Oriental Fire and Genl. Ins. Co. Ltd. Vs Ponugoti Ramanamma and Others

Court: Andhra Pradesh High Court

Date of Decision: Jan. 30, 1989

Acts Referred: Motor Vehicles Act, 1988 â€" Section 95

Citation: (1990) 1 ACC 643 : (1990) ACJ 928

Hon'ble Judges: Syed Shah Mohammed Quadri, J

Bench: Single Bench

Advocate: K. Mangachary, for the Appellant; M.V.S. Suresh Kumar, P. Innayya Reddy and S. Hanumaiah, for the Respondent

Final Decision: Dismissed

Judgement

Syed Shah Mohammed Quadri, J.
These two civil miscellaneous appeals arise out of common judgment of the Motor Accidents Claims

Tribunal dated November 27, 1984 in O.P. Nos. 132 and 133 of 1984. In C.M.A. No. 1508 of 1985 the claimants/petitioners, in the O.P. No.

132 of 1984, are the appellants whereas in C.M.A. No. 266 of 1985, the insurance company, the 2nd respondent in the said O.P., is the

appellant.

2. The facts leading to these appeals are: In the early morning of June 1, 1984 one Gajendraiah loaded mangoes at Guntur in lorry ADM 5994 for

transporting them to Nellore and accompanied it sitting in cabin along with his brother. While the lorry was going along the G.N.T. Road, from

Guntur towards Nellore, in the course of overtaking a truck to which a trolley was attached and which was proceeding ahead of the lorry in the

same direction, the said lorry dashed against the backside of the trolley which resulted in serious injuries to the said Gajendraiah and to his brother.

Gajendraiah succumbed to the injuries and died on the spot. The wife, children and parents of the said Gajendraiah (hereinafter referred to as "the

deceased") filed O.P. No. 132 of 1984. They claimed compensation of Rs. 75,000/- under various heads. According to them, the deceased was

earning Rs. 1,000/- per month and was maintaining them.

3. The owner of the lorry denied that the accident was the result of rash and negligent driving of the driver of the lorry ADM 5994. It is stated that

the lorry which was having trolley attached to it suddenly turned towards left side as a result of which the trolley turned towards south-east

direction on account of which lorry ADM 5994 came into contact with the north-western corner of the trolley and that the deceased who was

projecting his head outside the cabin received injuries and died. It was denied that the deceased was earning Rs. 1,000/- per month as alleged in

the petition.

4. The 2nd respondent insurance company filed its counter denying the allegation that the accident occurred due to rash and negligent driving of the

driver of the lorry ADM 5994. It is stated that the insurance policy issued for the said lorry covers only one person who may accompany the

goods loaded in the lorry and the extent of the liability is limited to Rs. 10,000/-. Therefore, the petitioners cannot claim compensation as prayed

for, and that the amount claimed is excessive.

5. Petitioners examined PWs 1 to 4 including the widow of the deceased as PW1 and the brother of the deceased who was travelling along with

him in the lorry as PW 2. Exhs. A-1 to A-5 were marked by them.

6. No oral evidence was let in for the respondents but the insurance policy was marked as Exh. B-1.

7. On appraisal of the evidence on record, the Tribunal determined the annual dependency value at Rs. 2,000/- and taking the multiplier as 13,

awarded compensation of Rs. 26,000/-, a further sum of Rs. 4,000/- to the widow (the 1st petitioner) for loss of consortium, interest at 6 per cent

per annum from the date of petition till the date of realisation and costs. The Tribunal held that the liability of the 2nd respondent insurance

company cannot be limited to Rs. 10,000/- as pleaded by it. Accordingly, the award was passed against both the owner as well as the insurance

company.

8. Mr. Mangachary, the learned counsel for the insurance company in C.M.A No. 266 of 1985, submits that the policy authorised travelling of

only one passenger and as two passengers were travelling along with the goods, the insurance company is not liable. In the alternative it is

contended that as the policy limits the liability to Rs. 10,000/-, no award can be passed against the insurance company over and above the said

amount.

9. Mr. Suresh Kumar, the learned counsel for the appellant in C.M.A. No. 1508 of 1985, submits that the quantum of compensation awarded by

the Tribunal is very meagre. It is submitted that wrong multiplier has been applied and that the compensation under different heads has not been

properly awarded. He further submits that the claim of the dependants of the deceased against the owner is covered by Act policy and the

insurance company cannot contract out of statute. Therefore, any limitation with reference to the quantum of compensation is void.

10. I shall first take up the contention regarding the quantum of compensation. It is stated that the deceased was earning Rs. 1,000/-per month, in

fruit business. But in the cross-examination it is admitted that the deceased was doing business in fruits only for three months and for the rest of the

period, he was carrying on business in vegetables. The trial court estimated the monthly income of the deceased between Rs. 300/- to Rs. 400/-

p.m. and arrived at annual dependency of Rs. 2,000/-. No material is placed before me to arrive at a different figure of the annual dependency than

that determined by the Tribunal. Therefore, I cannot but accept the annual dependency value recorded by the Tribunal. The Tribunal adopted

multiplier method for awarding compensation. It is true that multiplier method is not a statutory method but application of this method in any view

ensures uniformity in all cases. In A.P.S.R T.C. v. G. Ramanaiah 1988 ACJ 223 (AP), my learned brother Jagannadha Rao, J. has exhaustively

dealt with the multiplier method to substantiate that it is more scientific and provides a good basis for uniform approach. He has worked out tables

under different heads giving multiplier with reference to the age of the victim in accident cases and dependants/claimants.

11. The next question is what should be the multiplier in this case. The Tribunal has taken the multiplier as 13. The deceased was 31 years old at

the time of his death. Against the age of 30 years, the multiplier is given as 16.51. As the deceased was 31 years at the time of accident, the

multiplier can be taken as 16. Thus multiplying the annual dependency with the multiplier, the compensation amount would come to Rs. 32,000/-.

To this amount Rs. 7,500/- have to be added towards compensation for pain and suffering and loss of expectation of life. I, therefore, enhance the

compensation from Rs. 26,000/- as awarded by the Tribunal to Rs. 39,500/- (Rs. 32,000/-+ Rs. 7,500/-). This may be apportioned among the

claimants in the same ratio in which the Tribunal did. A further sum of Rs. 5,000/- is awarded to the 1st appellant wife towards compensation for

loss of consortium. The Tribunal awarded interest at 6 per cent per annum as against the rate of 12 per cent per annum to which the claimants are

entitled. The claimants will, therefore, be entitled to 12 per cent interest on the amount of compensation from the date of filing of the O.P. till date

of payment. Thus the award of the lower court is modified by enhancing the amount of compensation from Rs. 30,000/- to Rs. 44,500/- and

interest from 6 per cent per annum to 12 per cent per annum.

12. C.M.A. No. 1508 of 1985 is accordingly allowed with costs.

13. Now, I shall consider the question of the liability of the insurance company. Having regard to the rival contentions of the parties, the only

question which arises for consideration is whether the victim, the owner of the goods travelling along with the goods, is covered by the Act policy,

if so whether the insurance company can limit the liability to Rs. 10,000/-.

14. It would be advantageous to read Section 95 of the Motor Vehicles Act (for short "the Act") here:

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 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 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.

(3) Omitted

(4) A policy shall be of no effect for the purposes of this Chapter unless and until there is issued by the insurer in favour of the person by whom the

policy is effected a certificate of insurance in the prescribed form and containing the prescribed particulars of any conditions subject to which the

policy is issued and of any other prescribed matters; and different forms, particulars and matters may be prescribed in different cases.

(4-A) Where a cover note issued by the insurer under the provisions of this Chapter or rules made thereunder is not followed by a policy of

insurance within the prescribed time, the insurer shall, within seven days of the expiry of the period of the validity of the cover note, notify the fact

to the registering authority in whose records the vehicle to which the cover note relates has been registered or to such other authority as the State

Government may prescribe.

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

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

those classes of person.

15. Section 95 lays down that to comply with the requirements of Chapter VIII, the policy of insurance (hereinafter referred to as "the Act policy")

shall be a policy: (a) which is issued by an authorised insurer or by a co-operative society authorised to transact business of insurance u/s 108 of

the Act, (b) which insures the person or classes of persons specified in the policy (for short "the insurant") to the extent specified in Sub-section

(2). The Act policy is required to cover any liability which may be incurred by the insurant 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. It may be noted here that in so far as

the claims of third parties are concerned, there is no limitation either with reference to the nature of the vehicle involved in the accident or with

reference to the category of the victim or the property to which the damage is caused. The Act policy should also cover 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. In this case insurant''s

liability against death of or bodily injury to passengers of a public service vehicle is covered. In Sub-section (25) of Section 2 of the Act, the

expression "public service vehicle" is defined as any other vehicle used or adapted to be used for the carriage of passengers for hire or reward,

and includes a motor cab, contract carriage and stage carriage. The proviso to Sub-section (1) of Section 95 excepts from the Act policy: (1)

coverage of the liability in respect of the death or bodily injury sustained by an employee, arising out of and in the course of the employment of the

insurant, other than a liability arising under the Workmen''s Compensation Act, 1923 in respect of the death of, or bodily injury to, any such

employee engaged in driving the vehicle, and in case of a public service vehicle engaged as a conductor of the vehicle or in examining tickets on the

vehicle, in case of a goods vehicle being carried in the vehicle. In other words, the Act policy has to cover the liability in respect of the death of or

bodily injury to the following employees of the insurant in the course of employment: (a) a driver, (b) conductor or ticket examiner in public service

vehicle, and (c) the employees carried in any goods vehicle; (2) coverage of the liability in respect of death of or bodily injury to a person being

carried in or upon or entering or mounting or alighting from the vehicle at the time of the occurrence of the event out of which a claim arises except

where the vehicle is a vehicle in which passengers are carried for hire or reward or by reason of or in pursuance of a contract of employment; (3)

coverage of any contractual liability.

16. Thus it is seen that the liabilities required to be covered by the Act policy are four: the first and the second are contained in Sub-sections (i) and

(ii) of Section 95 (1) (b), that is, (1) liability in respect of death of or bodily injury to any person or damage to any property of a third party caused

by or arising out of the use of the vehicle in a public place, and (2) liability in respect of 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; and the third and the fourth are mentioned in provisos (i) and (ii)

of the same sub-section--they are (3) liability arising under the Workmen''s Compensation Act, 1923 in respect of the death of, or bodily injury to

(a) driver of the vehicle, (b) conductor of or ticket examiner in a public service vehicle, (c) employees being carried in a goods vehicle; and (4)

liability in respect of death of or bodily injury to persons being carried in or upon or entering or mounting or alighting from the vehicle in which

passengers are carried for hire or reward or by reason of or in pursuance of a contract of employment.

17. The question whether the owner of goods travelling along with the goods in a goods vehicle is covered by the Act policy is not free from

doubt. In Pushpabai Purshottam Udeshi v. Ranjit Ginning & Pressing Co. 1977 ACJ 343 (SC), the Supreme Court rejected the contention that

the words ''third party'' are wide enough to cover all persons except the insurant and the insurer, as such the owner of goods travelling in a goods

vehicle is not covered by the Act policy u/s 95 (1) (b) (i). Sub-section (ii) obviously covers passengers of a public service vehicle and not a goods

vehicle. The first proviso to Sub-section (1) (b) of Section 95, deals with coverage of liability arising under the Workmen''s Compensation Act,

1923 in respect of the death of or bodily injury sustained in the course of employment of the insurant, inter alia, by an employee being carried in a

goods vehicle. Now, it is to be seen whether the words ""a vehicle in which passengers are carried for hire or reward"" in the second proviso take in

their fold owner of goods travelling with the goods in a goods vehicle for hire or reward. I am inclined to think so, firstly, because these words are

wide enough to include the owner of the goods travelling along with the goods for hire or reward and secondly, because Rule 277 of the A.P.

Motor Vehicles Rules, 1964 postulates travelling of persons connected with the goods in a goods vehicle. Rule 277 reads thus:

277. Carriage of persons in goods vehicle.--

(1) No person shall be carried in the cab of a goods vehicle beyond the number for which there is seating accommodation at the rate of 284

millimetres measured along the seat, excluding the space reserved for the driver, for each person and not more than six persons in all in addition to

the driver shall be carried in any goods vehicle.

(2) No person shall be carried in a goods vehicle upon the goods or otherwise in such a manner that such person is in danger of falling from the

vehicle, and in no case shall any person be carried in a goods vehicle, in such a manner that any part of his person when he is in sitting position is at

a height exceeding 3 metres from the surface upon which the vehicle rests.

(3) No person other than a person connected to the conveyance of goods shall travel in a goods vehicle.

(4) Notwithstanding the provisions of Sub-rule (1), the Regional Transport Authority or the State Transport Authority may, subject to such

conditions as it thinks fit, allow a large number of persons to be carried in a goods vehicle.

(5) Nothing in this rule shall be deemed to authorise the carriage of any person for hire or reward on any goods vehicle, unless there is in force in

respect of the vehicle a permit authorising the use of the vehicle for such purpose, and save in accordance with the provisions of such permit.

18. A reading of this rule makes it clear that it is permissible for a person connected with the goods to travel in goods vehicle and that depending

upon the seating capacity in the cab of a goods vehicle, six persons excluding the driver may travel in it. The Regional Transport Authority or the

State Transport Authority may, subject to such conditions as it thinks fit, allow large number of persons to be carried in a goods vehicle. Further, a

goods vehicle may also be permitted to carry persons for hire or reward in accordance with the provisions of the permit authorising its use for such

purpose.

19. I shall now consider the cases cited at the bar. In Hindustan Ideal Insurance Corporation v. Manne Chimperamma 1974 ACJ 13 (AP), a

learned single Judge of this court held that for death of or bodily injury to the owner of the goods travelling in a goods vehicle, the insurance

company is not liable. The learned Judge relied on Commonwealth Assurance Co. Ltd. v. v.P. Rahim Khan Sahib 1971 ACJ 295 (Madras) and

South India Ins. Co. Ltd. v. P. Subramanium 1972 ACJ 439 (Madras). For reasons stated above, with respect I am unable to agree with the view

of the learned single Judge.

20. In Meesala Suryanarayana v. Goli Satyavathi 1979 ACJ 513 (AP), a Division Bench of our High Court held that persons travelling in the

vehicle which is permitted by condition of the permit and with the permission of the driver who was doing the business of his master are covered by

the policy and observed thus:

Section 95 covers not only a contract with the owner of the insured vehicle, but also persons who are on the vehicle pursuant to a contract of

employment with the owner of the goods carried in it. All that is necessary is that the person must be on the vehicle in pursuance of a contract of

employment and if he is such a person any injury caused to him would also be covered by the section.

It appears that the judgment of the learned single Judge referred to above was not cited before the Bench.

21. A Division Bench of the Karnataka High Court in Channappa Chanavirappa Katti and Another Vs. Laxman Bhimappa Bajantri and Others, ,

held that the owner of the goods travelling in a goods vehicle falls within the second proviso to Section 95 (1) (b) and is covered by Act policy.

The Bench observed.

In fact, in our opinion, the hire payable for carrying the goods must be deemed to include the hire for carrying the owner of the goods or his agent

or servant who travels in the vehicle along with the goods for their safety, inasmuch as it is impossible for us to think of a binding obligation on the

part of the owner of the goods vehicle to carry in it the owner of the goods, who hires the goods vehicle for carrying the goods. Moreover, such

obligation to carry the owner of the goods along with his goods in a goods vehicle can only be as a business proposition as opposed to a gratuitous

proposition. Hence, we have no doubt in our minds that the legislature by enacting the exception contained in the first part of the proviso has

thought of compulsory coverage by insurance of the risk of owners of goods who are entitled to travel in a goods vehicle along with their goods in

the event of any risk arising in the course of the user of the vehicle.

The same view was taken in T.M. Renukappa v. Fahmida 1980 ACJ 86 (Karnataka). A Full Bench of Rajasthan High Court in Santra Bai v.

Prahlad 1985 ACJ 762 (Rajasthan), also took the view that the owner of the goods travelling with the goods in the goods vehicle is covered by the

Act policy. The Full Bench observed:

In other words, if passengers carried by reason of or in pursuance of a contract of employment with the owner of the goods were to be included in

Clause (ii) of the proviso and there is statutory liability of the insurer to cover their risk, then there does not seem to be any valid reason why the

legislature could have excluded the risk of the owner of the goods himself when he accompanied with the goods in the vehicle. It is a matter of

common experience that when the goods are transported in a goods vehicle, some persons are necessary to be carried for loading and unloading

such goods. If the owner of the goods is a big businessman, he may not like to accompany himself with the goods but a petty or small businessman

may accompany with the goods himself as he may not be in a position to employ others for the safe carriage of the goods or due to the nature and

importance of the goods themselves. As owner of the goods may not trust the driver of the goods vehicle or other such situations and contingencies

may arise where the owner of the goods may like to travel himself along with the goods. He pays consideration for carrying his goods to the owner

of the vehicle and in such circumstances, such person would be considered as a passenger being carried in the vehicle for reward. He is not a

gratuitous passenger and makes a contract with consideration for transporting his goods and in such circumstances, the insurer should be liable in

respect of the death or bodily injury of such person 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. This provision has to be given a beneficial construction and the owner of the goods will

certainly fall in the category of passengers carried for reward by the insured.

In view of the fact that my learned brother Jagannadha Rao, J. also after exhaustive consideration of the case law in Oriental Fire & General

Insurance Co. Ltd. v. Matta Chandra Rao 1987 ACJ 174 (AP), took the view that the owner of the goods which are transported in the goods

vehicle travelling in the vehicle is covered by the Act policy and the insurance company is liable, I do not consider it necessary to refer to all the

other cases. With respect I agree with the view taken by the learned Judge as well as by the learned Judges of the Karnataka and Rajasthan High

Courts.

22. The limits on the quantum of compensation are contained in Sub-section (2) of Section 95 of the Act. This sub-section imposes minimum limit

of the liability. It is open to the insurer to insure for such higher amounts as the parties may agree on payment of higher premium etc. In case of

goods vehicle, the limit is Rs. 1,50,000/- including the liability arising under the Workmen"s Compensation Act, in respect of the death of or bodily

injury to employees (other than a driver) not exceeding six in number being carried in the vehicle. In case of a vehicle in which, if passengers are

carried for hire or reward or in pursuance of the contract of employment, the limit is Rs. 50,000/- in all. Irrespective of the class of vehicle, a limit

of Rs. 6,000/- in all is imposed in respect of damage to any property of a third party. In all other cases, irrespective of the nature of the vehicle

except those which have been mentioned above, the liability is coextensive with the liability incurred by the insurant. The other sub-sections are not

relevant for our purpose.

23. It would also be relevant to notice the provisions of Section 96 (1) of the Act which provide that after a certificate of insurance has been issued

under Sub-section 4 of Section 95 in favour of the person by whom a policy has been effected (insurant) judgment in respect of any such liability

as is required to be covered by a policy under Clause (b) of Sub-section (1) of Section 95, notwithstanding that the insurer may be entitled to

avoid or cancel or may have avoided or cancelled the policy, the insurer is liable to pay to the person entitled to the benefit of the decree any sum

not exceeding the sum assured payable thereunder, as if it was the judgment-debtor in respect of the liability together with any amount payable in

respect of costs and any sum payable in respect of interest on that sum by virtue of any enactment relating to interest on judgments. Sub-section

(2) provides that unless before or after the commencement of the proceedings in which judgment awarding compensation is given, the insurer had

notice through court of bringing of the proceedings or in respect of any judgment so long as execution is stayed thereon pending an appeal, no sum

shall be payable by it and the insurer to whom notice of the bringing of any such proceedings is so given shall be entitled to be made a party thereto

and to defend the action on any one of the grounds enumerated in Sub-sections (a) to (c) of Section 96 (2) of the Act. They are as follows:

(a) that the policy was cancelled by mutual consent or by virtue of any provision contained therein before the accident giving rise to the liability and

that either the certificate of insurance was surrendered to the insurer or that the person to whom the certificate was issued has made an affidavit

stating that the certificate has been lost or destroyed, or that either before or not later than fourteen days after the happening of the accident the

insurer has commenced proceedings for cancellation of the certificate after compliance with the provisions of Section 105; or

(b) that there has been a breach of a specified condition of the policy, being one of the following conditions, namely:

(i) a condition excluding the use of the vehicle--

(a) for hire or reward, where the vehicle is on the date of the contract of insurance a vehicle not covered by a permit to ply for hire or reward, or

(b) for organised racing and speed testing, or

(c) for a purpose not allowed by the permit under which the vehicle is used, where the vehicle is a transport vehicle, or

(d) without side-car being attached, where the vehicle is a motor cycle; or

(ii) a condition excluding driving by a named person or persons or by any person who is not duly licensed, or by any person who has been

disqualified for holding or obtaining a driving licence during the period of disqualification; or

(iii) a condition excluding liability for injury caused or contributed to by conditions of war, civil war, riot or civil commotion; or

(c) that the policy is void on the ground that it was obtained by the non-disclosure of a material fact or by a representation of fact which was false

in some material particular.

24. Sub-section (6) further provides that no insurer shall be entitled to avoid its liability to any person entitled to the benefit of the judgment

otherwise than in the manner provided by Sub-section (2), and Sub-section (3) declares that so much of the policy as purports to restrict the

insurance as respects such liabilities as are required to be covered by a policy under Clause (b) of Section 95 (1), by reference to any condition

other than those mentioned in Sub-section (2) (b), shall be of no effect.

25. The appellant claims that in view of limiting clause in the policy, Exh. B-1, it is not liable for anything more than Rs. 10,000/-. The clause on

which the appellant is relying is in the following terms:

Legal liability to non-fare paying passengers other than statutory liability except the Fatal Accidents Act, 1855, Commercial Vehicles only.

In consideration of the payment of an additional premium of Rs. 36/- and notwithstanding anything to the contrary contained in Section III (b) and

(c) it is hereby understood and agreed that the Company will indemnify the insured against his legal liability other than liability under statute (except

the Fatal Accidents Act, 1855) in respect of death of or bodily injury to:

(1) Any employee of the within named insured who is not a workman within the meaning of the Workmen''s Compensation Act, 1923 and

subsequent amendments to that Act prior to the date of this Endorsement and not being carried for hire or reward;

(2) Any other person not being carried for hire or reward provided the person is (a) the owner or representative of the owner of the goods, (b)

charterer or representative of the charterer of the truck, or (c) any other person directly connected with the journey in one form or another;

being carried in or upon or entering or mounting or alighting from any motor vehicle described in the schedule to this policy but such indemnity is

limited to the sum of Rs. 10,000/- in respect of any one such person and subject to the aforesaid limit in respect of any one person to Rs. 10,000/-

in respect of any number of claims in connection with any one such vehicle arising out of one cause. Subject otherwise to the terms, exceptions,

conditions and limitations of this policy.

I am afraid I cannot give effect to this submission. It has already been held that owner of goods travelling with the goods in a goods vehicle is

covered by the ''Act policy''. Prescribing limit on the liability of the insurance company in the policy inconsistent with the liability imposed u/s 95 (2)

is not only not a valid defence u/s 96 (2) but is also void. In my view, carrying two persons along with the goods as against one permitted by the

policy, Exh. B-1, will make no difference regarding the liability of the appellant.

26. In Pushpabai Purshottam Udeshi v. Ranjit Ginning & Pressing Co. 1977 ACJ 343 (SC), the Supreme Court laid down that the liability of the

insurance company in matters dehors the Act policy is governed by the contract and where the insurance company has entered into a contract, if

the liability is not covered by the Act policy, it is entitled to limit the same. As in the instant case, the liability of the appellant is covered by the ''Act

policy'' this judgment of the Supreme Court does not help the appellant.

27. In United India Insurance Co. Ltd. v. P. Seethamma 1985 ACJ 840 (AP), my learned brother Ramaswamy, J. held that the insurance contract

could not limit the liability incurred by the owner of the vehicle and that as the statute permits the owner of the goods to travel in the vehicle hired

for transporting the goods, the liability arises under the Act and in the event of death of owner of the goods, the insurance company has to

discharge the same upto the limit mentioned in Section 95 (2) (a). I am in respectful agreement with this view.

28. From the above discussion it follows that the limitation clause in Exh. B-I would, therefore, be void as being contrary to the provisions of the

Act, as such the insurance company is liable to pay the entire compensation awarded to the respondents.

29. The judgment and award under appeal granting a joint award against the owner and the insurance company is, therefore, confirmed and

C.M.A. No. 266 of 1985 is dismissed with costs.