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**(1982) 11 MAD CK 0055**  
**In the Madras High Court**

New India Assurance Co. Ltd.

APPELLANT

Vs

P. Paul also known as Balan and Others

RESPONDENT

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**Date of Decision :** 22-11-1982

**Acts Referred:**

Motor Vehicles Act, 1939 — Section 96(2)

**Citation :** (1983) 96 LW 557 : (1983) 2 MLJ 559

**Hon'ble Judges :** S. Nainar Sundaram, J

**Bench :** Division Bench

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**Judgement**

S. Nainar Sundaram, J.—The third respondent in O.P. No. 158 of 1978 on the file of the Additional Motor Accident Claims Tribunal, Madras, is the appellant in this appeal-The first respondent herein was the claimant; the second respondent herein was the second respondent; the third respondent herein was the fourth respondent and the fourth respondent herein was the first respondent respectively before the Tribunal. The claimant laid the claim for compensation of Rs. 18,000 on the ground that he sustained injuries in a motor vehicle accident involving the Taxi TMP 9810, on 19th May, 1977 at about 3-00 P.M., Mowbrays Road, opposite to Udipi Hotel, Alwarpet, Madras-600018. In view of the preliminary objection taken by Mr. R. Vedantham, learned Counsel for the claimant, the 1st respondent herein, I do not feel obliged to traverse upon the factual details of the controversy before the Tribunal. Suffice it to state that there was such an accident in which the petitioner was injured has been borne out by evidence on record. The fourth respondent herein was the owner of the vehicle, Taxi TMP 9810, at the relevant point of time. The second respondent herein was the driver of that taxi. The third respondent herein was a subsequent transferee of the vehicle. The appellant herein was the insurer of the vehicle in question. From the award passed by the Tribunal, I find that there was in fact a contest by the owner of the vehicle. Of course, the contest of the owner, the assured, and the insurer, before the Tribunal did not prove fruitful and the Tribunal chose to pass an award in favour of the claimant for a sum of Rs. 10,850 against the owner, driver and the insurer, and the insurer was directed to deposit the a

mount, within the time stipulated in the Award, and the subsequent transferee has been exonerated.

2. Mr. C. Ramesh Babu, learned Counsel for the appellant, herein, the insurer, would urge only one submission and that is, the vehicle insured was not at all involved in the accident and the claimant before the Tribunal must have sustained the injuries on account of a fall from a height of 8 feet. Before the learned Counsel for the insurer could make further submissions expatiating his contention, Mr. R. Vedantham, learned Counsel for the claimant, as stated above, put forth a preliminary objection and he would state it is not open to the insurer, the appellant herein, to raise such a contention in this appeal since it falls outside the purview of the lines of defences available to the insurer u/s 96(2) of the Motor Vehicles Act (IV of 1939), hereinafter referred to as "the Act". That this line of defence is not one enumerated in Section 96(2) of the Act is not in dispute. Hence, the principle recognized in *British India General Insurance Co. Ltd. Vs. Captain Itbar Singh and Others*, . will come into play and the insurer by himself will be debarred from putting forth any other ground than those enure under Section 96(2) of the Act. The statutory inhibition against the insurer to raise contentions other than those enured in Section 96(2) of the Act will continue even at the appellate stage-However, the very decision of the Supreme Court has recognised an exception to the rule and in the language of the Supreme Court it runs as follows:

We are further more not convinced that the statutes Causes any hardship, First, the insurer has the right, provided he has reserved it by the policy, to defend the action in the name of the assured and if he does so, all defences open to the assured can then be urged by him and there is no other defence that he claims to be entitled to urge. He can thus avoid all hardships if any by providing for a right to defend the action in the name of the assured and this he has full liberty to do.

In the instant case, it is not known as to whether the insurance policy contains a clause enabling the insurer to raise the present contention which may be open only to the assured, since the insurance policy has not been produced and marked as an exhibit before the Tribunal. Even if it is assumed that insurance policy contained a clause enabling the insurer to raise all contentions that are open to the assured, that could be done only if the action is defended in the name of the assured or the appeal is preferred in the name of the assured or along with the assured. In the instant case, the appeal is neither filed in the name of the assured nor the assured is a co-appellant along with the insurer.

3. Yet another exception has come to be recognized by a subsequent amendment introduced by Act LVI of 1969, bringing in Sub-section (2-A) in Section 110-C of the Act dealing with the procedure and powers of the Tribunal and it says that where in the course of any enquiry, the Tribunal is satisfied that there is collusion between the person making the claim and the person against whom the claim is made or the person against whom the claim is made has failed to contest the

claim, the Tribunal may direct the insurer to be impleaded as a party to the proceedings and the insurer so impleaded shall there upon have the right to contest the claim on all or any of the grounds that are available to the person against whom the claim has been made. In the present case, the owner of the vehicle, the assured, did contest the case and he did not remain *ex parte* and he cannot be stated to have abandoned his defence before the Tribunal. Hence there is no possibility to spell out a theory of collusion between the assured and the claimant. The mere fact that the owner of the vehicle, the assured has not filed any appeal against the award of the Tribunal will not also lend support to the proposition that there must have been a collusion between the assured and the claimant. Sub-section (2-A) envisages a contingency where the assured against whom the claim is made has failed to -contest the claim before the Tribunal, and not a case, where after contest, which proved abortive or futile as in a case, where the Tribunal passes an Award despite the contest, there is a failure ?n the part of the assured to prefer any appeal against the Award. The above propositions have found countenance before a Division Bench of this Court consisting of Ramanujam and M.A. Sathar Sayeed, JJ., in *The United India Fire and General Insurance Company, Limited (Unit), The Madras Motor and General Insurance Company Limited Vs. Parvathy and Another*, if the above ratio is applied, it is not possible to countenance the maintainability of the appeal at the instance of the insurer, the appellant herein, who only wants to canvass contentions other than those permissible to it u/s 96(2) of the Act. For the above reasons, this appeal fails and the same is dismissed. No costs.