

THE HON'BLE SRI JUSTICE GODA RAGHURAM
THE HON'BLE SRI JUSTICE G.V.SEETHAPATHY
AND
THE HON'BLE SRI JUSTICE SANJAY KUMAR

-

-

L.P.A. NOS.206, 207, 208 & 219 OF 2000;
L.P.A.NO.6 OF 2002; CMA NO.3282 OF 2002;
MACMA NO.361 OF 2006; MACMA NO.2821 OF 2011;
CMA NO.4732 OF 2003; CMA NO.1579 OF 2004;
MACMA NO.1378 OF 2011; W.P.NO.7262 OF 2005; W.P.NO.11883 OF
2005; MACMA NO.2486 OF 2006
AND MACMA NO.2623 OF 2007

-

-

-

DATED 20TH NOVEMBER, 2012

Between

The APSRTC, rep. by its
General Manager (now redesignated as
Managing Director), Musheerabad,
Hyderabad and others.

...Appellants

and

B.Kanakaratnabai and others

...Respondents

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-
-
-
-
-
THE HON'BLE SRI JUSTICE GODA RAGHURAM
THE HON'BLE SRI JUSTICE G.V.SEETHAPATHY
AND
THE HON'BLE SRI JUSTICE SANJAY KUMAR

-
L.P.A. NOS.206, 207, 208 & 219 OF 2000;
L.P.A.NO.6 OF 2002; CMA NO.3282 OF 2002;
MACMA NO.361 OF 2006; MACMA NO.2821 OF 2011;
CMA NO.4732 OF 2003; CMA NO.1579 OF 2004;
MACMA NO.1378 OF 2011; W.P.NO.7262 OF 2005; W.P.NO.11883 OF
2005; MACMA NO.2486 OF 2006
AND MACMA NO.2623 OF 2007

-
-
COMMON JUDGMENT: (Per SK,J)

By common order dated 20.09.2007 passed in L.P.A.Nos.206, 207, 208 & 219 of 2000 and 6 of 2002, a learned Division Bench of this Court referred for decision by a Full Bench the question as to whether compensation payable in respect of claims arising out of accidents involving insured buses hired by the Andhra Pradesh State Road Transport Corporation (APSRTC) should be borne by the owner of the vehicle, the Insurance Company, the APSRTC or by some or all of them. The order of reference reads as under:

“The vehicle, which was involved in the accident giving rise to a claim, was on lease with State Road Transport Corporation. The vehicle was also insured with the Insurance Company, insured by its owner. The question, in these circumstances, is whether the compensation has to be paid by the owner, by the Insurance Company or A.P.S.R.T.C., or by some or by all. There are at least nine judgments of this Court on this question, out of which, three are Division Bench Judgments, reported in (1) District Co-operative Central Bank Ltd. v. P.V.Sitamahalaxmi [2004 (2) ACJ 1332], (2) Depot Manager, APSRTC, Miryalaguda v. Poreddy Sujatha [2003 (5) ALD 586] and (3) New India Assurance Co. Ltd. v. B.G.Suma [2004 (2) ACJ 883].

We find there is cleavage of opinion in these judgments. We took up these cases on several occasions but nobody appeared for the Insurance Company and on last occasion, we requested Sri Kota Subba Rao, Senior Counsel, to assist us as *Amicus Curiae*. He had taken lot of pains to point out at least Nine judgments of this Court and the Division Bench judgments referred to above. He has also pointed out to us, two judgments of the Supreme Court reported in Rajasthan State Road

Transport Corporation v. Kailash Nath Kothari [1997 (2) ACJ 1148] and Rikhi Ram v. Sukhrania [(2003) 3 SCC 97].

Prima facie we are of the opinion that the Supreme Court judgments shown above, does not directly cover the controversy falling for consideration before us. Since there is cleavage of opinion between different judgments of the Division Benches of this Court, we refer the question framed above, for being decided by a Full bench of this court.

Let the papers be placed before Hon'ble the Chief Justice for necessary orders."

L.P.A.Nos.206, 207, 208 & 219 of 2000 and 6 of 2002 arose out of the common judgment dated 16.09.1999 of a learned Judge of this Court in CMA Nos.173, 175, 177, 174 and 176 of 1990 respectively, reported in **ANDHRA PRADESH STATE ROAD TRANSPORT CORPORATION V/s. BODAPATI KANAKA RATNABAI**^[1]. Thereby, the learned Judge had held the APSRTC also to be liable for payment of the compensation and dismissed its appeals against the decrees of the Motor Accidents Claims Tribunal holding the owner of the vehicle, the APSRTC and the Insurance Company jointly and severally liable.

CMA No.3282 of 2002 was filed by the APSRTC aggrieved by the judgment and decree dated 29.01.2002 in O.P.No.1382 of 1999 on the file of the II Additional Chief Judge, City Civil Court, Hyderabad. The accident which led to the filing of the O.P. took place on 11.06.1999. The Tribunal held the APSRTC alone to be liable for payment of the compensation and absolved the owner of the vehicle and the Insurance Company of responsibility in this regard. Interim stay of execution of the said decree was granted by this Court on 19.11.2002 subject to the condition that the APSRTC deposits half of the decretal amount along with interest and costs before the lower Court within a timeframe. The claimants were granted liberty to withdraw the same without furnishing security. By order dated 18.11.2008, the CMA was tagged on to the LPAs.

MACMA No.361 of 2006 was filed by New India Assurance Company Limited aggrieved by the award and decree dated 17.12.2004 passed by the Motor Accidents Claims Tribunal, Tirupati, in MVOP No.344 of 2000, whereby the owner of the vehicle, the Insurance Company and the APSRTC were held jointly and severally liable to pay the compensation in respect of an accident that occurred on 17.07.2000

involving an insured bus taken on lease by the APSRTC. Interim stay of all further proceedings, including execution of the decree under appeal, was granted by this Court on 20.02.2006 on the condition that the Insurance Company deposits half the amount awarded along with costs and interest within a timeframe. The claimant was allowed to withdraw the same without furnishing security. On 29.02.2010, a learned Judge directed this appeal to be put up with the LPAs.

MACMA No.2821 of 2011 was filed by the APSRTC against the order and decree dated 22.03.2010 passed by the Motor Accidents Claims Tribunal, Anantapur, in O.P.No.904 of 2008, holding the APSRTC liable to pay the compensation in respect of an accident that occurred on 28.11.2007 involving an insured bus leased by it. The owner and the Insurance Company were exonerated from liability in this regard. By order dated 12.12.2011, a learned Division Bench of this Court took note of the representation that connected matters were referred to a Full Bench and directed the appeal to be posted along with the LPAs.

CMA No.4732 of 2003 was filed by the owner of an insured bus given on hire to the APSRTC which was involved in an accident on 22.02.2001, giving rise to a claim for compensation in O.P.No.321 of 2002 on the file of the Motor Accidents Claims Tribunal, Karimnagar. By order and decree dated 26.09.2003, the Tribunal held the owner and the APSRTC jointly and severally liable to pay the compensation awarded. The O.P was dismissed in so far as the Insurance Company was concerned. By order dated 31.12.2003, taking note of the fact that an amount of Rs.25,000/- had already been deposited by the appellant, a learned Judge granted interim stay of the execution of the decree under appeal in so far as the appellant was concerned. Thereafter, on 30.08.2012, this CMA was directed to be posted along with the LPAs.

CMA No.1579 of 2004 was filed by the APSRTC against the order and decree dated 16.02.2004 passed by the Motor Accidents Claims Tribunal, City Civil Court, Hyderabad, in O.P.No.2317 of 2000, holding the APSRTC alone liable to pay the compensation awarded in respect of a claim arising out of an accident that occurred on 31.05.1999, involving an insured bus hired by it. Interim stay of the execution of the decree under

appeal was granted by this Court on 28.06.2004 upon the APSRTC depositing half of the amount awarded along with proportionate costs and interest. The claimant was held entitled to withdraw a part of the compensation awarded along with the costs and interest without furnishing security. The balance amount was directed to be kept in a fixed deposit for a stipulated period. Thereafter, on 04.08.2009, upon an application filed by the claimant, this Court permitted him to withdraw the balance amount which was kept in deposit without furnishing security. When it was represented on 09.12.2010 that connected matters in LPA No.206 of 2000 and batch were referred to a Full Bench, the matter was directed to be clubbed along with the batch.

MACMA No.1378 of 2011 was filed by the claimant in O.P.No.2317 of 2000 on the file of the Motor Accidents Claims Tribunal, City Civil Court, Hyderabad. By order and decree dated 16.02.2004, the Tribunal awarded compensation of Rs.4,40,000/- to the claimant holding the APSRTC solely liable for payment thereof. The claimant, being dissatisfied with the quantum of compensation awarded, filed this appeal. This appeal was clubbed with CMA No.1579 of 2004 filed by the APSRTC questioning the very same order and decree.

Writ Petition No.7262 of 2005 was filed by the owner of an insured bus given on hire to the APSRTC which was involved in an accident on 26.12.2002, leading to a claim for compensation in O.P.No.257 of 2003 on the file of the Motor Accidents Claims Tribunal, Chittoor. The Tribunal, by way of an interim order, directed payment of a sum of Rs.50,000/- under 'no fault liability'. As the Insurance Company only deposited 50% of the said amount, the APSRTC had to deposit the balance. It then initiated recovery of the same from the hire charges payable to the owner of the vehicle. Aggrieved thereby, he filed this writ petition. Interim stay was granted in his favour by this Court on 09.11.2005. Thereafter, when it was stated before the learned Judge hearing the case that it could not be decided until and unless the issue pending in LPA No.206 of 2000 and batch was adjudicated, the learned Judge directed the Registry to post the writ petition along with the batch.

Writ Petition No.11883 of 2005 arose out of a similar fact situation.

The petitioner, the owner of an insured bus, had given the same on hire to the APSRTC. The bus was involved in an accident on 12.02.2003 giving rise to a claim for compensation in O.P.No.793 of 2003 before the Motor Accidents Claims Tribunal, Warangal. The petitioner/owner, the Insurance Company and the APSRTC were parties to this O.P. The Tribunal held the APSRTC alone to be responsible for payment of the compensation awarded. Relying on the terms and conditions of the hire agreement entered into with the bus owner, the APSRTC, by proceedings dated 02.03.2005, resorted to recovery of the compensation paid by it from the petitioner/owner. Aggrieved, he filed this writ petition. Interim suspension of the proceedings dated 02.03.2005 was granted by this Court on 08.06.2005. Thereafter, on 09.09.2010, a learned Judge of this Court, upon being informed that the issue in the writ petition was interlinked with LPA No.2006 of 2000 and batch, directed the writ petition to be posted therewith.

MACMA No.2486 of 2006 was filed by the claimants in O.P.No.2232 of 2004 on the file of the II Additional Metropolitan Sessions Judge-cum-XVI Additional Chief Judge, Hyderabad. By order and decree dated 11.08.2006, the Court below awarded compensation to the tune of Rs.31,000/- to the first claimant and a sum of Rs.1,20,000/- to the second claimant in respect of the death of their son in an accident on 12.06.2004, involving an insured bus taken on hire by the APSRTC. The Court below held the owner, the Insurance Company and the APSRTC to be jointly liable for payment of the compensation. Aggrieved by the quantum of the compensation awarded, the claimants appealed.

MACMA No.2623 of 2007 was filed by the National Insurance Company Limited aggrieved by the very same order and decree dated 11.08.2006 in O.P.No.2232 of 2004, already under appeal in MACMA No.2486 of 2006. The Insurance Company was aggrieved by the finding of the Court below that it was jointly and severally liable for payment of the compensation along with the owner of the bus and the APSRTC. Interim stay of execution of the decree under appeal was granted by this Court on 07.06.2007, subject to the condition that the appellant deposits the entire amount awarded within six weeks. The said order was modified on

29.11.2007, permitting the claimants to withdraw half of the amount deposited without furnishing security. On 26.08.2010, it was brought to the notice of the learned Judge hearing the case that the issue in the appeal was the same as that referred to the Full Bench. The appeal thus came to be posted along with the batch.

The matters were accordingly listed for hearing before this Full Bench.

The issue referred to us for decision is as to where the liability would lie for payment of compensation in respect of claims of passengers/third parties arising out of accidents, involving insured vehicles hired by the APSRTC. The question is whether the compensation in such cases would have to be paid by the owner of the vehicle or by the Insurance Company or by the APSRTC or by some or all of them.

The answer to this question would primarily turn upon the law relating to motor vehicles and their insurance.

Hitherto, the Motor Vehicles Act, 1939 (for brevity, 'the Act of 1939') governed the field in so far as motor vehicles were concerned. Thereafter, the Motor Vehicles Act, 1988 (for brevity, 'the Act of 1988') came into effect from 01.07.1989. Under Section 217 thereof, the Act of 1939 stood repealed. For the purposes of these cases, it would be necessary to examine the provisions of these two enactments and also identify and analyze the differences between them, to the extent relevant.

Section 2(19) of the Act of 1939 defined 'owner' as under:

"(19) 'owner' means where the person in possession of a motor vehicle is a minor, the guardian of such minor, and in relation to a motor vehicle which is the subject of a hire-purchase agreement, the person in possession of the vehicle under that agreement;"

Section 2(30) of the Act of 1988 defines 'owner' as under:

"(30) 'owner' means a person in whose name a motor vehicle stands registered, and where such person is a minor, the guardian of such minor, and in relation to a motor vehicle which is the subject of a hire-purchase agreement, or an agreement of lease or an agreement of hypothecation, the person in possession of the vehicle under that agreement;"

Chapter XI of the Act of 1988 deals with 'Insurance of motor vehicles against third party risks' and corresponds to Chapter VIII of the Act of 1939.

Section 145 of the Act of 1988, equivalent to Section 93 of the Act of 1939, pertains to definitions for the purposes of the chapter. Section 146 of the Act of 1988 is identical to Section 94 of the Act of 1939, except for the inclusion of a proviso to Section 146(1), inserted by Act 54 of 1994 with effect from 14.11.1994. Section 146 of the Act of 1988 reads as under:

“146. Necessity for insurance against third party risk:— (1) No person shall use, except as a passenger, or cause or allow any other person to use, a motor vehicle in a public place, unless there is in force in relation to the use of the vehicle by that person or that other person, as the case may be, a policy of insurance complying with the requirements of this Chapter:

Provided that in the case of a vehicle carrying, or meant to carry, dangerous or hazardous goods, there shall also be a policy of insurance under the Public Liability Insurance Act, 1991 (6 of 1991).

Explanation: — A person driving a motor vehicle merely as a paid employee, while there is in force in relation to the use of the vehicle no such policy as is required by this sub-section, shall not be deemed to act in contravention of the sub-section unless he knows or has reason to believe that there is no such policy in force.

(2) Sub-section (1) shall not apply to any vehicle owned by the Central Government or a State Government and used for Government purposes unconnected with any commercial enterprise.

(3) The appropriate Government may, by order, exempt from the operation of sub-section (1) any vehicle owned by any of the following authorities, namely:-

- (a) the Central Government or a State Government, if the vehicle is used for Government purposes connected with any commercial enterprise;
- (b) any local authority;
- (c) any State transport undertaking:

Provided that no such order shall be made in relation to any such authority unless a fund has been established and is maintained by that authority in accordance with the rules made in that behalf under this Act for meeting any liability arising out of the use of any vehicle of that authority which that authority or any person in its employment may incur to third parties.

Explanation:— For the purposes of this sub-section, “appropriate Government” means the Central Government or a State Government, as the case may be, and,—

- (i) in relation to any corporation or company owned by the Central Government or any State Government, means the Central Government or that State Government;
- (ii) in relation to any corporation or company owned by the Central Government and one or more State Governments, means the Central Government;
- (iii) in relation to any other State transport undertaking or any local authority, means that Government which has control

over that undertaking or authority.”

Section 147 of the Act of 1988 addresses requirements of insurance policies and limits of liability. It corresponds to Section 95 of the Act of 1939. Section 147 reads thus:

“147. 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
- (b) insures the person or classes of persons specified in the policy to the extent specified in sub-section (2),
- (i) against any liability which may be incurred by him in respect of the death of or bodily injury to any person, including owner of the goods or his authorised representative carried in the vehicle or damage to any property of a third party caused by or arising out of the use of the vehicle in a public place;
- (ii) against the death of or bodily injury to any passenger of a public service vehicle caused by or arising out of the use of the vehicle in a public place:

Provided that a policy shall not be required—

- (i) to cover liability in respect of the death, arising out of and in the course of his employment, of the employee of a person insured by the policy or in respect of bodily injury sustained by such an employee arising out of and in the course of his employment other than a liability arising under the Workmen's Compensation Act, 1923 (8 of 1923), in respect of 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 carriage, being carried in the vehicle, or
- (ii) to cover any contractual liability.

Explanation:— for the removal of doubts, it is hereby declared that the death of or bodily injury to any person or damage to any property of a third party shall be deemed to have been caused by or to have arisen out of, the use of a vehicle in a public place notwithstanding that the person who is dead or injured or the property which is damaged was not in a public place at the time of the accident, if the act or omission which led to the accident occurred in a public place.

(2) Subject to the proviso to sub-section (1), a policy of insurance referred to in sub-section (1), shall cover any liability incurred in respect of any accident, up to the following limits, namely: —

- (a) save as provided in clause (b), the amount of liability incurred;
- (b) in respect of damage to any property of a third party, a limit of rupees six thousand:

Provided that any policy of insurance issued with any limited liability and in force, immediately before the commencement of this Act, shall continue to be effective for a period of four months after such commencement or till the date of expiry of such policy whichever is earlier.

(3) A policy shall be of no effect for the purposes of this Chapter unless and until there is issued by the insurer in favour of the person by whom the policy is effected a certificate of insurance in the prescribed form and containing the prescribed particulars of any condition subject to which the policy is issued and of any other prescribed matters, and different forms, particulars and matters may be prescribed in different cases.

(4) Where a cover note issued by the insurer under the provisions of this Chapter or the rules made thereunder is not followed by a policy of insurance within the prescribed time, the insurer shall, within seven days of the expiry of the period of the validity of the cover note, notify the fact to the registering authority in whose records the vehicle to which the cover note relates has been registered or to such other authority as the State Government may prescribe.

(5) Notwithstanding anything contained in any law for the time being in force, an insurer issuing a policy of insurance under this section shall be liable to indemnify the person or classes of persons specified in the policy in respect of any liability which the policy purports to cover in the case of that person or those classes of persons.”

The absolute and unconditional mandate of Section 147(5) of the Act of 1988, fortified with a *non obstante* clause, is a reproduction of Section 95(5) of the Act of 1939 and is of great significance. Section 95 of the Act of 1939, however, was differently worded in some respects. Section 95, to the extent it differed and is relevant, reads as under:

S.95 (1) (b) :

“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 employees of a person insured by the policy or in respect of bodily injury sustained by such an employee arising out of and in the course of his employment, other than a liability arising under the Workmen’s Compensation Act, 1923 (8 of 1923), in respect of 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.

Explanation.— For the removal of doubts, it is hereby declared that the death of or bodily injury to any person, or damage to any property of a third party shall be deemed to have been caused by or to have arisen out of the use of a vehicle in a public place notwithstanding that the person who is dead or injured or the property which is damaged was not in a public place at the time of the accident, if the act or omission which led to the accident occurred in a public place.

(2) Subject to the proviso to sub-section (1), a policy of insurance shall cover any liability incurred in respect of any one accident up to the following limits, namely :-

(a) where the vehicle is a goods vehicle, a limit of one lakh and fifty thousand rupees in all, including the liabilities, if any, arising under the Workmen's Compensation Act, 1923, in respect of the death of, or bodily injury to employees (other than the driver), not exceeding six in number, being carried in the vehicle.

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

(i) in respect of persons other than passengers carried for hire or reward, a limit of fifty thousand rupees in all;

(ii) in respect of passengers, a limit of fifteen thousand rupees for each individual passenger;

[c] save as provided in clause (d), where the vehicle is a vehicle of any other class, the amount of liability incurred :

(d) irrespective of the class of the vehicle, a limit of rupees six thousand in all in respect of damage to any property of a third party.

(3) Omitted by Act 100 of 1956.... ”

But for these differences, the two provisions were practically the same. It is pertinent to note that the earlier pecuniary limits on the Insurance Company's liability have been done away with in Section 147 of the Act of 1988. The term 'liability' is defined under Section 93 of the Act of 1939 to mean and include, wherever it is used in Chapter VIII in relation to the death of or bodily injury to any person, liability in respect thereof under Section 92A in Chapter VII-A of the Act of 1939. Section 92A dealt with liability without fault in certain cases and read as under:

“92A. Liability to pay compensation in certain cases on the principle of no fault:— (1) Where the death or permanent disablement of any person has resulted from an accident arising out of the use of a motor vehicle or motor vehicles, the owner of the vehicle shall, or, as the case may be, the owners of the vehicles shall, jointly and severally, be liable to pay compensation in respect of such death or disablement in accordance with the provisions of this section.

(2) The amount of compensation which shall be payable under

sub-section (1) in respect of the death of any person shall be a fixed sum of fifteen thousand rupees and the amount of compensation payable under that sub-section in respect of the permanent disablement of any person shall be a fixed sum of seven thousand five hundred rupees.

(3)

(4)”

‘Liability’ under Section 145(c) of the Act of 1988 states that for the purpose of Chapter XI, liability, wherever it is used in relation to the death of or bodily injury to any person, includes liability in respect thereof under Section 140. Section 140 figures in Chapter X of the Act of 1988, dealing with liability without fault in certain cases. Section 140 of the Act of 1988 corresponds to Section 92-A of the Act of 1939 and sub-sections (1) and (2) thereof are practically identical to sub-sections (1) and (2) of Section 92-A, except for the enhancement of compensation in respect of death to fifty thousand rupees and in respect of permanent disablement to twenty five thousand rupees.

Section 149 of the Act of 1988 corresponds to Section 96 of the Act of 1939 and deals with the duty of insurers to satisfy judgments against persons insured in respect of third party risks. To the extent relevant, Section 149 of the Act of 1988 is extracted hereunder:

“149. Duty of insurers to satisfy judgments and awards against persons insured in respect of third party risks: — (1) If, after a certificate of insurance has been issued under sub-section (3) of Section 147 in favour of the person by whom a policy has been effected, judgment or award in respect of any such liability as is required to be covered by a policy under clause (b) of sub-section (1) of Section 147 (being a liability covered by the terms of the policy) or under the provisions of Section 163 A is obtained against any person insured by the policy, then, notwithstanding that the insurer may be entitled to avoid or cancel or may have avoided or cancelled the policy, the insurer shall, subject to the provisions of this section, pay to the person entitled to the benefit of the decree any sum not exceeding the sum assured payable thereunder, as if he were the judgment debtor, in respect of the liability, together with any amount payable in respect of costs and any sum payable in respect of interest on that sum by virtue of any enactment relating to interest on judgments.

(2) No sum shall be payable by an insurer under sub-section (1) in respect of any judgment or award unless, before the commencement of the proceedings in which the judgment or award is given the insurer had notice through the Court or, as the case may be, the Claims Tribunal of the bringing of the proceedings, or in respect of such judgment or award so long as execution is stayed thereon pending an appeal; and an insurer to whom notice of the bringing of any such proceedings is so given shall

be entitled to be made a party thereto and to defend the action on any of the following grounds, namely: —

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

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

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

(b) for organized racing and speed testing, or

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

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

(ii) a condition excluding driving by a named person or persons or by any person who is not duly licensed, or by any person who has been disqualified for holding or obtaining a driving licence during the period of disqualification; or

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

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

(3)

(4) Where a certificate of insurance has been issued under sub-section (3) of Section 147 to the person by whom a policy has been effected, so much of the policy as purports to restrict the insurance of the persons insured thereby by reference to any conditions other than those in clause (b) of sub-section (2) shall, as respects such liabilities as are required to be covered by a policy under clause (b) of sub-section (1) of Section 147, be of no effect:

Provided that any sum paid by the insurer in or towards the discharge of any liability of any person which is covered by the policy by virtue only of this sub-section shall be recoverable by the insurer from that person.

(5) If the amount which an insurer becomes liable under this section to pay in respect of a liability incurred by a person insured by a policy exceeds the amount for which the insurer would apart from the provisions of this section be liable under the policy in respect of that liability, the insurer shall be entitled to recover the excess from that person.

(6) In this section the expressions "material fact" and "material particular" means, respectively a fact or particular of such a nature as to influence the judgment of a prudent insurer in determining whether he will take the risk and, if so, at what premium and on what conditions, and the expression "liability covered by the terms of the policy" means a liability which is covered by the policy or which would be so covered but for the fact that the insurer is entitled to avoid or cancel or has avoided or cancelled the policy.

(7) No insurer to whom the notice referred to in sub-section (2) or

sub-section (3) has been given shall be entitled to avoid his liability to any person entitled to the benefit of any such judgment or award as is referred to in sub-section (1) or in such judgment as is referred to in sub-section (3) otherwise than in the manner provided for in sub-section (2) or in the corresponding law of the reciprocating country, as the case may be.

Explanation.— For the purposes of this section, “Claims Tribunal” means a Claims Tribunal constituted under Section 165 and “award” means an award made by that Tribunal under Section 168.”

This, then, is the milieu of motor vehicles law, with special emphasis on insurance of vehicles against third party risks.

All the cases before us arise out of claims for compensation by passengers/third parties who were the victims of accidents involving insured buses hired by the APSRTC. But for the LPAs, all the other cases pertain to accidents which occurred after the advent of the Act of 1988 on 01.07.1989 and have to be dealt with accordingly. In so far as the LPAs are concerned, the accident involved therein occurred on 20.02.1988. The LPAs would therefore be governed by the Act of 1939 and not the Act of 1988. This accident resulted in the death of one passenger and injuries to four others. The claims for compensation on behalf of these passengers were dealt with jointly by the Motor Accidents Claims Tribunal. Thereafter, the appeals therefrom were disposed of by the learned single Judge by the common judgment reported in **BODAPATI KANAKA RATNABAI**¹. The LPAs arising out of this common judgment were accordingly clubbed together and as stated earlier, came to be referred to this Full Bench on the question framed by the learned Division Bench. The learned Division Bench was of the view that there was cleavage of opinion in the judgments rendered by Division Benches of this Court and that the Supreme Court judgments did not directly cover the controversy. It would therefore be necessary to trace the evolution of case law on the issue of locating liability to pay compensation in fact situations akin to those presented to us.

Firstly, it would be appropriate to consider the three Division Bench judgments mentioned in the order of reference. In **DISTRICT CO-OPERATIVE CENTRAL BANK LTD. V/s. P.V.SITAMAHALAXMI**^[2] decided on 28.08.2002, a Division Bench of this Court was dealing with a case where the Bank had hired an insured vehicle from its owner and the

same met with an accident giving rise to a claim for compensation. The Division Bench held that the Bank, being the hirer, would not be liable relying upon an unreported earlier Division Bench judgment in LPA Nos. 87 to 90 of 1990, wherein it was held that where the APSRTC took an insured vehicle on hire from the owner, then the APSRTC would not be liable to pay compensation. With regard to the liability of the Insurance Company, the Division Bench relied upon the judgments of the Supreme Court in **NEW INDIA ASSURANCE CO. LTD. V/s. KAMLA**^[3] and **AMRIT LAL SOOD V/s. KAUSHALYA DEVI THAPAR**^[4], wherein it was held that even if there was a breach, the Insurance Company would be liable to pay compensation. Applying this principle, the Division Bench held that though the owner had given the vehicle on hire to the Bank without paying additional premium, the Insurance Company was liable to pay the compensation. It was however observed that the Insurance Company would get a right to recover the said amount from the owner as he had committed a breach.

In **NEW INDIA ASSURANCE CO. LTD. V/s. B.G.SUMA**^[5] decided on 16.09.2002, the very same Division Bench had occasion to deal with the issue as to who would be liable to pay compensation in respect of an accident involving an insured vehicle taken on hire by the APSRTC. Relying on **RAJASTHAN STATE ROAD TRANSPORT CORPORATION V/s. KAILASH NATH KOTHARI**^[6], the Division Bench held that the APSRTC was liable and not the Insurance Company as the owner of the vehicle had no control over the bus or the driver at the time of the accident. The Division Bench was disinclined to follow the law laid down by the Supreme Court in **G.GOVINDAN V/s. NEW INDIA ASSURANCE COMPANY LIMITED**^[7] and **NEW INDIA ASSURANCE COMPANY LIMITED V/s. SHEELA RANI**^[8], wherein the Insurance Company had been held liable to pay the compensation, on the ground that the facts of those cases were entirely dissimilar. No reference was however made by the learned Division Bench to its own decision to the contrary in

P.V.SITAMAHALAXMI².

In **DEPOT MANAGER, APSRTC, MIRYALAGUDA, NALGONDA**

DISTRICT V/s. POREDDY SUJATHA^[9], another Division Bench of this Court was seized of a similar issue. The Claims Tribunal had held that the APSRTC, in the capacity of a hirer of the insured bus which met with the accident, was not liable to pay the compensation. As the claim had already been dismissed against the owner for non-payment of process and was also dismissed against the Insurance Company, the claimants' plea for compensation stood altogether rejected. In appeal, a learned Judge held that the APSRTC, as the hirer, had control over of the bus at the time of the accident and was therefore liable to pay the compensation. Aggrieved, the APSRTC appealed. The Division Bench found that the owner of the bus was not a party to proceedings and held that no award could be passed against him. The Division Bench narrowed down the controversy to the short question as to for whom the driver of the bus was working at the time of the accident. As the APSRTC had failed to adduce evidence to show that it had no control over the driver or establish that the driver appointed by the owner, while being under his control, was driving the bus at the time of the accident, the Division Bench held that the APSRTC was liable to pay the compensation. Dealing with the aspect as to whether the Insurance Company would also be liable, the Division Bench, taking recourse to the provisions of the statute with regard to insurance against third party risks and the judgments of the Supreme Court in **G.GOVINDAN⁷** and **RIKHI RAM V/s. SUKHRANIA^[10]**, held that the Insurance Company was also liable to pay the compensation.

The judgments of the Supreme Court mentioned in the reference order are to be seen next. In **KAILASH NATH KOTHARI⁶**, the Supreme Court was dealing with an insured bus hired by the Rajasthan State Road Transport Corporation (RSRTC) which was involved in an accident resulting in the death of passengers. Claim petitions were filed by their heirs under Section 110-A of the Act of 1939. They sought compensation from the RSRTC and the Insurance Company. The contention of the RSRTC was that the driver of the bus, whose negligence was the reason

for the accident, was not its employee and therefore, it was not responsible. The RSRTC further contended that the liability to pay the compensation was solely that of the owner. It relied upon a condition in the hiring agreement whereby it had disowned liability in this regard. The Insurance Company, on the other hand, took the plea that at the time of the accident, the bus was under the control of the RSRTC and therefore the liability rested with it alone. It was further contended that the liability of the Insurance Company in any event would be limited and could not exceed Rs.75,000/- in respect of all the claim petitions. The Motor Accident Claims Tribunal framed separate issues for consideration, one of which was whether, on the basis of the preliminary objections, the Insurance Company was not liable to pay the amount of compensation. Another issue was whether due to the terms and conditions of the contract, the RSRTC was not liable. The Tribunal held that in terms of the Insurance Policy and the provisions of the Act of 1939, the liability of the Insurance Company was limited in respect of the accident to a total sum of Rs.75,000/-. As regards the condition in the hiring agreement which excluded the liability of the RSRTC, the Tribunal held that the same was against public policy and therefore, the RSRTC would not stand discharged. Aggrieved by the award passed by the Tribunal, the RSRTC filed appeals before the High Court. Its plea that it was only a hirer and not the owner of the bus and that it could not consequently be fastened with the liability for payment of the compensation was however negated by the High Court. The contention of the Insurance Company that its liability could not be extended to cover the subject accident was also negated and the High Court affirmed the finding of the Tribunal with regard to the Insurance Company's limited liability. Aggrieved, the RSRTC alone approached the Supreme Court. The controversy before the Supreme Court was therefore confined only to the issue as to whether the terms and conditions of the contract exempted the RSRTC from liability. No other finding was called in question before the Supreme Court as is evident from the report of the judgment. The finding of the Courts below that the Insurance Company was liable, albeit to a limited extent under the provisions of the Act of 1939, therefore stood confirmed. Counsel for the

Insurance Company, in fact, stated before the Court that he did not question the finding on the issue framed by the Tribunal as to the Insurance Company's liability and reported that the specified amount had already been paid.

The RSRTC contended before the Supreme Court that as it was not the owner of the bus and the driver who had caused the accident was also not its employee, it could not be held liable for payment of the compensation. The Supreme Court, upon studying the terms and conditions of the contract existing between the owner and the RSRTC, found that the bus was undoubtedly in the control and possession of the RSRTC and was being used by it for carrying passengers for hire. The driver, though not an employee of the RSRTC, was to carry out the instructions, orders and directions of the RSRTC. Dealing with the definition of 'owner' under Section 2(19) of the Act of 1939, the Supreme Court held that the same was not exhaustive and must therefore be construed in a wider sense in the facts and circumstances of a given case. The expression 'owner' was therefore held to include a person who had the actual possession and control of the vehicle and under whose direction and command the driver was obligated to operate it. The Court observed that confining the meaning of 'owner' to a registered owner only, in a case where the vehicle was in the actual possession and control of the hirer, would not be proper for the purpose of fastening liability in case of an accident. Applying these principles, the Supreme Court observed that there was no privity of contract between the owner of the bus and the passengers and that it was a case of transfer of the control of the driver to the hirer. The Supreme Court further observed that if the original employer is able to establish that when the driver was lent, the effective control over him was also transferred to the hirer, the original employer can avoid his liability and the temporary employer or the hirer, as the case may be, must be held vicariously liable for the tort committed in the course of his employment while under the command and control of the hirer, notwithstanding the fact that the driver would continue to be on the payroll of the original employer. The Supreme Court further found that one of the conditions in the agreement between the RSRTC and the owner made it

abundantly clear that the RSRTC reserved its right to recover any amounts paid by it through Court or under mutual compromise from the owner. The Supreme Court therefore concluded that the RSRTC could not escape its liability. This judgment therefore laid down the law under the Act of 1939 as to where the liability for payment of compensation would lie in a contest between the owner of the vehicle and its hirer.

In **RIKHI RAM¹⁰**, the question that arose before the Supreme Court was whether in the absence of intimation of transfer of ownership of the vehicle as required under Section 103-A of the Act of 1939, the liability of the insurer to pay compensation to the third party ceases. Referring to **G.GOVINDAN⁷**, the Supreme Court observed that the said decision concluded the controversy as to the liability of the insurer to pay compensation to a third party even in the absence of intimation of transfer of the vehicle. It accordingly held that, as insurance against third party risks was compulsory and as the Insurance Company undertook liability to third parties specified in the policy, the third parties' right to recover any amount would not be effected by virtue of the other provisions of the Act or by any condition in the policy. The Supreme Court therefore affirmed the *ratio* laid down in **G.GOVINDAN⁷**. It was observed that there were two third parties when a vehicle is transferred by an owner to a purchaser. The purchaser is one of the third parties to the contract while the other third party is the one for whose benefit the vehicle was insured. The transferee, who is a third party to the contract, cannot get any personal benefit under the policy unless there is compliance with the provisions of the Act but so far as the third party injured or victim is concerned, he can enforce the liability undertaken by the insurer. The Supreme Court accordingly held that whenever a vehicle which is covered by an Insurance Policy is transferred, the liability of the insurer does not cease so far as the third party/victim is concerned, even if the owner or the purchaser did not give intimation as required by law.

At this stage, it would be apposite to study **G.GOVINDAN⁷**. The question before the Supreme Court therein was whether an Insurance Policy lapses and consequently the liability of the insurer ceases when an

insured vehicle was transferred and no application/intimation, as prescribed under Section 103-A of the Act of 1939, was given. The Supreme Court found that conflicting views were expressed by Full Benches of three High Courts. The Karnataka and Delhi High Court Full Benches had answered the issue in the affirmative while the Full Bench of this Court in **MADINENI KONDAIAH V/s. YASEEN FATIMA**^[11] had answered the issue in the negative. Affirming and upholding the view taken by this Court in **MADINENI KONDAIAH**¹¹, the Supreme Court disagreed with the Full Bench judgments of the Karnataka and Delhi High Courts which held to the contrary. The views expressed by Kodandaramayya, J in his concurring opinion in **MADINENI KONDAIAH**¹¹ were quoted copiously and at length by the Supreme Court. Thereafter, the Supreme Court observed:

“12. The heading of Chapter VIII of the old Act reads as “Insurance of Motor Vehicles against Third-Party Risks”. A perusal of the provisions under Chapter VIII makes it clear that the legislature made insurance of motor vehicles compulsory against third-party (victims) risks. This Court in *New Asiatic Insurance Co. Ltd. v. Pessumal Dhanamal Aswani* (AIR 1964 SC 1736) after noticing the compulsory nature of insurance against the third-party risks, observed that once the Company had undertaken liability to third parties incurred by the persons specified in the policy, the third parties’ right to recover any amount under or by virtue of the provisions of the Act is not affected by any condition in the policy.

13. In our opinion, both under the old Act and under the new Act the legislature was anxious to protect the third-party (victim) interest. It appears that what was implicit in the provisions of the old Act is now made explicit, presumably in view of the conflicting decisions on this aspect among the various High Courts.”

The Supreme Court hastened to add that the third party here would not include a transferee whose transferor had not followed the procedure for transfer of the policy.

Given the fact that **MADINENI KONDAIAH**¹¹ weighed so heavily with the Supreme Court in **G.GOVINDAN**⁷, it would be fitting to look at the said judgment.

The Full Bench of this Court in **MADINENI KONDAIAH**¹¹ was dealing with a case where an insured lorry was sold under an agreement

whereby the sale consideration for the vehicle was paid in part but the possession thereof was delivered to the vendee. The vendor had a road permit for the vehicle which was also delivered to the vendee along with the vehicle. The vehicle had been insured for third party risks but the Insurance Policy was not transferred to the vendee. Neither the vendor nor the vendee informed the insurer about the transfer of the vehicle. The vendee thereafter used the vehicle without obtaining a fresh Insurance Policy and the vehicle met with an accident giving rise to claims for compensation. The Motor Accidents Claims Tribunal, Hyderabad, held the vendee solely liable to pay the compensation and absolved the Insurance Company of liability. The vendee preferred an appeal before this Court which came to be referred to the Full Bench. The majority opinion was delivered by Raghuvir, J (for himself and Sardar Ali Khan, J). The learned Judges held that the Insurance Company would be liable for third party risks and that the same would not in any way be diluted by the peculiar facts obtaining in the case. Kodandaramayya, J in his separate concurring opinion, ascribed his own reasons for reaching the same conclusion. The question, as framed by the learned Judge, was whether the rights secured to third parties by insuring a vehicle would be defeated by transferring the vehicle during the period that the policy was in force. In this regard, the learned Judge observed that there would be two third parties when such a transfer takes place. Firstly, the transferee who is a third party to the contract of insurance and the other, the third party, for whose risk the vehicle was insured. The learned Judge thereafter observed as under:

“40. We have no hesitation to hold that the transferee who is a third party to the contract cannot secure any personal benefit under the policy unless there is a novation i.e. the insurance company, the transferor of the vehicle, and the transferee must agree that the policy must be assigned to the transferee so that the benefit derivable, or derived under the policy by the original owner of the vehicle, the policy holder can be secured by the transferee. Thus, it is clear under a composite policy, covering the risk of property, person, third party risks, the transferee cannot enforce the policy without the assignment in his favour so far the policy covers the risk of the person and property. He has no remedy against the Insurance company.”

The learned Judge then dealt with the issue as to what would be the insurable interest of the owner. Elaborating on this aspect, the learned

Judge observed as under:

“41. In the present case the insurable interest so far the third party risk is concerned, is not the proprietary interest in the vehicle that is required. It is a public liability imposed by the Statute on person using the vehicle in a public place. Hence, it is clear that the basis of this public liability insurance is the user of the vehicle either by the owner or by any other person and hence the proprietary interest in the vehicle is not decisive.”

Dealing with the statutory obligation visited on the Insurance Company by Section 94 of the Act of 1939 (corresponding to Section 146 of the Act of 1988), the learned Judge observed that it would be incorrect to assume that the moment the title of the vehicle passes to the transferee, the statutory obligation under Section 94 ceased and the original owner would no longer be guilty of causing or allowing the purchaser to use the vehicle. The question, according to the learned Judge, would be when the statutory liability ceases. The mere passing of the title in the vehicle to the transferee, *per* the learned Judge, would not put an end to this liability. The learned Judge pointed out that under Section 31 of the Act of 1939 the owner of the motor vehicle was required within 14 days to inform the registering authority of the transfer of the vehicle. Failure to comply with this requirement was made punishable under Section 112 of the Act of 1939. The learned Judge also took note of the fact that Section 31 of the Act of 1939 was amended, whereby the obligation to inform the authority was placed not only on the transferee but also the transferor of the vehicle. The learned Judge therefore concluded that the public liability to notify the transfer and secure a ‘no objection certificate’ under Section 31 read with Section 94 of the Act of 1939 would make the original owner retain the insurable interest and the insurable interest would not be the proprietary interest but the public liability not to run the vehicle or cause or allow any person to run the vehicle without insurance and also to notify the transfer of such vehicle to the registering authority. So long as such an obligation continues, notwithstanding the cessation of the proprietary interest, the insurable interest which is the foundation for the continuance of the operation of the policy would continue.

Relying upon case law, the learned Judge concluded thus:

“46. Thus, we are clearly fortified in our view that the insurable interest in the property is not necessary in the case of public liability insurance. The test is whether the liability under the statute ceased or not notwithstanding the passing of title and hence we respectfully dissent with the view expressed by various High Courts that on the sale of the vehicle the insurable interest ceases and the policy lapses. We agree that any claim of the transferee in respect of his property and his person cannot be enforced against the insurance company. He being a stranger he cannot have any claim against the insurance company. But the third party risk is concerned so long the obligations under the statute are not fulfilled, as contemplated under sec. 31 read with sec. 94, he continues to have the insurable interest till such obligations are fulfilled.

47. It is clearly an impracticable view to take that on passing of property in the vehicle, the policy lapses and the obligation under S. 94 of the Act ceases. In fact as observed by Supreme Court the policy is to the vehicle and hence normally it should run with the vehicle. It is just to expect a reasonable time for the transferor to make the necessary arrangement to notify the transfer under S. 31 and secure the certificate under S. 29-A within the time mentioned in those provisions. If this is not allowed, the moment the vendor receives the money and puts the vehicle in possession of the transferee, the latter is not in a position to use the vehicle in view of S. 94 till a fresh policy is obtained. He cannot take the vehicle to his house passing through any public place. When the transferor is liable to pay penalty under S. 31 and also liable to be prosecuted under S. 112 for not notifying the transfer, we are clearly of the opinion such statutory liability makes him to retain the insurable interest as the liability subsists till he discharges the statutory obligations. We disagree with the view expressed in (1972) 1 APLJ 249.

.....

50. The registration of the vehicle in the name of the transferee is not necessary to pass title in the vehicle. Payment of price and delivery of the vehicle makes the transaction complete and the title will pass to the purchaser. When the policy of insurance obtained by the original owner of the vehicle is composite one covering the risks for his person, property (vehicle) and the third party claim, on passing of title the transferee cannot enforce his claim in respect of any loss or damage to his person and vehicle unless there is a novation. So far the third party risk is concerned the proprietary interest in the vehicle is not necessary and the public liability continues till the transferor discharges the statutory obligation under Ss. 29-A and 31 read with S. 94 of the Act. Till he complies with the requirement of S.31 of the Act the public liability will not cease and that constitutes the insurable interest to keep the policy alive in respect of the third party risks are concerned. It must be deemed that the transferor allowed the purchaser to use the vehicle in a public place in the said transitional period and accordingly till the compliance of S. 31, the liability of the transferor subsists and the policy is in operation so far it relates to the third party risks. We answer the second question accordingly.”

A distinction was thus drawn between proprietary and insurable interests covered by an Insurance Policy and it was held that so far as third party risks, under the insurable interest, are concerned, cessation of proprietary interest would be of no consequence. The Insurance Company was therefore held liable. Though, in these cases, we are not faced with proprietary interest issues, the Insurance Companies seek to disown liability on the ground that the insured vehicles were given on lease to the APSRTC without intimation to them and without payment of additional premium enabling such lease etc. Mere transfer of possession of the insured vehicle under a lease agreement cannot stand on a worse footing than transfer of the ownership of such vehicle itself, as was the case in **MADINENI KONDAIAH¹¹**. The insurable interest of third parties would stand on a higher immutable level and the Insurance Companies, having committed themselves in this regard, cannot wash their hands off public liability insurance claims on technicalities. The *ratio decidendi* of **MADINENI KONDAIAH¹¹** ordains to the contrary.

Strangely, this Full bench judgment was neither cited before the learned Division Bench which made the reference nor was it considered in the Division Bench judgments mentioned in the reference order. The issue presently, however, is whether a case has been made out for us to differ with the *ratio* laid down by the Full Bench in **MADINENI KONDAIAH¹¹**. Significantly, the said *ratio* was confirmed by the Supreme Court in **G.GOVINDAN⁷** and applied in **RIKHI RAM¹⁰**. Having given thoughtful consideration to the issue, we are of the considered opinion that no grounds are made out for us to take a different view. However, as the matter was argued at length before us, we deem it appropriate to deal with the contentions advanced by the opposing counsel and record our own reasons for affirming the *ratio* laid down by the earlier Full Bench.

Now, a glance at some other judgments on this issue - in **GODAVARI FINANCE CO. V/s. DEGALA SATYANARAYANAMMA^[12]**, the Supreme Court was dealing with a claim arising out of an accident involving a vehicle held under a hire purchase agreement. It was held that ordinarily the financier cannot be treated to be the owner, as the person

who is in possession of the vehicle under the hire purchase agreement would have control over the vehicle and would therefore be liable to pay compensation for the accident. The Supreme Court opined that what is essential is to find out the liabilities of the persons involved in the use of the vehicle and the persons who are vicariously liable. In the event the owner of the vehicle is found to be liable, the Insurance Company would be consequently liable having entered into a contract of insurance with the owner. The Supreme Court therefore concluded that there could be no doubt whatsoever that possession/control of the vehicle played a vital role. So opining, the Supreme Court held that the person holding the vehicle under the hire purchase agreement would be liable to the exclusion of the financier/registered owner of the vehicle.

In **AMRIT LAL SOOD⁴**, the Supreme Court was dealing with a claim for compensation by a gratuitous passenger who sustained injuries while traveling in a car which met with an accident. The Tribunal held the Insurance Company liable. But, in appeal, a learned Judge of the High Court exonerated the Insurance Company. On further appeal, a Division Bench confirmed the finding of the learned Judge. The matter was thereupon taken to the Supreme Court. The question before the Supreme Court was whether the Insurance Company was exempt from liability. The Supreme Court answered in the negative holding that the expression 'any person' would also include an occupant of the car who was traveling gratuitously. As per Section 94 of the Act of 1939, the owner of a motor vehicle had to insure the vehicle in compliance with the requirements of Chapter VIII of the said Act. Section 95 of the Act provided that a policy of insurance must be one which insures the person against any liability which may be incurred by him in respect of the death of or bodily injury to 'any person' arising out of the use of the vehicle in a public place. The policy under consideration was a comprehensive policy. Analyzing the relevant clauses of the said policy, the Supreme Court held that the Insurance Company had thereunder agreed to indemnify the insured against all sums which the insurer would become legally liable to pay in respect of the death of or bodily injury to 'any person', which would

undoubtedly include an occupant of the car who was traveling gratuitously. Reference was made to the earlier judgment in **NEW ASIATIC INSURANCE CO. LTD. V/s. PESSUMAL DHANAMAL ASWANI**^[13], wherein it was observed:

“22. Thus the contract between the insured and the company may not provide for all the liabilities which the company has to undertake vis-à-vis the third parties, in view of the provisions of the Act. We are of opinion that once the company had undertaken liability to third parties incurred by the persons specified in the policy, the third parties’ right to recover any amount under or by virtue of the provisions of the Act is not affected by any condition in the policy. Considering this aspect of the terms of the policy, it is reasonable to conclude that proviso (a) of para 3 of Section 2 is a mere condition affecting the rights of the insured who effected the policy and the persons to whom the cover of the policy was extended by the company, and does not come in the way of third parties’ claim against the company on account of its claim against a person specified in para 3 as one to whom cover of the policy was extended.”

In the result, the Supreme Court held that the Insurance Company was also liable to meet the claim of the passenger.

In **UTTAR PRADESH STATE ROAD TRANSPORT CORPORATION V/s. KULSUM**^[14], the Supreme Court was dealing with a compensation claim governed by the provisions of the Act of 1988. The Tribunal had found the Uttar Pradesh State Road Transport Corporation (UPSRTC) jointly liable with the owner of the bus to pay the compensation. The Supreme Court framed the issue that arose for consideration as under:

“The question of law that arises for consideration in the instant and connected appeals is formulated as under:

If insured vehicle (in this case a mini bus) is plying under an Agreement of Contract with the Corporation, on the route as per permit granted in favour of the Corporation, in case of an accident, whether the Insurance Company would be liable to pay compensation or would it be the responsibility of the Corporation or the owner.”

The mini-bus in question was given on hire along with the driver to the UPSRTC by its owner. It met with an accident leading to the compensation claim. Relying on **KAILASH NATH KOTHAR**⁶, the Tribunal fixed the liability for payment of the compensation on the UPSRTC as the vehicle, at the time of the accident, was being run by it

under contract. The Insurance Company was exonerated from liability by the Tribunal despite the vehicle being insured by it. The Supreme Court took note of the changed definition of 'owner' under Section 2(30) of the Act of 1988 and the amendment effected to Section 103 of the Act of 1988 by the Uttar Pradesh Amendment Act 5 of 1993, which entitled the UPSRTC to hire any vehicle which could be plied by it on any route for which a permit had been issued by the transport authority. The Supreme Court consequently held that, in the context of Sections 146, 147 and 157 of the Act of 1988, the case was unique in nature. Dealing with **KAILASH NATH KOTHARI¹⁵** and the contention of the Insurance Company that the issue of the UPSRTC's liability had been concluded comprehensively therein, the Supreme Court opined that in the light of the drastic and distinct changes incorporated in the definition of 'owner' in the Act of 1988, **KAILASH NATH KOTHARI¹⁵** had no application to the case. Considering the clauses of the agreement entered into between the UPSRTC and the owner of the vehicle and the response of the Insurance Company to the pointed queries of the Court, the Supreme Court concluded that the Insurance Company was only trying to evade its liability on flimsy grounds or under a misconception of law. The Supreme Court accordingly held that for all practical purposes, the UPSRTC had become the owner of the vehicle and it must be deemed that the vehicle was transferred along with the Insurance Policy in existence and thus, the Insurance Company would not be able to escape its liability to pay the compensation. Placing reliance on **GURU GOVEKAR V/s. FILOMENA F. LOBO^[15]** and **UNITED INDIA INSURANCE COMPANY LIMITED V/s. SANTRO DEVI^[16]**, the Supreme Court held that Section 146 of the Act of 1988 gave complete protection to third parties in respect of death or bodily injury owing to the use of a vehicle in a public place, as insurance of the vehicle was made compulsory in that regard. The Supreme Court unequivocally declared that the liability of the Insurance Company was exclusive and absolute.

In **GURU GOVEKAR¹⁵**, the Supreme Court was dealing with an accident involving a motor vehicle which was entrusted by the insured owner to a repairer. The question was whether the Insurance Company

was liable to pay compensation to a third party in respect of a claim arising out of the use of the said vehicle in a public place by the repairer or his employee. The Supreme Court held that, by virtue of Section 94 of the Act of 1939, the insurer was liable to pay the compensation. The Supreme Court pointed out that when the owner of the motor vehicle entrusted his vehicle to the repairer to carry out repairs he was, in fact, allowing the repairer to use his vehicle in that connection. When such work of repair was being carried out in a public place, if on account of the negligence of either the repairer or his employee, a third party dies or suffers any injury either to his person or property, the Insurance Company would be liable to pay the compensation in accordance with sub-section (4) of Section 95 of the Act of 1939.

In **SANTRO DEVI**¹⁶, the Supreme Court was dealing with a case where the owner of the vehicle in whose name it was insured died but no steps were taken to transfer the policy in the name of his heir. The policy continued to be renewed in the name of the deceased owner. The vehicle was thereafter involved in an accident giving rise to a third party claim for compensation. The Insurance Company contended that the renewed policy was *void ab initio* as it was in the name of a dead person and therefore, it had no liability. The Supreme Court disagreed holding that the provisions of compulsory insurance had been framed to advance a social objective and were in the nature of a social justice doctrine. While observing that there could be no doubt that a contract of insurance must fulfill the statutory requirements of formation of a valid contract, the Supreme Court held that in case of a third party risk, the question has to be considered from a different angle. The Insurance Company was accordingly held liable.

Cases pertaining to vehicles requisitioned by statutory authorities stand on a different footing. In **ZILA SAHAKARI KENDRYA BANK MARYADIT V/s. SHAHJADI BEGUM**^[17], the Supreme Court was dealing with a case where a jeep along with its driver had been requisitioned from the owner by the State for election duty. Under the instructions of the requisitioning authority, the driver entered a septic tank

and died due to inhalation of poisonous gas. The issue before the Supreme Court was whether the State was liable as the driver was, for all intent and purport, under the control of the Election Officer. The Commissioner for Workmen's Compensation held the bank liable on the ground that the driver died during the course of his employment by the bank. The Supreme Court, on the other hand, held that the owner of the jeep was bound to comply with the order requisitioning the vehicle and its driver for election duty. As the deceased driver was under the complete control of the Election Officer at the time of his death, and as the jeep along with the driver had been requisitioned under the statute, leaving the actual owner no other option but to place the same under the services of the requisitioning authority, the Supreme Court held that the requisitioning authority would be the employer of the driver at the relevant point of time. The State was accordingly held liable to the exclusion of the actual employer, the bank.

Again, in ***NATIONAL INSURANCE CO. LTD., V/s. DEEPA DEVI***^[18], the Supreme Court dealt with a similar fact situation where an insured car, along with its driver, was requisitioned by the State for election duty. The vehicle thereafter met with an accident resulting in a third party claim for compensation. As per the terms of the Insurance Policy, the car was to be used only for 'social, domestic and pleasures and insured's own purpose'. The Motor Accidents Claims Tribunal upheld the contention of the Insurance Company that under the terms of the Insurance Policy, it was not liable to reimburse the owner of the vehicle for payment of compensation on account of the accident. The High Court, however, set aside this order holding the owner of the vehicle, the State Government and the Insurance Company jointly and severally liable to pay the compensation. Before the Supreme Court, the Insurance Company contended that as the vehicle in question was not used for the purpose for which the contract of insurance was entered into and having regard to the definition of 'owner' in the Act of 1988, the judgment of the High Court holding it liable could not be sustained. Reliance was placed on ***KAILASH NATH KOTHARI***⁶. Considering the definition of 'owner' under

the Act of 1939 and the Act of 1988, the Supreme Court opined that the Parliament did not take into consideration a situation of the nature arising in the case. Pointing out that though respondents 3 and 4 continued to be the registered owners of the vehicle, despite the same being requisitioned for election duty, they had no option but to abide by the statutory order of requisition, the Supreme Court observed that while the vehicle remained under requisition, the owner did not exercise any control over the same or the driver who was also requisitioned along with the vehicle. It was pointed out that save and except for legal ownership, for all intent and purport, the registered owner of the vehicle lost entire control over it. In a situation of this nature, the Supreme Court was of the opinion that the Court must proceed on the presumption that the Parliament, while enacting the Act of 1988, did not envisage such a situation. If in a given situation, the statutory definition contained in the Act cannot be given effect to in letter and spirit, the Supreme Court concluded that the same should be understood from the common sense point of view.

Referring to its earlier Judgment in **GURU GOVEKAR¹⁵**, the Supreme Court distinguished the same on facts as that was a case where the car was handed over with the consent of the owner while the vehicle when requisitioned, did not involve the consent of the owner who had no other alternative but to part with its possession. Referring to **RIKHI RAM¹⁰**, the Supreme Court distinguished the *ratio* laid down therein on facts. The following observations in **RIKHI RAM¹⁰** were extracted:

“5. The aforesaid provision shows that it was intended to cover two legal objectives. Firstly, that no one who was not a party to a contract would bring an action on a contract; and secondly, that a person who has no interest in the subject-matter of an insurance can claim the benefit of an insurance. Thus, once the vehicle is insured, the owner as well as any other person can use the vehicle with the consent of the owner. Section 94 does not provide that any person who will use the vehicle shall insure the vehicle in respect of his separate use.

6. On an analysis of Sections 94 and 95, we further find that there are two third parties when a vehicle is transferred by the owner to a purchaser. The purchaser is one of the third parties to the contract and the other third party is for whose benefit the vehicle was insured. So far, the transferee who is the third party in the contract, cannot get any personal benefit under the policy unless there is a compliance with the provisions of the Act. However, so far as third-party injured or victim is

concerned, he can enforce liability undertaken by the insurer.”

Thereafter, the Supreme Court observed as follows:

“We are also not concerned with such a situation.”

The Supreme Court therefore concluded that the State would be liable to pay the compensation to the claimants and not the registered owner of the vehicle. Consequently, the Insurance Company also stood absolved. The ratio of **RIKHI RAM**¹⁰ was therefore held inapplicable on facts only.

In **THE NEW INDIA ASSURANCE CO. LTD. V/s. SURAM RAMULAMMA**^[19], a learned Judge of this Court was dealing with an Insurance Policy which excluded the liability of the Insurance Company in case of contravention of any clause therein. The vehicle which was so insured was requisitioned by the State and thereafter met with an accident giving rise to a claim for compensation. The Claims Tribunal held the Insurance Company liable to pay the same. Aggrieved, the Insurance Company came before this Court. The learned Judge was of the opinion that the Insurance Company's liability during the period of requisition stood excluded under the terms of the policy. Referring to Section 94(2) of the Act of 1939 and Clause-9 of the policy, the learned Judge held that the liability stood transferred to the State during the period of requisition as the vehicle was requisitioned and the owner had no right over the vehicle thereafter. The learned Judge specifically observed that the Insurance Company's liability in respect of a vehicle requisitioned by the State stands on a different footing when compared to a vehicle hired to a third party for a limited purpose. The learned Judge accordingly concluded that the State alone was liable to pay the compensation.

This Court rendered several other judgments on the issue. In **P.SATYANARAYANA V/s. KESARI MANEVVA**^[20], **ANDHRA PRADESH STATE ROAD TRANSPORT CORPORATION V/s. K.SUSEELAMMA**^[21] and **K.MATURA BAI V/s. A.SHIVA NAGESWAR RAO**^[22], it was held by learned single Judges of this Court that the

APSRTC and the Insurance Company would both be liable for the compensation payable on claims arising out of accidents involving leased insured vehicles hired by the APSRTC.

In ***A.P.S.R.T.C. V/s. BATCHU PYDITHALLI^[23] and BRANCH MANAGER, ORIENTAL INSURANCE CO. LTD. V/s. JAVVAJI BHASKAR RAO^[24]***, learned Judges of this Court held that the APSRTC would be liable to pay compensation on account of the death of a person in an accident involving a vehicle hired by it and an agreement between the parties to the contrary would be of no help to the APSRTC.

In ***NEW INDIA ASSURANCE CO. LTD. V/s. V.RAMACHANDRA NAIDU^[25]***, a learned single Judge was dealing with a situation where the APSRTC had taken an insured bus on hire and the same was thereafter involved in an accident resulting in a claim for compensation. It was held that the APSRTC, the Insurance Company and the owner would all be jointly and severally liable.

In ***ANDHRA PRADESH STATE ROAD TRANSPORT CORPORATION V/s. K.VEERASWAMY^[26]***, a learned Judge of this Court held that the liability of the Insurance Company is not excluded in the event a private insured bus taken on hire by the APSRTC is involved in an accident.

In ***DUVVURU SIVA KUMAR REDDY V/s. MALLI SRINIVASULU^[27]***, a learned Judge of this Court held that though a person's name was not registered as the owner of the vehicle and he did not fall within the categories mentioned in the definition of owner in the Act of 1988, he could still be proceeded against by the claimants under the Act because a person in possession and in effective control of the driver of the vehicle can always be made liable for the tort of the driver, though he was not the owner under the Act, and for payment of compensation.

In ***NATIONAL INSURANCE CO. LTD V/s LUNAVATHI HARIYA^[28]***, a learned Judge dealt with the question as to whether the APSRTC could be held vicariously liable in the case of an accident

involving a private insured bus hired by it. It was held that if the original owner established that when he hired the bus and its driver to the APSRTC, the effective control over the driver was also transferred, the owner could avoid liability and the APSRTC, being the temporary employer or hirer, must be held vicariously liable for the tort committed by the driver. As it was not established on facts that the complete control of the driver had, in fact, been transferred to the APSRTC, the owner and the consequently the Insurance Company were held liable.

In **KESARI MANEVVA²⁰**, a learned Judge of this Court held that the Insurance Company would be liable for a third party risk in the case of an accident involving an insured bus hired by the APSRTC. The contention of the owner was that the insurance of the vehicle ran with the bus and merely because the vehicle was hired to the APSRTC, the Insurance Company could not escape its liability. The Tribunal exempted the Insurance Company from liability and fixed the same upon the owner and the APSRTC. The learned Judge took note of the fact that in **KAILASH NATH KOTHARI⁶**, the Insurance Company had also been held liable for payment of compensation to the extent permitted under the provisions of the policy and the Act of 1939. The learned Judge pointed out that the Supreme Court had not held that the Insurance Company was not liable to pay compensation when the owner gave the bus on hire to another. The learned Judge was therefore of the opinion that the ratio in **KAILASH NATH KOTHARI⁶** only supported the contention of the owner that once he handed over complete control of the vehicle along with its driver to the hirer, his liability stood excluded. The said judgment, *per* the learned Judge, did not come to the aid of the APSRTC or the Insurance Company. Referring to various other judgments of this Court and the Supreme Court, the learned Judge held that it was clear that even if the bus was given on hire to the APSRTC, the Insurance Policy obtained by the owner would be valid and Insurance Company would be liable to pay compensation payable to third parties in case the bus is involved in an accident. The learned Judge held that the Division Bench judgment of this Court in **B.G.SUMA⁵** was not in accordance with the ratio in **KAILASH NATH**

KOTHARI⁶ as the question relating to liability of the Insurance Company did not come up for consideration before the Supreme Court.

In **APSRTC, MUSHIRABAD, HYDERABAD V/s. KANCHE NAGABHUSHANAM @ BHUSHANAM^[29]**, a learned Judge of this Court held that the Insurance Company would be liable to pay the entire compensation in respect of a claim arising out of an accident involving an insured vehicle which was given on hire to the APSRTC. The learned Judge observed that though the vehicle was in the absolute control of the APSRTC, the original owner did not part with the ownership and therefore, there was no cessation of the privity of contract between the original owner and the Insurance Company in so far as third party risks were concerned.

In **APSRTC V/s. POLAVARAPU LAKSHMI KUMARI^[30]**, a learned Judge of this Court held that in so far as third party risks are concerned, the Insurance Policy would run with the vehicle and would not lapse upon the transfer or hire of the insured vehicle. The learned Judge opined that the Insurance Company cannot avoid its liability to third party risks merely because the owner gave the vehicle on hire to another person. The Insurance Company was accordingly held liable to pay the compensation to the third party who sustained injuries owing to the accident involving the bus given on hire to the APSRTC.

The preponderance of judicial thought, as manifested by the judgments referred to above, tilts towards holding the Insurance Companies accountable and liable so far as third party risks are concerned. Compulsory insurance mandated by Chapter XI of the Act of 1988/Chapter VIII of the Act of 1939 for the protection of third parties cannot therefore be defeated by exempting Insurance Companies of liability in this regard on technicalities.

Sri C.V.Mohan Reddy, learned senior counsel appearing for the APSRTC, contended that as regards accidents that occurred after the Act of 1988 came into force, the judgment of the Supreme Court in **KULSUM¹⁴** would govern the situation and therefore, the Insurance Company would be exclusively liable to pay the compensation arising out of claims even in the cases of insured vehicles hired by the ASRTC. Learned senior

counsel pointed out that under Rule 307 of the Andhra Pradesh Motor Vehicles Rules, 1989 framed under the Act of 1988, the APSRTC is given the option to run private vehicles taken on hire on payment of fixed hire charges for operating its services in a nationalized route, duly obtaining a permit for such vehicle. Learned senior counsel stated that this rule is akin to the amendment brought about by the Uttar Pradesh Amendment Act 5 of 1993 which was considered by the Supreme Court in **KULSUM¹⁴** and argued that the said judgment would apply on all fours in the State of Andhra Pradesh also. We find force in this contention. Given the similarities of the facts in **KULSUM¹⁴** and the cases arising in our State, the ratio laid down in the said judgment would squarely apply in so far as cases arising under the Act of 1988 are concerned.

As the LPAs pertain to claims governed by the provisions of the Act of 1939, the learned senior counsel contended that despite the judgment of the Supreme Court in **KAILASH NATH KOTHAR⁶**, the Insurance Company would still be liable to pay compensation. He pointed out that in **KAILASH NATH KOTHAR⁶** also, the Insurance Company had been held liable to pay the compensation to the maximum extent permissible under the Act of 1939 and therefore the said judgment did not lay down the proposition that the Insurance Company would be absolved of all liability and that the APSRTC would be solely liable to pay the compensation. Learned senior counsel relied upon case law and the provisions of the Acts of 1939 and 1988 in support of his contention that in so far as third party claims are concerned, the compulsory nature of the requirement to insure the vehicle would entail liability of the Insurance Company and that the failure on the part of the owner of the vehicle to keep the Insurance Company informed of the transfer of possession of the insured vehicle under a hiring agreement would be of no consequence.

Learned senior counsel stressed upon the fact that the Insurance Policy would attach to and run with the vehicle and third party claims arising out of such an Insurance Policy cannot be avoided by the Insurance Company on technicalities. Learned senior counsel further argued that Issue No.2 pertaining to the Insurance Company's liability in

KAILASH NATH KOTHARI⁶ was not considered and answered and the concentration of the Court was only on the conflict between the RSRTC and the owner as to their liability. Learned senior counsel therefore contended that the judgment was not an authority on the conflict as to liability between the Insurance Companies and the APSRTC.

Smt.I.Maamu Vani, Smt.S.A.V.Ratnam and Sri Nisaruddin Ahmed Jeddy, learned counsel, advanced arguments on behalf of the Insurance Companies involved in these cases. It is their contention that under Section 147(3) of the Act of 1988, an Insurance Policy issued by the Insurance Company would be of no effect for the purposes of Chapter XI, dealing with insurance of motor vehicles against third party risks, unless and until a Certificate of Insurance is issued by the Insurance Company to the person by whom the policy is effected in the prescribed form and containing the prescribed particulars of any condition, subject to which the policy is issued. Reference is also made by them to Rule 141 of the Central Motor Vehicles Rules, 1989, dealing with a Certificate of Insurance, which provides that an authorized insurer shall issue to every holder of a policy of insurance, a Certificate of Insurance in Form 51 in respect of each such vehicle. Learned counsel then drew the attention of the Court to Clause 10 in Form 51 which reads as under:

10.	Limitation as to use: — Stage carriage/contract carriage/goods carriage/ private service vehicle	The policy covers use only under a permit within the meaning of the Motor Vehicles Act, 1988, or such a carriage falling under sub- section (3) of section 66 of the Motor Vehicles Act, 1988. The policy does not cover use for (a) organized racing, or (b) speed testing.
-----	---	--

Learned counsel heavily relied upon Section 64-VB of the Insurance Act, 1938 (for brevity, ‘the Act of 1938’) which reads as under:

“64-VB. No risk to be assumed unless premium is received in advance.—(1) No insurer shall assume any risk in India in respect of any insurance business on which premium is not ordinarily payable outside India unless and until the premium payable is received by him or is guaranteed to be paid by such person in such manner and within such time as may be prescribed or unless and until deposit of such amount as may be prescribed, is made in advance in the prescribed manner.

(2) For the purposes of this section, in the case of risks for which

premium can be ascertained in advance, the risk may be assumed not earlier than the date on which the premium has been paid in cash or by cheque to the insurer.

Explanation.—Where the premium is tendered by postal money order or cheque sent by post, the risk may be assumed on the date on which the money order is booked or the cheque is posted, as the case may be.

(3) Any refund of premium which may become due to an insured on account of the cancellation of a policy or alteration in its terms and conditions or otherwise shall be paid by the insurer directly to the insured by a crossed or order cheque or by postal money order and a proper receipt shall be obtained by the insurer from the insured, and such refund shall in no case be credited to the account of the agent.

(4) Where an insurance agent collects a premium on a policy of insurance on behalf of an insurer, he shall deposit with, or dispatch by post to, the insurer, the premium so collected in full without deduction of his commission within twenty-four hours of the collection excluding bank and postal holidays.

(5) The Central Government may, by rules, relax the requirements of sub-section (1) in respect of particular categories in insurance policies.

(6) The Authority may, from time to time, specify, by the regulations made by it, the manner of receipt of premium by the insurer.”

Learned counsel pointed out that under Section 64-U of the Act of 1938, a Tariff Advisory Committee was constituted to control and regulate the rates, advantages, terms and conditions that may be offered by insurers in respect of general insurance business which would be binding on the Insurance Companies. Our attention was also drawn to Section 64-UB of the Act of 1938 which stipulates that the Tariff Advisory Committee may, by notification in the Official Gazette, make regulations to carry out the purposes of Part II-B of the Act of 1938, dealing with control of tariff rates. The learned counsel pointed out that under Section 64-UC(5) of the Act of 1938, if an Insurance Company was guilty of breach of any rate, advantage, term or condition fixed by the Tariff Advisory Committee, it shall be deemed to have contravened the provisions of the Act of the 1938. Under Section 64-VB(6) of the Act of 1938, the Tariff Advisory Committee may, from time to time, specify, by the regulations made by it, the manner of receipt of premium by the insurer. The learned counsel relied on the IMT (Indian Motor Tariff) prescribed by the Tariff Advisory Committee specifying the premium to be charged by the Insurance Companies for

Hearses Rs.115/- per passenger

Endorsement IMT – 46 is to be used.”

The learned counsel for the Insurance Companies asserted that once additional premium was not collected by the Insurance Companies enabling the hiring of the insured vehicles, they would not be liable even in respect of third party claims thereafter. They contended that in the absence of the additional premium to be paid under IMT.44, a bus let out on hire to the APSRTC would not continue to be covered by the Insurance Policy issued to the owner of the vehicle. Reference was also made to Section 146(3)(c) of the Act of 1988, whereby a State Transport Undertaking is exempted from the necessity of obtaining insurance against third party risks but was required under the proviso to establish and maintain a fund for meeting any liability arising out of the use of the vehicle of that authority which that authority or any person in its employment may incur to third parties. The learned counsel therefore contended that as the APSRTC maintained an insurance fund for meeting liabilities arising out of accidents involving its own buses, the Insurance Company need not cover third party risks even in respect of hired vehicles plied by the APSRTC.

The learned counsel relied on the judgment of the Supreme Court in ***NEW INDIA ASSURANCE COMPANY LIMITED V/s. SADANAND MUKHI***^[31] and more particularly paras 13 and 14 therein, which read as under:

“13. Contract of insurance of a motor vehicle is governed by the provisions of the Insurance Act. The terms of the policy as also the quantum of the premium payable for insuring the vehicle in question depends not only upon the carrying capacity of the vehicle but also on the purpose for which the same was being used and the extent of the risk covered thereby. By taking an “Act policy”, the owner of a vehicle fulfils his statutory obligation as contained in Section 147 of the Act. The liability of the insurer is either statutory or contractual. If it is contractual its liability extends to the risk covered by the policy of insurance. If additional risks are sought to be covered, additional premium has to be paid. If the contention of the learned counsel is to be accepted, then to a large extent, the provisions of the Insurance Act become otiose. By reason of such an interpretation the insurer would be liable to cover risk of not only a third party but also others who would not otherwise come within the purview thereof. It is one thing to say that life is uncertain and the same is required to be covered, but it is another thing to say that we must read a statute so as to grant relief to a person not contemplated by the Act. It is not for the

court, unless a statute is found to be unconstitutional, to consider the rationality thereof. Even otherwise the provisions of the Act read with the provisions of the Insurance Act appear to be wholly rational.

14. Only because driving of a motor vehicle may cause accident involving loss of life and property not only of a third party but also the owner of the vehicle and the insured vehicle itself, different provisions have been made in the Insurance Act as also the Act laying down different types of insurance policies. The amount of premium required to be paid for each of the policy is governed by the Insurance Act. A statutory regulatory authority fixes the norms and the guidelines.”

It is however relevant to note that the said case did not relate to a third party claim as the deceased was the owner of the motor vehicle which was involved in the accident. Further, the observations therein, extracted *supra*, reflect that in so far as third party risks are concerned, the Insurance Company would be liable. The said judgment therefore does not further the case of the Insurance Companies.

It is not in dispute that the Insurance Companies insured the buses taken on hire by the APSRTC which were thereafter involved in accidents giving rise to passenger/third party claims for compensation. The Insurance Companies admittedly collected premium towards passengers/third party risks. Such passengers/third parties would therefore be entitled to lay claims against the Insurance Companies on the basis of these policies, notwithstanding the fact that there may have been a transfer of the possession of the vehicles without intimation to the Insurance Companies pursuant to the hiring of the buses by the APSRTC. As pointed out in **MADINENI KONDAIAH¹¹**, such violation, if at all, would have effect on the proprietary interest and not upon the insurable interest vis-à-vis the passengers/third parties covered by the Insurance Policy.

Another judgment relied upon by the learned counsel for the Insurance Companies is that of a learned Division Bench of the Gujarat High Court in **MORBI TALUKA PANCHAYAT V/s. VIKRAM SINH GAMBHIR^[32]**. The observations of the learned Division Bench are extracted hereunder:

“Although, definition of ‘owner’ under Section 2(19) of the Motor Vehicles Act, 1939 is not clear, however, position is clear on facts possession and control of the vehicle being essential to determine liability. What was left in definition of ‘owner’ under Section 2(19) of the Motor Vehicles Act, 1939 has been made good in the new definition of ‘owner’ under Section 2(30)

of the Motor Vehicles Act, 1988. As per Section 2(30) of the Motor Vehicles Act, 1988, 'owner' means a person in whose name a motor vehicle stands registered and where such person is a minor, the guardian of such minor, and in relation to a motor vehicle which is the subject of a hire-purchase agreement, or an agreement of lease or an agreement of hypothecation, the person in possession of the vehicle under that agreement. In this case, Ext.64 is a document pertaining to offending vehicle. It has been handed over to T.D.O. Morbi Taluka Panchayat. Its possession is with T.D.O. Taluka Panchayat Morbi. It is under its control and it was being used by it for supply of water in water-scarcity areas under its jurisdiction. Last condition 10 in this agreement provides that for whatever damage or accident suffered by the tanker during the course of use, whole expenditure thereof shall have to be borne by the party taking it i.e. Taluka Development Officer, Taluka Panchayat, Morbi. This document Ext.64, with this condition, was accepted by the T.D.O. Taluka Panchayat, Morbi, therefore, liability for the accident and claim arising out of it. Contention of Shri Parikh that when a private carrier is allowed by the owner of the vehicle to be used by another for hire, liability of the Insurance Company ceases, is accepted [See ***Dattu Nathu Kudekar and Anr. v. National Insurance Co. Ltd.***, 1991 (1) G.L.R. 534]. No other contention was advanced by the parties.”

However, the observations extracted *supra* reflect that the vehicle had been requisitioned by the State and therefore the ratio of ***DEEPA DEVI***¹⁸ would be applicable to the fact situation. As pointed out in ***DEEPA DEVI***¹⁸, the facts of that case were not akin to those in ***RIKHI RAM***¹⁰ and on that basis, a distinction was drawn by the Supreme Court as it was not concerned with such a situation, as stated in para 14 of the report of the judgment. This judgment is therefore of no avail to the Insurance Companies.

In ***M/S.SURAJ MAL RAM NIWAS OIL MILLS (P) LTD. V/s. UNITED INDIA INSURANCE CO. LTD.***^[33], the Supreme Court held that the Insurance Company was not liable to pay the compensation on the ground that there was a breach of the conditions incorporated in the policy document. It was in this context, that the Supreme Court made the following observations:

“22. Before embarking on an examination of the correctness of the grounds of repudiation of the policy, it would be apposite to examine the nature of a contract of insurance. It is trite that in a contract of insurance, the rights and obligations are governed by the terms of the said contract. Therefore, the terms of a contract of insurance have to be strictly construed and no exception can be made on the ground of equity.

In *General Assurance Society Ltd.* (supra), a Constitution Bench of this Court had observed that:

“In interpreting documents relating to a contract of insurance, the duty of the court is to interpret the words in which the contract is expressed by the parties, because it is not for the court to make a new contract, however reasonable, if the parties have not made it themselves”.....

23. Similarly, in *Hirachand Rai Chandan Lal's case* (supra), this Court held that:

“The terms of the policy have to be construed as it is and we cannot add or subtract something. Howsoever liberally we may construe the policy but we cannot take liberalism to the extent of substituting the words which are not intended.”

24. Thus, it needs little emphasis that in construing the terms of a contract of insurance, the words used therein must be given paramount importance, and it is not open for the Court to add, delete or substitute any words. It is also well settled that since upon issuance of an insurance policy, the insurer undertakes to indemnify the loss suffered by the insured on account of risks covered by the policy, its terms have to be strictly construed to determine the extent of liability of the insurer. Therefore, the endeavour of the court should always be to interpret the words in which the contract is expressed by the parties.”

We fail to understand how this judgment furthers the case of the Insurance Companies. The indubitable fact remains that the Insurance Companies did undertake indemnification of passengers/third party risks in all the policies with which we are concerned and that being so, the observations of the Full Bench of this Court in ***MADINENI KONDAIAH***¹¹ mandate that the Insurance Companies must be held liable in so far as the insurable interest of such passengers/third parties is concerned. The public liability imposed by the statute therefore cannot be lightly brushed aside by the Insurance Companies relying on technicalities.

It is to be noted that the statutory liability of the Insurance Companies under Section 147(5) of the Act of 1988 and Section 95(5) of the Act of 1939 exists notwithstanding anything contained in any other law. Thus, the provisions of the Act of 1938 or any rule, regulation or tariff made thereunder, to the contrary, cannot whittle down the uncompromising mandate of Section 147(5) of the Act of 1988/Section 95(5) of the Act of 1939. The only grounds available to the Insurance Companies to avoid liability towards third party risks are those enumerated in Section 149(2) of the Act of 1988/Section 96(2) of the Act of 1939. No such grounds are

established in the cases before us. There was no exclusionary clause in any of the policies prohibiting the leasing of the buses to the APSRTC or any other agency. On the other hand, the buses were permitted to be used under relevant carriage permits, indicating the implicit awareness of the Insurance Companies that the buses were to be used for carrying passengers on hire.

Sri Kota Subba Rao, learned counsel, was asked to assist the Court by the learned Division at the time of making the reference. Learned *amicus curiae* made the following submissions:

In **KULSUM¹⁴**, the Supreme Court did not consider its earlier judgment in **DEEPA DEVI¹⁸** and **GODAVARI FINANCE CO.¹²**. The terms of the policy and the restrictions on use in **KULSUM¹⁴** were determinative of the decision therein and would therefore mean that the *ratio* of the said judgment would have to be restricted and would have no general applicability. Under Section 43(3) of the Act of 1988, when a motor vehicle is held under lease the registering authority shall issue a temporary Certificate of Registration to such vehicle, which shall incorporate legibly and prominently the full name and address of the person with whom such agreement has been entered into by the owner. In the absence of such registration, the APSRTC, being the hirer of the vehicle, cannot absolve itself of its liability and seek to pin the same on the Insurance Company. It would not be correct, as a general principle, to hold that the Insurance Company would be liable notwithstanding the breach of the conditions of the Insurance Policy by the owner and in the absence of payment of the applicable premium under the relevant IMT.

However, **DEEPA DEVI¹⁸** and **GODAVARI FINANCE CO.¹²** are inapplicable to the cases on hand as they pertained to a requisitioned vehicle and a vehicle held under a hire purchase agreement respectively. Further, failure to obtain temporary registration by a hirer cannot have the effect of absolving the Insurance Companies of their liability under Section 147(5) of the Act of 1988 and Section 95(5) of the Act of 1988. We are therefore not impressed with the submissions of the learned *amicus curiae*.

As pointed out by the Supreme Court in **G.GOVINDAN**⁷, both under the Act of 1939 and the Act of 1988, the legislature was anxious to protect the interests of the third party (the victim). According to the Supreme Court, what was implicit in the provisions of the Act of 1939 has now been made explicit in the Act of 1988, presumably in view of the conflicting decisions on this aspect amongst the various Courts.

In **PESSUMAL DHANAMAL ASWANI**¹³, the Supreme Court pointed out that once the Insurance Company undertook liability to third parties, such third parties' right to recover any amount under or by virtue of the provisions of the Act would not be affected by any condition in the policy.

In this regard, as stated earlier, it is pertinent to note that in none of the policies before us any specific exclusionary clauses were incorporated prohibiting the lease of the vehicles. On the other hand, the only limitation upon the use of the vehicles was that they should be plied under a contract carriage or a stage carriage permit. As all the vehicles involved in these cases were buses, it can be safely assumed that the Insurance Companies were well aware that they would be used for carriage of passengers. It was in this regard that the insistence on a contract or stage carriage permit was stressed upon. Section 66 of the Act of 1988 posits that no owner of a vehicle should use or permit the use of his vehicle as a transport vehicle in any public place save in accordance with the conditions of a permit granted by the Regional or State Transport Authority authorizing him to use the vehicle in the manner in which it is being used. Section 2(31) of the Act of 1988 defines 'permit' to mean a permit issued by a State or Regional Transport Authority or an authority prescribed in this behalf under the Act of 1988 authorizing the use of a motor vehicle as a transport vehicle. Section 72 of the Act of 1988 deals with grant of stage carriage permits while Sections 73 and 74 thereof deal with contract carriage permits. "Transport vehicle" is defined under Section 2(47) of the Act of 1988 to mean a public service vehicle, a goods carriage, an educational institution bus or a private service vehicle. Public service vehicle' is defined under Section 2(35) of the Act of 1988 as any motor

vehicle used or adapted to be used for the carriage of passengers for hire or reward, and includes a maxicab, a motorcab, contract carriage and stage carriage. In the claim petitions filed before the Motor Accidents Claims Tribunals in these cases, the Insurance Companies filed counters, *inter alia*, contending that in the event it was held liable to pay the compensation, it should also simultaneously be held to be entitled to recover the same from the APSRTC as the vehicle was being operated by it for its own use; that the vehicle involved in the accident was hired by the APSRTC and was operated by it under a separate permit obtained by it and the owner of the vehicle, the insured, did not have a permit and therefore the Insurance Companies were not liable to pay the compensation and that the APSRTC was solely responsible; that the limitations as to use prescribed therein stated to the effect that the vehicle was to be used only under a contract carriage/stage carriage permit within the meaning of the Act of 1939 or the Act of 1988 and that the policy did not cover use of the vehicle for organized racing, pace-making, reliability trial or speed-testing and use of the vehicle whilst drawing a trailer except the towing (other than for reward) of any one disabled mechanically propelled vehicle was not covered.

It is however to be noticed that in all the cases, premium towards liability towards passengers and third party risk was collected. Once separate premium was collected by the Insurance Companies for covering the risk to the passengers and third parties, it is no longer open to them to escape their liability in this regard. The failure in paying the additional premium as per IMT.44, at best, would absolve the Insurance Companies from covering the liability and loss, if any, of the APSRTC. It would not extend to protect the Insurance Companies from their acknowledged liability towards third parties as is evident from the policy documents. The Supreme Court in **RIKHI RAM¹⁰**, in no uncertain terms, held that whenever a vehicle covered by an Insurance Policy was transferred to a transferee, the liability of the insurer would not cease so far as the third party/victim is concerned, even if the owner or purchaser did not give intimation as required under the provisions of the Act. The cases on hand stand on a better footing as the insured, being the owner of the vehicle, did

not transfer the title or ownership of the vehicle but only its possession. IMT.44, as pointed out earlier, has application when the hirer of the vehicle requires protection and it does not apply to or abridge the liability of the Insurance Company in so far as third party risks are concerned.

The argument of the learned counsel for the Insurance Companies that the APSRTC is required to establish and maintain a separate fund for meeting such liability in accordance with the provisions of Sections 146 of the Act of 1988 and therefore, the Insurance Companies would not be liable to cover such liability, notwithstanding the fact that the vehicle taken on hire by the APSRTC was insured by them, does not merit acceptance. Pertinent to note, the provision as to establishment of such a fund applies only to a local authority exempted under Section 146(3)(b) and not a State transport undertaking, exempted under Section 146(3)(c) of the Act of 1988.

On principle, it is not open to the Insurance Companies to absolve themselves of liability towards passengers/third party risks on the short ground that the insured vehicle has been given on hire without following the prescribed procedure. This Court in **MADINENI KONDAIAH¹¹** has already held that even transfer of the ownership of an insured vehicle without following the due procedure would not absolve the Insurance Company of liability towards third party risks. Mere transfer of possession, through hire of the vehicle, cannot stand on a worse footing or exempt the Insurance Companies from liability in this regard.

The issue raised in the two writ petitions with regard to the validity of the action of the APSRTC in recovering the compensation amounts paid by it from the owners of the vehicles does not fall for consideration before us given the specific question referred to us for decision. We therefore decline to address this issue. The CMAs filed by the claimants for enhancement of the awarded compensation are also eschewed from consideration on the same count.

On the above analysis, we hold that mere hiring of insured buses by the owners to the APSRTC would not in any manner limit the liability and accountability of the Insurance Companies, be it under the Act of 1988 or

the Act of 1939, to honour passengers/third party risks covered by the Insurance Policies issued by them in favour of the owners. Notwithstanding the hiring of insured buses by the owners to the APSRTC, the Insurance Companies shall be solely and exclusively liable for payment of the compensation arising out of such passengers/third party claims unless any of the grounds in Section 149(2) of the Act of 1988/Section 96(2) of the Act of 1939 are made out. We therefore affirm the view taken by the Full Bench of this Court in **MADINENI KONDAIAH¹¹** which was approved and upheld by the Supreme Court in **G.GOVINDAN⁷** and applied thereafter in **RIKHI RAM¹⁰**. We answer the question referred to us for decision accordingly. All the matters shall be placed before the appropriate Courts for individual adjudication.

GODA RAGHURAM, J.

G.V.SEETHAPATHY, J.

SANJAY KUMAR, J.

20TH NOVEMBER, 2012.

Note:

L.R. Copy to be marked - Yes.

B/O

VGSR/PGS

***THE HON'BLE SRI JUSTICE GODA RAGHURAM**
THE HON'BLE SRI JUSTICE G.V.SEETHAPATHY
AND
THE HON'BLE SRI JUSTICE SANJAY KUMAR

-
L.P.A. NOS.206, 207, 208 & 219 OF 2000;
L.P.A.NO.6 OF 2002; CMA NO.3282 OF 2002;
MACMA NO.361 OF 2006; MACMA NO.2821 OF 2011;
CMA NO.4732 OF 2003; CMA NO.1579 OF 2004;
MACMA NO.1378 OF 2011; W.P.NO.7262 OF 2005; W.P.NO.11883 OF
2005; MACMA NO.2486 OF 2006
AND MACMA NO.2623 OF 2007

% 20-11-2012

The APSRTC, rep. by its
General Manager (now redesignated as
Managing Director), Musheerabad,
Hyderabad and others.

... Appellants

Vs.

\$ B.Kanakaratnabai and others

...Respondents

<GIST:

>HEAD NOTE:

! Counsel for appellants : Sri Pottigari Sridhar Reddy
& others.

^ Counsel for respondents : Sri V.Somasekhar & others.

? CASES REFERRED:

- 1) 2001 ACJ 401
- 2) 2002 (6) ALD 456 (DB)
- 3) 2001 ACJ 843 (SC)
- 4) 1998 ACJ 531 (SC) = (1998) 3 SCC 744
- 5) 2002 (6) ALT 465 (DB)
- 6) AIR 1997 SC 3444 = 1997 ACJ 1148
- 7) 1999 ACJ 781 (SC) = (1999) 3 SCC 754
- 8) 1999 ACJ 213 = (1998) 6 SCC 599
- 9) 2003 (5) ALD 586 (DB)
- 10) AIR 2003 SC 1446 = (2003) 3 SCC 97 = 2003 ACJ 534
- 11) AIR 1986 AP 62 (FB)
- 12) 2008 (3) ALD 18 (SC)= (2008) 5 SCC 107
- 13) 1958-65 ACJ 559 (SC) = (1964) 7 SCR 867 = AIR 1964 SC 1736
- 14) (2011) 8 SCC 142
- 15) 1988 ACJ 585 (SC) = (1988) 3 SCC 1 = AIR 1988 SC 1332
- 16) (2009) 1 SCC 558
- 17) 2006 ACJ 2845
- 18) 2008 ACJ 705
- 19) 1989 (2) ALT 270
- 20) 2010 ACJ 285
- 21) 2005 ACJ 559
- 22) 2004 (4) ALT 304
- 23) CMA No.2154 of 2001 Dated 18.06.2009
- 24) 2009 (3) ALD 53
- 25) 2006 (4) ACJ 2435
- 26) 1990 ACJ 1013
- 27) 2007 ACJ 448
- 28) 2004 ACJ 1792
- 29) 2008 (2) ALD 602
- 30) 2004 (5) ALT 457
- 31) (2009) 2 SCC 417
- 32) II (2006) ACC 106 (DB)
- 33) 2011 (2) SCJ 500

-
- [\[1\]](#) 2001 ACJ 401
- [\[2\]](#) 2002 (6) ALD 456 (DB)
- [\[3\]](#) 2001 ACJ 843 (SC)
- [\[4\]](#) 1998 ACJ 531 (SC) = (1998) 3 SCC 744
- [\[5\]](#) 2002 (6) ALT 465 (DB)
- [\[6\]](#) AIR 1997 SC 3444 = 1997 ACJ 1148
- [\[7\]](#) 1999 ACJ 781 (SC) = (1999) 3 SCC 754
- [\[8\]](#) 1999 ACJ 213 = (1998) 6 SCC 599
- [\[9\]](#) 2003 (5) ALD 586 (DB)
- [\[10\]](#) AIR 2003 SC 1446 = (2003) 3 SCC 97 = 2003 ACJ 534
- [\[11\]](#) AIR 1986 AP 62 (FB)
- [\[12\]](#) 2008 (3) ALD 18 (SC)= (2008) 5 SCC 107
- [\[13\]](#) 1958-65 ACJ 559 (SC) = (1964) 7 SCR 867 = AIR 1964 SC 1736

- [\[14\]](#) (2011) 8 SCC 142
- [\[15\]](#) 1988 ACJ 585 (SC) = (1988) 3 SCC 1 = AIR 1988 SC 1332
- [\[16\]](#) (2009) 1 SCC 558
- [\[17\]](#) 2006 ACJ 2845
- [\[18\]](#) 2008 ACJ 705
- [\[19\]](#) 1989 (2) ALT 270
- [\[20\]](#) 2010 ACJ 285
- [\[21\]](#) 2005 ACJ 559
- [\[22\]](#) 2004 (4) ALT 304
- [\[23\]](#) CMA No.2154 of 2001 Dated 18.06.2009
- [\[24\]](#) 2009 (3) ALD 53
- [\[25\]](#) 2006 (4) ACJ 2435
- [\[26\]](#) 1990 ACJ 1013
- [\[27\]](#) 2007 ACJ 448
- [\[28\]](#) 2004 ACJ 1792
- [\[29\]](#) 2008 (2) ALD 602
- [\[30\]](#) 2004 (5) ALT 457
- [\[31\]](#) (2009) 2 SCC 417
- [\[32\]](#) II (2006) ACC 106 (DB)
- [\[33\]](#) 2011 (2) SCJ 500