1)(b) Employees of the insured ; Non-Act-policy.

18. It is not compulsory to cover the insurance of employees of the insured in regard to (a) the employee engaged in driving the vehicle or (b) the conductor and the ticket examiner of ,a public service vehicle (c) the employee carried in the goods vehicle. Even, here, this can be covered by special contract.

19. But in view of the bracketed words, it is mandatory to cover the liability arising under the Workman's Compensation Act, 1923.

Clause (ii) of the proviso to Section 95(1)(b): (Act Policy)?

20. It is under this controversial Clause (ii) of the proviso that several types of passengers in "passenger vehicle" or "goods vehicle" have been brought into make the Insurance Company liable e.g. owners of goods carried in a goods vehicle, employees of owners of the goods vehicles have been brought in under the Act-Policy, provided they came under the held "passengers carried for hire or reward or contract of employment". These cases and the reasoning therefore are interconnected.

21. This Clause (ii) of the proviso to Section 95(1)(b) being in the nature of an exception, the negative part of the phrase "policy shall not be required" in the main part of the said proviso gets, so to say, nullified, and we are thrown back to the state or "compulsory liability" of the Insurance Company to cases where the Clause (ii) of the proviso applies.

22. If thus Clause (ii) of the proviso to Section 95(1)(b) imposes a compulsory liability on the Insurance Company, the question naturally arises as to its scope

and ambit. It is in this area that judicial interpretation has been liberal and expansive so as to bring in several categories of passengers of vehicles under the purview of compulsory liability of the Company. I shall now deal with them to the extent necessary for the discussion in these appeals. It is necessary to divide Clause (ii) of the proviso into the various sub-headings referred to by the counsel during arguments for deciding the cases of passengers on the goods vehicle in the first two CMAs. and that of the "cleaner" of the passenger vehicle in the other. We have also incidentally to refer to the cases of the injury or death of the owner of the goods carried, his employees, other persons carried for hire or reward or gratuitously and to cases of employees of the owner, of the vehicle. As pointed by the learned Counsel, all these aspects are inter-linked.

23. I shall now refer to these several sub-headings.

(A) The "vehicle" in Clause (ii) of the proviso to Section 95(1)(b): If includes a goods vehicle--

24. A reading of Clause (ii) of the proviso shows that the liability is compulsorily imposed "where the vehicle is a vehicle in which passengers are carried", One view is that the clause describes the nature of the vehicle --a vehicle which normally carries passengers i.e., a public service vehicle. The other view is that it may be any "vehicle" and not necessarily a passenger vehicle (public service vehicle).

25. This question is almost pivotal to the entire branch of cases dealing with "goods vehicles" for if the former interpretation is given and the words are understood as not including a "goods vehicle" then cases of owner of the goods employees of owner of goods and employees of owner of the goods-vehicle--will not fall within the Insurance Company's liability, for then these persons are carried in a "goods vehicle" and would not be covered by the words "vehicle".

26. The interpretation that the words "where the vehicle is a vehicle in which passengers are carried... "were interpreted as a description of vehicle which normally carries passengers as a vehicle, (such as a goods vehicle) "in fact" was carrying passengers, at the time of accident (vide per Lord Donovan in *Albert v. Motor Insurer's Bureau* 1971 (2) All ER 1345 But having regard to the definitions contained in our Motor Vehicles Act and to the fact that Rules made under the Act permit the carriage of passengers--to same extent--even in goods vehicles, the above view of the House of Lords has not been followed by our High Courts which have accepted that "goods vehicles" are covered by Clause (ii) of the proviso to Section 95(1)(b) Diverse reasons have been given. It is not necessary to refer to all the cases. It is sufficient to refer to the exhaustive discussion of this aspect by the Full Bench of the Gujarat High Court in *New India Assurance Co. Ltd. and Another Vs. Nathiben Chatrabhuj and Others*, where after considering the judgment of the Supreme Court in *State of Mysore v. Syed Ibrahim* AIR 1967 SC 1624 and discussing the implications of a permit under Sub-section 42(1) 123, read with Section 2(16), 2(23), it was observed by P.D. Desai

J (as he then was) :

... it is clear that if a person owns a motor vehicle and uses it or permits its user for carrying passengers for hire or reward, even occasionally, the motor vehicle must be regarded when so used, as a "public vehicle" and therefore, a "transport vehicle and when the owner so uses it or permits it to be so used, he is required to obtain a permit u/s 42, Sub-section (1).

27. The Full Bench of the Rajasthan High Court in Smt. Santra Bai and Vs. Prahlad and Others, etc. etc., has also reviewed the case law and held that Clause (ii) of the proviso speaks generally of a "vehicle", whereas other clauses use the words "goods vehicle" or "public service vehicle", wherever the Legislature wanted to give a restrictive meaning.

28. The Supreme Court in Pushpabai Purshottam Udeshi and Others Vs. Ranjit Ginning and Pressing Co. (P) Ltd. and Another, proceeded on the basis that this Clause (ii) of the proviso applied to a private motor car of a Company (which is not a public service vehicle). Likewise, our High Court has also proceeded to apply the provisions of Clause (ii) of this proviso for a goods vehicle in M. Suryanarayana v. G. Satyavathi 1979 (1) APLJ 401 and in Premier Insurance Co. Ltd. v. Siromanamma 1983 (2) APLJ 302 I shall therefore proceed on the basis that this clause covers also cases relating to vehicles other than passenger-vehicles and will cover goods vehicles and private motor cars also apart from passenger-vehicle.

(B) Passengers in good Vehicle: Statutory liability or Act Policy.

29. As already pointed out, the passengers--whether in a passenger vehicle or a goods vehicle, who are covered by the statutory liability or Act policy are either "passengers carried for hire or reward" or "by reason of or in pursuance of a contract of employment". In Pushpa Bai's (supra) while dealing with a passenger who was given a free-lift while referring to the first part of this clause, the Supreme Court clearly observed.

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

On the facts of that case, it was held that the passengers in the car were not carried for hire or reward and so the Insurance Company was held not liable statutorily. Therefore, if it is established that the passengers in the car are carried for hire or reward or by reason of and in pursuance of a contract of employment, the insurance company will be liable statutorily under the Act policy.

30. In Premier Insurance Co. Ltd's case (supra) a Division Bench of this Court consisting of Ramanujulu Naidu and Rama Rao, JJ also held, following Pushpa Bai's case (supra) that passengers carried for hire or reward in a good vehicle are covered by the Act-Policy in Clause (ii) of the proviso to Section 95(1)(b) and that any condition in the policy excluding liability of the company in cases of passengers carried for hire or reward will be of no effect (i.e., u/s 96(3)).

However, on facts, they held that was a case of a gratuitous passenger and not covered by Act-policy. But as even such cases of gratuitous passengers could be covered by special contract and the policy was not filed in that case, they remitted the matter to the tribunal. So far as our High Court is concerned, this Division Bench judgment which followed Pushpa Bai's (supra) the field.

31. Reliance is placed however by Sri S. Hanumaiah for the Company in United India Insurance Co. Ltd. Madras v. P. Seethamma 1985 (2) APLJ 57 where there is a passing observation that the Insurance Company is not liable in the case of a passenger carried for hire or reward and to a similar view expressed in Mohd. Abdul Raheem v. Chakkala Parvatamma 1985 (3) APLJ 11 --which related to a case of a passenger carried for hire or reward. I am unable to follow these two rulings in view of the judgment of the Supreme Court in Pushpa Bai's case (supra) and of the Division Bench of this Court in Premier Insurance Co. Ltd., case (Supra). Then reliance is placed on R. Venkateswararao v. Vijayalakshmi 1986 (1) ALT 113 which is also a case of a passenger carried for hire or reward but that case is distinguishable in as much as there the Court found that the passengers were allowed inspite of a specific prohibition of the owner of the vehicle and that the owner was not liable, and therefore the Insurance Company was not liable. However, I shall come back to this ruling when I come to the "liability of the owner of the vehicle". I hold that passengers carried for hire or reward or by reason or in pursuance of a contract of employment are covered by the Act-policy making the Insurance Company liable. As to Rules in the Act restricting the number of passengers in a goods vehicle, I shall deal with that topic separately.

32. Of course, in the case of other passengers not falling under Clause (ii) of the proviso, though there is no compulsory insurance, the Company may enter into a special contract of indemnity. The Supreme Court, in Pushpa Bai's case (supra) observed :

The insurer can always take policies covering risks which are not covered by the requirements of Section 95.

On the facts of that case, the passenger being one carried gratuitously, and there being a special contract of Insurance for Rs. 15,000/-, that amount was in fact, awarded by the Supreme Court.

(C) Who are passengers carried for hire or reward or by reason of or by reason of a contract of employment:

33. (i) The owner of the goods: The owner of the goods which are transported in the goods vehicle, has been treated by several High Courts (except the Madras and the Punjab High Courts and the Madhya Pradesh and Calcutta High Courts) as a person carried for "reward". The Bombay High Court in Nasibdar Suba Fakir Vs. Adhia and Company and Others, , the Rajasthan High Court in Santra Bat v. Prahlad, (supra), the Karnataka High Court in Channappa Chanavirappa Katti and Another Vs. Laxman Bhimappa Bajantri and Others, , United India Insurance Co.

Ltd. Vs. Gangamma and Another etc., , the Kerala High Court in State Insurance Department, State Insurance Officer, Trivandrum Vs. Sosamma Mani and Others, , the Allahabad High Court in Abdul Razak v. Smt. Sharyfunnisa AIR 1983 All 400, have held that the owner of the goods is covered by the Act policy and the Insurance Company is liable.

34. Our High Court in M. Suryanarayana v. G. Satyavathi, (supra) has also taken the same view. While the Bombay and Rajasthan High Courts treated the owner of the goods as carried in the goods vehicle for "reward"-the consideration being implied in the consideration paid for carriage of goods,-our High Court has considered the owner of the goods as a person carried under a contract of employment Whatever be the reasoning, all the above High Courts hold the Insurance Company liable under the Act-policy under Clause (ii) of the proviso to Section 95(1)(b).

35. On this point, the Division Bench judgement in M. Suryanarayana v. G. Satyavathi (supra) holds the field in our High Court, making the Insurance Company liable.

36. However, the Madras High Court in The Common Wealth Assurance Co. Ltd., Bombay Vs. V.P. Rahim Khan Sahib and Others, and in South Indian Insurance Co. Ltd. Vs. P. Subramaniam and Another, and the Punjab Full Bench in O.F. and Oriental Fire and General Insurance Co. Ltd. Vs. Smt. Gurdev Kaur and Others, the Madhya Pradesh High Court in South India Insurance Co. v. Heera Bat 1967 ACJ 65 and the Calcutta High Court in Indian Mutual General Insurance Society Ltd. Vs. Manzoor Ashan and Others, , have held that the owner of the goods carried is not covered by Clause (ii) of the proviso to Section 95(1)(b) and that unless there is a special contract the Company is not liable.

37. I may point out incidentally that the Karnataka High Court has relied upon Rule 161 and the Bombay High Court on Rule 118 which permit the owner of the goods to be carried in the goods vehicle as an additional reason to make the Insurance Company liable under the Act-policy. But the Rajasthan High Court in Santra Bai v. Prahlad (supra) stated that for this purpose, it is not necessary to rely on Rule 133 and that even without the aid of such Rules, the Clause (ii) of the proviso to Section 95(1)(b) can be construed as making the company liable.

(ii) Employees of the owner of the goods :

38. This class of persons has been held covered by the Act Policy for various reasons. Construing the words "by reason of or in pursuance of a contract of employment", in the similar provision in England in Izzard v. Universal Insurance Company 1937 AC 773 (HL) Lord Wright observed :

The words of the statute are general and unlimited. To insert the words "with the insured person" would be to insert words of specific limitation beyond what can be inferred from the general tenor of the Act or policy.

and it was held that these words* in the statute or the similar words in the policy

have to be widely construed and that the contract of employment may not only be with the owner of the vehicle but even with a "third party". Thus, if the persons carried are employees of a third party who has hired the vehicle, they will be covered by the Act-policy and the Insurance Company will be liable.

39. A similar view has been taken by various High Courts. The Madras, Orissa, Madhya Pradesh in *The Vanguard Insurance Co. Ltd., Madras Vs. Chinnammal and Others*, in *National Insurance Co. Ltd. Vs. Laxmi Devi and Others*, and in *Hukam Chand Insurance Co. Ltd. v. Badruddin* 1986 ACJ 184 have held that the Act-policy in Clause (ii) of the proviso to Section 95(1)(b) covers the liability of the Insurance Company in respect of the employees of the hirer or owner of the goods. There does not appear to be any direct case of our High Court but I am in agreement with the view taken by the above High Courts. In fact, the above interpretation is the starting point for the discussion under the next heading.

40. Of course, the Rules in Bombay and Karnataka (vide *Nasibdar v. Adhia Co.* (supra) and *Channappa v. Laxman* (supra) also permit such employees of the hirer to be carried upto a limit. That the employees of the hirer are also covered is accepted incidentally by the Kerala, Gujarat and Rajasthan High Courts (though the point did not directly arise) in the cases referred under the previous heading. It is held that the owner of goods has a right or need to put his employees on board for loading unloading or to keep them safe. Thus in respect of the employees of the owner of the goods or of the hirer, the Insurance Company is liable under the Act-policy.

(iii) Employees of owner of goods vehicle:

41. We have seen the cases of the employees of the hirer or the owner of the goods. In *Izzard's case* (supra) it was clearly held that the statute used general words and that they extended even to employees of a "third party". In other words even the employees of the owner of goods were held covered because of the wide language of the clause.

42. In the Madras High Court in *Vanguard Insurance Co. v. Chinnammal* (supra), while dealing with the case of the employees of the owner of the goods, after referring to *Izzards case* (supra) and to the decisions of the Punjab and Bombay High Courts, *Alagiriswamy, J.* (as he then was) held--

Thus, though on a superficial view of section, it might appear that the words "contract of employment" found in Section 95 of the Motor Vehicles Act would cover only a contract of employment with the owner of the insured vehicle, there is a preponderance of authority in favour of the other view that it would cover not only such persons; but also persons who are on the vehicle in pursuance of a contract of employment with the owner of the goods carried in it.

43. Thus, if the employees of the owner of the goods have been held covered by insurance under the Act policy under the Clause (ii) of the proviso to Section (1) (b), on account of a wide interpretation of the statute employees of the owner of

the vehicle are covered a fortiori indeed, it is the case of the employees of the owner of the vehicle that was the basis for extending the benefit to the employees of a "third party" hiring the vehicle. Therefore, the employees of the owner of the vehicle are covered a fortiori by the Act-policy under Clause (ii) of Section 95(1)(b). However, in Karnataka, Bombay and Gujarat, the employees of the owner of the vehicle are held covered because the Rules in those States permit carriage of the employees of the owner of the vehicle upto a particular limit. *Chinnappa v. Laxman* (Supra); *Oriental Fire and General Insurance Co. v. B. Parvathamma* AIR 1986 Karnataka 63, *Nasibdar v. Adhia Co.* (Supra); *New India Assurance Company Limited v. Nathiben Chaturbhuj* (Supra).

44. It is, however, argued by Sri Somayajulu for the Insurance Company that Clause (i) of the proviso to Section 95(1)(b) covers cases of employees of the owner of the vehicle (a) either engaged in driving the vehicle; (b) or if it is a public service vehicle, a person engaged as a conductor of the vehicle or in examining tickets on the vehicle, or (c) if it is a goods vehicle, a person being carried in the vehicle and that other employees of the owner of the vehicle cannot be covered by Clause (ii) of the proviso. This point arises, in CMA No. 883/81 in relation to the "cleaner" employed by the owner of the vehicle which was a "passenger vehicle": This contention cannot be accepted.

45. As pointed out in the Full Bench case in *Santra Bai v. Prahlad* (supra) in Clause (i) of the proviso it is stated that policy is not required in the three cases (a), (b), (c) above referred to. In other cases of employees of the owner of the vehicle, it must be treated as covered by Clause (ii) of the proviso, making the Insurance Company liable. In that case, while dealing with employees of the hirer of a goods vehicle it was held that

Now so far as the employees of the owner of the vehicle are concerned, if carried in goods vehicle, they would be covered under Sub-clause (c) of Clause (i) to the proviso of Sub-section (1) of Section 95. Thus, the other category of passengers carried in a vehicle in pursuance of a contract of employment under Clause (ii) of the proviso will be those, who would be employees of the owners of the goods or of such person who had hired such goods vehicle.

It was held that if it was not necessary to insure the employees of the owner of goods vehicle as in Sub-clause (c) of Clause (i) of the proviso, the others, namely, employees of the hirer would fall under Clause (ii) of the proviso (i.e , the exception to the exception) requiring compulsory insurance.

46. Likewise, if in the case of a passenger vehicle-such as the one in Sub-clause (b) of Clause (i) of the proviso it is not necessary to insure the conductor and the ticket examiner the other employees of the owner of the passenger vehicle--such as the cleaner--will equally fall under Clause (ii) of the proviso, making the Insurance Company liable.

(iv) "hire or reward" or "gratuitous":

47. These words were explained in *Bonham v. The Zurich Insurance Co.* (1945) 1 All E.R. 427. The word "hire" was held to impose an obligation to pay but the word "reward" was held applicable to cases where there was no such legally enforceable obligation. The word "reward" is explained as meaning "some consideration", express or implied, by the Bombay and Rajas-than High Courts in *Nasibdar v. Adhia Co.* (Supra) and *Santra Bai v. Prahlad* (Supra) where other cases are also considered. A gratuitous passenger is one who is not carried for hire or reward. But a passenger who is invited by the owner of the vehicle to travel in the vehicle has been held, in *Oriental Fire and General Insurance Co. Ltd. v. B. Parvatamma*, (Supra) to be not a "gratuitous passenger".

48. In *Orr v. Traftgar Insurance Co. Ltd.* (1948) 82 LLLR 1 (CA) the Court was obviously dealing with a case of non-compulsory insurance and exclusion of liability in a policy in respect of a "car being used for private or public hire". There one Prescott took Mr. Moore in his car at the request of one Gallagher's (Gallagher's car having gone out of order) to the station and Mr. Orr was knocked down and injured in an accident, and he claimed damages. Asquith L.J. observed:

I am satisfied that Moore would not have expected to obtain Prescott's car and services for nothing any more than Gallagher's car and services for nothing. It is quite true that no express mention "seems to have been made of payment between Prescott and Moore while they were together, but there might well have been such a mention but for the accident. Having regard to the accident, it was quite natural that payment should not be demanded. It does not follow from its not being demanded that there was not initially an implied contract constituted by conduct to make payment--a contractual obligation waived in consequence of the accident itself.

and it was held that Mr. Moore was being carried under an implied contract for hire. However on facts, the Company was held not liable. Obviously, this was not covered by the Act-policy and when the policy excluded liability of the Company in cases of passengers carried for hire or reward, the Company was held not liable. (See *Hardy Ivamy, Fire and Motor Insurance*, 4th Ed. 1984 at pp. 266.267). If the statute there had provided that cases of passengers carried for hire or reward were compulsorily covered (as in our Section 95), the clause in the policy excluding liability, would have been treated as void and the Company would have been held liable. I have referred to this case as one where the Court raised a presumption that a passenger is not normally carried gratuitously. Likewise in *United India Fire and General Insurance Co. Ltd., Madurai Vs. M.S. Durairaj and Others*, it was held by the Madras High Court that normally a lift to a passenger cannot be treated as a free-lift. The view appears to be that the normal presumption is that a person is not carried gratuitously of course, this is rebuttable.

49. It is argued by Sri C. Sadasiva Reddy that the two police-men in the first two C.M.As. must be treated as having been carried for hire or reward as they were going on official duty to curb naxalite activity.

50. True, normally, one may presume that a passenger is not carried gratuitously but the case of police-man, in my view, stands on a different footing. It may be that they were on official duty but in my view, they would not have agreed or intended to pay for their travel. In my view, they were gratuitous passengers only and the Insurance Company is not liable. The inherent circumstances rebut the presumption.

(D) Policy: exclusion of liability in cases of passengers carried for "hire or reward", if valid:

51. I have dealt with this aspect under the heading "hire or reward" above C (iv). I shall explain further. It is to be noted that conditions in the policy which exclude the liability of the Company in cases where the Act imposes liability, will be void. This is clear from Section 96(3) which states that once a certificate of Insurance is issued, so much of the policy as purports to restrict the insurance of the persons insured thereby by reference to any conditions other than those in Section 96(2)(b), as respects such liabilities as are required to be covered by a policy u/s 95(1)(b), shall be of no effect. For example, when the statute or Act-policy makes the Insurance Company liable (say) in respect of passengers carried for hire or reward in a goods vehicle, any condition in the policy excluding liability for passengers carried for hire or reward in the goods vehicle shall be void and of no effect. That is why, in *Premier Insurance Co. Ltd. v. V.S. Romanamma* (Supra) the Division Bench of our High Court followed the Supreme Court Judgment in *Pushpa Bai's Case* (Supra) and held that the Act-policy made the Company liable in respect of passengers carried for hire or reward and therefore over-ruled the decision of a learned single Judge of our High Court in *M/s. Nia Co. Ltd. v. S. Jaffar* 1982 (1) APLJ 316 where in the Condition in the policy excluding liability for passengers carried for hire or reward was relied upon. A submission was made by the counsel for the Insurance Company, that this over-ruling was not necessary. But in view of the judgment of the Supreme Court in *Pushpa Bai's case* stating that the Act-policy covers cases of passengers carried for hire or reward and in view of Section 96(3), this submission cannot be accepted. Similarly the Karnataka High Court in *Channappa v. Laxman* (supra) and the Gujarat High Court in *New India Assurance Co. Ltd. v. Nathiben Chatrubhuj* (supra) it was held that the condition in the policy becomes void.

52. It is true that the Madras High Court in *United India F. and G. Insurance Co. Ltd. v. M.S. Durairaj* (supra) and *G. Dhyanand and Another Vs. Zaamni Bi and Others*, , it was held that even if the statute imposed liability but still if the policy excluded liability, the Company was not liable. With respect, I may say that these rulings have not considered the effect of Section 96(3) of the Act.

(E) Comprehensive Policy--Section 11 Clause 1, 1, (a)--"any person"--if takes in gratuitous passengers.

53. The learned Counsel for the Paper Mills, Sri G. Krishna Moorthy and for the claimants Sri Sadasiva Reddy, however relied upon Sushil Kumar etc. Vs. Binodini

Rath and Others, and in Madras Motor and General Insurance Co. Vs. Katanreddi Subbareddy and Others, and contended that the Insurance Company is liable even in case of injury to or death of gratuitous passengers. In these cases, while accepting that the Company is liable under Clause (ii) of the proviso to Section 95(1)(b) and not covered by Act-policy, still, it was held that there was a special contract. In fact, the policy was construed as covering gratuitous passengers by special contract Acharya J., of the Orissa High Court and Chinnappa Reddy J., (as he then was) in the Andhra Pradesh High Court relied on Schedule II of the policy-liability to third parties which reads thus:

1. The Corporation will indemnify the insured in the event of accident caused by or arising out of the use of the Motor Car against all suras including claimant's costs and expenses which the Insured shall become legally liable to pay in respect of (2) death of or bodily injury to any person but except so far as is necessary to meet the requirements of Section 95 of the Motor Vehicles Act, 1939, the Corporation shall not be liable where such death or injury arises out of and in the course of the employment of such person by the Insured.

In the above cases, the words "any person" in the policy was construed widely as including even gratuitous passengers.

54. It is true the words "any person" here are as wide as the same words in Section 95(1)(b)(i) of the Act where also the words "any person" are used. But the above words are clearly restricted by the words "as is necessary to meet the requirements of Section 95". In other words if the case is one covered by the Act policy or compulsory insurance, then the one policy covers, "any person" so covered by the Act-policy and not otherwise. The selfsame clause in the policy was construed by the Supreme Court in Pushpa Bai's case. It was observed by Kailasam, J.

Clauses 1 and 1 (a) are not very clearly worded but the words except so far as is necessary to meet the requirements of Section 95 of the Motor Vehicles Act 1939 would indicate that the liability is restricted to the liability arising out of the statutory requirements u/s 95--These clauses would themselves indicate that what was intended to be covered under Clauses 1 and 1(a) is the risk required to be covered u/s 95 of the Motor Vehicles Act.

Hence cases of gratuitous passengers which are not covered by the Act policy cannot, as per the Supreme Court's judgment in Pushpa Bai's case, make-the Insurance company liable. In my humble view, the above two decisions are contrary to the Supreme Court judgment.

55. The Madras High Court in United India F and G Insurance Company Ltd. v. M.S. Durairaj (supra) again construed the same clause in a similar policy. Having held that passengers are carried for hire or reward, the Madras High Court then referred to Section 11 of the policy above extracted and held that the Insurance Company is not liable. They referred, on this point, to the discussion in relation to this type of policy in Pushpa Bai's case. In my humble view, the learned

Judges did not notice that in the Supreme Court case, the passenger was a gratuitous passenger and it was not an Act-policy and the above clause therefore was held to exclude the Company's liability. But in the Madras case, it was a case of a passenger for hire or reward and was an Act-policy and hence as per the above clause in the policy, the Insurance company must have been made liable.

56. In the present case, in the first two C.M.As. there is a similar clause but as here, the police constables are held to be gratuitous passengers, it is not a case of Act Policy and hence the company is not liable and the words "any person" have to be given, as stated by the Supreme Court, a restricted meaning as applying to cases of Act-policy only. Hence the Insurance company is not liable. The above clause cannot be treated as a special contract.

57. I may however incidentally point out that the other clause in the policy excluding liability of the Insurance company relied upon by the company's counsel, even in case of Act policy i.e., passengers carried for hire or reward, is of "no effect" because of Section 96(3).

(F) Prohibition in Permit or Rules-relevancy:

58. In certain permits or in certain rules made in various States under the Motor Vehicles Act, there is prohibition for carrying passengers for hire or reward in goods vehicles to a specific extent. It is argued for the Insurance Company that if passengers are carried contrary to the permit or the rules, the Insurance Company is not liable in view of Section 96(2)(b): This argument is particularly addressed by Sri S. Hanumaiah in the first two C.M.As. relating to goods vehicle, and reference is made to Rule 277 which states that no person shall be carried in the cab of the goods Vehicle beyond six and that no person shall be carried in a goods vehicle upon the goods or otherwise etc., and that no persons other than those connected with the goods can travel in the goods vehicle. Rule 277(v) states that nothing in the Rule shall be deemed to authorise the carriage of any person for hire or reward on any goods vehicle unless there is in force in respect of the vehicle a permit authorising the use of the vehicle for such purposes, and say in accordance with the provisions of such permit similarly reference is made to Rule 213(v) relating to conditions to be specified in permit and particularly to Clause (iv) thereof which states that no other person shall be carried in the cab beyond a particular number upto six etc. and to Clause (v) prohibiting carriage in a manner dangerous etc. It is argued by Sri S. Hanumaiah and also by Sri Somayajulu that this aspect was not considered by the Bench of this Court in *M. Suryanarayana v. G. Satyavathi* (supra) and in *Premier Insurance Co. Ltd. v. F. Siromanamma*, (supra) which respectively related to carriage of the owner of the goods and of the employees of the owner of the goods.

59. I may firstly state that the Bench decisions are binding on me and their correctness cannot be questioned before me. Secondly, as I shall presently show, reliance can be placed by the Company on Section 96(2)(b) only if the Company

gets the permit filed and marked as evidence in the case.

(i) Permit Condition:

60. It is true that u/s 96(2)(b), one of the defences available to the Company is that there is a breach of a specified condition of the policy. Section 96(2)(b) reads:

Section 96(2)(b): that there has been a breach of a specific condition of the policy, being one of the following conditions, namely--

(i) a condition excluding the use of the vehicle--

(a) for hire or reward, where the vehicle is on the date of contract of insurance a vehicle not covered by a permit to ply for hire or reward, or

(b) ...

(c) for a purpose not allowed by the permit under which the vehicle is used where the vehicle is transport vehicle, or

(d) ...

(ii) a condition excluding driving by a named person or persons or by any person who is not duly licensed....

(iii) a condition....

61. The provisions have been elaborately considered by a Full Bench of The Gujarat High Court. It is pointed by P D. Desai, J. (as he then was) in *New India Assurance Co. Ltd. v. Nathiben Chatrubhuj* (Supra) that, as permitted by Section 96(2)(b), the above conditions can certainly be imposed in a permit granted in respect of the vehicle. But it will be necessary for the Insurance Company to establish, by evidence, that a permit was granted with the above conditions. While it is sufficient for the claimant to show that the statutory insurance of Act-policy was available i.e., to the extent in Section 95(1)(b)(i) and (ii), the Insurance Company, if it wants to disclaim the liability of satisfying the decrees against the insured must prove that, on the date of the contract of Insurance the insured vehicle was not expressly or impliedly covered by a permit to ply for hire or reward ; or that other conditions of the permit were violated. Unless this burden is discharged by the Company it will be liable.

(ii) Rules made under the Act:

62. Coming to the alleged violation of Rules made under the Act, we have again to go to Section 96(2) of the Act. That section exhaustively specifies the defences open to the Company. That section makes no reference to the violation of the Rules as a defence open to a Company. It only refers to cancellation of the policy, breach of the specified conditions of the policy, enumerated in Clauses (i), (ii), (iii) of Section 96(2)(b) and of the policy being void. These defences alone are open to the Insurance Company, unless there is a specific clause reserving

the right to defend the action in the names of the insured and it is only in the latter case that the Company can raise the defences open to the assured. Vide *British India General Insurance Co. Ltd. Vs. Captain Itbar Singh and Others*, and for that purpose the permit must have been filed, as stated earlier, nor do the Rules refer to the exclusion of the liability of the Insurance Company.

63. The Rules thus govern the insured and his servants on the one hand and the State and its officers or the authorities on the other. Therefore violation of Rules by the insured or his driver may indeed result in such administrative or penal action, against the person owning the permit or using the vehicle, to be taken by the authority granting permit. But as between the contracting parties i.e., the owner of the vehicle and the insurance Company, it will have no bearing. It has been held in *Abdul Jabbar Vs. Muniammal*, *G. Dhyanand v. Zaamini Bi* (Supra) *Oriental Fire and General Insurance Co. Ltd v. . Parvathamma* (Supra), that even if the Rules are violated, the owner of the vehicle is still liable in Tort to the injured or the representative of the deceased. If the owner is liable, the Company is also liable unless it can raise this as a defence u/s 96(2) by special reservation as in Capt Itbar Singh's case.

64. The above position is clear also from the principle that a contract between two persons, such as a lease or a partnership in respect of a licence, cannot be avoided by the parties to the contract even though a statutory authority may have a right to ignore it or take penal action against the parties for violation of the law (see *Murlidhar Aggarwal and Another Vs. State of Uttar Pradesh and Others, Commissioner of I.T. v. Venkalaramana* 1984 (1) ALT 399, Thus violation of Rules by the owner of the vehicle or his servant does not by itself absolve the Insurance Company.

65. It is however argued for the Insurance Companies that in *Abdul Jabbar v. Muniammal*, in *G. Dhyanand v. Zaaminibi*, (supra) in *Oriental Fire and General Insurance Co. Ltd. v. B. Parvathamma*, (supra), the Courts held that even though the Rules does not come to the aid of the owner of the vehicle, it may still help the Company. For the reasons mentioned above, I cannot accept this contention. I may state that in our High Court, the decision in *NIA Co. Ltd. v. S. Jaffar* (Supra) wherein the Rule was relied upon for exonerating the Insurance Company, has since been over-ruled in *Premier-Insurance Company Limited v. V. Siromanamma*, (Supra).

(G) Tort--liability of owner of goods vehicle: prohibition by owner:

66. The cases which have presented difficulty are those in which there is a prohibition by the owner of the vehicle to his driver from carrying passengers at his will and cases where the Permit or the Rules prohibited the carriage of passengers. I have dealt with the latter aspect in the last mentioned paragraphs and held that the owner of the vehicle cannot plead the violation of the Permit or the Rules by himself or his driver. Coming to the former aspect where there is no proof of express prohibition by the owner of the vehicle to his driver, it has been

held by the Supreme Court in Pushpa Bai's case (Supra) and by our High Court in M. Krishna Rao v. S. Venkateswara Rao 1986 (1) APLJ 425 following the dictum of Lord Denning quoted therein, that the owner of the vehicle is liable. A distinction is made between acts done outside the sphere or course of employment and those done within the said sphere. It was held that the owner of the vehicle is liable.

67. In cases where there is proof of prohibition by the owner of his driver, it was recently held by our High Court in R. Venkateswara Rao. v. Vijayalakshmi (Supra) that the owner is not liable as the act of his servant is outside the sphere of employment. But even here, in spite of the owner's prohibition, the Madras High Court in Abdul Jabbar v. Muniammal held that the owner is liable and we are not concerned with such a question here.

68. In the present case, in the first two CMAs. I have considered the oral evidence of the PWs and ZW1 as to the owner's prohibition. But, in my view, the evidence for the owner is clearly interested and is not acceptable. The reasoning of the trial Court is sound and I hold that there was no prohibition by the owner. Hence on facts, following Pushpa Bai's case (Supra) and M. Krishna Rao v. S. Venkateswara Rao, I hold that the Andhra Paper Mills is liable. But as the two police-men were gratuitous passengers, the Insurance Company is not liable.

69. Result: In the result, in the first two CMAs., I hold that the goods vehicle is also covered by the Act policy under Clause (ii) of the proviso to Section 95(1) (b), that though the Insurance Company would have been liable under Act-policy in respect of passengers carried for hire or reward! but inasmuch as it is not established that the police-men were carried for hire or reward, the Company is not liable. However the owner of the vehicle is liable as I have found that there was no prohibition by the owner of the vehicle to his driver against carrying passengers. I do not express any opinion on the question whether, even if there is such a prohibition, the owner is liable as held by the Madras and Madhya Pradesh High Courts as opposed to the view of our High Court. The two CM As are allowed and the decree against the Insurance Company is set aside. The appeal (SR) with delay condonation application preferred by the Paper Mills is rejected.

70. In the third CMA No 883/81, which is passenger vehicle, it is held that the "cleaner" is covered by the Act-policy as an employee of the owner falling under Clause (ii) of the proviso to Section 95(1)(b), as he is not covered by Clause (i) of the proviso and the Insurance Company is liable upto Rs. 5,000/-as per Section 95(2), at that relevant time. CMA No. 883/81 filed by the owner of the passenger vehicle is allowed against the Insurance Company for Rs. 5,000/-. In other respects the CMA is dismissed. Having regard to the age of the claimants, the total compensation awarded is correct and the cross-objections filed by claimants are dismissed. No costs in all cases.