

(1986) 01 RAJ CK 0048

In the Rajasthan High Court

Case No : Civil Miscellaneous Appeal No. 64 of 1977

Vimla Srivastava

APPELLANT

Vs

Smt. Rajnidevi Sharma and Others

RESPONDENT

Date of Decision : 02-01-1986

Acts Referred:

Motor Vehicles Act, 1939 — Section 95(2)

Citation : (1988) 64 CompCas 613

Hon'ble Judges : N.M. Kasliwal, J;M.B. Sharma, J;Farooq Hasan, J

Bench : Full Bench

Advocate : S.M. Mehta, G.S. Bajna and R.S. Mehta, for the Appellant; H.M. Bhargava, S.C. Srivastava and A.K. Bhandari, for the Respondent

Judgement

Kasliwal, J.—The learned Single judge has referred the following question for decision by a larger Bench :

" Whether, after the decision of the Supreme Court in Motor Owners" Insurance Co. Ltd. v. Jadavji Keshavji Modi [1982] 52 Comp Cas 454 ; [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 case of passengers travelling in cab and Rs. 5,000 in the case 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 Ajmeer to Jaipur and Fiat car No. RJR 138 was going in the opposite direction from Jaipur to Ajmeer. When the Fiat car reached about 9 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 travelling in the 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 the deceased, Balu Ram, filed separate claim petitions. Respondents Nos. 1, 2 and 3, being heirs of the deceased, Surendra Sharma, filed a claim petition claiming of 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. 10,000 were required to be paid by respondent No. 5, M/s. New India Insurance Co. Ltd., M.I. Road, Jaipur, and rest of the amount was required to be paid by the appellant. The learned Tribunal fixed the liability of the insurance company to the extent of Rs. 10,000 only u/s 95(2)(b)(ii)(4) of the Motor Vehicles Act, 1939 (hereinafter 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 two equally reasonable meanings or interpretations. If a collision occurs between a car and truck resulting in injuries to five persons, it is as such plausible to say that five persons were injured in one accident as it is to say that each of the five persons met with an accident.

4. A by-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 five persons, who were injured. From their point of view, which is a relevant point of view, "any one accident " means " accident to anyone". It was further observed that if the matter is looked at 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 en bloc 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 five persons since each met with an accident, though during the course of the same transaction. It was thus held that if more than one person is injured during the course of the same transaction, each one of the persons has met with an accident.

5. 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.

6. 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 :

" 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 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.

(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 twenty 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, 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 a vehicle of any other class, the amount of the liability incurred."

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

"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 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 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 notwithstanding that the person who is dead or injured or the property which is damaged was not in a public place at the time of the accident,

if the act or omission which led to the accident occurred in a public place.

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

8. The Supreme Court in Sheikhpura Transport Co. Ltd. Vs. Northern India Transport Insurance Co., while considering the provisions of Section 95(2)(b), prior to the amendment, had held as under (at page 1627):

" 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. 2,000 per passenger though the total liability may go up to 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 exhibit R.W. 3/B. Clause (1) of that policy says:

"Subject to the limit of liability the company will indemnify 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 avoidance of certain terms and the right of recovery reads :

" Nothing in this policy or any endorsement thereon 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 indemnified 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 up to Rs. 2,000 each, in the case of Bachan Singh and Narinder Nath."

9. In *Kanan Bordoloi v. Balwant Rai Mukkar* [1984] ACJ 469, a Division Bench of the High Court at Gauhati held that the liability of the insurer was to the extent of Rs. 50,000 and no more. In the above case, the accident took place on September 23, 1971, in which one Khagendra Nath died. 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. 78,000 as compensation and had made the insurer also liable for the entire amount. The learned judges of the Gauhati High Court relied upon *Sheikhupura Transport Co. Ltd. Vs. Northern India Transport Insurance Co.*, and found that the provisions contained in the policy (exhibit " 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.

10. In *State of Gujarat v. Dushyantbhai Nagjibhai Patel* [1984] ACJ 560, the question arose in the following circumstances before a Division Bench of the Gujarat High Court (at p. 562):

" 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 the Executive Engineer, Capital Project Scheme, and a scooterowned by one P. K. Upadhyaya. The scooter was being driven at the material time by one D. N. Patel and one Manoharsing Keshrising was riding on the pillion.....as a result of the collision, D. N. Patel received extensive injuries whereas Manoharsing died on the spot....The Tribunal awarded an amount of Rs. 13,000 only being one half of the amount of damages assessed by it as compensation to the injured claimant.....The Tribunal was of the view, however, that the injured claimant was guilty of contributory negligence and that the degree of negligence on his part was 50 per cent. In view of the said finding, the Tribunal had awarded Rs. 13,000 only after assessing the damages at Rs. 26,000. The High Court, on appeal, assessed the amount of damages at Rs. 1,00,000 and allowed the injured 50 per cent, of the said amount, i.e., Rs. 50,000 as 50 per cent, of the amount was reduced on account of the contributory negligence."

11. It was contended on behalf of the insurer that the insurer's 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 of 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. 8,000 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 " any one " accident and that on a true construction of the relevant words, when there are several accidents, in the 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.

12. In *New India Assurance Co. Ltd. v. Mahmood Ahmed* AIR 1984 All 183 ; [1986] 59 Comp Cas 291 the controversy arose in the following circumstances.

13. In an accident between a bus and a truck Km. Saulat Nigar travelling in the bus died on May 3, 1974. A claim petition was filed which was allowed and compensation of Rs. 15,000 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, it 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, the insurance company will have to indemnify the owner of the vehicle up to 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. 5,000 though its overall liability may remain at Rs. 50,000. . If it were not so, the more heavier the pecuniary loss to the dependents, the lesser would be the extent of its coverage by the insurance company.

14. The entire provisions appear to be inequitable to those who stand in the 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 company on the basis of pro rata 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 the benefit. It is time that the Legislature stepped in and made suitable provision to ensure payment of whatever compensation 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 a 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 roadside 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-clauses (a) and (b), though they may not be discriminatory, have no valid basis for differentiation.

15. Thus, in the light of the above discussion, it appears to me that subject to the limits specified under Sub-clauses (1), (2) and (3) of Section 95(2)(b) of the Act, the liability of the insurance company to reimburse would at least be Rs. 5,000 for each individual. Although the minimum extent of liability of the insurance company 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 Rs. 5,000, 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, the limit placed by Sub-clause (4) will not apply. Statutory liability of the insurance company

being up to the extent of at least Rs. 50,000 it would be liable for satisfying the entire provisions as the Claims Tribunal has only awarded Rs. 15,000 by way of compensation to the claimant.

16. 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 injuries in his left hand and leg resulting in amputation of his leg. The Tribunal awarded an amount of Rs. 20,000 against the insurance company with interest at 6% per annum. Sheikhpura Transport Co. Ltd. Vs. Northern India Transport Insurance Co., was distinguished and reliance was placed on Motor Owners' Insurance Co. Ltd.'s case [1982] 52 Comp Cas 454 (SC) and the appeal filed by the National Insurance Co. was dismissed. It was observed as under (at pages 318 and 319):

"It was vehemently contended by the learned counsel appearing on behalf of the appellant that if the meaning of the expression in respect of " any one accident " as given by the Supreme Court in the 1981 case is to be accepted even in relation to claims relating to passenger buses, then, it would do violence to the express intention of the Legislature in Sub- Clause (4) and make the 1969 amendment meaningless as then there did not appear to be any sense for the Legislature to prescribe different limitations for the different capacities of passenger buses inasmuch as the outer limits of Rs. 50,000, Rs. 75,000 and Rs. 1,00,000 were made only keeping in view the possibility of the larger number of passengers being involved in accidents to bigger buses so that the limit of admissible claim fixed for each individual passenger in such cases may not prove too small and inadequate on account of apportionment in view of the outer limits of the liability fixed for the insurer and the number of passengers being carried in any such vehicle. In view of the decision of the Supreme Court, the court may perhaps, in a given case, award the maximum compensation even to only one passenger who might be victim of the accident in the type of the bus he was travelling as against the insurance company.

The contention of learned counsel for the appellant is attractive and finds support from all the decided cases of the various High Courts, some of which have been noticed by the Supreme Court and overruled in its 1981 decision referred to above as well as by the decision of the Supreme Court itself in Sheikhpura Transport Co. Ltd. Vs. Northern India Transport Insurance Co., but in view of the binding effect of this authority which has noticed and distinguished the earlier case, the argument of learned counsel for the appellant cannot be accepted and it must be held that the provisions contained in Sub-clause (4) of Clause (b) of Sub-section (2) of Section 95 must give way to the interpretation given by the Supreme Court in the above case. The award of Rs. 20,000 given by the learned Judicial Commissioner, therefore, being within the limit of the carrying capacity of the bus in question must be held to be proper and justified."

17. In Kota Sand Co. v. Santosh Talwar [1985] ACJ 98 (Raj) P. K. Banerji C.J. of this court held that in view of the amendment in the Motor Vehicles Act, the

order of the Tribunal dated October 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 tortfeasors.

18. A view contrary to the above cases has been taken in the following cases :

In *Prem Devi v. Harbhajan Singh* [1984] ACJ 707, a learned single judge of the Punjab and Haryana High Court held in the above case that the insurer's liability is limited to Rs. 5,000 only while that of the other respondents shall be joint and several and shall extend to the entire amount.

In *Noor Mohammad v. Phoola Rani* [1984] ACJ 518; [1986] 59 Comp Cas 306 a Division Bench of the 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 a seating capacity of 55 passengers and one driver and was insured for Rs. 65,000. This contract 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 person 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 the accident and has either died -or received bodily injury is Rs. 5,000.

19. 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 to a bus. The bus had a 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 in *Mahmood Ahmad's* case [1986] 59 Comp Cas 291 (All).

20. The above case was distinguished and it was observed that in the aforesaid case, the direct authority of the Supreme Court in *Sheikhupura Transport Co. Ltd. Vs. Northern India Transport Insurance Co.*, was not brought to the notice of his Lordship by counsel for any of the parties. It was then held that in *Sheikhupura Transport Co. Ltd. Vs. Northern India Transport Insurance Co.*, of

the Supreme Court, the point directly arisen for consideration was regarding the limit of liability of an insurance company u/s 95(2) of the Act. At that time, the limit was Rs. 2,000 in respect of the individual passenger carried in vehicle other than 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. Vs. Northern India Transport Insurance Co., 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 the total liability of insurance amount. It was then observed as under (p. 350):

" In fact, Section 95(2)(b)(ii)(4) of the Motor Vehicles Act is express on that point. Section 95(2) lays down that a policy of 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. 5,000 only, this would be the maximum limit irrespective of the total amount for which the vehicle is insured or required to be insured. The statutory liability is only to that extent. Any further liability can be taken by the insurance company only in pursuance of any further contract or stipulation which is not the case here. Similar view was taken in the case of Madras Motor and General Insurance Co. Ltd. v. V. P. Balakrishna [1982] ACJ 460 (Ker), I am bound by the authority of the Supreme Court which I must follow with the greatest respect. "

21. In K. R. Sivagami, Proprietor, Rajendran Tourist v. Mahaboob Nisa Bi [1981] ACJ 399, a Division Bench of the Madras High Court considered the question. It was held as under (at page 404):

"Coming to the stand taken by the insurance company in C.M.A. No. 36.7 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 up to certain limits. One limitation is contained in Clause (b)(ii)(1) which says that the insurer is liable to pay Rs. 50,000 in all where the vehicle is registered to carry not more than 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, adapted or used to carry not more than six passengers excluding the driver for hire or reward. The tourist 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 which will be in accord with the statutory provisions in Section 95(2) of the Motor Vehicles Act. "

22. In *Madras Motor and General Insurance Co. Ltd. v. V. P. Balakrishnan* [1982] ACJ 460, a Division Bench of the Kerala High Court, after considering the observations made by the Supreme Court in *Motor Owners' Insurance Co. Ltd. v. Jadavji Keshavji Modi* [1982] 52 Comp Cas 454, held as under (at page 464 of [1982] ACJ):

" 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, 1966, when the collision in that case took place. The Supreme Court referred to the changes that Section 95(2) underwent 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 amendment by the Motor Vehicles (Amendment) Act No. 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 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 Section 95(2) of the Motor Vehicles Act, by the Motor Vehicles (Amendment) Act No. 56 of 1969, which came into force on March 2, 1970. By the said amendment, Section 95(2)(b)(ii)(4) has been introduced which reads as follows :

"(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."

(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 coil-fronted with this sub-clause. We have given our 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 March 2, 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 third defendant has to be modified accordingly restricting its liability to Rs. 5,000 instead of Rs. 20,000 decreed by the court below. "

23. We have given our thoughtful consideration to the entire controversy raised in the case. In *Sheikhupura Transport Co. Ltd. Vs. Northern India Transport Insurance Co.*, decided by their Lordships of the Supreme Court it was held that the liability of the insurer only extended up to 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 Ludhiana to Raikot met with an accident on February .11, 1959, As a result of this accident, 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 payable 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 *Sheikhupura Transport Co. Ltd. Vs. Northern India Transport Insurance Co.*, as already extracted above.

24. Then there is the case of the Supreme Court in *Motor Owners' Insurance Co* [1982] 52 Comp Cas 454 , where the expression "any one accident" as contained in Section 95(2)(a) (before amendment by Act 56 of 1969) came up for consideration. The earlier case of the Supreme Court in *Sheikhupura Transport Co. Ltd. Vs. Northern India Transport Insurance Co.*, was distinguished by making the following observations (at p. 468 of 52 Comp Cas):

"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 on the interpretation of Clause (a) of Section 95(2). After setting out the relevant provisions of Section 95(2) at pages 24 and 25 of Suppl. SCR and at page 1627 of AIR, Hegde J., speaking for himself and Jaganmohan Reddy J., concluded :

" 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. 2,000 per passenger though the total liability may

go up to Rs. 20,000 ".

Towards the end of the judgment, it was observed that, reading the provisions contained in Sections 95 and 96 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 up to Rs. 2,000 each in the case of Bachan Singh and Narinder Nath."

In view of the limit on the insurer's liability in respect of each passenger, the argument on the construction of the words " any one accident/ had no relevance and was, therefore, neither made nor considered by the court. Different considerations may arise under Clause (b), as amended by Act 56 of 1969, but we do not propose to make any observations on that aspect of the matter, since it does not directly arise before us. "

25. The above observations clearly show that their Lordships of the Supreme Court in Motor Owners' Insurance Co.'s case [1982] 52 Comp Cas 454, were only considering the provisions of Section 95(2)(a) of the Act and further observed that different considerations may arise under Clause (b), as amended by Act 56 of 1969, and refrained from making any observations on that aspect of the matter, since it did not directly arise in Motor Owners' Insurance Co.'s case [1982] 52 Comp Cas 454 (SC). In the case before us, we are directly called upon to consider the provisions of Section 95(2)(b)(ii)(4) of the Act. The above provision makes it clear that 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, there would be a limit of Rs. 50,000 in all in respect of persons other than passengers carried for hire or reward. In respect of passengers carried for hire or reward, a limit of Rs. 50,000 in all where the vehicle is registered to carry not more than 30 passengers, a limit of Rs. 75,000 where the seating capacity is more than 30 but not more than 60 passengers and a limit of Rs. 1,00,000 in all where the vehicle has a carrying capacity of more than 60 passengers. Thereafter, it has been clearly provided that subject to the limits aforesaid, Rs. 10,000 for each individual passenger where the vehicle is a motor cab and Rs. 5,000 for each individual passenger in any other case. The words " subject to the limits aforesaid " are very significant and fix the liability of the insurer maximum to the limit of Rs. 50,000, Rs. 75,000 or Rs. 1,00,000 according to the seating capacity. There are no such words "subject to the limits aforesaid" in Section 95(2)(a). The meaning given to the expression "any one accident " if also imported while applying the provisions of Section 95(2)(b)(ii), then if 70 passengers died in a vehicle registered to carry more than 60 passengers, each one of the passengers would be entitled to claim Rs. 1,00,000 and the liability of the insurer may extend to Rs. 70,00,000. This could never have been the intention of the Legislature. It would make the provision of limiting the liability of the insurer to Rs. 1,00,000 in all totally redundant, and further provisions that subject to the limits aforesaid 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 passenger 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 Owners' Insurance Co.'s case [1982] 52 Comp Cas 454 (SC).

26. In our view, the reasons given in Jyoti Prasad Dixit's case [1986] 59 Comp Cas 348 (All), Madras Motor and General Insurance Co. Ltd.'s case [1982] ACJ 460 (Ker) and K.R. Sivagami's case [1981] ACJ 399 (Mad) appear to be more sound and based on correct interpretation of Section 95(2)(b)(ii)(4) of the Act. The Supreme Court's case of Sheikhpura Transport Co. Ltd. Vs. Northern India Transport Insurance Co., which is directly applicable to the facts of the present case still hold good and applies on all fours to the question referred.

27. 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.