Karnataka High Court National Insurance Co. Ltd. vs Dundamma And Others on 6 June, 1991 Equivalent citations: 1992 ACJ 1, 1992 75 CompCas 141 Kar, ILR 1991 KAR 2045, 1991 (3) KarLJ 505 Bench: K J Shetty, M Mirdhe, M R Jois JUDGMENT 1. In these miscellaneous first appeals presented under section 110D of the Motor Vehicles Act, 1939, by the National Insurance Company Limited, a Division Bench of this court has referred the following question of law for the opinion of the Full Bench under section 7 of the Karnataka High Court Act. The question reads : "Whether by force of clause (ii) of the proviso to section 95(1)(b) of the Motor Vehicles Act, 1939, the insurance company is liable to pay compensation in respect of death or bodily injury to any person travelling in a vehicle, though it is not a vehicle constructed and adapted and meant in law for carrying passengers for hire or reward, even to the extent of number of passengers permitted to be carried in the vehicle though not for hire or reward, even in the absence of any extra coverage secured by the owner under the policy concerned in respect of such passengers ?" 2. Brief facts of the case, in the first batch of cases which are sufficient for answering the question referred for the opinion of the Full Bench, are as follows : 3. The vehicle involved in the accident is a goods vehicle bearing registration No. MYX 6827 belonging to respondent No. 3 in M.F.A. No. 2902 of 1987. On February 26, 1986, it was plying from Panditha Hally to Saligrama in Mandya district, carrying 15 passengers. The lorry met with an accident in the course of the journey. As a result of the said accident ten persons died and five persons were injured. The legal representatives of the persons who died, as also the persons who were injured in the accident presented claim petitions before the Motor Accidents Claims Tribunal, Mandya, claiming compensation in respect of the death or bodily injury, as the case may be, to the passengers. The plea of the appellant insurance company with whom the vehicle was insured before the Tribunal was that the vehicle in question was a goods vehicle and it was not meant to carry passengers for hire or reward and, therefore, the risk in respect of death or injury to persons who were travelling in the goods vehicle was not covered in terms of section 95 of the Act, as also in terms of the policy issued. It was further pleaded by the insurance company that even on the basis that in the lorry a few persons were permitted to be carried according to the permit, unless an extra coverage had been taken by the owner of the lorry covering the risk to the passengers to the extent permitted to be carried in the vehicle, there would be no liability on the part of the insurance company. The Tribunal, however, overruled the objections of the insurance company on the ground that the persons who were travelling in the vehicle were not gratuitous passengers and made the award both against the owner of the lorry and its insurer. The relevant particulars of the cases are as follows : ——————————————————————————————- Sl M.F.A. No. M.V.C. No. Case of death Amount No. or injury awarded —————————————————————————————— Rs. 1 2902 of 1987 91 of 1986 death 26,800 2 2969 of 1987 109 of 1986 death 29,600 3 2970 of 1987 110 of 1986 injury 7,500 4 2971 of 1987 127 of 1986 injury 10,000 5 2972 of 1987 111 of 1986 death 55,120 6 2973 of 1987 99 of 1986 death 29,800 7 2974 of 1987 98 of 1986 death 39,400 8 2975 of 1987 95 of 1986 death 24,800 9 2976 of 1987 93 of 1986

death 46,600 10 2977 of 1987 107 of 1986 death 78,400 11 2978 of 1987 108 of 1986 death 38,920 12 2979 of 1987 130 of 1986 death 42,160 13 2980 of 1987 128 of 1986 injury 10,000 14 2981 of 1987 140 of 1986 injury 25,000 15 2982 of 1987 139 of 1986 injury 7,500 ——————————————————————————————-

4. Aggrieved by the orders of the Tribunal, the appellant presented the appeals.

5. In the appeals, the contention of the appellant-insurance company again was that having regard to section 95 of the Act, it was obligatory for the insurance company to cover the risk only in respect of passengers who are carried for hire or reward in a vehicle which in law is authorised to carry passengers for hire or reward and that as the vehicle in question was a goods vehicle, in law, it was not a vehicle in which passengers could be carried for hire or reward and, therefore, the risk was not covered by the force of section 95 of the Act, but could have been covered only if the owner of the vehicle had chosen to pay extra premium and had taken extra coverage for passengers travelling in the lorry, that too only in respect of the number of passengers permitted to be carried under the permit issued under the Act. It was their contention, as admittedly no specific coverage had been taken by the owner, that there was no liability on the insurance company.

6. As against the above contention of the appellant, learned counsel for the claimants relied on the Division Bench judgment of this court in Channappa Chanaveerappa Katti v. Laxman Bhimappa Bajentri, . In the said judgment, the Division Bench on an interpretation of the exception contained in sub-clause (ii) of the proviso to section 95(1)(b) of the Act, had held that the owner of the goods travelling in a goods vehicle could be regarded as a passenger travelling in the goods vehicle for hire or reward and, therefore, there was compulsory coverage of the risk under section 95(1) of the Act. Relevant portion of the judgment reads (at page 620) : "The Legislature by enacting the exception contained in the second part of the proviso excludes a specific category of persons from the requirement of compulsory insurance against liability which may be incurred by the insured in respect of the use of the vehicle insured. Such category of persons are those carried in or upon or entering or mounting or alighting from the vehicle at the time of the occurrence of the event (accident) out of which the claim arises. From this, it would follow that passengers 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 the claim arises are excluded from the coverage of compulsory insurance contemplated in Chapter VIII of the Act. If we remember that on the construction of the provisions contained in Chapter VIII of the Act, the Supreme Court has held, as already pointed out, that the policy should be taken in respect of the vehicle so as to provide insurance against any liability to third party

incurred by the person using the vehicle; by reason of the exception referred to by us, the policy need not be taken in respect of the vehicle so as to provide insurance against any liability to passengers incurred by the person using the vehicle. But enacting a further exception in the first part of the proviso to the exception contained in the second part thereof, the Legislature imposes a duty on the insured to take out a policy of compulsory insurance in respect of the vehicle so as to provide insurance against any liability to passengers carried for hire or reward or by reason of or in pursuance of a contract of employment, incurred by the person using the vehicle. In our opinion, therefore, passengers carried for hire or reward or by reason of or in pursuance of a contract of employment falling under the class of passengers within the meaning of the exception contained in the first part of the proviso are thrown back or restored to the status of 'any person' found in section 95(1)(b)(i) of the Act. Thus, if a passenger carried for hire or reward or by reason of or in pursuance of a contract of employment in a vehicle which is compulsorily insured, dies or suffers bodily injury by the use of the insured vehicle making the insured liable in damages, it must necessarily be construed as a liability which requires to be reimbursed by the insurer by reason of the policy of compulsory insurance taken in respect of the insured vehicle by the insured." At page 623 : "It has to be mentioned at the outset that the policy of the law in making provision for compulsory insurance of vehicles is to cover the risk of innocent third parties. If we consider the case of the owner of the goods (hirer of goods vehicle) who wants to convey his goods through a public goods vehicle, will he be an innocent third party when he dies or suffers injury while accompanying his goods carried by a public goods vehicle, in the course of the user of the vehicle ? Our answer to this question can only be in the affirmative for the simple reason that when the owner of the goods wants to convey his goods in a public goods vehicle, hired by him and accompany the goods for their safety, in the normal course of things, it would not be possible for him to ascertain beforehand, the financial stability of the user of the vehicle, the expertise of the driver of the vehicle in driving it, or the road worthy condition of the vehicle as would ensure his safety. When such a person travels as a passenger in a goods vehicle which is used to advance the business interests of its owner and is permitted by law, it cannot be said that it is not a vehicle meant for carrying passengers for hire or reward provided for in the exception to the first part of the proviso. In fact, in our opinion, the hire payable for carrying the goods must be deemed to include the hire for carrying the owner of the goods or his agent or servant who travels in the vehicle along with the goods for their safety, inasmuch as it is impossible for us to think of a binding obligation on the part of the owner of the goods vehicle to carry in it the owner of the goods, who hires the goods vehicle for carrying the goods. Moreover, such obligation to carry the owner of the goods along with his goods in a goods vehicle can only be as a business proposition as opposed to a gratuitous proposition. Hence, we have no

doubt in our minds that the Legislature by enacting the exception contained in the first part of the proviso has thought of compulsory coverage by insuring the risk of owners of goods who are entitled to travel in a goods vehicle along with their goods in the event of any risk arising in the course of the user of the vehicle. From this, it would follow that the goods vehicle with which we are concerned was a goods vehicle which was meant to carry along with the goods, passengers for hire or reward and fell within the exception contained in the first part of the proviso so as to require coverage of risk of the owner of goods travelling as passengers by compulsory insurance required to be taken in respect of the vehicle under Chapter VIII of the Act and exhibit D-1 is the policy of insurance which had been taken accordingly."

7. They also relied on the subsequent Division Bench judgments of this court in T. M. Renukappa v. Smt. Fahmida, and United India Insurance Co. Ltd. v. Gangamma, AIR 1982 Kar 261, in which the ratio in Channappa's case, was followed.

8. Learned counsel for the appellant, however, pointed out that the basis on which the Division Bench of this court proceeded in the case of Channappa, , as can be seen from paragraph 19, was that the owner of the goods travelling as a passenger in a goods vehicle was a third party in respect of whom the risk was required to be compulsory covered by section 95(1)(b)(i) of the Act and this view was contrary to the ration of the decision of the Supreme Court in the case of Pushpabai Parshottam Udeshi v. Ranjit Ginning and Pressing Co. (P.) Ltd., , in which the Supreme Court had clearly held that compulsory coverage of insurance prescribed by section 95(1)(b)(i) was in respect of third parties, i.e., those who are not passengers in the vehicle and that in respect of passengers carried in a vehicle which was not meant to carry passengers for hire or reward, unless special coverage is taken by the owner in respect of such passengers there would be no liability on the insurance company. It was pointed out on behalf of the appellant that the above decision though rendered earlier to the Division Bench judgment of this court, was not all brought to the notice of the Division Bench and that even in the subsequent case of Renukappa, , also, it was not brought to the notice of this court. They also pointed out that in the first decision of this court in Channappa's case, , the Division Bench of this court had followed the decision of the Gujarat High Court in Sakina Bibi v. Gordhan Bhai [1974] 15 Guj LR 428, and that, subsequently, the Full Bench of the Gujarat High Court in New India Assurance Co. v. Smt. Nathiben Chatrabhuj, [FB], on consideration of the ratio of the decision of the Supreme Court in Pushpabai's case, , had held that no compulsory coverage in respect of the passengers carried in a goods vehicle was provided for in section 95 of the Act. It is in these circumstances that the Division Bench referred the question of law set out in the first paragraph of this order for the opinion of the Full Bench.

9. Before the Full Bench, learned counsel appearing for the appellants and the respondents addressed elaborate arguments in support of their respective contentions. Sriyuths Chinnappa Kambeyanda, K. Suryanarayana Rao and S. P. Shankar, who are standing counsel for other insurance companies and are appearing in other cases in which a similar question arises, addressed arguments supporting the contention of the appellant, having been permitted by us to argue, on their request. Sri V. V. Gunjal, learned counsel, who is appearing for the claimants in similar cases, sought permission to argue and addressed arguments supporting the contention of the respondents. Both sides relied on a large number of decisions rendered by various High Courts. There has been divergence of opinion among the various High Courts. Having regard to the ratio of those decisions, they can be categorised as follows : I. The risk in respect of owners of the goods travelling in a goods vehicle is required to be compulsorily covered by section 95(1)(b), proviso (ii), and, therefore, the insurance company is liable to pay compensation in a claim petition arising out of the death or injury to such passenger. See Abdul Razzak v. Smt. Sharifunnisa, AIR 1983 All 400; [1985] 58 Comp Cas 426 (All), Nasibdhar Suba Fakir v. Adhia and Co. [1983] ACJ 264; [1985] 58 Comp Cas 449 (Bom), Raghunath Eknath Hivale v. Shardabai Karbhari Kale [1986] ACJ 460; [1987] 62 Comp Cas 755 (Bom) and New India Assurance Co. Ltd. v. K. T. Jose, .

II. If the driver had collected fare from passengers travelling in a goods vehicle, the insurance company is liable to pay the compensation which is payable by the owner in a claim petition arising out of death or injury to such passenger; otherwise not. See Gujarat State Road Transport Corporation v. Malubai Menand [1981] ACJ 36 (Gujarat) and Santrabai v. Prahlad [1985] ALJ 714; [1986] 59 Comp Cas 714 (Raj) [FB].

III. If a free lift was given in a goods vehicle or even in a public service vehicle to a passenger, if an event/accident takes place which gives rise to a claim against the owner, the owner alone is liable and not the insurer. See Jam Shri Staji Digvijayasingji v. Daud Taiyab , Ambaben v. Usmanbhai Amirmiya Sheikh [FB] and Santra Bai v. Prahlad [1985] ACJ 762; [1986] 59 Comp Cas 714 (Raj) [FB].

IV. Section 95 does no provide for compulsory insurance cover in respect of claims arising out of death or injury to owners of goods travelling in a goods vehicle. See M. Kandaswamy Pillai v. Chinnaswamy [1985] ACJ 232 (Mad), Harishankar Tiwari v. Jagru [1987] ACJ 1; [1988] 64 Comp Cas 468 (MP) [FB], New India Assurance Co. Ltd. v. Santha [1988] ACJ 689 (Mad) and Oriental Fire and General Insurance Co. Ltd. v. Gurdev Kaur [1967] ACJ 158; [1967] 37 Comp Cas 577 (Punj) [FB]. V. Section 95 does provide for compulsory insurance cover in respect of claims arising out of death or injury to an agent/employee of the owner of goods travelling in a goods vehicle though not for the owner of the goods. See Harishankar Tiwari v. Jagru [1988] 64 Comp Cas 468 (MP) [FB].

V. In respect of a claim arising out of death of or injury to a passenger who

was travelling in a vehicle statutory insurance cover would not be available and consequently the insurance company would not be liable if, on the date of the contract of insurance, the vehicle did not have a permit to carry passengers for hire or reward and the conditions incorporated excluded the use of the vehicle for carrying passengers for hire or reward (see New India Assurance Co. Ltd. v. Nathiben Chatrabhuj, [FB].

VI. Compulsory insurance prescribed under section 95 of the Act does not cover the risk in respect of claims arising out of injury to or death of passengers travelling in a goods vehicle even if they were being carried for hire or reward, as goods vehicle is in law not a vehicle authorised to carry passengers for hire or reward (see Oriental Fire and General Insurance Co. v. M. Bhanumati,). Thus it may be seen that there is divergence of opinion among the various High Courts on the question which arises for consideration in these cases. Learned counsel for the claimants submitted that there was no decision of the Supreme Court on the point.

10. According to learned counsel for the appellant, the ratio of the decision of the Supreme Court in Pushpabai, , supports their contention and in view of that the question referred for our opinion has to be answered in their favour.
11. Before proceeding to interpret the clause in section 95 of the Act, it is necessary to make a brief survey of the relevant provisions of the Act. "2. (3) 'contract carriage' means a motor vehicle which carries a passenger or passengers for hire or reward under a contract expressed or implied for the use of the vehicle as a whole at or for a fixed or agreed rate or sum -

(i) on a time basis whether or not with reference to any route or distance, or
(ii) from one point to another, and in either case without stopping to pick up, or set down along the line of route passengers not included in the contract; and includes a motor cab notwithstanding that the passengers may pay separate fares. 2.(8) "goods vehicle" means any motor vehicle constructed or adapted for use for the carriage of goods, or any motor vehicle not so constructed or adapted when used for the carriage of goods solely or in addition to passengers. 2.(16) "motor car" means any motor vehicle other than a transport vehicle (omnibus), roadroller, tractor, motor cycle or invalid carriage. 2.(22) "private carrier" means an owner of a transport vehicle other than a public arrer who uses that vehicle solely for the carriage of goods which are his property or the carriage of which is necessary for the purposes of his business not being a business of providing transport, or who uses the vehicle for any of the purposes specified in sub-section (2) of section 42. 2.(23) "public carrier" means an owner of a transport vehicle who transports or undertakes to transport goods, or any class of goods, for another person at any time and in any public place for hire or reward, whether in pursuance of the terms of a contract or agreement or otherwise, and includes any person, body, association or

company engaged in the business of carrying the goods of persons associated with that person, body, association or company for the purpose of having their goods transported. 2.(25) "public service vehicle" means any motor vehicle used or adapted to be used for the carriage of passengers for hire or reward, and includes a motor cab, contract carriage, and stage carriage. 2.(29) "stage carriage" means a motor vehicle carrying or adapted to carry more than six persons excluding the driver which carries passengers for hire or reward at separate fares paid by or for individual passengers, either for the whole journey or for stages of the journey. 2.(33) "transport vehicle" means a public service vehicle or goods vehicle.'

12. As can be seen from the above provisions contained in the definition section, the Act makes a clear classification of transport vehicles into two categories, namely, vehicles which are in law used or permitted to be used for carriage of passengers for hire or reward. They are contract carriages, motor cabs and stage carriages. A perusal of the provisions of the Act to which we shall refer later shows that it is these types of vehicles which are in law permitted to be used for carrying passengers for hire or reward. The goods vehicles are, according to the definition, vehicles constructed or adopted for use for the carriage of goods solely or in addition to passengers. These are classified into two categories, namely, private carriers and public carriers. Having regard to the definition of "private carrier" under section 2(22) these vehicles are meant for carrying the goods belonging to the owner; whereas public carriers are goods vehicles meant for carrying goods belonging to another for hire or reward. It is true that in the definition of goods vehicle it is stated that such a vehicle might be adapted to carry goods in addition to passengers. But what is of significance is, whereas the definitions of "contract carriage", "motor cabs" and "stage carriages" expressly provide that they are vehicles meant to carry passengers for hire or reward in the definition of the goods vehicle, though it is provided that it can carry passengers in addition to the goods, the words "for hire or reward" are designedly omitted, for, they are not vehicles which could be used in law for carrying passengers for hire or reward. This distinction, in our opinion, should be borne in mind in interpreting the provisions of section 95 of the Act.
13. The next group of sections, which are relevant are contained in Chapter IV. Section 42 of the Act requires that every "transport vehicle" should be covered by a permit issued under the relevant provisions of the Act. They are :

(1) Section 48 of the Act provides for grant of stage carriage permits. Relevant portion of section 48 reads : "48. Grant of stage carriage permits. - (1) Subject to the provisions of section 47, a Regional Transport Authority may, on an application made to it under section 46, grant a stage carriage permit in accordance with the application or with such modifications as it deems fit or refuse to grant such a permit ...

(2) The Regional Transport Authority, if it decides to grant a stage carriage permit, may grant the permit for a service of stage carriages of a specified description or for one or more particular stage carriages, and may, subject to any rules that may be made under this Act, attach to the permit any one or more of the following conditions, namely :- ...

(xii) that fares shall be charged in accordance with the approved fare table;
(xiii) that a copy of, or extract from, the fare table approved by the Regional Transport Authority and particulars of any special fares or rates of fares so approved for particular occasions shall be exhibited on every stage carriage and at specified stands and halts."

14. It may be seen that section 48(3)(xii) and (xiii) expressly provides that fares shall be charged as fixed by the competent authority.

(2) Section 51 of the Act provides for the grant of a contract carriage permit. Relevant portion of the said section reads :- "5. Grant of contract carriage permits. - (1) Subject to the provisions of section 50, a Regional Transport Authority may, or an application made to it under section 49, grant a contract carriage permit in accordance with the application or with such modification as it deems fit or refuse to grant such a permit ...
(3) The Regional Transport Authority, if it decides to grant a contract carriage, permit, may subject to any rules that may be made under this Act, attach to the permit any one or more of the following conditions, namely, - ... (iia) the maximum number of passengers and the maximum weight of luggage that may be carried on any specified vehicle or on any vehicle of a specified type, either generally or on specified occasions or at specified times and seasons and the same is prominently marked on the vehicle ...

(iv) that in the case of motorcabs, specified fares or rates of fares shall be charged and a copy of the fare table shall be exhibited on the vehicle;
(v) that in the case of vehicles other that motor cabs specified rates of hiring not exceeding specified maxima shall be charged ...
(vi) that, in the case of motorcabs, a taximeter shall be fitted and maintained in proper working order, if prescribed." As can be seen from the section, in respect of motor cabs and other contract carriages, fare or hire to be charged are to be in accordance with the rates fixed as required under section 51(2)(iv) and (v) of the Act.

(3) Section 53 provides for grant of private carrier's permits and section 56 provides for grant of public carrier's permits. Relevant portions of sections 53 and 56 read : "53. Procedure of regional transport authority in considering application for a private carrier's permit. - (1) A regional Transport Authority shall, in considering an application for a private carrier's permit, have regard to the condition of the roads to be used by the

vehicle or vehicles in respect of which the application is made, and shall satisfy itself that the vehicle or vehicles for which the permit is required will not be used except in connection with the business of the applicant. (1A) Subject to the provisions of sub-section (1), the Regional Transport Authority may, on an application made to it under section 52, grant a private carrier's permit in accordance with the application or with such modifications as it deems fit or refuse to grant such a permit." "56. Grant of public carrier's permits. - (1) Subject to the provisions of section 55, a Regional Transport Authority may on an application made to it under section 54, grant a public carrier's permit in accordance with the application or with such modifications as it deems fit or refuse to grant such a permit. ..

(4) The Regional Transport Authority, if it decides to grant a public carrier's permit may grant the permit for one or more goods vehicles of a specified description and may, subject to any rules that may be made under this Act, attach to the permit any one or more of the following conditions, namely, -

(i) that the vehicle or vehicles shall be used only in a specified area, or on a specified route or routes; ...

(ii) that goods of a specified nature shall not be carried;

(iii) the goods shall be carried at specified rates." Both in section 53 and section 56 there is no reference to the carrying of passengers for hire or reward. In section 56, it is expressly provided that public carriers are vehicles meant for transporting goods for hire or reward.

(4) Section 66 is of considerable importance for the question arising for consideration in these appeals. It reads : "66. Voidance of contracts restrictive of liability. - Any contract for the conveyance of a passenger in a stage carriage or contract carriage, in respect of which a permit has been issued under this Chapter, shall, so far as it purports to negative or restrict the liability of any person in respect of any claim made against that person in respect of the death of, or bodily injury to, the passenger while being carried in, entering or alighting from the vehicle, or purports to impose any conditions with respect to the enforcement of any such liability, be void." As can be seen from the above provision, the section speaks of conveyance of passenger in a contract carriage and a stage carriage in respect of which permits are issued under the Chapter and provides that any contract entered into, which negatives or restricts the liability of any person in respect of any claim in respect of death or bodily injury to a passenger while being carried in, entering or alighting from the vehicle, or purports to impose any conditions with respect to the enforcement of any such liability, shall be void. This section, in our opinion, gives the clearest indication that it is only the stage carriage and contract carriage vehicles, which expression includes motor cabs, which are authorised in

law to carry passengers for hire or reward and, therefore, the section provides that the owner of the vehicle cannot avoid the liability in the case of death or bodily injury to passengers, even by entering into a contract with the passengers or passenger concerned.

(5) Section 67 of the Act is again a special provision to make rules only in respect of stage carriages and contract carriages, namely, the vehicles which are in law authorised to carry passengers for hire or reward. Relevant portion of section 67 reads : "67. Power to make rules as to stage carriages and contract carriages. - (1) A State Government may make rules to regulate, in respect of stage carriages and contract carriages ...

(b) the conduct of passengers in such vehicles;

(2) Without prejudice to the generality of the foregoing provision, such rule may -

(c) require a passenger to declare, if so requested by the driver or conductor, the journey he intends to take or has taken in the vehicle and to pay the fare for the whole of such journey and to accept any ticket provided therefor;

(d) require, on demand being made for the purpose by the driver or conductor or other person authorised by the owner to the vehicle, production during the journey and surrender at the end of the journey by the holder thereof of any ticket issued to him;

(e) require a passenger, if so requested by the driver or conductor, to leave the vehicle on the completion of the journey the fare for which he has paid;

(f) require the surrender by the holder thereof on the expiry of the period or which it is issued of a ticket issued to him."

15. A reading of this section also indicates that stage carriages and contract carriages are the types of vehicles which are permitted under the Act for carrying passengers for hire or reward and the Government is authorised to frame rules in respect of various matters specified in clauses (a) to (f) all of which are intended to regulate the carrying of passengers for hire or reward in such vehicles. The absence of reference to any provisions relevant to regulating passengers for carrying for hire or reward in a goods vehicle in this section or any other provision also indicates that such vehicles are not meant for carrying passengers for hire or reward.

16. Section 68 of the Act is a general provision which relates to framing of rules for the purpose of the Act. Relevant portion of section 68 reads : "68. Power to make rules for the purposes of this Chapter. - (1) A State Government may make rules for the purpose of carrying into effect the provisions of this Chapter.

(2) Without prejudice to the generality of the foregoing power, rules under this section may be made with respect to all or any of the following matters, namely, - ....

(q) the provision of taximeters on motor cabs requiring approval of standard types of taximeters to be used and examining, testing and sealing taximeters;
(r) prohibiting the picking up or setting down of passengers by stage or contract carriages at specified places or in specified areas or at places other that duly notified stands or halting places and requiring the driver of the stage carriage to stop and remain stationary for a reasonable time when so required by a passenger desiring to board or alight from the vehicle at a notified halting place ...
(s) requiring the person in charge of a stage carriage to carry any person tendering the legal or customary fare ...
(t) the carriage of persons other than the driver in goods vehicles."

17. Section 68(2)(q) authorises framing of rules regulating taximeters and clause (r) authorises the prohibiting of picking up of passengers at specified places. All these are only in respect of stage carriages and contract carriages including motor cabs, which are authorised to carry passengers for hire or reward. Clauses (u) and (y) are of significance. Clause (u) empowers the Government to frame rules making it obligatory on the person in charge of a stage carriage to carry a person who is tendering the fare payable; whereas clause (y) empowers the Government to frame rules authorising the carrying of persons other than the driver in a goods vehicle. It is significant to note that this provision also does not refer to passengers to be carried for hire or reward in a goods vehicle. In exercise of the power under the above section the State Government has framed rules. Relevant rule is rule 161. It reads : "161. Carriage of persons in goods vehicles. - (1) Subject to the provisions of this rule, no person shall be carried in a goods vehicle : Provided that the owner or the hirer or a bona fide employee of the owner or the hirer of the vehicle may be carried in a goods vehicle, the total number of persons so carried in a light transport goods vehicle not being more that three and in any other goods vehicle, not being more that seven including the driver.

(2) Notwithstanding anything contained in sub-rule (1), but subject to the provisions of sub-rules (4) and (5), a Regional Transport Authority may be an order in writing permit a larger number of persons being carried in the vehicle on condition that no goods at all are carried in addition to such persons and such persons are carried free of charge in connection with the work for which the vehicle is used, and that such other conditions as may be mentioned by the Regional Transport Authority are observed and where the vehicle is required to be covered by a permit, the conditions of the permission aforesaid are also made conditions of the permit."

18. As can be seen from the above rule, it emphatically provides that no person shall be carried in a goods vehicle except as provided in the rule. Under the proviso, the only persons who are permitted to be carried in a goods vehicle are the owner or hirer or a bona fide employee of the owner or hirer. The total number of such persons who could be carried in a light transport vehicle is not more than three and in the case of heavy transport vehicles, not more than seven including the driver. The above rule also unmistakably indicates that the rule does not permit the carrying of any passenger for hire or reward in a goods vehicle. The only type of passengers permitted in a goods vehicle in the above rule are the owner of the vehicle itself or the hirer of the goods vehicle concerned or the employee of the owner or the employee of the hirer of the vehicle, that too subject to the condition that the number should not exceed three in the case of a light motor vehicle and six other than the driver, in respect of a heavy goods vehicle.
19. With this background, we shall now refer to the provisions in Chapter VIII of the Act. Section 95 of the Act makes it obligatory for the user of a vehicle to take an insurance policy complying with the requirement of this Chapter. Section 95(1) reads : "95. Requirements of policies and limits of liability. - (1) In order to comply with the requirements of this Chapter, a policy of insurance must be a policy which -

(a) is issued by a person who is an authorised insurer or by a co-operative society allowed 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) -
(c) 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."

20. Sub-section (1) of section 95 prescribes the mandatory requirement of an insurance policy. According to section 95(1)(b), it is obligatory for the owner of a motor vehicle using it in a public place to take an insurance policy which insures the person or class of persons specified in section 95(b)(i) and (ii) to the extent specified in sub-section (2). It is common ground that the risk required to be covered under section 95(1)(b)(i) is in respect of third parties, namely, other than passengers travelling in a vehicle. Again in respect of sub-clause (ii) of section 95(1)(b) which was inserted into the Act by Amending Act 56 of 1969, there is no dispute that it requires that the insurance policy should cover the risk against death or bodily injury to any passenger of a public service vehicle, namely, a

contract carriage which includes a motor cab and stage carriage, arising out of the use the vehicle in a public place.

21. The controversy, however, is regarding the interpretation of clause (ii) of the proviso. After sub-section (1) which provides that an insurance policy in respect of a vehicle must cover the risk, in respect of third parties (vide clause (i)) and in respect of passengers travelling in a public service vehicle (vide clause (ii)) there is the proviso which reads : "Provided that a policy shall not be required -

(i) to cover liability in respect of the death, arising out of and in the course of his employment, of the employee of a person insured by the policy or in respect of bodily injury sustained by such an employee arising out of and in the course of his employment other than a liability arising under the Workmen's Compensation Act, 1923, in respect of the death of, or bodily injury to, any such employee -

(a) engaged in driving the vehicle, or
(b) if it is a public service vehicle, engaged as a conductor of the vehicle or in examining tickets on the vehicle, or
(c) if it is a goods vehicle, being carried in the vehicle, or

(ii) except where the vehicle is a vehicle in which passengers are carried for hire or reward or by reason of or in pursuance of a contract of employment to cover liability in respect of the death of or bodily injury to persons being carried in or upon or entering or mounting or alighting from the vehicle at the time of the occurrence of the event out of which a claim arises, or
(iii) to cover any contractual liability."

22. As regards clause (i) again there is no controversy. It is common ground that to the extent of liability arising under the Workment's Compensation Act, 1923, in respect of death or bodily injury to a person driving any type of vehicle (vide clause (a)); a person engaged as a conductor or a ticket examiner in a public service vehicle (vide clause (b)) and in respect of employees carried in the vehicle if it were to be a goods vehicle (vide clause (c)) it is not compulsory that the insurance policy should cover the risk over and above the liability arising under the Workmen's Compensation Act. In other words, in respect of those persons compulsory coverage is prescribed up to the extent of liability under the Workment's Compensation Act. However, if any owner of a vehicle is desirous of covering the entire risk in respect of any such employee, i.e., whether a driver or a conductor or a ticket examiner in a public service vehicle or an employee travelling in a goods vehicle, he is at liberty to secure coverage for the entire risk, i.e., even higher that the liability arising under the Workmen's Compensation Act by making extra payment of the premium in terms of the tariff regulations of the insurance company concerned, by way of

abundant caution. On this aspect also there is no controversy. The controversy is in respect of clause (ii) of the proviso. The provision is no doubt involved and not happily worded. In order to understand its real meaning, it is necessary to read the second part of the exception first and first part next. So taken it reads : "Provided that a policy shall not be required ... 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, 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."

23. The crucial point arising for consideration is, what is the meaning to be attached to the words "the vehicle is a vehicle in which passengers are carried for hire or reward". According to learned counsel for the insurance company, the above-said words give the clearest indication that the vehicles contemplated by the clause are the vehicles which are used or adapted for carrying passengers for hire or reward and in respect of those vehicles the taking of an insurance policy covering the risk in respect of passengers is obligatory. But the persons or passengers travelling in a goods vehicle do not at all come under that exception, for the reason that a goods vehicle is not a vehicle in which passengers are carried for hire or reward. Learned counsel stressed that the use of the word "vehicle" for the second time was meant to describe the type of vehicle in respect of which the exception was incorporated and the description given is the vehicle in which passengers are carried for hire or reward and certainly, according to the provisions of the Act, a goods vehicle is not a vehicle in which passengers are carried for hire or reward.

24. As seen earlier, right from the definition section and the sections which provide for the grant of permits, the provisions of the Act clearly categorise transport vehicles into two categories, namely, those which are meant to be used for carrying passengers for hire or reward and those which are meant for carrying goods. As seen earlier, section 66 of the Act, which is another significant provision, provides that any contract entered into by any person which reduces or takes away the liability in respect of death or bodily injury to passengers carried in a stage carriage or a contract carriage would be invalid. The incorporation of such an express provision only in respect of passengers in a contract carriage or a stage carriage and omission to make a similar provision in respect of passengers in a goods vehicle gives the clearest indication that the question of rendering a contract avoiding liability in respect of passenger in a goods vehicle does not arise, for the reason that the Act does not prescribe any such statutory liability at all. If really under section 95(1)(b), proviso (ii), of the Act the Legislature had intended to impose any such liability in respect of passengers in a goods vehicle also, section 66 would have also provided that any contract which negatives or restructs the liability in respect of any passenger carried in a goods vehicle would also be invalid.

25. Apart from that, in our opinion, sub-section (2) of section 95 helps in ascertaining the true meaning of clause (ii) of section 95(b), proviso. For this purpose, it is necessary to specifically refer to the provisions of section 95(1)(b). The relevant portion of the same reads : "95. Requirements of policies and limits of liability. - (1) In order to comply with the requirements of this Chapter, a policy of insurance must be a policy which -

(a) is issued by a person who is an authorised insurer or by a co-operative society allowed 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)."

26. From the above provision, it is clear that, in order to find out who are the classes of persons and what is the extent of liability which should be covered by an insurance policy to be taken under section 95(1) of the Act, we have to read sub-section (2). That sub-section makes separate provisions in respect of different categories of vehicles. They are : "95. (2) Subject to the proviso to sub-section (1), a policy of insurance shall cover any liability incurred in respect of any one accident up to the following limits, namely :- Regarding goods vehicles (a) Where the vehicle is a goods vehicle, a limit of one lakh and fifty thousand rupees in all, including the liabilities, if any, arising under the Workmen's Compensation Act, 1923 (8 of 1923), in respect of the death of, or bodily injury to, employees (other than the driver), not exceeding six in number, being carried in the vehicle. Regarding vehicles in which (b) Where the vehicle is a vehicle passengers are carried for hire in which passengers are carried or reward or in pursuance of a for hire or reward or by reason of, contract of employment or in pursuance of, a contract of employment - (i) in respect of persons other than passengers carried for hire or reward, a limit of fifty thousand rupees in all; (ii) in respect of passengers, a limit of fifteen thousand rupees for each individual passenger. Regarding vehicles other than (c) Save as provided in clause (d) goods vehicles and vehicles in where the vehicle is a vehicle of any which passengers are carried other class, the amount of liability for hire or reward or in incurred. pursuance of a contract of employment In respect of all vehicles but (d) Irrespective of the class of only in relation to damage to vehicle, a limit of rupees six property thousand in all in respect of damage to any property of a third party."

27. An analysis of the clauses makes the following aspects clear :-

(1) In clause (a) relating to goods vehicles there is no reference to passengers. It only covers the third party risks as also risks in respect of employees, but limits the risk in respect of employees up to six and also provides that it is inclusive of the liability arising under the provisions of the Workmen's

Compensation Act. Compensation Act. Clause (a) also prescribes that the liability in respect of third parties is to the extent of Rs. 1,50,000. Therefore, a policy in respect of a goods vehicle is not at all required to cover the liability in respect of passengers in goods vehicle other than the employees.

(2) Clause (b) of section 95(2) covers the liability in respect of vehicles in which passengers are carried for hire or reward or by reason of or in pursuance of a contract of employment and fixes the liability in respect of persons other than passengers carried for hire or rewar at Rs. 50,000, i.e., third parties. In respect of passengers a limit of Rs. 15,000 in respect of each passenger is fixed.

(3) Clause (c) relates to the third category of vehicles which are neither goods vehicles nor vehicles meant for carrying passengers for hire or reward. The liability in respect of these vehicles is only in respect of third parties and the liability is unlimited. Private motor cars and omnibuses fall under this category.

(4) Clause (d) of section 95(2) is a provision which is applicable to all types of vehicles in respect of damage to any property of the third party and such liability is limited to only Rs. 6,000.

28. The classification of goods vehicles and passenger vehicles separately for fixing the liability under section 95(2) of the Act and the omission of reference to any passenger liability in respect of goods vehicles, in our opinion, is in conformity with the entire scheme of the Act, which classifies vehicles carrying passengers for hire or reward into one category and goods vehicle which are not meant to carry passengers for hire or reward into another category.

29. It is appropriate at this stage to refer to the decision of the Supreme Court in Pushpabai's case, . In the said case, the facts were as follows : An accident was caused by a motor car, as a result of which the claim petitions out of which the appeal arose before the Supreme Court were presented before the Tribunal. It was the contention of the claimants that the liability of the insurance company in respect of persons travelling in the car was covered by section 95 and it was unlimited. The stand of the insurance company was that in respect of persons travelling in a private car, no compulsory insurance was prescribed under section 95 of the Act and the liability would depend on the question as to whether specific coverage was taken by the owner by paying extra premium. In that case, it was also the plea for the company that the special coverage taken was only for Rs. 15,000 in respect of passengers. The Supreme Court interpreted the provisions of section 95 of the Act and in particular the very exception which is the subject matter of controversy in these appeals and held that no compulsory coverage in respect of passengers other than those carried for hire or reward, was prescribed in section 95(1) of the Act. The relevant portion of the judgment reads (at page 1745) : "The nationalised insurance company has taken notice and appeared through

Mr. Naunit Lal, advocate. The insurance company had nothing further to add except as to the quantum of liability of the insurance company so far as injuries to the passengers are concerned. Mr. Naunit Lal submitted that the scope of the statutory insurance does not cover the injury suffered by the passengers and as the owner has specifically insured under the insurance policy the risk to passengers to the extent of Rs. 15,000 only, the liability of the insurance company should be limited to Rs. 15,000. On behalf of the owner it was submitted that the insurance cover under the Act extended to the injury to the passengers also and sought to support his contention by referring to section 95(1)(b)(i) which provides against any liability to the owner which may be incurred by him in respect of death of or bodily injury to any person or damage to any property of a third party caused by or arising out of the use of the vehicle in a public place. 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 to that. Neither the Road Traffic Act, 1960, nor 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 reward or by reason of or in pursuance of a contract of employment. In fact, sub-section (4) of section 203 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 the 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 introduce by the amendment of section 95 of the Indian Motor Vehicles Act." At page 1746 :

30. Sections 95(2)(a) and 95(2)(b)(i) of the Motor Vehicles Act adopted the provisions of the English Road Traffic Act, 1960, and excluded the liability of the insurance company regarding the risk to the passengers. Section 95 provides that a policy of insurance must be a policy which insures the persons against any liability which may be incurred by him in respect of death or bodily injury to any person or damage to any property of a third party caused by or arising out of the use of the vehicle in a public place. The plea that the words 'third party' are wide enough to cover all persons except the person and the insurer is negatived as the insurance cover is not available to the passengers is 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."
31. Therefore, it is not required that a policy of insurance should cover risk to the passengers who are not carried for hire or reward. As under section 95

the risk to a passenger in a vehicle who is not carried for hire or reward is not required to be insured, the plea of counsel for the insurance company will have to be accepted and the insurance company held not liable under the requirements of the Motor Vehicles Act.

32. The insurer can always take policies covering risks which are not covered by the requirements of section 95. In this case, the insurer had insured with the insurance company the risk to the passengers. By an endorsement to the policy the insurance company had insured against the liability regarding accidents to passengers in the following terms : "In consideration of the payment of an additional premium, it is hereby understood and agreed that the company undertakes to pay compensation on the scale provided below for bodily injury as hereinafter defined sustained by any passenger ... The scale of compensation is fixed at Rs. 15,000." The insurance company is ready and willing to pay compensation to the extent of Rs. 15,000 according to this endorsement but learned counsel for the insured submitted that the liability of the insurance company is unlimited with regard to risk to the passengers. Counsel relied on section II of the policy which relates to liability to third parties. The clause relied on is extracted in full : 'Section II. Liability to third parties :

33. The company will indemnify the insured in the event of accident caused by or arising out of the use of the motor car against all sums including claimant's costs and expenses which the insured shall become legally liable to pay in respect of, -

(a) death of, or bodily injury to, any person but except so far as is necessary to meet the requirements of section 95 of the Motor Vehicles Act, 1939, the company shall not be liable where such death or injury arises out of and in the course of the employment of such person by the insured'." It was submitted that the wording of clause 1 is wide enough to cover all risks including injuries to passengers. The clause provides that the company will indemnify the insured against all sums including claimant's costs and expenses which the insured shall become legally liable. This, according to learned counsel, would include legal liability to pay for risk to passengers. The legal liability is restricted to clause 1(a) which states that the indemnity is in relation to the legal liability to pay in respect of death of, or bodily injury to, any person but except so far as is necessary to meet the requirements of section 95 of the Motor Vehicles Act, the company shall not be liable where such death or injury arises out of and in the course of the employment of such person by the insured. Clauses 1 and 1(a) are not very clearly worked but the words "except so far as is necessary to meet the requirements of section 95 of the Motor Vehicles Act, 1939," would indicate that the liability is restricted to the liability arising out of the statutory requirements under section 95. The second part of clause 1(a) refers to the non-liability for injuries arising in the course of employment of such person. The meaning of this sub-clause becomes clear when we look to the other clauses of the insurance policy. The policy also

provides for insurance of risks which are not covered under section 95 of the Act by stipulating payment of extra premium. These clauses would themselves indicate that what was intended to be covered under clauses 1 and 1(a) is the risk required to be covered under section 95 of the Motor Vehicles Act. On a construction of the insurance policy, we accept the plea of the insurance company that the policy had insured the owner only to the extent of Rs. 15,000 regarding injury to the passenger. In the result we hold that the liability of the insurance company is restricted of Rs. 15,000."

33. From the ratio of the above decision, it is clear that by virtue of the exception incorporated in clause (ii) below the proviso to section 95(1), the compulsory coverage provided was only in respect of passengers carried for hire or reward; and in respect of any passenger carried in any vehicle not for hire or reward, no compulsory coverage is prescribed under section 95. From this it follows that it is only in respect of vehicles in respect of which the permit has been taken in accordance with the provisions of the Motor Vehicles Act for carrying passengers for hire or reward that section 95 of the Act makes it obligatory to take an insurance policy which covers the risk in respect of death or bodily injury to passengers travelling in such vehicles in addition to compulsory coverage of risk as against death or injury to third parties. In respect of every other vehicle, even assuming that the vehicle like a private car or an omnibus or a goods vehicle in which passengers/persons could be carried legitimately, but not for hire or reward, section 95 of the Act does not make it obligatory on the part of the owner to take an insurance policy which covers the risk in respect of persons travelling in the said vehicles. The liability of the insurance company in such arises only if the owner of the vehicle had chosen to take a policy covering the risk to the persons travelling in such vehicles, as had been the position in the case of Pushpabai, .
34. In this context, the ratio of the Division Bench decision of this court in United India Insurance Co. v. Mariswamy (M.F.A. Nos. 490 to 505 of 1986, dated 15-2-1991) rendered, following the ratio in Pushpabai's case, , is apposite. That was also a case in which as many as 16 claim petitions were presented on account of death or bodily injury caused by an accident as a result of rash and negligent driving of an omnibus. In the said case, the insurance company had contended that it was not liable to pay compensation awarded in as many as 16 claim petitions on the ground that at the time of accident the vehicle was not being used by the owner but he had given the vehicle on hire to an educational institution whose employees were being carried in the vehicle and, therefore, there was contravention of the terms of the policy. On the question of fact, it was found that the vehicle was not used for carrying persons or passengers for hire or reward and, therefore, there was no contravention of the terms of the policy. As regards the liability of the insurance company this court, relying on the ratio of the judgment of the Supreme Court in Pushpabai's case, , pointed

out that the vehicle involved in the said case was an omnibus, which was no doubt not intended to carry passengers for hire or reward, but the owner of the vehicle had paid extra premium and had taken coverage for as many as 20 passengers having regard to the seating capacity of the vehicle. It was pointed out that as held by the Supreme Court in Pushpabai's case, , though it was not obligatory for the owner of the omnibus to have taken an insurance policy, by way of abundant caution he had chosen to take an insurance policy covering the risk in respect of passengers carried in the vehicle and, therefore, the insurance company was liable. The relevant portion of the judgment reads : "5. As far as the second contention is concerned, learned counsel placed reliance on the definition of the word 'omnibus' given in section 2(18A), as also the definitions of"public service vehicle",stage carriage" and "transport vehicle" given in the Motor Vehicles Act. They read : "omnibus" means any motor vehicle constructed or adapted to carry more than six persons ... "public service vehicle" means any motor vehicle used or adapted to be used for the carriage of passengers for hire or reward, and includes a motor cab, contract carriage, and stage carriage; "stage carriage" means a motor vehicle carrying or adapted to carry more than six persons excluding the driver which carries passengers for hire or reward at separate fares paid by or for individual passengers, either for the whole journey or for stages of the journey. "transport vehicle" means a public service vehicle ... " A combined reading of these definitions and section 47 and other relevant provisions of the Act would show that in order to carry passengers for hire or reward either as a stage carriage or as a public service vehicle, a permit under the relevant provision of the Act is a condition precedent. It is only after securing a permit under the provisions of the Act that a bus could be used either as a stage carriage or a contract carriage, as the case may be. There is no dispute in the present case that the owner had not secured any such permit. Therefore, it was only an "omnibus" intended to carry more than six persons as a private vehicle. In the insurance policy (exhibit D2), in addition to the basic premium of Rs. 310, the owner of the vehicle had paid a sum of Rs. 300 towards securing unlimited liability in respect of passengers. It is common ground that the number of passengers permitted to be carried in the bus were 20 and the amount of additional premium to cover the unlimited risk for 20 passengers to be paid was at the rate of Rs. 15 per passenger. Such payment had been made. In view of the additional payment, learned counsel for the insurance company does not dispute that the insurance company was liable in respect of 20 passengers and that the liability was also unlimited." .... Further, as held by the Supreme Court in Pushpabai Parshottam Udeshi v. Ranjit Ginning and Pressing Co. Pvt. Ltd., , section 95 of the Motor Vehicles Act requires that only when a vehicle is meant for carrying passengers for hire or reward it is obligatory on the part of the owner of the vehicle to secure insurance in respect of the passengers to be carried in the vehicle. In respect of any other private owner, it is left to the option of the owner of the vehicle to take insurance

in respect of the persons intended to be carried in the vehicle though he is obliged to have insurance in respect of third parties. As far as the present case is concerned, being an omnibus, it was not obligatory on the owner to have taken insurance in respect of passengers. The fact remains that the owner of the vehicle had secured unlimited liability in respect of 20 passengers by paying additional premium of Rs. 300 and the insurance company had accepted the said liability as it is discernible from the policy."

35. The said decision also throws considerable light on the question arising for consideration in these cases.

36. In our opinion, the test to find out as to whether, according to section 95 of the Act, the risk in respect of passengers are statutorily covered or not is not as to whether the passengers had paid hire or fare, but the question is as to whether the vehicle is authorised by law to carry passengers for hire or reward. A few illustrations would help to understand the point clearly :

(i) Let us take two instances of private cars or omnibuses in respect of which the owners of the vehicles had taken insurance policy only in respect of third party risks and the drivers of the vehicle while driving the car/omnibus from one place to another pick up passengers from the road side and collect fare from the passengers at the rate agreed to between the driver and the passenger and thereafter while driving the vehicle rashly and negligently both the vehicles met with accidents, in which persons travelling in the vehicle died or were injured and claim petitions are presented under section 110A of the Act.

(a) In one case the driver of the vehicle admits that while driving the vehicle from one place to another he had picked up passengers, but says that he did so only as a matter of help or courtesy but did not collect any fare.

(b) In the other case, the driver of the vehicle admits that while driving the vehicle from one place to another he had picked up passengers, but had collected or at least says that he had collected fare from the passengers concerned. If the construction of clause (ii) of section 95(1), proviso, as placed by the claimants is correct, in the first case the insurance company is not liable and in the second case the insurance company is liable. Then it means that the liability of insurance company under clause (ii) of section 95(1), proviso, depends upon the whims and fancies of the driver, i.e., either his collecting or not collecting fare, or his saying that he had collected or not collected fare. Surely such cannot be a situation brought about by law. In our opinion, in both the cases the insurance company is not liable as in both the cases the vehicle was not used or adapted in law to carry passengers for hire or reward.

(ii) Similar would be the position in respect of a goods vehicle, namely, a light motor vehicle which can carry the owner or hirer of the vehicle or

employee of the owner or employee of the hirer not exceeding three and in the case of a heavy motor vehicle in which including the owner or hirer or their employee not exceeding six could be carried. In such a case, there is no question of the owner or the driver of the vehicle receiving any hire or fare from the owner or hirer or their employees travelling in such vehicles. Further, there is also no question of carrying any other passenger in the vehicle for hire or reward. Therefore, as indicated in the first illustration, even assuming that the owner or the driver of the vehicle had collected fare from the persons travelling in the vehicle or says that fare had been collected, it cannot be said that the risk is statutorily covered by the provisions of section 95 of the Act as it would mean that the insurance company would incur liability if the owner or driver collects any amount as fare from passengers though not authorised by law. (iii)(a) Take for instance, a stage carriage which is in law authorised to carry passengers and the fare is statutorily fixed. Even if a person has been travelling in such a vehicle without paying fare either having secured a free pass from the owner or for any other reason, as it happens in many cases, as he happens to be a passenger who is travelling in a vehicle which is used for carrying passengers for hire or reward, in the event of death of, or bodily injury to, such passengers, can it be said the risk is not statutorily covered by section 95 of the Act ?

(b) Take another instance where on a given date in respect of a stage carriage plying from point "A" to point "B", the owner of the vehicle chooses to give a free lift to all the passengers on the ground that they are going to a holy place or to attend a function or to attend a jatra, and in the course of the journey an accident takes place and claims for compensation arise on account of death of, or bodily injury to, the persons who are travelling in such vehicle. Can the insurance company be permitted to say that on that particular day passengers had not paid hire or reward and, therefore, the insurance company is not liable ? The answer to the question in both the cases, in our opinion, must be in the negative, for, the vehicle is a vehicle meant for carrying passengers for hire or reward and, therefore, the risk is statutorily covered by section 95 of the Act. While learned counsel for the claimants agreed that that would be the correct answer, learned counsel for the insurance company also conceded that, in such cases, the insurance company is statutorily liable.

37. In our opinion, therefore, the statutory liability of the insurance company must depend on the statutory provision itself and not on what a driver or owner had done, i.e., whether he had collected hire or fare or had not collected hire or fare. Learned counsel for the insurance company conceded, and in our opinion rightly, that the question for consideration in a given case was not as to whether an individual passenger had actually paid hire or fare for travelling in a vehicle which constitutes the basis for fixing the

statutory liability on the insurance company, but what determines the question of liability is as to whether the person concerned was travelling in the vehicle which in law was meant for carrying passengers for hire or reward. Any other view, in our opinion, would lead to incongruous results, as indicated in the illustrations given earlier. In our opinion, the provisions of the Act are not such as would lead to such incongruous results, in that they make the liability of the insurance company depend upon the whims and fancies of the driver or the conductor of a vehicle, as the case may be, and to depend upon as to what he had done or says, i.e., whether the fare was collected or fare was not collected.

38. It is also necessary to point out that the motor vehicle insurance, though controlled by the provisions of the Act, still is a contract and, therefore, the insurance company must know on the date of issuing the policy itself as to what is the risk statutorily fixed or contractually agreed which it has covered under the policy. For instance, in respect of any stage carriage or a contract carriage vehicle, which includes a motor cab, the insurance company knows even on the date when it issues the insurance policy that having regard to the permit issued under the relevant provisions of the Motor Vehicles Act, the vehicle is in law adapted or used for carrying the prescribed number of passengers for hire or reward, and, therefore, by virtue of section 95 of the Act, the risk in respect of third parties and passengers is covered, subject to the extent provided in the section. But in the case of a goods vehicle, the insurance company, having regard to the provisions of the Motor Vehicles Act knows that it is not a vehicle meant for carrying passengers for hire or reward, having regard to the fact that though the definition of goods vehicle, states that the vehicle can carry passengers, it does not state that the vehicle is meant for carrying passengers for hire or reward. Similarly, in respect of a motor car or an omnibus also, an insurance company knows that though the car or omnibus is meant to be used for carrying persons, they are not meant for carrying passengers for hire or reward. Therefore, in all such cases it cannot be that the insurance company is statutorily liable in respect of risks arising out of death of, or bodily injury to, passengers carried in such vehicles, viz., a goods vehicle or a motor car or an omnibus. The position would not change even if the passenger concerned had paid the fare or hire and the owner or the driver of the vehicle had collected it, or the owner had given the vehicle for reward, in that, the vehicle was given for being used by bearing expenses of fuel and/or the batta of the driver. As pointed out earlier, the liability of the insurance company cannot be made to depend on a fortuitous circumstance, i.e., whether the driver or the owner of the vehicle concerned had collected fare or given the vehicle for any reward. Therefore, we are clearly of the view that the exception incorporated in clause (ii) of section 95(b), proviso, is not at all attracted in respect of passengers carried in a goods vehicle.

39. The judgment of the Supreme Court in State of Mysore v. Syed Ibrahim, , on which learned counsel for the respondents relies is of no assistance

to the claimants. The question for consideration in the said case was, if a vehicle was used/misused for carrying passengers for hire or reward without an express permit issued under the relevant provision of the Act, whether the person concerned was liable to be prosecuted for violation of the provisions of the Act. The Supreme Court reversing the judgment of this court held that the fact that the vehicle was not in law permitted to carry passengers for hire or reward was no answer to the charge that the person concerned had violated the provisions of the Act and for the purpose of finding out as to whether the person was guilty or not it was the actual user to which the vehicle was put to that should be looked into. The ratio of the decision is that if an owner or driver of a vehicle carries passengers for hire or reward in a vehicle in which it is not permitted and an accident takes place, they are liable to be punished for the violation of the provisions of the Act, and they cannot escape from the liability of being punished on the ground that the vehicle was not in law permitted to carry passenger for hire or reward.

40. From this, what follows is that in such a case even in respect of liability in tort, the owner and/or the driver cannot escape, on the ground that the passenger, death of whom or injury to whom, constituted the basis for claiming compensation, was being carried in the vehicle for hire or reward in contravention of law. But when it comes to the question of liability of the insurer, the matter would be entirely different. Can it be said that on the ground that the owner/driver of a vehicle carried passengers for hire or reward in it, though it was not permitted in law to do so, their liability in respect of death of, or bodily injury to, passengers so carried could be foisted on the insurance company even if it is not statutorily liable ? Does clause (ii) of the proviso to section 95(1) provide for such a consequence ? The answer to both the questions, in our considered opinion, has to be in the negative.

41. It is appropriate at this stage to refer to the relevant provision in the tariff, the insurance policy and the contents of insurance policy. It is not disputed that these documents in respect of all insurance companies are similar. We give below the relevant extracts from the documents : "India Motor Tariffs 1-12-1973

Commercial vehicles tariff (Contd.)

Extra Benefits (Contd.)

(Not applicable to motor trade risks except where otherwise specified)

N.B. 1. - The insurer may grant cover for unlimited indemnity by charging a premium of Rs. 15 per seat.

N.B. 2. - The above rates are net for any period up to 12 months, but in the case of current insurances when a policy is endorsed to cover this liability or to note

an increase in the carrying capacity, it is permissible for companies to allow on the renewal premium when the policy is renewed including such liability or such increased liability, as the case may be, a discount equal to the difference between the premium charged for the preceding year and that calculated on a pro rata basis. N.B. 3. - Attention is called to the requirements of section 95(2)(b) of the Motor Vehicles Act, 1939. 3. (i) Legal liability for accidents to non-fare paying passengers who are employees of the insured, but not "workmen" under the Workmen's Compensation Act and any other non-fare paying passengers. (a) Vehicles not designed for carriage of passengers, e.g., goods carrying vehicles. 42. The insured may be indemnified in respect of the above mentioned liability on payment of the following additional premium :- Rs. 10,000 any one passenger 15 per cent. of the liability to the public risks only premium. Rs. 50,000 any one accident Rs. 20,000 any one passenger 17.5 per cent. of the liability to the public risks only premium. Rs. 1,00,000 any one accident

Endorsement No. 14(a) must be used."

(2) Insurance policy regarding public carrier

"Limitations as to use :

43. Use only under a Public Carrier's Permit within the meaning of the Motor Vehicles Act, 1939.

The policy does not cover :

(1) Use for organised racing, pacemaking, reliability trial or speed testing.

(2) Use whilst drawing a trailer except the towing (other than for reward) or any one disabled mechanically propelled vehicle.

(3) Use for carrying passengers in the vehicle except employees (other than the driver) not exceeding six in number coming under the purview of the Workmen's Compensation Act, 1923."

(4) Endorsement 14(b) in the policy :

"I.M.T. 14(b) Legal liability to authorised non-fare paying passengers who are not employees of the insured.

In consideration of the payment of an additional premium as stated in the schedule and notwithstanding anything to the contrary contained in section II-1(c) it is hereby understood and agreed that the company will indemnify the insured against his legal liability other than liability under statute (except the Fatal Accidents Act, 1855), in respect of death of, or bodily injury to, any person not being an employee of the insured nor carried for hire or reward

"provided the person is" (a) The owner or representative of the owner of the goods. (b) The charterer or representative of the charterer of the truck. (c) Any person directly connected with the journey in one form or another. Whilst being carried in or upon or entering or mounting or alighting from the motor vehicle but such indemnity is limited to the sum of rupees as mentioned in the schedule in respect of any one such person and subject to the aforesaid limit in respect of any one person to Rs. ..... as mentioned in respect of any number of claims in connection with any one such vehicle arising out of one cause. Subject otherwise to the terms, exceptions, conditions and limitations of this policy." (4) Endorsement form to be enclosed to the policy : "Legal liability to non-fare paying passengers who are not employees of the insured (commercial vehicles only) In consideration of the payment of an additional premium of Rs. .... and notwithstanding anything to the contrary contained in section II-1(c) it is hereby understood and agreed that the company will indemnify the insured against his legal liability other than liability under statute (except the Fatal Accidents Act, 1855), in respect of death of, or bodily injury to, any person not being an employee of the insured nor carried for hire or reward whilst being carried in or upon or entering or mounting or alighting from any motor vehicle described in the schedule to this policy but such indemnity is limited to the sum of Rs. .... in respect of any one such person and subject to the aforesaid limit in respect of any one person to Rs. .... in respect of any number of claims in connection with any one such vehicle arising out of one cause. Subject otherwise to the terms, exceptions, conditions and limitation of this policy." 44. The contents of the tariff and the conditions incorporated in the policy extracted above clearly indicate that the insurance company covers risk in respect of every goods vehicle with the clear understanding that the risk in respect of passengers in a goods vehicle is not covered under the policy. If the conditions incorporated in the policy are inconsistent with the provisions of the Act, certainly the latter prevail but if the conditions are in conformity with the provisions of the Act they must prevail. For instance, if in an insurance policy issued in respect of a stage carriage or a contract carriage, a condition is incorporated in the policy to the effect that it would not be liable to pay compensation in respect of death of, or bodily injury to, passengers such a condition would be a nullity and the Legislature has also incorporated an express provision to that effect in section 66 of the Act. But the condition incorporated in the policy in respect of a goods vehicle to the effect that the insurance company is not liable to pay any compensation in respect of passengers carried in a vehicle other than the driver and the employees covered by section 95 of the Act, is strictly in conformity with the provisions of the Act and is binding on all concerned. 45. From our conclusion, that under section 95 of the Act, it is not obligatory that an insurance policy issued in respect of a goods vehicle must cover the liability in respect of death or bodily injury to passengers travelling in the vehicle, other than the driver and the employees up to the prescribed number, the question as to whether the freight charges paid by the owner of the goods could be deemed to include the hire or fare for travelling in the vehicle does not survive at all. 46. Learned counsel for the claimants submitted that an interpretation

of clause (ii) of the proviso to section 95(1)(b) of the Act to the effect that it creates an exception only in favour of passengers carried in a stage carriage or a contract carriage, is not permissible, for the reason that it would mean that the provision applies only to passengers carried in a public service vehicle which has been specifically incorporated in clause (ii) of section 95(1)(b) of the Act by the Amending Act 56 of 1969 and any such interpretation renders one of the provisions otiose and, therefore, such an interpretation should not be given. Learned counsel for the insurance company, however, submitted that actually clause (ii) of the proviso to section 95(1)(b) should have been or could have been omitted after inserting sub-clause (ii) in clause (b) of section 95(1) of the Act. Obviously, this was not done by oversight and they pointed out that in the corresponding provision, that is, section 147 of the 1988 Act, which is word for word similar to clause (ii) of the proviso to section 95(1)(b) of the Act, it has not been incorporated. 47. After giving careful consideration to the submissions, we are of the view that non-deletion of clause (ii) of the proviso to section 95(1)(b), after the introduction of clause (ii) by the Amending Act 56 of 1969 providing for a statutory coverage of the risk in respect of death or bodily injury to any passenger in a public service vehicle, does not lead to the necessity of giving any different interpretation than the one which we have given to clause (ii) of the proviso to section 95(1)(b) of the Act. On a comparison of clause (ii) of section 95(1)(b) inserted by Act 56 of 1969 and the wording of clause (ii) of its proviso, it may be seen, that the latter provision expressly covers liability not only in respect of death of, or bodily injury to, persons being carried in a vehicle in which passengers are carried for hire or reward, but also includes the liability in respect of the death of, or bodily injury to, persons at the time of entering or mounting or alighting from the vehicle at the time of the occurrence of the event, out of which the claim arises. It may be for this reason that the Legislature considered it not necessary to delete the exception as it was explanatory in nature, explaining that the liability in respect of death of, or bodily injury to, passengers carried in a vehicle in which passengers are carried for hire or reward, i.e., public service vehicle, as specified under sub-clause (ii) after the 1969 amendment, would also extend to death or injury caused at the time of entering, mounting or alighting from the vehicle, and did not incorporate it in the 1988 Act as it had given scope for innumerable litigations and divergence of opinion, and considered that even without that clause, a provision similar to clause (ii) of section 95(1)(b) [which corresponds to section 147(1)(b)(ii)] was comprehensive enough to cover the cases of passengers entering, mounting or alighting from the vehicle. Therefore, we find no substance in the submission made by learned counsel for the claimants. 48. The wording of the proviso to section 95(1)(b) indicates that as far as employees travelling in a vehicle, such as a person driving a vehicle, a conductor or ticket examiner in a public service vehicle, and employees carried in a goods vehicle are concerned, the risk is required to be compulsorily covered, though in view of section 95(2)(a) such compulsory coverage of risk in respect of goods vehicle is restricted to six. As far as any other persons travelling in a vehicle by reason of or in pursuance of a contract of employment are concerned, such travelling could be only in a

vehicle in respect of which a permit is secured to carry passengers for hire or reward. To illustrate, a stage carriage, or a contract carriage which includes a motor cab might be engaged by any employer for providing free conveyance to his employees from their residence to the place of work and vice versa. In such a situation also though the employees do not pay any hire, as their travelling in such a vehicle is by reason of or pursuant to a contract of employment, the risk in respect of death or bodily injury to such person resulting from an accident is also required to be compulsorily covered in view of sub-clause (ii) of the proviso to section 95(1)(b) of the Act. Whatever that my be, passengers travelling in a goods vehicle, other than employees, are not required to be covered by a policy issued in terms of section 95 of the Act, by the force of clause (ii) of the proviso to section 95(1)(b) of the Act. 49. For the aforesaid reason, we respectfully agree with the view taken by the Full Bench of the Gujarat High Court in New India Assurance Co. Ltd. v. Nathiben Chatrabhuj, , and in the two decisions of the Madras High Court in M. Kandaswamy v. Chinnaswamy [1985] ACJ 232 (Mad) and New India Assurance Co. Ltd. v. Santha [1988] ACJ 689 (Mad), and in the Full Bench decision of the Punjab High Court (Oriental Fire and General Insurance Co. Ltd. v. Gurdev Kaur [1967] ACJ 158; [1967] 37 Comp Cas 577 (Punj) [FB]) and in the decision of the Andhra Pradesh High Court (Oriental Fire and General Insurance Co. v. M. Bhanumati,) and respectfully disagree with the view taken by the Division Bench of this court in Channappa's case, , Renukappa's case, AIR 1979 Kar 25; [1982] 52 Comp Cas 634 and Gangamma's case, AIR 1982 Kar 261, and the view expressed in the judgments of the Allahabad, Bombay, Madhya Pradesh, Rajasthan and Kerala High Courts, referred to in paragraph 6 of this order. 50. Learned counsel for the claimants, however, submitted that even in the event of our taking the view that on a correct interpretation of clause (ii) of the proviso to section 95(1)(b) of the Act, the risk in respect of passengers in a goods vehicle is not covered by the insurance policy taken in conformity with the statutory requirement only, i.e., "Act Policy", we should apply the principle of stare decisis and hold that at least in respect of the owner of the vehicle travelling in a goods vehicle with his goods, the insurance company was liable, as that is the view prevailing in this court for the last twelve years after the decision in Channappa's case, . Learned counsel also further pointed out that the 1939 Act has since been replaced by the provisions of the 1988 Act and in the corresponding section the exception incorporated in clause (ii) of the proviso to section 95(1)(b), which has given rise to the controversy, has been omitted and, therefore, in respect of accidents occurring on and after July 1, 1989, on which date the new Act came into force, the controversy arising in these cases does not arise. Learned counsel for the insurance company, as stated earlier, had submitted that actually the said clause should have been deleted in the 1939 Act by the Amending Act 56 of 1969, when sub-clause (ii) was incorporated creating statutory liability in respect of death of, or bodily injury to, passengers travelling in a public service vehicle, as to some extent the two provisions overlapped each other. This fact has been taken note of by the Legislature as is evident from non-incorporation of a similar provision in the 1988 Act. They, however, do not dispute that, right

from 1979 till now, as far as the owner of the goods travelling in the vehicle is concerned, the insurance companies have been required to pay and have been paying the compensation in view of the ratio of the judgment in Channappa's case, . 51. In the circumstances, we are of the view that though the question of law referred for our opinion has to be answered in favour of the insurance company, there is justification to apply the principle of stare decisis regarding the liability of the insurance company in respect of owner of goods travelling in a goods vehicle, as the said view is holding the field for the last nearly twelve years, and particularly in view of the replacement of the 1939 Act by the 1988 Act, in which there is no similar clause. Therefore, we restrict the answer to the passengers travelling in a goods vehicle other than the owner of the goods. In this behalf, we should also make it clear that the owner of the goods in respect of whom liability could be foisted against the insurance company in respect of cases arising prior to July 1, 1989, should be persons who have entered into an agreement with the owner of the vehicle for carrying goods, and the goods carried should be those as defined in section 2(7) of the Act, and the liability shall not cover the number of persons carried in excess of what is permitted by rule 161 of the Karnataka Motor Vehicles Rules, 1963. 52. In the result, we answer the question referred for our opinion as follows : Under a motor vehicle insurance policy issued by an insurance company in conformity with section 95 of the Motor Vehicles Act, 1939, the insurance company is not liable, by the force of clause (ii) of the proviso to section 95(1)(b) of the Act, to pay compensation in respect of death of, or bodily injury to, any person travelling in a vehicle which is not a vehicle constructed or adapted and meant in law for carrying passengers for hire or reward such as a goods vehicle even to the extent of the number of passengers/persons permitted to be carried in the vehicle, except in respect of the owners of the goods travelling in a goods vehicle having engaged the vehicle under an agreement with the owner for carrying goods for hire or reward, and the goods carried are those as defined in section 2(7) of the Act, subject to the condition that such liability shall cover only up to the extent of the number of persons permitted to be carried in the goods vehicle under rule 161 of the Karnataka Motor Vehicles Rules, 1963.