

(2006) 09 KAR CK 0063

In the Karnataka High Court

Case No : M.F.A. No. 11996 of 2005 and M.F.A. CROB No. 180 of 2006

United India Insurance Co. Ltd.

APPELLANT

Vs

Bhagyalakshmi and Others

RESPONDENT

Date of Decision : 19-09-2006

Acts Referred:

Motor Vehicles Act, 1988 — Section 140, 146, 147, 171, 95

Citation : (2007) ACJ 1676

Hon'ble Judges : S. Abdul Nazeer, J;B. Padmaraj, J

Bench : Division Bench

Advocate : B.C. Seetharama Rao, for the Appellant; S.P. Shankar, for S. Nischal, for the Respondent

Judgement

B. Padmaraj, J.—Although the appeal preferred by the insurance company in M.F.A. No. 11996 of 2005 and the cross-objections preferred by the claimants in M.F.A. CROB No. 180 of 2006 were listed for orders by consent of both sides, they were taken up together for final disposal and they are accordingly disposed of by this common judgment.

2. Briefly stated the facts are as follows:

On 5.10.1996, the deceased Lingappa along with one Papanna was travelling in a private car owned by Narayanajoshi and insured with United India Insurance Co. Ltd. The said car was being driven by one Suresh Babu, when it met with accident on 5.10.1996 around 11.30 in the night on the B.H. Road near Harenahalli Gate. Accident was the result of actionable negligence on the part of the driver of the car when it collided with or dashed against a stationary lorry. As a result of this accident, deceased Lingappa who was one of the occupants of the car sustained certain serious injuries to his person and died on the spot. Claimants are the wife and the grown-up sons of the deceased. They preferred a claim petition before the M.A.C.T., Tumkur, contending, inter alia, that the deceased Lingappa at the lime of this unfortunate and untimely death was a proprietor of certain business concerns (big business magnate) and an

agriculturist having an income of more than Rs. 35,00,000 per month from his business and his annual income was more than Rs. 4,00,00,000 from his business establishment. Besides being a business magnate, the deceased was also an agriculturist owning certain extent of land yielding fabulous income. The deceased Lingappa was aged about 53 years at the time of his death. On these and other averments made in the claim petition, they claimed a compensation of Rs. 1,50,00,000 for the premature death of the deceased in the motor accident against the driver, owner and the insurer of the car. The appellant insurance company resisted the claim of claimants by filing its statement of objections and additional statement of objections. Insurer refuted its liability to pay compensation on the ground that there was no insurance coverage for the car at the relevant time of the accident and that further the deceased being an occupant of the car, there was no liability on the part of the insurer to indemnify the insured in respect of such accident as the insured had not covered any such risks with the insurer. It also resisted the claim of the claimants on the ground that compensation claimed is highly inflated and excessive and the same is made on the basis of certain manipulated records. The insurer had obtained permission to contest the claim on merits from the M.A.C.T. as contemplated u/s 170 of the Motor Vehicles Act. In this connection, a reference may be made to a decision of the Hon'ble Supreme Court in the case of National Insurance Co. Ltd., Chandigarh Vs. Nicolletta Rohtagi and Others, .

3. The M.A.C.T. on consideration of certain material placed on record by both the parties, has by its impugned judgment found that the accident in question was the result of actionable negligence on the part of the driver of the car and has awarded a compensation of Rs. 98,64,428 together with interest thereon at the rate of 8 per cent per annum from the date of the claim petition till the date of payment to the claimants and directed the insurer of the car to deposit the same within a period of 30 days from the date of the award. It is the finding of M.A.C.T. that the offending car was duly insured with the appellant insurance company at the time of accident and hence it is liable to satisfy the award.

4. Aggrieved by the impugned judgment and award of M.A.C.T., the appellant insurer has preferred an appeal and claimants have preferred the cross-objections. Where conditions precedent embodied in Section 170 of the Motor Vehicles Act is satisfied and award is adverse to the interest of the insurer, the insurer has a right to file appeal challenging the quantum of compensation, etc., even if the insured has not filed any appeal against the quantum of compensation.

5. In the appeal filed by the insurer, it has questioned the legality and correctness of the impugned judgment and award made by the M.A.C.T. on the ground that the liability to satisfy the award has been wrongly foisted upon it and also that the claimants are overcompensated. Claimants by their cross-objections would contend that the quantum of compensation awarded by the M.A.C.T. is totally inadequate and the liability to satisfy the award has been rightly fixed or

placed upon the insurer of the car.

6. Since common questions of law and facts are involved in the appeal filed by the appellant insurer and the cross-objections preferred by the claimants, they are both conveniently dealt with together. They were both heard together and are disposed of by this common judgment.

7. We have heard the arguments of the learned Counsel appearing for the parties on both sides at a considerable length and carefully perused the relevant material on record, with their assistance. We have also carefully gone through the several decisions relied upon by the learned Counsel on either side.

8. The learned Counsel for the appellant insurance company has contended as under:

The appellant issued the policy for the period from 11.20 a.m. on 6.10.1995 to 11.20 a.m. of 5.10.1996 and it had expired 12 hours prior to the accident. Since specific timings of commencement of policy has been mentioned in the insurance policy, there was no scope for anybody to interpret the time at which the policy expires. The M.A.C.T. has, therefore, committed a grave error in making the appellant liable to satisfy the award despite there being no subsisting policy at the time of the accident. The M.A.C.T. has acted arbitrarily in misinterpreting the policy produced as per Exh. D1 which had expired at 11.20 a.m. on 5.10.96. The policy having been issued from 11.20 a.m. on 6.10.1995 would not extend till midnight. When the timings of commencement of policy is mentioned by typing the same, the expiry period would also be the same. That further the policy as per Exh. D I which had been obtained by the insured was not a comprehensive one and he had only insured his vehicle for third party risks and the risk arising due to fire or theft of car. As such the occupants of the car are not covered under the policy and the insurer is not required to cover such risks u/s 147 of the Motor Vehicles Act. The claimant Nos. 2 to 6 are the major sons of the deceased and hence they cannot be termed as dependants of the deceased. Though the deceased was alleged to be a big business magnate having more than Rs. 4,00,00,000 of income, he had not remitted the income tax during his lifetime. But the claimants with connivance of some unscrupulous persons manipulated the income tax acknowledgments showing astronomical figures and all such records were created after the death of the deceased. The M.A.C.T. has relied upon the manipulated records and misrepresented evidence to hold that the deceased had annual income of Rs. 8,94,948 and applied the multiplier of 11 and awarded a fabulous amount of Rs. 98,64,428 under the head of loss of dependency. The M.A.C.T. did not act rationally while dealing with the claim made by the claimants and it has totally ignored the fact that the claimants have not produced even one RC book or such other record to show that the deceased owned even one lorry during his lifetime. The inspector of income tax who had been summoned before the M.A.C.T. was examined as DW 3 and he has deposed that for the year 1995-96, the net income declared was Rs. 1,84,560. He has also deposed that from 1991 to 1996, the returns were filed together and the

proceedings were pending and the assessments were concluded after the death of the deceased on the basis of a power of attorney executed in favour of one of the claimants. The income tax records that were placed on record had been manipulated with the aid of PW 3 by the claimants may be with collusion of some staff in the Income Tax Office at Tumkur. The material on record would only show that the deceased was not having substantial income much less the taxable income. The M.A.C.T. has acted perversely and arbitrarily in assessing the loss of dependency of the claimants at Rs. 98,64,428 on the erroneous assumption that the deceased had an annual income of Rs. 8,94,948 for the year 1995-96. While dealing with this aspect of the matter, the M.A.C.T. has totally ignored the fact that the net business profit shown was Rs. 1,84,560 and the net tax component was Rs. 80,024. Even this acknowledgment was manipulated by the claimants with the connivance of unscrupulous people. The M.A.C.T. has not even noticed that the claimant No. 3 is an assessee and his father had neither remitted any tax during his lifetime nor there is any assessment order in his name before his death. The M.A.C.T. has also committed an error in not taking note of the fact that in column No. 12 in the RTC for the year 1998-99, the same crops were shown to have been grown even after 2 years of the death of the deceased. This would establish that there was no economic loss even from agricultural activity as a consequence of the death of the deceased in the accident. M.A.C.T. has further committed a grave error in awarding interest at 8 per cent per annum, without there being any special circumstances warranting such a higher rate of interest. On the facts and in the circumstances of the case, the M.A.C.T. ought not to have awarded any interest, let alone the interest at the rate of 8 per cent per annum on the compensation amount awarded. The appellant is questioning its liability as well as the assessment of compensation made by the M.A.C.T. with 8 per cent interest per annum.

9. In support of his submissions, the learned Counsel appearing for the insurer has placed reliance upon the following decisions:

- (1) M/s. National Insurance Co. Ltd. Vs. Smt. Jijubhai Nathuji Dabhi and others, .
- (2) Oriental Insurance Co. Ltd. Vs. Sunita Rathi and Others, .
- (3) United India Insurance Co. Ltd., Shimla Vs. Tilak Singh and Others, .
- (4) New India Assurance Co. Ltd. Vs. Asha Rani and Others, .
- (5) New India Assurance Co. Ltd. Vs. C.M. Jaya and Others, .

10. The learned senior counsel for the cross-objectors-claimants has contended as under:

That the insurance policy as per Exh. D1 would show that the policy was valid from 11.20 a.m. on 6.10.1995 to midnight on 5.10.1996 and the accident in question having occurred at about 11.30 in the night on 5.10.1996 and hence, the same was very much valid and current at the time of the accident. The M.A.C.T. has committed no error in holding that the policy was valid and current

at the time of accident in question. This is a case where the policy itself mentions the time of commencement as well as the time of expiry of the policy and that being so, the contention advanced on behalf of the insurance company cannot be sustained in law. The policy, Exh. D1, clearly mentions that it commences from 11.20 a.m. on 6.10.1995 and expires on the midnight of 5.10.1996 and that being so, the insurance company cannot be permitted to contend that the policy was not in currency at the time when the accident in question took place. That further, the insurance policy as per Exh. D1 would show that it is a private car "B" policy and as per Section II-1(i), the insurer had undertaken to indemnify the insured in the event of the accident caused by or arising out of the use of motor car against all sums including claimant's costs and expenses, which the insured shall become legally liable to pay in respect of the death or bodily injury to any person including occupants carrier in the motor vehicle. Hence, the appellant insurer cannot avoid its liability in view of the nature of policy issued to the insured. Since no additional premium is required to be paid to cover such risks under the policy issued by the insurer, in the Schedule of premium, no mention has been made about any premium being paid in respect of such risks. Even the tariff regulations as per the India Motor Tariffs does not prescribe any premium being paid by the insured to cover such risks under the "B" policy. Therefore, even in the absence of any premium being paid to cover such risks, the appellant insurer had undertaken to indemnify the insured against such risks as per the policy conditions. That under the Insurance Act there are two kinds of policies, viz., "A" policy and "B" policy. "A" policy is not required to cover anything other than the statutory risks contemplated u/s 147 of the Motor Vehicles Act. If there is any coverage in excess of any statutory requirement, it is a comprehensive policy or "B" policy. The policy in question is a private car "B" policy. There is no compulsion to cover the risk of fire and theft but the policy in question covers the liability in respect of fire and theft and hence it is a comprehensive policy. A reference to the provisions contained u/s 147(1)(b)(i) and (ii) and Section 147(1) proviso (ii) of the Motor Vehicles Act would clearly bring out the distinction and the latter provision deals with the insurance coverage under a contractual liability. A reference may also be made in this regard to the provisions contained u/s 146 of the Motor Vehicles Act. The vehicle in question was a private car and it was insured under a "B" policy and hence it was a comprehensive policy. That is to say, the insurance policy, Exh. D1, covers the risk of fire and theft in addition to the statutory requirement and that further it is a private car "B" policy. Under "B" policy the insurer covers the risk of death or bodily injury to any person including occupants carried in the motor car as per Section II-1(i) of the policy conditions. To cover such risks, no extra premium is required to be paid by the insured to the insurer of the car. If it is a comprehensive policy, the risk of the occupants of the car is fully covered and hence no extra premium is required to be paid. Nowhere there is any insistence on the part of the insurer to pay additional or extra premium for covering the risk of the occupants of the car under "B" policy since such risk is covered by the contract Section II-1(i) for which no premium is required to be paid by the

insured. That further in the instant case an interim award was passed u/s 140 of the Motor Vehicles Act on 17.7.1999 which has become final and conclusive and, hence the insurer is estopped from re-agitating the matter. That apart, insurer had himself filed an application u/s 170 of Motor Vehicles Act which was allowed on 16.10.2003 and in view of such application filed by the insurer himself, it cannot escape its liability to satisfy the award. Therefore the insurer is clearly liable. As per Section 170 of the Motor Vehicles Act, it is only such insurer who accepts its liability can perform the said function. A careful perusal of the policy, Exh. D1, would show that it covers the risk of death or bodily injury to any person including the occupants carried in the car and, hence in the instant case, the insurer cannot escape its liability to satisfy the award in view of the nature of policy issued by it. With regard to the quantum of compensation awarded by M.A.C.T., the evidence on record is that what is demonstrated through income tax return, is the taxable return shown by the deceased and not his earning capacity, which can be inferred from the gross income shown without deducting expenses. The evidence on record is that the deceased was earning between Rs. 20,00,000 and Rs. 30,00,000 per month while the M.A.C.T. has taken Rs. 1,00,000 per month from the income tax returns and from agricultural lands. There is under valuation of the income of the deceased. The M.A.C.T. has clearly erred in awarding a paltry compensation of Rs. 88,00,000 under the head loss of dependency and it ought to have awarded a substantial sum under the said head taking into account gross income of the deceased which was Rs. 20,00,000 to Rs. 30,00,000 per month. Likewise, award of Rs. 10,000 under the head loss of consortium is also grossly inadequate and the same has to be enhanced to a substantial sum. Even the award made under the head of funeral expenses in a sum of Rs. 10,000 is on the lower side and it warrants enhancement. The positive evidence of the auditor, PW 2, with regard to the magnitude of the business of the deceased and the quantum of income of the deceased is not challenged and hence the M.A.C.T. ought to have computed the income of the deceased on the basis of such evidence. The M.A.C.T. has taken an overall view of the matter and ultimately it depended on Exh. P11 and thereby committed an error in taking the income of the deceased only on the basis of Exh. P11 and not on the basis of the actual earnings of the deceased at the time of his death. Therefore, the quantum of compensation awarded by the M.A.C.T. to the claimants for the death of the deceased is totally inadequate and it needs to be enhanced substantially.

11. In support of his submissions, the learned senior counsel for the claimants-cross-objectors has placed reliance upon the following decisions:

- (1) National Insurance Co. Ltd. v. Jugal Kishore 1988 ACJ 270.
- (2) New India Assurance Co. Ltd. Vs. Letchumi Kunchamma and Others, .
- (3) Shanthabai and others Vs. Shekappa and others, .
- (4) National Insurance Co. Ltd., Chandigarh Vs. Nicolletta Rohtagi and Others, .

- (5) *Guru Govekar v. Filomena F. Lobo* 1988 ACJ 585 (SC).
- (6) *Amrit Lal Sood and Another Vs. Smt. Kaushalya Devi Thapar and Others*, .
- (7) *D. Chandrappa Vs. Smt. K. Sunanda and others*, .
- (8) *General Assurance Society Ltd. v. Chandmull Jain* 1966 ACJ 267.
- (9) *Chandrakant Kandlal Sheth v. Union of India* (2002) 125 Taxman 975 CAL.

12. We shall first take up the issue regarding the quantum of compensation. On the question of quantum of compensation, the M.A.C.T. has, on the basis of an account extract of the Ammasandra Cement Factory with regard to the work done by the two transport companies of the deceased Lingappa, taken the income of the deceased at Rs. 1,00,000 per month, which comes to Rs. 12,00,000 per year. After deducting one-third thereof for the personal living expenses of the deceased, it arrived at a sum of Rs. 8,00,000 per year. The M.A.C.T. has further stated in the course of its impugned award that it would take the net income of the deceased as spoken to by the auditor, PW 2, for the assessment year 1995-96 to be Rs. 8,94,948. It may be mentioned that PW 2 is a Chartered Accountant by profession and he has given evidence only on the basis of the file concerning to the deceased placed before him by the claimants and he was not at all the auditor of the deceased, nor he had at any time, during the lifetime of the deceased, examined any of the accounts of the business of the deceased. His evidence appears to be confined only to the records placed before him by the claimants and nothing further. He has no personal knowledge of the business of the deceased nor he appeared to have had any acquaintance with the deceased or the business dealings of the deceased during his lifetime. His knowledge is totally restricted to or confined only to the records that were made available to him by the claimants. This is very clear from his own statement that the claimants had placed before him the file concerning to the deceased and accordingly as per the statement of accounts, etc., he has given evidence in court regarding the income of the deceased. His evidence appears to be in the nature of the evidence of an expert, which is absolutely of no avail to fix the income of the deceased. This is because he has not prepared any statement of accounts after looking into the entries in any of the authenticated and genuine account books or records maintained by the deceased during his lifetime. It would be of some relevance to note here itself that all the income tax returns from 1991 to 1996 were filed at a time and the assessments were completed not during the lifetime of the deceased, but only after the death of the deceased. It would appear that the deceased was never an income tax assessee during his lifetime, but he appears to have acquired that status only after his death. Thus, it was a posthumous award for the deceased. This is very clearly discernible from the evidence of DW 3, who is an Inspector of Income Tax. The said Income Tax Inspector, DW 3, has further stated that during the lifetime of the deceased, it is only Ravi, claimant No. 3, who was an income tax assessee and not the deceased. He has in fact produced the file pertaining to Ravi, claimant No. 3.

According to him, the deceased had declared only 8 lorries u/s 44-AE (sic of Income Tax Act, 1961). He has stated that the deceased had never declared that he is having 100 lorries, nor had he declared his income at Rs. 30,00,000 per month. He also stated that he has no personal knowledge about the business transactions of the deceased and his sons. According to him, along with the witness summons sent to him, he had also been furnished with several documents. That means, he did not bring any records from the Income Tax Office pertaining to the deceased to depose about the income and other aspects of the deceased. He has stated that Ravi, claimant No. 3, was an assessee during the assessment year 1996-97. On behalf of the claimants, it is only claimant No. 4, who had been examined before the M.A.C.T. as PW 1. He has stated that the deceased was the owner of the fleet of lorries, transporting various minerals, mainly, limestone to the Mysore Cements Ltd. and this apart, he was owning and managing various other businesses and the monthly income of the deceased was more than Rs. 35,00,000. He has further stated that at the time of the death of the deceased, his mother was very young and aged about 41 years and his brothers were still studying in schools and colleges. He has also stated that his father was the sole proprietor of various business firms and carrying on business in the name of Suryodaya Transports having 60 lorries, Bommalingeshwara Transports having 40 lorries and Meenakshi Minerals and Metals carrying out contract work of mining in minerals for Mysore Cements Ltd., Ammasandra. He has stated that his father was also owning one JCB, three tractors and four compressors, which were utilised in various contract works of his father. He has stated that his father was also owning agricultural land measuring 5 acres at Mavinahalli village. With regard to the income of the deceased, he has stated that his father was having a gross income of Rs. 20,00,000 per month from Suryodaya Transports, Rs. 10,00,000 per month from Bommalingeshwara Transports and about Rs. 5,00,000 per month from Meenakshi Minerals and Metals at the time of his death and apart from this, he had an agricultural income of Rs. 3,00,000 to Rs. 4,00,000 per annum. He has stated that his father was getting entire business payments through cheques from Mysore Cements Ltd. and was regular income tax assessee. He did not, however, produce any accounts books pertaining to the various businesses of his father, but he had only produced certain statements of accounts as per Exhs. P8 to P10. Besides these statements of accounts, he has also produced the income tax returns as per Exh. P11 and the RTC extracts as per Exh. P12. It is quite surprising to note that no one has vouchsafed to the authenticity of the statement of accounts produced on behalf of the claimants. It is not known as to who and how and on what basis such statements of accounts were prepared and submitted before the court. Though the Income Tax Inspector, DW 3, has stated that Ravi, claimant No. 3 has been an income tax assessee, this witness PW 1 would say that they were all students studying in schools and colleges. Likewise, when this witness PW 1 states that the deceased was a fleet owner, the evidence of the Income Tax Inspector, DW 3, would show that the deceased had only declared 8 lorries. Even with regard to the income declared by the deceased, there is total inconsistency

between the evidence of PW 1 and DW 3. Under the cross-examination, this witness PW 1 has stated that the income tax returns were filed by the auditor. But strangely, no such auditor had been examined by the claimants and the one examined by them before the court as PW 2 has given evidence, which is in the nature of an expert testimony. Admittedly, PW 2 was not the auditor of the deceased, during his lifetime. He is unable to say even by approximation as to when the deceased had become an income tax assessee. In fact, PW 2 in the course of his cross-examination clearly admits that his knowledge regarding the income of the deceased, etc., is confined or restricted only to the documents that were made available to him by the claimants. Further, although Papanna, PW 3 had accompanied the deceased in the car on that fateful day and claims to have acquaintance with the deceased, did not say anything regarding the status or income of the deceased. He has only stated that the deceased and himself had a lorry business. Therefore, the material placed on record does not in any way inspire confidence in the mind of the court to believe that the deceased had in fact such a fabulous income, during his lifetime from his business and agricultural establishment. The M.A.C.T. without critically analysing the material on record, has simply placed reliance on the evidence of PW 2 to arrive at the income of the deceased. We are, however, not persuaded to believe that the deceased was having such fabulous income, during his lifetime from his business and agricultural establishment. Further, the RTC extracts produced by the claimants would show that they pertain to the year 1998-99 and they would further show that the same crop has been shown to exist, even after the death of the deceased. It would, therefore, create doubt whether the deceased had really such income as alleged during his lifetime. Even if it is assumed that the deceased was earning income from his business and agricultural establishment, it is not the case of the claimants that the same has become extinct or dissipated after the death of the deceased. That being not the case of the claimants, it is to be presumed that the business and agricultural income of the deceased continue to exist even after his death and what at the most, the family of the deceased has lost on account of the death of the deceased is the services rendered by the deceased to the family and nothing more. In a fatal accident action, the accepted measure of damages awarded to the dependants is the pecuniary loss suffered by them, as a result of the death of the deceased. In this case, there is nothing substantial placed on the record to show how much has the widow and the grown-up sons have lost by the death of the deceased. There appears to be no pecuniary loss to the claimants, even after the death of the deceased. We say so because, there is nothing on record to show that after the death of the deceased, the entire business establishment of the deceased had been closed or the agricultural lands, which existed during the lifetime of the deceased have been left fallow. On the contrary, the RTC extracts produced by the claimants themselves would show that the same crop is being grown, even after the death of the deceased. In this context, a reference may be made to the decision of the Hon'ble Supreme Court in the case of The Divisional Controller, KSRTC Vs. Mahadeva Shetty and Another, , wherein it is held that the courts and Tribunals

have a duty to weigh the various factors and quantify the amount of compensation, which should be just. What would be just compensation is a vexed question. There can be no golden rule applicable to all cases for measuring the value of human life or a limb. Measure of damages cannot be arrived at by precise mathematical calculations. It would depend upon the particular facts and circumstances and attending peculiar or special features, if any. Every method or mode adopted for assessing compensation has to be considered in the background of just compensation which is the pivotal consideration. Though by use of the expression, "which appears to it to be just" a wide discretion is vested on the Tribunal, the determination has to be rational, to be done by a judicious approach and not the outcome of whims, wild guesses and arbitrariness. The expression, "just" denotes equitability, fairness and reasonableness and non-arbitrariness. If it is not so, it cannot be just. Statutory provisions clearly indicate that compensation must be just and it cannot be a bonanza; not a source of profit but the same should not be a pittance. A reference may also be made to the another decision of Hon''ble Supreme Court in the case of Sheikhpura Trans. Co. Ltd. v. Northern India Transporters'' Ins. Co. Ltd. 1971 ACJ 206, wherein it is held that pecuniary loss to the aggrieved party would depend upon data which cannot be ascertained accurately, but must necessarily be an estimate or even partly a conjecture. The general principle is that the pecuniary loss can be ascertained only by balancing, on the one hand, the loss to the claimants of future pecuniary benefits and on the other any pecuniary advantage which from whatever sources come to them by reason of the death, i.e., the balance of loss and gain to a dependent by the death must be ascertained. The determination of the question of compensation depends on several imponderables. In the assessment of those imponderables, there is likely to be a margin of error. Broadly speaking, in the case of death, the basis of compensation is loss of pecuniary benefits to the dependants of the deceased which includes pecuniary loss, expenses, etc. and loss to estate. Object is to mitigate hardship that has been caused to the legal representatives due to sudden demise of the deceased in the accident. Compensation awarded should not be inadequate and should neither be unreasonable, excessive, nor deficient. There can be no exact uniform rule for measuring value of human life and the measure of damage cannot be arrived at by precise mathematical calculation; but amount recoverable depends on broad facts and circumstances of each case. It should neither be punitive against whom claim is decreed nor it should be a source of profit of the person in whose favour it is awarded. The assessment of damages has never been an exact science; it is essentially practical. In its very nature whenever a Tribunal or a court is required to fix the amount of compensation in cases of accident, it involves some guesswork, some hypothetical consideration and some amount of sympathy linked with the nature of the disability caused. But all the aforesaid elements have to be viewed with objective standards. It is in this backdrop that facts of the present case have to be looked into. Because the sources of income of the deceased were the agricultural lands and the business concerns which continue to be there even after the death of the deceased. That is to say, the

agricultural lands and the business of the deceased which were the sources of earning for the deceased during his lifetime have now been devolved upon the claimants and it is not their case that the income from these sources had become extinct or dissipated after the death of the deceased. In the instant case, it is pertinent to note that almost all the sons of the deceased are grown-ups and it is not their case that they are not capable of looking after the agricultural lands and the business establishment, which were left behind by the deceased. The income tax assessment order pertaining to assessment year 1993-94 would show the name of assessee to be M.L. Ravi, who is none other than the claimant No. 3 and the son of the deceased. Said assessment order would further disclose that a return of income was filed on 29.3.1996 for the assessment year 1993-94 by late M.N. Lingappa, in response to the notice issued u/s 148 (sic of Income Tax Act, 1961) and that since it was a belated return, the same was lodged and notices were issued under Sections 142(1) and 143(2) and served on the assessee's GPA holder M.L. Ravi, who in response to those notices appeared along with an advocate and produced the books of accounts and the other required documents. These contents of the assessment order would clearly indicate that in all probability the agricultural establishment as well as the business concerns of the deceased were being continued by the sons of the deceased. This would get further confirmed by the evidence of DW 3 that Ravi, claimant No. 3, is also an income tax assessee. It is to be seen, therefore, that agricultural lands and the business of the deceased which formed the source of income for the deceased, are still in existence and they have now been taken over by the claimants as his legal heirs. That is to say, the lands possessed by the deceased as well as the business concerns which were run by the deceased still remain with the claimants as his legal heirs. There is, however, a possibility that the claimants may be required to engage persons to look after agriculture as well as the business concerns of the deceased. The matter can be approached from a different angle. On account of the premature death of the deceased in accident, the family of the deceased has been deprived of the services of the deceased in managing the affairs of the business concern as well as the agricultural establishments. Therefore, the normal rule about the deprivation of income is not strictly applicable to cases where agricultural and business income is the source. The attendant circumstances have to be considered. As we have already stated, there was no material placed on record to show that the sources of income have become extinct on account of the death of the deceased. The basis of assessing damage payable to the claimants in such cases will be different. The fact that the agricultural establishment and the business of the deceased is being carried on and the claimants deriving benefit therefrom has correlation with the accidental death of the deceased. In this connection, a reference may be made to the decision of the Apex Court in the case of State of Haryana and Another Vs. Jasbir Kaur and Others, , wherein it is held:

(8) ...The land possessed by the deceased still remains with the claimants as his legal heirs. There is, however, a possibility that the claimants may be required to

engage persons to look after agriculture. Therefore, the normal rule about the deprivation of income is not strictly applicable to cases where agricultural income is the source....

13. By analogy, the same is applicable to cases where the business income is the source of the deceased and the same is being carried on and the claimants are deriving benefit from that business.

14. Now, in view of the above, we have to decide as to the quantum of compensation payable to the claimants. The deceased was found to be aged about 53 years at the time of his death and he has left behind, his wife and five grown-up sons, who are quite capable of managing the affairs of the family including the business and agricultural establishments. As we have already stated, it is not the case of the claimants that after the death of the deceased, all his business establishments have been closed and the lands that were yielding income during his lifetime have been left fallow. That being not the case here, the normal rule about deprivation of income is directly not applicable to cases where agriculture is source of income of the deceased and in that case, the other circumstances have to be considered. Even with regard to the income from business, the same is the rule as it has not been established that the business run by the deceased had come to a close after the death of the deceased. Having regard to the nature of establishment of the deceased, in all probability it must have been continued even after the death of the deceased by the members of the family of the deceased. The deprivation of the earnings of the deceased cannot be considered unless all the relevant facts are proved by reliable and cogent evidence. It would, however, appear from the material on record that the deceased was having certain business concerns and was earning income, which did not appear to have been closed, so as to deprive the earnings of the deceased to the claimants or the pecuniary benefits to the claimants. What the claimants appeared have been really deprived of on account of the death of the deceased in the accident are the services and experience of the deceased to the family to run the business and also to supervise the agricultural establishment. In the present case, as noticed, there is no evidence brought on record by the claimants to show that they have suffered loss either in the agricultural establishment or in the business establishment that were being looked after or managed by the deceased after his death on account of this accident. This is to say, they have not been deprived of the income either from the business or from the agricultural establishment that are left behind by the deceased, but what they have been deprived of on account of the death of the deceased in the accident is the services rendered by the deceased to earn the said income either from the business or from the agricultural establishment of the family. There cannot be any doubt that the family of the deceased have been deprived of the services and expertise of the deceased in earning the income from the business establishment as well as from the agricultural establishment. This has to be quantified in terms of money for awarding compensation towards the loss of dependency to the claimants on account of the premature death of the deceased

in the accident. Having regard to the nature and quantum of business of the deceased and also the extent of lands owned by the deceased, we may not be in error in quantifying the loss of services of the deceased to the claimants in a sum of Rs. 25,000 per month or Rs. 3,00,000 per annum. Out of this, 1/3rd is to be deducted towards personal living expenses of the deceased. What would be the percentage of deduction for personal expenditure cannot be governed by any rigid rule or formula of universal application. It would depend upon the circumstances of each case. It would also depend on various factors such as whether the style of living was Spartan or Bohemian. In the absence of evidence, it is not unusual to deduct 1/3rd of gross income towards the personal living expenses and treat the balance as the amount likely to have been spent on the members of the family and the dependants. Deducting 1/3rd out of the said amount of Rs. 3,00,000, it would come to Rs. 2,00,000. This loss of dependency should be capitalized with the appropriate multiplier. Deceased was aged about 53 years at the time of his death and the appropriate multiplier would be 11. Therefore, multiplying the amount of Rs. 2,00,000 with the multiplier of 11, it would come to Rs. 22,00,000. That is to say, in the present case, we can certainly in view of our above discussion, take about Rs. 2,00,000 per year as the loss of dependency and if capitalised on a multiplier of 11, which is appropriate to the age of the deceased, the amount of compensation would work out to Rs. 22,00,000. To which is added the usual award for loss of consortium and the loss to estate each, in the conventional sum of Rs. 15,000. In addition to that, we shall also add a sum of Rs. 20,000 towards the funeral expenses, etc. This would bring the total amount to Rs. 22,50,000. The award made by the M.A.C.T. on the basis of income from agriculture and business is clearly unjustified in the facts and circumstances of the case and hence, it is liable to be set aside. On the contrary, the quantum of compensation under the head of loss of dependency to the claimants is to be awarded on the basis of the loss of service of the deceased to the family on account of his premature death in the accident. Therefore, the claimants instead of Rs. 98,64,428 awarded by the M.A.C.T. shall now be entitled to only a sum of Rs. 22,50,000 as stated supra.

15. We think, a sum of Rs. 22,50,000 should be fair, just and a reasonable award in the circumstances of this case. The rate of interest at 8 per cent per annum from the date of the petition till payment is, in the facts and circumstances of this case, left undisturbed. Rate of interest on compensation depends upon the facts and circumstances of each case. Award of interest would normally depend upon the bank rate prevailing at the relevant time. No principle could be deduced nor any rate of interest could be fixed to have a general application in motor accident claim cases, having regard to the nature of provision u/s 171 of the Motor Vehicles Act giving discretion to the M.A.C.T. in such matter. Therefore, there cannot be any hard and fast rule in awarding interest and the award of interest is solely at the discretion of the Tribunal. Rate of interest of 8 per cent per annum from the date of the petition till payment is, in the facts and circumstances of the case left undisturbed.

16. We shall now take up the issue regarding the liability of the insurer to satisfy the award.

17. Insurance policy, Exh. D1, issued by the insurer would show that the effective date and time of the commencement of the insurance was from 11.20 a.m. on 6.10.1995 and the date and time of expiry of the insurance was the midnight on 5.10.1996. The accident in question had occurred at about 11.30 p.m. in the night on 5.10.1996. That being so, the insurance policy issued by the insurer as per Exh. D1 was quite valid and effective on the date and time of the accident. The Tribunal has recorded, as a fact, that the policy of insurance as per Exh. D1 commences on 11.20 a.m. on 6.10.1995 and the date of expiry of the insurance as midnight on 5.10.1996 and, hence, it was operative at the time of accident, which took place at about 11.30 p.m. in the night on 5.10.1996. Under these circumstances, it is quite clear that the accident in question had occurred, when the policy, Exh. D1, was in currency and valid. The Hon'ble Supreme Court in *New India Assurance Co. Ltd. Vs. Ram Dayal and Others*, , had held that in the absence of any specific time mentioned in that behalf, the contract would be operative from the midnight of the day by operation of the provisions of the General Clauses Act. But in view of the special contract mentioned in the insurance policy, viz., it would be operative from 11.20 a.m. on 6.10.1995 and terminate on the midnight of 5.10.1996 and the accident had occurred earlier to the date and time of expiry of the insurance policy, the insurance company cannot be allowed to contend that the policy was not in currency at the time of the accident. Hence, we are unable to accept the contention advanced on behalf of the insurer that the insurance policy, Exh. D1, was not at all valid at the time of the accident and, hence, it is not liable to satisfy the award. We, therefore, hold that the policy issued by the insurer as per Exh. D1 was quite valid and current as on the date and time of the accident in question.

18. It was, however, contended on behalf of the insurer with vehemence that the risk of the deceased, who was admittedly the occupant of a private car was not at all covered by the policy, Exh. D1 and, hence, even if the insurance policy issued in respect of the private car was held to be valid and current at the time of the accident, the insurer is not liable to satisfy the award. We find considerable force in this submission made on behalf of the insurer. It is not in dispute that the deceased was an occupant of the car, when the accident in question had occurred. A careful perusal of the insurance policy as per Exh. D1 would show that it was issued in respect of a private car and it does not cover the risk of the occupant of the car, since no extra premium was paid by the insured to cover such risk. Be it noted that the occupant of a private car is not required to be covered under the statute and if at all, if such risk is to be covered by the insurer, it could be by way of a contract and by paying an additional premium therefor. But the policy issued by the insurer as per Exh. D1 does not indicate that such a risk was specifically covered by the insurer by accepting additional premium from the insured for covering the risk of an occupant of the car.

19. It was, however, contended by the learned senior counsel appearing for the claimants that the insurance policy as per Exh. D1 would show that it was a private car "B" policy and Section II-1(i) would show that the insurance company will indemnify the insured in the event of an accident caused by or arising out of the use of the motor car against all sums including the claimant's costs and expenses which the insured can become legally liable to pay in respect of the death or bodily injury to any person including occupants carried in the motor car (provided such occupants are not carried for hire or reward), but except so far as is necessary to meet the requirements of Motor Vehicles Act, 1988 the company shall not be liable where such death or injury arises out of and in the course of employment of such person by the insured. He, therefore, contended that in view of the nature of policy issued by the insurer and having regard to the clause contained in the policy of insurance, the insurer cannot escape its liability to satisfy the award when once it is found that the vehicle in question was duly insured with the insurance company. It is no doubt true that under "B" policy the insurance company can certainly cover the risks of the occupants of the car. But then in order to cover such risks, it was incumbent upon the insured to pay the premium to cover such risk. In the instant case, the schedule of premium which forms part of the insurance policy, Exh. D1, would show that the insured has not paid any extra premium for the insurer to cover the risk of the occupant of the car. The Hon'ble Apex Court in the case of United India Insurance Co. Ltd., Shimla Vs. Tilak Singh and Others, , has held in para 21 of the decision as under:

(21) In our view, although the observations made in New India Assurance Co. Ltd. Vs. Asha Rani and Others, , were in connection with carrying passengers in a goods vehicle, the same would apply with equal force to gratuitous passengers in any other vehicle also. Thus, we must uphold the contention of the appellant insurance company that it owned no liability towards the injuries suffered by the deceased Rajinder Singh who was a pillion rider, as the insurance policy was a statutory policy and hence it did not cover the risk of death of or bodily injury to gratuitous passenger.

20. The established legal position is that unless there is a specific coverage of the risk pertaining to the occupant of the car in the policy on payment of extra premium to cover such risk, the insurer is not liable. In fact, as noticed above, we have seen the policy issued by the insurer as per its copy, Exh. D1. It is a private car "B" policy. The question that arises for consideration is whether the policy, Exh. D1, would cover the risk of death or bodily injury to any person including the occupants carried in the motor car. Any policy in terms of Section 147 of Motor Vehicles Act covers the liability incurred by the insured in respect of death of or bodily injury to any person including owner of the goods or his authorised representative carried in the vehicle or damage to any property of a third party caused by or arising out of the use of the vehicle. Section 147 of the Motor Vehicles Act does not require an insurance company to assume the risk for the death or bodily injury to any person including the occupants carried in the motor car. In the case of Oriental Insurance Co. Ltd. Vs. Sunita Rathi and

Others, , it has been held that the liability of an insurance company is only for the purpose of indemnifying the insured against liabilities incurred towards third person or in respect of damage to property. Thus, where the insured, i.e., owner of the vehicle has no liability to a third party, the insurance company has no liability also. In this case, it has not been shown that the policy, Exh. D1, covered any risk for death or bodily injury to the occupant of the car. We are unable to accept the contention that the premium of Rs. 575 paid under the heading "Own Damage", "Fire and Theft only" and legal liability to the paid driver as per End.. IMT 19 is for covering the liability towards death of or bodily injury to any person including the occupants carried in the motor car. Under the heading "A. Own Damage", the words "Premium on vehicle and the non-electrical accessories" appear. Likewise under the heading "B. Liability" the words "Fire and Theft only" appear and under the heading "B. Liability (iii)" the words "Legal liability to paid driver as per End. IMT 19" appear. It is thus clear that the total premium (A + B) of Rs. 575 is paid towards damage to the vehicle, fire and theft and legal liability to paid driver as per End. IMT 19 and not for death of or bodily injury to any person including occupants carried in the motor car. The insurer can only indemnify the insured in the event of death or bodily injury to any person including occupants carried in the motor car provided such a risk is covered by the insured under the policy after payment of the extra premium. In this case, admittedly there is no such insurance. As the deceased was an occupant in a private car, the insurance company is not liable to pay any compensation since no such risk is covered under the policy, Exh. D1, by the insurer against payment of premium by the insured. The insurance policy, Exh. D1, only covers damage to the car, fire and theft and legal liability to paid driver as per End. IMT 19. It was contended on behalf of claimants that the car in question had been comprehensively insured with the insurance company under the policy, Exh. D1, which is a private car "B" policy and that since the accident had occurred during the period of insurance, insurance company is liable to pay compensation on account of the death of the occupant of the car. In the absence of any special contract between the insurer and the insured, the rights are governed by the statute, which did not require the insurer to cover the liability in respect of an accident to an occupant of the car. It was contended that the insurance policy, Exh. D1, expressly covered the liability in respect of death or bodily injury to the occupant of the car. Our attention was drawn to the insurance policy, Exh. D1, and in particular to Section II-1 (i) under the heading "Liability to Third Parties" which says subject to limit of liabilities as laid down in the Schedule hereto, the company will indemnify the insured in the event of an accident caused by or arising out of the use of motor car against all the sums including claimants' costs and expenses which the insured shall become legally liable to pay in respect of the death of or bodily injury to any person including occupants carried in the motor car provided such occupants are not carried for hire or reward but except so far as is necessary to meet the requirements of Motor Vehicles Act, 1988, the insurance company shall not be liable where such death or injury arises out of and in the course of employment of such person by the insured. The insurance

company has refuted the claim that no additional premium was paid to cover the risk pertaining to the occupant of the car. It was contended that in terms of the insurance policy, Exh. D1, as also u/s 147(1)(b) of the Motor Vehicles Act, 1988, no occupant of the private car apart from the driver was covered. Over and above the risks which are covered by the statutory provisions contained u/s 147 of the Motor Vehicles Act, parties may of course enter into a contract by which the insurer agrees to cover additional risks. It is not the case of the claimants that apart from the policy of insurance, there was any contract between the appellant insurer and the insured. The policy has a clause which defines the limits of liability in respect of death or bodily injury to any person including the occupants carried in the motor car caused by or arising out of the use of the motor vehicle u/s II-1(i) of the terms and conditions of the policy. Under the head "Limits of Liability" found on the first page of the insurance policy, Exh. D1, it has been clearly stated that as per the Motor Vehicles Act. Admittedly, as per the provisions contained in Section 147 of the Motor Vehicles Act, there is no requirement on the part of the insurer to cover the risks of the occupants of the car. That being so, the said section does not in any way assist the claimants in seeking to impose the liability upon the insurer. Be that as it may. Even assuming that it is so, there is nothing on record to show that the insured or the owner of the car had paid any additional premium to cover the risk of an occupant of the car. On the contrary, the insurance policy, Exh. D1, shows that the premium was paid for own damage, fire and theft and legal liability to paid driver as per End. IMT 19. There is no payment of any additional premium or extra premium for covering the risk of an occupant of the car. The submission of the learned senior counsel appearing for the claimants is that as the insurance policy, Exh. D1, was a private car "B" policy, in view of Section II-1(i) it would cover the risk of death or bodily injury to any person including occupants carried in the motor car. The submission is totally unacceptable. An insurance policy only covers the person or classes of persons specified in the policy. A comprehensive policy merely means that the loss sustained by such person(s) will be payable up to the insured amount irrespective of the actual loss suffered. In this connection a reference may be made to a decision of Hon"ble Supreme Court in the case of New India Assurance Co. Ltd. Vs. C.M. Jaya and Others, . The mere fact that the insurance policy, Exh. D1, is a private car "B" policy will not help the claimants in any manner. Thus, a careful perusal of the decisions relied upon by the learned Counsel for the claimants clearly shows that the liability of the insurer is limited, as indicated in Section 147 of the Act, but it is open to the insured to make payment of the additional higher premium and get higher risk covered in respect of third party also including occupants of the car. But in the absence of any such clause in the insurance policy, the liability of insurer cannot be unlimited in respect of third party/the occupant of the car and it is limited only to statutory liability. In the case of New India Assurance Co. Ltd. Vs. Smt. Shanti Bai and others, , following the case of National Insurance Co. Ltd. v. Jugal Kishore 1988 ACJ 270, it has held that a comprehensive policy which has been issued on the basis of the estimated value of the vehicle does not automatically result in

covering the liability with regard to third party risks for an amount higher than the statutory limit and that even though it is not permissible to use the vehicle unless it is covered at least under an "Act only" policy, it is not obligatory for the owner of the vehicle to get it comprehensively insured and that the limit of liability with regard to third party risk does not become unlimited or higher than the statutory liability in the absence of specific agreement to make the insurer's liability unlimited or higher than statutory liability. On a careful reading and analysis of the decision in *Amrit Lal Sood and Another Vs. Smt. Kaushalya Devi Thapar and Others*, , it is clear that the view taken by the Apex Court is no different. In this decision also, the case of *Jugal Kishore* 1988 ACJ 270, is referred to. It is held that liability of the insurer depends on the terms of the contract between the insured and insurer contained in the policy and that there is no prohibition for an insured from entering into a contract of insurance covering a risk wider than the minimum requirement of the statute whereby risk to the gratuitous passenger could also be covered and that in such cases where insurance policy is not merely statutory policy, the terms of the policy have to be considered to determine the liability of the insurer. Hence, the Apex Court after noticing the relevant clauses in the policy, on facts found that u/s II-1(i) of the policy, the insurer has agreed to indemnify the insured against all sums which insured shall become legally liable to pay in respect of death or bodily injury to any person. The expression "any person" would include an occupant of the car who is gratuitously travelling in it. Further, referring to the case of *Pushpabai Purshottam Udeshi v. Ranjit Ginning and Pressing Co.* 1977 ACJ 343, it was observed that the said decision was based upon the relevant clause in the insurance policy in that case which restricted the legal liability of the insurer to the statutory requirement u/s 95 of the Act. As such, that decision had no bearing on *Amrit Lal Sood and Another Vs. Smt. Kaushalya Devi Thapar and Others*, , as the terms of the policy were wide enough to cover a gratuitous occupant of the vehicle. Thus, it is clear that specific clause in the policy being wider, covering higher risk, made all the difference in the case of *Amrit Lal Sood* (supra) as to the unlimited or higher liability. The Apex Court decided that case in the light of the specific clause contained in the policy. The said decision cannot be read as laying down that even though the liability of the insurance company is limited to the statutory requirement, an unlimited or higher liability can be imposed on it. Be it noted that the liability could be statutory or contractual. A statutory liability cannot be more than what is required under the statute itself. However, there is nothing in Section 147 of the Motor Vehicles Act prohibiting the parties from contracting to create unlimited or higher liability to cover wider risks. In such an event, the insurer is bound by the terms of the contract as specified in the insurance policy in regard to unlimited or higher liability as the case may be. In the absence of such a term or clause in insurance policy, pursuant to the contract of insurance, a limited statutory liability cannot be expanded to make it unlimited or higher. If it is so done, it amounts to rewriting the statute or the contract of insurance, which is not permissible.

21. In view of our above discussion, we find that in the case of insurance company not taking any higher liability by accepting a higher premium, the liability of the insurance company is neither unlimited nor higher than the statutory liability fixed u/s 147 of the Act. In this connection, a reference may be made to the decision of the Hon''ble Supreme Court in the case of New India Assurance Co. Ltd. Vs. C.M. Jaya and Others, , wherein, it is held as under:

In a case of insurance company not taking any higher liability by accepting a higher premium for payment of compensation to a third party, the insurer would be liable to the extent limited u/s 95(2) of the Act and would not be liable to pay the entire amount. The deceased was riding on the pillion seat of a two-wheeler when it met with accident with a truck insured by the appellant insurance company by comprehensive insurance policy. It is not the case that any additional or higher premium was paid to cover unlimited or higher liability than statutory liability fixed as found in the term of the policy and copy of insurance policy produced before the court shows that the liability of the insurance company is limited to Rs. 50,000 in regard to the claim in question. It necessarily follows that the liability of the insurance company is limited to Rs. 50,000. The liability of the insurance company was not unlimited merely on the ground that the insured had taken a comprehensive policy, i.e., the truck covered by a comprehensive insurance policy.

The liability of insurance company could be statutory or contractual. A statutory liability cannot be more than what is required under the statute itself. However, there is nothing in Section 95 of the Act prohibiting the parties from contracting to create unlimited or higher liability to cover wider risk. In such an event, the insurer is bound by the terms of the contract as specified in the policy in regard to unlimited or higher liability as the case may be. In the absence of such a term or clause in insurance policy, pursuant to the contract of insurance, a limited statutory liability cannot be expanded to make it unlimited or higher. If it is so done, it amounts to rewriting the statute or the contract of insurance, which is not permissible.

22. It is thus clear from the above decision of the Apex Court that the liability of insurance company could be statutory or contractual and a statutory liability cannot be more than what is required under the statute itself. Admittedly, there is no statutory liability for the appellant insurer to cover the risk of an occupant of a private car. However, there is nothing in Section 147 prohibiting the parties from contracting to cover wider risk. In such an event, the insurer is bound by the terms of the contract as specified in the policy in regard to unlimited or higher liability as the case may be. In the absence of such a term or clause in insurance policy, pursuant to the contract of insurance, a limited statutory liability cannot be expanded to make it higher. If it is so done, it amounts to rewriting the statute or contract of insurance which is not permissible. In the instant case, we find that the appellant insurer has not covered a higher risk by accepting additional premium to cover the risk of an occupant of the car. Hence it

is not liable to satisfy the award. It would thus appear from the material on record that the vehicle in question was a private car and the policy issued by the insurer in respect of the said vehicle was private car "B" policy and as per the Schedule, the owner of the car had paid premium of Rs. 575 towards (A) own damage and (B) liability comprising fire and theft only and legal liability to paid driver. The insured did not pay any extra premium to cover the risk of the occupant of the car. That is to say, private car "B" policy issued by the insurer in respect of the vehicle in question had only covered the risk of the legal liability to paid driver and fire and theft only under (B) liability on payment of extra premium towards such risk. On the material shown to us, we are satisfied that the insured vehicle was a private car and it had only covered the risk of own damage, fire and theft and legal liability to paid driver and not the risk of occupant of the car as no extra premium was paid to cover such risk. In the instant case, the deceased was an occupant of the car. Hence, the appellant insurer is not liable to pay compensation for the death of the deceased. The insurance company is, therefore, absolved from liability since the deceased was an occupant of the car and the risk of the deceased occupant of the car was not covered under the policy, Exh. D1.

23. The learned Counsel for the parties have taken us through the insurance policy placed on record as per Exh. D1, which shows that the vehicle in question was a private car. The policy is private car "B" policy. Learned Counsel for the claimants has drawn our attention to Section II--Liability to Third Parties, wherein Clause (1)(i) prescribes that subject to the limit of liabilities as laid down in the Schedule hereto, the company will indemnify the insured in the event of an accident caused by or arising out of the use of motor car against all sums including the claimant's costs and expenses which the insured shall become legally liable to pay in respect of the death of or bodily injury to any person including occupants carried in the motor car provided such occupants are not carried for hire or reward, but except so far as is necessary to meet the requirements of Motor Vehicles Act, 1988, the company shall not be liable where such death or injury arises out of and in the course of an employment of such person by the insured.

24. In the column meant for showing the limits of liability, it is stated that u/s II-1(i) as per the Motor Vehicles Act, 1988. Further in the column meant for calculation of premium or the schedule of premium, it is stated that premium charged on vehicle and non-electrical accessories is Rs. 400, the basis premium charged for fire and theft only is Rs. 160 and premium charged for legal liability to paid driver as per Endt End. IMT 19 is Rs. 15. This makes the total premium of Rs. 575. It does not state that the insured has paid any premium to cover the liability of the occupants of the car.

25. Keeping in view the provisions of the Motor Vehicles Act, it can be said that as the provisions thereof do not enjoin any statutory liability on the owner of the vehicle to get his vehicle insured for any passenger travelling in a private car, the

insurer would not be liable therefor. An owner of a private car must pay premium for covering the risks of the occupants of the car. If a liability other than the limited liability provided for under the Act is to be enhanced under an insurance policy, additional premium is required to be paid. If the argument of learned senior counsel for the claimants is to be accepted, it would lead to the conclusion that the owner of a private car need not take out an insurance policy to cover the risk of occupants of the car and they would be deemed to have been covered under the policy wherefor even no premium is required to be paid. This would lead to absurdity. Hence such contention advanced on behalf of claimants is not capable of being accepted. We are, therefore, of the view that the insurer owed no liability towards injuries suffered by the deceased who was an occupant of a private car as the policy, Exh. D1, was a statutory policy and hence it did not cover the risk of death or bodily injury to an occupant of the car. The only other risks that were undertaken under the policy, Exh. D1, against payment of premium was fire and theft only, own damage, etc. and there was no premium paid towards the coverage of the risk of the occupant of the car. Though it was sought to be contended on behalf of the claimants that the India Motor Tariffs do not provide or contemplate payment of any premium to cover the risk of the occupants of the car, we are unable to accept this contention. This is because there cannot be any coverage other than the statutory risk without the payment of premium to cover such risks. Therefore though under "B" policy the insurer can certainly cover the risk of the occupants of the car, but the same would be on payment of extra premium to cover such risks. It is needless to point out that there could be only two kinds of risks, viz., the statutory risk which the insurer has to undertake as per the statute and the other risk is the contractual risk which the insurer will undertake provided extra premium has been paid to cover such risks by the insurer. We are, therefore, of the clear view that the insurer owed no liability towards injuries suffered by the deceased who was an occupant of the private car as the policy, Exh. D1, did not cover the risk of death or bodily injury to an occupant of the car against payment of extra premium. That is to say, when the insured has not paid any extra premium to cover such a risk, the insurer owed no liability towards the injuries suffered by the deceased who was an occupant of a private car.

26. The M.A.C.T. has not dealt with the issue regarding the risk of the deceased occupant of the car being covered under the insurance policy, Exh. D1. It appears to have proceeded on the sole premise that since the policy of insurance, Exh. D1, was valid and current at the time of accident, the insurer is liable to satisfy the award. It did not consider the specific contention taken by the insurer in its additional objection statement to the effect that the policy, which has been obtained by the insured was not a comprehensive one and that he had only insured the vehicle for third party risk and risk arising due to fire or theft of car and there was no specific coverage for the occupant of the car by paying additional premium thereof under the policy and that the insurer is not required to cover such risks u/s 147 of the Motor Vehicles Act. The basic issue

raised in the additional statement of objections filed by the insurer was one of the coverage of the risk of the occupant of a private car being not covered by the insurer and M.A.C.T. did not at all examine or consider the question. It did not record any positive finding as to whether the deceased being an occupant of a private car, the risk was really covered by the insurer under the policy obtained by the insured from the insurer as per Exh. D1 and whether the insured had paid any extra or additional premium to cover such risk, when admittedly, it was not required to be covered under a statute. The M.A.C.T. appears to have proceeded under the sole premise that there being a policy which was found to be valid, the insurer is liable to satisfy the award. This was a patent error committed by M.A.C.T. which needs our interference in the appeal. When the insurer had no liability under the statute to cover such risk, the M.A.C.T. ought to have considered whether the same is covered under any contract between the insurer and insured by payment of additional premium therefor. This, the M.A.C.T. did not do and we on our part having done this exercise, find that the risk of the deceased occupant of the car was not at all covered under the insurance policy, Exh. D1.

27. We are, therefore, of the clear view that the insurer of the car is not required to satisfy the award made to the claimants as the deceased being an occupant of the car, the same was not covered under the policy, Exh. D1, by the insured by paying the additional or extra premium to cover such risks. Hence, there is no liability for the insurer to satisfy the award.

28. In the result, therefore, the miscellaneous first appeal filed by the appellant insurer in M.F.A. No. 11996 of 2005 as well as the cross-objections filed by the claimants in M.F.A. CROB No. 180 of 2006 shall stand disposed of in the following terms:

- (1) The appeal filed by the appellant insurer in M.F.A. No. 11996 of 2005 is allowed. The appellant insurer is held to be not liable to satisfy the award to the claimants;
- (2) Claimants-cross-objectors are held to be entitled to a sum of Rs. 22,50,000 together with interest thereon at 8 per cent per annum from the date of the claim petition till the date of payment and which amount is liable to be satisfied not by the insurer but by the owner of the offending car;
- (3) The impugned judgment and award made by the M.A.C.T. is modified only to the extent as indicated above and in all other respects, it stands unaltered;
- (4) The cross-objections filed by the claimants-cross-objectors are hereby dismissed; and
- (5) We direct the owner of the car to pay the above amount to the claimants by depositing it in the Tribunal. Once such deposit is made, the same shall be disbursed to the claimants in accordance with the principles laid down by Apex Court in the case of General Manager, Kerala State Road Transport Corporation,

Trivandrum Vs. Mrs. Susamma Thomas and others, .

29. The appeal filed by the appellant insurer as well as the cross-objections filed by the claimants are accordingly disposed of in the manner as indicated above modifying the impugned judgment and award made by the M.A.C.T. only to the extent as indicated above and in all other respects it stands unaltered. But, in the circumstances of the case, there is, however, no order as to costs.

30. After the judgment was pronounced in the open court, the learned Counsel for the appellant insurer in M.F.A. No. 11996 of 2005 submits that the statutory amount deposited by the appellant insurer at the time of preferring appeal may be ordered to be refunded to the appellant insurer. The said submission made by the learned Counsel for the appellant insurer is placed on record. It is ordered accordingly.