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**(2012) 07 AHC CK 0235**

**In the Allahabad High Court**

**Case No : First Appeal From Order No. 2006 of 2012**

ICICI Lombard General Insurance Co. Ltd.

APPELLANT

Vs

Smt. Pinky and Others

RESPONDENT

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**Date of Decision : 06-07-2012**

**Acts Referred:**

Constitution of India, 1950 — Article 141

Insurance Act, 1938 — Section 64(U), 64(U)(c)

Motor Vehicles Act, 1988 — Section 146, 147, 157, 166, 2(30)

**Citation :** (2012) 7 ADJ 351 : (2013) 3 ALJ 139 : (2013) 4 ALLMR 59

**Hon'ble Judges :** Rajes Kumar, J;Anil Kumar Sharma, J

**Bench :** Division Bench

**Advocate :** Rahul Sahai, for the Appellant;

**Final Decision :** Dismissed

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## **Judgement**

Hon"ble Rajes Kumar, J.—Heard Sri Rahul Sahai, Learned Counsel for the appellant. This is an appeal by the Insurance Company challenging the order of the Motor Accident Claims Tribunal/Additional District Judge, Court No. 12, Agra in MACP No. 689 of 2012, dated 27th January, 2012 by which the Tribunal has awarded the compensation to the extent of Rs. 4,36,500/- to the claimants payable by the appellant.

2. The appellant is an insurer of the offending Bus, bearing registration No. U.P.-86-9544. In an accident, which took place on 14th August, 2010, between the aforesaid offending Bus and the Motorcycle, bearing registration No. U.P.-80-BK-2557 being driven by the deceased, Padam Singh @ Pappu, who was going from Fatehabad to his village alongwith his known person, at Meerpura Turning on Agra-Ban road, in which the deceased, Padam Singh, suffered grievous injuries and while taking to the Hospital for treatment, on the way, he died. One Ajay Pal Singh was the owner of the Bus. The said vehicle had been given on hire to Uttar Pradesh State Transport Corporation (in short UPSRTC) under the agreement. The claim petition was filed by the legal representatives of the

deceased u/s 166 of the Motor Vehicles Act claiming the compensation of Rs. 15 Lakhs on the ground that the accident took place on account of rash and negligent driving of the Bus. The 22 years old deceased was carrying on of milk business, earning about Rs. 8,000/- per month.

3. The Tribunal, however, in absence of any cogent and reliable evidence, relating to the income of the deceased, has estimated the monthly income at Rs. 3,000/- per month and after deducting 1/ 3rd towards personal expenses of the deceased, having regard to the age and applying multiplier of 18, in view of the principles laid down by the Apex Court in the case of Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, , estimated the compensation at Rs. 4,32,000/-. The Tribunal further awarded the compensation at Rs. 4,500/= under other heads. The total compensation awarded was Rs. 4,36,000/-.

4. In the present case, there is no dispute about the accident and involvement of the offending Bus.

5. The only submission pressed by the Learned Counsel for the appellant is that the vehicle was given by the owner of the vehicle to the UPSRTC, under the bipartite agreement, in which the appellant was not the party. The Bus was in the possession of the UPSRTC and, therefore, in view of Section 2(30) of the Motor Vehicles Act, the UPSRTC was the owner of the vehicle and as such was liable to pay the compensation. Since there was no agreement between the appellant and the UPSRTC and in the bipartite agreement, the Insurance Company was not the party, therefore, the appellant is not liable to indemnify the liability of the UPSRTC.

6. Learned Counsel for the appellant further submitted that under the Indian Motor Tariff (in short IMT-44), it has been provided that in case if the insured vehicle is let out on hire, the negligence of the owner/hirer would be indemnified by the Insurance company only upon payment of additional premium. He referred IMT-44, which reads as follows :

IMT-44 Indemnity To hirer-package policy-negligence of the owner or hirer

It is hereby declared and agreed that in consideration of payment of additional premium of Rs.....the insurer will indemnify any hirer of the vehicle insured loss, damage and liability as defined in this policy arising in connection with the vehicle insured while let on hire.

Provided that any such hirer shall as though he/she were the insured observe fulfill and subject to the terms, exceptions, conditions and limitations of this policy in so far as they apply.

7. Learned Counsel for the appellant submitted that the Indian Motor Tariff or I.M.T. (as it is commonly known) are issued by the Tariff Advisory Committee, which is a statutory body constituted u/s 64(U) of the Insurance Act, 1938. Section 64(U)(c) of the Insurance Act, 1938 confers power upon the advisory

committee to regulate rates, terms and conditions that may be offered by the insurers etc. Thus, various clauses of the Indian Motor Tariff (IMT) enjoy statutory force, bind and regulate the terms and conditions etc. of Insurance Policies. He also submitted that since the bipartite agreement entered into between the owner and U.P.S.R.T.C. excludes the Insurance Company/Appellant and does not comply with the requirement of IMT-44, it can be safely concluded that the same will not supersede and prevail upon the specific requirement under IMT-44. Admittedly in the present case there had been no compliance of IMT-44. He further submitted that Section 2(30) of the Motor Vehicle Act, 1988 defines the term "owner". It provides that the person, who by virtue of an agreement of lease/hypothecation, is in possession of the vehicle will be deemed to be its owner. From the conjoint reading of the definition of the "owner" as defined u/s 2(30) of the Act and IMT-44, it appears that it is the UPSRTC, which would be liable to pay the compensation as the appellant does not indemnify the risk coverage of UPSRTC. He has placed reliance on the decisions of the Apex Court in the case of Rajasthan State Road Transport Corporation v. Kailash Nath Kothari, 1998 (1) TAC 42, National Insurance Company Limited v. Deepa Devi, 2008 (1) TAC 214, and United India Insurance Company Ltd. Vs. U.P. State Road Transport Corporation and Others, .

8. Learned Counsel for the appellant further contended that the decision of the Apex Court in the case of UPSRTC v. Kulsum and others, 2011 (3) JCLR 510, is per incurium and sub silentio. To support his argument, he submitted that in the case of Rajasthan State Road Transport Corporation v. Kailash Nath Kothari (supra), the definition of the term "owner" u/s 2(19) of the Motor Vehicle Act, 1939 was considered. The crucial words on the basis of which, the rule has been laid down was "and in relation to a motor vehicle....., the person in possession of the vehicle under that agreement". Aforesaid words exist, both, in unamended definition u/s 2(19) as well as u/s 2(30) of the new Motor Vehicles Act, 1988. The Apex Court, in the case of UPSRTC v. Kulsum (supra), has distinguished its decision in the case of Rajasthan State Road Transport Corporation v. Kailash Nath Kothari (supra) merely on the ground that it was under the old Act, while the crucial phrase in both the Acts are same. He further submitted that since the decision of the Apex Court in the case of UPSRTC v. Kulsum (supra) is per incurium and sub silentio, it is liable to be ignored. In support of the submission, he relied upon the decision of this Court in the case of Kishori @ Lalu v. D.D.C., Varanasi, 1987 AWC 491, the decision of the Apex Court in the case of Faqir (dead) through Shyam Deo Vs. Kishori alias Lalloo and another, , wherein the aforesaid decision of this Court has been upheld. He also placed reliance on the decision of the Apex Court in the cases of Municipal Corporation of Delhi Vs. Gurnam Kaur, , A-One Granites v. State of U.P. and others, 2001 (3) AWC 1956 (SC), State of U.P. and Another Vs. Synthetics and Chemicals Ltd. and Another, and the decision of this Court in the case of Ram Pratap Singh v. State of UP., 2004 (4) UPLBEC 1673.

9. We have thoroughly considered submissions of Learned Counsel for the

appellant. The terra "owner" is defined by Section 2(30) of the Motor Vehicle Act, 1988. It reads as follows :

(30) "owner" means a person in whose name a motor vehicle stands registered and where such person is a minor, the guardian of such minor, and in relation to a motor vehicle which is a subject of a hire-purchase agreement, or an agreement of lease or an agreement of hypothecation, the person in possession of the vehicle under that agreement.

10. There is no dispute that under the agreement, UPSRTC was in possession and control of the aforesaid vehicle at the time of the accident. Thus, the UPSRTC is the owner within the definition of the owner" u/s 2(30). The copy of the agreement entered into between the original owner of the vehicle and the UPSRTC has not been filed by the appellant although it was filed and proved by the respondent No. 4 before the Tribunal. However, Learned Counsel for the appellant submitted that the terms and conditions of the agreement in the present case are similar to the terms and conditions mentioned in the judgment in the case of UPSRTC v. Kulsum and others (supra).

11. In the case of UPSRTC v. Kulsum and others (supra), the Apex Court has considered its earlier decision Rajasthan State Road Transport Corporation v. Kailash Nath Kothari (supra). The said case has been distinguished on the ground that the definition of the owner u/s 2(19) of the Motor Vehicle Act 1939 was under consideration, which has undergone substantial changes in Motor vehicle Act, 1988. Under the Act 1988 "owner" is defined u/s 2(30) of the Act.

12. It would be appropriate to refer Section 2 (19) of Old Act, 1939:

Section 2 (19) - "owner" means, where the person in possession of a motor vehicle is a minor, the guardian of such minor, and in relation to a motor vehicle, which is the subject of a hire purchase agreement, the person in possession of the vehicle under that agreement.

13. It may be that the phrase, namely, "the person in possession of the vehicle under that agreement are the same both u/s 2(19) of the Motor Vehicle Act 1939 and u/s 2(30) of the Motor Vehicle Act, 1988, but once the Apex Court has considered the old and new definition of "owner" under the Act 1939 and Act 1988 referred hereinabove and distinguished its own decision in the case of Rajasthan State Road Transport Corporation v. Kailash Nath Kothari (supra), this Court cannot take a different view. Moreover, perusal of definition of "owner" under the Old Act of 1939 and under the Act of 1988 reveals that there are material changes.

14. We are of the view that the decision of the Apex Court in the case of UPSRTC v. Kulsum (supra) is not per incurium nor it is sub silentio. If the Apex Court would not have considered the decision in the case of Rajasthan State Road Transport Corporation v. Kailash Nath Kothari (supra), then the position might have been different, but once on consideration of the decision in the case of

Rajasthan State Road Transport Corporation v. Kailash Nath Kothari (supra), an opinion has been expressed that it is not applicable as it is under the old Act. It is binding on this Court and cannot be reviewed.

15. Concept of "sub silentio" has been explained by Professor P.J. Fitzgerald, editor of the Salmond on Jurisprudence 12th Edition at p. 153 in the following words:

A decision passes sub silentio, in the technical sense that has come to be attached to that phrase, when the particular point of law involved in the decision is not perceived by the Court or present to its mind. The Court may consciously decide in favour of one party because of point A, which it considers and pronounces upon. It may be shown, however, that logically the Court should not have decided in favour of the particular party unless it also decided point B in his favour: but point B was not argued or considered by the Court. In such circumstances, although point B was logically involved in the facts and although the case had a specific outcome, the decision is not an authority on point B. Point B is said to pass sub silentio.

16. In the case of Arnit Das Vs. State of Bihar, , while examining the binding effect as is contemplated by Article 141 of the Constitution of India, the Apex Court has observed as under :

A decision not expressed, not accompanied by reasons and not proceeding on a conscious consideration of an issue cannot be deemed to be a law declared to have a binding effect as is contemplated by article 141. That which has escaped in the judgment is not the ratio decidendi This is the Rule of sub silentio, in the technical sense when a particular point of law was not consciously determined.

17. Encyclopaedic Law Dictionary defines "per incuriam" as follows:

Through want of care. An order of the Court obviously made through some mistake or under some misapprehension is said to be made per incuriam.

Per incuriam.".....Latin expression "per incuriam" means through inadvertence. A decision can be said generally to be given "per incuriam" when the Court has acted in ignorance of previous decision of its own or of the Apex Court.

18. In the case of State of U.P. and Another Vs. Synthetics and Chemicals Ltd. and Another, , Apex Court while considering the scope of Article 141 of the Constitution of India and doctrine of per incuriam observed as follows:

3. But the problem has arisen due to the conclusion in the case of Synthetic and Chemicals (supra). The question was if the State legislature could levy vend fee or excise duty on industrial alcohol. The Bench answered the question in the negative as industrial alcohol being unfit for human consumption the State legislation was incompetent to levy any duty of excise either under Entry 51 or Entry 8 of List II of the VIIth schedule. While doing so the Bench recorded the conclusion extracted earlier. It was not preceded by any discussion. No reason or

rationable could be found in the order. This gives rise to an important question if the conclusion is law declared under Article 141 of the Constitution or it is per incurium and is liable to be ignored.

4. Incuria literally means "carelessness". In practice per incurium appears to mean per ignoratium." English Courts have developed this principle in relaxation of the rule of stare decisis. The "quotable in law" is avoided and ignored if it is rendered, in ignoratium of a statute or other binding authority". 1944 1 KB 718 Young v. Bristol Aeroplane Ltd. Same has been accepted, approved and adopted by this Court while interpreting Article 141 of the Constitution which embodies the doctrine of precedents as a matter of law. In Jaisri Sahu Vs. Rajdewan Dubey and Others, , this Court while pointing out the procedure to be followed when conflicting decisions are placed before a Bench extracted a passage from Halsbury Laws of England incorporating one of the exceptions when the decision of an Appellate Court is not binding.

5. Does this principle extend and apply to a conclusion of law, which was neither raised nor preceded by any consideration. In other words can such conclusions be considered as declaration of law ? Here again the English Courts and jurists have carved out an exception to the rule of precedents. It has been explained as rule of sub-silentio. A decision passed sub-silentio, in the technical sense that has come to be attached to that phrase, when the particular point of law involved in the decision is not perceived by the Court or present to its mind" (Salmond 12th Edition). In Lancaster Motor Company (London) Ltd. v. Bremith Ltd., 1941 1 KB 675, the Court did not feel bound by earlier decision as it was rendered "without any argument, without reference to the crucial words of the rule and without any citation of the authority". It was approved by this Court in Municipal Corporation of Delhi Vs. Gurnam Kaur, . The Bench held that, "precedents sub-silentio and without argument are of no moment". The Courts thus have taken recourse to this principle for relieving from injustice perpetrated by unjust precedents. A decision which is not express and is not founded on reasons nor it proceeds on consideration of issue cannot be deemed to be a law declared to have a binding effect as is contemplated by Article 141 Uniformity and consistency are core of judicial discipline. But that which escapes in the judgment without any occasion is not ratio decedendi. In Shama Rao v. State of Pondicherry, AIR 1967 SC 1680, it was observed, it is trite to say that a decision is binding not because of its conclusions but in regard to its ratio and the principles, laid down there-in". Any declaration or conclusion arrived without application of mind or preceded without any reason cannot be deemed to be declaration of law or authority of a general nature binding as a precedent. Restraint in dissenting or overruling is for sake of stability and uniformity but rigidity beyond reasonable limits is inimical to the growth of law.

19. The Constitution Bench of the Apex Court in the case of Punjab Land Development and Reclamation Corporation Ltd., Chandigarh Vs. Presiding Officer, Labour Court, Chandigarh and Others, , has held that the Latin expression per

incuriam means through inadvertence. A decision can be said generally to be given per incuriam when this Court has acted in ignorance of a previous decision of its own or when a High Court has acted in ignorance to a decision of this Court.

20. In the case of UPSRTC v. Kulsum (supra), the Apex Court has considered the case where in an accident, third party suffered injuries/death and the right of the third party. The Apex Court has considered Sections 146, 147 and 157 of the Motor Vehicle Act, which read as follows :

146. Necessity for insurance against third-party risk.-(1) No person shall use, except as a passenger, or cause or allow any other person to use, a motor vehicle in a public place, unless there is in force in relation to the use of the vehicle by that person or that other person, as the case may be, a policy of insurance complying with the requirements of this Chapter :

147. Requirements of policies and limits of liability.-(1) In order to comply with the requirements of this Chapter, a policy of insurance must be a policy which-

- (a) is issued by a person who is an authorised insurer; and
- (b) insures the person or classes of persons specified in the policy to the extent specified in sub-section (2) -
  - (i) against any liability which may be incurred by him in respect of the death of or bodily injury to any person, including owner of the goods or his authorised representative carried in the vehicle or damage to any property of a third party caused by or arising out of the use of the vehicle in a public place;
  - (ii) against the death of or bodily injury to any passenger of a public service vehicle caused by or arising out of the use of the vehicle in a public place:

Provided that a policy shall not be required

(i) \* \* \* \*

(ii) to cover any contractual liability.

Explanation.-For the removal of doubts, it is hereby declared that the death of or bodily injury to any person or damage to any property of a third party shall be deemed to have been caused by or to have arisen out of, the use of a vehicle in a public place notwithstanding that the person who is dead or injured or the property which is damaged was not in a public place at the time of the accident, if the act or omission which led to the accident occurred in a public place.

(2) Subject to the proviso to subsection (1), a person of insurance referred to in sub-section (1), shall cover any liability incurred in respect of any accident, up to the following limits, namely:

- (a) save as provided in clause (b), the amount of liability incurred;
- (b) in respect of damage to any property of a third party, a limit of rupees six

thousand:

.....

157. Transfer of certificate of insurance.-(1) Where a person in whose favour the certificate of insurance has been issued in accordance with the provisions of this Chapter transfers to another person the ownership of the motor vehicle in respect of which such insurance was taken together with the policy of insurance relating thereto, the certificate of insurance and the policy described in the certificate shall be deemed to have been transferred in favour of the person to whom the motor vehicle is transferred with effect from the date of its transfer.

Explanation.-For the removal of doubts, it is hereby declared that such deemed transfer shall include transfer of rights and liabilities of the said certificate of insurance and policy of insurance.

(2) The transferee shall apply within fourteen days from the date of transfer in the prescribed form to the insurer for making necessary changes in regard to the fact of transfer in the certificate of insurance and the policy described in the certificate in his favour and the insurer shall make the necessary changes in the certificate and the policy of insurance in regard to the transfer of insurance.

21. The Apex Court has also considered the terms and conditions of the agreement, mainly, Clause 2.1, which provides that the second party shall be responsible to discharge all the legal liabilities under the Motor Vehicles Act, 1988 or any other Acts, registration, payment of taxes of vehicle, comprehensive insurance and all such liabilities as may be fixed from time to time by any law on the owner of the vehicle and the first party shall be deemed to have no liability whatsoever. On the consideration of the decision of the Apex Court in the case of Rajasthan State Road Transport Corporation v. Kailash Nath Kothari (supra) and the aforesaid provisions and the terms of the agreement, the Apex Court in the case of UPSRTC v. Kulsum (supra) has held as follows :

In our considered opinion, in the light of the drastic and distinct changes incorporated in the definition of "owner" in the old Act and the present Act, Rajasthan State Road Transport Corporation Vs. Kailash Nath Kothari and other etc., , has no application to the facts of this case. We were unable to persuade ourselves with the specific question which arose in this and connected appeals as the question projected in these appeals was neither directly nor substantially in issue in Kailash Nath case (supra). Thus, reference to the same may not be of much help to us. Admittedly, in the said case, this Court was dealing with regard to earlier definition of "owner" as found in Section 2(19) of the old Act

Critical examination of both the definitions of the "owner" would show that it underwent a drastic change in the Act of 1988, already reproduced hereinabove. In our considered opinion, in the light of the distinct changes incorporated in the definition of "owner" in the old Act and the present Act, Kailash Nath Kothari (Supra) case shall have no application to the facts of this case.

29. Critical examination thereof would show that the appellant and the owner had specifically agreed that the vehicle will be insured and a driver would be provided by owner of the vehicle but overall control, not only on the vehicle but also on the driver, would be that of the Corporation. Thus, the vehicle was given on hire by the owner of the vehicle together with its existing and running insurance policy. In view of the aforesaid terms and conditions, the Insurance Company cannot escape its liability to pay the amount of compensation.

35. In the instant case, the driver was employed by Ajay Vishen, the owner of the bus but evidently through Clause 4.4 of the agreement, reproduced hereinabove, driver was supposed to drive the bus under the instructions of the conductor who was appointed by the Corporation. The said driver was also bound by all orders of the Corporation. Thus, it can safely be inferred that effective control and command of the bus was that of the appellant.

36. Thus, for all practical purposes, for the relevant period, the Corporation had become the owner of the vehicle for the specific period. If the Corporation had become the owner even for the specific period and the vehicle having been insured at the instance of original owner, it will be deemed that the vehicle was transferred alongwith the insurance policy in existence to the Corporation and thus the Insurance Company would not be able to escape its liability to pay the amount of compensation.

37. The liability to pay compensation is based on a statutory provision. Compulsory insurance of the vehicle is meant for the benefit of the third parties. The liability of the owner to have compulsory insurance is only in regard to third party and not to the property. Once the vehicle is insured, the owner as well as any other person can use the vehicle with the consent of the owner. Section 146 of the Act does not provide that any person who uses" the vehicle independently, a separate insurance policy should be taken. The purpose of compulsory insurance in the Act has been enacted with an object to advance social justice.

38. Third-party rights have been considered by this Court in several judgments and the law on the said point is now fairly well-settled.

39. The Apex Court in *Guru Govekar Vs. Miss Filomena F. Lobo and Others*, , has held that : (SCC pp. 6-7 & 11, paras 8 & 13-14).

8.....Thus if a policy is taken in respect of a motor vehicle from an insurer in compliance with the requirements of Chapter VIII of the Act, the insurer is under an obligation to pay the compensation payable to a third party on account of any injury to his/ her person or property or payable to the legal representatives of the third party in case of death of the third party caused by or arising out of the use of the vehicle at a public place. The liability to pay compensation in respect of death of or injury caused to the person or property of a third party undoubtedly arises when such injury is caused when the insured is using the vehicle in a public place. It also arises when the insured has caused or allowed any other person (including an independent contractor) to use his vehicle in a

public place and the death of or injury to the person or property of a third party is caused on account of the use of the said vehicle during such period, unless such other person has himself taken out a policy of insurance to cover the liability arising out of such an accident.

13.....This meant that once the insurer had issued a certificate of insurance in accordance with sub-section (4) of Section 95 of the Act the insurer had to satisfy any decree which a person receiving injuries from the use of the vehicle insured had obtained against any person insured by the policy. He was liable to satisfy the decree when he had been served with a notice under sub-section (2) of Section 96 of the Act about the proceedings in which the judgment was delivered.

14....Any other view will expose innocent third parties to go without compensation when they suffer injury on account of such motor accidents and will defeat the very object of introducing the necessity for taking out insurance policy under the Act.

40. In a recent judgment of this Court, in *United India Insurance Co. Ltd. v. Santro Devi*, (2009) 1 SCC 558, it has been held as under : (SCC pp. 564-65 paras 16-17).

16. The provisions of compulsory insurance have been framed to advance a social object. It is in a way part of the social justice doctrine. When a certificate of insurance is issued, in law, the insurance company is bound to reimburse the owner. There cannot be any doubt whatsoever that a contract of insurance must fulfil the statutory requirements of formation of a valid contract but in case of third-party risk, the question has to be considered from a different angle.

17. Section 146 provides for statutory insurance. An insurance is mandatorily required to be obtained by the person in charge of or in possession of the vehicle. There is no provision in the Motor Vehicles Act that unless the name(s) of the heirs of the owner of a vehicle is/are substituted on the certificate of insurance or in the certificate of registration in place of the original owner (since deceased), the motor vehicle cannot be allowed to be used in a public place. Thus, in a case where the owner of a motor vehicle has expired, although there does not exist any statutory interdict for the person in possession of the vehicle to ply the same on road; but there being a statutory injunction that the same cannot be plied unless a policy of insurance is obtained, we are of the opinion that the contract of insurance would be enforceable. It would be so in a case of this nature as for the purpose of renewal of insurance policy only the premium is to be paid. It is not in dispute that quantum of premium paid for renewal of the policy is in terms of the provisions of the Insurance Act, 1938.

41. Perusal of the ratio of aforesaid Judgments of this Court shows that Section 146 of the Act gives complete protection to the third party in respect of death or bodily injury or damage to the property while using the vehicle in public place. For that purpose, insurance of the vehicle has been made compulsory to the

vehicles or to the owners. This would further reflect that compulsory insurance is obviously for the benefit of third parties.

42. Certificate of insurance between the owner and the insurance company contemplates under what circumstances the insurance company would be liable to pay the amount of compensation. The relevant conditions are reproduced herein below:

Rules with respect to use of the vehicle Use only for carriage of passengers in accordance with permit (contract carriage or stage carriage) issued within the meaning of the Motor Vehicles Act, 1988. This policy does not cover :

1. Use for organised racing, pace making, reliability trial, speed testing.
2. Use whilst drawing a trailer except the towing (other than to reward) of any one disabled mechanically propelled (sic propelled) vehicle.

Persons who are qualified to use the vehicle:

Any person including the insured provided that the person driving holds an effective driving licence at the time of the accident and is not disqualified from holding or obtaining such licence. Provided also that a person holding an effective learner's licence may also drive the vehicle when not used for transport of passengers at the time of the accident and such a person satisfies the requirement of Rule 3 of the Central Motor Vehicle Rules, 1989.

43. Perusal thereof would show that there has not been any violation of the aforesaid terms and conditions of the policy. The respondent Insurance Company has also failed to point out violation of any Act, Rules or conditions of insurance. The Insurance Company has no legal justification to deny the payment of compensation to the claimants.

45. Thus, looking to the matter from every angle, we are of the considered opinion that the Insurance Company cannot escape its liability of payment of compensation to third parties or claimants. Admittedly, owner of the vehicle has not violated any of the terms and conditions of the policy or provisions of the Act. The owner had taken the insurance so as to meet such type of liability which may arise on account of use of the vehicle.

46. Apart from the above, the Learned Counsel for the Insurance Company could not point out any legal embargo which may give right to it to deny the payment of compensation. Thus, legally or otherwise, liability has to be fastened on the Insurance Company only.

22. We have also gone through the IMT-44, which has been referred hereinabove. It provides that in consideration of payment of additional premium, the insurer will indemnify any hirer of the vehicle insured against loss, damage and liability, as defined in this policy arising in connection with the vehicle insured while let on hire. It is claimed that this tariff is being issued by the Tariff Advisory Committee which is a statutory body constituted u/s 64(u) of the

Insurance Act, 1938. We are of the view that the IMT-44 applies to those cases where the hirer takes the policy. Moreover, there is nothing in the policy to suggest that in case of transfer of possession of vehicle under the agreement some additional premium was required to be paid.

23. In the present case, there was a bipartite agreement between the owner and the UPSRTC wherein under the agreement, the hirer was not held responsible for the liability. IMT-44 does not apply in a case where under the agreement, the original owner is held liable and not the hirer. In the case in hand, under the agreement, the hirer is not responsible for any liability and it is the owner, who is liable. Under the policy, the appellant has to indemnify the liability of the original owner. Hirer steps into the shoes of the original owner. Thus, we are of the view that the Insurance Company cannot escape its liability to pay the compensation in case where the third party's risk is covered under the policy, in case, if the possession of the vehicle is given under the agreement to the hirer.

24. It is not in dispute that the terms and conditions of the agreement in the present case are similar to the terms and conditions of the agreement in the case of UPSRTC v. Kulsum (*supra*). There is also no dispute that the vehicle was insured and it was got insured by the original owner. Under the terms and conditions of the agreement it was necessary to get the vehicle insured. It is not the case of the appellant that any terms and conditions of the insurance policy has been violated and there was breach of policy. Thus, on the facts and circumstances and in view of the law laid down by the Apex Court, referred hereinabove, we are of the view that the Tribunal has rightly held that the Insurance Company is liable to pay the compensation and not the UPSRTC.

25. In view of the discussions made above, the appeal has no merit and is, accordingly, dismissed. The statutory amount deposited by the appellant be remitted to the concerned Tribunal within four weeks.