
(2011) 09 AHC CK 0377

In the Allahabad High Court

Case No : First Appeal From Order No. 1851 of 2010

Oriental Insurance Company Ltd.

APPELLANT

Vs

Lalji Yadava and Others

RESPONDENT

Date of Decision : 29-09-2011

Acts Referred:

Constitution of India, 1950 — Article 142

Insurance Act, 1938 — Section 64VB

Motor Vehicles Act, 1988 — Section 146, 147, 147(5), 149(1), 149(2)

Penal Code, 1860 (IPC) — Section 279, 304A, 319, 319(1)

Citation : (2011) 11 ADJ 525

Hon'ble Judges : Shyam Shankar Tiwari, J;S.P. Mehrotra, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. The present Appeal has been filed u/s 173 of the Motor Vehicles Act 1988, against the Judgment and Order/Award dated 19.3.2010 passed by the Motor Accidents Claims Tribunal, Bhadohi-Gyanpur in Motor Accident Claim Case No. 62 of 2008 filed by the claimant-respondent Nos. 1 and 2 on account of the death of Amarjeet in an accident which took place on 25.9.2008 at 4.00 p.m.

2. The case of the claimant-respondent Nos. 1 and 2 was that the said Amarjeet was coming on his cycle from the side of Jangiganj at 4.00 p.m. on 25.9.2008 when a vehicle (Scorpio) bearing Registration No. UP 66 D-0151, which was being driven by its Driver rashly and negligently, came from the direction of Varanasi to Allahabad, and hit the said Amarjeet near New Pandey Dhaba under Police Station-Gopiganj, District Sant Ravi Das Nagar (Bhadohi); and that the said Amarjeet sustained fatal injuries as a consequence of which he died during his treatment; and that the said Amarjeet was aged 19 years at the time of the accident; and that the said Amarjeet used to earn Rs. 5,000/- per month; and that the Report in regard to the accident was lodged at Police Station-Gopiganj and the same was registered as Case Crime No. 1873 of 2008, under Sections 279, 304A of the Indian Penal Code.

3. The said vehicle has hereinafter been also referred to as "the vehicle in question".

4. The Claim Petition was contested by the respondent No. 3 (Driver of the vehicle in question) and the respondent No. 4 (Owner of the vehicle in question) as well as by the Appellant-Insurance Company by filing Written Statements.

5. The respondent Nos. 3 and 4 in their joint Written Statement, inter alia, pleaded that the Claim Petition was based on incorrect allegations; and that the vehicle in question was not involved in any accident on the date and time and at the place alleged in the Claim Petition; and that the vehicle in question was insured with the Appellant-Insurance Company since prior to the accident in question, and the Driver of the vehicle in question (respondent No. 3 herein) was having valid Driving Licence for driving the vehicle in question, and as such, the Appellant-Insurance Company was liable to pay the amount of compensation, if awarded.

6. The Appellant-Insurance Company in its Written Statement denied the averments made in the Claim Petition. The Appellant-Insurance Company, inter alia, further averred that on investigation, it had transpired that Cheque No. 323975 dated 25.3.2008 for Rs. 14,970/- issued by the owner of the vehicle in question (respondent No. 4 herein) in favour of the Appellant-Insurance Company in regard to the premium, had been dishonored on account of insufficient funds in the account of the owner of the vehicle in question (respondent No. 4 herein), and Written Intimation dated 22.7.2008 in this regard along-with cancellation of the Insurance Policy had been given through post to the owner of the vehicle in question (respondent No. 4 herein) as well as A.R.T.O. Gyanpur, and in the circumstances, the Appellant-Insurance Company was not liable to pay any compensation. It was, inter alia, further averred that the accident occurred on account of the own negligence and fault of the deceased.

7. The Tribunal framed four issues in the Claim Case.

Issue No. 1 was regarding factum of the accident having occurred due to rash and negligent driving by the Driver of the vehicle in question resulting in fatal injuries to the said Amarjeet, and his consequent death.

Issue No. 2 was as to whether the Driver of the vehicle in question was having valid and effective Driving Licence and as to whether the owner of the vehicle in question was having valid and effective papers.

Issue No. 3 was as to whether the vehicle in question was validly and effectively insured at the time of the accident, and if yes, its effect.

Issue No. 4 was as to whether the claimant-respondent Nos. 1 and 2 were entitled to the payment of any compensation, and if so, as to what was the amount of such compensation and against which the opposite party in the Claim Case.

8. The parties led oral and documentary evidence in support of their respective cases.

9. Having considered the material on record, the Tribunal recorded its findings on various issues.

10. As regards Issue No. 1, the Tribunal held that the accident took place on account of rash and negligent driving by the Driver of the vehicle in question resulting in fatal injuries to the said Amarjeet, and his consequent death. Issue No. 1 was accordingly decided in the affirmative.

11. As regards Issue No. 2, the Tribunal held that the Driver of the vehicle in question was having valid Driving Licence at the time of the accident and the owner of the vehicle in question was having valid and effective papers at the time of the accident. Issue No. 2 was decided accordingly.

12. As regards Issue No. 3, the Tribunal noted that premium for insurance of the vehicle in question for the period with effect from 25.3.2008 to 24.3.2009 was paid by the respondent No. 4 to the Appellant-Insurance Company by cheque dated 25.3.2008 for Rs. 14,970/- drawn on State Bank of India; and that the said cheque was sent by the Appellant-Insurance Company for collection through H.D.F.C. Bank, Bhadohi, but the cheque was dishonoured on account of insufficient funds in the account of the respondent No. 4; and that by the Communication dated 29.7.2008, the Appellant-Insurance Company informed the respondent No. 4 regarding dishonour of the cheque, and also intimated that the Insurance Cover-Note in respect of the vehicle in question for "he period with effect from 25.3.2008 to 24.3.2009, had been cancelled.

13. The Tribunal, however, noted that there was no evidence available on the record which would show that information regarding cancellation of the Insurance Cover-Note in respect of the vehicle in question had been given to the Regional Transport Officer. Hence, relying upon the decision of the Supreme Court in *Oriental Insurance Company Limited v. Inderjit Kaur and others*, 1998(1) TAC 615 and the decision of this Court in *National Insurance Company Limited v. Jitendra Kaur and another*, 2009 (2) TAC 407 : 2009 All CJ 294, the Tribunal concluded that the Appellant-Insurance Company could not be absolved of its responsibility to pay compensation.

14. Accordingly, the Tribunal decided Issue No. 3 in the negative and held that the vehicle in question was not validly and effectively insured at the time of the accident. The Tribunal further held that in the circumstances, the Appellant-Insurance Company would be liable to pay the amount of compensation payable to the claimant-respondent Nos. 1 and 2 but the Appellant-Insurance Company would be entitled to recover from the owner of the vehicle in question (respondent No. 4 herein) the amount of compensation so paid by the Appellant-Insurance Company.

15. As regards Issue No. 4, the Tribunal awarded compensation amounting to Rs.

2,05,000/- with interest at the rate of 6% per annum with effect from the date of the award till the date of actual payment. The Tribunal further held that the amount of compensation would be paid by the Appellant-Insurance Company but subsequently the Appellant-Insurance Company would be entitled to recover the amount of compensation from the owner of the vehicle in question, namely, respondent No. 4 herein.

16. In view of the above findings, the Tribunal passed the impugned Judgment and Order/Award dated 19.3.2010, inter alia, awarding to the claimant-respondent Nos. 1 and 2 compensation amounting to Rs. 2,05,000/- with interest at the rate of 6% per annum with effect from the date of the Award till the date of actual payment.

17. The Tribunal further directed that the amount of compensation would in the first instance be paid by the Appellant-Insurance Company and subsequently, the Appellant-Insurance Company would be entitled to recover the amount of compensation paid to the claimant-respondent Nos. 1 and 2 from the owner of the vehicle in question, namely, respondent No. 4 herein.

18. We have heard Sri Arun Kumar Shukla, learned counsel for the Appellant-Insurance Company, and perused the record".

19. Sri Arun Kumar Shukla, learned counsel for the Appellant-Insurance Company submits that having held that the owner of the aforesaid vehicle in question (respondent No. 4 herein) failed to fulfil his part of obligation under the contract of insurance of the vehicle in question, the Tribunal erred in directing the Appellant-Insurance Company to pay the amount of compensation and thereafter recover the same from the owner of the vehicle in question, i.e., respondent No. 4 herein.

20. Sri Arun Kumar Shukla submits that in any case, the interest of the Appellant-Insurance Company as against the owner of the vehicle in question (respondent No. 4 herein) should have been properly secured so that after making the payment of compensation under the impugned Award, the Appellant-Insurance Company would be able to recover the same from the owner of the aforesaid vehicle in question. Sri Arun Kumar has relied upon the following decisions in this regard:

1. Oriental Insurance Company Ltd. v. Sri Nanjappan and others, 2004(2) TAC 12(SC).

2. National Insurance Company v. Challa Bharathamma, 2005(1) TAC 4 (SC).

21. We have considered the submissions made by Sri Arun Kumar Shukla, learned counsel for the Appellant-Insurance Company.

22. As regards the submission made by Sri Arun Kumar Shukla that the Tribunal erred in directing the Insurance company to make the payment of compensation and thereafter recover the same from the owner of the vehicle in question, it is

pertinent to refer to the relevant provisions of the Motor Vehicles Act, 1988.

23. Sub-section (5) of Section 147 of the Motor Vehicles Act, 1988 lays down as under:

147. Requirements of policies and limits of liability.--(1) to (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.

24. The above-quoted provision thus provides that an insurer issuing a policy of insurance u/s 147 of the said Act, 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.

25. Sub-section (1) of Section 149 of the Motor Vehicles Act, 1988 provides as follows:

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 subsection (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 subsection (1) of Section 147 (being a liability covered by the terms of the policy) [or under the provisions of Section 163-A] 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) to (7).....

26. The above-quoted provision thus provides that in case any judgment or award is obtained against any person insured by the policy, then the insurer shall 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 interest. This will be so even though the insurer may be entitled to avoid or cancel or may have avoided or cancelled the policy.

27. In view of the above provisions, we are of the opinion that the directions given by the Tribunal requiring the Appellant-Insurance Company to make the deposit of compensation awarded under the impugned award and thereafter

recover the same from the owner of the aforesaid vehicle in question, is in accordance with law, and the same does not suffer from any infirmity.

28. The above conclusion is supported by various decisions of the Apex Court:

1. Oriental Insurance Co.Ltd. v. Inderjit Kaur and others, AIR 1998 SC 588.
2. National Insurance Co. Ltd. Vs. Swaran Singh and Others, .
3. National Insurance Co. Ltd. Vs. Laxmi Narain Dhut, .
4. Prem Kumari and others v. Prahlad Dev and others, 2008(1) TAC 803 (SC).

29. In Oriental Insurance Co. Ltd. v. Indrajit Kaur and others, AIR 1998 SC 588, their Lordships of the Supreme Court opined as under (paragraph 7 of the said AIR):

7. We have, therefore, this position. Despite the bar created by Section 64-VB of the Insurance Act, the appellant, an authorised insurer, issued a policy of insurance to cover the bus without receiving the premium therefor. By reason of the provisions of Sections 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.

(Emphasis supplied)

30. This decision thus supports the conclusion mentioned above on the basis of Sections 147(5) and 149(1) of the Motor Vehicles Act, 1988.

31. In National Insurance Co. Ltd. Vs. Swaran Singh and Others, , their Lordships of the Supreme Court held as follows (paragraph 105 of the said AIR):

105. The summary of our findings to the various issues as raised in these petitions is 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) An insurer is entitled to raise a defence in a claim petition filed u/s 163-A or Section 166 of the Motor Vehicles Act, 1988, inter alia, in terms of Section 149(2) (a)(ii) of the said Act.

(iii) The breach of policy condition e.g., disqualification of the driver or invalid driving licence of the driver, as contained in sub-section (2) (a) (ii) of Section

149, has 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 the insured, the insurer has to prove that the insured was guilty of negligence and failed to exercise reasonable care in the matter of fulfilling the condition of the policy regarding use Of vehicles by a duly licensed driver or one who was not disqualified to drive at the relevant time.

(iv) Insurance Companies, 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 vehicles; the burden of proof wherefor would be on them.

(v) The Court cannot lay down any criteria as to how the 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 the insured unless the said breach or breaches on 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 the 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 fulfil 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 Sections 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 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.

(Emphasis supplied)

32. Proposition Nos. (vi) and (x), reproduced above support the conclusion that the direction given by the Tribunal in the award impugned in the present case is in accordance with law,

33. In *National Insurance Co. Ltd. v. Laxmi Narain Dhut*, 2007 (2) TAC 398 (SC), their Lordships of the Supreme Court considered the decision in *National Insurance Co.Ltd. v. Swaran Singh* (supra) and held as under (paragraph 35 of the said TAC):

35. As noted above, the conceptual difference between third party right and own damage cases has to be kept in view. Initially, the burden is on the insurer to prove that the license was a fake one. Once it is established the natural consequences have to flow.

In view of the above analysis the following situations emerge:

(1) The decision in *Swaran Singh*'s case (supra) has no application to cases other than third party risks.

(2) Where originally the license was 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/Commissions shall now consider the matter afresh in the light of the position in law as delineated above.

The appeals are allowed as aforesaid with no order as to costs.

(Emphasis supplied)

34. In view of the above decision, it is evident that in case of third party risks, the decision in *National Insurance Co.Ltd. v. Swaran Singh and others* (supra) would apply, and the insurer has to indemnify the amount to the third party and thereafter may recover the same from the insured.

35. In *Prem Kumari and others v. Prahlad Dev and others*, 2008(1)TAC 803 (SC), their Lordships of the Supreme Court have reiterated the view expressed in *National Insurance Company Limited v. Laxmi Narain Dhut*'s case (supra) explaining the decision in *National Insurance Company Limited v. Swaran Singh and others* (supra), and held as under (paragraphs 8 and 9 of the said TAC):

8. The effect and implication of the principles laid down in *Swaran Singh*'s case (supra) has been considered and explained by one of us (Dr. Justice Arijit Pasayat) in *National Insurance Co. Ltd. Vs. Laxmi Narain Dhut*, . The following conclusion in para 38 are relevant:

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

(1) The decision in *Swaran Singh*'s case (supra) has no application to cases other than third party risks.

(2) Where originally the license 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.

9. In the subsequent decision *The Oriental Insurance Company Limited Vs. Meena Variyal and Others*, , which is also a two Judge Bench while considering the ratio laid down in *Swaran Singh*'s case (supra) concluded that 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*'s case (supra). While arriving at such a conclusion the Court extracted the analysis as mentioned in para 38 of *Laxmi Narain Dhut* (supra) and agreed with the same. In view of consistency, we reiterate the very same principle enunciated in *Laxmi Narain Dhut* (supra) with regard to interpretation and

applicability of Swaran Singh's case (supra).

(Emphasis supplied)

36. In view of the above decisions, it is evident that the directions given by the Tribunal requiring the Appellant-Insurance Company to deposit the amount awarded under the impugned award in the first instance, and thereafter, recover the same from the owner of the vehicle in question, are valid and legal.

37. As regards the submission made by Sri Arun Kumar Shukla that the interest of the Appellant-Insurance Company should be protected as against the owner of the vehicle in question (respondent No. 4 herein) so that in case the Appellant-Insurance Company deposits the amount of compensation, it may be able to recover the same from the owner of the aforesaid vehicle in question, it is pertinent to refer to the decisions relied upon by Sri Arun Kumar Shukla

38. In *Oriental Insurance Company Ltd. v. Sri Nanjappan and others*, 2004(2) TAC 12 (SC) (supra), their Lordships of the Supreme Court opined as under (Paragraph 7 of the said TAC):

7. Therefore, while setting aside the judgment of the High Court we direct in terms of what has been stated in *Baljit Kaur's case* 2004(1) TAC 366 (SC) (supra) that the insurer shall pay the quantum of compensation fixed by Tribunal, about which there was no dispute raised to the respondents-claimants within three months from today. For the purpose of recovering the same from the insured, the insurer shall not be required to file a suit. It may initiate a proceeding before the concerned Executing Court as if the dispute between the insurer and the owner was the subject-matter of determination before the Tribunal and the issue is decided against the owner and in favour of the insurer. Before release of the amount to the insured, owner of the vehicle shall be issued a notice and he shall be required to furnish security for the entire amount which the insurer will pay to the claimants. The offending vehicle shall be attached, as a part of the security. If necessity arises the Executing Court shall take assistance of the concerned Regional Transport Authority. The Executing Court shall pass appropriate orders in accordance with law as to the manner in which the insured, owner of the vehicle shall make payment to the insurer. In case there is any default it shall be open to the Executing Court to direct realisation by disposal of the securities to be furnished or from any other property or properties of the owner of the vehicle, the insured. The appeal is disposed of in the aforesaid terms, with no order as to costs.

(Emphasis supplied)

39. In *National Insurance Company v. Challa Bharathamma*, 2005 (1) TAC 4 (SC) (supra), it was laid down as follows (Paragraph 13 of the said T.A.C):

The residual question is what would be the appropriate direction. Considering the beneficial object of the Act, it would be proper for the insurer to satisfy the award, though in law it has no liability. In some cases the insurer has been given

the option and liberty to recover the amount from the insured. For the purpose of recovering the amount paid from the owner, the insurer shall not be required to file a suit. It may initiate a proceeding before the concerned Executing Court as if the dispute between the insurer and the owner was the subject-matter of determination before the Tribunal and the issue is decided against the owner and in favour of the insurer. Before release of the amount to the claimants, owner of the offending vehicle shall furnish security for the entire amount which the insurer will pay to the claimants. The offending vehicle shall be attached, as a part of the security. If necessity arises the Executing Court shall take assistance of the concerned Regional Transport Authority. The Executing Court shall pass appropriate orders in accordance with law as to the manner in which the owner of the vehicle shall make payment to the insurer. In case there is any default it shall be open to the Executing Court to direct realisation by disposal of the securities to be furnished or from any other property or properties of the owner of the vehicle i.e. the insured, in the instant case considering the Quantum involved we leave it to the discretion of the insurer to decide whether it would take steps for recovery of the amount from the insured.

(Emphasis supplied)

40. In our opinion, the directions contemplated in the above decisions may be sought by the Appellant-Insurance Company before the Executing Court when the Appellant-Insurance Company, after depositing the amount awarded under the impugned Award, moves appropriate application before the Executing Court to recover the said amount from the insured person, i.e. the owner of the vehicle in question (respondent No. 4 herein), while the claimant files an application for the execution of the Award or for the release of the amount deposited by the Appellant-Insurance Company. We are refraining from expressing any opinion in this regard.

41. We may, however, refer to two decisions of this Court wherein the above decisions of the Supreme Court have been considered.

42. In *Smt. Bhuri and others v. Smt. Shobha Rani and others*, 2007 (1) TAC 20 (All), a learned Single Judge of this Court held as under (paragraph 5 of the said TAC):

5. From the aforesaid case law, as referred to by the learned Counsel for the parties, it would be evident that in spite of the fact that the insurer is not made liable to compensate the claimants under the policy u/s 149 of the Motor Vehicles Act, still the liability of payment, under the law as developed by the Apex Court in this context, has been assigned to the Insurance Company. At the same time, the Insurance Company has also been given liberty to recover the said amount from the insured within the provisions of the Motor Vehicles Act itself and without taking the burden of filing a suit for that purpose. This principle of law was initially propounded in *Baljit Kaur's* case (supra) and it has been followed in the aforesaid cases referred to by the parties concerned. But in the subsequent cases

more especially in Nanjappan's case (supra) it has also been observed that before releasing the amount under deposit before the Court the insured/owner of the vehicle shall be issued a notice and he shall be required to furnish security for the entire amount which the Insurance Company will pay to the claimants. After that notice the Court may direct the attachment of the offending vehicle as part of the security and could also pass appropriate orders in accordance with law. In case of default it shall be open to the Court to direct realisation of the amount from the insured/owner by disposal of security or from any other property or properties of the owner of the vehicle. Therefore, all these modes have been provided by the Apex Court for the insurer to make recovery from the insured. But from all these directions as given by the Apex Court, the purport is that the Court shall not undermine the interest of the claimants for whose welfare the Supreme Court has been developing this law through all these cases even by interpreting otherwise the liability of the insurer with Section 149 of the Motor Vehicles Act. Thus, what is the crux of the matter in the present case is that the revisionists-claimants cannot be made to suffer even if the insured/owner of the vehicle does not furnish security or does not appear before the Court in pursuance to the notice issued to him. The burden of recovering the amount within the provisions of the Act itself has been placed upon the insurer in the aforesaid judgments of the Apex Court. The claimants who have obtained the award in their favour have not been made to suffer through any observation made by the Supreme Court in these cases. Thus, in the aforesaid view of the matter, what I feel is that it would be just and proper if the Court below is directed to first take resort to the issuance of notice to the insured/owner of the vehicle and thereafter only the money under deposit before the Court should be released in favour of the claimants

(Emphasis supplied)

43. In National Insurance Co. Ltd. Vs. Smt. Khursheeda Bano and Others, , a Division Bench of this Court laid down as follows (paragraph 4 of the said AWC):

4. Learned counsel has cited the judgment of the Supreme Court in National Insurance Co. Ltd. Vs. Challa Bharathamma and Others, , to establish that the claim of the insurance company should be secured by the owner. We have no quarrel with such proposition. What we want to say is that unless and until an appropriate application in the selfsame proceeding is made by the insurance company for the purpose of recovery, the question of furnishing security by the owner cannot arise. Such situation is yet to ripe. At this stage, we are only concerned with the payment of compensation to the claimants which cannot be stalled and has got nothing to do with the dispute regarding liability between the owner and the insurance company. The sufferer is a third party. Moreover, in such judgment, the Division Bench of the Supreme Court has categorically held" considering the beneficial object of the Act, it would be proper for the insurer to satisfy the award, though in law it has no liability." In effect it is a stop-gap arrangement to satisfy the award as soon as it is passed. The judgment of 3

Judges" Bench of the Supreme Court in National Insurance Co. Ltd. Vs. Swaran Singh and Others, , also speaks in para 110 that the Tribunal can direct that the insurer is liable to be reimbursement 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. Therefore, the intention of the Legislature as well as the interpretation by the Supreme Court and different High Courts is well settled to the extent that under no circumstances payment of compensation to the claimants will be stalled. Even at the cost of the repetition we say, it has nothing to do with the dispute with regard to liability of owner or insurer, which can be considered in the separate application in the selfsame cause or in an execution application in connection thereto to be initiated by the insurance company.

(Emphasis supplied)

44. In view of the above discussion, r, we are of the opinion that the Tribunal did not commit any illegality in directing the Appellant-Insurance Company to make deposit of the amount of compensation, and recover the same from the insured person i.e. the owner of the vehicle in question-respondent No. 4 herein.

45. Before parting with the case, certain other submissions made by Shri Arun Kumar Shukla, learned counsel for the Appellant-Insurance Company may be considered.

46. Shri Arun Kumar Shukla, learned counsel for the Appellant-Insurance Company submits that in view of the dishonour of the cheque issued by the owner of the vehicle in question (respondent No. 4 herein) towards payment of premium for insurance of the vehicle in question, and the consequent cancellation of the Insurance Cover Note in respect of the vehicle in question by the Appellant-Insurance Company, prior to the date of the accident in question, namely, 25.9.2008, the vehicle in question could not be treated to be validly insured with the Appellant-Insurance Company, and the Appellant-Insurance Company was not liable to pay compensation in respect of the accident in question.

47. Having considered the submissions made by Shri Arun Kumar Shukla, learned counsel for the Appellant-Insurance Company, we find ourselves unable to accept the same.

48. In the present case, the Insurance Cover Note in respect of the vehicle in question was issued by the Appellant-Insurance Company for the period from 25.3.2008 to 24.3.2009. The cheque issued by the owner of the vehicle in question (respondent No. 4 herein) towards payment of premium was dishonoured by State Bank of India. After the dishonour of the said cheque, the Appellant-Insurance Company on 29.7.2008 cancelled the Insurance Cover Note issued in respect of the vehicle in question. The accident in question took place on 25.9.2008.

49. The Tribunal held that information in regard to the dishonour of the cheque

was sent to the owner of the vehicle in question (respondent No. 4 herein) but it was not established that any information regarding dishonour of the cheque was sent to the Office of the Regional Transport Officer. Shri Arun Kumar Shukla has not shown any illegality or infirmity in the said finding recorded by the Tribunal.

50. In *National Insurance Company Ltd. v. Jitendra Kumar and another*, 2009 (2) TAC 407 (All), relied upon by the Tribunal in the impugned Award, a Division Bench of this Court referred to the provisions of Sections 146, 147, 149(1) of the Motor Vehicles Act, 1988, and Section 64-VB of the Insurance Act, 1938, and also various judgments of the Supreme Court, and held as under (paragraphs 10 and 18 of the said TAC):

10. From the plain reading of several provisions of the Act, it appears to us that the insurance of the vehicle to run at the public places is mandatory in nature. Therefore, it is implied that the Insurance Company will inform all concerned inclusive of the Regional Transport Authority and the appropriate police authority dealing with-traffic simultaneously with the information of cancellation of the insurance coverage to the owner/insured. Insurance is an assurance. As per the scheme of the Act such assurance is to be given not only to the insured but also to the third parties who sustained injury or succumbed death due to road accident and their legal representatives. They are not aware about the import, period end extent of the contract between the insurer and the insured. They are also not aware about default. They presuppose that when a vehicle runs in the public place, it has all valid documents to run. One of such valid documents is contract of insurance between the insurer and insured to cover the third party risk. In that way knowledge or information for not having valid insurance coverage by the Insurance Company to the Regional Transport Authority and appropriate police authority deals with traffic is mandatory in nature. Insurers cannot be allowed to wait and watch like usual commercial enterprises and take defence of not having insurance coverage only after the accident when the claim will arise. As soon as an insurer enters into a contract with insured under the Act, it becomes statutorily liable to the third parties. On the other hand, the Act itself is a beneficial piece of legislation for the third parties. Therefore, whenever we sit in this jurisdiction, we should not be forgetful about predominant effect of such Act. Interest of the affected persons will be considered at first. Equity follows law by applying the maxim of *Acquitas sequitur legem* but sometimes law follows equity by the maxim of *Lex aliquando sequitur aequitatem* particularly when equity emerges into the law relevant for the purpose. Therefore, it is essential for the insurer to take a defence before the tribunal that it had not only cancelled the insurance coverage and informed the insured but also simultaneously intimated all concerned to prevent the vehicle from plying on the road otherwise it cannot avoid the liability to pay compensation to the third parties specially in the form of stop gap arrangement and recover from the owner i.e. insured. When the insurance coverage under the Act is compulsory, it has two fold duties i.e. prevention and compensation. When they have discharged their duty of prevention in absence of coverage by notice to the appropriate authorities, their

liability can be extinguished and the authority will be strictly liable to ensure seizure of such vehicle from the public place for not having insurance coverage. Notice to them means notice to public. In absence of the same an Insurance Company cannot be discharged from their liability to make payment of compensation to a third party even as a stop gap arrangement. Facilities under the statute cannot be frustrated by means of solitary intimation of the insurer to the insured about cancellation of insurance contract for dishonourment of requisite cheque/s. It is "strict liability" of the insurer under the law. An Insurance Company is doing business about risk as per its own policy. Therefore, if the Insurance Company is allowed to avoid the risk, the same will go against their own policy of business particularly when they are entitled to get back their money even by way of land revenue in case the contract does not seem to be in existence for any reason. There is, in general, no duty for the sufferer to anticipate that another will be negligent and to avoid the effects of that negligence by anticipation. The position of a sufferer and the position of an insurer cannot be equated at all.

18.....we find that there are two aspects.....One is whether the Insurance Company has informed all concerned or not and another is whether payment of compensation to the third parties is absolute or in the nature of stop gap arrangement with a right of recovery. When all concerned are intimated, an Insurance Company both under the Act and under the contract can have a defence about refusal of compensation to the third parties even as a stop gap arrangement, failing which it would be treated to be statutory default on the part of the Insurance Company. Thus, the Insurance Company cannot avoid its liability in such circumstances". Secondly, stop gap arrangement cannot be treated to be a liability. It is a device of the Court to get a statutory compliance to facilitate the sufferer keeping pace with the intention of the legislature. Hence, such type of accommodation of the Court cannot be treated to be the liability on the part of the insurer and as such reference on that score seems to be academic in nature.

(Emphasis supplied)

51. This decision, thus, lays down that in case the Insurance Company has cancelled the insurance coverage in respect of a vehicle, it must inform all concerned inclusive of the Regional Transport Authority and the appropriate police authority dealing with traffic simultaneously with the information of cancellation of the insurance coverage to the owner of the vehicle/insured. If the Insurance Company has informed only the owner of the vehicle regarding cancellation of insurance coverage, but has not informed the Regional Transport Authority and appropriate police authority regarding such cancellation, then the Insurance Company will not be able to avoid the liability to pay compensation to the third parties specially in the form of stop-gap arrangement and recover from the owner i.e., insured.

52. In the present case, as noted above, the Appellant-Insurance Company did

not give any information regarding cancellation of the Insurance Cover Note in respect of the vehicle in question on 29.7.2008 to the Office of the Regional Transport Officer. Hence, in view of the above decision of this Court, the Appellant-Insurance Company was liable to pay compensation to the third parties, namely, the claimant-respondent Nos. 1 and 2 herein. However, as held by the Tribunal, in view of the dishonour of the said cheque, issued by the owner of the vehicle in question (respondent No. 4 herein) towards payment of premium for insurance of the vehicle in question and in view of there being no evidence of any subsequent payment made by the owner of the vehicle in question (respondent No. 4 herein) in respect of the premium, there was failure on the part of the owner of the vehicle in question (respondent No. 4 herein) in fulfilling his obligation under the contract, and therefore it was proper that the Appellant-Insurance be given right to recover from the owner of the vehicle in question (respondent No. 4 herein) the amount of compensation paid by the Appellant-Insurance Company in respect of the accident in question. In our view, the said directions given by the Tribunal are in accordance with the above decision of this Court.

53. Shri Shukla then submits that in *National Insurance Co. Ltd. v. Parvathneni and another*, 2009 (4) TAC 382 (SC), a Bench consisting of two Hon"ble Judges of the Supreme Court while dealing with a case wherein a cheque towards premium for renewal of the Insurance Policy was dishonoured, have referred certain questions for decision by a Larger Bench. The order passed in the said case is reproduced below:

Delay of 65 days in filing the SLP is condoned.

2. Issue notice.

3. Until further orders, the operation of the impugned order shall remain stayed.

4. In this case, the allegation of the petitioner Insurance Company is that there was no valid Insurance coverage on the date of the accident i.e. 30th November, 2003. The cheque towards premium for renewal of the policy was issued on 29th November, 2003 but the same was dishonoured. Hence, the contention of the Insurance Company is that it has no liability to pay compensation amount to the claimants since there was no insurance coverage on the date of the accident.

5. Despite this, the High Court has directed the Insurance Company to pay the compensation amount to the claimants with liberty to the Insurance Company to recover the same from the owner of the vehicle.

6. Prima facie, we are of the opinion if the Insurance Company proves that it has no liability to pay compensation to the claimants, the Insurance Company cannot be compelled to make payment and later on recover it from the owner of the vehicle.

7. No doubt, there are some decisions which have taken the view that even if the Insurance Company has no liability, yet it must pay and later on recover it from

the owner of the vehicle. (See for example National Insurance Co. Ltd. v. Yellamma and another, (2008) 7 SCC 562 , Samundra Devi and Others Vs. Narendra Kaur and Others, , Oriental Insurance Co. Ltd. Vs. Brij Mohan and Others, , New India Insurance Co. v. Darshan Devi, (2008) 7 SCC 4162 (vide para 21), etc.).

8. We have some reservation about the correctness of the aforesaid decisions of this Court. If the Insurance Company has no liability to pay at all, then, in our opinion, it cannot be compelled by order of the Court in exercise of its jurisdiction under Article 142 of the Constitution of India to pay the compensation amount and later on recover it from the owner of the vehicle. In our view, Article 142 of the Constitution of India does not cover such type of cases. When a person has no liability to pay at all how can it be compelled to pay? It may take years for the Insurance Company to recover the amount from the owner of the vehicle, and it is also possible that for some reason the recovery may not be possible at all.

9. Hence, we direct that the papers of this case be placed before Hon''ble the Chief Justice of India for constituting a larger bench to decide the following question:

(1) If an Insurance Company can prove that it does not have any liability to pay any amount in law to the claimants under the Motor Vehicles Act or any other enactment, can the Court yet compel it to pay the amount in question giving it liberty to later on recover the same from the owner of the vehicle.

2. Can such a direction be given under Article 142 of the Constitution, and what is the scope of Article 142? Does Article 142 permit the Court to create a liability where there is none?

It has not been brought to our notice that the said questions have been answered by the Larger Bench of the Supreme Court. In the circumstances, we have decided the question of liability of the Appellant-Insurance Company in regard to the payment of compensation by applying the Doctrine of Pay and Recover on the basis of the legal position as it has been hitherto existing in the light of the decisions of the Supreme Court, which are binding on this Court.

Reference in this regard may be made to a decision of the Supreme Court in Harbhajan Singh and Another Vs. State of Punjab and Another, .

In the said decision, their Lordships of the Supreme Court opined as under (paragraphs 12, 13, 14, and 15 of the said SCC):

12. In Mohd. Shafi, (2007) 14 SCC 544, an application u/s 319 of the Code was filed by a witness. He was not the complainant. He had no locus standi to file the application. In that case, the trial Judge had refused to pass an order on the application filed by the complainant u/s 319 of the Code stating that the matter would be considered only after the cross-examination of the witnesses is over. The State was not aggrieved by that order and in that situation this Court

refused to interfere with the inference that such an order by the High Court at that stage was not held to be correct.

13. Our attention, however, has been drawn to a decision of this Court in Hardeep Singh Vs. State of Punjab and Others, wherein the following questions have been referred for consideration by a larger Bench by an order dated 7.11.2008:

79. We, therefore, refer the following two questions for the consideration of a Bench of three Hon''ble Judges:

(1) When the power under sub-section (1) of Section 319 of the Code of addition of an accused can be exercised by a Court? Whether application u/s 319 is not maintainable unless the cross-examination of the witness is complete?

(2) What is the test and what are the guidelines of exercising power under sub-section (1) of Section 319 of the Code? Whether such power can be exercised only if the Court is satisfied that the accused summoned in all likelihood would be convicted?

We would assume that in all cases the Court may not wait till cross-examination is over for the purpose of exercising its jurisdiction.

14. In the aforementioned decision in Hardeep Singh, the learned Judges had referred to a judgment of this Court in Rakesh and Another Vs. State of Haryana, , wherein it was held that even without cross-examination on the basis of a prima facie material which would enable the Sessions Court to decide whether the power u/s 319 of the Code should be exercised or not stating that at that stage evidence as used in Section 319 of the Code would not mean evidence which is tested by cross-examination.

15. Even if what is contended by the learned counsel is correct, it is not for us to go into the said question at this stage; herein cross-examination of the witnesses had taken place. The Court had taken into consideration the materials available to it for the purpose of arriving at a satisfaction that a case for exercise of jurisdiction u/s 319 of the Code was made out Only because the correctness of a portion of the judgment in Mohd Shafi has been doubted by another Bench, the same would not mean that we should wait for the decision of the larger Bench, particularly when the same instead of assisting the appellants runs counter to their contention.

(Emphasis supplied)

54. This decision, thus, lays down that only because the correctness of a judgment has been doubted by another Bench and the matter has been referred to a Larger Bench, it does not mean that the current Bench should wait for the decision of the Larger Bench.

55. This decision, thus, supports the conclusion drawn above that even though certain questions have been referred for decision to the Larger Bench of the

Supreme Court by the order passed in National Insurance Co. Ltd. v. Parvathneni and another, 2009(4) TAC 382 (supra), this Court is required to decide the controversy on the basis of the legal position hitherto existing in the light of the decisions of the Supreme Court, which are binding on this Court. The view of the Tribunal in this regard, in our opinion, is correct.

56. In view of the above discussion, we conclude that the Tribunal did not commit any error in giving directions requiring the Appellant-Insurance Company to deposit the amount awarded under the impugned Award in the first instance, and thereafter, recover the same from the owner of the vehicle in question (i.e., respondent No. 4 herein).

57. After making deposit of the amount awarded under the impugned award, it will be open to the Appellant-Insurance Company to initiate appropriate proceedings for recovery of the amount from the owner of the aforesaid vehicle in question (respondent No. 4 herein), and seek appropriate directions in such proceedings.

58. It is made clear that in case any appeal is filed by the claimant-respondent Nos. 1 and 2 or by the owner of the aforesaid vehicle in question (respondent No. 4 herein), it will be open to the Appellant-Insurance Company to contest the same on the grounds legally open to the Appellant-Insurance Company.

59. The amount of Rs. 25,000/- deposited by the Appellant-Insurance Company while filing the present appeal, will be remitted to the Tribunal for being adjusted towards the amount to be deposited by the Appellant-Insurance Company, as per the directions given in the impugned award.

60. Subject to the above observations, the Appeal filed by the Appellant-Insurance Company is dismissed.

61. However, on the facts and in the circumstances of the case, there will be no order as to costs.