Karnataka High Court Oriental Insurance Co. Ltd. vs Smt. Irawwa And Others on 3 March, 1992 Equivalent citations: 1993 76 CompCas 830 a Kar, 1992 (3) KarLJ 62 Author: R Jois Bench: M R Jois, N Hanumanthappa JUDGMENT Rama Jois, J. 1. In this appeal presented under section 173 of the Motor Vehicles Act, 1988, against an interim award made by the Motor Accidents Claims Tribunal, Belgaum, on a claim petition presented under section 166 of the Act granting compensation of Rs. 25,000 under section 140 of the 1988 Act in respect of death of a passenger travelling in a goods carriage together with his goods as a result of a motor accident which took place on November 6, 1990, that is, after the commencement of the 1988 Act, the following question of law arises for consideration : "Whether, under an insurance policy taken in conformity with the requirements of section 147 of the Motor Vehicles Act, 1988, the insurance company is liable to pay compensation in respect of death or bodily injury to any passenger travelling in a 'goods carriage' whether as a hirer or otherwise?" 2. The brief facts of the case are these : One Suresh was travelling in a goods carriage bearing registration No. MEH 5015. The goods carriage was plying from Belgaum to Bagewadi on November 6, 1990. The vehicle met with an accident at about 16.15 hours. A claim petition was presented by the wife of the deceased, Suresh, claiming a compensation of Rs. 3,50,000 for the death of Suresh in the said accident. In the claim petition, the claimants also claimed interim compensation of Rs. 25,000 payable on the ground of "no-fault liability" under section 140 of the Motor Vehicles Act, 1988, which corresponds to section 92A of the Motor Vehicles Act, 1939. As regards the liability of the insurance company under section 92A of the 1939 Act, a question of law had been referred to a Full Bench of this court in United India Insurance Co. v. Immam Aminasab Nadaf [1990] 67 Comp Cas 287; ILR 1990 Kar 16. The Full Bench of this court, after analysing the provisions of section 92A of the 1939 Act which, for the first time, created no-fault liability and all the related provisions, held that, in order to fix the liability on the insurance company in a given case, the following findings of fact must be arrived at by the Tribunal, namely :- (1) The vehicle concerned was involved in the accident; and (2) The risk giving rise to the claim petition was covered by the insurance policy covering the vehicle involved in the accident. 3. In this case, there was no dispute that the vehicle in question, namely, MEH 5015, was involved in the accident. The Tribunal, while considering the prayer for grant of relief under section 140 of the 1988 Act, proceeded to hold that, as there was an insurance policy covering the vehicle on the date of accident and as the deceased was travelling in a goods vehicle as owner of the goods, the insurance company was liable to pay compensation of Rs. 25,000 payable under section 140 of the 1988 Act. In coming to the conclusion that the risk was covered by the insurance policy, the Tribunal followed the Division Bench judgment of this court in T. M. Renukappa v. Fahmida, , in which this court had held that, if a person was travelling in a goods vehicle along with his goods for the carrying of which he had hired the goods vehicle, the risk arising out of the death of, or injury to, such a passenger would be covered by an insurance policy taken in conformity with section 95 of the 1939 Act. Accordingly, the Tribunal made an award for Rs. 25,000 payable under section

140 of the 1988 Act on the ground of no-fault liability and made both the owner of the vehicle who is respondent No. 6 in the appeal as well as the appellant-Oriental Insurance Company liable to pay the said amount. Aggrieved by the said award, the appellant-insurance company has presented this appeal. 4. The main ground urged by Sri Shankar, learned counsel for the appellant in this appeal is that in the Full Bench decision of this court in National Insurance Co. v. Dundamma, , the Division Bench decision in Renukappa's case , on which the Tribunal relied, has been overruled and it was held that the insurance company was not liable to pay compensation in respect of passengers in a goods vehicle other than the employees or coolies travelling in a goods vehicle and, even in respect of them, the risk stands covered only to the extent of the risk required to be covered by section 95 of the 1939 Act, which corresponds to section 147 of the 1988 Act. Learned counsel pointed out that, in respect of passengers travelling in a goods vehicle along with their goods, the Full Bench held that the liability of the insurance company to pay compensation should be held to exist by applying the principle of stare decisis, as the Division Bench decision of this court in Channappa Channaveerappa Katti v. Laxman Bhimappa Bajentri, , in which it was held that, in view of clause (ii) of the proviso to section 95(1) of the 1939 Act, an insurance company was liable to pay compensation in respect of death of, or bodily injury to, passengers travelling in a goods vehicle along with their goods which was followed in Renukappa's case, , held the field for nearly 12 years and it was not expedient to disturb the said position as the 1939 Act has since been repealed by the 1988 Act and, in the corresponding section 147, there was no provision similar to clause (ii) of the proviso to section 95(1) of the 1939 Act which had led to such an interpretation. He submitted that, in view of the Full Bench decision, the appellant was not liable to pay compensation in this case as the deceased was a passenger travelling in a goods vehicle, even though he was travelling with his goods and the accident took place on November 6, 1990, after the 1988 Act came into force. 5. Elaborating his contention, Sri S. P. Shankar, learned counsel for the insurance company, submitted as follows: The question as to whether an insurance company was liable to pay compensation in respect of passengers travelling in a goods vehicle even to the extent permitted by the Motor Vehicles Rules in the absence of special coverage of the risk taken by the owner of the vehicle by making extra payment of premium and whether the Division Bench decisions of this court in Channappa , and Renukappa, on the point were correct was the subject-matter of consideration by the Full Bench of this court in the case of Dundamma . After interpreting the provisions of section 95 of the 1939 Act which prescribed compulsorily the taking of insurance policies in respect of motor vehicles and the limits of liability and the provisions of section 96 of the Act which prescribed the defences open to an insurance company in a claim petition presented under section 110A of the 1939 Act, as also section 66 of the 1939 Act, which provided that any contract restricting the liability of the owner in respect of a passenger travelling in a passenger vehicle shall be void, held that an insurance company was not liable to pay compensation under an "Act only policy" in respect of death of, or bodily injury to, passengers travelling in a goods vehicle. The Full

Bench overruled the view taken by the Division Bench of this court in the case of Channappa, and also in Renukappa . The Full Bench, however, applied the principle of stare decisis and held that as the Division Bench decision of this court in Channappa's case was being applied by this court and was being followed by the insurance companies for nearly 12 years and as clause (ii) of the proviso to section 95(1)(b) which had given rise to such an interpretation had been omitted in the corresponding provisions of the 1988 Act, the insurance company would continue to be liable to pay compensation in respect of persons who had engaged the goods vehicle for carrying their goods and were travelling with their goods. As far as the 1988 Act is concerned, section 147 corresponds to section 95, section 149 corresponds to section 96 and section 92 corresponds to section 66 of the 1939 Act and all the relevant definitions of the words such as "transport vehicle", "passenger vehicle", "goods vehicle" and "goods" are all similar under the new Act, the ratio of the decision in Dundamma's case, applies on all fours to the facts of the present case, as the accident which gave rise to the claim petition before the Tribunal took place on November 6, 1990, after the 1988 Act came into force. Therefore, it cannot be said that the risk which gave rise to the claim petition was covered by the insurance policy covering the vehicle involved in the accident. The insurance company was, therefore, not liable to pay compensation on the count of "fault liability". It was also not liable to pay compensation on the basis of "no-fault liability" incorporated in section 140 of the 1988 Act, in view of the Full Bench decision in Aminasab Nadaf, , as, admittedly, according to the pleadings of respondents-claimants, the deceased was travelling as a passenger in a goods vehicle, albeit he was travelling with his goods after having paid freight charges and as the risk which gave rise to the claim petition was not covered by the insurance policy. 6. Coming to the facts of this case, there is no dispute that the deceased, Suresh, was travelling as a passenger in a goods vehicle bearing registration No. MEH 5015 on November 6, 1990. As a result of the rash and negligent driving of the said vehicle, there was an accident, at which the deceased, Suresh, sustained severe injuries and succumbed to the severe injuries. The 1988 Act had already come into force with effect from July 11, 1989. The question of law referred for the opinion of the Full Bench in Dundamma's case, , when the 1939 Act was in force, read as follows : "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 ?" 7. After considering all the relevant definitions regarding various types of vehicles and the entire scheme of the Act, with particular reference to sections 95, 96 and 66 of the 1939 Act and applying the ratio of the decision of the Supreme Court in Pushpabai Parshottam Udeshi v. Ranjit Ginning and Pressing Co. P. Ltd., , the Full Bench held as follows (at page 167 of 75 Comp Cas) : "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, section 95 of the Act makes it obligatory to take an insurance policy which covers the risk in respect of death of, 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 out an insurance policy which covers the risk in respect of persons travelling in the said vehicles. The liability of the insurance company in such cases arises only if the owner of the vehicle had chosen to take a policy covering the risk of the persons travelling in such vehicles, as had been the position in the case of Pushpabai, ." 8. At pages 178 and 179 : "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, [FB], and in the two decisions of the Madras High Court, M. Kandaswamy v. Chinnaswamy [1985] ACJ 232 and New India Assurance Co. Ltd. v. Santha [1988] ACJ 689, and in the Full Bench decision of the Punjab High Court, Oriental Fire and General Insurance Co. Ltd. v. Gurdev Kaur [1967] 37 Comp Cas 577; [1967] ACI 158 (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, , Renukappa, and Gangamma, 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. 9. 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 1959, 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 [1982] 52 Comp Cas 609. 10. 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 the owner of the 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. 11. 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 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." (nuderlined (Here printed in italics.) by us) 12. As can be seen from the above decision of the Full Bench, the entire controversy, namely, as to whether the passengers travelling in a goods vehicle were also required to be compulsorily covered by an insurance policy arose on account of clause (ii) of the proviso to section 95(1)(b) of the Act and particularly for the reason that the said clause was not deleted even after the amendment of section 95 by Act No. 56 of 1989, by which the risk in respect of death of, or bodily injury to, any passenger travelling in a public service vehicle caused by or arising out of the use of the vehicle in a public place was expressly included in section 95(1)(b)(ii) of the 1939 Act. At this stage, it

is appropriate to set out sections 94(1) and 95(1) of the 1939 Act and sections 146(1) and 147(1) of the 1988 Act as also the relevant definitions of the words given in the two enactments. They read : The 1939 Act The 1988 Act “94. Necessity for insurance”146. Necessity for insurance against third party risk. - (1) No against third party risk. - (1) No person shall use except as a passen- person shall use, except as a pas- ger or cause or allow any other senger or cause or allow any other person to use a motor vehicle in a person to use, a motor vehicle in a public place, unless there is in force public place, unless there is in force in relation to the use of the vehicle in relation to the use of the vehicle by that person or that other person, by that person or that other person, as the case may be, a policy of as the case may be, a policy of insurance complying with the insurance complying with the requirements of this Chapter." requirements of this Chapter." “95. Requirements of policies”147. Requirements of policies and limits of liability. - (1) In or- and limits of liability. - (1) In order der to comply with the requirements of to comply with the requirements of this Chapter a policy of insurance this Chapter, a policy of insurance must be a policy which - must be a policy which - (a) is issued by a person (a) is issued by a person who is an authorised insurer or by who is an authorised insurer; and a co-operative society allowed under section 108 to transact the business of an insurer, and (b) insures the person or (b) insures the person or classes of persons specified in the classes of persons specified in the policy to the extent specified in sub- policy to the extent specified in sub- section (2) - section (2) - (i) against any liability (i) against any liability which may be incurred by him in which may be incurred by him in respect of the death of, or bodily respect of the death of, or bodily injury to, any person or damage to injury to, any person or damage to any property of a third party caused any property of a third party caused by or arising out of the use of the by or arising, out of the use of the vehicle in a public place. vehicle in a public place. (ii) against the death of, or (ii) against the death of, or bodily injury to, any passenger of a bodily injury to, any passenger o a public service vehicle caused by or public service vehicle caused by or arising out of the use of the vehicle arising out of the use of the vehicle in a public place in a public place Provided that a policy shall not Provided that a policy shall not be required - be required - (i) to cover liability in (i) to cover liability in respect of the death, arising out of respect of the death, arising out of and in the course of his employ- and in the course of his employ- ment, of the employee of a person ment, of the employee of a person insured by the policy or in respect insured by the policy or in respect of bodily injury sustained by such of bodily injury sustained by such an employee arising out of and in any employee arising out of and in the course of his employment other the course of his employment other than a liability arising under the than a liability arising under the Workmen’s Compensation Act, Workmen’s Compensation Act, 1923 1923, in respect of the death of, or (8 of 1923), in respect of the death bodily injury to, any such of, or bodily injury to, any such employee - employee - (a) engaged in driving the (a) engaged in driving the vehicle, or vehicle, or (b) if it is a public service (b) if it is a public service vehicle, engaged as a conductor of vehicle engaged as a conductor of the vehicle or in examining tickets the vehicle or in examining

tickets on the vehicle, or on the vehicle, or (c) if it is a goods vehicle, (c) if it is a goods carriage, being carried in the vehicle, or being carried in the vehicle, or (ii) except where the vehicle (ii) to cover any contractual is a vehicle in which passengers are liability. carried for hire or reward or by reason of or in pursuance of a con- tract of employment, to cover liabi- lity in respect of the death of or bodily injury to, persons being car- ried in or upon or entering or mounting or alighting from the vehicle at the time of the occurrence of the event out of which a claim arises, or (iii) to cover any contractual liability. Explanation. - For the removal Explanation. - For the removal of doubts it is hereby declared that of doubts, it is hereby declared that the death of, or bodily injury to, any the death of, or bodily injury to, any person or damage to any property person or damage to any property of a third party, shall be deemed to of a third party shall be deemed to have been caused by, or to have have been caused by or to have arisen out of, the use of a vehicle arisen out of, the use of a vehicle in a public place notwithstanding in a public place notwithstanding that the person, who is dead or that the person who is dead or injured or the property which is injured or the property which is damaged, was not in a public place, damaged was not in a public place at the time of the accident, if the at the time of the accident, if the act, or omission which led to the act or omission which led to the accident occurred in a public place." accident occurred in a public place." Definitions "2(3) 'contract carriage' means 2(7) 'contract carriage' means a motor vehicle which carries a pas- a motor vehicle which carries a pas- senger or passengers for hire or senger or passengers for hire or reward under a contract expressed reward and is engaged under a or implied for the use of the vehicle contract, whether expressed or as a whole at or for a fixed or agreed implied, for the use of such vehicle rate or sum - as a whole for the carriage of pas- sengers mentioned therein and entered into by a person with a holder of a permit in relation to a fixed or an agreed rate or sum - (i) on a time basis whether (a) on a time basis whether or not with reference to any route or not with reference to any route or distance, or or distance; or (ii) from one point to (b) from one point to another, and in either case without another, stopping to pick up, or set down along the line and in either case, without of route passengers not included in stopping to pick up or set down the contract; and includes a motor passengers not included in the con- cab notwithstanding that the pas- tract anywhere dur- ing the journey, sengers may pay separate fares. and includes- (i) a maxicab; and (ii) a motorcab notwith- standing that separate fares are charged for its passengers." "2(7) 'goods' includes live-"2(13) 'goods' includes live- stock, and anything (other than stock, and anything (other than equipment ordinarily used with the equipment ordinarily used with the vehicle) carried by a vehicle except vehicle) carried by a vehicle except living persons, but does not include living persons, but does not include luggage or personal effects carried luggage or per- sonal effects carried in a motor car or in a trailer in a motor car or in a trailer attached to a motor car or the attached to a motor car or the per- personal lug- gage of passengers sonal luggage of passengers travel- travelling in the vehicle." ling in the vehicle." "2(8) 'goods vehicle' means"2(14) 'goods carriage' means any motor vehicle constructed or any motor vehicle constructed or adapted for

use for the carriage of adapted for use solely for the car- goods, or any motor vehicle not so riage of goods, or an motor vehicle constructed or adapted when used not so constructed or adapted when for the carriage of goods solely or used for the carriage of goods." in addition to passengers." "2(18A) 'omnibus' means any"2(29) 'omnibus' means any motor vehicle constructed or motor vehicle constructed or adapted to carry more than six adapted to, carry more than six perpersons excluding the driver." sons excluding the driver." "2(22) 'private carrier' means"2(33) 'Private service Vehicle' an owner of a transport vehicle means a motor vehicle constructed other than a public carrier who uses or adapted to carry more than six that vehicle solely for the carriage persons excluding the driver and of goods which are his property or ordinarily used by or on behalf of the carriage of which is necessary the owner of such vehicle for the for the purposes of his business not purpose of carrying persons for, or being a business of providing trans- in connection with, his trade or port, or who uses the vehicle for any business otherwise than for hire or of the purposes specified, in subreward but does not include a section (2) of section 42." motor vehicle used for public pur- poses." "2(25) 'Public service vehicle' "2(35) 'Public service vehicle' means any motor vehicle used or means any motor vehicle used or adapted to be used for the carriage adapted to be used for the carriage of passengers for hire or reward, of passengers for hire or reward, and includes a motorcab, contract and includes a maxicab, a motorcab, carriage and stage carriage." contract carriage and stage car- riage. 2(29) 'stage carriage' means "2(40) 'stage carriage' means a motor vehicle carrying or adapt- a motor vehicle constructed or ed to carry more than six persons adapted to carry more than six excluding the driver which carries passengers excluding the driver for passengers for hire or reward at hire or reward at separate fares paid separate fares paid by or for indi- by or for individual passengers, vidual passengers, either for the either for the whole journey or for whole journey or for stages of the stages of the journey. journey." "2(33) 'transport vehicle' 2(47) 'transport vehicle' means a public service vehicle or a means a public service vehicle, a goods vehicle. goods carriage, an educational in- stitution bus or a private service vehicle."

13. On a comparison of the material provisions of the two Acts, it is seen that section 146(1) of the 1988 Act which prescribes compulsory insurance for the use of a motor vehicle in a public place is word for word similar to section 94(1) of the 1939 Act. Section 147 of the 1988 Act which prescribes the requirements of an insurance policy in respect of a motor vehicle is similar to section 95 of the 1939 Act. With this difference, namely, that a provision similar to clause (ii) of the proviso to section 95 is not found in section 147. As may be seen from the Full Bench decision in Dundamma's case, , the argument that the insurance company was liable to pay compensation for the death of, or injury to, passengers travelling even in a goods vehicle for hire or reward was based on clause (ii) of the proviso to section 95(1) of the 1939 Act. The Full Bench, on a detailed examination of all the relevant provisions of the 1939 Act, held that the clause did not require the covering of liability in respect of passengers in

any vehicle which in law was not meant or authorised to carry passengers for hire or reward. However, by applying the principle of stare decisis, the liability in respect of passengers travelling in d goods vehicle along with their goods was upheld. While doing so, the Full Bench pointed out that the question was placed beyond doubt as far as the 1988 Act is concerned, as a provision similar to clause (ii) of the proviso to section 95(1)(b) of the 1939 Act has not been included in the corresponding section 147 of the 1988 Act. In other words, the Full Bench was clearly of the view that, in the absence of such a clause in section 147 of the 1988 Act, even the basis for the argument that an Act policy taken in conformity with section 147 of the 1988 Act would cover the risk in respect of passengers carried in a goods vehicle on payment of fare, whether the passenger concerned was travelling with his goods or otherwise does not exist.

14. It may be seen that section 147 of the 1988 Act, like section 95 of the 1939 Act, apart from prescribing the compulsory coverage in respect of third party risks, prescribes the compulsory coverage against death of, or bodily injury to, any passenger in a" public service vehicle" caused by or arising out of the use of the vehicle in a public place. The proviso to section 147 of the 1988 Act which is similar to the corresponding proviso to section 95(1) of the 1939 Act makes it clear that compulsory coverage in respect of drivers of any motor vehicle, conductors of public service vehicles and employees carried in a goods vehicle shall be limited to the. liability under the Workmen's Compensation Act. Under section 147(2) of the Act, while the liability in respect of damage to any property of a third party is limited to Rs. 6,000 as regards the liability in respect of passengers as also third parties, it is made equal to the liability incurred. Section 2(35) of the 1988 Act which defines "public service vehicle" is similar to section 2(25) of the 1939 Act and does not include a goods carriage The difference in the definitions of "goods vehicle" given in section 2(8) of the 1939 Act and "goods carriage" given in section 2(14) of the 1988 Act is significant. While the definition given in the 1939 Act gave an indication, that a goods vehicle could carry some passengers, the definition in the 1988 Act omits the words" in addition to passengers and states that goods carriage means any motor vehicle constructed or adapted for use "solely for the carriage of goods". Therefore, the question whether risk in respect of passengers carried in a goods vehicle should be covered by an insurance policy does not arise at all under the 1988 Act.

15. Rule 100 of the Karnataka Motor Vehicles Rules prescribes who could be carried in a goods vehicle. Relevant portion of it reads : "100. Carriage of persons in goods vehicle. - (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 carried free of charge or a police officer in uniform travelling on duty may be carried in goods vehicles, the total number of persons so carried :

(i) in light transport goods vehicle having registered laden weight less than

990 Kgs. not more than one;

(ii) in any other light transport goods vehicle not more than three and

(iii) in any goods vehicle not more than seven Provided that the provisions of sub-clauses (ii) and (iii) of the above proviso shall not be applicable to the vehicles plying on inter-State routes or the vehicles carrying goods from one city to another city.

16. This rule is similar to rule 161 of the 1963 rules framed under the 1939 Act and as held by the Full Bench in Dundamma's case [1992] 75 Comp Cas 141, it has no bearing on the question of liability of an insurance company under an Act policy. In respect of persons permitted to be carried in a goods carrier, other than those required to be covered under section 147(1) and also for covering higher risk for employees, an owner of a vehicle could secure coverage of such risks by paying extra premium.
17. For the aforesaid reasons, we answer the question of law set out in the first paragraph of this order as follows : Under a motor vehicle insurance policy issued by an insurance company in conformity with section 147 of the Motor Vehicles Act, 1988, the insurance company is not liable by the force of section 147 of the Motor Vehicles Act, to pay compensation in respect of death of or bodily injury to any person travelling in a goods carriage as a passenger whether as a hirer or otherwise.
18. We, however, make it clear that the answer given above does not apply to the driver and the employees carried in a goods carriage in respect of whom section 147(1) requires compulsory coverage of the risk to the extent of liability under the Workmen's Compensation Act.
19. As far as the facts of this case are concerned, as already stated, there is no dispute. The deceased was a passenger in a goods carriage, though he was travelling with his goods in the vehicle. The accident took place on November 6, 1990, after the new Act came into force. In the present case, the insurance policy has been produced and it is seen from the insurance policy that no extra coverage in respect of any passenger, such as owner or hirer travelling in the vehicle has been taken. Therefore, the insurance company is not liable to pay compensation either on the ground of fault liability or on the ground of no-fault liability.
20. In the result, we make the following order .

(i) The appeal is allowed;

(ii) The order made by the Tribunal under section 140 of the 1988 Act is set aside only to the extent it is against the appellant-insurance company;

(iii) The claimants shall be entitled to enforce the order against the owner of the vehicle;

(iv) The amount deposited by the appellant-insurance company in terms of section 173 of the Act is permitted to be withdrawn by the appellant.