(1985) 12 RAJ CK 0021

In the Rajasthan High Court

Case No : Civil Miscellaneous Appeal No. 64 of 1977

Vimla Srivastava APPELLANT

Vs

Smt. Rajni Devi Sharma and Others RESPONDENT

Date of Decision : 01-12-1985

Acts Referred:

Motor Vehicles Act, 1939 — Section 95(2)(b)(ii)(4)

Citation : (1986) 2 WLN 262

Hon'ble Judges : Narendra Mohan Kasliwal, J;Mahendra Bhushan Sharma, J;Farooq Hassan, J

Bench : Full Bench

Judgement

N.M. Kasliwal, J.—Learned Single Judge has referred the following question for decision by a larger banch :

Whether after the decision of the Supreme Court in Motor Owners Insurance Company Ltd. v. Jadavji Keshavji Modi 1983 ACJ 507 the liability of the insurance company for the purpose of Sub-clause (4) of Section 95(2)(b)(ii) of the Motor Vehicles Act, 1939, continues to be limited to the extent of Rs. 10,000/- in the cases of passenger travelling in cab and Rs. 5,000/- in the cases of passenger travelling in other vehicles or, Sub-clause (4) would give way to the above judgment and the liability would be governed by Sub-clauses (1), (2) and (3) depending upon the number of passengers For which the vehicle is registered ?

2. Brief facts of the case are that on May 27, 1971 Taxi No. RJT 226 was coming from Ajmer to Jaipur and Fiat Car No. RJR 131 was going in the opposite direction from Jaipur to Ajmer. When the Fiat car reached about Kms ahead of Dudu near Parsoli village, the Taxi and the Fiat car collided in the middle of the road. The accident took place because of the rash and negligent driving of both the aforesaid vehicles. Shri Surendra Sharma, who was in taxi died on the spot and one other person sitting in the taxi also died. Shri Balu Ram owner of the fiat car also died after 3-4 days due to the injuries received by him and one Ram Kishan also received some injuries.

3. Shri Ram Kishan injured and heirs of deceased Balu Ram filed separate claim petitions. The respondents. Nos. 1,2 and 3 being heirs of deceased Surendra Sharma filed a claim petition claiming Rs. 3,00,000/- by way of compensation. The Tribunal vide its award dated January 15,1977, awarded a sum of Rs. 2,11,200/- as compensation to the claimants and Rs. 500/- as costs. Out of the aforesaid amount, Rs. (0,000/- were required to be paid by respondent No. 5 M/ s New Insurance Company Ltd., M.I. Road, Jaipur and rest of the amount was required to be paid by the appellant. Learned Tribunal fixed the liability of the Insurance Company to the extent of Rs. 10,000/-only u/s 95(2)(b)(4) of the Motor Vehicles Act, 1939 (here in after referred to as ''the Act'')- The Supreme Court in Motor Owners'' Insurance Company Limited Vs. Jadavji Keshavji Modi and Others, had taken the view that the expression "any one accident" in Section 95(2) of the Act is susceptible of the equally reasonable meanings or interpretations. If a collision occurs between a car and truck resulting in injuries to 5 persons, it is as such plausible to say that 5 persons were injured in one accident as it is to say that each of the 5 persons met with an accident. A bye stander looking at the occurrence objectively will be right in saying that the truck and the car met with an accident or that they were concerned in one accident. On the other hand, a person looking at the occurrence subjectively like the one who is injured in the collision, will say that he met with an accident, and so will each of the 5 persons, who were injured. From their point of view which is relevant point of view, "any one accident" means "accident to anyone." It was further observed that if the matter is looked from an objective point of view the insurer''s liability will be limited to Rs. 20,000/- in respect of injuries caused to all the five persons considered enblock as a single entity since they were injured as a result of one single collision. On the other hand, if the matter is looked at subjectively as it ought to be the insurer''s liability will extend to a sum of Rs. 20,000/- in respect of the injuries suffered by each of the 5 persons since each met with an accident, though during the course of same transaction. It was thus held that if more than one person is injured during the course of same transaction, each one of the persons has met with an accident.

4. In view of the aforesaid decision given by their Lordships of the Supreme Court difficulty arose in interpreting the provisions of Sub-clause (4) of Clause (b) of Sub-section (2) of Section 95 of the Act. Different views were expressed by different High Courts and in these circumstances, the above question has been referred to a larger bench by the learned single Judge.

5. Prior to an amendment made by the Act 56 of 1969 which came into effect on March 2,1970, the provisions of Section 95, Sub-sections (1) and (2) read as under :

Section 95(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

(b) insures the person or classes of persons specified in the policy to the extent specified in Sub-section (2) against any liability which may be incurred by him or them in respect of the death of or bodily injury to any person caused by or arising out of the use of the vehicle in a public place ;

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-

(a) engaged in driving the vehicle; or

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

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

(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 injry to persons being carried in or upon or entering or amounting or a lighting from the vehicle at the time of the occurrence of the event out of which a claim arises; or

(iii) to cover any contractual liability.

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

(a) Where the vehicle is a goods vehicle, a limit of twenty thou- sand 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 a contract of employment in respect of persons other than passengers carried for hire or reward, a limit of twenty thousand rupees; and in respect of passengers a limit of twenty thousand rupees in all, and four thousand rupees in respect of an individual passenger, if the vehicle is registered to carry not more than six passengers excluding the driver or two thousand rupees in respect of an individual passenger, if the vehicle is registered to carry more than six passengers excluding the driver ;

(c) where the vehicle is vehicle of any other class the amount of the liability incurred.

After Act 56 of 1969 Sub-sections (1) and (2) of Section 95 read as under:

Section 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-

(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

(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-

(i) to cover liability in respect of the death, arising out of and in the course of his employment, of the employee or 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

(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

(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 boiily injury to persons being carried in or upon or entering or mounting or alighting from the vehicle at the time of the occurrence of the event out of which a claim arises, or

(iii) to cover any contractual liability.

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 not with standing 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 (1), a policy of insurance shall cover

any liability incurred in respect of any one 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;

(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,-

(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....

6. The Supreme Court in Sheikhupura Transport Co. Ltd. Vs. Northern India Transport Insurance Co., while considering the provisions of Sections 95(2)(b) prior to the amendment had held as under :

In the present case, we are dealing with a vehicle in which more than six passengers were allowed to be carried. Hence the maximum liability imposed u/s 95(2) on the insurer is Rs. 2000/- per passenger though the total liability may go upto Rs. 20,000/-. This is also the view taken by the High Court. The limit of insurer prescribed u/s 95(2)(b) of the Motor Vehicles Act can be enhanced by any contract to the contrary. Therefore we have to see whether the contract of insurance entered into between the appellant and the insurance company provided for the payment of enhanced amount in case the owner of the bus involved in an accident is required by the decree of a court to pay any higher amount as compensation. The insurance policy issued by the insurer is marked as Exh. RW 3/8 Clause (1) of that policy says:

Subject to the limit of liability the Company will idemnify the insured in the event of accident caused by or arising out of the use of the Motor Vehicle in a public place against all sums including claimants costs and expenses which the insured shall become legally liable to pay in respect of death of or bodily injury to any person.

The opening words of this clause "subject to the limit of liability the Company" evidently refer to the limit prescribed u/s 95(2,(b) of the Motor Vehicles Act. No clause in the insurance policy specifically providing for the payment of any amount higher than that fixed u/s 95(2)(b) was brought to our notice. The clause dealing with evidence of certain terms and the right of recovery reads:

Nothing in this policy or any endorsement there on shall affect the right of any person indemnified by this policy or any other person to recover an amount under or by virtue of the provisions of the Motor Vehicles Act, 1939, Section 96.

This clause makes it abundantly clear that the extent of the right of the person idemnified is as prescribed in Section 96 of the Motor Vehicles Act. Under that provision the amount to be recovered is that covered by Clause (b) of Sub-section (1) of Section 95. Clause (b) of Section 95(1) says:

In order to comply with the requirements of this Chapter, a policy of insurance must be a policy which-

(b) insures the person or classes of persons specified in the policy to the extent specified in Sub-section (2) against any liability which may be incurred by him or them in respect of the death of or bodily injury to any person caused by or arising out of the use of the vehicle in a public place....

Reading all these provisions together, it is clear that the statutory liability of the insurer to indemnify the insured is as prescribed in Section 95(2). Hence the High Court was right in its conclusion that the liability of the insurer in the present case only extends upto Rs. 2,000/- each, in the case of Bachan Singh and Narinder Nath.

7. In Kanan Bardoloi v. Balwanl Rai and Ors. 1984 ACJ 469, a Division Bench of the High Court at Gauhati held that the liability of the (sic) was to the extent of Rs. 50,000/- and no more. In the above case accident took place on September 23, 1971 in which one Khagendra Nath died in the accident. The claim was filed on behalf of the widow of Khagendra Nath and two minor children. The learned Motor Accidents Claims Tribunal had awarded a sum of Rs. 70,000/- as compensation and had made the insurer also liable for the entire amount. The learned Judge of the Gauhati High Court relied upon Sheikhpura Transport Company Ltd.''s case (supra) and found that the provisions contained in the policy (Ex. ''Gha'') did not limit the liability of the insurer to what has been fixed in the statute. In this view of the matter it was held that the learned Tribunal erred in law in making the insurer liable for the entire amount of Rs. 78,000/-. It was held by the learned Judges that as per the law and the terms of the policy,

the insurer could have been asked to pay a sum of Rs. 50,000/- and no more.

8. In State of Gujarat v. Dushyantbhai Nagjibhai Patel and Anr. 1984 ACJ 560. the question arose in the following circumstances before a Division Bench of the Gujarat High Court:

An accident in which two vehicles collided with each other took place at Gandhinagar on October 14, 1974, in which a young man lost his life and another sustained injuries. The vehicles involved were a truck trailer owned by the State of Gujarat and registered in the name of Executive Engineer, Capital Project Scheme and a scooter owned by one P.K. Upadhyaya. The scooter was being driven at the material time by one D.N. Patel and one Manohar Singh Kasri Singh was riding on the pillion seat. As a result of the accident D.N. Patel received intensive injuries whereas Manohar Singh died on the spot. The Tribunal awarded an amount of Rs. 13,000/- only being half the amount of damages assessed by it as compensation to the injured claimant. The Tribunal was of the view that the injured claimants were guilty of contributory negligence and that the degree of negligence on his part was 50%. In view of the said finding the tribunal had awarded Rs. 13,000/- only after assessing the damages @Rs. 26,000/-. The High Court on appeal assessed the amount of damages @Rs. 1,00,000/- and allowed the injured 50% of the said amount i.e. Rs. 50,000/- as 50% of the amount was reduced on account of the contributory negligence.

It was contended on behalf of the insurer that the insurer liability in respect of ''any one accident'' is limited under the policy to Rs. 50,000/-. It was also argued on behalf of the insurer that since the insurer had already paid an amount @Rs. 29,000/- to the widow of the deceased Manohar Singh and Rs. 13,000/- have been paid to the injured D.N. Patel, as such the liability of the insurer to satisfy the enhanced award be limited to Rs. 8000/- only. The above contention of the insurer was not accepted. Placing reliance on an earlier decision of a Division Bench of that Court a view was taken that in case of third party risk Section 95(2), in terms, provided that the policy shall cover any liability in respect of ''anyone'' accident and that on a true construction of the relevant words when there are several accidents, in case of every injured person there would be an accidental injury and that, therefore, in case of every such injured person, the insurer would be liable to satisfy the award.

9. In New India Assurance Co. Allahabad v. Mahmood Ahmed and others; AIR 1984 All 183, the controversy arose in the following circumstances:

In an accident between a bus and a truck Km. Saulat Nigar travelling in the bus died on 3-5-1974. A claim petition was filed which was allowed and a compensation of Rs. 15000/- was awarded against the Insurance Company. It was held that the language of Sub-clause (iv) is certainly ambiguous and within the minimum prescribed limit for the liability of an Insurance Company also prescribes a minimum liability of Rs. 5,000/- for each victim, it was further observed "thus, if in any accident 10 persons died or are injured insurance company will have to indemnify the owner of the vehicle upto a minimum of Rs. 5,000/- for each individual passenger. However, if the number of those killed or injured exceeds 10 even then the liability in respect of each passenger will not be less than Rs. 5000/- though its over-all liability may remain Rs. 50,000/-. If it were not so, the more heavy the pecuniary loss to the dependents lesser would be the extent of its coverage by the Insurance Company.

The whole provisions appear to be inequitable to those who stand in utmost need of the compensation money. As between those who are injured in any accident those who are awarded higher compensation will get more than those who are awarded lesser compensation because, due to lower income their dependency would also be lower. At the time of being indemnified by the Insurance Co. on the basis of pro ratio division of compensation the poor will be benefited to a much lesser extent than their more affluent co-passengers. This completely makes mockery of the true spirit behind the provision which was introduced mainly to ensure quick and prompt payment to the family of the victim which may need help in their moment of distress immediately. In actual practice, therefore, the benefit does not really go to those who are supposed to get it but someone else reaps its benefit. It is time that legislature should step in and make a suitable provision to ensure payment of whatever compensation that is awarded to any claimant and the same should be made fully indemnifiable by the insurer. There can be no moral or legal justification for making a distinction between passengers in car and those in any other kind of passenger or goods vehicle. The value of human life cannot depend upon the mode of travel employed by a person. Nor can it be allowed to depend upon the type of vehicle which terminates a human life in a road side accident more, if you are hit by a car and much less if one is unluckily hurt by another kind of vehicle. The various provisions contained in Sub-clause (a) and (b) though they may not discriminate^ have no valid basis for differentiation.

Thus, in the light of the above discussion it appears to me that subject to the limits specified under Sub-clause (1), (2) and (3) of Section 95(2)(b) of the Act the liability of the Insurance Co. to reimburse would at least be Rs. 5000/- for each individual. Although the minimum extent of liability of the Insurance Co. to indemnify the owner of the vehicle in respect of the compensation incurred by him due to loss of life or injury to each individual passenger in a motor accident would at least be Rupees 5000/- yet its total liability would be subject to the minimum limit prescribed. Any liability in excess thereof, if incurred by the owner, will have to be borne by the owner of the vehicle himself unless the terms of the contract of Insurance provide otherwise. In the present case a lone passenger had lost her life and, therefore, limit placed by Sub-clause (4) will not apply. Statutory liability of the Insurance Co. being upto the extent of atleast Rs. 50,000/-it would be liable for satisfying the entire judgment as the claims tribunal has only awarded Rs. 15000/- by way of compensation to the claimant.

10. In National Insurance Co. Ltd. Vs. Chhunnu Ram and Another, , in an

accident on June 7, 1974, one Chhunnu Ram while travelling in the bus sustained iujuries in his left hand and leg resulting in amputation of his legs. The Tribunal awarded an amount of Rs. 20,000/- against the Insurance Company with interest @ Rs. 6% per annum. M/s Sheikhupura Transport Company Ltd.''s case (supra) was distinguished and reliance was placed on Motor Owners'' Insurance Co. Ltd.''s case (supra) and the appeal filed by the National Insurance Co. was dismissed. It was observed as under :

Mr. Prasad, however, also referred to a single judge decision of this Court in the case of Ramkhelawan Mistry Vs. Rabindra Kumar Ghose and Another, . This decision is entirely on a different point where the arbitration clause provided for reference to three arbitrators in a partnership agreement : each partner having a right to appoint his own and appointment of arbitrators was made by two of them but the third refused. Thereupon the two partners applied to the court to appoint an arbitrator for third partner and when an application was made by the two partners, it was held that neither Section 8 nor Section 9 nor Section 10 was applicable to such cases and the remedy was under the ordinary law of instituting a suit and they could not get any relief under the arbitration clause.

It was next contended by Mr. Prasad that appointment of Shri D.N. Chatterjee as the sole arbitrator was made before the expiry of 15 clear days after the service of notice. No such plea was taken in the court below nor do I find any substance in the same as the provisions of Sub-section (2) referred to above no application in as much as 15 days would be referable to their first letter of January, 1975 and not to the letter by which the opposite party No. 1 nominated Mr. D.N. Chatterjee as his arbitrator.

11. In Kota Sand Company and Anr. v. Santosh Talwar and Ors. 1985 ACJ 98, P.K. Banerjee, C.J. of this court held that in view of the amendment in the Motor Vehicles Act the order of the Tribunal dated December 28, 1974, was modified to the extent that the insurance company would pay a sum of Rs. 50,000/- in each case in favour of the claimants; and the balance would be equally paid by M/s Kota Sand Company and the Rajasthan Government as they were joint tort feasers.

12. A contrary view to the above cases has been taken in the follow- ing cases :

13. In Prem Devi v. Harbhajan Singh and Ors. 1984 ACJ 707, learned Single Judge of Punjab & Haryana High Court held in the above case that insurer''s liability is limited to to 5,000/- only while that of the other respondents shall be joint and several and shall extend to the entire amount.

14. In Noor Mohammed and Anr. v. Phoola Rani and Ors. 1984 ACJ 518 a Division Bench of Allahabad High Court held that the maximum amount of liability of the insurance company would be Rs. 5,000/- only. In the above case it was argued on behalf of the Insurance Company that the liability of the Insurance Company was limited to the extent of Rs. 5,000/- for each individual passenger in view of the provisions of Section 95(2)(b)(ii)(4) of the Act. It was argued that the

liability of the Insurance Company was to the extent of Rs. 75,000/- where the vehicle is registered to carry more than 30 but not more than 60 passengers, but the liability for each individual passenger was limited to Rs. 5,000/-only. The court examined the duplicate copy of the original insurance cover and found that the vehicle had the seating capacity of 55 passengers and one driver and was insured for Rs. 65,000/-. This con- tract was entered into on May 24, 1961. The deed also showed that the insurance cover was subject to Clauses 10, 13, 16, 21, 23 and 26. Clause 13 indicated that the Company would indemnify the insurer against liability of law for compensation for death or bodily injury to any persons to the extent of Rs. 5,000/- in respect of one person and subject to the aforesaid limit in respect of any one person to Rs. 50,000/- in respect of any number of claimants arising out of one cause. The Court thus held that the Act as well as the contract made it clear that the upper limit of the liability of the insurance company in respect of any individual person, who is subject to accident and has either died or received bodily injury is Rs. 5,000/-.

15. In another case of the Allahabad High Court in Jyoti Prasad Dixit (deceased by L.Rs.) Vs. Smt. Bitan Devi and Others, a passenger had died in an accident in a bus The bus had the capacity of more than 30 and as such was compulsorily insurable for Rs. 75,000/- under the provisions of Section 95(2)(b) of the Act. It was argued that the insurance company should have been taxed with the entire liability and reliance was placed on Mahomood Ahmed''s (supra).

16. The above case was distinguished and it was observed that in the aforesaid case the direct authority of the Supreme Court reported in Sheikh- pura Transport Co. Ltd.''s case (supra) was not brought to the notice of his Lordship by the counsel for any parties. It was then held that in Sheikhpura Transport Co. Ltd.''s case (supra) of the Supreme Court the point had directly arisen for consideration was regarding the limit of liability of insurance company u/s 95(2) of the Act. At that time the limit was Rs. 2000/- in respect of the individual passenger carried in vehicle other than carried in a motor cab. That limit had been raised to Rs. 5.000/- but there was no other change in the rest of that provision. It was further held that in fact in Sheikhpura Transport Co. Ltd.''s case (supra) also the total liability of the insurance company was Rs. 20,000/- with a rider concerning individual passenger carried in the vehicle limiting the liability and it was held that actually that rider which limits the liability to certain amount will govern the case irrespective of total liability of insurance amount. It was then observed as under:

In fact Section 95(2)(b)(ii)(4) of the Motor Vehicles Act is express on the point. Sub-section (2) lays down that the Insurance covers liability upto the limits laid down below and then Clause (4) of Sub-section (2)(b) lays down the limit of liability for each individual passenger to Rs. 5000/- only, this would be the maximum limit irrespective of the total amount for which vehicle is insured or required to be incurred. The statutory liability is only to the extent. Any further liability can be taken by Insurance Company only in pursuance of any further contract or stipulation which is not the case. Similar view was taken in the case of Madras Motor and General Insurance Co. Ltd. v. V.P. Balkrishna also 1982 A CJ 450 (Ker), I am bound by the authority of the Supreme Court which I must follow with greatest respect.

17. In K.R. Sivagami, Proprietor, Rajendran Tourist v. Mahaboob Nisa Bi and Ors. 1981 ACJ 399, a division Bench of the Madras High Court considered the question. It was held as under :

Coming to the stand taken by the insurance company in CM.A. No. 367 of 1977, it is seen that Section 95(2)(b)(ii)(4) of the Motor Vehicles Act, specifically provides two limitations in relation to the liability of the insurer in respect of an accident in which a vehicle carrying passengers is involved. Section 95(2) says, a policy of insurance shall cover any liability incurred in respect of any one accident upto certain limits. One limitation is contained in Clause (b)(ii)(4) which says that the insurer is liable to pay Rs. 50,000/-, in all where the vehicle is registered to carry not more 30 passengers. The second limitation is contained in Clause (b)(ii)(4) and that limitation is that subject to the limit of Rs. 50,000/- for one accident compensation cannot exceed Rs. 10,000/- per passenger if the vehicle is a motor cab and Rs. 5,000/- in respect of any other vehicle. In this case, the vehicle involved in the accident is a motor cab which is defined in Section 2(15) of the Motor Vehicles Act as any motor vehicle constructed, adopted or used to carry not more than six passengers excluding the driver for hire or re-ward. The tourst taxi which was involved in the accident in this case, will definitely come under the said definition of ''motor cab''. Therefore, in view of the specific provisions contained in Section 95(2) of the Motor Vehicles Act, the liability of the insurer can be limited only to Rs. 10,000/-for each individual passenger. In this case, the Tribunal has awarded a sum of Rs. 37,000/- as against the insurer. This is contrary to the specific provision contained in Section 95(2)(b)(ii)(4) of the Motor Vehicles Act. We have to therefore, set aside that portion of the award which directed the insurance company to pay a sum of Rs. 37,000/- to the claimants and instead direct the insurer to pay a sum of Rs. 10,000/- to the claimants in this case will be in accord with the statutory provisions in Section 95(2) of the Motor Vehicles Act.

18. In Madras Motor and General Insurance Co. Ltd. v. V.P. Bala Krishna and Ors. 1982 ACJ 460, a Division Bench of Kerala High Court after considering the observations made by the Supreme Court in Motor Owners Insurance Company Ltd.''s v. Jadavji Keshavji Modi and Ors. 1981 ACJ 507, held as under:

Reliance on the above passages may at the first flush appear to be sound. But it can be seen that the plaintiff cannot sustain the support that he seeks from the passages quoted above. It has to be noted that the Supreme Court in that case was concerned with Section 95(2)(a), as it existed on February 1, 1956, when the collision in that case took place. The Supreme Court referred to the changes that Section 95(2) under went from time to time and traced its history to appreciate the scope of the contention raised in that case. It was after considering the section as it stood after considering the section as it stood after amendment by the Motor Vehicles (Amendment) Act 100 of 1956, that it was held that the insurance company could be made liable for an amount in excess of the statutory limit of Rs. 20,000/- as it stood then, and then, and that on the basis that each injured was involved in a separate accident. The question that fell for consideration before the Supreme Court in that case was whether the award of damages of Rs. 29,125/- to the legal representatives of the driver who died in the accident and the passenger who travelled in the car was proper, in view of the limit of Rs. 20,000/- fixed by the section as it then stood. We do not think it necessary to consider the applicability of the ratio of that decision for the reason that we are in this case concerned with the section as it stands after the amendment brought to by the Motor Vehicles (Amendment) Act 56 of 1969, which came into force on 2nd March, 1970. By the said amendment, Section 95(2)(b)(ii)(4) has been introduced which reads as under:

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

(This clause has not been correctly quoted in the report appearing in the decision). The plaintiff''s counsel found it extremely difficult to reconcile his submission with this sub-clause. He could not pursue his submissions based on the ratio of the decision under reference when confronted with this sub-clause. We have given cur anxious consideration to this aspect of the case in view of the principle settled by the Supreme Court in the above decision. We hold that the decision could be distinguished on its facts. The section applicable in the present case is the amended Section 95(2) as it now stands with effect from 2nd March, 1970. Clause (4) limits the claim of each individual passenger in a case like this to Rs. 5,000/-. Therefore, we hold that the appellant in A.S. No. 36 of 1977 could be made liable only for an amount of Rs. 5,000/- in respect of each injured individual passenger and that the decree against the 3rd defendant has to be modified accordingly restricing its liability to Rs. 5,000/- instead of Rs. 20,000/- decreed by the Court below.

19. We have given our thoughtful consideration to the entire controversy raised in the case. In Sheikhpura Transport Company Ltd.''s case (supra) decided by their Lordships of the Supreme Court it was held that the liability of the insurer only extended upto Rs. 2,000/-each, in the case of Bachan Singh and Narinder Nath. The facts in the above case were that a passenger bus belonging to the appellant while travelling from Ludhiyana to Rajkot met with an accident on February II, 1959. Asa result of this respondent two persons namely Bachan Singh and Narinder Nath died on the spot and some others received minor injuries. The Tribunal computed the compensation due to the legal representatives of Bachan Singh at Rs. 18,000/-. In the case of Narinder Nath also it computed the total compensation payable at Rs. 18,000/-. It directed that the entire sum pay- able by the appellant should be paid by the Insurance

Company. On appeal the High Court enhanced the compensation payable to the legal representatives of both Bachan Singh and Narinder Nath from Rs. 18,000/- to Rs. 36,000/-. The High Court, however, allowed the appeal of the Insurance Company and limited the amount payable by the Insurance Company to Rs. 2,000/- in the case of each one of the deceased persons. Their Lordships of the Supreme Court on appeal considered the question as to the extent of the liability of the Insurance Company, and the limit to the extent of Rs. 2,000/- only for each individual, in Sheikhpura Transport Company Ltd.''s case (supra) as already extracted above.

20. Then there is the case of the Supreme Court in Motor Owners Insurance Co. (supra) where the expression "any one accident" as contained in Section 95(2)(a) (before amendment by Act of 1969) came up for conside- ration. The earlier case of Supreme Court in Sheikhpura Transport Co. Ltd. (supra) was distinguished by making the following observations :

The judgment of the Punjab High Court was brought in appeal to this court in Sheikhupura Transport Co. Ltd. Vs. Northern India Transport Insurance Co., . For reasons aforesaid, the judgment in that case is not an authority of the interpretation of Clause (a) of Section 92(2). After setting out the Rs. 10,000/- for each individual passenger where vehicle is a motor cab and Rs. 5,000/- for each individual passenger in any other case shall also be meaningless. In view of the above express language used by the Legislature, in our view, the liability of the insurer continues to be limited to the extent of Rs. 10,000/- in the case of individual passengers in a motor cab and Rs. 5,000/- in any other case. Sub-clause (4) of Section 95(2)(b)(ii) has to be given its meaning as expressed in clear language by the Legislature and cannot be interpreted according to the decision given in Motor Owner''s Insurance Co.''s case (supra).

22. In our view, the reasons given in Jyoti Prasad Dixit''s case (supra) Madras Motor and General Insurance Co. Ltd.''s case (supra) and K.R. Shivagami''s case (supra) appear to be more sound and based on correct interpretation of Section 95(2)(b)(ii)(4) of the Act. The Supreme Court case Sheikhpura Transport Co. Ltd.''s case (supra) which is directly applicable to the facts of the present case still holds good and applies on all fours to the question referred.

23. The question referred to us is thus answered in the manner indicated above. The case may now be sent back to the learned Single Judge for deciding the appeal on merits.

