Chandro Devi and Others Vs. Jit Singh and Others

Chandro Devi and Others Vs. Jit Singh and Others

SooperKanoon Citation : sooperkanoon.com/679702

Court : Delhi

Decided On : Apr-14-1989

Reported in : [1989]66CompCas149(Delhi)

Judge : S.N. Sapra, J.

Acts : Motor Vehicles Act, 1939 - Sections 95 and 96

Appellant : Chandro Devi and Others

Respondent : Jit Singh and Others

Advocate for Pet/Ap. : Mr. O. P. Goel, Mr. Goel

Judgement :

S. N. Sapra, J.

1. The present appeal has been filed by the appellants under section 110D of the Motor Vehicles Act, 1939 (hereinafter called 'the Act'), against the order dated August 22, 1975 passed by the Motor Accidents Claims Tribunal, Delhi.

2. Smt. Chandro Devi, appellant No. 1 and appellants Nos. 2 to 6 are the unfortunate widow and children respectively of deceased Bhartu. The facts in brief are as under:

Shri Bhartu, son of Shri Shera, was residing in village Teha Tehsil Sonepat, Haryana, along with his family. On the night of July 7/8, 1968, Shri Bhartu, now deceased, was coming in motor truck No. PNF-8204 driven by Jit Singh, respondent as owner of his goods consisting of vegetables from his village to Subzi Market, Delhi on G.T. Road. When the truck was near mile stone No. 14 on the Grand Trunk Road, another truck, bearing registration No. PNQ-2409, being driven by respondent Sucha Singh, was coming from Delhi and both the vehicles collided with each other and overturned resulting in injuries to deceased Bhartu and other persons, who were also on truck No. PNF-8204. Immediately after the accident, Shri Bhartu was taken to Irwin Hospital, Delhi and was admitted there. Later on, succumbed to the injuries.

3. Bhartu had left behind the present appellants. At the time of death, Bhartu left six minor children, i.e. three daughters and three sons. During the pendency of proceedings, appellants Nos. 2 to 6 attained the age of majority and elected to pursue the appeal. Truck No. PNF-8204 was owned by respondent Raj Pal and the other truck No. PNQ-2409 was owned by respondent Avtar Singh.

4. The appellants filed an application, being suit No. 316 of 1968 under section 110A of the Act before the Motor Accidents Claims Tribunal, Delhi, thereby claiming a compensation of Rs. one lakh as the legal representatives and dependents of the deceased. In the application, it has been alleged that the aforesaid accident was caused by the rash and negligent driving of the vehicles by their respective drivers, namely, respondents, Jit Singh and Sucha Singh. The vehicles in question were being driven by the drivers in the course of their employment under their respective employers/owners of the truck who are respondent Raj Pal Avtar Singh. The deceased was possessed of good physique and was in the prime of his life. At the time of his death, it was alleged that he was 40 years old and if he had not died in the accident, he would have lived up to the age of 90 years. The deceased used to take land on theka and used to cultivate vegetables which grew in abundance. The deceased was earning a sum of Rs.600 per month on the average. At the time of accident, the deceased was carrying six bundles of vegetables weighing about 12 mounds worth Rs.450. It was further alleged that the appellants were wholly dependent on the deceased and had been

rendered destitute by the untimely death of the deceased. The petitioner was filed through Smt. Chandro Devi for self and as next friend and guardian of the minors. She is an illiterate lady and she put her rights thumb impression on the petition.

5. Respondents, Sucha Singh and Avtar Singh, did not contest the petition and they were proceeded ex parte. At the time of accident, both the vehicles were insured with M/s Calcutta Insurance Limited. After the nationalisation of the General Insurance in India, the said company was later on represented by National Insurance Co. Ltd. Respondent Jit Singh filed written statement. In his written statement, it has been alleged that the petitioner had no locus standi to file the claim petition. The vehicles which were involved in the accident, were public goods carriers and the same were not meant for carrying passengers. The allegations made by the appellant were also denied. However, it was admitted that the accident took place on the night of July 7, 8, 1968 on the G. T. Road, Delhi. But the plea was that the accident took place on account of the negligent and rash driving on the part of the respondent Sucha Singh of vehicle No. PNQ 2409. Respondent Raj Pal, who was the owner of vehicle No. PNF 8204 also filed a written statement taking pleas similar to the pleas taken by respondent Jit Singh. The insurance company filed a written statement. Various preliminary objections were taken. The insurance company alleged that the insurance policy covering open truck No. PNF 8204 against third party risk was void on the ground that it was obtained by the insured by means of misrepresentation and fraud. The insurance policy concerning the aforesaid two vehicles covered only the use of the vehicles as 'public carriers' and it was clearly stipulated in the policies that the same would not cover any risk arising out of the use of the vehicle or vehicles for conveyance of passengers for hire or reward. For this reason, it was alleged, the insurance company was not liable to pay any compensation to the petitioners. It was further alleged that the offending trucks No. PNF 8204 and PNQ 2409 were being used and driven at the time of the accident in contravention of the terms of their public carrier permits and in violation of the conditions incorporated in the insurance polices.

6. On the pleadings of the parties, following issues were framed:

1. Was Shri Bhartu, son of Shri Shera, killed due to rash and negligent driving of truck No. PNF 8204 driven by Shri Jit Singh, respondent No. 1 and/or truck No. PNQ 2409 driven by Shri Sucha Singh respondent No. 3 on July 8, 1968?

2. Are the petitioners the legal representatives of Shri Bhartu deceased?

3. Was Shri Bhartu not allowed by law to travel by truck No. PNF 8204? If so, to what effect?

4. Was the insurance policy of truck No. PNF 8204 obtained by respondent No. 2 by fraud and misrepresentation in collusion with the insurance company? If so, to what effect?

5. Is the petition barred by limitation?

6. What amount, if any, are the petitioners entitled to recover by way of price of vegetables? If so, from which of the respondent?

7. To what amount, if any, are the petitioners entitled by way of compensation for loss of crop? If so, from which of the respondents?

8. To what amount, if any, are the petitioners entitled by way of compensation for the death of Shri Bhartu? If so, from which of the respondents?

9. Relief.

7. Learned Tribunal dealt at length with the evidence produced by appellants. The Tribunal held that the accident was caused on account of rash and negligent driving on the part of the respective drivers of the two vehicles.

8. Issue No. 2 has been decided by the learned Tribunal affirmatively by holding that the petitioners were the legal representatives of the deceased. Issue No. 3 has been decided by the learned Tribunal against respondents.

9. Issue No. 4 has been decided in the negative and against the respondent insurance company.

10. On issues Nos. 5 and 6, no arguments have been addressed. While deciding issue No. 8, the learned Tribunal held that the petitioners were entitled to receive a sum of Rs.15,300 as compensation.

11. The learned Tribunal held that it had been fully established that the accident, resulting in fatal injuries to Bhartu was caused due to rash and negligent driving on the part of the drivers of both the vehicles. I am inclined to uphold the findings of the learned Tribunal on issue No. 1 as this is based on sufficient material on record. No doubt, it is for the petitioners to prove that the accident was caused due to the rash and negligent driving on the part of the drivers of the vehicles. In the present case, even the principle of rest ipsa loquitur is applicable. It means that the accident speaks for itself. The time of accident is 12.30 a.m. on July 8, 1968. Vehicle No. PNF 8204 was going to Delhi on G. T. Road and while the other vehicle was coming from Delhi on that road. There was a collision between the two vehicles and the inspection report of the two vehicles, which has been exhibited, speaks for itself. It is clear that the accident was caused due to rash and negligent driving on the part of both the drivers. Moreover, there are three eye witnesses who were traveling on vehicle No. PNF 8204 and their account of the accident is very consistent and accurate and there is no reason to disbelieve their statements. One more fact is very important is this case. Neither of the drivers has been produced in the witness box. So, the respondents or the insurance company have no locus standi to challenge the version of the eye witnesses.

12. In my view, Shri Bhartu was killed in an accident which was caused due to the rash and negligent driving of both the drivers. In other words, this is a case of contributory negligence. I also hold that the drivers of the aforesaid two vehicles were driving these vehicles in the course of their employment.

13. No arguments have been addressed by respondents on the findings on issue No. 2. I am also of the view that the present appellants are the legal representatives of Shri Bhartu, the deceased.

14. I do not want to disturb the finding of the learned Tribunal on issue No. 3. The learned Tribunal has discussed the evidence of Shri Jallu PW-4 who has deposed that the driver of truck No. PNF 8204 had not prohibited him and the other persons

from traveling in the vehicle. It is in evidence that the deceased, Shri Bhartu, and the other three persons, who were carrying their goods in the vehicle, were charged at the rate of 12 annas per bundle of vegetables and 12 annas per passenger. No doubt it is admitted that the truck in question was a goods vehicle. It has been proved by evidence that the deceased, Shri Bhartu, and the other three passengers had boarded the truck with the permission and consent of the driver. The driver of the truck has not been produced in the witness box to rebut the evidence. In fact, nothing has been produced in the witness box to rebut the evidence. In fact, nothing has been produced by respondents to show how the deceased, Shri Bhartu, and the other three passengers were traveling in the truck illegally. I am of the view that the learned Tribunal has decided issue No. 2 correctly. The question as to the liability of the insurance company will be dealt with later on.

15. While deciding issue No. 8, learned Tribunal has held that at the time of accident, the deceased Shri Bhartu was 45 years old. It has also been held that as no evidence has been led with regard to the history of longevity in the family of the deceased, the deceased could normally be expected to live up to the age of 60 years. With regard to the age of the deceased at the time of accident, the post mortem report has been believed. I also agree with this finding and hold that at the time of accident, the deceased, Shri Bhartu, was 45 years old. In the petition the appellants stated that the deceased was expected to live up to 90 years. However, no evidence was led by appellants with regard to the history of the family on life expectancy.

16. Learned counsel for the appellants urges that the span of life could have been taken to be at least 70 years in view of the high rise in life expectancy. Reliance has been placed by learned counsel for appellants upon the judgment of the Supreme Court in the case of Smt. Jyotsna Dey v. State of Assam JT 1986 SC 1109. No material has been placed on record by respondents. The deceased, Shri Bhartu, was living in a village and was taking lands on theka. I am of the view that the span of life in the present case should have been fixed at 65 years.

17. Learned Tribunal has held that the deceased might be earning Rs.200 per month which were the wages earned by an unskilled labourer. In my view, this finding of the Tribunal is erroneous and against the material placed on record. Learned Tribunal has wrongly held that no reliable evidence on record has been placed to establish the income of the deceased. It appears that the learned Tribunal was influenced by the fact that no documentary evidence had been produced in the case as Smt. Chandro Devi, appellant No. 1, stated in her evidence that the deceased used to keep accounts of his earning. The entire approach of the learned Tribunal is wrong in appreciating the statements of the witnesses produced by appellants with regard to the income of the deceased. One fact must be borne in mind that, when appreciating the evidence, facts and circumstances of each case must be taken into consideration. Here is a case where the deceased was a person living in a village situated in Haryana. It has been established that he was taking land on theka and used to cultivate it either by himself or through employed labourers. What his widow meant in her statement was that the deceased might be writing about the earning that must be on some paper. It does not mean that the deceased was maintaining regular books of account. The accident took place in the year 1968 and her statement was recorded in the year 1975. No such kacha paper could be produced and probably it was impossible to produce the same. So, no adverse inference can be drawn.

18. Appellants have produced sufficient oral evidence as to the monthly income of the deceased immediately before his death. PW-1, Shri Murari Lal, was sarpanch of village Teha where the deceased Shri Bhartu was residing. He has deposed that the deceased used to take lands on theka and used to cultivate vegetables on these lands. The deceased used to bring vegetables for sale to Delhi and was earning a sum of Rs.5,000 to Rs.7,000 per year. He has also deposed that the deceased used to cultivate 2 to 2 1/2 kilas of land. The learned Tribunal is wrong in holding that the statement of this witness could not be believed as he had no personal knowledge as this fact had been told by the deceased to him.

19. PW-2 is Man Phool Singh who has also stated that the deceased had possessed good physique and used to earn on an average a sum of Rs.10,000 a year. Shri Jallu is PW-4. He is the person who was traveling along with the

deceased and he also used to take lands on theka and cultivate the same. In other words, he was in the same business as that of deceased Shri Bhartu. He has also deposed that Shri Bhartu was at least earning as sum of Rs.500 per mensem.

20. Smt. Chandro Devi who is PW-9 is the widow of the deceased. She has categorically deposed that her husband used to grow vegetables and used to bring vegetables to Delhi for sale. She has further deposed that the deceased used to give her a sum of Rs.600 to Rs.700 every month for household expenses. It is a fact that at the time of his death, the deceased family consisted of himself, his wife and six minor children. He was supporting his family. I am of the view that the statements of these witnesses may be a little exaggerated, but still it cannot be said that these witnesses are unreliable. Taking into consideration the statements of all these witnesses, I come to the conclusion that reasonably, the deceased was earning a sum of Rs.500 per mensem immediately before his death. In this case, the deceased was supporting a large family as mentioned above and safely it can be held that a sum of Rs.200 was being spent by the deceased on himself leaving a sum of Rs.300 per mensem for his family. In other words, appellants suffered a pecuniary loss at the rate of Rs.300 per mensem for a period of 20 years. At the rate of Rs.300 per mensem, the total pecuniary loss suffered for a period of 20 years comes to Rs.72,00.

21. Learned Tribunal has made deductions at the rate of 15 per cent. for lumpsum payment and uncertainties of life. I am unable to agree with this finding. I am of the view that in view of the rapid rise in prices and fall of the value of rupee, no such deductions should be made for lumpsum payment and uncertainties of life. Moreover, the compensation under the Act is an attempt to rehabilitate the family of an unfortunate victim. I am supported by the judgments in cases Kaushalya Devi v. Mohan Lal [1985] ACJ 514 (P & H) and Chand Kanwar v. Mannaram [1988] 63 Comp Cas 721.

22. Mr. C. L. Khanna, learned counsel for insurance company, has contended that the insurance company is not at all liable to pay any compensation for the reason that the vehicle No. PNF 8204 was a goods vehicle and as such could not carry the deceased, Bhartu. Under the terms and conditions of the insurance policy, the

insurance company was liable only to what is necessary to meet the requirements of section 95 of the Act. The terms and conditions of the permit or of the insurance policy did not cover the use of the vehicle for conveyance of passengers for hire or reward. The passengers traveling in the goods vehicle were not entitled to any benefit of insurance under the policy. The other truck, i.e., PNQ 2409, also did not owe any duty to the passengers who were traveling in the other truck. Reliance has been placed upon the judgments in the cases of Oriental Fire and General Insurance Co. Ltd. v. Smt. Gurdev Kaur , Mahabir Prasad AGarwalla v. Jiban Chandra Hazarika [1973] ACJ 180; Pushpabai Purshottam Udeshi v. Ranjit Ginning and Pressing Co. : [1977]3SCR372 ; Indian Mutual General Insurance Society Ltd. v. Manzorr Ashan : AIR1977 Cal34 ; New India Assurance Co. Ltd. v. Mohinder Lal [1978] ACJ 10 ; Jam Shri Sataji Digvijay Singhji v. Daud Taiyab : AIR1978 Guj153 ; Ambaben v. Usmanbhai Amirmiya Sheikh [1979] ACJ 292; New India Assurance Co. Ltd. v. Shaik Jaffer ; Chameli Devi v. New India Assurance Co. Ltd. [1982] ACJ and United India Insurance Co. Ltd. v. Abdul Munaf Majur Hussain Momin .

23. Mr. O. P. Goel, learned counsel for appellants, on the other hand, has urged that under section 95 of the Act, third parties are to be compulsorily insured. The deceased, Bhartu, was on the vehicle with the consent of the driver who was driving the vehicle in the course of his employment. Moreover, the deceased was traveling as owner of the goods and as such, under the permit the owner of the goods was allowed to travel in the goods vehicle. He further submits that in the present case, the insurance company has failed to produce the permit to show that use of the vehicle for conveyance of such passengers was prohibited. Even the insurance company has filed to prove the insurance policy in accordance with law. He submits that, in the insurance policy, higher premium has been charged which shows not only the unlimited liability of the insurance company but covering the risk to such passengers on the goods vehicle. These insurance policies which have been produced are forged documents because these policies are neither the original nor copies of the same. These are simply 'attested to be true copies'. Mr. Goel has placed reliance on the judgments in the cases of Meesala Suryanarayana v. Goli Satyavathi [1979] ACJ 513; Kaushalya Devi v. Mohan Lal [1985] ACJ 514 and Hansibai v. National Insurance Co. Ltd. [1987] 62 Comp Case

160 (Raj).

24. Sub-section (8) of section 2 of the Act defines a good vehicle as a motor vehicle constructed or adapted for use for the carriage of goods or so constructed or adapted when used for the carriage of goods solely or in addition to passengers. Sub-section (20) gives the definition of permit which means means a document issued by the State or Regional Transport Authority, authorising the use of transport vehicles as contract carriages, or stage carriages or authorising the owner as a private carrier or public carrier to use such vehicle. Sub-section (23) of section 2 of the Act defines the public carrier as an owner of a transport vehicle who transports or undertakes to transport goods, or any class of goods for another person at any time for hire or reward, whether in pursuance of the terms of a contract or agreement or otherwise. Sub-section 25 defines a public service vehicle which means any motor vehicle used or adapted to be used for the carriage of passengers for hire or reward.

25. It is now disputed that both the trucks were insured only as public carriers. Section 95 of the Act deals with the requirements of policies as given in Chapter VIII of the Act and the part of this section which is material for the present case (which stood in the year 1968) reads as under:

'95. (1) In order to comply with the requirements of this Chapter, a policy of insurance must be a policy which-...

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

Provided that a policy shall not be required-...

(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 our of which a claim arises....

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

26. Sub-section (1) of section 96 reads thus-

'96(1). If, after certificate of insurance has been issued under sub- section (4) of section 95 in favor of the person by whom a policy has been effected, 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 (being a liability covered by the terms of the policy) is obtained against any person insured by the policy, then, notwithstanding that the insurer may be entitled to avoid or cancel or may have avoided or cancelled the policy, the insurer shall, subject to the provisions of this section, pay to the person entitled to the benefit of the decree any sum not exceeding the sum assured payable there under, as if he were 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.'

27. Sub-section (2) of this section gives the defenses available to the insurer. And sub-section (6) then provides-

'(6) No insurer to whom the notice referred to in sub-section (2) or sub- section (2A) has been given shall be entitled to avoid has liability to any person entitled to the benefit of any such judgment as is referred to in sub-section (1) or sub-section (2A) otherwise than in the manner provided for in sub-section (2) or in the corresponding law of the State...'

28. In the case of Oriental Fire and General Insurance Co. Ltd. v. Gurdev Kaur , the Full Bench of the Punjab High Court was considering questions with regard to

sub-section (1) of section 96 and proviso (ii) to clause (b) of sub-section (1) of section 95 of the Act. The facts in the that case were that a truck was hired by certain persons for carrying their goods. All the five persons were also on the truck as owners of the hides. The total number of persons in the truck was more than six. The truck collided with another truck coming from the apposite direction and as a result of the accident, three persons were killed. The truck was insured under a policy of insurance with the insurer, covering liability in terms of section 95 of the Act and it specifically said that use of the vehicle was only under a public carrier permit within the meaning of the Motor Vehicles Act, 1939, and that it did not cover the use for conveyance of passengers of hire or reward. The Full Bench held that the decision of the House of Lords had settled the expression 'contract of employment' in clause (ii) of the proviso to sub-section (1) of section 95 of the Act. The Full Bench held as under (at page 583):

'The decision in this case settled that the expression `contract of employment' in clause (ii) of the proviso to sub-section (1) of section 95 of Act (4 of 1939) refers not only to a contract of employment with the insured but also to a contract of employment of a person who is on the insured vehicle for sufficient or business reasons, and has taken a contract of employment in pursuance of which he is on the vehicle as the adequate criterion of such reasons. He need not, thereforee, be under a contract of employment with the insured so long as he was on the insured vehicle by reason of or in pursuance of his contract of employment, in other words, when because of his contract of employment he was on the vehicle. In Prakash Vati v. Delhi Dayal Bagh Dairy Ltd. [1927] ACJ 82 , the supplier of the milk himself was on the insured vehicle, and a Division Bench, consisting of Falshaw J. (as he then was) and myself, held that the supplier of the milk could not be in the employment of himself and was, thereforee, not covered by clause (ii) of the proviso to sub-section (1) of section 95 of the Act (4 of 1939). Exactly similar was the view which prevailed with the Madhya Pradesh High Court in a case reported at page 65 of the same volume South India Insurance Co. Ltd., Indore v. Heerabai [1967] ACJ 65. Support of this view is also available from K. N. P. Patel v. K. L. Kasar [1966] ACJ 284 . Reliance is, thereforee, placed on these decisions on the side of the appellant in support of its claim that the three deceased persons were not passengers on the truck in question `by reasons of or in pursuance of a

contract of employment', because they were not employed by anybody to go on the truck, but were on it as owners of the goods carried in it. Apparently, the terms of clause (ii) of the proviso to sub-section (1) of section 95 of Act (4 of 1939) do not cover the case of such passengers because on a public carrier they could not be as passengers and they were on it as owners of the goods carried in it. So, they were apparently not on it `by reason of or in pursuance of a contract of employment' for they had no contract of employment with anybody to be on the truck, and they could not possibly have a contract of employment with themselves. The cases cited support this view. There is an indirect support for this approach from the decision in Izzard's case [1938] 8 Comp Case 91; [1937] AC 773, as well.'

29. The Full Bench further observed (p. 585):

'On the side of the respondents, reliance in this respect has been placed on Vaguard Fire and General Insurance Co. Ltd. v. Sarla Devi, and British India General Insurance Co. Ltd. v. Captain Itbar Singh [1959] 29 Comp Case 60 (SC), for the proposition that to an insurer, no other defense is open except defenses under sub-section (2) of section 96, but in those cases the liability was such as was required to be covered by a policy under clause (b) of sub-section (1) of section 95, and the policy in fact did so. The consideration that is urged on the side of the insurer in these appeals, thereforee, did not and could not possibly arise in those two cases. Here the insurer's contention is that so far as the three deceased persons as hirers-cum-owners of the goods are concerned, they did not come under clause (ii) of the proviso to section 95(1)(b). So the policy was not one that was required to cover liability under clause (b) of sub-section (1) of section 95. It is open to the insurer to prove that. This is not barred by any provision of section 96, and in fact, as stated, section 96 proceeds on the basis that such a policy under section 95(1)(b) is required. The first argument on the side of the respondents, thereforee, cannot prevail.

The words in clause (ii) of the proviso to clause (b) of sub-section (1) of section 95 `are carried for hire or reward `or' are carried by reason of or in pursuance of a contract of employment' go with with the work `passengers' and not with the word

`vehicle'. If those words were to be read with the word `vehicle', the reading the this clause of the proviso does not make correct grammatical sense or any other sense. This is one consideration which negatives completely the second argument that in this case there was `a contract of employment' of the truck or the motor vehicle of Banarsi Das or that there was `a contract of employment' of Banarsi Das as a carrier. Then it has not been shown by reference to any judicial opinion that the expression `a contract of employment' can have reference to a contract of carriage of goods whether in relation to the carriage itself or as the owner of such carriage. The normal and the ordinary meaning and scope of the expression `a contract of employment' points to a person being employed to do something or to carry out something for another person. It has the element of rendition of some service in one shape or another for the employer. So, it cannot refer to the hiring of a goods- carrier as a contract of employment or to the owner of such a carrier as the person with whom a contract of employment has been made. On this consideration also, the second argument cannot be accepted. So, this argument too fails.'

30. The view of the Full Bench was endorsed by the Madras High Court in the case of South India Insurance Co. Ltd. v. P. Subramaniam [1972] 42 Comp Case 986, the High Court of Assam and Nagaland at Gauhati in the case of Mahabir Prasad Agarwalla v. Jiban Chandra Hazarika [1973] ACJ 180 and the High Court of Calcutta in Indian Mutual General Insurance Society Ltd. v. Manzoor Ashan, : AIR1977 Cal34 . In Pushpabai Parshottam Udeshi's case, : [1977]3SCR372 , the Supreme Court has finally settled the true object, meaning and scope of section 95(1)(a) and 95(b)(i) of the Act. One Shri Purshottam Tulsidas Udeshi was traveling in a car which was driven by the manager of a company, namely, M/s. Ranjit Ginning and Pressing Co. Pvt. Ltd. The car met with an accident and he died. The car was insured. While interpreting the provisions of sections 95(1)(a) and 95(1)(b)(i) of the Act, their Lordships of the Supreme Court have held as under (p. 1745):

'As section 95 of the Motor Vehicles Act, 1939, as amended by Act 56 of 1969 is based on the English Act, it is useful to refer that neither the Road Traffic Act, 1960, or the earlier 1930 Act required users of motor vehicles to be insured in

respect of liability for death or bodily injury to passengers in the vehicle being used except a vehicle in which passengers were carried for hire or rewarded or by reason of or in pursuance of a contract of employment. In fact section 203(4) of the 1960 Act, provided that the policy shall not be required to cover liability in respect of death of or bodily injury to persons being carried in or upon, or entering or getting on to or alighting from, the vehicle at the time of occurrence of the event out of which the claims arise. The provisions of the English Act being explicit, the risk to passengers is not covered by the insurance policy. The provisions under the English Road Traffic Act, 1960, were introduced by the amendment of section 95 of the Indian Motor Vehicles Act. The law as regards general exclusion of passengers is stated in Halsbury's Laws of England, third edition, volume 22, at page 368 para 755 as follows:

'Subject to certain exceptions a policy is not required to cover liability in respect of the death of, or bodily injury to, a person being carried in or upon, or entering or getting into or alighting from, the vehicle at the time of the occurrence of the event out of which the claim arises.'

31. Their Lordships have further observed (p. 1746):

'Sections 95(1)(a) and 95(1)(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 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 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."

32. In Ambaben's case, : AIR1979 Guj9 , the question that arose for consideration before the Full Bench of the High Court of Gujarat was in connection with the provisions of section 95(1)(b) read with section 95(2) of the Act and rule 118 of the Motor Vehicles Rules. In vie of the judgment of the Supreme Court in Pushypabai Parshottam Udeshi's case, : [1977]3SCR372 , the Full Bench has held as under (p. 14):

'We, thereforee, answer the question referred to us as follows:

The decision in Sakinabibi's case [1974] 15 Guj LR 428, is toned down to the extent we have indicated in our judgment above, by the decision of the Supreme Court in Pushpabai's case, : [1977]3SCR372 , and in the light of that decision, it is obvious that so far as the policy contemplated by section 95(1)(b) is concerned, it does not cover the risks to (A) persons other than those who were carried for hire or reward at the time of the occurrence of the event which gives rise to the claim against the insurer and, (B) passengers other than those who were bona fide employees of the owner or hirer of the vehicle not exceeding six in number, carried sin pursuance of or by reason of a contract of employment.

We wish to make it clear that nothing that we have stated in the course of this judgment should be considered to affect the liability in respect of six bona fide employees of the owner or hirer of the vehicle under the provisions of section 95(1)(a). We are not concerned in the course of this judgment with any provisions of section 95(2) and the extent of liability there under and we are concerned with only whether the business test which was evolved by the Division Bench in Sakinabibi's case [1974] 15 Guj LR 428 is still good law looking to the decision in Pushpabai's case, : [1977]3SCR372 .'

33. In Meesala Suryanarayana v. Goli Satyavati [1979] ACJ 513 (AP), the Division Bench of the High Court of Judicature of Andhra Pradesh at Hyderabad was dealing with the interpretation of section 95(1)(b) of the Act. The facts in this case were that a lorry, which was insured with the Oriental Fire and General Insurance

Co. Ltd., Madras, was loaded with timber purchased by one Shri Dorabbai. The goods belonged to Dorabbai and he was traveling in the lorry along with his goods. The lorry met with an accident and as a result of the same, Dorabbai died on the spot. The contention of learned counsel for the insurance company before the Division Bench was that the insurance company was liable to pay compensation under section 95(1)(b) of the Act in respect of death or bodily injury to a passenger only if he had been carried for hire or reward or by reason of or in pursuance of a contract of employment and, thereforee, the owner of the goods who had travelled in the goods vehicle was not entitled to compensation for any accident which had caused him injuries or death.

34. The Division Bench held as under:

'Section 95(1)(b) merely says that a policy of insurance must be a policy which insures the person or classes of persons specified in the policy to the extent specified in sub-section (2) and sub-section (3) provides for covering a liability incurred in an accident by fixing the limits under clause (a) if the vehicle is a goods vehicle a limit of Rs.50,000 is imposed including the liabilities, if any, arising under the Workmen's Compensation Act and under clause (b) if a vehicle in which passengers are carried for hire or reward or by reason of or in pursuance of a contract of employment. Admittedly, in the present case, the vehicle is not vehicle in which passengers are carried for hire. It is a goods vehicle which comes under clause (a) and a goods vehicle is required to be covered by a public carriage permit under section 42 of the Motor Vehicles Act. According to conditions of the permit as contemplated under rule 213(v)(iv), no person shall be carried with the vehicle upon the goods or the number for which there is seating accommodation at the rate of 381 millimeters measured along with the seat, excluding the space reserved for the driver, for each person. Rule 213(v)(v) prohibits any condition to be attached to the permits permitting more than six persons in addition to the driver except with the permission of the Transport Authority. In the instant case, the lorry was admittedly insured with the insurance company. The registration certificate and the permit of the vehicle are not produced either by the owner of the vehicle or by the insurance company in order to know how many persons were allowed to be carried in the vehicle. From the evidence, it transpires that there

were altogether five persons in the vehicle including the driver out of whom four persons died on the spot. It is also revealed in the evidence that the deceased was the owner of the goods and he was permitted by the driver and the cleaner to travel in the vehicle. So, it is not a case where the deceased was traveling unauthorisedly. There is evidence also to show that he was allowed to travel in the lorry as he happened to be the owner of the goods which the lorry was carrying. In the absence of non-production of the permit and the registration book, it may be safely assumed that not more than six persons are allowed in the vehicle or at least two in addition to the driver. It is also common knowledge that the owner of the goods or his representative travels in the lorry to see that goods reach their destination in a safe condition. Further, the driver as the agent of the owner has permitted the deceased to travel in the vehicle. Under these circumstances, it is not open to the insurance company to contend that they are not liable to pay compensation.'

35. In United India Insurance Co. Ltd. [1985] 58 Comp Case 58 (Bom), the facts were that the truck in question was a goods vehicle and the driver of the same had allowed 35 passengers to board the truck by charging them Re. 1 per head as fare for their journey. On the way, the truck turned turtle and the passengers in the truck were thrown overboard. Some of them were crushed under the truck. As a result, six passengers had died. The heirs of the deceased had filed petitions under the Act thereby claiming compensation. The claim was resisted by the insurance company on the ground that the truck was insured with it only as a goods vehicle and the policy had not covered the use of the vehicle for the conveyance of passengers for hire or reward. Moreover, the truck had not a permit to carry any passenger but was only registered as a goods vehicle. The Division Bench of the High Court of Judicature at Bombay held, on the facts of the case, that the policy did not cover use for the conveyance of passengers for hire or reward and the expression 'third party' did not include the passengers in the vehicle, in view of the decision of the Supreme Court in Pushpabai Parshottam Udeshi, : [1977]3SCR372 .

36. In Pushpabai's case : [1977]3SCR372 , the Supreme Court has now finally interpreted the provisions of sections 95(a) and 95(b)(1) of the Act. It is not

required that the policy of insurance should cover the risk to the passengers who were not carried for hire or reward. In the light of the aforesaid decision, it is obvious that so far as the policy contemplated by section 95(1)(b) is concerned, it does not cover the risks to (A) persons other than those who were carried for hire or reward at the time of occurrence of the event which gives rise to the claim against the insurer and (B) passengers other than those who were bona fide employees of the owner or hirer of the vehicle carried in pursuance of or by reason of a contract of employment.

37. Coming to the facts of the present case, both the trucks in question were insured with the insurance company and were registered as goods vehicle. It is settled that the insurer can always take a policy covering risks which are not covered by the requirement of section 95. There should be no ambiguity about this proposition of law. In the present case, the deceased was traveling in the goods vehicle as owner of the goods. It is obligatory on the part of the insurance company to prove that the permit with regard to truck No. PNF 8204 did not allow the conveyance of passengers for hire or reward. In other words, the insurance company must show as to what were the conditions of the permit concerning the truck in question. It is also obligatory on the part of the insurance company to prove, in accordance with law, the contents of the insurance policy, to show that there was prohibition in the insurance policy for carrying passengers in the vehicle for hire or reward. It must be shown that the risk of the owners of the goods, who travelled in the goods vehicle in question, was not covered by the insurance policy.

38. The permit concerning truck No. PNF 8204 has not been produced in court, nor has any evidence been led as to what was the nature of the permit and what were the conditions subject to which the truck in question was allowed to ply, whether the permit allowed a particular number of passengers, as owners of goods or as employees of the owners or hirer to travel in the vehicle. These questions remain unanswered as the insurance company has miserably failed in not producing the permit in question. No attempt was ever made by the insurance company to lead any evidence with regard to the conditions of permit.

39. Mr. C. L. Khanna, learned counsel for insurance company, has invited my attention to the document which is exhibit RW-1/1. He submits that this is the insurance policy concerning the vehicle bearing registration No. PNF 8204 and that the risk of the third party was insured, but as the vehicle was a goods vehicle, the passengers' risk was not covered and only the risk of two drivers and one cleaner was covered. He has also invited my attention to the warranty clauses and conditions in general and more particularly to condition No. 1 with regard to the limitation as to the use of the vehicle, which says 'only under a public carrier's permit'. He also submits that under clause 8, it is specifically mentioned that the policy does not cover the use of the vehicle for conveyance of passengers for hire or reward.

40. I am of the that first it is to be seen whether the policy exhibit RW-1/1, concerning vehicle No. PNF 8204 and the insurance policy exhibit RW-1/2 concerning the order vehicle No. PNQ-2409, have been proved in accordance with law. This is settled law that the party in accordance with law. This is settled law that the party must produce the best available evidence in court. It is necessary to reproduce the relevant provisions of the Indian Evidence Act, with regard to the proof of contents of documents, primary and secondly evidence. Sections 61, 62, 63, 64 and 65 of the Indian Evidence Act read as under:

'61. Proof of contends of documents.-The contents of documents may be proved either by primary or by secondary evidence.

62. Primary evidence.- Primary evidence means the document itself produced for the inspection of the court.

Explanation 1.-Where a document is executed in several parts, each part is primary evidence of the document;

Where a document is executed in counterpart, being executed by one or some of the parties only, each counterpart is primary evidence as against the parties executing it.

Explanation 2.- Where a number of documents are all made by one uniform process, as in the case of printing, lithography, or photography, each is primary evidence of the contents of the rest; but, where there are all copies of a common original, they are not primary evidence of the contents of the parties executing it.

63. Secondary evidence.- Secondary evidence means and includes-

(1) certified copies given under the provisions hereinafter contained;

(2) copies made from the original by mechanical processes which in themselves insure the accuracy of the copy, and copies compared with such copies;

(3) copies made from or compared with the original;

(4) counterparts of documents as against the parties who did not execute them;

(5) oral accounts of contents of a document given by some person who has himself seen it.

64. Proof of documents by primary evidence.- Documents must be proved by primary evidence except in the cases hereinafter maintained.

65. Cases in which secondary evidence relating to documents may be given.- Secondary evidence may be given of the existence, condition or contents of a document in the following cases:

(a) when the original is shown or appears to be in the possession or power- of the person against whom the document is sought to be proved; or of any person out of reach of, or not subject to, the process of the court, or of any person legally bound to produce it, and when, after the notice mentioned in section 66, such person does not produce it;

(b) when the existence, conditions or contents of the original have been proved to be admitted in writing by the person against whom it is proved or by his representative in interest;

(c) when the original has been destroyed or lost, or when the party offering evidence of its contents cannot, for any other reason not arising from his own default or neglect, product it in reasonable time;

(d) when the original is of such a nature as not to be easily movable;

(e) when the original is a public document within the meaning of section 74.'

41. It is thus clear that the contents of documents can be proved either by primary or by secondary evidence. Primary evidence means the document itself produced for the inspection of the court. It is settled law that the documents must be proved by primary evidence, except in cases mentioned in section 65 of the Evidence Act. It is also settled law that mere production of a document is not proof of its contents, especially when the person producing it, is neither the writer nor the one on whose behalf it is written. A person who is not producing the primary evidence must explain the reasons for that.

42. The document exhibit RW 1/1. at the top, says 'commercial vehicle (comprehensive)'. At the foot of this document it is stated for Calcutta Insurance Ltd. It also bears the word 'signed on behalf of the company' and then the words 'countersigned'. This document, exhibit RW 1/1, described as 'Attested true copy', is attested by one Mr. Y. K. Lakhanpal. It is clear that this is neither the carbon copy of the original insurance policy nor was this prepared at the time when the original insurance policy was issued in favor of the insured, namely, Shri Raj Pal in respect of vehicle No. PNF 8204. When this document has been prepared, as an attested true copy, is not known because no date has been given by Mr. Y. K. Lakhanpal when he has written the word 'attested true copy'. This document was produced vide list of documents dated April 23, 1975, before the Tribunal by the insurance company. This list of documents describes these two polices as true copies. The question is whether the insurance policy, which is exhibit RW 1/1, has been proved in accordance with law or not. No doubt, the original policy was in the possession of the owner, Shri Raj Pal. The insurance company has placed on record a copy of the notice dated May 5, 1975, which is exhibit RW 1/3. This notice was given by a counsel for the insurance company to Shri Mastan Chand Malhotra, Advocate and counsel for the owners and drivers, in respect of vehicle

No. PNF 8204. In this notice, it was stated that the owners and drivers should produce in court, not later than the next date of hearing, that was May 14, 1975, the original policy of insurance, issued by the insurance company in favor of Shri Raj Pal for the third party risks of truck No. PNF 8204 and the registration book of the truck No. PNF 8204 and its permit and other connection papers. This notice was received by the counsel on May 8, 1975. March 14, 1975, was the date fixed for the evidence of the parties. On that day, petitioners' counsel closed his evidence. A last opportunity was granted by the Tribunal to the respondents to examine their evidence on May 14, 1975. It is for this date that the notice was given by counsel for the insurance company to counsel for the owners of the vehicle to produce the documents. On May 14, 1975, the case was taken up but the respondents failed to produce any evidence. As a last opportunity had already been granted to the respondents, and no good reason was given for adjournment, the evidence of the respondents was closed and the case was adjourned to July 25, 1975, for arguments. It appears that the insurance company moved an application under order 17 rule 1, order 18 and section 151 of the Civil Procedure Code for reviewing the aforesaid order and it was prayed that the respondents be allowed to lead their evidence. On July 25, 1975, the learned Tribunal allowed the insurance company to produce the evidence and on the same day one Shri Amrit Lal Suri appeared as witness on behalf of the insurance company. It is this witness who has produced the 'attested true copies' of the insurance policies. Thus, it is clear that after May 14, 1975, no attempt was made by the insurance company to give notice to the owners to produce the original insurance policy.

43. The insurance company must show as to why the carbon copy of the original policy has not been produced. When Shri Amrit Lal Suri appeared as a witness, he did not bring any record to show as to from where these documents, which are attested to be true copies, were prepared. These copies were attested by one Shri Lakhanpal and he was not produced. In the case of Mahinder Singh [1986] ACJ 446, the insurance policy was exhibited, but Mahinder Narain J. has held that the same has not been proved in accordance with law. The facts in both the cases were almost similar. In Mahinder Singh's case, [1986] ACJ 446, the original policy register was produced before the court, but in the present case, no such evidence was produced by the insurance company. If the courts accept such type of

evidence in a case of claim for compensation under the Act, then, the very object of insurance will be defeated. The insurance company has failed to show as to why the original policy register was not produced. Under these circumstances, I hold that the insurance company has not proved the insurance policies with respect to both the vehicles in accordance with law. As the insurance policies have not been proved, I hold that the insurance company is liable to pay compensation to the appellants.

44. The next contention of Mr. Khanna, learned counsel for the insurance company ,is that the liability of the insurance company, at the given time, was not more than Rs.20,000 in view of the provisions as contained in sub- clause (b) of sub-section (2) of section 95 of the Act. The accident book place in the year 1968 and at that time the liability of the insurance company was limited to Rs.20,000. Mr. Khanna has placed reliance on judgment in the cases of Nand Kaur v. Sukh Raj [1984] 55 Comp Case 661 (Delhi) and British India General Insurance Co. Ltd. v. Smt. Maya Banerjee [1987] 61 Comp Case 359 (SC).

45. Mr. Goel, learned counsel for the appellants, on the other hand, submits that in the present case, the insurance policy was a comprehensive insurance policy and risk of the third party was covered to unlimited extent. Moreover, he urges that the insurance company has failed to prove the insurance policy and as such the liability of the insurance company should be presumed to be unlimited. He has placed reliance on the judgment in Chand Kanwar v. Mannaram [1988] 63 Comp Case 721 (Raj); [1986] ACJ 269; Daljit Sawhney v. Jagtar Singh [1988] 63 Comp Case 452 (Raj) and Usha Sehgal v. Chhote Ram [1987] 61 Comp Case 500 (Delhi).

46. In Nand Kaur's case [1984] 55 Comp Case 661 (Delhi), Sultan Singh J. dealt with the provisions contained in section 95(2)(b) before its amendment by the Act in 1969. It has been held that as the accident took place before the amendment of the provisions, it seems that the appellant's liability, against the insurance company, was limited to Rs.20,000 only. To my mind, Sultan Singh J. was dealing with a policy which is now known as the 'Act only' policy.

47. In British India General Insurance Co. Ltd., : AIR 1986 SC2110 , the Supreme Court has held as under (at page 359):

'The insurer is in appeal by special leave. The short point canvassed by it before us is as to whether the insurer would have statutory liability beyond as sum of Rs. 20,000 as had been provided in section 95(2)(b)(i) of the Motor Vehicles Act of 1939 at the time the claim arose in 1961. That provision confined the liability of the insurer to a sum of Rs.20,000 in respect of person other than passengers carried for hire or reward. Admittedly, the deceased was a third party and had been knocked down by the bus when riding on a cycle. In the face of the provision contained in section 95(2) of the Motor Vehicles Act, the liability of the insurer could not be in excess of the statutory limit. We are inclined to agree with learned counsel for the appellant that the High Court was in error in fixing the liability of the insurer at a sum above Rs.20,000.'

48. From the same judgment it appears that their Lordships also examined the judgment of the Supreme Court in New Asiatic Insurance Co. Ltd. v. Pessumal Dhanamal Aswani [1964] 34 Comp Case 693 and were of the view that in that case there was a comprehensive insurance in respect of the motor car and relying on the terms of the policy in that case, the Supreme Court held that the liability was not limited by the statute. So, their Lordships were dealing in this case with an insurance policy which was an 'Act only' policy.

49. In Usha Sehgal [1987] 61 Comp Case 500 (All), S. B. Wad J. held that there was some misconception about the liability of the insurance company under section 96. Section 95 and 96 form part of Chapter VIII which are concerned with the liability to third parties. Section 94 of the Act makes it compulsory for the vehicles plying on public roads to be compulsorily insured. The object of making insurance compulsory was to see that in all cases where death of or bodily injury in caused by a vehicle plying on a public road, a definite compensation would be paid. The policy that a vehicle plying on the public roads must mandatorily have a policy is called an 'Act only' policy. A minimum premium is prescribed for this 'Act only' policy. But the policy may cover higher risks to third parties by taking additional premium. S. B. Wad. J. has held as under (p. 502):

'Counsel for respondent No. 5, the insurance company has pleaded that the liability of the insurance company was limited to Rs.50,000 only. According to counsel, the liability of the insurance company under section 96 of the Act is limited to liability as mentioned in sub-clause (b) of sub-section (2) of section 95. The said liability under section 95 was restricted at the relevant time to Rs.50,000. There appears to be some misconception about the liability of the insurance company under section 96. Section 96 and 95 form part of Chapter VIII which concerns with the liability to the third party. Section 94 of the Act makes it compulsory for the vehicles plying on the public road to be compulsorily insured. The object of making insurance compulsory was to see that in all cases where death or bodily injury is caused by a vehicle plying on the public road, a definite compensation would be paid. The policy that a vehicle plying on the public roads must mandatorily have is a policy called an `Act only' policy. The minimum premium of Rs.94 was fixed at the relevant time for such an `Act only' policy. What sub-clause (b) of sub-section (1) of section 95 speaks of is an `Act only' policy. The amount on such a policy is the minimum that a third part would be entitled to in case of an accident. But the policy may cover higher risk to third parties by taking additional premium. There is yet another variety of policy which is called a `comprehensive policy'. This policy takes care of the liability to pay compensation to the owner or to a passenger or to a third party. Additional premium is taken for additional risks such as fire, riots etc. If it is a `third party policy' or a `comprehensive insurance policy', the insurance company will be bound to pay higher compensation which would, in all cases, be more than the compensation under an `Act only' policy. In the present case, the claimants had asserted that the policy was a `comprehensive policy'.'

50. In Chand Kanwar's case [1988] 63 Comp Case 721 (Raj), Mr. Justice Guman Mal Lodha was dealing with the question whether the liability of the insurance company was limited or unlimited, as per the conditions mentioned in the insurance policy and held as under (at page 730):

'In this era of social justice, the dictum of law which is merely a sort of clarion call to judges for social justice articulated by Krishna Iyer J. of the apex court in a series of decisions appealing to the judges to have an edge of beneficial

interpretations for the `have nots' cannot be ignored as a political doctrine bereft of law and justice as critically commented by some judges. What Iyer J. has said and restated is inspired by the following classical clarion call of the father of nation, Mahatma Gandhiji, duly and aptly utilised by Krishna Iyer J., as his source of inspiration in some of the decisions extracted in Gujarat Steel Tubes Ltd. v. Gujarat Steel Tubes Mazdoor Sobha, : (1980)ILLJ137SC . The classical and emotional words extracted in the above judgment by Iyer J., of the father of nation, Mahatma Gandhiji, echo in this third would jurisprudence with much relevancy today. Gandhiji said:

`Whenever you are in doubt...apply the following test. Recall the face of the poorest and weakest man whom you may have seen, and ask yourself, if the step you contemplate is going to be of any use of him.'

I am, in the present case, required to interpret the above phrase in the context of deciding the liability of the insurance company for indemnifying the insured and virtually making the payment to the injured or bereaved family of the deceased in a motor vehicle accident. It is common knowledge that the injured or the claimants-heirs of the deceased in spite of awards usually are able to realise the lion's share only from the insurance company unless the owner of the motor vehicle is the State or Corporation or some company. In this background, many a time and more often than not, the award amount, except to the extent of the liability of the insurance company, remains as a paper decree only and cannot wipe out the tears of the widow and minors bereaved parents who lose either their only or the main bread-earner in the family.'

51. The insurance company must prove that the policy in question is an 'Act only' policy. The amount mentioned by the statute is the minimum amount. But the policy can always cover higher risk to third parties by taking additional premium. It is obligatory on the part of the insurance company to prove the insurance policy and its terms and conditions. In a number of decisions by this court, it has been held that where the insurance company fails to produce the insurance policy or prove the same in accordance with law, then, it shall be presumed that the liability of the insurance company is unlimited. As I have already held that the insurance

company has failed to prove the insurance policy in accordance with law, I hold that the liability of the insurance company is unlimited in the present case.

52. The last question which arises for consideration is with regard to interest. Mr. Goel, learned counsel for appellants, has urged that the appellants are entitled to interest from the date of accident at the rate of 12 per cent. per annum. After the award given by the Tribunal, the insurance company and one of the owners of the truck also filed an appeal being FAO No. 16 of 1976. The amount, so awarded by the Tribunal, was directed by court to be deposited and paid to appellants, subject to their furnishing security. This amount has not been withdrawn so far as the appellants have failed to furnish the security. Mr. Goel submits that even on this matter the interest should be awarded, because the insurance company opposed the payment of the awarded amount to the appellants unconditionally. Reliance has been placed by Mr. Goel in Narcinva V. Kamat v. Alfredo Antonio Doe Martino [1985] 58 Comp Case 383 (SC); [1985] ACJ 397, Chameli Wati v. Delhi Municipal Corporation [1985] ACJ 645 (SC) and Satya Wati Pathak v. Hari Ram : AIR1984 Delhi106 .

53. Mr. Khanna, learned counsel for the insurance company, on the other hand, submits that interest should not be allowed.

54. In the case of Narcinva V. Kamat [1985] 58 Comp Case 383, the Supreme Court allowed interest at the rate of 12 per cent. per annum from the date of accident till payment on the amount of compensation.

55. In Chameli Wati's case [1985] ACJ 645, their Lordships of the Supreme Court have held as under:

'We are of the view that the Division Bench of the High Court erred in the exercise of its discretion under section 110CC of the Motor Vehicles Act, 1939, in not awarding interest on the amount of compensation finally determined by it from the the date of the application. It is undoubtedly true that under section 110CC, the Division Bench of the High Court had discretion to award interest at such rate and from such date not earlier than the date of the application as it may think fit in the exercise of its discretion. But it is well settled that every discretion conferred by

statute must be exercised judicially on the basis of the facts and circumstances of a particular case. Here when the learned single judge enhanced the amount of compensation, he awarded interest on the enhanced amount at 6% per annum from the date of his judgment and the Division Bench also when it further enhanced the amount of compensation, directed that interest at the rate of 6% per annum be paid on the enhanced amount from the date of its judgment and not from the date of the application. The learned single Judge as well as the Division Bench totally ignored the fact that the enhanced amount of compensation awarded by them was in their judgment the correct amount of compensation payable to the appellants on account of the death of the deceased resulting from the accident. The learned singe judge and the Division Bench should have thereforee awarded interest on the enhanced amount of compensation from the date of the application. We accordingly set aside the judgment of the Division Bench as also the judgment of the learned single judge in so far as these judgments direct that interest shall be payable on the enhanced amount of compensation from the date of the respective judgments and instead, we direct that interest shall be payable on the enhanced amount of compensation as finally determined by the Division Bench at the rate of 12% per annum from the date of the application from compensation. The respondents will of course get credit for the amounts already paid by them to the appellants from time to time and interest shall be calculated taking into account such payments. The amount directed to be said to the appellants under this order shall be paid within two months from today.'

56. The Supreme Court observed that the Division Bench of the High Court had erred in the exercise of its discretion under section 110CC of the Act in not awarding the interest on the amount of compensation from the date of application. No doubt, the High Court had discretion to award interest at such rate and from such date not earlier than the date of the application. But it was well settled that every discretion conferred by statute must be exercised judicially on the basis of the facts and circumstances of the particular case. In this case, the Supreme Court awarded interest at the rate of 12 per cent. per annum from the date of application.

57. Satya Wati Pathak [1983] ACJ 424 (Delhi), Sultan Singh J. had held as under (at page 435):

'Lastly the question is about the interest. The Tribunal has awarded interest at 6 per cent, from the date of the award. This is not a reasonable rate of interest considering the bank rate since the date of accident. The accident took place in 1968 and not a single penny has been paid to the heirs so far. Section 110CC of the Act provides for the award of interest at such rate and for such period as the court may specify. Considering the facts of the case and the existing bank rate, interest at 9 per cent. per annum from the date of filing of the compensation application till realisation would be just and proper.

Learned counsel for the appellants further submits that an amount of Rs.20,000 appears to have been deposited by the insurer with the Tribunal but the same was subject to furnishing bank guarantee by the appellants. His submissions is that the appellants are entitled to interest on the entire amount of compensation. His submission is that the deposit was not unconditional and thereforee there is no question of the stoppage of interest after the deposit. His argument is that the provisions of rules 1 to 3 of Order 24 of the Code of Civil Procedure are not applicable to the facts of the case. Learned counsel refers to P. S. L. Ramanathan Chettiar v. O. R. M. P. R. M. Ramanathan Chettiar, : [1968]3SCR367 , wherein the following observation has been made (at page 1050):

`The last contention raised on behalf of the respondent was that at any rate the decreeholder cannot claim any amount by way of interest after the deposit of the money in court. There is no substance in this point because the deposit in this case was not unconditional and the decreeholder was not free to withdraw it whenever he liked even before the disposal of the appeal. In case he wanted to do so, he had to give security in terms of the others. The deposit was not in terms of Order 21, rule 1, Civil Procedure Code, and as such there is no question of the stoppage of interest after the deposit.'

The amount deposited by the respondents was not unconditional and thereforee the appellants would be entitled to interest even on the amount, if any, deposited by the respondents'

58. Taking into consideration the totality of the circumstances, I am of the view that the appellants was entitled to interest at the rate of 12 per cent. per annum on the

entire amount of compensation (including the amount which was deposited by the insurance company) from the date of compensation application (5th August, 1968) filed under section 110A of the Motor Vehicles Act, before the Tribunal.

59. In view of the facts and circumstances of the case, this appeal is partly allowed and the awarded of the learned Tribunal is modified. The amount of compensation is hereby increased from Rs.15,300 to Rs.72,000. The appellants shall also be entitled to interest at the rate of 12 per cent. per annum from August 5, 1968 (date of filing the compensation application) till payment. The appellants shall also be entitled to full costs. The insurance company is directed to satisfy the award within a period of two months from today. The cross objections being C.M. No. 1112 of 1976, filed by Shri Raj Pal, respondent No. 2 under Order 41, rule 22, Civil Procedure Code, are hereby dismissed.

60. FAO No. 16 of 1976 filed by Shri Avtar Singh and the insurance company is also dismissed.