that their Lordships of the Supreme Court have applied a multiplier as high as 20 though this must be considered as virtually the outer limit. Consequently we see no reason why in this case the norm of 16 should at all be deviated from. Applying the same the compensation figure would work out to Rs. 19,200 only. However, because the appellants had not preferred any appeal against the judgment of the Tribunal wherein Rs. 18,000 had been awarded and further because the express claim in the present Letters Patent Appeal also is for the restoration of the amount of compensation by the Tribunal. we are precluded from granting compensation at the aforesaid amount of Rs. 19,200. This appeal is, therefore, allowed and in the peculiar circumstances the compensation awarded to the appellants is restored to Rs. 18,000. The appellants would also be entitled to their costs.

*N.K.S.*

*Before S. S. Sandhawalia, C.J. and D. S. Tewatia, J.*

HANS RAJ and another,—*Appellants.*

*versus*

SUKHDEV SINGH and another,—*Respondents*

*First Appeal from Order No.* 20 *of* 1981.

February 23, 1982.

*Motor Vehicles Act (IV of 1939)—Sections 94, 95, 96 and 110-B—Compensation awarded in a motor accident—Vehicle insured with an insurer for an amount higher than the limit prescribed by section 95(2)—Liability of the insurer—Whether extends to the sum assured by the policy—Financial limits prescribed by section 95(2)—Whether the minimum prescribed by the statute.*

*Held,* that a close reading of sections 94 and clauses (a), (b), (c) and (d) of sub-section (2) of section 95 of the Motor Vehicles Act, 1939, seems to indicate that the limit of financial liability and the other requirements of the policy are the minima prescribed by the statute in order to comply with the requirements of a mandatory insurance against the third party risk. Section 95 itself lays down the minimum limits etc. for conforming thereto. This however, cannot be read as the maximum limits of financial liability for

which the owner of the motor vehicle may wish to safeguard against. There seems to be no warrant for taking so myopic and narrow view of the provisions of sub-section (2) in this context on principle. What is noticeable in sub-section (5) of section 95 is the fact that this provision begins with a non-obstante clause and would, therefore, override any other provision including this in section 95 itself. The legislature has designedly introduced this sub-section to make it clear that the liability of the insurer under the contract of insurance would continue to subsist. In terms it lays down that the insurer would be liable to indemnify any person or class of persons specified in the insurance policy with regard to any liability which it had purported to cover. This would equally cover the quantum for such risk which obviously would be the sum assured. The language of section 96(1) of the Act in terms says that the insurer would be liable to pay the person entitled to the benefit of the decree any amount not exceeding the sum assured payable thereunder as if he were the judgment-debtor. The maxima of liability of the insurer, therefore, is the sum assured under the policy of insurance. The particular language used is "any sum not exceeding the sum assured". There is no reason to construe and read this plain language to mean as any sum not exceeling the sum prescribed in section 95(2) of the Act. Such a construction would be doing violence to the plain language of the provision and is otherwise not warranted on larger principles. Thus, the liability of the insurer for vehicles covered under section 95(2) would extend to the sum assured by the policy of insurance in consideration of the premiums paid.

(Paras 5, 8 and 12).

The United India Fire and General Insurance Co. Ltd. and another *vs.* Mrs. Sayar Kanwar and others, 1976 A.C.J. 426

—*Dissented from.*

*First Appeal from Order of the Court of Sh. Dev Bhushan Gupta, Motor Accident Claims Tribunal, Patiala, dated 8th August, 1980 granting compensation to Gurdial Singh amounting to Rs. 7,000 and to Sukhdev Singh Rs. 7,000 with costs the petition. The Insurance Company would be liable to any compensation with record to the property of Rs. 2,000 only in one accident. However, its liability is limited up to Rs. 50,000 in case of injuries. The Insurance company is liable to pay only up to Rs. 1,500 to the petitioner in each case. This order can be executed against the Insurance company to the extent of Rs. 1,500 only and the rest of the amount is to be paid by respondents Nos. 1 and 2.*

Maharaj Bakhsh Singh, Advocate, *for the Petitioner.*

L. M. Suri, Advocate, with V. P. Gandhi, Advocate, *for the Respondent.*

JUDGMENT

*S. S. Sandhawalia, C.J.* :

(1) The meaningful issue which calls for determination has been formulated in the following terms, in the lucid order of reference :

> "Do the provisions of sub-section (1) of section 96 of the Motor Vehicles Act limit the liabiility of the insurer *qua the insured as also the third party to the one* that by virtue of sub-section (2) of section 95 it is required to cover, even though by charging extra premium the insurer has undertaken a liability greater than the one the provision of sub-section (3) of section 95 requires it to cover."

2. Mulkh Raj is the registered owner of truck No. UTJ-3338. On June 8, 1979 at 3.30 p.m. It was involved in a collision with two bullock-carts of the claimant-respondents. As a result thereof all the four bullocks involved died and the two carts were damaged whilst injuries were suffered by both the drivers of the carts. Separate claims with regard to the injuries and loss of property were preferred by the two drivers. Besides the appellant No. 1—driver of the truck—its insurer Messrs New India Assurance Company Limited were also impleaded as respondents. The Tribunal decided in favour of the claimants and assessed the loss with regard to the damage to their property at Rs. 6,500 and compensation for personal injuries at Rs. 500. Thus he awarded Rs. 7,000 to each one of the claimants. However, as regards the liability of the Insurance Company, it held as follows :—

> "....The Insurance Company shall be liable to pay compensation with regard to the property of Rs. 2,000 only in one accident. However, its liability is limited up to Rs. 500 in case of injuries. The Insurance Company is liable to pay up to Rs. 1,500 to the petitioner in each case. This order can be executed against the Insurance Company to the extent of Rs. 1,500 only. The rest of the amount is to be paid by respondents Nos. 1 and 2. Counsel fee is fixed at Rs. 50 in each case.

Both the truckowner and the driver challenged the Award of the Tribunal by two separate appeals (FAOs. 20 and 21 of 1981). These F.A.Os. first came up before my learned brother Tewatia, J., sitting singly. Noticing that the core point arising therein was one of frequent occurrence and was of considerable importance, he referred it foo an authoritative decision to a Larger Bench.

3. Before us, learned counsel for the appellant placed firm reliance on the language of the statute itself. Adverting first to section 98 of the Motor Vehicles Act, 1939 (hereinafter called 'The Act), he contended that this in itself envisages the liability of the insurer to pay to the claimants any sum not exceeding the sum assured and payable under the Insurance Policy. Consequently, it was forcefully submitted that the liability of the insurer is to be extent of the sum assured and payable under the policy of insurance and not subject to any limitation spelt out in section 95(2) of the Act. Reliance was also placed on section 110-B of the Act which provides that the Claims Tribunal shall specify the amount which shall be paid by the insurer as well. Counsel submitted that reading the aforesaid two provisions together it was inevitable that the insurer would be liable up to the limit of the sum assured and the Tribunal was enjoined to direct such payment by the insurer.

4. To appreciate the aforesaid contention, one may at the very outset read the relevant provisions of section 94, 95 and 96 of the Act :

"94. *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.

* * * * * *

* * * * * *

"95. *Requirements of policies and limits of liability.*—

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

* * * * *

(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—

* * * * *

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

* * * * *

"96. *Duty of insurers to satisfy judgments against persons insured in respect of third party risks.*—

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

* * * * *

5. Now a plain reading of section 94 of the Motor Vehicles Act, 1939, makes it manifest that the statute first mandates a policy of insurance against third party risk before a motor vehicle can be used in a public place. Section 95 which follows then spells out the requirements of such an insurance policy and the limits of financial liability as spelt out in clauses (a), (b), (c) and (d) of sub-section (2) of section 95 of the Act. Now a close reading of these privisions seems to indicate that the limit of financial liability and the other

requirements of the policy are the minima prescribed by the statute in order to comply with the requirements of a mandatory insurance against the third party risk. Section 95 itself lays down the minimum limits etc., for conforming thereto. This, however, cannot be read as the maximum limit of financial liability for which the owner of the motor vehicle may wish to safeguard against. There seems to be no warrant for taking so myopic and narrow view of the provisions of sub-section (2) in this context on principle. This view is further buttressed by sub-section (5) of section 95 which is in the following terms :—

> "95 (5) Notwithstanding anything elsewhere contained in any law, a person issuing a policy of insurance under this section shall be liable to indemnify the person or classes of person 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 person."

What is noticeable herein is the fact that the aforesaid provision begins with a non-obstante clause and would, therefore, override any other provision including those in section 95 itself. The legislature has designedly introduced this sub-section to make it clear that the liability of the insurer under the contract of insurance would continue to subsist. In terms it lays down that the insurer would be liable to indemnify any person or class of persons specified in the insurance policy with regard to any liability, which it had purported to cover. This in my view would equally cover the quantum for such risk which obviously would be the sum assured.

6. The relevant provisions of the Act in this context have also to be viewed from a social angle. The purpose, object and policy of the statute herein seems to be that the victims of the accident should be liable to secure compensation by the speedier remedy before the Tribunal and the execution of its award in their favour straightaway against the insured and the insurer as well in a single proceeding. It is with the object in view that section 94 lays down a mandatory duty on owners and users of motor vehicles to insure against third party risk and section 95 provides for the minimum financial limits of such a policy of insurance. However, where the owner or user of the motor vehicles seeks to cover himself fir a larger risk and the

insurer for the consideration of the extra premium which he pays insures him for such an amount there seems to be no earthly reason why the liability of such an insurer should still remain at the minimum level provided by the statute. If one may say so these financial minima are povided as criteria for the eligibility as a policy of insurance for the purposes of the Act and in no way to provide an upper limit for the risks which the policy of insurance may cover and the particular contracts which the insurer and the insured may willlngly arrive at.

7. Even from the larger angle of the well-known policy of the law that it wishes to avoid the multiplicity of proceedings the stand taken on behalf of the respondent-Insurance Company seems to be totally unsustainable. Mr. L. M. Suri, their learned counsel, very fairly conceded that the Insurance Company was certainly liable up to the sum insured for third party risk to the insured. The contract *inter se* between the insurer and the insured does not leave that in doubt. The only stand taken on behalf of the insurers was that the Tribunal, however, cannot issue an award against the insurers under section 110-B above the financial limits prescribed in section 95(2)(d) in the present case. Such a hypertechnical stance would only mean that the victim of the accident must execute the compensation awarded in his favour against the owner, or the user, of the vehicle who is so insured. The insured would then have to claim the same from his insurers who would be bound to indemnify him in this context in accordance with the policy of insurance. On this stand there will have to be at least the duplication of the proceeding for affording compensation to the victim. This would be defeating the very letter and spirit of section 96 which had expressly envisaged the avoidance of such a multiplicity, and to make the insurer directly liable to the claimant (when an award is made against the insured) as if he was a judgment-debtor in respect of the liability of the insured. On this principle also once the insured is found liable for an amount which does not exceed the sum assured, the insurer should *ipso facto* become liable therefor in satisfaction of the award in the proctedings before the Tribunal itself.

8. Equally I find substance in the stand taken by the learned counsel for the appellant on the basis of the language of section 96(1) of the Act. This in terms says that the insurer would be liable to pay the person entitled to the benefit of the decree any amount not

exceeding the sum assured payable thereunder, as if he were the judgment debtor. The maxima of liability of the insurer, therefore, is the sum assured under the policy of insurance. The particular language used is "any sum not exceeding the sum assured." I see no reason to construe and read this plain language to mean as any sum not exceeding the sum prescribed in section 95(2) of the Act. Such a construction would in my opinion be doing violence to the plain language of the provision and as shown above is otherwise not warranted on larger principles.

9. It would appear that the precedent of the final Court, though not on all fours, seems to be to cover the point substantially by way of analogy. In *Pushpabai Purshottam Udeshi and others* v. *M/s Ranjit Ginning and Pressing Co. and another* (1), one of the issues before their Lordships was with regard to the liability of the insurance company to pay compensation to the passengers carried in a private motor car. The insurance policy taken out by the insured expressly covered the risk of liability to such passengers. However, it was the admitted position that there is no statutory requirement whatsoever in section 95 to cover the risk of injury to passengers carried in a private car. Even in such a case their Lordships held the insurance company directly liable to the third party up to the extent of the sum assured under the award of the Tribunal. It thus flows from this decision that even in a case which is not within the specific and statutory requirements of the insurance policy and the limits of law prescribed under section 95(2) the insurer would still be liable up to the sum assured in satisfaction of an award made under section 110-B of the Act. Once that is so, it would *a fortiori* follow that for matters within the requirements of an insurance policy and the financial limits prescribed therein the insurer would be even more liable to satisfy the award. Merely because the minimum financial limits are prescribed in section 10(2) it cannot possibly absolve the insurer from the payment up to the sum assured for which he has specifically contracted in consideration of extra premium paid by the insured. It calls for notice that in *Pushpabai Purshottam Udeshi case* (supra) their Lordships after referring to the various sub-sections of section 95 had then observed as follows :—

> "The insurer can always take policies covering risks which are not covered by the requirements of section 95

(1) 1977 A.C.J. 343.

In this case the insurer had insured with the insurance company the risk to the passengers. By an endorsement to the policy the insurance company had insured the liability regarding the accidents to passengers in the following terms :—

'In consideration of the payment of an additional premium it is hereby understood and agreed that the company undertakes to pay, compensation on the scale provided below for bodily injury as hereinafter defined sustained by any passenger....' ".

After holding as above and construing the insurance policy, their Lordships granted an award in favour of the claimants to the extent of Rs. 27,500, out of which the liability of the insurance company was restricted to Rs. 15,000 which was the sum assured under the policy. It would thus be manifest that the aforesaid observations and the decision in a way materially aids the case of the appellants.

10. In view of the aforesaid binding enunciation of the final Court, it is unnecessary to advert individually to any earlier High Court cases which may have struck a discordant note. However, in fairness to the learned counsel for the respondent we must notice *The United India Fire & General Insurance Co. Ltd. and another* v. *Mrs. Sayar Kanwar and others* (2), wherein paragraph 75 of the report a conclusion contrary to the ratio in *Pushpabai Purshottam Udeshi's case* (supra) seems to have been arrived at. With great respect it appears to us that the view expressed in the aforesaid Rajasthan case cannot now hold the field against the later binding judgment of the Supreme Court and I would, therefore, respectfully record my dissent therefrom.

11. The view I am inclined to take receives direct support from the undermentioned observations of the Division Bench of Madhya Pradesh High Court in *Manjula Devi Bhuta and another* v. *Manjusri Raha and others* (3) :

"The result of the above discussion is that, in our judgment, the limit of liability of an insurer in respect of third party risks is prescribed in section 96(1) of the Act, so that

(a) .....

(2) 1976 A.C.J. 426.

(3) 1968 A.C.J. 1.

(b) If the sum specified in the policy as payable thereunder exceeds the sum payable under section 95(2), the maximum liability shall be the sum specified in the policy. Sub-section (4) of section 96 does not deal with the liability of the insurer but it confers right upon the insurer to recover an amount from the insured."

12. To conclude the answer to the question posed at the outset is rendered in the negative and it is held that the liability of the insurer for vehicles covered under section 95(2) would extend to the sum assured by the policy of insurance in consideration of the premiums paid.

13. The question of law having been answered in the above terms, the case would now go back for decision on merits before the learned Single Judge.

(Sd.) S. S. SANDHAWALIA,
Chief Justice.

*D. S. Tewatia, J.*—I agree.

*N.K.S.*

*Before M. M. Punchhi, J.*

THE AMRITSAR CENTRAL CO-OPERATIVE CONSUMER'S STORE LTD—*Petitioner*

*versus*

THE STATE OF PUNJAB and others—*Respondents.*

*Civil Writ Petition No.* 359 *of* 1973.

February 24, 1982.

*Industrial Disputes Act* (XIV *of* 1947)—*Sections* 10(1)(c) *and* 39—*Industrial dispute referred for adjudication by the Labour Commissioner—Notification authenticated by him in the name of the President of India—Labour Commissioner treating this notification* non est *and making another reference of the same dispute under his own signatures—Labour Commissioner—Whether could refer the same dispute again when once it stood referred.*