

(1976) 04 RAJ CK 0013

In the Rajasthan High Court

Case No : Civil Miscellaneous Appeal No's. 149 to 151, 156 to 158 and Civil Revision No's. 421 and 469 of 1972

The United India Fire and General Insurance Co. Ltd. and
Another

APPELLANT

Vs

Mst. Sayar Kanwar and Others

RESPONDENT

Date of Decision : 06-04-1976

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115
Constitution of India, 1950 — Article 227
Motor Vehicles Act, 1939 — Section 110B, 95, 96

Citation : AIR 1976 Raj 178 : (1976) RLW 263

Hon'ble Judges : V.P. Tyagi, Acting C.J.; M.L. Jain, J

Bench : Division Bench

Advocate : H.M. Parekh, A.L. Mehta, for Aya Singh, for the Appellant; D.S. Shishodia, for Mst. Sayar Kanwar and her minors, for the Respondent

Judgement

Jain, J.—We will dispose of these six appeals and two revisions by this single judgment

2. An Accident involving two motor vehicles took place on 14-5-1967 at 7.00 p. m. near village Kamalpura on the Bhilwara-Shahpura Road. Passenger bus No. RJE 6-53 was coming from Kota Side, while Jeep No-RJE 723 was going from Bhilwara in the opposite direction. Both the vehicles collided giving rise to 4 claim petitions Nos. 26/67, 27/67, 28/67 and 29/67, which were filed before the Motor Accidents Claims Tribunal, Bhilwara.

3. The bus was owned by Aaya Singh and was insured with New Great Insurance Company of India Ltd. It was being driven by Panna Lal. The bus had no permit, yet it was carrying a marriage party from Kota to Bhilwara. The marriage party was of Sub-Inspector Bahadur Singh of Bhilwara. The jeep was owned by Bhagwan Swaroop and insured with the Vulcan Insurance Co., Ltd. It was being driven by Shakoor Pinara. The Jeep was carrying Chandan Singh, Bagh Singh,

Raj Kanwar, Anand Kanwar and Shaitan Singh. The owners and insurers of both the vehicles blamed each other for the accident.

4. Chandan Singh filed the petition No. 26/67 that he was occupying a seat in the jeep. The accident took place on account of the negligence of the drivers of both the vehicles. He received four injuries and claimed Rs. 50,000/- as compensation. The Vulcan Insurance Company's contention was that they had not covered the risk of a passenger travelling in a private jeep. The learned Tribunal held that the accident occurred on account of the negligence of both the drivers and awarded a total sum of Rupees 15,000/- to Chandan Singh, against the owners of the bus and jeep and their insurers, but it limited the liability of the New Great Insurance Co. to Rs. 8,000/- only.

5. In the claim petition No. 27/67 filed on behalf of Shaitan Singh, who was also travelling in the jeep, the claim was for Rs. 2,000/-. Shaitan Singh is a minor child and son of Chandan Singh. He had suffered a fracture in the left lower jaw. The learned Tribunal awarded to him Rs. 1,000/- as general damages for physical and mental pain.

6. Claim petition No. 28/67, was filed on behalf of the widow Sayar Kanwar and minor sons of deceased Bagh Singh, who was travelling in the jeep and died. The claim was for Rs. 30,500/-. The learned Tribunal awarded Rs. 17,200/- in favour of the applicants and against the owners and insurers but it fixed the liability of the New Great Insurance Co., at Rs. 10,000/-.

7. The claim petition No. 29/67 was filed by Mst. Raj Kanwar for a compensation of Rs. 2,500/- for the injuries sustained by her. She was travelling in the jeep. The learned Tribunal awarded Rs. 2,500/- to her against the owners and insurers but limited the liability of the New Great Insurance Company to Rs. 1,600/- only.

8. Thus, the total amount awarded was Rs. 25,700/- out of which Rs. 20,000/- were specified to be paid by the New Great Insurance Co., insurer of the bus.

9. It appears that the New Great Insurance Company has deposited the amount for the payment of the claimants. But the Vulcan Insurance Co, which is now vested in the United India Fire and General Insurance Co. Ltd. and Aaya Singh have challenged the award.

10. Appeals Nos. 156, 157, 158 of 1972 and Revision No. 469/72 are by Aaya Singh the owner of the Bus. Appeal Nos. 149, 150, 151 of 1972 and Revision No. 421/72 are by Messrs. United India Fire and General Insurance Co. Ltd.

11. The learned counsel for the revisioners submitted that if no revision is permissible u/s 115 of the C. P. C. against the Tribunal, then the two revisions may be treated as applications under Article 227 of the Constitution. Reliance was placed upon *Laxmi Narain Misra v. Kailash Narain Gupta* 1974 RLW 7 : AIR 1974 Rat 55 and *Calcutta Chemical Co. Ltd. and Another Vs. D.K. Barman and Another*, In the Rajasthan case it was held that the Claims Tribunal is not a court subordinate to High Court. In the Patna case, it was observed that where the

case is heard by the Division Bench, it makes no difference whether the applications are u/s 115 of the C. P. C. or under Article 227 of the Constitution. In view of the Rajasthan decision, we prefer to treat these revisions as petitions under Article 227 of the Constitution. Whose negligence?

12. The learned Tribunal's findings, as pointed out earlier, are that the accident took place on account of the negligence of the drivers of both the vehicles. The learned counsel appearing for the appellant bus owner Aaya Singh has submitted that the findings of the learned Tribunal are contrary to record. All the three claim petitions stated that both the vehicles were being driven very fast and when the driver of the bus was negotiating the bend at Kamalpura, he did not care to slow down the vehicle with the result that the bus left its side and came to the right side. The jeep which was coming on its correct side also left it and moved to its right side. In this attempt, the left front portion of the bus and left front portion of the jeep dashed against each other. In these circumstances, the learned Tribunal, urged the learned counsel, should have held that the accident was not caused on account of any rash and negligent act on the part of the bus driver. He also referred us to the photographs which were taken of the vehicle as found interlocked after the accident at the scene of occurrence. We were also taken through the evidence specially the portions which appear to indicate that the bus was not at fault but had to leave its side in order to avoid collision with the jeep coming fast from the front side.

13. Chandansingh P. W. 1 deposed that the left front portion of both vehicles collided against each other and the bus had almost come over the jeep. With the impact of collision, the jeep turned its face towards the right side of the road. Gopendra Sharma P. W. 3, who is a Mechanical Inspector and who had examined the vehicles as they stood on the scene of occurrence, deposed that the bus was about 3" away from the jeep. The front brake of the jeep was out of order. It had no hand brake. He did not find any tyre marks on the road. In his inspection memo Ex. A1, he has stated that the left front portion of the jeep was damaged; head light, mudguard, wind-screen, bonnet, radiator, foundation light, steering-wheel, carburettor were all damaged. As regards the bus, the memo states that the left head lights were broken, left portion of the roof had come out and the bumper was bent; the brackets of the front lights were broken, His opinion was that both the vehicles were moving at the time of the accident. According to him, it was not correct to say that the bus was standing still at the time of occurrence.

14. Abdul Shakoor D. W. 1 who was driving the jeep deposed that the bus was running at a speed of 50-60 miles an hour and dashed against the jeep which was coming at 5-7 miles per hour on account of the bend. He pulled the brake of the jeep but the speed of the bus could not be broken and it dashed against the jeep and pushed it 10"-12" backwards. He denied that the bus dashed against the left side of the jeep, rather he asserted that it dashed against the front side of the jeep, Rameshwarlal D.W. 2 was the Station House Officer, Banera who registered a case under Sections 279 and 337 I. P. C. in respect of this

occurrence. His impression has been that the jeep dashed against the left side of the bus and the jeep was on the wrong side. Gajraj Singh D. W. 3 deposed that there was a bridge ahead at the place of occurrence and there was not much of a curve. He was travelling in the bus itself. According to Mohammed Omar D. W. 4 the bus had almost stopped before the jeep dashed against it.

15. This was the evidence upon which the learned Tribunal held that the driver of the bus was rash as well as negligent; and the contention that the bus driver was not negligent could have been best rebutted by the driver of the bus but he was not produced. The learned Tribunal also found that the impact on the jeep and damage thereto shows that it was also in good speed. Although the bus might be fast but the jeep also being in speed, could not be stopped. The jeep tried to bypass the bus on the right which caused the accident.

16. The learned tribunal thus, held that the driver of the bus as well as the driver of the jeep both were rash and negligent due to which the accident took place. Upon an examination of the evidence to which we have referred above, we are inclined to agree with the facts found by the learned Tribunal in this respect. The defence witnesses were trying to support their own cases. Rameshwar D. W. 2 and Gopendra Sharma P. W. 3 are not eye witnesses. But it is impossible to believe that the bus was not at fault and had come to a halt when the jeep dashed against it. We have also examined closely the photographs. They clearly show that both the vehicles must have been in speed, there was a head long collision and on account of its impact the jeep turned its face rightwards. That supports the findings arrived at by the Tribunal. We are not impressed by any of the arguments so strenuously put forward by Mr. Mehta against the findings of the learned Tribunal and reject them.

17. The Quantum of Compensation: The learned counsel Mr. Mehta then, challenged the quantum of damages awarded by the learned Tribunal.

18. In Chandan Singh's petition (No. 26/67, appeal No. 157/72), the claim made, was as follows:

19. Rs. 5,000/- for treatment, Rupees 20,000/- for permanent disability on account of the fractures in knee-cap and Rs. 25,000/-for physical and mental pain.

20. The learned Tribunal however, allowed only Rs. 2,000/- as expenses in connection with the medical treatment, as the claimant had also to get a special shoe made on account of the damage to the knee. The learned counsel submits that this award is excessive because Chandan Singh received treatment free in the hospital. He has produced no bills, nor has he kept any accounts. We think that these factors have already been taken into account by the learned Tribunal and that is why it reduced the claim from Rs. 5,000/- to Rs. 2,000/- on account of medical expenses. The objection therefore does not seem to be valid. As held in *Swaraj Motors Private Ltd., Kottayam Vs. T.R. Raman Pillai and Another*, expenses need not be supported by any bills and vouchers.

21. On account of the compensation for permanent disability, the learned Tribunal awarded Rs. 10,000/-; and a sum of Rupees 300/- was awarded in respect of mental and physical pain.

22. The learned counsel Mr. Mehta objects that this amount too was fixed arbitrarily. The claimant is an ex-jagirdar, who received Rs. 40,000/- as compensation and earns about Rs. 40,000/- per year out of his 300 bighas of land. The learned Tribunal has not cared to consider that the return from the lands do not require any effort on his part and no loss of income can be said to have occurred because the knee-cap has been damaged on account of the fracture.

23. In this connection also the learned Tribunal relied upon Swaraj Motors Private Ltd., Kottayam Vs. T.R. Raman Pillai and Another, In this case, there was a compound fracture of both the bones of the leg. The claimant was an advocate earning Rs. 500/- per month. His leg was shortened by 1 1/2" and there was 90° flexion on the knee and complete stiffness of the ankle joint and foot resulting in limping. An Award of Rs. 7,200/- for loss of income was held to be quite moderate.

24. Another ruling relied upon by the learned Tribunal was New India General Insurance Co. Ltd. v. Srikanta Ghosh 1972 ACJ 153 (Orissa) wherein it was observed that in fixing quantum of compensation in accident cases there is bound to be some element of arbitrariness because after certain salient features are indicated, the matter would normally be left to the tribunal to take a reasonable view of those facts and come to fix the quantum of compensation. It was also remarked that once such an amount is determined, unless a positive basis is indicated to refute such quantification, it would not be proper to interfere with the quantum determined by the tribunal.

25. Learned Tribunal placed reliance further upon Government of India v. Jeevraj Alva 1970 ACJ 221 : AIR 1970 Mys 13 In this case an award of Rs. 2500/- was upheld in appeal for a compound fracture of fore-arm and fracture of both the bones of a leg of a boy.

26. We have considered the objections of the learned counsel Mr. Mehta but we do not feel inclined to interfere with the amount awarded by the learned Tribunal. The sums of Rs. 10,000/- and Rs. 3,000/- respectively for loss of income and mental and physical suffering appear to us to be just moderate.

27. In Case of Raj Kanwar's petition (No. 29/67, Appeal No.] 58/1972), she claimed Rs. 25,000/- but she was awarded only Rs. 2,500/-; Rs- 500/- in connection with the treatment and Rs. 2,000/- for physical and mental pain. Mr. Mehta submits that according to the statement of Chandan Singh, expenses of the medical treatment of his wife Raj Kanwar were included in the amount spent by him. She did not have to spend anything on medical expenses. She remained in a public hospital for one month. In her claim petition Mst. Raj Kanwar has claimed Rs. 3000/- as medical expenses but in her statement there is no

evidence to show how much money has been spent on her medical treatment. The argument is that the sum of Rs. 500/- should not have been allowed to her, Here again, we find that the award made by the Tribunal cannot be said, by any test, anything different from being moderate and just.

28. In respect of claims petition of Shaitan Singh (No. 27/67 Revision No. 469/72) his father and guardian Chandan Singh has said nothing in respect of his compensation but he was awarded Rs. 1,000/- as general damages for the injuries sustained by him. This was also challenged because the amount was fixed without evidence. The learned Tribunal has awarded the sum after considering the statement of Chandan Singh and the doctor. We do not find any merit in the arguments in this respect.

29. In case of Sayar Kanwar and her sons for death of Ragh Singh (Claim petition No. 28/67 appeal No. 156/72), Rupees 17,200/- was awarded as compensation; Rs. 15,000/- was awarded on account of loss of income, Rs. 2,000/- was allowed as compensation for agony and Rs. 200/- as expenses of treatment. Mr. Mehta assailed this award on the ground that there is no evidence regarding the income of Bagh Singh. In considering the damages in such cases, the court has to consider the expectancy of life, the income of the deceased, the amount spent on family, the property which is left behind; further consideration should be given to the fact that a lump sum was being made available to the legal representatives. But the learned Tribunal did not at all consider any of these factors

30. Mr. Mehta rested his contention upon Sheikhpura Transport Co. Ltd. Vs. Northern India Transport Insurance Co., in which the Supreme Court observed that in fixing compensation, the pecuniary losses can be ascertained only by balancing on the one hand, the losses to the claimants of the future pecuniary benefit, and on the other, any advantage which from whatever sources come to them by reason of the death.

31. The second case relied upon was C.K. Subramania Iyer and Others Vs. T. Kunhikuttan Nair and Others, . It was observed therein that there can be no exact uniform rule for measuring the value of the human life and the measure of damages cannot be arrived at by precise mathematical calculations but the amount recoverable depends upon the particular facts and circumstances of each case. It is not sufficient for the plaintiff to prove that he lost by the death of the deceased a mere speculative possibility of pecuniary benefit. In order to succeed, it is necessary for him to show that he has lost a reasonable probability of pecuniary advantage.

32. In Union of India v. Smt. Jyotikana Bhowmick AIR 1973 Gau 127, it was held that in case of death, loss to dependents should be computed on the basis of life expectancy of the deceased and his net income as arrived at by reducing his personal expenses from his actual income.

33. In Narandas Bapalal Dandwala Vs. The Land Acquisition Officer, it was observed that the court should ordinarily adopt method of multiplier for purposes

of assessing compensation for the loss of annual dependency benefit. What the court is called upon to do in such cases is to provide compensation which is proportional to the injury resulting from the death. By employing multiplier, the court assesses a lump sum compensation for all the dependents depending upon the deceased. The question as to how the compensation is to be apportioned between the different claimants cannot have any bearing on the question as to what should be the proper multiplier in the given case.

34. Let us now see what was done by the learned Tribunal in this respect. Rs. 20,000/- were claimed as general damages. The learned Tribunal said that looking to the age of the deceased, who could live upto 65 years and family of 5 persons to support and looking to lump sum payment that would be made, Rs. 15,000/- would be deemed just and sufficient. The learned counsel for the appellant bus owner contended with all the force at his command that the learned Tribunal did not determine the compensation upon any evidence but fixed the amount arbitrarily. The learned Tribunal should have considered the expectancy of life and income of the deceased and the expenditure which he could have made on himself and his family, property left behind by him and the advantages of obtaining the amount in lump sum. But the Tribunal did nothing of the kind and the amount awarded by the Tribunal on the head of loss of damages cannot be sustained. Same was the case respecting the amounts allowed on account of mental agony and expenses of treatment which sums were also awarded without any evidence.

35. On the other hand, the learned counsel for the claimants referred us to the *Corporation of Madras v. Thangamal* 1966 ACJ 148 (Mad) wherein it was held that the court should not interfere with an award made by the Tribunal who tried the case. In this ruling reliance was placed upon *Taylor v. Mayor Alderman and Burgesses of South Hampton* (1952) CA No. 89 according to which the Appellate Court does not interfere with an award by a [judge who tried a case, unless, looking to it, it is out of all proportion to the figure which the court considers the proper award. It was observed, "when I heard the facts of this case, I said to myself: "Good Gracious me--as low as that for these injuries. Giving the best consideration I can to it, it seems to me that this sum is too low." In *McCarthy v. Coldair* (1951) CA No. 271 Denning LJ said "I think Mr. Everett put the test graphically and rightly when he said that this court would interfere if it said to itself. "Good Gracious me--as high as that." In *Flint v. Lovell* (1935) 1 KB 354 Greer J. said "In order to justify reversing the trial Judge on the question of the amount of damages, it will generally be necessary that the Court should be convinced either that the Judge acted upon some wrong principle of law or that the amount awarded was so extremely high or so very small as to make it, in the judgment of this court, an entirely erroneous estimate of the damage to which the plaintiff was entitled."

36. In *K. Gopalakrishnan Vs. Sankara Narayanan and Others*, it was observed that the appellate Court would be loath to interfere with the quantum of

damages awarded by the Tribunal unless there is an error in principle or the amount awarded is so unreasonable as to call for interference.

37. We have considered the arguments of both the sides and it appears to us correct to hold that this court should not interfere in the quantification of damages awarded by the Tribunal unless it feels that they are too high or too low, i.e. they are not in proportion to the loss or injury caused or unless there is some error in principle or in approach adopted by the Tribunal below. In this petition only two witnesses were examined, namely, Mst. Sayar Kanwar widow of the deceased and the doctor. Bagh Singh was injured in the head and died on 20-5-1957. His widow deposed that when her husband died, he was 40 years old. He had 30 Bighas of land which he ploughed himself. Now, the lands are cultivated through a share-cropper who takes away two-thirds of the produce. The bullocks have also been sold. She spent about Rs. 600/- on treatment. It will be seen that there was not much of evidence and in such a case, the Tribunal had to make its own estimate. The Tribunal awarded Rupees 200/- as medical expenses and Rs. 2,000/- towards the compensation for agony. This amount cannot be on the high side by any test. The average span of life was taken to be 65 years and only a sum of Rs. 10,000/- based on an income of Rs. 400/- or so a year was allowed which we do not consider unreasonable. This much amount the deceased must be earning and was barely necessary to maintain his wife and four sons. No doubt the land is there but the tiller is gone and the widow has to have it ploughed through an agency which takes a pretty good share. We do not think that in the circumstances of this case, the award made by the Tribunal is high at all.

38. We, therefore, reject all the arguments advanced against the quantum of compensation awarded by the Tribunal in all the petitions.

39. Apportionment of liability; learned counsel then, submitted that it being a case of contributory negligence, the liability should have been apportioned between the respondents. The insurer of the bus has already paid Rs. 20,000/- out of the total of Rs. 35,710/- awarded by the Tribunal. The damages should be shared by the bus owner and the jeep owner. In respect of this point, the learned counsel for the respondent raised an objection that this point was not agitated before the Tribunal nor was any alternate plea taken by the appellant and therefore this point cannot be allowed to be raised in this Court. We do not think that the objection should be allowed to prevail because if apportionment was called for under the law and the learned lower court failed to do so, then, the appellate court is certainly entitled to rectify the mistake.

40. In *Attorney General v. Rada Baskaran* 1974 ACJ 461 a case from Malasia, a car was speeding fast behind a lorry which moved into the middle of the road and went towards right from centre road divider and came in the car's path. The car did not slow down and braked hard and over-turned On account of its impact with the road divider. The Lorry driver was found to be negligent to the extent of 70 per cent and the car driver to the extent of 30 per cent of the total damages.

41. In *State of Punjab and Another Vs. Smt. Phool Kumari and Others*, drivers of both the vehicles were responsible for the accident. It was held that in such cases, the liability to make good the damage or loss shall be proportionate, to, the degree to which each person was at fault. In this case 2/3rd of total compensation was made payable by the Punjab State on behalf of the Punjab Roadways and the balance was to be paid by the insurers on behalf of the owner of the truck.

42. In *Lang v. London Transport Executive* (1959) 3 All ER 609 the facts were that the possibility of the danger was reasonably apparent and the bus driver was negligent in not taking the precaution of looking at the traffic in the side road as he approached it to see whether the solo motor cycle was still moving at twenty miles an hour and obviously intending to cross the major road; the motor cycle driver however was much more responsible for the accident than the bus driver. The responsibility was apportioned as 2/3rd to Lang and 1/3rd to the defendants.

43. In *Varada Reddy v. M/s. Suseelamma* 1974 ACJ 31 (Andh Pra) the court apportioned the liability between motor bicycle and the bus driver in the ratio 1:3 where the bus driver was also found guilty of negligence.

44. In *Rouse v. Squires* 1974 ACJ 88 (CA) an English case, a lorry skidded and obstructed the motor way in jack-knife position R. came to help. Another lorry coming behind stopped with head light on. The third lorry came following at a very fast speed, collided with the lorry standing ahead in its rear portion pushed it forward and knocked R to death. The liability in the ratio of 3:1 was apportioned between the drivers of the jack-knifed lorry and the third lorry.

45. In *Subash Chander and Others Vs. State of Haryana and Others*, the appellants in the five cases were held liable for 1/2 of the compensation amount assessed on general principles because both the jeep driver and driver of the Haryana Government Road ways bus were equally at fault.

46. On the basis of these decisions it was urged that the liability should be apportioned between the two vehicles.

47. On the other side, it was contended that the case of *State of Punjab v. Phool Kumari* AIR 1963 Punj 125 was not followed in *Manjula Devi Bhuta v. Manjusri Raha* 1968 ACJ 1 (Madh Pra) wherein a distinction was drawn between a "contributory negligence" and a "composite negligence". The contributory negligence applies solely on the conduct of the plaintiff. It means that there has been an act of omission on his part, which has materially contributed to the damage. Where a person is injured without any negligence on his part but as a result of the combined effect of the negligence of two other persons, it is not a case of contributory negligence in that sense. It is a case of what has been styled as composite negligence. The learned Judges quoted the following from "Pollock on Tort" at page 362: "where negligent acts of two or more independent persons have between them caused damage to a third, the sufferer is not driven to apply

any such analysis to find out whom he can sue. He is entitled, of course, within the limits set by the general rules as to remoteness of damage to sue all or any one of the negligent persons. It is no concern of his whether there is any duty of contribution or indemnity as between those persons though in any case he cannot recover in the whole more than his whole damage. The phrase of "contributory negligence of a third person" which has sometimes been used, must, therefore, be rejected as misleading."

48. u/s 110-B of the Motor Vehicles Act, 1939, the Tribunal is required to determine the amount of compensation which appears it to be just and to specify the person or persons to whom compensation shall be paid specifying the amount which shall be paid by the insurer. The High Court of Madhya Pradesh held that where as a result of collision between two motor vehicles a passenger is injured, the Tribunal will not apportion the compensation in the ratio of respective negligence (apart from specifying the liability of the insurer). They followed the view taken in *The Palghat Coimbatore Transport Co. Ltd. Vs. Narayanan and Others*,

49. Upon a consideration of the matter, it seems to us that where the negligence of the claimant injured or the deceased also contributes to the happening of the accident, the amount of compensation that the respondent will be required to pay shall be in proportion to the volume of his fault or negligence, but where a person is injured or dies in an accident which occurs not on account of his negligence but because the drivers of the colliding vehicles were negligent, the claimants are entitled to damages jointly and severally from the negligent respondents. In that event, it is no concern of the Tribunal to apportion the damages between them. Viewed in that light, the arguments of Mr. Mehta do not appear relevant in this case because the injured and the deceased in this case before us did not contribute to the accident. We reject his contention.

50. Liability of Insurer; Now, the United India Fire and General Insurance Co. Ltd., (The Vulcan Insurance Co.) contends that it cannot be held liable for compensation in relation to passengers travelling in the jeep which was insured with them. The argument can better be understood by referring briefly to the provisions of the Motor Vehicles Act, 1939, in this connection which are relevant for this purpose.

51. According to Section 94 of the Motor Vehicles Act, 1939, no person can use except as passenger or cause or allow any other person to use a motor vehicle in public place, unless there is in force in relation to the use of the vehicle by that person, or that other person, as the case may be, a policy of insurance complying with the requirements of Chapter VIII.

52. Section 95 inter alia provides that in order to comply with the requirements of Chapter VIII, a policy of insurance must be a policy which insures the person or classes of persons specified in the policy to the extent specified in Sub-section (2), 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 use of the vehicle in a public place; but a policy shall not be required to cover liability in respect of 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, except where the vehicle is a vehicle in which passengers are carried for hire or reward, etc. It was with reference to this requirement that Mr. Parekh the learned counsel for the Vulcan Insurance Co. Ltd., urged that the insurers were not liable to make good any liability of the insured in respect of death of or bodily injury, to any person which were carried in the jeep because the vehicle was not plying for hire or reward. The learned counsel also referred us to the policy dated 25-10-1966 issued by them.

53. The contention of Mr. Parekh is that though the owner of the vehicle may be liable for the compensation in respect of the passengers carried in the jeep in question, yet the Claims Tribunal, whether it specifies u/s 110-B of the said Act, the amount payable by the insurer or not, cannot make the insurer pay u/s 96 (1) thereof more than its liability as is stated and limited by Section 95 thereof. As it was not a vehicle in which passengers are carried for hire or reward, the insurer is not bound to cover the risk to the passengers. Nor does the policy mean to cover any such risk.

54. The contention of the claimants, on the other hand, is that if the policy insures against all damages including those in respect of the passengers going in a vehicle which is not plied for hire or reward, as the policy under consideration, they contend, it is the duty of the Tribunal u/s 110-B of the Motor Vehicles Act, 1939, to specify the amount which it has undertaken to pay in terms of the policy whatever be its extent. It cannot be and was not the intention of the law that the claimant must come to the Tribunal in respect of the liabilities which are the minimum required by the Act to be covered and to approach a court of civil jurisdiction in respect of the remaining liability under the policy. Indeed, the jurisdiction of civil Courts has been expressly barred by Section 110-F of the said Act which lays down that where any Claims Tribunal has been constituted for any area, no Civil Court has jurisdiction to entertain any question relating to any claim for compensation which may be adjudicated upon by the Claims Tribunal for that area.

Mr. Shishodia, the learned counsel for the claimants, submits that the Tribunal can adjudicate upon all claims of compensation u/s 110-B which empowers the Tribunal to adjudicate upon the claims for compensation in respect of accidents involving the death of, or bodily injuries to, persons arising out of the use of motor vehicle, or damages to any property of a third party so arising or both, except where the claim for compensation in respect of damage to property exceeds Rs. 2,000/-, the claimant has an option to refer the case to the Civil Court for adjudication and in such cases the Claims Tribunal shall have no jurisdiction to entertain any question relating to such claim. The claimants,

therefore, urged that in spite of the fact that the insurer is precluded from raising defences other than those available to it u/s 96 of the Motor Vehicles Act, all claims under which the insurer has bound itself in terms of the policy is required to be adjudicated upon by the claims Tribunal and not by a Civil Court.

55. Mr. Parekh, the learned counsel for insurer, contended vehemently firstly, that the limits of insurer's liability have been prescribed under Sub-section (2) of Section 95 which would not otherwise have been so prescribed if the matter was left to be governed only by the terms of the policy; and secondly, it is not even necessary under the law to implead an insurer as a defendant and where the insurer is impleaded or applies for being made a party, then it cannot avoid the policy on any ground other than those stated in Sub-section (2) of Section 96 of the Act, vide Sub-section (6) thereof and is bound to make payment to the person entitled to the benefit of the decree, of any sum not exceeding the sum assured, payable thereunder. This is so because the claimant is not a party to the contract of insurance and he is merely a statutory beneficiary. The Tribunal cannot award to him as against the insurer anything more than what the statute allows. Thus, beyond the limits of liability prescribed in Chapter VIII insurer cannot be held liable before the Claims Tribunal. Thirdly, the claims were also not fought before the Tribunal on the basis that the policy provided risks larger than those which are required to be insured compulsorily. In case this court came to the conclusion that the Tribunal can adjudicate upon all matters covered by the policy, then the case be remitted to the Tribunal with the directions that the insurer shall be allowed to raise on its own and on behalf of the insured all defences available under the law of contract and the insurance and the case be tried afresh.

56. Having considered the matter, it appears to us that the insurer is not required to cover any liability in respect of passenger carried in a vehicle not run for hire or reward, but the insurer can, by contract, extend its liability in any respect beyond the requirements of the Act and also safeguard its interest fully by providing a term in the policy that it shall be entitled to take over the defence both on its behalf and on behalf of the insured even on grounds other than those limited by the Act. This is clear from the decisions of the Supreme Court reported in *Sheikhupura Transport Co. Ltd. Vs. Northern India Transport Insurance Co.*, and *British India General Insurance Co. Ltd. Vs. Captain Itbar Singh and Others*, vide para 16.

57. Now, an examination of the policy shows that the policy covers under clause 1 of Section IT, "Liability to third parties." The premium paid is also for third party risk only.

It has also provided for subrogation, vide conditions, para 2.

58. The questions that now arise for determination are whether the injured or the deceased were third parties and whether the Tribunal can make any award in respect of such passengers against the insurer, which may exceed the statutory

limits,

59. In support of his contention, the learned counsel for the respondents cited *Digby v. General Insurance and Life Insurance Corporation Ltd.* 1943 AC 121 wherein it was observed that the governing conception is that the insurer is one party to the contract and the policy holder another party and that claims made by others in respect of the negligent use of the vehicle may be *inter alia* described as claims by third parties. If a passenger in a car is injured by negligent driving for which the policy holder is responsible, the passenger would have a claim to be compensated by the policy holder, and an indemnity against other claims as provided in the policy in question. I do not think that this case has any relevance apart from definition of a "third party". Under this ruling the policy holder, while being in her own motor car driven by her chauffeur was injured in a collision between it and another vehicle. It was held that the driver was entitled to be indemnified by the insurer respondents in respect of the sum so payable by him to the injured who was the policy holder herself. The terms of the policy in that case were peculiar to itself inasmuch as the policy covered the risk arising out of the negligence of the driver as well. Though the injuries of the owner policy holder were caused by the negligence of her own driver, the insurer had to pay her.

60. In *Assam Corporation v. Binu Rani* 1974 ACJ 381 : AIR 1975 Gau 3 the High Court said that the words "third party" have not been defined in the Act or in the Rules and held that the gratuitous passenger was a third party. It was further held that the provisions of Sections 110 to 110-F of the Act are not controlled by the provisions of Section 96 as these sections provide a self-contained code for adjudicating upon such claims and imposed a statutory duty on the insurer to indemnify the insured. So where the policy covers wider risk than the one prescribed under the Act, the insurer is liable to pay compensation for the injuries sustained by the passenger carried in a vehicle gratuitously.

61. Mr. Parekh pointed out that the *Assam Corporation's* case AIR 1975 Gau 3 is based upon *K. Gopalakrishnan Vs. Sankara Narayanan and Others*, which has been overruled by *Jayalakshmi and Others Vs. The Ruby General Insurance Co., Madras and Another*, It was observed therein that Sub-section (2) of Section 95 has not been correctly interpreted by the Division Bench in *K. Gopal Krishnan's* case.

62. The next case in the series relied upon by the respondents is *Madras Motor and General Insurance Co. Vs. Katanreddi Subbareddy and Others*, where the policy provided that insurers shall indemnify the insured against all sums which insured is legally liable to pay in respect of death of or bodily injury to, any person in the event of accident, the policy is wide enough to cover private occupants of car and insurer is liable to pay compensation. In this case also reliance was placed upon *K. Gopalakrishnan Vs. Sankara Narayanan and Others*, which has been overruled as aforesaid.

63. In the Premier Insurance Co. Ltd. v. Gambhir Singh and Golabsingh AIR 1975 Guj 133 it was observed that Section 95 (1) contemplates the coverage of the liability arising out of the death of or injury to any person and does not say that the minimum limits of compulsory coverage fixed by it in certain specified cases must always remain unaltered even by voluntary contract between the parties. So far as the liability which arises under the provisions of Motor Vehicles Act is concerned, it is only the Tribunal established under that Act which has jurisdiction to deal with the matter. Under the circumstances, whenever a question of compensation arises on account of some act of tort, it is required to be determined under the provisions of Motor Vehicles Act. It is only the Tribunal established under the Act which has got jurisdiction to deal with the matter. Section 96 of the Act casts a duty on the insurer to satisfy judgment against the insured persons in respect of third party risk. This section speaks in parenthesis of a liability (covered by the terms of the policy) and thus provides for the satisfaction of not only statutory liabilities but also of the contractual liabilities in terms of the policy. If the terms of the policy reveal no limits as to the liability, the insurer should indemnify the insured to the fullest extent which he has been liable to all third parties.

64. In Mangilal Vs. Parasram and Others, it was held that all claims by third parties against the insured as well as the insurer must be settled by the Claims Tribunal.

65. Yet, another facet of argument made in this respect was that Sub-sections (1) and (2) of Section 96 of the Act speak of "judgment", "decree" and "judgment-debtor" which indicate that these provisions do not apply to an "award" made by the "Claims Tribunal" and the limits prescribed by Section 96 (1) are not attracted.

66. To sum up, the argument is that Section 96 cannot limit that powers of the Tribunal to make an award against the insurer in accordance with the terms of the policy.

67. The learned counsel for insurer on the other hand began his arguments by citing passages from Clive Insurance Company Ltd. v. Jogendra Singh 1972 ACJ 295 (Orissa). It was observed in this case that ordinarily the insurer is not liable to indemnify a gratuitous passenger in a vehicle which is not meant for carrying passenger on hire or reward unless the policy expressly covers liability in respect of such gratuitous passengers. His contention is that the policy does not expressly cover the risk of third parties such as the claimants in question.

68. In Chander Mohan v. D.C Kapur 1970 ACJ 121 (Delhi) the High Court of Delhi observed that in case of death of passenger travelling in a car the provisions of Section 96 (1) are not applicable because liability in respect of a passenger in a car is not required to be covered by a policy u/s 95 (1) (b) of the said Act

69. In Subash Chander and Others Vs. State of Haryana and Others, the court observed that it is essential before holding the insurer liable in the case of death

of a gratuitous passenger travelling in a private car that firstly, there should be a judgment against the insured and secondly, the judgment must be in respect of a liability which is required to be covered by a policy under the provisions of Section 95 (1) (b) and thirdly, the liability was in fact covered by the terms of the policy. In this case the policy was in a printed form provided by the Life Insurance Corporation of India but it was mentioned in the last column of the Schedule that only third party risk has been covered. The life Insurance Corporation had further proved that the passenger's risk was not covered by this policy, if such risk were covered extra premium was chargeable and no such premium has been paid by the insured. To the same effect are the facts and observations in *K.N.P. Patel v. K.L. Kasar* 1966 ACJ 284 (Bom). Mr. Parekh contends that these cases govern the matter before this Court.

70. In *Oriental Fire and General Insurance Co. Ltd. Vs. Smt. Gurdev Kaur and Others*, it was emphasized that from the very terms of Sub-section (1) of Section 96 it was clear that the liability of the insurer to pay to the person entitled to the benefit of the decree of the Tribunal is in regard to judgment in respect of such liability as is required to be covered by a policy under clause (b) of Sub-section (1) of Section 95 which clause is subject to the two provisos (i) and (ii) of Sub-section (1) of that section. Apparently, if, the liability is not covered by Clause (b) of Sub-section (1) of Section 95, the question of any payment by the insurer pursuant to any judgment by the Tribunal does not arise. Sub-section (2) of Section 96 refers to a sum payable by an insurer in Subsection (1) of that section and Sub-section (6) of that section debars any defence other than those mentioned in Sub-section (2). But this only happens when the judgment is in respect of a liability as is required to be covered by a policy by that provision. It is obviously for the insurer to prove that in a particular case the liability is not required to be covered by that provision and when the insurer shows that, then it has no liability to pay to the person who is entitled to the benefit of the decree and judgment of the Tribunal. In such a case, the question of other defences never arises under sub-section (2) of Section 96.

71. In *Jayalakshmi and Others Vs. The Ruby General Insurance Co., Madras and Another*, it was held that Section 95 (1) (b) makes it first requirement of a policy under the Act in general terms that the policy must be one which ensures against any liability in respect of death of or bodily injury to any person caused by or arising out of the use of the vehicle in a public place. The second requirement under Clause (b) is that the person or classes of persons who effect insurance are specified in the policy. The third requirement is that the insurance against liability specified in the clause must be to the extent specified in Sub-section (2) of Section 95. Generally speaking provision relating to third party insurance did not extend to persons carried in the vehicle not run for hire or reward. Proviso (ii) exempts from requirement of insurance to cover liability in respect of death of, or bodily injuries to, persons being carried in or upon or entering or mounting or alighting from such vehicle at the time of the occurrence of the event of which the claim arises.

72. Mr. Parekh then submitted that Sections 110A to 110F do not lay down any substantive provisions regarding determination of liability of the insurer. They are only procedural. In this regard he relied upon *Palaniammal v. The Safe Service Ltd* 1966 ACJ 19 (Mad) for the contention that the effect of these provisions is to create a new forum (and not a new kind of liability). He next relied upon the decisions of this court in *Fatehlal v. Smt. Kalawati* 1972 WLN 1008 that Sections 110-A to 110-F of the aforesaid Act do not affect any substantive rights. They only mean a change in forum.

73. In substance the argument is that it is only Section 96 which creates a liability upon the insurance company and that Section limits the liability to the one that is covered by Section 95 (1).

74. We have considered and it appears to us that the claimants are third parties but the effect of Section 96 is that the Tribunal can cast upon the insurer a liability only to the extent which is permissible u/s 95 of the Act. The use of words "Court", "judgment", and "decree" in Section 96 do not refer to a liability of the insurer only when a decree is given under the judgment of court of civil jurisdiction. The word "court" includes "Tribunal," the "decree" and "judgment" include an award or judgment of the Tribunal. In this regard we may refer to a decision of Calcutta High Court reported in *Hukam Chand Insurance Co. Ltd. v. Subhashini Roy* 1971 ACJ 156 (Cal). It was held in that case that from a study of the Sections 110 to 110-F, it appears that the only change that has been introduced in the matters of adjudication of claims for compensation by these provisions is that the Courts are replaced by the Claims Tribunal. It, therefore, follows that although Section 96 has not been suitably amended, yet whenever a Claims Tribunal is set up for any area, the word "court" occurring in Section 96 must be interpreted to mean Claims Tribunal. For, Section 96 (1) and (2) of the Act fixed the liability of the insurer to satisfy judgment against insured. Clearly, therefore, the amended provisions conferring power of adjudication on Claims Tribunal, if divorced from Section 96 (1) and (2) of the Act would be rendered ineffective.

75. We therefore are of the view that the contentions urged by Mr. Parekh have considerable force and hold that the liability of the Vulcan Insurance Co. and for that matter its successor company cannot exceed the one which has been imposed upon it by Section 95 of the Motor Vehicles Act, 1939.

76. Accordingly, we direct as follows:

1. The appeals Nos. 156, 157, 158 of 1972 and petition No. 469 of 1972 are hereby dismissed.

2. The appeals Nos. 149, 150 and 151 of 1972 and petition No. 421 of 1972 are hereby accepted and the awards of the Tribunal in question are modified to the extent that the Vulcan Insurance Company, now represented by the United Fire and General Insurance Company Ltd., shall not be liable for making any payment in connection with the injuries of Chandan Singh, Shaitan Singh, Raj Kanwar and

the death of Bagh Singh. 3. No order as to costs.