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**(1997) 05 OHC CK 0014**  
**In the Orissa High Court**  
**Case No : M.A. No. 323 of 1995**

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|-------------------------------------------------|------------|
| Divisional Manager, National Insurance Co. Ltd. | APPELLANT  |
| Vs                                              |            |
| Raj Kishore Jethy and Others                    | RESPONDENT |

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**Date of Decision :** 02-05-1997

**Acts Referred:**

Motor Vehicles Act, 1988 — Section 140, 141, 142, 143, 144

**Citation :** (1998) 1 ACC 307 : (1999) ACJ 858 : (1997) 84 CLT 851

**Hon'ble Judges :** Pradipta Ray, J

**Bench :** Single Bench

**Advocate :** Puranjan Roy, S. Roy and D.P. Thatraj, for the Appellant; Prasanna Kumar Rath and M. Das, for the Respondent

**Final Decision :** Allowed

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## Judgement

Pradipta Ray, J.—Respondent Nos. 1 and 2 being the parents of the deceased filed a claim petition before the Second Motor Accidents Claims Tribunal, Cuttack for compensation. The said case was registered as Misc. Case No. 498 of 1993. In the said case the claimants filed an application u/s 140 of the Motor Vehicles Act, 1988 for interim no fault award. Admitted position is that the offending motor cycle was being driven by a minor. The insurance company raised an objection that under the Motor Vehicles Act a minor is not entitled to get a driving licence and accordingly is not authorised to drive any motor vehicle. The insurance company contended that under the terms and conditions of the insurance policy it was not liable to indemnify an owner of a motor vehicle if the same was being driven by a person not having valid driving licence or incapable of having a driving licence under the law. The Tribunal overruled the said objection raised on behalf of the insurance company and relying upon a decision in Ravi Kumar v. Ram Parkash 1989 ACJ 550 (Delhi), directed the insurance company to pay Rs. 25,000 as interim award u/s 140 of the Motor Vehicles Act, 1988 (hereinafter referred to as "the Act"). Being aggrieved by the aforesaid order the insurance company has filed this appeal.

2. The question which arises for consideration in this appeal is whether at the stage of consideration for interim award u/s 140 of the Act the Tribunal is required to examine plea of any breach of the condition of the insurance policy or not. Mr. Roy, learned Counsel appearing for the appellant insurance company has submitted that the insurer's liability to indemnify the owner arises out of the contract of insurance and if there is any breach of material conditions or terms of the contract for insurance, the insurer is not liable to pay even interim compensation u/s 140 of the Act. On the other hand, Mr. P.K. Rath, appearing for the claimants has contended that at the stage of compensation u/s 140 of the Act, the Tribunal is not required to go into the question of any alleged breach of condition. According to him, if it is prima facie established that the offending vehicle is covered by the insurance policy at the time of accident the insurance company remains liable to pay the interim compensation subject to final determination in the claim case. The learned Counsel for both the parties have placed several decisions of different High Courts in support of their respective submissions and it appears that there is conflict of opinions on the aforesaid question. The Delhi High Court in Ravi Kumar's case, 1989 ACJ 550 (Delhi), has taken the view that various defences as provided under Sub-Section (2) of Section 96 of the 1939 Act are available to the insurance company, but those defences would not be available to the insurance company in respect of its liability to pay compensation u/s 92-A in view of its overriding effect by virtue of Section 92-E of the Act of 1939. According to the said decision, only defence that would be available is that the offending vehicle was not insured with the insurance company in question. It has been observed therein:

Proceedings u/s 92-A of the Act brook no delay. The only thing that is required to be seen is that the policy of insurance complies with the requirements as laid down in the Act. It is immaterial if ultimately the petition fails either on the "principle of fault" or even on any of the defences permissible to the insurance company as laid in Sub-section (2) of Section 96 of the Act. Liability of the insurance company u/s 92-A of the Act to the extent mentioned therein would, therefore, appear to be absolute.

3. Similar view has been taken by the Madhya Pradesh High Court in the case of National Insurance Company, Jabalpur Vs. Thaglu Singh and Others, . It has been held in that case:

The statutory scheme envisages that if there is a motor accident and death or permanent disablement results from such an accident, owner or owners of the vehicle or vehicles involved shall be liable to pay the prescribed compensation without proof of negligence and irrespective of any contributory negligence of the deceased or the injured and the amount so paid has to be adjusted out of the compensation found due under the final award. There is no provision requiring the recipient of compensation of no fault liability to refund any part of the amount received at any stage. The legislative intent is to ensure that some succour reaches the victim or the dependants without going into the questions

which may arise for consideration while passing the final award. If the vehicle is insured, naturally the liability would fall on the insurer; permitting the insurer at that stage to raise any defence other than that there is no insurance policy in force at the relevant time or to raise the statutory defences contemplated in the succeeding Chapter would be to frustrate the legislative object in introducing the concept of no fault liability. The insurer is duly protected inasmuch as if ultimately in the final award the insurer is exonerated, the Tribunal can issue appropriate direction enabling the insurer to collect the same from the owner of the vehicle. This could be the only legitimate conclusion to be drawn from the peremptory language of Section 92-A of the 1939 Act or Section 140 of the 1988 Act.

The same view was also expressed by Gauhati High Court in the decision in *New India Assurance Co. Ltd. v. Member, Motor Accidents Claims Tribunal* 1988 ACJ 612 (Gauhati) and by the Jammu and Kashmir High Court in *National Insurance Co. Ltd. v. Surjit Singh* 1988 ACJ 1122 (J&K). Similar view has also been expressed in the following decisions:

- (i) *National Insurance Co. Ltd. Vs. Anjali Mallick and Others*, ;
- (ii) *United India Insurance Co. Ltd. Vs. C.D. Munirathanam Reddi and Another*, ;
- (iii) *New India Assurance Co. Ltd. and Others Vs. Khairunsi Mirad Hajarat Mulla and Others*, ;
- (iv) *New India Assurance Co. Ltd. Vs. Bhajnoo and Another*, .

4. The Full Bench of the Karnataka High Court in the case of *M/s. United India Insurance Company, Bangalore Vs. Imman Aminasab Nadaf and others*, , has taken a contrary view. It has been held therein in para 18:

After giving our careful consideration, it appears to us that whether the compensation is claimed under "no fault liability" of the owner of the vehicle u/s 92-A or on ground of fault u/s 110-A, as far as the insurer is concerned his liability, in view of Section 95 (5), is to indemnify the insured only to the extent such liability is undertaken or covered by the policy and not beyond that. Therefore, in order to fix the liability on the insurance company to pay the compensation awarded u/s 92-A of the Act, the Tribunal, in addition to deciding as to whether the vehicle involved in the accident was covered by an insurance policy, has to decide as to whether prima facie the risk was covered by the insurance policy. If having regard to the facts stated in the claim petition itself and the contents of an insurance policy, a finding could be arrived at that the policy did not cover the risk, in such a case there is no reason as to why the insurance company should be compelled to pay the amount solely on the ground that the policy of insurance existed and compel the insurance company to collect later the money paid from the owner of the vehicle which would throw the insurance companies to innumerable litigations. It is nowhere provided and it is also not the case of the claimant that an insurer should pay the amount awarded

u/s 92-A even if the liability was not covered by the policy. Further, if the intention of the legislature was to deprive the defences available u/s 96 (2) of the Act at the stage of adjudication of a claim u/s 92-A of the Act, the legislature would have incorporated such a condition. In fact, the only provision incorporated in Section 92-B (2) of the Act is to require the Tribunal to dispose of the claim u/s 92-A of the Act as expeditiously as possible. Thus when the legislature has not imposed the liability on the insurer to pay the amount awarded u/s 92-A, even in cases in which the liability is not covered by the policy and further the legislature has not deprived the defences open to insurance company u/s 96 (2), in the course of adjudication of claims u/s 92-A, such a bar cannot be assumed by the courts.

5. There cannot be any dispute that the liability of the insurance company arises out of an agreement and if it is established that any material condition incorporated in the agreement has been infringed or violated by the owner, the insurer cannot be held liable. The Supreme Court in the decision in *Sohan Lal Passi Vs. P. Sesh Reddy and others*, , has observed:

To examine the correctness of the aforesaid view this appeal was referred to a three-Judges" Bench, because on behalf of the insurance company, a stand was taken that when Section 96 (2) (b) (ii) has provided that the insurer shall be entitled to defend the action on the ground that there has been a breach of a specified condition to the policy, i.e., the vehicle should not be driven by a person who is not duly licensed, then the insurance company cannot be held to be liable to indemnify the owner of the vehicle. In other words, once there has been a contravention of the condition prescribed in Sub-section (2) (b) (ii) of Section 96, the person insured shall not be entitled to the benefit of Sub-section (1) of Section 96. According to us, Section 96 (2) (b) (ii) should not be interpreted in a technical manner. Sub-section (2) of Section 96 only enables the insurance company to defend itself in respect of the liability to pay compensation on any of the grounds mentioned in Sub-section (2) including that there has been a contravention of the condition excluding the vehicle being driven by any person who is not duly licensed. This bar on the face of it operates on the person insured. If the person who has got the vehicle insured has allowed the vehicle to be driven by a person who is not duly licensed then only that clause shall be attracted. In a case where the person who has got insured the vehicle with the insurance company, has appointed a duly licensed driver and if the accident takes place when the vehicle is being driven by a person not duly licensed on the basis of the authority of the driver duly authorised to drive the vehicle whether the insurance company in that event shall be absolved from its liability? The expression "breach" occurring in Section 96 (2) (b) means infringement or violation of a promise or obligation. As such the insurance company will have to establish that the insured was guilty of an infringement or violation of a promise. The insurer has also to satisfy the Tribunal or the court that such violation or infringement on the part of the insured was wilful. If the insured has taken all precautions by appointing a duly licensed driver to drive the vehicle in question

and it has not been established that it was the insured who allowed the vehicle to be driven by a person not duly licensed, then the insurance company cannot repudiate its statutory liability under Sub-section (1) of Section 96.

6. The decisions which have taken the view that if the offending vehicle is insured, insurance company is liable to pay no fault award irrespective of any other consideration, have been guided by their anxiety to ensure that victims of an accident get a quick or immediate interim relief. It has been accepted by all courts that for the purpose of giving an interim no fault award, the Tribunal need not venture any detailed inquiry or to take evidence and it must pass its award in a summary manner upon prima facie satisfaction of the presence of basic ingredients. There cannot be any dispute regarding the proposition that at the stage of Section 140 of the Act the Tribunal is to conduct a summary enquiry and not a detailed enquiry. But it is difficult to accept the view that even if on the face of it a breach of the material condition of the insurance policy becomes apparent the Tribunal will have to hold the insurance company liable.

7. Section 140 of the Act of 1988 nowhere makes the insurance company liable to pay no fault award. The requirements of insurance against third party risk and the liability of the insurance company to indemnify or to satisfy any judgment or award have been provided in Sections 146 and 149 of the Act of 1988. Liability has been defined in Section 145(c) as inclusive of liability u/s 140 of the Act. Section 149 Sub-section (2) has absolved the insurer from making payment if there has been a breach of a specified condition of the policy as enumerated therein. Sections 145 to 164 are in Chapter XI of the Act of 1988. Sections 140 to 144 are in Chapter X. In several decisions reference has been made to Section 144 which provides that the provisions of Chapter X shall have effect notwithstanding anything contained in any other provision of this Act or of any other law for the time being in force. According to some of those decisions plea of breach of conditions available to the insurer u/s 149 cannot be made applicable at the time of no fault award u/s 140 because of Section 144 of the said Act. With due respect, it is difficult to appreciate the said view. Section 144 does not exclude only the provisions of Section 149(2), but it speaks of entire Chapter XI. If Section 144 excludes Chapter XI then the insurer cannot at all be held liable because its liability has been imposed by different sections appearing in Chapter XI. The provisions of Chapters X and XI of the said Act of 1988 are to be read harmoniously and in case of any inconsistency the provisions of Chapter X will have overriding effect. Otherwise the entire scheme becomes unworkable. Thus, those provisions in Chapter XI of the Act making the insurance company liable and immunising it under specified contingencies are to be availed of for the purpose of wanting the provisions of Chapter X workable and effective.

8. No doubt a detailed inquiry or taking of evidence is not contemplated at the stage of Section 140 of the Act, but still the Tribunal is required to make a summary enquiry to arrive at prima facie satisfaction of existence of the basic ingredients. It is not and cannot be the law that an interim award is to be given

on a mere application. Even before giving an interim no fault award the Tribunal is to be prima facie satisfied that --

- (i) death or permanent disablement has been caused by the alleged accident;
- (ii) the offending vehicle and the risk involved were covered by a valid insurance policy at the material point of time; and
- (iii) the materials on record ex facie do not disclose any breach of material condition of the policy of insurance.

Prima facie satisfaction on point No. (i) will make the owner liable. To hold the insurance company liable prima facie satisfaction on the 2nd and 3rd points is also necessary. If on the face of the document of insurance and the factual position emerging from the materials on record, it prima facie appears to the Tribunal that a material condition of the insurance policy has been infringed it should not hold the insurance company liable to pay the interim award. However, the owner will be entitled to establish after adducing evidence at the final hearing that there was no breach of condition or that he was not responsible for the alleged breach and to get reimbursement of the amount paid as interim award from the insurer. In such case owner will have to satisfy the interim no fault award. The claimant will not suffer inasmuch as he will get the compensation u/s 140 of the Act of 1988 from the owner.

9. In the present case, the prima facie factual position is that the offending motor cycle was being driven by a minor, who is disqualified to drive a motor cycle and to obtain a driving licence. Such being the ex facie position, Tribunal erred in holding the insurance company liable to pay no fault award. However, it will be open to the owner of the vehicle to establish after leading necessary evidence at the stage of final hearing that he was not at all responsible for the said breach and if such case is established the Tribunal may ask the insurance company to indemnify the owner for the payments made by him. In view of the summary nature of the inquiry at the stage of Section 140, it is not possible for the Tribunal to call upon the owner to establish at the stage of no fault award that he had no control over the situation and he cannot be held responsible for the breach.

10. Section 140 Sub-section (3) of the Act of 1988 cannot be read to mean that in spite of any wrongful negligence or breach on the part of the owner affecting contractual relationship with the insurer, the liability will be fastened on the insurance company. Section 140(3) provides that even if any wrongful act, neglect or default on the part of the owner is not pleaded or not established the claimant will be entitled to obtain compensation to the specified amount. The said provision regulates the right of the claimants to get interim compensation vis-a-vis the owner of the offending vehicle, but it does not restrict the right of the insurer vis-a-vis insured. Considering the various provisions of Chapters X and XI of the Motor Vehicles Act, 1988, the view taken by the Full Bench of the Karnataka High Court in M/s. United India Insurance Company, Bangalore Vs.

Imman Aminasab Nadaf and others, , appears to be just and reasonable.

11. For the foregoing reasons the present appeal is allowed. The interim award passed by the Tribunal so far as it held the insurance company liable, is set aside. The owner of the vehicle is held to pay compensation u/s 140 of the Act subject to final determination of the claim.