

**(1987) 01 GAU CK 0005**  
**In the Gauhati High Court**

**Case No :** F.A. No. 57 of 1980 and Civil Revision No. 220 of 1980

|                                                 |            |
|-------------------------------------------------|------------|
| The Oriental Fire and General Insurance Company | APPELLANT  |
| Vs                                              |            |
| Smt. Nani Bala Devi and Another                 | RESPONDENT |

**Date of Decision :** 05-01-1987

**Acts Referred:**

Motor Vehicles Act, 1939 — Section 95, 96, 96(1)  
Workmens Compensation Act, 1923 — Section 12, 12(2), 13, 19

**Citation :** (1987) 1 ACC 553 : (1987) ACJ 655 : AIR 1988 Guw 40 : (1989) 65 CompCas 609

**Hon'ble Judges :** B.L. Hansaria, J

**Bench :** Single Bench

**Advocate :** A.K. Bhattacharyya and A.K. Das, for the Appellant; N.C. Das and R.K. Jain, for the Respondent

**Final Decision :** Dismissed

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## Judgement

B.L. Hansaria, J.—These cases have raised a question of general importance which is related to granting of compensation under the provisions of the Workmen's Compensation Act, 1923, hereinafter the Workmen's Act. The question is whether an insurance company can be directed to pay the compensation awarded to a workman.

2. The facts which need be noted are these. Deceased Tarini was employed as handyman-cum-cleaner of truck No. ASU 3181 which was owned by the respondent/opposite party No. 2 Shri Ghewar Chand Jain who had insured his vehicle with the appellant as required by the provisions of the Motor Vehicles Act, 1939, hereinafter the MV Act. The workman had sustained injuries in an accident arising out of, and in the course of, his employment. The accident had taken place on 14-3-78 and the workman succumbed to his injuries on 21-3-78. The Commissioner appointed under the provisions of the Workmen's Act was approached by the widow of the deceased claiming a sum of Rs. 18,000/- as compensation as the monthly salary of the deceased was Rs. 250/-. The

Commissioner on being satisfied that the accident had been caused in the course of employment of deceased Tarini, and finding that the amount claimed was as provided in Schedule-IV of the Workmen's Act, ordered both the owner and the insurer, who were arrayed as parties before the Commissioner, to pay a sum of Rs. 18,000/-. Feeling aggrieved, the insurer has preferred this appeal. A revision petition has also been filed as a measure of abundant caution. Both the appeal and the revision having raised common question of law were heard together and are being disposed of by this common judgment.

3. The facts of the case are not in dispute. It has also been admitted by the appellant that the policy taken out by the owner of the vehicle was valid at all relevant time. The only question agitated by Shri Bhattacharyya, learned counsel for the appellant/petitioner, is relatable to that part of the order of the learned Commissioner by which he asked the insurer also to make payment. The contention of the learned counsel is that such order could not have been passed within the four corners of the Workmen's Act. The rival submission of Shri Das is that an insurer is also liable to pay compensation under the Workmen's Act, if attention is paid to certain provisions of the MV Act.

4. Shri Bhattacharyya has urged that the Workmen's Act is a self-contained Code and its provisions alone are required to be borne in mind while deciding the question of quantum of compensation as well as the liability of the persons to pay compensation. As the approach in this case was to the Commissioner appointed under the provisions of the Workmen's Act, it is urged by Shri Bhattacharyya that the provisions of the MV Act would not apply. If attention were to be confined to the provisions of the Workmen's Act, it is submitted that the appellant could have been made liable only u/s 14 of the Act, which has no application in the case at hand.

5. To appreciate these contentions of Shri Bhattacharyya, let the relevant provisions of the Workmen's Act be noted. Before this is done, it may be pointed out that this Act was enacted to "provide for the payment by certain classes of employers to their workmen of compensation for injuries by accident".

The relevant provisions are :

"Section 2. Definitions -- (1) In this Act, unless there is anything repugnant in the subject or context-

(a) \*\*\* \*\* (b) "commissioner" means a Commissioner for Workmen's Compensation appointed u/s 20;

(c) "compensation" means compensation as provided for by this Act;

(d) \*\*\* \*\* (e) "employer" includes any body of persons whether incorporated or not and any managing agent of an employer and the legal representative of a deceased employer, and, when the services of a workman are temporarily lent or let on hire to another person by the person with whom the workman has entered into a contract of service or apprenticeship, means such

other person while the workman is working for him;

\*\*\* \*\* Section 3. Employer's liability for compensation. (1) If personal injury is caused to a workman by accident arising out of and in the course of his employment, his employer shall be liable to pay compensation in accordance with the provisions of this Chapter :

\*\*\*\* \*\* Section 12. Contracting -- (1) Where any person (hereinafter referred to as the principal) in the course of or for the purpose of his trade or business contracts with any other person (hereinafter in this section referred to as the contractor) for the execution by or under the contractor of the whole or any part of any work which is ordinarily part of the trade or business of the principal, the principal shall be liable to pay to any workman employed in the execution of the work any compensation which he would have been liable to pay if that workman had been immediately employed by him; and where compensation is claimed from the principal, this Act shall apply as if references to the principal were substituted for reference to the employer except that the amount of compensation shall be calculated with reference to the wages of the workman under the employer by whom he is immediately employed.

(2) Where the principal is liable to pay compensation under this section, he shall be entitled to be indemnified by the contractor, for any other person from whom the workman could have recovered compensation and where a contractor who is himself a principal is liable to pay compensation or to indemnify a principal under this section shall be entitled to be indemnified by any person standing to him in the relation of a contractor from whom the workman could have recovered compensation and all questions as to the right to and the amount of any such indemnity shall, in default of agreement be settled by the Commissioner.

(3) -- (4) ?\*\*\*\* \*\* Section 13. Remedies of employer against stranger -- Where a workman has recovered compensation in respect of any injury caused under circumstances creating a legal liability of some person other than the person by whom the compensation was paid and any person who has been called to pay an indemnity u/s 12 shall be entitled to be indemnified by the person so liable to pay damages as aforesaid.

Section 14. Insolvency of employer -- (1) Where any employer has entered into a contract with any insurers in respect of any liability under this Act to any workman, then in the event of the employer becoming insolvent or making a composition or scheme of arrangement with his creditors or, if the employer is a company, in the event of the company having commenced to be wound up, the right of the employer against the insurers as respect that liability shall, notwithstanding anything in any law for the time being in force relating to insolvency or the winding up of companies, be transferred to and vest in the workman, and upon any such transfer the insurers shall have the same rights and remedies and be subject to the same liabilities as if they were the employer, so however, that the insurers shall not be under any greater liability to the

workman than they would have been under the employer.

\*\*\*\* \* Section 19. Reference to Commissioners -- (1) If any question arises in any proceedings under this Act as to the liability of any person to pay compensation (including any question as to whether a person injured is or is not a workman) or as to the amount or duration of compensation (including any question as to the nature or extent of disablement), the question shall, in default of agreement, be settled by a Commissioner."

These provisions show, according to the learned counsel, that it is the employer who is to pay the compensation provided for by this Act and who can in the situations visualised by Sections 12 and 13, get himself indemnified by the persons mentioned in these sections. It is in case of insolvency of the employer or his making composition with his creditors or where the employer is a company which is being wound up, that the insurer becomes directly liable to pay the compensation. To fortify his submissions Shri Bhattacharyya has relied on these decisions : (1) R.B. Moondra and Co. Vs. Mst. Bhanwari and Another, (2) Oriental Fire and General Insurance Company Ltd. v. Govind Singh, 1972 ACJ 137 : 1973 Lab IC 1066 ; (3) K.P. Kurian v. Managing Partner, Hindusthan Shipping Company 1975 Lab IC 130 (4) G. Sreedharan v. Hindusthan Ideal Insurance Corporation 1976 Lab IC 732 (Andh Pra); (5) New India Assurance Company v. Parameshwari, (1976) 32 FLR 371 (Ker) and (6) Charag Chemical Industries v. R. G. Ganesan, 1981 ACJ 532 : (1989 Lab IC 28) (Mad).

6. Before views expressed in these decisions are noted, it would be apposite to refer to certain provisions of the MV Act. These provisions find place in Chapter-VIII dealing with insurance of motor vehicles against third party risks. Section 94 deals with necessity for insurance against third party risk. Section 95 has dealt with the requirements of policy of insurance and limits of liability. We are concerned with the proviso to Sub-section (1) which reads : --

"95. Requirements of policies and limits of liability-

(1) \* \* \* \* \* Provided that a policy shall not be required-

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

It may be stated that the exception mentioned in the proviso as regards liability arising under the Workmen's Compensation Act, 1923, was inserted by the Motor Vehicles (Amendment) Act, 1956, and as would appear from what is being stated later, this has made a material difference for the case at hand. Sub-section (5) of Section 95 of the MV Act is also relevant, it reads : --

"Section 95(5). Notwithstanding anything elsewhere contained in any law, a

person 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."

Section 96(1) which has contained a deeming provision to regard the insurer as a judgment-debtor in some cases, reads as below : --

"Section 96. Duty of insurers to satisfy judgments against persons insured in respect of third party risks--(1) If, after a certificate of insurance has been issued under Sub-section (4) of Section 95 in favour of the person by whom a policy has been effected, judgment in respect of any such liability, as is required to be covered by a policy under Clause (b) of Sub-section (1) of Section 95 (being a liability covered by the terms of the policy) 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."

Section 96(2) requires notice to be given to the insurer before it is made liable u/s 96(1). It also sets out the defences available to an insurer. The relevant part states : --

"Section 96(2). No sum shall be payable by an insurer under Sub-section (1) in respect of any judgment-unless, before or after the commencement of the proceedings, in which the judgment is given, the insurer had notice, through the Court, of the bringing of the proceedings, or in respect of any judgment so long as execution is stayed thereon pending an appeal; and an insurer, to whom notice of the bringing of any such proceedings is so given, shall be entitled to be made a party thereto and to defend the action on any of the grounds, namely-

\*\*\* \*\* Section 110-AA is also material : --

"110-AA. Option regarding claims for compensation in certain cases. Notwithstanding anything contained in the Workmen's Compensation Act, 1923, where the death of or bodily injury to any person gives rise to a claim for compensation under this Act and also under the Workmen's Compensation Act, 1923, the person entitled to compensation may claim such compensation under either of these Acts but not under both."

7. With these provisions of the two Acts in mind, the ratio of the cases relied on by Shri Bhattacharyya may be noted in R.B. Moondra and Co. Vs. Mst. Bhanwari and Another, it was pointed out by a learned single Judge that the compensation under the Workmen's Act is payable by an "employer" and an insurance

company does not come within the ambit of that definition. It was, therefore, held that the Commissioner appointed under that Act will have no jurisdiction to award compensation to a workman against an insurer unless the case falls u/s 14 of the Act. As to Section 96(1) and (2) of the MV Act, which were pressed into service to claim compensation from the insurance company, it was held that Section 96(1) does not contemplate passing of a decree against the insurer himself. As regards Section 96(2) it was stated that it did not bear the submission that the Commissioner under the Workmen's Act is authorised to pass a decree against the insurance company even though it was made a party in the proceeding. It is respectfully stated that, as would be seen later, the provisions of Sections 95 and 96 of the MV Act do lend support to the submission that an insurer too is liable to pay compensation under the Workmen's Act.

8. The view taken by a learned single Judge in Govind Singh, 1972 Ace CJ 137 : (1973) Lab IC 1066) (All), was that in a proceeding under the Workmen's Act the Commissioner has no jurisdiction to pass a decree against the insurer of the motor vehicle, though it was accepted that the amount awarded against the employer could be realised by the claimant from the insurance company under the provisions of Section 96 of the MV Act. This decision thus favour the submissions advanced by Shri Das.

9. In K. P. Kurian, 1975 Lab IC 130 (Ker), it was observed by a Division Bench that except in the case of insolvency of the employer, the claim for compensation has to be made against the employer alone. It has been further stated in para 8 that the provisions of the MV Act do not require that a claim under the Workmen's Act should be in accordance with the provisions of Ss. 95 and 96 of the former Act. These observations were made while dealing with the contention as to whether the appeal preferred by the workman before the High Court without impleading the State Insurance Officer was maintainable or not. The view taken was that the Insurance Officer was not a necessary party even before the Commissioner, and so the appeal as filed was held to be maintainable. I would respectfully say that an insurer may not be a necessary party in all cases before a Commissioner, but its presence will be necessary if any claim is made against it, and under the law such a claim would be permissible, for reasons to be alluded later, even in cases which are not covered by Section 14 of the Workmen's Act.

10. G. Sreedharan, 1976 Lab IC 732(Andh Pra) has dealt with the question of whether the employer could claim indemnity from the insurer by filing a petition under the provisions of the Workmen's Act. Though the facts of the present case are different, the reasons given by the Bench for holding against the employer in this case do support the stand taken by Shri Bhattacharyya. It has been stated in this decision that though a stranger (like insurer) could be asked to indemnify an employer by virtue of what has been provided in Section 13 of the Workmen's Act, right u/s 13 could be enforced only by filing a regular suit in civil court. As to determination of liability of "any person" mention of which has been made in

Section 19 of the Workmen's Act, it was stated that an insurance Company which has undertaken to indemnify an employer would not come within the fold of Section 19 inasmuch as this section deals with the question of payment of "compensation", which has been defined in Workmen's Act to mean compensation as provided by that Act, because of which this expression shall not embrace the amount payable by the insurer to the insured in terms of the policy of insurance. In so far as Section 96(2) of the MV Act is concerned, it was stated in para 22 that the provision of this section could be applied only to suits before the civil courts but not to proceeding before the Claims Tribunal u/s 110 of the MV Act. I am in respectful disagreement with the views expressed in this judgment for reasons being stated later.

11. In *Parameshwari* (1976) 32 FLR 371 , it was stated by Bench that Section 14 of the Workmen's Act is the sole provision under which the liability of the employer extended to the insurer also. A perusal of para 3 of this judgment shows that the right of the claimant to get the compensation realised from the insurer by virtue of what has been stated in Section 96 of the M.V. Act was not gone into and no judgment was pronounced on this aspect of the case.

12. In *Charag Chemical Industries* 1981 ACJ 532 : 1982 Lab IC 28 (Mad), the right conferred on an employer by Section 13 of the Workmen's Act was held by a learned single Judge to be enforceable by taking resort to civil proceedings. As to the jurisdiction of the Commissioner to determine the liability of "any person" u/s 19 of the Workmen's Act it was stated that the amount that could be realised by the employer or the insured from the insurer by virtue of the terms of the policy cannot strictly be termed to be compensation within the meaning of the Act.

13. It would thus seem that in the decisions cited by Shri Bhattacharyya a view was taken, inter alia, that (1) the provisions of Section 96(1) and (2) of the M.V. Act could not be imported while dealing with the claim of compensation under the Workmen's Act, and (2) the term "any person" in Section 19 of the Workmen's Act would not bring within its fold the insurer which has undertaken to indemnify the insured in this regard. Contrary views have, however, been expressed in a number of decisions to which my attention has been invited by Shri Das. These renderings are by different High Courts of the country. I may first refer to a decision of this Court in *M.A. (F) 62/72 (Ratanlal Sethia v. Pronoy Kumar)* disposed of on 14-9-73 wherein it has been held after referring to Sections 95 and 96 of the M.V. Act, that insurance company is a necessary party in a proceeding under the Workmen's Act and it is liable to pay compensation awarded under this Act to the extent covered by the policy. Shri Bhattacharyya has contended that this decision has been rendered without referring to the provisions of the Workmen's Act. Though this is true, yet the view of the learned single Judge that Sections 95 and 96 of the M.V. Act would come into play even in a proceeding under the Workmen's Act cannot be ignored.

14. In *Hindusthan Ideal Insurance Company Ltd. v. Pappu Poojari* 1972 ACJ 433,

it was held by the Mysore High Court that though Section 96(1) of the M.V. Act does not contemplate passing of a decree against the insurer himself, it did not follow from this proposition that in a proceeding before the Commissioner on an application claiming compensation the insurer could not be impleaded as a party u/s 96(2) of the M.V. Act, and that the Commissioner could not declare that the insurer was liable to pay the claimants any sum awarded against the employer as if the insurer were the judgment-debtor. It is apparent that this view was taken because the Court was satisfied that the provisions of Section 96(1) and (2) of the M.V. Act applied to a proceeding under the Workmen's Act also. Similar view was expressed in *Kamala Devi v. Navin Kumar* 1973 ACJ 115 : AIR 1973 Raj 79), by a learned single Judge of the Rajasthan High Court. It was held that Sections 95 and 96 of the M.V. Act are applicable to claims under the Workmen's Act provided that the accident arose out of the use of the motor vehicle in a public place and the employee concerned was covered by the limits laid down u/s 95(2) of the M.V. Act.

15. A Bench of the Madhya Pradesh High Court held in *Northern India Insurance Company v. Commissioner of Workmen's Compensation* 1973 ACJ 428 that the provisions of Section 96 of the M.V. Act are applicable to proceedings under the Workmen's Act and being of this view it opined that the insurer could be made a party in the proceeding under this Act after notice and that although the primary liability under the Workmen's Act was that of the employer but the insurance company was liable to discharge the claim if it was a judgment-debtor. This decision was followed by a learned single Judge of the same High Court in *New India Insurance Company v. Dujiya Bai* 1983 ACJ 601, wherein it was held that the provisions contained in Section 14 of the Workmen's Act did not negative the liability of the insurance company in cases wherein Section 14 was not attracted.

16. A Division Bench of the Gujarat High Court in *Northern India Motor Owners Insurance Company Limited v. M. S. Solanki* 1974 ACJ 55 : 1974 Lab IC 72), and a learned single Judge of the Allahabad High Court in *Sital Prasad v. Afsari Begum* 1977 ACJ 486 : 1977 Lab IC 1553), took the view that provisions of the M.V. Act apply while determining the liability under the Workmen's Act. The expression "any person" finding place in Section 19 of the Workmen's Act was held as wide enough to take within its fold the insurer also. In taking this view specific mention was made about Section 95(5) of the M.V. Act which has started with the non obstante clause stating that a person issuing a policy of insurance shall be liable to indemnify the person or classes of persons specified in policy in respect of a liability which the policy purports to cover in the case of that person or those classes of persons. The legislative fiction created by Section 96(1) of the M.V. Act in regarding the insurer, on satisfaction of the conditions mentioned in the section, as judgment-debtor was also emphasized.

17. The next decision to be referred to by Shri Das is that of a Division Bench of the Madras High Court in *Premier Insurance Company Ltd. Vs. C. Thomas and Others*, It was pointed out in this decision that when the Workmen's Act had

been passed scheme of compulsory insurance for motor vehicles dealt with by Chapter VIII of the M.V. Act, was not in existence, which has, however, brought out far-reaching changes. It was then stated that provisions of Sections 12(2), 13 and 19 of the Workmen's Act indicated that persons other than the employer and the employee could also be brought before the Commissioner and a claim against them could also be considered by the Commissioner. By preferring to the proviso to Section 95(1) of the M.V. Act it was held that the legislature definitely had in mind the Workmen's Act and made the provisions of that Act a basis to cover the claim of the workmen under the M.V. Act also. Then by referring to Section 110-AA of the M.V. Act it was stated that this provision made abundantly clear that the claim against the insurer could be agitated by a workman not only before a Claims Tribunal but before a Commissioner also under the Workmen's Act.

18. The last decision to be relied on by Shri Das is that of the Orissa High Court in the Oriental Fire and General Insurance Company Limited v. Matians Burla 1986 ACJ 732, wherein it was held by a learned single Judge by relying on two earlier decisions of that Court, viz. Bibhuti Bhusan v. Dinamani 1982 ACJ 338 : (1981 Lab IC 1364) and Subasini v. State of Orissa 1984 ACJ 276, that by virtue of Section 95 of the M.V. Act, the Tribunal constituted under the Workmen's Act was competent to determine the liability of the insurer to the extent the workman was entitled under the Workmen's Act and the insurer was bound to indemnify the owner to that extent.

19. Having given due thought to the rival contentions advanced by Shri Bhattacharyya and Shri Das, and having respectfully considered the views expressed by the different High Courts of the country in the decisions noted above, I would accept the submission advanced by Shri Das. My reasons for doing so are these : --

(1) The provisions of the Workmen's Act cannot be viewed in isolation when the M.V. Act has specifically stated that a policy of insurance taken out under the provisions of Chapter VIII cannot exclude the liability arising under the Workmen's Act. The awareness of the liability under the Workmen's Act even while dealing with the liability under the M.V. Act has been clearly shown in the proviso to Sections 95(1) and 110-AA of the latter Act.

(2) The Workmen's Act was enacted before the compulsory insurance of vehicle visualised by Chapter VIII of the M.V. Act had come into force. The benefits made available by the insurance cannot be set at naught. The far-reaching changes brought into play by the requirement of compulsory insurance must be allowed its full play.

(3) Realisation of the compensation from the employer alone even where the insurer is to bear the loss as per the terms of the policy would put the victim in a difficult situation inasmuch as it is well known that realisation of compensation is easier when it is fastened on the insurer than on the insured. The financial

position of the latter may in many cases thwart the realisation of the dues. The policy taken out for the benefit of the workmen has to allow him to reap full advantage of the same.

(4) If an employer is left to take recourse to an independent proceeding like civil suit to get himself indemnified, the same would result in multiplicity of proceedings which has to be avoided.

(5) Sections 12(2) and 13 of the Workmen's Act do indicate that persons other than employers can be made liable to pay compensation under the provisions of the Workmen's Act. In this context a narrow meaning to the expression "any person" in Section 19 of the Act would militate against the wide sweep of the expression, especially when it is viewed in the background of the provisions finding place in the M.V. Act.

The thinking that the person visualised by Section 19 of the Workmen's Act has to be one who has to pay compensation as defined in this Act does not stand against the broad view indicated above because the word "compensation" has been defined to mean "compensation as provided for by this Act". By asking the insurer to pay compensation as provided by the Workmen's Act (which is Rs. 18,000/- in the present case) nothing is being done against Section 19 of this Act. What this section would interdict is to ask "any person" to pay compensation provided for by another statute, same, as the M.V. Act. Had the definition of "compensation" in the Workmen's Act been "compensation payable under this Act" the matter might have been different.

(6) Significance of Section 95(5) of the M.V. Act has to be noted here. This section has categorically stated that notwithstanding anything elsewhere contained in any law, a person issuing a policy of insurance u/s 95 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. In the face of this statutory provision, the expression "any person" in Section 19 of the Workmen's Act has to cover an insurer also.

(7) The provisions finding place in Section 96(2) of the M.V. Act cannot be confined to judgment of Civil Courts. There are plethora of decisions applying provisions of Section 96(2) regarding the defences available to an insurer to a proceeding before the Claims Tribunal set up under the provisions of the M.V. Act.

(8) Section 110-AA of the M.V. Act having given an option to the claimant to proceed either under the Workmen's Act or under the M.V. Act, but not under both, it cannot be visualised that different considerations would arise regarding the liability of insurer in respect of the same claim depending upon the forum chosen. The liability of the insurer being a very material part relating to granting of compensation under the provisions of Chap. VIII of the M.V. Act, the legislature incorporating Section 110-AA in the M.V. Act could not have intended that the insurer would cease to be liable at the hands of the Commissioner under the Workmen's Act in case approach were to be made to him under the latter

Act.

(9) The deeming provision enacted in Section 96(1) of the M.V. Act stating that under the conditions mentioned in the section, the insurer would be deemed to be judgment-debtor has to be given its full effect. A legal fiction is adopted in law for a limited and definite purpose, and the fiction must serve that purpose, of course, a deeming provision cannot be pushed too far so as to result in a most anomalous or absurd position as pointed out in Para 9 of the K.S. Dharmadatan Vs. Central Government and Others, In this connection, the following observations of Lord Asquith at pages 132-133 in East End Dwelling Company Limited v. Finsbury Borough Council 1952 AC 109, deserve to be noted : --

"If you are bidden to treat an imaginary state of affairs as real, you must surely, unless prohibited from doing so, also imagine as real the consequence and incidents which, if the putative state of affairs had in fact existed, must inevitably have flowed from or accompanied it..... The statute says that you must imagine certain state of affairs; it does not say that having done so, you must cause or permit your imagination to boggle when it comes to the inevitable corollaries of that state of affairs."

Thus, a fiction created by a statute takes within its fold inevitable corollaries of the assumed state of affairs, though a deeming provision cannot be carried further than what it is intended for -- there being no justification for extending the fiction beyond its legitimate field or beyond the purpose for which the legislature adopted it, as noted in Paras 10 to 13 of K.S. Dharmadatan Vs. Central Government and Others,

(10) With the aforesaid legal view relating to the field of operation of a deeming provision in mind, let it be seen whether the fiction created by Section 96(1) of the M.V. Act can be applied to the case at hand. Section 96(1) has provided that if after certificate of insurance has been issued in favour of any person, a judgment is obtained against that person relating to a liability which is covered by the policy, then the insurer had to be treated as if he were the judgment-debtor. The wide language in which the fiction has been created by Section 96(1) cannot be confined to a proceeding only under the M.V. Act. It has to come into play with respect to any judgment which may be passed against the insured imposing upon him a liability which is covered by the policy taken out by him. The fiction has been incorporated in Section 96(2) with a definite purpose -- treatment of an insurer as a judgment-debt or on satisfaction of certain conditions; and this fiction cannot be allowed to boggle down while trying to fasten the liability of judgment-debtor on an insurer even though the conditions mentioned in Section 96(1) are satisfied, only on the ground that the judgment against the insured has been rendered by a court or tribunal not known to the M.V. Act. Placing of such a limitation shall stand in the way of giving full effect to the fiction. It cannot also be said that allowing the fiction to operate in the field covered by the Workmen's Act will result in an anomalous position or will amount to extension of the scope of the deeming provision beyond its legitimate

field or beyond the purpose for which the legislature had adopted it. Indeed the extension shall serve the purpose the legislature had in mind.

11. There is still another reason as to why the provisions of the MV Act have to prevail while deciding the matter at hand. The MV Act is not only a later law than the Workmen's Act, but is also a special law dealing with the liability of an insurer arising out of a motor accident for which compensation can be awarded against the insured for which the insurer has undertaken to indemnify. The maxim applicable in this regard is "*generalia specialibus non derogant*", literal meaning of which is that general words or things do not derogate from special. (See Black's Law Dictionary and Osborn's Concise Law Dictionary). This expression was explained in Commissioner of Income Tax, Patiala and Others Vs. Shahzada Nand and Sons and Others, to mean that when there is a conflict between a general and a special provision, the latter shall prevail. (See para 8). In State of Gujarat and Another Vs. Patel Ramjibhai Danabhai and Others, this maxim was regarded in para 26 as a "cardinal principle of interpretation" and it was stated that this principle means that the general provisions must always yield to the special provision. The Privy Council had occasion to deal with this principle in Secretary of AIR 1931 149 (Privy Council) characterising it as "well-recognised principle. This decision was noted approvingly in Patna Improvement Trust Vs. Smt. Lakshmi Devi and Others, (See para 12). In The South India Corporation (P) Ltd. Vs. The Secretary, Board of Revenue Trivandrum and Another, it was stated in para 18 that it is a settled law that a special provision should be given effect to the extent of its scope, leaving the general provision to control cases where the special provision does not apply. It was stated in para 9 of the Union of India (UOI) and Another Vs. India Fisheries (P) Ltd., that where there is an apparent conflict between the independent provisions of law, the special provision must prevail. It was pointed out in para 35 of The Bengal Immunity Company Limited Vs. The State of Bihar and Others, that as a cardinal rule of construction a particular or special rule must control or cut down the general rule. (See para 167 also).

In Paradip Port Trust, Paradip Vs. Their Workmen, the Supreme Court was called upon to decide whether representation of a legal practitioner was permissible in an industrial dispute before adjudicatory authorities contemplated by the Industrial Disputes Act. By applying the principle of *generalia specialibus non derogant* it was held that special provision in the Industrial Disputes Act will prevail in this regard over the Advocates Act which was held to be a general piece of legislation relating to the subject matter of appearance of lawyers before all courts, tribunals and other authorities, whereas Industrial Disputes Act was concerned with the representation of legal practitioners before the authorities mentioned in this Act.

There can be no doubt that the provisions finding place in the MV Act regarding the liability of insurer and his obligation to indemnify the insured have to be regarded in the nature of special provision insofar as compensation for motor

accident is concerned, whereas the provisions in the Workmen's Act are of general nature covering compensation for all types of accidents. So, the special provisions finding place in the MV Act have to prevail over those incorporated in the Workmen's Act in case of conflict insofar as compensation to a victim of motor accident, and liability of insured and insurer therefore are concerned.

12. Because of the reasons aforesaid, I hold that the insurer was rightly made jointly liable in the present case to pay the compensation to the legal representative of the deceased. The appeal and the revision, therefore, stand dismissed