

Smt. Kaushalya Devi Vs. Housing and Development Board and ors.

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Court : Allahabad

Decided On : Jul-14-1981

Reported in : [1983]53CompCas676(All)

Judge : K.N. Singh and ;N.N. Mithal, JJ.

Acts : [Motor Vehicles Act, 1939](#) - Sections 93, 95, 95(4) and 110

Appeal No. : F.A.F.O. No. 297 of 1975

Appellant : Smt. Kaushalya Devi

Respondent : Housing and Development Board and ors.

Advocate for Def. : Prakash Gupta and ;Bhuneshwar Prasad, Advs.

Advocate for Pet/Ap. : V.N. Agrawal, ;K.K. Gour, ;G. Singh and ;K.P. Agrawal, Advs.

Disposition : Appeal allowed

Judgement :

1. This F.A.F.O., arises out of a claim petition decided by the Motor Vehicles Claims Tribunal, Agra, dismissing the claim petition filed by Smt. Kaushalya Devi, mother of the deceased, who is now appellant before us.

2. The appellant had filed the claim petition before the Claims Tribunal, Agra, claiming compensation in the sum of Rs. 2.50 lakh on account of the death of her son, Sri Krishna Kumar Bhartari, in an accident which took place on 11th May, 1971, near the crossing of Mal Road and the Cariappa Road, Agra, involving truck No. RRL 2621 belonging to respondent No. 2 and a mini-bus bearing No. UPH 3092 owned by respondent No. 1. In this accident, apart from the driver of the mini-bus, claimant's son, K. K. Bhartari, also lost his life. The deceased was aged 34 years and was unmarried. At the time of the accident he was serving as an Assistant Engineer with the U.P. Housing and Development Board and was posted, at the relevant time, at Agra. He was then drawing a salary of Rs. 800 per month apart from some other incomes which he used to derive from other sources.

3. It was alleged in the claim petition that the accident took place on account of the negligence of the drivers of the two vehicles involved in the accident and, therefore, the owners of the two vehicles were alleged to be liable jointly and severally for the claim set out against respondents Nos. 1 and 2 in the claim petition. Subsequently, however, respondent No. 3 was added as a party as the insurer of the truck in question. Similarly, respondent No. 4 was impleaded as a respondent because the mini-bus belonging to respondent No. 1 was insured with it.

4. All the four respondents put in their written-statements separately. Respondent No. 1 claimed that the accident was caused due to the rash and negligent driving by the driver of truck No. RRL 2621 and, therefore, the liability for paying the entire compensation was that of respondent No. 2. It was further stated that there was no negligence on the part of the driver of the mini-bus owned by respondent No. 1 who had a valid licence and, therefore, it disclaimed its liability to pay any compensation to the claimant. Respondent No. 2, in his written statement stated that the accident had taken place not on account of any negligence on the part of the driver of the truck but in fact the driver of the mini-bus was guilty of rash and negligent driving and as such respondent No. 2 was not at all liable for payment of any compensation. The amount of compensation claimed was also questioned as excessive. It was also stated that the claim petition did not give the details of the alleged negligence and as such no compensation could be awarded. In the written

statement filed by respondent No. 3, mainly three objections were raised; firstly, the cover note issued to the owner of the truck for the relevant period was subject to the payment of the premium amount and as no premium money was paid no insurance policy was ever issued and there was no completed contract between the owner of the truck and the insurance company. Secondly, it was contended that the cover note issued was obtained by respondent No. 2 by misrepresentation that the premium amount would be paid. Since the cover note was obtained by false inducement, the same was not binding on the insurance company. Lastly, it was contended that the cover note, even if the same be deemed to be valid, yet, the same was effective only for 15 days and it automatically became ineffective on the expiry of that period. Since the cover note was issued on April 19, 1971, it became ineffective automatically on May 3, 1971. The accident having taken place on May 11, 1971, the insurance company was not liable to pay any compensation to the claimant.

5. Respondent No. 4, in its written statement, raised two objections, firstly, that the driver of the mini-bus did not possess a valid driving licence at the relevant time and as such it was not being driven by an authorised person, which violated the terms of the insurance policy. It was, secondly, contended that the deceased was a passenger in the mini-bus at the relevant time and since under the terms of the policy risk to passengers was not covered, the company was not liable for the amount claimed.

6. The Tribunal, on the basis of the evidence led before it came to the conclusion that Sri K.K. Bhartari had in fact died in an accident which happened on May 11, 1971, at about 2 p.m. between truck No. BRL 2621 and the mini-bus No. UPH 3092 near the crossing of Mall Road and the Cariappa Road, Agra. The Tribunal also recorded a finding that the drivers of both the vehicles were guilty of rashness and negligence in driving and were, therefore, jointly responsible for the accident. The Tribunal, therefore, apportioned their liability equally. On the question of the quantum of compensation payable, the Tribunal assessed the total monetary dependency of the claimant on the deceased at Rs, 57,600, but, after making deductions on account of the lump sum nature of the payment, the claims under the life insurance policy of the deceased, the sale of the car belonging to the

deceased and the sale of the house, the Tribunal held that the amounts already received by the claimant aggregated much more than the amount payable to her by way of compensation and as such she was not entitled to get any compensation against the respondents. On the basis of these findings, the Tribunal dismissed the claim petition. This is how the claimant has come up before us.

7. In the appeal before us, it was mainly urged on behalf of the petitioner that the entire approach of the Tribunal in assessing the compensation and in making the deductions from the amount of compensation assessed by it was totally erroneous. It was urged that in fact no deductions could have been made in respect of the claims received under the life insurance policy of the deceased or the provident fund claims received by the claimant. Also, the amount received by the sale of the car and the house also could not be adjusted while awarding the final compensation. The respondents on the other hand urged that the findings of the Tribunal about the negligence of both the drivers was incorrect and each respondent again wanted to put the blame on the driver of the vehicle belonging to the other respondent. The amount of compensation assessed, however, was not seriously contested. However, the two insurance companies have questioned their liability and urged that the deceased was a passenger in the mini-bus and, therefore, under Section 95(1), the insurance company was not liable for the amount claimed. Similarly, respondent No. 3 has urged that there was no valid policy of insurance in respect of the truck in question at the relevant time and as such it was not liable for the payment of compensation.

8. We will first consider the question of liability of the drivers and the owners of the two vehicles in respect of the accident in question. Unfortunately the driver of the mini-bus as well as the deceased, K.K. Bhartaria, the two persons who were the most competent to state about the manner in which the accident actually took place are no more in this world. From out of the other passengers occupying the mini-bus at the relevant time, D.W. 7, Shri D.D. Gupta, has been examined as a witness by respondent No. 1. The driver of the truck was none other than the very son of the owner. He has appeared as D.W. 4 and he has stated that the accident took place on account of the rashness and negligence of the driver of the mini-bus.

In order to minimise his own share of negligence, he has taken recourse to exaggeration when he stated that at the relevant time his truck was moving at the speed of 15 to 20 kms. per hour only. This statement on the face of it cannot be accepted. There is a natural tendency of the driver involved in a motor accident to try to minimise the gravity of the negligence on his part and with that view an effort is usually made to show that the vehicle driven by him was being driven at a low speed and was under his complete control. There is also a conscious effort to exaggerate the gravity of negligence on the part of the driver of any other vehicle involved in the accident. This case too is not an exception to this rule. In our view, however, it would be against the normal human conduct to believe that an empty truck was being driven on a wide road at about 2 p.m. in broad sunshine in the month, of May by a young man at a speed of only 15 or 20 km/ph. In a country like ours where the truck drivers are loath even to give side or to blink the head lights, this would seem to be an almost impossibility. Therefore, unless properly corroborated by some other independent evidence, we will not like to accept his version on its face value'. We find none. Therefore, it is really difficult for us to believe D.W. 4 that he was driving the truck only at the speed of 15 to 20 km/ ph. This statement also looks ridiculous in the light of the photographs filed on the record as Exs. B/4, B/5, B/6 and B/8. The velocity with which the truck entered the compound of the bungalow No. 70 after tearing through the masonry boundary wall and trampling over a few trees before coming to a stop is tell tale. A truck even though empty is a much heavier vehicle than a mini-bus even when loaded. The impact admittedly was on the right rear corner of the truck and it is not possible that the truck moving at 15 to 20 km/ph. only would take a turn of 90 and after crossing a wide road it will rush tearing through a masonry boundary wall and proceed to trample some of the trees also. This would be impossible unless the speed of the truck was in the vicinity of 60 km/ph. or so. We hold accordingly.

9. This, however, does not mean that the entire blame for the accident has to be put at the door of the driver of the truck. It appears from the evidence on record that the crossing of the Mall Road and the Canappa Road is a fairly wide crossing. It is true that there was no island or round- about there at the time when the accident took place. It is also in evidence that there are thick bushes along walls of bungalows on both sides of the Mall road which might have made it difficult for the

driver of the mini-bus to see the truck coming on the Cariappa Road. From the situation of the vehicles after the accident (see photographs) it appears that the accident must have taken place a little to the north of the main crossing. It was stated by Sri B.D. Gupta, D.W. 7, that after the impact the minibus was dragged to a pit before turning turtle causing instantaneous death of the driver of the mini-bus and causing serious injuries to Sri K.K. Bhartari. His statement appears to be more consistent with the situation of the case. It is true that Sri Bhartari was also working in the Housing Board as an Engineer, but Mr. B. D. Gupta is a fairly senior officer of the Board and it is not expected that he will tell a lie merely to help the cause of the claimant. He has appeared as a witness for respondent No. 1. Admittedly he was also an occupant of the mini-bus at the relevant time.

10. From the side of respondent No. 2, one Shri U.K. Sharma has been examined as D.W. 6. He is an assessor and is beneficially interested in respondent No. 3, the insurance company. According to him, he was present and he saw the accident happening before his own eyes. We have gone through the statement of this witness and we find the same to be unworthy of reliance. D.W. 7 has clearly stated that this witness was not present at the time of the accident. To us it appears that both the mini-bus as well as the truck were being driven at a considerable speed and none of the drivers could see the other vehicle until a little, while before they actually entered the crossing. As soon as the truck was seen moving at a fast speed and the driver of the mini-bus found that there is no chance of avoiding the accident, he perhaps tried to apply brakes and tried to turn the vehicle to his right to gain some space and time but this device did not help him and the mini-bus still dashed against the right rear portion of the truck. The photographs of the mini-bus on the record, Exs. B/6 and B/8, suggest that the entire impact of the collision was on the left front portion of the mini-bus near the driver's seat. It may be recalled that the minibus was a left-hand driven vehicle, Sri K. K. Bhartari was also sitting just behind the driver's seat and after the accident the mini-bus turned turtle on its left. The driver was sandwiched between the seat and the steering-wheel and died then and there while Sri Bhartari received serious multiple injuries and succumbed to them in the hospital.

11. Curiously enough, no photographs have been filed by respondent No. 2 showing the place where the mini-bus had struck against the truck. It appears that this was done designedly. Photographs B/4 and B/5 merely show damage done to the truck near the rear wheel of the truck but this could also have been caused due to the impact against the northern pillars of the gate of Bungalow No. 20 and not in collision with the mini-bus in question. All these circumstances and the statement of the witnesses, particularly of D.W. 7, Sri B. D. Gupta, lead us to the conclusion that the drivers of both the vehicles were driving the vehicles rashly and negligently and, therefore, they are equally responsible for the accident. The finding of the Tribunal that they were equally responsible for accident was, therefore, correct and is accordingly upheld.

12. Next question that comes up for consideration is about the amount of compensation payable to the claimant on account of the death of Sri K. K. Bhartari. The deceased had an elder brother, who had predeceased, leaving behind him his widow, Smt. Vimla Bhartari, and three daughters out of whom two had already been married before the accident and one was married after the accident in question took place. The claimant is the mother of the deceased. Her husband had succeeded to some immovable property of his father (grandfather of the deceased) which included two houses and some shops. The entire family after the death of Ram Das, brother of the deceased, had been living jointly and was entirely dependent on the deceased. Shri K. K. Bhartari had been drawing salary of Rs. 800 per month and he was also deriving some income from his house property. It has also come in evidence that on the date of the accident in the meeting of the Housing Board it had been decided that the deceased should be promoted as an Executive Engineer. Taking into account his young age and also the chances of promotion in future, the Tribunal came to the conclusion that the income of the deceased should be taken as Rs. 1,200 per month on an average. Looking to the habits of Sri K. K. Bhartari and the life standard, which he was accustomed to maintain, it was further held that he must be spending Rs. 750 per month on his household expenses out of which the deceased must be spending Rs. 300 per month on the claimant alone. In view of all this an average of Rs. 400 per month was taken to be the dependency of the claimant on the deceased. On this basis, the Tribunal came to the conclusion that if the life span of the claimant

was taken to be 70 years, she would have got financial support from the deceased for at least 12 years and as such a sum of Rs. 57,600 would have been spent by the deceased on the claimant during this period. The question that, however, arises for consideration was whether the life span of 70 years has to be fixed for the claimant in this case or this time (span) should be increased. The accident had taken place in 1971 and the statement of the claimant was recorded on January 9, 1974, when she gave out her age as 60-61. She is still alive and must be about 68 years of age. It would, therefore, not be incorrect to take the life expectancy in the case of the claimant as 70 years only, as held by the Tribunal. There is no evidence to the contrary to justify an additional period of expected longevity. In our view, therefore, the Tribunal was right in fixing the life expectancy at 70 years for the claimant in this case.

13. As already stated the Tribunal came to the conclusion that the total financial dependency of the claimant on the deceased was to the extent of Rs. 57,600. Out of this the Tribunal has made deductions of Rs. 9,600 on account of lump sum nature of the payment. It is obvious that such, a deduction ought to be made, for, what the claimant would have received from her son would not have been a lump sum but only periodical payments spent over her every month and spread over a span of 12 years. If she is being given the benefit of receiving the entire amount in a lump sum then naturally the deduction which is now normally accepted as 1/6th of the total amount is to be made from the amount found payable to her. The deduction of Rs. 9,600 made by the Tribunal, therefore, appears to be justified.

14. The Tribunal has, however, made a further deduction of Rs. 12,500 on account of money paid under insurance policies and in respect of the provident fund due to the deceased. We do not find any justification for making such deductions. The amount paid by the insurance company on the maturity of the policy or earlier is merely an amount contributed or paid under the contract of insurance earlier by the policyholder himself. It is his own money which has been given back to him due to the happening of a certain contingency depending entirely upon the insurance contract. It has, however, nothing to do with the death of the insured except to the extent that the amount becomes payable on the happening of his death which may occur either during the continuance of the policy or even

thereafter. In either case it is not the advantage which an insured person gets merely on account of the death. Therefore, it cannot be termed as an amount which becomes payable to the legal representatives on account of the death of the insured in an accident involving a motor vehicle. Under Section 110 of the Motor Vehicles Act, the Claims Tribunal can only adjudicate upon the claims for compensation in respect of the accident involving death of, or bodily injury to, persons arising out of the use of motor vehicles in a public place, etc. The amount paid by the insurance company, it hardly needs to be said, does not amount to compensation in respect of an accident involving the death of a person arising out of the use of a motor vehicle. There is no nexus between the two. If the death had occurred in any other manner, then also the amount would have been payable by the insurance company on the basis of the contract of insurance and the mere fact that the death of the insured in a particular case has been caused on account of an accident involving the use of a motor vehicle will not make any difference at all. We are clearly of the view that the amount payable by the insurance company is not an amount which should be deducted from the total amount of compensation payable to a claimant on the basis of the monetary loss caused to him or her.

15. The same is the position with respect to the amount payable as gratuity which is paid to an employee on the basis of the length of his service with his employer and which would be payable to him whether or not he dies during the service period or thereafter either in an accident involving the use of a motor vehicle or not. In this case also there is no nexus between the amount payable as gratuity and the compensation payable for causing the death in the use of a motor vehicle. We may refer to the decision of the House of Lords in *Parry v. Cleaver* [1969] 1 All ER 555, where the Insurance policy amounts were held to be collateral benefits which the deceased has bought with his own money. It was the benefit derived by way of prudent saving effected for his own benefit in a contract by the insured party whose benefit could never go to the tortfeasors. It is only a like which could be deducted from a like and, therefore, the intrinsic nature of the payment must be considered before the deductions could be made. It has been argued from the side of the respondent that in any case the payment of these amounts has been accelerated. It is not understood how the payment of the amounts has been accelerated' and even if that be so on what rationale could the same be deducted

from the amount of compensation payable to the claimant. As we have already seen above, it is only a like which could be deducted from the like and, therefore, the amount due under the insurance policy, which is payable as a result of the own contribution of the insurer, could have no connection with the amount of compensation which is payable on account of the death of the insured in a motor accident. Acceleration or no acceleration, the two claims are things wide apart and one cannot be deducted from the other. We are, therefore, of the view that any amount paid by the life insurance company under a policy of insurance and gratuity or the provident fund amount, due to the deceased or his nominees, are not such which may be deducted from the amount of compensation payable to the claimant on account of the death of her son. The Claims Tribunal, according to us, was not right in holding to the contrary.

16. Coming now to the next question, where the Tribunal has come to the conclusion that since the car of the deceased must have been sold by the claimant, a sum of Rs. 7,500 has to be deducted from the amount of compensation assessed. We find from the evidence that there is nothing to show that the car was worth Rs. 7,500 or it was sold for such an amount. The only admission in the evidence is that the deceased did own a car and the same had been disposed off. No further cross-examination was directed on this point. That alone could not entitle the Tribunal to fix the price of the car on the basis of its own assessment unsupported by any legal evidence on the record. The price of an old car depends on many factors including the anxiety of the owner to sell as also of the purchaser's need of the moment. We do not know what was the year of the manufacture or brand, make and condition of the car at the relevant time. These materials cannot be supplied by any person from his own personal experience or on the basis of any imagination or fancy. There must be some kind of evidence on record.

17. Apart from this, the question is whether the price of the articles owned by the deceased have to be deducted from the amount of compensation. If the argument of the respondents is to be accepted, it would mean that even the articles of daily use should be valued and the value thereof be deducted from the compensation because all those things have now vested in the claimant on the death of her son.

Here again the same question arises whether there does exist any nexus between the claim for compensation and the right to possess the properties which once belonged to the deceased. As an heir of the deceased, the natural mother would be entitled to the properties left by her son. But, would it be a benefit which has accrued to her on account of the accident involving use of motor vehicle resulting in the death of her son? The answer has to be only, an emphatic 'No'. If the son had died otherwise than in a motor accident the properties would have still gone to her and, therefore, the value of the tangible properties owned by the deceased cannot legally be deducted from the amount of compensation determined in favour of the claimant. It was finally submitted that the deduction of the entire amounts as above was justified. We do not, however, agree with this proposition. The claimant, as mother, certainly had a right of residence with the son and also a right-of support from him. Had the son survived her, she may not have had any title to this property but she had a vested interest in the same. We thus do not agree with this initial submission.

18. In the same way, deduction of the amount of Rs. 60,000 on account of the sale of the house from the amount of compensation appears to be wrong. We do not see any justification for doing so. It was urged that on account of the death of the claimant's son, succession by her has at least been expedited and, therefore, for this acceleration of succession some deduction must be made. The argument, though attractive at first look, is not entirely correct. As we have discussed above, the claimant in such cases is entitled to pecuniary compensation for the loss occasioned to the claimant due to the death of the deceased in an accident involving the use of a motor vehicle in a public place. The claimant's right in the property which was dormant and may not have matured at all in her favour but for her son's untimely death and, therefore, her contingent right has certainly been accelerated. For this acceleration some deduction can be made. This would again be more conjectural than mathematically correct. Keeping in view the escalation of prices since the death to the time of sale of the house and all other imponderables, we feel that a deduction of a nominal sum of Rs. 5,000 should suffice to take care of the advantage which the claimant may have derived due to such acceleration of succession. A sum of Rs. 5,000 only, therefore, need be deducted on this score from the compensation amount. For the same reasons for which we have rejected

the deduction of Rs. 7,500 from the amount of compensation regarding sale of the car, we also reject the deduction of the sum of Rs. 60,000 from the compensation amount and reduce this deduction to only Rs. 5,000.

19. In the result, we find that, out of the total amount of Rs. 57,600 which was determined by the Tribunal as payable to the claimant on account of the dependency on the deceased, a deduction of Rs; 9,600 plus Rs. 5,000 total Rs. 14,600 only has to be made which leaves a clear sum of Rs. 43,000 payable to the claimant as compensation for the death of her son in the accident involving the use of the motor vehicle in question.

20. The learned counsel for respondent No. 3, however, urged that there was no valid insurance contract between respondent No. 3 and the awner of the truck. According to him, the cover note No. 31305 dated April 19, 1971, was issued to respondent No. 2 but the same was subject to the payment of the premium. In fact no premium was really paid by respondent No. 2 and it appears that he later on got his vehicle insured with another company covering the period 18th May, 1971, to 17th May, 1972, under policy No. 5/JA/CV/9889/71. This policy of insurance was given by the Union Co-operative Insurance Society Ltd., Bombay, on May 18, 1971. It was further urged that the cover note issued to respondent No. 2 on April 19, 1971, by itself did not amount to a completed agreement of insurance and on the expiry of 15 days after the date of its issue, it automatically came to an end on May 3, 1971. The vehicle in question was, therefore, not covered by any insurance at all on the date of the accident. It is also alleged that the cover note had been obtained by false representation by respondent No. 2 and as such also the insurance company was not bound by the same. The Tribunal, on the other hand, has found that the premium amount for the policy had been paid. The cover note is Ex. 56A on the record and there is a stamp mark showing the words ' Document will be valid subject to realisation of the premium ' imprinted over it. However, in the second line of the cover note, the following words have been written :

' The insured having paid the sum of Rs. 135 only, the risk is hereby covered in terms of assets, (See form of third party risk also applicable thereto.)'

21. These words are followed by a clause reading thus ' subject to any special condition or restriction which may be mentioned overleaf '. It is pertinent to note here that no conditions or restrictions have been mentioned overleaf in this cover note. It, therefore, appears to be correct that respondent No. 3 had in fact issued the cover note after having received Rs. 135 as premium from respondent No. 2, No evidence except the statement of D.W. 3 has come on record to show that this sum of Rs. 135 had never been paid to the respondent insurance company. The agent who had issued the cover note has not been examined nor any account book of the insurance company have been filed to show that such an amount in fact had not been recovered by it. D.W. 3 has taken courage to say that no premium was received only on the strength of the above-mentioned stamp mark on the cover note. It, therefore, appears that the stamp on the cover note alone is the source of all his emphasis in his statement that no premium had been received, although in the earlier part of the cover note itself there is a clear recital that a sum of Rs. 135 had in fact been received by way of premium. We also cannot ignore that the insurance company has failed to produce relevant books of account in order to rebut the admission made in the cover note to the effect that Rs. 135 had been paid. Since Rs. 135 has been mentioned in the own handwriting of the person who had filled in the form, it appears improbable that the money was not paid to the company or its agent. It is quite possible that the stamp mark that the document would be valid only subject to the realisation of the premium amount imprinted over the cover note may have been affixed in the routine course on all the cover notes and once the payment is received then this stamp would automatically become meaningless. The stamp would have some meaning only when the premium amount is not in fact paid. On the face of the clear finding of the Tribunal we fear it is not possible for us to take a different view of the matter merely because respondent No. 2 had taken another policy also with another company. We are, therefore, not satisfied that the mere statement made on behalf of respondent No. 3 that there was no valid contract between the parties and that too by a person other than the one who had filled in the cover note on behalf of the insurance company would be sufficient to rebut the clear admission contained in the cover note. On an appreciation of all the evidence on record in this respect, we find ourselves in agreement with the findings recorded by the Claims Tribunal,

Agra.

22. Having held that the premium amount had been paid before the cover note had been issued by the insurance company we have to examine as to what is the effect of such payment. Does it amount to a completed contract between the insurance company and the insured? The contention of the learned counsel for the insurance company was that the contract between the parties comes into existence only after the insurance policy has been issued after completing all the formalities, although, once the formalities have been completed, it relates back to the date when the cover note was issued. We do not agree. Chapter VIII of the Motor Vehicles Act deals with the insurance of motor vehicles against third party risks. Under Section 93(b) a 'certificate of insurance' has been defined as meaning a certificate issued by the authorised insurer in pursuance of Sub-section (4) of Section 95, and includes a cover note complying with such requirements as may be prescribed, i.e., where such a certificate has been issued by the insurance company pending the issue of a regular policy of insurance, this, in its nature, would be a sort of memorandum of acceptance of the policy provisionally. According to the learned counsel for the insurance company the life of the cover note is only 15 days and on the expiry of that period if a regular policy is not issued the validity of the cover note would come to an end. This, however, does not appear to be correct. In view of some other provisions it appears that the cover note is issued by the insurance company after the acceptance of the premium amount in order to authorise the use of the vehicle in a public place because it usually takes some time before the actual policy can be issued by the company after completing various formalities. In order to obviate these difficulties and as a public policy, the insurance companies issue cover notes pending the finalisation of the issuance of the regular policy. The validity of the cover note, therefore, cannot be limited to any shorter period. The cover note in question was issued on April 20, 1971, and it is clearly mentioned in column 4 that the insurance covers the period up to April 19, 1972. In column 7 there is a clear assertion that for the validity of the insurance policy all the conditions would be as above. Reference of the words 'as above' can only be to the period mentioned in column 4 which gives the date of the expiry of the insurance cover, i.e., April 19, 1972. In the cover note there is no mention of any period of 15 days. Having issued the cover note

after accepting the premium amount, it is for the insurance company itself to complete the remaining formalities and formally issue the policy. The insured or the third party cannot be allowed to be left at the mercy of the insurance company in such matters, otherwise in most of the cases the insurance company will not issue any insurance policy even after issuing the cover note and thus frustrate the very purpose for which Section 94 of the Motor Vehicles Act has been enacted. This section lays down that no person shall use except as a passenger or cause or allow any other person to use a motor vehicle in a public place, unless there is in force in relation to the use of the vehicle of that person, or that other person, as the case may be, a policy of the insurance complying with the requirements of that Chapter; Therefore, once a motor vehicle is put in use in a public place there must be a policy in accordance with the Chapter VIII of the Act. As we have seen earlier, from the definition of the 'certificate of insurance' it is quite obvious that the cover note should be one which is in accordance with the requirement of Section 95(4). Section 95(4) makes it obligatory on the insurance company to issue a policy of insurance in favour of the insured in the prescribed form containing the necessary particulars and conditions. When such a policy has been issued, it will amount to the issuance of a certificate of insurance. A reading of the two Sections 93(b) and 95(4) of the Act, therefore, makes it clear that the issuance of a regular policy of insurance after the cover note has been issued is more or less a ministerial job which is to be performed by the office of the insurance company itself and it cannot invalidate the issued cover note. Sub-section (4A) also further clarifies this position when it lays down that if the insurance policy is not issued within the prescribed time, then the insurance company must, within 7 days of the expiry of that period, inform the registering authority about the same. In this case, we do not find any evidence on the record which may go to prove that the insurance company had issued any such letter to the registering authority after the expiry of the alleged 15 days from the date of the issue of the cover note. If the insurance company was of the view that the premium amount had not been paid, it was bound to have informed the registering authority about the same. But no such step appears to have been taken. This also indirectly supports the plea that the premium amount had in fact been paid by the insured to the insurance company and the insurance company is only trying to take advantage of the fact that by that

time the actual policy of insurance could not be finalised and issued to the insured.

23. The argument of the learned counsel for the insurance company that the cover note would not be valid or effective after the expiry of 15 days does not find support from any of the conditions mentioned in the cover note itself or any other provision of the Motor Vehicles Act or the Rules made thereunder. No other provision or rules also have been brought to our notice from which it could be held that the cover note could be issued only for the duration of 15 days and after that period it automatically becomes ineffective. As already discussed above, the period for which the cover note was valid was up to 21st April, 1972, and, therefore, the liability of the insurance company cannot be avoided on this technical ground.

24. In the result, we find that the owner as well as the insurance company, i.e., Co-operative Insurance Society Ltd., are both liable for the payment of the compensation in respect of the accident in question.

25. It was next argued for the insurance company with which the minibus was insured that it was under no obligation to pay the compensation as at the relevant time the deceased was travelling as a passenger in the vehicle. The argument was that under Section 95(1)(b), proviso (ii), the company was exempted from the payment of any compensation. This argument has no force. The purpose of Section 95 is only to lay down what minimum conditions must necessarily be contained in a policy of insurance which is required to be obtained by the owner of a motor vehicle before he may use it in a public place. It, therefore, lays down that the insurance policy required under Chap. VIII of the Motor Vehicles Act must contain the conditions as are specified in Sub-sections (1) and (2) thereof. It does not lay down that no other conditions can be agreed upon between the parties but certainly they must be such as could exist, without violating the conditions which are positively required to be contained in the insurance policy. The statutory requirement must be complied with by the insurance company but apart from those conditions the insurance company would be free to take upon itself any larger responsibility than those required by law, may be for the sake of getting higher insurance premium by covering the greater risk. A similar question arose in

the National Insurance Co. Ltd, v. Narendra Kumar, decided by a Division Bench of this court--See [1983] 53 Comp Cas 669. Relevant portion of Section 95 may be reproduced, as under :

'(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 cooperative society allowed under section 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.....

(ii) except where the vehicle is the vehicle in which the 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.'

26. This section, therefore, requires that any policy under this Chapter must be issued by an authorised insurer, etc., and must insure a person or a class of person to the extent specified in Sub-section (ii). Such insurance must be against causing death or bodily injury or damage to the property of a third party from the use of the motor vehicle in a public place. This section then makes an exception

that such a policy is not needed in respect of cases covered by the Workmen's Compensation Act or in respect of the liability against the death or bodily injury to persons while being carried as passengers or while entering, mounting or alighting from the vehicle at the time of the accident but this exception will not apply in the case of a vehicle in which passengers are carried for hire and reward or under a contract of employment. The deceased, in the instant case, was not a passenger for hire or reward. He was an employee of the Avas Evam Vikas Parishad and had been returning in the official vehicle after attending the meeting at the circuit house. It was in connection with his administrative duty as engineer in the Avas and Vikas Parishad that the deceased was travelling in the ill-fated vehicle at the relevant time. It was Avas Evam Vikas Parishad which owned the vehicle and as such the deceased could be said to be one of the owners of the vehicle though in a limited sense and was occupying the same certainly not as a passenger. In any case, he was occupying it as an employee of the owner of the vehicle while in discharge of his duties and not for hire or reward. He, therefore, cannot be said to be a passenger for hire or reward and as such this exception will not apply to him. In respect of such a person, it is necessary that there must be an insurance and in fact there was an insurance which is already on record. We do not, therefore, find any merit in this argument. The owner of the mini-bus as well as the insurance company will be liable for the payment of the amount of compensation.

27. We have already held that the drivers of both the vehicles have been guilty of driving rashly and negligently and, therefore, the amount of compensation payable in this case has to be borne by both the sides equally. We have also considered the amount of compensation payable and have fixed a sum of Rs. 43,000 as compensation payable to the appellant. We, therefore, allow the appeal and direct that the sum of Rs. 21,500 will be paid by the owner of the truck No. RRL 2621 which would also be recoverable from the insurance company, i.e., respondent No. 3, and the remaining sum of Rs. 21,500 would be payable by respondent No. 1 and may also be recovered from its insurance company, respondent No. 4. We further award interest on the amount of compensation payable by each set respectively at the rate of 6% per annum payable from the date of the filing of the petition till the date of its recovery or deposit in court by the respondents, whichever is earlier. The appellant shall also get her costs from the respondents,

which too shall be equally borne by the two sets of the respondents.

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