
(2005) 01 RAJ CK 0008

In the Rajasthan High Court

Case No : Civil Special Appeal No's. 10, 28, 41 and 42 of 2004

Varju and Others

APPELLANT

Vs

United India Insurance Co. Ltd. and Others

RESPONDENT

Date of Decision : 12-01-2005

Acts Referred:

Motor Vehicles Act, 1939 — Section 108, 95, 95(1)

Motor Vehicles Act, 1988 — Section 146, 147, 147(1), 2(14)

Citation : (2005) 4 ACC 516 : (2006) ACJ 328 : (2005) 2 RLW 1296 : (2005) 4 WLC 1

Hon'ble Judges : Rajesh Balia, J;Dinesh Maheshwari, J

Bench : Division Bench

Advocate : Rajesh Panwar, for the Appellant; R.K. Mehta, S.D. Vyas, D.K. Parihar, Sangeet Lodha and Lalit Kawadia, for the Respondent

Final Decision : Allowed

Judgement

Rajesh Balia, J.—All these appeals arise out of accident claim cases which arose on account of a single accident which took place on 10.7.1992. On that date, Padma Ram, Chaina Ram and Hamu Ram were travelling in Jonga jeep No. RSF 8247, being driven by Nimb Singh and it was travelling towards road leading from Barmer to Jaisalmer. As a result of the said accident, Padma Ram and Chaina Ram died and Hamu Ram suffered injuries.

2. Three claim petitions were filed: one by heirs and dependants of Chaina Ram being M.A.C.T. Case No. 74 of 1992; second by Hamu Ram being M.A.C.T. Case No. 2 of 1993; and third by Chauthi and Pancha Ram, parents of Padma Ram being M.A.C.T. Case No. 82 of 1992 impleading United India Insurance Co. Ltd., Barmer, as the insurer and Nimb Singh and Narpat Singh being the driver and owner of the vehicle respectively. The Motor Accidents Claims Tribunal, Barmer vide its award dated 23.2.1995 finding that the vehicle was being driven rashly and negligently by Nimb Singh which resulted in death of Padma Ram and Chaina Ram and injury to Hamu Ram; the vehicle was insured with United India

Insurance Co. Ltd. is a fact not in dispute; noticed the plea of the insurance company that the vehicle was insured as a private vehicle only, while at the time of accident it was being used as a taxi and the passengers were being carried in for hire and reward and as such there was a breach of the conditions of the insurance policy and, therefore, the insurance company is not liable to pay any compensation.

3. The Tribunal in this respect found on the basis of statement of witness produced by the insurance company, who admitted that the insurance cover was issued for covering the third party risks, for which a premium of Rs. 240 was charged and an additional premium of Rs. 15 was charged and that the policy was issued for private and vocational use and, therefore, it cannot be held that the owner of the vehicle was using the vehicle in the breach of the policy conditions. Consequently, awards were made in all three claim petitions making the insurance company liable.

4. Aggrieved with the aforesaid awards, insurance company preferred three appeals before the High Court.

5. Learned single Judge vide his judgment under appeal dated 21.3.2003 found that the policy was an "Act only policy" and referring to a decision of the Supreme Court in New India Assurance Co. Ltd. Vs. Asha Rani and Others, and other cases observed that the expression "any person" appearing in Section 147(1)(b)(i) of the Act does include occupants of private vehicle which is not a public service vehicle and insurance company is not liable to indemnify the owner under the "Act only" policy unless such a risk is covered under specific term of contract by charging additional premium or otherwise. Consequently the award against the insurance company was set aside in each case and it was held that appellants shall be entitled to recover whatever amount that might have been paid by it from owner and/or driver.

6. Aggrieved with the aforesaid judgment, these appeals have been preferred by Varju in the case arising out of the death of Chaina Ram in the accident Claim Case No. 74 of 1992 and the other three appeals have been preferred by Nimb Singh, the owner of the vehicle.

7. The only question which has been raised in all these appeals is whether the insurance company is liable under the provisions of Section 147(1)(b)(i) to cover the risk of occupant of a vehicle even if the same is not a public service vehicle and the ratio of New India Assurance Co. Ltd. Vs. C.M. Jaya and Others, , is confined to cases relating to gratuitous passengers carried in goods vehicle prior to 14.11.1994? The said decision does not govern the case of private vehicles.

8. The contention is founded on the distinction made out from the conjoint reading of provisions of repealed Motor Vehicles Act, 1939 and the provisions made under Motor Vehicles Act, 1988 correspondingly governing the minimum risk required to be covered by the insurer under sections 95 and 147 of the respective Acts.

9. To understand the contention raised before us by the learned counsel for the appellants, it will be apposite to read the provisions of Section 95 and section 147 in juxtaposition, as reproduced hereunder:

ACT of 1939 ACT of 1988

95. Requirements of policies and limits of liability.-- (1) In order to comply with the requirements of this Chapter, a policy of insurance must be a policy which --
147. Requirements of policies and limits of liability.--(1) In order to comply with the requirements of this Chapter, a policy of insurance must be a policy which --

(a) is issued by a person who is an authorised insurer or by a co-operative society allowed u/s 108 to transact the business of an insurer, and (a) is issued by a person who is an authorised insurer, and

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

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

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

Provided that a policy shall not * * * be required-- Provided that a policy shall not be required --

(i) to cover liability in respect of the death, arising out of and in the course of his employment, of the employee of a person insured by the policy or in respect of bodily injury sustained by such an employee arising out of and in the course of his employment other than a liability arising under the Workmen's Compensation Act, 1923 (8 of 1923), in respect of the death of, or bodily injury to, any such employee -- (i) to cover liability in respect of the death, arising out of and in the course of his employment, of the employee of a person insured by the policy or in respect of bodily injury sustained by such an employee arising out of and in the course of his employment other than a liability arising under the Workmen's Compensation Act, 1923 (8 of 1923), in respect of the death of, or bodily injury to, any such employee --

(a) engaged in driving the vehicle, or (a) engaged in driving the vehicle, or

(b) if it is a public service vehicle engaged as a conductor of the vehicle or in

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

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

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

(iii) to cover any contractual liability. (ii) to cover any contractual liability.

Explanation.-- For the removal of doubts, it is hereby declared that the death of or bodily injury to any person or damage to any property of a third party shall be deemed to have been caused by or to have arisen out of, the use of a vehicle in a public place notwithstanding that the person who is dead or injured or the property which is damaged was not in a public place at the time of the accident, if the act or omission which led to the accident occurred in a public place.

Explanation. -- For the removal of doubts, it is hereby declared that the death of or bodily injury to any person or damage to any property of a third party shall be deemed to have been caused by or to have arisen out of, the use of a vehicle in a public place notwithstanding that the person who is dead or injured or the property which is damaged was not in a public place at the time of the accident, if the act or omission which led to the accident occurred in a public place.

(2) Subject to the proviso to Sub-section (2) Subject to the proviso to Sub-section

(1), a policy of insurance shall cover any liability incurred in respect of any one accident up to the following limits, namely -- (1), a policy of insurance referred to in Sub-section (1), shall cover any liability incurred in respect of any accident, up to the following limits, namely --

(a) where the vehicle is a goods vehicle, a limit of fifty thousand rupees in all, including the liabilities, if any, arising under the Workmen 's Compensation Act, 1923 (8 of 1923), in respect of the death of, or bodily injury to, employees (other than the driver), not exceeding six in number, being carried in the vehicle; (a) save as provided in clause (b), the amount of liability incurred;

(b) where the vehicle is a vehicle in which passengers are carried for hire or reward or by reason of or in pursuance of a contract of employment, -- (b) in respect of damage to any property of a third party a limit of rupees six thousand:

(i) in respect of persons other than passengers carried for hire or reward, a limit of fifty thousand rupees in all;

(ii) in respect of passengers, --

(1) a limit of fifty thousand rupees in all where the vehicle is registered to carry not more than thirty passengers;

(2) a limit of seventy-five thousand rupees in all where the vehicle is registered to carry more than thirty but not more than sixty passengers;

(3) a limit of one lakh rupees in all where the vehicle is registered to carry more than sixty passengers; and

(4) subject to the limits aforesaid, ten thousand rupees for each individual passenger where the vehicle is a motor cab, and five thousand rupees for each individual passenger in any other case;

(c) save as provided in clause (d), where the vehicle is a vehicle of any other class, the amount of liability incurred;

(d) irrespective of the class of the vehicle, a limit of rupees two thousand in all in respect of damage to any property of a third party.

Provided that any policy of insurance issued with any limited liability and in force, immediately before the commencement of this Act, shall continue to be effective for a period of four months after such commencement or till the date of expiry of such policy whichever is earlier.

XXX XXX XXX

(4) A policy shall be of no effect for the purposes of this Chapter unless and until there is issued by the insurer in favour of the person by whom the policy is effected a certificate of insurance [* * *] in the prescribed form and containing the prescribed particulars of any conditions subject to which the policy is issued and of any other prescribed matters; and different forms, particulars and matters may be prescribed in different cases. (3) A policy shall be of no effect for the purposes of this Chapter unless and until there is issued by the insurer in favour of the person by whom the policy is effected a certificate of insurance in the prescribed form and containing the prescribed particulars of any condition subject to which the policy is issued and of any other prescribed matters; and different forms, particulars and matters may be prescribed in different cases.

(4-A) Where a cover note issued by the insurer under the provisions of this Chapter or the rules made thereunder is not followed by a policy of insurance within the prescribed time, the insurer shall, within seven days of the expiry of the period of the validity of the cover note, notify the fact to the registering authority in whose records the vehicle to which the cover note relates has been registered or to such other authority as the State Government may prescribe.

(4) Where a cover note issued by the insurer under the provisions of this Chapter or the rules made thereunder is not followed by a policy of insurance within the prescribed time, the insurer shall, within seven days of the expiry of the period of the validity of the cover note, notify the fact to the registering authority in whose records the vehicle to which the cover note relates has been registered or to

such other authority as the State Government may prescribe.

(5) Notwithstanding anything elsewhere contained in any law, a person issuing a policy of insurance under this section shall be liable to indemnify the person or classes of person specified in the policy in respect of any liability which the policy purports to cover in the case of that person or those classes of person.

(5) Notwithstanding anything contained in any law for the time being in force, an insurer issuing a policy of insurance under this section shall be liable to indemnify the person or classes of persons specified in the policy in respect of any liability which the policy purports to cover in the case of that person or those classes of persons.

10. On the conjoint reading of the provisions, it was pointed out by the learned counsel for the appellants that under the repealed Act, second proviso to Sub-clause (b) of Sub-section (1) of section 95 specifically excluded the coverage of liability arising out 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 or by reason of or in pursuance of a contract of employment. Since this proviso has been excluded and it has not been reenacted under Motor Vehicles Act, 1988. Clause (b) of Sub-section (1) of section 95 of the Act of 1939 ad verbatim remained Clause (b) of Sub-section (1) of Section 147 as originally enacted so far it is relevant for the present purposes, except the second proviso referred to above.

11. On the aforesaid premise, it is contended that express provision excluding the liability of occupant having been not enacted by the Act of 1988, the expression "any person" appearing in Sub-clause (i) of clause (b) of section 147 is wide enough to cover the liability of occupant of the vehicle and cannot be restricted to persons other than the occupants or passengers in the vehicle, in the absence of any provision like proviso (ii) to section 95 (1) (b) under the repealed Act.

12. With this broad proposition, it was further urged that w.e.f. 14.11.1994 after the words injury to any person the words "including the owner of the goods or his authorised representative carried on in the vehicle" were inserted in Sub-clause (i) of clause (b) of Sub-section (1) of Section 147. The inclusion of the aforesaid persons is referable to the coverage of risk in respect of occupants of the goods vehicle as the owner of the goods or his authorised representative carried in vehicle. This is so because otherwise carrying passengers in goods vehicle amounts to use of vehicle otherwise than provided under law as per provision of Section 2(14) of the Act of 1988 defining goods vehicle, which is different from its definition under repealed Act.

13. Supreme Court in the case of New India Assurance Company Vs. Shri Satpal Singh and Others, , took a view that under the new Act an insurance policy covering third party risk is not required to exclude gratuitous passengers in a

vehicle, no matter that the vehicle is of any type or class. Hence the decisions rendered under the old Act vis-a-vis gratuitous passengers are of no avail while considering the liability of the insurance company in respect of any accident which occurred or would occur after the new Act came into force.

14. Subsequent thereto, the Supreme Court in *New India Assurance Co. Ltd. Vs. Asha Rani and Others*, , overruled its earlier decision in *New India Assurance Company Vs. Shri Satpal Singh and Others*, , holding that the Amending Act 1994 was not clarificatory in nature and created a new coverage in respect of owner of the goods vehicle or his authorised representative being carried in the goods vehicle under Sub-clause (i) of clause (b) of section 147.

15. Learned counsel contends that the whole development of the amendment and enunciation of principle by the Apex Court as aforesaid results in that so far as the goods vehicles are concerned, the gratuitous passengers other than those required to be covered since Amendment Act w.e.f. 14.11.1994, the coverage of "any person" in respect of other vehicle is not affected by the principle enunciated in the aforesaid ratio and the effect of omission of proviso (ii) to clause (b) of Sub-section (1) of section 95 widens the scope of "Act only" policy required to provide coverage of any person who suffers death or bodily injury and the claim arising from death or bodily injury suffered by any person as a result of plying of vehicle in public place. Thus, the expression "any person", as contended by the learned counsel, covers a person whether inside or outside the vehicle and is not confined to cover the third party risk excluding the occupants of the vehicle.

16. On the other hand, it is contended by learned counsel for insurance company that the decision in *New India Assurance Co. Ltd. Vs. Asha Rani and Others*, , being clear that Sub-clause (i) of clause (b) of Sub-section (1) of section 147 covers only the third party risk and within the meaning of "third party" the occupant of a vehicle is not covered. So far as the occupant of the vehicle is concerned, the statutory requirement to indemnify the insured is governed by Sub-clause (ii) of Clause (b) of Section 147 (1).

17. Since a passenger other than a passenger in the public service vehicle or an employee other than the person employed as a driver or a conductor in the public service vehicle travelling in the vehicle or owner of goods or his representative in goods vehicle is not covered under the "Act only" policy, it needs to be covered by specific term of contract of any policy agreed to between the parties to the insurance agreement, if the insured seeks such coverage of risk.

18. Learned counsel for the respondent contends that the decision in *New India Assurance Co. Ltd. Vs. Asha Rani and Others*, , has been reaffirmed by Apex Court in *National Insurance Co. Ltd. Vs. Baljit Kaur and Others*, . It cannot be doubted that in view of the consistent view taken by Apex Court after overruling its earlier decision in *New India Assurance Company Vs. Shri Satpal Singh and*

Others, , the expression "any person" used in Sub-clause (i) of Clause (b) of Section 147(1) is not wide enough to cover risks other than third party risks except the risk of the occupant to the extent of Sub-clause (ii) or the persons included under Sub-clause (i) of clause (b) of Section 147 since amendment dated 14.11.1994.

19. Having given our careful consideration, we are of the opinion that having regard to the principle enunciated by the Apex Court more than once, it is eloquently clear that the risk required to be covered under the "Act only" policy u/s 147 does not govern the passengers in vehicle other than the passengers in the public service vehicles because Sub-clause (i) of clause (b) of section 147 covers only third party risks in the context in which it has been set except otherwise specifically provided for.

20. One thing is apparent from the perusal of the provision itself that if the expression "any person" who has suffered death or bodily injury in its widest amplitude may cover any person including a person occupying vehicle of any type--whether a goods vehicle, public service vehicle or a private vehicle, enactment of Sub-clause (ii) and proviso to Sub-section (1) would be rendered redundant and without any purpose. If that view is not accepted then the expression "any person" used in Sub-clause (i) is to be considered in a restricted meaning. Then it shall have to find its meaning in the context in which it has been used and considering the legislative development of the provisions relating to statutory coverage of insurance policy.

21. It may also be noticed that the statute requiring compulsory coverage of liability arising out of use of vehicle in public place is not intended to cover insurance of all and every type of risks for which all and every person in respect of any injury suffered by him may lay claim in respect of it against the insured, which ordinarily is in the realm of contracting parties but primarily is founded to provide a minimum protective umbrella to the vulnerable persons at the public places who may suffer injury on account of the use of vehicle in such public place for which the driver of the vehicle is primarily liable and the owner of the vehicle becomes vicariously liable. Therefore, the limitation in the coverage under the "Act only" policy is inherent. The statutory provision neither covers nor excludes the entire territory of contract.

22. The reading of provision in that context reveals that it does not restrict a wide coverage which the insurance cover under the agreement between the parties may make. It is open for the insurance company and the insured to cover multiple risks relating to many matters which may not strictly arise under the "Act only" policy or under the rules of strict liability. Primarily the statutory requirement is where persons in the public place suffer any injury because of the mobility of vehicle brought on road by other person and the persons who occupy the vehicle for hire or reward for being carried from one place to another and results in fiduciary relationship between the carrier and the carried of a safe travel from one place to another. It is perhaps coverage of these two types of

liabilities which the development of statutory insurance coverage primarily supported. That accounts for the specific coverage of passenger in public service vehicles and restrictive coverage of risk relating to the employees as occupants of the vehicles. Specific provision for passengers in public service vehicle and restricting the liability in respect of employees occupying vehicle and inclusion of specified occupants of goods vehicle which are otherwise not envisaged in definition of goods vehicle impliedly ousts all other class of occupants from "Act only" policy.

23. Until 1960 the law in India had followed the development in this regard in England. First time it was the Third Parties (Rights against Insurers) Act, 1930, which recognised the liability of the claims of third parties to be covered by the insurance policy which did not cover the risk of injury to occupants. Thereafter Road Traffic Act, 1960, required the motor vehicle to be insured in respect of liability for death or bodily injury to passengers in the vehicle who were carried for hire or reward or by reason of or in pursuance of a contract of employment, in the vehicle. In 1972 the law in England envisaged the coverage of liability in respect of occupants of vehicle.

24. The liability arising from accidents need insurance policy as a statutory compulsion was recognised for the first time in India under Motor Vehicles Act, 1939 and thereafter under the Motor Vehicles Act, 1988. Section 95 of the Act of 1939 as originally enacted did not have Sub-clause (ii) of clause (b) of Sub-section (1) of section 95. Though the clause (ii) of proviso to section 95 (1) had been originally enacted, no separate provision has been made to cover passengers travelling in public service vehicles and was governed by the proviso. That provision was brought into effect by amending Motor Vehicles Act, 1939 by the Amending Act 56 of 1969.

25. In respect of liability for death or bodily injuries, the provisions of English Act were explicit and the risk of the passengers was not covered by the insurance policy. The law provided a general exclusion of passengers. As per Halsbury's Laws of England--

Subject to certain exceptions a policy is not required to cover liability in respect of the death of or bodily injury to a person being carried in or upon or entering or getting into or alighting from the vehicle at the time of the occurrence of the event out of which the claim arises.

26. Expression "any person" used in the Act of 1939 has ever since been the subject-matter of debate for judicial interpretation in respect of "Act only" policy taken under the contract of insurance which usually covered liability arising under the Motor Vehicles Act and no other liability, which depends on contracting parties to arrive at by agreement. Obviously that necessitated determination of premium other than the premium required to be paid for "Act only".

27. The two questions inviting attention of the courts were that, firstly, whether the expression "any person" used in section 95 (1) (b) (i) is all pervasive to

include all persons whether inside or outside the vehicle in whatsoever capacity they are travelling and whether it relates to any type or class of vehicle. The second question which has been inviting the attention is that if restrictive meaning is given to Sub-clause (i) of section 95 (1)(b) whether it covers third party risk to the passengers, who are not party to the insurance agreement on the ground that the third party in the context of the insurance policy means parties other than the insured and insurer as those are the parties to insurance agreement and all other persons are third parties qua the contract of insurance.

28. Both the contentions in such wide amplitude have not been accepted by the courts of India. The matter in our opinion is no more *res Integra*, in view of number of decisions from the Apex Court.

29. In the first instance, we may refer to *Pushpabai Purshottam Udeshi v. Ranjit Ginning and Pressing Co.* 1977 ACJ 343 which has been referred to in most of the later cases.

30. Udeshi's case 1977 ACJ 343 related to claim made by a passenger who was travelling in a company's car, which was being driven by its Manager. The passenger was given a lift while he was going in the car by the said Manager and as a result of an accident, the passenger died and his wife and children filed claim. The car was insured for "Act only" liability and the accident took place on 18.12.1960, i.e., to say before the amended provision of section 95 had come into force. The court opined:

Section 95 (a) and 95 (b) (i) of the Motor Vehicles Act adopted the provisions of the English Road Traffic Act, 1960 and excluded the liability of the insurance company regarding the risk to the passengers. Section 95 provides that a policy of insurance must be a policy which insures the persons against any liability which may be incurred by him in respect of death 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. The plea that the words "third party" are wide enough to cover all persons except the person and the insurer is negated as the insurance cover is not available to the passengers is made clear by the proviso to sub-section which provides that a policy shall not be required:

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

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

31. However, the court made it clear that the insurer can always take policies covering risks which are not covered by the requirements of section 95.

32. This issue came in its fuller expanse before the court in *Smt. Mallawwa Etc.*

Vs. The Oriental Insurance Co. Ltd. and Others, . This case came before a three-Judge Bench on a reference made by a two-Judge Bench, which opined that decision of two-Judge Bench in Pushpabai Purshottam Udeshi's case 1977 ACJ 343 needs reconsideration in greater detail and interpretation of section 95 in the context of death of owner of goods being carried in goods vehicle whether insurer is liable to pay compensation to his legal heirs in view of earlier decision of the Supreme Court.

33. Referring to the aforesaid principle stated in Halsbury's Laws of England and Udeshi's case 1977 ACJ 343 and considering the development of law under statutory provisions in England and India, the court observed that:

In the absence of the proviso, the main provision would have included all classes of vehicles including goods vehicles and all passengers whether carried for hire or reward or by reason of or in pursuance of a contract of employment or otherwise.

However, referring to proviso (i), the court said that such an unqualified meaning to the words "any person" was not envisaged. The court said while referring to proviso (i):

It refers to "vehicle", "public service vehicle" and "goods vehicle". The words "any person" in the main provision would have included the employee of the person insured and, therefore, an exception was made by enacting proviso (i) so as to restrict liability of the insurer in respect of his employees. Both those exceptions were made as the legislature did not want to widen the liability of the insurer and the insured by making it more than what it was under the English Act, upon which section 95 was based.

For coming to this conclusion, the Apex Court quoted in extenso from Pushpabai Purshottam Udeshi's case (supra). Turning to proviso (ii) the court said:

It, in clear terms, restricted the scope of the main provision by confining its application to that vehicle which is "a vehicle in which passengers are carried for hire or reward or by reason of or in pursuance of a contract of employment". In the first instance, the vehicle had to be a vehicle of that class in which passengers were carried. If that, was not the intention of the legislature, it would not have used the phraseology "the vehicle is a vehicle in which passengers are carried" and would have simply provided that "except where passengers are carried for hire or reward...". So also the compulsory coverage was not intended for all passengers and, therefore, it was provided that "passengers are carried for hire or reward or by reason of or in pursuance of a contract of employment".

34. Thus, the confinement of the operation of the main provision was in respect of vehicles and also passengers. The court further noticed that even after amendment, the provisos remained intact. The court noticed that the object of legislature in making the amendment was to cover the risk in respect of passengers of the public service vehicles. The legislature, therefore, made a

special provision by inserting Sub-clause (ii) of clause (b), leaving the rest of Sub-section (1) including the proviso as it was. If this background is kept in mind, it becomes apparent that the legislature did not want to make any change in the position of law except to provide specifically for covering risk to passengers of public service vehicles.

35. Thus, the court carved out the principle that there was no distinction between passenger and non-passenger but passenger's risk whether travelling in public service vehicle or by any other vehicle in which passengers are carried for hire or reward were covered by separate provision, hence excluded from main provision in section 95 (1) (b) (i). The court said:

Though apparently, it looked as if the legislature by introducing the two Sub-clauses in clause (b) had tried to make a distinction between passengers and non-passengers, that was not really so. Though the proviso appeared after Sub-clause (ii) of clause (b), it really remained a proviso to the earlier clause (b) which after the amendment became clause (b) (i). Neither the object of introducing Sub-clause (ii) in clause (b) nor the language of the proviso indicate that the proviso was to act as a proviso to Sub-clause (ii) also. Even earlier, the passengers of a public service vehicle were required to be covered compulsorily as they answered the description of passengers carried for hire or reward. The only effect of making a special provision for passengers of a public service vehicle was that proviso (ii) thereafter remained applicable to vehicles other than public service vehicles.

In reaching the above conclusion the court approved *Udeshi's case* 1977 ACJ 343 that third party risk does not cover passengers by referring to the passage that "the plea that words "third party" are wide enough to cover all persons excluding the person and the insurer is negatived as the insurance cover is not available to passengers except to the extent provided in the proviso to Sub-section (1)".

36. After 1988 Act came into force, as noticed above, second proviso to Sub-section (1) has not been re-enacted. The absence of the said proviso has given rise to a contention which is now being raised before us that the omission necessarily meant, as was noticed by Supreme Court in *Smt. Mallawwa Etc. Vs. The Oriental Insurance Co. Ltd. and Others*, , that all persons travelling whether inside or outside the vehicle in respect of all vehicles whether public service vehicle or goods vehicle or any other vehicle would correspond to expression "any person" who has died or suffered injury as a result of accident caused by a vehicle in the public place.

37. This contention initially found favour with the Supreme Court in *New India Assurance Company Vs. Shri Satpal Singh and Others*, . Referring to the omission of proviso to section 95 (1) in its new incarnation section 147, the court held that:

Under the new Act an insurance policy covering third party risk is not required to

exclude gratuitous passenger in a vehicle, no matter that the vehicle is of any type or class. Hence, the decisions rendered under the old Act vis-d-vis gratuitous passengers are of no avail while considering the liability of the insurance company in respect of any accident which occurred or would occur after the new Act came into force.

38. However, another Bench of two Judges was of the opinion that the decision in New India Assurance Company Vs. Shri Satpal Singh and Others, , requires reconsideration and referred the question to larger Bench in respect of liability of insurance company for gratuitous passenger in a goods vehicle prior to amendment in section 147(1)(b)(i) came into force w.e.f. 14.11.1994.

39. On such a reference, the Supreme Court in New India Assurance Co. Ltd. Vs. Asha Rani and Others, , held that New India Assurance Company Vs. Shri Satpal Singh and Others, , was decided erroneously.

40. The rival contentions raised before the Apex Court were around the fact that the Act of 1988 has further been amended w.e.f. 14.11.1994. Section 147(1)(b) of the new Act, which prevailed at the time of amendment envisaged that the policy must be a policy which insures the person or classes of persons specified in the policy to the extent specified in Sub-section (2)--

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

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

41. By the amendment of 1994, words "including the owner of the goods or his authorised representative carried in the vehicle" were inserted after the expression "any person".

42. While the claimants urged that the amendment was clarificatory in nature because it was otherwise included in Sub-clause (i) of Clause (b) because the expression "any person" was wide enough to cover an occupant of the vehicle which meant insurance to cover cases of death of or bodily injury caused to any person whether outside or inside the vehicle. The contention was founded on the premise that in the absence of provision like the second proviso to section 95 (1) (b), the provision which was otherwise in terms identical with sub-clause (i) of clause (b) of section 95 (1) was wide enough to include all classes of vehicles including goods vehicle and all types of occupants whether for hire or reward or otherwise.

43. The insurance company urged that the amendment has brought in substantive change in law for providing coverage of risk of certain class of passengers only not otherwise covered under other provision.

44. The Apex Court held New India Assurance Company Vs. Shri Satpal Singh

and Others, , to have been erroneously decided and upheld the contention of insurance company that it made substantive change in law. Hon''ble Sinha, J. in his concurring judgment clearly said that:

the meaning of the words "any person" must also be attributed having regard to the context in which they have been used, i.e., "a third party".

45. In New India Assurance Co. Ltd. Vs. Asha Rani and Others, , distinction was noticed between coverage of liability in respect of passengers carried in public service vehicle on one hand and passengers otherwise carried in a private or goods vehicle on the other hand. The provision in view of the 1994 amendment would only cover a third party, as also the owner of goods or his authorised representative and not any passenger carried in goods vehicle whether for hire or reward or otherwise. Sub-clause (i) of clause (b) of Sub-section (1) of Section 147 speaks of liability which may be incurred by the owner of a vehicle in respect of 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. Furthermore an owner of "a passenger carrying vehicle, must pay premium for covering the risks of the passengers". Whereas Sub-clause (ii) thereof deals with liability which may be incurred by the owner of a public service vehicle, in respect of any injury or death caused by or arising out of the use of vehicle in a public place. If the 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.

46. It may be recalled that in Smt. Mallawwa Etc. Vs. The Oriental Insurance Co. Ltd. and Others, , the court had reached the same conclusion that "Act only policy" required coverage of passengers risk carried in public service vehicle under clause 95 (1) (b) (ii) and of passengers carried in other passenger carrying vehicles under proviso (ii) to section 95 (1) (b) (i) in case such passengers are carried for hire or reward or are carried under a contract of employment.

47. Apart from this, definition of "goods vehicle" under Act of 1939 permitted the carrying of passengers up to 6 in number in goods vehicle. However, 1988 Act made a departure and excluded carriage of passengers in goods vehicle. Since provision like proviso (ii) to section 95 (1) (b) (ii) and definition of goods vehicle permitting passengers to be carried thereto, do not find place in the Act of 1988, the statutory coverage of risk by insurer thereunder was held to be restricted to strictly third party" and passenger carried in public service vehicle and cover employee-passengers under proviso to section 147 (1) only:

48. The court in National Insurance Co. Ltd. Vs. Baljit Kaur and Others, , said that:

it is not possible to countenance the contention of the respondents that the words "any person as used in section 147 would be rendered otiose by an interpretation that removed gratuitous passengers from the ambit of the same.

49. It was observed by the court in the case concerning New India Assurance Co. Ltd. Vs. Asha Rani and Others, , that the true purport of words "any person" is to be found in the liability of insurer for third party risk which was sought to be provided for by the enactment.

50. It was further observed by the court in New India Assurance Co. Ltd. Vs. Asha Rani and Others, :

(19) Section 146 specifies the necessity for insurance against third party risk. In terms thereof an owner of a motor vehicle is statutorily enjoined to have a policy of insurance complying with the requirements of the said Chapter before he uses or causes or allows any other person to use a motor vehicle in public.

(20) Section 147 deals with requirements of policies and limits of liability The proviso appended thereto however, makes an exception to the Main provision which reads thus:

xxx xxx xxx

(21) We may notice that the proviso appended to Section 95 of 1939 Act contained Clause (ii) which has been omitted in the 1988 Act and reads as under:

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

(22) Thus, it may be noticed that so far as employees of the owner of the motor vehicle are concerned, an insurance policy was not required to be taken in relation to their liability other than arising in terms of the provisions of the Workmen's Compensation Act, 1923. On the other hand, proviso (ii) appended to section 95 of the 1939 Act, enjoined a statutory liability upon the owner of the vehicle to take out an insurance policy to cover the liability in respect of a person who was travelling in a vehicle pursuant to a contract of employment. The legislature has consciously not inserted the said provision in the 1988 Act.

(26) In view of the changes in the relevant provisions in the 1988 Act vis-a-vis the 1939 Act, we are of the opinion that the meaning of the words "any person" must also be attributed having regard to the context in which they have been used, i.e., "a third party". Keeping in view the provisions of the 1988 Act, we are of the opinion that as the provisions thereof do not enjoin any statutory liability on the owner of a vehicle to get his vehicle insured for any passenger travelling in a goods vehicle, the insurers would not be liable therefor.

51. The aforesaid decision in our opinion ought to have given quietus to all the doubts in respect of law that occupants and passengers of any vehicle except the passengers covered specifically under Sub-clause (i) of clause (b) or the passengers travelling in public service vehicle covered by Sub-clause (ii) of

clause (b) of section 147(1) are not covered under the "Act only" policy unless the terms of contract between the insurer and the insured otherwise provide on payment of additional premium.

52. Significantly in *National Insurance Co. Ltd. Vs. Baljit Kaur and Others*, , the court while construing section 147 made it clear that it cannot be read in a manner to render any part of statute to be redundant. Accepting the contention of the petitioner that term "any person" in Sub-clause (i) of Clause (b) includes every person whether outside vehicle or inside vehicle and in whatever vehicle, it would render sub-clause (ii) of clause (b) and proviso thereto redundant and otiose.

53. If the expression "any person" includes any and every class of occupants of the vehicle, passengers in public service vehicle and employees of the owner of any class in vehicle too will be covered under it. The definition of public service vehicle clearly indicates that such vehicle is meant for carrying persons in it from one place to another for hire or reward and there would be no necessity to make a separate provision for covering such risks. So also there would be no purpose and meaning to restrict coverage of risk concerning employees of the owner of the vehicle under proviso to Section 147(1). For that reason, the contention made by the learned counsel that decision in *New India Assurance Co. Ltd. Vs. Asha Rani and Others*, and *National Insurance Co. Ltd. Vs. Baljit Kaur and Others*, , modifies and restricts the wide meaning accepted by the Supreme Court in *New India Assurance Company Vs. Shri Satpal Singh and Others*, , only to the extent of coverage of occupants of goods vehicle under the "Act only" policy envisaged as per Section 147 prior to its amendment w.e.f. 14.11.1994, otherwise Satpal 's case governs the coverage of passengers of other genre cannot be accepted.

54. We may recall that in both cases, viz., *New India Assurance Co. Ltd. Vs. Asha Rani and Others*, , as well as *National Insurance Co. Ltd. Vs. Baljit Kaur and Others*, , the court reached its conclusion on the premise that "goods vehicle" as defined u/s 2(14) of the Act of 1988 makes it clear that goods vehicle is the vehicle in which only goods are carried. Making departure from the repealed Act of 1939, it did not envisage that any passenger can be carried in a goods vehicle except the driver. Thus, carriage of passenger in goods vehicle is not at all envisaged under the Act of 1988. Hence, it cannot be held that legislature provided for compulsory coverage of risk in respect of persons carried in vehicle in breach of law. This necessitated inclusion of owner of goods or his representative accompanying the goods in a vehicle for compulsory risk coverage and the amendment in this regard was not found to be clarificatory.

55. If the aforesaid decisions are confined to exclusion of goods carriage vehicle but include occupants of any vehicle in general, where carriage of persons is envisaged in law as purpose for which vehicle is deployed and is not confined to coverage of "third party risk" as stated in the two decisions, the resultant position will be that Sub-clause (ii) of clause (b) and proviso thereto is rendered

superfluous and redundant. Any precedent cannot be read in such a manner by rendering any provision of the statute mere superfluous and academic.

56. Section 147(1)(b) covers only the third party risk has also been held in Dhanraj Vs. New India Assurance Co. Ltd. and Another, and Sri Pramod Kumar Agrawal and Another Vs. Smt. Mushtari Begum and Others, .

57. The same conclusion was reached in Oriental Insurance Company Ltd. Vs. Devireddy Konda Reddy and Others etc. etc. and Jogi Subbamma and Others etc. etc., , after referring to corresponding provision in the Act of 1939 and 1988 Act and considering the amendments made therein the court said that the legislative intent was to prohibit goods vehicle from carrying any passengers. It was found to be clear from the expression "in addition to passengers" as contained in the definition of "goods vehicle" in the old Act and the expression used in defining "goods carriage" u/s 2(14) of the Act of 1988 as "solely for the carriage of the goods". Carrying of any passenger in a goods carriage is not contemplated in the Act of 1988. There is no provision similar to clause (ii) of the proviso appended to section 95 of the old Act prescribing requirement of insurance policy of persons carried in any vehicle for hire or reward. Even section 147 of the Act mandates compulsory coverage against death of or bodily injury to any passenger of "public service vehicle". The proviso makes it further clear that the compulsory coverage in respect of employees is restricted to drivers of the vehicle and also conductors of public service vehicle and be limited to liability under the Workmen's Compensation Act, 1923. There is no reference to any passenger in "goods carriage".

58. Specific provision for passengers in public service vehicle and about limited type of employees on board the vehicle by necessary implication exclude the other class of passengers in any other vehicle, from compulsory coverage of risk under "Act only" policy.

59. The question again arose before the Apex Court in Ramashray Singh Vs. New India Assurance Co. Ltd. and Others, . The court said that it was a case in which the vehicle (Sic. person) was being carried for hire. The vehicle met with an accident and the employee Shashi Bhushan Singh died. A claim was sought against the insurance company with whom the vehicle was insured. The claim to award compensation to "khalasi" was negatived on the ground that he did not fall within the nature of employees mentioned in proviso to section 147(1) nor he could be awarded compensation as passenger.

60. Before parting with the discussion, we may notice a Full Bench decision of Kerala High Court in Oriental Insurance Co. Ltd. Vs. Ajayakumar and Others, , on which reliance has been placed by the learned counsel for the appellant for contending that the principle enunciated in New India Assurance Co. Ltd. Vs. Asha Rani and Others, , is confined to person carried in goods vehicle and it cannot be extended to passenger carried either gratuitous or for hire or reward in other vehicles other than public service vehicle. At the outset, we may notice

that the decision was rendered before the decision of Supreme Court in Asha Rani's case (supra) and National Insurance Co. Ltd. Vs. Baljit Kaur and Others, , confining the risk required to be covered by section 147 to third party risks and, therefore, to the extent the decision by Kerala High Court in Oriental Insurance Co. Ltd. Vs. Ajayakumar and Others, , holds contrary to it must be deemed to have been impliedly overruled.

61. For the like reason, decision of Madhya Pradesh High Court in Oriental Insurance Co. Ltd. Vs. Smt. Radharani and Others, , is of little avail to the claimants. The same was founded on a dissenting note from decision of Kerala High Court in Chacko P.M. alias Thankachan Vs. Rosamma Antony and Others, , since then majority view in P.M. Chacko's case has been affirmed by the Supreme Court in Dr. T.V. Jose v. Chacko P.M. 2001 ACJ 2059 holding that the third party liability does not cover the risk of passengers who are not carried to hire or reward. Chacko's case arose under the old Act. Radha Rani's case arose before amendment in the new Act.

62. Another reason which has found favour with the Full Bench of Hon''ble Kerala High Court is that the passengers travelling in a vehicle are third party and are covered by the third party risk because the contract of insurance is between the insured and the insurer and all persons stranger to contract are third party qua the contract of insurance hence the occupant should be governed by coverage of third party risk under the insurance policy.

63. Another decision, which the learned counsel has relied upon is Natarajan v. D. Chandrasekaran 2004 ACJ 701 rendered by Madras High Court, taking the same view of expression "third party" as was taken by Kerala High Court. The case related to a pillion rider of a two-wheeler. The court upheld the claim raised on behalf of pillion rider who had sustained injuries by holding that all such persons, who suffered injury on account of use of vehicle qua contract of insurance are "third parties" in the sense that they are other than the insurer and the insured, in view of the fact that the words "third party" have not been defined in the Act or even in the Rules. For this purpose, the court has relied on Stroud's Judicial Dictionary, the meaning of the words, "third party risk" has been given as below:

Third Party Risks [Road Traffic Act, 1930 (20 & 21 Geo. S, c.43), S. 35]" connotes that the insurer is one party to the contract, that the policyholder is another party and that claims made by others in respect of the negligent use of the car, may be naturally described as claims by third parties. The Privy Council has also thus interpreted the words "Third Party Risk" in Digby v. General Accidents Fire & Life Assurance Corporation (1943) ACJ 121

64. The court also relied upon its earlier Bench decision in National Insurance Co. Ltd., Madras Vs. V.S.R. Kumaresan and others, .

65. The conclusion in this respect reached by Kerala and Madras High Courts in the above cases, in our opinion with great respect, is directly opposed to the

contention rejected by the Apex Court in Udeshi's case 1977 ACJ 343 as well as in Smt. Mallawwa Etc. Vs. The Oriental Insurance Co. Ltd. and Others, . The contention was specifically rejected by the Apex Court as noticed hereinbefore.

66. The decisions of Kerala and Madras High Courts in this regard are contrary to what has been laid down by the Supreme Court, hence with great respect we are unable to agree with it.

67. The contention has also been raised before us that since after the decision of Supreme Court in Udeshi's case 1977 ACJ 343 a Tariff Advisory Committee was set up under the Insurance Act, 1938, which recommended in its report dated 13.3.1978 to include in the terms and conditions of the insurance policy cover the risk arising in respect of persons travelling in vehicle to include any persons whether such occupants are carried for hire or reward or not and directed above instructions to be effective retrospectively w.e.f. 25.3.1977; the date on which Udeshi's judgment was delivered. Since the instructions of the Tariff Advisory Committee under the Act of 1938, it must be deemed that in every "Act only" policy, such term has been included to undertake liability in respect of occupant or passenger of any vehicle, as term of contract in addition to requirement of section 95 of the Act of 1939 or for that matter u/s 147 of Act of 1988. Such condition has become a part of every insurance policy issued after 13.3.1978 and, therefore, it must be held that the risk of any person including occupants carried in the motor car without hire or reward is also undertaken by the insurance policy. In this connection, reliance has been placed on the decisions of Oriental Fire & Genl. Ins. Co. Ltd. v. Sanatan Pradhan 1988 ACJ 792 Sagar Chand Phool Chand Jain v. Santosh Gupta 1985 ACJ 585 and New India Assurance Co. Ltd. v. Satyanath Hazarika 1989 ACJ 685

68. We have perused the aforesaid three judgments and have also considered the scheme of Insurance Act, 1938 providing for constitution and functions of Advisory Committee to regulate the rates to be offered by the insurance. We notice that in none of the judgments cited reference has been made to the exact terms of instructions that might have been issued by the Advisory Committee in March, 1978. The judgment rendered by Gauhati High Court in New India Assurance Co. Ltd. v. Satyanath Hazarika 1989 ACJ 685 candidly noticed that full text of the Tariff Advisory Committee could not be obtained despite best efforts. Gauhati High Court referred to decisions of Delhi and Orissa High Courts for concluding as under:

An insurer would be liable to indemnify the insured in respect of compensation awarded against him for the death or bodily injury to a gratuitous passenger in all those cases which are pending before the Claims Tribunal or appellate authorities since 25.3.1977. In other cases, the insurer would be liable in cases of the present nature if the particular policy covered the risk, and it shall be the burden of the insurer to satisfy by producing the policy that such a risk was not covered by the policy.

69. While Delhi High Court's decision refers to production of Tariff Advisory Committee's instructions, but it merely records that the same is taken on record and has been perused by the court. However, the details of such instructions do not find place in the judgment and, therefore, we are unable to make any comment on it.

70. Similarly, decision of Orissa High Court merely follows the decision of Delhi High Court without referring to the actual terms of tariff instructions.

71. In the absence of any material and consideration whether a subordinate authority created under one Central statute can provide for something for including in the statutory liability of the insurance company, which is statutorily not required to be taken by them is also of doubt. Apart from the above, policy in the present case which is of much later date, does not show that any such liability was undertaken. Therefore, this proposition also does not support the case of the appellants.

72. The next question that requires consideration is whether the directions issued by the Motor Accidents Claims Tribunal which has upheld the contention of the appellants and their claim against the insurance company by holding that it is liable to indemnify the owner in respect of the claim arising in respect of the occupant of the vehicle following New India Assurance Company Vs. Shri Satpal Singh and Others, , decision which has been set aside by the learned single Judge following the decision in New India Assurance Co. Ltd. Vs. Asha Rani and Others, , can insurer be directed to pay the award amount to the claimants and receive the same from the owner?

73. The question was considered by the Apex Court in National Insurance Co. Ltd. Vs. Baljit Kaur and Others, . The court held that:

Act only policy" does not cover the risk in respect of any person other than third party and occupant is not a third party directed that in place of the insurer, the owner of the vehicle shall be liable to satisfy the decree. However, keeping in view the fact that the position of law was not clear so long, the legal position as clarified herein shall have prospective effect. Therefore, the interest of justice will be subserved if the appellant herein is directed to satisfy the awarded amount in favour of claimant, if not already satisfied and recover the same from the owner of the vehicle. For the purpose of such recovery, it would not be necessary for the insurer to file a separate suit but it may initiate a proceeding before the executing court as if the dispute between the insurer and the owner was the subject-matter of determination before the Claims Tribunal and the issue was decided against the owner and in favour of the insurer.

74. In view of the aforesaid opinion of the Supreme Court, we are further of the view that the learned single Judge was in error to the extent it was held that the insurance company cannot be required to satisfy the claim of the claimants and then recover it from the owner. Therefore, to that extent the order of the learned single Judge is required to be modified.

75. Consequently, the appeal filed by the claimant Varju is allowed in part by holding that the insurer is not liable to indemnify the owner of the vehicle in respect of the liability arising on account of death or bodily injury to the occupant of the vehicle in question as the same was not covered under the "Act only" policy. However, in terms of the directions issued in National Insurance Co. Ltd. Vs. Baljit Kaur and Others, , the insurance company shall satisfy the awarded amount in favour of the claimants, if not already satisfied and recover the same from the owner of the vehicle. In case the owner does not make the payment, it can be recovered by initiating proceedings before the executing court as if the dispute between the insurer and the owner was the subject-matter of determination before the Tribunal and the issue was decided against the owner and in favour of the insurer.

76. So far as the appeals filed by Nimb Singh the owner are concerned, the same are dismissed by holding that the insurance company is not liable to satisfy the liability arising from the claim in respect of death or bodily injury caused to the occupant of the vehicle in question but since we have directed the insurance company to satisfy the award in favour of the claimants, the appellants shall be liable to repay the said amount of the award to insurance company and if the amount is not paid, the insurance company shall be entitled to recover by executing as a decree for the said terms, as per the observations made by us above.

There shall be no order as to costs.