**APPLICATION BEFORE THE AUTHORITY OF MOTOR ACCIDENT CLAIMS TRIBUNAL**

IN THE COURT OF THE....................

Application No..................... of 19....................

A. B. C............................................................ Applicants

*versus*

C. D. F......................................................... Respondents

We the heirs and legal representatives of the late Shri.................... s/o Shri .................... and, resident of.................... who was injured in Motor Vehicle Accident, hereby apply for the grant of compensation for the death of Shri .................... as heirs and legal representatives of the deceased. Necessary particulars in respect of the injury, vehicle etc. are given below:

1. Name and father’s name of the person died.

2. Full Address of the person dead.

3. Age of the person injured/dead.

4. Occupation of the person dead.

5. Name and address of the employer of the deceased, if any.

6. Monthly income of the person dead.

7. Does the person in respect of whom compensation is claimed, pay income tax? if so, state the amount of income tax to be supported by documentary evidence.

8. Place, date and time of the accident.

9. Name and address of the police station in whose jurisdiction the accident took place or was registered.

10. Had the person in respect of whom compensation is claimed, travelled by the motor vehicle involved in the accident? If so, the name of place of starting the journey and destination.

11. Nature of injuries sustained.

12. Name and address of the Medical Officer/Practitioner, if any, who attended the deceased.

13. Period of treatment and expenditure if any, insured thereon (to be supported by documentary evidence).

14. Registration No. and the type of the motor vehicle involved in the accident.

15. Name and address of the insurer of the Motor Vehicle.

16. Name and address of the owner of Motor Vehicle.

17. Has any claim been lodged with the Owner/Insurer if so with what results?

18. Name and address of the applicant.

19. Relation with deceased.

20. Amount of compensation.

21. Title of property of the deceased.

22. Any other information that may be necessary or helpful in the disposal of the claim.

23. Reasons or grounds for the late submission of the claim application on which condonation of the delay is claimed.

24. Cause of accident with brief description.

Petitioners

**CASE LAW**

The liability of the insurer arises only when a judgment is obtained against the insured. In other words, it is only then and then alone that the insurer is obliged to pay the claimants, the amount due by the insured under an award made against him by the Motor Accident Claims Tribunal.1

The liability of the insurer to pay a claim under a motor-cum-accident policy arises on the occurrence of the accident and not before, and, therefore, the law as was in force on the date of the accident would be the determining factor in awarding compensation to different claimants and the extent of the insurance company’s liability would be determined accordingly.2

The liability of the Insurance Company is for the liability of the owner vis a vis the vicarious liability incurred by the driver of the vehicle.3

It is settled law that an insurer can cover a higher risk than the statutory limit.4

Sub-section (2) of Section 95 prescribe the minimum requirement of the insurance policy but it is open to the insurer to cover risk to a larger extent, and if he does, the liability will be determined in terms of the risk covered.5

Where the policy covers wider risk than under Section 95(2), the Claims Tribunal is competent to make an award directing the insurer to pay such compensation to the claimant for which the insured is found liable.6

Insurance Company is liable to cover the risk of a hirer/agent or his employees travelling with the goods in a goods vehicle under the proviso to clause (b) of Section 95(1) as a passenger carried for hire or reward or by reason or in pursuance of a contract of employment.7

It will not cover the risk of the persons, who after taking lift from the driver on payment of some money or fare otherwise travel in the vehicle carrying with them, their some luggage or goods.

A Motor Accident Claims Tribunal can hold an Insurance Company liable to pay an amount in excess of the statutory limit prescribed by Section 95(2)(b) of the Act if the policy covers that liability; that the question as to whether an Insurance Company is or is not so liable, should not be decided on the abstract doctrine of burdens of proof; that the Insurance Company should produce in such cases before the Tribunal on True copy of the policy of insurance; that in the event of failure of the Insurance Company to do so, the Tribunal should direct the Insurance Company to produce such copy and that failure to comply with the direction of the Tribunal in that behalf would justify drawing of an adverse inference against the Insurance Company.8

It is well settled that the proviso (ii) to Section 95(1 )(b) provides cover in respect of the risk of passengers even if they are carried in a vehicle which is not a public service vehicle if they are carried for hire or reward or by reason or in pursuance of a contract of employment.9

The liability could, however, be avoided by the Insurance Company on any or more of the grounds specified in Section 96(2) *[ibid].*

Once a policy is issued by the Insurance Company covering any person or classes of persons who are entitled to be indemnified against the death or bodily injury to any person or damage to any property of third party caused by or arising out of the use of the vehicle in a public place, the object of insurance is to get indemnification of any damage that may be caused to any third party arising out of the use of the vehicle in a public place in an accident causing death or bodily injury to that third party or damage to any property of the third party.10

The burden to prove that the liability of the insurer is limited to the extent provided under Section 95 lies on the insurer.11

If no evidence is led by either party and the insurance policy or a copy thereof is not produced, the Insurance Company would be liable for the entire amount, *[ibid].*

A policy issued by way of a ‘cover note’ will be as effective as a ‘certificate of insurance’.12

When the cheque is obtained form the insured as valid payment towards premium for the Cover Note issued, non-presentment of the cheque by the insurer

for encashment cannot have the effect of absolving the insurer of the liability under the Cover Note pursuant to the receipt of such Cheque, *[ibid].*

A motor policy cannot be interpreted so as to restrict its operation as would defeat the very purpose for which it has been taken.13

It is well settled that in order to make the Insurance Company liable to pay a sum higher than its statutory liability in terms of Section 95(2) of the Act, a specific agreement to the aforementioned effect has to be arrived at by and between the owner and the Insurance Company and a separate premium has to be paid for enhancement of such liability undertaken to be paid by the Insurance Company in this behalf.14

In terms of Article 141 of the Constitution of India, by entering into a contract of insurance covering comprehensive third party risk, the insurer cannot be said to have agreed to indemnify the owner to an unlimited amount, *[ibid],*

If risk of any other nature in excess of statutory liability, if any, is sought to be covered it has to be clearly specified in the policy and separate premium paid therefor.15

The liability of the insurer could not be in excess of the statutory limit under Section 95(2).l6

Clause (a) deals with ‘goods vehicle’ while clause (b) deals with ‘passenger vehicle’ or ‘motor cab’. The overall liability for each death is different under each of these clauses.17

The principles with regard to Section 95(2)(a) cannot be attracted to Section 95(2)(b) *[ibid].*

The claim has to be adjudicated according to provision which existed at the time of accident took place.18

If the owner himself suffers an injury in an accident, he does not acquire any right to get compensation from the Insurance Company under the policy issued to him.19

If the insurer is not liable, then the insured is also not liable. The liability of the insurer depends upon the liability of the insured. Under the law, negligence of the owner or driver is a *sine qua non* for such liability, *[ibid].*

Personal insurance is intended to secure to the assured or his representative the payment of a sum money in the event of his disablement or death by accident. It resembles life insurance and differs from other classes of insurance and it is not a contract of indemnity but a mere contract to pay a sum of money in a certain contingency, *[ibid].*

Where the vehicle is comprehensively insured, the limitation contained in Section 95(2) of the Act does not apply. In spite of it, outer limit of the liability of the Insurance Company will depend on the terms of the policy.20

In accident claim cases while interpreting the contract of insurance the Tribunals and the courts have to be conscious of the fact that right to claim compensation by heirs and legal representatives of the victims of the accident is not defeated on technical grounds.21

1. The Oriental Fire & General Insurance Co. Ltd. v. Bachan Singh, 1982 P. L. R. 280 (P. &. H.) F. B.

2. Tara Pada Roy v. Dwijendra Nath Sen & Ors., (1985) 2 A. C. C. 563 (Pat ) D. B.: See: A. I. R. 1982 S. C. 836.

3. United India Fire & General Insurance Co. Ltd. v. Gulab Chandra Gupta, (1985) 1 A. C. C. 52 (All. ) D. B.

4. United Fire & General Insurance Co. Ltd. v. Mrs. Kalsum Begum, (1986) 2 T. A. C. 397 (Gauhati).

5. United Fire & General Insurance Co. Ltd. v. Minaben Harish Chandra, A. i. R. 1979 Guj. 108.

6. Assam Corporation v. Binu Rai, A. I. R. 1975 Gauhati 3.

7. Harishankar Tiwari v. Jagru, 1987 (1) A. C. J. 1 (M. P. ) F. B.

8. United India Fire & Insurance Co. Ltd. v. Natvarlal & Ors., (1989) 1 A. C. C. 9 (M.P.) F. B.

9. The New India Assurance Co. Ltd. v. Siyaram Yadav & 2 Ors., (1989) 1 A. C. C. 82 (M.P.) Ref. to; National Insurance Co. Ltd. & anr. v. Nathibai Chaturbhuj & ors., 1982 A. C. J. 153 (Guj.) F. B.

10. A. T. V. S. Prasad v. United India Insurance Co. Ltd., (1989) 1 A. C. C. 151 (A. P. ).

11. New India Assurance Co. Ltd. v. Mahinder Kaur & ors., (1989) 1 A. C. C. 172 (Raj.).

12. Oriental Insurance Co. Ltd. v. K. Gowramma & ors., (1989) 1 A. C. C. 200(Karn.) D.B.

13. United India Assurance Co. Ltd. v. Thimmawwa & ors., (1989) 1 A. C. C. 208 (Karn.) D. B.: (1989) 1 A. C. J. 149 (Karnataka).

14. The Oriental Fire & General Insurance Co. Ltd. v. Barun Kumar Pandey & anr., (1989) B. L. J. R. 230 (Patna-Ranchi Bench).

15. (1988) 1 S. C. C. 626.

16. The Oriental Fire & General Insurance Co. Ltd. v. Mahila Lolma & Ors., (1989) 1 C. C. C. 6 (M. P. ) D. B.

17. P. Rajaiah & anr, v. M. Manikya Reddy & anr., (1989) 1 C. C. C. 612 (A. P. ): See A. I. R. 1981 S. C. 2059: A. I. R. 1987 S. C. 2158.

18. National Insurance Co. Ltd. v. Gotiya & ors., (1989) 1 C. C. C. 471 (Raj. ).

19. Mathew Koshy v. Oriental Insurance Co. Ltd., 1989 A. C. J. 21 (Ker. ) D. B.

20. New India Assurance Co. Ltd. v. Nanak Chand Ben & Ors., 1989 A. C. J. 169 (M. P.); See: 1987 A. C. J. 872 (S. C. ): 1982 A. C. J. (Supp. ) 106 (Mad. ) D. B.

21. Sohan Lal Passi v. P. Sesh Reddy, 1996 (5) Supreme 603.