

Bechu Khan vs Smt. Saraswati And Ors. on 18 April, 2019

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Bench: Vikas Kunvar Srivastav

HIGH COURT OF JUDICATURE AT ALLAHABAD, LUCKNOW BENCH

[Reserved]

(AFR)

Court No.10

[Case :- FIRST APPEAL FROM ORDER No. - 1407 of 2009]

Appellant :- Bechu Khan

Respondent :- Smt. Saraswati And Ors.

Counsel for Appellant :- Deepak Kumar Agarwal

Counsel for Respondent :- Ravindra Pratap Singh

Hon'ble Vikas Kunvar Srivastav,J.

1. Present First Appeal From Order is moved under Section 173 of the Motor Vehicles Act, 1988 by Bechu Khan, the owner of offending motor vehicle, against the claimant-respondents and the Insurance Company. The appeal has arisen from the judgment and award dated 31.08.2009 passed by learned Motor Accident Claims Tribunal, Barabanki in MACP no. 339 of 2007 (Smt. Saraswati & Others Vs. United India Insurance Company Ltd. and Another) awarding the compensation of Rs. 1,17,000/- alongwith interest @ 6% per annum from the date of filing of the claim petition against respondent no. 6-United India Insurance Company Ltd. by giving it a right to recover the said amount from the appellant.

2. The appellant has challenged the impugned judgment and award of the Motor Accident Claims Tribunal (hereinafter referred to 'MACT' in short for the purpose of convenience) on the ground that

while deciding the claim petition, the learned Tribunal has committed error of law in relying upon the statement of one Umashanker alleged to be eye witness of the accident ignoring the fact that the witness was brother of the deceased and as such, being an interested witness, his testimony ought to have been disbelieved. Consequently, the grounds assailing the judgment, taken in the memo of appeal are, firstly alleged accident was caused due to rash and negligent driving on the part of the driver of the appellant's vehicle. Secondly, learned MACT wrongly reached at the conclusion that driver of the vehicle of the appellant was driving the vehicle rashly and negligently merely on the basis of statement of the aforesaid eye witness produced by the claimant-respondents. Thirdly, at the relevant date of accident, the vehicle was being driven by the appellant's son who was having a valid and effective driving licence for the vehicle of without gears and the motorcycle, involved in the accident, too was a Hero Honda motorcycle of the model without gears but the learned Tribunal without properly appreciating the said evidence on record took into consideration the customer booklet filed by respondent no. 6 issued in respect of Hero Honda CD Dawn model and held that motorcycle of the appellant was also a motorcycle with gears and, therefore, his son was not duly authorized to drive the said motorcycle. Fourthly, no evidence was adduced by respondent no. 6-United India Insurance Company Ltd. to prove that the appellant's motorcycle was a motorcycle with gears and, as such, the impugned judgment and award is liable to be set aside. Fifthly, since the motorcycle of the appellant was duly insured and the son of the appellant was driving the said motorcycle with a valid and effective driving licence to drive the said vehicle, therefore, the liability to reimburse under the contract of insurance lies upon the respondent no. 6-United India Insurance Company Ltd. only and right to recover could not have been given by the MACT. Therefore, the judgment and award of the learned MACT is erroneous in law.

3. Heard learned counsel for the appellant Sri Deepak Kumar Agarwal, learned counsel for claimant-respondent nos. 1 to 5 Sri Ravindra Pratap Singh, learned counsel Sri Jitendra Narain Mishra for respondent no. 6-United India Insurance Company Ltd. and perused the material available on record.

4. Learned counsel for the respective parties submit their arguments for and against the grounds taken in the appeal.

5. Learned counsel for the appellant-owner who is admittedly insured by respondent no. 6-United India Insurance Company Ltd. in the course of argument has drawn attention of the Court towards the written statement filed by him before the MACT. In para 24 of the written statement, particular pleadings are given that the offending motor vehicle no. UP 32-AH-7223 is owned by the appellant and he is the registered owner with the RTO. He has further stated in the said para regarding the registration certificate effective from 01.06.2001 to 31.05.2016 and the insurance is effective from 27.04.2007 to 26.04.2008 vide Policy No. 080205/31/07/02/00000398 by United India Insurance Company Ltd., Barabanki office on the relevant date of accident i.e. to say on 02.05.2007. He pleads in para 25 of the written statement that his son Riyaz Khan was driving the said motorcycle on the relevant date of accident. He never used to drive the motorcycle speedily with rash and negligence, rather he is in a habit of driving of motorcycle following with all the rules of traffic with a limited speed and on the date of accident also he was driving with a valid driving licence no. 45474/BBK/2006 effective from 03.04.2006 to 02.04.2026 and, as such, the licence was valid and

effective on the relevant date of accident.

6. The appellant had denied the factum of accident by the motorcycle having been driven by his son on the date of accident and set a story in the written statement in para 27 that the deceased-Shiv Shanker was grazing the herd of his cattle on the roadside and the cattles began to fight together due to which some of the cattles stampede away therefrom and the deceased was dashed by them, fell down. He got head injury due to which he died. As such, he has not denied the accident but in the alternative he merely pressed on the point that if the accident is found to have been proved by witnesses to have been committed by the motorcycle driven by his son, then the appellant being insured under the insurance Policy, entered with respondent no.6 with regard to third party risk, the victim should be indemnified by the Insurance Company, in case the judgment and award of compensation is passed with respect to the said accident against the appellant without any right to recovery because the driving licence was duly valid and effective on the relevant date and time of the accident.

7. Learned counsel for the appellant further stressed on the point and the manner in which the learned MACT considered the customer information book in Hero Honda CD Dawn to reach at the conclusion that at the time of accident, the son of the appellant was driving a geared motorcycle and his driving licence was for vehicle which was not for the type of vehicle driven at the time of accident.

8. In response to the submission of learned counsel for the appellant, learned counsel for respondent no. 6-United India Insurance Company Ltd. has submitted in the written statement that they have specifically pleaded that at the relevant date of accident, the driver of the motorcycle, involved in the accident, was having a licence to drive a non-geared motorcycle only. He was driving a motorcycle Hero Honda CD Dawn of which no. was UP-32 AH-7223 and for such type of vehicle, he was not having a driving licence and, therefore, was not duly authorized to drive such vehicle.

9. Since the act of owner to permit his son to drive the motorcycle for which his son was not duly authorized as his driving licence was for non-geared motorcycle, breach of terms and conditions of the insurance policy occurred, therefore, they are entitled to avoid the liability which has occurred under the judgment of MACT due to accident caused by his son by driving a motor vehicle unauthorizedly in a public place for which he was not duly licenced.

10. Learned counsel for the claimant-respondent nos. 1 to 5 argued that the claimant-respondent nos. 1 to 5 are third party with regard to the insurer and insured, therefore, both are responsible to pay all the compensation granted by the MACT and none of them can avoid this liability under law. He further argued that in a very clear and unambiguous words he has stated in his petition that Shiv Shanker died due to injury sustained in an accident which took place on 02.05.2007 at about 5:00 p.m. near village Dundupur, Police Station Asandara, District Barabanki due to rash and negligent driving of motorcycle bearing no. UP-32, AH 7223 by its driver and dashed Shiv Shanker who was standing on his left side on the road. He further argued that whatever as to the motorcycle by which the accident caused, available, was given in the petition in respect of make and model of the vehicle. The information as to it was a geared or non-geared motorcycle is immaterial for his claim for

compensation. The claim for compensation for the accident caused by the said motorcycle no. UP-32 AH 7223 was placed. They successfully proved the accident and, therefore, the learned court below has rightly reached at the finding of accident with the motorcycle and awarded the compensation.

11. After hearing learned counsel for the parties, the following questions involved in the appeal are that :

(i) Whether the fact, the offending motor vehicle/the motorcycle no. UP-32 AH 7223 was involved in the accident, is found proved correctly by the learned MACT ?

(ii) Whether learned MACT rightly fixed liability of accident for consequential compensation against the owner-appellant, then what would be the liability under the mandatory policy of insurance under Section 147 of the Motor Vehicles Act, entered between the appellant and respondent no. 6 ?

(iii) Whether the driver of the motor vehicle was having a licence that was not duly issued for the type of vehicle which he was driving at the relevant date and time of the accident, if so, whether makes any difference with the liability of Insurance Company ?

(iv) Whether, the learned MACT has committed any error in directing the respondent no. 6-United India Insurance Company to pay the compensation to the claimant-respondents at the first instance and then to recover ?

12. With regard to question no. 1, this would be relevant to perused the documentary as well as oral evidences produced in support thereof, adduced by the claimant-petitioners so as to assess the finding of learned MACT as to the involvement of the offending motor bike no. UP-32 AH-7223 in the accident in question. This is settled principle of law relating to motor accident claims cases that the claimant-petitioners are not be put under strict burden to prove the accident. The MACT has to gather the fact of accident on the basis of preponderance of probabilities from the materials documentary and oral evidence on record.

13. On perusal of the record of learned MACT, a list of documentary evidences filed by by the claimant-petitioners before the MACT includes the certified copy of the First Information Report of the accident in Case Crime No. 154 of 2007, under Section 279, 304-A of IPC, Police Station Asandara, District Barabanki against Riyaz Khan. This would be pertinent to mention that Riyaz Khan is the driver of the motorcycle which registered owner is his father Bechu Khan who has moved claim petition and is insured with regard to third party risk by United India Insurance Company Ltd.-respondent no. 6 and is opposite party in the claim petition. The said FIR narrates the exact detail of the accident as pleaded in the claim petition clearing mentioning the registered number of Motorcycle no. UP-32 AH-7223 CD dawn and the specific dated 02.05.2007 and time of the accident. The chargesheet submitted by the police in pursuance to the investigation done after registering of the said FIR is also produced by the claimant-petitioners, duly certified by the concerned criminal court whether the police found the allegations correct and the appellant's son

Riyaz Khan was levelled with the charges of committing offence under Sections 279 and 304-A of the IPC. Another police investigation paper is certified copy of the site map prepared by the Investigating Officer in the course of investigation is also available on record which shows that the deceased was at the extreme left side of the road where the accused of the said criminal case under Sections 279/304-A of the IPC dashed him by rash and negligent driving of his motorcycle. Certified copy of the post-mortem report is filed on record which is in connection with the said crime number and reports the cause of death due to ante-mortem injuries which the deceased got in the accident.

14. Further the oral evidence is also adduced by the claimant-petitioner. PW-2 Umashanker narrates the same village Asandara to which the deceased belonged. He stated on oath that on 02.05.2007 in the evening when the deceased Shiv Shanker was grazing his cattle on the southern side of the road and was standing there, a motorcycle bearing no. UP-32 AH-7223 which was being driven by driver rashly and negligently, dashed the deceased Shiv Shanker due to which he got serious head injuries. The motorcycle alongwith driver was also fell down when witness alongwith other people rushed to catch him but he ran away. This witness was cross examined by the Insurance Company and the owner of the bike but nothing adverse or contrary was drawn out from his cross examination and in his evidence he remained intact regarding the fact of the accident. No other defence witness is examined before the court by either of the opposite parties, namely, the owner of the offending vehicle and the Insurance Company.

15. On perusal of documentary and oral evidence, the fact coming out is proved with all preponderance of probabilities and, therefore, there is nothing on record to disbelieve the evidence produced by the claimant-petitioners before the MACT. Hon'ble Apex Court in its judgment and order dated 09.02.2018 passed in the case of Archit Saini and Another Vs. The Oriental Insurance Company Limited and Others, Civil Appeal No. 7300-7309 of 2016, held as under:

".....While considering a claim petition, the Tribunal is required to hold an enquiry and act not as criminal court so as to find whether the claimants have established the occurrence beyond shadow of any reasonable doubt. In the enquiry, if there is prima facie evidence of the occurrence there is no reason to disbelieve such evidence. The statements coupled with the facts of registration of FIR and trial of the accused in a criminal court are sufficient to arrive at a conclusion that the accident has taken place. Likewise, in Kusum Lata Vs. Satbir, 2011 (2) RCR Â(C) 379 (SC) Hon'ble Apex Court has held that in a case relating to motor accident claims, the claimants are not required to prove the case as it is required to be done in a criminal trial. The Court must keep this distinction in mind. Strict proof of an accident caused by a particular bus in a particular manner may not be possible to be done by the claimants. The claimants were merely to establish their case on the touchstone of preponderance of probability. The standard of proof beyond reasonable doubt could not have been applied."

16. As such, the learned MACT has correctly and rightly reached at the conclusion that the motorcycle in question i.e. UP-32 AH-7223 has caused the accident due to rash and negligent driving of its driver and, consequently, the victim of the accident Shiv Shanker received serious head

injuries and died.

17. Another question related with the aforesaid finding of the fact as to the accident is that the consequential liability on the death of accident victim shiv shanker with regard to grant of compensation against the owner-appellant and the liability under the mandatory policy of insurance under Section 147 of the Motor Vehicles Act is to be considered. This is not disputed rather admitted fact that the offending motor vehicle is insured by the United India Insurance Company-respondent no. 6.

18. Here it would not be out of place to quote the relevant provisions of Motor Vehicles Act in this regard before going into the discussions upon the question:

"Section 146:- Necessity for insurance against third party risk:-

(1) 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 this Chapter: 26 [Provided that in the case of a vehicle carrying, or meant to carry, dangerous or hazardous goods, there shall also be a policy of insurance under the Public Liability Insurance Act, 1991 (6 of 1991).] Explanation. --A person driving a motor vehicle merely as a paid employee, while there is in force in relation to the use of the vehicle no such policy as is required by this sub-section, shall not be deemed to act in contravention of the sub-section unless he knows or has reason to believe that there is no such policy in force.

(2) Sub-section (1) shall not apply to any vehicle owned by the Central Government or a State Government and used for Government purposes unconnected with any commercial enterprise.

(3) The appropriate Government may, by order, exempt from the operation of sub-section (1) any vehicle owned by any of the following authorities, namely:--

(a) the Central Government or a State Government, if the vehicle is used for Government purposes connected with any commercial enterprise;

(b) any local authority;

(c) any State transport undertaking:

Provided that no such order shall be made in relation to any such authority unless a fund has been established and is maintained by that authority in accordance with the rules made in that behalf under this Act for meeting any liability arising out of the use of any vehicle of that authority which that authority or any person in its employment may incur to third parties. Explanation. --For the purposes of this sub-section,

"appropriate Government" means the Central Government or a State Government, as the case may be, and--

(i) in relation to any corporation or company owned by the Central Government or any State Government, means the Central Government or that State Government;

(ii) in relation to any corporation or company owned by the Central Government and one or more State Governments, means the Central Government;

(iii) in relation to any other State transport undertaking or any local authority, means that Government which has control over that undertaking or authority.

Section 147: Requirements of policies and limits of liability:-

(1) In order to comply with the requirements of this Chapter, a policy of insurance must be a policy which-

(a) is issued by a person who is an authorised insurer; and

(b) 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, 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 the vehicle in a public place;

(ii) against the death of 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:

Provided that a policy shall not be required--

(i) to cover liability in respect of the death, arising out of and in the course of his employment, of the employee of a person insured by the policy or in respect of bodily injury sustained by such an employee arising out of and in the course of his employment other than a liability arising under the Workmen's Compensation Act, 1923 (8 of 1923) in respect of the death of, or bodily injury to, any such employee--

(a) engaged in driving the vehicle, or

(b) if it is a public service vehicle engaged as conductor of the vehicle or in examining tickets on the vehicle, or

(c) if it is a goods carriage, being carried in the vehicle, or

(ii) to cover any contractual liability.

Explanation. --For the removal of doubts, it is hereby declared that the death of or bodily injury to any person or damage to any property of a third party shall be deemed to have been caused by or to have arisen out of, the use of a vehicle in a public place notwithstanding that the person who is dead or injured or the property which is damaged was not in a public place at the time of the accident, if the act or omission which led to the accident occurred in a public place.

(2) Subject to the proviso to sub-section (1), a policy of insurance referred to in sub-section (1), shall cover any liability incurred in respect of any accident, up to the following limits, namely:--

(a) save as provided in clause (b), the amount of liability incurred;

(b) in respect of damage to any property of a third party, a limit of rupees six thousand:

Provided that any policy of insurance issued with any limited liability and in force, immediately before the commencement of this Act, shall continue to be effective for a period of four months after such commencement or till the date of expiry of such policy whichever is earlier.

(3) A policy shall be of no effect for the purposes of this Chapter unless and until there is issued by the insurer in favour of the person by whom the policy is effected a certificate of insurance in the prescribed form and containing the prescribed particulars of any condition subject to which the policy is issued and of any other prescribed matters; and different forms, particulars and matters may be prescribed in different cases.

(4) Where a cover note issued by the insurer under the provisions of this Chapter or the rules made thereunder is not followed by a policy of insurance within the prescribed time, the insurer shall, within seven days of the expiry of the period of the validity of the cover note, notify the fact to the registering authority in whose records the vehicle to which the cover note relates has been registered or to such other authority as the State Government may prescribe.

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

19. On the bare perusal of the provisions of Motor Vehicles Act, 1998 incorporated in Section 146 and 147, it is clear that the offending motorcycle no. UP-32 AH-7223 was insured under the mandatory provision of the Act with a view to rotate the interest of third party "In the case in hand the third party is the accident victim Shiv Shanker who died in the accident on 02.05.2007".

20. Section 147(2) includes the death or bodily injury to any passenger by public service vehicle caused by or arise out of the use of the vehicle at a public place. No doubt, Riyaz Khan was driving the offending vehicle at a public place where Shiv shanker was met with accident due to rash and negligent driving, and therefore, liability is covered under Section 147 of the Act subject to other provisions made therein.

21. The Insurance Company should have been put under liability to satisfy the judgment and award of compensation passed against the insured under the terms of insurance policy. However, under the statute, the insurer has right to take several defences wherein they can avoid the said liability. To understand the liability of Insurance Company and the scope of their right to avoid such liability under Section 149 of the Motor Vehicles Act, 1988 is 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) 1[or under the provisions of section 163A] is obtained against any person insured by the policy, then, notwithstanding that the insurer may be entitled to avoid or cancel or may have avoided or cancelled the policy, the insurer shall, subject to the provisions of this section, pay to the person entitled to the benefit of the decree any sum not exceeding the sum assured payable 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 organised 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 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 under section 165 and "award" means an award made by that Tribunal under section 168.

22. In the present case, the learned counsel for respondent no. 6 has tried to make defence that the insured-owner of the motorcycle permitted his son to drive the same on the relevant date of accident who was not duly authorized to drive the said vehicle as the same was geared one and his son was having a driving licence for driving non-geared motorcycle. This fact was pleaded in the written statement submitted before the MACT, therefore, burden to prove the fact lies upon the Insurance Company. The driving licence filed by the owner-insured-appellant was issued by respondent no. 6 is filed on record. On perusal whereof it becomes clear that the Competent Authority has ticked, while issued the licence, on the type of vehicle without gears. It also reveals that the said licence was issued to drive the motorcycle having no gears, as such, it is admitted that the driving licence of the driver of offending motorcycle was authorizing the driver to drive non-geared motorcycle. Further, the registration certificate filed by the appellant refers the motorcycle number UP-32 AH 7223. The make and model of the vehicle as entered in the registration certificate also discloses that the motorcycle is a Joy Model having Engine No. 01E25E03990 and Chassis no. 01E25F04416 of Hero Honda Company. The registration certificate nowhere describes the motorcycle whether it is geared or non-geared but from perusal of Column in the right-side of the registration certificate, it appears that the said motorcycle is of 100 cc. having petrol engine.

23. The owner-appellant has not discharged his burden to prove the type of motorcycle involved in the accident, through it is a vital fact for decision in this case against the insurer. The absence of any such evidence this can not be presumed that the said motorcycle was a non-geared motorcycle.

24. Another documentary evidence as filed by the owner-insured is important i.e. the insurance certificate issued by respondent no. 6-Oriental India Insurance Company Ltd., available on record as paper no. Ga-43. On perusal of insurance certificate, it is found that respondent no. 6-United India Insurance Company Ltd. and the insured-appellant with regard to his motorcycle bearing no. UP-32 AH 7223 entry made in its model as Joy Honda Splendor with the capacity of 100 cc. In the light of abovesaid certificate, as per the document of insurance policy issued by respondent no. 6, the motorcycle was Hero Honda Splendor of 100 cc capacity. The said insurance cover certificate contains the terms and conditions, the relevant whereof is cited therefrom as under:

Person or Class of Persons entitled to drive:- Any person including insured provided that a person driving holds an effective driving licence at the time of the accident and is not disqualified from holding or obtaining such a licence, provided also that the person holding an effective learner's Licence may also drive the vehicle and such a person satisfies the requirements of Rule 3 of the Central Motor Vehicles Rules 1989.

25. Further, it is also relevant to quote from the insurance cover certificate preferred hereinabove the limits of liability contained therein which runs as under:

Limits of Liability:

Under Section I(i) in respect of any one accident: As per Motor Vehicles Act, 1988;
Under Section I(ii) in respect of any one claim or series of claims arising out of one event; event: Rs. UPTO Rs. 100000/.

26. Further, the insurance cover certificate claims that this policy is subjected to terms and conditions and limits endorsements numbers printed herein/attached hereto.

27. The policy was issued on 27.04.2007, it also relevant to said that the accident occurred on 02.05.2007, as such policy covers the third party risk occasioned due to use of insured motor vehicle in a public place the commencement of insurance for the purpose of act is given in the certificate as 14.05 hours on 27.04.2007 and date of expiry of the insurance given midnight on 26.04.2008.

28. With regard to the question what would be the effect over the liability occurred under the contract of insurance on the part of insurer to indemnify the insurance with regard to liability adjudicated by a MACT/court for compensation in case of third party risk. If the driver either having no licence or having valid driving licence but not meant for driving, the type of vehicle, he was driving at the relevant date and time of accident, or invalid licence.

29. The insurance cover certificate filed by the appellant-owner of the offending motor vehicle before the MACT refers the persons are class of persons entitled to drive, as any person including insured provided that a person driving, (a) effective driving licence at the time of accident and is not disqualified from holding or obtaining such a licence provided also that the person holding an effective learner licence may also drive the vehicle and such a person satisfies the requirement of Rule 3 of the Central Motor Vehicles Rules, 1989.

30. For the purpose of ascertaining the liability under Section 149 of the Insurance Company with regard to third party risk that bodily received injury that occasioned due to accident caused, the owner- driver of the offending motor vehicle this would be relevant to see what is the meaning of the word 'effective driving licence' with regard to the aforesaid question, the following provisions from the Motor Vehicles Act are being extracted:

31. Section 2 (10) of the Motor Vehicles Act, 1988 defines the driving licence which is quoted as under:

"driving licence" means the licence issued by a competent authority under Chapter II authorising the person specified therein to drive, otherwise than as a learner, a motor vehicle or a motor vehicle of any specified class or description;

Further Section 2 (27) of the Act defines the motor cycle which reads as under:

"motor cycle" means a two-wheeled motor vehicle, inclusive of any detachable side-car having an extra wheel, attached to the motor vehicle;

32. Rule 3 of Chapter II of the Central Motor Vehicles Rules, 1989 reads as under:-

Chapter II Rule 3 Sub Rule 1 (a)-

"3. General.--The provisions of sub-section (1) of section 3 shall not apply to a person while receiving instructions or gaining experience in driving with the object of presenting himself for a test of competence to drive, so long as--

(a) such person is the holder of an effective learner's licence issued to him in Form 3 to drive the vehicle;

(b) such person is accompanied by an instructor holding an effective driving License to drive the vehicle and such instructor is sitting in such a position to control or stop the vehicle; and

(c) there is painted, in the front and the rear or the

33. Sections 3, 4 and 5 of the Motor Vehicles Act, 1988 are relevant which are quoted herein-below:-

Section 3:- Necessity for driving licence:-

(1) No person shall drive a motor vehicle in any public place unless he holds an effective driving licence issued to him authorising him to drive the vehicle ; and no person shall so drive a transport vehicle [other than [a motorcab or motor cycle] hired for his own use or rented under any scheme made under sub - section (2) of section 75] unless his driving licence specifically entitles him so to do.

(2) The conditions subject to which sub-section (1) shall not apply to a person receiving instructions in driving a motor vehicle shall be such as may be prescribed by the Central Government.

Section 4:- Age limit in connection with driving of motor vehicles:-

(1) No person under the age of eighteen years shall drive a motor vehicle in any public place: Provided that 8[a motor cycle with engine capacity not exceeding 50 cc] may be driven in a public place by a person after attaining the age of sixteen year.

(2) Subject to the provisions of section 18, no person under the age of twenty years shall drive a transport vehicle in any public place.

(3) No learner's licence or driving licence shall be issued to any person to drive a vehicle of the class to which he has made an application unless he is eligible to drive that class of vehicle under this section.

Section 5:- Responsibility of owners of motor vehicles for contravention of sections 3 and 4:-

No owner or person in charge of a motor vehicle shall cause or permit any person who does not satisfy the provisions of section 3 section 4 to drive the vehicle.

34. The driving licence is granted under the provisions relating to grant of driving licence under Section 8 of the Act. The relevant sub Section 1, 2, and 3 are being quoted hereinunder:

Section 8:- Grant of learner's licence:-

(1) Any person who is not disqualified under section 4 for driving a motor vehicle and who is not for the time being disqualified for holding or obtaining a driving licence may, subject to the provisions of section 7, apply to the licensing authority having jurisdiction in the area -

(i) in which he ordinarily resides or carries on business, or

(ii) in which the school or establishment referred to in section 12 from where he intends to receive instruction in driving a motor vehicle is situate, for the issue to him of a learner's licence.

(2) Every application under sub-section (1) shall be in such form and shall be accompanied by such documents and with such fee as may be prescribed by the Central Government.

(3) Every application under sub-section (1) shall be accompanied by a medical certificate in such form as may be prescribed by the Central Government and signed

by such registered medical practitioner, as the State Government or any person authorised in this behalf by the State Government may, by notification in the Official Gazette, appoint for this purpose.

[Provided that no such medical certificate is required for licence to drive a vehicle other than a transport vehicle.]

35. Section 9 makes the provisions about grant of driving licence which is of foremost consideration for the matter in hand before the Court. Section 9 is quoted as under:

Section 9:- Grant of driving licence:-

(1) Any person who is not for the time being disqualified for holding or obtaining a driving licence may apply to the licensing authority having jurisdiction in the area -

(i) in which he ordinarily resides or carries on business, or

(ii) in which the school or establishment referred to in section 12 from where he is receiving or has received instruction in driving a motor vehicle is situated, for the issue to him of a driving licence.

(2) Every application under sub-section (1) shall be in such form and shall be accompanied by such fee and such documents as may be prescribed by the Central Government.

[(3) If the applicant passes such test as may be prescribed by the Central Government, he shall be issued the driving licence :

Provided that no such test shall be necessary where the applicant produces proof to show that -

(a) (i) the applicant has previously held a driving licence to drive such class of vehicle and that the period between the date of expiry of that licence and the date of the application does not exceed five years, or

(ii) the applicant holds or has previously held a driving licence to drive such class of vehicle issued under section 18, or

(iii) the applicant holds a driving licence to drive such class of vehicle issued by a competent authority of any country outside India, subject to the condition that the applicant complies with the provisions of sub-section (3) of section 8,

(b) the applicant is not suffering from any disability which is likely to cause driving by him to be a source of danger to the public ; and the licensing authority may, for that

purpose, require the applicant to produce a medical certificate in the same form and in the same manner as is referred to in sub-section (3) of section 8 :

Provided further that where the application is for a driving licence to drive a motor vehicle (not being a transport vehicle), the licensing authority may exempt the applicant from the test of competence to drive a vehicle prescribed under this subsection, if the applicant possesses a driving certificate issued by any institution recognised in this half by the State Government.] (4) Where the application is for a licence to drive a transport vehicle, no such authorisation shall be granted to any applicant unless he possesses such minimum educational qualification as may be prescribed by the Central Government and a driving certificate issued by a school or establishment referred to in section 12. [(5) Where the applicant does not pass the test, he may be permitted to reappear for the test after a period of seven days :

Provided that where the applicant does not pass the test even after three appearances, he shall not be qualified to re-appear for such test before the expiry of a period of sixty days from the date of last such test.] (6) The test of competence to drive shall be carried out in a vehicle of the type to which the application refers:

Provided that a person who passed a test in driving a motor cycle with gear shall be deemed also to have passed a test in driving a motor cycle without gear.

(7) When any application has been duly made to the appropriate licensing authority and the applicant has satisfied such authority of his Competence to drive, the licensing authority shall issue the applicant a driving licence unless the applicant is for the time being disqualified for holding or obtaining a driving licence :

Provided that a licensing authority may issue a driving licence to drive a motor cycle or a light motor vehicle notwithstanding that it is not the appropriate licensing authority :

Provided further that the licensing authority shall not issue a new driving licence to the applicant, if he had previously held a driving licence, unless it is satisfied that there is good and sufficient reason for his inability to obtain a duplicate copy of his former licence.

(8) If the licensing authority is satisfied, after giving the applicant an opportunity of being heard, that he -

(a) is a habitual criminal or a habitual drunkard ; or

(b) is a habitual addict to any narcotic drug or psychotropic substance within the meaning of the Narcotic Drugs and Psychotropic Substances Act, 1985 (61 of 1985) ;
or

(c) is a person whose licence to drive any motor vehicle has, at any time earlier, been revoked, It may for reasons to be recorded in writing, make an order refusing to issue a driving licence to such person and any person aggrieved by an order made by a licensing authority under this sub-section may, within thirty days of the receipt of the order, appeal to the prescribed authority.

(9) Any driving licence for driving a motor cycle in force immediately before the commencement of this Act shall, after such commencement, be deemed to be effective for driving a motor cycle with or without gear.

36. Section 10 prescribes the formate and contents of the licencig the driver which runs as under:

Section 10:- Form and contents of licences to drive:-

(1) Every learner's licence and driving licence, except a driving licence issued under section 18, shall be in such form and shall contain such information as may be prescribed by the Central Government.

(2) A learner's licence or as the case may be, driving licence shall also be expressed as entitling the holder to drive a motor vehicle of one or more of the following classes, namely :-

(a) motor cycle without gear;

(b) motor cycle with gear ;

(c) invalid carriage ;

(d) light motor vehicle ;

[(e) transport vehicle ;]

(i) road-roller ;

(ii) motor vehicle of a specified description."

37. From the conjoint reading of the aforesaid provisions, it becomes clear that a driver is said to be having a valid driving licence when he satisfied two requirements, first as to the duration for which it is issued and second the type of vehicle for which he is authorized to drive motor vehicle of the specified class or the description as it is clear from Section 3 of the Motor Vehicle Act, 1988. This is to be read with the insurance policy condition that everyone is required to have effective driving licence to drive a vehicle in public place. The driving licence should fulfill the aforesaid two conditions for its being effective and being valid. The effectiveness includes the duration and the type for which the licence is issued to the person to possess the particular class of licence.

38. In the present case, the licence of the driver of the motorcycle is proved to have a driving licence for non-gear motorcycle. This would further be relevant to mention here that the amendment of the year 1994 in the Motor Vehicles Act effective from 14.11.1994. The word 'without gear' has been replaced with up to 50 cc, therefore, this class of vehicle entitles the holder to drive two wheelers up to 50 cc. Presently there are some vehicles in the capacity of more than 50 cc but are without gears. Strictly speaking the holder of such licence for non-gear motorcycle cannot drive the vehicles above 50 cc. Though it may or may not be without gear. It has been seen that despite the fact that the word 'without gear' substituted vide amendment of the Act in the year, 1994, the Transport Authorities as usual continue to issue the licence category as motorcycle without gear. The minimum age is also considered as '16' years in such cases. Therefore, the holders of driving licence of category 'without gear' are entitled to drive vehicle upto 50 cc without gear and also the vehicle above 50 cc without gear.

39. Learned counsel for the appellant-owner of the offending motor vehicle and learned counsel for the Insurance Company, the respondent no. 6 has debated as to whether the Hero Joy motorcycle as pleaded by the appellant in his written statement is a non-gear motorcycle or geared motorcycle but the documentary evidences filed by the appellant make clear the type of motor vehicle which was being driven at the relevant date of accident by his son. The driving licence stipulates that it was issued for the motorcycle without gear. Thus, it is no doubt that the driving licence of the owner-appellant's son was effective and duly authorized for driving the motorcycle without gear. The registration certificate produced by the owner-appellant in evidence paper no. Ga-44 clearly shows that the motorcycle of the appellant-owner was registered motorcycle no. UP-32 AH 7223 is a 100 cc motorcycle of Joy Model Hero Honda motorcycle. However, copy of the insurance cover certificate paper no. Ga-43 produced by the owner-appellant shows the motorcycle to be a 100 cc and model is given as Hero Honda Splendor whatsoever it may have been the court is least concerned, the admitted fact is that the motorcycle bearing no. UP-32 AH 7223 involved in accident is of the registered owner, the appellant and is a 100 cc motorcycle.

40. As discussed hereinabove, 'without geared motorcycle' word is substituted in the year, 1994 with the word '50 cc' and, therefore, certainly the driver of offending motor vehicle was not holding the driving licence to drive a type of motorcycle which was not 50 cc motorcycle. As such, the owner-appellant on the basis of evidences produced by him to prove that the offending motor vehicle involved in the accident was being driven with valid licence failed to do so. Documents produced by him, by itself proved that he committed a breach of the terms and conditions of the policy by permitting a person who was not holding the proper driving licence at the time of accident and, therefore, in accordance with the various judgments of Hon'ble Apex Court, the insured would be liable for risk of death of the victim of the accident to compensate.

41. The next question is whether the fact and situation of this case the Insurance Company can be directed to pay the claim amount, with liberty to recover the same from the owner of the vehicle (appellant). This issue has been answered in the case of National Insurance Company Ltd. Vs. Swaran Singh and Others reported in [(2004) 3 SCC 297]. Relevant para no. 107 is reproduced hereunder:

"We may, however, hasten to add that the Tribunal and the court must, however, exercise their jurisdiction to issue such a direction upon consideration of the facts and circumstances of each case and in the event such a direction has been issued despite arriving at a finding of fact to the effect that the insurer has been able to establish that the insured has committed a breach of contract of insurance as envisaged under sub-clause (ii) of clause (a) of sub-section (2) of Section 149 of the Act, the insurance company shall be entitled to realise the awarded amount from the owner or driver of the vehicle, as the case may be, in execution of the same award having regard to the provisions of Sections 165 and 168 of the Act . However, in the event, having regard to the limited scope of inquiry in the proceedings before the Tribunal it had not been able to do so, the insurance company may initiate a separate action therefor against the owner or the driver of the vehicle or both, as the case may be. Those exceptional cases may arise when the evidence becomes available to or comes to the notice of the insurer at a subsequent stage or for one reason or the other, the insurer was not given opportunity to defend at all. Such a course of action may also be resorted when a fraud or collusion between the victim and the owner of the vehicle is detected or comes to the knowledge of the insurer at a later stage."

42. Simultaneously, it should be kept in mind that the Act has a benevolent scheme under which a mandatory provision as to the compulsory insurance is made under Section 146 and 147 of the Act referred hereinabove. No owner of a motor vehicle can himself drive or permit to drive anyone else if the vehicle is not insured under the terms and conditions of Section 147 of the Act. Notwithstanding anything contained in any law for the time being enforced and insurer issuing a policy of insurance under above Section shall be liable to indemnify the person or classes of persons specified in the policy in respect of any liability with policy purpose covered in the case of that person or those classes of persons. Sub Section 2(i) of Section 149 as quoted herein-above provides 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; as a defence available to avoid the liability with regard to insured, the owner of the vehicle. The insurer in terms of Sub Section 2 of Section 149 of the Act has an absolute right to raise defence specified inter alia in Sub Section 2 of Section (a) thereof. Such a right being unequivocal having regard to the judgment of the Apex Court in National Insurance Company Ltd., Chandigarh Vs. Nicolletta Rohtagi and others reported in [2002 (7) SCC 456] must be allowed to be invoked by the insurer to its full power in the proceedings before the Tribunal. The insurer, thus, entitled to show that the vehicle involved in the accident at the material point of time was driven by a person who was not duly licenced or disqualified to hold a licence.

43. All these circumstances are considered in various decisions of Hon'ble Apex Court and taking into consideration of all those, Hon'ble Apex Court in the case of National Insurance Company Ltd. Vs. Swaran Singh and Others reported in [(2004) 3 SCC 297] has discussed the circumstance when the person has been granted licence for one type of vehicle but at the relevant time he was driving another type of vehicle. Para nos. 88 and 89 of the judgment are reads as under:

"88. Section 10 of the Act provides for forms and contents of licences to drive. The licence has to be granted in the prescribed form. Thus, a licence to drive a light motor vehicle would entitle the holder there to drive the vehicle falling within that class or description.

89. Section 3 of the Act casts an obligation on a driver to hold an effective driving licence for the type of vehicle which he intends to drive. Section 10 of the Act enables Central Government to prescribe forms of driving licences for various categories of vehicles mentioned in sub-section (2) of said section. The various types of vehicles described for which a driver may obtain a licence for one or more of them are (a) Motorcycle without gear, (b) motorcycle with gear, (c) invalid carriage, (d) light motor vehicle, (e) transport vehicle, (f) road roller and (g) motor vehicle of other specified description. The definition clause in Section 2 of the Act defines various categories of vehicles which are covered in broad types mentioned in sub-section h (2) of Section 10. They are 'goods carriage', 'heavy-goods vehicle', 'heavy passenger motor-vehicle', 'invalid carriage', 'light motor-vehicle', 'maxi-cab', 'medium goods vehicle', 'medium passenger motor-vehicle', 'motor-cab', 'motorcycle', 'omnibus', 'private service vehicle', 'semi-trailer', 'tourist vehicle', 'tractor', 'trailer', and 'transport vehicle'. In claims for compensation for accidents, various kinds of breaches with regard to the conditions of driving licences arise for consideration before the Tribunal. A person possessing a driving licence for 'motorcycle without gear', for which he has no licence. Cases may also arise where a holder of driving licence for 'light motor vehicle' is found to be driving a 'maxi-cab', 'motor-cab' or 'omnibus' for which he has no licence. In each case on evidence led before the 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 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."

44. Hon'ble Supreme Court in the case of Swaran Singh (supra) in para 110 has given the summery of finding. Relevant portion of the same is read as under:

"The summary of our findings to the various issues as raised in these petitions are as follows:

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

(ii) An insurer is entitled to raise a defence in a claim petition filed under Section 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 driver or invalid driving licence of the driver, as contained in sub-section (2)(a)(ii) of section 149, have 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 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 duly licensed driver or one who was not disqualified to drive at the relevant time.

(iv) Insurance companies are, 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 said burden would be discharged, inasmuch as the same would depend upon the facts and circumstance 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 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 insured under section 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 fulfil 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 under Section 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 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. 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 under Section 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 proviso thereunder and sub-section (5) which are intended to cover specified contingencies mentioned therein to enable the insurer to recover amount paid under the contract of insurance on behalf of the insured can be taken recourse of by the Tribunal and be extended to claims and defences of insurer against insured by relegating them to the remedy before regular court in cases where on given facts and circumstances adjudication of their claims inter se might delay the adjudication of the claims of the victims."

45. In the present case, respondent no. 6-the Insurance Company has pleaded and also successfully proved the breach of terms and conditions of policy specifically by saying that insured-owner of the vehicle permitting to drive his motorcycle by a person who was not duly licenced in terms of the aforesaid provision of the Act is violateral and breached the terms of the policy.

46. The case in hand before this Court is with regard to the driver who does not hold a licence for the type of vehicle which he was driving at the time of accident in terms of Chapter II of the Motor Vehicles Act, 1988.

47. The question that if the insured is found to commit breach in terms and conditions of the policy of the insurance then what deference it makes with regard to liability in case of third party risk for whom the Insurance of motor vehicle is made compulsory by the Act.

48. The decision of Hon'ble Apex Court in Swaran Singh (supra) plays role of light house in the cases of Driving Licences (fake, invalid, expired or for different type of vehicles etc.). Briefly stating the claim has to be paid to the claimants in the first instance by the Insurance Company even in the cases of breach of the terms of policy. The Insurer has to prove that the breach was in the known to the insured and if the compensation is paid to claimants, then recover it from the insured.

49. In view of the discussion made here-in-above, I find that the impugned judgment and award dated 31.08.2009 passed by learned Motor Accident Claims Tribunal, Barabanki in MACP no. 339 of 2007 has no error either of fact or of law and, therefore, need no interference. The impugned judgment and award dated 31.08.2009 is confirmed and the appeal is disposed of with direction that entire compensation amount, as awarded by the tribunal vide judgment and award dated 31.08.2009, shall be paid to the claimants by the insurer-United India Insurance Company (respondent no. 6) in the first instance within 30 days from the date of order in the appeal with liberty to recover the same from the owner of the vehicle (appellant) in accordance with law, otherwise the same shall be recovered through the process of the court from the Insurance Company and be paid to the claimant-respondents within 45 days after the aforesaid period of 30 days prescribed for payment by Insurance Company (respondent no. 6).

50. Registry is further directed to send back the lower court record to the concerned Court.

Order Date :- 18/04/2019 kkv/ [Vikas Kunvar Srivastav,J.]