National Insurance Co. Ltd vs Swaran Singh & Ors on 5 January, 2004

Equivalent citations: AIR 2004 SUPREME COURT 1531, 2004 (3) SCC 297, 2004 AIR SCW 663, (2004) 1 JT 109 (SC), 2004 (1) SLT 345, 2004 (1) SCALE 180, 2004 SCC(CRI) 733, 2004 (1) LRI 198, 2004 (1) ACE 86, 2004 (1) JT 109, 2004 (1) BLJR 725, (2004) 1 CURCC 130, (2004) 1 GUJ LH 691, (2005) 1 JAB LJ 85, (2004) 1 KER LT 781, (2004) 2 MAD LW 744, (2004) 27 OCR 540, (2004) 1 PUN LR 510, (2004) 2 RAJ LW 161, (2004) 1 TAC 321, (2004) 2 ANDHLD 36, (2004) 1 SUPREME 243, (2004) 2 RECCIVR 114, (2004) 2 ICC 816, (2004) 1 SCALE 180, (2004) 2 GCD 57 (SC), (2004) 14 INDLD 57, (2004) 1 ACC 1, (2004) 2 CIVLJ 35, (2004) 118 COMCAS 396, (2004) 2 CURLJ(CCR) 394, (2004) 72 DRJ 555, (2004) 2 GUJ LR 989, (2004) 1 WLC(SC)CVL 270, (2004) 1 ACJ 1, (2004) 2 ALL WC 1589, (2004) 109 DLT 304, (2004) 5 BOM CR 467

Bench: Chief Justice, D.M. Dharmadhikari, S.B. Sinha

CASE NO.:
Special Leave Petition (civil) 9027 of 2003

PETITIONER:
National Insurance Co. Ltd.

RESPONDENT:
Swaran Singh & Ors.

DATE OF JUDGMENT: 05/01/2004

BENCH:
CJI., V.N. Khare, D.M. Dharmadhikari & S.B. Sinha.

JUDGMENT:

J U D G M E N T W I T H SLP (C) 10017/03, 10042, 10055, 10510, 10787, 10829-10831, 11129/2003, SLP(C) 153/04 CC No. 4917/2003, SLP(C) 154/04 CC No. 4997/2003, SLP(C) 156/04 CC No. 5137/2003, SLP(C) 155/04 CC No.5196/2003, SLP(C) 157/04 CC No.5360/2003, SLP(C) 159/04 CC No. 5564/2003, SLP(C) 356/04 CC No. 5877/2003, SLP (C) No. 9335, 9356, 9554, 9560, 9811, 9812, 9815, 9867, 9900 of 2003, 9947/2003, SLP(C) 321/04 CC No. 4686/2003, SLP(C) 160/04 CC No. 4739/2003, SLP(C) 357/04 CC No. 4747/2003, SLP (C) No. 15528/2002 & SLP (C) No. 15772/2002 By V.N.Khare, CJI & D.M.Dharmadhikari, S.B. Sinha, JJ.

Interpretation of Section 149(2)(a)(ii) vis-`-vis the proviso appended to sub-sections (4) and (5) of the Motor Vehicles Act, 1988 is involved in this batch of special leave petitions filed by the National

Insurance Company Limited (hereinafter referred to as Insurer) assailing various awards of the Motor Vehicle Claims Tribunal and judgments of the High Courts.

In view of the fact that these petitions involve pure questions of law, it is not necessary to advert to the individual fact pertaining to each matter.

Suffice, however, is to point out that the vehicles insured with the petitioners were involved in accidents resulting in filing of claim applications by the respective legal representatives of the deceased(s) or the injured person(s), as the case may be.

Defences raised by the Petitioner company in the claim petitions purported to be in terms of Section 149(2)(a)(ii) of the Motor Vehicles Act, 1988 (hereinafter referred to as 'the Act') were : (a) driving licence produced by the driver or owner of the vehicle was a fake one; (b) driver did not have any licence whatsoever; (c) licence, although was granted to the concerned driver but on expiry thereof, the same had not been renewed;

(d) licence granted to the drivers being for one class or description of vehicle but the vehicle involved in the accident was of different class or description; and (e) the vehicle in question was driven by a person having a learner's licence.

Before we proceed further in the matter it is relevant to notice certain relevant statutory provisions which are :

> "2(10) "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;
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> 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 motor cab or motor cycle hired for his own use or rented under any scheme made under subsection (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.
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> 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:
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> Provided that a motor cycle with engine capacity not exceeding 50cc may be driven in a public place by a person after attaining the age of sixteen years. (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.

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 or section 4 to drive the vehicle.

6. Restrictions on the holding of driving licences. - (1) No person shall, while he holds any driving licence for the time being in force, hold any other driving licence except a learner's licence or a driving licence issued in accordance with the provisions of section 18 or a document authorising, in accordance with the rules made under section 139, the person specified therein to drive a motor vehicle.

(2) No holder of a driving licence or a learner's licence shall permit it to be used by any other person.
(3) Nothing in this section shall prevent a licensing authority having the jurisdiction referred to in sub-section (1) of section 9 from adding to the classes of vehicles which the driving licence authorises the holder to drive.

7. Restrictions on the granting of learner's licences for certain vehicles. (1) No person shall be granted a learner's licence to drive a transport vehicle unless he has held a driving licence to drive a light motor vehicle for at least one year.

(2) No person under the age of eighteen years shall be granted a learner's licence to drive a motor cycle without gear except with the consent in writing of the person having the care of the person desiring the learner's licence."

Section 9 provides for grant of driving licence.

> "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 -
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> (i) in which he ordinarily resides or carries on business, or
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> (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.

xxx xxx xxx xxx (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, if the licensing authority is satisfied that there is good and sufficient reason for the applicant's inability to apply to 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.

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;

(j)motor vehicle of a specified description.

14. Currency of licences to drive motor vehicles. - (1) A learner's licence issued under this Act shall, subject to the other provisions of this Act, be effective for a period of six months from the date of issue of the licence.

(2) A driving licence issued or renewed under this Act shall. -

(a) in the case of a licence to drive a transport vehicle, be effective for a period of three years:

Provided that in the case of licence to drive a transport vehicle carrying goods of dangerous or hazardous nature he effective for a period of one year and renewal thereof shall be subject to the condition that the driver undergoes one day refresher course of the prescribed syllabus; and

(b) in the case of any other licence,-

(i) if the person obtaining the licence, either originally or on renewal thereof, has not attained the age of fifty years on the date of issue or, as the case may he, renewal thereof,-

(A) be effective for a period of twenty years from the date of such issue or renewal; or
(B) until the date on which such person attains the age of fifty years, whichever is earlier;

(ii) if the person referred to in sub-clause (i), has attained the age of fifty years on the date of issue or as the case may be, renewal thereof, be effective, on payment of such fee as may be prescribed, for a period of five years from the date of such issue or renewal:

Provided that every driving licence shall, notwithstanding its expiry under this subsection continue to be effective for a period of thirty days from such expiry,

15. Renewal of driving licences. - (1) Any licensing authority may, on application made to it, renew a driving licence issued under the provisions of this Act with effect from the date of its expiry:

Provided that in any case where the application for the renewal of a licence is made more than thirty days after the date of its expiry, the driving licence shall be renewed with effect from the date of its renewal:

Provided further that where the application is for the renewal of a licence to drive a transport vehicle or where in any other case the applicant has attained the age of

forty years, the same shall be accompanied by a medical certificate in the same form and in the same manner as is referred to in sub-section (3) of section 8, and the provisions of sub-section (4) of section 8 shall, so far as may be, apply in relation to every such case as they apply in relation to a learner's licence.

(2) An application for the renewal of a driving licence shall be made in such form and accompanied by such documents as may be prescribed by the Central Government.

(3) Where an application for the renewal of a driving licence is made previous to, or not more than thirty days after the date of its expiry, the fee payable for such renewal shall be such as may be prescribed by the Central Government in this behalf.

(4) Where an application for the renewal of a driving licence is made more than thirty days after the date of its expiry the fee payable for such renewal shall be such amount as may be prescribed by the Central Government:

Provided that the fee referred to in sub-section (3) may be accepted by the licensing authority in respect of an application for the renewal of a driving licence made under this sub-section if it is satisfied that the applicant was prevented by good and sufficient cause from applying within the time specified in sub-section (3):

Provided further that if the application is made more than five years after the driving licence has ceased to be effective the licensing authority may refuse to renew the driving licence unless the applicant, undergoes and passes to its satisfaction the test of competence to drive referred to in sub-section (3) of section 9.

(5) Where the application for renewal has been rejected, the fee paid shall be refunded to such extent and in such manner as may be prescribed by the Central Government.

(6) Where the authority renewing the driving licence is not the authority which issued the driving licence it shall intimate the fact of Renewal to the authority which issued the driving licence.

16. Revocation of driving licence on grounds of disease or disability. -Notwithstanding anything contained in the foregoing sections, any licensing authority may at any time revoke a driving licence or may require, as a condition of continuing to hold such driving licence, the holder thereof 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 if the licensing authority has reasonable grounds to believe that the holder of the driving licence is, by virtue of any disease or disability, unfit to drive a motor vehicle and where the authority revoking a driving licence is not the authority which issued the same, it shall intimate the fact of revocation to the authority which issued that licence."

Section 19 provides for power of the licensing authority to disqualify from holding a driving licence or revoke such licence.

Section 20 empowers the court to disqualify a person in the event a person is convicted of an offence under the Motor Vehicles Act or of an offence in the commission of which a motor vehicle was used.

Section 21 provides for suspension of driving licence in certain cases. Section 23 provides for effect of disqualification order. Section 27 provides for the power of the Central Government to make rules.

Chapter II of the Act deals with the provisions of licensing of drivers of motor vehicles.

Section 147 of the Act provides for requirements of policies and limits of liability. Section 149 provides for the duty of insurers to satisfy judgments and award against persons insured in respect of third party risks. Sub-section (1) of Section 149 postulates that in the event of a certificate of insurance has been issued in terms of Section sub-section (3) of Section 147 a judgment or award in respect of any such liability is obtained by the insured, the insurer notwithstanding its entitlement 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. Sub-section (2) of Section 149 of the Act, however, seeks to make an exception thereto. Sub-sections (4), (5) and (7) of Section 149 read thus :

> "(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:
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> 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.
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> (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

subsection (2) or in the corresponding law of the reciprocating country, as the case may be."

Sections 165 of the Act provides as under :

"165. Claims Tribunals. - (1) A State Government may, by notification in the Official Gazette, constitute one or more Motor Accidents Claims Tribunals (hereafter in this Chapter referred to as Claims Tribunal) for such area as may be specified in the notification for the purpose of adjudicating upon claims for compensation in respect of accidents involving the death of, or bodily injury to, persons arising out of the use of motor vehicles, or damages to any property of a third party so arising, or both.

Explanation.- For the removal of doubts, it is hereby declared that the expression "claims for compensation in respect of accidents involving the death of or bodily injury to persons arising out of the use of motor vehicles" includes claims for compensation under section 140 [and section 163A].

(2) A Claims Tribunal shall consist of such number of members as the State Government may think fit to appoint and where it consists of two or more members, one of them shall be appointed as the Chairman thereof.

(3) A person shall not be qualified for appointment as a member of a Claims Tribunal unless he -

(a) is, or has been, a Judge of a High Court, or

(b) is, or has been a District Judge, or

(c) is qualified for appointment as a High Court Judge [or as a District Judge].

(4) Where two or more Claims Tribunals are constituted for any area, the State Government, may by general or special order, regulate the distribution of business among them."

Section 168 of the Act provides as follows :

"168. Award of the Claims Tribunal.- On receipt of an application for compensation made under section 166, the Claims Tribunal shall, after giving notice of the application to the insurer and after giving the parties (including the insurer) an opportunity of being heard, hold an inquiry into the claim or, as the case may be, each of the claims and, subject to the provisions of section 162 may make an award determining the amount of compensation which appears to it to be just and specifying the person or persons to whom compensation shall be paid and in making the award the Claims Tribunal shall specify the amount which shall be paid by the

insurer or owner or driver of the vehicle involved in the accident or by all or any of them, as the case may be;

Provided that where such application makes a claim for compensation under section 140 in respect of the death or permanent disablement of any person, such claim and any other claim (whether made in such application or otherwise) for compensation in respect of such death or permanent disablement shall be disposed of in accordance with the provisions of Chapter X. (2) The Claims Tribunal shall arrange to deliver copies of the award to the parties concerned expeditiously and in any case within a period of fifteen days from the date of the award.

(3) When an award is made under this section, the person who is required to pay any amount in terms of such award shall, within thirty days of the date of announcing the award by the Claims Tribunal, deposit the entire amount awarded in such manner as the Claims Tribunal may direct."

Mr. Harish Salve and Mr. M.L. Verma, learned senior counsel appearing on behalf of the insurer made the following submissions in support of these petitions.

(1) The insurer in terms of sub-section (2) of Section 149 of the Act has an absolute right to raise a defence specified, inter alia, in sub-clause (ii) of clause (a) thereof;

(2) Such a right being clear and unequivocal having regard to the judgment of this Court in National Insurance Company Ltd., Chandigarh Vs. Nicolletta Rohtagi and Others [(2002) 7 SCC 456] must be allowed to be invoked by the insurer to its full effect. In the proceedings before the Tribunal, the insurers, thus, were 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 licensed' or was 'disqualified to hold a licence'.

(3) A person cannot be said to be 'duly licensed' unless he has been granted a permanent licence for driving a particular vehicle in terms of the provisions of Chapter II of the Motor Vehicles Act and, thus, a vehicle cannot be held to be driven by a person duly licensed therefor if : (a) he does not hold a licence; (b) he holds a fake licence; (c) he holds a licence but the validity thereof has expired; or (d) he does not hold a licence for the type of vehicle which he was driving in terms of Chapter II of the Motor Vehicles Act, 1988, or (e) he holds merely a learner's licence. Reliance in this behalf has been placed on New India Assurance Co. Ltd. Vs. Mandar Madhav Tambe and Others [(1996) 2 SCC 328] and United India Insurance Co. Ltd. vs. Gian Chand and Others [(1997) 7 SCC 558].

(4) Once the defence by the insurer is established in the proceedings before the Tribunal, it is bound to discharge the insurer and fix the liability only on the owner and/or the driver of the vehicle.

(5) Once it is held that the insurer has been able to establish its defence, the Tribunal or the Court cannot direct the insurance companies to pay the awarded amount to the claimant and in turn recover the same from the owner and the driver of the vehicle.

The decisions of this Court in New India Assurance Co., Shimla vs. Kamla and Others etc. [(2001) 4 SCC 342] and United India Insurance Company Ltd. vs. Lehru and Others [(2003) 3 SCC 338] wherein it has been held that the court is entitled to issue a direction upon the insurer to satisfy the award and thereafter recover the same from the owner of the vehicle do not lay down the correct law and should be overruled.

The learned counsel appearing on behalf of the respondents, who are third party claimants on the other hand, submitted:

(i) that the Parliament deliberately used two different expressions 'effective licence' in Section 3 and 'duly licensed' in sub-section (2) of Section 149 of the Act which are suggestive of the fact that a driver once licensed, unless he is disqualified, would continue to be a duly licensed person for the purpose of Chapter XI of the Act.

(ii) Thus, once a person has been duly licensed but has not renewed his licence, the same would not come within the purview of Section 149 and thus would not constitute a statutory defence available to the insurer in terms thereof. Only in the event of lapse of five years from the date of expiry of the licence, such statutory defence may be raised.

(iii) Once a certificate of insurance is issued in terms of the provisions of the Act, the insurer has a liability to satisfy an award. It has been pointed that a major departure has been made in the 1988 Act insofar as in terms of Section 96(2)(b) of the 1939 Act all the statutory defences were available in terms of sub-section (3) thereof provided that the policy conditions other than those prescribed therein had no effect; whereas in the new Act, Section 149(2)(a) prescribes that the policy is void if it is obtained by non-disclosure of material fact. Section 149(4) confines to only clause (b) and states that the conditions of policy except as mentioned in clause (b) of sub-section (2) are of no effect and, thus, after the amendment, except in cases which are covered under clause (b) of Section 149, the insurance companies are liable to pay to the third parties. In other words, the right of insurer to avoid the claim of the third party would arise only when the policy is obtained by misrepresentation of material fact and fraud and in no other case.

(iv) Sub-section (1) of Section 149 makes it clear that the insurer should pay first to the third parties and recover the same if they are absolved on any of the grounds specified in sub-section (2) thereof. Reliance, in this connection, has been placed on BIG Insurance Co. Ltd. vs. Captain Itbar Singh and Others [AIR 1959 SC 1331] and New India Assurance Company Vs. Kamla & Others [(2001) 4 SCC 342].

(v) The burden to prove the defence raised by the insurers as regard the question as to whether there has been any breach of violation of policy conditions of the insurance policy has been issued or not, would be upon the insurer.

(vi) The breach on the part of the insured must be a wilful one being of fundamental condition by the insured himself and the burden of proof, therefore, would be on the insurer.

(vii) With a view to avoid its liabilities it is not sufficient for the insurer to show that the person driving at the time of accident was not duly licensed but it must further be established that there was a breach on the part of the insured. Reliance, in this connection, has been placed on Narcinva V. Kamath and Another vs. Alfredo Antonio Doe Martins and Others [(1985) 2 SCC 574], Skandia Insurance Company Ltd. vs. Kokilaben Chandevadan and Others [(1987) 2 SCC 654], Sohan Lal Passi vs. P. Sesh Reddy and Others [(1996) 5 SCC 21] and United India Insurance Company Ltd. vs. Lehru & Others [(2003) 3 SCC 338].

Before we deal with various contentions raised by the parties it is desirable to look into the legislative history of the provisions for its interpretation. The relevant provisions of the Act indisputably are beneficent to the claimant. They are in the nature of a Social Welfare Legislation.

Chapter XI of the Motor Vehicles Act, 1988, inter alia, provides for compulsory insurance of vehicles in relation to the matters specified therefor. The provision for compulsory insurance indisputably has been made inter alia with a view to protect the right of a third party.

This Court in Sohan Lal Passi (supra) noted:

"10. The road accidents in India have touched a new height. In majority of cases because of the rash and negligent driving, innocent persons become victims of such accidents because of which their dependants in many cases are virtually on the streets. In this background, the question of payment of compensation in respect of motor accidents has assumed great importance for public as well as for courts. Traditionally, before the Court directed payment of tort compensation, it had to be established by the claimants that the accident was due to the fault of the person causing injury or damage. Now from different judicial pronouncements, it shall appear that even in western countries fault is being read and assumed as someone's negligence or carelessness. The Indian Parliament, being conscious of the magnitude of the plight of the victims of the accidents, have introduced several beneficial provisions to protect the interest of the claimants and to enable them to claim compensation from the owner or the insurance company in connection with the accident."

The intention of the Parliament became further evident when in the Motor Vehicles Act, 1939, a new chapter being Chapter VIIA dealing with insurance of motor vehicles against third party risks was introduced and the beneficent provisions contained in the Motor Vehicles Act, 1939 were further made liberal by reason of the Motor Vehicles Act, 1988 and the amendments carried out therein from time to time in aid of the third party claims by way of grant of additional or new rights conferred on the road accident victims.

Under the common law a person injured by reason of another person's wrongdoing had no right of action against insurers who undertook to indemnify the wrongdoer. The first invasion of this principle took place by reason Third Parties (Rights against Insurers) Act, 1930. The British Parliament in the light of the aforementioned Act enacted the Road Traffic Act, 1930 which has since been replaced by Road Traffic Act, 1988.

The Third Parties (Rights Against Insurers) Act 1930 was enacted with a view to correct injustice effecting a statutory assignment of the rights of the assured to the injured person as prior thereto the right of a person to be indemnified under a contract of insurance against claims made against him by persons whom he might have injured was one personal to himself, and there was no privity of any sort between the injured person and the insurers. The injured person had no interest either at law or in equity in the insurance money, either before or after it was paid by the insurers to the assured. In a case where the assured became bankrupt and if the injured person had not already obtained judgment and levied execution of his claim for damages his only right was to move in the bankruptcy or the winding-up of proceedings. The beneficial provisions of the aforementioned English statutes were incorporated by the Parliament of India while enacting the Motor Vehicles Act, 1939 which has also since been repealed and replaced by the Motor Vehicles Act, 1988.

Concededly different types of insurance covers are issued containing different nature of contract of insurance. We are, however, in this batch of cases mainly concerned with third party right under the policy. Any condition in the insurance policy, whereby the right of the third party is taken away, would be void.

Indisputably such a benefit to a third party was provided under the Statute keeping in view the fact that the conditions in the assured's policy may not be of no or little effect in relation to a claim by a person to whom an assured was under a compulsorily insurable liability. In this context, it is necessary to consider as to what is a third party right. A third party claim arises when a victim of an accident suffers a bodily injury or death as a result thereof or his property is damaged. An accident is not susceptible to a very precise definition.

The popular and ordinary sense of the word was "an unlooked-for mishap or an untoward event which is not expected or designed".

In R. Vs. Morris [(1972) 1 W.L.R. 228], the Court of Appeal defined the word as an "unintended occurrence which has an adverse physical result". The Supreme Court of Canada in Pickford & Black Ltd. vs. Candian General Insurance Co. [(1976) 2 Lloyd's Rep. 108], stated the law thus :-

> "The meaning to be attached to the word "accident" as employed in the body of an insurance policy was thoroughly explored by Mr. Justice Pigeon in the reasons for judgment which he delivered on behalf of the majority of this Court in The Canadian Indemnity Co. v. Walkem Machinery & Equipment Ltd., (1975) D.L.R. (3d) 1. In the course of these reasons at p. 5 he adopted the views expressed by Mr. Justice Freedman, in a dissenting opinion in the Court of Appeal of Manitoba in Marshall Wells of Canada Ltd. v. Winnipeg Supply and Fuel, R. Litz & Sons Co. v. Candian

> General Insurance Co., (1964) 49 W.W.R. 644 at p. 665 where that learned Judge said :
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> With respect, I am of the view that what occurred here was an accident. One must avoid the danger of construing that term as if it were equivalent to "inevitable accident." That a mishap might have been avoided by the exercise of greater care and diligence does not automatically take it out of the range of accident. Expressed another way, "negligence" and "accident" as here used are not mutually exclusive terms. They may co-exist.
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> After expressing the view that even an occurrence which is the result of a calculated risk or of a dangerous operation may come within the meaning of the word "accident", Mr. Justice Pigeon went on to say at p. 6 :
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> While it is true that the word "accident" is sometimes used to describe unanticipated or unavoidable occurrences, no dictionary need be cited to show that in every day use, the word is applied as Halsbury says...to any unlooked for mishap or occurrence...this is the proper test..."

In Halsbury's Laws of England, Fourth Edition Reissue, it is stated:

> "An injury caused by the willful or even criminal act of a third person, provided the assured is not a party or privy to it, is to be regarded as accidental for the purposes of the policy, since from the assured's point of view it is not expected or designed."

In Colinvaux's Law of Insurance (6th Edition) page 304, the following illustration is given :

> "If a man walks and stumbles, thus spraining his ankle, the injury is accidental for while he intends to walk he does not intend to stumble. In Hamlyn v. Crown Accidental Insurance the assured's injury was due to stooping forward to pick up a marble dropped by a child as it rolled from him. He stood with his legs together, separated his knees, leaned forward and made a grab at the marble, and in doing so wrenched his knee. The injury was held by the Court of Appeal to be accidental, on the ground that the assured did not intend to get into such a position that he might wrench his knee."

At para 17-13 of the said treatise it is stated :

> "Accident includes negligence It makes no difference that the accident was caused by the negligence of the assured (as opposed to his intentional act). Thus there is an accident where the assured crosses a railway line without exercising due care and is knocked down by an approaching train. In fact, one of the commonest causes of accidents is negligence, and an accident policy applies, excepted perils apart, whether the injury is caused by the negligent act of the assured himself or of a third party."

A right of the victim of a road accident to claim compensation is a statutory one. He is a victim of an unforeseen situation. He would not ordinarily have a hand in it. The negligence on the part of the victim may, however, be contributory. He has suffered owing to wrongdoing of others. An accident may ruin an entire family. It may take away the only earning member. An accident may result in the loss of her only son to a mother. An accident may take place for variety of reasons. The driver of a vehicle may not have a hand in it. He may not be found to be negligent in a given case. Other factors such as unforeseen situation, negligence of the victim, bad road or the action or inaction of any other person may lead to an accident.

A person suffering grievous bodily injury may require money for his survival/medical treatment. Statutory compensation paid to the next of kin of the victim of an accident may, thus, bring to a large number of families the only ray of light at the end of the tunnel.

In other words, what would also be covered by the contract of insurance vis-`-vis the beneficent statutory provisions like Sub-Section (2) of Section 149 of the said Act would be when a death or bodily injury has been caused as a result of assured's own voluntary act. Even an unforeseeable result of assured's deliberate act may come within the purview of the accident. Even if an accident has occurred due to negligent driving of the assured person, it may not prevent recovery under the policy and certainly thereby a third party would not be non-suited.

However, we may notice that in C.M. Jaya's case (supra), a Constitution Bench of this Court held that the liability of the insurer will have to be determined having regard to the question as to whether any extra premium is paid or not. It was observed :

> "...The said decision cannot be read as laying down that even though the liability of the Insurance Company is limited to the statutory requirement, an unlimited or higher liability can be imposed on it. The liability could be statutory or contractual. A statutory liability cannot be more than what is required under the statute itself. However, there is nothing in Section 95 of the Act prohibiting the parties from contracting to create unlimited or higher liability to cover wider risk. In such an event, the insurer is bound by the terms of the contract as specified in the policy in regard to unlimited or higher liability as the case may be. In the absence of such a term or clause in the policy, pursuant to the contract of insurance, a limited statutory liability cannot be expanded to make it unlimited or higher. If it is so done, it amounts to rewriting the statute or the contract of insurance which is not permissible."

For the aforementioned reasons, the provisions contained in Chapter XI of the Motor Vehicles Act, 1988 must be construed in that light.

Sub-section (1) of Section 149, casts a liability upon the insurer to pay to the person entitled to the benefit of the decree as if he were the judgment debtor. Although the said liability is subject to the provision of this section, it prefaces with a non-obstante clause that the insurer may be entitled to avoid or cancel or may have avoided or cancelled the policy. Furthermore, the statute raises a legal

fiction to the effect that for the said purpose the insurer would be deemed to be judgment debtor in respect of the liability of the insurer.

In Halsbury's Laws of England, Fourth Edition Reissue, Volume 25, it is stated:

> "743. Benefits conferred on third parties by the Road Traffic Act, 1930. It was against the background of the Third Parties (Rights against Insurers) Act 1930 that the Road Traffic Act 1930 (now replaced by the Road Traffic Act 1988), was passed. It was realised that, unless some alterations were made in the rights to which the third party was by the first-named Act subrogated, those rights would frequently be of little, if any, value. Accordingly, it was provided that certain conditions in the assured's policy were to be of no effect in relation to a claim by a person to whom an assured was under a compulsorily insurable liability. The conditions to that extent avoided are any conditions providing (1) that no liability is to arise, or (2) that any liability which has arisen is to cease, in the event of some specified thing being done, or omitted to be done, after the occurrence of the event giving rise to the claim. If, therefore, any admission of liability is made after an accident contrary to a condition in the policy, or if, contrary to a condition in the policy, proper notice of the accident is not given to the insurers, the injured third party is not affected so far as his claim is concerned."

This Court in Nicolletta Rohtagi (supra) which has since been followed in Sadhana Lodh Vs. National Insurance Company Ltd. and Anr. reported in [(2003) 1 SCR 567] in no uncertain terms held that the defence available to an insurance company would be a limited one.

The question as to whether an insurer can avoid its liability in the event it raises a defence as envisaged in Sub-section (2) of Section 149 of the Act corresponding to sub-section (2) of Section 96 of the Motor Vehicles Act, 1939 had been the subject matter of decisions in a large number of cases.

It is beyond any doubt or dispute that under Section 149(2) of the Act an insurer, to whom notice of the bringing of any proceeding for compensation has been given, can defend the action on any of the grounds mentioned therein.

However, Clause (a) opens with the words "that there has been a breach of a specified condition of the policy", implying that the insurer's defence of the action would depend upon the terms of the policy. The said sub-clause contains three conditions of disjunctive character, namely, the insurer can get away from the liability when (a) a named person drives the vehicle; (b) it was being driven by a person who did not have a duly granted licence; and (c) driver is a person disqualified for holding or obtaining a driving licence.

We may also take note of the fact that whereas in Section 3 the words used are 'effective licence', it has been differently worded in Section 149(2) i.e. ' duly licensed'. If a person does not hold an effective licence as on the date of the accident, he may be liable for prosecution in terms of Section 141 of the Act but Section 149 pertains to insurance as regard third party risks.

A provision of a statute which is penal in nature vis-`-vis a provision which is beneficent to a third party must be interpreted differently. It is also well known that the provisions contained in different expressions are ordinarily construed differently.

The words 'effective licence' used in Section 3, therefore, in our opinion cannot be imported for sub-section (2) of Section 149 of the Motor Vehicles Act. We must also notice that the words 'duly licensed' used in sub-section (2) of Section 149 are used in past tense.

Thus, a person whose licence is ordinarily renewed in terms of the Motor Vechiles Act and the rules framed thereunder despite the fact that during the interregnum period, namely, when the accident took place and the date of expiry of the licence, he did not have a valid licence, he could during the prescribed period apply for renewal thereof and could obtain the same automatically without undergoing any further test or without having been declared unqualified therefor. Proviso appended to Section 14 in unequivocal term states that the licence remains valid for a period of thirty days from the day of its expiry.

Section 15 of the Act does not empower the authorities to reject an application for renewal only on the ground that there is a break in validity or tenure of the driving licence has lapsed as in the meantime the provisions for disqualification of the driver contained in Sections 19, 20, 21, 22, 23 and 24 will not be attracted, would indisputably confer a right upon the person to get his driving licence renewed. In that view of the matter he cannot be said to be delicensed and the same shall remain valid for a period of thirty days after its expiry.

If a person has been given a licence for a particular type of vehicle as specified therein, he cannot be said to have no licence for driving another type of vehicle which is of the same category but of different type. As for example when a person is granted a licence for driving a light motor vehicle he can drive either a car or a jeep and it is not necessary that he must have driving licence both for car and jeep separately.

Furthermore, the insurance company with a view to avoid its liabilities is not only required to show that the conditions laid down under Section 149(2)(a) or (b) are satisfied but is further required to establish that there has been a breach on the part of the insured. By reason of the provisions contained in the 1988 Act, a more extensive remedy has been conferred upon those who have obtained judgment against the user of a vehicle and after a certificate of insurance is delivered in terms of Section 147(3) a third party has obtained a judgment against any person insured by the policy in respect of a liability required to be covered by Section 145, the same must be satisfied by the insurer, notwithstanding that the insurer may be entitled to avoid or to cancel the policy or may in fact have done so. The same obligation applies in respect of a judgment against a person not insured by the policy in respect of such a liability, but who would have been covered if the policy had covered the liability of all persons, except that in respect of liability for death or bodily injury.

Such a breach on the part of the insurer must be established by the insurer to show that not only the insured used or caused or permitted to be used the vehicle in breach of the Act but also that the damage he suffered flowed from the breach.

Under the Motor Vehicles Act, holding of a valid driving licence is one of the conditions of contract of insurance. Driving of a vehicle without a valid licence is an offence. However, the question herein is whether a third party involved in an accident is entitled to the amount of compensation granted by the Motor Accidents Claims Tribunal although the driver of the vehicle at the relevant time might not have a valid driving licence but would be entitled to recover the same from the owner or driver thereof.

It is trite that where the insurers relying upon the provisions of violation of law by the assured takes an exception to pay the assured or a third party, they must prove a wilful violation of the law by the assured. In some cases violation of criminal law, particularly, violation of the provisions of the Motor Vehicles Act may result in absolving the insurers but, the same may not necessarily hold good in the case of a third party. In any event, the exception applies only to acts done intentionally or "so recklessly as to denote that the assured did not care what the consequences of his act might be".

In Narvinva' case (supra), a Division Bench of this Court observed :

> "...The insurance company complains of breach of a term of contract which would permit it to disown its liability under the contract of insurance. If a breach of term of contract permits a party to the contract to not to perform the contract, the burden is squarely on that party which complains of breach to prove that the breach has been committed by the other party to the contract. The test in such a situation would be who would fail if no evidence is led..."

In Skandia's case (supra), this Court held :

> "Section 96(2)(b)(ii) extents immunity to the insurance company if a breach is committed of the 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 from holding or obtaining driving licence during the period of disqualification. The expression "breach" is of great significance. The dictionary meaning of "breach" is "infringement or violation of a promise or obligation" (See Collins English Dictionary). It is, therefore, abundantly clear that the insurer will have to establish that the insured is guilty of an infringement or violation of the promise that a person who is duly licensed will have to be in charge of the vehicle. The very concept of infringement or violation of the promise that the expression "breach" carries within itself induces an inference that the violation or infringement or violation. If the insured is not at all at fault and has not done anything he should not have done or is not amiss in any respect, how can it be conscientously posited that he has committed a breach ? It is only when the insured himself places the vehicle in charge of a person who dies not hold a driving licence, that it can be said that he is "guilty" of the breach of the promise that the vehicle will be driven by a licensed driver. It must be established by the insurance company that the breach was on the part of the insured and that it was the insured who was guilty of violating the promise or infringement of the contract. Unless the insured is at fault and is guilty of a breach, the insurer cannot

> escape from the obligation to indemnify the insured and successfully contented that he is exonerated having regard to the fact that the promisor (the insured) committed a breach of his promise. Not when some mishap occurs by some mischance. When the insured has done everything within his power inasmuch as he has engaged a licensed driver and has placed the vehicle in charge of a licensed driver, with the express or implied mandate to drive it himself, it cannot be said that the insured is guilty of any breach."

In B.V. Nagaraju vs. M/s Oriental Insurance Co. Ltd. [AIR 1996 SC 2054], Punchhi, J. speaking for the Division Bench followed Skandia (supra) and read down the exclusionary term of the insurance policy to serve the main purpose thereof, holding :

> "The National Commission went for the strict construction of the exclusion clause. The reasoning that the extra passengers being carried in the goods vehicle could not have contributed, in any manner, to the occurring of the accident, was barely noticed and rejected sans any plausible account; even when the claim confining the damage to the vehicle only was limited in nature. We, thus, are of the view in accord with the Skandia's case (AIR 1987 SC 1184), the aforesaid exclusion term of the insurance policy must be read down so as to serve the main purpose of the policy that is indemnify the damage caused to the vehicle, which we hereby do."

A contract of insurance also falls within the realm of contract. Thus, like any other contract, the intention of the parties must be gathered from the expressions used therein.

Ivamy in his treatise 'Fire and Motor Insurance' (2nd Edition) at page 272-273 narrated an interesting case concerning Employment of "under age"

> driver in Sweeney vs. Kennedy [(1948), 82, L.I.L. Rep. 294 at 297] as under :
>
> "In Sweeney vs. Kennedy the proposer in answer to a question stating "Are any of your drivers under twenty-one years of age or with less than twelve months' experience" replied "No". One of the lorries covered by the policy was involved in an accident whilst it was being unloaded, and a third pqrty was fatally injured. At the time of the accident it was being driven by the insured's son, who had twelve months' driving experience but was under twenty-one. When a claim for an indemnity was made against the insurance company, payment was refused on the ground that the employment of a driver under twenty-one years of age amounted to such an alteration in the character of the risk as would avoid the policy.
>
> Kingsmill Moore, J., giving judgment in the Eire Divisional Court, rejected this argument and held that the company was liable. He said that whether a change of risk was so great as to avoid an insurance must always be a question of degree and a question of the opinion of the Court on the circumstances of the case. He could see a vast difference between the risks involved in insuring a merchantman and a

> privateer; a smaller but still very substantial difference between the risk involved in insuring an explosive and non-explosive demolition; and a very exiguous difference between the risks of insuring when a driver was under or over twenty-one.
>
> He then observed :
>
> "The law provides that licences to drive motor vehicles may be given to persons of specified ages, the ages varying with the class of the vehicle; and when a person is driving a vehicle of the category which by his age he is entitled to drive, there is, I think, some presumption that, as far as age reflects on competency, he is competent to drive it. Certainly this would be an honest and reasonable view for an insured person to take in a case where he had not been expressly limited by the terms of the policy to the employment of drivers over 21. Certain categories of vehicles may not, by law, be driven by persons under 21, and as the framework of the proposal form was apt to cover an application for insurance of such vehicle, he might reasonably consider that Q.9 was designed to all attention to this fact. If insurers take a different view as to the proposer age of drivers from the view of the law, it is open to them
>
> - indeed, I would say incumbent upon them - to make this clear by the insertion of specific provisions in the policy and not attempt to secure their ends by a side wind. I hold that there was no such alteration in the subject-matter of the insurance as would or could avoid the policy."

In the event the terms and conditions of policy are obscure it is permissible for the purpose of construction of the deed to look to the surrounding circumstances as also the conduct of the parties. In Oriental Insurance Co. Ltd. vs. Sony Cheriyan [(1999) 6 SCC 451], it has been held :

> "The insurance policy between the insurer and the insured represents a contract between the parties. Since the insurer undertakes to compensate the loss suffered by the insured on account of risks covered by the insurance policy, the terms of the agreement have to be strictly construed to determine the extent of liability of the insurer. The insured cannot claim anything more than what is covered by the insurance policy. That being so, the insured has also to act strictly in accordance with the statutory limitations or terms of the policy expressly set out therein."

Yet in Oriental Insurance Co. Ltd. vs. Samayanallur Primary Agricultural Co-op. Bank [AIR 2000 SC 10], this Court laid down the law in the following terms :

> "The State Commission appreciated the real controversy between the parties and decided the dispute on interpretation of the insurance policies and the proposal produced before the District Forum. There was no necessity of referring to the dictionaries for understanding the meaning of the word 'safe' which the parties in the instant case are proved to have understood while submitting the proposal and accepting the insurance policy. The cashier's box could not be equated with the safe

> within the meaning of the insurance policy. The alleged burglary and the removal of the cash box containing the jewellery and cash was not covered by the insurance policy between the parties. The insurance policy has to be construed having reference only to the stipulations contained in it and no artificial far fetched meaning could be given to the words appearing in it."

The courts also readily apply the doctrine of waiver in favour of the insured and against the insurer.

The insurer's liability arises both from contract as well as statute. It will, therefore, may not be proper to apply the rules for interpretation of a contract for interpreting a statute.

The correctness of the decision rendered in Skandia's case (supra) was questioned and the matter was referred to a three-Judge Bench to which we shall advert to a little later.

Gian Chand's case (supra) relied on behalf of the petitioner is of not much assistance. Therein this Court was dealing with peculiar fact situation obtaining therein. In that case the insured admittedly did not have any driving licence and in that situation, the insurance company was held to be not liable. The Bench noticed the purported conflict between the two sets of decisions but did not refer the matter to a larger Bench. It merely distinguished the cases on their own facts stating :

> "Under the circumstances, when the insured had handed over the vehicle for being driven by an unlicensed driver, the Insurance Company would get exonerated from its liability to meet the claims of the third party who might have suffered on account of vehicular accident caused by such unlicensed driver. In view of the aforesaid two sets of decisions of this Court, which deal with different fact situations, it cannot be said that the decisions rendered by this Court in Skandia Insurance Co. Ltd. v. Kokiolaben Chandravadan and the decision of the Bench of three learned Judges in Sohan Lal in any way conflict with the decisions rendered by this Court in the cases of New India Assurance Co. Ltd. vs. Mandar Madhav Tambe and Kashiram Yadav v. Oriental Fire & General Insurance Co."

There may be a case where an accident takes place without there being fault on the part of the driver. In such an event, the question as to whether a driver was holding a valid licence or not would become redundant. (See Jitendra Kumar vs. Oriental Insurance Co. Ltd. & Anr. - J.T. 2003 (5) SC 538].

Skandia (supra), on the other hand, has been approved by a three- Judge Bench, when the correctness thereof was referred to a larger Bench in Sohan Lal Passi's case (supra), wherein a three-Judge Bench of this Court noticed the ratio propounded in Skandia's case (supra) and observed :

> "...In other words, once there has been a contravention of the condition prescribed in sub-section (2)(b)(ii) of Section 96, the person insured shall not be entitled to the benefit of sub-section (1) of Section 96. According to us, Section 96(2)(b)(ii) should

> not be interpreted in a technical manner. Sub-section (2) of Section 96 only enables the insurance company to defend itself in respect of the liability to pay compensation on any of the grounds mentioned in sub-section (2) including that there has been a contravention of the condition excluding the vehicle being driven by any person who is not duly licensed. This bar on the face of it operates on the person insured. If the person who has got the vehicle insured has allowed the vehicle to be driven by a person who is not duly licensed then only that clause shall be attracted. In a case where the person who has got insured the vehicle with the insurance company, has appointed a duly licensed driver and if the accident takes place when the vehicle is being driven by a person not duly licensed on the basis of the authority of the driver duly authorised to drive the vehicle whether the insurance company in that event shall be absolved from its liability ? The expression 'breach' occurring in Section 96(2)(b) means infringement or violation of a promise or obligation. As such the insurance company will have to establish that the insured was guilty of an infringement or violation of a promise. The insurer has also to satisfy the Tribunal or the Court that such violation or infringement on the part of the insured was wilful. If the insured has taken all precautions by appointing a duly licensed driver to drive the vehicle in question and it has not been established that it was the insured who allowed the vehicle to be driven by a person not duly licensed, then the insurance company cannot repudiate its statutory liability under sub-section (1) of Section 96..."

A bare perusal of the provisions of Section 149 of the Act leads to only one conclusion that usual rule is that once the assured proved that the accident is covered by the compulsory insurance clause, it is for the insurer to prove that it comes within an exception.

In MacGillivray on Insurance Law it is stated:

> "25-82 Burden of Proof: Difficulties may arise in connection with the burden of proving that the facts of any particular case fall within this exception. The usual rule is that once the assured has proved that the case comes within the general risk, it is for the insurers to prove that it comes within an exception. It has therefore been suggested in some American decisions that, where the insurers prove only that the assured exposed himself to danger and there is no evidence to show why he did so, they cannot succeed, because they have not proved that his behaviour was voluntary or that the danger was unnecessary. Since an extremely heavy burden is imposed on the insurers if they have to prove the state of mind of the assured, it has been suggested in Canadian decisions that the court should presume that the assured acted voluntarily and that, where he does an apparently dangerous and foolish act, such danger was unnecessary, until the contrary is shown. In practical terms, therefore, the onus does in fact lie on the claimant to explain the conduct of the assured where there is not apparent reason for exposing himself to an obvious danger."

In Rukmani and Others vs. New India Assurance Co. Ltd. and Others [1999 ACJ 171], this Court while upholding the defences available to the insurer to the effect that vehicle in question was not being driven by a person holding a licence, held that the burden of the insurer would not be discharged when the evidence which was brought on record was that the Inspector of Police in his examination in chief merely stated, "My enquiry revealed that the respondent No.1 did not produce the licence to drive the abovesaid scooter. The respondent No.1 even after my demand did not submit the licence since he was not having it."

The proposition of law is no longer res integra that the person who alleges breach must prove the same. The insurance company is, thus, required to establish the said breach by cogent evidence. In the event, the insurance company fails to prove that there has been breach of conditions of policy on the part of the insured, the insurance company cannot be absolved of its liability. (See Sohan Lal Passi (supra) Apart from the above, we do not intend to lay down anything further i.e. degree of proof which would satisfy the aforementioned requirement inasmuch as the same would indisputably depend upon the facts and circumstances of each case. It will also depend upon the terms of contract of insurance . Each case may pose different problem which must be resolved having to a large number of factors governing the case including conduct of parties as regard duty to inform, correct disclosure, suppression, fraud on the insurer etc. It will also depend upon the fact as to who is the owner of the vehicle and the circumstances in which the vehicle was being driven by a person having no valid and effective licence. No hard and fast rule can therefor be laid down. If in a given case there exists sufficient material to draw an adverse inference against either the insurer or the insured, the Tribunal may do so. The parties alleging breach must be held to have succeeded in establishing the breach of conditions of contract of insurance on the part of the insurer by discharging its burden of proof. The Tribunal, there cannot be any doubt, must arrive at a finding on the basis of the materials available on records.

In the aforementioned backdrop, the provisions of sub-sections (4) and (5) of Section 149 of the Motor Vehicles Act, 1988 may be considered as the liability of the Insurer to satisfy the decree at the first instance.

A beneficent statute, as is well known, must receive a liberal interpretation [See Bangalore Water Supply & Sewerage Board etc. vs. A. Rajappa and Others etc. [(1978) 2 SCC 213], Steel Authority of India Ltd. and Others vs. National Union Waterfront Workers and Others [(2001) 7 SCC 1], ITI Ltd. vs. Siemens Public Communications Network Ltd. [(2002) 5 SCC 510], Amrit Bhikaji Kale and Others vs. Kashinath Janardhan Trade and Another [(1983) 3 SCC 437] and Kunal Singh vs. Union of India and Another [(2003) 4 SCC 524].

The liability of the insurer is a statutory one. The liability of the insurer to satisfy the decree passed in favour of a third party is also statutory.

In Halsbury's Laws of England, Fourth Edition Reissue, Volume 25, it is stated:

> "749. Judgments required to be satisfied. The first condition of the obligation of the insurers to pay on a judgment is that there is a judgment.

> The Second condition is that the judgment must be in respect of a liability which is required to be covered by compulsory insurance. In other words, the only person who can maintain a right of action direct against the insurers is a person falling within the class of third parties whose bodily injury or death or damage to whose property is required to be covered by a motor policy.
>
> The third condition is that the liability is, in fact, covered by the terms of the policy, or would be covered but for the fact that the insurer is entitled to avoid or cancel, or has avoided or cancelled, the policy. For this purpose, conditions declared to be invalid as against a third party are ignored, but if, even after ignoring all such conditions, the relevant use of the vehicle puts it outside the scope of the policy, the insurers are left immune. The most important clause in this connection is the 'description of use' clause. The assured is criminally liable if he uses his car for purposes outside the scope of his insurance and, in addition to his criminal liability, he has to bear unaided the cost of compensating third parties injured by his use if he is negligent. Subject to the statutory provision rendering certain conditions invalid against third parties, the insurers are not obliged to carry a wider scope of liability that they have agreed by their policy to carry.
>
> The fourth condition is that the judgment must be against a person insured by the policy. This language covers a permitted driver as well as the person by whom the policy has been effected."

As has been held in Sohan Lal Passi (supra), the insurance company cannot shake off its liability to pay the compensation only by saying that at the relevant point of time the vehicle was driven by a person having no licence.

Thus, where a liability has been established by a judgment, it is not permissible to look beyond the determination in order to establish the basis of the liability.

In United Insurance Co. Ltd. Vs. Jaimy and others [1998 ACJ 1318], it is stated:

> "Section 149(2) relates to the liability of the insurer and speaks of a situation in regard to which no sum shall be payable by an insurer to whom notice of bringing of any such proceeding is given, could defend the action stated in the said statutory provision. The contention in the context would be found in section 149(2)(a) in the event of a breach of a specified condition of the policy enabling the insurer to avoid liability in regard thereto. In the process in regard to the right of the insurer to recover the amount from the insured, it would have to be seen by referring to section 149(4) successfully recovered from the insured.
>
> Section 149(4) says that where a certificate of insurance is issued, so much of the said policy as purports to restrict the insurance of the persons insured thereby by referring to any of the conditions mentioned and it is precisely enacted in regard

thereto and that the liability covered by section 2(b) as are required to be covered by the policy would not be available. The position is made further clear by the provisions enacting that any sum paid by the insurer in or towards the discharge of any liability of any person who is covered by the policy by virtue of this sub-section shall be recoverable by the insurer from that person.

In other words, section 149(4) considers the right of the insurance company in regard to re-imbursement of the amount paid by them only in the context of a situation other than the one contemplated under Section 149(2)(b). It would mean that except under the situation provided by section 149(2)(b), the insurer would not be in a position to avoid the liability because he has got rights against the owner under the above provision.

The learned counsel strenuously submitted that this would not be the correct understanding and interpretation of the statutory provisions of section 149 of the 1988 Act. The learned counsel submitted that to read the statutory provision to understand that the insurance company could only claim from the owner in situations governed by section 149(2)(b) and to have no right under the said provision with regard to other situations under section 149(2)(a) would not be the proper reading of the statutory provision. The learned counsel submitted that in fact the provision would have to be meaningfully understood. It is not possible to consider the submission of the learned counsel in the light of the plain language of the statutory provision. It is necessary to emphasise that under the new Act the burden of the insurance company has been made heavier in the context of controlling the need of taking up contentions to legally avoid the liabilities of the insurance company."

The social need of the victim being compensated as enacted by the Parliament was the subject matter of consideration before a three-Judge Bench of this Court as early as in 1959 in British India General Insurance Co. Ltd. vs. Captain Itbar Singh and Others [(1960) 1 SCR 168], wherein Sarkar, J speaking for the Bench observed :

"Again, we find the contention wholly unacceptable. The Statute has no doubt created a liability in the insurer to the injured person but the statute has also expressly confined the right to avoid that liability to certain grounds specified in it. It is not for us to add to those grounds and therefore to the statute for reasons of hardship. We are furthermore not convinced that the statute causes any hardship. First, the insurer has the right, provided he has reserved it by the policy, to defend the action in the name of the assured and if he does so, all defences open to the assured can then be urged by him and there is no other defence that he claims to be entitled to urge. He can thus avoid all hardship if any, by providing for a right to defend the action in the name of the assured and this he has full liberty to do. Secondly, if he has been made to pay something which on the contract of the policy he was not bound to pay, he can under the proviso to sub-s.(3) and under sub-s.(4) recover it from the assured. It was

said that the assured might be a man of straw and the insurer might not be able to recover anything from him. But the answer to that is that it is the insurer's bad luck. In such circumstances the injured person also would not have been able to recover the damages suffered by him from the assured, the person causing the injuries...

Similar view has been taken in Skandia's case (supra), Sohan Lal Passi's case (supra), Kashiram Yadav and Another vs. Oriental Fire and General Insurance Co. Ltd. and Others [(1989) 4 SCC 128] and several others.

In Kamla's case (supra), a Division Bench of this Court summed up the legal position :

"The position can be summed up thus :

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

The submissions made on behalf of the petitioner may now be noticed. According to the learned counsel, sub-section (4) of Section 149 deals with the situation where the insurer in the policy 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) of Section 149 and in that view of the matter no liability is covered for driving of a vehicle without licence or fake licence. The submission ignores the plain and unequivocal expression used in sub-section (2) of Section 149 as well as the proviso appended thereto. With a view to construe a statute the scheme of the Act has to be taken into consideration. For the said purpose the entire Act has to be read as a whole and then chapter by chapter, section by section and word by word. [See Reserve Bank of India etc. vs. Peerless General Finance and Investment Co. Ltd. and others [(1987) 1 SCC 424 Para 33]. Proviso appended to sub-section (4) of Section 149 is referable only to sub-section (2) of Section 149 of the Act. It is an independent provision and must be read in the context of Section 96(4) of the Motor Vehicles Act, 1939. Furthermore, it is one thing to say that the insurer will be entitled to avoid its liability owing to breach of terms of a contract of insurance but it is another thing to say that the vehicle is not insured

at all. If the submission of the learned counsel for the petitioner is accepted, the same would render the proviso to sub-section (4) as well as sub-section (5) of Section 149 of the Act otiose, nor any effective meaning can be attributed to the liability clause of the insurance company contained in sub-section (1). The decision in Kamla's case (supra) has to be read in the aforementioned context. Sub-section (5) of Section 149 which imposes a liability on the insurer must also be given its full effect. The insurance company may not be liable to satisfy the decree and, therefore, its liability may be zero but it does mean that it did not have initial liability at all. Thus, if the insurance company is made liable to pay any amount, it can recover the entire amount paid to the third party on behalf of the assured. If this interpretation is not given to the beneficent provisions of the Act having regard to its purport and object, we fail to see a situation where beneficent provisions can be given effect to. Sub-section (7) of Section 149 of the Act, to which pointed attention of the Court has been drawn by the learned counsel for the petitioner, which is in negative language may now be noticed. The said provision must be read with sub-section (1) thereof. The right to avoid liability in terms of sub-section (2) of Section 149 is restricted as has been discussed hereinbefore. It is one thing to say that the insurance companies are entitled to raise a defence but it is another thing to say that despite the fact that its defence has been accepted having regard to the facts and circumstances of the case, the Tribunal has power to direct them to satisfy the decree at the first instance and then direct recovery of the same from the owner. These two matters stand apart and require contextual reading.

WHEN ADMITTEDLY NO LICENCE WAS OBTAINED BY A DRIVER:

> We have analysed the relevant provisions of the said Act in terms whereof a motor vehicle must be driven by a person having a driving licence. The owner of a motor vehicle in terms of Section 5 of the Act has a responsibility to see that no vehicle is driven except by a person who does not satisfy the provisions of Section 3 or 4 of the Act. In a case, therefore, where the driver of the vehicle admittedly did not hold any licence and the same was allowed consciously to be driven by the owner of the vehicle by such person, the insurer is entitled to succeed in its defence and avoid liability. The matter, however, may be different where a disputed question of fact arises as to whether the driver had a valid licence or where the owner of the vehicle committed a breach of the terms of the contract of insurance as also the provisions of the Act by consciously allowing any person to drive a vehicle who did not have a valid driving licence. In a given case, the driver of the vehicle may not have any hand at all, e.g. a case where an accident takes place owing to a mechanical fault or vis-major. [See Jitendra Kumar (supra)] In V. Mepherson vs. Shiv Charan Singh [1998 ACJ 601 (Del.)] the owner of the vehicle was held not to be guilty of violating the condition of policy by willfully permitting his son to drive the car who had no driving licence at the time of accident. In that case, it was held that the owner and insurer both were jointly and severally liable. In New India Assurance Co. Ltd. vs. Jagtar Singh and Others [1998 ACJ 1074], Hon'ble M. Srinivasan, CJ, as His Lordship then was, dealing with the case where a duly licensed driver was driving a vehicle but there was a dispute as to who was driving the vehicle. In that case the court referred to the judgment in Kashiram Yadav vs. Oriental Fire & General Insurance Co. Ltd. [1989 ACJ 1078 (SC)] and expressed its agreement with the views taken therein.

In National Insurance Co. Ltd. vs. Ishroo Devi and Others [1999 ACJ 615] where there was no evidence that the society which employed the driver was having knowledge that the driver was not holding a valid licence, it was held the insurance company is liable. The court relied upon the decisions of this Court in Kashiram Yadav's case (supra), Skandia's case (supra) and Sohan Lal Passi's case (supra).

WHEN THE PERSON HAS BEEN GRANTED LICENCE FOR ONE TYPE OF VEHICLE BUT AT THE RELVANT TIME HE WAS DRIVING ANOTHER TYPE OF VECHILE :

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.

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- sectionh (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.

We have construed and determined the scope of sub-clause (ii) of sub- section(2) of section 149 of the Act. Minor breaches of licence conditions, such as want of medical fitness certificate, requirement about age of the driver and the like not found to have

been the direct cause of the accident, would be treated as minor breaches of inconsequential deviation in the matter of use of vehicles. Such minor and inconsequential deviations with regard to licensing conditions would not constitute sufficient ground to deny the benefit of coverage of insurance to the third parties.

On all pleas of breach of licensing conditions taken by the insurer, it would be open to the tribunal to adjudicate the claim and decide inter se liability of insurer and insured; although where such adjudication is likely to entail undue delay in decision of the claim of the victim, the tribunal in its discretion may relegate the insurer to seek its remedy of reimbursement from the insured in the civil court.

WHERE THE DRIVER'S LICENCE IS FOUND TO BE FAKE :

It may be true as has been contended on behalf of the petitioner that a fake or forged licence is as good as no licence but the question herein, as noticed hereinbefore, is whether the insurer must prove that the owner was guilty of the wilful breach of the conditions of the insurance policy or the contract of insurance. In Lehru's case (supra), the matter has been considered at some details. We are in general agreement with the approach of the Bench but we intend to point out that the observations made therein must be understood to have been made in the light of the requirements of law in terms whereof the insurer is to establish wilful breach on the part of the insured and not for the purpose of its disentitlement from raising any defence or the owners be absolved from any liability whatsoever. We would be dealing in some details with this aspect of the matter a little later. LEARNER'S LICENCE :

Motor Vehicles Act, 1988 provides for grant of learner's licence. [See Section 4(3), Section 7(2), Section 10(3) and Section 14]. A learner's licence is, thus, also a licence within the meaning of the provisions of the said Act. It cannot, therefore, be said that a vehicle when being driven by a learner subject to the conditions mentioned in the licence, he would not be a person who is not duly licensed resulting in conferring a right on the insurer to avoid the claim of the third party. It cannot be said that a person holding a learner's licence is not entitled to drive the vehicle. Even if there exists a condition in the contract of insurance that the vehicle cannot be driven by a person holding a learner's licence, the same would run counter to the provisions of Section 149(2) of the said Act.

The provisions contained in the said Act provide also for grant of driving licence which is otherwise a learner's licence. Section 3(2) and 6 of the Act provides for the restriction in the matter of grant of driving licence, Section 7 deals with such restrictions on granting of learner's licence. Section 8 and 9 provide for the manner and conditions for grant of driving licence. Section 15 provides for renewal of driving licence. Learner's licences are granted under the rules framed by the Central Government or the State Governments in exercise of their rule making power. Conditions are attached to the learner's licences granted in terms of the statute. A

person holding learner's licence would, thus, also come within the purview of "duly licensed" as such a licence is also granted in terms of the provisions of the Act and the rules framed thereunder. It is now a well-settled principle of law that rules validly framed become part of the statute. Such rules are, therefore, required to be read as a part of main enactment. It is also well- settled principle of law that for the interpretation of statute an attempt must be made to give effect to all provisions under the rule. No provision should be considered as surplusage.

Mandar Madhav Tambe's case (supra), whereupon the learned counsel placed reliance, has no application to the fact of the matter. There existed an exclusion clause in the insurance policy wherein it was made clear that the Insurance Company, in the event of an accident, would be liable only if the vehicle was being driven by a person holding a valid driving licence or a permanent driving licence "other than a learner's licence". The question as to whether such a clause would be valid or not did not arise for consideration before the Bench in the said case. The said decision was rendered in the peculiar fact situation obtaining therein. Therein it was stated that "a driving licence" as defined in the Act is different from a learner's licence issued under Rule 16 of the Motor Vehicles Rules, 1939 having regard to the factual matrix involved therein.

The question which arises for consideration in these petitions did not arise there. Neither the same were argued at the Bar nor the binding precedents were considered. Mandar Madhav Tambe's case (supra), therefore, has no application to the facts of these cases nor create any binding precedent. The view we have taken is in tune with the judgments rendered by different High Courts consistently. [See for example New India Assurance Co. Ltd. Vs. Latha Jayaraj and others [1991 ACJ 298].

CONFLICT OF DECISIONS :

Contention of Mr. Salve that there exists a conflict in the decisions of this Court in Nicolletta Rohtagi (supra) on the one hand and Kamla (supra) and Lehru (supra) on the other cannot be accepted. We do not find in the said decisions any such conflict.

Nicolletta Rohtagi (supra) was a case where a question arose as to whether an appeal by the insurer on the ground de'hors those contained in Section 149(2) would be maintainable. It was held not to be. There cannot be any doubt or dispute that defences enumerated in Section 149(2) would be available to the insurance companies, but that does not and cannot mean that despite such defences having not been established, they would not be liable to fulfil their statutory obligation under sub-section (1) of Section 149 of the Act.

So far as the purported conflict in the judgments of Kamla (supra) and Lehru (supra) is concerned, we may wish to point out that the defence to the effect that the licence held by the person driving the vehicle was a fake one, would be available to the

insurance companies, but whether despite the same, the plea of default on the part of the owner has been established or not would be a question which will have to be determined in each case.

The court, however, in Lehru (supra) must not read that an owner of a vehicle can under no circumstances has any duty to make any enquiry in this respect. The same, however, would again be a question which would arise for consideration in each individual case.

The submission of Mr. Salve that in Lehru's case (supra), this Court has, for all intent and purport, taken away the right of insurer to raise a defence that the licence is fake does not appear to be correct. Such defence can certainly be raised but it will be for the insurer to prove that the insured did not take adequate care and caution to verify the genuineness or otherwise of the licence held by the driver.

Our attention has also been drawn on an unreported order of this Court in Malla Prakasarao vs. Malla Janaki & Ors. (Civil Appeal No. 163 of 1996 disposed of on 6th August, 2002) which reads as under : "It is not disputed that the driving licence of the driver of the vehicle had expired on 20th November, 1982 and the driver did not apply for renewal within 30 days of the expiry of the said licence, as required under Section 11 of the Motor Vehicles Act, 1939. It is also not disputed that the driver of the vehicle did not have driving licence when the accident took place. According to the terms of contract, the Insurance Company has no liability to pay any compensation where an accident takes places by a vehicle driven by a driver without driving licence. In that view of the matter, we do not find any merit in the appeal.

The appeal fails and is, accordingly dismissed. There shall be no order as to costs".

In that case, the Court presumably as in the case of Mandar Madhav Tambe's case (supra), was concerned with the terms and conditions of the contract of insurance. Before the Court, no occasion arose to consider the general terms and condition of the contract of insurance vis-`-vis liability of insurance under the Motor Vehicles Act.

CONCLUSION:

It is, therefore, evident from the discussions made hereinbefore that the liability of the insurance company to satisfy the decree at the first instance and to recover the awarded amount from the owner or driver thereof has been holding the field for a long time.

Apart from the reasons stated hereinbefore the doctrine of stare decisis persuades us not to deviate from the said principle.

> It is well-settled rule of law and should not ordinarily be deviated from. (See The Bengal Immunity Company Limited Vs. the State of Bihar and Others [1955] 2 SCR 603 at 630-632, Keshav Mills Co. Ltd. Vs. Commissioner of Income-Tax, Bombay North [1965] 2 SCR 908 at 921- 922, Union of India & Anr. Vs. Raghubir Singh (Dead) By LRs. etc. [1989] 3 SCR 316 at 323, 327, 334, M/s. Gannon Dunkerley and Co. and Others Vs. State of Rajasthan and Others (1993) 1 SCC 364, Belgaum Gardeners Cooperative Production Supply and Sale Society Ltd. Vs. State of Karanataka 1993 Supp (1) SCC 96, Hanumantappa Krishnappa Mantur and Others Vs. State of Karnataka [1992 Supp (2) SCC 213].

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.

Although, as noticed hereinbefore, there are certain special leave petitions wherein the persons having the vehicles at the time when the accidents took place did not hold any licence at all, in the facts and circumstances of the case, we do not intend to set aside the said awards. Such awards may also be satisfied by the petitioners herein subject to their right to recover the same from the owners of the vehicles in the manner laid down therein. But this order may not be considered as a precedent.

Although in most of the case, we have not issued notices in view of the fact that the question of law has to be determined; we have heard counsel for the parties at length at this stage.

SUMMARY OF FINDINGS :

> 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) 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) The 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.

For the reasons aforementioned, these petitions are dismissed but without any order as to costs.