
(2014) 12 BOM CK 0038
In the Bombay High Court
Case No : First Appeal No. 27 of 2009

Bajaj Allianz General Insurance Co. Ltd.	APPELLANT
Vs	
Ashwita Arvind Poll	RESPONDENT

Date of Decision : 16-12-2014

Acts Referred:

Motor Vehicles Act, 1988 — Section 11 140 149 149(2) 149(2)(a)(ii)

Citation : (2015) 2 BomCR 359

Hon'ble Judges : U.V. Bakre, J

Bench : Single Bench

Advocate : Emerico Afonso, Advocate for the Appellant; Sebastian Vales and S.M. Singbal, Advocate for the Respondent

Judgement

U.V. Bakre, J.—Heard learned Counsel for the parties.

2. This appeal is directed against the judgment and award dated 26.09.2008, passed by the learned Presiding Officer of the Motor Accident Claims Tribunal at Mapusa (M.A.C.T., for short), in Claim Petition No. 9/2006.

3. The appellant was the respondent no. 3-insurance company; the respondents no. 1, 2 and 3 were the claimants and respondents no. 4, 5 were respondents no. 1 and 2 who were respectively the driver and owner of the offending vehicle. Parties shall hereinafter be referred to as per their status in the said claim petition.

4. The claimants had filed the said claim petition under Section 166 of the Motor Vehicles Act, 1988 (M.V. Act, for short) for grant of total compensation of Rs. 18,00,000/- on account of death of the husband of the claimant no. 1 and the father of the claimants no. 2 and 3.

5. Case of the claimants, in short, was as follows:-

The husband of claimant no. 1 and father of claimants no. 2 and 3, namely, Arvind Poll, aged 47 years, was proceeding from Parra to Mapusa by riding his

scooter bearing no. GA-01-L-8478 on 12.09.2005 at around 12:15 hours. When he reached Canca, next to Bodgeshwar temple, respondent no. 1 while riding Honda Dio scooter bearing no. GA-03-B-9037 suddenly took a turn to proceed to Canca and dashed to the scooter of said Arvind due to which he sustained grievous injuries which resulted into his death on 13.09.2005. The deceased was working as lineman and was earning Rs. 7,537/- per month. The claimants were totally dependent on the income of the deceased.

6. The respondents no. 1 and 2 filed their written statement denying the case of the claimants. They stated that their liability, if any, was covered by the insurance policy issued by respondent no. 3. They stated that the accident was caused due to the fault of the deceased himself who rode the scooter in fast speed and in rash and negligent manner. They stated that the accident had taken place at Canca, but the spot of the accident was much after the Bodgeshwar temple.

7. The respondent no. 3, in its written statement, admitted that the vehicle of the respondent no. 2 was covered under the insurance policy issued by it at the time of the accident, but claimed that there was breach of condition since, respondent no. 1 was not duly licensed and was riding the vehicle in violation of Rule 3 of Central Motor Vehicle Rules. The respondent no. 1 was not accompanied by any duly licensed person at the time of the accident. The respondent no. 3 also claimed that the accident had occurred due to the negligence of the deceased himself.

8. Accordingly, issues were framed. The claimants examined claimant no. 1, Mrs. Ashwita Poll as AW-1; Shri Ramesh Kalangutkar, Head Constable attached to Mapusa police station as AW-2; Shri Nelson Iype, Executive Engineer, Electricity Department, Division XIII as AW-3; and Shri V.P. Singh Akela, Assistant Engineer, Electricity Department, Kadamba Plateau, as AW-4. The respondent no. 1 examined herself as RW-1. The respondent no. 3 examined its Technical Manager, Shri Shripad Nigudkar, as RW-2.

9. Upon consideration of the entire evidence on record, the learned M.A.C.T. held that the accident had occurred due to the negligence of the respondent no. 1 in riding the vehicle bearing no. GA-03-B-9037. The learned M.A.C.T. further held that the claimants were entitled to receive, jointly and severally, from respondents no. 2 and 3 an amount of Rs. 5,35,000/- together with interest at the rate of 6% per annum from the date of filing of the petition till realisation. The amount awarded under Section 140 of the M.V. Act was held to be inclusive of the amount awarded. The claimants and respondents no. 1 and 2 have not challenged the above Judgment and award. However, respondent no. 3-insurance company has challenged the same.

10. The main ground for challenge is that there was a breach of policy condition and therefore, the respondent no. 3 was not liable to indemnify the respondent no. 2 for any liability and to pay compensation to the claimants.

11. Mr. Afonso, learned counsel for the respondent no. 3, pointed out that the daughter of the insurer was riding the said scooter and she had learner's license. He submitted that she was riding the scooter without any pillion rider/instructor having valid license. Learned Counsel read out Section 3 of the M.V. Act and Rule 3 of the Central Motor Vehicles Rules, 1989 (Rules, for short). He also read out the clause in the insurance policy produced as Exhibit 53. He urged that the learner's license is not for general riding, but for learning with an instructor having effective driving license sitting behind in such a position to control or stop the vehicle and that there had to be painted in the front and the rear of the vehicle on white background the letter "L" of specific size, in red colour. According to the learned Counsel, the learner's licence would be included in effective driving licence only if the conditions mentioned in Rule 3 are fulfilled. He submitted that all above requirements under the law were not complied with, in the present case. He pointed out that neither in the written statement of respondents no. 1 and 2 nor in the deposition of RW1, it was stated that there was any pillion rider with RW1 on the said scooter. He submitted that RW2 had stated about said violations of law in his affidavit-in-evidence and had produced the insurance policy showing that said violation amounted to breach of policy. He, therefore, urged that the impugned judgment and award insofar as it directs respondent no. 3 to pay the compensation be quashed and set aside. In the alternative, the learned Counsel submitted that respondent no. 3 be directed to pay the compensation to the claimants and recover the same from the owner of the vehicle. He relied upon the following judgments:

- (i) Judgment dated 28/03/2008 of Delhi High Court in the case of "Jeet Singh Vs. National Insurance Co. Ltd. and Ors.", (MAC. APP. 30/2006);
- (ii) Sri Pramod Kumar Agrawal and Another Vs. Smt. Mushtari Begum and Others, ;
- (iii) Malla Prakasarao Vs. Malla Janaki and Others, ;
- (iv) Ishwar Chandra and Others Vs. The Oriental Insurance Co. Ltd. and Others, ; and
- (v) Ram Babu Tiwari Vs. United Indian Insurance Co. Ltd. and Others, .

12. On the other hand, Mr. Singbal, learned Counsel for the respondents no. 1 and 2 submitted that the respondent no. 1 was riding the scooter without gear and had a valid learner's license and besides the above, there was a pillion rider with valid license. He urged that the requirement of the law is that the insurer must willfully commit the breach of condition of the policy and then only the insurance company could claim to be not liable to indemnify the insurer. He further urged that the respondent no. 1 was knowing to ride the scooter and the alleged breach of the condition of driving license was not fundamental to the cause of the accident. Learned Counsel urged that the M.A.C.T. has considered all the aspects and no interference with the impugned Judgment and Award is called for. He relied upon the following judgments:

- (i) National Insurance Co. Ltd. Vs. Swaran Singh and Others, ;
- (ii) Pepsu Road Transport Corporation Vs. National Insurance Company, ;
- (iii) Raghunath Eknath Hivale Vs. Shardabai Karbhari Kale and Others, ; and
- (iv) "Prashant s/o Vinayak @ Vitthal and Another Vs. Hariprakashsingh s/o Badamsingh and Others", in First Appeal No. 303/1998.

13. Mr. Vales, learned Counsel for the claimants, adopted the arguments of Mr. Singbal, learned Counsel for the respondents no. 1 and 2.

14. I have gone through the original record and proceedings. I have considered the arguments advanced by the learned Counsel for the parties and also the judgments relied upon by them.

15. AW-1, the claimant no. 1 was not an eye witness to the accident. The claimants have not examined any eye witness. However, the uncontroverted panchanama of the scene of accident and sketch are on record, as Exhibit 43, being produced by the Investigating Officer(AW-2) himself. AW-2, in detail, deposed to the position of the vehicles on the road; damages to the vehicles; skid marks of the Chetak scooter on the road; blood streams, etc. The Chetak scooter is seen at the extreme left side of the road if one proceeds from Parra to Mapusa, whereas Dio scooter bearing no. GA-03-B-9037 (offending vehicle) is seen on the side road going to Canca village. AW2 has specifically stated that as per his investigation, the accident was caused due to rash and negligent driving of Dio scooter by the respondent no. 1 who suddenly took right turn to go towards Canca village and in that process caused the accident. From the position of the vehicles, as shown on the sketch, it can be said that the respondent no. 1 while riding the said scooter suddenly took a turn to proceed to Canca due to which the said Dio scooter dashed the front right side of the Chetak scooter. The panchanama and the sketch speak for themselves. RW-1, the respondent no. 1, herself, stated that she had to take diversion to the route which was to her right and was leading to Canca village. RW-1 was travelling from Canca to Mapusa whereas, deceased was proceeding from Parra to Mapusa. It can thus be said that without taking note of the Chetak scooter of the deceased, respondent no. 1 took the turn towards right and gave dash to the scooter of the deceased.

16. In the circumstances above, the learned M.A.C.T. has rightly held that the accident occurred due to the fault of the respondent no. 1. There is no dispute that the deceased sustained serious injuries in the said accident and expired on the next day as a result of the said injuries.

17. The deceased was a Government servant, working as lineman/wireman in the Electricity Department. The Executive Engineer, Division XIII, Shri Nelson Iype (AW-3) has issued a certificate stating that the deceased was working in the Electricity Department w.e.f. 04.10.2004 and that his date of birth is 08.11.1958 as per the records in the service book. This certificate is at Exhibit 40. The salary certificate is a part of Exhibit-40, and the same was issued by AW-4, Shri V.P.

Singh Akela, the Assistant Engineer, Electricity Department, Kadamba Plateau, which reveals that gross income of the deceased was Rs. 7,537/- per month and the net salary was Rs. 4,947/- per month. The Secondary School Passing Certificate of the deceased, produced by AW-1 at Exhibit 37 shows that the deceased was born on 08/11/1958. The learned M.A.C.T. has presumed that the net salary of the deceased was Rs. 5,000/- per month, which comes to Rs. 60,000/- per year. After deducting 1/3rd towards personal expenses of the deceased, the income was brought to Rs. 40,000/- per annum and since the age of the deceased was 47 years at the time of the accident, multiplier of 13 was used and the loss of dependency was worked out at Rs. 40,000 per annum. An amount of Rs. 10,000/- has been awarded to the claimant no. 1 towards loss of companionship and Rs. 5,000/- towards funeral charges. Thus, the total compensation has been calculated at Rs. 5,35,000/-. The same as been directed to be paid alongwith interest at the rate of 6% from the date of filing the petition till realisation. In my considered view, the compensation worked out by the learned M.A.C.T. is also just and reasonable and no interference with the same is called for.

18. The only point for my determination is whether respondent no. 3 was not liable to pay the said compensation.

19. It is true that the respondents no. 1 and 2 did not state in their written statement that there was a pillion rider sitting behind RW-1, on the scooter. But the Respondent no. 3, on its own, through its advocate, brought on record the actual position by asking RW-1, in her Cross-examination whether any body was on the pillion seat of her vehicle. RW-1 answered that her cousin by name Suraj Purohit was on the pillion seat of her scooter. No suggestion was put to RW-1 that there was no pillion rider sitting behind respondent no. 1 at the time of the accident. It is pertinent to note that AW-2, the Head Constable, Ramesh Kalangutkar, who investigated the accident case deposed that respondent no. 1 was holding the learner's license and that he had registered offence under Section 3 of the M.V. Act and there was one pillion rider on the said scooter, though he had not verified whether he was having a permanent license or not. RW-2, Shri Shripad Nigudkar, the Assistant Technical Manager of the respondent no. 3 deposed that the respondent no. 1 was not duly licensed to ride the said Dio scooter bearing no. GA-03-B-9037 and she was not accompanied by an instructor holding an effective driving licence and therefore, was riding the same in violation of Rule 3 of the Central Motor Vehicle Rules. However, RW-2 was not an eye witness to the accident to state that there was no instructor. In such circumstances, it cannot be said that certainly there was no pillion rider/instructor with valid license sitting with the respondent no. 1 on the said Dio scooter. There is absolutely no evidence on record to show that letter "L" of specific size painted with red colour was not there on the front and rear side of the scooter.

20. In the Insurance Policy, which is at Exhibit 53, there is a clause saying:

"Driver: Any person including the 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. Provided also that the person holding an effective learner's licence may also drive the vehicle and that such a person satisfies the requirements of Rule 3 of the Central Motor Vehicles Rules, 1989."

21. In paragraph 110 of the case of "Swaran Singh" (supra), the Hon"ble Court has observed thus:

"110. The summary of our findings to the various issues as raised in these petitions is as follows:

(i) Chapter XI of the Motor Vehicles Act, 1988 providing compulsory insurance of vehicles against third-party risks is a social welfare legislation to extend relief by compensation to victims of accidents caused by use of motor vehicles. The provisions of compulsory insurance coverage of all vehicles are with this paramount object and the provisions of the Act have to be so interpreted as to effectuate the said object.

(ii) An insurer is entitled to raise a defence in a claim petition filed under Section 163-A 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 condition e.g. disqualification of the driver or invalid driving licence of the driver, as contained in sub-section 2(a)(ii) of Section 149, has 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 the 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 a duly licensed driver or one who was not disqualified to drive at the relevant time.

(iv) Insurance companies, however, with a view to avoid their liability must not only establish the available defence(s) raised in the said proceedings but must also establish "breach" on the part of the owner of the vehicle: the burden of proof wherefor would be on them.

(v) The court cannot lay down any criteria as to how the said burden would be discharged, inasmuch as the same would depend upon the facts and circumstances of each case.

(vi) Even where the insurer is able to prove breach on the part of the insured concerning the policy condition regarding holding of a valid licence by the driver or his disqualification to drive during the relevant period, the insurer would not be allowed to avoid its liability towards the insured unless the said breach or breaches of the condition of driving licence is/are so fundamental as are found to have contributed to the cause of the accident. The Tribunals in interpreting the

policy conditions would apply "the rule of main purpose" and the concept of "fundamental breach" to allow defences available to the insurer under Section 149(2) of the Act.

(vii) The question, as to whether the owner has taken reasonable care to find out as to whether the driving licence produced by the driver (a fake one or otherwise), does not fulfill the requirement of law or not will have to be determined in each case.

(viii) If a vehicle at the time of accident was driven by a person having a learner's licence, the insurance companies would be liable to satisfy the decree.

(ix) The Claims Tribunal constituted under Section 165 read with Section 168 is empowered to adjudicate all claims in respect of the accidents involving death or of bodily injury or damage to property of third party arising in use of motor vehicle. The said power of the Tribunal is not restricted to decide the claims inter se between claimant or claimants on one side and insured, insurer and driver on the other. In the course of adjudicating the claim for compensation and to decide the availability of defence or defences to the insurer, the Tribunal has necessarily the power and jurisdiction to decide disputes inter se between the insurer and the insured. The decision rendered on the claims and disputes inter se between the insurer and insured in the course of adjudication of claim for compensation by the claimants and the award made thereon is enforceable and executable in the same manner as provided in Section 174 of the Act for enforcement and execution of the award in favour of the claimants.

(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 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 under Section 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 subsection (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.

(xi) The provisions contained in sub-section (4) with the proviso thereunder and sub-section (5) which are intended to cover specified amount paid under the contract of insurance on behalf of the insured can be taken recourse to by the Tribunal and be extended to claims and defences of the insurer against the insured by relegating them to the remedy before regular court in cases where on given facts and circumstances adjudication of their claims inter se might delay the adjudication of the claims of the victims."

22. In the case of "Pepsu Road Transport Corporation" (supra), the Hon'ble Supreme Court relying upon its judgments in the cases of "Swaran Singh" (supra) and many other cases has held as follows:

"As far as the owner of the vehicle is concerned, when he hires a driver, he has to check whether the driver has a valid driving licence. Thereafter he has to satisfy himself as to the competence of the driver. If satisfied in that regard also, it can be said that the owner had taken reasonable care in employing a person who is qualified and competent to drive the vehicle. The owner cannot be expected to go beyond that, to the extent of verifying the genuineness of the driving licence with the licensing authority before hiring the services of the driver. However, the situation would be different if at the time of insurance of the vehicle or thereafter the insurance company requires the owner of the vehicle to have the licence duly verified from the licensing authority or if the attention of the owner of the vehicle is otherwise invited to the allegation that the licence issued to the driver employed by him is a fake one and yet the owner does not take appropriate action for verification of the matter regarding the genuineness of the licence from the licensing authority. If despite such information with the owner that the licence possessed by his driver is fake, no action is taken by the insured for appropriate verification, then the insured will be at fault and, in such circumstances, the insurance company is not liable for the compensation."

23. In the case of "Prashant s/o Vinayak @ Vitthal Deshmukh" (supra), this Court has observed thus:

"In view of the above observations and in view of the fact that the insurer in the present case did not discharge the onus to establish that the insured was guilty of willfully violating policy, the insurer was wrongly exonerated by the Tribunal from the vicarious liability to compensate claimants in the present case, although insurer-Company could not legitimately claim exoneration from liability to pay compensation. It is well-settled principle that a person who alleges breach must prove breach of policy by cogent evidence. The insurer could have summoned driver to examine him or responsible officer from the RTO (Road Transport Office) and record from the Transport Authority could have been got produced to prove by positive evidence that the driver had no valid or effective driving licence at the time of accident and owner of the offending motor vehicle had entrusted the motor vehicle to the driver who was disqualified for driving at the relevant time of the incident/accident. Insurer may escape liability only if he can make out a case of willful infringement or violation of policy by insured, by cogent evidence, if it is found that insured is guilty of negligence for want of reasonable care to fulfill policy conditions. In the result, it must be concluded that in the present case, the Insurer-company for want of any evidence led by it, is liable to compensate the claimants jointly and severally along with the insured. Even otherwise, the insurer is liable to pay first and may then recover the amount paid as compensation from the owner/driver of the offending motor-vehicle as the case may be, in view of settled legal principle stated in the case of "National

Insurance Co. Vs. Swaran Singh" (supra)."

24. From the above, it is clear beyond doubt that merely because the driver of the offending vehicle had no licence or had a fake licence or a learner's licence, that, in itself, would not exonerate the insurance company from indemnifying the owner of the offending vehicle. The insurance company, in order to avoid liability, will have to establish 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 a duly licensed driver or one who was not disqualified to drive at the relevant time. The insurer would not be allowed to avoid its liability towards the insured unless the said breach or breaches of the condition of driving licence is/are so fundamental as are found to have contributed to the cause of the accident. The Tribunals in interpreting the policy conditions would apply "the rule of main purpose" and the concept of "fundamental breach" to allow defences available to the insurer under Section 149(2) of the Act. Insurer may escape liability only if it can make out a case of willful infringement or violation of policy by insured, by cogent evidence, if it is found that insured is guilty of negligence for want of reasonable care to fulfill policy conditions.

25. In the case of "Jeet Singh" (supra), the driver of the offending vehicle, which was a car, was himself the owner of that car and had a learner's licence and it was not proved that he was accompanied by any person known as Daljeet Singh, a licenced driver. Though it was proved that some person was sitting on the front seat of the car, however, the identity of the said person was not proved and even if Daljeet Singh was assumed to be present, however, there was no evidence to prove that he was an instructor, expert in driving a vehicle. No driving licence of Daljeet Singh was produced on record. It was held by the learned Single Judge of the Delhi High Court there was apparent violation of Rule 3(b) of the Rules and therefore the Judgments in the case of "Swaran Singh" and in other cases cited by the appellant were not applicable. It was held that there was clear breach of the conditions of the learner's licence. Since in the above case, the driver and the owner (insured) of the offending vehicle was the same, the question of making out a case of willful infringement or violation of policy by insured, did not arise.

26. In the case of "Malla Prakasarao" (supra), relied upon by the learned Counsel for the respondent no. 3, the driving licence of the driver had expired and the driver had not applied for renewal within 30 days as required by Section 11 of the M.V. Act. There was a specific condition in the insurance policy that the Insurance Company has no liability to pay any compensation where an accident takes place by a vehicle, driven by a driver without a driving licence. The driver of the vehicle did not have driving licence when the accident took place. In the circumstances above, the Hon'ble Supreme Court held that Insurance Company was not liable to pay the compensation. The Judgment in the case supra was delivered on 6th August 2002, i.e. much prior to the Judgment in the case of

"Swaran Singh" (supra). In the case of "Swaran Singh" (supra), the Hon"ble Supreme Court has considered the Judgment in the case of "Malla Prasarao" (supra).

27. In the case of "Pramod Kumar Agrawal" (supra), it was found that the vehicle was a goods vehicle and the owner had not insured the vehicle for carrying passengers in them. The Hon"ble Supreme Court held that insurer was not liable to pay the compensation and that it was the owner who was so liable. However, the insurer was directed to pay the quantum of compensation and recover the same from the insured by initiating proceeding before the executing Court.

28. In the case of "Ishwar Chandra" (supra), the motor accident had occurred after deemed 30 days grace period provided for under proviso to Section 15(1) of the Act, after expiry of licence but before renewal application had been filed. Considering the Judgment in the case of "Swaran Singh" (supra), and the Judgment in the case of National Insurance Co. Ltd. Vs. Kusum Rai and Others, , the two Judge Bench of the Hon"ble Supreme Court held that the owner did not have any right to be indemnified by the insurer. In the case of "Ram Babu Tiwari" (supra), also the driver did not hold a driving licence as on the date of accident. Earlier, the driver had licence only for one year but had failed and neglected to renew the licence for about three years. The effect of not having licence for such a long period was one of the questions. The Judgments in the cases of "Swaran Singh"; "Kusum Rai" and "Ishwar Chandra" (supra) were referred to and it was held by the Apex Court that there was no infirmity in the Judgment which held that the Insurance Company was not liable to indemnify the insured. The Judgments in the cases of "Pramod Kumar Agrawal"; "Ishwar Chandra" and "Ram Babu Tiwari" (supra) were all delivered by Two-Judge Bench of the Hon"ble Supreme Court whereas the Judgment in the case of "Swaran Singh" (supra), was delivered by Three-Judge Bench of the Apex Court.

29. The present case is not such where the respondent no. 1 did not have license at all. The respondent no. 1 had a valid learner's license and evidence on record also showed that there was a pillion rider sitting behind the respondent no. 1. The respondent no. 3 has not proved that there was no letter "L" of specific size, in red colour, on the front and rear side of the offending vehicle or that the pillion rider who was on the offending vehicle was not an instructor, etc. What had to be established was that there had been breach on the part of the insured i.e. willful violation of the conditions of the policy. In view of the principles laid down by the Hon"ble Supreme Court, in the case of "Swaran Singh" (supra), since there is no material on record to show that the breach of condition of policy was immediate cause of the accident and that there was willful violation of the law and the policy conditions by the respondent no. 2, the question of exonerating respondent no. 3 from payment of compensation does not arise. The Hon"ble Supreme court in the Case of "Swaran Singh" (supra), has observed that the beneficial statute must receive liberal interpretation and that Insurance Company cannot shake off its liability to pay compensation only by saying that at the relevant point of time,

the vehicle was driven by a person having no licence. The law as laid down by the Apex Court in the case of "Swaran Singh" (supra) is binding. In any case, the respondent no. 3 can and shall be entitled to recover the amount from the owner i.e. respondent no. 2, if it is entitled to do so, as observed by the Apex Court.

30. In view of the above and with the observation as above, I find that there is no merit in the appeal. Hence, the appeal is dismissed.