

(2011) 03 MAD CK 0617
In the Madras High Court
Case No : C.M.A. No. 2153 of 2004

A. Humayur Bevi and others	Vs	APPELLANT
S. Ganesan and others		RESPONDENT

Date of Decision : 04-03-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 33
Constitution of India, 1950 — Article 141, 142
Evidence Act, 1872 — Section 101, 102, 103, 104
General Clauses Act, 1897 — Section 27
Motor Vehicles Act, 1988 — Section 10, 10(2)(e), 14, 14(2), 149

Citation : (2012) ACJ 1779

Hon'ble Judges : T. Mathivanan, J

Bench : Single Bench

Advocate : M. Seyadhu Sulaiman, Mr. M. Ajmal Khan and Mr. A. Arumugam, for the Appellant; D. Sivaraman, for the Respondent

Final Decision : Allowed

Judgement

T. Mathivanan, J.—Challenging the award of Rs. 1,17,000 as well as the findings of Motor Accidents Claims Tribunal (First Additional District Judge-cum-Chief Judicial Magistrate). Madurai, exonerating the insurance company from the clutches of the liability dated 26.9.1996 and made in M.C.O.P. No. 782 of 1994, on the file of the Motor Accidents Claims Tribunal (Additional District Judge-cum-Chief Judicial Magistrate), Madurai, the claimants have approached this court by way of this appeal. The facts which are absolutely necessary for the disposal of this appeal are as under:

That on 17.12.1993 at about 4.30 p.m. deceased Asan Meeran was fatally knocked down by a lorry bearing registration No. TDA 4129 belonging to the respondent No. 1 herein, when he was proceeding on a cycle in front of Saranya Sweet Stall on Madurai-Alagarkoil Road at Tallakumam, which resulted in his death instantaneously on the spot. Hence, the claimants being the wife, minor children and mother of the deceased had filed a claim application in M.C.O.P. No.

782 of 1994, on the file of Motor Accidents Claims Tribunal (Additional District Judge-cum-Chief Judicial Magistrate), Madurai, claiming a sum of Rs. 3,00,000 towards the compensation.

2. The respondent No. 1 being the owner of the lorry did not resist the claim. On the other hand, the respondent No. 2 insurer had resisted the claim on the following grounds:

(a) The driver of the lorry bearing registration No. TDA 4129 was not having valid and effective driving licence to drive the heavy goods vehicle at the material time.

(b) Having allowed an unqualified person to drive the heavy goods vehicle, without valid endorsement on the driving licence, the respondent No. 1 being the owner of the vehicle, had violated the conditions of the insurance policy.

(c) The occurrence has taken place only due to the negligent act of the deceased himself.

3. In order to establish their respective cases, the parties to the proceedings went for trial. Including the claimant No. 1, two witnesses were examined on behalf of the claimants. During the course of their examination, Exhs. A1 to A7 were marked. On the other hand, three witnesses were examined on the side of the insurer and eight documents were marked on their part.

4. On evaluation of the evidences and other materials available on record, the Claims Tribunal had found that the driver of respondent No. 1 was not holding valid and effective driving licence to drive the heavy goods vehicle, which was involved in the occurrence at the material time. It had also found that since the respondent No. 1, being the owner of the vehicle, had violated the policy condition, respondent No. 2, being the insurer of the offending vehicle, cannot be held liable to indemnify the owner of the vehicle. Ultimately, the Claims Tribunal had exonerated the insurance company from the clutches of the liability and directed the respondent No. 1, being the owner of the vehicle, to pay a sum of Rs. 1,17,000 towards the compensation for the death of the deceased Asan Meeran. The award as well as the findings of the Claims Tribunal have been challenged in this appeal by the claimants.

5. Insofar as the present appeal is concerned, the facts need not be reiterated once again and the scope for the disposal of the appeal is also very limited, as it hinges around the liability of the insurance company. It is not disputed that the lorry bearing registration No. TDA 4129 was insured with the respondent No. 2 insurance company at the relevant period. But Mr. A. Arumugam, the learned counsel appearing for the appellants, has submitted that:

(a) Respondent No. 1 being the owner of the vehicle should have verified as to whether the driver was having valid and effective licence to drive a particular type of vehicle.

(b) The coverage under the policy in respect of the offending vehicle is not at all disputed.

(c) Since the insurance contract between the respondent Nos. 1 and 2 in respect of the lorry involved in the accident was in force at the relevant period, the insurance company had to indemnify the insured.

6. He has also added that the Motor Vehicles Act, 1988 as amended in 1994 is a beneficial legislation and the purpose of the Act, therefore, cannot be defeated by the insurance company on a technical ground. He has also maintained that even in case of violation of policy condition, the aggrieved persons being innocent should not be made to suffer and their real loss must be proportionately compensated.

7. In order to substantiate his contention, he has placed reliance upon the following decisions:

- (1) National Insurance Co. Ltd. Vs. Swaran Singh and Others,
- (2) Divisional Manager, National Insurance Co. Ltd. v. A. Usha (sic).
- (3) Oriental Insurance Co. Ltd. Vs. Mohammed Hussain and Another,
- (4) The New Indian Insurance Company Vs. Darshana Devi and Others,
- (5) United India Insurance Company Ltd. Vs. Leheru and Others,
- (6) Oriental Insurance Co. Ltd. Vs. Angad Kol and Others,
- (7) Maduraiveeran and Another Vs. Subburaj and Others,
- (8) Tashi Rigzin Vs. Stanzin Jigmed and Others,
- (9) The New India Assurance Company Limited Vs. Smt. Kalpana and Others,
- (10) Premkumari and Others Vs. Prahlad Dev and Others,
- (11) The United India Insurance Co. Ltd. Vs. S. Saravanan (Infirmary) rep. by his wife, NF.S. Lalitha and Ravi,
- (12) Manager, United India Insurance Co. Ltd. v. P. Muthumani (sic).
- (13) Branch Manager, United India Insurance Co. Ltd. Vs. Nagammal, Unnamalai and V.B. Krishnan,
- (14) Pyare Mohan Lal Vs. State of Jharkhand and Others,

8. Countering the arguments advanced on behalf of the appellants-claimants, the learned counsel appearing for respondent No. 2 insurance company has submitted that admittedly the burden of proof rests on the shoulder of the insurance company to establish the fact that the driver of the lorry was not having valid and effective driving licence and that the insurance company had taken strenuous efforts placing the respondent No. 1, the owner of the vehicle,

to produce the driving licence of his driver for the purpose of verification as to whether it was valid and effective, authorising the driver of the lorry to drive a particular type of vehicle.

9. He has also submitted that steps taken by the insurance company would be substantiated by documentary evidence ranging from Exhs. R2 to R4. It is pertinent to note here that Exhs. R2 to R4 are the copies of the notices issued to the respondent No. 1, S. Ganesan (the owner of the vehicle) and thereby, he was put under notice to produce the details of the driving licence of his driver within 10 days. But unfortunately all the envelopes containing the notices were returned with endorsement "Insufficient Address".

10. The learned counsel appearing for the respondent No. 2 insurance company has also drawn this court's attention to certificate of insurance, Exh. R1. It is revealed that the lorry bearing registration No. TDA 4129 stands in the name of the respondent No. 1, S. Ganesan, and insured with the respondent No. 2 insurance company at the relevant period. The date of commencement of the insurance is 11.8.1993 and the date of expiry of insurance is 10.8.1994. The lorry which was insured has been described as "goods carriage".

11. With regard to persons or classes of persons entitled to drive, it has been stated in the certificate of insurance that:

Any person including insured provided that a person driving holds an effective driving licence at the time of the accident and is not disqualified from holding or obtaining such a licence.

12. With regard to driving of contract carriage, goods carriage and private service vehicle, it is stated that provided also that the person holding an effective learner's licence may also drive the vehicle when not used for the transport of passenger/ goods at the time of accident and that such a person satisfies the requirement of rule 3 of Central Motor Vehicles Rules, 1989.

13. It is also specifically stated that certificate of insurance has been certified in accordance with the provisions of Chapters X and XI of the Motor Vehicles Act, 1988, i.e., the liability without fault in certain cases and the insurance of motor vehicles against third party risks respectively.

14. RW 1 is the Executive Officer of the respondent No. 2 insurance company. He would depose in his examination-in-chief that the driver was not holding proper driving licence at the time of occurrence and he was not also having valid endorsement to drive a particular type of vehicle.

15. In this connection, three notices were sent to the owner of the vehicle, calling for his explanation, but those notices were returned. According to RW 1, since the owner of the vehicle had violated the conditions of policy, the insurance company is not liable to be compensated. Exh. R6 is the attested photocopy of the driving licence of the driver of the lorry, which has been produced through RW 1.

16. From the face of the driving licence, it is revealed that at the first instance, the driver, S. Kannappan, was licensed to drive only the light motor vehicle and thereafter, on 10.2.1987, an endorsement seems to have been made authorising the driver, S. Kannappan, to drive the heavy passenger vehicle also w.e.f. 30.1.1987.

17. Exh. R5 is the investigation report in connection with the evidence of RW 1. The learned counsel appearing for the respondent No. 2, insurance company, has submitted that the insurance company had tried hard to discharge their burden to establish the fact that the driver of the vehicle was not having effective driving licence at the time of occurrence. It would go to establish through Exh. R6, driving licence, that even in spite of effective steps taken, the owner of the vehicle had not chosen to come forward to say as to whether the driver of the vehicle was having driving licence to drive the lorry at the material time.

18. He has also added that the conduct of the respondent No. 2 insurance company would go to establish that they had exercised their due diligence to discharge their burden to say that the driver was not having effective licence.

19. In support of his contention, learned counsel appearing for the respondent No. 2 insurance company has sought the assistance of section 10(2)(e) of the Motor Vehicles Act, 1988 after the amendment which came into force from 14.11.1994 and he has also made reference to section 10 of the Motor Vehicles Act prior to the amendment.

20. In order to substantiate his argument, he has also placed reliance upon the following decisions:

- (1) New Indian Assurance Co. Ltd. Vs. Roshanben Rahemansha Fakir and Another,
- (2) Branch Manager, United India Insurance Co. Ltd. Vs. Nagammal, Unnamalai and V.B. Krishnan,

21. It is important to note that accident took place on 17.12.1993. The amendment in the Motor Vehicles Act, 1988, came into effect from 14.11.1994 by Act 54 of 1994.

22. Section 10 of the Motor Vehicles Act reads as follows:

10. Form and contents of licences to drive.--(1) Every learner's licence and driving licence, except a driving licence issued u/s 18, shall be in such form and shall contain such information as may be prescribed by the Central Government.

(2) A learner's licence or, as the case may be, driving licence shall also be expressed as entitling the holder to drive a motor vehicle of one or more of the following classes, namely:

(a) motor cycle without gear;

(b) motor cycle with gear;

- (c) invalid carriage;
- (d) light motor vehicle;
- (e) transport vehicle;
- (i) road-roller;
- (j) motor vehicle of a specified description.

23. From sub-section (2) of section 10, it is made clear that it shall be expressed in driving licence entitling the holder to drive the motor vehicle of the classes specified in sub-clauses (a) to (j), particularly sub-clauses (e) to (h) state that to drive the transport vehicle, the driver must be holding the driving licence with proper endorsement.

24. It is also clear that after the amendment, the vehicles specified in clauses (e) to (f) of section 10 have been clubbed together under the description of transport vehicle. Prior to amendment, i.e., prior to 14.11.1994, vehicles have been described under clauses (e) to (h) of sub-section (2) of section 10 of the Motor Vehicles Act, 1988 in the following manner:

- (e) medium goods vehicle;
- (f) medium passenger motor vehicle;
- (g) heavy goods vehicle; and
- (h) heavy passenger motor vehicle.

25. As discussed earlier, the vehicles described under sub-clauses (e) to (h) have been brought under one description as transport vehicle in the substitution effected by section 8 of Act 54 of 1994, w.e.f. 14.11.1994. It is to be pointed out that the amendment is not having retrospective effect.

26. On coming to the instant case at hand, the lorry bearing registration No. TDA 4129 owned by the respondent No. 1 and belonging to the category of heavy goods vehicle as defined under clause (g) of sub-section (2) of section 10 prior to the amendment.

27. u/s 2(47), term "transport vehicle" has been defined as follows:

2(47) "transport vehicle" means a public service vehicle, a goods carriage, an educational institution bus or a private service vehicle.

28. As contemplated u/s 2(47) of the Act, public service vehicle, a goods carriage and educational institution bus or a private service vehicle have been brought under the description of transport vehicle.

29. Now, as it is seen from certificate of insurance, Exh. R1, the vehicle involved in the occurrence has been categorised as "goods carriage". Hence, as envisaged under sub-section (2) of section 10 of the Act, to drive the goods carriage or a

heavy goods vehicle or transport vehicle, whatever may be the case, a specific endorsement is to be made on the driving licence entitling the driver to drive a particular type of vehicle.

30. The term "heavy goods vehicle" has been defined u/s 2(16) which contemplates as follows:

heavy goods vehicle" means any goods carriage the gross vehicle weight of which, or a tractor or a road-roller the unladen weight of either of which, exceeds 12000 kilograms;

31. Chapter II of Motor Vehicles Act, 1988, deals with the licensing of drivers of motor vehicles. Section 3 deals with the necessity for driving licence:

3. Necessity for driving licence.--(1) No person shall drive a motor vehicle in any public place unless he holds an effective driving licence issued to him authorising him to drive the vehicle; and no person shall so drive a transport vehicle other than a motor cab or motor cycle hired for his own use or rented under any scheme made under subsection (2) of section 75 unless his driving licence specifically entitles him so to do.

32. Section 14 deals with the currency of licences to drive the motor vehicles. Section 14(2) contemplates that a driving licence issued or renewed under this Act shall,--

(a) in the case of a licence to drive a transport vehicle, be effective for a period of three years:

33. As adumbrated supra, the vehicle described as "goods carriage" has been brought under the ambit of transport vehicle.

34. Motor Accidents Claims Tribunal on the basis of the evidence given by RW 1 and RW 2 as well as Exhs. R2 to R4 has come to the definite conclusion that the driver of the respondent No. 1 was not having effective driving licence to drive the lorry bearing registration No. TDA 4129, which is a heavy goods vehicle. Under this circumstance, a question has also arisen before the Tribunal that in case the respondent No. 2 insurance company is not found liable to indemnify the owner of the vehicle as the driver was not having effective driving licence, then who is to be held responsible to answer the claimants?

35. To answer this question that the insurance company alone is liable to pay the compensation reliance was placed on three decisions before the Claims Tribunal:

(1) Suresh Mohan Chopra Vs. Lakhi Prabhu Dayal and others,

(2) Jogendra Singh Vs. Gulsherkhan and Others,

(3) Tarawati Tandon and Others Vs. Hari Dutt Pathak and Others,

36. After going through the above cited judgments, the Tribunal has held that those decisions were not made applicable to the facts and circumstances of the

given case on hand and ultimately, the Tribunal has come to the conclusion that on the basis of the evidence of RW1 to RW3 and Exhs. R1 to R8, it is substantiated that the insurance company is not liable to pay the compensation to the claimants.

37. In support of the conclusion the Tribunal has placed reliance upon the following decisions:

(1) M. Sammamma and Another Vs. Syed Kaja Maunuddin and Others,

(2) United India Insurance Company Ltd. Vs. Palaniammal and others,

38. In this connection, learned counsel appearing for appellants-claimants would submit that as the insurance company had claimed that it was not liable to indemnify the owner of the vehicle as he had committed breach of the insurance contract, the insurance company has to necessarily prove that breach. He has also argued that the burden rests on the insurance company to establish its contention.

39. The learned counsel appearing for the appellants-claimants has also placed reliance upon section 149(2)(a)(ii) of the Act and submitted that as contemplated u/s 149(2)(a)(ii) of the Motor Vehicles Act, in order to avoid the liability under this provision, it must be shown by the insurance company that there is a "breach" on the part of owner of vehicle.

40. In support of his arguments, he has placed reliance upon Premkumari and Others Vs. Prahlad Dev and Others, In this connection, a Division Bench of the Supreme Court of India has held in Skandia Insurance Co. Ltd. Vs. Kokilaben Chandravadan and Others, and Sohan Lal Passi Vs. P. Sesh Reddy and others, that the breach must be on the part of the insured. To hold otherwise would lead to absurd results. Just to take an example, suppose a vehicle is stolen. Whilst it is being driven by the thief there is an accident. The thief is caught and it is ascertained that he had no licence. Can the insurance company disown liability? The answer has to be an emphatic "No". To hold otherwise would be to negate the very purpose of compulsory insurance. The insured or relatives of the person killed in the accident may find that the decree obtained by them is only a paper decree as the owner is a man of straw. The owner himself would be an innocent sufferer. It is for this reason that the legislature, in its wisdom, has made insurance, at least third party insurance, compulsory. The aim and purpose being that an insurance company would be available to pay. In the businesses there is an element of risk. All persons carrying on business must take risks associated with that business. Thus it is equitable that the business which is run for making profits also bears the risk associated with it. At the same time innocent parties must not be made to suffer or lose. These provisions meet these requirements. We are thus in agreement with what is laid down in the aforementioned cases, viz., that in order to avoid liability it is not sufficient to show that the person driving at the time of accident was not duly licensed. The insurance company must establish that the breach was on the part of the insured.

41. The Apex Court has also held in the above cited decisions that:

it is clear from the above decision when the owner after verification satisfied himself that the driver has a valid licence and was driving the vehicle in question competently at the time of the accident there would be no breach of section 149(2)(a)(ii), in that event, the insurance company would not then be absolved of liability. It is also clear that even in the case that the licence was fake, the insurance company would continue to remain liable unless they prove that the owner was aware or noticed that the licence was fake and still permitted him to drive.

In case there is a breach of condition of policy by the insured, the insurer is entitled to avail the defence as enlisted u/s 149(2)(a)(ii) of the Act.

42. Section 149(2) contemplates that the insurance company shall be entitled 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 organised 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

43. In United India Insurance Company Ltd. Vs. Lehu and Others, also it is observed that in order to avoid such liability, the insurer must establish that there was a breach on the part of the insured. Merely showing that the person driving at the time of accident was not duly licensed is not sufficient.

44. Apart from this decision, the learned counsel appearing for the appellant insurance company has also relied upon the decision in National Insurance Co. Ltd. Vs. Swaran Singh and Others, In this case, it is held that:

102 (ii) Insurer is entitled to raise a defence in a claim petition filed u/s 163A or section 166 of the Motor Vehicles Act, 1988, inter alia, in terms of section 149(2) (a)(ii) of the said Act.

(iii) The breach of policy conditions, e.g., disqualification of driver or invalid driving licence of the driver, as contained in sub-section (2)(a)(ii) of section 149, have to be proved to have been committed by the insured for avoiding liability by the insurer. Mere absence, fake or invalid driving licence or disqualification of the driver for driving at the relevant time, are not in themselves defences available to the insurer against either the insured or the third parties. To avoid its liability towards insured, the insurer has to prove that the insured was guilty of negligence and failed to exercise reasonable care in the matter of fulfilling the condition of the policy regarding use of vehicles by duly licensed driver or one who was not disqualified to drive at the relevant time.

45. In all the decisions referred to above, it has been uniformly held that as contemplated u/s 149(2) the insurer is entitled to raise a defence in a claim petition, but the actual breach alleged to have been committed by the insured must be proved by the insurer. Unless the breach of the policy condition is established, the insurer cannot escape from the clutches of the liability.

46. On coming to the instant case at hand, respondent No. 2 has unambiguously proved that the insured has committed the breach of policy condition. The testimonies of RW1 and RW2 as well as the documents under Exhs. R1 to R8 itself would go to substantiate this fact.

47. As already observed *infra*, the notices ranging from Exhs. R2 to R4, which were sent to the insured by the respondent No. 2 insurance company, were returned. In Exh. R4, it is endorsed by the concerned authority of Postal Department stating that several reminders were sent, but in spite of that the addressee has not chosen to receive the letter.

48. When this being the real fact, u/s 27 of the General Clauses Act, it is deemed that notices were duly served on the respondent No. 1, the owner of the vehicle. Besides this, as contemplated under Chapter VII of the Evidence Act, in accordance with the provisions of sections 101, 102, 103 and 104, the respondent No. 2 insurance company has discharged their burden to prove that the insured has committed breach of condition of policy.

49. Insofar as the findings of the Tribunal exonerating the respondent No. 2 insurance company from the clutches of liability is concerned, it does not require any interference.

50. Secondly, the monthly income of the deceased determined by the Tribunal is very low, when comparing with the prevailing price rates.

51. Investigation Report, Exh. R5, says that appellant-claimant No. 1, A. Humayur Bevi, and her son, aged about 15 years, are doing ice cream manufacturing work along with his uncle and supplying ice cream in the Medical College campus as well as to the Ladies Hostel and they are also supplying to the house surgeons in the Government Hospital. They are living only in the rental house, and there is no other income to the family and that they are continuing

the business of the deceased. This is the real condition prevailing in the family of the victim.

52. Considering the evidence available and produced on behalf of the appellants-claimants, this court is of the view that a sum of Rs. 3,000 can be taken into consideration towards the monthly income of the deceased. Accordingly, the income of the deceased would be Rs. 36,000 per annum. After deducting 1/3rd towards his personal and living expenses, the 2/3rd remainder would be Rs. 24,000.

53. It is apparent on the face of the record that the deceased was aged about 45 years at the time of the accident. Hence, as per Second Schedule to section 163A of the Act, the proper multiplier would be 15. On application of this multiplier system, the loss of income of the family would be Rs. 3,60,000. Since the age of appellant-claimant No. 1 was 35 years at the time of the accident, she is entitled to get a sum of Rs. 15,000 towards loss of consortium. Apart from this, the claimant Nos. 2 to 4 are each entitled to get a sum of Rs. 10,000 towards the loss of love and affection and another sum of Rs. 2,000 towards funeral expenses. In total, the claimants are entitled to Rs. 4,07,000.

54. It has been found by the Tribunal that the insurance company is not liable to pay the compensation. Under this circumstance, a question arises as to whether the insurance company can be compelled to pay this award amount to the appellants-claimants and to recover it from the insured at the later stage.

55. The learned counsel appearing for the respondents has contended that the principle of "pay and recover" cannot be applied in this case as the Hon"ble Apex Court in the National Insurance Co. Ltd. Vs. Parvathneni and Another, has raised this question as to whether the insurance company can be compelled by an order in exercise of extraordinary jurisdiction under Article 142 of the Constitution of India to pay and recover.

56. He has also urged before this court that the Hon"ble Supreme Court has held as to whether Article 142 of the Constitution of India permits the court to create a liability? Ultimately, the matter was directed to be placed before his Lordship the Hon"ble Chief Justice for constituting a larger Bench to decide the issue. In this case, the learned counsel for the respondent No. 2 has contended that unless and until the issue is settled by larger Bench of Hon"ble Supreme Court, this question of pay and recover will not arise.

57. It is pertinent to note here that Article 142 of the Constitution of India confers enormous powers on the Hon"ble Supreme Court to exercise its jurisdiction to pass any such decree or make such order as is necessary for complete justice.

58. It may be relevant to extract Article 142 of the Constitution of India which reads as follows:

142. Enforcement of decrees and orders of Supreme Court and orders as to

discovery, etc.--(1) The Supreme Court in the exercise of its jurisdiction may pass such decree or make such order as is necessary for doing complete justice in any cause or matter pending before it, and any decree so passed or order so made shall be enforceable throughout the territory of India in such manner as may be prescribed by or under any law made by Parliament and, until provision in that behalf is so made, in such manner as the President may by order prescribe.

(2) Subject to the provisions of any law made in this behalf by Parliament, the Supreme Court shall, as respects the whole of the territory of India, have all and every power to make any order for the purpose of securing the attendance of any person, the discovery or production of any documents, or the investigation or punishment of any contempt of itself.

59. Similarly, it may also be relevant to refer to Article 141 of the Constitution of India, which contemplates that this law declared by Apex Court shall be binding on all courts within the territory of India. However, the Hon''ble Supreme Court has laid down the following categories of decisions of the Supreme Court having no binding force:

(a) *Obiter dicta*, i.e., statements which are not part of the *ratio decidendi*.

(b) A decision *per incuriam*, i.e., a decision given in ignorance of the terms of a statute or rule having the force of a statute.

(c) A decision passed *sub-silentio*, i.e., without any argument or debate on the relevant question.

(d) An order made with the consent of the parties, and with the reservation that it should not be treated as a precedent.

60. From Article 142, it can easily be understood that for the benefit of the nation as well as the States, the Supreme Court can exercise its jurisdiction to make such order as is necessary for complete justice in any cause.

61. On coming to Article 141 of the Constitution of India, the proviso (d) clearly demarcated that an order made with the consent of the parties, and with the reservation shall not be treated as a precedent. On the basis of proviso (d) of Article 141 of the Constitution of India, a larger Bench of the Hon''ble Supreme Court of India headed by his Lordship Hon''ble Mr. Justice V.N. Khare, Chief Justice of India as he then was, held in *National Insurance Co. Ltd. Vs. Swaran Singh and Others*, that:

(100) Although, as noticed hereinbefore, there are certain special leave petitions wherein the persons having (*sic* driving) the vehicles at the time when the accidents took place did not hold any licence at all, in the facts and circumstances of the case, we do not intend to set aside the said awards. Such awards may also be satisfied by the petitioners herein subject to their right to recover the same from the owners of the vehicles in the manner laid down

therein. But this order may not be considered as a precedent.

62. As the Supreme Court in *National Insurance Co. Ltd. Vs. Swaran Singh and Others*, has held that this order may not be considered as a precedent, an issue arises as to whether the principle of stare decisis can be applied in the instant case on hand. As already discussed, appellants-claimants are leading their lives in a poor and pathetic situation as revealed from Exh. R5. Having been found that the insured alone is liable to pay the compensation, another question also arises as to whether the owner of the vehicle would be in a position to satisfy the award. If the owner of the vehicle is not in a position to comply with the direction of this court, then what would be the effect of the award? Will it remain merely on paper? Under this circumstance, this court has also thought it fit to seek the assistance of the case in *Oriental Insurance Co. Ltd. Vs. Angad Kol and Others*, . In this case, a Division Bench of the Supreme Court headed by his Lordship Hon"ble Mr. Justice S.B. Sinha had held that the owner committed breach of condition of insurance policy and hence, the insurer is not liable to pay the compensation. However, the insurer was directed to pay the award amount to the claimants and recover the same from the owner of the vehicle.

63. Again, it is necessitated for this court to refer the case in *National Insurance Co. Ltd. Vs. Swaran Singh and Others*, . In this decision in para 102 under the caption "Summary of Findings", the Apex Court has laid down the guidelines as to treat the amount, which would be recovered by the insurance company, as revenue recovery when it is directed to be paid to the claimants and recover it later from the owner of the vehicle.

(x) Where on adjudication of the claim under the Act the Tribunal arrives at a conclusion that the insurer has satisfactorily proved its defence in accordance with the provisions of section 149(2) read with sub-section (7), as interpreted by this court above, the Tribunal can direct that the insurer is liable to be reimbursed by the insured for the compensation and other amounts which it has been compelled to pay to the third party under the award of the Tribunal. Such determination of the claim by the Tribunal will be enforceable and the money found due to the insurer from the insured will be recoverable on a certificate issued by the Tribunal to the Collector in the same manner u/s 174 of the Act as arrears of land revenue. The certificate will be issued for the recovery as arrears of land revenue only if, as required by sub-section (3) of section 168 of the Act, the insured fails to deposit the amount awarded in favour of the insurer within thirty days from the date of announcement of the award by the Tribunal.

64. As contemplated u/s 173 of the Motor Vehicles Act and Order 41, rule 33 of the Code of Civil Procedure, this court being the appellate court can exercise its power and extend its appellate jurisdiction to do fair justice to the aggrieved parties. Keeping in view these facts, this court directs the respondent No. 2 to pay the enhanced amount of Rs. 4,07,000 to the appellants-claimants with interest at the rate of 7.5 per cent per annum from the date of claim petition till the date of realization within a period of two months from the date of receipt of a

copy of this order, less the amount already deposited. Accordingly, this civil miscellaneous appeal is allowed. No costs.

Appeal allowed.