
(2010) 12 AHC CK 0195

In the Allahabad High Court

Case No : First Appeal from Order No. 1871 of 2010

The Oriental Insurance Co. Ltd.

APPELLANT

Vs

Mohan Car Care Centre and Another

RESPONDENT

Date of Decision : 14-12-2010

Acts Referred:

Insurance Act, 1938 — Section 64VB

Motor Vehicles Act, 1988 — Section 147, 147(1), 147(3), 147(5), 149

Citation : (2010) 12 AHC CK 0195

Hon'ble Judges : Satya Poot Mehrotra, J; Ashok Kumar Roopanwal, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Satya Poot Mehrotra, J.—The present Appeal has been filed u/s 173 of the Motor Vehicles Act, 1988, against the Judgment and Order/ Award dated 23.02.2010 passed by the Motor Accidents Claims Tribunal, Meerut in Motor Accident Claim Case No. 619 of 2004 filed by the claimant-respondent no. 1 for compensation on account of damage to the property of the claimant-respondent no. 1 (namely, the Plant, Machinery, Tools and other accessories used in the garage of the claimant-respondent no. 1 for repair, maintenance and service of motor vehicles) in the garage of the claimant-respondent no. 1).

2. It may be mentioned that two connected Motor Accident Claim Cases, namely, Motor Accident Claim Case No. 620 of 2004 and Motor Accident Claim Case No. 621 of 2004 were also decided by the said Award.

3. Motor Accident Claim Case No. 620 of 2004 pertained to the claim for compensation on account of the damage to the car of the claimant-respondent no. 1 while Motor Accident Claim Case No. 621 of 2004 pertained to the claim for compensation on account of the damage to the building belonging to Smt. Dayawati in which the garage of the claimant-respondent no. 1 was situated.

4. The case of the claimant-respondent no. 1 was that on 17.7.2003 at about 8

A.M., the driver of the vehicle in question, namely, Truck No. U.P.14 P5718, while driving the said Truck rashly and negligently, hit the electric pole on Garh Road near Ram Purna Gas Service Agency, Police Station-Nauchandi, Meerut, and as a result, the electric wires were broken and the electric wires fell down on the said Truck, which was loaded with the L.P.G. Gas Cylinders, and the Cylinders caught fire, which spread to all nearby area including the garage of the claimant-respondent no. 1 thereby causing huge damage to the property of the claimant-respondent no. 1, (namely, the Plant, Machinery, Tools and other accessories used in the garage of the claimant-respondent no. 1 for repair, maintenance and service of motor vehicles).

5. It was, interalia, further asserted by the claimant-respondent no. 1 that the vehicle in question, namely, the aforesaid Truck was owned by Rajesh Kumar (respondent no. 2 herein), and was insured with the Appellant-Insurance Company at the time of the accident. An amount of Rs. 9,56,582/was claimed as compensation for damage to the property of the claimant-respondent no. 1 (namely, the Plant, Machinery, Tools and other accessories used for repair, maintenance and service of motor vehicles and various others items enumerated in the Claim Petition).

6. The Claim Petition was contested by the respondent no. 2 herein (owner of the vehicle in question) as well as by the Appellant-Insurance Company by filing Written Statements.

7. The respondent no. 2 in his written statement pleaded that he was the registered owner of the vehicle in question. However, the respondent no. 2 denied the accident as alleged by the claimant-respondent no. 1, and in the alternative, pleaded that the vehicle in question was insured with the Appellant-Insurance Company at the time of the accident, and therefore, the Appellant-Insurance Company was liable to pay the amount of compensation, if awarded.

8. The Appellant-Insurance Company in its written statement admitted that the vehicle in question was insured with the Appellant-Insurance Company for the period with effect from 16.10.2002 to 15.10.2003. The Appellant-Insurance Company, however, denied the accident as alleged by the claimant-respondent no. 1.

9. It was, further pleaded by the Appellant-Insurance Company that the driver of the vehicle in question was not having valid and effective Driving Licence to drive the said vehicle with necessary endorsement; and that the vehicle in question had not got a valid Fitness Certificate and a valid Permit u/s 66 of the Motor Vehicles Act, 1988; and that the owner of the vehicle in question (respondent no. 2 herein) had committed breach of terms and conditions of the insurance policy as well as the provisions of the Motor Vehicles Act, 1988 regarding Fitness, Permit and the Driving Licence, and as such, the Appellant-Insurance Company was not liable to pay any compensation to the claimant-respondent no. 1.

10. It was, further pleaded by the Appellant-Insurance Company that the alleged

loss occurred due to the goods owned by Ram Purna Gas Agency and Indian Oil Corporation Ltd. for which the Indian Oil Corporation Limited, Bharat Petroleum Corporation Ltd., I.B.P. Company Ltd. and their associates had taken a Public Liability Policy, and in the circumstances, the claimant-respondent no. 1 could claim compensation under the said policy for getting compensation for damage to the property of the claimant-respondent no. 1.

11. The Tribunal framed the following 5 common issues in Motor Accident Claim Case No. 619 of 2004 (giving rise to the present Appeal) and two other connected Motor Accident Claim Cases referred to in the earlier part of this judgment:

1. Whether on 17.7.2003 at 8. A.M. accident took place due to rash and negligent driving of the Truck No. UP 14 P5718 which collided with electric Pole, resulting breaking of electric wires and fell down on Gas Cylinders loaded in the Truck, due to which Fire caused and damages the property of the petitioners?

2. Whether Truck No. U.P. 14 P5718 was not insured by the Opposite Party No. 2 Oriental Insurance Co. Ltd. at the time of the accident?

3. Whether the petitioners are entitled to get any relief if yes from whom and how much?

4. Whether the Offending Truck No. U.P. 14 P5718, owned by the Opposite Party No. 1 was driven by a driver having valid driving licence and was being plied along with proper permit and fitness Certificate in accordance with the terms and conditions of the Insurance Policy concerned - If so its effect?

5. Whether the petition is bad for non joinder of necessary party?

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

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

14. As regards Issue No. 1, the Tribunal held that the accident took place on account of rash and negligent driving by the driver of the vehicle in question, namely, the aforesaid Truck, resulting in damage to the property of the claimant-respondent no. 1 (namely, the Plant, Machinery, Tools and other accessories used in the garage of the claimant-respondent no. 1 for repair, maintenance and service of motor vehicles) as also the car of the claimant-respondent no. 1 and the building belonging to Smt. Dayawati in which the garage was situated. Issue No. 1 was decided accordingly. As regards Issue Nos. 2 and 4, the Tribunal held that it was established that the vehicle in question, namely, the aforesaid Truck was insured with the Appellant-Insurance Company at the time of the accident but it was not established that the vehicle in question was plied under proper valid Permit and Fitness Certificate and by the driver having valid Driving Licence. Therefore, the Tribunal held that the Appellant-Insurance Company

would be liable to pay the amount of compensation with recovery right against the respondent no. 2 (Rajesh Kumar owner of the vehicle in question). Issue Nos. 2 and 4 were decided accordingly.

15. As regards Issue No. 5, the Tribunal held that the Claim Petition was not bad for nonjoinder or necessary parties. Issue No. 5 was decided accordingly.

16. As regards Issue No. 3, the Tribunal reiterated its findings that the accident took place on 17.7.2003 at 8 A.M. due to rash and negligent driving by the driver of the vehicle in question, namely, the aforesaid Truck which collided with electric pole, resulting in breaking of electric wires and the electric wires fell down on Gas Cylinders loaded in the vehicle in question (Truck), due to which fire was caused resulting in damages to the property of the claimant-respondent no. 1. The Tribunal further reiterated its findings that the driver of the vehicle in question (Truck) was not having a valid Driving Licence, Permit and Fitness Certificates at the time of the accident. The Tribunal further reiterated its findings that the vehicle in question (Truck) was insured with the Appellant-Insurance Company.

17. Having reiterated the said findings, the Tribunal held that the claimant-respondent no. 1 was entitled to compensation of Rs. 4 lacs in Motor Accident Claim Case No. 619 of 2004 for damage to the property of the claimant-respondent no. 1 (namely, the Plant, Machinery, Tools and other accessories used in the garage of the claimant-respondent no. 1).

18. The Tribunal further held that the amount of compensation would be paid by the Appellant-Insurance Company to the claimant-respondent no. 1 with recovery right against the respondent no. 2 (Rajesh Kumar owner of the vehicle in question). The Tribunal reiterated that as the vehicle in question (Truck) was being plied by the driver without proper Driving Licence, Route Permit and Fitness Certificate, the Appellant-Insurance Company would be liable to pay the amount of compensation with recovery right against the owner of the vehicle in question (Rajesh Kumar respondent no. 2 herein). The Tribunal further awarded interest at the rate of 6% per annum to the claimant-respondent no. 1 from the date of filing of the Claim Petition.

19. In view of the above findings, the Tribunal passed the impugned Judgment and Order/Award dated 23.2.2010 in Motor Accident Claim Case No. 619 of 2004, inter alia, awarding to the claimant-respondent no. 1 compensation amounting to Rs. 4 lacs with interest at the rate of 6% per annum from the date of filing of the Claim Petition, i.e., from 5.8.2004 with recovery right against the owner of the vehicle in question (Rajesh Kumar respondent no. 2 herein).

20. We have heard Shri Kuldip Shanker Amist, learned counsel for the Appellant-Insurance Company, and perused the record.

21. Sri Kuldip Shanker Amist, learned counsel for the Appellant-Insurance Company submits that having held that the aforesaid vehicle in question was

being run against the terms and conditions of the Insurance Policy, the Tribunal erred in directing the Appellant-Insurance Company to pay the amount of compensation and thereafter recover the same from the owner of the vehicle in question, i.e., respondent no. 2 herein.

20. Sri Kuldeep Shanker Amist submits that in any case, the interest of the Appellant-Insurance Company as against the owner of the vehicle in question (respondent no. 2 herein) should have been properly secured so that after making the payment of compensation under the impugned award, the Appellant-Insurance Company would be able to recover the same from the owner of the aforesaid vehicle in question. Sri Kuldeep Shanker Amist has relied upon the following decisions in this regard

1. Oriental Insurance Company Ltd. Vs. Sri Nanjappan and Ors. 2004(2) TAC 12 (SC).

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

23. We have considered the submissions made by Sri Kuldeep Shanker Amist, learned counsel for the Appellant-Insurance Company.

24. As regards the submission made by Sri Kuldeep Shanker Amist that the Tribunal erred in directing the Insurance Company to make the payment of compensation and thereafter recover the same from the owner of the vehicle in question, it is pertinent to refer to the relevant provisions of the Motor Vehicles Act, 1988.

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

147. Requirements of policies and limits of liability(

1) to (4)....

(5)Notwithstanding anything contained in any law for the time being in force, an insurer issuing a policy of insurance under this section shall be liable to indemnify the person or classes of persons specified in the policy in respect of any liability which the policy purports to cover in the case of that person or those classes of persons.

26. The above quoted provision thus provides that an insurer issuing a policy of insurance u/s 147 of the said Act, shall be liable to indemnify the person or classes of persons specified in the policy in respect of any liability which the policy purports to cover in the case of that person or those classes of persons.

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

149. Duty of insurers to satisfy judgements and awards against persons insured in respect of third party risks(1) If, after a certificate of insurance has been issued under Sub-section (3) of Section 147 in favour of the person by whom a

policy has been effected, judgment or award in respect of any such liability as is required to be covered by a policy under clause (b) of Sub-section (1) of Section 147 (being a liability covered by the terms of the policy) [or under the provisions of Section 163A] is obtained against any person insured by the policy, then, notwithstanding that the insurer may be entitled to avoid or cancel or may have avoided or cancelled the policy, the insurer shall, subject to the provisions of this section, pay to the person entitled to the benefit of the decree any sum not exceeding the sum assured payable there under, as if he were the judgment debtor, in respect of the liability, together with any amount payable in respect of costs and any sum payable in respect of interest on that sum by virtue of any enactment relating to interest on judgments.(2) to (7)....

28. The above quoted provision thus provides that in case any judgment or award is obtained against any person insured by the policy, then the insurer shall pay to the person entitled to the benefit of the decree any sum not exceeding the sum assured payable there under, as if he were the judgment debtor, in respect of the liability, together with any amount payable in respect of costs and interest. This will be so even though the insurer may be entitled to avoid or cancel or may have avoided or cancelled the policy.

29. In view of the above provisions, we are of the opinion that the directions given by the Tribunal requiring the Appellant-Insurance Company to make the deposit of compensation awarded under the impugned award and thereafter recover the same from the owner of the aforesaid vehicle in question, is in accordance with law, and the same does not suffer from any infirmity.

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

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

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

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

(Emphasis supplied)

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

33. In National Insurance Co. Ltd. Vs. Swaran Singh and Others, their Lordships of the Supreme Court held as follows(paragraph 10 of the said AIR):

105. The summary of our findings to the various issues as raised in these petitions is as follows:

(i) Chapter XI of the Motor Vehicles Act, 1988 providing compulsory insurance of vehicles against third-party risks is a social welfare legislation to extend relief by compensation to victims of accidents caused by use of motor vehicles. The provisions of compulsory insurance coverage of all vehicles are with this paramount object and the provisions of the Act have to be so interpreted as to effectuate the said object.

(ii) An insurer is entitled to raise a defence in a claim petition filed u/s 163A or Section 166 of the Motor Vehicles Act, 1988, inter alia, in terms of Section 149(2)(a)(ii) of the said Act.

(iii) The breach of policy condition e.g., disqualification of the driver or invalid driving licence of the driver, as contained in Sub-section (2)(a)(ii) of Section 149, has to be proved to have been committed by the insured for avoiding liability by the insurer. Mere absence, fake or invalid driving licence or disqualification of the driver for driving at the relevant time, are not in themselves defences available to the insurer against either the insured or the third parties. To avoid its liability towards the insured, the insurer has to prove that the insured was guilty of negligence and failed to exercise reasonable care in the matter of fulfilling the condition of the policy regarding use of vehicles by a duly licensed driver or one who was not disqualified to drive at the relevant time.

(iv) Insurance Companies, however, with a view to avoid their liability must not only establish the available defence(s) raised in the said proceedings but must also establish "breach" on the part of the owner of the vehicles; the burden of proof where for would be on them.

(v) The Court cannot lay down any criteria as to how the said burden would be discharged, inasmuch as the same would depend upon the facts and circumstances of each case.

(vi) Even where the insurer is able to prove breach on the part of the insured concerning the policy condition regarding holding of a valid licence by the driver or his qualification to drive during the relevant period, the insurer would not be allowed to avoid its liability towards the insured unless the said breach or breaches on the condition of driving licence is/are so fundamental as are found to have contributed to the cause of the accident. The Tribunals in interpreting the policy conditions would apply " the rule of main purpose" and the concept of

"fundamental breach" to allow defences available to the insurer u/s 149(2) of the Act.

(vii) The question, as to whether the owner has taken reasonable care to find out as to whether the driving licence produced by the driver, (a fake one or otherwise), does not fulfill the requirements of law or not will have to be determined in each case.

(viii) If a vehicle at the time of accident was driven by a person having a learner's licence, the insurance Companies would be liable to satisfy the decree.

(ix) The claims tribunal constituted u/s 165 read with Section 168 is empowered to adjudicate all claims in respect of the accidents involving death or of bodily injury or damage to property of third party arising in use of motor vehicle. The said power of the tribunal is not restricted to decide the claims inter se between claimant or claimants on one side and insured, insurer and driver on the other. In the course of adjudicating the claim for compensation and to decide the availability of defence or defences to the insurer, the Tribunal has necessarily the power and jurisdiction to decide disputes inter se between the insurer and the insured. The decision rendered on the claims and disputes inter se between the insurer and insured in the course of adjudication of claim for compensation by the claimants and the award made thereon is enforceable and executable in the same manner as provided in Section 174 of the Act for enforcement and execution of the award in favour of the claimants.

(x) Where on adjudication of the claim under the Act the tribunal arrives at a conclusion that the insurer has satisfactorily proved its defence in accordance with the provisions of Sections 149(2) read with Sub-section (7), as interpreted by this Court above, the Tribunal can direct that the insurer is liable to be reimbursed by the insured for the compensation and other amounts which it has been compelled to pay to the third party under the award of the tribunal. Such determination of claim by the Tribunal will be enforceable and the money found due to the insurer from the insured will be recoverable on a certificate issued by the tribunal to the Collector in the same manner u/s 174 of the Act as arrears of land revenue. The certificate will be issued for the recovery as arrears of land revenue only if, as required by Sub-section (3) of Section 168 of the Act the insured fails to deposit the amount awarded in favour of the insurer within thirty days from the date of announcement of the award by the tribunal.

(xi) The provisions contained in Sub-section (4) with the proviso there under and Sub-section (5) which are intended to cover specified contingencies mentioned therein to enable the insurer to recover amount paid under the contract of insurance on behalf of the insured can be taken recourse to by the Tribunal and be extended to claims and defences of the insurer against the insured by relegating them to the remedy before regular court in cases where on given facts and circumstances adjudication of their claims inter se might delay the adjudication of the claims of the victims.

(Emphasis supplied)

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

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

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

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

(2)Where originally the license was fake one, renewal cannot cure the inherent fatality.

(3) In case of third party risks the insurer has to indemnify the amount and if so advised to recover the same from the insured.

(4)The concept of purposive interpretation has no application to cases relatable to Section 149 of the Act.

The High Courts/Commissions shall now consider the matter afresh in the light of the position in law as delineated above.

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

(Emphasis supplied)

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

38. In *Prem Kumari & others vs. Prahlad Dev and Ors.* 2008(1) T.A.C. 803 (S.C.), their Lordships of the Supreme Court have reiterated the view expressed in *National Insurance Company Limited. Vs. Laxmi Narain Dhut's* case (supra) explaining the decision in *National Insurance Company Limited Vs. Swaran Singh and others* (supra), and held as under (paragraphs 8 and 9 of the said TAC):

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

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

- (1) The decision in Swaran Singh's case (supra) has no application to cases other than third party risks.
- (2) Where originally the license was a fake one, renewal cannot cure the inherent fatality.
- (3) In case of third party risks the insurer has to indemnify the amount, and if so advised, to recover the same from the insured.
- (4) The concept of purposive interpretation has no application to cases relatable to Section 149 of the Act.

9. In the subsequent decision *The Oriental Insurance Company Limited Vs. Meena Variyal and Others*, which is also a two Judge Bench while considering the ratio laid down in *Swaran Singh* 's case (supra) concluded that in a case where a person is not a third party within the meaning of the Act, the Insurance Company cannot be made automatically liable merely by resorting to *Swaran Singh* 's case (supra). While arriving at such a conclusion the Court extracted the analysis as mentioned in para 38 of *Laxmi Narain Dhut* (supra) and agreed with the same. In view of consistency, we reiterate the very same principle enunciated in *Laxmi Narain Dhut* (supra) with regard t o interpretation and applicability of *Swaran Singh* 's case (supra).

(Emphasis supplied)

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

40. As regards the submission made by Sri Kuldeep Shanker Amist that the interest of the Appellant-Insurance Company should be protected as against the owner of the vehicle in question (respondent no. 2 herein) so that in case the Appellant-Insurance Company deposits the amount of compensation, it may be able to recover the same from the owner of the aforesaid vehicle in question, it is pertinent to refer to the decisions relied upon by Sri Kuldeep Shanker Amist.

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

7. Therefore, while setting aside the judgment of the High Court we direct in terms of what has been stated in *Baljit Kaur*'s case 2004(1) T.A.C.366 (SC) (supra) that the insurer shall pay the quantum of compensation fixed by Tribunal, about which there was no dispute raised to the respondents claimants within three months from today. For the purpose of recovering the same from the insured, the insurer shall not be required to file a suit. It may initiate a proceeding before the concerned Executing Court as if the dispute between the

insurer and the owner was the subject matter of determination before the Tribunal and the issue is decided against the owner and in favour of the insurer. Before release of the amount to the insured, owner of the vehicle shall be issued a notice and he shall be required to furnish security for the entire amount which the insurer will pay to the claimants. The offending vehicle shall be attached, as a part of the security. If necessity arises the Executing Court shall take assistance of the concerned Regional Transport Authority. The Executing Court shall pass appropriate orders in accordance with law as to the manner in which the insured, owner of the vehicle shall make payment to the insurer. In case there is any default it shall be open to the Executing Court to direct realization by disposal of the securities to be furnished or from any other property or properties of the owner of the vehicle, the insured. The appeal is disposed of in the aforesaid terms, with no order as to costs.

(Emphasis supplied)

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

The residual question is what would be the appropriate direction. Considering the beneficial object of the Act, it would be proper for the insurer to satisfy the award, though in law it has no liability. In some cases the insurer has been given the option and liberty to recover the amount from the insured. For the purpose of recovering the amount paid from the owner, the insurer shall not be required to file a suit. It may initiate a proceeding before the concerned Executing Court as if the dispute between the insurer and the owner was the subject matter of determination before the Tribunal and the issue is decided against the owner and in favour of the insurer. Before release of the amount to the claimants, owner of the offending vehicle shall furnish security for the entire amount which the insurer will pay to the claimants. The offending vehicle shall be attached, as a part of the security. If necessity arises the Executing Court shall take assistance of the concerned Regional Transport Authority. The Executing Court shall pass appropriate orders in accordance with law as to the manner in which the owner of the vehicle shall make payment to the insurer. In case there is any default it shall be open to the Executing Court to direct realization by disposal of the securities to be furnished or from any other property or properties of the owner of the vehicle i.e. the insured. In the instant case considering the Quantum involved we leave it to the discretion of the insurer to decide whether it would take steps for recovery of the amount from the insured.

(Emphasis supplied)

43. In our opinion, the directions contemplated in the above decisions may be sought by the Appellant-Insurance Company before the Executing Court when the Appellant-Insurance Company, after depositing the amount awarded under the impugned award, moves appropriate application before the Executing Court to recover the said amount from the insured person, i.e. the owner of the vehicle

in question (respondent no. 2 herein), while the claimant files an application for the execution of the award or for the release of the amount deposited by the Appellant-Insurance Company. We are refraining from expressing any opinion in this regard.

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

45. In *Smt. Bhuri and others Vs. Smt. Shobha Rani and others*, 2007 (1) T.A.C. 20 (All.), a learned Single Judge of this Court held as under (paragraph 5 of the said T.A.C.):

5. From the aforesaid case law, as referred to by the learned Counsel for the parties, it would be evident that in spite of the fact that the insurer is not made liable to compensate the claimants under the policy u/s 149 of the Motor Vehicles Act, still the liability of payment, under the law as developed by the Apex Court in this context, has been assigned to the Insurance Company. At the same time, the Insurance Company has also been given liberty to recover the said amount from the insured within the provisions of the Motor Vehicles Act itself and without taking the burden of filing a suit for that purpose. This principle of law was initially propounded in *Baljit Kaur's* case (supra) and it has been followed in the aforesaid cases referred to by the parties concerned. But in the subsequent cases more especially in *Nanjappan's* case (supra) it has also been observed that before releasing the amount under deposit before the Court the insured/owner of the vehicle shall be issued a notice and he shall be required to furnish security for the entire amount which the Insurance Company will pay to the claimants. After that notice the Court may direct the attachment of the offending vehicle as part of the security and could also pass appropriate orders in accordance with law. In case of default it shall be open to the Court to direct realisation of the amount from the insured/owner by disposal of security or from any other property or properties of the owner of the vehicle. Therefore, all these modes have been provided by the Apex Court for the insurer to make recovery from the insured. But from all these directions as given by the Apex Court, the purport is that the Court shall not undermine the interest of the claimants for whose welfare the Supreme Court has been developing this law through all these cases even by interpreting otherwise the liability of the insurer with Section 149 of the Motor Vehicles Act. Thus, what is the crux of the matter in the present case is that the revisionists claimants cannot be made to suffer even if the insured/owner of the vehicle does not furnish security or does not appear before the Court in pursuance to the notice issued to him. The burden of recovering the amount within the provisions of the Act itself has been placed upon the insurer in the aforesaid judgments of the Apex Court. The claimants who have obtained the award in their favour have not been made to suffer through any observation made by the Supreme Court in these cases. Thus, in the aforesaid view of the matter, what I feel is that it would be just and proper if the Court below is directed to first take resort to the issuance of notice to the insured/owner of the

vehicle and thereafter only the money under deposit before the Court should be released in favour of the claimants.

(Emphasis supplied)

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

4. Learned counsel has cited the judgment of the Supreme Court in *National Insurance Co. Ltd. Vs. Challa Bharathamma and Others*, to establish that the claim of the insurance company should be secured by the owner. We have no quarrel with such proposition. What we want to say is that unless and until an appropriate application in the selfsame proceeding is made by the insurance company for the purpose of recovery, the question of furnishing security by the owner cannot arise. Such situation is yet to ripe. At this stage, we are only concerned with the payment of compensation to the claimants which cannot be stalled and has got nothing to do with the dispute regarding liability between the owner and the insurance company. The sufferer is a third party. Moreover, in such judgment, the Division Bench of the Supreme Court has categorically held "considering the beneficial object of the Act, it would be proper for the insurer to satisfy the award, though in law it has no liability." In effect it is a stopgap arrangement to satisfy the award as soon as it is passed. The judgment of 3 Judges' Bench of the Supreme Court in *National Insurance Co. Ltd. Vs. Swaran Singh and Others*, also speaks in para 110 that the Tribunal can direct that the insurer is liable to be reimbursement by the insured for the compensation and other amounts which it has been compelled to pay to the third party under the award of the Tribunal. Therefore, the intention of the Legislature as well as the interpretation by the Supreme Court and different High Courts is well settled to the extent that under no circumstances payment of compensation to the claimants will be stalled. Even at the cost of the repetition we say, it has nothing to do with the dispute with regard to liability of owner or insurer, which can be considered in the separate application in the selfsame cause or in an execution application in connection thereto to be initiated by the insurance company.

(Emphasis supplied)

47. In view of the above discussion, we are of the opinion that the Tribunal did not commit any illegality in directing the Appellant-Insurance Company to make deposit of the amount of compensation, and recover the same from the insured person i.e. the owner of the vehicle in question respondent no. 2 herein.

48. After making deposit of the amount awarded under the impugned award, it will be open to the Appellant-Insurance Company to initiate appropriate proceedings for recovery of the amount from the owner of the aforesaid vehicle in question (respondent no. 2 herein), and seek appropriate directions in such proceedings.

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

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

51. Before parting with the case, it is pertinent to mention that Shri Kuldip Shanker Amist, learned counsel for the Appellant-Insurance Company has made submissions on the merits of the case, namely, that the accident was not caused by the vehicle in question, i.e., the aforesaid Truck but the same was caused as the Gas Cylinders exploded, and therefore, claim for compensation ought to have been made by the claimant-respondent no. 1 as against the Indian Oil Corporation and Ram Purna Gas Service Agency (i.e. Agency of Indian Oil Corporation) under the Public Liability Insurance Act, 1991.

52. As noted above, we are dismissing the Appeal in view of the fact that the Appellant-Insurance Company has been given right to recover the amount of compensation deposited by it pursuant to the impugned Award, from the owner of the vehicle in question (respondent no. 2 herein), and we are leaving it open to the Appellant-Insurance Company to contest the Appeal, if any, filed by the claimant-respondent no. 1 or by the owner of the vehicle in question (respondent no. 2 herein) on the grounds legally open to the Appellant-Insurance Company. Therefore, we are refraining from expressing any opinion in regard to the above submissions made by Shri Kuldip Shanker Amist, learned counsel for the Appellant-Insurance Company.

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

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

55. We order accordingly.