
(2009) 06 MAD CK 0209
In the Madras High Court
Case No : C.M.A. No. 1851 of 2004

New India Assurance Company Limited	APPELLANT
Vs	
V. Bommi and Others	RESPONDENT

Date of Decision : 12-06-2009

Acts Referred:

Constitution of India, 1950 — Article 142
Insurance Act, 1938 — Section 64VB
Motor Vehicles Act, 1939 — Section 103A, 105, 64VB
Motor Vehicles Act, 1988 — Section 145, 146, 147, 147(3), 147(5)

Citation : (2010) ACJ 1809 : (2009) 4 LW 62 : (2009) 5 MLJ 1349

Hon'ble Judges : T.S. Sivagnanam, J;Prabha Sridevan, J

Bench : Division Bench

Advocate : K.S. Narasimhan, for the Appellant; M. Swamikannu, for A.C. Kumaragurubaran, for Respondents-1 to 4 and K. Surendranath, for Respondent-5, for the Respondent

Judgement

Prabha Sridevan, J.—On 18.3.1997, one Vijaya Baskaran (the deceased) was proceeding in his motor cycle, when near the Kathipara Junction, the insured lorry bearing No. TN-21-U-1305 hit him and caused fatal injuries. According to the claimants, the legal representatives of the above Vijaya Baskaran, it was the rash and negligent driving of the lorry driver which caused the accident. They claimed Rupees One Crore as compensation since according to them, the deceased was the proprietor of Saran Engineers and Builders and was earning between Rs. 25,000/- and Rs. 35,000/- per month. The owner of the lorry, who was the first respondent in the claim petition and who is the fifth respondent herein, remained ex parte initially and then sought to set aside the ex parte order and contested the claim. According to the owner, the deceased was under the influence of alcohol and fell down in his attempt to overtake the vehicle that was going in front of him.

2. The appellant-insurance company, which was the second respondent in the claim petition, disclaimed its liability on the ground that there was no subsisting

insurance policy in respect of the lorry on the date of the accident. The vehicle was covered by the policy for the period from 26.8.1996 to 25.8.1997. The owner of the vehicle had issued a cheque on 23.8.1996 for Rs. 12,190/-. The cheque was returned for want of funds. On 5.9.1996, the appellant received the cheque from the Bank and intimated the fact of dishonour to the owner of the vehicle on 18.9.1996. The intimation was sent by R.P.A.D. There was no response from the owner and the policy was cancelled. Therefore, on the date of the accident, viz., 18.3.1997, there was no policy. On 19.3.1997, the owner approached the Insurance Company and took a fresh policy. The appellant examined R.W.5., the Bank Officer to support their case. The Tribunal gave an award for a sum of Rs. 25,00,000/-. Aggrieved by that, the present appeal has been filed.

3. Learned Counsel Mr. K.S. Narasimhan appearing on behalf of the appellant-insurance company submitted that when there is no subsisting policy, the insurance company has no liability to indemnify the owner. Even on quantum, he made his submissions. Learned Counsel appearing for respondents 1 to 4-claimants, on the other hand, relied upon several judgments to support his case. Learned Counsel appearing for the fifth respondent-owner too made his submissions.

4. The chronological dates and events are as follows:

23.8.1996 ? Cheque issued towards premium 23.8.1996 ? Cover Note issued
26.8.1996 to 25.8.1997 ? Period of Policy 5.9.1996 ? Dishonour of cheque
13.9.1996 ? Letter to the insured intimating the cancellation of the policy
18.9.1996 ? Acknowledgment received 18.3.1996 ? Accident 19.3.1997 ? Fresh
policy taken for the same vehicle

5. The decisions relied upon are discussed hereunder:

In *New India Assurance Co. Ltd. Vs. Rula and Others*, , the Supreme Court held that a contract of insurance like any other contract is concluded by the offer and acceptance and liability would arise only on payment of premium. In that case, the a cheque was issued on 8.11.1991 towards the premium, it was dishonoured and the insurance policy was cancelled. In that case, the accident took place on 8.11.1991. The Supreme Court held that the subsequent cancellation of the insurance policy on the ground of dishonour would not affect the rights of a third party which had accrued on the date when the policy was issued. The subsequent cancellation of insurance policy will not affect the rights already accrued in favour of the third respondent. Learned Counsel relied on this decision to draw the inference that this would clearly show that if on the date of the accident the policy had already been cancelled, then the insurer can rightly defend the claim made against him.

6. In *National Insurance Co. Ltd. Vs. Seema Malhotra and Others*, , the accident took place on 31.12.1993. The intimation of dishonour came on 10.1.1994. The insurer informed the insured on 20.1.1994 that the policy was cancelled with

immediate effect. The Supreme Court made the following observations:

8. The direction that insurance company can now deduct the premium amount from the compensation to be fixed is no solace to the insurer. The essence of the insurance business is the coverage of the risk by undertaking to indemnify the insured against loss or damage. They agree to pay the damages arising out of any accident by taking a chance that no accident might happen. Motivation of the insurance business is that the premium would turn to be the profit of the business in case no damage occurs. Such business of the insurance company can be carried on only with the premium paid by the insured persons on the insurance policy. The only profit, if at all the insurance company makes, of the insurance business is the premium paid when no accident or damage occurs. But to ask the insurance company to bear the entire loss of damages of somebody else without the company receiving a pie towards premium is contrary to the principles of equity, though the insurance companies are made liable to third parties on account of statutory compulsions due to the initial agreement, entered between the insured and the company concerned.

20. However, if the insured makes up the premium even after the cheque was dishonoured but before the date of accident it would be a different case as payment of consideration can be treated as paid in the order in which the nature of transaction required it. As such an event did not happen in this case the insurance company is legally justified in refusing to pay the amount claimed by the respondents.

7. In *Deddappa and Others Vs. The Branch Manager, National Insurance Co. Ltd.*, , the accident took place on 6.2.1998 and it was long after the communication as to the cancellation of the insurance policy. The Supreme Court referred to Section 64VB of the Motor Vehicles Act which provides that no risk will be assumed unless premium is received in advance, and after extracting the Section, observed as follows:

15. The said provision, therefore, in no unmistakable term provides for issuance of a valid policy only on receipt of payment of the premium.

....

19. The said decision proceeded on the basis that it was the Insurance Company which was responsible for placing itself in the said predicament as it had issued a policy of insurance upon receipt only of a cheque towards the premium in contravention of the provisions of Section 64VB of the 1938 Act. The public interest in a situation of that nature and applying the principle of estoppel, this Court held, would prevail over the interest of the Insurance Company.

20. The ratio of the said decision was, however, noticed by this Court in *New India Assurance Co. Ltd. Vs. Rula and Others*, . It was held that ordinarily a liability under the contract of insurance would arise only on payment of premium, if such payment was made a condition precedent for taking effect of the

insurance policy but such a condition which is intended for the benefit of the insurer can be waived by it. It was opined:

...If, on the date of accident, there was a policy of insurance in respect of the vehicle in question, the third party would have a claim against the Insurance Company and the owner of the vehicle would have to be indemnified in respect of the claim of that party. Subsequent cancellation of the insurance policy on the ground of non-payment of premium would not affect the rights already accrued in favour of the third party.

The dicta laid down therein clarifies that if on the date of accident the policy subsists, then only the third party would be entitled to avail the benefit thereof.

In that case, however, the Supreme Court, in exercise of its power under Article 142 of the Constitution of India and in view of the fact that the appellant hailed from the lowest strata of the society, directed the insurer to pay the claim and recover the same from the owner.

8. In 2008 AIR S.C.W. 5298 [National Insurance Co. Ltd. v. Yellamma], the Supreme Court held as follows :

8. In today's world payment by cheque is ordinarily accepted as valid tender but the same would be subject to its encashment. A distinction, however, exists between the statutory liability of the insurance company vis-a-vis the third party in terms of Sections 147 and 149 of the Motor Vehicles Act and its liability in other cases but it is clear that if the contract of insurance had been cancelled and all concerned had been intimated thereabout, the insurance company would not be liable to satisfy the claim.

9. In this case, there cannot be any doubt or dispute whatsoever that no privity of contract came into being between the appellant and the second respondent and as such the question of enforcing the purported contract of insurance while taking recourse to Section 147 of the Motor Vehicles Act did not arise.

Second respondent did not contest the case at any stage. It did not adduce any evidence before the Tribunal. It does not appeal from the judgments of the High Court. No argument in the appeal was advanced in his behalf. Before us also, no appearance has been made on behalf of the respondent No. 2 despite service of notice.

....

11. In the peculiar facts and circumstances of this case, we are, therefore, of the opinion that the interest of justice would be subserved if we, in exercise of our jurisdiction under Article 142 of the Constitution of India, direct that the awarded amount be paid by the appellant to the first respondent with liberty to it to recover the same from the second respondent by initiating an appropriate proceeding in this behalf.

9. In 2008 AIR S.C.W. 6178 [National Insurance Co. Ltd. v. Abhaysing Pratapsing

Waghela], the finding of fact was that the cover note was not cancelled prior to the deposit of premium in cash by the owner, but only after the accident. In these circumstances, the Supreme Court held that the insurer was liable to cover the third party claim and observed as follows:

17. It is in the aforementioned situation, we are of the opinion, that the judgment of the High Court cannot be faulted. No doubt, a contract of insurance is to be governed by the terms thereof, but a distinction must be borne in mind between a contract of insurance which has been entered into for the purpose of giving effect to the object and purport of the statute and one which provides for reimbursement of the liability of the owner of the vehicle strictly in terms thereof. In that limited sense, a contract of insurance entered into for the purpose of covering a third party risk would not be purely contractual. We may place on record that an ordinary contract of insurance does not have a statutory flavour. The Act merely imposes an obligation on the part of the insurance company to reimburse the claimant both in terms of the Act as also the Contract. So far as the liability of the insurance company which comes within the purview of Sections 146 and 147 is concerned, the same subserves a constitutional goal, namely, social justice. A contract of insurance covering the third party risk must, therefore, be viewed differently vis-a-vis a contract of insurance qua contract.

10. In an unreported judgment of this Court dated 12.11.2003 rendered in C.M.A. No. 2524 of 2003 and C.R.P. Nos. 1384 to 1387 of 2003, a Division Bench of this Court has held as follows:

The second respondent is the owner of the lorry bearing Regn. No. TNP-7272. He insured the said lorry for the period from 14.2.1998 to 13.2.1999 and though he gave a cheque for a sum of Rs. 5,503/- towards premium since the said cheque was dishonoured, the Insurance Company sent a notice on 27.2.1998 which is marked as Ex.R5 to the owner of the vehicle stating that the Insurance Policy of the lorry bearing Regn. No. TNP-7272 was cancelled. Since the said policy was cancelled even before the date of accident, viz., 24.5.1998, the Tribunal is not correct in making the Insurance Company liable to pay the claim of the claimants.

11. As against this, we have the following judgments. In *Oriental Insurance Co. Ltd. Vs. Inderjit Kaur and Others*, , the Supreme Court has held thus:

8. We have, therefore, this position. Despite the bar created by Section 64VB of the Insurance Act, the appellant, an authorised insurer, issued a policy of insurance to cover the bus without receiving the premium therefore. By reason of the provisions of Section 147(5) and 149(1) of the Motor Vehicles Act, the appellant became liable to indemnify third parties in respect of the liability which that policy covered and to satisfy awards of compensation in respect thereof notwithstanding its entitlement (upon which we do not express any opinion) to avoid or cancel the policy for the reason that the cheque issued in payment of the premium thereon had not been honoured.

9. The policy of insurance that the appellant issued was a representation upon

which the authorities and third parties were entitled to act. The appellant was not absolved of its obligations to third parties under the policy because it did not receive the premium. Its remedies in this behalf lay against the insured....

11. It must also be noted that it was the appellant itself who was responsible for its predicament. It had issued the policy of insurance upon receipt only of a cheque towards the premium in contravention of the provisions of Section 64VB of the Insurance Act. The public interest that a policy of insurance serves must, clearly, prevail over the interest of the appellant.

12. In T.A.C. 48 (A.P.) [Oriental Insurance Co. Ltd. v. Pinjari Hussainamma and Ors.], a learned single Judge of the Andhra Pradesh High Court held that in a case where the cancellation of cover note was not communicated to the registering authority, the insurance company cannot escape its liability to pay the awarded amount. In New India Assurance Company Limited Vs. Shamsed and Another, , the accident took place on 27.2.1989. The policy was issued on 5.10.1988 by accepting a cheque, but the cheque was dishonoured on 8.10.1988. The policy was, therefore, cancelled on the date of the accident. In these circumstances, the Kerala High Court held that the rights of the parties had got crystallized and the third parties who are entitled to get the benefit out of the policy were not at all affected by the dishonouring of the cheque and as far as they were concerned, it was a valid policy to their benefit, notwithstanding the fact that the cheque was dishonoured.

13. We may also look at the change in the law from the 1939 Act and then in 1988 and again in 1994. Under the 1939 Act, Section 105 imposed upon the insurer the duty to notify to the registering authority the cancellation or suspension of the policy. It read as follows :

105. Duty of insurer to notify registering authority cancellation or suspension of the policy.

Whenever a policy of insurance issued under the provisions of this Chapter is cancelled or suspended by the insurer who has issued the policy, the insurer shall within seven days notify such cancellation or suspension to the registering authority in whose records the registration of the vehicle covered by the policy of insurance is recorded or to such other authority as the State Government may prescribe.

Whereas, in the two subsequent Acts, the provision relating to transfer of certificate of insurance which was available u/s 103A in the 1939 Act is reproduced as Section 157 in the 1988 Act and again in the 1994 Act. However, this requirement to notify the registering authority has not been included in the subsequent enactments. Even if the insurer had omitted to notify the cancellation, that by itself would not keep alive the rights of the third parties to claim the benefit of the policy vide AIR 1956 Cal. 555 (DB) [Bir Singh v. Smt. Hashi Rashi Banerjee and Ors.]. Therefore, regardless of the omission or existence of this provision, once we accept that the cancellation had been duly

intimated to the insurer, the non-intimation thereof to the registering authority cannot affect the right of the insurer to claim exoneration from its liability.

14. If we look at the evidence, R.W.1 is Dhakshinamoorthy, the owner of the vehicle. In his chief-examination, he has said, "I do not know that the insurance company informed me that the cheque had been dishonoured. I was informed of the same only after the accident". Ex.R.3 is the acknowledgment form for receipt of the intimation by the insurance company. R.W.1 has looked at the signature and has stated, "The signature in the acknowledgment card looks like my signature, but I cannot be sure". According to him, he was informed of the cancellation only after the accident. R.W.4 is the Senior Assistant of the Insurance Company. According to him, the cheque was returned to them on 5.9.1996. Thereafter, the company had cancelled the policy vide Ex.R.6. The Office Register is marked as Ex.R.7 and the Tapal Register is marked as Ex.R.8. According to him, this was received by the fifth respondent-owner on 18.9.1996 and six months later, the accident took place. In cross-examination, he has stated that the duration of the policy under Ex.R.5 is from 26.8.1996 (4 PM) to 25.8.1997 (12 PM). His evidence is, "In Ex.R.5, the dishonour of the cheque is noted, but not the cancellation of policy. In Ex.R.5, the date of cancellation is noted". He has denied that after the insured received the letter, the policy can be cancelled only after the insured came to the office. He has denied the suggestion that Ex.R.7 has been materially altered to suit their convenience.

15. Now we will go through the documentary evidence. Ex.R.1 is the advocate's notice asking to produce the following documents?

(i) The original letter dated 13.9.1996 addressed by the insurance company to the owner-fifth respondent which was received on 18.9.1996.

(ii) The original of the cancellation endorsement dated 26.8.1996 ? No. 31/40/30.

(iii) Letter received from Indian Overseas Bank, Perungalathur Branch informing the owner-fifth respondent about the dishonour of the cheque issued to the appellant.

Ex.R.2 is the dishonoured cheque with the endorsement "On account of insufficient funds" sent by the Indian Overseas Bank to the Bank of Baroda. Ex.R.3 is the carbon copy of the registered letter sent by the appellant to the fifth respondent-owner stating that the premium has been returned since it exceeds arrangement and that "We are not on risk in respect of the above policy in the absence of a valid payment of premium"; it also informs the insured that payment of premium in cash immediately is necessary to enable the insurer to assume the risk subject to the confirmation that there has been no loss thus far. This was received on 18.9.1996 and the acknowledgment card was shown to the insured, who has indicated that it looks like his signature, but he cannot be sure. Ex.R.5 is the policy and it has been crossed with the words "Cheque being dishonoured", though there is no date written on it. Ex.R.6 is the cancellation in which the appellant-insurance company has stated the fifth respondent-owner on

13.9.1996, "It is hereby declared and agreed that the above policy is cancelled from inception as premium remitted by you by way of Cheque No. 644069 dated 23.8.1996 has not been realized and returned by our Bank". We find that this is dated 13.9.1996. Ex.R.7 is the cheque dishonour book. In this, Entry No. 05 is 13.9.1996, which is the policy in question and the date of cancellation is shown as 13.9.1996. Entry No. 06 is 18.9.1996 and the date of cancellation is shown as 18.9.1996.

16. Therefore, according to the appellant, on the date on which the accident took place, the policy had been cancelled and the owner of the vehicle had also been intimated of the same, and so no policy was subsisting on the date of the accident. This is not similar to the other cases, where the dishonour of the cheque was intimated, but the policy had not been cancelled on the date of the accident, and therefore, the Supreme Court held that as far as the third parties were concerned, there was a subsisting policy. In this case, the records indicate that the policy was cancelled.

17. When the policy is cancelled what happens to third party risk? This question has been answered by the Supreme Court in National Insurance Co. Ltd. Vs. Swaran Singh and Others, in the following words:

31. The right of a victim of a road accident to claim compensation is a statutory one. He is a victim of an unforeseen situation. He would not ordinarily have a hand in it. The negligence on the part of the victim may, however, be contributory. He has suffered owing to wrongdoing of others. An accident may ruin an entire family. It may take away the only earning member. An accident may result in the loss of her only son to a mother. An accident may take place for variety of reasons. The driver of a vehicle may not have a hand in it. He may not be found to be negligent in a given case. Other factors such as unforeseen situation, negligence of the victim, bad road or the action or inaction of any other person may lead to an accident.

....

33. In other words, what would also be covered by the contract of insurance vis-a-vis the beneficent statutory provisions like Sub-section (2) of Section 149 of the said Act would be when a death or bodily injury has been caused as a result of assured's own voluntary act. Even an unforeseeable result of assured's deliberate act may come within the purview of the accident. Even if an accident has occurred due to negligent driving of the assured person, it may not prevent recovery under the policy and certainly thereby a third party would not be non-suited.

....

36. Sub-section (1) of Section 149, casts a liability upon the insurer to pay to the person entitled to the benefit of the decree as if he were the judgment debtor. Although the said liability is subject to the provision of this section, it prefaces

with a non-obstante Clause that the insurer may be entitled to avoid or cancel or may have avoided or cancelled the policy. "Furthermore, the statute raises a legal fiction to the effect that for the said purpose the insurer would be deemed to be judgment debtor in respect of the liability of the insurer.

....

48. Furthermore, the insurance company with a view to avoid its liabilities is not only required to show that the conditions laid down u/s 149(2)(a) or (b) are satisfied but is further required to establish that there has been a breach on the part of the insured. By reason of the provisions contained in the 1988 Act, a more extensive remedy has been conferred upon those who have obtained judgment "against the user of a vehicle and after a certificate of insurance is delivered in terms of Section 147(3) a third party has obtained a judgment against any person insured by the policy in respect of a liability required to be covered by Section 145, the same must be satisfied by the insurer, notwithstanding that the insurer may be entitled to avoid or to cancel the policy or may in fact have done so. The same obligation applies in respect of a judgment against a person not insured by the policy in respect of such a liability, but who would have been covered if the policy had covered the liability of all persons, except that in respect of liability for death or bodily injury.

18. It would, therefore, appear from the above that the cancellation of the policy only entitles the insurer to proceed against the owner and recover what it has paid as per the award, but it must and shall satisfy the innocent third party.

19. As regards the quantum, the deceased was 28 years old at the time of his death. Though it was the case of the claimants that he was earning between Rs. 25,000/- and Rs. 35,000/-, no documents were filed to support this. On the basis of Exs.P.1 to P.8, which were documents showing the educational qualifications, without any basis, the Tribunal determined his monthly income as Rs. 15,000/-. According to the Tribunal, it was his degree which persuaded it to do so. Ex.P.6 is an experience certificate which shows that the deceased was working as a Technical Assistant in a World Bank Aided Project. Ex.P.7 is also an experience certificate given by M/s. Builtec Engineers and Builders, which shows that the deceased was drawing Rs. 2,500/- per month working as a Site Engineer. Ex.P.8 is another experience certificate given by M/s. Sudarsan Construction, which shows that he was paid Rs. 1,800/- per month. The deceased had bought a Yamaha Motorcycle. Ex.P.17 is the quotation given by the deceased on behalf of Saran Engineers and Builders to one Varadha Narayan for a proposed construction at Bell Nagar.

20. There is absolutely no evidence regarding the income of the deceased. But we will roughly take what might have been the starting salary for a P.W.D. Civil Engineer at that time and it could not have been more than Rs. 10,000/-. Since the deceased had his own private business, we will take it that his monthly income was Rs. 10,000/-. Thus calculated, his annual income would have been

Rs. 1,12,000/- and if we deduct one-third of it from this amount, the contribution of the deceased to his family would have been Rs. 80,000/- per annum. We will adopt the same multiplier as adopted by the Tribunal, i.e., 18 and thus arrive at a sum of Rs. 14,40,000/- which was the loss of income to the family. The Tribunal has been generous in granting huge sums under the heads of conventional damages and we necessarily have to reduce that. It has awarded a sum of Rs. 2,00,000/- towards loss of expectation of life; Rs. 50,000/- towards loss of consortium to the wife; Rs. 50,000/- towards loss of love and affection to the minor son; and Rs. 50,000/- towards loss of love and affection to the parents of the deceased. We reduce these as follows:

Loss of Consortium to the wife : Rs. 20,000
Loss of love and affection to the minor son : Rs. 20,000
Loss of love and affection to the parents of deceased : Rs. 15,000
Funeral Expenses : Rs. 5,000
Adding to this, the amount which we have awarded under the head Loss of Estate to the family : Rs. 14,40,000
----- Total Compensation Payable to the Claimants : Rs. 15,00,000

21. It is true that Section 149(1) of the Act casts a liability on the insurer notwithstanding the fact that the insurance company will be entitled to cancel or may have in fact cancelled the policy, they have to satisfy the claim. But in Daddappa's case (supra), the Supreme Court referred to Sections 147(5) and 149 of the Act in paragraph 17 and have observed as follows:

17. We may, however, notice that in terms of Sub-section (5) of Section 147 and Sub-section (1) of Section 149 of the Act, the Insurance Company became liable to satisfy awards of compensation in respect thereof, notwithstanding its entitlement to avoid or cancel the policy for the reason that the cheque issued for payment of premium thereon had not been honoured.

Then they referred to Inderjit Kaur's case (supra), where this question was left open and where the insurance company had issued the policy of insurance in violation of Section 64VB of the 1938 Act, whereupon the Supreme Court held that public interest should prevail over the interests of the insurance company. Finally, in Daddappa's case (supra), the Supreme Court after referring to Rula's case (supra) where it was held that a liability under the contract of insurance would arise only on payment of premium held:

26. We are not oblivious of the distinction between the statutory liability of the Insurance Company vis-a-vis a third party in the context of Sections 147 & 149 of Act and its liabilities in other cases. But the same liabilities Page 4595 arising under a contract of insurance would have to be met if the contract is valid. If the contract of insurance has been cancelled and all concerned have been intimated thereabout, we are of the opinion, insurance company would not be liable to satisfy the claim.

27. A beneficial legislation as is well known should not be construed in such a manner so as to bring within its ambit a benefit which was not contemplated by

the legislature to be given to the party. In *Regional Director, Employees' State Insurance Corporation, Trichur Vs. Ramanuja Match Industries*, this Court held:

We do not doubt that beneficial legislations should have liberal construction with a view to implementing the legislative intent but where such beneficial legislation has a scheme of its own there is no warrant for the Court to travel beyond the scheme and extend the scope of the statute on the pretext of extending the statutory benefit to those who are not covered by the scheme.

We, therefore, agree with the opinion of the High Court.

22. So in *Daddappa's* case, the Supreme Court has in fact referred to Section 149(1) and then held that if the contract of insurance has been cancelled and all concerned had been intimated, the insurance company would not be liable to satisfy the claim. Then in exercise of the jurisdiction under Article 142 gave the following direction:

28. However, as the appellant hails from the lowest strata of society, we are of the opinion that in a case of this nature, we should, in exercise of our extraordinary jurisdiction under Article 142 of the Constitution of India, direct the Respondent No. 1 to pay the amount of claim to the appellants herein and recover the same from the owner of the vehicle viz., Respondent No. 2, particularly in view of the fact that no appeal was preferred by him. We direct accordingly.

23. In an unreported judgment in dated 10.1.2008 rendered in M.A.C. Appln. No. 730 of 2007, a learned Single Judge of the Delhi High Court dismissed the insurance companies case holding that since intimation was not given by the Insurance Company to the Registering Authority about the cancellation of the insurance policy there was no merits in the appeal.

24. Section 146 of the Act deals with the necessity for insurance against the third party risk. Therefore, no person can use a motor vehicle in a public place unless there is an insurance policy. This is the protection for the third party who may met with an accident owing to the use of the insurance vehicle. The Motor Tariff Regulations-II of IV General Regulations GR.24 deals with Cancellation of Insurance and Double Insurance and it reads as follows:

GR. 24. Cancellation of Insurance and Double Insurance

a. Cancellation of Insurance

i. A policy may be cancelled by the insurer by sending to the insured seven days notice of cancellation by recorded delivery to the insured's last known address and the insurer will refund to the insured the pro-rata premium for the balance period of the policy.

ii. A policy may be cancelled at the option of the insured with seven days notice of cancellation and the insurer will be entitled to retain premium on short period scale of rates for the period for which the cover has been in existence prior to the

cancellation of the policy. The balance premium, if any, will be refundable to the insured. Refund of premium will be subject to:

? There being no claim under the policy, and

? The retention of minimum premium as specified in the Tariff.

? A policy can be cancelled only after ensuring that the vehicle is insured elsewhere, at least for Liability Only cover and after surrender of the original certificate of Insurance for cancellation.

? Insurer should inform the Regional Transport Authority(RTA) concerned by recorded delivery about such cancellation of insurance.

Therefore, even though the Section relating to the duty to inform the Regional Transport Authority is not found in the present case, the regulations should have the third party risk by insisting that the policy can be cancelled in the manner mentioned above. Therefore, we are satisfied that in this case, there is a proof that he has intimated the facts of cancellation to the insured. But it has not been complied with in full with its duty as laid down in General Regulations mentioned above. Therefore, even though the insurance company may contend that it owes no duty to the insured to indemnify the claim for compensation as far as the third party is concerned, he is bound to receive the just and reasonable compensation.

25. We have already referred to Swaran Singh's case where the Supreme Court has clearly stated in paragraph 48 that a judgment must be satisfied by the insurer, though the insurer may be entitled to avoid or to cancel the policy or may in fact have done so. Therefore, though we may accept that the policy has in fact been cancelled, the judgment will have to be satisfied by the insurer and the insurer may recover it from the policy holder. It is to this extent only that we can say that the insurer has no liability to indemnify the insured. But the third party's claim stands unaffected as we understand from Swaran Singh's case. Therefore, we feel that the only course open to us would be to direct the insurance company to pay the claimants and thereafter, recover the same from the insured.

26. The Full Bench of Kerala High Court in 2006 A.C.J. 106 (Oriental Insurance Co. Ltd. v. Sivankutty and Ors.) has held that the insurer cannot disown liability to a third party and that their remedies have to be worked out against the insured. It is for this reason that in 1987 A.C.J. 411 (Skandia Insurance Co. Ltd. v. Kokilaben Chandravadan), it was held thus:

...When the option is between opting for a view which will relieve the distress and misery of the victims of accidents or their dependants on the one hand and the equally plausible view which will reduce the profitability of the insurer in regard to the occupational hazard undertaken by him by way of business activity, there is hardly any choice. The Court cannot but opt for the former view. Even if one were to make a strictly doctrinaire approach, the very same conclusion

would emerge in obeisance to the doctrine of "reading down" the exclusion Clause in the light of the "main purpose" of the provision so that the "exclusion clause" does not cross swords with the "main purpose" highlighted earlier. The effort must be to harmonize the two instead of allowing the exclusion Clause to snipe successfully at the main purpose.

27. In *Branch Manager, United India Insurance Co. Ltd. Vs. Nagammal, Unnamalai and V.B. Krishnan*, , the Full Bench after referring to Section 149 of the Motor Vehicle Act observed that Section 149 itself contemplates that under certain contingencies, even though ultimately the insurer may not be liable, it is required to satisfy the award and recover the same subsequently from the owner. The following paragraphs from *Swaran Singh*'s case (supra) are relevant:

78. Sub-section (5) of Section 149 which imposes a liability on the insurer must also be given its full effect. The insurance company may not be liable to satisfy the decree and, therefore, its liability may be zero but it does not mean that it did not have initial liability at all. Thus, if the insurance company is made liable to pay any amount, it can recover the entire amount paid to the third party on behalf of the assured. If this interpretation is not given to the beneficent provisions of the Act having regard to its purport and object, we fail to see a situation where beneficent provisions can be given effect to. Sub-section (7) of Section 149 of the Act, to which pointed attention of the Court has been drawn by the learned Counsel for the petitioner, which is in negative language may now be noticed. The said provision must be read with Sub-section (1) thereof. The right to avoid liability in terms of Sub-section (2) of Section 149 is restricted as has been discussed hereinbefore. It is one thing to say that the insurance companies are entitled to raise a defense but it is another thing to say that despite the fact that its defense has been accepted having regard to the facts and circumstances of the case, the Tribunal has power to direct them to satisfy the decree at the first instance and then direct recovery of the same from the owner. These two matters stand apart and require contextual reading....

99. It is, therefore, evident from the discussions made hereinbefore that the liability of the insurance company to satisfy the decree at the first instance and to recover the awarded amount from the owner or driver thereof has been holding the field for a long time....

102. We may, however, hasten to add that the Tribunal and the court must, however, exercise their jurisdiction to issue such a direction upon consideration of the facts and circumstances of each case and in the event such a direction has been issued, despite arriving at a finding of fact to the effect that the insurer has been able to establish that the insured has committed a breach of contract of insurance as envisaged under Sub-clause (ii) of Clause (a) of Sub-section (2) of Section 149 of the Act, the insurance company shall be entitled to realise the awarded amount from the owner or driver of the vehicle, as the case may be, in execution of the same award having regard to the provisions of Sections 165 and 168 of the Act....

In the present case, the family has lost its sole bread winner. We think justice requires that we should direct the insurance company to pay the amount of compensation to the claimant and to recover it from the owner of the vehicle since these directions have been holding the field for a long time as seen from the above decisions.

28 For all the aforesaid reasons, the appeal is partly allowed. The quantum of compensation as awarded by the Tribunal is modified and the claimants are entitled to receive a compensation of Rs. 15,00,000/-. The appellant-insurance company shall pay the claimant the compensation as modified by us and recover the same from the fifth respondent-owner. However, there shall be no order as to costs.