

(2008) 02 CHH CK 0030
In the Chhattisgarh High Court
Case No : M.A. (C) No. 44 of 2007

United India Insurance Co. Ltd.

APPELLANT

Vs

Kunj Bihari Mishra and Others

RESPONDENT

Date of Decision : 26-02-2008

Acts Referred:

Constitution of India, 1950 — Article 136, 142
Motor Vehicles Act, 1988 — Section 149(2), 166

Citation : (2008) 02 CHH CK 0030

Hon'ble Judges : Dilip Raosaheb Deshmukh, J

Bench : Division Bench

Advocate : Dashrath Gupta, for the Appellant; Gautam Khetrapal, Advocate For Respondents No. 1 None For other Respondents, for the Respondent

Judgement

Dilip Raosaheb Deshmukh, J.—Heard finally.

2. The only point that arises for determination in this appeal is whether the learned Additional Motor Accidents Claims Tribunal, Bilaspur (henceforth "the Tribunal") was justified in passing the award of pay and recover against the Appellant/insurer after recording a finding that the driver of the offending vehicle did not possess a driving licence.

3. It is not in dispute in this appeal that Respondent No. 1/claimant, a pedestrian, who was knocked down by the Motor Cycle No. CG11B6166 driven by Respondent No. 2 is a third party, whose risk was statutorily covered by the insurer under the policy of insurance.

4. Respondent No. 3, Shyamlal Kurmi, the owner of the offending vehicle Motor Cycle No. CG11B6166 and Respondent No. 2, Ghanshyam Kaushik, the driver did not contest the application filed by Respondent No. 1/claimant u/s 166 of the Motor Vehicles Act, 1988 (henceforth "the Act") for compensation on the ground of permanent disability suffered due to being hit by the motor cycle driven by Ghanshyam Kaushik.

5. The Tribunal recorded a specific finding in paragraph 14 that Ghanshyam Kaushik, Respondent No. 2/driver of the offending vehicle did not possess a driving licence on the date of accident. Pacing reliance on *New India Assurance Co. Ltd. v. Jyotsna Patra and others*, 2006 (1) TAC 502 (Ori) and *Smt. Pushpabai and other v. Padumnath Mali and others*, 2005(5) MPHT 36 (Chhattisgarh) and considering the fact that the offending vehicle was insured by the Appellant, it passed an order of pay and recover against the Appellant without recording any finding as to whether liability to pay compensation rested with the Appellant/ insurance company or not.

6. Shri Dashrath Gupta, learned Counsel appearing for the Appellant/ insurer argued that the Tribunal had no jurisdiction to pass an order of pay and recover against the insurer even in a case of third party risk having been covered by the insurer, if it was established that due to a fundamental breach of the essential condition of the policy, i.e., the offending vehicle having been driven by a person not possessing a valid and effective driving licence the insurer could avoid liability u/s 149(2) (a) (ii) of the Act. Reliance was placed on *United India Insurance Co. Ltd. v. Anubai Gopichand Thakare and others*. First Appeal No. 827 of 2006 decided on 04-08-2007 in the High Court of judicature at Bombay in which it was held that when a direction of pay and recover is given to meet the ends of justice of the Supreme Court of India, it is given in exercise of the extraordinary jurisdiction of the Apex Court under Articles 136 and 142 of the Constitution of India, which is not available to the tribunal or even the High Court. Reliance was also placed on a decision rendered by the Supreme Court in *Sardari and Others v. Sushil Kumar and others*, Appeal (Civil) No. 1733 of 2008 on 4-03-2008 arising out of S.L.P.(C) No. 19965 of 2004.

7. On the other hand, Shri Gautam Khetrapal, learned Counsel appearing for Respondent No. 1/claimant placed heavy reliance on *New India Assurance Co., Shimla Vs. Kamla and Others etc. etc.*, *National Insurance Co. Ltd. Vs. Swaran Singh and Others*, and *National Insurance Co. Ltd. Vs. Laxmi Narain Dhut*, while contending that the Supreme Court has, in those cases, upheld the jurisdiction of the tribunal to 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 tribunal. Since in the present case, there is no dispute that Respondent No. 1/claimant was a third party being a pedestrian, who was dashed by the offending vehicle driven by Respondent No. 2, the Tribunal had jurisdiction to order the insurer, which was under a statutory liability to cover the risk of the claimant being a third party, to first pay and recover from the owner the compensation awarded by the Tribunal despite recording a finding that Respondent No. 2, i.e., the driver of the offending vehicle did not possess any driving licence.

8. Having considered rival submissions, I have perused the record. Section 149 of the Act, which casts a duty on the insurer to satisfy judgments and awards against persons insured in respect of third-party risks, reads as under:

Section 149. Duty of insurers to satisfy judgments and awards against persons insured in respect of third party risks. - (1) If, after a certificate of insurance has been issued under 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 163-A is obtained against any person insured by the policy then, notwithstanding that the insurer may be entitled to avoid or cancel or may have avoided or cancelled the policy, the insurer shall, subject to the provisions of this section, pay to the person entitled to the benefit of the decree any sum not exceeding the sum assured payable thereunder, as if he were the judgment-debtor, in respect of the liability, together with any amount payable in respect of costs and any sum payable in respect of interest on that sum by virtue of any enactment relating to interest on judgments.

(2) No sum shall be payable by an insurer under Sub-section (1) in respect of any judgment or award unless, before the commencement of the proceedings in which the judgment or award is given the insurer had notice through the Court or, as the case may be, the Claims Tribunal of the bringing of the proceedings, or in respect of such judgment or award 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 following grounds, namely:

(a) that there has been a breach of a specified condition of the policy, being one of the following conditions, namely:

(i) a condition excluding the use of the vehicle-

(a) for hire or reward, where the vehicle is on the date of the contract of insurance a vehicle not covered by a permit to ply for hire or reward, or

(b) for organized racing and speed testing, or

(c) for a purpose not allowed by the permit under which the vehicle is used, where the vehicle is a transport vehicle, or

(d) without side-car being attached where the vehicle is a motor cycle; or

(ii) a condition excluding driving by a named person or persons or by any person who is not duly licensed, or by any person who has been disqualified for holding or obtaining a driving licence during the period of disqualification; or

(iii) a condition excluding liability for injury caused or contributed to by conditions of war, civil war, riot or civil commotion; or (b) That the policy is void on the ground that it was obtained by the non-disclosure of a material fact or by a representation of fact which was false in some material particular.

(3) Where any such judgment as is referred to in Sub-section (1) is obtained

from a Court in a reciprocating country and in the case of a foreign judgment is, by virtue of the provisions of Section 13 of the Code of Civil procedure, 1908 (5 of 1908) conclusive as to any matter adjudicated upon by it, the insurer (being an insurer registered under the Insurance Act, 1938 (4 of 1938) and whether or not he is registered under the corresponding law of the reciprocating country) shall be liable to the person entitled to the benefit of the decree in the manner and to the extent specified in Sub-section (1), as if the judgment were given by a Court in India: Provided that no sum shall be payable by the insurer in respect of any such judgment unless, before the commencement of the proceedings in which the judgment is given, the insurer had notice through the Court concerned of the bringing of the proceedings and the insurer to whom notice is so given is entitled under the corresponding law of the reciprocating country, to be made a party to the proceedings and to defend the action on grounds similar to those specified in Sub-section (2).

(4) Where a certificate of insurance has been issued under Sub-section (3) of Section 147 to the person by whom a policy has been effected, so much of the policy as purports to restrict the insurance of the persons insured thereby by reference to any condition other than those in Clause (b) of Sub-section (2) Shall, as respects such liabilities as are required to be covered by a policy under Clause (b) of Sub-section (1) of Section 147, be of no effect:

Provided that any sum paid by the insurer in or towards the discharge of any liability of any person which is covered by the policy by virtue only of this Sub-section shall be recoverable by the insurer from that person.

(5) If the amount which an insurer becomes liable under this section to pay in respect of a liability incurred by a person insured by a policy exceeds the amount for which the insurer would apart from the provisions of this section be liable under the policy in respect of that liability, the insurer shall be entitled to recover the excess from that person.

(6) In this section the expression "material fact" and "material particular" means, respectively a fact or particular of such a nature as to influence the judgment of a prudent insurer in determining whether he will take the risk and, if so, at what premium and on what conditions, and the expression "liability covered by the terms of the policy" means a liability which is covered by the policy or which would be so covered by the policy or which would be so covered but for the fact that the insurer is entitled to avoid or cancel or has avoided or cancelled the policy.

(7) No insurer to whom the notice referred to in Sub-section (2) or Sub-section (3) has been given shall be entitled to avoid his liability to any person entitled to the benefit of any such judgment or award as is referred to in Sub-section (1) or in such judgment as is referred to in Sub-section (3) otherwise than in the manner provided for in Sub-section (2) or in the corresponding law of the reciprocating country, as the case may be.

Explanation. - For the purposes of this section, "Claims Tribunal" means a Claims Tribunal constituted u/s 165 and "award" means an award made by that Tribunal u/s 168.

9. In *Skandia Insurance Co. Ltd. Vs. Kokilaben Chandravan and Others*, , it was observed by the Supreme Court that the insistence of the legislature that a motor vehicle can be used in a public place only if that vehicle is covered by a policy of insurance is not for the purpose of promoting the business of the Insurance Company but to protect the members of the community who become sufferers on account of accidents arising from use of motor vehicles. It is pointed out in the decision that such protection would have remained only a paper protection if the compensation awarded by the Courts were not recoverable by the victims (or dependents of the victims) of the accident. This is the *raison d'être* for the legislature making it prohibitory for motor vehicles being used in public places without covering third party risks by a policy of insurance. Any contract of insurance under Chapter XI of the Act, contemplates a third party who is not a signatory or a party to the contract of insurance but is, nevertheless, protected by such contract. As pointed out by the Supreme Court in *New Asiatic Insurance Co. Ltd. Vs. Pessumal Dhanamal Aswani and Others*, , the rights of the third party to get indemnified can be exercised only against the insurer of the vehicle (emphasis supplied by me).

10. In *New India Assurance Co., Shimla v. Kamla and Ors.* (supra), dealing with similar situation of renewal of a fake driving licence and breach of insurance policy conditions on account of vehicle being driven without a valid driving licence, the Supreme Court observed in paragraphs 19 to 22 and held in paragraph 25 as under:

19. Sub-section (4) of S. 149 of the Act says that so much of the policy as purports to restrict the insurance of the person insured by reference to any condition shall "as respects such liabilities as are required to be covered by a policy, be of no effect." The proviso to the said Sub-section is important for the purpose of considering the question involved in this case and hence that proviso is extracted below:

Provided that any sum paid by the insurer in or towards the discharge of any liability of any person which is covered by the policy by virtue only of this Sub-section shall be recoverable by the insurer from that person.

20. Similarly, in this context Sub-section (5) is equally important and hence that is also extracted below:

If the amount which an insurer becomes liable under this section to pay in respect of a liability incurred by a person insured by a policy, exceeds the amount for which the insurer would apart from the provisions of this section be liable under the policy in respect of that liability, the insurer shall be entitled to recover the excess from that person.

21. A reading of the proviso to Sub-section (4) as well as the language employed in Sub-section (5) would indicate that they are intended to safeguard the interest of an insurer who otherwise has no liability to pay any amount to the insured but for the provisions contained in Chapter XI of the Act. This means, the insurer has to pay to the third parties only on account of the fact that a police of insurance has been issued in respect of the vehicle, but the insurer is entitled to recover any such sum from the insured if the insurer were not otherwise liable to pay such sum to the insured by virtue of the conditions of the contract of insurance indicated by the policy. 22. To repeat, the effect of the above provisions is this: When a valid insurance policy has been issued in respect of a vehicle as evidenced by a certificate of insurance the burden is on the insurer to pay to third parties, whether or not there has been any breach or violation of the policy conditions. But the amount so paid by the insurer to third parties can be allowed to be recovered from the insured if as per the policy conditions the insurer had no liability to pay such sum to the insured.

25. The position can be summed up thus: The insurer and insured are bound by the conditions enumerated in the policy and the insurer is not liable to the insured if there is violation of any policy condition. But the insurer who is made statutorily liable to pay compensation to third parties on account of the certificate of insurance issued shall be entitled to recover from the insured the amount paid to the third parties, if there was any breach of policy conditions on account of the vehicle being driven without a valid licence. Learned Counsel for the insured contended that it is enough if he establishes that he made all due enquiries and believed bona fide that the driver employed by him had a valid driving licence, in which case there was no breach of the policy condition. As we have not decided on that contention it is open to the insured to raise it before the Claims Tribunal. In the present case, if the Insurance Company succeeds in establishing that there was breach of the policy condition the Claims Tribunal shall direct the insured to pay that amount to the insurer. In default the insurer shall be allowed to recover that amount (which the insurer is directed to pay to the claimants - third parties) from the insured person.

11. In *National Insurance Co. Ltd. v. Swaran Singh and Ors.* (supra), the Supreme Court was considering a situation in which a claim for compensation was made by a third party and the liability of the insurer under Sections 147(1) and 149(2) of the Act to pay compensation under its statutory liability to satisfy the award passed by the tribunal was in question. In paragraph 110, the summary of findings of the Supreme Court to the various issues raised in the petitions were as under:

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

effectuate the said object.

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

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

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

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

(vi) Even where the insurer is able to prove breach on the part of the insured concerning the policy condition regarding holding of a valid licence by the driver or his qualification to drive during the relevant period, the insurer would not be allowed to avoid its liability towards the insured unless the said breach or breaches on the condition of driving licence is/are so fundamental as are found to have contributed to the cause of the accident. The Tribunals in interpreting the policy conditions would apply "the rule of main purpose" and the concept of "fundamental breach" to allow defences available to the insurer u/s 149(2) of the Act.

(vii) The question, as to whether the owner has taken reasonable care to find out as to whether the driving licence produced by the driver (a fake one or otherwise), does not 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 Section 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 (emphasis supplied by me). Such determination of claim by the Tribunal will be enforceable and the money found due to the insurer from the insured will be recoverable on a certificate issued by the Tribunal to the Collector in the same manner u/s 174 of the Act as arrears of land revenue. The certificate will be issued for the recovery as arrears of land revenue only if, as required by Sub-section (3) of Section 168 of the Act the insured fails to deposit the amount awarded in favour of the insurer within thirty days from the date of announcement of the award by the Tribunal.

(xi) The provisions contained in Sub-section (4) with the proviso thereunder and Sub-section (5) which are intended to cover specified contingencies mentioned therein to enable the insurer to recover the 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 (emphasis supplied by me) 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 the claims inter se might delay the adjudication of the claims of the victims.

12. In *National Insurance Co. Ltd. v. Swaran Singh and Ors.* (supra), the Supreme Court held that in each case, on evidence led before the Claims Tribunal, a decision has to be taken whether the fact of the driver possessing licence for one type of vehicle but found driving another type of vehicle, was the main or contributory cause of accident. If on facts, it is found that accident was caused solely because of some other unforeseen or intervening causes (emphasis supplied by me) like mechanical failures and similar other causes having no nexus with driver not possessing requisite type of licence, the insurer will not be allowed to avoid its liability merely for technical breach of conditions concerning driving licence.

13. In the case of *National Insurance Co. Ltd. v. Laxmi Narain Dhut* (supra), the Supreme Court summarized its finding as under:

1. The decision in National Insurance Co. Ltd. Vs. Swaran Singh and Others, has no application to cases other than third-party risks.

2. Where originally the licence 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, (emphasis supplied by me)

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

14. In Smt. Pushpabai and Ors. v. Padumnath Mali and Ors. (supra), a Division Bench of this Court held that where the scooter was being driven without a valid licence, the insurance company should be given liberty to recover the amount paid to the claimants from Respondent No. 2 for breach of the insurance policy by taking steps in accordance with law for recovery of the amount paid to the claimants from the owner of the scooter.

15. In the instant case, the insured neither filed written statement nor stepped in the witness box exposing him to an adverse inference being drawn against him to the effect that the vehicle had been handed over by him for being driven by an unlicensed driver. The owner and the driver of the offending vehicle having remained ex parte before the Tribunal, an inference can, thus, safely be drawn that the owner, without exercising reasonable care, negligently permitted the offending vehicle to be driven by Respondent No. 2, who did not possess any driving licence. In this view of the matter, a fundamental breach of the condition of the policy of insurance is established and it can safely be inferred that by allowing the motor cycle, i.e., the offending vehicle to be driven by a person who did not possess any driving licence, Respondent No. 3/owner had committed such a fundamental breach of the policy of insurance, which had contributed to the accident. The Tribunal, therefore, ought to have in the first instance held that the insurance company, having successfully established a defence available to it u/s 149(2)(a)(ii) of the Act, was not under any liability to pay compensation.

16. Admittedly, Respondent No. 1/claimant, a pedestrian, who was knocked down by the offending vehicle driven by Respondent No. 2 is a third party, whose risk was statutorily covered by the insurer under the policy of insurance. In view of the decision rendered by the Supreme Court in New India Assurance Co., Shimla v. Kamla and Ors. (supra), National Insurance Co. Ltd. v. Swaran Singh and Ors. (supra), National Insurance Co. Ltd. v. Laxmi Nrain Dhut (supra) and a Division Bench of this Court in Smt. Pushpabai and Ors. v. Padumnath Mali and Ors. (supra) and also in view of the fact ;that the owner and the driver of the offending vehicle were not contesting the application for compensation and had remained ex parte, the Tribunal had jurisdiction and was justified in ordering the insurance company to pay the compensation awarded and recover it from the owner. Even in Sardari and Ors. v. Sushil Kumar and Ors. (supra), the Supreme Court has in paragraph 6 observed that in certain fact situations the Court while

fastening the liability on the owner of the vehicle may direct the Insurance Company to pay to the claimants the award amount with liberty to it to recover the same from the owner. There is, thus, no illegality in the impugned award. The appeal is accordingly dismissed.

17. It is thus clear that the Tribunal, in the fact situation of each case, is required to consider whether it would be necessary to pass an order of pay and recover against the Insurance Company. The order of pay and recover ought not to be passed against the Insurance Company mechanically and without giving reasons for the same. Such fact situations could be many. There could be material on record to show that the claimant would have difficulty in recovering the compensation awarded from the owner. There could be a situation in which the service of summons on the owner of the vehicle might not have been possible for want of proper address or that the owner, after service of summons, did not contest the claim and remained ex parte. There could be a situation in which the claimants are in a state of penury and compensation not immediately recoverable from the owner would need to be disbursed to the claimants expeditiously. The Tribunal would be required to consider the facts and circumstances of each case and give reasons before passing an order of pay and recover against the insurer after exonerating the insurer from the liability to pay compensation on proof of defence available to it u/s 149(2)(a) of the Act. As regards the procedure to be adopted by the insurer for recovery of compensation paid by it to a third party in terms of the award from the owner, the Supreme Court in *Oriental Insurance Co. Ltd. v. Nanjappan and others*, AIR 2004 SCW 952 held in paragraph 8 as under:

8. Therefore, whole setting aside the judgment of the High Court we direct in terms of what has been stated in *Baljit Kaur's* case (supra) that the insurer shall pay the quantum of compensation fixed by the 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 the insured, owner of the vehicle shall be issued a notice and he shall be required to furnish security for the entire amount which the insurer will pay to the claimants. The offending vehicle shall be attached, as a part of the security. If necessity arises the Executing Court shall take assistance of the concerned Regional Transport Authority. The Executing Court shall pass appropriate orders in accordance with law as to the manner in which the insured, owner of the vehicle shall make payment to the insurer. In case there is any default it shall be open to the Executing Court to direct realisation by disposal of the securities to be furnished or from any other property or properties of the owner of the vehicle, the insured.....

18. Placing reliance on the above dictum of the Supreme Court and in the facts and circumstances of the case and also bearing in mind that the owner and the driver did not contest the application for compensation and remained ex parte, it is ordered that the insurer shall deposit in the Tribunal the quantum of compensation awarded to Respondent No. 1/claimant within three months. 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, the Tribunal shall issue notice to the insured requiring him to furnish security for the entire amount which the insurer will pay to Respondent No. 1/claimant. In case there is any default, the Executing Court shall, after releasing the amount in favour of the claimant, take steps to attach the offending vehicle as a part of the security and if necessity arises take the assistance of the concerned regional Transport Authority. It shall also be open to the Executing Court to direct realisation of the amount paid by the insurer by disposal of the securities to be furnished or from any other property or properties of the owner of the vehicle, the insured.

04-04-2008

The matter was heard in chambers.

Shri Dashrath Gupta, learned Counsel for the Appellant/insurer. Shri Gautam Khetrapal, learned counsel for Respondent No. 1/claimant. No one appears for other Respondents.

Shri Dashrath Gupta, learned Counsel for the Appellant/insurer pointed out that on 28-03-2008 he has submitted one computer generated copy of the judgment delivered by the Supreme Court of India on 04-03-2008 in Sardari and Ors. v. Sushil Kumar and others, in Appeal (Civil) No. 1733 of 2008 arising out of S.L.P. (C.) No. 19965 of 2004 for being included in his submissions. However, it did not occur to him and, therefore, he did not point out to the Court that the said judgment was delivered by the Supreme Court of India on 04-03-2008 and, therefore, could not be included in the order in Miscellaneous Appeal (C.) No. 44 of 2007 (United India Insurance Company Limited v. Kunjbihari Mishra and others), which was passed by oral dictation in open Court on 26-02-2008.

A clarification, therefore, needs to be made here regarding the date of order being 26-02-2008 and the case law of Sardari and Ors. v. Sushil Kumar and Ors. (supra) having been relied in the order passed.

The arguments were heard in this Miscellaneous Appeal (C.) on 26-02-2008 and oral dictation for dismissing the appeal was given in open Court. Since the matter under consideration in this appeal was considered to be one of importance, learned Counsel for the parties had requested that the order be approved for reporting and they be permitted to submit more case law on the view taken by

this Court to be incorporated in the order.

19. In view of the request at the Bar while a comprehensive judgment was under preparation, on 28-03-2008, Shri Dashrath Gupta, learned Counsel for the Appellant/insurer submitted for inclusion in his submissions one computer generated copy of the judgment delivered by the Supreme Court of India in Sardari and Ors. v. Sushil Kumar and Ors. (supra), which has been referred by me in the order passed in Miscellaneous Appeal (C.) No. 44 of 2007. The order in Miscellaneous Appeal (C.) No. 44 of 2007 was, thus, ready and signed by me on 31-03-2008. Since the appeal was disposed of by an oral order passed on 26-02-2008, therefore, the date after signing the order had to be 26-02-2008.

In the above circumstances, for purposes of limitation, the order though pronounced earlier, but, signed on 31-03-2008 shall be reckoned from the date of signing the order, i.e. 31-03-2008.