

(2008) 01 GUJ CK 0049
In the Gujarat High Court

Case No : First Appeal No's. 2042, 5109, 5315 and 5329 of 2007 and Civil Application No's. 5847, 14062, 14893 and 14940 of 2007

New India Assurance Co. Ltd.

APPELLANT

Vs

P. Saguna and Others

RESPONDENT

Date of Decision : 16-01-2008

Acts Referred:

Motor Vehicles Act, 1939 — Section 95, 95(1)

Motor Vehicles Act, 1988 — Section 140, 140(1), 146, 147, 147(1)

Citation : (2009) ACJ 1733 : (2008) 1 GLH 616 : (2008) 2 GLR 1357

Hon'ble Judges : D.H. Waghela, J

Bench : Single Bench

Advocate : Megha Jani, Mehul Sharad Shah and L.K. Bhaya, for the Appellant;
D.C. Dave, H.S. Munshaw and Shalin Mehta, for the Respondent

Judgement

D.H. Waghela, J.—These appeals u/s 173 of the Motor Vehicles Act, 1988 ("the Act" for short) are preferred by two insurance companies from the awards made u/s 163A of the Act and, having involved common question of law, they are disposed by this common judgment after hearing arguments in extenso at the admission stage.

2. In First Appeal No. 2042 of 2007, the New India Assurance Co. Ltd. has challenged the award in MACP No. 340 of 2001 awarding compensation of Rs. 4,62,839/- with cost and interest @ 7.5% p.a. to the heirs of deceased P.Balakrishna, aged 29, who met with an accident on 19.11.2000 at 07.30 p.m. on Gandhidham-Kandla Highway while driving the scooter which slipped due to some obstruction on the road and who succumbed to his injuries on 23.11.2000. The Claims Tribunal turned down the plea of the insurance company that the deceased himself was a tortfeasor and, due to his own negligence, he sustained injuries and died even as the owner of the vehicle and the employer of the deceased did not contest the claim. It was also unsuccessfully argued that the employer had not paid additional premium of Rs. 25/- for covering the risk of his employee and hence the insurance company was not liable to pay any amount of

compensation. It was contended on behalf of the claimant that the accident had happened due to full lights of the vehicles coming from the opposite side and the scooter of the deceased had slipped due to some obstruction on the road which might not have been noticed.

3. In First Appeal No. 5109 of 2007, the deceased was a driver and owner of a carrier rikshaw which rammed into a dumper which was parked on the road on 29.11.2004 on Porbandar-Kutiyana Highway. It was contended that opponent No. 1 had so kept the dumper on the road as to make an obstruction. The present appeal is preferred by the insurance company of the dumper to challenge its liability to pay total compensation of Rs. 4,15,000/-with cost and interest @ 7% p.a.

4. In First Appeal No. 5315 of 2007, the National Insurance Co. Ltd. has challenged the award in MACP No. 33 of 2006 whereunder it is held to be jointly and severally liable to pay to the claimant the sum of Rs. 2,92,500/- with cost and interest @ 7.5% p.a. in a case in which, on 4.7.2005, deceased pillion rider on a motorcycle was killed on the National Highway No. 8, Near Piplaj Chokdi where the jeep of opponent No. 1 dashed with the motorcycle. The appellant as the insurance company for the motorcycle unsuccessfully contended that no premium was paid for pillion rider and hence it could not be held liable, jointly and severally, to indemnify the owner of the motorcycle, even as the driver of the motorcycle was not holding a valid licence and the accident had occurred due to sole negligence on the part of the driver.

5. In First Appeal No. 5329 of 2007, the National Insurance Co. Ltd., has challenged the award and order in MACP No. 259 of 2006 whereunder the opponents were ordered to jointly and severally pay Rs. 3,42,552/- with cost and interest @ 7.5% p.a. for death of the pillion rider while his father was driving the vehicle on 6.9.2000 and a truck had come from behind and dashed with the motorcycle. It was contended by the insurance company that drivers of both the vehicles were not holding a valid licence. The owner of the truck had denied the allegation of ownership of the truck.

6. The arguments on behalf of the appellants could be summarised as under:

(a) A tortfeasor or heirs of a tortfeasor himself are not entitled to compensation under the provisions of Section 163A of the Act;

(b) The insurance company is an "authorized insurer" as far as risk of third party is concerned and, if risk of the deceased or insured person were not covered by the policy, the insurer cannot be held liable to pay to the person entitled to the benefit of the decree even if award were obtained against any person insured by the policy. The terms and conditions of the policy cannot be ignored since the liability is arising under a contract;

(c) The intention of the legislature in enacting Section 163A is to see that the claimants are not required to prove negligence and not to make insurance

company liable irrespective of the risk covered;

(d) Where no liability arises for the insured, i.e. owner of the vehicle, the insurance company also has no liability. An owner of a vehicle, who is injured himself or whose driver or employee is injured in an accident, can claim compensation only if an insurance for personal accident were taken;

(e) In case of death of or injury to an employee in an accident arising out of use of a motor vehicle, the liability of insurance company would be restricted to that arising under the Workmen's Compensation Act;

(f) Insurance company owed no liability towards injuries suffered by a pillion rider where the policy was a statutory policy and did not cover the risk of death or bodily injury to a gratuitous passenger;

(g) Insurer was entitled to raise all available defences in terms of Section 149(2)(a)(ii) of the Act;

(h) Section 163A of the Act makes provision for compensation only to third parties and cannot be extended to cases in which pillion rider or passengers in the vehicle of the insured were injured and compensation was claimed against authorized insurer of the vehicle.

7. Even as the above contentions are partly or indirectly covered in the judgments of this Court, learned Counsel vehemently argued for adopting a difference course in view of recent judgments of the Supreme Court as discussed hereunder. Before alluding to the ratio and observations made in several judgments binding on this Court, it may be appropriate and advantageous to refer to the relevant provisions as under of the Act:

CHAPTER XI INSURANCE OF MOTOR VEHICLES AGAINST THIRD PARTY RISKS

145. Definitions.- In this Chapter,-

(a) "authorised insurer" means an insurer for the time being carrying on general insurance business in India under the General Insurance Business (Nationalisation) Act, 1972 (57 of 1972), and any Government insurance fund authorised to do general insurance business under that Act;

(b) ...

(c) "liability", wherever used in relation to the death of or bodily injury to any person, includes liability in respect thereof u/s 140;

(d) ...

(e) ...

(f) ...

(g) "third party" includes the Government.

146. Necessity for insurance against third party risk-

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

Provided....

Explanation....

(2) ...

(3) ...

147. Requirements of policies and limits of liability.-

(1) In order to comply with the requirements of this chapter, a policy of insurance must be a policy which-

(a) is issued by a person who is an authorised insurer; and

(b) insures the person or classes of persons specified in the policy to the extent specified in Sub-section (2)-

(i) against any liability which may be incurred by him in respect of the death of or bodily injury to any person including owner of the goods or his authorised representative carried in the vehicle or damage to any property of a third party caused by or arising out of the use of the vehicle in a public place;

(ii) against the death of or bodily injury to any passenger of a public service vehicle caused by or arising out of the use of the vehicle in a public place:

Provided that a policy shall not be required-

(i) 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 out of and in the course of his employment other than a liability 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:....

(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, up to the following limits, namely-

(a) save as provided in Clause (b), the amount of liability incurred;

(b) in respect of damage to any property of a third party, a limit of rupees six thousand:

Provided that....

(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 by 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) ...

(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.

148. ...

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 so given shall be entitled to be made a party thereto and to defend the action on any of the following grounds, namely:

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

(i) 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 nondisclosure of a material fact or by a representation of fact which was false in some material particular.

(3) ...

(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 condition 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) ...

(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 167.

150 to 163...

163A Special provisions as to payment of compensation on structured-formula basis.-

(1) Notwithstanding anything contained in this Act or in any other law for the time being in force or instrument having the force of law, the owner of the motor vehicle or the authorised insurer shall be liable to pay in the case of death or permanent disablement due to accident arising out of the use of motor vehicle, compensation, as indicated in the Second Schedule, to the legal heirs or the victim, as the case may be.

Explanation.-....

(2) In any claim for compensation under Sub-section (1), the claimant shall not be required to plead or establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act or neglect or default of the owner of the vehicle or vehicles concerned or of any other person.

(3) ...

163B. Option to file claim in certain cases.-

Where a person is entitled to claim compensation u/s 140 and Section 163A, he shall file the claim under either of the said sections and not under both.

8. The following judgments for the observations as under made therein were cited and discussed at the bar:

(a) In *Bajaj Allianz General Insurance Co. Ltd. v. Belaben @ Bhumikaben Yatinkumar* in First Appeal No. 4104 of 2006 (judgment dated 14.12.2006), it is held by Division Bench of this Court:

15. Seen in the above setting, it is not possible to accept the Insurance Company's contention that even after incorporating the no fault principle or absolute liability in Sections 140 and 163A, the Parliament intended to introduce in Section 163A the fault principle in case of a driver who, according to the opponent/s, drove the vehicle in a rash and negligent manner. Our analysis in the preceding paras clearly shows that the Parliament intended to exclude altogether inquiry into the question of negligence. Once you retain that inquiry in a case where the driver or his heirs are claimants, the whole gamut of inquiry will

surface introducing the elements of delay and uncertainty which the Parliament intended to exclude. What the Parliament has specifically thrown out from the front door cannot be permitted to be reintroduced through the back door.

...

18. At the fag end of arguments, Mr. Nanavati for the appellant - insurance company submitted that since the owner of the motor cycles in the two cases had not paid extra premium for covering the risk of the driver of the motor-cycle in question, the appellant-insurance company was not liable to pay even the compensation u/s 163A of the Act. The owner/driver of the vehicle was covered under the policy for personal accident cover of Rs. 1 lakh on account of payment of premium of Rs. 50/- and, therefore, there would be no liability to pay compensation u/s 163A of the Act.

19. This contention was not urged before the Tribunal and, therefore, cannot be allowed to be raised in this appeal. Even otherwise in view of our finding that the insurer's liability u/s 163A encompasses the liability to pay compensation on the basis of no fault principle even in case of a driver who is alleged to be responsible for causing the accident in question and that the liability u/s 163A is an independent statutory liability and is a social security scheme as held in Deepal Girishbhai Soni and Others Vs. United India Insurance Co. Ltd., Baroda, , the contention cannot be accepted.

(b) In National Insurance Co. Ltd. v. Rukhshanaben Salimbhai Vora 2006 (3) GLR 2561, the Division Bench of this Court observed:

The non-obstante clause with which Section 163A(1) begins makes it clear that the liability of the insurance company to satisfy the award is not dependent upon any other provisions of the Act and therefore, the question whether the passenger in the motorcycle was a gratuitous passenger or whether he can be said to be a third party or not would not be relevant. The contention, therefore, must be rejected.

(c) In New India Assurance Co. Ltd. Vs. Muna Maya Basant, , another Division Bench of this Court observed:

10. ...The opposite parties in other words have no right to challenge the claim u/s 163A on any ground except on the ground of involvement of the vehicle or any limitation or grounds recognised by Section 163A, namely, income of the victim, deduction to be made, age, locus standi, no insurance or cessation of insurance, ownership of vehicle, mode of assessment as per structured formula, and the like, or to seek the order directing the victim to prefer the application u/s 166 for fullfledged hearing. The provision of Section 163A, to put differently makes the opposite parties liable to pay the lump sum amount as ex gratia payment to be calculated as per structured formula with no right to challenge on the grounds available in the petition filed u/s 166 of the Act; and payment u/s 163A is not made subject to the inquiry contemplated u/s 166 of the Act. The appellant,

therefore, cannot be allowed to lament on the ground that it does not get a right to challenge or defend putting forth a case it desires to, or contend that the application u/s 166 when not filed and ordered to pay u/s 163A of the Act, its right to defend is jeopardised. In view of such law and position of Section 163A, the compensation under no fault liability on pre-determined formula has to be awarded and for such award of compensation, petition u/s 166 of the Act is not a condition precedent. Irrespective of one's own stand except permissible as aforesaid, the party liable has to pay as per pre-determined formula u/s 163A of the Act so as to assuage the miseries and woes or distress of the victims of the motor accident. The contention raised in this regard, therefore, cannot sustain.

11, 12...

13. The anxiety is also expressed in the next contention submitting what the insurance company should do if it is made liable to pay u/s 163A though in fact it may not be liable to pay because the driver of the vehicle involved in the accident may not have the licence or might have driven the heavy vehicle though having the licence for a light vehicle, or what the insurance company should do if it is made liable to pay more under the pre-determined formula than the limits of the liability fixed in the policy because u/s 163A the insurance company will have no scope to challenge on such grounds, while u/s 166 if the petition is filed, it will have the scope to challenge putting forth its defence and may avoid to pay more than its contractual liability otherwise a question of recovery may arise and insurance company will have to, if ordered to pay more, sustain loss.

14. Under the Act, the liability of the insurance company is statutory and that can be spelt out from Section 147. Charging extra premium, the insurance company may prefer to cover higher liability or risk or unlimited liability. In any case, therefore, the contractual liability will not be less than the statutory liability. It may be stated that by introduction of Section 163A, the liability is arising thereunder must now be deemed to have been covered under statutory liability regardless of the pecuniary limit in that regard specified in the policy, or premium charged. In other words, the limits of the statutory liability should be deemed to have been extended or enlarged appropriately so as to cover the liability that arises u/s 163A. For the said liability, extra premium is not to be charged or specific contract is not required to be entered into. When that is so, it cannot be said that the insurance company will have to pay more. However, in some cases, where third party does not come in picture if the court directs the insurance company to pay more than its statutory or contractual liability, as the case may be, it would be open to the insurance company under the terms of the contract to recover, from the insured, the excess amount paid pursuant to the order or in execution and discharge of the order of the Court/Tribunal. In case the insurance company has to pay more than its liability or risk covered under the policy, to a third party, it can invoke Sections 147 and 149(4) or (5) of the Act for the recovery of the amounts paid in excess of the liability. Regarding licence the scheme of the provisions of Section 163A does not provide a scope to

raise a plea in defence so as to challenge the claim on the ground of no licence or category thereof being different because u/s 163A as stated earlier the sums on ad hoc basis under social obligation has to be paid notwithstanding other provisions. The contention, therefore, gains no ground to stand upon.

(d) In *Dhanraj Vs. New India Assurance Co. Ltd. and Another*, the Apex Court observed:

8. Thus, an insurance policy covers the liability incurred by the insured in respect of death of or bodily injury to any person (including an 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. Section 147 does not require an insurance company to assume risks for death or bodily injury to the owner of the vehicle.

(e) In *National Insurance Co. Ltd. Vs. Swaran Singh and Others*, a Three Judge Bench of the Supreme Court held:

102, The summary of our findings to the various issues as raised in these petitions are as follows:

(i) Chapter XI of the Motor Vehicles Act, 1988 providing compulsory insurance of vehicles against third party risks is a social welfare legislation to extend relief by compensation to victims of accidents caused by use of motor vehicles. The provisions of compulsory insurance coverage of all vehicles are with this paramount object and the provisions of the Act have to be so interpreted as to effectuate the said object.

(ii) Insurer is entitled to raise a defence in a claim petition filed u/s 163A or Section 166 of the Motor Vehicles Act, 1988, inter alia, in terms of Section 149(2)(1)(ii) of the said Act.

(iii) The breach of policy conditions, e.g. disqualification of driver or invalid driving licence of the driver, as contained in Sub-section (2)(a)(ii) of Section 149, have to be proved to have been committed by the insured for avoiding liability by the insurer. Mere absence, fake or invalid driving licence or disqualification of the driver for driving at the relevant time, are not in themselves defences available to the insurer against either the insured or the third parties. To avoid its liability towards insured, the insurer has to prove that the insured was guilty of negligence and failed to exercise the condition of the policy regarding use of the vehicles by duly licensed driver or one who was not disqualified to drive at the relevant time.

(iv) The insurance companies are (sic), however, with a view to avoid their liability must not only establish the available defence(s) raised in the said proceedings but must also establish "breach" on the part of the owner of the vehicle, the burden of proof wherefor would be on them.

(v) The court cannot lay down any criteria as to how said burden would be

discharged, inasmuch as the same would depend upon the facts and circumstances of each case.

(vi) Even where the insurer is able to prove breach on the part of the insured concerning the policy condition regarding holding of a valid licence by the driver or his qualification to drive during the relevant period, the insurer would not be allowed to avoid its liability towards insured unless the said breach or breaches of the condition of driving licence is/are so fundamental as are found to have contributed to the cause of the accident. The Tribunals in interpreting the policy conditions would apply "the rule of main purpose" and concept of "fundamental breach" to allow defences available to the insurer u/s 149(2) of the Act.

(vii) The question, as to whether the owner has taken reasonable care to find out as to whether the driving licence produced by the driver (a fake one or otherwise), does not fulfill the requirements of law or not will have to be determined in each case.

(viii) If a vehicle at the time of accident was driven by a person having a learner's licence, the insurance companies would be liable to satisfy the decree.

(ix) The Claims Tribunal constituted u/s 165 read with Section 168 is empowered to adjudicate all claims in respect of the accidents involving death or of bodily injury or damage to property of third party arising in use of motor vehicle. The said power of the Tribunal is not restricted to decide the claims inter se between claimant or claimants on one side and insured, insurer and driver on the other. In the course of adjudicating the claim for compensation and to decide the availability of defence or defences to the insurer, the Tribunal has necessarily the power and jurisdiction to decide disputes inter se between the insurer and the insured. The decision rendered on the claims and disputes inter se between the insurer and insured in the course of adjudication of claim for compensation by the claimants and the award made thereon is enforceable and executable in the same manner as provided in Section 174 of the Act for enforcement and execution of the award in favour of the claimants.

(x) Where on adjudication of the claim under the Act the Tribunal arrives at a conclusion that the insurer has satisfactorily proved its defence in accordance with the provisions of Section 149(2) read with Sub-section (7), as interpreted by this Court above, the Tribunal can direct that the insurer is liable to be reimbursed by the insured for the compensation and other amounts which it has been compelled to pay to the third party under the award of the Tribunal. Such determination of claim by the Tribunal will be enforceable and the money found due to the insurer from the insured will be recoverable on a certificate issued by the Tribunal to the Collector in the same manner u/s 174 of the Act as arrears of land revenue. The certificate will be issued for the recovery as arrears of land revenue only if, as required by Sub-section (3) of Section 168 of the Act, the insured fails to deposit the amount awarded in favour of the insurer within thirty days from the date of announcement of the award by the Tribunal.

(xi) The provisions contained in Sub-section (4) with the proviso thereunder and Sub-section (5) which are intended to cover specified contingencies mentioned therein to enable the insurer to recover the amount paid under the contract of insurance on behalf of the insured can be taken recourse to by the Tribunal and be extended to claims and defences of the insurer against the insured by relegating them to the remedy before regular court in cases where on given facts and circumstances adjudication of their claims inter se might delay the adjudication of the claims of the victims.

(f) In *The Oriental Insurance Company Limited Vs. Meena Variyal and Others*, , the Apex Court observed:

17. ...The whole protection provided by Chapter XI of the Act is against third-party risk. Therefore, in a case where a person is not a third party within the meaning of the Act, the insurance company cannot be made automatically liable merely by resorting to *Swaran Singh* ratio. This appears to be the position. This position was expounded recently by this Court in *National Insurance Co. Ltd. Vs. Laxmi Narain Dhut*, This Court after referring to *Swaran Singh* and discussing the law summed up the position thus: (*Laxmi Naraian Dhut* case SCC 719,38):

38. In view of the above analysis the following situations emerge:

1. The decision in *Swaran Singh* case has no application to cases other than third-party risks;
2. Where originally the licence was a fake one, renewal cannot cure the inherent fatality.
3. In case of third-party risks the insurer has to indemnify the amount and if so advised, to recover the same from the insured.
4. The concept of purposive interpretation has no application to cases relatable to Section 149 of the Act.

The High Courts/Commission shall now consider the matter afresh in the light of the position in law as delineated above.

18. In *New India Assurance Co. Ltd. v. Asha Rani*, this Court had occasion to consider the scope of the expression "any person" occurring in Section 147 of the Act. This Court held: (SCC p235, para 26)

...that the meaning of the words "any person" must also be attributed having regard to the context in which they have been used i.e. "a third party". Keeping in view the provisions of the 1988 Act, we are of the opinion that as the provisions thereof do not enjoin any statutory liability on the owner of a vehicle to get his vehicle insured for any passenger travelling in a goods vehicle, the insurers would not be liable therefor.

In other words, this Court clearly held that the apparently wide words "any person" are qualified by the setting in which they occur and that "any person" is

to be understood as a third party.

19. In *United India Insurance Co. Ltd. v. Tilak Singh* this Court made a survey of the prior decisions and discountenanced an attempt to confine the ratio of *Asha Rani*. This Court stated that although the observations in *Asha Rani* were in connection with carrying passengers in a goods vehicle, the same would apply with equal force also to gratuitous passengers in any other vehicle. This Court also noticed that the decision to the contrary in *New India Assurance Co. v. Satpal Singh* was specifically overruled in *Asha Rani* case. In other words, it was re-emphasised that a policy in terms of Section 147 of the Act is not intended to cover persons other than third parties.

26. ...An obiter dictum of this Court may be binding only on the High Courts in the absence of a direct pronouncement on that question elsewhere by this Court....

(g) In *The Oriental Insurance Co. Ltd. etc. Vs. Hansrajbhai V.Kodala and Others etc. etc.*, , the Apex Court observed:

20. Lastly, for interpretation and construction of Section 163A, we would refer to its heading and language. The heading is "Special provisions as to payment of compensation on structured formula basis". At the outset, we would make it clear that for interpretation of the words of a section the language of the heading cannot be used to control the operation of the section, but at the same time being part of the statute it prima facie furnishes some clue as to the meaning and purpose of *S.K.P. Varghese v. ITO* 1982 1 SCR 647. In case of ambiguity or doubt, heading can be referred to as an aid in construing the provision.

21. The learned Counsel for the claimants however submitted that if we compare the language used in Sections 163A and 140(1) it would be apparent that Section 140 contemplates payment of compensation by the owner of the vehicles. As against this, Section 163A contemplates payment of compensation by the owner of the vehicle or authorised insurer. It is submitted that even if we read the said phrase as "owner of the motor vehicle of authorised insurer" as "owner of the motor vehicle or authorised insurer" on the assumption that "of" is wrongly used, then also it is their contention that Section 163A envisages payment either by the authorised insurer or by the owner of the motor vehicle. It has wider implication and, therefore, compensation beyond maximum of Rs. 50,000/- is provided in Second Schedule and hence the payment u/s 163A should not be considered as alternative to payment of compensation under the fault liability. In our view, it is true that Section 140 talks of payment of compensation by the owner of the vehicle, while Section 163A after reading "of" as "or" would mean that owner of the vehicle or the authorised insurer would be liable to pay compensation u/s 163A. But that would not make any difference because determination of compensation u/s 163A is final and not as an interim measure. As stated above, the legislature has deliberately not provided that it is in addition to the compensation payable on the principle of fault liability. There is

no provision for adjusting the compensation payable u/s 163A with the other payment on fault liability under the Act.

(h) In *Smt. Yallwwa and Ors. v. National Insurance Co. Ltd.* 2007 (5) Supreme 144, the Apex Court observed:

9. It is not in dispute that an award of the Tribunal is to be made in terms of Section 168 of the Act. For the said purpose, the Tribunal is required to issue a notice to the insurer and give the parties an opportunity of being heard. While making an award in terms of Section 168 of the Act, the procedure laid down u/s 166 of the Act are required to be complied with. The proviso appended to Section 168 of the Act, however, lays down that where such application makes a claim for compensation u/s 140 in respect of the death or permanent disablement of any person, such claim and any other claim (whether made in such application or otherwise) for compensation in respect of such death or permanent disablement shall be disposed of in accordance with the provisions of Chapter X of the Act. Section 140, as noticed hereinbefore, provides for no fault liability. It uses the words "accident arising out of the use of a motor vehicle", the owner of the vehicle and when more than two vehicles are involved, "the owners of the vehicles" shall, jointly and severally, be liable to pay compensation.

10. The said provision, therefore, makes the owners of the vehicles liable but not the insurer per se. Irrespective of the fact whether a claim petition is required to be adjudicated under Chapter X or Chapter XII of the Act, it is permissible to raise a defence in terms of Sub-section (2) of Section 149 of the Act. Even it is possible for the owner of the vehicle to raise a contention that his vehicle being not involved in the accident, he is not liable to pay any amount in terms of Section 140 of the Act.

11. One of the defences available to the insurer is breach of conditions specified in the policy. When such a defence is raised, the Tribunal is required to go into the said question. Section 140 of the Act does not contemplate that an insurance company shall also be liable to deposit the amount while it has no fault whatsoever in terms of Sub-section (2) of Section 147 of the Act.

(i) In *United India Insurance Co. Ltd., Shimla Vs. Tilak Singh and Others*, , the Apex Court observed:

19. The argument that the risk pertaining to a third party would extend to a person other than the parties to the insurance contract was raised in *New India Assurance Co. v. Satpal Singh* where after contrasting the language of Section 95(1) of the 1939 Act with the provisions of Section 147(1) of the 1988 Act, this Court held (SCC p.241, para 11):

11. The result is that under the new Act an insurance policy covering third-party risk is not required to exclude gratuitous passengers in a vehicle, no matter that the vehicle is of any type or class. Hence the decisions rendered under the old Act vis-a-vis gratuitous passengers are of no avail while considering the liability

of the insurance company in respect of any accident which occurred or would occur after the new Act came into force.

20. The view expressed in Satpal Singh case however, has been specifically overruled in the subsequent judgment of a Bench of three Judges in New India Assurance Co. Ltd. v. Asha Rani. In that case, the discussion arose in connection with carrying passengers in a goods vehicle. This Court after referring to the terms of Section 147 of the 1988 Act, as contrasted with Section 95 of the 1939 Act, held that the judgment in Satpal Singh case had been incorrectly decided and that the insurer will not be liable to pay compensation. In the concurring judgment of Sinha, J. after contrasting the language used in the 1939 Act with that of the 1988 Act, it has been observed (vide SCC p.235, paras 25 and 27):

25. Section 147 of the 1988 Act, inter alia, prescribes compulsory coverage against the death of or bodily injury to any passenger of "public service vehicle". Proviso appended thereto categorically states that compulsory coverage in respect of drivers and conductors of public service vehicle and employees carried in a goods vehicle would be limited to the liability under the Workmen's Compensation Act, it does not speak of any passenger in a "goods carriage".

27. Furthermore, Sub-clause (i) of Clause (b) of Sub-section (1) of Section 147 speaks of liability which may be incurred by the owner of a vehicle in respect of death of or bodily injury to any person or damage to any property of a third party caused by or arising out of the use of the vehicle in a public place, whereas Sub-clause (ii) thereof deals with liability which may be incurred by the owner of a vehicle 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.

21. In our view, although the observations made in Asha Rani case were in connection with carrying passengers in a goods vehicle, the same would apply with equal force to gratuitous passengers in any other vehicle also. Thus, we must uphold the contention of the appellant Insurance Company that it owned no liability towards the injuries suffered by the deceased Rajinder Singh who was a pillion rider, as the insurance policy was a statutory policy, and hence it did not cover the risk of death of or bodily injury to a gratuitous passenger.

(j) In Deepal Girishbhai Soni and Others Vs. United India Insurance Co. Ltd., Baroda, , a three Judge Bench of the Apex Court has made pertinent observations in the context of the provisions of Section 163A of the Act as under:

36. ...The Act indisputably is in the nature of a social welfare legislation.

39. ...Section 163A was introduced in the Act by way of a social security scheme. It is a code by itself....

48. ...While granting compensation, the Tribunal is required to adjudicate upon the disputed question as regards age and income of the deceased or the victim, as the case may be. Unlike Section 140 of the Act, adjudication on several issues arising between the parties is necessary in a proceeding u/s 163A of the Act.

59. The question may be considered from different angles. As for example, if in the proceedings u/s 166 of the Act, after obtaining compensation u/s 163A, the awardee fails to prove that the accident took place owing to negligence on the part of the driver or if it is found as of fact that the deceased or the victim himself was responsible therefore as a consequence where to the Tribunal refuses to grant any compensation; would it be within its jurisdiction to direct refund either in whole or in part the amount of compensation already paid on the basis of structured formula? Furthermore, if in a case the Tribunal upon considering the relevant materials comes to the conclusion that no case has been made out for awarding the compensation u/s 166 of the Act, would it be at liberty to award compensation in terms of Section 163A thereof.

60. The answer to both the aforementioned questions must be rendered in the negative. In other words, the question of adjustment or refund will invariably arise in the event if it is held that the amount of compensation paid in the proceedings u/s 163A of the Act is interim in nature.

66. ...In Section 163A, the expression "notwithstanding anything contained in this Act or in any other law for the time being in force" has been used, which goes to show that the Parliament intended to insert a non-obstante clause of wide nature which would mean that the provisions of Section 163A would apply despite the contrary provisions existing in the said Act or any other law for the time being in force. Section 163A of the Act covers cases where even negligence is on the part of the victim. It is by way of an exception to Section 166 and the concept of social justice has been duly taken care of.

9. The scheme of the provisions relevant for interpretation and application of Section 163A is fairly clear, although not very simple. Section 163A is engrafted into Chapter XI entitled "Insurance Of Motor Vehicles Against Third Party Risks" and clearly provides for liability of the insurer to pay compensation, as indicated in the Second Schedule, notwithstanding anything contained in the Act or in any other law or instrument having force of law. Simply put, it creates an absolute liability of the owner of the motor vehicle as well as the authorised insurer in case of death or permanent disablement due to accident arising out of the use of motor vehicle. And, self-contained code as it is held to be in *Deepal Soni (supra)*, the liability should not depend upon or be subject to any other consideration under any other provision of law. That conclusion would be further buttressed by reading the relevant part of Sub-section (1) of Section 149 of the Act. That part, shorn of irrelevant or adjectival clauses, provides that if an award in respect of any liability required to be covered by the policy OR under the provisions of Section 163A is obtained against any person insured by the policy, the insurer shall, subject to the provisions of that section, pay to the other person entitled to the benefit of the decree, any sum not exceeding the sum assured payable thereunder, as if he were the judgment debtor.

9.1 Conjoint reading of Sections 149(1) and 163-A(1) would lead to the conclusion that liability to pay compensation u/s 163A arises directly against the

authorised insurer as such and for obtaining an award in that regard so as to execute a decree as if the insurer were the judgment debtor, the provisions of Section 149 have to be complied. The fact, however, would remain that the liability u/s 163A is an independent statutory liability directly arising against the insurer.

9.2 Under the provisions of Section 146 of the Act, insurance is compulsorily required "in relation to the use of the vehicle" and the policy has to compulsorily comply with the requirements of Chapter XI which includes provisions of Section 163A. However, the provisions in Section 149(1) creating a direct duty of the insurer to satisfy awards made u/s 163A is subject to the provisions of Sub-section (2) of Section 149 which provide for notice to and defences available for the insurer. That opportunity and availability of defences, however, are again subject to Sub-sections (4) and (5) and restricted by the provisions of Sub-section (7) of Section 149. According to Sub-section (4), once a certificate of insurance has been issued, so much of the policy as purports to restrict the insurance by reference to any condition other than those in Clause (b) of Sub-section (2) shall be of no effect; provided that any liability discharged by the insurer by virtue only of Sub-section (4) shall be recoverable by the insurer from any person whose liability was discharged. That would mean, even in case of breach of specified condition as enumerated in Section 149(2), liability has to be discharged by the insurer except where the policy was void on the ground of having been obtained by non-disclosure of material fact or by misrepresentation. Even if the liability incurred by the insurer exceeds the amount for which the insurer would be liable under the policy, the insurer will have to pay, but would be entitled to recover the excess from the insured. The insurer is, by Sub-section (7), expressly prohibited from avoiding his liability towards any person entitled to the benefit of an award made u/s 163A, otherwise than in the manner provided for in Sub-section (2) of Section 149.

9.3 Thus, as clearly held in *National Insurance Co. Ltd. v. Swaran Singh* (supra), insurer is entitled to raise defences in terms of Section 149(2) subject to such qualifications as are laid down in that judgment. Otherwise, the scheme of compulsory insurance "in relation to the use of the vehicle" to insure against death, bodily injury or damage to any property of a third-party caused by or arising out of the use of the vehicle in a public place is wide enough to encompass "any liability" in respect of "any person". Since the requirement of even pleading any wrongful act, neglect or default of the owner or any other person is expressly excluded by Sub-section (2) of Section 163A, the question of attributing negligence to any person, in proceeding u/s 163A, cannot be allowed to arise. As held by this Court in *Bajaj Allianz General Insurance Co. Ltd. v. Belaben* (supra), insurer's liability u/s 163A encompasses the liability to pay compensation on the basis of "no fault principle" even in case of a driver who is alleged to be responsible for causing the accident in question. As held by another Division Bench of this Court in *New India Assurance Co. Ltd. v. Muna Maya Basant* (supra), by introduction of Section 163A, liability arising thereunder must

now be deemed to have been covered under the statutory liability regardless of the pecuniary limit in that regard specified in the policy or premium charged. Thus, the limits of statutory liability has to be deemed to have been extended or enlarged appropriately so as to cover the liability that arises u/s 163A and, for that, extra premium is not to be charged or specific contract is not required to be entered into. These propositions of law supported by aforesaid statutory provisions and precedents binding on this Court cover all the contentions of the appellants. The victim of the accident being the tortfeasor, pillion rider, employee of the insured or gratuitous passenger appears to be wholly irrelevant for the purposes of adjudication of a claim for compensation u/s 163A of the Act.

10. However, it was vehemently argued that very title of Chapter XI indicated that a scheme of compulsory insurance was provided against third-party risks and the title of the Second Schedule prescribed u/s 163A also provides for compensation for third-party claims which would not include the claims arising from death or injury to an employee, a driver, a pillion rider or a gratuitous passenger. The submissions in that regard were sought to be supported by the observations quoted hereinabove in *Oriental Insurance Co. Ltd. v. Meena Variyal* (supra), *United India Insurance Co. Ltd. v. Tilak Singh* (supra) and *New India Assurance Co. Ltd. v. Asha Rani* (supra). It was submitted that the cover of compulsory insurance provided by Chapter XI of the Act was only against third-party risks and "any person" is to be understood as "a third party", as held in the aforesaid judgments. And, as the provisions for compulsory insurance do not enjoin any statutory liability on the owner of the vehicle to get his vehicle insured for any passenger travelling in a goods vehicle, or gratuitous passenger in any other vehicle, their claim u/s 163A also need not be satisfied by the insurer. It must, however, be noted that the observations in *Oriental Insurance Co. Ltd. v. Meena Variyal* (supra), *Dhanraj v. New India Assurance Co. Ltd.* (supra), *National Insurance Co. Ltd. v. Laxmi Narain Dhut* (supra), and in *United India Insurance Co. Ltd. v. Tilak Singh* (supra), were not made with reference to the above aspect of the provisions of Section 163A of the Act; whereas the claims of compensation u/s 163A of the Act were under direct consideration of three Judge Bench of the Apex Court in *National Insurance Co. Ltd. v. Swaran Singh* (supra) and *Deepal Soni* (supra). In *Meena Variyal* (supra) itself it is observed that an obiter dictum of the Supreme Court is binding only in absence of a direct pronouncement on a particular question. The judgment in *Laxmi Narain Dhut* (supra) emphasises "rule of legislative intent". Interpretation must depend on the text and the context and the Court has to choose that interpretation which represents the true intention of the legislature. The enactment of Section 163A and amendment of Section 149(1) clearly marks a departure from the concept of insurer indemnifying the owner for the benefit and purpose of satisfying decrees obtained by third parties and breaks new ground by making the insurer directly liable to pay regardless of its liability under the policy of insurance. After the Amendment Act 54 of 1994, broadly two kinds of awards are required to be satisfied by the insurer u/s 149(1); viz. (i) "awards 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 (ii)"under the provisions of Section 163A". That addition of the alternative category of liability "under the provisions of Section 163A" unequivocally makes such liability different from the liability covered by the express terms of the policy.

10.1 Even as late as in the year 2007, in Smt. Yallwwa and Ors. (supra), while considering the provision for "no fault liability" u/s 140, it was observed that it made the owner of the vehicle liable, but not the insurer per se. As against that, by express language of Section 163-A, insurer is made directly liable per se as discussed earlier. Therefore, keeping in mind the objectives and purpose for which the provisions of Section 163A are made, and made to supersede all other provisions of law, it has to be held that the claim for compensation by a third-party cannot be defeated by an insurer of the motor vehicle out of the use of which the accident had arisen and death or permanent disablement caused, except as indicated hereinabove. It may be pertinent to reproduce as under, the observations of Justice Frankfurter of the United States Supreme Court, as quoted in para 35 of National Insurance Co. Ltd. v. Laxmi Narain Dhut(supra):

35. Legislation has an aim, it seeks to obviate some mischief, to supply an adequacy, to effect a change of policy, to formulate a plan of Government. That aim, that policy is not drawn, like nitrogen, out of the air; it is evidenced in the language of the statutes, as read in the light of other external manifestations of purpose.

The observations of the Supreme Court in Mehboob Dawood Shaikh Vs. State of Maharashtra, on application of precedent may be quoted as under:

12. ...A decision is available as a precedent only if it decides a question of law. A judgment should be understood in the light of facts of that case and no more should be read into it than what it actually says. It is neither desirable nor permissible to pick out a word or a sentence from the judgment of this Court divorced from the context of the question under consideration and treat it to be complete law decided by this Court. The judgment must be read as a whole and the observations from the judgment have to be considered in the light of the questions which were before this Court.

11. Therefore, following the judgments directly applicable in the cases u/s 163A and in view of the benevolent scheme of creating a statutory liability of the insurer, independent of the terms of policy and any other provision of law, it is held that the pleas and defences of the victim of the accident being tortfeasor, pillion rider, gratuitous passenger or employee of the insured were not available to the insurer for avoiding or defeating its liability to pay compensation in accordance with the prescribed formula.

12. In any of the present set of appeals, it is not the case of the insurer that an issue was framed and a decree was sought on their behalf against the owner of the vehicle; and, therefore, the question of application of Sub-section (4) or (5)

of Section 149 of the Act is not addressed. In view of the clear and absolute statutory liability of the appellant-insurance companies to satisfy the award made in favour of the claimants for compensation u/s 163A of the Act and the issues raised by the appellants having been squarely covered by the judgments of this Court as discussed hereinabove, the appeals are dismissed at the threshold, with no order as to costs. Civil applications filed in this set of appeals for stay of the impugned awards no longer survive and stand disposed as rejected.