Royal Sundaram Alliance Insurance Co. Ltd. Vs A. Meenakshi and Others

Court: Madras High Court

Date of Decision: March 4, 2009

Acts Referred: Constitution of India, 1950 â€" Article 14
Insurance Act, 1938 â€" Section 64U
Insurance Regulatory and Development Authority Act, 1999 â€" Section 14
Motor Vehicles Act, 1939 â€" Section 108, 2, 6, 95, 95(1)
Motor Vehicles Act, 1988 â€" Section 147, 147(1)

Citation: (2009) ACJ 2218 : (2009) 2 LW 353 : (2009) 2 MLJ 293

Hon'ble Judges: Prabha Sridevan, J; K.K. Sasidharan, J

Bench: Division Bench

Advocate: N. Vijayaraghavan, for the Appellant; Mythili Suresh, for Respondents-1 to 4, for the Respondent

Final Decision: Dismissed

Judgement

Prabha Sridevan, J.
The deceased was a passenger in the insured vehicle and on account of the negligence of the driver who was also the

owner of the vehicle, an accident occurred on 30.7.2004. The accident resulted in the deaths of the driver and the three passengers. The driver

and two persons died at the hospital, while one passenger died on the spot. The claimants are the legal heirs of the passenger who died on the

spot.

2. The legal question that arises for consideration in this appeal is whether the insurance company is liable to pay compensation for the death of the

passengers who travelled in the car and whether the insurance policy covers the liability to a gratuitous passenger. We also have to decide what is

a just and reasonable compensation for the claimants. According to the claimants they are liable to be compensated in a sum of Rs. 25,00,000/-.

The insurer has taken the specific point that on payment of additional premium, the insurance policy in this case has been extended to cover

personal accident to five unnamed persons for a capital sum insured of Rs. 70,000/- each in terms of (India Motor Tariff) IMT.16 and therefore,

even if the insurance company is liable its liability is restricted to Rs. 70,000/- and nothing more.

3. The Motor Accidents Claims Tribunal was not inclined to accept the case of the insurance company that there was only a limited liability. It

awarded a compensation of Rs. 19,10,000/-. Against that, this appeal has been filed. We have heard the rival submissions, gone through the

copies of the relevant documents.

4. Every case has to be decided according to the facts of the case. The following facts in this case are the basis for our decision:

(a) The deceased was a gratuitous passenger in the insured vehicle.

(b) The Policy is a Package/Comprehensive Policy.

(c) The vehicle is a private car.

In Haryana Financial Corporation and Another Vs. Jagdamba Oil Mills and Another, , the Supreme Court quoted the following words of Lord

Denning in the matter of applying precedents, which have become locus classicus:

Each case depends on its own facts and a close similarity between one case and another is not enough because even a single significant detail may

alter the entire aspect. In deciding such cases, one should avoid the temptation to decide cases (as said by Cardozo) by matching the colour of one

case against the colour of another. To decide, therefore, on which side of the line a case falls, the broad resemblance to another case is not at all

decisive.... Precedent should be followed only so far as it marks the path of justice, but you must cut the dead wood and trim off the side branches

else you will find yourself lost in thickets and branches. My plea is to keep the path to justice clear of obstructions which could impede it.

These words have subsequently been reiterated by various courts in a number of judgments. So, in a case like this, the decisions which involve an

Act Policy, a goods vehicle or a public transport vehicle may be relevant, but they are not binding.

5. Section 95 of the Motor Vehicles Act, 1939 reads as follows:

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;

....

(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 [one lakh and 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, a limit of fifteen thousand rupees for each individual passenger;];

(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 [six thousand] in all in respect of damage to any property of a third party].

...

(5) Notwithstanding anything elsewhere contained in any law, a person issuing a policy of insurance under this section shall be liable to indemnify

the person or classes of person specified in the policy in respect of any liability which the policy purports to cover in the case of that person or

those classes of person.

The relevant section after the 1988 Act came into force is Section 147, and it reads as follows:

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

policy which-

(a) is issued by a person who is an authorised insurer; and

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

(i) against any lliability 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;

...

(2) Subject to the proviso to Sub-section (1), a policy of insurance referred to in Sub-section (1), shall cover any liability incurred in respect of any

accident, up to the following limits, namely:

(a) save as provided in Clause (b), the amount of liability incurred;

(b) in respect of damage to any property of a thirty party, a limit of rupees six thousand:

Provided that any policy of insurance issued with any limited liability and in force, immediately before the commencement of this Act, shall continue

to be effective for a period of four months after such commencement or till the date of expiry of such policy whichever is earlier.

...

6. So the law relating to Requirements of Policies and Limits of Liability is set down in Section 147 of the Motor Vehicles Act, 1988. This

corresponds to Section 95 of the Motor Vehicles Act, 1939. Section 147(1)(i) provides that in order to comply with the requirements of the said

Chapter, an insurance policy would cover any liability incurred by the insured in respect of the death of or bodily injury to any person, including

owner of the goods etc. The section is quite wide in its scope and meaning and the object of the legislature has to be given the widest, most

effective and practical meaning so that the net of coverage is extended to as many classes of persons relating to as many types of vehicles without

exception. Courts are obliged to ensure that as many classes of motor accident victims receive the benefit of compensation, unless it is specifically

restricted by the Act or it is specifically restricted by the contract, without violating the provisions of the Act. The insurer can and may contract to

cover risks and liabilities which he is not bound to under the Act. To put it in other words, he can expand his net of coverage far beyond the

statute-imposed limits, but he can not restrict his net of coverage contrary to the statute. This is how we must advance the object of the Act. Then

again we must understand who is a "" third party"". A third party is one who is neither the insurer nor the insured. He is simply a third party. By the

same logic, third party coverage must include all third parties, unless by doing so we breach the covenants of the Policy, or include specific

categories of ""third parties"" who are excluded by the Section.

7. In New India Assurance Company Vs. Smt. Shakuntla Devi and Others, , a Division Bench of the Jammu and Kashmir High Court held that

Section 147 of the Act is quite comprehensive in scope and meaning. It has to be given wider, effective and practical meaning so that the object of

the legislature which was faced with divergent views of various courts of the country giving different interpretation to the provisions of Section 95 of

the 1939 Act, causing immense harm to many categories of persons by disentitling them from claiming compensation either from the insurer or the

insured or both, in the facts and circumstances of the case, is given effect to. The learned Judges held that the legislature clearly intended that every

policy of insurance is statutorily required to cover the risk of liability in respect of classes of persons relating to all types of vehicles without

exception and with no defence to the insurance company disclaiming the liability with respect to particular class of persons or particular kind of

vehicles.

8. Motor Insurance in India till date is Tariff driven. Section 64U of the Insurance Act provides for the establishment of the Tariff Advisory

Committee to control and regulate the rates, advantages, terms and conditions that may be offered by insurers. Section 14 of the I.R.D.A. Act

which deals with the duties, powers and functions of the Authority, provides in Sub-section (2)(i) that the powers and functions include the control

and regulation of (rates, advantages, terms and conditions), not so controlled by the Tariff Advisory Committee u/s 64U. General Regulation No. 1

of IMT states that Motor insurance in India is transacted within the purview of the IMT. The Tariff Advisory Committee has laid down rules and

regulations, rates, terms and conditions, advantages for transaction of insurance business in India in accordance with the provisions of Part-2B of

the Insurance Act, 1938. It is stated in the IMT that the 2002 Tariff supersedes the provisions of the IMT in existence upto 30.6.2002 and that

they are binding on all concerned and that there cannot be any breach of the tariff, especially a breach of the provisions of the Insurance Act,

1938. The insurance companies are also required to issue policies in accordance with the IMT provisions only.

9. The appellant-Insurance Company in the present case, which is a private insurance company, is no exception. Standard forms are prescribed

for contracts of insurance which are set down in the insurance policy. Therefore, our decision in this case which involves the risk or liability to a

gratuitous passenger travelling in a private car would apply to a pillion rider carried on a two wheeler gratuitously. According to the claimant, it is

only cases involving Act Policies that the risk of such victims are not covered. In a Package Policy or a Comprehensive Policy, such gratuitous

occupants are automatically covered and if additional premium is specifically paid, that is in addition to the compensation payable under the Act.

Whereas, according to the insurance company, the risks to such victims are not covered by Section 147 of the Act and even under Package

Policies, they are covered only and to the extent of the additional premium paid.

10. A copy of the insurance policy in question was produced before us. The insured is G. Saravanan who was driving the car on the fateful day.

The policy is a ""Carshield Private Car Package Policy"". The limitations as to use and limits of liability read as follows:

Limitations as to use:

The Policy covers use of the vehicle for any purpose other than:

(a) Hire or Reward, (b) Carriage of goods (other than samples or personal luggage), (c) Organised racing, (d) Pace making, (e) Speed testing, (f)

Reliability Trials, (g) Any purpose in connection with Motor Trade.

Limits of liability:

Under Section II-1(i) of the Policy Death of or bodily injury Such amount as is necessary to meet the requirements of the Motor Vehicles Act,

1988.

Under Section II-1(ii) of the Policy Damage to Third Party Property Rs. 7,50,000/-.

PA Cover for Owner Driver u/s III CSI Rs. 2,00,000/-.

The package premium paid by the insured is ""Own Damage + Liability"". Under the head ""Liability"", it is stated ""Basic premium including premium

for TPPD (Third Party Property Damage)"". In addition, they had also paid premium under Personal Accident Benefits (Section III). Section II of

the Policy deals with liability to third parties and it reads as follows:

1. Subject to the limits of liability as laid down in the Schedule hereto, the Company will indemnify the insured in the event of an accident caused by

or arising out of the use of the Private Car against all sums which the Insured shall become legally liable to pay in respect of:

(i) death of or bodily injury to any person including occupants carried in the Private Car (provided such occupants are not carried for hire or

reward) but except so far as it is necessary to meet the requirements of the Motor Vehicles Act, the Company shall not be liable where such death

or injury arises out of and in the course of the employment of such person by the Insured.

....

In the Policy Schedule, we do not see any limits to the liability with regard to third party occupants.

11. To trace the history of risk of gratuitous passengers in a private car, 1977 A.C.J. 343 Pushpabai Purshottam Udeshi v. Ranjit Ginning and

Pressing Co. may be taken as a benchmark. In that case, a passenger who was travelling in a car died in the accident. The Supreme Court held

that Section 95 of the Motor Vehicles Act, 1939 as amended by Act 56 of 1969 is based on the English Acts and they did not require the users of

motor vehicles to be insured in respect of liability for death or injury to passengers except a vehicle in which passengers are carried for hire or

reward. The English Law developed subsequently, but the Indian law existing on the date of this judgment had not changed. In the above case, the

Supreme Court observed as follows:

20. Sections 95(a) and 95(b)(i) of the Motor Vehicles Act adopted the provisions of the English Road Traffic Act, 1960, and excluded the liability

of the insurance company regarding the risk to the passengers. Section 95 provides that a policy of insurance must be a policy which insures the

persons against any liability which may be incurred by him in respect of death or bodily injury to any person or damage to any property of a third

party caused by or arising out of the use of the vehicle in a public place. The plea that the words ""third party"" are wide enough to cover all persons

except the person and the insurer is negatived as the insurance cover is not available to the passengers made clear by the proviso to Sub-section

which provides that a policy shall not be required:

(ii) except where the vehicle is a vehicle in which passengers are carried for hire or reward or by reason of or in pursuance of a contract of

employment, to cover liability in respect of the death of or bodily injury to persons being carried in or upon or entering or mounting or alighting

from the vehicle at the time of the occurrence of the event out of which a claim arises.

Therefore it is not required that a policy of insurance should cover risk to the passengers who are not carried for hire or reward. As u/s 95 the risk

to a passenger in a vehicle who is not carried for hire or reward is not required to be insured the plea of the counsel for the insurance company will

have to be accepted and the insurance company held not liable under the requirements of the Motor Vehicles Act.

21. The insurer can always take policies covering risks which are not covered by the requirements of Section 95. In this case the insurer had

insured with the insurance company the risk to the passengers. By an endorsement to the policy the insurance company had insured the liability

regarding the accidents to passengers in the following terms:

In consideration of the payment of an additional premium it is hereby understood and agreed that the company undertakes to pay compensation on

the scale provided below for bodily injury as hereinafter defined sustained by any passenger....

The scale of compensation is fixed at Rs. 15.000. The insurance company is ready and willing to pay compensation to the extent of Rs. 15,000

according to this endorsement but the learned Counsel for the insured submitted that the liability of the insurance company is unlimited with regard

to risk to the passengers. The counsel relied on Section II of the Policy which relates to liability to third parties. The clause relied on is extracted in

full:

Section II. Liability to Third Parties.

1. The Company will indemnify the insured in the event of accident caused by or arising out of the use of the Motor Car against all sums including

claimant''s costs and expenses which the insured shall become legally liable to pay in respect of

(a) death of or bodily injury to any person but except so far as is necessary to meet the requirements of Section 95 of the Motor Vehicles Act,

1939, the Company shall not be liable where such death or injury arises out of and in the course of the employment of such person by the insured.

It was submitted that the wording of Clause 1 is wide enough to cover all risks including injuries to passengers. The clause provides that the

Company will indemnify the insured against all sums including claimant''s costs and expenses which the insured shall become legally liable. This

according to the learned Counsel would include legal liability to pay for risk to passengers. The legal liability is restricted to Clause 1(a) which

states that the indemnity is in relation to the legal liability to pay in respect of death of or bodily injury (to any person but except so far as is

necessary to meet the requirements of Section 95 of the Motor Vehicles Act, the Company shall not be liable where such death or injury arises out

of and in the course of the employment of such person by the insured. Clauses 1 and 1(a) are not Very clearly worded but the words ""except so

far as is necessary to meet the requirements of Section 95 of the Motor Vehicles Act, 1939"", would indicate that the liability is restricted to the

liability arising out of the statutory requirements u/s 95. The second part of Clause 1(a) refers to the non-liability for injuries arising in the course of

employment of such person. The meaning of this Sub-clause becomes clear when we look to the other clauses of the insurance policy. The policy

also provides for insurance of risks which are not covered u/s 95 of the Act by stipulating payment of extra premium These clauses would

themselves indicate that what was intended to be covered under Clauses 1 and 1(a) is the risk required to be covered u/s 95 of the Motor

Vehicles Act.

22. On a construction of the insurance policy we accept the plea of the insurance company that the policy had insured the owner only to the extent

of Rs. 15,000 regarding the injury to the passenger. In the result we hold that the liability of the Insurance company is restricted to Rs. 15,000.

There shall be a decree in favour of the claimants/appellants to the extent of Rs. 27,500 against the respondents out of which the liability of the

insurance company will be restricted to Rs. 15,000. The appeal is allowed with the costs of the appellant which will be paid by the respondents in

equal share.

This judgment was delivered on 25.3.1977. We specifically note the words used by the Supreme Court that the insured can always take policies

covering risks which are not covered by the requirements of Section 95 of the 1939 Act.

12. Soon thereafter, the Tariff Advisory Committee took a decision which is very important for deciding the present issue and which also totally

altered the effect of the decision in Pushpabai''s case (supra). This is explained in detail by the Gujarat High Court in Harshvardhatiya Rudraditya

and Others Vs. Jyotindra Chimanlal Parikh and Another, . There, the deceased was a gratuitous passenger. There, as in the present case, the

insurance policy was a Comprehensive Policy. At that time, IMT.5 read as follows:

In consideration of the payment of an additional premium, it is hereby understood and agreed that the Company undertakes to pay compensation

on the scale provided below for bodily injury as hereinafter defined sustained by any passenger other than the insured and/or his paid driver

attendant or cleaner and/or a person in the employment of the insured coming within the scope of the Workmen''s Compensation Act, 1923 and

subsequent amendments of the said Act and engaged in and upon the service of the insured at the time such injury is sustained whilst mounting into

dismounting from or travelling in but not driving the motor car and caused by violent accidental external and visible means which independently of

any other cause shall within three calendar months of the occurrence of such injury result in:

Scale of compensation

(1) Death.... Rs. 15,000.00 (2)..... ... ...

The counsel for the appellant produced before the Gujarat High Court a communication issued by the Tariff Advisory Committee to the insurers

carrying on general insurance business in the Bombay Region, which is in the following terms:

TARIFF ADVISORY COMMITTEE BOMBAY REGIONAL COMMITTEE

Circular M.V. No. 1 of 1978 Bombay, 17th March, 1978

INSURANCE COMPANY''S LIABILITY IN RESPECT OF GRATUITOUS PASSENGERS CONVEYED IN A PRIVATE CAR -

STANDARD FORM FOR PRIVATE CAR COMPREHENSIVE POLICY - SECTION II - LIABILITY TO THIRD PARTIES.

I am directed to inform insurers that advices have been received from the Tariff Advisory Committee to the effect that since the industry had all

these years been holding the view liability (sic) the same practice should continue.

In order to make this intention clear, insurers are requested to amend Clause 1(a) of s. II of the Standard Private Car Policy by incorporating the

following words after the words ''death of or appearing therein:

Including occupants carried in the motor car provided that such occupants are not carried for hire or reward.

I am accordingly to request insurers to make the necessary amendment on sheet 38 of the Indian Motor Tariff pending reprinting of the relevant

sheet.

(Emphasis ours).

All existing policies may be deemed to incorporate the above amendment automatically as the above decision is being brought into force with effect

from 25th March, 1977.

Sd. Regional Secretary.

The Gujarat High Court held as follows:

Taking into consideration the spirit underlying the aforesaid instructions issued by the Tariff Advisory Committee all the insurers would be expected

to adhere to the policy decision in its true spirit. The policy decision had to be evolved by reson of the fact that for years the insurers were

considered to be liable even in cases of gratuitous passengers. The situation came to be altered by virtue of the decision in Pushpabai''s case, AIR

1977 SC 1735, rendered on 25th March, 1977. The insurance business having been nationalised it is but reasonable to expect the insurers not to

take advantage of the altered situation and to continue to discharge their obligation as hitherto. No doubt, the aforesaid instructions cannot be

enforced in an M.A.C.T. proceeding in the sense that we cannot direct that the insurance company shall reimburse the insured fully or that the full

decree against the insured may be executed against the insurance company as if it was a decree passed against it. We are given to understand that

the insurance companies are discharging their obligation as hitherto notwithstanding Pushpabai''s case, AIR 1977 SC 1735. If such is the policy

that being followed in other cases no discrimination can be made on principle in the present case. There cannot be a selective application of the

policy embodied in the aforesaid resolution. If such a selective application were to be countenanced, it would violate the mandate of Article 14 of

the Constitution of India. We have, therefore, no doubt that the insurance company will follow the same policy uniformly and will not clutch at this

defence in the present case if the policy decision contained in the aforesaid communication is being adhered to in other cases. In case of necessity,

learned Counsel for the claimants will be at liberty to apply to the insurance company and make a request for implementing the aforesaid policy

decision in the present case. It will be open to him to forward a copy of this judgment in support of this request.

Therefore, the Tariff Advisory Committee had brought these instructions into force literally from the date on which the judgment in Pushpabai''s

case was delivered by the Supreme Court. The Tariff Advisory committee determines the terms and conditions and the limits and liabilities of an

insurance policy vide Section 64U of the Insurance Act. A reading of the Circular, though intended for the Bombay Region, indicates that all along,

insurance companies had intended that the risk to a gratuitous occupant in a private car was to be covered and was in fact covered by a Package

Policy.

13. In 1985 A.C.J. 585 Sagar Chand Phool Chand Jain v. Santosh Gupta, the Delhi High Court had to consider a similar issue. Before the Delhi

High Court, again, the judgment in Pushpabai"s case was pressed into service and it was contended that the liability of the insurance company is

restricted to the statutory liability u/s 95 of the 1939 Act and no more and that if the risk to the passenger has to be covered, it is to be done by a

special contract and since the contract of insurance did not specify risk to the passengers, nor any additional payment or premium was received,

the passenger cannot claim to be compensated in an amount exceeding the statutory liability. On the side of the claimants, it was contended that the

very concept of a Comprehensive Policy includes the risk to a passenger gratuitously carried. A special contract is necessary for limiting the liability

of the insurance company and therefore, the liability is all inclusive, unless specifically limited. The Circular dated 13.3.1978, which has been

extracted above, was also brought to the notice of the Delhi High Court. The policy in question was of the year 1970 and when the case came up

for hearing before the Tribunal on 31.5.1979, the 1978 Instructions had come into operation. The Delhi High Court held that, ""Apart from the

instructions of the Tariff Advisory Committee, the contract itself provided positive indication that the risk of occupants/passengers is covered by

the policy. The contract itself at the top describes it as a contract for ''Private Car (Comprehensive)''. Section 2 of the contract provides for liability

to third party and this paragraph shows that the company will indemnify the insured in the event of an accident caused by or arising out of the use

of the motor car against all sums including claimant"s costs and expenses which the insured shall become legally liable to pay in respect of death of

or bodily injury to any person but except so far as is necessary to meet the requirements of Section 95 of the 1939 Act, the company shall not be

liable where such death or injury arises out of and in the course of the employment of such person with the insured"". The Delhi High Court also

noted that apart from these provisions, the contract itself provides for general exceptions where the company shall not be liable to pay and the

exceptions do not include the occupants/passengers. In fact, at the time of arguments, the Delhi High Court was informed that the valuable and

important instructions which affect the policy holders are not published either by the Tariff Advisory Committee or by the National Insurance

Company.

14. Before the Delhi High Court, the counsel for the insurance company could not produce any material, nor a single policy where in a

Comprehensive Policy, special premium was charged to cover the risk of occupants/passengers. Therefore, the Delhi High Court rightly concluded

that this would negatively establish that the nationalised insurance companies did not enter into special contract of insurance to cover

occupants/passengers and that the Comprehensive Policy covers all the risks and liabilities to which the insured is liable. The Delhi High Court also

held that the 1978 Instructions of the Tariff Advisory Committee are in the nature of express clarification of the legal position already obtaining and

therefore, no new right was created by the 1978 Circular, but the existing right was only clarified. Even the 1978 Circular specifically mentioned,

that this is how it has all along been understood and that in recent times, the insurance companies were taking a different stand which necessitated

the Tariff Advisory Committee to come out with explicit instructions. Therefore, these instructions are not declaratory, but only clarificatory and as

per Section 64U, govern the insurers.

15. The provisions relating to motor accidents claims in the Motor Vehicles Act form a self-constituted Code and they are intended to benefit the

unfortunate legal heirs of an accident victim or the unfortunate injured in an accident and if the rights that these persons are entitled to are not made

known to them, it is possible that they are prevented from making the rightful claim or cheated from receiving the rightful compensation.

16. What was then specifically mentioned in the Tariff Advisory Committee Circular in 1978 has now been incorporated in the contract itself in a

Package Policy. Therefore, even if the 2002 Tariff regime does not specifically mention that in a Comprehensive Policy, the gratuitous occupant''s

risk is covered since it is a comprehensive policy, by its own terminology, it includes any person in the car or any type of vehicle except those that

are specifically excluded.

17. The vehicle in this case is a private car. IMT.2 lays down the tariff for private car, and it includesÃ¯Â¿Â½

(a) Private Car Type Vehicles used for social, domestic and pleasure purposes and also for professional purposes (excluding the carriage of goods

other than samples) of the insured or used by the insured''s employees for such purposes but excluding use for hire or reward, racing, pace making,

reliability trial, speed testing and use for any purpose in connection with the Motor Trade.

(b) Motorised three wheeled vehicles (including motorised rickshaws/cabin body scooters used for private purposes only).

As regards limitations, the policy covers the use of the vehicle for any purpose other thanÃ¯Â¿Â½

a) Hire or reward

b) Carriage of goods (other than samples or personal luggage)

c) Organized racing

d) Pace making

e) Speed testing

f) Reliability trials

g) Use in connection with Motor Trade

The additional premium payable which has been shown separately in the premium computation table is with regard to the legal liabilityÃ¯Â¿Â½

(i) to paid drivers/and/or cleaner;

(ii) to employees of the insured travelling in and/or driving the employer''s vehicle; and

(iii) trailers.

The premium for gratuitous passenger is not mentioned here. The Standard Form for private car - Package Policy would show in Section II with

regard to liability to third parties that the insurance company will indemnify the insured in the event of an accident caused by or arising out of the

use of the vehicle against all sums which the insured shall become legally liable to pay in respect ofÃ¯Â¿Â½

(i) death of or bodily injury to any person including occupants carried in the vehicle (provided such occupants are not carried for hire or reward)

but except so far as it is necessary to meet the requirements of Motor Vehicles Act, the company shall not be liable where such death or injury

arises out of and in the course of the employment of such person by the insured; and

(ii) damage to property other than property belonging to the insured or held in trust or in the custody or control of the insured.

Therefore, except occupants who are carried for hire and reward, and in the case of death and injury of a person in the course of employment of

such person by the insured to the extent necessary to meet the requirements of the Workmen''s Compensation Act, the Insurer shall indemnify the

insured against all sums he is legally liable to pay . The words used in the contract of insurance, extracted above, viz. ""Any person including

occupants carried in the vehicle provided such occupants are not carried for hire or reward"" are the words exactly used in the Tariff Advisory

Committee Circular of the year 1978. Therefore, even if the 2002 IMT does not make a specific reference to it cannot dilute the third party liability

of the insurer. General Regulation No. 3 states that the policies insuring motor vehicles are to be issued only as per the Standard Form given u/s 6

of the IMT. The present policy and the terms contained therein are in accordance with the Standard Forms and therefore, the risks of the

occupants carried in the motor vehicle so long as they are not carried for hire or reward are automatically covered when a Comprehensive Policy

is taken. It is difficult to understand how the insurance companies can evade their liability inspite of having contracted under the policy to cover the

risk to an occupant, or to use the words of the Gujarat High Court ""clutch at this defence"" doggedly.

18. We will refer to the decisions of the Supreme Court which are cited by the insurance company.

19. The first is United India Insurance Co. Ltd., Shimla Vs. Tilak Singh and Others, . The deceased a pillion rider, was a gratuitous passenger. The

Supreme Court held that the insurance company was not liable. The policy in that case was a statutory policy which did not cover the result of

death or bodily injury to a gratuitous passenger. The Supreme Court referred to New India Assurance Company Vs. Shri Satpal Singh and

Others, , where the Supreme Court had held that under the new Act, an insurance policy covering third party risk is not required to exclude

gratuitous passenger in a vehicle no matter that the vehicle is of any type or class. The Supreme Court in Tilak Singh''s case (supra), held that since

Satpal Singh''s case (supra) has been overruled by New India Assurance Co. Ltd. Vs. Asha Rani and Others, , it is no longer necessary to follow

Satpal Singh''s case. Of course, in Tilak Singh''s case, the Supreme Court made certain observations:

In our view, although the observations made in Asha Rani''s case (supra) were in connection with carrying passengers in a. goods vehicle, the same

would apply with equal force to gratuitous passengers in any other vehicle also. Thus, we must uphold the contention of the appellant-insurance

company that it owed no liability towards the injuries suffered by the deceased Rajinder Singh who was a pillion rider, as the insurance policy was

a statutory policy, and hence it did not cover the risk of death of or bodily injury to gratuitous passenger.

But we have to apply this judgment in the context of the facts of the individual case. The passengers were gratuitously carried in a goods vehicle in

Asha Rani''s case.

20. In 2008 (8) Supreme 276 The General Manager, United Insurance Co. Ltd. v. M. Laxmi, the deceased was a pillion rider. The Policy was an

Act Policy. The Supreme Court referred to Asha Rani''s case where the Supreme Court held thus:

In view of the changes in the relevant provisions in the 1988 Act vis-a-vis the 1939 Act, we are of the opinion that the meaning of the words ""any

person"" must also be attributed having regard to the context in which they have been used i.e. ""a third party"". Keeping in view the provisions of the

1988 Act, we are of the opinion that as the provisions thereof do not enjoin any statutory liability on the owner of a vehicle to get his vehicle

insured for any passenger travelling in a goods vehicle, the insurers would not be liable therefor.

Two paragraphs in M. Laxmi''s Case (supra) are very important:

Learned Counsel for the appellant submitted that the High Court has misread the Circular of the Tariff Advisory Committee dated 2.6.1986. The

same referred to compensation payable to pillion riders in case of comprehensive policy. The Clarification/Circular has no relevance so far as Act

Policy Cases are concerned and it related to only Comprehensive Policy""; and

There is no dispute that the Circular dated 2.6.1986 refers to Comprehensive Policy. It categorically states that standard form for motorcycle

should cover liability to pillion passengers in case of Comprehensive Policy. As noted by the MACT, the policy in the instant case was an Act

Policy.

Therefore, it would be quite proper for us to draw strength from these observations that a Comprehensive Policy covers the liability of pillion

riders. The Supreme Court held in favour of the insurer in M. Laxmi''s case only because the policy therein was an Act policy. In this judgment, the

Supreme Court has referred both to Tilak Singh''s case and Asha Rani''s case and from the above observations, it is clear that the Supreme Court

was of the opinion that while in an Act Policy, the risk to a pillion rider who was a gratuitous passenger is not covered, it is covered in the case of a

Comprehensive Policy.

21. In Amrit Lal Sood and Another Vs. Smt. Kaushalya Devi Thapar and Others, , the injured was a gratuitous passenger travelling in a private

car. The High Court held that the insured was not liable since the claimant was only a passenger. The insurance policy was extracted by the

Supreme Court and we find that it is almost identical to the policy in the case before us. The Supreme Court held in Amritlal Sood''s case as

follows:

3. The question to be decided is whether the insurer is liable to satisfy the claim for compensation made by a person travelling gratuitously in the

car. The factual findings are not in dispute before us but for the contention of the appellants that the amount of compensation awarded by the

Division Bench is excessive. We have no difficulty in repelling that contention as we find the materials on record to be sufficient to support the

award of enhanced compensation.

4. The liability of the insurer in this case depends on the terms of the contract between the insured and the insurer as evident from the policy.

Section 94 of the Motor Vehicles Act, 1939 compels the owner of a motor vehicle to insure the vehicle in compliance with the requirements of

Chapter VIII of the Act. Section 95 of the Act provides that a policy of insurance must be one which insures the person against any liability which

may be incurred by him in respect of death or bodily injury to any person or damage to any property of third party caused by or arising out of the

use of the vehicle in a public place. The section does not however require a policy to cover the risk to passengers who are not carried for hire or

reward. The statutory insurance does not cover injury suffered by occupants of the vehicle who are not carried for hire or reward and the insurer

cannot be held liable under the Act. But that does not prevent an insurer from entering into a contract of insurance covering a risk wider than the

minimum requirement of the statute whereby the risk to gratuitous passengers could also be covered. In such cases where the policy is not merely a

statutory policy, the terms of the policy have to be considered to determine the liability of the insurer.

5. In the present case, the policy is admittedly a Ã¯Â¿Â½comprehensive policyÃ¯Â¿Â½. Ã¯Â¿Â½Comprehensive insuranceÃ¯Â¿Â½ has been defined in BlackÃ¯Â¿Â½s

Law Dictionary, 5th Edn. as Ã¯Â¿Â½All-risk insuranceÃ¯Â¿Â½ which in turn is defined as follows:

Type of insurance policy which ordinarily covers every loss that may happen, except by fraudulent acts of the insured. (Miller v. Boston Ins. Co.

218 A 2d 275, 278 : 420 Pa 566) Type of policy which protects against all risks and perils except those specifically enumerated.

6. The relevant clauses in the policy before us are found in Ã¯Â¿Â½Section II -- Liability to Third PartiesÃ¯Â¿Â½. They are:

1. The Company will indemnify the insured in the event of accident caused by or arising out of the use of the motor car against all sums including

claimantÃ¯Â¿Â½s costs and expenses which the insured shall become legally liable to pay in respect of

(a) death of or bodily injury to any person but except so far as is necessary to meet the requirements of Section 95 of the Motor Vehicles Act,

1939, the Company shall not be liable where such death or injury arises out of and in the course of the employment of such person by the insured.

(b) damage to property other than property belonging to the insured or held in trust by or in the custody or control of the insured.

2. The Company will pay all costs and expenses incurred with its written consent.

3. In terms of and subject to the limitations of the indemnity which is granted by this section to the insured the company will indemnify any driver

who is driving the motor car on the insuredÃ¯Â¿Â½s order or with his permission provided that such driver

(a) is not entitled to indemnity under any other policy

(b) shall as though he were the insured observe, fulfil and be subject to the terms, exceptions, conditions and limitations of this policy insofar as

they can apply.

7. Under the heading General Exceptions, the companyÃ¯Â¿Â½s liability is excluded inter alia in respect of any accident occurred whilst the car is being

used otherwise than in accordance with the limitations as to use or being driven by any person other than a driver. The limitations as to use set out

in the policy are not relevant in this case as it is not the case of the insurer that there is a violation thereof. The term Ã¯Â¿Â½driverÃ¯Â¿Â½ is expressly

defined in the policy as any of the following:

(a) Any person,

(b) The insured may also drive a motor car belonging to him and not hired to him under a Hire-Purchase Agreement. Provided that the person

driving holds a licence to drive the motor car or has held and is not disqualified for holding or obtaining such a licence.

8. Thus u/s II(1)(a) of the policy the insurer has agreed to indemnify the insured against all sums which the insured shall become legally liable to pay

in respect of death of or bodily injury to Ã¯Â¿Â½any personÃ¯Â¿Â½. The expression Ã¯Â¿Â½any personÃ¯Â¿Â½ would undoubtedly include an occupant of the car

who is gratuitously travelling in the car. The remaining part of Clause (a) relates to cases of death or injury arising out of and in the course of

employment of such person by the insured. In such cases the liability of the insurer is only to the extent necessary to meet the requirements of

Section 95 of the Act. Insofar as gratuitous passengers are concerned there is no limitation in the policy as such. Hence under the terms of the

policy, the insurer is liable to satisfy the award passed in favour of the claimant. We are unable to agree with the view expressed by the High Court

in this case as the terms of the policy are unambiguous....

10. The High Court has placed reliance on the judgment of this Court in Pushpabai Purshottam Udeshi and Others Vs. Ranjit Ginning and Pressing

Co. (P) Ltd. and Another, . That judgment was based upon the relevant clause in the insurance policy in that case which restricted the legal liability

of the insurer to the statutory requirement u/s 95 of the Motor Vehicles Act. That decision will have no bearing in the present case inasmuch as the

terms of the policy here are wide enough to cover a gratuitous occupant of the vehicle.

This is the clear exposition on the terms of a Comprehensive policy by a three Judge Bench.

22. In New India Assurance Co. Ltd. Vs. C.M. Jaya and Others, , a five Judge Bench of the Supreme Court which was constituted to decide the

conflict between New India Assurance Co. Ltd. Vs. Smt. Shanti Bai and others, and Amritlal Sood''s case (supra), answered that there was really

no conflict, and that both laid down the law correctly and held in paragraph 10 as follows:

Thus, it is clear that the specific clause in the policy being wider, covering higher risk, made all the difference in Kaushalya Devi''s case as to

unlimited or higher liability.

Therefore, the law laid down in Amritlal Sood''s case (or Kaushalya Devi''s case) that insofar as gratuitous passengers are concerned there is no

limitation in the policy would squarely apply to this case.

23. Now, we will look at some of the High Court judgments. In United India Insurance Co. Ltd. Vs. Bhagyalakshmi and Others, , a Division

Bench of the Karnataka High Court held that the insurance company was not liable. That is to say, when the insured has not paid any extra

premium to cover the risk of death or bodily injury to an occupant of a private car, then the insurer will not be liable. This judgment is dated

19.9.2006. On 25.9.2007, a Division Bench of the same High Court, in Bajaj Allianz General Insurance Co. Ltd. v. Smt. Lakshmamma C.M.A.

No. 7493 of 2007, held otherwise with regard to the issue whether the policy covered the risk of the pillion rider. There is no reference to any

judgment except to look at the policy issued by the insurance company.

SECTION II - LIABILITY TO THIRD PARTIES

1. Subject to the limits of liability an laid down in the Schedule hereto the Company will indemnify the insured in the event of an accident caused by

or arising out of the use of the insured vehicle against all sums which the insured shall become legally liable to pay in respect of:

i) death of or bodily injury to any person including occupants carried in the insured vehicle (provided such occupants are not carried for hire or

reward)

(emphasis supplied)

The Division Bench held as follows:

Now, in this background, we have seen the policy produced before us. It also says the limits of liability u/s 2(i) of the policy. Therefore, the policy

issued by the insurance company covers the risk of a passenger in the vehicle and having issued such a policy it is not proper for the insurance

company to contend that liability to public risk under the basic premium does not cover the risk of a pillion rider in a two-wheeler. If there was no

liability towards the pillion rider in the policy issued by it, the appellant Ã¯Â¿Â½ insurance company should have made it very clear that risk of such

pillion rider is not covered under the policy and more over, in the standard format produced before us, it includes the coverage of pillion rider.

Therefore, we cannot appreciate the arguments advanced by the learned Counsel for the Appellant on this aspect. Accordingly, this point is

answered against the insurance company.

24. In 2008 (1) T.A.C. 51 (Cal.) Amit Bar v. National Insurance Co. Ltd., a Division Bench of the Calcutta High Court held that no additional

premium was paid to cover the risk to pillion rider and though in that case, it was a Package Policy, the Division Bench held in favour of the

insurance company. They relied on Tilak Singh"s case to arrive at this conclusion. But we have seen that in Tilak Singh"s case, the policy was an

Act policy.

25. In Bajaj Allianz General Insurance Company Limited Vs. B.M. Niranjan and Another, , has referred to the policy and the terms and conditions

contained therein which uses the words "death or bodily injury to any person including occupants carried in the insured vehicle" and held as

follows:

19. A reading of the aforesaid terms and conditions discloses that the Insurance Company issued a policy known as ""Package Policy"" for two

wheelers and collected a premium to cover the risk of not only own damage, but also third party. The coverage also included the death or bodily

injury to any person including occupants carried in the insured vehicle (provided such occupants are not carried for hire or reward). The terms and

conditions of the policy and the schedule of payment cannot but be said to cover claims of the injured pillion rider of the Motor Cycle.

20. Although the learned Counsel for the appellant strenuously contends that covering the risk of injury or death of a pillion rider of the Motor

Cycle is permissible only on payment of additional premium, such a contention in my opinion cannot be countenanced. I say so because, as noticed

supra, the Insurance Policy is known as ""Package Policy"" and not an ""Act Policy"". An ""Act Policy"" undoubtedly covers risks under the statute. The

evidence of RW-1 is not in the direction of establishing that the policy of the insurance was an ""Act Policy"". The ""endorsement 227"" in the schedule

to the policy remains unexplained and the evidence of RW1 does not make reference to the said endorsement. RW-1 does not point out to any

particular term in the ''Package Policy'' Ex. D 1 or the certificate cum policy schedule, Ex .P3 with regard to non-payment of an additional

premium to cover the risk of pillion rider of the Motor Cycle or that the insurer was not liable to answer the claim of the pillion rider in the event of

death or injury. In that view of the matter, it cannot therefore be said that the risk under the policy Ex.D1 was limited to claims of the owner or the

rider of the Motor Cycle.

25. In Mathew Joseph Vs. Janaki, , a Full Bench of the Kerala High Court held that payment of premium alone casts a corresponding duty on the

insurance company for rendering coverage. The matter was referred to the Full Bench since there was a conflict between the Full Bench decision in

Oriental Insurance Co. Ltd. Vs. Ajayakumar and Others, and United India Insurance Co. Ltd., Shimla Vs. Tilak Singh and Others, . The Kerala

High Court observed as follows:

12. In view of our earlier observations, it cannot be perceived that observations in the Full Bench judgment continue to operate. There was

available an ""Act only"" policy to bank upon. The observations in paragraph 11 of the judgment in Oriental Insurance Co. Ltd. v. Ajayakumar 1999

(2) KLT 886 FB reads as following:

Therefore, it has to be taken that the term ""any person"" referred in Clause (b)(i) would take in all passengers for hire or reward or otherwise. We

do not find any merit in the contention raised by the learned Counsel for the appellant that if the term ""any person"" in Clause (b)(i) would take in

passengers in private vehicle carried in for hire or reward then it was unnecessary for the Legislature to bring in the amendment under Act 54 of

1994 to include owner of the goods or his authorised representative carried in the vehicle in Clause (i).

The decision substantially had rested on United India Insurance Co. Limited v. Appukuttan 1995 (1) KLT 807 Definitely later decisions have

found that the expression ''any person'' can have relevance only vis-a-vis a third party. So long as the view as above prevails, it may not be proper

for this Court to hold that the observations made in the Full Bench judgment are to govern the situation. Appukuttan''s case is to be deemed as

wrongly decided. Gratuitous passengers in transport vehicles, including a motor cycle, can have coverage only when a comprehensive policy or

extended policy as might be possible to be issued has been availed of by the owner of the vehicle. Only in such cases, the Insurance Company is

required to compensate. We hold that the guidelines set by the Supreme Court are unambiguous viz., that payment of premium alone can cast a

corresponding duty on the insurer for rendering coverage on any such group, when they are not required to be mandatorily brought under

insurance protection.

The Full Bench held, therefore, that gratuitous passengers can have coverage only when a Comprehensive Policy has been availed of by the owner

of the vehicle.

26. In Naynesh H. Nanavati Vs. Dashrath R. Bhagat and Others, , again a single Judge of the Gujarat High Court, referred to Pushpabai''s case

and also to 1989 A.C.J. 845 Kailash Kumar v. Bhola of the Punjab and Haryana High Court. Before the Punjab and Haryana High Court, the

deceased was a gratuitous passenger. The insurance company contended that it was not liable. The Punjab and Haryana High Court disagreed

with the view taken by the Tribunal in absolving the insurance company of its liability and held otherwise on the basis of the relevant instructions of

the Tariff Advisory Committee. The learned Judge observed that after the Tariff Advisory Commitee''s instructions, the insurance company cannot

avoid liability.

27. In Motor Vehicle Laws Ã¯Â¿Â½ 13th Edition, 2008 Lexis Nexis Butterworths Wadhwa, Nagpur, which is a critique on motor vehicle laws by

Justice K. Kannan and N. Vijayaraghavan, the learned authors on considering the large scale use of two wheelers with pillion riders and carriage of

gratuitous occupants in private car have given their opinion, referring to various judgments under the head ""Liability of insurer for death/injury to

gratuitous passengers in private car under a Package/Comprehensive Policy"", since it is a very serious and sensitive issue that requires examination,

They observe as follows:

Motor TP cover is still governed by Tariff. What TAC had directed or expressed in 1977 still holds good and their decision to amend the Policy

wording which is in use till date, continues to bind the Insurers.

The Insurers cannot ignore the TAC decision and argue as if the Policy is framed or issued by them independently and there is no cover for

occupants.

In our opinion, the ''additional premium'' argument cannot be stretched too far by the Insurers, ignoring the Policy wording and the intention to

cover as stipulated by TAC.

The learned authors also observed as follows:

The liability of insurer to a pillion rider and a gratuitous occupant would depend upon the cover granted by insurer being Act Policy or Package

Policy. In respect of an Act Policy such persons are not required to be covered. It is only under a Package Policy such persons are covered by the

contract of insurance. Under the earlier dispenseation in Motor Vehicle Act, this position was the same. In Pushpabai''s case, the Supreme Court

had held that the insurer would not be liable to occupants carried in a private vehicle under a Policy. In K. Gopalakrishnan v. Sankaranarayanan

1969 A.C.J. 34 and National Insurance Co. Ltd. v. V. Vasantha 1987 A.C.J. 887, the High Court, Madras had held that insurer was not liable to

pillion riders carried on a 2 wheeler under an Act Policy. Similar decisions were delivered by all courts barring a few.

We read in this very exhaustive critique that it is not without reason or out of ignorance that insurers were satisfying the awards all along from

1977, it was on account of the fact that as against an Act Policy, the Comprehensive (now Package) Policy, occupants were expressly covered,

due to a conscious change in the Policy wording after insurers were held not liable by the Supreme Court in Pushpabai''s case; and that as regards

the third party coverage under Comprehensive Policy prevailing before 25.3.1977, it is clear that the Comprehensive Policy before 25.3.1977 did

not use the words ""including occupants carried in the motor car provided that such occupants are not carried for hire or reward"". These are the

words in the 1978 Circular. They further observe thus:

There is no change in the law Ã¯Â¿Â½ Insurers are not required to cover passengers in a private car. The relevant portion of the Policy has also not

changed materially ever since 1977. TAC''s Circular or the amendment has not become inapplicable or irrelevant when this portion of the Policy

wording is being maintained till date even under the 2002 Tariff.

When neither the law nor the relevant wording in the Policy has changed, it would not be open to Insurers to ignore the wording and the

amendment brought about by TAC consciously in 1977 itself to argue that there is no liability for occupants, contrary to what is stated in the Policy

document.

28. The judgments of the Supreme Court where the insurer was held not liable were cases where either the policy was an Act Policy or the

gratuitous passengers were travelling in a goods vehicle or a public transport vehicle. In none of those cases, the policy was a Comprehensive

Policy, nor were the passengers travelling in a private car, except in Amrit Lal Sood''s case, which was approved in C.M. Jaya (supra) by a five

Judge Bench. The Supreme Court clearly held that it will depend on the insurance policy that has been taken. When Section II of the Policy as

extracted in paragraph 11 above covers the risk of death of any occupant and when that is the contract to which the parties have bound

themselves, we do not see how the insurance company can evade their duty to pay the compensation. In fact, as already pointed out, even in M.

Laxmi''s case (supra), the observations of the Supreme Court clearly indicate that the risk of a pillion rider would be covered if it is a

Comprehensive Policy. We have already extracted the relevant clauses of the Policy and we find that there is no limit imposed on the insurer''s

liability. By virtue of the wording of Section 147 and also Section II of the Policy, the death or injury of a gratuitous passenger is covered. Over

and above the premium paid by the insured who has taken a Comprehensive Policy, if the insured pays additional premium, then the insurer''s

liability arises to the extent agreed upon. In this case the extent is Rs. 70,000/-. This is in addition to, and not the maximum extent of, the third party

liability already agreed upon in Section II of the policy. In the context of renewal of Mediclaim Policy, the Supreme Court has held that, ""(T)he

insurance companies cannot either in the prospectus or in the terms of the policy lay down any condition that would be derogatory to the terms and

conditions approved by the Regulatory Authority,"" and that ""regulations guidelines and circulars are binding on the insurance companies."" - vide

United India Insurance Company Limited Vs. Manubhai Dharmasinhbhai Gajera and Others, .

29. There fore it is clear from the Act itself, the words of the policy and the decision in Amritlal Sood''s case (supra) that a Comprehensive Policy

covers the risk of a gratuitous passenger to the extent of the liability incurred. We may imagine what will happen in a case where the owner is

driving his car covered by a Comprehensive Policy. He is accompanied by his wife and children. There is an accident as in this case. The wife and

children are permanently disabled by the injuries. If we agree with the appellant Insurance Company, those pathetic claimants will not get any

compensation. The law never intended this to happen. That is why the TAC explicitly came out with the clarificatory Circular in 1978. We cannot

forget that the words used are ""third party"" and ""Comprehensive"", so we cannot deny this relief to the third party occupant in a car covered by a

Comprehensive Policy.

30. Now, we come to the quantum of compensation. Exhibits P.5 to P.9 are Income Tax Returns of the deceased. The deceased was the Director

of Mourind Automation Private Limited. He was an Income Tax Assessee. On the basis of Exs. P.5 to P.9, which are the SARAL Income Tax

Return Forms, the Motor Accidents Claims Tribunal found that the annual income of the deceased was Rs. 1,65,000/- and after deducting one-

third of the said amount, arrived at a sum of Rs. 1,10,000/- as the annual contribution of the deceased to his family. The Tribunal multiplied the said

sum by 17 and arrived at a sum of Rs. 18,70,000/-. Then, adding the conventional damages, a total sum of Rs. 19,10,000/- was arrived at by the

Tribunal to be paid as compensation.

31. Both the counsel made their submissions. According to the counsel for the insurance company, the award was on the excessive side. Under

Ex.P.5, the income of the deceased is shown as Rs. 87,000/-; in Ex.P.6, it is shown as Rs. 1,14,396/-; in Ex. P.8, it is shown as Rs. 1,22,400/-;

and in Ex. P.9, the income is shown as Rs. 1,08,390/-, as per the evidence of P.W.1. From this, we will take the income of Rs. 1,22,400/- which

is most advantageous to the claimants. Since the deceased was only 36 years old at the time of the accident and was receiving income both under

the head ''salary'' and ''business income'', the scope of earning more could not be ruled out. There has been a jump of Rs. 40,000/- in the annual

income in just two years from Ex.P.2 to Ex. P.8, which works out to about Rs. 7,000/- per month to Rs. 10,000/- per month and he was in his

thirties. The learned Counsel for the respondent submitted that in one year, it was shown as Rs. 1,90,000/-, which was misread by the Tribunal.

32. Taking into account all these facts, we may reasonably fix Rs. 2,00,000/- as the annual income of the deceased and after deducting one-third,

Rs. 1,35,000/- would be his contribution to the family. Then, adopting a multiplier of 13, the pecuniary loss would be Rs. 17,55,000/-. The

Tribunal arrived at a sum of Rs. 17,76,658/-. The insured had taken personal accident benefit cover and under this head, the maximum amount

payable is Rs. 70,000/-. So this should be added, the would be Rs. 18,25,000/-. A sum of Rs. 25,000/- was awarded to the wife of the deceased

for the loss of consortium. If this is confirmed, it will add up to Rs. 18,50,000/-. A sum of Rs. 10,000/- was awarded to the mother towards the

loss of love and affection of her son. If this is confirmed, it adds up to Rs. 18,60,000/-. The award towards funeral expenses as fixed by the

Tribunal at Rs. 10,000/- is confirmed. Then it adds up to Rs. 18,70,000/-. Usually this Court awards Rs. 10,000/- each to the children who have

lost the parent, whereas the Tribunal has awarded Rs. 20,000/- each. We do not think we will interfere with this. Thus, the aggregate sum will

come to Rs. 19,10,000/-. The Tribunal had awarded the very same amount and therefore, it requires no interference by this Court.

33. Before the Delhi High Court in Sagar Chand Phool Chand Jain''s case (supra), the counsel for the claimants submitted that instructions which

affect the policy holders are not published or they are not brought to the knowledge of the policy holders. We hope the situation has changed. In

Manubhai Dharmasinhbhai Gajera''s case (supra), the Supreme Court has referred to Clause-3 of the I.R.D.A. requirements which relates to

consideration and review of products, meaning thereby the insurance policy, and they specifically refer to the following words in Clause-3:

(ii) All literature relating to the product should be in simple language and easily understandable to the public at large. As far as possible, a similar

sequence of presentation may be followed. All technical terms should be clarified in simple language for the benefit of the insured.

34. The policy holder should know as to whose risk is being covered. It should be brought to his knowledge that even his family members would

be gratuitous passengers travelling in his car and we also hope that in addition to English and Hindi, the insurance companies, both public sector as

well as private sector undertakings, would consider publishing the instructions and guidelines in the language of the State. The law governing the

insurance policy ultimately is a law of contract and so both parties should understand exactly what are the terms of the contract and for exactly

what extent and what type of coverage the policy holder is paying premium.

35. While deciding the claim petition, the Motor Accidents Claims Tribunal should examine the terms of the Policy produced by the insurer, and in

the event of denial of liability, a finding should be rendered with regard to the nature of the Policy as to whether it was an "Act Policy" or a

''Package Policy''.

36. In this case, we have decided the legal issue relating to coverage of risk to a gratuitous passenger traveling in a private car in favour of the third

party and against the insurer. Though the Motor Accidents Claims Tribunal had given its reasons for rejecting the case of the Insurance Company

that its liability is limited, we confirm the conclusion of the Tribunal but for the reasons stated by us hereinabove. As regards the quantum, we

confirm the award of compensation as granted by the Motor Accidents Claims Tribunal.

37. The Civil Miscellaneous Appeal is accordingly dismissed. No costs. Consequently, M.P. No. 1 of 2009 is closed.