
(1992) 01 MAD CK 0012
In the Madras High Court
Case No : L.P.A. No. 1 of 1988

Venkataswami Motor Service

APPELLANT

Vs

C.K. Chinnaswamy and Others

RESPONDENT

Date of Decision : 22-01-1992

Acts Referred:

General Clauses Act, 1897 — Section 6
Motor Vehicles Act, 1988 — Section 147, 217, 41

Citation : (1993) ACJ 1 : (1992) 1 LW 670

Hon'ble Judges : P.S. Mishra, J;K. Swamidurai, J

Bench : Division Bench

Advocate : V. Manivannan, for the Appellant; Raju K. Lukose and R. Balasubramanian, for the Respondent

Final Decision : Dismissed

Judgement

P.S. Mishra, J.—The third respondent, owner of a motor vehicle in M.C.O.P. No. 14 of 1980 before the Motor Accidents Claims

Tribunal, Coimbatore and appellant in A.A.O. No. 678 of 1981 has preferred this appeal under Clause 15 of the Letters Patent of this Court

against the award of compensation to the claimant-respondent Nos. 1 to 4 herein amounting to Rs. 36,000/- out of which Rs. 5,000/- is payable

by the insurer and the balance by the owner-appellant.

2. The claimants who are the husband and minor sons and daughters of the victim Kamalam moved the Tribunal u/s 110-A of the Motor Vehicles

Act, 1939 (since repealed) alleging that Kamalam was traveling in a town bus plying in route No. 32-C and bearing registration No. TNE 6517

along Goods Shed Road on 16.7.1979 at about 7.45 a.m. When the said bus approached the bus stop near the junction of Big Bazaar Street and

Goods Shed Road, west of St. Michael's High School, she got down from the bus at that stop, but before she could stabilise herself on the road,

the conductor instructed the driver to move the vehicle and accordingly the driver started the bus rashly and negligently with the result that

Kamalam was knocked down and dragged along by the body of the bus. In that process, she sustained multiple injuries and succumbed to them in

the C.M.C. Hospital. The claimants impleaded the driver, the conductor, the owner of the vehicle and the insurer as party respondents in the

proceeding before the Tribunal.

3. The driver pleaded in his return that there was no bus stop on the Goods Shed Road near St. Michael's High School and that Kamalam got

down from the running bus and lost her balance due to which she met with the accident which caused her death. The conductor and the owner of

the bus (appellant) adopted the said counter and thus maintained that Kamalam met with the accident entirely on account of her own fault and not

on account of any rash or negligent act of the driver or the conductor.

4. The insurer in a separate counter-affidavit alleged that the driver was plying the bus at a moderate speed from north to south along Goods Shed

Road. The victim was one of the passengers travelling in the bus. When the bus approached the junction of the Goods Shed Road and Big Bazaar

Street, the driver slowed down the vehicle. At this point of time, despite the warning given by the conductor, the victim jumped out of the bus.

Since the bus was still moving, she fell down and sustained injuries, to which injuries she succumbed later in the day. The insurer maintained that its

maximum liability was Rs. 5,000/- only.

5. The Tribunal, on a consideration of the evidence, both oral and documentary, found that the accident took place only on account of the rash and

negligent act of the driver and conductor of the bus and that there was no contributory negligence on the part of the victim. It, however, held that

the victim did not cease to be a passenger within the meaning of proviso (ii) to Sub-section (1) of Section 95 of the Motor Vehicles Act and so the

liability of the insurer was restricted to Rs. 5,000/-. The Tribunal concluded that the claimants-respondents were entitled to a compensation of Rs.

36,000/- and awarded compensation accordingly with interest at 6 per cent per annum from the date of the petition.

6. In the appeal against the Tribunal's awarding compensation, the appellant maintained that it was the insurance company that had to pay the

entire amount of compensation that had been awarded by the Tribunal and that the findings of the Tribunal with regard to the negligence of the

driver and the quantum of compensation were not proper and not sustainable.

7. Swamikkannu, J., who eventually heard the appeal, however, has held that the victim Kamalam was still a passenger within the meaning of

Section 95(2)(b) read with proviso (ii) to Sub-section (1) thereof and thus the insurer's liability was limited to the limits under the Act, that there

was no force in the contention of the appellant in view of the evidence on record that the accident was not as a result of the rash and negligent

driving and that the quantum of compensation awarded was correct.

8. Before we proceed into the contentions, we propose to have the foundation of facts that (1) Kamalam travelled in the town bus plying on route

No. 32-C bearing registration No. TNE 6517 on 16.7.1979 at about 7.45 a.m. along Goods Shed Road, (2) the accident took place when the

bus approached the bus stop near the junction of Big Bazaar Street and Goods Shed Road, west of St. Michael's High School and (3) the bus

belonged to the appellant.

9. It is on record in the evidence of the witnesses, which has not been seriously challenged before us, that the bus stopped near the junction of

Goods Shed Road and Big Bazaar Street and that three women alighted from the bus along the front exit including the victim Kamalam. When she

was placing one foot on the ground and another foot on the footboard of the bus, the conductor gave the whistle and the bus began to move

slowly. Kamalam was holding the post near the front exit when the bus moved and dragged her to a distance of about 10 feet. The passengers in

the bus shouted and the bus was stopped. The bus ran over her and caused serious injuries, to which injuries she later succumbed.

10. Chapter VIII of the 1939 Act contained a special provision as to insurance of motor vehicles against third party risks and in Section 95

thereof, fixed the limits of liability in these words:

(1) In order to comply with the requirements of this Chapter, a policy of insurance must be a policy....

(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, i.e. 1/2

(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;

(b) where the vehicle is a vehicle in which passengers are carried for hire or reward or by reason of or in pursuance of contract of employment i.e. 1/2

(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 i.e. 1/2

(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.

11. It is nobody's case that in case victim Kamalam was a passenger in the bus at the time of the accident, the insurer's liability will be higher than

rupees five thousand as fixed under Clause (4) of Sub-section (2) of Section 95 above quoted. The controversy herein is whether Kamalam was

still a passenger, when, according to the learned Counsel for the appellant, Kamalam had ceased to be a passenger, for she had moved out of the

bus. According to him, the insurer in such a situation should be held liable for the whole amount of compensation payable to the claimants.

12. A Bench of the Calcutta High Court in Gobinda Prosad Mukherjee v. Sujit Bhowmick 1978 ACJ 160 (Cal), dealt with a case of a minor

school student, who, after the school hours, tried to board a private bus at the bus stop opposite the school, but before he could board the bus, it

started moving on the signal of the conductor. The boy lost balance and fell down on the road and the rear wheel of the bus rolled over his right

leg. The principal contention before the court was that the Tribunal should have held that the insurer was liable for the whole amount of

compensation and that Section 95(2)(b) of the Motor Vehicles Act, 1939, was not applicable as the boy, who did not board the bus but only

made an attempt to board the same, could not be said to be a passenger within the meaning of the said provision. The Calcutta court observed:

Clause (b) of Sub-section (2) of Section 95, inter alia, provides that subject to the proviso to Sub-section (1), 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, if the vehicle is registered to carry

more than six passengers excluding the driver, a policy of insurance will cover any liability incurred in respect of any accident up to the limit of two

thousand rupees in respect of individual passenger. In the instant case, there is no dispute that the vehicle in question is registered to carry more

than six passengers excluding the driver. Even assuming that the respondent was not a passenger as he was only attempting to board the bus, still

the limit of the liability of the insurer would be in terms of Section 95. The proviso (ii) to Section 95(1), which has been quoted above, clearly lays

down that where the vehicle is a vehicle in which passengers are carried for hire or reward, as in the present case, policy of the insurer would

cover the liability for death 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. Sub-section (2) having been made subject to the proviso to Sub-section (1), it covers the

liability for death or bodily injury to persons caused in the circumstances stated above. The word "passengers" in Clause (b) of Sub-section (2) of

Section 95 also includes within it any person meeting with death or bodily injury under the circumstances mentioned in the proviso (ii) to Sub-

section (1) where the vehicle is one in which passengers are carried for hire or reward or under a contract of employment. The limit of liability of

the insurer will be as specified in Clause (b) of Sub-section (2). In our view, there is no substance in the contention of the appellant that the

respondent was not a passenger as he had only attempted to board the bus at the time when the accident happened and accordingly, the insurer should be held liable for the whole amount of compensation as awarded. As the vehicle is registered to carry more than six passengers excluding the driver, the Tribunal was perfectly justified in fixing the liability of the insurer at Rs. 2,000/- only in view of Clause (b) of Sub-section (2) of Section 95 of the Act.

13. In the case of *Uvaraja v. Parvathi Ammal* 1986 ACJ 506 (Mad), a learned single Judge of this Court dealt with a case of a victim of a motor accident, who was about to get into the moving bus, but slipped down due to rush and ultimately got under the wheel and met with his death.

Referring to an earlier Division Bench judgment of this Court in *Damodaran v. Santhanam*, A.A.O. No. 558 of 1979; decided on 28th July, 1981, which was a case on facts that the deceased was about to get into the moving bus, the court said:

I must straightway point out that the facts are on all fours with those found in a decision rendered by a Division Bench of this Court in *Damodaran*

v. Santhanam, A.A.O. No. 558 of 1979; decided on 28th July, 1981. In this case, the finding is that the deceased was about to get into the

moving bus, but then before he could get into the bus, he slipped down due to rush and ultimately got under the wheel and met with his death. It is

now relevant to notice the facts in the unreported case referred to above. The deceased was not a passenger in the bus and there was a scramble

between the persons who were waiting for the bus at the bus stand and it is at that scramble the deceased fell down and was run over by the bus.

On the said facts, the Bench held, "Therefore, we can safely say that a person attempting to get into the bus but who did not succeed in getting entry into the bus, cannot be taken to be a passenger in the bus".

If that is so, in the instant case, the deceased cannot be said to be a passenger in the bus. Unless the deceased was a passenger, the insurance

company cannot call to its aid Section 95(2)(b)(ii)(4) of the Motor Vehicles Act. Then, the insurance company is alone liable to pay the entire claim.

14. A Bench of this Court in *Southern Motors, Madurai v. C. Sivajothiammal* 1982 ACJ (Supp) 85 (Madras), has said:

Though the learned Counsel for the insurer contends that all persons who are authorised to travel in the bus by the issue of tickets should be taken

to be passengers of the bus, we are not in a position to accept such a wide proposition. As a matter of fact in a judgment of this Court, Natarajan,

J. in *Madras Motor and General Insurance Co. Ltd., Tirunelveli v. Perumal Konar*, C.M.A. Nos. 7 and 25 of 1972, held that a person travelling

on the footboard without actually entering the bus cannot be taken to be a passenger and that if death or injury is caused to such a passenger, there

cannot be any limit on the insurer's liability. However, it is unnecessary for us to go to the extent of saying that a person travelling on the footboard

is not a passenger, as in this case we are not concerned with a person travelling on the footboard but a person who did not actually get into the

bus, fell down and sustained injuries by a fall from the moving bus in his attempt to get an entry into the bus while it was moving.

15. In *Sivakumar Transports Vs. Mani alias Palaniswamy and Others*, , a learned single Judge of this Court again considered the case of a person,

who met with an accident while attempting to board a bus and said as follows:

The expression "passenger" normally refers to one who travels either in a bus or a vehicle or a ship and the predominant idea conveyed by the

expression "passenger" is one who travels. It is further seen from the elaborate provisions and the rules under the Motor Vehicles Act that what is

contemplated is that a person could be regarded as a passenger, when he travels either by being seated inside the bus in the seats provided for

occupation by passengers who travel or by standing, where such passengers are allowed to travel by standing. The entrance and the exit provided

in a bus are only for the purpose of securing ingress and egress and they are not meant for travel Therefore, any person found on the footboard at

the time of the accident cannot normally be regarded as a passenger travelling by the vehicle concerned. The attempted entry into the bus through

the exit from the footboard could at best be regarded as having been done with a view to begin or commence travel by the bus. A person in the

position of the first respondent making an attempt to get into the bus and failing in it cannot be regarded as travelling by the bus as a passenger. In

Damodaran v. Santhanam, A.A.O. No. 558 of 1979; decided on 28.7.1981, a Division Bench of this Court had occasion to consider whether a

person attempting to get into a moving bus would be a passenger. The Division Bench held that a person attempting to enter a bus but falling down

as a result of the bus being suddenly started before he could enter the bus, cannot be said to be a passenger. To similar effect is the decision in

Uvaraja v. Parvathi Ammal 1986 ACJ 506 (Madras), wherein it has been laid down that when a person attempts to get into a moving bus, but

before getting into the bus slips down and meets with a fatal accident, the deceased could not be regarded as a passenger in the bus and the

insurance company cannot call to its aid Section 95(2)(b)(ii)(4) of the Motor Vehicles Act.

16. The cases above cited, however, are cases of persons, who were yet to enter the bus and thus found not travelling in the bus.

17. In National Insurance Co. Ltd. Vs. V.K. Sundaravali and Others, a learned single Judge of this Court, however, dealt with a case of a person

who met with an accident while getting down from a bus at the bus stop. That was a case in which before the victim could rest, his foot on the

ground, the driver of the bus moved the vehicle in a rash and negligent manner as a result of which he was thrown out and sustained serious injuries

to which he succumbed later in the hospital. After referring to the various authorities in cases of accidents taking place causing injuries to persons,

who were yet to enter into the bus, the learned Judge has taken notice of two judgments, one in United India Insurance Co. Ltd. v. A.R. Sundari,

C.M.A. No. 55 of 1981; decided on 24.12.1986 and another in Venkataswami Motor Service v. C.K. Chinnaswamy 1989 ACJ 371 (Madras),

the former being a judgment in which a learned single Judge of this Court held that the person who was alighting from the bus and had set one foot

on the ground when the bus was moved was not a passenger at the time of the accident and the latter in which on similar facts, a learned single

Judge held that the deceased, who was getting down from the bus and was killed since the driver moved the vehicle before he could safely get

down was to be treated as a passenger and thereafter said:

Though some of the decisions of this Court and some decisions of other courts holding a person getting inside a vehicle as a third party, had been

placed before the learned Judge the decision referred to by me in the preceding para, rendered by S.A. Kader, J., in United India Insurance Co.

Ltd. v. A.R. Sundari, C.M.A. No. 55 of 1981; decided on 24.12.1986, had not been placed before the learned single Judge. Learned Judge,

therefore, without any further discussion observed that the facts and circumstances of the case before him were different from the facts and circumstances of the cases cited before him.

and added,

he Shorter Oxford English Dictionary, 3rd Edition, gives the meaning of the word "passenger" as hereunder:

Passenger One who travels in some vessel or vehicle, especially on board ship or in a ferry or passage-boat; later applied also to travellers by any public conveyance entered by fare or contract."

The paramount idea conveyed by the term "passenger" is that a passenger travels. A passenger, therefore, is one who travels.

The Act as well as the Rules framed by the State Government thereunder give an indication regarding the mode by which one would travel in

vehicles. Suffice it to refer to the relevant provisions dealing with the mode of travel in public conveyance carrying travel passes and travelling in the

seating accommodation provided in the vehicle. Section 70(2)(b) of the Act enables the State Government to make Rules relating to the seating

arrangement in public service vehicles and protection of passengers against the weather. Rule 360 of the Tamil Nadu Motor Vehicles Rules, 1940

and the subsequent rules prescribe the manner in which seating accommodation is to be provided for the passengers who travel in the vehicle. For

each passenger a reasonably comfortable seating space of not less than thirty-eight centimetres square measured on straight lines along and at right

angles to the front of each seat with a distance of 135 cm. from the backs of the seats on the other side is to be provided. Detailed rules have been

framed regarding alignment of seats in different types of stage carriages, body-built of stage carriages and other matters. Travel, therefore, is only

by remaining seated in the accommodation provided. Rule 363(2) provides an exception to this mode of travel, wherein the Transport Authority

could permit travel by standing, except when the stage carriage is running as express service or running on that road. Total passenger-capacity of

each vehicle is fixed with reference to the seating accommodation available within the body of the bus. Similarly, the number of passengers who

could be permitted to travel by standing is also fixed with reference to the space available in the bus. For passengers who are permitted to travel

by standing grab-rails are being provided to ensure safe travel.

Rule 368 provides that in every public service vehicle, other than a motor car, there shall be on the left side of the vehicle an entrance in the rear or

rear overhang and an exit in the front, each having a width of not less than 53 cm. and of sufficient height. Rule 370 regulates the measurement of

entrance or exit passage in the bus. The top of the tread of the lowest step shall not be more than 45 cm. or less than 25 cm. above the ground and

the steps shall not be less than 23 cm. wide and should be with non-slip treads.

A combined reading of these provisions clearly shows that one could travel in a passenger vehicle only in two ways, viz., either by remaining seated

in the seating accommodation provided or by standing in vehicles where travel by standing is specially permitted. The steps that are provided in the

vehicle for the purpose of entry or exit are for entry and exit. They are not meant for travel. When, therefore, one is actually using the exit or entry

passage, at that point of time, one cannot be said to be travelling. Such a person, therefore, cannot be considered a passenger. He is using that

entry passage for the purpose of commencing or continuing his travel and he is using the exit passage for the purpose of getting down from the

vehicle, either after completing the travel or for any other reason. It, therefore, follows that one who is either getting into the vehicle or is getting

down from the vehicle cannot be said to travel at that point of time. Such a person is not a passenger. The Act, as well as the Rules, do not permit

of any other interpretation.

18. A learned single Judge of the Delhi High Court dealt with a case in *Ram Saroop v. Balbir Singh* 1988 ACJ 500 (Delhi), in which a person

suffered an accident while getting down from the bus and said:

For complying with the provisions of Section 95(2)(b)(ii)(4), it must be shown that the deceased was a passenger at the time when the accident

took place. A person is called a passenger when he buys a ticket for the bus from the boarding point to the point of destination and actually travels

in the bus. He is a passenger by virtue of a contract between him and the owner of the bus, the consideration being payment of the bus fare and

obligation on the part of the owner of the bus being to carry the person from the

boarding point to the point of destination. In the present case, the deceased boarded the bus at the General Stores bus stop and his destination point was the bus stop at the Ordnance Depot, Shakurbasti. He had purchased the ticket for the said journey. If the bus had stopped at the Ordnance Depot bus stop, the deceased would have got down and the contract would have come to an end. As soon as he had alighted from the bus and touched the ground, he would not have remained a "passenger". What has happened in the present case is that bus No. DLP 6059 did not stop at the Ordnance Depot bus stop and thus prevented the deceased from getting down at the point of destination. The bus went much ahead and when the deceased was trying to get down, the bus started and its rear wheel ran over the deceased and killed him. In these circumstances, I am of the opinion that at the bus stop at the Ordnance Depot, the status of the deceased as a "passenger" came to an end. Theory of the respondents that the deceased jumped out of the bus and suffered injury because of the fall has been rejected by the Tribunal, as no evidence was furnished by the respondents. I, therefore, hold that when the accident was caused and the deceased was run over by the bus, he was not a "passenger" of the bus and, therefore, the insurance company cannot claim limited liability u/s 95(2)(b)(ii)(4). I have no hesitation in holding that the insurance company is liable on the principle of third party liability and hence its liability is unlimited in the present case.

19. The consensus of judicial opinion thus is in favour of a person being treated as a passenger when he actually entered into the bus and not when he was attempting to get into the bus but not succeeded in getting into the bus. Two Judges of this Court, one in the impugned judgment and another in the case reported in Venkataswami Motor Service v. C.K. Chinnaswamy 1989 ACJ 371 (Madras), have taken the view that the victim, who was getting down from the bus and met with the accident before he could safely get down, was to be treated as a passenger and one in United India Insurance Co. Ltd. v. A.R. Sundari, C.M.A. No. 55 of 1981 and another in National Insurance Co. Ltd. Vs. V.K. Sundaravali and Others, , have taken the view that a person who was alighting from the bus and had set one foot on the ground when the bus moved was not a passenger at the time of the accident. They are in the company of a learned

single Judge of this Court in the case reported in *Ram Saroop v. Balbir Singh* 1988 ACJ 500 (Delhi).

20. Words and Phrases (Permanent Edition) 31A has many cases to refer wherein it is said that a pedestrian crossing a street to board a waiting

street car with open gates is a passenger; person in the act of getting upon a street car is a passenger; one becomes "passenger" of street car when

setting foot on step after car stopped with intention of becoming passenger and one who attempts to board a rapidly moving train does not become

a passenger, though he may have a ticket for it. Some of the citations in the book are:

Pedestrian crossing a street to board a waiting street car with open gates is a passenger. *Zimmermann v. Mednikoff*, 162 NW 349, 350, 165 Wis

333.

One who attempts to board a rapidly moving train does not become a passenger, though he may have a ticket for it. *Illinois Cent R. Co. v. Cotter*,

103 SW 279, 280, 31 Ky Law Rep 679.

A person in the act of getting upon a street car is a "passenger". *Benjamin v. Metropolitan St. Ry. Co.* 151 SW 91, 94, 245 Mo 598.

One becomes "passenger" of street car when setting foot on step after car stopped, with intention of becoming passenger. *Dahline v. City of*

Seattle, 5 P(2d) 1010, 1012, 165 Wash 683.

A person boarding a car for the purpose of meeting a friend intending to become a passenger if the friend was on the car, otherwise not, is not a

"passenger". *Hatcher v. Quincy Horse Railway & Carrying Co.* 181 III App 30.

Person becomes a "passenger" of street car as soon as he sets his foot on step or running board in the act of getting into the car after it has

stopped, with the intention of becoming a passenger. *Heva v. City of Seattle*, 272 P 41,43,150 Wash 61.

One who attempts to board a moving train is not a "passenger", though he may have purchased a ticket entitling him to passage thereon. *Kentucky*

Highlands R. Co. v. Creed, 179 SW 417, 418, 166 Ky 469, LRA 1916B 830 Ann Cas 1917C 1205.

Where street car stops at usual place of receiving passengers and opens door, persons proceeding to board car are "passengers" within law fixing

status of parties. *Bradley v. Williams*, 101 So 808, 809, 20 Ala App 308.

Person does not become "passenger" on train by getting on moving train until he actually reaches place of safety inside car. *United States Fidelity*

& Guaranty Co. v. *Aschenbrenner*, CCA Cal 65 F 2d 976, 980.

One injured while boarding elevated railway train when door thereof was suddenly closed on his foot and train started was a "passenger" at time of

accident, though train conductor rang bell for motorman to proceed. *Weaver v. Sprague*, 71 NE 2d 106, 330 III App 331.

The relation of carrier and passenger may be implied from an attempt to enter in a proper manner a street car as a passenger, with the intention of

being transported therein. *North Chicago St. Ry. Co. v. Williams*, 29 NE 672, 675, 140 III 275.

The book also contains citations of cases in which a person stepping out of the car was either held to be a passenger or not a passenger. Such

citations in the book are:

Persons leaving car or grounds: One who has alighted from street car and is in safety in highway is not "passenger", as regards care required by

carrier. *Lacks v. Wells*, 44 SW 2d 154, 156, 329 Mo 327.

Where a "passenger" has safely alighted from a car at his destination, he ceases to be a passenger. *Columbus R. Co. v. Asbell*, 66 SE 902, 903,

133 Ga 573.

A passenger alighting from a street car is still a "passenger" until he has had a reasonable opportunity to reach a place of safety. *Louieville Ry. Co.*

v. *Kennedy*, 172 SW 970, 971, 162 Ky 560 Ann Cas 1916E 996.

A passenger remains such until he has alighted from carrier's vehicle and while alighting carrier owes him duty of a very high degree of care.

Lackey v. Missouri & K.I. Ry. Co. 264 SW 807, 808, 305 No. 260.

After woman had alighted from street car and was standing on pavement near car, she was no longer "passenger" and company did not then owe

her duty of carrier to passenger. *El Pase Electric Co. v. Ludlow*, Tax 291 SW 619, 621.

The relation of passenger and carrier ceases at the end of the journey when the passenger has had a reasonable time and opportunity to leave the

premises of the carrier. *Illinois Cent R. Co. v. Mcmillion*, 129 111 App 27, 237.

Street car "passenger" ceased to be such as soon as she had safely stepped on to public street and had reasonable opportunity to step into place

of safety. *Zaiewaki v. Milwaukee Electric Railway & Light Co.* 263 NW 577, 219 Wis 541.

Child struck by a motor cycle after stepping from street car to street held not "passenger" at time of injury, as respects street car company's

liability as carrier for her injuries. *Wittkower v. Dallas Ry. & Terminal Co.*, Tax Civ App 73 SW 2d 867, 869.

Person leaving street car ceases to be "passenger" as soon as he steps from car into public street at regular alighting place and has had reasonable

opportunity to leave place at which he alights. *Wittkower v. Dallas Ry. & Terminal Co.*, Tax Civ App 73 SW 2d 867, 869.

One who had alighted from street car upon street in safety ceased to be a "passenger" and, as regards injuries sustained in tripping over object

dangling from rear of street car, had status of ordinary pedestrian. *Gallagher v. St. Louis Public Service Co.* 59 SW 2d 619, 332 Mo 944.

Generally, status of "passenger" continues until he has stepped safely from carrier conveyance and has had reasonable opportunity to leave the

place at which he alights and he may alight from the conveyance during journey without losing his status as passenger. *Whilte v. Allghany Cab Co.*

29 NYS 2d 272, 273.

A passenger who had alighted from street car and walked about 50 feet along the safety zone where she intended to transfer to another street car,

but was injured before doing so, was no longer a "passenger". *McAlpine v. Los Angeles Ry. Corpn.* 154 P 2d 911, 912, 67 Cal App 2d 486:

Where a woman who had been a "passenger" left the train and in passing through the depot fell over a cuspidor on the floor and was injured, she

had ceased to be a passenger and the burden was on her to show affirmatively negligence on the part of defendant. *Green v. Baltimore & O.R.*

Co. 63 A 603, 214 Pa 240.

A person injured while attempting to alight from a moving street car was a "passenger" thereon, within the meaning of an accident insurance policy

providing for the payment of double insurance if insured was injured while riding as a passenger in any passenger conveyance. *King v. Travellers'*

Ins. Co. 28 SE 661, 662, 101 Ca 64, 65 Am St Rep 288.

An adult passenger in possession of normal faculties, after alighting safely from street car where there is no traffic or anything else to interfere with

his movements, ceases to be a "passenger" and becomes a "pedestrian" and street car company owes him no duty greater than it owes to other

pedestrian. *Ferguson v. Kansas City Public Service Co.* 156 P 2d 869, 875, 159 Kan 520.

One who alights from street car upon street and is in safety from any contact or collision with street car ceases to be a "passenger" and as regards

injuries sustained in tripping over some object or being struck by another vehicle, has status of ordinary "pedestrian". *Wullbrandt v. City of Seattle*,

84 P 2d 123, 125, 196 Wash 645.

Where railroad provided work train to carry yard workmen to depot from the place of work, workman ceased to be a "passenger" when he

disembarked at depot, as regards degree of care railroad owed workman killed while riding on tender of engine to his home after he left depot.

Buckner v. Southern Ry. Co. 96 SW 2d 600 601, 20 Tenn App 212.

Generally, a person ceases to be a "passenger" as soon as he safely steps from the car into a public street and has had a reasonable opportunity to

leave the place at which he alights, provided he is set down at a place which is reasonably safe and proper for that purpose. *Will v. Milwaukee*

Electric Ry. & Light Co. 17 NW 658, 659, 169 Wis 38.

If the insured had safely alighted on the pavement from a street car when struck by taxicab, he was not a "passenger on a street car", within policy;

but if he was in the act of alighting, or had not safely alighted, from the car when struck, he was a "passenger", within the policy. *Quinn v. New*

York Life Ins. Co. 195 NW 427, 429, 234 Mich 641.

A passenger on alighting from a street car at the end of his journey loses his status as a passenger when he has stepped from the car to a place of

safety on the street, or on the highway, the question depending not on number of steps he has taken but on the circumstances and conditions under

which he alights. *Loggins v. Southern Public Utilities Co.* 106 SE 822, 823, 181 NC 221.

The relation of a street car passenger does not end when he leaves the car, but continues until he has reasonable opportunity to leave the carrier's

roadway, after the car reaches the place to which he is entitled to be carried.

Melton v. Birmingham Ry. Light & Power Co. 45 SE 151, 153, Ala 95, 16 LRA NS 467.

Where a person becomes a "passenger" he continues as one until he is safely deposited at his point of destination and until he has left or had reasonable time within which to leave the premises of the carrier, unless the relation of carrier and passenger be sooner terminated by the voluntary act of the passenger. Mc Bridge v. Georgia Ry. & Electric Co. 54 SE 674, 676, 125 Ga 515.

Where defendant's street car conductor committed an unprovoked assault on the plaintiff, an old man, as he was endeavouring to alight and pushed or threw him from the car, but plaintiff attempted to get his umbrella, which remained on the platform and the conductor kicked him, plaintiff had not entirely ceased to be a "passenger" at the time he was kicked and the company was liable therefor. Flynn v. St. Louis Transit Co. 87 SW 560, 562, 113 Mo App 185.

Where passenger had not left street car at time it was started forward but then had one foot on step of car and had hold of an iron attached to car with one hand for purpose of assisting her in alighting, she was still a "passenger". Keller v. Chicago Rys. Co. 183 111 App 399.

The law deems the relation of carrier and passenger to exist and treats one as a "passenger" who is properly on the steps leaving the car. Devoy v.

St. Louis Transit Co. 91 SW 140, 143, 192, Mo 197, citing Clerk Street Rye. (2d Ed) 3, Schepers v. Union Depot Ry. Co. 29 SW 712, 126

Mo 665, Barth v. Kansas City El. Ry. Co. 44 SE 778, 142 No. 535, Booth Street Ry. Law, 326.

A policy of accident insurance provided for double indemnity when the injury was sustained "while riding as a passenger on any railway passenger

car". It is held that the insured when on the platform of a car preparatory to getting off, in the way provided by the carrier, or in the act of doing so,

was within the meaning of the policy riding as a passenger on a railway passenger car. Gillis v. Duluth Casualty Ass'n, 158 NW 252, 253, 133

Minn 238. A passenger on a railroad train alighted in the night at the town where he resided. The station, the town and his home were all on the

west side of the track and the doors of the cars, which were vestibuled, were opened on that side. After his train had departed, he was killed by

another train on a track to the eastward. Held, that he had ceased to be a "passenger" prior to his death and the company at that time owed no duty to him as such. *Payne v. Illinois Cent R. Co.* 155 F 73, 76, 83 CCA 589.

Where a passenger after alighting from a train passed outside the station grounds and along a path on the railroad's right of way to a point 345 feet from the station, on her way home, where she lost her way in the darkness and fell into a turntable pit, she was not a "passenger" at the time; the duty that the railroad company owed her as a passenger having terminated when she left the depot grounds. *Louieville & N.R. Co. v. Hobhe*, 159 SW 682, 683, 155 Ky 130, 47 LRA NS 1149.

The rule is that the relation of passenger and carrier, when established, does not terminate until the passenger has reached his destination, alighted from the train and had a reasonable time in which to leave the place where passengers are discharged. A traveller on a railroad train ceases to be a "passenger" when, after alighting from his train upon the railroad platform, he has passed from that platform and off the railroad property to a public highway on which he intends to cross the tracks. *Garrett v. Atlantic City & S.R. Co.* 74 A 273, 274, 79 NJL 127.

When a person on a coach of a railway company pays his fare to a point of destination on its line, he becomes a passenger and remains such till the journey for which he has paid has ended and until a reasonable time, to be determined from all the attendant circumstances, within which he should have left the carrier's premises, has elapsed; and this is true without regard to the object of the passenger's journey or his reason for stopping at the station which is the end of the journey. *Houston & T.C.R. Co. v. Batchler*, 83 SL 902, 904, 37 Tax Civ App 116.

Where a carrier has made proper arrangements for the exit by passengers from its station grounds, a passenger must use the ways provided and where he knowingly fails to do so and without invitation makes his exit in some other way, he ceases to be a passenger and becomes at most a mere licensee; and it makes no difference that he goes where others, with the knowledge of the carrier, have gone before him, unless there is some invitation on the part of the carrier and knowledge of such use does not of itself amount to such invitation. *Legge v. New York N.H. & H.R. Co.* 83 NE 367, 368, 197 Mass 86, 23 LRA NS 633.

Whether a person who has alighted from a standing train at a station and who is crossing the railway tracks, by a planked way provided by the

company for that purpose, after the train from which he has alighted has moved out, is still a "passenger", entitled to so cross without looking or

listening is a question of fact for the jury, where under the proof, reasonable men may differ as to whether he was proceeding from the station

platform to a place of safety within a reasonable time after he had alighted from the train. The relation of "passenger" and carrier, when established,

does not terminate until the "passenger" has reached his destination, alighted from the train and has had reasonable time in which to leave the place

where "passengers" are discharged. *Atlantic City Ry. Co. v. Kiefer*, 66 A 930, 931, 932, 75 NJL 54.

While one is passing from one train to another as required by the conditions of his ticket, he remains a passenger and is entitled to all rights as such.

Baltimore & C.R. Co. v. State, 60 Md 449, 462.

A passenger on a street car, who steps from the car into a public street, ceases to be a passenger the moment he leaves the car. *Crammer v. West*

End St. Rly Co. 31 NE 391, 156 Hass 320, 16 LRA 490, 32 Am St Rep 456.

A person ceases to be a passenger when he has alighted from a train, gone on the sidewalk of the highway and thence started to cross the track,

on his way from the station. *Allerton v. Boston & M.R.R.* 15 NE 621, 623, 146 Mass 241.

That an aged and infirm passenger did not get off a railway coach with the other passengers, but waited five minutes for assistance before

attempting to alight alone, did not deprive him of his status as a passenger. *Turner v. Walash Ry. Co.*, Mo 211 SW 101, 103.

An approach to a railway depot on premises belonging to the company constitutes a part of such premises and the relation of carrier and

passenger continues until the passenger has passed beyond such approach. *Gulf C. & S.F. Ry. Co. v. Glank*, 30 SW 278, 279, 9 Tax Civ App

599.

Where a person had a ticket giving him a right to ride as a passenger and had no opportunity to surrender it or pay his fare, but left the train after it

had stopped at a station where passengers were accustomed and had a right to leave the train and was injured while so doing by a train on another

track, he still continues to be a passenger up to the time of the injury. *Mckimble v. Boston & M.R.R.* 2 NE 97, 98, 139 Mass 542.

Plaintiff, a married woman, while travelling alone with her baby, was transferred to a station of defendant's railway, over which she had a valid

ticket, purchased from a connecting line and which included her transfer from one road to the other. The station was kept open at all times, both

day and night, for the use of passenger; and plaintiff remained there to await her train, which would not arrive for 10 hours, with the assent of

defendant's agent. While alone in the waiting room at night, she was assaulted by defendant's night agent. Held, that she was a passenger and that

defendant was liable for act of its employee. *St. Louis S.W. Ry. Co. of Texas v. Griffith*, 35 SW 741, 743, 12 Tex Civ App 631.

Where a passenger places himself under the charge of the carrier as he begins his journey, he is a passenger being transported and is within the

protection of Section 3, Article 1, C. 72 Comp. St. 1911, until he is afforded an opportunity to leave the premises of the carrier at his destination;

but if it appears that the passenger, having reached the end of his journey, has departed from the car and has had a reasonable time and

opportunity to avoid injury from the operation of the train, or further necessity of relation of the servants of the carrier, he ceases to be a passenger

and thereafter is not within the protection afforded by the statute. *Painter v. Chicago, B.&Q. Ry. Co.* 140 NW 787, 789, 93 Neb 419.

While it is undoubtedly true that none who has bought a ticket or otherwise become entitled to transportation on a train of cars of a railroad

corporation, is ordinarily a passenger from the time when he reasonably and properly starts from the ticket office or waiting room of the station to

take his seat in the car of the train until he has reached the station to which he is entitled to be carried and has had an opportunity by safe and

convenient means to leave the train or roadway of the corporation at that station, he loses his character as a passenger by getting off the train at his

destination before the Main stops. *Commonwealth v. Boston & N.R.R.* 129 Mass 500, 501, 37 Am Rep 382.

21. What is striking, however, in all such situations is the fact that to establish that a certain person was a passenger, it should be seen, however,

how he acted and how those responsible to carry him as a passenger behaved. It is not in doubt and it cannot be doubted that a person becomes a

passenger by contract, express or implied. The expression "passenger" ultimately refers to one, who travels either in a bus or a vehicle or a ship or a train. This expression means one who travels and nothing else. When the relationship of a carrier and a passenger begins with reference to the vehicle concerned must be found varying from fact to fact and case to case. A person rushing to a vehicle and attempting to board when in fact it had started moving given in the circumstances of the case, we found, not to be a passenger. One who has not entered the vehicle is obviously not a passenger. One who has alighted from the vehicle is also not a passenger. But a passenger alighting from a vehicle may still be a passenger until he had reasonable opportunity to reach a place of safety, meaning thereby that he was away from the vehicle.

22. While we have no hesitation in holding that insurance of a motor vehicle against third party risks is a sort of indemnity to the insured, we cannot visualise that in the garb of enjoying such indemnity a negligent carrier can escape the liability of damages. How can he be allowed to say: "Look here, my vehicle is insured; therefore I can throw out a passenger and then say that since he was found on the street, he was not a passenger.

23. Learned counsel for the insurer expressed this concern and we share his anxiety for the simple reason that while it may appear beneficial to the claimants to hold that the insurer will have the liability not limited to Rs. 5,000/- or Rs. 10,000/-, as the case may be, it will indeed be a freedom to the owners, drivers and others to escape any consequences of their rash and negligent acts. It is with this concern, one has to understand the problems in each case and solve it in the light of the principles that would determine whether the victim was a passenger or not. A person who was yet to become a passenger in the sense that he had not been booked or that he wanted to enter forcibly into a vehicle, which was moving or was soon to move, may not be a passenger. Similarly, a person who was entering into the bus or any other vehicle, but was prevented by any rashness or negligence of the owner, driver, conductor or any other agent or servant of the owner may be taken to be a passenger. The same test may apply to a person leaving the car or vehicle. A passenger alighting from the vehicle may cease to be a passenger if he had left the vehicle for good. If he stepped out of the vehicle into the street, he was a pedestrian and not a passenger in the vehicle. However, this safety catch in a given

circumstance can be used as an incisive scissor and when and how the chord of relationship of the carrier and the passenger would be cut could

still depend not on speculation but on facts.

24. There has been another serious argument and we must take notice of that before we advert to the last contention that the learned Counsel for

the appellant has raised, viz., whether the insurer's liability will be under the new Act or will be under the repealed Act. This argument is based

upon Sub-section (2) of Section 96 of the 1939 Act, which reads as follows:

No sum shall be payable by an insurer under Sub-section (1) in respect of any judgment unless before or after the commencement of the

proceedings, in which the judgment is given, the insurer had notice through the court of the bringing of the proceedings, or in respect of any

judgment so long as execution is stayed thereon pending an appeal; and an insurer to whom notice of the bringing of any such proceeding is so

given shall be entitled to be made a party thereto and to defend the action on any of the following grounds, namely—½

25. Learned counsel for the appellant has placed reliance upon a judgment of the Supreme Court in *British India General Insurance Co. v. Capt.*

Itbar Singh, 1958-65 ACJ 1 (SC), in which it has been observed:

Now the language of Sub-section (2) seems to us to be perfectly plain and to admit of no doubt or confusion. It is that an insurer to whom the

requisite notice of the action has been given "shall be entitled to be made a party thereto and to defend the action on any of the following grounds,

namely", after which comes an enumeration of the grounds. It would follow that an insurer is entitled to defend on any of the grounds enumerated

and no others. If it were not so, then, of course, no grounds need have been enumerated. When the grounds of defence have been specified, they

cannot be added to. To do that would be adding words to the statute.

XXX XXX XXX

We, therefore, think that Sub-section (2) clearly provides that an insurer made a defendant to the action is not entitled to take any defence which is

not specified in it.

XXX XXX XXX

Sub-section (2) in fact deals with defences other than those based on the

conditions of a policy. Thus Clause (a) of that sub-section permits an insurer to defend an action on the ground that the policy has been duly cancelled provided the conditions set out in that clause have been satisfied.

Clause (c) gives him the right to defend the action on the ground that the policy is void as having been obtained by non-disclosure of a material fact

or a material false representation of fact. Therefore, it cannot be said that in enacting Sub-section (2) the legislature was contemplating only those

defences which were based on the conditions of the policy.

It also seems to us that even if Sub-section (2) and Sub-section (3) were confined only to defences based on the conditions of the policy that

would not have led to the conclusion that the legislature thought that other defences not based on such conditions would be open to an insurer. If

that was what the legislature intended, then there was nothing to prevent it from expressing its intention. What the legislature has done is to

enumerate in Sub-section (2) the defences available to an insurer and to provide by sub-section

(6) that he cannot avoid his liability excepting by means of such defences. In order that Sub-section (2) may be interpreted in the way the learned

Solicitor-General concedes this and says that the only word that has to be added is the word "also" after the word "grounds". But even this the

rules of interpretation do not permit us to do unless the section as it stands is meaningless or of doubtful meaning neither of which we think it is. The

addition suggested will, in our view, make the language used unhappy and further effect a complete change in the meaning of the words used in the

subsection.

26. Reliance has also been placed upon somewhat similar observations as in the above judgment of the Supreme Court by a learned single Judge

of the Andhra Pradesh High Court in *United India Fire and General Insurance Co. Ltd. v. Pogaku Parvathamma* 1982 ACJ (Supp) 293 (AP). In

that judgment it is observed:

It is only u/s 110-C of the Act that the insurer is permitted to raise all objections to the claim of the motor vehicle accident victim. But u/s 110-C of

the Act, the insurer cannot and would not become a contesting party to the claim normally. The insurer would become entitled to implead itself as a

party-respondent and oppose the claim only where the Accidents Claims Tribunal

was satisfied that there was collusion between the claimant and the person against whom the claim was made or the person against whom the claim had been made had failed to contest the claim. In the absence of collusion between the claimant and the insured or negligence or indifference on the part of the insured in contesting the claim, the insurer cannot implead itself as a party. It follows from the above that the claimant is under no obligation to make on his own the insurer a party-respondent to his claim and it is wholly for the insurer to implead itself as a party-respondent either u/s 110-C of the Act or u/s 96(2) of the Act. If the insurer impleads itself u/s 110-C of the Act, it would be open to the insurer to raise all objections to the granting of the claim which would have been raised by the insured. But, as in this case, as there was no finding by the Accidents Claims Tribunal that the insured was colluding with the claimant or that there was any negligence or indifference on the part of the insured and the insurer was impleaded from the commencement of the proceedings the insurance company cannot avail itself of the provisions of Section 110-C of the Act. The only other section of which it can take benefit is Section 96(2) of the Act. As we have already noted that u/s 96(2) of the Act, it is not open to the insurance company to oppose the claim on all and every ground, it can only raise such of those objections which are enumerated in Section 96(2)(a), (b) and (c) of the Act. The question then arises whether the present argument of the insurer falls u/s 96 of the Act. In this case, the argument of the insurance company is that the Accidents Claims Tribunal ought not to have saddled the insurance company with any liability exceeding Rs. 5,000/- fixed by Section 95(2)(b) (ii)(4) of the Act. But the question is whether this argument is open for the insurance company to be raised....

27. The observation in the judgment of the Supreme Court, which evidently is a statement of law, is binding on all concerned. The judgment of the Andhra Pradesh High Court also appears to be sound, salutary and convincing. However, they do not appear to cover the whole field, particularly the type of the case with which we are dealing. It is one thing to say as to what defence is available to the insurer and quite another as to whether any person including the owner of the vehicle can saddle the insurer with something beyond its liability. The statute has fixed a limit. The insurer is

obliged to act as provided thereunder. If something more than the law is said and done, the insurer can always say that anything beyond the law

shall not bind it. Here is a case in which the Tribunal has recognised the statutory limitation and fixed the liability of the insurer strictly in accordance

with law. The owner of the vehicle has appealed and suggested that it is not his but that of the insurer's liability because the victim was a third party

and not a passenger. How then the insurer cannot say that the victim was not a third party and that he was a passenger. It is a case quite

distinguishable on facts and in such cases, in our opinion, the argument that the insurer can raise no defence other than the defences made available

to it u/s 96(2) of the 1939 Act cannot be accepted.

28. The third and the last argument to which we have already made a reference is developed on the basis of a Division Bench judgment of the

Andhra Pradesh High Court in *T. Srinivasulu Reddy v. C. Govardhana Naidu* 1990 ACJ 66(AP) and a judgment of the Bombay High Court in

Oriental Fire and General Insurance Co. Ltd. v. Shantabai S. Dhume 1987 ACJ 198 (Bombay). In the latter case, a learned single Judge of the

Bombay High Court has taken the view that Section 92-A introduced in the Motor Vehicles Act by the Amending Act 47 of 1982 which came

into force with effect from 1.10.1982 was retrospective in operation. The same view has been expressed in the judgment of the former case by the

Andhra Pradesh High Court in these words:

Applying the ratio of the aforementioned Supreme Court case, we have no hesitation in coming to the conclusion that Section 92-A of the Motor

Vehicles Act applies even to pending proceedings. This provision is a social welfare legislation and dispenses with the proof of negligence on the

part of the owner or the driver of the vehicle and imposes a no fault liability. We accordingly hold that all actions for compensation pending on the

day when the provision came into force are governed by this provision irrespective of the fact whether the accident took place prior or subsequent

thereto. Since the law dispenses with the proof of negligence, it can be done in any pending proceeding irrespective of the date of accident. The

words "the owner of the vehicle shall, or, as the case may be, the owners of the vehicles shall, jointly and severally, be liable to pay compensation"

occurring in Section 92-A (1) and the words "claimants shall not be required to

plead and establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act, neglect or default of the owner" are prospective and shall apply to pending and future claims.

29. On the strength of these observations, it is suggested before us that the insurer's liability should be fixed in accordance with the provisions in

Chapters X and XI of the Motor Vehicles Act, 1988, which Act has repealed 1939 Act and has come into force during the pendency of the

appeal. Chapter X of 1988 Act deals with liability without fault in certain cases. It fixes the responsibility on the principle of no fault liability upon

the owner of the vehicle in the case of death (Section 140) and in the case of permanent disability (Sections 141 and 142). Chapter XI, however,

deals with the provisions similar to the provisions in Chapter VIII of the 1939 Act. Section 147 deals with the requirements of policies and limits of

liability and says in Section 147(1) as follows:

In order to comply with the requirements of this Chapter, a policy of insurance must be a policy which—¹/₂

(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).

(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:

Provided that a policy shall not be required—¹/₂

(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—¹/₂

(a) engaged in driving the vehicle, or

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

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

(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.

Sub-section (2) thereof, however, fixes the limit of the liability of the insurer in certain cases. Unlike, however, Section 95(2) of the 1939 Act

wherein there is mention of a limit as to insurer's liability for each individual passenger, etc., there is no provision in the new Act imposing any such

limitation. It, however, must be borne in mind that Sub-section (2) of Section 147 of the new Act is controlled by Sub-section (1) thereof. It will

be thus for the insured to see that there is a policy insuring against the death of or bodily injury to any passenger of a public service vehicle or

against any liability which may be incurred in other cases. A public service vehicle cannot be confused with any State owned operation. It has a

definite connotation under the Act and that can be gathered from the definition. Section 2(35) has defined "public service vehicle" to mean any

motor vehicle used or adapted to be used for the carriage of passengers for hire or reward and includes a maxi-cab, a motor cab, contract

carriage and stage carriage.

30. In view of the above, it is not possible to find any change introduced by the new law that would destroy what actually accrued as a right to the

claimants and/or the insurer or in the same view to find any such right accruing to the owner of the vehicle, which can enter into a claim arising

under 1939 Act.

31. This apart, the cases of claims arising under the Motor Vehicles Act, 1939 have to be viewed in the light of Section 217 of the 1988 Act,

which provides as follows:

Repeal and savings. (1) The Motor Vehicles Act, 1939 (4 of 1939) and any law corresponding to that Act in force in any State immediately

before the commencement of this Act in that State (hereafter in this section referred to as "the repealed enactments") are hereby repealed.

(2) Notwithstanding the repeal by Sub-section (1) of the repealed enactments

(a) any notification, rule, regulation, order or notice issued, or any appointment or declaration made or exemption granted, or any confiscation

made, or any penalty or fine imposed, any forfeiture, cancellation or any other thing done, or any other action taken under the repealed enactments

and in force immediately before such commencement shall, so far as it is not inconsistent with the provisions of this Act, be deemed to have been

issued, made, granted, done or taken under the corresponding provision of this Act;

(b) any certificate of fitness or registration or licence or permit issued or granted under the repealed enactments shall continue to have effect after

such commencement under the same conditions and for the same period as if this Act had not been passed;

(c) any document referring to any of the repealed enactments or the provisions thereof shall be construed as referring to this Act or to the

corresponding provision of this Act;

(d) the assignment of distinguishing marks by the registering authority and the manner of display on motor vehicles in accordance with the provision

of the repealed enactments shall, after the commencement of this Act, continue to remain in force until a notification under Sub-section (6) of

Section 41 of this Act is issued;

(e) any scheme made u/s 68-C of the Motor Vehicles Act, 1939 (4 of 1939), or under the corresponding law, if any, in force in any State and

pending immediately before the commencement of this Act shall be disposed of in accordance with the provisions of Section 100 of this Act;

(f) the permits issued under Sub-section (1-A) of Section 68-F of the Motor Vehicles Act, 1939 (4 of 1939), or under the corresponding

provisions, if any, in force in any State immediately before the commencement of this Act shall continue to remain in force until the approved

scheme under Chapter VI of this Act is published.

(3) Any penalty payable under any of the repealed enactments may be recovered

in the manner provided by or under this Act, but without

prejudice to any action already taken for the recovery of such penalty under the repealed enactments.

(4) The mention of particular matters in this section shall not be held to prejudice or affect the general application of Section 6 of the General

Clauses Act, 1897 (10 of 1897), with regard to the effect of repeals.

The mention in Sub-section (4) of Section 217 of Section 6 of the General Clauses Act, 1897 shall automatically make such claims subject to the

principles that are generally recognised under the said provision. Section 6 of the General Clauses Act reads as follows:

Effect of repeal. — When this Act or any Central Act or Regulation made after the commencement of this Act, repeals any enactment hitherto

made or hereafter to be made, then, unless a different intention appears, the repeal shall not —

(a) revive anything not in force or existing at the time at which the repeal takes effect; or

(b) affect the previous operation of any enactment so repealed or anything duly done or suffered under; or

(c) affect any right, privilege, obligation or liability required, accrued under any enactment so repealed; or

(d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment so repealed; or

(e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment

as aforesaid;

and any such investigation, legal proceeding or remedy be instituted, continued or enforced and any such penalty, forfeiture or punishment may be

imposed as if the repealing Act or regulation had not been passed.

32. A welfare or beneficial legislation, which will only introduce certain procedural provisions without affecting any right, privilege, obligation, or

liability, penalty, forfeiture or punishment as indicated in this provision undoubtedly will be welcome as applied in a pending proceeding not,

however, when a right, privilege, obligation or liability is likely to be altered.

33. For the reasons as above, we are of the opinion that the judgment of the learned single Judge does not suffer from any of the infirmities pointed

out by the learned Counsel for the appellant. We, however, clarify and emphasise that the rule as to whether a certain person is a passenger or not has to be carefully applied in every case.

34. It is represented on behalf of the learned Counsel for the appellant that a sum of Rs. 32,610/- has already been deposited towards compensation and the balance amount with interest alone remains to be payable to the claimants. After giving credit to the said sum, the claimants are entitled to recover the balance amount of compensation with interest as per the award of the Tribunal.

35. In the result, the appeal is dismissed. No costs.