

(1996) 10 P&H CK 0107

In the Punjab And Haryana At Chandigarh

Case No : F.A.O. No. 725 of 1994 and Cross-Objection No. 55-CII of 1995

National Insurance Co. Ltd.

APPELLANT

Vs

Smt. Santro Devi and Others

RESPONDENT

Date of Decision : 28-10-1996

Acts Referred:

Motor Vehicles Act, 1988 — Section 149(2), 15

Citation : (1997) 1 ACC 211 : (1997) ACJ 111 : (1996) 114 PLR 667

Hon'ble Judges : V.S. Aggarwal, J;M.S. Liberhan, J;M.L. Koul, J

Bench : Full Bench

Advocate : L.M. Suri, R.M. Suri and Deepak Suri, for the Appellant; O.P. Sharma, for the Respondent

Final Decision : Dismissed

Judgement

M.S. Liberhan, J.—It is expedient to collate the facts and circumstances under which this case has come before us. The main narration of events and circumstances are taken from FAO 725 of 1995 which was referred to the Full Bench and was argued as such.

2. Kinara Tubes Private Ltd. was the registered owner of truck No. HYW-6262 which was insured with the appellant. Rajbir Singh was employed as a driver with Kinara Tubes Pvt. Ltd. Krishan deceased was killed on 24.5.1993 while crossing the road in an accident with the above referred truck" being driven rashly and negligently by Rajbir Singh driver.

3. Smt. Santro Devi widow of Krishan Kumar deceased and his three minor children claimed compensation of Rs.5 lacs for the death caused by rash and negligent driving from the insurance company, the owner and the driver on account of their statutory as well as tortious liability. A compensation of Rs.2,59,200/- with 12% P.A. interest was awarded to the claimants against the owner, driver and the appellant insurance company jointly and severally. The owner was held liable for tortious act of his driver a employee vicariously.

4. The driver and owner of the truck jointly defended the claim, by putting a common defence, inter-alia, denying the occurrence, taking the plea of alibi and putting the case to be of their false implication.

5. The appellant insurance company demurred, inter-alia, on the pleas of defective verification, bar of limitation, vagueness of the petition, non-disclosure of cause of action, contravention of the provisions of Motor Vehicles Act and filing of the petition to defraud the appellant. The validity of the driving licence of the respondent-driver was denied. In addition to the above pleas, the pleas taken by the owner and driver were also put up,

6. The Tribunal found, the deceased was killed on account of rash and negligent driving of the above referred truck by Rajbir Singh driver, owned by Kinara Tubes Pvt. Ltd. and insured with the appellant. The plea of false implication and alibi were rejected. It was observed while holding the appellant liable that the driving licence of the driver of the vehicle involved in the accident was not issued by the Appropriate Authority at Gwalior. Resultantly, it was a fake licence issued on 9.11.1987, though it was twice renewed by a duly authorised licencing Authority at Toharfa firstly upto 8.11.1989 and then upto 9.11.1990. The Tribunal relied on the law laid down by Division Bench of this Court in National Insurance Co. Ltd. Vs. Sucha Singh and Others, to the effect that valid renewal of a fake licence would render it to be a valid driving licence. Thus, there being no violation of the contract of insurance between the insurer and the insured and as a necessary corollary, the appellant insurance company was found liable for the indemnity.

7. Prestine questions of law of wider litigative fall out, built on the edifice of the object of Motor Vehicles Act and its provisions, broadly pointed out and argued before the Full Bench, on which I propose to dispose of this appeal, and which keeping in view, the facts at variance in innumerable cases referred, can be figuratively put thus:-

I have after weighing the legal question of public importance and the interest involved, effecting the society at large and the desirability of deciding the questions, when on merit the decision on questions could be avoided, decided to dispose of the questions raised and argued with details.

8. In order to resolve each legal controversy rather to answer the questions raised, the Courts are guided by the objects imbibed in the directive principles of the Constitution i.e. justice, social and economical, and in order to meet social requirement or social interest the veiling of hollowed terminology, with progressive awareness, in order to bring out satisfactory results, which is the polestar of the Constitution rather of every law, justice without being practical, responsible and devoid of ground realities of a situation, would be wooden justice and would be rendering negatory and illusory what the Constitutional law has set out as the sole object of all laws in a civilized society to be attained.

9. It is well settled that all laws irrespective of being procedural, substantive, or constitutional are aimed at setting up a society governed by rule of law, which

postulates as understood by a common man of ordinary prudence, justice to all and individual concerned it is required from constitutional functionaries with foreseeability, to provide justice to individuals, though may not at the cost of the society at large, Justice has to be practical, responsible to realities of situation.

10. If I may venture to say the Legislation always presumed to have provided for disciplined conduct of a person over whom the individuals citizens have no control. Further, it cannot be said that a person having a right can be left high and dry by not providing for remedy by legislation of its enforcement.

11. At this stage, I may hasten to add, that one of the objects of all laws much less common laws is to adjust or solve the difficulties, adjust the just relations in the social and commercial life by judicial process, by further giving a meaning to the statutory provisions for meeting the set of facts usual and unusual normal and abnormal, growing with the national development, required to be met from the demands of expanding society and laws, failing to do so may result in draconian rule of law or law of jungle. The rule of law is the golden thread of our Constitution which is not negotiable at any cost.

12. State under various constraints, with scientific ever changing mode of management of State affairs, its involvement in innumerable welfare activities to fulfil its constitutional objectives and obligations for providing an egalitarian society, to provide social justice to the road users, wherein with the passage of time the motor vehicles have become lethal weapons on the roads, in the hands of unscrupulous illiterate, semi literate and literate persons - the negligent drivers. The Motor Vehicles Act was amended in 1994 (hereinafter referred to as the "Act") with distinct object on the edifice of which the statutory provisions contained in the Act run thus:-

Public interest, the safety of road users, providing for compensation by the insurance companies to the victims of motor vehicles accident, in addition to the liability under tort, simplification of the procedure devoid of legal technicalities for recovery of damages or compensation by the claimants, to cater the benign object of protecting the innocent third party i.e. the road users who may not be left high and dry or without remedy with respect to damage caused to him by use of the motor vehicles. The Legislation in furtherance of the object of road safety, to ensure that roads do not become death traps provided for preventive measures as well as to compensate or measure to reimburse claims for damages suffered, provided for allowing driving by licenced drivers only i.e. driving by a person knowing driving and found to be suitable to drive, by the State. As a preventive measure statutory provisions were enacted prescribing right, eligibility and disqualification for obtaining a driving licence. In order to achieve the object and to deter the unauthorised drivers to drive, it provided punishment for driving a motor vehicle in a public place without holding a driving licence duly issued by an appropriate authority. The Legislature statutorily and categorically, in order to achieve the object of Act, provided for strict procedure for grant of a driving licence in spite of that it has simplified the procedure.

12. The Act contains three sections. One is to regulate driving by authorised persons; second deals with the liability of the persons to third party i.e. the road users and the third provides for rights of third party against the delinquents i.e. owner, driver and the insurer.

13. From a close look of the material provisions of the Act, it would be apposite to refer to law relating to issuing of the driving license as a preventive measure, as it manifests from the statutory provisions, thus;

No person is allowed to drive a motor vehicle in a public place without holding an effective valid driving licence issued by a duly authorised competent authority. No one can permit or authorise any person to drive without having an effective valid driving licence. Neither the holder of a driving licence nor any other person shall permit the use of his driving licence by another person. Driving licence can be issued only by a duly authorised competent authority to a person above the age of 18 years and that also if one is not disqualified for holding or obtaining it, and passes the test of competence to drive; provided further that he ordinarily resides within the territorial jurisdiction of the appropriate authority.

Driving licence can be issued to a person for a specified period. Test for competence to drive is the quintessence, of course, subject to the exemption imbibed in the Act. However, passing of the test is mandatory. No licence can be issued to a person who is disqualified to obtain the same on account of his disability which is likely to be a source of danger to public life.

15. The only exception provided by the Act, wherein the authority other than appropriate authority could grant a driving licence is to drive a motor cycle, that too after showing good and sufficient cause for applicant's inability to apply to the appropriate authority.

16. Pre-conditions for issuing of a driving licence are provided by Section 9(8) of the Act or one may say the circumstances under which a driving licence cannot be issued. However, these are not relevant to answer the questions raised herein before us. One can say, the Legislature attempted to ensure by taking preventive measures for safety of road users which is the sacred and foremost object of the Government to provide safety and security from cradle to death, before a privilege or licence to drive a vehicle in public place was granted by issuing a driving licence to drive the so called lethal weapons on the road under the veil of motor vehicles in the modern era of high technology. Educational qualification has been prescribed for holding driving licence for commercial, public and transport vehicles etc. By Section 9(10) of the Act read with duties of the State to grant a licence was prescribed to give information in the licence with respect to the particulars of the driver. Various time periods for which a driving licence is issued have been prescribed. It may be noticed that persons under the age of 50 years can get a driving licence for a duration of 20 years/upto the age of 50 years whichever is completed earlier. After the age of 50 years, a licence can be issued at a time for 5 years. Statutorily, the Act has provided that licence would

remain operative and effective for 30 days from the date of its expiry. Paramateria is the period provided for renewal of a driving licence.

17. The Act postulates for renewal of a driving licence on its expiry by Section 15 of the Motor Vehicles Act. Thrust of arguments put forth with respect to the renewal of the driving licence centres around this Section. The question of renewal of licence or its validity is to be answered in terms of Section 15, which runs thus:-

"15. Renewal of driving licences:- Any licencing authority may, on application made to it, renew a driving licence issued under the provisions of this Act, with effect from the date of its expiry.

Provided that in any case where the application for the renewal of a licence is made more than thirty-days after the date of its expiry, the driving licence shall be renewed with effect from the date of its renewal.

Provided further that where the application is for the renewal of a licence to drive a transport vehicle or where in any other case, the applicant has attained the age of forty years, the same shall be accompanied by a medical certificate in the same form and in the same manner as is referred to in Section (3) of Section 8 and the provisions of Sub-Section (4) of Section 8 shall, so far as may be, apply ;a relation to every such case as they apply in relation to a learner's licence.

xx xx xx xx xx (6) Where the authority renewing the driving licence is not the authority which issued the driving licence it shall intimate the fact of renewal to the authority which issued the driving licence".

18. It emerges from a reading of substantive and procedural provisions of the Act and the Rules that the appropriate authority has been authorised to issue driving licences for specified periods, on expiry of which licence has to be renewed by the appropriate authority according to the procedure prescribed, the maximum period for which it can be issued initially is upto the age of 50 years though after 40 years, it can be renewed for 5 years at a time only and that too on production of a medical certificate. Renewal would be effective from the date it expires if sought within 30 days, otherwise from the date of renewal with an exception that if the renewal is sought after expiry of 5 years of its validity , it can be renewed only on passing the test of competency to drive, It is incumbent for the appropriate authority renewing the licence to inform the issuing authority in case both are not the same.

19. For cancellation, suspension, revocation or for the Courts to disqualify a person from holding a driving licence various circumstances and situations or particular exigencies in which it can be done as well as the authorities who can do so are provided and the same are not relevant to the questions required to be answered.

20. It is mandatory for the State to maintain a Register of driving licences issued

or renewed from time to time. Such Register maintained by the State would contain information or particulars like name, and address of the holder of the driving licence, its number, the date of issue or renewal expiry and class of vehicles authorised to drive. Information with respect to Register maintained by the State would be sent to the Central Government in the prescribed form.

21. It is State's duty and right to control traffic which is provided by Chapter 8 of the Act. Specific reference may be made to Section 130, 133, 134 and 135, on reading the said Sections it emerges that it is incumbent for the driver or incharge of the vehicle to produce the driving licence, registration certificate of the vehicle and insurance certificate on demand by the police or other authorities. Owner's duty to supply information with respect to driver's or conductor's licence held by them in their possession or could be by reasonable diligence be ascertained by them in the prescribed form is provided by Section 133 of the Act.

Recent years have seen general and considerable extension, of practice of insurance against various form of liabilities which the insurer may incur to third party providing principally the social security, the third party risk, insurance in respect of claims for damages caused to third party i.e. road-users by the owner or driver's motor vehicles, provided for compulsory insurance of the vehicle.

21. In consonance with the object of providing social security, protection to the road users as a preventive measure and remedy to a person who suffered at the hands of third person on whom one has no control provided by Chapter XI of the Act for insurance of motor vehicles against third persons.

22. It would be expedient at this stage to notice the scheme of the insurance under the act against third party risk. Persons have been debarred from using or permitting to use any motor vehicle in public-place unless there is in force in relation to the use of vehicle by the person or other persons, a policy of insurance complying with the requirements of Chapter XI of the Act.

23. The relevant statutory provisions to answer the questions raised, runs thus:

" 146. Necessity for insurance against third party risks- (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).

Explanation:- A person driving a motor vehicle merely as a paid employee, while there is in force, in relation to the use of the vehicle no such policy as is required by this Sub-Section, shall not be deemed to act in contravention of the Sub-section unless he knows or has reason to believe that there is no such policy in

force.

(2) Sub-section (1) shall not apply to any vehicle owned by the Central Government or a State Government and used for Government purposes unconnected with any commercial enterprise.

(3) The appropriate Government may, by order, exempt from the operation of Sub-section (1) any vehicle owned by any of the following authorities, namely :-

(a) the Central Government or a State Government, if the vehicle is used for Government purposes connected with any commercial enterprise;

(b) any local authority;

(c) any State transport undertaking.

Provided that no such order shall be made in relation to any such authority unless a fund has been established and is maintained by that authority in accordance with the rules made in that behalf under this Act for meeting any liability arising out of the use of any vehicle of that authority or any person in its employment may incur to third parties."

Section 147 provides for requirements of policies and limits of liability. The Statute provides quintessence with regard to who can insure and who can be injured. It runs thus:-

"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;

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 -

(1) to cover liability in respect of the death, arising out of and in the course of his employment of the employee of a person insured by the policy or in respect of bodily injury sustained by such an employee arising under the Workmen's Compensation Act 1923 (8 of 1923) in respect of the death of, or bodily injury to any such employee -

(a) engaged in driving the vehicle or

(b) if it is a public service vehicle engaged as a conductor of the vehicle or in examining tickets on the vehicle or

(c) if it is a goods carriage, being carried in the vehicle or (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 third party shall be deemed to have been caused by or to have arisen out of, the use of a vehicle in 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 Sub-section (1) a policy of insurance referred to in Sub-section (1), shall cover any liability incurred in respect of any accident upto 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 :

Provided that any policy of insurance issued with any limited liability and in force, immediately before the commencement of this Act, shall continue to be effective for a period of for months after such commencement or till the date of expiry of such policy whichever is earlier.

(3) A policy shall be of no effect for the purposes of this chapter unless and until there is issued by the insurer in favour of the person to whom the policy is effected a certificate of insurance in the prescribed form and containing the prescribed particulars of any condition-subject to which the policy is issued and of any other prescribed matters; and different forms, particulars and matters may be prescribed in different cases.

(4) Where a cover note issued by the insurer under the provisions of this Chapter or the rules made thereunder is not followed by a policy of insurance within the prescribed time, the insurer shall within seven days of the expiry of period of the validity of the cover note, notify the fact to the registering authority in whose records the vehicle to which the cover note relates has been registered or to such other authority as the State Government may prescribe.

(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 of 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.

The statutory duty or liability of the insurer against the persons insured is provided by Section 149 of the Act, which runs thus :-

"149. Duty of insurers to satisfy judgments and awards against persons insured in respect of third party risks:- (1) If, after a certificate of insurance has been issued under Sub-section (3) of Section 147 in favour of the person by whom a policy has been effected, judgment or award in respect of any such liability as is required to be covered by a policy under Clause (b) of Sub-section (1) of Section 147 (being a liability covered by the terms of the policy) or under the provisions of Section 163A, is obtained against any person insured by the policy then, notwithstanding that the insurer may be entitled to avoid or cancel or may have avoided or cancelled the policy, the insurer shall, subject to the provisions of this section, pay to the person entitled to the benefit of the decree any sum not exceeding the sum assured payable thereunder, as if he were the judgment debtor in respect of the liability together with any amount payable in respect of costs and any sum payable in respect of interest on that sum by virtue of any enactment relating to interest on judgments.

(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 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) a condition excluding the use of the vehicle -

(a) for hire or reward where the vehicle is on the date of the contract of insurance a vehicle not covered by a permit to ply for hire or reward, or

(b) for organised racing and speed testing, or

(c) for a purpose not allowed by the permit under which the vehicle is used, where the vehicle is a transport vehicle, or

(d) without side car being attached where the vehicle is a motor cycle, or

(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 has been disqualified for holding or obtaining a driving licence during the period of disqualification; or

(iii) a condition excluding liability for injury caused or contributed to by conditions of war civil war, riot or civil commotion; or

(b) that the policy is void on the ground that it was obtained by the non-disclosure of a material fact or by a representation of fact which was false in some material particular.

(3) Where any such judgment as is referred to in Sub-section (1) is obtained

from a Court in a reciprocating country and in the case of a foreign judgment is, by virtue of the provisions of Section 13 of the Code of Civil Procedure, 1908 (5 of 1908) conclusive as to", any matter adjudicated upon by it, the insurer (being an insurer registered under the Insurance Act, 1938 (4 of 1938) whether or not he is registered under the corresponding law of the reciprocating country) shall be liable to the person entitled to the benefit of the decree in the manner and to the extent specified in Sub-section (1), as if the judgment were given by a Court in India.

Provided that no sum shall be payable by the insurer in respect of any such judgment unless, before the commencement of the proceedings in which the judgment is given, the insurer had, notice through the Court concerned of the bringing of the proceedings and the insurer to whom notice is so given is entitled under the corresponding law of the reciprocating country, to be made a party to the proceedings and to defend the action on grounds similar to those specified in Sub-section (2).

(4) Where a certificate of insurance has been issued under Sub-section (3) of Section 147 to the person by whom a policy has been effected, so much of the policy as purports to restrict the insurance of the persons insured thereby by reference to any conditions other than those in Clause (b) of Sub- section (2) shall, as respects such liabilities as are required to be covered by a policy under Clause (b) of Sub-section-(1) of Section 147, be of no effect;

Provided that any sum paid by the insurer in or towards the discharge of any liability of any person, which is covered by the policy by virtue only of this Sub-section shall be recoverable by the insurer from that person.

(5) If the amount which an insurer becomes liable under this section to pay in respect of a liability incurred by a person insured by a policy exceeds the amount for which the insurer would apart from the provisions of this section be liable under the policy in respect of that liability, the insurer shall be entitled to recover the excess from that person.

(6) In this section the expression "material fact" and "material particular" mean respectively a fact or particular of such a nature as to influence the judgment of a prudent insurer in determining whether he will take the risk and, if so, at what premium and on what conditions, and the expression "liability covers by terms of the policy" means a liability which is covered by the policy or which would be so covered but for the fact that the insurer is entitled to avoid or cancel or has avoided or cancelled the policy.

(7) 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 to any person entitled to the benefit of any such judgment or award as is referred to in Sub- section (1) or in such Judgment as is referred to in Sub-section (3) otherwise than in the manner provided for in Sub-section (2) or in the corresponding law of the reciprocating, country, as the case may be.

Explanation For the purposes of this section, "Claims Tribunal" means a Claims Tribunal constituted u/s 165 and "award" means an award made by that Tribunal u/s 168."

24. Similarly, rights of third party against insurer on insolvency of the insured i.e. liability to insured would be transferred to and vests in third party in whom the liability was so incurred. The Act further provides that insolvency of the insured would not effect the liability of the insured or claim of third party. Section 150 of the Act, runs as under :-

150. Rights of third parties against insurers on insolvency of the insured : -(1) Where under any contract of insurance effected in accordance with the provisions of this chapter, a person is insured against liabilities which he may incur to third parties, then-

(a) in the event of the person becoming insolvent or making a composition or arrangement with his creditors, or

(b) where the insured person is a company in the event of a winding up order being made or a resolution for a voluntary winding up being passed with respect to the company or of receiver or manager of the company's business or undertaking being duly appointed or of possession being taken by or on behalf of the holders of any debentures secured by a floating charge of any property comprised in or subject to the charge,

if, either before or after that event, any such liability is incurred by the insured person, his rights against the insurer under the contract in respect of the liability shall, notwithstanding anything to the contrary in any provision of law, be transferred to and vest in the third party to whom the liability was so incurred.

(2) Where an order for the administration of the estate of a deceased debtor is made according to the law of insolvency, then, if any debt provable in insolvency is owing by the deceased in respect of a liability to a third party against which he was insured under a contract of insurance in accordance with the provisions of this Chapter, the deceased debtor's rights against the insurer in respect of that liability shall, notwithstanding anything to the contrary in any provision of law, be transferred to and vest in the person to whom the debt is owing.

(3) Any condition in a policy issued for the purpose of this Chapter purporting either directly or indirectly to avoid the policy or to alter the rights of the parties thereunder upon the happening to the insured person of any of the events specified in Clause (a) or Clause (b) of Sub-section (1) or upon the making of an order for the administration of the estate of a deceased debtor according to the law of insolvency shall be of no effect.

(4) Upon a transfer under Sub-section (1) or Sub-section (2), the insurer shall be under the same liability to the third party as he would have been to the insured person, but -

(a) if the liability of the insurer to the insured person exceeds the liability of the insured person to the third party, nothing in this chapter shall affect the rights of the insured person against the insurer in respect of the excess, and

(b) if the liability of the insurer to the insured person is less than the liability of the insured person to the third party, nothing in this chapter shall affect the rights of the third party against the insured person in respect of the balance.

25. The rights and duties of the insurer have been expressly provided by the statutory provisions, including right to be impleaded as a party in any proceeding in any Court of law relating to the vehicle insured.

26. The settled principles required to be kept in view while interpreting the . statutory provisions enacted for the protection of public at large and not only the individuals alone , thus are (i) the circumstances in which statutory Act was passed; (ii) the situation, the Act was required to meet (iii) the object of the common law is to solve the difficulties arising in social or commercial life. It must meet, so far as possible, the set, of facts abnormal as well as usual. It must grow with the development of a nation, must face and deal with the changing moral circumstances. Unless it can do that, it fails in its functions and decline its dignity and value in the expanding society's demands from the common law. Reference may be made to . (iv) The intention of the Legislature is to be gathered from the particular Act under consideration. Whether a particular rule applied in a particular case depends upon the purview of legislation and the language employed, (v) it is the pith and substance of the legislation which has to be taken into consideration and not the isolated words, bereft of context and the text in which they are used, with reference to the object of the same, the object of provisions, malice intended to be remedied and edifice of the provisions contained in the Act; (vi) The words used in the Act are not to be applied literally. The facts cannot be sacrificed to phrases invalidating of a situation; (vii) No interpretation can be put which turns out to be so unfair that words used by the legislation could not have been intended to mean what they might appear to say; (viii) By interpretation process, unfair or draconian result should not be produced; (ix) While resorting to interpretation of Statute, what reasonable person would think of a statute to mean and follow them, cannot be lost sight of; (x) While interpreting the law enacted for public at large involving social justice, and social security, sacred approach to say "yes" unless there are good reason to say "no" would be more appropriate as it would affirm public faith more in the institution like insurance more than to shake it; (xi) An attempt should be made while interpreting the statutory provisions that the object of the provisions are not rendered otiose by its literal construction/interpretation; (xii) The individual needs and demands of society, how far the legislature has gone to reconcile between the need of the society and the claim of individual, re-adjustment of old principles with new needs of situation standard forms, customs, and other circumstances taking the matter to be different when law is unwillingly broken, astute enough to have contrived to get it how it contribute to public morality with

emphasis on equity. Principles should be required to be invoked more liberally when public interest demands the same; (xiii) In the social welfare legislature's interpretations benefits to the claimants should be given preference over the technicalities of law which should not be allowed to have upper hand to undo and crush the legislation; (xiv) It is desirable that while interpreting a Statute a sympathetic view to relieve the duress and misery of the victims should be preferred; (xv) The doctrine of necessities keeping in view the duty of the State to rule justice has to be enforced and given full effect through process of judicial enforcement. Strict test propounded from time to time for interpretation can not prevail to perpetuate injustice. Test would not be applied to avoid justice; (xvi) In order to give effect to the predominant purpose of the Motor Vehicles Act providing preventive measures as was well remedied one's after the event, ensuring the safety of third person, principal of liberal construction as presently the trend is, to give effect to protection of third party without adopting the dissective course or defences taken by insurer by statute, is to be made. It would only give effect to public policy on ground realities, (xvii) Ordinarily, in case of social welfare legislation, endeavour is to be made to put interpretation beneficial, to the claimant. Technicalities of law should not be allowed to have upper hand to undo and crush the spirit of legislation for social justice, which is not negotiable at all.

27. At this stage, it would be expedient to notice the conspectus of law emerged from the judgments of Hon''ble the Supreme Court and High Courts cited at the Bar.

i) The act of insurance is not a private legislation and bargain between the employer and employee but a public Act based in favour of third person to compel the owner of the vehicle to reimburse the sufferer, provided protection to the third person i.e. the road users as is obvious and appears from the whole purview and intention of the legislation was the only remedy for breach of statutory duty, should not be only fine rather on the construction of statute. It can be inferred that the person injured by breach of the statute has a right to recover damages from the one committing it.

ii) Insurer can undertake to cover the risk beyond that provided by the Statute or the limits by entering into a special contract;

iii) The Statute provides defence to the insurer;

iv) No insurer is entitled to avoid his liability or benefits of the judgment to any person other than the one provided by the Statute i.e. Section 149 of the Act;

v) Where the insured has done everything within his power, it cannot be said that the insurer is guilty of any breach;

vi) Where an act is done with the knowledge of the insured, the insurer would be liable to indemnify the insured. In such a situation the insurer cannot take the defence of breach of conditions of the certificate of insurance. The burden of

proof of the violation of the policy or the breach of contract is on the insurer. It must be established by the insurer that the breach is on the part of the insured. Unless insured is at fault and is guilty of breach of conditions, the insurer cannot escape the liability to indemnify the insured.

vii) No conditions imposed beyond the statutory conditions provided for can be enforced;

viii) Courts are required to interpret the law and not to make new one. In the same constraint the condition that the insurer should be protected against fraudulent action of the insurance it being an institution in public sector would suffer irreparable loss, was rejected, inter-alia, observing that the insurer had a remedy to recover from the insured. Otherwise the provisions of the Motor Vehicles Act, making the company liable being beneficial one, has been purposely engrafted in the Statute for the efficacious remedy so that award could be satisfied would be rendered negatory and the very object would stand defeated.

ix) It has been repeatedly observed that clauses of policy should receive interpretation not only consistent with the intent of the parties to the contract but also to further the object of the statute particularly when it is in printed form and issued in usual course;

x) The exclusion Clause 147 of the Act, provide with respect to the persons who are not duly licenced or persons who have been disqualified as mentioned therein to be within to the policy to be specific; terms do admit a position that the drivers who are once licenced and are not disqualified are not specifically excluded. It was preferred to interpret the terms of policy in the light of the purpose of the statute which makes the provision for indemnifying the case involving third party in the accidents and for satisfying the claims arising therefrom in favour of the party affected rather than particularly noting that intention of the Legislation to make insurance compulsory as to safeguard the interest of third party who is quite innocent and who incurs the risk from the hazards of negligent drivers. To hold otherwise, would render the object of compulsory insurance, the risk of third party as negatory.

xi) Insurance companies were held liable where drivers once hold the licences and are not disqualified.

xii) The exclusion clause for payment as well as the provisions of the Act, has to be read down in order to achieve the main purpose of the provisions enacted, for the protection of the victims of the accidents so that the promisor is exculpated when he does everything in his power to keep the promise;

xiii) With respect to public policy, which the Act, is expected to meet, has been spelled out thus:

The Legislature with unworkability and froth with several unsurmountable operational threats keeping in view the third party i.e. users of the road in the jungle of roads made the vehicles in the form of lethal weapons let loose as a

public policy created, an agency of insurance to discharge the State duty towards the public through the insurance company. Thus conferring its own duty on the insurer giving the words its ordinary natural meaning to the Statute. It would be reasonable to infer and justify that the State has given this responsibility for commercial convenience on the assumption that the insurer would go a long way to give effect to the benign beneficial statutory benefits provided for the protection of third party, who is neither privy to the contract between insured and insurer nor is in a position to control the conduct of the insured or insurer in the use of vehicles in public place. There is no gain-saying that the contract of indemnity is not a personal contract in that sense with the third person. It is the third party's right against the insured undertaken by the insurer to re-imburse the insured under contract with respect to his liability to third party. It is this right which vests in third party to recover his claim from the insurance directly. This liability incurred by the insurer on behalf of the insured is in the standard form, I may hasten to add that one cannot be over generous to insurance nor the contract of insurance can be treated on the pedestal of contract entered into between the contracting parties, inasmuch as the contract entered into for the protection of the third party which is not privy to the contract was the object of the statute and the public policy, particularly keeping in view the principles of third party insurance being an anomalous as it runs counter to the principles of private contract. The insurer cannot deprive the third party of the fruits of contract entered into between the insurer and the insured on triviality.

It is well recognized that public interest cannot be sacrificed at the alter of private interest. In a civilized society public interest is the paramount consideration. The Courts are bound to consider the interest of public in preference to all other interests as the society can only survive, advance or progress if the public interest is protected jealously. Protecting the interest of the road users by no stretch of imagination can be taken out of the purview of the protection of the public interest. Compulsory insurance provided by the Statute is again a step aimed at the protection of the public i.e. not only the road users or the victims of the accident or third party but it includes the owner of the vehicle, driver as well as they are protected by compulsory insurance from being crushed financially by having to pay heavy damages in view of the absolute liability of the tortfeasor.

It is the State's duty to protect the public or individuals and ensure their safety and security, It is nothing else but to fulfil the public dream provided by Article 21 of the Constitution of India.

(xiv) The object of common law is to solve difficulties and just relations in the social and commercial life, meeting all set of facts usual or unusual, normal or abnormal growing with the national development. Dealing with the changing and noval circumstances, meeting the demands of expanding society and common law is the call of the day. Failure to do so will be nothing else but, failure of the rule of law.

28. Reference may be made to *Skandia Insurance Co. Ltd. v. Kokilaben Chandravadan and Ors.* 1987 91 P.L.R. 665 ; *Narcinva V. Kamat and Anr. v. Alfredo Antonio Doe Martins and Ors.* *Padma Srinivasan v. Premier Insurance Company Ltd.*, 1982 ACJ 191; *Lalappa Lingappa and Others Vs. Laxmi Vishnu Textile Mills Ltd.*, ; *Rudul Sah Vs. State of Bihar and Another*, and *B.V. Nagaraju Vs. M/s. Oriental Insurance Co. Ltd.*, Divisional Officer, Hassan, .

29. I may hasten to add that conceptually, it has been observed in innumerable cases rather it has become axiomatic that the public interest should not be allowed to be overridden by the private interest. Courts are bound to consider the conduct of a person, rights and liabilities of a person provided by the Statute or common law. Keeping in view the golden principle "standard of a reasonable person/man of ordinary prudence" bereft of microscopic or argumentative deduction by interpretation of law, individual conceptions or perceptions and give effect to the intent of Parliament i.e. individual cannot be left high and dry/ without a remedy or redress for the damage suffered particularly in use of road and especially when the rule of law postulates justice to individual concerned, which should and must be practical and responsible to ground realities.

Providing social security by the State to meet its obligation under Article 38 of the Constitution of India to the road users, in addition to the preventive, steps taken that only competent person drive the authorised vehicle and providing for compensation in case of any event having taken place by providing compulsory insurance of the motor vehicle is a step to attain the objective of directive principles of State policy. It is a step to provide social security in the eventuality of preventive steps having failed. Insurance liability to third person is absolute. Insurer is liable for an event. It is not only to meet the liability of the insured or to reimburse him but is also to meet liability of a third party as well as compensate him for the loss suffered at the hands of the insured from the use of his vehicle though he is not a privy to the contract between the insured and the insurer who is only beneficiary under the Act.

30. Insurance Companies are one of the major participants or act or are actors, in the developing social welfare State, with its always expanding role, particularly in case of motor vehicle insurance, which has become a necessity recognised in view of the hazards on the road, where vehicles undoubtedly have become lethal weapons against innocent third person i.e. user of the road. I may venture to state that the State recognising its duty towards the road users, irrespective of commercial convenience, and further expecting more from the wealthy companies rather individuals; on the principle of loss spreading evenly and thus avoiding crushing one person economically and at the same time compensating the victims of the loss suffered, in order to fulfill the society's duty to individual, as the exigencies of social justice, envisage bearing of loss by creating a liability of the insurance and provided statutorily the third party insurance by the Motor Vehicles Act. The object of statutory and compulsory insurance under the Act is not only bereft of profit motive by the insurance companies but is also a step

towards owning the responsibility by the society with respect to road victims.

31. It provides absolute liability of the insurance company wherein one is not liable for conduct but for the event. I may hasten to add that insurance policy under the Motor Vehicles Act is a blanket security to the road users. It can be termed as national or society's obsession by any civilized society. In public interest, it is only the mode of protection to the road users or to the road traffic. It is in consonance with achieving of primary purpose, victims and wrong doers, legitimate expectation with one's right and liabilities in the expanding role of legislation. It is a step forward for providing social justice that apart from the liability incurred by a party for conduct or commission of tortious act, provides statutory liability of the insurer. In spite of the cleavage of various opinions I am of the view, as precedently accepted, it is the principle of equity which ought to be done to the public who are users of the road with all the hazards of the mechanisation and use of motor vehicles. It was to mitigate the rigours of technicalities of common law and contractual law. Providing protection to the claimants of the road accidents and to achieve axiomatic justice in the exigencies of fact is more important and need of the hour than the proclial interest of profit in the business world.

32. There is no gain saying that insurance companies are instrumentalities as tortfeasors in the process of social welfare, with dignity , flexibility, ignoring the technicalities to maintain the public faith rather to shake it in the institution of insurance.

33. As observed earlier, providing insurance by the statute against third party risk by the business of automobile insurance legislation is not with a motive of permitting business in automobile insurance with an object of profit making, but to protect the public using the roads from the risk attending upon users of the motor vehicles on the road. In order to meet one's liability, the insurer must adopt the principle of an armed chair i.e. must place in the place of the insured, third party and then conduct its liability to third person. If I may say, the one who takes a risk of profit should have a risk of loss too. Insurer cannot be antagonised because its participation in carrying out the welfare activities of Government which is the Governmental functions.

34. The contract of motor insurance in essence is one of the indemnity for consideration which guarantees the insured, compensation for the loss or risk in case of an accident or loss or damage suffered totally or partially stipulated in the contract of insurance. The insured cannot profit out of bargain of insurance under the Statute, Motor Vehicles Act and other ancillary laws i.e. Contract Act as well as the contract of insurance. The indemnifier is obliged to pay to the insured as well as the third party, the compensation for the loss caused by use of motor vehicle in public place. The right of the third party to recover the loss suffered from the insured which is inherent on the basis of his right in equity, justice and good conscience. Basically or inherently, it is a contract to protect promisee of anticipated loss. The insurer or insurance-company or indemnifier is liable to

reimburse the insured which he is required to pay to third person out of liability arising out of tort or statute, providing the promisee to act prudently, bonafidely and did not contravene the specific order of promisor.

As observed earlier, reading of various text books one can infer that widening of liability both at common law and statutory law has led to this development of insurance, which infact spread loss on those lest able to bear it. It satisfies the social need, the need to compensate the victims to protect him against the impecunious dependent as road activities are prolofic sufficient of injuries and insurance is compulsory. It is aimed at the protection of public by providing that there should be body of insurer behind the driver to prevent crushing financially the owner and the driver, as obviously the company would not insure unless there is assurance of adequate precautions likely to be taken. It has been observed by Lord Denning J.

"That there should be absolute liability in all such cases whenever dependent can be protected by insurance. The person would not insure unless there is assurance that adequate precautions are likely to be taken"

36. There can be no gainsaying that contract of insurance is a special kind of contract and cannot be put on the equal pedestal of the personal contract. I may say, as the contract does not run with property which is the subject matter of insurance, it is a policy of personal indemnification, particularly in case of statutory contract of insurance under the Motor Vehicles Act, where the insurer undertakes to indemnify not only the insured but also a third person, also known as third party who is not a privity to the contract of insurance, in spite of third party insurance may be anomalous since it runs counter to the principle of privity of contract though justified on the grounds of commercial convenience as a special contract, which can not be termed as personal contract in that sense as in latter sense it would go far to destroy the beneficial provisions for the road users. Such a contract cannot be termed as surety, trust or agency contracts, still it is never the less a guarantee.

37. Discernably from the scheme of the Motor Vehicles Act, statutory provisions for insurance, segregated from all other provisions of the Act, as referred in earlier part of the judgment, in the realm of present day concept of insurance, the conspectus of irrisistable conclusions dictates that before a vehicle is permitted to use it at a public place and the third party suffers any damages by use of vehicle, the same could be recovered straight away from the insurer. Thus, the sufferer may not suffer irrecoverability or depending on the financial condition of the driver or the owner and would not render the benign provisions of the Act as illusory or a mirage.

38. The cardinal tenets concluding from wrap and weft of Chapter XII read with Chapter XI especially Sections 146, 147, 149, 150 and 170 of the Motor Vehicles Act, on the annals of principles stated above, it emerges or is apparent or the irresistable conclusion dictates that no body would either himself or allow any

other person to drive a vehicle in public place without a valid driving licence and insurance policy, issued by the appropriate authority. The insurer is duty bound to satisfy the awards, judgments against the insured, of the third party. It has been statutorily provided vide Section 147 of the Act, the conditions which can be imposed while issuing the policy of insurance against third party risk i.e. notwithstanding any other thing contained in law, the insurer is bound to indemnify the persons specified in the policy of course, I may hasten to add that the company would be entitled to notice about hearing of claim. It could put only those defences which have been statutorily provided or permitted and later incorporated in the policy of insurance. Most relevant one to answer the questions raised is with respect to driving by an un-licensed driver. It has been made incumbent rather mandatory to reimburse the third person/party in spite of the fact that insurer's right to avoid or cancel the policy, subject to the extent of amount insured.

39. Quintessence provided by Section 149(2) of the Act for absolving the insurer of its liability i.e. when the insurer had no notice from Court or the Tribunal of the proceedings initiated by the claimants. The insurance company has got a right to defend its liability in the proceedings on the grounds specifically statutorily provided. Since the right to defend on grounds statutorily provided, all other ground defence qua the insurer stood ruled out so far the liability under the Act is concerned. Reading of Sections 146, 147, 149, 150, 170 in its pith and substance provided defence against the insured and not a third person i.e. road user. Section 146(5) provides rather made it incumbent and obvious that insurer is liable to indemnify and reimburse the persons or class of persons specified in the policy, with respect to their liabilities with no strings attached to it. Only breach of specified condition would absolve the insurer of its liability i.e. if the driver of the vehicle was not holding a valid driving licence at the time of occurrence.

40. Right of third person, for whose protection the benign provisions were enacted, remains unaffected qua the insurer i.e. insolvency, winding up of insurer, or any other conditions imposed in the policy which would directly or indirectly avoid the policy or to alter the rights of parties thereunder upon the happening of the event to insured, would not effect the right of third party.

41. As has been observed in the earlier part of the judgment, to meet the demand of public policy arising to protect public using roads in view of the ever increasing danger of bodily injury or even to life from the use of motor vehicles as lethal weapons on the roads, the Legislation enacted law to protect the third party by enacting provisions in the Motor Vehicles Act to the effect that no vehicle shall be used on public place until it is insured. The object and intention of the Legislation is too clear and obvious i.e. in the eventuality of a third party suffering any damage on account of use of vehicles on public places, he may not be left high and dry without any reimbursement or, compensation from tortfeasor. The third party without being privy to the contract may be able to

straight way recover from the insurance company the compensation to which he is entitled. The recoverability of damages may not depend upon the financial condition of the driver or the owner who are the tortfeasers. This is benign object of reimbursement to the third party from the insurer is of public policy, further balanced by the duty of the State to protect the road users from its hazards which have become unescapable fact of life. It is further in consonance with the object that insurer may not be crushed economically on account of an accident having occurred at his hands. In a sense the liability of the insurance company introduced by the statutory provisions as emerged from the desire of the Legislation is for providing social security to the victims of the road accidents.

42. The liability of the insurance company is an absolute liability as understood by common law i.e. where one is not liable for the conduct but for an event. As is the case in hand, the insurance company is liable to the third party to reimburse or compensate for the damage suffered on account of injuries caused by the use of a motor vehicle by its rash and negligent driving. It was observed, by Hon^{ble} the Supreme Court in *Skandia Insurance Co. 's case* (supra) while dealing with the question whether a person who is not duly licenced by itself exonerates the insurance company from the liability, after noticing the facts and circumstances of the said case, neither owner committed any breach of the policy conditions of insurance nor violated the contractual conditions embodied in the policy and the condition which excludes driving by a person not duly licenced is not absolute and promissory to absolve, the insurer. Once it is shown that insured has done everything in his power to keep, honour and fulfil the promise and is not guilty of a deliberate breach, the insurer would be liable to reimburse the insured or third party injured. It was observed that even if it is treated as an absolute promise, there is substantial compliance therewith upon an express or implied mandate being given to the licenced driver not to allow the vehicle to be left unattended so that it happens to be driven by an unlicensed driver. The exclusion clause has to be read down in order that is not at war with the "main purpose" of the provision enacted for the protection of the victims of accident so that the promisor is exculpated when he does every thing in his power to keep the promise. With respect to the object of insurance the Hon^{ble} Supreme Court observed that to find the intention of the Legislation in the course of interpretation of relevant provisions, the test of probing into the same is by keeping in mind the goal for achieving it by enacting those provisions. It is not the concern of the Legislature whether one owner gets the vehicle insured or not. In continuing with the observations, the Hon^{ble} Supreme Court observed that such protection would remain a protection on paper unless there is a guarantee that compensation awarded would be recoverable from the persons who are liable for consequences of the accident. The legal procedure involves time, cost, money cost invested from scarce resources of income and would make a mockery of persons who are depending upon them. It is to overcome this situation that the Legislature has made the insurance obligatory. It was further observed that to make the protection not rare, the Legislature has also provided

that judgments obtained are not to be defeated by the incorporation of exclusion clause. Section 96 of the Act now equivalent to Section 149 provided that except in saving to the extent permitted, it would be the, obligation of the insurance company to satisfy the judgments obtained against the person insured against the third party risk . It ensures that victims are really compensated in terms of money and not in terms of promise.

43. The Hon"ble Supreme Court defines "Breach" as one carried within itself drawing an inference that violation or infringement on the part of the promisor must be wilful infringement or violation. Reference be made to Skandia Insurance Co It was observed that if the insured is not at fault and has not done or is not amiss in any respect, how can it be conveniently posted the he had committed a breach. It requires the insurance company to establish that it was the insured who was guilty of violating the promise or infringement of the contract. It was further laid down that to construe the provisions differently, would be to rewrite the provisions by engrafting a rider to the effect that in the event of a motor vehicle happened to be driven by an unlicensed person regardless of the circumstances in which such contingency occurred, the insured or insurer will not be liable under the contract. It is the statutory provisions defining the conditions of exemption which was interpreted and observed that must be interpreted for which the same has been enacted accompanied by anxiety of the claimant that protection is not nullified by the back looking interpretation which serves to defeat the provisions rather than fulfil its life. Otherwise, it would be nullifying the benevolent provisions and purpose and philosophy of the Legislature without being informed of the true goal sought to be achieved. What the Legislature has given Courts cannot deprive by way of exercise of interpretation when both are plausible, one i.e. where more than two plausible options are available, then it more desirable option to take a view which relieves the distress and misery of the victims in preference to the other which will reduce profitability of the insured in regard to occupational hazards undertaken by them by way of business activities.

44. Section 3 of the insurance policy provides for general exception from the liability of the insured. The relevant part of exception is one where the vehicle is being driven by other than the driver as stated in the driver clause or driven under the influence of liquor or drugs etc. The insurer undertook to indemnify the insured in the event of an accident caused by, arising out of a motor vehicle - against all sums including cost and expenses which the insured shall become liable to pay in respect of the injuries caused by or arising out of the use of motor vehicle, damage to the property caused by such use of motor vehicle. It further undertook to indemnify the insured if the vehicle is driven by his driver/ employee if driving it on his order or permission. It has been specifically mentioned that the persons who are entitled to drive i.e. insured, any other person who is driving on the insured's order or with his permission of course subject to the condition that the person driving holds or had held and has held and has not been disqualified from holding an effective driving licence, with all

the required endorsements thereon as per the Motor Vehicles Act and the rules made thereunder for the time being in force to drive the category of motor vehicles insured under it.

45. There has been no embargo, put on the right of third person or on the right of any person indemnified by the policy or any other person entitled to recover the amount under and by virtue of the provisions of the Motor Vehicles Act. The insured shall repay to the company all sums paid by the company which the insurance company would have not been liable to pay but for the said provisions. There is no dispute that the insurer under the contract of insurance against liability of third party is without any restriction except provided by the Statute or the policy in conformity with the Statute. It is an accepted principle of indemnity or corollary to principles of indemnity without abrogating one's right inherent in the contents of indemnity. The natural effect of the same is that insurer is entitled to be placed in the position of insured. The insurer is entitled to all the rights and remedies against third person with respect to the subject matter of insurance. The contract of motor insurance is an essence for all intents and purposes of the indemnity and particularly to the third person. The insurer is liable to reimburse the third party on account of the loss caused by him. The right of the third party insurance does not only follow from the policy, the contract and statutory provisions of law, but it follows on the basis of right in justice, equity and good conscience.

46. As observed in the earlier part of the judgment, the Legislation is alive to its duty towards third party as the liability of the insured for whom it was made incumbent to insure the vehicle statutorily specifying the defences on which they could defend their liability to pay as provided by Section 149 of the Act. The relevant part of Section 149(2) provides the situation when no sum shall be payable by the insurer and he would be entitled to defend an action against it. Apart from other grounds the relevant ground herein under consideration is of Section 149(2)(a)(ii) i.e. a condition excluding driving by a named person or persons, by any person who is not duly licenced or by any person who has been disqualified from holding or obtaining of driving licence during the period of disqualification. The policy in the present case, in terms of the statutory provisions provided for the class of persons entitled to drive. As earlier referred to, the person driving must hold or has held and has not been disqualified from holding an effective driving licence. The insurance company is liable for reimbursement to the insured or liable to compensate the third party where the vehicle is being driven with the permission of the insured or on his orders meaning thereby that the vehicle can be driven by an employee in the course of his employment by the insured, provided he either holds a driving license or has or has held a driving licence and has not been disqualified for holding an effective driving licence. It is not the particular person who is required to be insured. The only requirement is that the vehicle has to be insured. The same cannot be used on the road unless insured in respect of risk to third party as envisaged by Section 146 of the Act.

47. There is no doubt that the insurer not only expects but it is enjoined that insured takes all steps to mitigate the loss. Breach of the policy by the insured or insurer would not ordinarily effect the right of innocent parties i.e. third party who is not privy to the contract for whose protection the statutory provisions of insurance against the third party as well as indemnity, undertaking the insurer to indemnify the insured against third party has been provided for in the public interest. Rigours of technicalities can not be ipso facto enforced so far as third person is concerned who is not in control of the situation. No lop sided view can be taken to deprive the third person of his claim. The object and the sole purpose is the protection of third party and not to promote the business and inflating profits of the insurance.

48. It is on the principle of conduct of the ordinary prudent person if the insured has done everything in his power to keep and honour the terms of contract and comply with the statutory provisions of law. The insurer ordinarily cannot refuse to indemnify the insured particularly when the insured is not uilty of deliberate breach. The observations made above find further strength when the Statute has taken steps advanced towards providing of compensation in case of hit and run. Breach of conditions by a driver or of any statutory rules or provision by itself can be taken as breach on the part of the insured.

49. The conspectus of law enumerated above in the earlier part of the judgment particularly to the effect that insurance company cannot be absolved of its liability merely on the proof that conditions envisaged by Section 147 have not been taken care of by the facts and circumstances of the case. The insurer cannot absolve itself from its liability particularly to the third party

50. It is incumbent upon the insurance company to further ensure that violation or non-compliance of the conditions either of the policy or of the provision of Section 147 equated to old Section 96-B(i)(ii) of the Act, was a wilful infringement. In order to meet the exigency of the object of the Act and public interest the exclusion clause has to be read down in order that the same is not at war with the purpose of providing safeguards to the victims of the accident and the role of the insurer to indemnify the Insured i.e. claim against tortfeasor is rendered illusory. The insurer is not left without a remedy. In case of violation of breach of term of the policy, the insurer can proceed against the insured, however, with regard to the liability against the third person which is the statutory duty of the insurer and the statutory right the third party, the same cannot be over ridden on account of any negligent violation intentional or unintentional on the part of the insured and the insurer particularly if any one of them has been made to suffer on account of the act of third person i.e. the State, as in the case in hand, wherein the driver is alleged to have secured a fake licence which has been subsequently renewed and the insured acted on the assumption and presumption that the acts of the state done in due course of official discharge of duties are valid and legal. It is the duty of the State towards public and people at large who are required to rely on the acts of sovereign/state

to ensure that their acts are not purged or forged and due care is taken for complying with the statutory provisions of law.

51. There can be no dispute with respect to the contention raised by the learned counsel for the appellant that licence is a permission or privilege granted by the State to do something in accordance with law. The Motor Vehicles Act provides for granting of licence to driver of a motor vehicle, issued by a competent authority authorising a person therein to drive a motor vehicle. Specified licence is required to be issued in a particular form provided by the rules. There can be no implied permission to the unlicensed drivers to drive. Driving of a vehicle without a driving licence is penal.

52. The Statute itself provides for the age at which one can have a driving licence after passing a qualifying test. The entire procedure for granting of a driving licence necessitated for the same and the procedure for its renewal is provided by Chapter 2 of the Motor Vehicles Act. Adhering to the principles of pith and substance of the Legislation for the interpretation of the statutory provisions, it can be safely stated that no person was permitted to drive a motor vehicle in public place unless he holds an effective driving licence issued by an authorised person to a person of qualifying age. It is the holder of the driving licence who was to ensure that it is he who alone uses the licence and no other person uses the same. It is for the State, in view of the penal clauses provided that no person drives a vehicle in a public place, without having duly issued a driving licence. That is the minimum expected from the state under the heading "Duty and care to its public". Ordinarily, a driving licence is to be issued by the competent authority within whose jurisdiction one ordinarily resides, after he passes the test as prescribed or if he fails within one of the exceptions provided for exemption from test. Under the amended provisions as prevalent today read with the rules framed thereunder, it is enjoined upon the State to maintain a Register in the prescribed form for issuing of the driving licences. In case of licence to drive transport vehicles carrying goods of dangerous or hazardous nature, the same would be effective for a period of one year and renewal thereof is necessary subject to the condition that the driver undergoes a refresher course.

53. Learned counsel for the appellant has laid emphasis on the terms "renewal" as envisaged in English language. Reference was made to "Chamber's Dictionary" to define what a "Licence" is. Similarly, learned counsel for the appellant-insurance company relied on words and phrases 1944 Volume 33 page 538, Webster's IIInd "New International Dictionary" Volume II, 1966 Edition page 1034 for renewal and for licence" page 1304; Mitral's Legal and Commercial Dictionary 4th Edition 1985 page 498 to define "licence". Similarly Section 52 of the Indian Easement Act, 1882; Encyclopedia of Britannica Edition 1969 volume 13 page 1067 for "Licence" Motor Vehicles Act 1939, 1988 and 1994. There is no dispute about the definition with respect to "licence" which in sum and substance can be said to be privilege granted by the State to a person to do a particular act controlled by the State. "Licence" is a document to be issued by a competent

and authorised authority. Similarly, power of renewal is nothing but renewing a thing which is in existence i.e. making it afresh or validating it by extending the period further.

54. The meaning of "renewal" as given in the WEBSTER'S dictionary is as under:-

"Renewal : the act or process of renewing (a renewal of the copyright by the publisher) Repetition. 2. the quality or state of being renewed 3. something renewed; specf: an expiring agreement 4. something used for renewing; specf: an expenditure that betters (as by prolonging useful lives; increasing output) existing fixed assets and is usu. capitalized in the accounts-usu- used in pl; compare REPAIR, replacement 5. a forbearance from enforcing an obligation (as on commercial paper) in virtue of an agreement by which the obligee relinquishes his right of action for a definite period or until a specified date."

55. Ordinarily and general as understood either under the Contract Act or general law, the only acts which can be rectified are legal and valid. Renewal is nothing else but *pari-materia* with that of ratification of an act or it can be said that it amounts to extending or renewing an act or a document for a further period which had an existence in the eye of law. Licence not legally issued or a forged document cannot be renewed. Similarly, forging of signatures either for issuance of driving licence or on the licence or fabrication of a driving licence is a criminal offence, which cannot be ratified. However, a criminal act may be ratified qua a civil liability provided the authority ratifying it has full knowledge and is conscious of the fact that the document having not been issued by a duly authorised person, ratifies it. A document not issued by a public officer duly authorised cannot be validated by the renewing authority inasmuch as the acts of the officers of the State should be backed by the statutory power conferred on a person to do a particular act. By referring to the Motor Vehicles Act, we find that no authority has power to validate a driving licence issued by an unauthorised person or fabricated document can not be validated by any authority under the Statute. As a natural corollary, if a licence issued by an unauthorised person cannot be validated, the same cannot be renewed by any stretch of imagination. Apart from this, a void document cannot be validated by its renewal. Renewal can be effected of a document or of an act which is preexisting. There cannot be a renewal of a non-existing document as a licence forged or fabricated or one issued by an unauthorised person is no document in the eye of law.

56. Issuing of driving licences is the state's duty. Elaborate procedure has been provided by the Act and the Statute. It is only when the a, competent authority to issue licences is satisfied, that applicant for a licence for driving of a particular vehicle knows driving and is in medically fit position to drive that a driving licence is issued for a specified period, which is renewal at intervals even for which a medical certificate is required at the age of 40/50 years so on and so forth. At the option of the renewing authority one may have to undergo again a test for driving. The Act provides for maintenance of a regular Register in a particular form prescribed for the holders of driving licences, which includes the

name and particulars of the licence holder as the statute enjoins that it is only the Licensing Authority within whose jurisdiction a person ordinarily resides, can issue a driving licence, though renewal of a driving licence can be sought from any other competent authority for issuing the licence where the licence holder has shifted his ordinarily residence, yet it is enjoined upon the renewing authority to intimate the issuing authority with respect to the renewal of a driving licence. Driving of a vehicle without holding an effective valid licence is an offence and punishable under the Motor Vehicles Act.

57. Thus the State owes a duty of care to the common man, public User of the road, insurer, insured, owner of the vehicle holder of the vehicle etc. that a person does not carry with him a fake or forged document alleged to have been issued by an unauthorised person. The very object of intimating to the issuing authority about the renewal is to ensure that no forged document is renewed. It may be observed that the standard required in the circumstances of the case is to forestall the chances of issuing of forged document and detection of forged licences, apart from other modes required to be taken by the State like, effective checking from time to time etc. There is clear proximity between the wrong doer i.e. driver or holder of fake licence and the absence of reasonable care on the part of the State which is likely to cause damage to the road users.

58. It emerges from the precedents cited above that question with regard to duty of care may be put as follows :- " Giving the policy choice" made by public body did an authority take reasonable care in believing it, It is of extensively pragmatic care i.e. was there an absence of negligence in exercise of statutory power?

59. Thus, I am of the considered view that it was the duty of the State to ensure that no body forges the State's documents and uses them. If any body does so and the State is unable to discover the same within reasonable time and any public man suffers any damage on account of tortuous act committed by such person, the liability of the State would be determined in appropriate case as and when it arises. We restrain ourselves from expressing any view with respect to the liability of the State to the person who suffers because of the forged document of the State, used by the forger.

60. Negligence as understood by a common man is an act where a person does not advert to consequences when as a reasonable man could have adverted to. It is blameworthy inadvertance to the consequences of conduct so far as a reasonable man would have adverted to them. It is in the social interest and in the interest of public. Otherwise too, it is also assumed that a man would act as a reasonable man and every act and conduct of a person would be judged at the alter of the standard of a reasonable person. Burden of proving that one acted as a reasonable man is discharged once it is shown that a reasonable care and skill was taken. It is the obligation of the master to ensure that before employing a person care has been taken and that the driver to whom vehicle is handed over was holding a valid driving licence. There is presumption that vehicle is being

driven for the master's purpose and the driver acting in the course of employment was holding a valid driving licence unless rebutted. Independence of idiosyncrasies bereft of robust temperaments fail to foresee or disregard the obvious danger. There is a sense in which the standard of care of a reasonable man involves in its application as a subjective element. It has to be judged in each case in the facts and circumstances of a particular case what a reasonable man would have had in contemplation and what according to the party put him liable or to have foreseen. It is always easy to be wiser after the event. One is expected to guard against reasonable probability and not fantastic possibility. It will be reasonable to infer that in the facts and circumstances that a person goes for employment as a driver, the insurer sees his driving licence. Prima facie finding nothing wrong in the driving licence or having any reasonable basis to doubt the same particularly when it has been renewed time and again by a duly authorised person, assumed that the driving licence has been validly issued. One can not be expected to the extent of absurdity or with an extra ordinary sensitivity while checking the title to the property of a man one may not first find out. How the territory was acquired by the sovereign originally which resulted in the acquisition of the title of the seller.

61. Once the insured has verified the driving licence he is discharged of the duty of reasonable care or duty of care towards insurer as well as third party, as renewal of a driving licence is an act of the State.

62. Keeping in view the tendency as developed, being more liberal and the liberal protection of third parties the course of employment has not to be dissected. It has to be seen as a whole. As observed earlier, vicarious liability of the master depends upon a specific state of mind. It is obvious where master and servant relationship exists, the master took all reasonable steps to ensure that requirements of the Statute and the obligations imposed by the policy have been reasonably observed from the standard of a reasonable person. The insurer is bound to reimburse the insured which he is liable to pay to the third person the victim of the road hazards. Benefits have to go in favour of innocent sufferer or injured by the act of somebody who was employed by the defendant employer and who was seeking to further employer's interest, particularly when the employer is the ostensible authority who complied with the statutory requirements. It is the requirement of the public policy that an employee acting beyond his authority during the course of his employment is not only liable but the master too. The rights conferred under the Motor Vehicles Act are in addition to the rights under tort and not derogation of rights under torts. Public interest should be allowed to over-ride the private interest. Courts are duty bound to consider the rights of public. The Legislation never intended that damage should be done to innocent persons without redress. As observed above, in the earlier part of the judgment, the very object of the Courts is to grant justice to the victims of road accidents. It would be no justice to deny the same for the sake of commercial convenience on the assumption that a person has committed fraud with the State in fabricating a document of driving licence which the State has

failed to check under its duty of care for enforcement of law towards its citizen. If it is interpreted, as suggested by learned counsel for the appellant, than it would destroy the benefits of the beneficial benign legislation for the public interest at the alter of commercial convenience and technicalities sacrificing, rather making the very object of the constitutional duty of the public welfare as negatory.

63. There can be no dispute that there can be no renewal of a document or something non existing in the eye of law, yet in the facts and circumstances, mere invalidity of a licence or non-existing of licence as a logical consequence or as corollary, that there was no valid licence, which has subsequently been renewed, would not deprive third person of his right to recover the compensation from the insurer, for whose benefit or protection basically the Statute made it incumbent for the owner or user to use a vehicle at a public place duly insured. Denying claim of the third party in these circumstances, one can be said to be over generous to insurance company and would bring the administration of justice to disrepute and need a third person for whose protection the Legislation is every day trying to meet in all eventualities or the situations. By judicial interpretation one cannot permit the insured to evade its liability rather coming straight forward with helping hand to establish a welfare society for which the companies are permitted to establish. The basic object of the companies being, as observed earlier, not profit making but to protect the interest of road users.

64. In view of the questions of law having been dealt with in the earlier part of the judgment, to deal with the case in hand, which was referred as a whole to the Full Bench, it would be expedient to notice the salient facts as emerged from the pleadings of the parties and the evidence led by them, thus:-

65. The only skeletal, bare plea, bereft of facts and particulars of fraud was taken. The plea of fraud in verbatim runs as under:

" That this fraudulent petition has been filed with a view to defraud the respondents. This claim is bogus, malafide, illegal in law".

With respect to the driving licence, the plea raised runs in verbatim as under;-

" That at the time of alleged accident, the truck No. HYW-6262 was not being driven by a person holding a valid driving licence nor he had ever held a valid driving licence".

65. Though the factum of accident with the above referred truck was denied yet a plea was taken that respondent Rajbir Singh driver was not driving the/ruck in the course of employment of the insured nor with his consent or permission. The factum of rash and negligent driving was denied. There is no reference even remotely with respect to the denial of the relationship of employer and employee between Rajbir Singh driver and respondent-owner. There is no reference either of denial or acceptance with respect to holding of a valid driving licence by the driver much less its validity. The vehicle being insured with the insurance

company-appellant was asserted and was not denied. Respondent-driver appeared in the witness box as R.W.I and admitted himself to be in the employment of the owner of the truck. With reference to his driving licence the only statement made by the witness is to the effect, " My driving licence is in the Court. Exhibit R1 is the photo copy of my driving licence. I got this driving licence prepared from Gwalior. The driving licence was brought by my Ustaad. I did not go personally there". The suggestion put to him about the licence being fictitious and not issued by the Licensing Authority, Gwalior, was denied. I may hasten to add that the driving licence was taken into possession by the police, which was never summoned. Surprisingly and in the most casual form respondent No-3 the insurance company tendered in its evidence only the insurance policy Exhibit R3, the report of surveyor Exhibit R4 and letter to the Licensing Authority, Gwalior Exhibit R5. The said documents were accepted and exhibited without their being proved by anybody much less in accordance with the provisions of Indian Evidence Act, I cannot restrain myself in observing that the recording of evidence, marking and exhibiting of documents is totally in ignorance of the Evidence Act as well as the procedure prescribed by the Code of Civil Procedure. Even if the provisions of the CPC or Indian Evidence Act may not be strictly applicable to these proceedings yet the minimum principles of equity, justice and good conscience of the Procedure as laid down by the Legislature have not even been remotely observed.

66. Be that as it is, apart from the observations made above, the reading of report of Surveyor Exhibit R4 makes an interesting reading with respect to the questions raised in this case on the basis of assumptions and presumptions. Exhibit R5 is an application made by one Rajbir Singh seeking a copy of driving licence from the Transport Authority Gwalior. There is no report of anybody on this application nor the original report by the authority has been placed on the record. One surveyor of the insurance company reported in favour of his employer and submitted the report produced in court marked as Exhibit R4. The said report inverbatim runs as under :

" In accordance with the advice from D.C. Gwalior on 4.8.1993 undersigned collected the Photostat copy of D/L of Shri Rajbir Singh D.L. No. R-9045/84 and visited R.T.O. Gwalior.

Undersigned deposited fee of Rs. 10/- against the driving licence to get the driving licence particulars (application enclosed). But Officers conveyed that against the D.L. No. R-9045 A/c Shri Rajbeer Singh, no record is available in their office.

"issued without prejudice"

Sd/- Surveyor"

67. I fail to comprehend that on the basis of said report of the surveyor and in the absence of an iota of evidence on record against the statement of driver on oath and in the absence of specific pleas with the particulars, one can assume

that the non-availability of the record with respect to the above referred driving licence would amount to issuance of a fake driving licence; or the driving licence is forged; or the driving licence was not issued in the ordinary course of business. The maintenance of the record is not within the control of the holder of the licence nor he can be held responsible for the availability of the same. In the ordinary course of business the acts done by the State employees in due discharge of their official duties would be presumed to have been done in accordance with the rules and law. There is nothing on the record that the signatures of the issuing authority were forged or were not of competent authority. The validity of the driving licence got further corroborated when it was renewed twice over, particularly when there is not even a suggestion, that the renewal of the driving licence was in violation of any statutory rules regulations provisions of the Act or there was any violation of any procedure for renewal or renewal of the driving licence was not by a duly authorised person or it was fraudulent. Thus, in the facts and circumstances of the case in hand, I cannot resist in coming to a conclusion that respondent-Rajbir Singh was holding a valid driving licence at the time of the accident.

68. At this stage, I cannot restrain myself in observing that the insurance company instead of fulfilling its pious duty towards injured i.e. third person took all possible defences under the sky irrespective of the fact whether they knew or not what defences are taken. It appears to be an intentional malafide crude attempt made by the insurance company as well as the insured along with the driver of the offending vehicle to deprive the claimants of their claim, if not totally, at least to delay the payment of compensation to the claimants as far as possible, by playing the game of chess with the illiterate litigants and, with the system of justice in which they had a blind faith. The trial Court too went on with the proceedings without applying its mind at any stage that the pleas taken are not alternative pleas but are all destructive of each other, which is not permissible under any jurisprudence. Much is expected from the insurance companies, as observed in the earlier part of the judgment, being the participants of bringing about a welfare State to meet its obligation open heartedly and only defend claims against them as participatory litigants and not as adversary litigants. The insurance company for reasons best known to it did not feel satisfied with the award and came up further in appeal raising all sorts of questions of law without there being any factual matrix for the same. In my considered view, it is an oblique motive to deny the rightful claim of the claimants by utilising the public funds at their disposal, which should be frowned at and should not be permitted lightly. Judicial restraint demands that I leave it at this stage and say no more.

69. In view of the observations made above, I answer the questions posed as under:

(1) A forged driving licence though may be validly renewed, would not become a valid driving licence or a duly issued driving licence in accordance with the Motor

Vehicles Act.

(2) The insured bonafidely believing in the validity of a forged driving licence employing the holder of a fake driving licence renewed by a competent authority, would not amount to violation of the conditions of contract or of insurance policy. It would not be violating either conditions of indemnity or the insurance policy or the contract or violation of any statutory provisions. Under these circumstances, merely employing a driver with a forged driving licence would not absolve the insurer of its liability;

(3) In the absence of mens rea or knowledge or intention to violate the terms of policy or the provisions of the Act by the insured, the insurance company would not be discharged of its liability from indemnifying the insurer or of its statutory liability to third party or its contractual liability to third party.

(4) The insurance company cannot refuse to meet its liability qua third party for any act or omission bonafidely or otherwise committed by the insured or its liability inasmuch as third party for whose benefit the insurance has been provided, is not a privy to any breach as being not in control of the act or conduct of the insured or its employee or insurer. Thus, the insurance company cannot refuse to meet its liability qua third party.

(5) The insurer is duty bound and liable statutorily as well as contractually to reimburse third party claim, for the tortious act committed by the insured or his employee as well as the liability incurred by insured or his employee under the Motor Vehicles Act;

(6) The insurance company can neither refuse to indemnify nor is discharged from its liability to the insured or the claimants for an act of fraud committed by the third party qua the insured though it has a right to recover any loss suffered by it from the person, who committed the fraud or from any other authority, as permissible either under tort or any other statute; and

(7) The insurance company would be entitled to recover the amount, which it has paid to the claimant from the insured or his driver or employee who has perpetuated fraud and the insurance company was made to reimburse third party who suffered loss because of the tortious act of the insured or his employee. The insurer would not be left without remedy to reimburse itself. It would be at liberty to approach under tort in accordance with law for the failure of the State to discharge common duty care as well as the insured for not observing due care of an ordinary prudent person expected from the insured, as a duty towards the insurer as well as the person who has committed the fraud. Remedy, as available to the insurer is not a decision by this court while dealing with the question, rather it is left open to be determined as and when a question arises in the facts and circumstances of a particular case.

70. Thus, in view of the observations made above and for no reasons having been provided in the judgment 1994(1) PLR 140, on the basis of which, it can be

held that renewal of a driving licence can be equated with a driving licence or renewal of a fake driving licence would result in its validation, with due respect to the Hon"ble Judges, I am unable to subscribe to the view of law taken in the above referred judgment, which with all humility is expressly over ruled.

71. Nothing substantial has been argued with respect to the cross-objections for enhancement of the compensation. Otherwise too the award of Rs.2,59,200/- appears to be a just compensation. Thus, we find no ground to increase the compensation.

72. Questions posed, argued or referred are answered, in the above terms.

73. However, for the reasons recorded above the appeal as well as cross-objections fail and are hereby dismissed with no order as to costs.