

(2017) 07 BOM CK 0142
In the Bombay High Court
Case No : 2 of 2006

National Insurance Company Ltd. Wardhaman Nagar Branch
through the Divisional Manager

APPELLANT

Vs

Smt. Veena wd/o Sanjay Dongre, & Ors.

RESPONDENT

Date of Decision : 20-07-2017

Acts Referred:

Constitution of India, Article 136, Article 142 - Special leave to appeal by the Supreme Court - Enforcement of decrees and orders of Supreme Court and orders as to discovery, etc
<a hr

Citation : (2017) 07 BOM CK 0142

Hon'ble Judges : Shalini Phansalkar-Joshi

Bench : SINGLE BENCH

Advocate : D. N. Kukday, S. V. Sirpurkar

Final Decision : Dismissed

Judgement

1. By its Judgment and Order dated 22.8.2005 passed in Claim Petition No. 230 of 2001, the Motor Accident Claims Tribunal, Nagpur held the appellant Insurance Company jointly and severally liable to pay compensation of Rs.11,03,000/to the respondents with future interest @ 8% per annum from the date of petition till realization, with further directions that the appellant was to satisfy the Award first and then to recover the amount from the owner, in execution proceeding.

2. Being aggrieved by this Order and Judgment, the appellant Insurance Company has preferred this appeal.

3. Brief facts of the appeal can be stated as follows: On 7.11.2000 deceased Sanjay was travelling in a Jeep No. MH35/ C0206 at about 6.00 a.m. on National High No.6. When the jeep came near Birs Phata, it gave dash to stationary truck bearing No. MP-23/ DA-8977. Resultantly, deceased Sanjay, who was one of the occupants in the jeep, suffered fatal injuries and died on the spot. The offence was registered against respondent no.3, the jeep driver by Sakoli police station

under Section 279, 304A of the Indian Penal Code. The jeep was insured with the present appellant and it was owned by respondent no.6 Narayan.

4. Respondent no.1 Veena is the widow of deceased Sanjay, whereas respondent nos. 2 to 5 are their minor children. As per the case of this respondent nos. 1 to 5, at the time of accident, deceased Sanjay was 39 years old. He was working as Pharmacist at Rural Hospital, Chichgad, District Gondia and was drawing salary of Rs. 8,500/per month. These respondents were totally dependent upon him. On account of his untimely death, they lost their only source of income. Therefore, they filed Claim Petition before the Tribunal against appellant and respondent nos. 6 and 7, claiming compensation of Rs.23,00,000/.

5. The appellant resisted the said petition vide written statement at Exh.44, admitting the insurance of the jeep. However, raising a specific plea that there was breach of terms and conditions of the insurance policy. It was submitted that said jeep was insured as private car but at the time of accident it was being used for carrying farepaying passengers and in that situation as the contractual liability of the Insurance Company being only towards bona fide occupants of the vehicle, that too to the extent of Rs.57,000/per occupant, the liability of the deceased, who was travelling in the jeep, as fare paying passenger and, therefore, not a third party, is not covered under the insurance policy and hence, the appellant cannot be fastened with the liability of paying compensation to the respondents. An attempt was also made to contend that as the owner and insurer of the truck no. MP-23-DA-8977 were not joined in the Claim Petition, the claim petition was bad for nonjoinder of necessary parties. It was submitted that the truck was standing without any indicator or signal and hence, truck driver was also equally responsible for the cause of accident. It was also submitted that the amount claimed in the petition towards compensation was excessive and exorbitant.

6. Respondent no.6, the owner and respondent no.7, the driver of the jeep, though appeared in the petition, did not file their written statement. At the time of hearing also, both of them remained absent.

7. On these respective pleadings of the parties, the Tribunal framed necessary issues for its consideration at Exh.45. In support of their case, respondent no.1 examined herself and led the evidence of witness Mahadeo Kanojiya, to prove the pay bill of the deceased. As against it, on behalf of appellant, P.S.I. Motiram Gohare was examined to prove that at the time of accident deceased was travelling in the jeep as fare paying passenger. Appellant also led the evidence of its Senior Branch Manager Sudhakar Shende to prove the terms and conditions in the policy Exh.101. As the owner of the jeep has not contested the petition, appellant was permitted to contest the claim on all grounds under Section 170 of the Motor Vehicles Act.

8. On appreciation of the evidence led before it, the learned Tribunal was pleased to hold that the cause of accident was the rash and negligent driving of the jeep

and hence, the owner of the jeep is liable to compensate respondent nos. 1 to 5. As regards the liability of the appellant Insurance Company, Tribunal held that there was definitely breach of the terms and conditions of Insurance Policy. However, appellant has in the first instance, to pay the amount of compensation of respondents and thereafter to recover the same from the owner of the jeep in execution proceedings. The Tribunal accordingly awarded the compensation of Rs.11,03,000/to the respondents with interest @ 8% per annum from the date of petition till realization.

9. This judgment and order of the Tribunal is subject matter of the present appeal. It may be stated that neither the owner of the jeep nor the original claimants have challenged this judgment and hence, the only issue which can arise and which is raised for consideration is about the liability of insurance company to satisfy the award, when admittedly the Tribunal itself has held the breach of terms and condition of policy to be proved on record.

10. As a matter of fact, this issue is also on both the factual and legal aspects no more res integra. However, before adverting to this legal issue, it would be necessary to state certain proved facts on record; the first and foremost is that deceased was travelling in the jeep which gave dash to the stationary truck. The offence was registered against the jeep driver and the Tribunal has also, after discussing the evidence on record, came to conclusion that the cause of accident was rash and negligent driving of the jeep. In this respect, the Tribunal has considered the fact that the driver of the jeep even though was made party to the petition, did not step into witness box. The Tribunal has also considered the evidence of witness no.2 Prashant Bansod who was travelling in the said jeep, hence an eyewitness to the accident to prove that the jeep was in fast speed and the driver of the jeep was unable to control the jeep, even after noticing the stationary truck and as a result the accident occurred. As can be seen from the judgment of the Tribunal, the aspect of rashness or negligence on the part of jeep driver was not at all seriously challenged or disputed. In the instant appeal also, the owner and the driver of the jeep i.e. respondent nos. 6 and 7 have not appeared and contested the said finding of the Tribunal. Moreover, that finding of the Tribunal being based on the evidence on record like FIR, spot panchnama and also the evidence of eyewitness Prashant, no interference is called for in the said finding.

11. The next material factual aspect which is also proved on record is that, at the time of accident, the deceased and other occupants were travelling therein as fare paying passengers. There is evidence on record to that effect of A.S.I. Motiram Gohare, who was examined by the appellant and who has stated that, in all 12 persons, including the deceased had hired the jeep in order to go to Pachmadhi. It is admitted by respondent no.1 Veena that she had no acquaintance with the owner of the jeep. Though she has denied that deceased was travelling in the said jeep as fare paying passenger, the inference is inevitable that the jeep was taken on hire, in absence of any pleading that

deceased was travelling as gratuitous passenger. There is also no case or defence put by the owner or the driver of the vehicle that deceased was travelling as gratuitous passenger. As a matter of fact, Prashant (PW2) has admitted in his statement recorded by police in the course of investigation that the jeep was hired for going to Pachmadhi. Therefore, this finding of the learned Tribunal that deceased was travelling in the jeep as fare paying passenger is also based on proper appreciation of evidence on record and it is not challenged by either respondent no.6 then owner or respondent no.7, the driver of the jeep. They have not preferred any appeal against this judgment of the trial Court, therefore, it has become final.

12. The evidence on record also goes to show that the insurance policy of the jeep was covering the risk of nine passengers to the extent of Rs.57,000/per passenger, by accepting premium of Rs.256.50. There is evidence on record of the Manager of the Insurance Company Shri. Sudhakar Shende. Thus, the Insurance policy of the jeep was covering the third party risk and as the occupants of the jeep cannot be considered as third party, their risk was not covered under the policy. The copy of the insurance policy is produced on record at Exh.101 and it clearly goes to show that it was the comprehensive policy. SectionII in respect of the liability of third party as contained in policy at Exh.101, is sufficient to show that liability of the occupants in the car was covered, provided that such occupants are not carried for hire or reward.

13. Hence, liability to indemnify the insurer is only in respect of the claim of third party, which includes occupants of the car, who are not travelling for hire or reward. In other words, only the liability of gratuitous passenger is covered under the terms and conditions of the policy. This legal position is also well settled in view of the judgment of the Hon'ble Apex Court in case of Amritlal Sood Vs. Kaushlya Devi, 1988 ACJ 531, wherein it was held that the word "any person" used in sectionII of the policy, only include the occupant of the car who was gratuitously travelling in the said vehicle. In the instant case, as deceased is proved to be travelling in the said vehicle on hire, his liability is not covered under the insurance policy.

14. If the liability of the deceased, who was a passenger for hire, travelling in the jeep is not covered by the insurance policy, the question raised for consideration, by learned counsel for appellant in the backdrop of these facts is whether the Insurance Company can be even directed to satisfy the award at first instance and thereafter to recover the same from the owner in execution proceeding? The submission of learned counsel for appellant is twofold; first that, such direction to the Insurance Company to satisfy the award and thereafter to recover the same for the owner of the offending vehicle is given by the Hon'ble Apex Court in its extraordinary jurisdiction under Article 136 or 142 of the Constitution, therefore, neither the Tribunal nor the High Court can give such direction. Secondly, it is submitted that if such direction is to be given, then first, the owner should be directed to furnish solvent surety of the entire amount of the

award, then only the appellant insurance company can be fastened with the liability to satisfy the Award.

15. According to learned counsel for respondentsclaimants, however, such directions can be given by the Tribunal and this Court also. Moreover, it is submitted that, in this case as the entire amount of compensation is already deposited in the Court by the appellantInsurance Company and the owner of the offending vehicle is also no more alive, it would not be proper to deprive the claimants for further period from the amount of compensation.

16. To appreciate these two submissions made by learned counsel for both the parties, it would be necessary to revisit the authoritative pronouncements of the Apex Court on this point.

17. According to learned counsel for the appellant, once the breach of the terms and conditions of the policy is proved on record the insurance Company cannot be liable even to satisfy the award at first instance and thereafter to recover the same from the owner of the vehicle. It is urged that whatever directions, given by the Hon"ble Apex Court on this aspect of "pay and recover" are given, only in exercise of its jurisdiction under Article 142 of the Constitution of India read with Article 136 thereof. Those directions were given for doing complete justice to the parties. Such extra ordinary jurisdiction is however, neither available with the Tribunal nor with this Court as the Apex Court alone can exercise such extraordinary jurisdiction.

18. In this respect reliance is placed on the judgment of Hon"ble Apex Court in the case of "Oriental Insurance Company Limited Vs. Brij Mohan and others 2007 AIR SCW 3734", wherein the Apex Court itself, has clearly observed that, it was in exercise of its extraordinary jurisdiction and in order to do complete justice to the parties, it has given directions to the Insurance Company to satisfy the Award first and thereafter to recover it from the Insurer.

19. It is submitted by learned counsel for appellant that in the decision of Ram Prakash Sing and Ors. Vs. State of Bihar and Ors., 2006 AIR SCW 5312 also, it was held that this was an order passed under Article 142 of the Constitution of India on the particular facts of that case and the direction given on the subject, in exercise of jurisdiction under Article 142, is not a binding precedent.

20. Learned counsel for appellant has in this respect then placed reliance on the judgment of a single bench of this Court in the case of United India Insurance Co.Ltd. Vs. Anubai Gopichand Thakare, 2008(1) Mh.L.J. 73, to submit that in this case this Court has refused to give such direction to the Insurance Company to indemnify the owner who is not entitled otherwise to claim from the insurer, on the count that such direction falls within the domain of extraordinary jurisdiction of the Apex Court and hence the same cannot be treated as binding precedent. It was further held that even Section 168 of the Motor Vehicles Act does not empower the Tribunal to issue direction to the insurer to pay amount of compensation, once the finding is reached that insurer is not liable to pay such

amount on account of fundamental breach of the terms of the Insurance policy.

21. Learned counsel for the appellant has then placed reliance on the judgment of Division Bench of this Court in the case of Traders Pvt.Ltd., Ahmedabad and another Vs. Sunanda wd/o Krishna Machivale and others, [2009(1) Mh.L.J. 898 wherein also this Court refused to issue such direction to the Insurance Company to satisfy the award first and thereafter to recover the same from the owner. It was held that, such direction cannot be issued in all cases to insurance Company, if it is not bound in law to pay compensation, to pay it and recover it from the owner of the offending vehicle. It was further held that the direction given by the Apex Court in the case of National Insurance Company Vs. Baljitkaur and others 2004 (2) Mh.L.J. (SC) 372, was in exercise of its jurisdiction under Article 142 of the Constitution of India read with Article 136 thereof for doing complete justice to the parties. Such powers do not vest in the High Court, therefore, it was not possible to pass similar orders.

22. It is submitted by learned counsel for appellant that different view taken by learned single Judge of Nagpur Bench in the case of National Insurance Co. Ltd. Vs. Prakash Sakharam Dudhankar and ors., 2006(1) Mh.L.J. 601 was not accepted by the Division Bench of our High Court in this case.

23. Thus, according to learned counsel for appellant, this court should restrain itself from confirming the order passed by the Tribunal, of directing the Insurance Company to satisfy the award first and then to recover the amount from the owner, as such order can be passed only by the Hon"ble Supreme Court in its extraordinary jurisdiction. Hence, according to learned counsel for appellant, the impugned order of the Tribunal to that effect is required to be quashed and set aside.

24. Per contra, learned counsel for respondentsclaimants has relied upon the judgment of the single bench of this Court in the case of New Assurance Company Limited Vs. Sindhu wd/o Hiralal Tawade and others in First Appeal No. 656 of 2004 decided on 29.3.2012, wherein another single Judge of the Nagpur Bench of this Court has taken note of the consistent view taken by the Hon"ble Supreme Court in the case of Kusum Lata Vs Satbir & others [AIR 2011 SC 1234] and held that such direction needs to be given to the Insurance Company to pay compensation to the claimants and then to recover the same from the owner of the vehicle. The submission made therein that, only the Apex Court can give such direction in its extraordinary jurisdiction was rejected.

25. Learned counsel for respondents, has then also placed reliance on the judgment of the Apex Court in the case of Kusum Lata & others Vs. Satbir and others, 2011 DGLS(SC) 206, wherein paragraph13 of its judgment, the Hon"ble Apex Court held as follows:

"13.....In respect of the dispute about licence, the Tribunal has held and, in our view rightly, that the insurance company has to pay and then may recover it from the owner of the vehicle. This Court is affirming that direction in view of the

principles laid down by a three Judge Bench of this Court in the case of National Insurance Company Limited V. Swaran Singh and others report in (2004) 3 SCC 297".

(Emphasis supplied)

26. It is submitted by learned counsel for respondents that, in this judgment the order passed by the Tribunal directing the Insurance Company to pay and then recover it from the owner of the vehicle, was held to be rightly given and confirmed. Therefore, according to learned counsel for respondents, there is no substance in the contention of learned counsel for appellant that only the Apex Court can issue such direction.

27. Learned counsel for respondents has then placed reliance on the judgment of the Apex Court in the case of Manager, National Insurance Company Limited Vs. Saju P. Paul and another, (2013) 2 Supreme Court Cases 41 to submit that in this judgment after taking review of all its earlier judgments on this question, as to whether such direction could be issued to the Insurance Company to first satisfy the awarded amount in favour of claimant and then recover the same from the owner of the vehicle, Apex Court placed reliance on its judgment in National Insurance Company Vs. Baljitkaur (supra), wherein it was held in paragraph 21 as follows:

"21....The upshot of the aforementioned discussions is that instead and in place of the insurer the owner of the vehicle shall be liable to satisfy the decree. The question, however, would be as to whether keeping in view the fact that the law was not clear so long such a direction would be fair and equitable. We do not think so. We, therefore, clarify the legal position which shall have prospective effect. The Tribunal as also the High Court had proceeded in terms of the decision of this Court in Satpal Singh. The said decision has been overruled only in Asha Rani. We, therefore, are of the opinion that the interest of justice will be subserved if the appellant herein is directed to satisfy the awarded amount in favour of the claimant, if not already satisfied, and recover the same from the owner of the vehicle. For the purpose of such recovery, it would not be necessary for the insurer to file a separate suit but it may initiate a proceeding before the executing court as if the dispute between the insurer and the owner was the subjectmatter of determination before the Tribunal and the issue is decided against the owner and in favour of the insurer. We have issued the aforementioned directions having regard to the scope and purport of Section 168 of the Motor Vehicles Act, 1988, in terms thereof, it is not only entitled to determine the amount of claim as put forth by the claimant for recovery whereof, from the insurer, owner or driver of the vehicle jointly or severally but also the dispute between the insurer on the one hand and the owner or driver of the vehicle involved in the accident inasmuch as can be resolved by the Tribunal in such a proceeding."

(Emphasis supplied).

28. It was observed by the Hon"ble Apex Court that the above position has been followed even in subsequent decision like National Insurance Co. Ltd. Vs. Challa Upendra Rao (2004) 8 SCC 517, wherein it was observed in paragraph13 as follows"

"13.... The residual question is what would be the appropriate direction. Considering the beneficial object of the Act, it would be proper for the insurer to satisfy the award, though in law it has no liability. In some cases the insurer has been given the option and liberty to recover the amount from the insured. For the purpose of recovering the amount paid from the owner, the insurer shall not be required to file a suit. It may initiate a proceeding before the executing court concerned as if the dispute between the insurer and the owner was the subject-matter of determination before the Tribunal and the issue is decided against the owner and in favour of the insurer. Before release of the amount to the claimants, owner of the offending vehicle shall furnish security for the entire amount which the insurer will pay to the claimants. The offending vehicle shall be attached, as a part of the security. If necessity arises the executing court shall take assistance of the Regional Transport Authority concerned. The executing court shall pass appropriate orders in accordance with law as to the manner in which the owner of the vehicle shall make repayment to the insurer. In case there is any default it shall be open to the executing court to direct realisation by disposal of the securities to be furnished or from any other property or properties of the owner of the vehicle i.e. the insured. In the instant case, considering the quantum involved, we leave it to the discretion of the insurer to decide whether it would take steps for recovery of the amount from the insured."

29. In this case, the Apex Court also took into consideration its decisions in National Insurance Co.Ltd. Vs. Kaushalaya Devi (2008) 8 SCC 246 and in the case of National Insurance Company Vs. Roshan Lal SLP (C) No. 5699 of 2006 order dated 19.1.2007, wherein, in the light of argument raised before a twoJudge Bench that the direction ought not to be issued to the Insurance Company to discharge the liability under the award first and then recover the same from the owner, the matter has been referred to the larger Bench for consideration. It was held that merely because the matter was referred to the larger Bench, does not mean that the course which was followed in Baljitkaur and Challa Upendra Rao should not be followed, more so in a particular fact situation of the said case in which the accident has occurred in the year 1993, when claimant was 28 years of old and now he was about 48 years of age, who has been permanently disabled and not been able to get compensation due to the stay order. It was held that he can not be compelled to struggle further for recovery of the amount. Hence, having regard to the peculiar facts of the case, he was allowed to withdraw the amount deposited by the Insurance Company with interest accrued thereon and it was held that Insurance Company, may recover the said amount by following the procedure as laid down in the case of Challa Upendra Rao.

30. In the latest judgment of the Apex Court in the case of Manura Khatun and others Vs. Rajesh Kumar Singh and others, (2017) 4 Supreme Court Cases 796 relied upon by learned counsel for respondents also, being faced with the similar situation wherein the Insurance Company was exonerated and the Award was passed only against the owner of the offending vehicle i.e. the person insured, it was held that appellantsclaimants were entitled for an order against the insurer to pay the awarded sum to claimants and then to recover said amount from the insured in the same proceedings, as per the law laid down in para26 of the judgment made in Saju P. Paul. It was held that since the High erred in not passing such order, it was necessary to modify the said order. Accordingly, after taking note of its earlier orders which are referred in the judgment of Saju P. Paul, it was held that the Insurance Company was liable to satisfy the award first and accordingly directed to pay the awarded sum to the claimants and thereafter to recover the same from the owner of offending vehicle in execution proceeding.

31. Thus, the consistent and well crystalised legal position which can be gathered from all the above referred judgments of the Hon''ble Apex Court and this court is that even in the case where the breach of terms and insurance Company is proved on record, a direction can be issued and needs to be issued to the Insurance Company to satisfy the award first and then to recover the amount from the owner of the offending vehicle. As can be seen from this latest judgment of the Hon''ble Apex Court in the case of Manura Khatun (supra), as the High Court has not followed this course, it was held that High Court has erred in not passing such order and the order of the High Court was modified giving such direction to the Insurance Company. Therefore, it can no more be accepted that, neither the Tribunal nor this Court can issue such order on the principle of "pay and recover" against the Insurance Company, in the light of the categorical and unequivocal view taken by the Apex Court that even if the award is passed against insurer i.e. owner of the vehicle only, it is the duty of the insurer to satisfy the award first and then to recover from the owner. Therefore, in this case also even if it is accepted that the insurer of the offending vehicle is exonerated and award is passed again the owner of the vehicle only in that case also, the appellant the Insurance Company has to satisfy the award first and then to recover it from the owner.

32. Next submission of learned counsel for the appellant is that if this Court is confirming the order passed by the Tribunal directing the appellant Insurance Company to satisfy the award first and then to recover it from the owner, then this Court should follow the mode laid down by the Apex Court in the case of Pramod Kumar Agrawal and Ors Vs. Mushtari Begum and Ors, III (2005) ACC 357 (SC) and also in the case of National Insurance Company Limited Vs. Challa Bharathamma and others, (supra). In the case of Mushtari Begum reliance was placed by the Hon''ble Apex Court on its judgment in National Insurance Company Vs. Baljit Kaur (supra) and it was held in para11 as follows:

"11... While upholding the judgment of the High Court we direct in terms of what

has been stated in Baljit Kaur's case (supra), that the insurer shall pay the quantum of compensation fixed by the Tribunal, about which there was no dispute raised, to the respondents claimants within three months from today. For the purpose of recovering the same from the owner the insurer shall not be required to file a suit. It may initiate a proceeding before the concerned Executing Court as if the dispute between the insurer and the owner was the subject matter of determination before the Tribunal and the issue is decided against the owner and in favour of the insurer. Before release of the amount to the claimants, owner of the vehicle i.e. appellant No.1 shall furnish security for the entire amount which the insurer will pay to the claimants. The offending vehicle shall be attached, as a part of the security. If necessity arises the Executing Court shall take assistance of the concerned Regional Transport Authority. The Executing Court shall pass appropriate orders in accordance with law as to the manner in which the owner of the vehicle i.e. appellant No.1 shall make payment to the insurer. In case there is any default it shall be open to the Executing Court to direct realization by disposal of the securities to be furnished or from any other property or properties of the owner of the vehicle, the insured (the appellant No.1)". (Emphasis supplied).

33. In the judgment of Challa Bharathamma, (supra) the mode for recovery of amount from the owner is laid down in para 13 as follows:

"13.... The residual question is what would be the appropriate direction. Considering the beneficial object of the Act, it would be proper for the insurer to satisfy the award, though in law it has no liability. In some cases the insurer has been given the option and liberty to recover the amount from the insured. For the purpose of recovering the amount paid from the owner, the insurer shall not be required to file a suit. It may initiate a proceeding before the concerned Executing Court as if the dispute between the insurer and the owner was the subject matter of determination before the Tribunal and the issue is decided against the owner and in favour of the insurer. Before release of the amount to the claimants, owner of the offending vehicle shall furnish security for the entire amount which the insurer will pay to the claimants. The offending vehicle shall be attached, as a part of the security. If necessity arises the Executing Court shall take assistance of the Regional Transport Authority concerned. The Executing Court shall pass appropriate orders in accordance with law as to the manner in which the owner of the vehicle shall make repayment to the insurer. In case there is any default it shall be open to the Executing Court to direct realisation by disposal of the securities to be furnished or from any other property or properties of the owner of the vehicle i.e. the insured. In the instant case, considering the quantum involved we leave it to the discretion of the insurer to decide whether it would take steps for recovery of the amount from the insured." (Emphasis supplied).

34. As stated above, this mode of recovery of the amount by insurance Company from the owner, which is laid down in Baljit Kaur's case and in the case of Challa

Bharathamma is approved and confirmed by the Apex court in the case of Saju P. Paul by giving a specific direction to the effect that "recovery of amount by the Insurance Company from the owner shall be made by following the procedure as laid down by the Court in Challa Upendra Rao's case". The said mode was further approved in the case of Manura Khatun by observing in para-21 "that Insurance Company can recover the paid award sum from the owner of the vehicle in execution proceeding arising in in this very case as per the law laid down in para26 of Saju P. Paul's case". In the present case also therefore, the similar orders are required to be passed as Tribunal has also held the appellant liable to satisfy the award and then to recover the amount from the owner of the vehicle, but has not laid down the conditions and the mode, which are laid down by the Apex Court in above said decision of Challa Bharathamma. Those directions are now required to be incorporated in this judgment and to this limited extent interference is warranted in the impugned judgment and award of the Tribunal.

35. The submission of learned counsel for respondentclaimants is that, in this case, both in the petition before the Tribunal and also in this appeal, respondent no.6, the owner of the offending vehicle has not appeared and not contested the claim. Now, respondent no.6, the owner is also no more alive and his legal heirs are brought on record. In such situation, it is submitted that it will be difficult for the claimants to recover the amount of compensation from the owner or to comply with the directions of the owner executing furnishing security for the entire amount. It is submitted that even one does not know whether the offending vehicle is still owned by respondent no.6. Hence, it is urged that directing the claimants to execution proceeding for recovery of the amount which is long overdue as the accident in the case has taken place in the year 2000 i.e. about 17 years back, would be parody of justice. It is urged that instead thereof, as the amount is already deposited by the appellantInsurance Company in this court, the respondentsclaimants may be permitted to withdraw the same. The remedy of recovering that amount from the legal heirs of respondent no.6, the owner of the offending vehicle is still available to the appellant which appellant can exercise independently by filing execution proceeding against them. According to learned counsel for the respondentsclaimants, this would also serve the substantive cause of justice.

36. In my considered opinion, however, though this submission appears to be "just", so as to subserve the cause of justice, having regard to the law laid down by the Hon''ble Apex Court in all the above said authorities like Challa Bharathamma, Mushtari Begum and Ors., this Court cannot deviate from the mode prescribed by the Hon''ble Apex Court, in order to enable the claimants to get amount of compensation. After all, the appellantInsurance Company, which is required to be exonerated from paying the compensation amount in view of the breach of the terms and conditions of the insurance policy is now being directed to pay the said amount and, therefore, the interests of the Insurance Company are also required to be protected before the claimants are permitted to withdraw

the said amount. The Court has to, in such cases take the balanced view. Therefore, the directions given in the said authorities need to be issued in this case also, so as to safeguard the rights of appellant Insurance Company and also that of the respondents claimants.

37. As amount of compensation awarded by the Tribunal is based on the evidence on record, proving that total net salary of the deceased was Rs.8500/ per month and at the time of accident he was 39 years of age, the Tribunal has rightly applied multiplier 16 and awarded the total compensation of Rs.11,03,000/, even considering his future prospects also. Therefore, on that score no interference is warranted in the judgment of Tribunal.

38. As a result, the appeal stands dismissed. The direction given by the Tribunal to appellant to satisfy the award and recover the same from the owner in Execution Proceeding is confirmed with further direction as follows: Before the release of the amount of compensation deposited by the appellant in this Court to the respondent claimant, the owner of the offending vehicle respondent shall furnish security for the entire amount which the insured will pay to the claimant.

If necessity arises, the executing Court shall take assistance of the concerned Regional Transport Authority for attachment of the vehicle.

The Executing Court shall pass appropriate order in accordance with the law as to the manner in which the owner of the vehicle shall make payment of the insurer.

In case there is any default, it shall be open to the executing Court to direct realisation of the amount by disposal of the securities to be furnished or from any other property or properties of the owner of the vehicle.

In this case, considering the quantum involved, it is left to the discretion of the insurer to decide whether it would take steps for recovery of the amount from the insured.

With these directions, the appeal stands dismissed with no order as to costs.