

(2007) 04 DEL CK 0232

In the Delhi High Court

Case No : MAC Appeal No. 259 of 2004 and FAO No. 474 of 2002

Oriental Insurance Co. and Others

APPELLANT

Vs

Vinod Kumar and Others
 National Insurance Co. Ltd.

RESPONDENT

Vs Shri Ashok Kumar and Others

Date of Decision : 23-04-2007

Acts Referred:

Central Motor Vehicles Rules, 1989 — Rule 142

Contract Act, 1872 — Section 25, 51, 52, 54, 65

Insurance Act, 1938 — Section 64VB

Motor Vehicles Act, 1988 — Section 140, 145, 146, 147, 147(3)

Citation : (2007) 96 DRJ 483

Hon'ble Judges : Sanjiv Khanna, J

Bench : Single Bench

Advocate : Joy Basu, Madhurendra Kumar, Mike Desai and Gaurav Sahai, in MACA No. 259/2004 and Pradeep Gaur and Amit Kumar Pandey, in FAO No. 474/200, for the Appellant; Kamal Gupta, in MACA No. 259/2004 and Diwakar Seth in Respondent Nos. 1-2 in FAO No. 474/2002, for the Respondent

Final Decision : Allowed

Judgement

Sanjiv Khanna, J.—The present appeals raise a common question of law relating to third party liability of an insurance company under the Motor Vehicles Act, 1988 (hereinafter referred to as the Act, for short) even after the cheque given by the insured, i.e. the owner of the vehicle, to cover third party liability has bounced and notice terminating the contract of insurance has been served on the insured. Learned Motor Accidents Claim Tribunal has held that the appellants, the insurance companies will be liable to third parties.

2. Under law of contract, if one party commits fundamental breach of the terms of the agreement, the other party is entitled to terminate the contractual relationship and be absolved from performing it's obligations. Failure and default in paying consideration as per terms agreed, is a fundamental breach of a contract. In fact the party terminating the contract is entitled to sue the other

side and claim/recover damages, if any. The Act, however, has made inroads into the law of contract as far as contract of insurance relating to motor vehicles is concerned. The Act has specific provisions in respect of third party liabilities. Being a beneficial legislation, the Courts have interpreted the provisions of the Act to ensure that the legislative intent and benefit is not nullified by the insurance companies on the basis of contractual terms to the contrary. Courts have always endeavored to ensure maximum protection to third parties who suffer as a result of a road accident so that they are not penalised.

Brief Facts of MAC. APP. No. 259/2004

3. Motor car bearing registration No. DL-1Y-2760 was owned by Megha Tours and Travels. The owner issued a cheque dated 22nd February, 1997 towards payment of premium for insurance cover to the Oriental Insurance Company Limited. The insurance was for the period 22nd December, 1997 to 21st December, 1998.

4. The said cheque was dishonoured and payment of the premium was not made. The appellant insurance company vide letter dated 7th January, 1998 informed the owner of the motor car that the insurance cover stood cancelled due to non-receipt of premium and that the insurance company would not be on risk whatsoever, and no claim will be entertained. It was further stated that the insurance cover would commence from the time when the premium would be paid.

5. The motor car met with an accident on 6th October, 1998. Mr. Vinod Kumar was injured in the said accident having suffered fractures in his left leg and other injuries. He filed a claim petition before the Motor Accidents' Claim Tribunal and an award for Rs. 43,000/- along with interest has been passed in his favor against the owner and the driver of the motor car. The insurance company has also been made liable to pay the aforesaid amount in spite of the fact that insurance cover note was cancelled vide letter dated 7th January, 1998 and the insurance premium was not paid. Learned Tribunal in this regard relied upon two judgments of the Supreme Court in the case of Oriental Insurance Company Limited v. Inderjit Kaur reported in AIR 1998 SC 588 and New India Assurance Co. Ltd. Vs. Rula and Others, and inter alia, held that the insurance company would be liable to pay compensation even if the cover note was cancelled. Recovery rights were granted to the insurance company after making payment, to collect the amount from the owner/driver of the vehicle. The appellant insurance company has challenged the impugned award dated 5th February, 2004 on the question of its liability to make payment, once cheque given for the insurance premium had bounced and the insurance cover note was cancelled.

Brief Facts of FAO No. 474/2002

6. Bus bearing registration No. DL-1P-7961 owned by Mr. Dev Raj Singh was insured with the appellant insurance company-National Insurance Company Limited. The owner-insured issued a cheque towards insurance premium, which was however dishonoured and the insurance premium was not paid. The

insurance premium was for the period 29th February, 2000 to 28th February, 2001. On 22nd March, 2000, the appellant insurance company informed the owner, viz. Mr. Dev Raj Singh that the insurance cover had been cancelled due to dishonour of the cheque.

7. The aforesaid bus met with an accident on 21st November, 2000 in which one Riki, who was going on a cycle expired. Claim petition was filed by the legal heirs of Riki and vide award dated 1st May, 2007, learned Tribunal passed an interim award of Rs. 50,000/- against the owner and driver of the vehicle. The insurance company was also made liable to pay the said amount in spite of the fact that the insurance cover was cancelled and the premium was not paid. Learned Tribunal relied upon the decision of the Supreme Court in the cases of Inderjit Kaur and Rula (supra) mentioned above and held that the appellant insurance company cannot avoid its liability in spite of dishonour of the cheque, for claims lodged by third parties. Decision of the Supreme Court in the case of National Insurance Co. Ltd. Vs. Seema Malhotra and Others, was relied upon by the insurance company. However, the said judgment was held not applicable to the facts of the present case as in the said case claim had been filed before the Consumer Court.

CONTENTIONS AND JUDGMENTS

8. Learned Counsel for the parties have referred to three judgments of the Supreme Court quoted above viz. Inderjit Kaur, Rula and Seema Malhotra (supra). They have also brought to my notice decision of a Division Bench of the Calcutta High Court in the case of V. Ravi Vs. M/s. New India Assurance Company Ltd. and others, and judgment of the Madhya Pradesh High Court at Jabalpur in Miscellaneous Appeal No. 559/1994 titled United India Insurance Company Limited v. Kaushalya Bai and 12 Ors.

9. These decisions may now be noticed. In the case of Inderjit Kaur (supra) the Supreme Court noticed that policy of insurance was issued on 30th November, 1989 and a letter stating that the cheque had been dishonoured was issued on 23rd January, 1990. Thereafter, the premium was paid for car on 2nd November, 1990. However, in the meanwhile, on 19th April, 1990, the accident had taken place. The Supreme Court referred to Sections 146 and 149(2) of the Act and held that the insurance company would be liable. Notwithstanding Section 64VB of the Insurance Act, 1938, it was held that the policy of insurance issued by the insurance company entitles the authorities and third parties to rely and act upon the representation made by the insurance company. Once policy of insurance is issued, the liability of the insurance company to third parties is not absolved and continues in spite of bouncing of the cheque and non payment of the premium. Reference was made to the decision of Montreal Street Railway Company v. Normandin reported in AIR 1917 P C 142 in which it has been held as under:

When the provisions of a statute relate to the performance of a public duty and the case is such that to hold null and void acts done in neglect of this duty would

work serious general inconvenience or injustice to persons who have no control over those entrusted with the duty and at the same time would not promote the main object of the Legislature, it has been the practice to hold such provisions to be directory only, the neglect of them, though punishable, not affecting the validity of the acts done.

10. It was further held that the appellant insurance company was itself responsible for the predicament as it had issued policy of insurance upon receipt of the cheque of premium in contravention of Section 64 VB of the Insurance Act and public interest must prevail over the interest of insurance company.

11. In the case of *Rula* (supra), the provisions of the Act were examined and it was held that the rights of the third parties to be indemnified is created by the statute, i.e. in the form of Section 149(1) of the Act. It was observed that third parties are not signatories to the contract of insurance and, Therefore, are not concerned and do not come into picture at all in the matter of payment of premium. They cannot, Therefore, be non-suited against the insurance company on the ground that the insurance premium has not been paid. A Division Bench of Calcutta High Court in the case of *V. Ravi* (supra) has referred to the social aspect and the fact that the Act is a benevolent legislation and, Therefore, should be construed in favor of third party claimants and against the insurance company. It was, inter alia, held as under:

Motor Vehicles Act, 1988, so far as the same relates to awarding of compensation for the loss of life or property or sufferance of bodily injury by a third party, being a benevolent statute, the said provision should be construed in favor of the claimant and against the insurance company. Section 149, as noticed hereinbefore, in clear and unequivocal terms imposes a statutory liability upon the insurer if a question of fraud or misrepresentation arises by and between the insurer and the insured, the third party claimant is not concerned therewith. A vehicle is required to be compulsorily insured in terms of the provisions of the Motor Vehicles Act, 1988. Keeping in view the aforementioned provisions, we are of the opinion that the learned tribunal has committed an error in going into the issue raised by the respondent No. 1. In our opinion, if according to the respondent No. 1, the contract of insurance did not come into force on 18-2-1992 and the certificate of insurance was wrongly granted either by reason of any mistake or fraud committed by either of the parties or by its officers, the remedy of the respondent No. 1 may be to initiate a separate proceeding for realisation of the amount so paid by it from the owner of the vehicle, but keeping in view the letter and spirit of the Motor Vehicles Act, we are of the opinion that a third party claimant should not suffer therefore.

12. The Madhya Pradesh High Court has taken a different view in the case of *Kaushalya Bai* (supra) and held where cover note is cancelled long before the date of accident, the insurance company cannot be held liable to indemnify the owner and pay third parties. The two decisions of the Supreme Court in the case of *Inderjit Kaur* (supra) and *Rula* (supra) were considered in the case of *Seema*

Malhotra (supra). In Seema Malhotra's case (supra) reference was made to the provisions of the Indian Contract Act, 1872 and general provisions of contract of insurance with reference to the Insurance Act. While referring to Sections 25, 51, 52, 54 and 65 of the Contract Act it was held that in case of reciprocal promises, which are required to be simultaneously performed, the insurance company is absolved from performing its promise once a cheque given towards premium is dishonoured. The contract in such a situation becomes void. It was, inter alia, held as under:

17. In a contract of insurance when the insured gives a cheque towards payment of premium or part of the premium, such a contract consists of reciprocal promise. The drawer of the cheque promises the insurer that the cheque, on presentation, would yield the amount in cash. It cannot be forgotten that a cheque is a bill of exchange drawn on a specified banker. A bill of exchange is an instrument in writing containing an unconditional order directing a certain person to pay a certain sum of money to a certain person. It involves a promise that such money would be paid.

13. While referring to the nature of insurance business, Supreme Court observed as under:

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.

14. The Supreme Court also distinguished the judgment in the case of Inderjit Kaur (supra) holding that the three Judges Bench in the said case had left the point unconsidered. It was further held that intimation about dishonour of the premium cheque was sent two months after the accident. Reference was made to paragraph 9 of the judgment in Inderjit Kaur's case (supra). Rula's case (supra) was also distinguished by observing that the question of insurer's right to repudiate the claim did not arise in the said case and the Bench had parried the question.

15. Learned Counsel for the claimant, however, has pointed out one

distinguishing fact in the case of Seema Malhotra (supra). It was stated that the claimants in the case of Seema Malhotra were legal heirs of the insured owner and Therefore were not "third parties". However, the Supreme Court judgment in the case of Seema Malhotra (supra) did not proceed on this basis and this is not the ground and reason given by the Supreme Court to distinguish Inderjit Kaur's and Rula's case (supra).

Notification

16. Learned Counsel for the insurance company has also drawn my attention to the Gazette Notification dated 17th October, 2002 issued by the Insurance Regulatory and Development Authority. Relevant paragraph of the said notification is reproduced below:

4. Commencement of Risk: In all cases of risks covered by the policies issued by an insurer, the attachment of risk to an insurer will be in consonance with the terms of Section 64 VB of the Act and except in the cases where the premium has been paid in cash, in all other cases the insurer shall be on risk only after the receipt of the premium by the insurer.

Provided that in the case of a policy of a general insurance that where the remittance made by the proposer or the policy holder is not realized by the insurer, the policy shall be treated as void ab-initio.

Provided further that in the case of a policy of life insurance, the continuance of the risk or otherwise shall depend on the terms and conditions of the policy already entered into.

17. Reliance by the Learned Counsel for the insurance company in this regard was also placed upon the Insurance Act, which requires notifications etc. to be placed before the Parliament for their approval. However, said notification obviously does not have retrospective effect and the accident in the present cases had taken place prior to the notification. The notification, Therefore, is of no relevance to the present matters. Moreover, it is settled law that notifications or regulations which are in conflict with or are contrary to the statutes, cannot over-ride the statute. They can supplant but cannot go contrary to any enactment. If a notification is contrary to the statute, it cannot be given effect to, regardless of the fact that the concerned notification was placed before the parliament. In *Hukam Chand etc. Vs. Union of India (UOI) and Others*, it was held that placing of Rules before the Parliament would not confer validity on the Rule itself, if it is not in conformity with the Act. In the case of *Kerala Samsthana Chethu Thozhilali Union Vs. State of Kerala and Others*, it was held that a rule or notification must not only be in conformity with the parent Act but also in conformity with the provisions of any other Act, as a subordinate legislation cannot violate any plenary legislation by Parliament or State legislation.

PROVISIONS AND THEIR INTERPRETATION

18. In order to decide the controversy, it is important to refer to the relevant

provisions of the Act. Chapter XI of the Act deals with the insurance of motor vehicles against third party risk. Section 145 is the definition clause. The relevant clauses of the said Section are as under:

145.(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 the Act;

145.(b) "certificate of insurance" means a certificate issued by an authorised insurer in pursuance of Sub-section (3) of Section 147 and includes a cover note complying with such requirements as may be prescribed and where more than one certificate has been issued in connection with a policy, or where a copy of a certificate has been issued, all those certificates or that copy, as the case may be;

145.(d) "policy of insurance" includes "certificate of insurance";

19. Section 146 of the Act stipulates that no persons shall use or allow any other person to use a motor vehicle in public unless he has a policy of insurance complying with the requirements of the Act.

20. Section 147 of the Act deals with the policy of insurance, certificate of insurance and gives over-riding effect to the provisions of the Act. Sub-Sections 3, 4 and 5 of Section 147 are relevant and read:

147. (3) A policy shall be of no effect for the purposes of this Chapter unless and until there is issued by the insurer in favor 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.

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

147.(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.

21. Reading of the said Section and the definition clauses show that there are two distinct and separate stages before policy of insurance is issued. Firstly, a cover note is issued when vehicle is insured with the authorized insurer. This is also clear from Rule 142 of the Central Motor Vehicles" Rules, 1989 which reads

as under:

1. 142. Cover notes. (1) Every cover note issued by an authorised insurer shall be in Form 52.

(2) A cover note referred to in Sub-rule (1) shall be valid for a period of sixty days from the date of its issue and the insurer shall issue a policy of insurance before the date of expiry of the cover note.

22. The cover note once issued, is valid for a period of sixty days and not thereafter. The second stage is issue of the certificate of insurance and the last is issue of the insurance policy. Sub-Section 3 of Section 147 states that the authorized insurer has to issue a certificate of insurance in the prescribed format. The Central Motor Vehicles" Rules, 1989 prescribes the format for issue of certificate of insurance. Perusal of the Rule and the format shows that the certificate of insurance should contain basic details and conditions of insurance, which can be read, understood and verified by even a common man who does not understand the intricacies and legal nuances of various clauses of an insurance policy. Terms and conditions of insurance are mentioned in the policy. Policy itself may be a complicated and technical legal document containing various limitations and other terms of the contract. Without a certificate of insurance, insurance policy is not effective in view of Section 147(3) of the Act. As per Section 147(4) of the Act, once an insurance cover note is issued but is not followed by a policy of insurance within a period of sixty days, the insurance company within seven days of the expiry of the period of insurance is required to notify the registering authority as per their records.

23. Sub-Section 5 of Section 147 is a non-obstante clause, which gives primacy and over-riding effect notwithstanding any other law to the contrary, which will include the Insurance Act. An authorized insurer issuing the policy of insurance is to indemnify the owner of the vehicle in respect of the claims covered by the policy notwithstanding any other law to the contrary.

24. Now reference may be made to Section 149(1) & (2) of the Act, which read as under:

149. (1) If, after a certificate of insurance has been issued under Sub-section (3) of Section 147 in favor 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) 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 there under, 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.

149 (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, 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:

25. Section 149(1) comes into operation where a certificate of insurance has been issued u/s 147(3) in favor of a person by whom the policy has been effected and an award or judgment in respect of liability covered by the policy has been adjudicated. In such circumstances, notwithstanding the fact that the insurer may have already cancelled or avoided the policy or may be entitled to avoid or cancel the policy, an insurance company is liable to make payment to third parties. However, as is clear from reading Section 149(1), the liability of the insurance company can be fastened only after certificate of insurance has been issued u/s 147(3) of the Act. The said liability cannot be fastened when no certificate of insurance has been issued.

26. A harmonious reading of the aforesaid provisions predicates that no person can use a motor vehicle in a public place without obtaining third party insurance from an authorized insurer. An authorized insurer is required to issue a certificate of insurance and the policy of insurance has no effect unless a certificate of insurance in the prescribed format is issued. A certificate of insurance once issued will have over-riding effect, notwithstanding any other law being in force, and the insurance company shall be liable to indemnify all the persons or, class of persons specified in the policy irrespective of the fact that the insurance company is entitled to avoid or cancel the policy or has already avoided and cancelled the policy. Once certificate of insurance has been issued, then liability u/s 149(1) of the Act towards third parties on behalf of the insurance company exists notwithstanding the fact that the insurance policy has been cancelled or is liable to be cancelled. It may be relevant to state here that a cover note is valid only for a period of 60 days under the Rules and, Therefore, must be followed by a policy along with certificate of insurance as required by Section 147(3) of the Act. Insurance cover note on its own expires by efflux of time within 60 days, if not followed by a policy of insurance, within the prescribed time of 60 days. However, the statute, viz. Section 147(4) casts an obligation on the insurance company to inform the registering authority in whose record the vehicle is registered or the prescribed State authority where the vehicle is registered, within 7 days of expiry of the period that the cover note has lapsed without a policy of insurance being issued.

27. Section 149(1), Therefore, comes into operation only when certificate of insurance has been issued along with policy. It does not deal with the situation where a certificate of insurance along with policy has not been issued. Once

certificate of insurance along with policy has been issued, the insurance company cannot avoid its liability towards third parties notwithstanding the fact that it is entitled to cancel the policy or may have even cancelled the same. There is no provision in the Act under which the insurance company is liable to inform the registering authority or any prescribed authority about cancellation of certificate of insurance or the policy. Therefore, once certificate of insurance or policy is issued, the liability of the insurance company towards third parties continues during the prescribed period notwithstanding cancellation of the said policy or the right of the insurance company to cancel the policy.

28. In the cases of *Inderjit Kaur* and *Rula* (supra), the Supreme Court has held that cancellation of the policy due to non-payment of premium was of no consequence as far as third party liability was concerned. The Act being a benevolent legislation, the provisions of the Act must be given an over riding effect notwithstanding cancellation of the policy or right of the authorized insurer to cancel the policy on account of non-payment of the premium. There cannot be any doubt that once certificate of insurance and policy is issued, authorized insurer will be bound as far as third party liabilities are concerned, regardless of the terms of the agreement and the provisions of the Contract Act and the Insurance Act to the contrary. Provisions of Section 149(1) must be given an over-riding effect in view of Section 147(5) of the Act.

29. The difficulty in the present cases arises because no policy and certificate of insurance have been issued. The question raised is whether Section 149(1) is applicable as the said Section comes into operation only after certificate of insurance has been issued.

30. An inclusive definition given to the phrase "certificate of insurance" in Section 145(b) and the term "policy of insurance" as defined in Section 145(d) of the Act. "Certificate of insurance" as defined includes "cover note" complying with such requirements as may be prescribed and "policy of insurance" includes "certificate of insurance". Thus, if we literally read Sub-Sections 145(b) and 145(d) of the Act together, a cover note complying with requirements as prescribed is equal to or as good as certificate of insurance and certificate of insurance is equal to or as good as policy of insurance. Therefore, on literal reading of the definition clauses, once a cover note is issued, a certificate of insurance is also deemed to be issued. It may also be stated that Section 145 while defining the said terms does not use the expression "subject to the context requiring to the contrary" as with definition clauses in most enactments.

31. A harmonious reading of the clauses mentioned above will have to be done. While interpreting and examining these clauses, one will have to keep in mind that the enactment is a benevolent legislation and also the fact that the authorized insurer is required to take care and caution when it issues cover note valid for a period of 60 days and third parties cannot be blamed and denied benefit under the enactment, and also the fact that the insurance company in a given case may not have issued "certificate of insurance" and the policy after the

cheque has bounced. Observations made by the Supreme Court in Seema Malhotra's case also have to be kept in mind. The basic object and purpose of insurance under which premium is collected from various parties by an authorized insurer and indemnification is given is payment of premium by the insured. It is out of this corpus and the premium received that compensation to third parties is paid. This aspect cannot all-together be ignored. On a conjoint reading of the clauses, the object and the purpose behind the enactment, I feel that a cover note once issued is equal to certificate of insurance and policy of insurance for a period of sixty days. Thereafter, it expires by efflux of time. It is not required to be cancelled. Cancellation/termination and expiry by efflux of time, it is well understood, are different concepts and have different implications in law. Therefore, an insurance company will be liable to pay compensation to third parties in case after issue of the cover note, an accident takes place during the validity of the cover note. The cover note itself will be a certificate of insurance and policy of insurance during the validity of the cover note. However, after the expiry of the cover note, i.e. after sixty days, it ceases to exist in the eyes of law and accordingly it also ceases to have character of a certificate of insurance or policy of insurance. Any other reasoning or conclusion will lead to incongruous result and confusion with one provision or the other being rendered redundant or otiose.

32. It is not possible to accept the contention of the insurance companies that issue of cover note is if no affect and liability cannot be fastened on the insurance companies u/s 149(1) because they have issued cover note. During the period of validity of the cover note of 60 days, it is treated as equivalent to a certificate of insurance or policy of insurance and accordingly protection u/s 149(1) of the Act is applicable. Otherwise an insurance company can deny it's liability to pay third parties, if an accident takes place within 60 days but before certificate of insurance is issued. In such cases insurance companies can also urge that Section 149 of the Act will not apply as certificate of insurance has not been issued. This will be contrary to the legislative intent which has defined a certificate of insurance and insurance policy to include a cover note, without carving out any exception. Therefore, if an accident takes place within 60 days of the issue of the cover note, insurance company will be bound by Section 149(1) of the Act, notwithstanding that the cover note has been cancelled or may be cancelled or avoided.

33. The other question that now arises is whether an insurance company will be liable after the cover note has expired by efflux of time and is not followed by issue of policy of insurance or certificate of insurance in view of Section 147(4) and 149(1) of the Act. As there is no cover note and the same has expired after 60 days from the date of issue, there is no certificate of insurance and the insurance policy. Section 149(1) of the Act will not continue to apply even after cover note has expired by efflux of time. As already stated above, expiry of the period by efflux of time, is not equivalent to cancellation or termination of the contract of insurance. There is, Therefore, no question of issue of certificate of

insurance, one of the two pre-conditions for invoking Section 149(1) of the Act. Such cases are not covered by and protected by Section 149(1) of the Act. The said section will not come into operation after cover note has expired by efflux of time.

34. Section 147(4) also casts an obligation upon the insurance companies to inform the registering authority or the prescribed authority in case certificate of insurance is not issued and cover note expires by efflux of time. However, I may notice here that the Act does not specifically provide and state what will be the consequence in case the insurer does not inform the prescribed authority or the registering authority. The question, Therefore, arises whether this provision is directory or mandatory. It is well settled that use of the word "shall" or "may" is not considered decisive and the question whether a provision is directory or mandatory depends on the intention of the legislature having regard to the nature, scope and design of the statute, and not upon the language in which the intent is clothed. One of the well accepted tests for determining whether a provision is directory or mandatory is to see whether the enactment provides for consequences that would follow from non compliance with the requirement prescribed. (Refer, Administrator, Municipal Committee, Charkhi Dadri and another Vs. Ramji Lal Bagla and others, and State of U.P. Vs. Manbodhan Lal Srivastava, . The Act does not specifically provide consequences for violation of Section 147(4). Violation of Section 147(4), Therefore, will not make the insurance company liable to third parties notwithstanding default in informing the registering authority or the prescribed authority. The contract that has expired is not extended by Section 147(4) of the Act. Notice as required is to be issued after expiry of the cover note i.e. after the validity of the cover note period of 60 days has come to an end. To interpret Section 147(4) to the contrary, will amount to re-writing the said Section incorporating deeming consequences, though there is no specific provision and the legislation is silent.

CONCLUSION

35. In view of the above discussion, the following legal position emerges:

(i)Section 149(1) comes into operation once certificate of insurance is issued. The provision has over riding effect and the insurance company will be bound to indemnify third parties notwithstanding the fact that certificate of insurance and insurance policy is liable to be cancelled or has been cancelled.

(ii)Cover note is issued for a limited period and expires after a period of 60 days in view of Rule 142 of Central Motor Vehicles Rules. During it's validity in view of Section 145(b) and 145(d), a cover note itself is equal to certificate of insurance and insurance policy. Section 149(1) applies for the benefit of the third parties.

(iii)However, cover note comes to end by efflux of time and ceases to be certificate of insurance or policy of insurance after 60 days. Therefore, in case certificate of insurance or policy of insurance is not issued within 60 days of the issuance of the cover note, Section 149(1) of the Act will not apply after expiry

of the said period. Thereafter, the insurance company will not be liable to make payment to third parties as there is no certificate of insurance. A certificate of insurance and insurance policy in the form of a cover note has expired by efflux of time. Thus, the question of termination, cancellation and avoidance does not arise.

ANOTHER CONTENTION

36. I may now notice another argument raised by the Learned Counsel for the insurance company.

37. It was submitted that Section 149(1) has no application as far as interim award u/s 140 is concerned. Reliance in this regard was placed upon language of the Section 149(1) of the Act, which refers to payment of compensation u/s 147(1) or Section 163A of the Act. This argument has to be rejected. Section 140 relates only to grant of interim compensation. Compensation is awarded by the Tribunal u/s 147(1)(b) and 163A. The interim compensation once awarded u/s 140 is to be deducted from the total compensation awarded under the said provisions i.e. 147(1)(b) or 163A of the Act. Section 140 is itself a part or a proviso to Section 147(1)(b) or 163A of the Act. If the interpretation given by the insurance company is accepted, it will lead to absurd results. Insurance company will not be liable to pay interim compensation u/s 140 of the Act, in spite of the contract of indemnity under the statute. Insurance company will be liable only after final award is passed including the amount paid u/s 140 of the Act. Such absurdities have to be avoided, keeping in view the object and purpose bearing to Sections 140, Section 147(1)(b) or 163A of the Act. The provisions have to be read harmoniously. Section 140, Therefore, is to be read as part of Section 147(1)(b) or 163A of the Act. Reference to the two provisions i.e. Section 147(1)(b) or 163A in Section 149(1) of the Act will, Therefore, include reference to Section 140 of the Act.

38. In view of the findings and the legal position, the appeals filed by the insurance companies are allowed. In the facts and circumstances of the case there is no order as to costs.