
(2003) 07 KAR CK 0084
In the Karnataka High Court
Case No : M.F.A. No. 3420 of 2001

Mahabala

APPELLANT

Vs

Satyanarayana and Others

RESPONDENT

Date of Decision : 18-07-2003

Acts Referred:

Motor Vehicles Act, 1988 — Section 149 (2)

Citation : (2004) ACJ 850 : (2004) ILR (Kar) 375 : (2003) 4 KCCR 2602

Hon'ble Judges : S.B. Majage, J

Bench : Single Bench

Advocate : Varadaraj R. Havaladar, for the Appellant; S.V. Prakash, for R-2 and P.B. Raju, for R-3, for the Respondent

Final Decision : Allowed

Judgement

S.B. Majage, J.—The appellant, who was claimant before the Additional M.A.C.T. at Sagar in M.V. C.No. 76/1995, has approached this Court since his claim petition seeking compensation of Rs. 1,60,000/- from the respondents came to be dismissed on 27.4.2001.

2. Heard the learned Counsel for the parties. It is submitted for the claimant that the Tribunal has committed an error in holding that the claimant failed to prove that there was an accident to him by motor cycle and also in not awarding compensation to him besides in holding that the Insurance Company has proved that it is not liable to pay compensation after holding that the rider had no valid driving licence as on the date of accident. On the other hand, it is submitted for the Insurance Company that the finding on negligence is proper and correct and that the policy of insurance ceased to be effective as the transfer of the vehicle by respondent No. 2 to respondent No. 1 was not informed and, at any rate, as respondent No. 1 had no valid and effective driving licence, the Tribunal has rightly not fastened liability with it (Insurance Company). Perused the records carefully.

3. In brief, the case of the claimant is that, on 26.4.1991, when he was proceeding on the left side on Avenahalli Heggodu road, the first respondent came on motor cycle bearing No. MEG-8872 driving it in a rash and negligent manner and dashed against him causing injuries and hence, he is entitled to compensation as claimed. The first respondent remained absent inspite of service of notice and not contested the claim. However, the second respondent filed his objections stating that since he had transferred the vehicle in question on 20.3.1991 itself to the first respondent for consideration of Rs. 6,000/- and parted with its possession then only, he is in no way liable to answer the claim and as such, the claim is not maintainable against him. So also, third respondent Insurance Company, with which the said vehicle was insured, disputed its liability to pay compensation on the ground that the rider of the motor cycle had no valid or effective driving licence to drive it. After enquiry, the Tribunal held that the claimant failed to prove the accident and 2nd respondent is not liable to answer the claim because of transfer of vehicle to respondent No. 1 and so also the Insurance Company as the first respondent had no valid or effective driving licence to drive the motor cycle and dismissed the claim petition. So, in this appeal of the appellant - claimant, following points arise for consideration.

(1) Whether accident between cycle and motor cycle on 26.4.1991 is proved? If so, who was at fault?

(2) Whether the second respondent is absolved from liability due to transfer of motor cycle by him to the first respondent?

(3) Whether the third respondent proved that respondent No. 1 - rider of motor cycle had no driving licence to drive it and as such, it is not liable to pay compensation?

4. Point No. 1 : As per claim petition, it is the case of the appellant/ claimant that, on 26.4.1991, when he was proceeding on the left side of the road, from Heggodu to his residence on Avenahalli - Heggodu Road, the first respondent drove the motor cycle in a rash and negligent manner and dashed against him after coming from opposite direction and caused injuries, etc., However, what is stated by claimant examined as PW-1 before the Tribunal is that about 8 years back at 6 p.m. when he was going from his village to Heggodu pushing his cycle on left side on the road, a motor cycle came from opposite direction at great speed and caused the accident. So, there is no consistency in the pleading and evidence since one shows that he was proceeding from his village to Heggodu whereas, the other shows that from Heggodu, he was proceeding to his residence. That apart, according to Ex.P.1 - F.I.R., a Rajdoot motor cycle came and dashed against Mahabalappa - claimant, who was coming on cycle towards Heggodu from Athisara, and at that time, complainant was coming from Heggodu. The complainant is no other than a close relative of the claimant as Mahabalappa is his brother-in-law. Of course, complainant has not been examined before the Tribunal for the reasons best known to the claimant.

5. Further, the mahazar at Ex.P.2 shows that the cycle was found lying in East-West direction whereas, the motor cycle was found lying facing towards southern direction at the eastern edge of the tar road, which has 10 ft tar road with 4 ft with kaccha road on either side. It also shows that Avenahalli is towards South whereas, Heggodu is towards North of place of accident. This shows claimant going towards north i.e., Heggodu on wrong side of road with cycle whereas, motor cycle going towards south on its correct side. Even going on cycle or damage to any cycle is not at all found in the claim petition, though claimant stated in his deposition that he was going pushing his cycle at the time of accident. Of course, as noted already, the complaint shows going on cycle and not pushing cycle when accident occurred. Thus, there is no consistency in the case/ stand of the claimant and even between the pleading and evidence that from which direction/place to which direction/place, the claimant was going with/ without cycle, etc.,

6. However, that itself cannot be taken to hold that there was no accident at all for the reason that the person, who could have disputed the accident, i.e., respondent No. 1 has not appeared in the case before the Tribunal to say so. Even respondent No. 2 has not specifically denied the accident. Of course, 3rd respondent, though denied contents of para No. 22 of claim petition relating to accident earlier to that, pleaded ignorance for para No. 8 pertaining to place, date and time of accident. Not only that, the claimant - PW1 was not suggested during his cross-examination that there was no accident on that day. The suggestions were that the motor cycle did not dash against cycle and that he fell down from his cycle on his own without being dashed by motor cycle and sustained injuries, etc., Further, on the complaint found in F.I.R. (Ex.P1) regarding said accident, Police conducted investigation and ultimately, filed charge sheet against respondent No. 1 which is clear from Ex.R2 filed and marked for the respondent -3 only. So, the respondent - 3 cannot fall back against its own records and now plead and take the defence that there was no accident at all. That apart, there was no reason for the respondent -1 to leave the motor cycle at the place of accident, if there was no accident. It is not the case or evidence of the respondents that the motor cycle was not at the place of accident when police visited that place, conducted spot mahazar -Ex.P2 and seized it. On the other hand, records produced by respondents only show that after accident, motor cycle was with Police and respondent No. 1 took it after obtaining order from the Court. This also cannot be ignored. Further, RW-1 examined for the 3rd respondent and respondent No. 2 examined as RW-2 have not stated on oath that there was no accident at all on 26.4.1991. In view of the said material on record and circumstances of the case and the nature of the proceedings, it can be safely held that there was accident between cycle and motor cycle on 26.4.1991. Still the Tribunal wrongly held that there was no accident at all on 26.4.1991 and as such, that finding cannot be sustained.

7. Of course, so far as actionable negligence is concerned, in view of the material and circumstances on record, it cannot be said that the rider of the motor cycle

alone was responsible for the accident more so, when the situation of the place of accident as depicted in Ex.P2 -Mahazar is kept in mind with inconsistency in the case and evidence of claimant that from which direction/place to which direction/place, he was proceeding with/without cycle. Further, the date of accident is in April. So, when the time of accident (5.45 p.m.) is considered, it cannot be said that the claimant and rider of the motor cycle, both could not see each other coming on the road, when the road has no curve near or at the place of accident. Even there is no specific pleading or evidence that the motor cyclist was on wrong side of the road. On the other hand, evidence shows that claimant was on wrong side and the motor cycle was coming on its correct side from Heggodu direction to Avenahalli direction. However, there is nothing on record to say that some other vehicle or obstacle was on the road and as such, motor cyclist could not avoid accident. So, it cannot be said that the motor cyclist has not at all contributed for the accident when kept in mind the width of tar road with Kaccha road on either side besides the type of vehicles, time of accident, etc, and as such, in the facts and circumstances of the case, the claimant and respondent No. 1, both could be held responsible to the extent of 60% and 40% respectively for the accident. Accordingly, first point is answered.

8. Point No. 2:- Admittedly, as on the date of accident, respondent No. 2 was the registered owner of vehicle but, according to him, he had sold it to the respondent No. 1 earlier to accident. To prove the same, respondent No. 2 has stepped into the witness box as RW-2 and stated on oath with regard to the sale of said motor cycle to respondent No. 1 and in support of it, produced Ex.R7, which shows that he had sold the motor cycle with its possession to the first respondent on 20.3.1991 itself for a sum of Rs. 6,000/-. Further, Ex.R-4 order sheet, Ex.R-5 indemnity bond, Ex.R-6 release order also corroborate the case of the second respondent because, after the accident, when the motor cycle had been seized by Police, it was the first respondent, who had taken it from the custody of the Court after executing bond. If the vehicle had not been purchased by 1st respondent i.e, if the second respondent had not sold the vehicle to first respondent, there was no reason for the first respondent to apply for its custody and take the same from the Court after executing bond. That apart, the first respondent has not appeared in the case to say anything with regard to transfer of the vehicle to him by respondent No. 2 pleaded by respondent No. 2. So, there can be no reason to disbelieve that, on 20.3.1991, respondent No. 2 has sold vehicle to the first respondent for a consideration of Rs. 6,000/- and its custody/possession was with first respondent at the time of accident as its owner and possessor and as such, its effect on the liability of Insurance Company requires to be seen.

9. In the case of Paragounda Vs. Bhimappa and others, a Full Bench of this Court held that unless it is proved that the registered owner has ceased to be the owner of vehicle, he continues to be liable in the event of an accident for the claims of third parties. Said decision has approved an earlier Full Bench decision of this Court in the case of National Insurance Co Ltd. Vs. Mallikarjun and others,

in which a Full Bench decision of the High Court of Andhra Pradesh in the case of Madineni Kondaiah and Others Vs. Yaseen Fatima and Others, has been distinguished.

10. However, in the case of G. Govindan Vs. New India Assurance Co. Ltd. and Others, the Supreme Court has preferred the ratio laid down by Andhra Pradesh High Court and quoted with approval following observations made in the case of Kondaiah (supra) and held the view taken by this Court in the case of Mallikarjun (supra) as not correct:-

"It is incorrect to assume that the moment the title of the vehicle passes to the transferee the statutory obligation u/s 94 ceases and the original owner is no longer guilty of causing or allowing the purchaser to use the vehicle. The question is when does the statutory liability cease? The mere passing of title in the vehicle to the transferee will not put an end to this liability. For this purpose we must examine two more provisions of the Act. u/s 31 the transferor shall within 14 days of the transfer report the fact of transfer to the registering authority within whose jurisdiction the transfer is to be effected and shall simultaneously send a copy of the said report to the transferee and within forty-five days of the transfer forward to the registering authority no objection certificate obtained by him u/s 29-A. Section 29-A contemplates issuing of no objection certificate both on the occasion of assignment of a new registration mark and also while transferring the motor vehicle. The registering authority is enjoined to issue a certificate within a period of thirty days and if no orders are passed the registering authority shall be deemed to have granted the no objection certificate. The failure to comply with Section 31 is made punishable u/s 112. However, as an alternative measure it also provided u/s 31(1-A) that if the transferor or transferee fails to comply with the requirements of Section 31 they have to pay a fine of Rs. 100 or the prescribed amount considering the period of delay on their part by way of penalty. It is pertinent to note that Section 31 was amended by Act 100 of 1956. u/s 31 as it stood prior to this amendment in 1956 only the transferee was required to report the transfer of the ownership and was expected to forward a certificate of registration to the registering authority within thirty days of the transfer. Prior to this amendment there was no statutory obligation on the transferor as is now provided in sub-Clause (a) of Sub-section (1) of Section 31 to notify the transfer to the registering authority within whose jurisdiction the transfer is effected. Thus we see till the transferor fulfils the statutory obligation u/s 31 his liability continues. Further he is the ostensible owner of the vehicle so long the registration is not changed."

..... "The registration of the vehicle in the name of the transferee is not necessary to pass title in the vehicle. Payment of price and delivery of the vehicle makes the transaction complete and the title will pass to the purchaser. When the policy of insurance obtained by the original owner of the vehicle is a composite one covering the risks for his person, property (vehicle) and the third

party claim, on passing of title the transferee cannot enforce his claim in respect of any loss or damage to his person and vehicle unless there is a novation. So far the third-party risk is concerned the proprietary interest in the vehicle is not necessary and the public liability continues till the transferor discharges the statutory obligation under Sections 29-A and 31 read with Section 94 of the Act. Till he complies with the requirement of Section 31 of the Act the public liability will not cease and that constitutes the insurable interest to keep the policy alive in respect of the third-party risks are concerned. It must be deemed that the transferor allowed the purchaser to use the vehicle in a public place in the said transitional period and accordingly till the compliance of Section 31, the liability of the transferor subsists and the policy is in operation so far it relates to the third-party risks. We answer the second question accordingly."

(emphasis supplied)

In the present case, though respondent No. 2 stated to have complied with Section 31 (old) = Section 50 (new) of the Act, no record or proof has been furnished in support of it. So, it cannot be taken that Section 31 of the Act was complied with and consequently he cannot avoid his liability so far as claimant-third party risk is concerned. Accordingly, second point is answered in negative.

11. Point No. 3:- In its objections, the third respondent-Insurance Company pleaded only to the effect that it does not admit that the first respondent had a valid driving licence to drive the vehicle in question. Though it has not specifically contended, its case was that the first respondent had no valid driving licence to drive the motor cycle. In other words, its only defence was that by allowing first respondent to drive motor cycle, who had no driving licence, respondent No. 2-owner has committed breach of policy condition.

12. In support of said pleading, there is evidence of RW-1 Prakash. It is stated by him that the respondent No. 1 had no driving licence and the R.T.O. Office informed that it has no record to show that any driving licence was issued to the first respondent and the first respondent also failed to produce driving licence before the Vehicle Inspector when the motor cycle was inspected by M.V.I after accident. However, except the said statement of RW-1 examined for respondent No. 3, there is no other evidence or record. So, the question is, whether this much evidence coupled with the pleading referred to above is sufficient to hold that the Insurance Company has discharged its burden cast on it since, admittedly, the burden to prove the same was on the Insurance Company, as held by this Court even before quarter century in the case of *SANJIVA SHETTY v. ANANTHA AND ORS.* 1976 ACJ 261 and reiterated recently also in the case of *H.G. Ramachandra Rao Vs. Master Srikantha and others*, and even by the Supreme Court recently in the case of *Rukmani and Others Vs. New India Assurance Co. and Others*, .

13. Admittedly, the 3rd respondent - Insurance Company has neither summoned respondent No. 1 - rider of motor cycle to give evidence nor obtained and

produced any record issued by RTO nor summoned anybody from the office of R.T.O. to show that respondent No. 1 had no driving licence to drive motor cycle. In the case on hand, if really respondent No. 1 had no driving licence to drive it, there was no reason for Police not to charge-sheet respondent No. 1 for driving motor cycle without driving licence particularly when charge-sheeted for rash and negligent driving, as is clear from charge-sheet Ex.R-2. This fact also cannot be ignored.

14. In the case of Ramachandra Rao (Supra), when the insurer had not taken any such step (referred to above), though produced charge-sheet and copy of order sheet to show that the driver pleaded guilty, this Court held that insurer failed to discharge the burden that driver had no driving licence. Similarly, the High Court of Andhra Pradesh has not absolved Insurance Company from its liability in the case of *INDIAN MUTUAL INSURANCE COMPANY v. VIJAYA RAMULU AND ORS.* 1978 ACJ 366 when the insurer had not taken effective steps to examine the driver to prove that vehicle was driven by a person not having valid driving licence.

15. So also, in the case of Rukmani and Others Vs. New India Assurance Co. and Others, when some evidence was adduced but not summoned the driver nor produced any record from R.T.A., the Supreme Court observed as under:-

"3. We have seen the only evidence which the Insurance Company produced in support of the plea. This is the evidence of Inspector of Police who investigated the accident. In his evidence, PW-1 who was the Inspector of Police, stated in his examination - in- chief, " My enquiry revealed that the 1st respondent did not produce the licence to driver the abovesaid scooter. The first respondent even after my demand did not submit the licence since he was not having it". In his cross examination he has said that it is the Inspector of Motor Vehicles who is required to check whether the licence is there but he had not informed the Inspector of Motor Vehicles that the 1st respondent was not having a licence since he thought it was not necessary. In our view, this evidence is not sufficient to discharge the burden which was cast on the Insurance Company. It did not summon the driver of the vehicle. No record from the Road Transport Authority has also been produced. In these circumstances, the Insurance Company has not discharged the burden cast upon it u/s 96(2)(b)(ii) of the Motor Vehicles Act, 1939."

(underline supplied)

In view of the above, the sole statement of RW-1, not supported by any other evidence or record, is held not sufficient to hold that the Insurance Company has proved that the respondent No. 1 had no valid driving licence to drive motor cycle as on the date of accident.

16. That apart, what is pertinent to note is that it was insurance Company, which was required to plead and prove the breach of condition(s) by respondent No. 2 so as to absolve itself from liability. This is because of Section 149(2) of the Act,

relevant part of which is as under: -

"149. Duty of insurers to satisfy judgments and awards against persons insured in respect of third party risks.

1) 2) No sum shall be payable by an insurer under Sub-section (1) in respect of any judgment or award unless, before the commencement of the proceedings in which the judgment or award is given the insurer had notice through the Court or, as the case may be, the Claims Tribunal of the bringing of the proceedings, or in respect of such judgment or award so long as execution is stayed thereon pending an appeal; and an insurer to whom notice of the bringing of any such proceedings is so given shall be entitled to be made a party thereto and to defend the action on any of the following grounds, namely-

a) that there has been a breach of a specified condition of the policy, being one of the following conditions, namely-

i) ii) a condition excluding driving by a named person or persons or by any person who is not duly licensed, or by any person who had been disqualified for holding or obtaining a driving licence during the period of disqualification; or

iii)"

17. After considering Section 149(2) of the Act, in the case of United India Insurance Company Ltd. Vs. Lehu and Others, the Supreme Court has observed and held as under:-

"..... We are thus in agreement with what is laid down in the aforementioned cases viz., that in order to avoid liability it is not sufficient to show that the person driving at the time of accident was not duly licensed. The insurance company must establish that the breach was on the part of the insured."

18. Thus, it is only in case of a breach or violation of the promise on the part of the insured that the insurer can hide under the umbrella of the exclusion clause. The expression "breach" is of great significance. The dictionary meaning of "breach" is "infringement or violation of a promise or obligation". It is, therefore, abundantly clear that the insurer will have to establish that the insurer is guilty of an infringement or violation of a promise that a person, who is duly licenced, will have to be incharge of the vehicle. The very concept of infringement or violation of the promise that the expression "breach" carries within itself induces an inference that the violation or infringement on the part of the promisor must be a willful infringement or violation. As such, the Insurance Company will have to not only establish that insured was guilty of an infringement or violation of promise, it has also to satisfy the Tribunal that such infringement or violation on the part of the insured was willful, as held by the Apex Court in the case of Skandia Insurance Co. Ltd. Vs. Kokilaben Chandravan and Others, .

19. The Supreme Court has reiterated the same in the case of Sohan Lal Passi Vs. P. Sesh Reddy and others, by holding that:-

" Unless it is established on the materials on record that it was the insured who had willfully violated the condition of the policy by allowing a person not duly licensed to drive the vehicle when the accident took place, the insurer shall be deemed to be a judgment debtor in respect of the liability in view of sub section (i) of Section 96 of the Act " (underline supplied)

20. However, in the case on hand, except pleading that it does not admit that the 1st respondent had a valid driving licence to drive motor cycle, the Insurance Company has not pleaded breach of any term or condition, much less breach of any specific term/condition of insurance policy at Ex.R3. Not only that, in his evidence, RW-1 has not stated that respondent No. 2 has violated any term or condition much less violation of a specific term/condition of policy. Further, it is neither pleaded in its objections nor brought on record either in the evidence of RW-1 or by way of any suggestion to RW-2 respondent No. 2 during his cross-examination that he (respondent No. 2) knew very well that respondent No. 1 had no driving licence to drive motor cycle and inspite of that he (respondent No. 2) caused/ permitted respondent No. 1 to drive it and thereby/thus guilty of infringement or violation of a promise that a person who is duly licensed will be incharge of the vehicle. In other words, it is a case of absence of any pleading and evidence by respondent -3 Insurance Company regarding violation of any term or condition of the policy at Ex. R3 much less any specific term/condition of policy by respondent No. 2. So, even if assumed for a moment that the Insurance Company has shown that the respondent No. 1 was not duly licensed when he drove motor cycle and caused accident, that itself cannot be taken to hold that the respondent No. 3 - insurer proved that the insured - respondent No. 2 committed breach as provided in Section 149(2)(a)(ii) of the Act, So, it cannot be absolved from its liability.

21. Incidentally, it may also be noted that, as per Ex. R3- Insurance Policy, any person including insured could drive vehicle provided the person driving holds effective driving licence at the time of the accident and is not disqualified from holding or obtaining such a licence. However, in this case, though it is pleaded that rider of motor cycle-respondent No. 1 had no driving licence, there is no pleading or evidence that he was disqualified from holding or obtaining such licence. This aspect of the matter also cannot be lost sight.

22. Above all, it is an admitted fact that the claimant is a third party, who has suffered in the accident. So, what are his (third party's) rights to have compensation require to be considered. For this, firstly reference can be had to Section 146(1) of the Act, which says that:

"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:

Provided that in the case of a vehicle carrying, or meant to carry, dangerous or hazardous goods, there shall also be a policy of insurance under the Public Liability Insurance Act, 1991 (6 of 1991)."

23. The Apex Court, in the case of Skandia Insurance Co. Ltd. (supra), has considered the object and purpose of getting motor vehicles insured as under: -

"13. In order to divine the intention of the legislature in the course of interpretation of the relevant provisions there can scarcely be a better test than that of probing into the motive and philosophy of the relevant provisions keeping in mind the goals to be achieved by enacting the same. Ordinarily it is not the concern of the legislature whether the owner of the vehicle insures his vehicle or not. If the vehicle is not insured any legal liability arising on account of third party risk will have to be borne by the owner of the vehicle. Why then has the legislature insisted on a person using a motor vehicle in a public place to insure against third-party risk by enacting Section 94? Surely the obligation has not been imposed in order to promote the business of the insurers engaged in the business of automobile insurance. The provision has been inserted in order to protect the members of the community traveling in vehicles or using the roads from the risk attendant upon the user of motor vehicles on the roads. The law may provide for compensation to victims of the accidents who sustain injuries in the course of an automobile accident or compensation to the dependants of the victims in the case of a fatal accident. However, such protection would remain a protection on paper unless there is a guarantee that the compensation awarded by the courts would be recoverable from the persons held liable for the consequences of the accident. A Court can only pass an award or a decree. It cannot ensure that such an award or decree results in the amount awarded being actually recovered, from the person held liable who may not have the resources. The exercise undertaken by the law Courts would then be an exercise in futility. And the outcome of the legal proceedings which by the very nature of things involve the time cost and money cost invested from the scarce resources of the community would make a mockery of the injured victims, or the dependants of the deceased victim of the accident, who themselves are obliged to incur not inconsiderable expenditure of time, money and energy in litigation. To overcome this ugly situation the legislature has made it obligatory that no motor vehicle shall be used unless a third-party insurance is in force. In order to make the protection real, the legislature has also provided that the judgment obtained shall not be defeated by the incorporation of exclusion clauses other than those authorised by Section 96 and by providing that except and save to the extent permitted by Section 96 it will be the obligation of the insurance company to satisfy the judgment obtained against the persons insured against third-party risk (vide Section 96). In other words, the legislature has insisted and made it incumbent on the user of a motor vehicle to be armed with an insurance policy

covering third-party risks which is conformity with the provisions enacted by the legislature. It is so provided in order to ensure that the injured victims of automobile accidents or the dependants of the victims of fatal accidents are really compensated in terms of money and not in terms of promise"

(underline supplied)

24. Further, in the case of *Lehru* (supra), the Supreme Court has observed that:

"16 In the case of *New India Assurance Co. v. Kamla* 1976 ACJ 261 the question was whether by virtue of Section 149(2)(a)(ii) an insurance company could avoid liability if it is proved that the driving licence was fake. This Court considered, in detail, Section 149 of the Motor Vehicles Act, 1988 and held that the insurer has to pay to third parties on account of the fact that a policy of insurance has been issued in respect of the vehicle. It is held that the insurer may be entitled to recover such sum from the insured if the insurer was not otherwise liable to pay such sum to the insured by virtue of the contract of insurance."

17. It is submitted that *Kamla* case is not correctly decided. It is submitted that Sub-section (7) of Section 149 of the Motor Vehicles Act, 1988 has not been noticed by this Court in *Kamla* case. We see no substance in this submission. A plain reading of Section 149 would show that an insurance company would continue to be liable to third persons."

25. As to what should be the approach of Court/Tribunal while interpreting the contract of insurance, the Apex Court has observed as under in the case of *SOHANLAL PASSI* (supra):

"15.While interpreting the contract of insurance, the tribunals and Courts have to be conscious of the fact that right to claim compensation by heirs and legal representatives of the victims of the accident is not defeated on technical grounds It need not be pointed out that the whole concept of getting the vehicle insured by an insurance company is to provide an easy mode of getting compensation by the claimants, otherwise in normal course they had to pursue their claim against the owner from one forum to the other and ultimately to execute the order of the accidents Claims Tribunal for realization of such amount by sale or properties of the owner of the vehicle. The procedure and result of the execution of the decree is well known "

(underline supplied)

26. Further, while considering Section 149 of the Act, the Supreme Court has observed as under in the case of *LEHRU* (supra):-

" Thus under Sub-section (1) the insurance company must pay to the person entitled to the benefit of the decree, notwithstanding that it has become "entitled to avoid or cancel or may have avoided or cancelled the policy". The words "subject to the provisions of this Section" mean that the insurance company can get out of the liability only on grounds set out in Section 149. Sub-

section (7), which has been relied on, does not state anything more or give any higher right to the insurance company. On the contrary, the wording of Sub-section (7) viz. "no insurer to whom the notice referred to in Sub-section (2) or Sub-section (3) has been given shall be entitled to avoid his liability" indicates that the legislature wanted to clearly indicate that insurance companies must pay unless they are absolved of liability on a ground specified in Sub-section (2). This is further clear from Sub-section (4) which mandates that conditions, in the insurance policy, which purport to restrict insurance would be of no effect if they are not of the nature specified in subsection (2). The proviso to Sub-section (4) is very illustrative. It shows that the insurance company has to pay to third parties but it may recover from the person who was primarily liable to pay. The liability of the insurance company to pay is further emphasized by Sub-section (5). This also shows that the insurance company must first pay, then it can recover. If Section 149 is read as a whole it is clear that Sub-section (7) is not giving any additional right to the insurance company. On the contrary it is emphasizing that the insurance company cannot avoid liability except on the limited grounds set out in Sub-section (2).

19. Now let us consider Section 149(2). Reliance has been placed on Section 149(2)(a)(ii). As seen, in order to avoid liability under this provision it must be shown that there is a "breach". As held in *Skandia and Sohan Lal Passi* cases the breach must be on the part of the insured. We are in full agreement with that. To hold otherwise would lead to absurd results. Just to take an example, suppose a vehicle is stolen. Whilst it is being driven by the thief there is an accident. The thief is caught and it is ascertained that he had no licence. Can the insurance company disown liability? The answer has to be an emphatic "No". To hold otherwise would be to negate the very purpose of compulsory insurance. The injured or relatives of the person killed in the accident may find that the decree obtained by them is only a paper decree as the owner is a man of straw. The owner himself would be an innocent sufferer. It is for this reason that the legislature, in its wisdom, has made insurance, at least third-party insurance, compulsory. The aim and purpose being that an insurance company would be available to pay. The business of the company is insurance. In all business there is an element of risk. All persons carrying on business must take risks associated with that business. Thus it is equitable that the business which is run for making profits also bears the risk associated with it. At the same time innocent parties must not be made to suffer or loss. These provisions meet these requirements "

(underline supplied)

27. Now reference can also be had to Section 147(5) of the Act which corresponds to Section 95(5) of Motor Vehicles Act, 1939. It runs as under:

Section 147(5): Notwithstanding anything contained in any law for the time being in force, an insurer issuing a policy of insurance under this section shall be liable to indemnify the person or classes or persons specified in the policy in respect of any liability which the policy purports to cover in the case of that

person or those classes of persons."

(underline supplied)

It is significant to note that said provision starts with a non-abstante clause and contains the word "shall" while making insurer liable. So, while considering the liability of insurer, they cannot be ignored.

28. In this context, it will be useful to note the following observations made even before three decades by a Bench of three Judges of the Supreme Court in the case of *New Asiatic Insurance Co. Ltd. Vs. Pessumal Dhanamal Aswani and Others*, wherein the object of said provision has been considered along with some other related provisions, as under:

"Sub-section (5) of Section 95 makes the insurer liable to indemnify the person or classes of person specified in the policy in respect of any liability which the policy purports to cover in the case of that person or those classes of person. If the policy covers the insured for his liability to third parties, the insurer is bound to indemnify the person or classes of person specified in the policy. The same is the effect of Sub-section (1) of Section 96 which provides that the insurer is bound to pay to the person entitled to the benefit of a decree he obtains in respect of any liability covered by the terms of the policy against any person insured by the policy irrespective of the fact whether the insurer was entitled to avoid or cancel or might have avoided or cancelled the policy. This means that once the insurer has issued a certificate of insurance in accordance with Sub-section (4) of Section 95 he has to satisfy any decree which a person receiving injuries from the use of the vehicle insured obtains against any person insured by the policy. He is however liable to satisfy the decree only when he has been served with a notice under subsection (2) of Section 96 about the proceedings in which the judgment was delivered. It is for this reason that a notice under Sub-section (2) of Section 96 was issued to the company and it is on account of the consequential liability in case the plaintiffs' claim is decreed against Pessumal that the appellant challenged the correctness of the allegation that Pessumal was a person insured under the policy issued by it in respect of the Chevrolet car. It follows from a consideration of these various provisions of the Act-and this is not really disputed for the appellant-that if under the terms of the policy Pessumal can be said to be the person insured under para 3, the company would be liable to satisfy the decree if any passed against Pessumal.

.....The company, by agreeing with the person who affects the policy, to insure him against liability to third parties, takes upon itself the entire liability of the person effecting the insurance. It is open to the insurer not to extend his indemnity to the insured to other persons but if it extends it to other persons, it cannot restrict it vis a vis the right of the third party entitled to damages, to recover them from the insured, a right which is not disputed.....

The Act contemplates the possibility of the policy of insurance undertaking liability to third parties providing such a contract between the insurer and the

insured, that is, the person who effected the policy, as would make the company entitled to recover the whole or part of the amount it has paid to the third party from the insured. The insurer thus acts as security for the third party with respect to its realizing damages for the injuries suffered, but vis a vis the insured, the company does not undertake that liability or undertakes it to a limited extent. It is in view of such a possibility that various conditions are laid down in the policy. Such conditions, however, are effective only between the insured and the company, and have to be ignored when considering the liability of the company to third parties.....

Thus the contract between the insured and the company may not provide for all the liabilities which the company has to undertake vis a vis the third parties, in view of the provisions of the Act. We are of opinion that once the company had undertaken liability to third parties incurred by the persons specified in the policy, the third parties' right to recover any amount under or by virtue of the provisions of the Act is not affected by any condition in the policy "

(underline supplied)

29. So also, even recently in the case of G. GOVINDAN (supra), after considering provisions contained in Sections 94, 95, 96, 97 and 99 of the M.V. Act (old) (which correspond to Sections 146, 147, 149, 150 and 152 of M.V. Act 1988) and the object, with which compulsory insurance is provided to protect the interest of third party, the Supreme Court has held as under:

"12. The heading of Chapter VIII of the old Act reads as "Insurance of Motor Vehicles Against Third- Party Risks." A perusal of the provisions under Chapter VIII makes it clear that the legislature made insurance of motor vehicles compulsory against third - party (victims) risks. This Court in *New Asiatic Insurance Co.Ltd. v. Pessumal Dhanamal Aswani* after noticing the compulsory nature of insurance against the third-party risks, observed that once the Company had undertaken liability to third parties incurred by the persons specified in the policy the third parties' right to recover any amount under or by virtue of the provisions of the Act is not affected by any condition in the

13. In our opinion, both under the old Act and under the new Act the legislature was anxious to protect the third-party (victim) interest. It appears that what was implicit in the provisions of the old Act is now made explicit, presumably in view of the conflicting decisions on this aspect among the various High Courts."

(underline supplied)

In view of the above, it can be held that the right of claimant, who is a third party, to recover any amount under or by virtue of the provisions of the Act is not affected by any condition in the policy.

30. Of course, the Insurance Company, though not pleaded, has brought on record and argued for insurer that since the motor cycle was sold without any intimation to it, the liability had ceased with transfer of title of motor cycle. It is

true that RW-2 was said to have informed the Insurance Company about the transfer, but no record is produced. Not only that, RW-2 stated that the Insurance Company was not informed in writing about the transfer. Further, there was non-compliance of Section 31 of Act (old). But, as noted already, in the case of Govindan, the Supreme Court has held that in such a case, the liability of the transferor subsists and the policy will be in operation so far as it relates to 3rd party risk.

31. Even otherwise, it may be noted that in the case of Rikhi Ram and Another Vs. Smt. Sukhrania and Others, the Supreme Court has held that so far as third party risk is concerned, the liability of the insurer does not cease even if the owner or purchaser does not give any intimation of transfer of vehicle to the Insurance Company. In view of the above, considered from any angle, 3rd respondent - Insurance Company is not absolved from the liability to pay compensation to third party-claimant. Accordingly, point No. 3 is answered.

32. Now coming to the compensation to be awarded, it may be noted that the claimant was aged about 41 years at the time of deposition recorded on 2.9.1999 and as such, he can be said to have been aged about 37 years on the date of accident though, in the claim petition, he is shown as aged 29 years. He has stated that he was getting works attended with other coolies besides working as a coolie and earning Rs. 35/- per day earlier to accident but on account of accident, he is not in a position to attend to those works and consequently, incurred loss to the extent of Rs. 25,000/- to 30,000/- and even he cannot carry any weight on his head and gets pain in his eye, if he carries any head load and lost complete vision of left eye and he suffers mentally when people call him as blind-man". If he had examined Doctor and got produced case sheet or wound certificate, the matter would have been different, but not now, as he has not examined any Doctor to prove his alleged disabilities, though produced treatment certificate besides the disability certificates marked as Exs. P21 and 23, on which basis his said evidence requires to be appreciated. Still, the records including bills, etc., cannot be totally ignored and as such, keeping that in mind, the amount of compensation requires to be determined.

33. At this stage, it is important to note that claimant has not produced any record whatsoever to show treatment, if any, taken by him from 26.4.1991 to 11.5.1991, though deposed about it. Of course, the records show that he was in - patient in K.M.C. Hospital at Manipal from 12.5.1991 to 22.5.1991 and treated for injury to left eye and head. The medical bills produced together come to Rs. 2,376.80 paise. So, having regard to the material available on record and type of evidence adduced and date of accident besides absence of evidence of any Doctor regarding disability, it would not be improper, if a sum of Rs. 50,000/- is awarded as global compensation, which can take care of the amount of compensation, to which the claimant is entitled to under different heads. However, the claimant is held entitled to a sum of Rs. 20,000/- only since he was also held responsible for the accident to the extent of 60% but, of course, with

interest @ Rs. 9% per annum from the date of petition to till its recovery. No other point has been raised nor remained to be considered.

In the result, the appeal is allowed with cost setting aside the impugned judgment and award and held that the appellant / claimant is entitled to Rs. 20,000/- with interest @ Rs. 9% per annum from the respondent jointly and severally, but the third respondent is directed to pay or deposit the said amount within a period of 30 days from today.

Fee of Advocate is fixed at Rs. 500/-.

Draw up award accordingly.