

(2008) 03 BOM CK 0098

In the Bombay High Court

Case No : First Appeal No. 2791 of 2007

Bajaj Allianz General Insurance Co. Ltd.

APPELLANT

Vs

Vaishali Shetty and Others

RESPONDENT

Date of Decision : 31-03-2008

Acts Referred:

Maharashtra Motor Vehicles Rules, 1989 — Rule 140, 254, 255, 258, 259

Motor Vehicles Act, 1939 — Section 110A, 92A, 92B, 92B(2)

Motor Vehicles Act, 1988 — Section 140, 141, 144, 149(1), 149(2)

Citation : (2008) ACJ 2642

Hon'ble Judges : Abhay S. Oka, J

Bench : Single Bench

Advocate : Amol A. Gatne, for the Appellant; R.G. Ketkar and S.M. Vidyarathi, for the Respondent

Final Decision : Dismissed

Judgement

Abhay S. Oka, J.—On 12.12.2007 this Court issued a notice for final disposal at admission stage. Submissions of the learned Counsel appearing for the parties were heard on 14.2.2008 and the judgment was reserved. Today, the appeal is kept for dictation of the judgment.

2. The present first appeal raises interesting questions regarding the scope of adjudication in a claim petition filed u/s 140 of the Motor Vehicles Act, 1988. With a view to appreciate the submissions made by the learned Counsel for the parties, it will be necessary to refer to the facts of the case in brief.

3. The respondent Nos. 1 to 3 are the claimants in a petition filed u/s 140 of the Motor Vehicles Act, 1988 (hereinafter referred to as "the said Act of 1988"). The claim for compensation is on account of death of one Suresh Shetty in an accident involving buses having registration Nos. MH 12-CH 4583 and MH 12-AR 8985. There is also a claim petition filed by the claimants u/s 166 of the said Act of 1988.

4. It is the case of the claimants that on 7.12.2006, the deceased was travelling by a bus bearing registration No. MH 12-CH 4583 owned by the respondent No. 4 herein which was insured with the appellant at the relevant time. Though the bus was owned by the respondent No. 4, it was being run on hire by the respondent No. 5, i.e., the Pune Municipal Transport. The said bus in which the deceased was travelling gave a dash to the other bus bearing registration No. MH 12-AR 8985 involved in the accident which was stationary. The case is that as a result of injuries sustained in the accident Suresh died.

5. The claim petition was defended by the respondent No. 5 by filing a reply. The case made out by the respondent No. 5 is that the bus was owned by the respondent No. 4 and was insured with the present appellant. It is contended that the respondent No. 5 had taken bus on hire from the respondent No. 4. The contention raised by the appellant insurer in the reply is that though offending bus was being used by the Pune Municipal Transport, there was no valid permit granted by the Regional Transport Office on the date of accident and, therefore, in view of the breach of terms and conditions of policy, appellant was not liable to satisfy the award which may be made against the owner.

6. The learned Member of the Tribunal allowed the claim petition u/s 140 of the said Act of 1988 and held the appellant, respondent Nos. 4 and 5 jointly and severally liable to pay compensation of Rs. 50,000 with interest.

7. While passing the impugned judgment and award, learned Member of the Tribunal referred to the copies of F.I.R., spot panchnama, inquest panchnama, the insurance cover note, post-mortem notes, etc. The involvement of the bus concerned was not disputed. The learned Member of the Tribunal noted the contention raised by the advocate for the appellant on the basis of the letter of Regional Transport Office, Pune dated 19.6.2007, that the bus was not having a requisite permit. The learned Member of the Tribunal observed that the controversy, whether there was a permit for plying the vehicle can be decided only after evidence is adduced by the parties. The learned Member observed that while deciding a petition u/s 140 of the Motor Vehicles Act, 1988, it is not necessary to establish any negligence or fault on the part of the owner and driver of the vehicle. The learned Member of the Tribunal held that admittedly the bus was owned by respondent No. 4 which was given on hire to respondent No. 5 and that the same was insured with the appellant. Therefore, a joint and several award in the sum of Rs. 50,000 was passed by the Member of the Tribunal against the appellant, respondent Nos. 4 and 5.

8. At this stage it must be stated that respondent No. 5 filed an affidavit in reply to the civil application for stay and has placed on record along with the reply a copy of a certificate of insurance which is placed on record of the Tribunal. Moreover, along with the affidavit, an extract of the permit register of the Regional Transport Office has been produced to show that there was a valid permit granted in respect of the bus from 17.12.2004 to 16.12.2009. The said register shows that the permit was transferred on 15.11.2007 in the name of

respondent No. 5. A copy of letter dated 30.5.2007 sent by the Regional Transport Office to the General Manager of the respondent No. 5 is placed on record. Lastly, a communication dated 29.1.2008 issued by the Regional Transport Office to the respondent No. 5 is placed on record. By way of rejoinder, the appellant has placed on record a letter dated 2.2.2008 issued by the Regional Transport Office, Pune to the appellant. Reliance is placed on the said letter by the appellant.

9. Though the parties are relying upon some documents which were not produced before the Tribunal, instead of passing an order of remand, I have heard the parties on the said documents as there is no dispute about the genuineness of the said documents. Moreover, if an order of remand is passed it will cause prejudice to the original claimants. There will be a delay in disposal of a petition u/s 140 of the said Act of 1988 thereby completely defeating the legislative intent of providing for immediate relief to the victims of an accident.

10. The submission of learned advocate for the appellant is that as held by the Apex Court in a recent case, an order passed by the Tribunal in a claim petition u/s 140 of the said Act of 1988 is an award which is subject to an appeal u/s 173 of the said Act of 1988. He relied upon relevant clauses in the policy of insurance. He pointed out that the policy was subject to use of bus under a permit within the meaning of the said Act of 1988 or such a carriage falling under Sub-section (3) of Section 66 of the said Act of 1988. Relying upon the documents which are referred to above, he pointed out that admittedly such permit was not issued on the date of the accident. He submitted that at highest the documents relied upon by the respondent No. 5 indicate that a decision was taken to issue such a permit but the same was neither issued nor granted. He pointed out that in communication dated 2.2.2008 sent by the Regional Transport Office to appellant it is specially recorded that permit has not been issued to the motor vehicle. However, as per the permit register maintained manually by the said office, permit No. 92 is assigned to the said bus for a period from 17.12.2004 to 16.12.2009. He pointed out that there is an endorsement that the said permit is withheld for non-payment of passenger tax. He, therefore, submitted that it was obvious that there was no valid permit in existence which was either issued or granted to the bus concerned on the date of the accident.

11. He submitted that all the defences which are available under Sub-section (2) of Section 149 of the said Act of 1988 were available to an insurer while defending a claim petition u/s 140 of the said Act of 1988. He invited my attention to the decision of the Apex Court in the case of Yallwwa v. National Insurance Co. Ltd. 2007 ACJ 1934 . He also relied upon certain other decisions of the learned single Judges of this Court and submitted that while passing an award u/s 140 of the said Act of 1988, the defence raised by an insurer regarding absence of policy or regarding breach of terms and conditions of the policy will have to be considered on merits by the Tribunal as the adjudication made u/s 140 of the said Act of 1988 is an award within the meaning of said Act

of 1988. Another submission made by the appellant is that the liability to pay compensation u/s 140 of the said Act of 1988 is that of the insured and even u/s 149(1) of the said Act of 1988 the insurer is under no obligation to honour the award made against the insured u/s 140 of the said Act of 1988.

12. Learned Counsel appearing for respondent No. 5 has supported the impugned judgment and award. He pointed out that merely because the Regional Transport Office did not issue the permit, it cannot be said that the vehicle was being plied without the permit. He submitted that though a permit was issued, it was not physically handed over as according to the Regional Transport Office, certain taxes are not paid by respondent No. 5. His submission is that even the communication on which reliance is placed by the appellant records the decision of the Regional Transport Office to issue the permit for the period covering the date of the accident. His submission is that by virtue of Section 144 of the said Act of 1988, Section 140 of the said Act of 1988 has an overriding effect over the other provisions of the said Act of 1988 and, therefore, while deciding a petition u/s 140, defences under Sub-section (2) of Section 149 of the said Act of 1988 are not available to the insurer.

13. The learned Counsel appearing for the respondent No. 4 has also supported the impugned judgment and award. His submission is that the proceedings u/s 140 of the said Act of 1988 is a summary proceedings. His submission is that if such a summary proceedings is allowed to be converted into a full-fledged trial by allowing the parties to lead evidence on the alleged breach of the terms and conditions of the policy, the legislative intent will be completely defeated. He has placed reliance on certain decisions of the Apex Court and this Court. Reliance was placed on decision of the Apex Court in the case of K.M. Viswanatha Pillai Vs. K.M. Shanmugam Pillai, , which lays down that u/s 42(1) of the Motor Vehicles Act, 1939, it is not necessary that the owner himself should obtain permit and it only requires that the transport vehicle shall not be used except in accordance with the conditions of the permit.

14. The first question which arises for consideration is whether the defence covered by Sub-section (2) of Section 149 of the said Act of 1988 is available to an insurer while defending a claim petition u/s 140 of the said Act of 1988. The second question to be decided is as to what is the nature and the scope of proceedings u/s 140 of the said Act of 1988 and whether the Tribunal is required to hold a full trial while deciding the petition u/s 140 of the said Act of 1988. The third question will be whether the insurer is liable to satisfy the award made against the insured u/s 140 of the said Act of 1988. In the event the answer to the first question is in the affirmative the other question will be whether the appellant has established a breach thereby entitling it to avoid the liability under the policy of insurance.

15. As far as the first question is concerned, it is no longer *res Integra* in view of what has been held by the Supreme Court in the recent judgment in the case of Yallwwa 2007 ACJ 1934. In paras 9 and 10 of the decision, the Apex Court has

observed as under:

(9) ...Section 140, as noticed hereinbefore, provides for no fault liability. It uses the words "accident arising out of the use of motor vehicle", "the owner of the vehicle" and when more than two (sic two or more) vehicles are involved, "the owners of the vehicles" shall, jointly and severally, be liable to pay compensation.

(10) The said provision, therefore, makes the owners of the vehicles liable but not the insurer per se. Irrespective of the fact whether a claim petition is required to be adjudicated under Chapter X or Chapter XII of the Act, it is permissible to raise a defence in terms of Sub-section (2) of Section 149 of the Act. Even it is possible for the owner of the vehicle to raise a contention that his vehicle being not involved in the accident, he is not liable to pay any amount in terms of Section 140 of the Act.

(Emphasis added)

In para 17 the Apex Court proceeded to observe as under:

In a given case, the statutory liability of an insurance company, therefore, either may be nil or a sum lower than the amount specified u/s 140 of the Act. Thus, when a separate application is filed in terms of Section 140 of the Act, in terms of Section 168 thereof, an insurer has to be given a notice in which event, it goes without saying, it would be open to the insurance company to plead and prove that it is not liable at all.

(Emphasis added)

In the said decision, the Apex Court considered legality and validity of a decision of Full Bench of this Court in the case of Divisional Controller, MSRTC Vs. Bapu Onkar Chaudhari, . The issue before the Supreme Court was whether an order passed u/s 140 of the said Act of 1988 is an award which is appealable u/s 173 of the said Act of 1988. In para 30 the Apex Court answered the question by observing that:

(30) .. .In our opinion, an order of the Claims Tribunal awarding compensation u/s 140 of the Act is appealable u/s 173 as it amounts to an award u/s 173.

Thus, the first question is already answered by the aforesaid decision of the Apex Court which holds that it is permissible for an insurer to raise defences in terms of Sub-section (2) of Section 149 of the Act while resisting a claim petition u/s 140 of the said Act of 1988. This decision also answers the third question framed above. The very fact that the Apex Court has held that a defence under Sub-section (2) of Section 149 of the said Act of 1988 is available to the insurer in a claim petition u/s 140 shows that the insurer is liable under the statute to satisfy the award made u/s 140 against the insured.

16. Now turning to the second question, it must be stated here that Section 140 form part of Chapter X of the said Act of 1988. The provision of Section 140 corresponds to Section 92-A of the Motor Vehicles Act, 1939 (hereinafter referred

to as "the said Act of 1939") which has been repealed by the said Act of 1988. Section 166 of the said Act of 1988 which forms part of Chapter XII of the said Act of 1988 provides for filing an application for compensation on account of bodily injury to person or death of a person resulting from an accident involving the use of a motor vehicle. Section 168 deals with the procedure to be followed while dealing with an application u/s 166. Sub-section (1) of Section 168 reads thus:

168. Award of the Claims Tribunal.- (1) On receipt of an application for compensation made u/s 166, the Claims Tribunal shall, after giving notice of the application to the insurer and after giving the parties (including the insurer) an opportunity of being heard, hold an inquiry into the claim or, as the case may be, each of the claims and, subject to the provisions of Section 162 may make an award determining the amount of compensation which appears to it to be just and specifying the person or persons to whom compensation shall be paid and in making the award the Claims Tribunal shall specify the amount which shall be paid by the insurer or owner or driver of the vehicle involved in the accident or by all or any of them, as the case may be:

Provided that where such application makes a claim for compensation u/s 140 in respect of the death or permanent disablement of any person, such claim and any other claim (whether made in such application or otherwise) for compensation in respect of such death or permanent disablement shall be disposed of in accordance with the provisions of Chapter X.

Therefore, Sub-section (1) of Section 168 itself makes a distinction between the procedure to be followed while deciding an application u/s 166 and the procedure to be followed while dealing with an application u/s 140. The proviso to Sub-section (1) provides that when an applicant in an application u/s 166 also makes a claim for compensation u/s 140 in respect of death or permanent disability of any person, such claim shall be disposed of in accordance with the provisions of Chapter X. There is one section in Chapter X which deserves to be taken note of. It is Section 144 which provides that the provisions of Chapter X shall have overriding effect notwithstanding anything contained in any other provision of this Act or of any other law for the time being in force. Thus, Section 140 of the said Act overrides not only the other provisions of the said Act of 1988 but also provisions of other laws for the time being in force.

17. The State of Maharashtra has exercised the rule making power under the said Act of 1988 and has framed Maharashtra Motor Vehicles Rules, 1989 (hereinafter referred to as "the said Rules"). It will be necessary to refer to the relevant rules contained in Chapter IX under the heading "Claims Tribunal". Rule 254 provides for contents of an application made u/s 166 of the said Act of 1988. Rule 255 provides that notwithstanding anything contained in Rule 254 every application for a claim u/s 140 shall be filed before the Claims Tribunal in the manner provided in the said Rules. Thus, the rules also make a special provision in respect of claim application u/s 140 of the said Act of 1988 with regard to

procedural requirements relating to filing of a claim petition. Rule 258 provides for examination of the applicant in a claim petition u/s 166 of the said Act of 1988 covered by Rule 254. Rule 259 gives the power to summarily dismiss such application. Rule 260 provides that if the said application is not dismissed under Rule 259, a notice is required to be issued to the owner, driver and insurer. Sub-rule (3) of Rule 260 makes a special provision for dealing with an application u/s 140. Rule 260 reads thus:

260. Notice to the parties involved.- (1) If the application is not dismissed under Rule 259, the Claims Tribunal shall, send to the owner or the driver of the vehicle or both involved in the accident and its insurer, a copy of the application, and the annexures thereto together with the notice of the date on which the parties shall enter their appearance either in person, or through their duly authorised agents, and may also file their written statements, if any, with additional copies of the same, for being furnished to the other parties connected with the matter. It will dispose of the application, and may call upon the parties to produce on that date any evidence which they may wish to tender.

(2) The service of the notice shall be effected on the owner, the driver and the insurer of the vehicle in question, as the case may be, by way of personal service through the bailiff or by registered post A.D. or both.

(3) Where the applicant makes a claim for compensation u/s 140, the Claims Tribunal shall give notice to the owner and insurer, if any, of the vehicles involved in the accident directing them to appear on the date, not later than fifteen days from the date of issue of such notice. The date so fixed for such appearance shall also be not later than fifteen days from the receipt of the claim application filed by the claimant. The Claims Tribunal shall state in such notice that in case they fail to appear on such appointed date, the Claims Tribunal shall proceed ex parte on the presumption that they have no contention to make against the award of compensation.

18. Thereafter there are elaborate provisions regarding appearance and examination of the parties, appearance of the legal practitioner, local inspection, method of recording evidence, framing of issues and the judgment and award. Rule 275 provides that certain powers vesting in the civil court by virtue of the provisions of the Code of Civil Procedure, 1908 (hereinafter referred to as "the said Code") can be exercised by the Tribunal. Rule 276 provides the procedure to be followed by the Claims Tribunal in holding enquiries. The said rule provides that several provisions of the orders and rules in the First Schedule of the said Code apply to the proceedings before the Claims Tribunal. What is important is Rule 277 which reads thus:

277. Savings.-Notwithstanding anything contained in these rules, in the case of motor accidents and claims u/s 140, the Claims Tribunal may follow such summary procedure, as it thinks fit.

19. The said Rule 277 makes it very clear that notwithstanding anything

contained in the aforesaid Rules, a claim u/s 140 will have to be decided by following such summary procedure as the Claims Tribunal may think fit. The Rule 280 provides for the procedure for obtaining information and documents necessary for awarding compensation u/s 140. Rule 281 deals with judgment and award of compensation u/s 140 and Section 163-A of the said Act of 1988. Thus, the rules make it clear that the procedure to be followed while deciding a claim petition under Rule 140 is distinct from the procedure governing an application u/s 166 of the said Act of 1988. A summary procedure is to be adopted for the petitions u/s 140 of the said Act of 1988.

20. At this stage, it will be necessary to refer to a decision of the Apex Court in the case of Shivaji Dayanu Patil and another Vs. Smt. Vatschala Uttam More, . The Supreme Court in the said decision has considered the nature and object of the provisions of Section 92-A of the said Act of 1939 and the procedure to be followed while deciding a claim application u/s 92-A. The Apex Court has referred to the provisions of the Bombay Motor Vehicles Rules which apply to a claim petition u/s 92-A of the said Act of 1939. Paras 44 and 45 of the said decision read thus:

(44) Rule 306-C prescribes the procedure of disbursement of compensation u/s 92-A to the legal heirs in case of death. The submission of Mr. Sanghi is that in spite of the aforesaid amendments which have been introduced in the Rules after the enactment of Section 92-A, the Claims Tribunal is required to follow the procedure contained in the other rules before awarding compensation u/s 92-A of the Act. In other words, it must proceed to adjudicate the claim after the opposite party is afforded an opportunity to file the written statement under Rule 298, by framing issues under Rule 299 and after recording evidence in accordance with Rules 300 and 301 and that it is not permissible for the Claims Tribunal to make an order purely on the basis of the documents referred to in Rules 291-A, 306-A and 306-B. In our opinion, the said submission of Mr. Sanghi cannot be accepted. The object underlying the enactment of Section 92-A is to make available to the claimant compensation amount to the extent of Rs. 15,000 in case of death and Rs. 7,500 in case of permanent disablement as expeditiously as possible and the said award has to be made before adjudication of the claim u/s 110-A of the Act. This would be apparent from the provisions of Section 92-B of the Act. Section 92-B(2) of the Act provides that a claim for compensation u/s 92-A in respect of death or permanent disablement of any person shall be disposed of as expeditiously as possible and where compensation is claimed in respect of such death or permanent disablement u/s 92-A and also in pursuance of any right on the principle of fault, the claim for compensation u/s 92-A shall be disposed of as aforesaid in the first place. With a view to give effect to the said directive contained in Section 92-B of the Act, the Maharashtra Government has amended the Rules and has inserted special provisions in respect of claims u/s 92-A in Rules 291-A, 291-B, 297(2), 306-A, 306-B, 306-C and 306-D of the Rules. The object underlying the said provisions is to enable expeditious disposal of a claim petition u/s 92-A of the Act. The said object would

be defeated if the Claims Tribunal is required to hold a regular trial in the same manner as for adjudicating a claim petition u/s 110-A of the Act. Moreover, for awarding compensation u/s 92-A of the Act, Claims Tribunal is required to satisfy itself in respect of the following matters:

- (i) an accident has arisen out of the use of a motor vehicle;
- (ii) the said accident has resulted in permanent disablement of the person who is making the claim or death of the person whose legal representative is making the claim;
- (iii) the claim is made against the owner and the insurer of the motor vehicle involved in the accident;

(45) The documents referred to in Rules 291-A and 306-B will enable the Claims Tribunal to ascertain the necessary facts in regard to these matters. The panchnama and the first information report will show whether the accident had arisen out of the use of the motor vehicle in question. The injury certificate or the post-mortem report will show the nature of injuries and the cause of death. The registration certificate and insurance certificate of the motor vehicle will indicate who is the owner and insurer of the vehicle. In the event of the Claims Tribunal feeling doubtful about the correctness or genuineness of any of these documents or if it considers it necessary to obtain supplementary information or documents, Rule 306-A empowers the Claims Tribunal to obtain such supplementary information or documents from the police, medical or other authorities. This would show that Rules 291-A, 306-A and 306-B contain adequate provisions which would enable the Claims Tribunal to satisfy itself in respect of the matters necessary for awarding compensation u/s 92-A of the Act and in view of these special provisions which were introduced in the Rules by the amendments in 1984, the Claims Tribunal is not required to follow the normal procedure prescribed under the Act and the Rules with regard to adjudication of claim u/s 110-A of the Act for the purpose of making an order on a claim petition u/s 92-A of the Act.

(Emphasis added)

Thus, the Apex Court in so many words has held that the provision of Section 92-A is a special provision and the Claims Tribunal is not required to follow the normal procedure which applies to an application u/s 110-A of the said Act of 1939. The position is not different under the provisions of the said Act of 1988.

21. It must be noted here that the Apex Court while deciding the case of *Yallwwa* 2007 ACJ 1934 (SC), has not at all dealt with the procedure which is required to be followed while deciding a petition u/s 140 of the said Act of 1988. In fact the issue regarding the nature of the procedure to be adopted and the nature of inquiry in a claim application u/s 140 did not arise for the consideration of the Apex Court in the case of *Yallwwa* (supra). The ratio of the decision in the case of *Yallwwa* (supra) is that an order passed u/s 140 of the said Act of 1988 is an

award within the meaning of Section 173 and that it is open for the insurer to raise defence covered by Sub-section (2) of Section 149 of the said Act of 1988. It lays down that it is also open for the insurer to contend that there was no valid policy covering the liability arising out of the vehicle involved in an accident.

22. Thus, in a given case while defending a claim u/s 140 it is open for an insurer to raise a defence which is covered by Sub-section (2) of Section 149 of the said Act of 1988. However, that does not mean that the Tribunal is required to hold a full trial permitting the parties including the insurer to lead oral evidence. As pointed out earlier, considering the proviso to Sub-section (1) of Section 168 read with Section 144 together with Rule 277 of the said Rules, while deciding a claim application u/s 140, the Claims Tribunal is required to follow a summary procedure. The said Act of 1988 as well as the said Rules lay down the requirement of producing certain documents along with a claim petition u/s 140 such as panchnama of the place of the accident, first information report or station diary entry, medical certificate in Form Comp. B, post-mortem report or death certificate and the certified copy of Form Comp. AA. It is obvious that the insurer can also produce a copy of policy of insurance or certificate of insurance. After considering the documents required to be produced along with the claim application u/s 140 of the said Act of 1988, the Tribunal will have to decide all the issues arising in the claim petition u/s 140 including the contentions raised by the insurer or owner of the vehicle. Such a claim petition will have to be decided on the basis of the documents which are required to be produced along with an application u/s 140 of the said Act of 1988. The parties to the claim petition u/s 140 can always invoke the power of the Tribunal under Rule 280 for obtaining supplementary information and documents. Reliance can be placed by the parties including the insured and insurer on such documents and information for proving their defences. However, the scope of the proceedings cannot be enlarged further by permitting the parties to lead further evidence. It is obvious that the findings in the claim u/s 140 can never bind the parties in the claim u/s 166 as the said findings are recorded in a summary proceedings. The second question is answered accordingly.

23. Moreover, where a claimant has also filed a claim petition u/s 166 of the said Act of 1988 which is pending for adjudication, the Tribunal can reserve the remedy of insurer to seek reimbursement from the insured in case the insurer is able to establish the defence while finally deciding a claim petition u/s 166 of the said Act of 1988. Even Section 141 of the said Act of 1988 can be followed while deciding the petition u/s 166. The sum and substance of the aforesaid discussion is that though in a claim u/s 140 of the said Act of 1988, an insurer is permitted to raise the defences covered by Sub-section (2) of Section 149 of the said Act of 1988, by reason of the insurer raising such defences the Tribunal cannot depart from the summary procedure and the Tribunal cannot allow proceedings u/s 140 of the said Act of 1988 to be converted into a full trial on par with a trial in a petition u/s 166 of the said Act of 1988. If Tribunals are allowed to adopt such a course, it will completely defeat the legislative intent of providing a quick remedy

by way of Section 140 of the said Act of 1988.

24. Now turning to the last question which arises in the facts of the case, even going by the material produced by the appellant insurer it is crystal clear that the authorities under the said Act of 1988 took a decision to grant a permit to the bus concerned and in fact in the permit register, an entry has been made regarding permit assigned to the bus for a period from 17.12.2004 to 16.12.2009. The date of the accident in present case is 7.12.2006. The endorsement made by the Regional Transport Office, Pune on letter dated 2.2.2008 addressed to the appellant shows that the permit is withheld for non-payment of passenger tax of Rs. 55,32,53,932 by Pune Municipal Transport, respondent No. 5. In the reply filed by respondent No. 5 to the application for stay, a reliance has been placed on a letter dated 30.5.2007 sent by the Regional Transport Office to the respondent No. 5. It is pertinent to note that the said letter records that the State Government had permitted Pune Municipal Transport, respondent No. 5 on 13.5.2004 to hire private buses subject to compliance with certain terms and conditions. The said letter records that the respondent No. 5 was in arrear of passenger tax to the tune of Rs. 55,32,53,932 at the end of March 2007. The said letter records that as payment has not been made by the respondent No. 5, the Regional Transport Office has stopped issuing permits and registration books. The said letter as well as endorsement on letter dated 2.2.2008 make it very clear that there was no impediment in granting permit to the particular bus and in fact a permit was assigned for the period from 17.12.2004 to 16.12.2009. The letter dated 29.1.2008 issued by the R.T.O. to the respondent No. 5 records that in respect of the bus involved in the accident, the tax was paid up to 31.12.2008. Thus, on the date of the accident, it cannot be disputed that there was already a decision of Regional Transport Office to grant permit to the bus for the period from 17.12.2004 to 16.12.2009. Though an entry of the said permit was made in permit register, the permit was not physically issued by the Regional Transport Office because of the default of the respondent No. 5-transport undertaking in paying the passenger taxes liable to be paid by said undertaking.

25. A reference has already been made earlier to the decision of the Apex Court in the case of National Insurance Co. Ltd. Vs. Swaran Singh and Others, . In the said case the Apex Court was dealing with a breach of policy condition relating to driving licence. In para 102 of the said decision the Apex Court has summarised its findings. Clause 6 of para 102 is relevant. What the Apex Court has held is that the insurer is not allowed to avoid its liability towards the insured unless the said breach or breaches in relation to the driving licences is/are so fundamental as are found to have contributed to the cause of accident. Most importantly the Apex Court held that Tribunals interpreting the policy conditions would apply the rule of "main purpose" and will follow the concept of fundamental breach while allowing the defences available to the insurer u/s 149(2) of the said Act.

26. In the present case, the Tribunal was required to apply the rule of main

purpose while interpreting the policy conditions and if the test of main purpose is adopted, even after considering the material placed on record by the appellant insurer, a finding cannot be recorded that the breach was so fundamental that the appellant is entitled to avoid its liability under the policy of insurance. The authorities had in fact taken a decision to assign the permit to the bus in question. But the permit was not issued only because respondent No. 5 had not paid taxes in respect of other vehicles.

27. In the circumstances, this Court is unable to accept the submissions made by learned Counsel appearing for the appellant.

28. The result is that appeal must fail and accordingly appeal is dismissed with no orders as to costs.

29. At this stage, the learned Counsel appearing for the respondent No. 5 pointed out that as there was a stay granted in favour of appellant insurer, the claimants have executed the impugned award against the respondent No. 5 and have recovered compensation amount payable under the impugned award. He, therefore, submits that necessary directions be issued to the appellant in that behalf.

30. The award made by the Tribunal has been confirmed by this Court.

31. Therefore, it is for respondent No. 5 now to take out appropriate proceedings against the appellant for recovery of the amount and no direction in that behalf can be issued in this appeal. Appellant is permitted to withdraw the sum of Rs. 25,000 deposited in this Court in compliance with Section 173 of the Motor Vehicles Act, 1988.