

(1999) 04 CAL CK 0081
In the Calcutta High Court

Case No : Civil Appellate Jurisdiction F.M.A. No. 23 of 1998

Sripati Charan Mondal and Another

APPELLANT

Vs

Oriental Insurance Company Ltd.

RESPONDENT

Date of Decision : 26-04-1999

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 1, Order 6 Rule 13, Order 6 Rule 2, Order 8 Rule 2, Order 8 Rule 3
Motor Vehicles (Amendment) Act, 1994 — Section 147(1)
Motor Vehicles Act, 1939 — Section 95
Motor Vehicles Act, 1988 — Section 110(A), 110(B), 140(1), 140(2), 141(2)
Succession Act, 1925 — Section 306
West Bengal Motor Vehicles Rules, 1989 — Rule 180

Citation : (2000) 2 CALLT 353 : (1999) 2 CHN 391 : 2 CWN 246

Hon'ble Judges : Samir Kumar Mookherjee, Acting C.J.; Shyamal Kumar Sen, J

Bench : Division Bench

Advocate : Mr. Krishanu Banik, for the Appellant; Mr P.K. Drolia, for the Respondent

Judgement

S.K. Sen, J.—This appeal is directed against an order passed by the Tribunal dismissing the application u/s 140 of the Motor Vehicles Act, 1988.

2. The appellants are parents of the deceased Amiya Kumar Mondal who was a student in a local school in Hooghly. The appellants claimed a sum of Rs. 25,000/- as compensation for the death of their son due to the accident that occurred in the said vehicle with another vehicle. The said accident occurred on 12.8.1991 at about 13.00 hours when the said victim and other students of the local school were going to Digsui Football Ground in connection with a football match. The driver of the vehicle tried to overtake another vehicle which was going along the road and as a result of collision the said vehicle overturned and many students/passengers sustained injuries and later on the son of the applicants who was admitted in Chinsurah Hospital died due to the injuries in the head. The claimants/ appellants before the learned Tribunal claimed compensation from the Insurance Company u/s 140 of the Act.

3. The Insurance Company/respondent filed written statement. Upon hearing the parties the learned Tribunal came to the finding that the name of the deceased Amiya Kumar Mondal does not appear in the FIR and the persons who have lodged FIR for the said accident have not adduced any evidence regarding the death of the deceased due to the accident in the said vehicle and therefore the claim was dismissed- It was also held by the Tribunal that Amiya Kumar Mondal was a co-passenger in the said vehicle has not been proved. The claimants being aggrieved by the said judgment and order of the Tribunal filed the instant appeal.

4. It has been contended on behalf of the appellants that the Tribunal failed to appreciate the true scope of section 140 of the Motor Vehicles Act. 1988. It should have considered that the accident has arisen out of the use of the motor vehicle and that the same had resulted in death of the person whose legal representative is making the claim and that the claim is binding against the owner and the insured of the vehicle involved in the accident.

5. It has also been argued on behalf of the appellant that u/s 140 of the said Act of 1988 the inquiry is narrow and limited and the Tribunal cannot adjudicate the merits of the defence of the insurer u/s 140 of the said Act. It has further been argued that the question whether or not the Insurance Company is liable to pay compensation on the basis of various defences available to it can only be considered and decided in the course of hearing of the main application u/s 166 of the Act. 1988.

6. It has also been contended on behalf of the appellant that section 140 is in the nature of a beneficial legislation enacted with a view to confer the benefit of expeditious payment of a limited amount by way of compensation to the victims of an accident arising out of the use of a motor vehicle on the basis of no fault liability.

7. Mr. Banik learned Advocate for the appellant has also submitted that the object u/s 140 of the Act, 1988 would be defeated if the claims Tribunal is required to hold regular trial in the same manner for adjudication u/s 166 of the Act.

8. In support of his contention he has referred to the following decisions :--

(i) Shivaji Dayanu Patil and another Vs. Smt. Vatschala Uttam More, ;

(ii) New India Assurance Co. Ltd. Vs. Smt. Savitribai Tukaram Londhe and Others, ;

(iii) Raphik Mehbub Pakhali Vs. Anantkumar Pravinkumar Jajal and Another, .

9. The learned Advocate for the appellant has also refuted the contention of the respondent to the effect that the claim Tribunal cannot reject the claim petition u/s 140 of the said Act on the ground that the vehicle in accident is a goods vehicle and not a passenger vehicle. In support of his contention he has relied upon the following decisions :--

(i) National Insurance Co. Ltd. Vs. Shabirkhan and Others, :

(ii) State of Assam Vs. Pranesh Debnath and Others, ;

(iii) Kalawati Devi Vs. Zawahirul Nisan and Another,

10. The learned Advocate for the appellant has also relied upon the judgment and decision in the case of the United India Insurance Company Ltd. v. Ms. Sukhiabai and Others, reported in AIR 1992 MP 53. In support of his contention that payment of no fault liability is a must and it is to be paid first. This is the first mentioned compensation. Compensation for no fault liability is to be instantly discharged by Insurance Company.

11. Mr. Banik has also referred to section 92(A) of the Motor Vehicle Act and has submitted that a liability under the said section could not be put to an end on any ground whatsoever. He has further submitted that the Parliament made it clear that no fault liability could not be taken away by any other provisions of any other Act. In support of his contention he has relied upon the following decisions :--

(i) The The Oriental Insurance Co. Ltd. Vs. Sm. Maheswari Roy and another, :

(ii) Ravi Kumar and Another Vs. Ram Parkash and Others, .

12. The learned Advocate for the respondent, on the other hand, has referred to paragraph 3 of the written statement and has submitted that only on principles of the observance of the terms and conditions of the Insurance policy, the Insurance Co. will have to deposit Rs. 25,000/- before the learned Court, otherwise liability will not be fastened upon the petitioner.

13. The learned Advocate for the respondent has also referred to paragraph 4 of the written statement which mentioned as follows :--

"The deceased was in no way involved in the capacity of being an employee in respect of the damaged vehicle. That is why the applicant has failed to State monthly salary on account of being an alleged deceased."

14. Mr. Drolia, learned Advocate for the respondent has also referred to the evidence of P.W. 2. He has also submitted that the FIR for the said accident was lodged by Sri Abdul Sattar, an Assistant Teacher and Srikant Mondal and Ex-student. It has been alleged that nowhere in the FIR the name of Amiya has been mentioned and the persons who have adduced evidence have also not referred to the death of Amiya by the said accident. Accordingly, it has been contended that the Tribunal was correct in holding that the claimants failed to prove that Amiya was a passenger in the accident lorry.

15. It has also been argued on behalf of the respondent that since the deceased was one of the passengers of the accident lorry of which more than 50 people were going to football ground to watch football match and the same is not permitted in law to travel in lorry/goods carriage, therefore the respondent in not

liable to pay any compensation for injury or death caused to the passengers due to the accident of the said lorry.

16. Mr. Drolia has referred to the definition of lorry as given in Cambridge International Dictionary. Lorry, according to the said Dictionary means "a truck, a large vehicle used for transporting goods." Mr. Drolia has also referred to Rule 180 of the West Bengal Motor Vehicles Rules, 1989 which inter alia provides as follows :--

"Carriage of persons is goods vehicles

(1) Save in the case of vehicle which is being used for the carriage of troops or police or displaces persons under the authority of the Refugee Rehabilitation Department of the State Government or being used on requisition under the West Bengal Requisition of Vehicles Act or being used in connection with Relief operation under the Authority of the Department of Relief. Government of West Bengal or being used in connection with conduct of Election or a Stage Carriage in which goods are being carried in addition to passengers, no person shall be carried in a goods vehicle other than a bona fide employee of the owner or the hirer of the vehicle and except in accordance with this rule.

(2) The owner or the hirer or a bona fide employee of the owner or the hirer of the vehicle may be carried free of charge in a goods vehicle. The total number of persons so carried-

(i) in a light goods vehicle having gross vehicle weight of less than 1000 kg. not exceeding one;

(ii) in any other light goods vehicle, not exceeding three; and

(iii) in any goods vehicle other than a light goods vehicle not exceeding seven."

17. Mr. Drolia has submitted referring to Rule 180 that in view of the aforesaid provisions there is a bar for travelling in a lorry or goods carriage. He has relied upon the judgment and decision in the case of Oriental Insurance Co. Ltd. Vs. Smt. Irawwa and others, and has submitted that there cannot be any liability attached to the Insurance Company and that the Insurance Company cannot be fastened with liability since the passengers are not permitted to be carried in a goods vehicle. Under the 1988 Act, risk in respect of passengers carried in a goods vehicle should be covered by an Insurance Policy does not arise at all.

18. Referring to the said decision Mr. Drolia has also argued that the Insurance Company is not liable in view of section 147 of the Motor Vehicles Act. 1988 to pay compensation in respect of death or bodily injury to any person travelling in goods carriage as passenger whether as a Hirer or otherwise. In support of his contention he has relied upon the following decisions :--

(i) Oriental Fire and General Insurance Co. Ltd. Vs. M. Bhanumathi and others, ;

(ii) Sardar Mohan Singh Bedi Vs. Manu Maya Thappa and Others, ;

(iii) Oriental Fire and General Insurance Co. Vs. Hirabai Vithal Nikam and Others, ;

(vi) New India Assurance Co. Ltd. Vs. Surjit Kaur and Another, .

(v) M. Kanda Swamy Pillai Vs. Chinnaswamy and Another, .

19. In view of the aforesaid judgments the respondent has submitted that since the deceased Amiya was travelling in a lorry being a goods carriage together with more than 50 others, therefore, the respondent is not liable for payment of any compensation for injury or death caused by the accident of the said lorry.

20. Further submission has been made by Mr. Drolia to the effect that it is admitted position that the vehicle met with the accident and as such although the respondent in his written statement has not stated that the vehicle was goods vehicle the claimants are not entitled to compensation. In view of provisions laid down in Order VI Rule 13 of the Code of Civil Procedure, the respondent is not required to plead any matter of fact which law presumes in his favour. He has referred to Order VI Rule 13 of the CPC Accordingly, the respondent has submitted that the Tribunal has rightly rejected the claim of the appellants.

21. We have considered the submissions of the learned Advocates for the parties and the decisions cited. It appears to us that the learned Tribunal dismissed the application u/s 140 of the Motor Vehicles Act only on the ground that it could not be proved that the victim Amiya was passenger of the lorry No. WBK 5377 and that as a result of collision with another lorry, Amiya was one of the injured when it was capsized. Learned Tribunal also took note of the fact that the informant, ex-student Srikant or the assistant teacher Abdul Sattar who would be best witnesses in the instant occasion for not forthcoming. They did not give any evidence and that the learned Judge of the Tribunal disbelieved the evidence of P.W. 2 that he was a passenger of the lorry in question and saw the accident as alleged by him.

22. It appears that no other question was raised before the learned Tribunal. Section 140 of the Motor Vehicles Act, 1988 provides as follows :--

"140. Liability to pay compensation in certain cases on the principle of no fault-

(1) Where death or permanent disablement of any person has resulted from an accident arising out of the use of a Motor Vehicle or Motor Vehicles, the owner of the vehicle shall, jointly and severally, be liable to pay compensation in respect of such death or disablement in accordance with the provisions of this section.

(2) The amount of compensation which shall be payable under subsection (1) in respect of the death of any person shall be a fixed sum of fifty thousand rupees and the amount of compensation payable under that sub-section in respect of the permanent disablement of any person shall be a fixed sum of twenty five thousand rupees.

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

(4) A claim for compensation under sub-section (1) shall not be defeated by reason of any wrongful act, neglect or default of the person in respect of whose death or permanent disablement the claim has been made nor shall the quantum of compensation recoverable in respect of such death or permanent disablement be reduced on the basis of the share of such person in the responsibility for such death or permanent disablement.

(5) Notwithstanding anything contained in sub-section (2) regarding death or bodily injury to any person, for which the owner of the vehicle is liable to give compensation for relief, he is liable to pay compensation under any other law for the time being in force :

Provided that the amount of such compensation to be given under any other law shall be reduced from the amount of compensation payable under this section or u/s 163A."

23. It appears on perusal of the post-mortem report of the victim, Amiya refers to R.P.S. Chinsurah P.S. Case No. 241/91 dated 12.8.1991 and Magra P.S. Case No. 180/dated 12.8.1991 which clearly relates to the FIR lodged in the instant case and the said position has been admitted by the learned Judge of the Tribunal.

24. In that view of the matter, there was no scope for holding that Amiya was not in the vehicle involved in the accident and the finding of the Tribunal to that extent cannot be sustained.

25. Be that as it may, it has been argued for the first time before us in appeal that the vehicle which carried the students and was involved in the accident was a goods vehicle and therefore no liability arises so far as the Insurance Company is concerned. It may be noted that we have considered the written objection filed before the learned Tribunal and have found that there is no specific allegation to the effect that the vehicle which carried the students including the victim was a goods vehicle. Learned Advocate for the respondent, however, submitted that it is admitted position that the said vehicle was a lorry.

26. It appears that the respondent has not raised any such plea in its written objection which has been mentioned hereinbefore.

27. It is well settled that the question of fact by way of defence has to be specifically raised in the written statement or objection. In this connection it is necessary to consider Order 6, Rules 1 and 2 :--

"O.6, R.1--1. (New Cf. Jud. Act, 1873 section 100)--"Pleading" shall mean plaint

or written statement.

2.(1)--Every pleading shall contain, and contain only, a statement in a concise form of the material facts on which the party pleading relies for his claim or defence, as the case may be, but not the evidence by which they are to be proved."

28. It is also necessary to raise by way of defence in the written statement of matters which show that the suit not to be maintainable or that the transaction is either void or voidable in point of law.

29. Order 8, Rule 2 also requires in this connection :--

"The defendant must raise by his pleading all matters which show the suit not to be maintainable, or that the transaction is either void or voidable in point of law, and all such grounds of defence as, if not raised, would be likely to take the opposite party by surprise, or would raise issues of fact not arising out of the plaint, as, for instance, fraud, limitation, release, payment, performance, or facts showing illegality."

30. It is also well known that the general or mere denial in the written statement is not sufficient and the denial must not be the evasive but specific and necessary but point in question raised in the claim. The said position is clear from the O.8, R.3.

"It shall not be sufficient for a defendant in his written statement to deny generally the grounds alleged by the plaintiff, but the defendant must deal specifically with each allegation of fact of which he does not admit the truth, except damages."

31. There is no specific allegation of fact and no specific defence taken by way of fact that the goods being brought under "goods vehicle". There is no liability attached to Insurance Company. The fact that the goods have been brought by way of goods vehicle has not been taken in the written statement or urged before the Tribunal and as such the said fact, in my view, cannot be urged for the first time in appeal particularly in appeal against an order u/s 140 of M.V. Act. It may be that the respondent, Insurance Company, considering true scope of section 140 did not take the said plea before the Tribunal.

32. The questions of liability of Insurance Company in case of death of a person involved in an accident while travelling in goods vehicle has been considered by the Patna High Court in the case of Kalawati Devi Vs. Zawahirul Nisan and Another, . In the aforesaid decision an appeal u/s 173(1) of the Motor Vehicles Act, 1988 against the judgment and award of the Additional Claims Tribunal, Dhanbad dated 22.4.1994 whereby the claim of the appellant for compensation has been awarded to the extent of Rs. 57,600/- only against the owner of the offending vehicle, the Tribunal having absolved the insurer for the liability of compensation. The appellant being aggrieved by the quantum of compensation as also on the finding that the insurer was not liable in the facts of the case has

filed the said appeal. The appellant claimed compensation of Rs. 3,50,000/-.

33. Considering several decisions of several High Courts, the Patna High Court following the decisions of the Bombay, Allahabad, and Rajasthan High Courts allowed the appeal and held that Insurance Company is liable, The Patna High Court further held that under the new amended Act subsequent repeal/omission of proviso (11) of the old Act means that what was excepted and falls within the main provision. It was further held that the effect of the omission of sub-clause (11) of proviso to sub-section (1) of section 95 means that now the liabilities set out at that (a) and (b) of section 147 of 1988 Act are required to be compulsorily insured.

34. In New India Assurance Co. Ltd. Vs. Kamlaben Sultansinh Jadav and Others, it has been held that the insurer, in order to successfully disclaim his liability on the grounds mentioned in section 96(2)(b) has to establish :

(i) that on the date of the contract of insurance, the insured vehicle was expressly or implicitly not covered by a permit to carry any passenger for hire or reward;

(ii) that there was a specified condition in the policy which excluded the use of the insured vehicle for the carriage of any passenger for hire or reward;

(iii) that the vehicle was, in fact, used in breach of such specified condition on the occasion giving rise to the claim by reason of the carriage of the passenger therein for hire or reward; and

(iv) that the vehicle was used by the insured or at his instance in breach of specific conditions including a condition that in the goods vehicle passengers for hire or reward were not to be carried. If it is done without knowledge of the insured by the driver's acts or omission, the insurer would be liable to indemnify the insured.

35. On the scope of no fault liability u/s 140 and also liability of Insurance Company u/s 147 in respect of an accident taking place in a goods vehicle Gauhati High Court in State of Assam Vs. Pranesh Debnath and Others, held that Insurance Company is liable. In the said decision also the order of the Claims Tribunal awarding compensation of Rs. 25,000/- to the claimant has been challenged on the ground that the deceased was carried as a passenger in the truck in violation of terms and conditions of policy of insurance and it has been contended on behalf of the Insurance Company that it has no liability to the same. Referring to the Full Bench decision of the Gauhati High Court in New India Assurance Co. Ltd. Vs. Satyanath Hazarika and Others, it was held that the Insurance Company is liable to pay compensation in respect of death of or bodily injury to a gratuitous passenger. It was also held that the insurer would be liable to indemnify the insured in respect of compensation awarded against him for the death of or bodily injury to a gratuitous passenger also.

36. Accordingly, relying upon the decision of Gauhati High Court in New India

Assurance Co. Ltd. v. Satyanath Hazarika it was held in the aforesaid decision that the claimant was entitled to get interim compensation u/s 140 of the said Act.

37. The Orissa High Court in the case of Divisional Manager. Oriental Insurance Company Ltd. v. Jasoda Mohanta and Others, reported in 1 (1997) ACC 175 held that analysis of language of section 147(1)(b)(1) of the Motor Vehicles Act, 1988 leaves no doubt that the words "any person" means not only third party, but also other persons and the word "vehicle" covers all kinds of vehicles including a goods vehicle. In case of death or bodily injury the Legislature has used the words "any person" while in case of damage to property the Legislature has confined it only to property of a third party. This difference in language is indicative of the wider coverage in case of death or bodily injury.

38. It was further held by the Orissa High Court in the aforesaid decision that by the Motor Vehicles (Amendment) Act, 1994 section 147(1)(b)(1) has been amended substituting the words "Injury to any person, including owner of the goods or his Authorised Representative carried in the vehicle" for the words "carry to any person". The said amendment has made it further clear that "any person" has been used in a wider sense.

39. In order to consider the difference in the earlier Act and the present Act, it is necessary to consider the material provisions of section 95 of the Motor Vehicles Act, 1939 and section 147 of the Motor Vehicles Act, 1988 including its amendments. The material portion of section 95 of the Act are set out hereinbelow :--

"95. Requirements of policies and limits of liability :

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

(a) is issued by a person who is an authorised or by a Co-operative Society allowed u/s 108 of transact the business of an insurer, and

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

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

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

provided that a policy shall not be required :

(i) to cover liability in respect of the death arising out of and in the course of his employment of the employees of a person insured by the policy or in respect of bodily injury sustained by such an employee arising out of and in the course of

his employment other than a liability arising under the Workmen's Compensation Act, 1923 (8 of 1923) in respect of the death of or bodily injury to. any such employees:

- (a) engaged in driving the vehicle, or
- (b) If it is a public service vehicle, engaged as a conductor of the vehicle or in examining ticket on the vehicle, or
- (c) if it is a goods vehicle, being carried to the vehicle, or
- (ii) except where the vehicle is a vehicle in which passengers are carried for hire or rewards or by reason of or in pursuance of a contract of employment, to cover liability in respect of the death of or bodily injury to persons being carried in or upon or entering or mounting or alighting from the vehicle at the time of the occurrence of the event out of which a claim arises, or
- (iii) to cover any contractual liability."

40. The material provisions of section 147 as it stood before the 1994 Act are quoted below :--

"147. Requirements of policies and limit of liability :

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

- (a) is issued by a person who is an authorised insurer; and
- (b) insurer the person or classes of persons specified in the policy of the extent specified in sub-section (2);
- (i) against any liability which may be incurred by him in respect of any death of or bodily injury to any person or damage to any property of a third party caused by or arising out of the use of the vehicle in a public place;
- (ii) against the death of or bodily injury to any passenger of a public service vehicle caused by or arising out of the use of the vehicle in a public place;

provided that a policy shall not be required-

(i) to cover liability in respect of the death arising out of and in the course of his employment of the employee of a person insured by the policy in respect of bodily injury sustained by such an employee arising out of and in the course of his employment other than a liability arising under the Workmen's Compensation Act. 1923 (8 of 1923) in respect of the death of, or bodily injury to any such employee-

- (a) engaged in driving the vehicle, or
- (b) if it is a public service vehicle engaged as a conductor of the vehicle in examining tickets on the vehicle, or

- (c) if it is a goods carriage, being carried in the vehicle, or
- (ii) to cover any contractual liability".

41. It appears that section 95(1)(b)(i) of the Motor Vehicles Act, 1939 contained the same language as section 147(1)(b)(i) as it stood before the Motor Vehicles (Amendment Act, 1994). But one of the provisions of section 95 of the said Act, 1939 excluding specified classes of persons from the statutory requirement of insurance coverage, has been omitted in section 147 of the Motor Vehicles Act, 1988.

42. Amendment Act, 1994 in respect of section 147(1)(b)(i) substituted the words "Injury to any person" including owner of the goods or the authorised representative carried in the vehicle for the words "injury to any person". It has been made further clear by the said amendment that any person has been used in a wider sense. Judgment and decision in the case of D.M. Oriental Insurance Co. Ltd. v. Jasoda Mahanta, reported in 1(1997) AC 175 clearly lays down that the words "any person" even prior to the amendment were not confined only to third party but the same has a wider coverage and the amendment is only clarificatory in nature. Learned Judge of the Orissa High Court has observed as follows in paragraph 14 of the said judgment :

"By the Motor Vehicles (Amendment) Act. 1994 section 147(1)(b)(i) has been amended substituting the words "injury to any person, including owner of the goods or his authorised representative carried in the vehicle for the words "injury to any person". The said amendment has made it further clear that "any person" has been used in a wider sense. It has been argued on behalf of the appellant that the said amendment indicates that prior to such amendment the words "any person" did not include the owner of the goods or his authorised representative carried in the vehicle. As already stated herein before that the words "any person" even prior to the amendment were not confined to only third party but the same had a wider coverage. The nature of the amendment shows that the same is clarificatory by nature. The plain meaning of the words "any person" is "all persons" and accordingly it was not at all necessary to insert the words "including the owner of the goods or the authorised representative carried in the vehicle". In view of the conflicting and divergent interpretations by different Courts the said words have been added to put an end to all possible controversies. It is well known that in many cases Legislature has added or deducted words in order to clarify the position, to clear up and ambiguity and to prevent any scope for conflicting interpretation. It is also an accepted rule of interpretation of statutes that when an amendment is made to clarify things it ordinarily means that the unamended provision had included and covered these introduced by way of clarification."

43. On proper interpretation of section 147(1)(b)(i) of the Act of 1988 it is clear that words "any person" includes not only third party but also other person and the word "vehicle" covers all kinds of vehicle including a goods vehicle in case of

death or bodily injury. The Legislature has used the words "any person" while in case of damage to property, the Legislature has confined it only to property of a third party. This view has been taken by the Orissa High Court in the aforesaid decision.

44. In the aforesaid decision the learned Judge considering several decisions took the view that under the Motor Vehicles Act, 1988 the words "any person" used in section 147(1)(b)(i) include persons carried by even a goods vehicle and are not confined to third party only, the Insurance Company cannot escape their statutory liability.

45. Scope of section 140 and of no fault liability u/s 140 was considered by the Bombay High Court in the case of *Raphik Mehbub Pakhali v. Anantkumar Pravinkumar Jalal and Another*, reported in 1996 ACJ 356 wherein the learned Judge considered several decisions and held and observed inter alia in paragraph 13 of the said judgment as follows :--

"13. In a series of judgments, it has been consistently held that the scope of enquiry to an application u/s 140 is extremely limited. One has to only ascertain as to whether (i) the accident has arisen out of the use of the motor vehicle, (ii) the said accident has resulted in a permanent disablement of the person who is making the claim or the death of a person whose legal representatives are making the claim, and (iii) the claim is made against the owner and insurer of the motor vehicle involved in the accident. Once these three factors are established, prima facie, in my view, the claimant is entitled to succeed in an application u/s 140 of the Motor Vehicles Act. I may now briefly refer to some of the judgments in this behalf."

46. It will not be out of place to consider the following paragraphs of the said judgment. Paragraph 15, 16, 17 are set out hereinbelow :--

"15. In *New India Assurance Co. Ltd. v. Minquel Laurence Correia* 1986 Min. L.J. 242 : 1986 ACJ 646 (Bom) Cuno, J considered the provisions of section 92-A and observed that :

"Section 92A of the Motor Vehicles Act is a beneficial legislation and provides for liability to pay compensation in certain cases on the principle of no fault Section 92-A(2) lays down that the amount of compensation which shall be payable under sub-section (1) in respect of death of any person shall be a fixed sum of fifteen thousand rupees and the amount of compensation payable in respect of permanent disablement of any person shall be a fixed sum of rupees seven thousand five hundred. The scope and nature of enquiry u/s 92-A is very limited and the question as to whether or not the insurance company is liable to pay compensation for different reasons is to be dealt with and decided in the course of the hearing of the main application for compensation u/s 110-A of the Act, The requirements u/s 92-A are only whether (a) a vehicle had been involved in accident; (b) a person died or sustained permanent disablement as a result of such accident; and (c) with whom the vehicle was insured. This is so because

irrespective of any fault, the legal representatives of the dead persons or the person who had suffered a permanent disablement are to be given a quick and effective temporary relief. It is open to the insurance company to raise any or all the defences which are available to it under the Act, particularly that under the terms and conditions of the insurance policy, the insurance company is not liable to pay any compensation. But this aspect of the case is to be dealt with in the course of the proceedings for compensation u/s 110-B of the Act and if ultimately the company succeeds in establishing that under the terms and conditions of the insurance policy, it is not liable to pay compensation then, the insurance company will be entitled to get money paid u/s 92-A of the Act repaid to it by the owner of the vehicle. A direction to this effect has necessarily to be made by the Tribunal itself while disposing of the application u/s 110-B of the Act, so as to avoid the insurance company to be dragged in further litigation."

"16. In *Oriental Fire & General Insurance Co. Ltd. v. Aleixo Fernandes* 1986 ACJ 1137 (Bom), G.D. Kamat. J observed that section 92-A has to be interpreted as a beneficial provision and construction must be adopted on that basis. Even the defence of the driver having no licence cannot be raised at the stage of making order u/s 92-A and it was held in that case that this will be an issue in the main petition. Relevant observations are to be found in paras 11 and 12 at pages 1142-43 of the report."

"17. A Division Bench of this Court, Dharmadhicari and Sujata Monohar, JJ, (as she then was) had occasion to consider the scheme of section 92-A in the case of *Paradurang Narayandes Sarada v. Subhash Copal Changale*. 1989 ACJ 879 (Bom). Relying upon the Supreme Court decision in the case of *Gujarat State Road Transport Corporation, Ahmedabad Vs. Ramanbhai Prabhatbhai and Another*, and in the case of *Guru Govekar Vs. Miss Filomena F. Lobo and Others*, , the Division Bench observed as under :--

"However, we find some substance in the contention of Mr. Kudrelli that so far as the compensation payable u/s 92-A of the Act is concerned, the insurance company will be liable. To say the least this position is conceded by Mr. Chaphekar. This concession of Mr. Chaphekar is based on the decisions of the Supreme Court in *Gujarat State Road Transport Corporation, Ahmedabad Vs. Ramanbhai Prabhatbhai and Another*, , and *Guru Govekar Vs. Miss Filomena F. Lobo and Others*, . In *Guru Govekar*'s case the Supreme Court has observed "while it may be true, as we have observed earlier, that under the law of Torts owner may not be liable on the principle of vicarious liability, the insurer would be liable to pay the compensation by virtue of the provisions of section 94 and section 95 of the Act, referred to above." Therefore, we hold that the insurance company will be liable to indemnify the owner so far as the compensation payable u/s 92-A of the Motor Vehicles Act is concerned. Similar view seems to have been taken by the Rajasthan High Court in *Narendra Singh Vs. Oriental Fire and General Insurance Co. Ltd., Delhi and Others*, and *Mohanlal Vs. National Insurance Company Ltd. and Others*, ."

47. Judgment and decision in the case of New India Assurance Co. Ltd. Vs. Smt. Savitribai Tukaram Londhe and Others, relied upon by learned Advocate for the appellant may also be taken note of. In the aforesaid decision there was several appeals arising out of one accident and orders of payment of compensation of no fault liability to the extent of Rs. 15,000/- to the claimants in each of the petitions and all the seven appeals were taken up together and disposed of by the common judgment. In fact, all the seven claim applications as well as applications u/s 92-A are identical. According to the case set out in the claim petitions, the deceased along with other relatives and family of one Bhiva Gaikwad were travelling in a Matador bearing No. MTO-8416 owned by Purushottam Tukaram Gadade. The said vehicle was insured with the present appellant. New India Assurance Co. Ltd. According to the case set out in the claim petitions, the owner of the said Matador was having relation with the said Bhiva Gaikwad and accordingly the said Bhiva had requested the owner of the Matador for carrying the goods and articles from Baramati to Purandar and back and, for the purpose of safety of these articles, the owners of these articles were travelling in the Matador. On 15.12.1986 at about 1 a.m. near kilometre No.6 on Nira Baramati Road, near the village Korhale Budrak when the said Matador was proceeding towards Baramati after the marriage ceremony carrying various persons, the Matador met with an accident. According to the claimants, the Matador was loaded with bags and other material in its back which was necessary for the marriage ceremony. The claimants have alleged that the driver of the vehicle viz. Suresh Tukaram Gadade was driving the vehicle rashly and negligently with high and excessive speed and could not negotiate the curve on the road and dashed against a tree which was on the wrong side of the vehicle. Because of the severe impact, 16 persons died on the spot as well as on the way to the hospital and other 20 to 25 persons were seriously injured. Each of the claimants claimed compensation against the owner, the driver as well as the insurer. Application for no fault liability u/s 92-A was also filed by the claimants praying therein that they were entitled to an amount of Rs. 15,000/- as no fault liability against the opponents and accordingly prayed that appropriate directions be issued to the opponents for payment of no fault liability.

47. The New India Assurance Co. Ltd. the appellant in all the appeals, filed written statement and reply to the application u/s 92-A of the Motor Vehicles Act, 1939 before the Tribunal and set up the plea that the vehicle MTQ-8416 was insured with insurer as a public carrier and, therefore, it was not required to cover the risk of persons being carried in it and the insurance policy also does not cover the risk of persons travelling in the goods vehicle. The insurer set up the plea that the owner committed breach of specific condition mentioned in policy by carrying passengers in the goods vehicle and insurer was, therefore, not liable. With regard to the claim u/s 92-A of the Motor Vehicles Act, 1939 the insurer replied in para 6 of the reply that if the Court holds the insurer liable to meet the liability under no fault and ultimately if the insurer succeeds in establishing that under terms and conditions of the insurance policy it was not

liable to pay compensation, then insurer will be entitled to get back money paid u/s 92-A from the owner of the vehicle and therefore prayed that direction to this effect be necessarily made.

49. The Tribunal considered the application u/s 92-A and ordered the owner as well as insurer to jointly and severally pay an amount of Rs. 15,000/- to the claimants in each claim application.

50. Against the said order appeal was preferred by the Insurance Company.

51. Learned Judge of the Bombay High Court held in paragraph 9 of the said judgment at page 478 of the said report as follows :--

"Section 92-A was inserted in the Motor Vehicles Act, 1939 with the object that an amount of Rs. 15,000/- is made available to the claimant in case of death and Rs. 7,500/- in case of permanent disablement as expeditiously as possible before the claim is finally adjudicated u/s 110-A of the Motor Vehicles Act. 1939. When this beneficial legislation was enacted by way of section 92-A the legislature intended to provide certain immediate relief to the claimant till the main claim was adjudicated and decided and such compensation u/s 92-A was based on the principle of on fault. The legislature never intended that while considering an application u/s 92-A for no fault liability, the Tribunal must be involved in comprehensive issue of fact and law that may be required to be decided on completion of claim application at the time of adjudication of the claim. The niceties of the defence that may be available to the owner or insurer could only be decided after the parties had led evidence, but no such elaborate enquiry is required to be made at the time of disposal of an application u/s 92-A."

52. While dealing with the several other decisions the learned Judge of the Bombay High Court inter alia also observed that the nature of enquiry u/s 92-A was very limited. It was clarified in the said decision that even on the face of the insurance policy, without going into the matter any further. If it appears that no liability can be attached to in the Insurance Company then in such event the Insurance Company cannot be fixed with such liability. If, however, certain enquiry is required to be made regarding policy of insurance in view of the fact stated in the claim petition, the Tribunal cannot adjudicate the merits of the defences of the insurer u/s 92-A. The enquiry u/s 92-A is narrow and limited but at the same time. It does not exclude the prima facie consideration by the Tribunal whether the risk was covered on the face of the insurance policy or not and that prima facie opinion has to be based on the face of the insurance policy alone and on no other material and evidence.

53. Judgment and decision in the case of Shivaji Dayanu Patil and another Vs. Smt. Vatschala Uttam More, a relied upon by the learned Advocate for the appellant may be taken note of. In the aforesaid decision the Supreme Court had explained the scope of sections 92-A, 110-A and 92-B of the Motor Vehicles Act, 1939. The Supreme Court while explaining the object of the said sections observed inter alia as follows :--

"The object underlying the enactment of section 92-A is to make available to the claimant compensation amount to the extent of Rs. 15,000/- in case of death and Rs. 7,500/- in case of permanent disablement as expeditiously as possible and the said award has to be made before adjudication of the claim u/s 110-A of the Act. This would be apparent from the provisions of section 92-B of the Act. Section 92-B of the Act provides that a claim for compensation u/s 92-A in respect of death or permanent disablement of any person shall be disposed of as expeditiously as possible and where compensation is claimed in respect of such death or permanent disablement u/s 92-A shall be disposed of as aforesaid in the first place. With a view to give effect to the said directive contained in section 92-B of the Act, the Maharashtra Government has amended the Rules and has inserted special provisions in respect of claims u/s 92-A in Rules, 291-A, 291-B, 297(2), 306-A, 306-B, 306-C and 306-D of the Rules. The object underlying the said provisions is to enable expeditious disposal of a claim petition u/s 92-A of the Act. The said object would be defeated if the Claims Tribunal is required to hold a regular trial in the same manner as for adjudicating a claim petition u/s 110-A of the Act. Moreover, for awarding compensation u/s 92-A of the Act the Claims Tribunal is required to satisfy itself in respect of the following matters :

- (i) an accident has arisen out of the use of a Motor Vehicle;
- (ii) the said accident has resulted in permanent disablement of the person who is making the claim or death of the person whose legal representative is making the claim;
- (iii) the claim is made against the owner and the insurer of the motor vehicle involved in the accident."

54. The Division Bench of this Court in the case of *The Oriental Insurance Co. Ltd. v. Sm. Maheswari Roy and Another*, reported in AIR 1992 Cal 33 held that the liability u/s 92-A of the Motor Vehicles Act could not be put to an end because of the death of the victim subsequently or for any other ground whatsoever. The Parliament made it clear that no fault liability could not be taken away by any other provisions of any other act and as such in the facts and circumstances of the case, section 306 of the Indian Succession Act had no manner of application to a proceeding under Chapter VIIA of the Motor Vehicles Act. The Oriental Insurance Company cannot be allowed to avoid or evade its liability u/s 92A of the Motor Vehicles Act in the facts and circumstances of the case.

55. The Division Bench further observed in paragraph 7 of the said judgment at page 332 of the said report as follows :

"Accordingly, we are of the view that the proceeding initiated under Chapter VIIA of the Motor Vehicles Act could not be said to have been abated by virtue of provisions of section 306 of the Indian Succession Act. It is very unfortunate that on this technical plea which has no substance, the Insurance Company spending lot of money from the funds of the Corporation and preferred this appeal when

the liability of the Insurance Company to pay compensation in this case is limited to Rs. 7,500/- public money should not have been wasted in such luxury litigation by the Insurance Company."

56. The Madhya Pradesh High Court in the case of United India Insurance Co. Ltd.. Gwalior v. Mst. Sukhiabai and Others, reported in AIR 1992 MP 53 considered the scope of no fault liability u/s 140 of the Motor Vehicles Act, 1988 and held in paragraph 6 at page 55 of the said report follows :--

"However, I cannot say that the apprehension which Shri. Johri has expressed is wholly without any basis in that there will be likelihood of the insurer losing its entitlement to claiming statutorily envisaged exoneration subsequently in the same proceeding. In terms of section 149(2) and 170 of the Act. About that, more later, because in my dissent in Bhagwandas 1990 ACC CJ 495 (Madhyapradesh), certain views I expressed on the corresponding provision of the Old Act, section 96(2). At this stage, however, I must say that the proviso to section 168(1) also clearly indicates that the provision for payment of adhoc compensation on the principle of "no fault liability" contemplated u/s 140 is an independent provision. Section 144 adds to the regous of the rigid mandate section 140. Indeed, section 141(2) of the same Chapter X embodying section 140 as well, vests on the Tribunal an inexorable duty of dealing with add disposing of "as expeditiously as possible" the claim for compensation contemplated u/s 140. Reliance, therefore, of Shri. Knot on this Court's decision in Mahila Ramdei Vs. Nand Kumar and Others, is most appropriate as this Court has taken the view that the Claims Tribunal is required to exercise u/s 92-A, Motor Vehicles Act, 1939 its jurisdiction suo motu to pass an order thereunder in the absence of an application for the contemplated relief. In New India Assurance Co. Vs. Smt. Phoolwati and Others, , this Court has held that the moment it is found by a Court or Tribunal on material available to it that one or more motor vehicle/motor vehicles is or are involved in an accident, the provisions of section 92-A become alive and generate sufficient power to enable jurisdiction to be exercised thereunder to help the hapeless and helpless. Relief, in my view, according to the contemplation of the Legislature, is to be provided to the widows and orphans quickly and instantly to preempt and prevent their destitution and vagrancy and that object of the Legislature can be fulfilled only if the order u/ s 140 is passed imaginatively to ensure the relief to reach quickly, effectively and positively to the destituted. It is, indeed, therefore, desirable rather than. as done in the instant case in the impugned award. If any of the two vehicles (in case in which the accident is one of a collision between the two) is an insured vehicle, order u/s 140 is expeditiously passed specifying that the liability under that order is to be discharged by the insurer. However, the Claims Tribunals are advised to frame their orders suitably to conform also to the language used in section 140(1) to hold primarily the "owners" of both motor vehicles in such a case to be "Jointly and severally" liable to discharge the "no fault liability" contemplated u/s 140(1). By that, the jurisdiction of the Claims Tribunal to indicate insurer's statutory liability contemplated u/s 149 is not impaired and the

Tribunal may still name the insurer as person liable to discharge the liability in respect of order passed u/s 140(1) of the Act; but that will leave no doubt at least about the right of the insurer to agitate subsequently exonerating finally of his liability and to press for an order for reimbursement by way of restitution."

57. Judgment and decision in the case of National Insurance Co., Jabalpur Vs. Sadhelal and Another, may also be taken note of. In the aforesaid decision the Tribunal directed of payment of interim compensation u/s 92-A jointly to the owner and the Insurance Company. Appeal was filed against the said interim award by the Insurance Company. The insurer/appellant contended at the relevant time i.e. at the time of the accident the vehicle in question was being used in direct breach of conditions contained in the insurance Policy and as such the insurer-appellant could not be held jointly liable along with the owner of the vehicle to pay the amount of compensation u/s 92-A of the Act to the claimant-respondent No. 1.

58. The Madhya Pradesh High Court, however, held that it cannot be disputed that under the provisions of the Motor Vehicles Act there are certain statutory defences open to an insurer on the basis of which in spite there being an Insurance Policy issued by it being in operation at the relevant time it can still avoid not only its final liability but also its liability to pay interim compensation u/s 92-A of the Act in a claim case. But, then, needless to say, in all such cases the burden lies on the insurer to plead the relevant statutory defences and to prove the same to the satisfaction of the Tribunal. In fact, it is the said aspect of the matter which creates difficulty in determining the joint liability of the insurer at the stage of payment of interim compensation u/s 92-A of the Act.

59. It was also observed in the aforesaid decision that if the insurer-appellant has to be offered an opportunity to adduce evidence in support of the statutory defence or defences raised by it at the stage of payment of interim compensation u/s 92-A of the Act, the procedure adopted is bound to be a time consuming one and is likely to defeat the very purpose for which the said section has been enacted. Accordingly, bearing in mind the object of enacting section 92-A of the Act, it is but fair not to adopt such a procedure at the stage of the said section. At the said stage, if the Tribunal is prima facie satisfied, from the material on record that the vehicle which was involved in the accident belonged to the party who is joined as the owner of the vehicle and that the said owner has an Insurance Policy in his favour covering his liability to pay interim compensation u/s 92-A of the Act, the said facts should be regarded as sufficient by the Tribunal for directing both the owner of the vehicle and the insurer jointly to pay the amount of interim compensation under the said section to the claimant.

60. The High Court further observed and held in paragraph 6 of the said judgment as follows :--

"From what has been stated above, it should not be inferred that the insurer has to be denied the right to plead and establish the statutory defences, if any,

available to it under the provisions of the Act and contend that in the facts and circumstances of the case it is neither liable to pay the final amount of compensation nor the interim amount of compensation u/s 92-A of the Act. What is really meant is that the trial of such defence/defences has to be postponed to be held along with the other issues framed in the claim case and that if the insurer is successful in establishing any such defence/defences, the owner of the vehicle is to be held liable to reimburse the said amount to the insurer in the final award to be made by the Tribunal."

61. Accordingly, the High Court was of the view that no fault can be found with the Tribunal having held the insurer-appellant jointly liable along with owner of the vehicle to pay the amount of interim compensation to the claimant-respondent No. 1 at the stage of section 92-A of the Act in the claim case in question. In fact, the High Court observed that the impugned order does not deprive the insurer-appellant to plead whatever defences might be available to it under the Motor Vehicles Act and establish that it is not liable to pay the amount of interim compensation u/s 92-A of the Act. As mentioned above, if it is successful in establishing the relevant statutory defence/defences, it shall be entitled to obtain a direction against the owner of the vehicle for the reimbursement of the amount of interim compensation, if any,- recovered from it.

62. With the observations as above, the Madhya Pradesh High Court dismissed the appeal.

63. On behalf of the respondent, Oriental Insurance Co. Ltd. the following decisions have been relied upon :--

- (i) Oriental Fire and General Insurance Co. Ltd. Vs. M. Bhanumathi and others, ;
- (ii) Sardar Mohan Singh Bedi Vs. Manu Maya Thappa and Others, ;
- (iii) Oriental Fire and General Insurance Co. Vs. Hirabai Vithal Nikam and Others, ;
- (iv) M. Kanda Swamy Pillai Vs. Chinnaswamy and Another, .

64. It may be noted that all the aforementioned decisions were based upon the earlier Act; 1939 and did not take into account, the Act of 1988 along with the subsequent amendment made with regard to section 95(1)(b)(i) of the Act, 1939 wherein specified classes of persons have been excluded from the statutory requirement of insurance coverage by omission made in section 147 of the said Act, 1988.

65. It is clear from the language of section 147(1)(b)(i) of the said Act, 1988 that the words "any person" means not only third party but also other persons and the word "vehicles" covers all kinds of vehicles including goods vehicle. In case of death or bodily injured, the legislature used the word "any person" while in case of damage to property, the legislature confined it only to third party. This difference in language clearly indicates wider coverage in case of death of

bodily injury. Orissa High Court in the case of Divisional Manager, Oriental Insurance Co. Ltd. v. Jasada Mahanto and Others, reported in 1997 SCC 175, which has already been taken note of has explained the situation in proper perspective. It may be noted that all the decisions relied upon by Mr. Drolia do not take into account the effect of the provisions made in the Act of 1988 along with the subsequent amendment in 1994 as noted aforesaid and as such the principles laid down in the said decisions. In our view, cannot apply to the facts of the instant case.

66. Judgment and decision in the case of Smt. Mallawwa Etc. Vs. The Oriental Insurance Co. Ltd. and Others, relied upon by the learned Advocate for the appellant cannot have any application in the facts of the instant case in view of the specific finding made in the said judgment. In paragraph 13 thereof at page 595 which is quoted hereinbelow :--

"13. The 1939 Act is now replaced by the 1988 Act. Section 147 which corresponds to old section 95 has been substantially altered by the legislature. Therefore, the above interpretation of section 95 of the 1939 Act will govern the cases which have arisen under the 1939 Act According to our interpretation of section 95(1)(b)(i) and the proviso, the appeals filed by the Insurance Company are allowed. In SLP (C) Nos. 10745, 10747 and 10748 of 1995 filed by the Insurance Company, "leave" is granted and those appeals are also allowed. The appeals filed by the claimants/owners of the vehicles are dismissed. SLP (C) No. 9727 of 1989 filed by the owner of the vehicle is also dismissed."

67. It has been made clear in the aforesaid decision that the interpretation made in the said decision will only apply to the cases which have arisen under 1939 Act and therefore the principles decided in the aforesaid case cannot have any application in the instant case.

68. However, judgment and decision in the case of M/s. United India Insurance Co. Ltd. v. B. Hamawatt & Ors. is an unreported judgment passed by the Division Bench of this Court which one of us is a party may be taken note of. The said principles decided in the aforesaid decision applies with full force in the instant case.

69. Considering all aspects of the matter, we are of view, that this appeal should be allowed. The order passed by the Tribunal u/s 140 of the Motor Vehicles Act, 1988 dated 21.9.1996 in M.A.C Case No. 45 of 1992 is according set aside.

70. The respondent Insurance Company is directed to pay Rs. 25,000/-as compensation to the claimants on account of the death of the son of the appellant due to the accident that occurred on 12.8.1991 in the said vehicle by account payee cheque through the advocate on record of the appellant on identification of the appellant by the said advocate within four weeks from date of communication of the order.

It is, however, made clear if at the final hearing, the Insurance Company succeeds in its defence, it will be open for the Insurance Company to recover the same from the owner of the vehicle.

S.K. Mookherjee, A.C.J.

71. I agree with the conclusion.

Later :

The prayer for stay of operation of this judgment is refused.

Let urgent xerox certified copies of this judgment be handed over to the learned Advocate, for the parties, within ten days from the date of deposit of requisite stamps and folios.

72. Appeal Succeeds