Karnataka High Court Dr. S. Jayaram Shetty vs The National Insurance Company ... on 19 April, 2002 Equivalent citations: 2002 ACJ 2054, ILR 2002 KAR 3117, 2003 (4) KarLJ 484 Author: T S Thakur Bench: T S Thakur, D S Kumar JUDGMENT Tirath S. Thakur, J. 1. This appeal arises out of an order made by the Additional Motor Accidents Claims Tribunal, Bhadravathi in M.V.C. No. 202 of 1996 whereby the Tribunal has rejected the claim petition filed by the appellant seeking compensation for the injuries sustained by him. The Tribunal has taken the view that since the appellant was himself the owner of the vehicle involved in the accident, he was not entitled to claim any compensation as the accident had occurred because of the rash and negligent driving of his own driver. The appellant assails the correctness of that view and argues that even when he himself is the owner of the vehicle involved in the accident and even when the accident in question had occurred on account of the rash and negligent driving of his own driver, he was entitled to maintain a claim as a third party. The controversy arises in the following circumstances. 2. A private car bearing Registration No. KA-14/M 749 owned by the appellant was on 7th of July, 1995, being driven by one Sri Madhusudhan, a driver temporarily appointed by the appellant. Somewhere between Tumkur and Bangalore, the car dashed against a roadside tree resulting in grievous injuries to the occupants including the driver who later died in the hospital. Two claim petitions for payment of compensation were instituted; one of which was filed by the appellant-owner of the vehicle. The Insurance Company resisted the claim made by the appellant inter alia on the ground that he being the owner of the vehicle in question was not a third party within the meaning of the Motor Vehicles Act, 1988, and was not therefore entitled to claim any compensation for the injuries sustained by him. It was alleged that since the appellant had not taken a personal accident policy, the Insurance Company was not liable to pay any compensation to him. On the basis of the pleadings, the Tribunal framed three material issues, namely.– (1) Whether the petitioners prove that the alleged accident is due to rash and negligent driving of the car bearing Registration No. KA-14/M 749?

(2) Whether the petitioners are entitled for compensation. If so, from whom and to what extent?

(3) Whether the respondent-insurance company proves that the petitioner is not entitled to claim compensation from it for the reasons stated in paras 1 and 6(c) of the objection statement?

3. By the judgment impugned in this appeal, the Tribunal held issue (1) in the affirmative and recorded a finding that the accident had taken place due to rash and negligent driving of the car by the deceased, Sri Madhusudhan. Insofar as issue (2) was concerned, the Tribunal held, that the appellant, who was the claimant in M.V.C. No. 202 of 1996, was not entitled to any compensation as he was not a third party within the meaning of the Motor Vehicles Act, 1988. The claim filed by him

was accordingly dismissed, aggrieved whereof, the appellant has filed the present appeal as noticed earlier.

4. Appearing for the appellant, Mr. S.P. Shankar made a two-fold submission. He urged that an insured owner who is not statutorily or contractually excluded from being treated as a third party could maintain a claim in that capacity. Alternatively, he submitted that the term 'Any person' appearing in Section 147 of the Motor Vehicles Act, 1988, was wide enough to include within its meaning an insured who had sustained any injury on account of use of the motor vehicle owned or insured by him.

5. On behalf of the respondents, Mr. Rajagopalan argued that Chapter XI of the Motor Vehicles Act, 1988, made insurance of the motor vehicles compulsory only against third party risks. The owner of the vehicle who got the vehicle insured against such risks could not himself claim to be a third party, even if he was an occupant of the vehicle in question and had sustained injuries on account of its rash and negligent driving. It was indeed open to the insured to take a larger cover to include the risk to his life by paying the prescribed premium in which event the insured could to the extent of the risk covered by any such policy, lodge a claim for payment of compensation. Since no such additional coverage had been secured by the appellant, the Tribunal was justified in holding that the appellant was not a third party and rejecting the claim for payment of compensation.

6. Chapter XI of the Motor Vehicles Act, 1988, deals with insurance of motor vehicles against third party risks. While Section 145 appearing in the aid chapter defines certain expressions used therein, Section 146 prohibits the use of a motor vehicle in a public place unless there is in force in relation to the use of any such vehicle a policy of insurance complying with the requirements stipulated in the chapter. The requirements of policies and the limits of liability are stipulated by Section 147 of the Act. It inter alia provides that: (a) In order to comply with the requirements of the chapter, the policy must be issued by an authorised insurer; (b) It must insure the person or classes of persons specified in the policy to the extent specified in Sub-section (2) thereof; (c) The policy should insure the person specified in the policy against any liability which may be incurred by him in respect of the death or bodily injury to any person [including owner of the goods or his authorised representative carried in the vehicle] or damage to any property of a third party caused by or arising out of the use of a vehicle in a public place; (d) In the case of a public service vehicle it must insure the person specified in the policy against the death of or bodily injury to any passenger caused by or arising out of the use of the vehicle in a public place.

7. Proviso to Sub-section (2) of Section 147 creates certain exceptions to the requirements of the policy of insurance. It inter alia provides that the

policy in terms of Sub-section (1) shall not be required to cover liability in respect of the death, arising out of and in the course of his employment of the employee of a person insured by the policy or in respect of bodily injury sustained by such an employee arising out of and in the course of his employment other than a liability arising under the Workmen's Compensation Act, 1923 (8 of 1923), in respect of the death of, or bodily injury to, any such employee engaged in driving the vehicle or if it is a public service vehicle engaged as a conductor of the vehicle or in examining tickets on the vehicle or if it is a goods carriage, being carried in the vehicle. The policy also need not cover any contractual liability.

8. What is clear from a careful reading of Section 147 is that it makes insurance against third party risk compulsory. The object is to ensure that a third party who suffers any injury to life, limb or property is able to recover compensation regardless of the financial position of the owner or driver of the offending vehicle. The object underlying Chapter VIII of the earlier Act which corresponds to Chapter XI of the present Act was described by the Supreme Court in New Asiatic Insurance Company Limited v. Pessumal Dhanamal Aswani and Ors., in the following words.– "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 user of the motor vehicle would be able to get damages for injuries suffered and that their ability 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".

9. The above position was reiterated in G. Govindan v. New India Assurance Company Limited and Ors., where the Court observed.– "The heading of Chapter VIII of the 1939 Act read as"Insurance of Motor Vehicles against Third Party Risks". Its provisions clearly indicate that the legislature made insurance of motor vehicles compulsory against third party (victims) risks. Since insurance against third party risks is compulsory, once the insurer/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".

10. Thus far there is no difficulty. The difficulty arises when the person who has secured the policy of insurance claims to be the owner, insured and the third party, all three roiled in one. The argument of Mr. Shankar was that the term 'third party' used in the heading of Chapter XI and Section 147 is wide enough to include the owner of the vehicle also, so that if the owner is travelling in his own car, whether driving himself or being driven by his paid driver, he can make a claim for payment of compensation against the Insurance Company no matter the accident that causes injuries to him

was the result of his own or his driver's rash and negligent driving. It was further argued that if the occupants in a private car, are covered as 'third parties', there is no reason why the owner who is also one such occupant should not also be treated as such.

11. The term 'third party' has not been defined exhaustively in the Act. Section 145(g) gives an inclusive definition and simply states that 'third party' will include the Government. That does not however present much difficulty, in understanding the true meaning and import of the term. The term 'third party' must necessarily refer to a party other than those, who are parties to the contract of insurance. For a contract of insurance, the insurer is one party while the policy holder is the other party. Any person or persons other than the said two party or parties would necessarily be referred to as third parties. That is precisely how the expression third party appearing in Chapter XI has to be understood. Considerable support for that view is available from the meaning given to the words "third party risk" in Stroud's Judicial Dictionary, which explains third party risks in the following words.– "Third party risks (Road Traffic Act, 1930 (Clause 43), Section 35 of the Road Traffic Act, 1972 (Clause 20), Section 143) connotes that the insurer is one party to the contract, that the policy-holder is another party, and that the claims made by others in respect of the negligent use of the car may be naturally described as claims by third parties (Digby v. General Accident Fire and Life Assurance Corporation, 1943 AC 121).

12. The argument that the insured owner of a motor vehicle involved in a motor accident can also claim to be a third party must therefore be rejected on first principles alone.

13. The issue can be viewed from another angle also. Section 147 enjoins that the policy issued by the authorised insurer should insure the person specified in the policy against any liability which may be incurred by him in respect of death of or bodily injury to any person specified in Sub-section (1)(b)(i) and (ii). The critical expression "against any liability, which may be incurred by him" in Section 147(1)(b)(i) leaves no manner of doubt that the policy of insurance, which the owner obtains from the authorised insurer is meant to insure the owner or the holder of the policy against any liability that he may incur qua third parties whether such liability be on account of death or bodily injury to any such person or damage to any property owned by him. In terms of Sub-section (1)(b)(ii), the policy must also insure the owner against the death of or bodily injury caused by or arising out of the use of the vehicle if it is a public service vehicle used in a public place. In other words, if no liability arises against the holder of the policy, the same cannot arise against the Insurance Company. That position of law is fairly well-settled by the decision of the Supreme Court in Oriental Insurance Company Limited v. Sunita Rathi and Ors., . The High Court had in that case while exempting the owner of the vehicle

made the insurer liable to pay the compensation. The Court declared that approach to be erroneous and held that liability of the insurer arises only when the liability of the insured has been made out for purposes of indemnifying the insurer under the contract of insurance. To the same effect is the decision of the Supreme Court in Minu B. Mehta and Anr. v. Balkrishna Ramchandra Nayan and Anr., . The claim had in that case arisen under the old Act. The Court was examining the provisions of Section 95 corresponding to Section 147 of the new Act. It observed.– "The insurance policy is only to cover the liability of a person which he might have incurred in respect of death or bodily injury. The accident to which the owner or the person insuring is liable is to the extent of his liability in respect of death or bodily injury and that liability is covered by the insurance. It is therefore obvious that if the owner has not incurred any liability in respect of death or bodily injury to any person there is no liability and it is not intended to be covered by the insurance. The liability contemplated arises under the law of negligence and under the principle of vicarious liability. The provisions as they stand do not make the owner or the Insurance Company liable for any bodily injury caused to a third party arising out of the use of the vehicle unless the liability can be fastened on him. It is significant to note that under Sub-clause (ii) of Section 95(1)(b) of the Act, the policy of insurance must insure a person against the death or bodily injury to any passenger of a public service vehicle caused by or arising out of the use of the vehicle in a public place. Under Section 95(1)(b), Clause (ii) of the Act the liability of the person arises when bodily injury to any passenger is caused by or use of the vehicle in a public place. So far as the bodily injury caused to a passenger is concerned it need not be due to any act or liability incurred by the person. It may be noted that the provisions of Section 95 are similar to Section 36(1) of the English Road Traffic Act, 1930, the relevant portion of which is to the effect that a policy of insurance must be policy which insures a person in respect of any liability which may be incurred by him in respect of death or bodily injury to any person caused by or arising out of the use of the vehicle on road. The expression"liability which may be incurred by him" is meant as covering any liability arising out of the use of the vehicle. It will thus be seen that the person must be under a liability and that liability alone is covered by the insurance policy". (emphasis supplied)

14. Keeping the above in view, the claim made by the appellant against the Insurance Company for payment of compensation was clearly misconceived. That is because the accident in question had not given rise to any liability against the insured viz., the claimant in the instant case. It was admittedly not a case where the insured had vis-avis a third party incurred any liability for death, injury or loss to property so as to render the Insurance Company liable to reimburse any such loss. So long as no liability arose qua the insured, the liability of the Insurance Company, which is conse-

quential and dependent upon any such liability against insured would also not arise. The decision of a Single Bench of this Court in United India Insurance Company Limited, Gulbarga v. Siddanna Nimbanna Jawali and Anr., 2001(3) Kar. L.J. 240 : ILR 2001 Kar. 1670 and that of a High Court of Madras in United India Insurance Company Limited, Salem v. Lakshmi and Ors., correctly state the legal position. The first limb of the argument advanced by Mr. Shankar must therefore fail and is accordingly rejected.

15. That leaves us with the alternative submission made by Mr. Shankar that since the occupants of the private car owned by the appellant were themselves insured against death or personal injury, there is no reason why the owner, who is also one of such occupants at the time of the accident could not be deemed to be similarly covered for payment of compensation. The argument must fail for two reasons. Firstly, because the occupants of a private car are covered in terms of Endorsement 5 to the policy, which reads as under.– "Accidents to unnamed passengers other than the insured and his paid driver or cleaner (private cars only): In consideration of the payment of an additional premium it is hereby understood and agreed that the Company undertakes to pay compensation on the scale provided below for bodily injury as hereinafter defined sustained by any passenger other than the insured and/or his paid driver, attendant or cleaner and/or a person in the employ of the insured coming within the scope of the Workmen's Compensation Act, 1923, and subsequent amendments of the said Act and engaged in and upon the service of the insured at the time such injury is sustained whilst mounting or dismounting from or travelling in the motor car and caused by violent accidental external and visible means which independently of any other cause shall within three calendar months of the occurrence of such injury result in".

16. It is evident from the above that while passengers travelling in a private car, are covered against death or bodily injury resulting from the accident involving the vehicle, the insurance cover qua the insured is specifically excluded. The insurance cover provided to the occupants, it is noteworthy, does not flow from the provisions of Section 147 of the Act. It on the contrary flows from the wider cover, which the insured has secured beyond the minimum prescribed under Section 147 by paying an additional premium. In case the insured obtains such a wider cover under the terms of the policy, the Insurance Company will be liable to undertake the liability. What is however clear is that the liability to compensate the occupant injured in any such event will flow not from the requirements of Section 147, but on the terms of the policy issued to the insurer. The legal position in this connection is no longer res integra having been authoritatively settled by the Supreme Court in Amrit Lal Sood and Anr. v. Smt. Kaushalya Devi Thapar and Ors., where the Court observed.– "Section 95 requires a policy to cover the risk to passengers who are not carried for hire or reward. The statutory insurance does not cover injury

suffered by occupants of the vehicle who are not carried for hire or reward and the insurer cannot be held liable under the Act. But that does not prevent an insurer from entering into a contract of insurance covering a risk wider than the minimum requirement of the statute whereby the risk to gratuitous passengers could also be covered. In such cases where the policy is not merely a statutory policy, the terms of the policy have to be considered to determine the liability of the insurer".

17. It may be recalled that the insurance cover to occupants travelling in a private car without hire or reward was extended pursuant to the decision of the Supreme Court in Civil Appeal No. 2071 of 1998 stating that the insurers are not liable in respect of the insured's liability for passengers carried in a private vehicle on the ground that Section 95 of the old Act did not require the insurance policy to cover such liability. It was consequent upon the said decision that the Tariff Advisory Committee had issued circulars amending the existing policies with effect from 25th of March, 1977. The legal position however remains unaltered by the said amendment and extension of the insurance coverage for the occupants remains optional as there is no compulsion under Section 147 of the Act to provide for any such insurance. The decision of a Single Bench of this Court in Shanthabai and Ors. v. Shekappa and Ors., has dealt with the genesis of the extended cover for passengers travelling in private car.

18. Reliance by Mr. Shankar upon the decision of the Supreme Court in Chimajirao Kanhojirao Shirke and Anr. v. Oriental Fire and General Insurance Company Limited, is of no avail. In that case, the insured had obtained a policy, according to which unlimited personal injury and property damage up to Rs. 10,00,000/- was covered on receipt of a premium of Rs. 134/- from the insured. The injured had met with an accident while travelling in the vehicle owned by him. The claim lodged for payment of compensation was dismissed by the High Court holding that the insurance policy obtained by the insured did not cover any such risk for him. The Supreme Court however did not approve that reasoning. It held on an interpretation of the terms of the policy that there was no mistake in the policy inasmuch as the same extended unlimited personal injury cover to the insured on receipt of an additional premium of Rs. 134/-. Suffice it to say that the Court was in that case dealing with a situation where the insured had taken a policy for his personal cover on payment of the additional premium. It was in that background that the Supreme Court held that the insured was covered for any risk arising out of the use of the vehicle owned by him. That however is not the position in the instant case. The car owned by the appellant was not admittedly insured for any risk to the owner in the event of his death or bodily injury arising out of its use. In that view, therefore, the claim made by the appellant was maintainable neither on the ground of his being a third party nor on the terms of the policy issued in his favour.

19. There is no merit in this appeal, which fails and is hereby dismissed with costs throughout, which we assess at Rs. 3,000/-. D.V. Shylendra Kumar, J.

20. I have had the benefit of perusing the judgment proposed by my learned brother Mr. Justice Tirath S. Thakur. I agree with the conclusion that the appeal deserves to be dismissed with costs and the reasons given in the judgment for dismissing the appeal.

21. Nevertheless, I would like to add a few sentences of my own supplementing the reasons mentioned for dismissal of the appeal in the context of the submissions made on behalf of the appellant.

22. The crux of the argument on behalf of the appellant as submitted by Sri S.P. Shankar, learned Counsel appearing for the appellant is that the owner of the motor vehicle which is involved in the accident and who is insured by a policy of insurance issued by the insurer is to be understood in the context of the expression "third party" under Section 145(g) of the Motor Vehicles Act, 1988 ('the Act', for short), and as one including the owner of the vehicle also and if so understood, any bodily injuries suffered by him or even in respect of the death of the owner himself while being in the vehicle when the accident takes place, the Insurance Company is liable to reimburse a claim to compensate the bodily injuries suffered by the insured or by the legal representative on the death of an insured in such an accident. The argument in support of this submission is that the insured persons having not been expressly excluded from the definition of "third party" as it occurs in Chapter XI of the Act, the insured is deemed to be included within the definition of "third party" under Section 145(g) of the Act and if so, even in respect of damages, payable as compensation to the insured or his legal representative/s, the Insurance Company is liable to make good the claim. The liability of the Insurance Company is because of the statutory provisions under Sections 147, 149 and 150 of the Act, it is claimed.

23. My learned brother has dealt with in detail as to how the insured cannot become a "third party". The entire scheme of Chapter XI of the Act is for providing assured compensation arising out of third party claims while making insurance of the motor vehicles compulsory and by providing statutory liability in respect of such claims on the Insurance Company. An Insurance Company issuing a policy covering such risks is bound by the provisions of Chapter XI of the Act, no matter what the policy itself states. The cover is in favour of owner of the vehicle who is basically liable to compensate such claims and to ensure that the claims of the third parties are not defeated by the financial vagaries of the owner. Insurance cover is made compulsory by the statute. It is not the object of Chapter XI to cover any portion of damages or claims which may arise due to bodily injury or death of the owner of the motor vehicle himself Therefore, it

is not possible to accept the submission on behalf of the appellant that a policy issued to satisfy the requirements of Chapter XI should also be construed as a policy covering the claims which may arise due to bodily injury or death of the owner of a motor vehicle.

24. Learned Counsel for the appellant has also sought to substantiate his argument by drawing support from the decisions of the Supreme Court in Smt. Kaushnuma Begum and Ors. v. New India Assurance Company Limited and Ors., and Chimajirao Kanhojirao Shirke's case, supra. In neither of these cases, the Supreme Court has indicated that the owner of a motor vehicle is in the position of a "third party" to make the Insurance Company liable to compensate a claim arising out the bodily injury or death of a owner of a motor vehicle. In Kaushnuma Begum's case, supra, the claim was clearly by a third party. Though no doubt the Supreme Court invoked the principle of strict liability propounded in Rylands v. Fletcher, 1861-73 All ER 1 : (1868) HL 330 for awarding compensation to the claimants in the former case, the discussion was in the context of proving negligence on the part of the driver or owner of the vehicle and as a consequence making the owner and the insurer liable. The principle of strict liability was called in aid even where factually the driver of the jeep which was involved in the accident was at no fault, in the sense there was no negligent act on his part, but due to the burst of the jeep tyre akin to an act of vis major which was the cause for accident resulting in the vehicle toppling over, hitting the claimant's husband, who died. The Court ruled that use of the motor vehicle in a public road and the motor vehicle being the cause for the accident resulting in injury or death was in itself a sufficient justification to satisfy claim of third party when the third party was not at all at fault for the cause of the accident. In fact, as between the third party, who was also not at fault and the driver of the vehicle on whose part also there was no negligence, still the accident involving the vehicle being the cause for the death of a person, claim for compensation was justified on the principle of strict liability. The Court also noticed the difference between the concept of "no fault liability" and the compensation as provided under Section 140 of the Act and the "strict liability" as propounded in the case of Rylands, supra.

25. In fact, in the context of the claim under Section 140 of the Act, the Act does not use the expression "third party claims" as is expressly used in Chapter XI of the Act. The expression "death of or bodily injury to any person" occurring in Section 147(1)(b), while in this part is in respect of such liability by a third person only, it is not so restricted in the usage of the expression "where death or permanent disablement of any person has resulted from an accident arising out of the use of a motor vehicle or motor vehicles..." occurring in Section 140(1) of the Act.

26. The discussion of the Supreme Court in this case indicating that the trend in respect of compensation claims involving use of motor vehicles on the

road is more to compensate the victims than to deny them by accepting the defence on the part of the tortfeasors that the claimants have failed to prove negligence on the part of the driver of a motor vehicle. The factum of the victim of a motor vehicle accident having suffered bodily injury and loss in itself are to be taken as the cause to make the owners liable to compensate such losses. But this is not the same to say that the Supreme Court has treated the owner also as a third party in the context of claims indicated in Chapter XI of the Act.

27. Even in the case of Chimajirao Kanhojirao Shirke, supra, did not say that the insured is in the position of a "third party", but having regard to the terms of the policy under which an extra premium had been paid for covering what was known as "unlimited personal injury and property damage upto rupees ten lakhs", and on the interpretation of this clause of the policy, the Supreme Court, while disagreeing with the High Court which had held that such extra premium had been paid for covering risk in favour of "third party risk" and not the personal injury or death of insured; took the view that such an interpretation was not available and it was also not open to the Insurance Company to put forth such a plea when it had not been pleaded so before the Trial Court, while in the claim petition it had been expressly claimed that payment of the extra premium includes for coverage of unlimited personal injury for the owner also. It was essentially on the interpretation of the terms of the policy and the meaning of the words "unlimited personal injury and property damage up to Rupees Ten Lakhs" occurring in the policy itself, the Supreme Court held that the Insurance Company was liable to make good the claim of the owner. It was not on the premise that the owner was also in the position of a "third party" and as such the Insurance Company was liable to compensate a claim of the owner who had been injured in the accident. Neither of these cases advance the case of the appellant nor supports the submission of the learned Counsel for the appellant that the owner is also to be held to be as a third party; to be understood within the definition of that phrase occurring in Chapter XI of the Act. On the contrary, a clear distinction has been maintained in the Act between the expression "owner" and the expression "third party and the"persons who cause or whose vehicle is used in a public way giving rise to an accident" and a claim and whose liability is required to be covered by the insurer by taking a policy of insurance. It is not possible to understand or interpret the words "third party" or the words "any person" to include the owner of a vehicle who is primarily required to meet the claims arising out of the accident of a motor vehicle in a public place.

28. Sri S.P. Shankar, learned Counsel for the appellant has also relied upon a decision of the House of Lords in Digby v. General Accident Fire and Life Assurance Corporation Limited., 1943 HL and PC 121

29. In this case, the Privy Council, by a majority of 3:2, on interpretation

of the provisions of a policy of insurance, held that the owner of a motor vehicle which is covered by the policy of insurance and who is the holder of the policy, can be treated to be in the position of a "third party" insofar as the claim of the owner herself in respect of personal injuries suffered by the owner due to the rash and negligent driving on the part of her paid driver. On the interpretation of the provisions and clauses of the policy, it was held that particularly Section 2(3) of the policy which has provided that "The insurance under this section" (third party liability) shall also extend to "indemnify in like manner any person whilst driving. . . .." Motor vehicle on "the order or with the permission of the policy holder" provided ". . . . that such person shall, as though he were the policy holder, observe, fulfill and be subject to the terms, exceptions and conditions of this policy insofar as they can apply", held that as the owner (policy holder) was entitled to claim damages against even her own driver in respect of personal injuries to her due to an accident caused by the collusion of her car with another motor car by the negligent driving of her driver and as the driver had been indemnified against all claims arising against the driver by the said clause in the policy, the Insurance Company was liable to reimburse and compensate even the owner in respect of personal injury which the driver was liable to compensate.

30. The learned Counsel, placing reliance on this decision, submits that the owner of a motor vehicle involved in the accident and who has taken out a policy of insurance can, on similar grounds, sustain a claim against the Insurance Company by treating him as a third party within the meaning of said expressions for the purpose of Chapter XI of the Motor Vehicles Act, 1988.

31. Though I am more inclined to agree with the minority view expressed by Viscount Simon L.C. and Viscount Maugham than with the majority view expressed by Lords Atkin, Wright and Porter, what is more important is that the view taken in this case depended more on the interpretation of the relevant clauses of the policy. As a clause in the policy specifically provided indemnity to the authorised driver of the vehicle against all claims which may arise against the driver "in a like manner" as was provided to the policy holder and insofar as the owner was concerned, it was held that she was in the position of a "third party" who had lodged the claim against the driver and as the policy was treated as a policy combining two contracts into one, and insofar as the contract between the Insurance Company and the driver for providing indemnity as against the driver, the policy holder was treated as a third person and as such the Insurance Company was made liable to indemnify the liability of the driver. It is not as though the owner becomes a third party for all situations. What is important is it is because of the express clause in the policy that the owner was able to sustain her claim for reimbursement by the Insurance Company. This is not the same as to hold that the owner of a motor vehicle also becomes a "third party" in all situations. At any rate, having regard

to the provisions of Section 153 of the Act, the expression "third party" cannot be read as a person including the insured also for the purpose of compulsory insurance to be taken out in respect of "third party" claims as provided under Section 147 of the Act. It is not one of the requirements of Section 147 of the Act that an insurance policy issued for the purpose of Chapter XI should also include coverage in respect of the owner who is the insured, by treating such insured also as a "third party". I am of the view that the decision of the House of Lords does not advance or support the argument of the learned Counsel for the appellant that the insured also should be taken or should be read as a person within the meaning of "third party" occurring in Chapter XI of the Act. The argument of the learned Counsel for the appellant fails.

32. Learned Counsel for the appellant has also made an alternative submission that what is sought to be covered by the policy of insurance is the vehicle which is involved/which is the cause for the accident and it is not with reference to the owner of the vehicle and as such even if a owner is in the vehicle and gets injured or dies in the accident while travelling in the vehicle which is covered by a policy of insurance, it should be understood that his risks are also covered by the policy as the vehicle itself is covered under the policy. A policy of insurance is a policy of guarantee indemnifying the liability of a person who has to satisfy the claims arising out of the accident. Obviously the policy is a contract between the owner of the vehicle and the Insurance Company. It is not a contract between the Insurance Company and an inanimate object like the motor vehicle. If it should be understood in the manner as is suggested by the learned Counsel for the appellant, the very contract does not come into existence. It is particularly so in the context of third party claims which are sought to be protected under the provisions of Chapter XI of the Act. It is not possible to interpret the provisions occurring in this chapter in such a manner that it seeks to protect the interest of the insured even with regard to his own injury or the claim of his dependents. It may so happen in a case that a policy may cover such risks also as was the situation in the case of Chimajirao Kanhojirao Shirke, supra, but to hold that a policy issued to cover the risks arising out of third party claims is to be understood to be a policy, also covering the risk arising out of the claim of bodily injury or death of the owner of the vehicle is not a possibility in law. Accordingly, the submission of the learned Counsel for the appellant is to be rejected. Appeal has to fail and is dismissed.