
(1975) 03 AP CK 0004

In the Andhra Pradesh High Court

Case No : Appeal against order No. 298 of 1972

Zakaria and Others

APPELLANT

Vs

Naoshir Cama and Others

RESPONDENT

Date of Decision : 07-03-1975

Acts Referred:

Motor Vehicles Act, 1939 — Section 96(2)

Citation : AIR 1976 AP 171

Hon'ble Judges : A. Sambasiva Rao, Acting C.J.; Raghuvir, J

Bench : Division Bench

Advocate : V. Rajagopala Reddy and T.H.B. Chalapati, for the Appellant; C. Padmanabha Reddy and A.S. Prakasam, for the Respondent

Judgement

A. Sambasiva Rao, Acting C.J.

1. Questions of substantial import relating to the claims arising out of Motor Accidents arise for consideration in this appeal.

2. The appeal relates to a claim arising out of a motor accident which took place on 4th June, 1967 on what is popularly known as Tank Bound Road which connects the twin cities of Hyderabad and Secunderabad. One M.A. Khader (hereinafter called the deceased) met with his death in the accident. He was then driving a scooter which collided with a convertible standard Herald car bearing registration No. KLE 2860 which was being driven by the 1st respondent. The five legal representatives of the deceased who include his parents, his widow and his children, filed O.P. 176/67 before the Motor Accidents Claims Tribunal u/s 110-A of the Motor Vehicles Act, 1939 claiming compensation in a sum of Rs. 4,53,222/-. There are many respondents to the action, the 1st respondent being the person who was driving the car. The 2nd respondent is the Hindustan General Insurance Society Limited with which the car was insured. The car originally belonged to one N.C. Cama who had died intestate on 23rd April 1967 leaving behind him several heirs. Along with 1st respondent, respondents 8 to 10 are those heirs.

3. We will now notice the respective contentions of the parties who may be broadly analysed into three categories. The petitioners are one, respondents 1, 3 to 10 are another and the 2nd respondent viz., the Insurance Company is the third. The petitioners allege that on 4-6-1967 at about 5.15 P.M. the deceased was proceeding on his Vespa scooter along the Tank Bund road from Secunderabad side to Hyderabad. The 1st respondent was proceeding from the Hyderabad side to Secunderabad side in the motor car with six other persons sitting in it and himself driving it. He was driving the car in a rash and negligent manner as a result of which a collision between the car and the scooter took place near an electric pole No. T.S. 150/22. The deceased sustained multiple injuries on the head, chest, leg etc., and died practically instantaneously before any medical aid could be rendered to him. His monthly income was between Rs.1200/- to Rs.1300/-. If his earnings and his future prospects are considered, the loss of earning capacity for the next thirty years would amount to 4 and half lakh of rupees at the rate of Rs. 15,000/- per annum. A sum of Rs. 3,222 is claimed separately as damages for the destruction of the scooter.

4. Respondent No. 1, with whom respondents 3 to 10 sail, states that the car belonged to his father N.C. Cama who had died intestate on 28-4-1967. The car was insured by the father with the 2nd respondent company under the policy dated 19-12-1966 for a period of one year. After the death of the owner, his heirs including the 1st respondent became entitled to the rights under the policy and so the Insurance Company is liable to pay whatever compensation that is decreed by the Court. He denies that he drove the car in a rash and negligent manner. He further disputes the claim as arbitrary, exorbitant and excessive. The Tribunal has no jurisdiction to adjudicate upon the claim relating to the loss to the scooter. He was not responsible for the accident or the death of the deceased and that he is not in any way liable to pay any compensation.

5. The Insurance Company admits the insurance of the car for one year commencing from 10-12-1966. According to it, however, the policy automatically lapsed with the death of the insured viz. N.C. Cama. Consequently, it is not liable to any action for damages by third parties for injuries caused by rash and negligent driving of the car on a date subsequent in the death of the insured.

There is no cover in the policy by subsequent fresh insurance with the 2nd respondent covering the liability in favour of the 1st respondent and that unless and until the Company enters into a fresh agreement with the 1st respondent, its liability to pay compensation does not continue after the death of the insured. What was argued upon in the policy is only a personal indemnity to the insured and on his death that has become void and inoperative. It should, therefore, be deemed that the 1st respondent was driving an insured car at the time of the accident and he alone is liable for any damages that may be awarded.

6. The 1st Additional Chief Judge, City Civil Court, Hyderabad, who was the Motor Accidents Claims Tribunal, who tried the claim petition, framed as many as seven issues and some more additional issues. Before we notice the findings of

the Tribunal it is necessary to notice a few other developments that took place subsequent to the accident. The 1st respondent was prosecuted for rash and negligent driving before the Third City Magistrate in C.C. No. 5728 of 1967. That Court convicted him and sentenced him to undergo imprisonment for six months and to pay a fine of Rs. 3,500/-. The Principal Special Judge, Hyderabad, where the convicted 1st respondent appealed in Crl. A. 148 of 1969 upheld the conviction and the sentence.

The High Court of Andhra Pradesh, however, in Crl. R.C. 285/69 reversed the findings of the Courts below and set aside the conviction and the sentences. Thereupon, the legal representatives of the deceased carried the matter to the Supreme Court. There it is now pending in Crl. A. Nos. 50 and 51 of 1971. A faint suggestion is made by the learned counsel for the appellants that we might await the decision of the Supreme Court before we dispose of the appeal. We have not accepted the suggestion for the manifest reason that the evidence and the findings in the criminal case are not binding on the civil court when it considers the compensation claim. The Tribunal as well as we, sitting in appeal, will have to decide the questions that arise entirely on the basis of the evidence adduced before the Tribunal in the claim petition. We cannot be guided by the findings, one way or the other, of the Supreme Court. Our function is to decide the question on the merits of the case as they emerge from the evidence placed in this case before us.

7. By an order dated 28th March, 1970, in I.A. 251/70, the 1st respondent was permitted to amend his counter pleading that the Company is liable to satisfy the award, if any, for compensation inasmuch as the 2nd respondent had issued a policy dated 1-5-1967 which was in force at the time of the accident in respect of a car APJ 539 belonging to the 1st respondent himself, where the Company undertook to indemnify the 1st respondent while personally driving the motor car not belonging to him and other than the one covered by the policy issued in the name of the 1st respondent relating to the Hindustan car. The Insurance Company disputed the jurisdiction of the Tribunal to adjudicate upon the latter contractual liability and contented that if the 1st respondent had any such remedy, he could enforce it only in a different proceeding. All these were points for consideration before the Tribunal.

It found that the petitioners are the heirs and legal representatives of the deceased and that the result of the criminal case acquitting the 1st respondent could not be ignored. However, assessing the evidence placed before it, it held that there was no conclusive proof that the 1st respondent had rashly and negligently driven the car at the time of the accident. On the question of the liability of the Insurance Company, the decision of the Tribunal is that the policy issued to N.C. Cama the original owner, did not enure to the benefits of the 1st respondent since the death of the insured put an end to the policy. The alternative contention of the 1st respondent that in any case by virtue of the separate policy, the Company was liable to pay, the decision is that he has to

work out his remedies under that policy in a separate proceeding and cannot enforce it in this claim. In regard to the claim for scooter it is held that it is outside the purview of the Claims Tribunal.

As a result of these findings, the Tribunal concludes that the petitioners have failed to prove that the 1st respondent was liable for causing the death of the deceased and so, are not entitled to any compensation. For that reason, as well as for the reason that the policy had lapsed with the death of the original owner, the 2nd respondent is also not liable. When the 1st respondent himself is not liable, there is no question of respondents 5 to 10 being liable. However, obviously with the intention of obviating any remand, the Tribunal estimates the compensation at Rs.1,20,000/-. It deducts Rs.22,720/- on account of the facts that because of the succession certificate issued on the death of the deceased, a benefit to the extent of Rs.22,720/- accrued to them and so that should be deducted from the amount of compensation. Consequently the Tribunal is of the opinion that the compensation that is to be paid is Rs.97,280/-. The claimants have brought this appeal.

8. In the first place, Sri T.H.B. Chalapati appearing for the petitioner-appellants endeavoured to show that the death of the deceased took place on account of the rash and negligent driving on the part of the 1st respondent. His attempt is to make out this contention in two ways. First of all, according to him, the evidence on record is sufficient to conclusively prove that the 1st respondent rashly and negligently drove the car at the time of the occurrence. For this he largely relies on the evidence of P.Ws. 3 and 4 who are claimed to be the eye-witnesses of the occurrence. Before we assess the value of their evidence it is worthy of note that there is singular lack of cogent and clear evidence in regard to the incident which could have been easily produced. It is claimed that police men arrived on the scene immediately but none of them has been examined.

It is a well-known fact that Tank Bund road is a busy thoroughfare and particularly at 5-15 P.M. when the occurrence took place, large number of people would be present there returning home from their work and relaxing on the tank bund, which is one of the most popular places of relaxation in the twin cities. It is also said that quite a large number of people gathered when the incident took place and rightly so, but none of them was examined. Even the sketch of the actual place of the occurrence is not placed which would have enabled the Court to arrive at a decision in regard to rash and negligent driving. We are really surprised that when a person died and large claim was made as compensation on the ground that he had died on account of the rash and negligent driving of the 1st respondent, the petitioners rested content with adducing very meager evidence. Unfortunately, the burden to show that the 1st respondent was rashly and negligently driving his car at that time was on the claimants. Nevertheless, no proper care had been taken to adduce even the most obvious evidence. This is a serious lacuna in their case.

9. Be that as it may, let us see what the two so-called eye-witnesses state about

the occurrence. The Tribunal was not prepared to rely on them. It even doubted their claim that they had witnessed the incident. At the outset we may note that P.Ws. 3 and 4 are young men of 21 and 20 years of age. Both of them surprisingly claim that they had known the 1st respondent earlier. In what manner and for what reason they came to know him they do not explain. The witness P.W. 3 was sitting at the Hanuman Temple in the company of P.W. 4 on the parapet wall of the tank bund. He says that the 1st respondent was driving at a high speed proceeding in the direction of Hyderabad. He overtook an Ambassador Car, a military van and a motor cycle one after another. The speed at which he was driving was 50 or 60 miles per hour. How the witness could estimate the speed is beyond comprehension.

When the car was overtaking the Ambassador car a girl, who was trying to cross the road, was almost to be over-run and so she dashed back and was about to fall on P.Ws. 3 and 4. At the Darga when the car was overtaking another Ambassador car, a scooter was proceeding from the opposite direction and that scooter was on the right side of the road. It was running only at the speed of 10 to 15 miles per hour. The witness describes that the car dashed against the scooter and thereafter grazed against a pole and over-turned. The rider of the scooter fell down and the witnesses ran there. The victim was bleeding from his mouth, nose and ears. He was placed on the parapet wall. Though he lost consciousness he regained it for a little while when he gave his name. The scooter was dragged by the car upto the electric pole and there it went ablaze. The scooter was dragged for five or six paces. One of the occupants of the car was caught underneath its doors and sustained injuries. A policeman came from the direction of Boat Club. He sent the deceased towards Secunderabad. They lifted the car and removed the person caught underneath it.

Another police man came from Hyderabad side and sent that injured person towards Hyderabad. Some other occupants of the car were also injured. The 1st respondent himself sustained injuries and he was sent by the police in a car. According to this witness the impact between the car and the scooter was near the parapet wall. In cross-examination he was asked that he did not give the number of the car or indicate its speed or disclose about the three overtakings, in the Criminal Court. The witness, however, denies this.

But what is significant is that when the collision took place he and P.W. 4 were 100 feet away from the place. It is difficult to imagine that he could see with certainty what happened from a distance of 100 feet away. Obviously to explain away the non-examination of any other person, he says that at that time there were none-else present. Certainly the girl was not examined. The police came almost immediately but they were not examined. The Ambassador car, which was overtaken by the 1st respondent's car just prior to the accident, stopped for a while and then went away. This is another surprising feature. If a gruesome occurrence like this took place no one could have ignored it and gone away unconcerned. So this is another improbability in the version of the witness.

Another important statement made by the witness is that the width of the road at the place of accident was so narrow as to permit only two buses crossing. So, it is difficult to believe that the 1st respondent tried to overtake three motor cars in a such a narrow place.

10. Coming to P.W. 4 who is no other than P.W.3's uncle, he says that there were seven occupants in the car, three in front and four in the rear seat. This witness describes the speed of the car at 60 or 70 miles per hour. According to him, the occurrence took place near the Darga. It was in the centre of the road. We have already referred to the evidence of P.W. 3 that the collision had taken place very near the parapet wall which is on the extreme side of the road. Thus, there is an internal conflict in the evidence of the two witnesses. In the collision took place in the centre of the road and it is also the case of the 1st respondent examined as R.W. 1 then the very version of the witnesses that the 1st respondent overtook three cars while driving rashly becomes untenable. The road at the juncture is narrow as to permit only two buses crossing. If the collision took place in the middle of the road, the 1st respondent could not have overtaken any cars. In cross-examination by the respondents excepting the 2nd respondent, P.W. 4 further clarifies that the collision took place in the process of overtaking the Ambassador car. As we have said, that could not have been the case on such a narrow road. The witness says that the 1st Ambassador car was just 50 or 40 feet away from the place of accident and so also the military vehicle and Jawa scooter. The occupants of these vehicles get down but none was examined.

11. To say the least, this evidence is not at all persuasive enough to enable us to hold that the 1st respondent was driving rashly and negligently. Further, even the actual place of collision is differently stated by the two witnesses.

12. The 1st respondent examined as R.S. 1 on the other hand, claims that he was driving only at 25 to 30 miles per hour. According to him, when he reached the place opposite to Coca-Cola factory double-decker bus was coming in the opposite direction and suddenly a scooter shot out from behind the bus, since its rider was trying to overtake it. As it was overtaking the bus, the scooter dashed straight to his car. Since that section of the road was narrow, it was not possible for three vehicles to negotiate that spot without collision. He tried to avoid it by swerving his car to the left. Since the speed of the scooter was about 45 miles per hour, it hit the right side of the car. He tried to avoid collision with the parapet wall and then slid and hit the right side of the wall. The whole thing happened in a split second.

He was himself trapped inside the car. He denies in the cross-examination that he was driving at a speed of 60 to 70 miles per hour. He also denies that he had overtaken three vehicles prior to the accident. He denies the girl running across the road. According to the witness; the deceased died because of the accident caused by himself. It is suggested to him that the impact with the scooter was very near the right hand side of the parapet wall but the witness denies it. As we have pointed out, this is quite in accordance with the evidence of P.W. who says

that the collision took place in the centre of the road.

13. This is all the evidence available before the Court about rash and negligent driving. It is impossible to find on the basis of this evidence that rash and negligent driving by the 1st respondent has been made out. So, we are with the Tribunal in holding that the case of rash and negligent driving by the 1st respondent has not been made out.

14. We have also indicated that learned counsel attempts to establish rash and negligent driving in two ways. Firstly by direct evidence. His second attempt is that out of the proved circumstances it can be presumed. He refers to the almost instantaneous death of the deceased, the death of one of the occupants of the car, the injuries caused to the 1st respondent, the car going and striking against the electric pole and the car dragging the scooter for a little distance. A presumption is enough to be spelled out from these circumstances that there should have been rash and negligent driving. We cannot agree.

Even if rash and negligent driving could be inferred from these circumstances, it need not necessarily be on the part of the 1st respondent. It would have well been on the part of the deceased. For that also, of course there is no evidence. There is no denial of the fact that the deceased died, the 1st respondent received injuries and another occupant of the car also died later on account of the injuries. It is also seen that the car grazed against an electric pole. But rash and negligent driving need not necessarily be the inference from these circumstances. Admittedly it was a narrow patch of road and the collision took place in the middle of the road. It could have been quite possible for the drivers of the car as well as the scooter to swerve their vehicles in order to avoid further damage and for that reason the car might have scratched against the electric pole. Certainly death of two persons and injuries to another on account of the collision is a serious occurrence. But it need not necessarily be occasioned by rash or negligent driving. Even out of anxiety to avoid collision both persons might have made frantic efforts which might have resulted in the tragedy. So, we cannot agree that rash and negligent driving, particularly on the part of the 1st respondent, can be presumed from the circumstances of the case. Thus, the first point on behalf of the appellant fails.

15. Then come the question as to the liability of the insurer to pay damages to the injured or to the legal representatives of the deceased. The first way of escape of this liability out is that if the driver of the car covered by insurance was not guilty of rash and negligent driving, then there is no liability at all to pay damages to the injured or to the legal representatives of the deceased person. This argument, in other words, is that the liability to compensate arises only when the driver of the motor vehicle is guilty of rash and negligent driving and in no other case.

This stand is taken only by the insurance Company and not by the 1st respondent and his other co-heirs. They indeed have stated in their counter to

the claim petition that the Insurance Company is liable to pay damages to the petitioners who are appellants now. The argument of the Insurance Company is that unless rash and negligent driving is proved, the owner of the car covered by the insurance would not be liable to pay any damages and when the insured is not liable, the insurer is completely free from any responsibility.

This argument advanced to escape from the liability looks, on the face of it, very startling. In these days of overgrowing motor vehicular traffic and consequently the number of accidents that are caused by such traffic, this argument, if accepted, would lead to very grave consequences. If an insured person or the heirs of a deceased person who has been the victim of a motor accident, is obliged to prove rash and negligent driving before some damages are awarded to him or them, it appears as a general principle, that the very purpose of motor insurance would be defeated.

10. Apart from this ostensible preposterous result that would flow out of such an argument, we will have to consider the position on the basis of the provisions in the law. The Motor Vehicles Act (Act IV of 1939) itself provides in Chapter VIII for insurance of motor vehicles against third party risks is provided in the statute. Certificate of Insurance as defined in Section 93 (b) is one issued by the insurer in pursuance of section 95 (4).

Section 94 makes insurance against third party risks necessary. It forbids any person from using, excepting as a passenger, or causing or allowing any other person to use a motor vehicle in a public place, unless there is in force in relation to the use of the vehicle by that person or that other person, as the case may be, a policy of insurance complying with the requirements of the Chapter i.e. the Eighth one. This makes the intention of the legislature quite clear. No vehicle shall be used unless it is covered by insurance in accordance with the provisions of Chapter VIII. This basic requirement is introduced obviously for the purpose of safeguarding the rights of the general public who may be injured by the use of a motor vehicle.

We have already referred to the nature of a Certificate of Insurance, it should be a Certificate issued in pursuance of sub-section (4) of Section 95. Section 95 (4) requires that a policy should be in the prescribed form and contain the prescribed particulars of conditions. At the same time sub-section (1) of Section 95 declares that in order to comply with the requirements of Chapter VIII, a policy of insurance must be a policy which "insures the person or classes of persons specified in the policy to the extent specified in sub-section (2)(i) against any liability which may be incurred by him in respect of the death of or bodily injury to any person or damage to any property of a third party caused by or arising out of the use of the Vehicle in a public place." This is Section 95 (1) (b) (i) and we have omitted the other portions of the section because they are immaterial for the present discussion.

The Policy of Insurance must necessarily insure the person or classes of persons

specified in the policy against any liability which may be incurred by him (i.e. the insured in respect of the death of or bodily injury to any person or damage to any property of the third party caused by or arising out of the use of the vehicle in a public place. It should be noted that there are no qualifications or limitations placed on this liability. If any death of a third party occurs or bodily injury to him is caused or damage to his property takes place on account of driving the insured vehicle in a public place, the insurance covers such liability. The provisions does not say that such death, injury or damage should have been caused only by rash and negligent driving on the part of the person who was driving the insured car. Had the intention of the Parliament been otherwise, it would certainly have introduced the qualification in the provision. The unqualified language in which the liability is declared clearly demonstrates that the liability to compensate would arise if death or bodily injury or damage to the property is caused.

As we have already pointed out, Section 94 (1) makes it obligatory to cover every motor vehicle with a policy of insurance complying with the requirements of Chapter VIII, Section 95 (1) (b) (i) is an essential part of Chapter VIII and consequently it can be concluded without any hesitation that the liability to compensate arises when death, bodily injury or damage to property of a third party is caused arising out of the one of the vehicle in a public purpose. To infer the qualification and complication that such death bodily injury or damage should have been caused before such liability arises, only on account of rash and negligent driving would be introduced in the provision something which is not there. Further it would be violating and perverting the clear provisions of the statute and the intention of the Legislature. Section 96 lays the duty on insurers to satisfy judgments against persons insured in respect of third party risks. This is yet another indication of the anxiety of the Parliament to avoid unnecessary and undue delays in the injured persons getting compensation by way of damages.

By virtue of this provision, the insurer also is made a party to an actin to recover compensation and whatever award is passed by the Tribunal can be executed against it. Section 97 refers to rights of third parties against insurer on the insolvency of the insured. Section 99 declares that no settlement made by the insurer in respect of any claim which might be made by a third party in respect of any liability of the nature preferred to in clause (b) of sub-section (1) of section 95 shall be valid unless such third party is party to the settlement. Section 101 in its turn says that insolvency of insured persons will not affect the liability of insured or claims by third parties.

17. We will now consider Section 110 and the other relevant provisions relating to claims. Section 110 provides for constitution of Claims Tribunals "for the purpose of adjudicating upon claims for compensation in respect of accidents involving the death of, or bodily injury to persons arising out of the use of motor vehicles or damages to any property of a third party so arising or both. It is once again noteworthy that there is no qualification in regard to the manner of

occurrence of the accident.

Section 110-A says that an application should be made for compensation arising out of an accident of the nature specified in section 110(1). Section 110-B requires the Claims Tribunals to make an enquiry after giving the parties an opportunity of being heard and then pass an award determining the amount of compensation. Section 110-C prescribes the procedure and powers of the Claims Tribunals. Sub-section (2-A) of Section 110-C states that if there is collusion between the insured and the person making the claim, the insurer shall have the right to contest the claim on all or any of the grounds that are available to the person against whom the claim has been made. It is here very essential to note the specific provision in Section 96 (2) which enumerates the grounds on which the insured can defend the action. Rash and negligent driving is not one of the grounds included there. So, in the absence of collusion between the insured and the person claiming compensation, the defence of the insured is limited only to the ground stated in Section 96 (2).

18. These various provisions in the Motor Vehicles Act leave no doubt as to the liability of the insured and consequently the insurer to pay compensation to a third party, if he dies or bodily injury to him and damage to his property is caused on account of the use of the insured vehicle in a public place, irrespective as to whether the death, injury or damage has been caused by rash and negligent driving. We may have refer to a few decided cases which are placed before us.

19. Learned counsel for the Insurance Company first relies on the decision of the Punjab High Court in Ram Pertap Vs. General Manager, Punjab Roadways, Ambala, A single learned Judge held that the cardinal principle of liability in tort, when death or bodily injury has been caused to a person, is negligence or failure to take the requisite amount of care required by law and Sections 101 to 110-F do not in any way override the law of torts. So, it cannot be accepted that u/s 110, in order to claim compensation, it is not necessary to establish that the accident was the result of negligence on the part of the owner or the driver of the vehicle. The second case relied on by the Insurance Company is the decision of a Full Bench of the Madhya Pradesh High Court in Mangilal Vs. Parasram and Others, where it was held that liability of the insured has first got to be established by proving negligence and the Insurance Company has only to indemnify the insured if the latter is found liable under the law of torts. While making this observation, the learned Judges noticed the fact that the provisions of the Motor Vehicles Act do not lay down affirmatively that negligence must be proved before the insurer is held liable to pay compensation to the claimant, though they tried to explain it away by saying that it is so because the Act is not intended to substitute the law of torts in its application to the case of an accident. They also pointed out that the provisions contained in Sections 110 to 110-F enact complete procedure for the trial of claims and determination of compensation.

But all the observations, in our opinion, are obiter because the learned Judges found, as a fact, that there was negligence on the part of the driver of the car. Once negligence was found, the other propositions of law propounded by the learned Judges would not be material. Further, the learned Judges themselves referred to the decision of the Supreme Court in *British India General Insurance Co. Ltd. Vs. Captain Itbar Singh and Others*, where it was held that the insurer has the right, provided he has reserved it by the policy, to defend the action in the name of the assured and that if he does so, all defences open to the assured can then be urged by him and there is no other defence that he claims to be entitled to urge. That means, the defence open and available to the insurer are only those mentioned in Section 96 (2). In the policy before us there is no such reservation and this defence is not available to the insurer.

20. We will now refer to a few other decisions which throw light on this problem. In *British India General Insurance Co. Ltd. Vs. Captain Itbar Singh and Others*, the questions of interpretation and the scope of Section 96 arose. Sarkar J., speaking for the Court, made it very plain that the Court cannot add words to a section unless as it stands it is meaningless or of doubtful meaning. Applying this rule of interpretation, we will find Section 95 (1) (b) is neither meaningless nor has any doubt or ambiguity about it. Such being the case, the Court cannot add the words "in the event of rash and negligent driving" in Section 95 (1) (b). The court further held that the insurer has been conferred a right u/s 96 (2) to be made a party to the suit and to defend it. Since that right is a creature of the statute, its content and scope necessarily depends on the provisions of the statute. Sub-section (2) clearly provides that an insurer is not entitled to take any defence which is not specified in it and cannot be added to. The only manner of avoiding liability provided in sub-section (2) is through the defences therein mentioned. In the instant case, the 1st respondent admits that the heirs of the deceased should be compensated and it is not open to the insurer that since there is no rash and negligent driving, the liability to compensate does not arise, since it is not one of the defences available to it u/s 96 (2). The Supreme Court considered the object of Chapter VIII of the Motor Vehicles Act and the scope of Section 95 (1) (b) and S. 96 (1) in *New Asiatic Insurance Co. Ltd. Vs. Pessumal Dhanamal Aswani and Others*, Reghubar Dayal, J., who spoke for the Court, explained the object of Chapter VIII thus:--

"Chapter VIII of the Act, it appears from the heading, makes provision for insurance of the vehicle against third party risks, that is to say, its provisions ensure that third parties who suffer on account of the use of the motor vehicles would be able to get damages for injuries suffered and that their liability to get the damages will not be dependent on the financial condition of the driver of the vehicle whose user led to the causing of the injuries. The provisions have to be construed in such a manner as to ensure this object of the enactment."

The learned Judge proceeds further to state :

"The policy must therefore provide insurance against any liability to third party

incurred by that person when using the vehicle. The policy should therefore be with respect to that particular vehicle. It may, however, mention the person specifically or generally by specifying the class to which that person may belong, as it may not be possible to name specifically all the persons who may have to use the vehicle with the permission of the person owning the vehicle and effecting the policy of insurance. Section 96 therefore must be a policy by which a particular car is insured.

It was also laid down that once the Company had undertaken liability to third parties incurred by the persons specified in the policy, the third parties' right to recover any amount under or by virtue of the provisions of the Act is not affected by any condition in the policy. The clarification of the object of Chapter VIII and the liability of the insurer lends considerable support to the view we have expressed. We consequently hold that the liability of the insurer and consequently that of the insured does not cease to exist in the absence of proof of rash and negligent driving of the insured car. We reject the contention of the Insurance Company in this behalf.

We should not however, be understood as expressing any opinion on the question whether that liability to compensate would arise and exist in the event of the injured person being responsible for the accident or having contributed to it. We do not propose to decide that question as it does not arise here. There is no proof and no finding that the deceased was responsible for the accident or that he had contributed to it.

21. The defence of the Insurance Company does not stop with the above point. It has yet another string to its bow. On its behalf, Sri A.S. Prakasam contends that the insured N.C. Cama had deeded and with his deed also arose the end of all liability of the insurer in respect of the car. It is pointed out that the heirs did not renew the policy or take it in their own name. The coverage given under the policy is purely a personal one and does not enure to the transferee of the vehicle or to the heirs of the original insured, if there was no fresh policy issued. This is how learned counsel presents this aspect of the case.

22. We are not, however, persuaded to uphold this argument, though the Tribunal was. There is nothing in the policy issued to N.C. Cama stating that it is purely personal to him. On the other hand, from a reading of the preamble of the policy and other conditions, it is clear that the coverage is that of the car and not the insured. Let us use from the provisions of the statute whether they lend any support to the contention of the insured for it is only from the provisions of the statute the rights and liabilities should be ascertained. Section 94, which insists upon insurance against third party risks, says that no person shall use except as a passenger or cause or allow any other person to use a motor vehicle in a public place, unless there is in force in relation to the use of the vehicle by that person or that other person, as the case may be a policy of insurance complying with the requirements of chapter VIII.

It is immediately seen that what is emphasized in respect of third party risks is the use of the vehicle. The words in Section 94 (1) "unless there is in force in relation to the use of the vehicle make it abundantly clear that it is the vehicle and its use that are covered at least in so far as third party risk is concerned. So long as the vehicle is used and an accident takes place by its user resulting in third party risk, then certainly it should be understood from Section 94 (1) that the policy, which had been taken by late N.C. Cama from the insurer for one year, did not expire and the period of insurance was still continuing as on the date of the accident. The escape valve that is sought to be utilised is that the insured is sought to be utilised is that the insured had died and consequently, despite the non-expiry of the period of insurance, the liability of the insured came to an end.

Such a contention, in our opinion, runs counter to the language of Section 94 (1) which says that a policy of insurance has to be in force in relation to the use of the vehicle. It does not postulate and in fact does not warrant a construction that though the period of insurance has not expired, the coverage given by the insurer would come to an end with the death of the insured. The same anxiety of the Parliament is once again expressed in Section 95. We have already referred to clause (b) of Section 95 (1). Sub-clause (i), thereof requires a policy of insurance to insure against any liability which may be incurred in respect of death etc., caused by or arising out of the use of the vehicle in a public place. The emphasis is once again on the vehicle.

Section 96 imposes the duty on insurers to satisfy the judgments against persons insured in respect of third party risks. Sub-section (2) of Section 96 lays down the grounds on which alone the insurer can defend an action. Death of the insured is not one of the grounds mentioned in sub-section (2). Section 97 ensures the right of the third parties against insurer even when the person or company in whose favour a policy has been given, has become insolvent or has been wound up. Likewise Section 101 reiterates that insolvency or any event mentioned in sub-section (1) or sub-section (2) of Section 97 shall not affect any liability referred to in Section 95 (1) (b).

We may, however, take note of Section 102 which says that the death of a person, in whose favour a certificate of Insurance had been issued, if it occurs after the happening of an event which has given rise to a claim under the provisions of this chapter, shall not be a bar to the survival of any cause of action arising out of the said event against his estate or against the insurer. Though learned counsel for the insurer wants to utilise this to his advantage, we fail to see how this particular provision will help him. What the section says is that if a person in whose favour the certificate had been issued dies after the happening of an accident, such death shall not be a bar to the survival of any cause of action arising out of the accident either against his estate or against the insurer. From this it does not follow that if a person had died before the occurrence, all liability ceases. Thus, going by the provisions of the Act, we are unable to

contribute to the view that with the death of the person in whose favour the Certificate of Insurance has been given the liability of the insurer ceases to exist though the period of insurance is running on the date of the accident.

23. Further, the problem may be examined from another perspective. The motor car that is covered under the policy was property of N.C.Cama, the person in whose name the Certificate of Insurance was given. As his property it passed, on his death to his heirs who included the 1st respondent. As his heirs the 1st respondent and the respondents 3 to 10 succeeded to the car. It is also in evidence that there was a succession certificate issued in favour of the heirs in regard to the estate of late N.C. Cama. If the case is property and has passed, on the death of the owner, to his heirs on principle the policy of insurance taken by the late owner for which he paid valuable consideration in the shape of premium should also be property. Consequently it and the rights thereunder should and would devolve on his heirs by operation of law. The legal consequences of such a position is that respondents 1 and 3 to 10 became entitled on the death of N.C. Cama, to the car as well as to the benefits of the policy which was still in force. In this view also, the liability incurred by the use of the car should be borne by the insurer.

24. Many an authority have been cited by the learned counsel for the insurer in support of his contention. We may briefly refer to some of them. Our attention is invited to paragraph 471 at page 244 of volume 22 of Halsbury's Laws of England. Third Edition. It says :

"Where an insurance is effected on property of the assured, or is in itself a form of investment, so as to be property in itself, the demise of the assured will not affect its duration in the absence of specific provision to that effect appropriate premiums having been paid, the value secured will normally pass as property to the personal representative of the deceased."

This passage, we may immediately point out, lends support to the view we have expressed above that the rights under the policy would pass as property to the personal representative of the deceased. Learned counsel, however, seeks to emphasize on the next passage which says:--

"There are, however, certain classes of insurance which are inherently personal to the insured in the sense that they insure him personally against specific losses or liabilities or the occurrence of specific contingencies, and it therefore follows that, once he personally has ceased by death to be capable of incurring such losses or liability or of being affected by such contingencies, the policy comes to an end."

We have already referred to the fact that the coverage under the policy, as contemplated by the provisions of the Act, is the use of the car and so, it is difficult to hold that the policy, whose period has not lapsed, does not continue to cover third parties risk. Then two Madras decisions in *M. Bhoopathy (Died) and Others Vs. M.S. Vijayalakshmi and Another*, and *Queensland Insurance Co. Ltd.*,

v. Rajalakshmi Ammal, (1970 ACJ 104) (Mad) are relied on. The ratio of these cases is that an insurance policy is a contract of personal indemnity and the insurer cannot be compelled to accept the responsibility in respect of a third party who may be quite unknown to him. Change of ownership of a vehicle puts an end to the policy. It was held that the insurance Company can raise the defence that the policy lapsed on the transfer of the vehicle. These are cases which arose out of transfer of the vehicle.

Whether we agree with the view taken there or not, there is a world of difference between those cases and the one before us. Transfer of vehicle is effected by action of parties, while succession and inheritance does not deemed upon the volition of the parties. As property the motor vehicle and the insurance rights relating thereto devolve on the heirs. So, the insurer's liability continued so long as the period of insurance does not lapse, because of the fact that the heirs have inherited the car and the rights under the policy. In regard to the view expressed in the latter of the two decisions that the insurer cannot be compelled to accept responsibility in respect of a third party, who may be quite unknown to him, we would like to point out that a third party, when he dies or suffers an injury, should not be allowed to suffer because unknown to him there was a change in the ownership of the vehicle. If such were the result one could spell out, then the very purpose of compulsory insurance against third party risks is completely defeated.

Court should not accept a construction which would destroy the essentials of a statute. Reliance is placed on the observation of Veeraswami, J.,(as he then was) in Bhoopathy v. Vijayalakshmi, 1970 ACJ 104 (Mad) (supra) that if death of the insured occurs before the happening of such an event, then of course the policy ipso facto lapses and will be of no effect in respect of liabilities arising from accidents thereafter. In our opinion it is only an obiter and in any case for the reasons we have stated, we cannot agree with this observation of the learned Judge. It is true that while making this observation he relied on a passage in Shawcross on Motor Insurance (2nd Edition) at p. 287 which is also relied on before us by the learned counsel for the insurer that a policy is automatically avoided when the insured dies, becomes bankrupt or parts with the insured vehicle. The learned author was referring to the English law.

No doubt our own law is fashioned largely after the English law and some provisions in the two laws correspond with each other. Yet, the duty of the Court is to construe the statute which is in force in the country. If we go completely by the observations of Shawcross then even bankruptcy of the insured puts an end to the liability. That is specifically excluded by the Indian Act. So, it is unsafe to go by these passages. To the same effect are the decisions of the Delhi High Court in Insurance Company Limited Vs. Vimal Rai and Others, Orissa High Court in The South India Insurance Co. Ltd. Vs. Purna Chandra Misra and Others, and that of the Madras High Court in Rajappa and Others Vs. Andalammal and Others, . They are all cases dealing with liability arising out of transfer of the

motor vehicle. Here we not concerned with a transfer. So, these cases give no guidance to fix the liability of the insurer in this case.

25. We, may however, refer to *Kelly v. Cornhill Insurance Co. Ltd.*, (1964) 1 All ER 321. That was a case where the owner died and the accident took place while the car was still part of the estate of the deceased. During the owner's lifetime there was unlimited permission given by him to his son to drive the car. Neither he nor his executrix revoked the son's permission to drive. So, the question arose whether the son was protected by the policy against third party claims when he was driving the car which resulted in an accident or the death of the owner. Lord Dilhorne observed;

"The risks which, in turn for the payment of a premium, they had undertaken to cover during the currency of the policy were not, in my opinion, altered in any degree by reason of Michael Kelly's death. The policy is entirely silent as to the effect on the currency of the policy on the death of the insured, Michael Kelly and if it be the case, as they now contend, that after his death the policy ceased to cover the driving of the car by any one to whom he had given permission to drive it, it is to be noted that the policy makes the provision for the return of any of the premium paid for cover upto April 26, 1960."

These observations apply with great force to the circumstances of the present case. Lord Reid stated at page 324:

"As the company have chosen not to insert any express provision to deal with the case of the death of the insured during the currency of the policy, we are left with the difficult and unsatisfactory task of drawing inference from provisions which are not directed to that event read in the light of the policy and proposal as a whole. In answer 4 of the closed record the respondents plead that the policy "was personal to the deceased" and "had lapsed as at the date of death of the deceased." Counsel did not try to maintain that surprising contention in argument. It would mean that, if the car was destroyed by fire or stolen immediately after the death of the insured, the company would be under no liability to indemnify the executor, and that the provision for payment of a lumpsum to the insured's wife in certain events would no longer be in force. There is no provision for return of any part of the premium even if the insured died a few days after the commencement of the policy. No ordinary person reading the policy would think that it is necessary to take out a new policy the day after the death of the insured if the car is to be covered and even apart from the rule that documents are read contra preferentem. I would find it impossible to accept the interpretation for which the respondents' pleading contends. If the deceased dies intestate there is no executor who can act before confirmation and even where there is an executor nominate he has no title until confirmation to deal with the estate. Immediately after the death the property must I think still be regarded as in hereditas jacens of the deceased."

Lord Guest said at page 332 that if there was no limitation there was no reason

why the permission should lapse automatically on the death of the father. Lord Guest at page 334 observed:

"It was at one stage in the case contended that the policy lapsed on the death of the insured. It was, however, conceded by the respondents before your lordships that for certain limited purposes the policy subsisted after death. For example, Sections D and F of the policy cover the insured's car against fire and burglary, and the policy would enure to the deceased's representative during the current term for these purposes. The personal representatives of the insured or the insured owner are also covered for liability incurred by the insured person before his death."

We drew attention and reinforcement from these observations of the Lords.

26. We may also usefully refer to a passage in the judgment of the Supreme Court in *New Asiatic Insurance Co. Ltd. Vs. Pessumal Dhanamal Aswani and Others*, . It says :

"The policy must therefore provide insurance against any liability to third party incurred by that person when using that vehicle. The policy should therefore be with respect to that particular vehicle. This passage emphasises that the policy covers the vehicle and its use. Chinnappa Reddy, J., in *The Hindusthan General Insurance Society Ltd. Vs. P.R. Narsa Reddi and Others*, held that the liability of insurance Company does not necessarily end by mere transfer of the vehicle by the insured.

27. We are nothing either in the statute or in the actual terms and conditions of the policy which was still in force on the date of the accident which would prevent the legal heirs from succeeding to the car as well as the rights thereunder. For these reasons, we disagree with the Tribunal and reject contention of the insurer that its liability to cover third party risk lapsed with the death of the insured.

28. This finished the legal aspect. What remains is only the quantum of damages. It follows from what we have held above that the petitioners appellants are entitled to damages. Though they have made a large claim as compensation, Sri T.H.B. Chalapathi before us has clearly stated that he is limiting his claim only to Rs.1,20,000/- which was found by the Tribunal as the quantum of damages, if any, payable. However, it deducted a sum of Rs.22,720/- out of this amount since the petitioner-appellants got an accelerated benefit to this sum on the succession certificate. Learned counsel questions this deduction but we do not find anything wrong in the Tribunal doing so on account of death of the deceased he heirs undoubtedly got this amount. So, it is certainly proper to deduct this amount from Rs.1,20,000/-. The balance is Rs.97,280/-.

We may also refer to the claim of the learned counsel for the value of the scooter, that was demanded. As the Tribunal has pointed out, it should be decided and determined in a separate proceeding and not in this. So we allow

this appeal and award a sum of Rs.97,280/- as compensation for the death of the deceased in the occurrence. Since we have held that the insurance was in force the insurer viz., the 2nd respondent is liable to pay the amount. The appellants will get proportionate costs of the appeal from the 2nd respondent. The other respondents will bear their own costs.

29. Appeal allowed.