RAJASTHAN HIGH COURT

United India Insurance Co. Ltd

Vs.

Madho Singh

Civil Misc. Appeal No. 42 of 2001
(N.P. Gupta, J.)

24.09.2003

JUDGEMENT

N. P. Gupta, J.

1. This appeal has been filed by the Insurer against the judgment and award of the Motor Accident Claims Tribunal, Abu Road dated 19-9- 2000 decreeing the claimants'claim for a sum of Rupees 3,50,000/- along with interest @ 12% from the date of claim petition, and holding the appellant liable for the entire amount.

2. Contention of the learned counsel for the appellant, mainly is, that the delinquent vehicle, tempo was being driven by respondent No. 2 who is the husband of the owner respondent No. 1, and was not holding any valid driving license, and therefore, there being breach of specified conditions of the policy, and this being one of the defenses available to the appellant under Section 149(2), the learned Tribunal has erred in holding the appellant liable. Some other contentions have also been raised, regarding the rate of interest, and the period for which the appellant could be held liable for the interest.

3. The appeal came up before the Court on 15-1-2002, on which date notice to show cause was ordered to be issued. After service, the matter came up on 19-7-2002, on which date record was ordered to be requisitioned. Thereafter, the matter came up before me on 21-3-2003, on which date I heard the matter, and the main objection that was raised on the side of the claimant respondent was, that in view of the provisions of Section 149(4), specially its proviso, and sub-section (5) of Section 149, even if it is assumed that the driver was not holding any valid license, still, in view of the various judgments of Hon'ble the Supreme Court, including those in *British India General Insurance Co. v. Itbar, reported in* [1] *New Asiatic Insurance Co. Ltd. v. Pessumal*

Dhanamal, reported in [2]*New India Assurance Co. Ltd. v. Kamla, reported in* [3] it is always open to the Insurer to recover back the amount from the owner insured, and, therefore, the Insurer should make payment of the amount of compensation to the claimant, and, in turn, therefore, no interference is required to be made in this appeal.

4. Learned counsel, for the appellant on the other hand, submitted that the provisions of Sections 149(4) and 149(5) do not have the effect of taking away the defenses available to the appellant under Section 149(2).

5. Considering these arguments, it appeared that, this question about the scope and effect of Sections 149(4) and 149(5) arises in majority of cases, in which appeals are filed by the Insurance Companies, and I also feel, that it does arise in some of the appeals filed by the owners, and claimants also, where the Insurance Company has been exonerated, by the learned trial Court, on one or more of the grounds enumerated in Section 149(2), and there also, this argument is advanced on the side of the appellant, that in view of the provisions of Section 149(4), including its proviso and Section 149(5), the Insurer should have been held liable. I also comprehended that there are quite a few judgments, pronounced by Hon'ble Supreme Court, so also by this Court, having bearing on the question, and taking different views, on this aspect of the matter.

6. In that view of the matter, on 21-3-2003 I invited the Members of the Bar, who are mostly appearing for different Insurance Companies to enlighten the Court, as to in what cases, and in what circumstances, the provisions of Section 149(4), its proviso, and Section 149(5), would be attracted.

7. All the learned counsel, who appeared, submitted that they would better like to furnish list of cases by way of specimen cases, involving different nature of breach of policy conditions, in which they are representing different Insurance Companies, and would then like to first of all collectively argue the point effectively. Accordingly the case was adjourned. Then on 27-3-2003 learned counsels furnished the list of cases, and prayed that all these cases, as per the list, and few more appeals, mentioned in the order, be listed together.

8. Considering the seriousness of the question involved, and the fact that by that time this appeal had not been admitted, on 27-3-2003 this appeal was admitted. Record had already been received, and the parties were being represented, therefore, this appeal was directed to be listed for final hearing, as prayed by the learned counsels, on 21-4-2003, along with other cases bunched with it (as detailed in Appendix A).

9. On 21-4-2003, the learned counsels appearing submitted that, they feel that, it would be more expedient that, they prepare a brief synopsis of the points involved in all these cases, i.e. various facets of the breach of policy conditions, so as to enable the Court to appropriately consider the question, as to in what cases the Insurer should be held liable to make payment, and then be left to recover it from the owner, and in what cases the Insurer need not be compelled to make payment of the compensation. Accordingly the case was adjourned to 28-4-2003, on that day the learned counsels gave synopsis of the points involved in many of these cases. Thereafter, after one more adjournment, on 16-5-2003 the hearing of the matters commenced, continued on 26-5-2003, then on 29-5-2003 the arguments on the side of the appellants were concluded, and the case was posted for arguments on the side of the respondents on 14-7-2003.

10. I may briefly recall the points, and the manner, in which it is involved, in most of the cases comprised in this bunch.

11. In Appeal No. 352/2001 the delinquent vehicle was a Jeep insured for private purposes under comprehensive policy, and the ground raised by the Insurer appellant to defend the liability was, that the driver was not possessing valid driving license.

12. Appeals Nos. 964 and 965/2001 are the claimant's appeal wherein the Insurer has been exonerated on the ground that the driver of the mini bus was possessing driving license for driving a light motor vehicle, which was not a valid license for driving a public transport vehicle.

13. In Appeal No. 100/2002, the driver was holding license authorizing him to drive light motor vehicle only, while the vehicle involved was a transport vehicle. Thus, it is contended that the driver was not holding effective driving license.

14. An Appeals Nos. 265/2002 and 274/2002 the ground raised is that the driver was not holding valid effective driving license.

15. In Appeals Nos. 693 and 699 of 1998 the Insurer appellant has raised a ground that at the time of accident the person driving the delinquent Truck was having a license to drive light motor vehicle only, and not for heavy transport vehicle.

16. In Appeals Nos. 442, 443, 102 of 2001 the ground raised is that the driving license possessed by the driver being Ex. 14 is discovered by the Insurer as fake.

17. In Appeal No. 704 of 2000 the driver was licensed to drive light motor vehicles

only, while the delinquent vehicle was a tanker alleged to be a heavy transport vehicle.

18. In Appeal No. 216 of 2001 the license authorized the holder to drive Motor cycle and light motor vehicle, while he was driving a transport vehicle as a paid employee, the vehicle being a goods carriage.

19. In Appeal No. 613/2001 the finding of the learned Tribunal is that as on the date of accident the driver was not possessing valid driving license still the Insurer was held liable.

20. In Appeal No. 7/2001 the driving license is contended to be fake.

21. In Appeal No. 3 of 1995 the ground raised is that the license authorizes the driver to drive heavy goods vehicle, while the delinquent vehicle was a heavy passenger vehicle. Thus it was contended that the driver was not possessing effective and valid license.

22. In Appeal No. 1024/2001 the accident related to 2-5-93, while the driver had obtained license only on 27-7-93 which also was valid for Motor Cycle only, while the vehicle involved was a transport vehicle, being a goods carriage, and thus it is contended that the driver was not holding any driving license at the time of accident.

23. In Appeal No. 1095/2001 the appellant Insurer has raised the ground that the license possessed by the driver since 1985 had expired on 31-5-95, and was subsequently renewed on 29-11-95 while the accident relates to 19-11-95 i.e. in the interregnum period, on which date he was not holding valid driving license.

24. In Appeal No. 700 of 2001 the ground raised is that the driver of the delinquent vehicle was not holding valid driving license, inasmuch as the license was issued on 26-11-93 and was valid up to 25-11-96 which was renewed on 19-7-97, while the accident occurred on 11-2-1997. In this case also the learned Tribunal found that the driver was not holding valid driving license, still, the Insurer was held liable.

25. In Appeal No. 38/2001 the driver of the truck is alleged to be not having valid license for driving heavy vehicle, likewise, the truck is also alleged to be not having requisite fitness certificate, and that the victim was travelling in the truck, a goods vehicle, as a gratuitous passenger.

26. In Appeal No. 450 of 1998, the ground raised is that the driver was not holding valid driving license to drive the delinquent Jeep, the other ground is that the victim was travelling as a gratuitous passenger in a private Jeep.

27. In Appeal No. 277 of 1997 the victim was a passenger on the tractor, and the ground raised is that the vehicle was insured for agricultural and forestry purposes, while the victim was travelling as a gratuitous passenger on the tractor. The other ground raised is that the driver was not possessing valid driving license.

28. In Appeal No. 830 of 2001 the ground raised is that the victim was travelling on the tractor as gratuitous passenger, while the Insurer has issued 'only act policy'for the tractor, for agricultural purposes.

29. In Appeals Nos. 970, 242, 210 of 2001 the ground raised is that the claimant was a fare paying passenger in the Truck, a goods vehicle.

30. In Appeal No. 595 of 2000 the delinquent Jeep was insured for private use only, while it was being used for hire or reward, and the victim was passenger, in that Jeep.

31. In Appeal No. 133/2001 the ground raised is that the delinquent Jeep was insured by the appellant for private use, while the victim along with his other relatives, were travelling in the Jeep, as fare paying passengers, and the Jeep was plied as a taxi. The other objection taken is that as against the sitting capacity of 6, at the time of accident, the Jeep was carrying 12 passengers.

32. In Appeals Nos. 105, 106, 107 and 108 of 1997 the ground raised is that the Jeep was insured for private purposes only, while the victim was passenger in the Jeep, and is contended to be fare paying passenger, as Jeep was being used as a taxi. The other contention raised was that as against capacity of 7 passengers, 13 passengers were carried in the Jeep.

33. In Appeal No. 141 of 1998 the Insurer appellant's ground is, that capacity of bus was 38 persons, while it was carrying 200 persons, in and atop the bus.

34. Then in Appeal No. 524 of 1997 the Jeep was insured and registered for private purposes only, but was being used for commercial purposes, the other ground raised is that the deceased himself was driving the vehicle, thus he was only occupant of the Jeep and not third party.

35. The brief narration of the points involved in the various cases persuades me, in the first instance to decide the point, as a question of law, and then to hear the various appeals, on their individual facts, independently.

36. Accordingly now I proceed to consider the question involved, on the anvil of the submissions made by the various learned counsels on the either side.

37. The narration of the points involved, in different appeals, as noticed above shows that the question of applicability, and scope of Section 149(2) vis-a-vis Section 149(4), including its proviso, Sections 149(5), and Section 149(7), or for that matter Secs. 96(2) vis-a-vis 96(4) of the old Act of 1939, are the basic provisions, interpretation whereof, is to be decisive of the controversy involved. The provisions of the two sections, of the old Act, and new Act, are in pari-materia.

38. Since Section 149, and for that matter even Section 96, speaks about the liability required to be covered by the policy under sub-section (1) of Section 147 (Section 95 of the old Act), I think it expedient for the sake of convenience to reproduce the provisions of Secs. 95 and 96 of the old Act, so also Sections 147 and 149 of the Act here itself.

39. The Sections read as under:-

> "Section 147. Requirements of policies and limits of liability.- (1) In order to comply with the requirements of this Chapter, a policy of insurance must be a policy which-
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> (a) is issued by a person who is an authorized insurer; and
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> (b) insures the person or classes of persons specified in the policy to the extent specified in sub-section (2)-
>
> (i) against any liability which may be incurred by him in respect of the death of or bodily injury to any person or damage to any property of a third party caused by or arising out of the use of the vehicle in a public place;
>
> (ii) against the death of or bodily injury to any passenger of a public service vehicle caused by or arising out of the use of the vehicle in a public place:
>
> Provided that a policy shall not be required-
>
> (i) to cover liability in respect of the death, arising out of and in the course of his employment, of the employee of a person insured by the policy or in respect of bodily injury sustained by such an employee arising out of and in the course of his employment other than a liability arising under the Workmen's Compensation Act, 1923 (8 of 1923), in respect of the death of, or bodily injury to, any such employee-
>
> (a) engaged in driving the vehicle, or

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

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

(ii) to cover any contractual liability.

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

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

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

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

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

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

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

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

"Section 149. Duty of insurers to satisfy judgments and awards against persons insured in respect of third party risks.- (1) If, after a certificate of insurance has been issued under sub-section (3) of Section 147 in favor of the person by whom a policy has been effected, judgment or award in respect of any such liability as is required to be covered by a policy under clause (b) of sub-section (1) of Section 147 (being a liability covered by the terms of the policy) is obtained against any person insured by the policy then, notwithstanding that the insurer may be entitled to avoid or cancel or may be avoided or cancelled the policy, the insurer shall, subject to the provisions of this section, pay to the person entitled to the benefit of the decree any sum not exceeding the sum assured payable thereunder, as if he were the judgment-debtor, in respect of the liability, together with any amount payable in respect of costs and any sum payable in respect of interest on that sum by virtue of any enactment relating to interest on judgments.

(2) No sum shall be payable by an insurer under sub-section (1) in respect of any judgment or award unless, before the commencement of the proceedings in which the judgment or award is given the insurer had notice through the Court or, as the case may be, the Claims Tribunal of the bringing of the proceedings, or in respect of such judgment or award so long as execution is stayed thereon pending an appeal, and an insurer to whom notice of the bringing of any such proceedings is so given shall be entitled to be made a party thereto and to defend the action on any of the following grounds, namely:-

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

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

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

(b) for organised racing and speed testing, or

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

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

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

(iii) a condition excluding liability for injury caused or contributed to by conditions of war, civil war, riot or civil commotion; or

(b) that the policy is void on the ground that it was obtained by the non-disclosure of a material fact or by a representation of fact which was false in some material particular.

(3) Where any such judgment as is referred to in sub-section (1) is obtained from a Court in a reciprocating country and in the case of a foreign judgment is, by virtue of the provisions of Section 13 of the Civil Procedure Code, 1908 (5 of 1908) conclusive as to any matter adjudicated upon by it, the insurer (being an insurer registered under the Insurance Act, 1938 of the reciprocating country) shall be liable to the person entitled to the benefit of the decree in the manner and to the extent specified in sub-section (1), as if the judgment were given by a Court in India:

Provided that no sum shall be payable by the insurer in respect of any such judgment unless, before the commencement of the proceedings in which the judgment is given, the insurer had notice through the Court concerned of the bringing of the proceedings and the insurer to whom notice is so given is entitled under the corresponding law of the reciprocating country, to be made a party to the proceedings and to defend the action on grounds similar to those specified in sub-section (2).

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

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

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

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

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

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

"S. 95 Requirements of policies and limits of liability.

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

(a) is issued by a person who is an authorized insurer (or by a cooperative society allowed under Section 108 to transact the business of an insurer), and

[(b) insures the person or classes of persons specified in the policy to the extent specified in sub-section (2)-

(i) against any liability which may be incurred by him in respect of the death of

or bodily injury to any person or damage to any property of a third party caused by or arising out of the use of the vehicle in a public place;

(ii) against the death of or bodily injury to any passenger of a public service vehicle caused by or arising out of the use of the vehicle in a public place:]

Provided that a policy shall not be required-

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

(a) engaged in driving the vehicle, or

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

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

(ii) except where the vehicle is a vehicle in which passengers are carried for hire or reward or by reason of or in pursuance of a contract of employment, to cover liability in respect of the death of or bodily injury to persons being carried in or upon or entering or mounting or alighting from the vehicle at the time of the occurrence of the event out of which a claim arises, or

(iii) to cover any contractual liability.

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

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

[(a) where the vehicle is a goods vehicle, a limit of [one lakh and fifty thousand

rupees] in all, including the liabilities, if any, arising under the Workmen's Compensation Act, 1923 (8 of 1923), in respect of the death of, or bodily injury to, employees (other than the driver), not exceeding six in number, being carried in the vehicle;]

[(b) where the vehicle is a vehicle in which passengers are carried for hire or reward or by reason of or in pursuance of a contract of employment,-

(i) in respect of persons other than passengers carried for hire or reward, a limit of fifty thousand rupees in all;

(ii) in respect of passengers, a limit of fifteen thousand rupees for each individual passenger;]

(c) save as provided in clause (d), where the vehicle is a vehicle of any other class, the amount of liability incurred;

(d) irrespective of the class of the vehicle, a limit of rupees [six thousand] in all in respect of damage to any property of a third party.]

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

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

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

"S. 96. Duty of insurers to satisfy judgments against persons insured in respect of third party risks.

(1) If, after a certificate of insurance has been issued under sub-section (4) of Section 95 in favor of the person by whom a policy has been effected, judgment in respect of any such liability as is required to be covered by a policy under clause (b) of sub-section (1) of Section 95 (being a liability covered by the terms of the policy) is obtained against any person insured by the policy, then, notwithstanding that the insurer may be entitled to avoid or cancel or may have avoided or cancelled the policy, the insurer shall, subject to the provisions of this section, pay to the person entitled to the benefit of the decree any sum not exceeding the sum assured payable there under, 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 enactments relating to interest on judgments.

(2) No sum shall be payable by an insurer under sub-section (1) in respect of any judgment unless before or after the commencement of the proceedings in which the judgment is given the insurer had notice through the Court of the bringing of the proceedings, or in respect of any judgment so long as execution is stayed thereon pending an appeal; and an insurer to whom notice of the bringing of any such proceeding is so given shall be entitled to be made a party thereto and to defend the action on any of the following grounds, namely:-

(a) that the policy was cancelled by mutual consent or by virtue of any provision contained therein before the accident giving rise to the liability, and that either the certificate of insurance was surrendered to the insurer or that the person to whom the certificate was issued has made an affidavit stating that the certificate has been lost or destroyed, or that either before or not later than fourteen days after the happening of the accident the insurer has commenced proceedings for cancellation of the certificate after compliance with the provisions of Section 105; or

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

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

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

(b) for organised racing and speed testing, or

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

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

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

(iii) a condition excluding liability for injury caused or contributed to by conditions of war, civil war, riot or civil commotion; or

(c) that the policy is void on the ground that it was obtained by the non-disclosure of a material fact or by a representation of fact which was false in some material particular.

(2A) Where any such judgment as is referred to in sub-section (1) is obtained from a Court in a reciprocating country and in the case of a foreign judgment is, by virtue of the provisions of Section 13 of the Civil Procedure Code, 1908 (5 of 1908), conclusive as to any matter adjudicated upon by it, the insurer (being an insurer registered under the Insurance Act, 1938 (4 of 1938), and whether or not he is registered under the corresponding law of the reciprocating country) shall be liable to the person entitled to the benefit of the decree in the manner and to the extent specified in sub-section (1), as if the judgment were given by a Court in India:

Provided that no sum shall be payable by the insurer in respect of any such judgment unless, before or after the commencement of the proceedings in which the judgment is given, the insurer had notice through the Court concerned of the bringing of the proceedings and the insurer to whom notice is so given is entitled under the corresponding law of the reciprocating country, to be made a party to the proceedings and to defend the action on grounds similar to those specified in sub-section (2)].

(3) Where a certificate of insurance has been issued under sub-section (4) of Section 95 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 conditions 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 95, be of no effect:

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

(4) 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.

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

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

40. Opening the arguments and raising the contentions, Mr. R. K. Mehta invited my attention to Section 149(2)(b)(ii), then attention was drawn to various sub-clauses of Section 2 of the Act being the interpretation clause defining Learner License, Non-transport Vehicle, Transport Vehicle, Motor Vehicle. Then referring to the provisions of Chapter II of the Act it was contended that notification dated 19-6-92 has been issued by the Central Government, and then vide notification dated 30-5-2001 vehicles have been classified in two categories, being the Transport Vehicles and Non-Transport Vehicles. Then attention was invited to Section 4, where under age limit is prescribed for entitlement of person to obtain driving license, then Section 7 was referred, where there is a restriction for grant of learner's license with respect to certain category of vehicles, then provision of Sections 14 and 15 were referred to. Then referring to Section 3 it was contended that it requires an effective Driving License for the Transport Vehicle, and that, a specific authorization for driving a

particular category of vehicle has to be there. Then Section 5 was referred to, to show that, there is a restriction on the owner also, not to handover the vehicle without being satisfied about the person holding valid and effective driving license. Highlighting the significance of specifications of category of vehicle in the Driving License, it was contended that the person can hold a Driving License but then for being entitled to drive transport vehicle one has to cross a particular age limit also, and it was contended that a person of 19 years of age can hold a license but he cannot drive a transport vehicle, and therefore, if such a person causes accident, the Insurance Company cannot be held liable, and therefore, for the purpose of deciding the contention of the Insurance Company, about validity of driving license of the driver, the categories of vehicles specified in the license, which the driver is authorized to drive, is also required to be seen. The judgment of Hon'ble SC in *New India Assurance Co., Shimla v. Kamla, reported in* [4] and *United India Insurance Co. Ltd. v. Lehru, reported in* [5] cases were read over. Advancing the argument ahead, it was contended that if at the Tribunal level the Insurance Company proves that the owner intentionally, knowingly, willfully or deliberately permitted a person to drive the vehicle which he was not authorized to drive, then the Insurer cannot be held liable. Relying upon the judgment of Hon'ble SC in *British India General Insurance Co. v. Itbar Singh, reported in* [6] it was contended that Section 149(2) provides effective defenses to the Insurance Company. Attempt was also made to impress upon this Court about the predicaments of the Insurer, to prove its defense, about want of driving license, in the event of, either the owner remaining totally absent, or absenting after filing the written statement, or though being represented by a lawyer but not taking interest, and it was contended that in such circumstances how the Insurer is to prove existence, or want of license, and therefore, the provisions of Section 106 of the Evidence Act should be invoked. For this purpose the last para of judgment of Hon'ble the SC in *National Insurance Co. Ltd. v. Jugal Kishore, reported in* [7] was relied upon.

41. Thus, the over all argument of Mr. Mehta is mainly on the question of requirement of driver to be holding valid and effective Driving License to drive the particular category of vehicle, and on the aspect as to how the Insurer is to prove its stand.

42. Then Mr. Manoj Bhandari addressed the Court, and also submitted that the question of driving license involves various facets e.g. no license being there, license being fake, or forged, or being invalid, not authorizing to drive the type of vehicle involved in the accident. Then elaborating the argument, he reiterated the provisions of Section 3, then reading para 20 of the judgment of Hon'ble SC in Lehrur's case,

submitted that it is the duty of the owner to check as to whether driver is holding a valid driving license, as a condition precedent, before handing over the vehicle to him. Mr. Bhandari referred to para 10 of the judgment of Hon'ble SC in *United India Insurance Co. Ltd. v. Gian Chand, reported in* [8] and also read to me the judgment of Hon'ble the SC in *Kashiram Yadav v. Oriental Fire and General Insurance Co.,* [9] The judgment in *Sohanlal Passi v. P. Sesh Reddy, reported in* [10] and *Skandia Insurance Co. Ltd. v. Kokilaben Chandravadan*[11] cases were also read, to argue that, in those cases vehicle was entrusted for driving to a licensed driver, who left it to the cleaner to drive, and therefore, it was held by Hon'ble the SC that there was no breach of the condition on the side of the insured, and therefore, the insurer was held liable. It was contended that if the owner does not appear in the witness box, to depose about his having handed over the vehicle to a licensed driver, an adverse inference is required to be drawn in favor of the insured. Para 13 of the judgment in Lehru's case was read over, to contend that the Insurance Co. gets absolved if it is established that the breach is by the insured. Then para 17 of this judgment was also read over, which refers to proviso of Section 149(4), which confers a right on the insurer to recover the amount from the owner. Since the language of Section 149(4) talks only about Section 149(2)(b), it was contended that the guiding factor to attract the proviso to Section 149(4) is the scope of liability under Section 147(1)(b). It was also contended that Section 149(2) provides a complete defense, when the language uses the words 'no sum shall be payable'. By reading the provisions of Section 149(4), over to me again, on the next date of hearing i.e. 26-5-2003, it was contended that the scope and purport of Section 149(4) is only to prohibit contracting out of the requirements of Section 147(1)(b), so as to undertake a reduced limit of liability. In other words, even if the Insurance cover undertakes a liability to an extent lesser than the one provided under Section 147(1)(b), that is of no effect, and explaining the proviso to Section 149(4) it was contended that in such an event if the insurer is made to pay the amount by virtue of Section 147(1)(b) then the difference of amount between the contractual limits, and the one which the insurer is made to pay, can be recovered by the insurer from the owner. Then Section 149(7) was read to contend that it clearly provides that the insurer can "avoid its liability" in the manner as provided in Section 149(2), and therefore, if the insurer can avoid liability under Section 149(2), the proviso to Section 149(4), or the provisions of Section 149(5), cannot be invoked to direct the insurer to make payment; and then leave it open to recover from the owner. Mr. Bhandari invited my attention to *National Insurance Co. v. D. M. Rohatgi, reported in* [12] and contended that Section 149(4) or (5) do not have the effect of taking away the rights conferred by

Section 149(2). In other words Section 149(4) and (5) cannot be interpreted, in a manner to mean, to either attract any liability not covered by Section 147(1)(b), nor to take away or restrict the defenses available under Section 149(2), so as to render Section 149(2) otiose.

43. Then Mr. Sanjeev Johari again read Sections 149(4) and (5) and contended that even on bare reading of these sub-sections, it is clear that, thereby defenses provided in Section 149(2) cannot be restricted, more particularly when Section 149(7) confers a right on the insurer, by enacting Section 149(2), to be a "mode of avoiding its liability". It was contended that entire sub-section (2) of Section 149 is compact one, and each of the defenses enumerated therein cannot be made to stand on a different footing, rather each of them provides a complete and effective defense.

44. Then Mr. Jagdish Vyas again read over Section 149(7) and reiterated the contention that Section 149(2) provides the manner in which insurer can "avoid its liability", and Sections 149(4) and (5), cannot be read in a manner, to render Section 149(2) or (7), altogether redundant. It was contended that, if in all cases, the insurer was required to be held liable, and was always to be left to recover from the owner, there would have been express provision to that effect. Learned counsel then read over the judgment of Hon'ble the SC in *Oriental Insurance Co. Ltd. v. Cheruvakkara Nafeessu, reported in* [13] It was a case where the Company was made to pay an amount beyond the limits covered by the policy, so also by the statute, and there Hon'ble the SC left it open to the insurer to recover amount from the owner. Then the learned counsel read the Constitution Bench judgment of Hon'ble the SC in *New India Assurance Co. Ltd. v. C. M. Jaya, reported in* [14] where the two conflicting views in *New India Assurance Co. v. Shanti Bai, reported in* [15] and *Amrit Lal Sood v. Smt. Kaushalya Devi Thapar, reported in* [16] was required to be resolved on the question, as to whether insurer would be liable to the extent limited under old Section 95(2), or would be liable to pay the entire amount, and could ultimately recover excess from the insured?. In para 14 the reference was answered in the way, that in the case of Insurance Company not taking any higher liability, by accepting a higher premium, for payment of compensation to a third party, the insurer would be liable to the extent limited under Section 95(2) and would not be liable to pay the entire amount. Learned counsel then again read the judgment of Hon'ble the SC in Itbar's case (AIR 1959 SC 1331) specially paras 5, 6, 7, 13, 14 and 15 to contend, that Hon'ble the SC recognized the right of the insurer, having been created by the statute, to defend the action, on the ground enumerated in sub-section (2), and held that it can defend on no other ground,

as the grounds cannot be added. On the principle that words cannot be added to the statute, para 7 was stressed, where it was held that to avoid liability, the insurer is to successfully raise the defense, mentioned in Section 95(2), and establish them. Then para 13 was read to contend that, in interpreting the statute words can be added only if, the section as it stands, is meaningless, or is of doubtful meaning. Then para 15 was read to contend, that even according to Hon'ble the Supreme Court, persons sought to be bound by the judgment should be entitled to resist his liability under it, by raising all defenses which he can, in law, advance against passing of it. Then in para 16 it was observed that no doubt the statute has created liability in the insurer to the insured, but the statute has also expressly confined the right to avoid liability, on certain grounds specified in it, and it was in this sequence observed, that if he has been made to pay something, which on the contract of the policy he was not bound to pay, the insurer can recover it from the insured, by virtue of sub-section (4) and proviso to sub- section (3). It is in this sequence, that it was observed, that if the insured might be a man of straw, from whom the insurer may not be able to recover, it was described to be 'a mere bad luck of the insurer'. Learned counsel then read to me in extenso, the judgment of Hon'ble the SC in Skandia Insurance Co.'s case, Sohanlal Passi's case, and the judgment in *New India Assurance Co. v. Kamla*. In all these three judgments it was found, that the insured had entrusted the vehicle to the licensed driver, and there was no breach on the part of the insured. I may recollect here that in Skandia Insurance Co.'s case, in para 14 Hon'ble the SC had clearly held, that the burden to prove the breach of policy conditions is always on the Insurance Co. Then learned counsel, in Kamla's case, stressed much on paras 21, 22, 23 and 25. It was contended that in Kamla's case, the judgment of Hon'ble the SC in Itbar's case, was not considered, which clearly recognizes the insurer's right to defend, and that in Skandia Insurance Co.'s case and Sohan Lal's case it was nowhere held, that even in cases of insurer proving breach of policy conditions, it is to be made liable for payment of compensation.

45. Mr. Vyas then contended that, the ratio of the judgment of Hon'ble the SC is to be seen in the backdrop of facts of that particular case, and that the controversy involved is required to be decided on the basis of the language of the statute itself, and the words of judgment of Hon'ble the SC are not to be taken as statute. Reference in this regard was made to the judgment of Hon'ble the SC in *Haryana Financial Corporation v. M/s. Jagdamba Oil Mills, reported in* [17] specially para No. 20. Mr. Vyas then again read over to me the Constitution Bench judgment of Hon'ble the SC in C. M. Jaya's case. Mr. Vyas then relied upon Division Bench judgment of this Court in

New India Assurance Co. Ltd. v. Rajasthan State Road Transport Corpn., reported in [18] which followed C. M. Jaya's case, and held that Insurance Company cannot be made liable to make payment of the entire amount, and thereafter to recover it from the insured. Mr. Vyas submitted regarding judgment of Hon'ble the SC in Cheruvakkara's case that, that judgment only proceeds on New Asiatic Insurance Co.'s case (AIR 1964 SC 1736) and Amrit Lal Sood's case, but in view of the subsequent constitution Bench judgment in C. M. Jaya's case, that is of no assistance to the claimants.

46. On the other hand, Mr. R. K. Soni, Mr. Hemant Choudhary, Mr. Rajesh Panwar, Mr. B. M. Bhojak addressed the Court to controvert the contentions raised on behalf of the Insurer.

47. Mr. Soni, in the opening invited my attention to the judgment of Hon'ble Supreme Court, in *National Insurance Co. Ltd. v. Nicolletta Rohtagi, reported in* [19] wherein the legislative history was traced, and according to the learned counsel, the provision has been enacted, for protecting the victims, and not the Insurer. However, learned counsel submitted, that the provisions of Section 149 has to be read as a whole, and whatever legislative defenses have been provided to the Insurer under Section 149(2), those defenses are substantive, and not formal. In other words, according to the learned counsel, the burden to establish the defense is on the Insurer, but then in the event of, defense being established to the satisfaction of the Court, they do provide effective defense. It was also contended, that by virtue of Sec-tion 149(7), the Insurer can defend the action only on the grounds enumerated in sub-section (2), and on no others. It is contended that despite the fact that contract of insurance, is a contract, between the owner and the Insurer, but then Section 149(4) enacts the provision of law to override the terms of the contract. Mr. Soni fairly agreed that, on account of the words used in Section 149(7) "entitled to avoid his liability" words used in sub-section (2) "entitled to be made a party thereto and to defend" are to be construed by reading them together, and thus Insurer is entitled to successfully avoid its liability, in the event of being able to prove the defense enumerated in sub-section (2). Learned counsel referred to Oxford's Dictionary, so also English to Hindi Dictionary Vidhi Shabdawali, wherein the term 'defense' has been defined to mean as under:-

48. In the New Shorter Oxford English Dictionary the word "defend" has been defined to mean:-

> "defend:defendre ward off, protect, Ward off, avert, 2 Prevent, hinder; keep

from doing something 3. Prohibit, forbid, arch 4. Ward off an attack on; fight for the safety of; protect from or against assault or injury; keep safe, b. Sports and Games, Protect (a wicket etc.) from the ball; resist an attack on (a goal etc.) 5. Uphold by argument, vindicate; speak or write in favor of, Maintain (a contested statement); contend 6. Resist an attack; put up a defense.

. . . .

Law. Deny the truth of (an allegation against oneself); present a defense of (oneself, one's cause); represent (a defendant) as legal counsel."

In Judicial Dictionary by K. J. Aiyer Eight Edition, 1980 the word "defense" has been defined to mean:-

"Defense. (1) A denial of the plaintiff's allegations by the defendant, (2) the statement of the pleas raised by the defendant, (3) a justification or excuse.

Peremptory- Denial by the defendant of the truth or validity of the plaintiff's claim or complaint.

Dilatory- Defense raising a technical objection to the further prosecution of the action, but not going to the merits.

Defendant is a person against whom a civil action is brought."

In Vidhi Sabdawali (Legal Glossary), the term "defense" has been defined to mean:-

Defense :

Defend :

In Cambers English-Hindi Dictionary, the term "defense" has been defined to mean:-

49. Then Mr. Soni read to me the judgment of Hon'ble SC in Itbar Singh's case, and submitted, that in interpreting the statute, where the language is clear, and there is no confusion, then the Court cannot add words to the statute, for the purpose of finding the object of the legislature, and contended that according to sub-section (1) the Insurer is under an obligation to satisfy the award, and that the grounds enumerated in sub-section (2) are exhaustive. Learned counsel again read to me the judgment of Hon'ble SC in Lehru's case.

50. Then Mr. Hemant Choudhary also addressed and referred to the judgment of

Hon'ble SC in *C. M. Jaya, New India Assurance Co. Ltd. v. Asha Rani, reported in* [20] and Kamla's case (AIR 2001 SC 1419) and contended that the Insurer is liable to pay to the victim of every kind, and on the face of the observations of Hon'ble SC made in para 23 in Kamla's case, it can recover back the amount from the Insured.

51. Then Mr. Bhojak also supported Mr. Soni, and Mr. Choudhary and submitted that if the vehicle is covered by an Insurance Cover, then, the Insurer has to make the payment, and can recover it back from the Insured.

52. Then lastly Mr. Panwar argued the matter at length, and submitted that, he does not agree with the submissions made by Mr. Soni, and the other counsels, who had argued, that in the event of Insurer proving the defense, it is entitled to be exonerated. According to Mr. Panwar, even if the Insurer proves all, or any of the defenses enumerated in Section 149(2), still it has to make the payment to the victim, or the legal representatives, and can recover the amount back from the insured. He has also submitted, that the Insurer has to prove, that the Insured has wilfully committed the breech of the conditions of the policy, as contemplated by sub-section (2).

53. Learned counsel relied upon the judgments of Hon'ble the SC in Skandia's case, Sohanlal Passi's case (AIR 1996 SC 2627) so also on New Asiatic Insurance Co.'s case (AIR 1964 SC 1736), Kamla's case and Lehru's case (AIR 2003 SC 1292). It is contended by the learned counsel, that Section 149(1) enacts an absolute liability of the Insurer, to satisfy the award in favor of the claimants, and so far as sub-section (2) to sub-section (7) are concerned, they are the provisions for contest between Insurer and the Insured, and have nothing to do with the claimants, inasmuch as, in the event of Insurer being able to prove the defense under sub-section (2), then, according to the learned counsel, the Insurer becomes entitled to recover back the amount from the Insured, and even in that event the Insurer cannot deny the liability to make payment to the claimants.

54. Learned counsel invited my attention to Section 146, and submitted, that it provides for compulsory insurance, and the provision is enacted only for the benefit of the society at large, the poor unwary victims, who may not be in a position to recover the amount of compensation from the owner, who may happen to be person with no means, then it was submitted that according to Section 146(5) the Insurer has to indemnify, the person or classes of persons, specified in the policy, in respect of any liability purportedly covered. And that Sections 146, 147 and 149 are required to be read together, and construed harmoniously, and if so done, the only result flowing is,

that once Insurance Cover is issued, in the event of any accident, the Insurer has to make the payment to the claimants, and may settle its rights with the Insured.

55. Another limb of argument is, that a proper reading of Section 149(4) does show, that except the condition provided in Section 149(2)(b) any other condition, even if imposed by the Insurer, is held to be void, per force of this section, and therefore, even the conditions enumerated in Section 149(2)(a) could not be legally enforced, or incorporated in the contract of Insurance, with the result that, even if imposed or incorporated, they are of no effect *qua* the third parties. Then according to the learned counsel, by virtue of Section 149(5), in the event of breach of policy also, the Insurer can recover the amount from the Insured, therefore, the provisions of Section 149(2) is not related with the claimants, and that third party rights should not be allowed to be defeated, under the garb of commission of breach of policy conditions by the Insured.

56. Learned counsel laid great stress on paras 21, 22 and 25 of the judgment of Hon'ble SC in Kamla's case, and also relied on para 20 of Lehru's case. Learned counsel then referred to a judgment of Hon'ble the SC in *Rikhi Ram v. Sukhrania, reported in* [21] wherein, in para 3 Hon'ble the SC has held, that Insurance against third party is compulsory, and once the Insurance Company had undertaken liability to the third party, incurred by the persons specified in the policy, the third party's right to recover any amount, is not affected, by virtue of the provisions of the Act, or by any condition in the policy. It was held that the liability of an insurer does not come to an end, even if the owner of the vehicle does not give any intimation of transfer to the Insurance Company.

57. Then learned counsel referred to the judgment of Hon'ble SC in *Oriental Insurance Co. v. Indedrjit Kaur, reported in* [22] Para 6) wherein in para 7, Hon'ble the SC has held as under:-

> "7. Chapter II of the Motor Vehicles Act, 1988 provides for the insurance of motor vehicles against third-party risks. Section 146 there under states that no person shall use or cause or allow any other person to use a motor vehicle in a public place unless there is in force in relation to the use of the vehicle a policy of insurance that complies with the requirements of the chapter. Section 147 sets out the requirements of policies and the limits of liability. A policy of insurance, by reason of this provision, must be a policy which is issued by a person who is an authorized insurer."

58. Hon'ble SC then quoted sub-section (5) of Section 147 of the Motor Vehicles Act.

59. The learned counsel next relied on the judgment of Hon'ble SC in *Suganthi Suresh Kumar v. Jagdeeshan, reported in* [23] where in Hon'ble the SC has made observations about judicial discipline, and held that High Court cannot overrule the judgment of Hon'ble the Supreme Court. It has been held in para 9 as under:-

> "It is impermissible for the High Court to overrule the decision of the Apex Court on the ground that SC laid down the legal position without considering any other point. It is not only a matter of discipline for the High Courts in India, it is the mandate of the constitution as provided in Article 141 that the law declared by the SC shall be binding on all Courts within the territory of India."

60. In this judgment earlier judgment of Hon'ble the SC in *Anil Kumar Neotia v. Union of India, reported in* [25] was also relied upon, wherein it had been held that the High Court cannot question the correctness of the decision of the Supreme Court, even though the point sought before the High Court was not considered by the Supreme Court.

61. The next judgment relied upon was of Hon'ble SC in *Bharat Petroleum Corpn. Ltd. v. Mumbai Shramik Sangha, reported in* [26] again to contend that the two Judges Bench is bound by the judgment of Constitution Bench consisting of five Judges, even if it doubts the correctness of that decision.

62. Learned counsel then referred to yet another judgment of Hon'ble the SC in *Oriental Insurance Co. Ltd. v. Inderjit Kaur, reported in* [27] wherein Hon'ble the SC comprehending the provisions of Sections 147(5), 149(4), 149(5), and 149(6) held as under (Para 7):-

> "Despite the bar created by Section 64-VB of the Insurance Act, the appellant, an authorized insurer, issued a policy of insurance to cover the bus without receiving the premium therefore. By reason of the provisions of Sections 147(5) and 149(1) of the Motor Vehicles Act, the appellant became liable to indemnify third parties in respect of the liability which that policy covered and to satisfy awards of compensation in respect thereof notwithstanding its entitlement to avoid or cancel the policy for the reason that the cheque issued in payment of the premium thereon had not been honored."

63. Then Mr. Jagdish Vyas in rejoinder referred to the judgment of Hon'ble the SC in *State of Maharashtra v. Nandend Parbhani Z.L.B.M.V. Operator Sangh, reported in* [28] and contended that when the language of the statute is plain and clear, then

inconvenience, or hardships are no considerations for refusing to give effect to that meaning, that the intention of the legislature is required to be gathered from the language used, and therefore, a construction, which requires for its support the additional substitution of words, and which results in rejection of words as meaningless, has to be avoided.

64. Replying regarding contention on the anvil of Section 147(4), it was contended, that the provision comprehends to override such condition as are not permitted by law, and cannot be interpreted to render the defenses provided in sub-section (2) to be meaningless.

65. Then Mr. Manoj Bhandari submitted that Section 149(5) comprehends an entirely different situation, and provides for entitlement of the Insurer to recover the amount from the Insured, as it may have been made to pay, only by virtue of the provisions of the Act, and beyond the policy, and therefore, this provision cannot be interpreted to negative the limited defenses, specifically provided in sub-section (2). It was then contended, that there is absolutely no warrant to support the proposition, that the defense contemplated by sub-section (2) are only between the Insurer, and Insured, and have nothing to do with the claimants. According to the learned counsel, for interpreting sub-section (2), in this manner, the words will have to be added to the statute, so as to limit those defenses to be only *qua* the owner, that, in view of clear language of sub-section (2), being absolutely clear, is not permissible for the Courts, to so add the words. According to the learned counsel, according to the plain language of sub-section (2), if read with sub- sec. (7), it clearly means that the defenses provided in sub-section (2), are substantial defenses, providing complete defense to the Insurer, not only against the owner, but even *qua* the third parties, and victims as well.

66. I have considered the rival contentions, and have gone through various judgments of Hon'ble the Supreme Court, this Court, and the various provisions of law, as referred to by the learned counsel and otherwise also.

67. First of all I may deal with the judgments in Bharat Petroleum's case (2001 AIR SCW 1846) and Suganthi Suresh Kumar's case (AIR 2002 SC 681) as referred by Mr. Panwar, there is no doubt about the principle propounded by the Hon'ble SC and at least I for one feel myself to be most conservative Judge, and always abide by the highest amounts of judicial discipline, and never, in any manner, even mean to take a view, different than what has been taken by Hon'ble the Supreme Court, much less to

venture to overrule the judgments of Hon'ble the Supreme Court. These judgments therefore need not detain me at all. It is a different story that here the question involved before me is not as to whether to follow any particular judgment of Hon'ble the Supreme Court, or not, nor is it a question where I am called upon by either of the side to take a view different from one taken by Hon'ble the Supreme Court, and therefore, these two judgments, do not at all effect the controversy involved in the present case. In the present case I am only concerned with the various provisions of Motor Vehicles Act, as referred to, by the learned counsel, on either side, and am to interpret them, and for that purpose I am to seek guidance from various judgments of Hon'ble the Supreme Court, and obviously without in any manner not following them.

> 68. Since good number of judgments of Hon'ble the Supreme Court, taking different views have been brought to the notice of the Court, I, in the first instance, propose to analyze the judgments to find out as to whether they at all take a different view, regarding the question involved before me, in case it transpires, that they do take different views, then to analyze them on the anvil of, number of Hon'ble Judges comprising of the Bench deciding the cases, and then to prefer the judgment delivered by the bench comprising of larger number of Hon'ble Judges, and at the same time. I may notice here the dictates given by Hon'ble the SC in Haryana Financial Corporation's case (AIR 2002 Supreme discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of Courts are not to be read as Euclid's theorems nor as provisions of the statute. These observations must be read in the context in which they appear. Judgments of Courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for Judges to embark into lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes, their words are not to be interpreted as statutes. In *London Graving Dock Co. Ltd. v. Horton* [29] Lord Mac Dermot observed:

"The matter cannot, of course, be settled merely by treating the ipsissima vertra of Willes, J. as though they were part of an Act of Parliament and applying the rules of interpretation appropriate thereto. This is not to detract from the great weight to be given to the language actually used Court 834) referred to above, which are as under:-

> "19. Courts should not place reliance on decisions without

by that most distinguished Judge."

In ***Home Office v. Dorset Yacht Co. (1970 (2) All England Reporter 294)*** Lord Reid said, "Lord Atkin's speech. . .is not to be treated as if it was a statute definition. It will require qualification in new circumstances." Megarry, J. in (1971) 1 WLR 1062 observed :

> "One must not, of course, construe even a reserved judgment of even Russell L. J. as if it were an Act of Parliament." And, in *Herrington v. British Railways Board* [30] Lord Morris said:
>
> "There is always peril in treating the words of a speech or judgment as though they are words in a legislative enactment, and it is to be remembered that judicial utterances made in the setting of the facts of a particular case."
>
> "Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases. Disposal of cases by blindly placing reliance on a decision is not proper."

69. Likewise Hon'ble the SC in *Delhi Administration v. Manohar Lal, reported* [31] *in* in para 5 Hon'ble the SC has mandated by making the following observations (Para 5):-

> "Apparently the learned Judge in the High Court was merely swayed by considerations of judicial comity and propriety and failed to see that merely because this Court has issued directions in some other cases, to deal with the fact situation in those other cases, in the purported exercise of its undoubted inherent and plenary powers to do complete justice, keeping aside even technicalities, the High Court exercising statutory powers under the criminal laws of the land, could not afford to assume to itself the powers or jurisdiction to do the same or similar things, the High Court and all other Courts in the country were no doubt ordained to follow and apply the law declared by this Court but that does not absolve them of the obligation and responsibility to find out the ratio of the decision and ascertain the law, if any, so declared from a careful reading of the decision concerned and only thereafter proceed to apply it appropriately, to the cases before them. . . . . ."

70. Therefore, the controversy involved before me, is required to be viewed from the various stand points, viz. from the stand point of the object of the statute, public policy, from the stand point of language of statute, and the principles of interpretation of statutes, so also from the stand point of principles propounded by Hon'ble the SC in

various judgments from time to time till the date.

71. Taking up the aspect of the object of the statute, and of public policy, from the stand point of language of statute, and the principles of interpretation of statutes first, true it is that as held by Hon'ble the SC in Itbar's case (AIR 1959 SC 1331) so also in New Asiatic Insurance Co.'s case (AIR 1964 SC 1736) that the object of the statute is to provide relief to the unfortunate victims of the accident or their dependants, but then that is only one part of the object of the statute. The statute is required to be seen as a whole, and the whole being, entire Motor Vehicles Act. If the scheme of various provisions of the Act is comprehended, it is more than clear that it is a comprehensive statute, clearly stipulating and enacting various provisions, to ensure the public safety, prevention of, or at least substantial avoidance of, the unfortunate accidents, by laying down the requirements of Driving License, categorizing various types of vehicles, laying down different parameters of eligibility, to hold Driving License with respect to particular category of vehicle, providing different procedure for grant of license to drive different categories of vehicles, prescribing different, age limits for entitlement to obtain Driving License for different category of vehicles, makes provision for timely renewal, suspension or cancellation of license, makes provision for permanently debarring from getting renewal of the license, and at the same time clearly injuncts the owner not to hand over vehicle to any person, who does not hold a valid Driving License, for that category of vehicle. Over and above all that, breach of these prohibitions, is made a criminal offence, punishable with imprisonment.

72. In this regard during course of arguments certain other provisions of the Motor Vehicles Act have also been referred by the learned counsels, and I feel that some more provisions of the Motor Vehicles Act would be required to be referred, and therefore, I think it appropriate to also quote the following provisions of Motor Vehicles Act at this place itself:-

> "Section 3. Necessity for driving license.- (1) No person shall drive a motor vehicle in any public place unless he holds an effective driving license issued to him authorizing him to drive the vehicle; and no person shall so drive a transport vehicle [other than a motor cab hired for his own use or rented under any scheme made under sub-section (2) of Section 75] unless his driving license specifically entitles him so to do."
>
> "Section 4. Age limit in connection with driving of motor vehicles.- (1) No person under the age of eighteen years shall drive a motor vehicle in any public

place:

Provided that a motor cycle without gear 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 license or driving license shall be issued to any person to drive a vehicle of the class to which he has made an application unless he is eligible to drive that class of vehicle under this section."

"Section 5. Responsibility of owners of motor vehicles for contravention of Sections 3 and 4.- No owner or person in charge of a motor vehicle shall cause or permit any person who does not satisfy the provisions of Section 3 or Section 4 to drive the vehicle."

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

(2) No holder of a driving license or a learner's license 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 license authorizes the holder to drive."

"Section 7. Restrictions on the granting of learner's license for certain vehicles.- (1) No person shall be granted a learner's license-

(a) to drive a heavy goods vehicle unless he has held a driving license for at least two years to drive a light motor vehicle or for at least one year to drive a medium goods vehicle;

(b) to drive a heavy passenger motor vehicle unless he has held a driving license for at least two years to drive a light motor vehicle or for at least one year to drive a medium passenger motor vehicle;

(c) to drive a medium goods vehicle or a medium passenger motor vehicle unless he has held a driving license for at least one year to drive a light motor vehicle.

(2) No person under the age of eighteen years shall be granted a learner's license 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 license."

"Section 9. Grant of driving license.- (1) Any person who is not for the time being disqualified for holding or obtaining a driving license may apply to the licensing authority having jurisdiction in the area-

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

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

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

(3) No driving license shall be issued to any applicant unless he passes to the satisfaction of the licensing authority such test of competence to drive as may be prescribed by the Central Government:

Provided that, where the application is for a driving license to drive a motor cycle or a light motor vehicle, the licensing authority shall exempt the applicant from the test of competence prescribed under this sub-section, if the licensing authority is satisfied-

(a) (i) that the applicant has previously held a driving license and that the period between he date of expiry of that license and the date of such application does not exceed five years; or

(ii) that the applicant holds or has previously held a driving license issued under Section 18; or

(iii) that the applicant holds a driving license issued by a competent authority of any country outside India; and

(b) that the applicant is not suffering from any disease or disability which is

likely to cause the driving by him of a motor cycle or, as the case may be, a light motor vehicle to be a source of danger to the public, and the licensing authority may for that purpose require the applicant to produce a medical certificate in the same form and in the same manner as is referred to in sub-section (3) of Section 8;

Provided further that where the application is for a driving license to drive a motor vehicle (not being a transport vehicle), the licensing authority may exempt the applicant from the test of competence to drive prescribed under this sub-section, if the applicant possesses a driving certificate issued by an automobile association recognised in this behalf by the State Government.

(4) Where the application is for a license to drive a transport vehicle, no such authorization shall be granted to any applicant unless he possesses such minimum educational qualification as may be prescribed by the Central Government and a driving certificate issued by a school or establishment referred to in Section 12.

(5) Where the applicant does not pass to the satisfaction of the licensing authority the test of competence to drive under sub-section (3), he shall not be qualified to re-appear for such test,-

(a) in the case of first three such tests, before a period of one month from the date of last such test, and

(b) in the case of such test after the first three tests, before a period of one year from the date of last such test.

(6) The test of competence to drive shall be carried out in a vehicle of the type to which the application refers:

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

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

Provided that a licensing authority may issue a driving license 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 license to the applicant, if he had previously held a driving license, unless it is satisfied that there is good and sufficient reason for his inability to obtain a duplicate copy of his former license.

(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 license 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 license 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 license 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."

"Section 10. Form and contents of licenses to drive.- (1) Every learner's license and driving license, except a driving license 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 license or, as the case may be, driving license 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) medium goods vehicle;

(f) medium passenger motor vehicle;

(g) heavy goods vehicle;

(h) heavy passenger motor vehicle;

(i) road-roller;

(j) motor vehicle of a specified description."

"Section 11. Additions to driving license.- (1) Any person holding a driving license to drive any class or description of motor vehicles, who is not for the time being disqualified for holding or obtaining a driving license to drive any other class or description of motor vehicles, may apply to the licensing authority having jurisdiction in the area in which he resides or carries on his business in such form and accompanied by such documents and with such fees as may be prescribed by the Central Government for the addition of such other class or description of motor vehicles to the license.

(2) Subject to such rules as may be prescribed by the Central Government, the provisions of Section 9 shall apply to an application under this section as if the said application were for the grant of a license under that section to drive the class or discretion of motor vehicles which the applicant desires to be added to his license."

"Section 13. Extent of effectiveness of licenses, to drive motor vehicles.- A learner's license or a driving license issued under this Act shall be effective throughout India."

"Section 14. Currency of licenses to drive motor vehicles.- (1) A learner's license 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 license.

(2) A driving license issued or renewed under this Act shall,-

(a) in the case of a license to drive a transport vehicle, be effective for a period of three years; and

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

(i) if the person obtaining the license, either originally or on renewal thereof, has not attained the age of forty years on the date of issue or, as the case may be, 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 forty years,

whichever is earlier,

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

Provided that every driving license shall, notwithstanding its expiry under this sub-section, continue to be effective for a period of thirty days from such expiry."

"Section 15. Renewal of driving licenses.- (1) Any licensing authority may, on application made to it, renew a driving license 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 license is made more than thirty days after the date of its expiry, the driving license shall be renewed with effect from the date of its renewal :

Provided further that where the application is for the renewal of a license 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 license.

(2) An application for the renewal of a driving license 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 license 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:

(4) Where an application for the renewal of a driving license 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 license 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 license has ceased to be effective, the licensing authority may refuse to renew the driving license, 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 license is not the authority which issued the driving license it shall intimate the fact of renewal to the authority which issued the driving license."

"Section 66. Necessity for permits.- (1) No owner of a motor vehicle shall use or permit the use of the vehicle as a transport vehicle in any public place whether or not such vehicle is actually carrying any passengers or goods save in accordance with the conditions of a permit granted or countersigned by a Regional or State Transport Authority or any prescribed authority authorizing him the use of the vehicle in that place in the manner in which the vehicle is being used :

Provided that a stage carriage permit shall, subject to any conditions that may be specified in the permit, authorize the use of the vehicle as a contract carriage :

Provided further that a stage carriage permit may, subject to any conditions that may be specified in the permit, authorize the use of the vehicle as a goods carriage either when carrying passengers or not:

Provided also that a goods carriage permit shall, subject to any conditions that may be specified in the permit, authorize the holder to use the vehicle for the carriage of goods for or in connection with a trade or business carried on by him.

(2) The holder of a goods carriage permit may use the vehicle, for the drawing of any trailer or semi-trailer not owned by him, subject to such conditions as may be prescribed.

(3) ... ...

(4) Subject to the provisions of sub-section (3), sub-section (1) shall, if the State Government by rule made under Section 96 so prescribes, apply to any motor vehicle adapted to carry more than nine persons excluding the driver."

"Section 177. General provision for punishment of offences.- Whoever contravenes any provision of this Act or of any rule, regulation or notification made there under shall, if no penalty is provided for the offence be punishable for the first offence with fine which may extend to one hundred rupees, and for any second or subsequent offence with fine which may extend to three hundred rupees."

"Section 180. Allowing unauthorized persons to drive vehicles.- Whoever, being the owner or person in charge of a motor vehicle, causes, or permits, any other person who does not satisfy the provisions of Section 3 or Section 4 to drive the vehicle shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to one thousand rupees, or with both."

73. A reading of the above quoted provisions does make it clear, that the whole object of the statute is to ensure public safety, and the violation of the provisions is made an offence, under different provisions of the Act, apart from the residuary provisions contained in Section 177 of the Act.

74. At this place I may also advert towards the provisions of Section 23 of the Indian Contract Act, and may gainfully quote Section 23 of the Indian Contract Act, which

reads as under.-

> "Section 23. What considerations and objects are lawful and what not?-
>
> The consideration or object of an agreement is lawful, unless-
>
> it is forbidden by law; or
>
> is of such a nature that, if permitted, it would defeat the
>
> provisions of any law; or
>
> ... ...
>
> the Court regards it as immoral, or opposed to public policy.
>
> In each of these cases, the consideration or object of an agreement is said to be unlawful. Every agreement of which the object or consideration is unlawful is void."

75. A reading of this section makes it clear, that if consideration or object of an agreement, is of any of the natures enumerated in the aforesaid section, then by statutory fiction, the consideration or object of the agreement is said to be unlawful, and every agreement of which object or consideration is unlawful, is declared by the section to be void.

76. It is required to be comprehended that it is only as a part of that public safety, that the provisions for compulsory insurance etc. have also been made, inasmuch as, it is per force of Section 146 of the Act, that Insurance cover is required to be obtained complying with the requirements of the Chapter, and the requirements of the chapter include the requirements enumerated in Section 147. Thus, the contract of insurance is, of indemnity, undertaking to indemnify the insured, in the event of his suffering any of the liabilities required to be indemnified by Section 147, and the consideration of the contract of indemnity is payment of premium by the insured, and in addition to comply with such of the requirements of the Act as are incorporated in the policy, as permissible specified conditions of policy. This is one aspect of he matter. The more important aspect of the matter is that, even in entering into such a contract, if it is found that the indemnity is undertaken to indemnify for the loss, resulting from any act done, or allowed to be done, by the Insured, which falls within any of the categories enumerated in Section 23 of the Contract Act, it would result into the contract being a contract for the object of, or for permitting the commission of, such

an act, and in turn the agreement would tantamount to an agreement, to undertake a liability arising out of such an activity, in consideration of receiving premium. The obvious result would be, that in that event the contract of insurance would be void. Immediately next question, which in that event would arise is as to whether the Insurer can be allowed to avoid its liability on the ground of the contract of insurance being void, on account of the provisions of Section 23 of the Contract Act? This contingency is reasonably taken care of by the provisions of sub-section (1) of Section 149, when statute uses the words "notwithstanding that the insurer may be entitled to avoid or cancel or may have avoided or cancelled the policy, the insurer shall, subject to the provisions of this section pay to the person entitled to the benefit of the decree,...." Therefore, by virtue of language of Section 149(1) even in the event of it being established that the liability sought to be indemnified under the policy has arisen, out of an act, which is tainted with any of the prohibitions enumerated in Section 23 of the Contract Act, the Insurer is to make the payment. This obviously is to result into a situation precisely prohibited by the provisions of Section 23 of the Contract Act. In that view of the matter, the provisions of Section 149 as a whole are required to be interpreted, in the manner that, the object, spirit, and philosophy of the provisions of Chapter XI, are upheld, and at the same time the provisions of Section 23 of the Contract Act are also not ignored, if not violated.

77. Thus by virtue of the provisions, and philosophy, of Section 23 of the Contract Act if the liability of the insured arises as a result of violation of such provisions, which has been made punishable with imprisonment, in that event the insured cannot be allowed to claim indemnity, nor can the insurer be compelled to indemnify, on account of it having issued the Insurance Policy. But then if this situation is allowed to come about, it would straightway negative, the very object and purpose, of enactment of the provisions of Sections 147 and 149 of the Act, and would result into leaving the victims of the accident helpless, for whose benefit the provisions have been enacted. Obviously therefore, the two extreme ends, are, and were, required to be reconciled, and the object of the enactment was required to be achieved, providing some soft way out, from the prohibitions contained in Section 23 of the Contract Act.

78. Thus, in an attempt to achieve the object of the enactment, and providing some soft way out from the prohibitions contained in Section 23 of the Contract Act, that, out of very many illegalities made punishable under Motor Vehicles Act, by enacting the provisions of Section 149(1), notwithstanding the illegalities, the insurer is held liable. But then even in this situation legislature did not think it proper to countenance

some of the illegalities, and, therefore, the Insurer was allowed to get away from his liability, by permitting it to defend the action on few limited grounds, as enumerated in Section 149 (2) of the Act, or for that matter Section 96 (2) of the old Act. And thus, the provisions of Section 149 (2) are to be interpreted in the back drop of the object of the statute, parameters of the public policy, and the parameters of the recognised principles of interpretation of statute, so also on the parameters as observed by Hon'ble the SC in Itbar's case, and New Asiatic Insurance Co.'s case?

79. As noticed above the provisions of Section 149 (2) shows that, the defenses provided to the insurer there under, are, apart from being limited, are precisely few of those, doing of which, is prohibited by M.V. Act, and is also made punishable. But then at the same time accident resulting from, or contributed by, doing of any of the other prohibited acts, has not been permitted to be taken as a defense by the Insurer. Therefore, the provisions contained in Section 149 (2) or for that matter Section 96 (2) of the old Act are required to be comprehended, to have been enacted in the spirit of the provisions of Section 23 of the Contract Act. Obviously therefore, Section 149 (2), is required to be interpreted so as to be given full play, so long as it does not fall in conflict with any of the other provisions, whether of this very section, or of any other section of the Act.

80. Let me now dilate a bit on the details as to what are the defenses enumerated in Section 149 (2)? The first defense provided is, about breach of specified conditions of the policy, being condition excluding the use of vehicle for hire or reward, where on the date of contract of the insurance vehicle is not covered by permit to ply for hire or reward, or excluding the use of vehicle for organised racing and speed testing, or a purpose not allowed by the permit under which the vehicle is used where the vehicle is a transport vehicle, or without a side car where the vehicle is a motor cycle. It is in this sequence, that one of the conditions contemplated is, exclusion of driving by named person or persons, or by a person who is not duly licensed etc. or a condition excluding liability for injury, caused, or contributed to, by conditions of war, civil war, riot or civil commotion, or that the policy is void on the ground that it was obtained by non-disclosure of material fact, or by representation of fact which was false in material particulars.

81. I may recapitulate here that apart from these judgments cited on the question of principles of interpretation of statutes, or requirement of judicial propriety in the matter of precedents, practically all the judgments of Hon'ble the Supreme Court, as referred, are either on the question of validity or otherwise of the driving license of the

person driving the vehicle, or on the question of limit of liability of the Insurance Co., and in that sequence different findings have been given, but then the different clauses and sub-clauses of Section 149 (2), which all stand at part, are required to be considered on the above parameters, and if various clauses and sub-clauses of Section 149 (2) are considered, they make it obvious that, each of them does provide complete defense to the action.

82. This is one aspect of the matter.

83. The other aspect of the matter is that if Section 149 by itself consists of different sub-sections, it is required to be interpreted on the basis of the well recognized principles of interpretation of statutes.

84. Hon'ble the SC in Itbar's case, AIR 1959 SC 1331 in Para 13 has held that words cannot be added to the statute unless the section as it stands is meaningless or of doubtful meaning.

85. In *Alembic Chemical Works v. Workman, reported in* [32] Hon'ble the SC while dealing with the provisions of the Factories Act, held that, if a section in such a statute is reasonably capable of two constructions, that construction should be preferred, which furthers the policy of the Act, and is more beneficial to those, in whose interest the Act may have been passed. And further observed in Para 7, that "it is well settled that in construing the provisions in welfare legislation the Courts should adopt what is sometimes described a beneficent rule of construction....."

(Emphasis supplied)

86. In *Kanti Lal v. Paramnidhi, reported in* [33] considering the importance of the intention of legislature in the matter of interpretation of statute, in Para 6 it was held as under :-

> "The first and primary rule of construction is that the intention of the Legislature must be found in the words used by the Legislature itself. If the words used are capable of one construction only then it would not be open to the Courts to adopt any other hypothetical construction on the ground that such hypothetical construction is more consistent with the alleged object and policy of the Act. The words used in the material provisions of the statute must be interpreted in their plain grammatical meaning and it is only when such words are capable of two constructions that the question of giving effect to the policy or object of the Act can legitimately arise. When the material words are capable

> of two constructions, one of which is likely to defeat or impair the policy of the Act whilst the other construction is likely to assist the achievement of the said policy, then the Courts would prefer to adopt the latter construction. It is only in such cases that it becomes relevant to consider the mischief and defect which the Act purports to remedy and correct."

87. In *Jnan Banjan Sen Gupta v. Arun Kumar reported in* [34] dealing with a case of tenancy law, on the question of interpretation of Section 2(5) of Calcutta Thika Act, in Para 9 it was found, that the Act is a piece of beneficial legislation, conferring a right upon the tenant and on the question of its interpretation, held that, in dealing with such a provision of law, Court cannot read into the definition something which is not already, there and introduction of which, will lead to imposing a restriction upon the rights of this class of tenants by judicial interpretation.

88. In *Mangi Lal v. Sugan Chand, reported in* [35] it was held that a liberal construction must flow from the language used, and the rule does not permit, placing of an unnatural interpretation on the words contained in the enactment, nor does it permit the raising of any presumption, that protection of widest amplitude must be deemed to have been conferred, upon those for whose benefit the legislation may have been enacted.

89. In *Motor Owners'Insurance Co. Ltd. v. Jadavji Keshavji Modi, reported in* [36] interpreting the words "any one accident" in Section 95 (2) it was held that where the language used by the law makers does not yield to one and one meaning only, it leaves a sufficient and desirable discretion for the Judges to interpret, laws in the light of their purpose.

90. In *Rajinder Kumar Joshi v. Veena Rani, reported in* [37] dealing with a case of eviction, involving a question of determination of rent, and contending that when the rate of rent is in dispute, the provisions of Section 13 (2) (i) of East Punjab Act were not attracted, and therefore, no order of eviction could be passed, recognizing the legislation, to be for the protection of tenants from eviction, reading the plain language of the statute, Hon'ble the SC observed, in Para 6 "on the other hand to read in Section 13 (2) (i) the provisions as suggested by Sri Nesargi would involve recasting of the statute which is not permissible to do."

(Emphasis supplied)

91. In *G. Giriyappa v. Anantharai L. Parekh, reported in* [38] while dealing with the

case of Karnataka Rent Control Act, which again was a case of social legislation, dealing with the principle of interpretation of such legislation, it was observed in Para 9 as under (Para 8 of AIR) :-

> "It is, of course, true that the Act is a piece of social legislation enacted primarily to protect the interest of the tenants as observed in the case of Kewal Singh (supra) and, therefore, needs liberal construction. But then liberal construction has to flow from the language used for, an unnatural and unreasonable interpretation of words contained in an enactment is impermissible...."

(Emphasis supplied)

92. Then Craies, in his Book on Statute Law, Seventh Edition, at page 91, has stated as under :-

> "It is not, however, competent to a Judge to modify the language of an Act of Parliament in order to bring it into accordance with his own views as to what is right or reasonable. Boni judicis est dicere, non jus dare'
>
> In *Abel v. Lee*· [39] Lord Willes J. held 'no doubt, the general rule is that the language of an act is to be read according to its ordinary grammatical construction unless so reading it would entail some absurdity, repugnancy, or injustice......... But I utterly repudiate the notion that it is competent to a Judge to modify the language of an act in order to bring it in accordance with his views of what is right or reasonable.'
>
> In *R. v. Mansel Jones,* [40] Lord Coleridge C.J. said that it was the business of the Courts to see what Parliament had said instead of reading into an Act what ought to have been said. This involves the assumption that the Act in question is intelligible.
>
> In *Latham v. Lafone,* [41] Martin B said 'I think the proper rule for construing this statute is to adhere to its words strictly; and it is my strong belief, that by reasoning on long-drawn inferences and remote consequences the Courts have pronounced many judgments effecting debts and actions in a manner that the persons who originated and prepared the Act never dreamed of.'
>
> In *Coxhead v. Mullis,* [42] Lord Coleridge, C.J. said 'the tendency of my own mind.......... always is to suppose that Parliament meant what Parliament has

clearly said, and not to limit plain words in an Act of Parliament by considerations of policy, if it be the policy, as to which minds may differ, and as to which decisions may vary."

Then in this very Book in Chapter 9 at Page 159 it has been stated as under :-

> "In approaching the question of interpreting words used in statutes it is necessary to keep in mind the presumption that words in a statute are strictly and correctly used. (Cf. *Law Society v. United Services Bureau* referred) [43]
>
> In *Spillers Ltd. v. Cardiff Assessment Committee,*[44] Lord Hewart C.J. held "It ought to be the rule and we are glad to think it is the rule that words are used in an Act of Parliament correctly and exactly and not loosely and inexactly. Upon those who assert that the rule has been broken, the burden of establishing their proposition lies heavily, and they can discharge it only by pointing to something in the context which goes to show that the loose and inexact meaning is to be preferred."

Then at page 162 it has been stated as under :-

> "the words of an Act of Parliament which are not applied to any particular science or art are to be construed as they are understood in common language."
>
> In *Grenfell v. Inland Revenue Commissioners Pollock B* said "if a statute contains language which is capable of being construed in a popular sense, such a statute is not to be construed according to the strict or technical meaning of the language contained in it, but is to be construed in its popular sense, meaning, of course, by the words 'popular sense'that sense which people conversant with the subject matter with which the statute is dealing would attribute to it."

Then in this very Book in Chapter-5 at Page-175 it has been stated as under :-

> "In construing statutes, however, the policy of law can only be taken into account when the statute under consideration is not explicit. To adopt any other method of construction would be to impose upon the subject the political, moral, social, or religious view of the Judges, instead of construing and ascertaining the definite intention of the legislature."

93. If the provisions of Section 149 are interpreted on the above parameters, the things which are clear on the face of it, are, firstly, since the language of the statute being absolutely clear, and bereft of any ambiguity, words are not required to be added to the

section, or any part thereof. Secondly, the various sub-sections have to be interpreted in a manner, so as to give fullest meaning to their provision. Thirdly, any of the sub-section is not to be interpreted in such a manner, as may render the provisions of any other sub- section otiose, or redundant.

94. From the perusal of the provisions of Section 149 as a whole, it is clear that Section 149(1) enacts liability of the insurer. Then sub-section (2), provides a procedure ensuring compliance of principles of natural justice, and also gives a list of defenses, on the basis of which insurer can avoid its liability. Sub-section (3) is not relevant for the present controversy, as it speaks about the judgment obtained from a court of reciprocating country. Then sub-section (6) is practically an explanation clause to elucidate the scope of expressions used in Section 149 (2) (b) (ii). Then sub-section (7) provides that, the insurer cannot be entitled to avoid its liability otherwise then in the manner provided for in sub-section (2).

95. Thus a combined reading of the provisions of sub-sections (1), (2), and (7) makes it clear that, they constitute practically a complete code, for attracting liability, procedure for ensuring compliance of principles of natural justice, and providing for defense, and prohibiting avoidance of liability in any other manner.

96. The words used in sub-section (2) are, that the insurer is entitled to defend the action on any of the following grounds (grounds mentioned therein), and then sub-section (7) shows that the insurer cannot avoid its liability otherwise than in the manner provided for in sub-section (2). Meaning thereby that on a combined reading of Section 149(2) and (7) it is clear that, it provides a machinery, by which the insurer can avoid its liability, and defend the action. 'To defend'obviously means, 'to put forward and substantiate the defense'.

97. The word 'defense'has definite meaning, for which purpose I may refer to few classic dictionaries :-

98. In Black's Law Dictionary Sixth Edition at page 419 the term 'Defense'has been defined as under:-

> "Defense. That which is offered and alleged by the party proceeded against in an action or suit, as a reason in law or fact why the plaintiffs should not recover or establish what he seeks. That which is put forward to diminish plaintiff's cause of action or defeat recovery. Evidence offered by accused to defeat criminal charge.

With respect to defenses to a commercial instrument of which a holder in due course takes free, the term "defense" means a legally recognized basis for avoiding liability either on the instrument itself or on the obligation underlying the instrument.

A response to the claims of the other party, setting forth reasons why the claims should not be granted. The defense may be as simple as a flat denial of the other party's factual allegations or may involve entirely new factual allegations. In the latter situation, the defense is an affirmative defense. Under Rules of Civil Procedure, many defenses may be raised by motion as well as by answer.

99. In Webster's Third New International Dictionary Vol. 1 at Page 591 the term 'Defend'has been defined as under.

Defend 1. archaic : to ward or fend off : drive back or away : REPEL 2. archaic PREVENT, FORBID, PROHIBIT. 3. to drive danger or attack away from : secure against attack : maintain against force : 4 to maintain against argument or hostile criticism : UPHOLD, JUSTIFY 5 : to act as attorney for (an accused person) in criminal proceedings 6 : to deny or oppose the right of a plaintiff in regard to (a suit or a wrong charged) : CONTROVERT : OPPOSE, RESIST a claim at law : CONTEST a suit vi 1 : to take action against attack or challenge the ing champion he preferred to attacking; specif; to enter or make a defense in a legal action or suit "defense- la : the act of defending, b: a defendant's denial, answer, or plea : an opposing or denial of the truth or validity of the plaintiff's or prosecutor's case-compare d: an argument prepared or advanced to defend an action, policy or thesis : JUSTIFICATION 4a: defenders or the positions taken up by them

100. In Words and Phrases Permanent Edition Vol. 11A at page 348 the term 'Defense'has been defined as under :-

> A "defense" is a right possessed by defendant, arising from facts alleged in his pleadings, which defeats plaintiff's cause of action or claim for remedy demanded by his action. *Eagle Savings and Loan Ass'n v. West,* [45]

An action by insurer to cancel life policy on ground that insured's answers in application regarding prior health and attendance by physician were untrue is within purview of statute estopping insurer from setting up in "defense" of action on policy, issued on certificate of medical examiner, that insured was not in condition of health required by policy unless policy was procured by fraud or deceit. *Equitable Life Ins. Co. of Iowa v. Mann,* [46] Want of consideration is a matter of "defense" which, if

alleged, is deemed denied. *Paillet v. Vroman,* [47] The operation of the statute of limitations of the demanding state against the offense for which extradition is sought is a "defense" to be interposed upon trial in such state and is not to be considered on habeas corpus proceedings for release of one held under a rendition warrant in a sister state. *Waggoner v. Feency,* [48] The right of mortgagors under agreement whereby mortgagors had furnished deceased mortgagee during his lifetime with board, lodging, and care in return for his promise to cancel the mortgage, was not a "claim" required to be filed with mortgagee's executor within eight months of first publication of notice by executor in accordance with statute, but was rather a "defense" pleadable in event that executor should seek to foreclose the mortgage, and hence mortgagors were entitled to maintain suit to cancel notes secured by mortgage and to have the mortgage declared satisfied, more than eight months after first publication of notice to creditors. *Starke v. Pfender,* [49] A defense, in legal language, is a full answer to the whole or to some part of plaintiff's demand. *Wehle v. Butler, N.Y.* [50] In law, defense is that which is offered and alleged by the party proceeded against in an action or suit as a reason, in law or fact, why the plaintiff should not recover or establish what he seeks- what is put forward to defeat an action. And it has also been defined as the denial of the truth or the validity of the complaint- a general assertion that the plaintiff has no ground of action. *Whitfield v. Aetna Life Ins. Co.* [51] A "defense" means that which is sufficient to defeat the complaint by denying, justifying, or confessing and avoiding the action. People ex rel. *Anderson v. Chicago and E.I.R.Co.* [52] 101. Therefore, in view of the above meaning of the term 'defense', when sub- section (2) contemplates to provide defense to the insurer, it has to be construed to mean, to provide an effective defense, as against pseudo defense, i.e. if the insurer is able to plead and prove any of the defenses enumerated in Section 149 (2), and the Court believes the version of the insurer, then it has to result into complete exoneration of the insurer.

102. This interpretation clearly upholds, and respects, the purposive existence of the provisions of Sections 149 (2) and 149 (7).

103. Coming to the provisions of Section 149 (4) and (5), suffice it to say that, the provisions of Section 149 (4) and (5) are also to be read in a proper and meaningful manner. What Section 149 (4) provides is, that where a certificate of insurance is issued under Section 147 (3), so much of the policy as purports to restrict the insurance of the persons insured 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 Section 147 (1) (b), be of no effect. This sub-section, on the

face of it, has the effect of, laying down the overriding effect of Section 147 (1) (b), on the certificate of insurance issued under Section 147 (3), and lays down that once certificate of insurance is issued under Section 147(3), restrictions imposed, as respects liabilities as are required to be covered by Section 147 (1) (b), shall be of no effect, other than those contained in sub-section (2) (b). It is to this sub-section that the proviso has been added, providing that any sum paid by the insurer, in or towards the discharge of any liability of any person, covered by the policy, "by virtue only of this sub-section" shall be recoverable by the insurer from that person.

104. How the language of the proviso is to be interpreted, has also been laid down by Hon'ble the Supreme Court, in *Dwarka Prasad v. Dwarka Das, reported in* [53] and *M/s. Mackinnon Mackenzie and Co. Ltd. v. Audrey D'Costa, reported in* [54] Inasmuch as in Dwarka Prasad's case in Para 18 it has been held as under-

> "The law is trite. A proviso must be limited to the subject-matter of the enacting clause. It is a settled rule of construction that a proviso must *prima facie* be read and considered in relation to the principal matter to which it is a proviso. It is not a separate or independent enactment. 'Words are dependent on the principal enacting words, to which they are tacked as a proviso. They cannot be read as divorced from their context'1912 AC 533, 544. If the rule of construction is that *prima facie* a proviso should be limited in its operation to the subject-matter of the enacting clause, the stand we have taken is sound. To expand the enacting clause, inflated by the proviso, sins against the fundamental rule of construction that a proviso must be considered in relation to the principal matter to which it stands as a proviso........."

(Emphasis supplied)

105. Similarly in Mackinnon Mackenzie's case, in Para 11 the Hon'ble SC has clearly held as under:-

> "A proviso to sub-section (3) to Section 4 comes into operation only where sub-section (3) is applicable. Since there are no different scale of pay in the instant case sub-section (3) of Section 4 would not be attracted and consequently, the proviso would not be applicable at all. The proviso cannot travel beyond the provision to which it is proviso."

(emphasis supplied)

106. Accordingly, following the above dictum, the proviso to sub-section (4) is

required to be interpreted, to be not travelling beyond the provision to which it is appended, being Section 149 (4).

107. Coming to sub-section (5), it provides that if the amount, which the insurer becomes liable under that section to pay in respect of a liability incurred by a person insured by the 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. This again is a provision protecting the rights of the insurer, to recover the amount from the insured, in the event of the insurer's liability being held by the Court to an extent, exceeding the liability undertaken by the policy, and permits that the insurer would be entitled to recover that amount from that person, but these provisions, whether of sub-section (5) or proviso to sub-section (4), do not at all provide that, irrespective of any defense, that may be available to the insurer, having been taken, and proved, as contemplated by sub-section (2), the insurer shall have to pay the amount, and will only be entitled to recover it back from the insured.

108. From this discussion, without meaning to miss any words, I find no way out, from coming to the conclusion that, the provisions of Section 149 (5) or proviso to Section 149 (4) do not in any manner militate against, the availability of meaningful, and purposeful defense to the insurer, enabling it to avoid its liability, in the event of pleading, and proving, its defense, in the manner provided by sub-section (2).

109. Now, I may take up the various judgments of Hon'ble the SC which have bearing on the controversy and taking different views.

110. Before proceeding with the judgments, I may notice that judgments broadly fall in the following categories:-

1. Holding the insurer to be not liable.

2. Holding the insurer to be liable.

3. Holding the insurer liable to a limited extent.

4. Holding the insurer to be not liable but directing it to be free to recover the amount from the insured.

5. Holding the insurer liable to a limited extent and at the same time directing it to be free to recover the excess amount from the insured.

6. Holding the insurer to be liable and at the same time directing it to be free to recover the excess amount from the insured.

7. Other judgments dealing with different grounds of defenses taken by the Insurer.

111. In Nicolletta Rohtagi's case, AIR 2002 SC 3350 as appears from Para 8 thereof, that Hon'ble the SC purportedly traced the legislative history, only for showing that while enacting Chapter VIII of 1939 Act or Chapter XI of 1988 Act, the intention of legislature was to protect third party rights, and not the insurer.

112. Significantly the question involved before Hon'ble the SC has been quoted in Para 2 of the judgment, being "where an insured has not preferred an appeal under Section 173 of the Motor Vehicles Act, 1988 (hereinafter referred to as '1988 Act') against an award given by the Motor Accidents Claims Tribunal (hereinafter referred to as 'tribunal'), it is open to the insurer to prefer an appeal against the award by the tribunal, questioning the quantum of the compensation, as well as finding, as regards the negligence of the offending vehicle." For answering this question Hon'ble the SC proceeded to discuss the matter from Para 9 onwards, and held as under :-

> "9. To answer the question, it is necessary to find out on what grounds the insurer is entitled to defend/contest against a claim by an injured or dependants of the victims of motor vehicle accident. Under Section 96 (2) of 1939 Act which corresponds to Section 149 (2) of 1988 Act, an insurance company has no right to be a party to an action by the injured person or dependants of deceased against the insured. However, the said provision gives the insurer the right to be made a party to the case and to defend it. It is, therefore, obvious that the said right is a creature of the statute and its content depends on the provisions of the statute. After the insurer has been made a party to a case or claim. The question arises what are the defenses available to it under the statute. The language employed in enacting sub- section (2) of Section 149 appears to be plain and simple and there is no ambiguity in it. It shows that when an insurer is impleaded and has been given notice of the case, he is entitled to defend the action on grounds enumerated in the sub-section, namely, sub-section (2) of Section 149 of 1988 Act, and no other ground is available to him. The insurer is not allowed to contest the claim of the injured or heirs of the deceased on other ground which is available to an insured or breach of any other conditions of the policy which do not find place in sub-section (2) of

Section 149 of 1988 Act. If an insurer is permitted to contest the claim on other grounds it would mean adding more grounds of contest to the insurer than what the statute has specifically provided for.

10. Sub-section (7) of Section 149 of 1988 Act clearly indicates in what manner sub-section (2) of Section 149 has to be interpreted. Sub-section (7) of Section 149 provides that no insurer to whom the notice referred to in sub-section (2) or sub-section (3) has been given shall be entitled to avoid his liability to any person entitled to the benefit of any such judgment or award as is referred to in sub-section (1) or in such judgment as is referred to in sub-section (3) otherwise than in the manner provided for in sub-section (2) or in the corresponding law of the reciprocating country, as the case may be. The expression 'manner'employed in sub-section (7) of Section 149 is very relevant which means an insurer can avoid its liability only in accordance with what has been provided for in sub-section (2) of Section 149. It, therefore, shows that the insurer can avoid its liability only on the statutory defenses expressly provided in sub-section (2) of Section 149 of 1988 Act. We are, therefore, of the view that an insurer cannot avoid its liability on any other grounds except those mentioned in sub-section (2) of Section 149 of 1988 Act.

11. It is relevant to note that the parliament, while enacting sub-section (2) of Section 149 only specified some of the defenses which are based on conditions of the policy and, therefore, any other breach of conditions of the policy by the insured which does not find place in sub-section (2) of Section 149 cannot be taken as a defense by the insurer. If the parliament had intended to include the breach of other conditions of the policy as a defense, it could have easily provided any breach of conditions of insurance policy in sub-section (2) of Section 149. If we permit the insurer to take any other defense other than those specified in sub-section (2) of Section 149, it would mean we are adding more defenses to insurer in the statute which is neither found in the Act nor was intended to be included."

(Emphasis supplied)

113. Thus, from perusal of these three paras, it is more than clear that the Hon'ble SC clearly held, that we cannot add more defense to the insurer in the statute, which is neither found in the Act nor was it intended to be included. But then it was held that the Parliament while enacting sub- section (2) specified some of the defenses, which

are based on the conditions of the policy, and that the Insurer can avoid its liability only on the statutory defenses expressly provided in sub-section (2). Thus, by laying down that it cannot avoid the liability on any other ground, the obvious conclusion is that on the grounds made available, the Insurer can avoid its liability, not only *qua* the owner, but on the face of language of Section 149 (7), *qua* the claimants as well.

114. In Inderjit Kaur's case, AIR 1998 SC 588 Hon'ble the SC was considering the question, as to whether the Insurer is liable, once having issued the policy, despite the fact that the cheque issued by the insured has been dishonored, with the result that the Insurer did not receive the premium, and Hon'ble the SC held the Insurer to be liable. Perusal of the judgment shows, that the provisions of Section 149 (1) and Section 147 (5) were considered by the Hon'ble Supreme Court, and was not required to consider the provisions of sub-section (2), for the simple reason, that a look at sub-section (2) quoted above shows, that non receipt of payment is not one of the defenses enumerated in sub-section (2), and therefore, in view of the non obstante language of Section 149 (1), notwithstanding Section 64VB the Insurer was held liable.

115. In Rikhi Ram's case, AIR 2003 SC 1446 the question being considered by Hon'ble the Supreme Court, as appear from Para 2 of the judgment, was "whether in the absence of an intimation of transfer as required under Section 103-A of the Act, the liability of the insurer to pay compensation to the third party ceases", and it was noticed that there was conflicting view of the High Courts, as regards the question, whether the insurance policy lapses, and consequently the liability of insurer ceases when the insured vehicle was transferred, and no intimation as prescribed under Section 103-A of the Act was given to the insurer. It is for deciding this controversy that reliance was placed on earlier judgment of Hon'ble SC in *G. Govindan v. New India Assurance Co. Ltd., reported in* [55] which had settled the controversy, on the question of liability of insurer, to pay compensation to third party, in the absence of any intimation of transfer of the vehicle, to the Insurer. It was held therein that since insurance against third party is compulsory, and once the Insurance Company had undertaken liability to third party incurred by the persons specified in the policy, the third party's right to recover any amount, is not affected by virtue of the provisions of the Act, or by any condition in the policy. Then, further reason was given by Hon'ble the SC that the liability of an insurer does not come to an end, even if the owner of the vehicle does not give any information of transfer to the Insurance Company. Then the legislative history was traced, and observed that the third party's right should not suffer on account of failure to comply with those terms of the insurance policy, and

that Section 94 of the Act gives protection to third party in respect of death or bodily injury or damage to the property while using the vehicle in public place and, therefore, the insurance of vehicle had been made compulsory. Thus, Hon'ble the SC in Rikhi Ram's case was not considering the question involved in this case before me. That apart, again a perusal of Section 149 (2) shows that non intimation to the Insurer, about the transfer of vehicle, is not one of the defenses enumerated in sub- section (2), and therefore, again in view of the non-obstante language of Section 149 (1) in absence of this condition being specified in sub-section (2), on the ground of non-intimation about transfer, the Insurer cannot avoid its liability. Therefore, the judgment in Rikhi Ram's case, in my humble view has no bearing on the controversy in hand before me.

116. *British India General Insurance Co. v. Itbar Singh's case,* [56] is a case primarily considering the question as to whether the insurer can defend the action on the grounds enumerated in the then Section 96 (2) or even on other grounds. Interpreting Section 96 (2), in Para 8 it was held that "an insurer made a defendant to the action is not entitled to take any defense which is not specified in it." And on merits it was found that none of the defenses available under Section 96 (2) was taken by the defendants in that case. Then considering the considerations of hardship of the insurer, in Para 16 it was held as under :-

> "......... 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-section (3) and under Sub-section (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. The loss had to fall on some one and the statute has thought fit that it shall be borne by the insurer. That also seems to us to be equitable for the loss falls on the insurer in the course of his carrying on his business, a business out of which he makes profit, and he could so arrange his business that in the net result he would never suffer a loss. On the other hand, if the loss fell on the injured person, it would be due to no fault of his, it would have been a loss suffered by him arising out of an incident in the happening of which he had no hand at all."

117. Thus this judgment falls in category 2 and simply recognised the right of the insurer, if available under the contract of insurance, so as to be not liable, and

otherwise by leaving it open to recover it from the insured, under sub-section (4) and proviso to sub-section (3) of Section 96, (corresponding to Section 149 (5) and (4)).

118. New Asiatic Insurance Co.'s case, AIR 1964 SC 1736, is a case primarily dealing about the scope and effect of the terms of the insurance policy. Inasmuch as, in that case, the owner of the car had taken a policy and the person driving the car also had his own policy of indemnity, and it was considered that the question as to whether the particular driver has a right of indemnity, has nothing to do with the liability which the driver has incurred to the third party for the injuries caused. In that background, in Para 22 it was held, that "once the company has undertaken liability to third parties, incurred by the person specified in the policy, the third parties'right to recover any amount under or by virtue of the provisions of the Act is not effected by any condition in the policy......."

119. Then holding, about the object of the provisions of Chapter VIII, in Para 12, it was held as under :-

> "(12) Chapter VIII of the Act, it appears from the heading, makes provision for insurance of the vehicle against third-party risks, that is to say, its provisions ensure that third-parties who suffer on account of the user of the motor vehicle would be able to get damages for injuries suffered and that their ability to get the damages will not be dependent on the financial condition of the driver of the vehicle whose user led to the causing of the injuries. The provisions have to be construed in such a manner as to ensure this object of the enactment."

120. In my humble comprehension, what has been held by Hon'ble Supreme Court, in Para 12 above, is the object and philosophy of the provisions of Chapter VIII of the Motor Vehicles Act, 1939. Hon'ble the Supreme Court, in this case, was not at all considering the scope purport, and effect of the provisions of Section 96 (2), i.e. as to what is to be the consequence, in the event of the insurer taking one or more of the defenses permissible under Section 96 (2), and then proving them. On the other hand what I find from the judgment is that, that was a case, which arose at a stage, where a notice was issued to the insurer making it a party, and that issuance of notice itself was challenged, which challenge was negatived by the Division Bench of the High Court, and against that order the matter was carried by the insurer to Hon'ble the Supreme Court, and it was held that under Section 96 (2) it was liable to be issued notice and to become a party. Obviously, the right to take defense, to prove them, and the effect thereof was yet to come, after the matter was tried in the trial.

121. For the purpose of finding out the precedential force of this judgment, I am bound by the above quoted guide lines, laid down by Hon'ble the Supreme Court, in Haryana Financial Corporation's case, AIR 2002 SC 834, and in Delhi Administration's case, AIR 2002 SC 3088, as quoted above.

122. Thus in view of the above principles propounded by Hon'ble the SC in Haryana Financial Corporation's case, and in Delhi Administration's case, the judgment in New Asiatic Insurance Co.'s case cannot be said to be laying down, that the insurer should, irrespective of the defenses, should always make the payment and then recover it from the insured. It is a different story, that this judgment does not at all even deal with, the provisions of Section 96 (3) or (4), nor was there any occasion to deal with them, as the original case, had not yet even been tried.

123. Skandia Insurance Co.'s case, AIR 1987 SC 1184 is another case where Hon'ble the SC was dealing with a case, where the insurer sought to claim immunity from the decree on the ground of policy condition excluding driving by named person or persons or by any person who is not duly licensed....... and permissibility of such exclusion under Section 96 (2). After referring to various judgments of different High Courts, and in Para 12, Hon'ble SC has held as under :-

> "12. The defense built on the exclusion clause cannot succeed for three reasons, viz.-
>
> (1) On a true interpretation of the relevant clause which interpretation is at peace with the conscience of Section 96, the condition excluding driving by a person not duly licensed is not absolute and the promissor is absolved once it is shown that he has done everything in his power to keep, honor, and fulfill the promise and he himself is not guilty of a deliberate breach.
>
> (2) Even if it is treated as an absolute promise, there is substantial compliance therewith upon an express or implied mandate being given to the licensed driver not to allow the vehicle to be left unattended so that it happens to be driven by an unlicensed driver.
>
> (3) The exclusion clause has to be 'read down'in order that it is not at war with the 'main purpose ‘of the provisions enacted for the protection of victims of accidents so that the promissor is exculpated when he does everything in his power to keep the promise."

124. Then in Para 13, for interpreting the provisions of the Act the Hon'ble SC probed

into the motive and philosophy of the relevant provisions, keeping in mind the goal to be achieved by enacting the same, and in Para 13 observed as under :-

> "13. In order to divine the intention of the legislature in the course of interpretation of the relevant provisions there can scarcely be a better test than that of probing into the motive and philosophy of the relevant provisions keeping in mind the goals to be achieved by enacting the same. Ordinarily it is not the concern of the legislature whether the owner of the vehicle insures his vehicle or not. If the vehicle is not insured any legal liability arising on account of third party risk will have to be borne by the owner of the vehicle. Why then has the legislature insisted on a person using a motor vehicle in a public place to insure against third party risk by enacting Section 94. Surely the obligation has not been imposed in order to promote the business of the insurers engaged in the business of automobile insurance. The provision has been inserted in order to protect the members of the Community travelling in vehicles or using the roads from the risk attendant upon the user of motor vehicles on the roads. The law may provide for compensation to victims of the accidents who sustain injuries in the course of an automobile accident or compensation to the dependants of the victims in the case of a fatal accident. However, such protection would remain a protection on paper unless there is a guarantee that the compensation awarded by the Courts would be recoverable from the persons held liable for the consequences of the accident. A Court can only pass an award or a decree. It cannot ensure that such an award or decree results in the amount awarded being actually recovered, from the person held liable who may not have the resources. The exercise undertaken by the law Courts would then be an exercise in futility. And the outcome of the legal proceedings which by the very nature of things involve the time cost and money cost invested from the scarce resources of the Community would make a mockery of the injured victims, or the dependents of the deceased victim of the accident, who themselves are obliged to incur not inconsiderable expenditure of time, money and energy in litigation. To overcome this ugly situation the legislature has made it obligatory that no motor vehicle shall be used unless a third party insurance is in force. To use the vehicle without the requisite third party insurance being in force is a penal offence. The legislature was also faced with another problem. The insurance policy might provide for liability walled in by conditions which may be specified in the contract of policy. In order to make the protection real, the legislature has also provided that the judgment obtained

shall not be defeated by the incorporation of exclusion clauses other than those authorized by Section 96 and by providing that except and save to the extent permitted by Section 96 it will be the obligation of the Insurance Company to satisfy the judgment obtained against the persons insured against the third party risks. (vide Section 96). In other words, the legislature has insisted and made it incumbent on the user of a motor vehicle to be armed with an insurance policy covering third party risks which is in conformity with the provisions enacted by the legislature. It is so provided in order to ensure that the injured victims of automobile accidents or the dependents of the victims of fatal accidents are really compensated in terms of money and not in terms of promise. Such a benign provision enacted by the legislature having regard to the fact that in the modern age the use of motor vehicles notwithstanding the attendant hazards, has become an inescapable fact of life, has to be interpreted in a meaningful manner which serves rather than defeats the purpose of the legislation. The provision has therefore to be interpreted in the twilight of the aforesaid prospective.".

(Emphasis supplied)

125. Significantly in this para Hon'ble SC noticed that the insurance policy might provide for liability walled in by condition which may be specified in the policy and held that legislature has also provided that the judgment obtained shall not be defeated by incorporation of exclusion clauses other than those authorized by Section 96. Then Hon'ble SC went on factual aspect of the matter as to whether there was breach of condition of policy on the part of insured and on appreciation of facts it was found that it cannot be considered that there was a breach on the part of the insured.

126. Thus, in my humble view, though this judgment highlights the motive and philosophy of the Act, and the guidelines given by Hon'ble SC are duly respected, but since even in this judgment, in Para 13 as highlighted above incorporation of exclusion clauses in the policy permissible under Section 96 has been duly recognized, obviously meaning thereby that if the insurer is able to prove the requisites as contemplated by Section 96 (2), the logical conclusion of this judgment is, that the insurer is not liable. Thus, this judgment for the present categorization falls in Category-2.

127. In *M. K. Kunhimohammed v. P. A. Ahmedkutty, reported in* [57] Hon'ble SC was dealing with the provisions of Section 95 (2) of the old Act, as to the limit of the

liability, and taking a view different from the one taken in Motor Owners' case, AIR 1981 SC 2059 in Para 13 it was held as under :-

> "13. Having regard to the statute as it stood prior to the amendments by Act 47 of 1982 we hold that the insurer was liable to pay up to Rs. 10000/- for each individual passenger where the vehicle involved was a motor cab and up to Rs. 5000/- for each individual passenger in any other case...."

128. Thus, even on the face of existence of the provisions of Section 96 (3) and (4) Hon'ble SC held that the insurer was liable to pay up to the aforesaid limits only. Thus on the process of reasoning, it clearly flows that the insurer cannot be compelled to pay the entire amount, and leaving it open to it, to recover the excess amount from the insured.

129. *National Insurance Co. Ltd. v. Jugal Kishore's case,* [58] was a case under the old Motor Vehicles Act, and the question involved was, as to the limits of liability of the insurer *qua* the claimants where the insurance cover was comprehensive one. The accident in that case related to 15th June, 1969 i.e. prior to the amendments of 2nd March, 1970 at which time the limit of liability was only Rs. 20,000/-. In that case the High Court enhanced the award of compensation made by the Tribunal from Rs. 10,000/- to Rs. 1,00,000/- and the insurer was also held liable for the entire amount, and Hon'ble SC did hold that the liability of the insurer was limited to Rs. 20,000/- only. However, the peculiar facts of that case were that while granting special leave, it was noticed that under the orders of Hon'ble the SC the insurer had deposited Rs. 1,00,000/- and the special leave was granted on the condition that in the event of reversal of the decision of the High Court the said amount shall not be refunded by the claimants. In that view of the matter, in Para 10 Hon'ble the SC has held as under :-

> 10. "In the result, this appeal succeeds and is allowed to this extent that the liability of the appellant is fixed at Rs. 20,000/- together with interest as allowed by the High Court. In view of the order of this Court dated 14th September, 1984 quoted above, however, it is held that even if the total liability of the appellant falls short of Rs. 1,00,000/- which was deposited by it and withdrawn by the claimant-respondent in pursuance of the said order, the decree of the High Court as against the driver and the owner of the vehicle, namely, respondent Nos. 2 and 3 is, however, maintained and all sums in excess of Rs. 1,00,000/- which has already been withdrawn by the claimant- respondent as aforesaid shall be recoverable by him from respondent Nos. 2 and 3 only. There

shall be no order as to costs."

Thus, this judgment falls in category 5 mentioned above.

130. Kashiram Yadav's case, AIR 1989 SC 2002 is a case where the tractor was driven by a person holding no driving license. Considering the scope and effect of Section 96 (2), Hon'ble SC held as under:-

> "4. Section 96 of the Motor Vehicles Act, 1939 imposes duty on the insurer to satisfy judgments against persons insured in respect of third party risks. Sub-section (2) thereof provides exception to the liability of the insurer. Sub-section 2(b) of Section 96 provides that the insurer is not liable to satisfy the judgments against the persons insured if there has been a breach of a specified condition of the policy. One of the conditions of the policy specified under Clause (ii) is that the vehicle should not be driven by any person who is not duly licensed, or by any person who has been disqualified for holding or obtaining driving license during the period of disqualification. It is not in dispute that the certificate of insurance concerned in this case contains this condition. If, therefore, there is a breach of this condition, the insurer will not be liable to indemnify the owner.

(Emhasis supplied)

In subsequent paragraphs the judgment in Skandia Insurance Co.'s case was referred and was distinguished on facts.

131. This judgment thus falls in Category-I.

132. *New India Assurance Co. Ltd. v. Mandar Madhav Tambe and others, reported in* [59] was a case where the driver was having only learner's license, validity whereof expired on 21-11-77, while the accident occurred on 4-7-79, on which date the driver was not holding a driving license, though soon thereafter the driver obtained a fresh learner's license on 7-7-79, and thereafter obtained a driving license on 9-7-79. Hon'ble the SC highlighted the requirements of driving license, on the anvil of the relevant rules, and in Para 14 it was held that "what was obtained by the respondent driver from the authorities under the Act was not license within the meaning of rules" and then in Para 15 it was held as under :-

> "15. Apart from the fact that a learner having such a license would not be regarded as duly licensed, the aforesaid clause in the insurance policy makes it abundantly 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 license or a permanent driving license "other than a learner's license". This clause specifically provides that even if Respondent 3 had held a current learner's license at the time of the accident, the appellant would not be liable. In the present case it is clear that Respondent 3 did not have a permanent learner's license before the date of the accident and he had held only a learner's license and it lapsed nearly two years before the accident. The High Court observed that the Act did not contemplate a "permanent driving license" because a driving license is valid only for a certain period after which it has to be renewed. This may be so, but the use of the words "permanent driving license" in the insurance policy was to emphasise that a temporary or a learner's license-holder would not be covered by the insurance policy. The intention and meaning of the policy clearly is that the person driving the vehicle at the time of the accident must be one who holds a "driving license" within the meaning of Section 2 (5-A) of the Act. "This being so, we are unable to agree with the conclusions of the High Court that the appellant was liable to pay the amount which had been awarded in favor of Respondent 1."

(Emphasis supplied)

133. Thus this judgment also clearly holds that in the event of the insurer making out a defense under Section 96 (2) it cannot be held liable. It is a different story that at the time of granting of special leave, Hon'ble SC had already imposed a condition that irrespective of the results of the case the appellant will pay the amount awarded to the claimant. But then as a proposition of law this judgment also is a clear authority for the proposition that Section 96 (2) or for that matter present Section 149 (2) does provide a complete and effective defense. This judgment thus falls in the Category-1.

134. Sohanlal Passi's case, AIR 1996 SC 2627 is a case where Hon'ble SC was considering the case, where the insurer contested the liability, on the ground that the vehicle was being driven by a cleaner, who was not holding the driving license. Relying upon the judgment in *Pushpa Bai Purshottam v. Ranjit Ginning reported in* [60] and Skandia Insurance Co.'s case, AIR 1987 SC 1184, the provisions of Section 96 (2) were interpreted and at page 737, in Para 12 (Para 14), it was held as under :-

"As such Insurance Co. will have to establish that the insured was guilty of 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 willful. 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 Co. cannot repudiate its statutory liability......"

135. Then on facts it was found that the insured had done everything requisite and within his powers by engaging a licensed driver, and having placed the vehicle in his charge. In that view of the matter relying upon the judgment of Hon'ble SC in Kashi Ram's case, AIR 1989 SC 2002 and Skandia Insurance Co.'s case the insurer was held liable.

This judgment thus falls in category-2.

136. Gian Chand's case is a case, AIR 1997 SC 3824 where the controversy was that the insured permitted the vehicle to be driven by an unlicensed driver and therefore the insurance Company sought exoneration. The Tribunal exonerated the insurer, and the High Court relying on Skandia Insurance Co.'s case held it liable. The insurer relying upon the judgment of Hon'ble the Supreme Court, in Mandar Madhav Tambe's case, AIR 1996 SC 1150 and Kashi Ram's case, assailed the liability, while the claimants sought the insurer to be held liable, on the basis of Skandia Insurance Co'.s case and Sohan Lal Passi's case. Hon'ble the SC found Skandia Insurance Co.'s case to be of no avail, and relying upon the judgments in Mandar Madhav Tambe's case and Kashi Ram's case held in Para 12 as under :-

> 12. "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 situation, it cannot be said that the decisions rendered by this Court in *Skandia Insurance Co. Ltd. v. Kokilaben 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 case of *New India Assurance Co. Ltd. v. Mandar Madhav Tambe* and *Kashiram Yadav v. Oriental Fire and General Insurance Co.*"

(Emphasis supplied)

137. Then in Para 13 Hon'ble the SC held as under :-

> "13. In the result, therefore, this appeal is allowed. The decision of the High Court under appeal to the extent it refuse to exonerate the Insurance Company will stand set aside and it is held that the Insurance Co. is not liable to meet the claim of the respondent-claimants. The claim petition will stand rejected against the Insurance Co. The respondent-claimants will however be entitled to recover the awarded amount from respondent No. 1 and 9."

(Emphasis supplied)

138. This judgment thus falls in Category-1.

139. Amrit Lal Sood's case, AIR 1998 SC 1433, is a judgment where Hon'ble three Judges Bench was dealing with a case of the victim being gratuitous passenger in the car, for which the High Court held the insurer to be not liable. After referring to Jugal Kishore's, case AIR 1988 SC 719 and New Asiatic Insurance Co.'s case, AIR 1964 SC 1736 it was comprehended that the matter rests in the realm of terms of the policy, as to whether the insurer had undertaken an extended cover beyond the one required by the statute, and appreciating the terms of the contract of insurance in that case, held that the insurer had undertaken extended cover. Thereafter appreciating the rights reserved by the insurer to avoid certain liabilities, in Para 14 it was held that the "clause does not enable the insurance company to resist or avoid the claim made by the claimant. The clause will arise for consideration only in a dispute between the insurer and the insured. The question whether under the said clause the insurer can claim repayment from the insured is left open." Thus this case falls in Category-6.

140. *New India Assurance Co. Ltd. v. Rula and others, reported in* is a case where the question involved was about the effect of subsequent cancellation of policy, on the ground of non payment of premium, while the accident had already occurred. In that case after quoting Section 149 (1) it was held to be casting a duty on the insurer to satisfy judgments and awards against persons insured in respect of third party risks. Then relying upon the philosophy propounded in New Asiatic Insurance Co.'s case it was held that the manifest object of this provision is to ensure that third party, who suffers injuries due to the use of the motor vehicle, may not be able to get damages from the owner of the vehicle and recoverability of the damages may not depend on the financial condition or solvency of the driver of the vehicle who had caused the injuries. Then it was considered that the question as to whether the premium has been paid or not, is not the concern of the third party, who is concerned with the fact that there was a policy issued in respect of the vehicle involved in the accident, and it is on

the basis of this policy that the claim can be maintained by the third party against the insurer.

141. This judgment does not at all deal with the aspects of Section 149 (2) or 149 (4) or 149 (5), apart from the fact that, as noticed above, that non- receipt of premium is not one of the permissible defenses under Section 149 (2) of the Act.

142. Cheruvakkara's case, 2000 AIR SCW 4535, is a case decided by Bench consisting of two Hon'ble Judges, and the question involved was, as to What is the extent of liability of an insurance company towards the third party as per Section 95 (1) (b) of the Motor Vehicles Act, 1939, and what are its rights in case of payment of an amount in excess of the limits of the liability under the insurance policy vis-a-vis the insured? The accident in that case related to 6-7-88 and was thus covered by the old Act. The Tribunal had passed an award of Rs. 1,94,150/- and held the insurer liable for the entire amount, and this was upheld by the High Court. After appreciating the terms of the insurance policy and the provisions of Sections 95 and 96 of the Act, and after referring to the judgments in New Asiatic Insurance Co.'s case and Amrit Lal Sood's case, it was held in Para 10 as under :-

> "10. In the facts and circumstances of this case we find that despite holding the liability under the policy limited to the extent of Rs. 50,000/-, the Claims Tribunal and the High Court were not unjustified in directing the appellant Company to pay the whole of the awarded amount to the claimants on the basis of the contractual obligations contained in clauses relating to the liability of the third parties and avoidance clause. However, the Claims Tribunal and the High Court were not justified in rejecting the right of the appellant Company to recover from the insured the excess amount paid in execution and discharge of the award of the Tribunal."

143. Thus this case falls in category 5.

144. Kamla's case, is a case where again Hon'ble SC was dealing with a case where the insurer contested the liability, on the ground that the vehicle was driven by person whose driving license was a fake one. Other question involved in this case was about the effect of renewal of such fake license. On this aspect of course Hon'ble SC held in Para 12 as under :-

> "12. As a point of law we have no manner of doubt that a fake license cannot get its forgery outfit stripped off merely on account of some officer renewing

> the same with or without knowing it to be forged. Section 15 of the Act only empowers any licensing authority to "renew a driving license issued under the provisions of this Act with effect from the date of its expiry." No licensing authority has the power to renew a fake license and, therefore, a renewal if at all made cannot transform a fake license as genuine. Any counterfeit document showing that it contains a purported order of a statutory authority would even remain counterfeit albeit the fact that other persons including some statutory authorities would have acted on the document unwittingly on the assumption that it is genuine."

145. On the question of liability of the insurer, after referring to the provisions of Section 149 (2), in Paras 19 and 20 reference was made to the provisions of Section 149 (4) and (5), which have already been quoted above, and in Para 21 onwards it was held as under :-

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

146. Then observations from Skandia Insurance Co.'s case, AIR 1987 SC 1184 were referred to, to the effect that the insistence of the Legislature that a motor vehicle can be used in a public place only if that vehicle is covered by a policy of insurance is not for the purpose of promoting the business of the Insurance Company but to protect the members of the community who become sufferers on account of accidents arising

from use of motor vehicles. It is pointed out in the decision that such protection would have remained only a paper protection if the compensation awarded by the Courts were not recoverable by the victims (or dependents of the victims) of the accident. And then this was held to be :-

> "the raison d'etre for the Legislature making it prohibitory for motor vehicles being used in public places without covering third party risks by a policy of insurance."

147. Then it was noticed to have been followed by a three Judge Bench of that Court with approval, in Sohan Lal Passi's case, AIR 1996 SC 2627. Then in Para 25 the proposition of law was summed up as under :-

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

(Emphasis supplied)

148. It may be noticed here, as a fact, that in this case, at the initial stage, vide order dated 6-3-2000 passed by the Hon'ble Supreme Court, the insurer was directed to pay the awarded amount, and the same had been paid, and by the judgment, reported, the matter was sent back to the Tribunal to decide the question as to whether the insurer was entitled to recover the amount from the owner, on account of vehicle being driven by a person not holding valid driving license.

149. Thus, deducing the legal position flowing from the judgment, it has been ruled in Para 25 that the insurer and insured are bound by the conditions enumerated in the policy, and the insurer is not liable to the insured if there is violation of any policy condition, and that if the insurer is made statutorily liable to pay compensation to third parties on account of certificate of insurance issued, it is entitled to recover from the insured the amount paid to the third parties. In other words, the entitlement of the insurer to recover the amount from the insured arises only if the insurer is not liable under the terms of the policy, but has been made statutorily liable. Thus, this judgment does not at all militate against the entitlement of the insurer to defend the action on the grounds enumerated in Section 149 (2). So far as the effect of the provisions of Section 149 (4) and (5) and the pronouncement of Hon'ble SC leaving it open to insurer to recover back the amount, I shall deal in later part of this judgment.

Asha Rani's case, AIR 2003 SC 607 is yet another judgment decided by a bench consisting of three Hon'ble Judges, which I may gainfully refer. By this judgment a big bunch of cases was decided, and the question involved was whether the insurer is liable to pay compensation to the dependents of the deceased passenger, who was travelling in the goods vehicle, and the vehicle met with the accident. The controversy was earlier decided by Hon'ble Supreme Court, in *New India Assurance Co. v. Satpal Singh, reported in* [62] and there was another judgment in *Mallawwa v. Oriental Insurance Co. reported in* [63] And by holding that Satpal Singh's case was not correctly decided and it was held in Para 10 (Para 9 of AIR 2003 SC 607) as under :-

> "10. In Satpal's case (supra) the Court assumed that the provisions of Section 95 (1) of Motor Vehicles Act 1939 are identical with Section 147 (1) of the Motor Vehicles Act, 1988, as it stood prior to its amendment. But a careful scrutiny of the provisions would make it clear that prior to the amendment of 1994 it was not necessary for the insurer to insure against the owner of the goods or his authorized representative being carried in a goods vehicle. On an erroneous impression this Court came to the conclusion that the insurer would be liable to pay compensation in respect of the death or bodily injury caused to either the owner of the goods or his authorized representative when being carried in a goods vehicle the accident occurred. If the Motor Vehicles Amended Act of 1994 is examined, particularly Section 46 of Act 6 of 1994 by which expression "injury to any person" in the original Act stood substituted by the expression "injury to any person including owner of the goods or his authorized representative carried in the vehicle" the conclusion is irresistible that prior to

> the aforesaid amendment Act of 1994, even if widest interpretation is given to the expression 'to any person'it will not cover either the owner of the goods or his authorized representative being carried in the vehicle. The objects and reasons of Clause 46 also states that it seeks to amend Section 147 to include owner of the goods or his authorized representative carried in the vehicle for the purposes of liability under the insurance policy. It is no doubt true that sometimes the legislature amends the law by way of amplification and clarification of an inherent position which is there in the statute, but a plain meaning being given to the words used in the statute, as it stood prior to its amendment of 1994, and as it stands subsequent to its amendment in 1994 and bearing in mind the objects and reasons engrafted in the amended provisions referred to earlier, it is difficult for us to construe that the expression "including owner of the goods or his authorized representative carried in the vehicle" which was added to the pre-existed expression "injury to any person" is either clarificatory or amplification of the pre-existing statute. On the other hand it clearly demonstrates that the legislature wanted to bring within the sweep of Section 147 and making it compulsory for the insurer to insure even in case of a goods vehicle, the owner of the goods or his authorized representative being carried in a goods vehicle when that vehicle met with an accident and the owner of the goods or his representative either dies or suffers bodily injury. The judgment of this Court in Satpal's case, therefore, must be held to have not been correctly decided and the impugned judgment of the tribunal as well as that of the High Court accordingly are set aside and these appeals are allowed. It is held that the insurer will not be liable for paying compensation to the owner of goods or his authorized representative on being carried in a goods vehicle when that vehicle meets with an accident and the owner of goods or his representatives dies or suffers any bodily injury."

150. Not only this considering the aspect of Section 149 (2), in Para 30 it was held as under :-

> "30. We may consider the matter from another angle. Section 147 (2) (sic 149) of the 1988 Act enables the insurer to raise defenses against the claim of the claimants. In terms of Clause (c) of sub-section (2) of Section 147 (sic 149) of the Act one of the defenses which is available to the insurer is that the vehicle in question has been used for a purpose not allowed by the permit under which the vehicle was used. Such a statutory defense available to the insurer would be

obliterated in view of the decision of this Court in Satpal Singh's case (supra)."

151. Thus in this judgment the case having been considered from both the stand points, what flows is that despite issuance of the insurance cover, the Insurer cannot be held liable for compensation in the event of the victim being passenger in the goods vehicle. In other words, it has not been held that even in such situation the Insurer should be directed to make payment of compensation to the claimants, and then recover it from the insured, whether under proviso to Section 149 (4) or under Section 149 (5).

152. Then this judgment has further been followed by Hon'ble SC in *Oriental Insurance Co. Ltd. v. Devireddy Konda Reddy, reported in* [64] And in Para 9 it was held as under :-

> "9. The inevitable conclusion, therefore, is that provisions of the Act do not enjoin any statutory liability on the owner of a vehicle to get his vehicle insured for any passenger travelling in a goods carriage and the insurer would have no liability therefor."

153. I may now refer to the judgment of Hon'ble the SC in Lehru's case, AIR 2003 SC 1292. This is a judgment rendered by a bench comprises by two Hon'ble Judges, and the question involved was about the liability of the insurer, who sought to avoid its liability on the ground, that the license of the driver was fake one. The Hon'ble Court proceeded to decide the case, on the basis that it was no longer res integra, as to whether the Insurance Co. can avoid its liability to third party, and it was observed that in spite of point being fully covered in a large number of matters the Insurers are seeking to avoid its liability. Then in Para 8 it was held that "learned counsel for the appellants has attempted, with great fervour, to convince us that the settled law is not correct. We remain unconvinced." Then the judgment in Itbar Singh's case, AIR 1959 SC 1331), Skandia Insurance Co.'s case, AIR 1987 SC 1184, Sohan Lal Passi's case AIR 1996 SC 2627, and Kamla's case, AIR 2001 SC 1419 were referred, the provisions of Section 149 were quoted in extenso, and then by referring to the language of Section 149 (7), in Para 17 it was held as under :-

> "......the wording of sub-section (7) viz. "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" indicates that the legislature wanted to clearly indicate that insurance companies must pay unless they are absolved of liability on a ground specified in sub-section (2)......"

154. Then in this very para it was further held as under :-

> "...........This is further clear from sub-section (4) which mandates that conditions; in the insurance policy, which purport to restrict insurance would be of no effect if they are not of the nature specified in sub-section (2). The proviso to sub-section (4) is very illustrative. It shows that the insurance company has to pay to third parties but it may recover from the person who was primarily liable to pay. The liability of the insurance company to pay is further emphasized by sub-section (5). This also shows that the insurance company must first pay, then it can recover. If Section 149 is read as a whole it is clear that sub-section (7) is not giving any additional right to the insurance company. On the contrary it is emphasizing that the insurance company cannot avoid except on the limited grounds set out in sub-section (2)."

155. Then proceeding to consider the scope of Section 149 (2) (a) (ii), relying upon the cases of Skandia Insurance Co., and Sohan Lal Passi it was held in Para 18 as under :-

> "... ... ... in order to avoid liability under this provision it must be shown that there is a "breach". As held in Skandia's and Sohan Lal Passi's cases (Supra) the breach must be on the part of the insured. ......We are thus in agreement with what is laid down in the aforementioned cases viz. that in order to avoid liability it is not sufficient to show that the person driving at the time of accident was not duly licensed. The Insurance company must establish that the breach was on the part of the insured."

(emphasis supplied)

156. Appreciating the facts of that particular case, it was held in Para 20 as under:-

> "20. When an owner is hiring a driver he will therefore have to check whether the driver has a driving license. If the driver produces a driving license which on the face of it looks genuine, the owner is not expected to find out whether the license has in fact been issued by a competent authority or not. The owner would then take the test of the driver. If he finds that the driver is competent to drive the vehicle, he will hire the driver. We find it rather strange that insurance companies expect owners to make enquires with RTOs, which are spread all over the country, whether the driving license shown to them is valid or not. Thus where the owner has satisfied himself that the driver has a license and is

driving competently there would be no breach of Section 149 (2) (a) (ii). The insurance company would not then be absolved of liability. If it ultimately turns out that the license was fake, the insurance company would continue to remain liable unless they prove that the owner/insured was aware or had noticed that the license was fake and still permitted that person to drive......."

Of course, after recording this finding, in this very para Hon'ble SC has continued to hold as under :-

"................ More importantly, even in such a case the insurance company would remain liable to the innocent third party, but it may be able to recover from the insured. This is the law which has been laid down in Skandia's, Sohan Lal Passi's and Kamala's cases. We are in full agreement with the views expressed therein and see no reason to take a different view."

157. As to what is the effect of this finding of Hon'ble the Supreme Court, given in the judgment comprising a bench of Hon'ble two Judges only, is required to be considered on the anvil, as to whether it is in line with the other judgments of Hon'ble the Supreme Court, delivered by benches comprising of larger number of Hon'ble Judges, or how it is to be followed in view of pronouncements of Hon'ble the SC in Haryana Financial Corporation's case (AIR 2002 SC 834) and in *Delhi Administration v. Manohar Lal's case* [65]

158. Now, I may refer to a Constitutional Bench decision of Hon'ble the SC in C. M. Jaya's case (AIR 2002 SC 651). The Hon'ble Constitution Bench was hearing a reference made to the Constitution Bench. The terms of reference were :-

"1. The question involved in these appeals is whether in a case of insurance policy not taking any higher liability by accepting a higher premium, in case of payment of compensation to a third party, the insurer would be liable to the extent limited under Section 95 (2) or the insurer would be liable to pay the entire amount and he may ultimately recover from the insured. On this question, there appears to be some apparent conflict in the two three-Judge Bench decisions of this Court- (1) *New India Assurance Co. Ltd. v. Shanti Bai* [66] and (2) *Amrit Lal Sood v. Kaushalya Devi Thapar* [67]

2. In the latter decision, unfortunately the decision in New India Assurance case has not been noticed though reference has been made to the decision of this Court in *National Insurance Co. Ltd. v. Jugal Kishore* which was relied upon in

the earlier three Judge Bench judgment. In view of the apparent conflict in these two three-Judge Bench decisions, we think it appropriate that the records of this case may be placed before My Lord, the Chief Justice of India to constitute a larger Bench for resolving the conflict. We accordingly so direct. The record may now be placed before the Hon'ble the Chief Justice of India."

159. Considering the conflicting judgments and the provisions of the Act, Hon'ble the Constitution Bench, in para-8 held as under :-

> "8. Thus, a careful reading of these decisions clearly shows that the liability of the insurer is limited, as indicated in Section 95 of the Act, ... But in the absence of any such clause in the insurance policy the liability of the insurer cannot be unlimited in respect of third party and it is limited only to the statutory liability. This view has been consistently taken in the other decisions of this Court."

160. Then after considering the other judgments, in para-10 it was further held as under :-

> "10. On a careful reading and analysis of the decision in Amrit Lal Sood it is clear that the view taken by the Court is no different. In this decision also, the case of Jugal Kishore is referred to. It is held :
>
> (i) that the liability of the insurer depends on the terms of the contract between the insured and the insurer contained in the policy;
>
> (ii) there is no prohibition for an insured from entering into a contract of insurance covering a risk wider than the minimum requirement of the statute whereby risk to the gratuitous passenger could also be covered; and
>
> (iii) in such cases where the policy is not merely statutory policy, the terms of the policy have to be considered to determine the liability of the insurer.
>
> .... 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."

(Emphasis supplied)

Then the precise reference was answered in para-14 as under :-

> "14. In the premise, we hold that the view expressed by the Bench of three learned Judges in the case of Shanti Bai is correct and answer the question set out in the order of reference in the beginning as under :
>
> In the case of the Insurance Company not taking any higher liability by accepting a higher premium for payment of compensation to a third party, the insurer would be liable to the extent limited under Section 95(2) of the Act and would not be liable to pay the entire amount"

(Emphasis supplied)

161. Thus, this Constitutional Bench Judgment in totally unequivocal terms answers the reference, holding that in the act policy insurer is not liable to pay the entire amount. This necessarily negatives legal proposition that even in such case the insurer should pay the entire amount and recover the excess amount, exceeding the statutory limits, from the insured.

162. This being the Constitutional Bench decision, all other decisions rendered by the Hon'ble Bench comprising of lesser number of Hon'ble Judges, on the law of precedents, have to yield to this judgment, as obviously, I am bound to follow the latest Constitutional Bench Judgment.

I may also refer to one more Division Bench Judgment of this Court Raj. State Road Transport Corp.'s case (2003 WLC (UC) 34). This was a case where the learned Single Judge of this Court, relying upon judgment of Hon'ble Supreme court, in Cheruvakkara's case (2000 AIR SCW 4535) had directed the insurer to pay entire amount, and left it open to the insurer to recover from the owner and following the Constitutional Bench Judgment in C. M. Jaya's case, the contention of the claimant, to the effect that, it was not answered by the Constitutional Bench as to whether the insurer would be liable to pay the entire amount and may ultimately recover from the insured, was negatived, by holding that there is no room to contend that the answer given by the SC was to a part of the question and not to full question. It was further

held in para-8 as under :-

> "Moreover, the last part of the answer that the "insurance company would not be liable to pay the entire amount", in our opinion, succinctly and clearly answers the full question referred to the larger bench that the insurance company is not liable to make payment and ultimately recover from the insured to the extent it makes the payment of liability undertaken by it."

(Emphasis supplied)

163. With recording this finding, the appeal was allowed, the judgment and award under appeal was modified, and the direction given to the insurer to pay the entire amount and recover the excess one from the claimant was pointedly set aside.

164. I may also observe that the considerations of beneficial legislation, or sympathies for the victims, are alike, whether the victim be a pedestrian, or a passenger in the public service vehicle, or a passenger in the goods vehicle, irrespective of the fact as to whether the vehicle was being driven by a licensed driver, or not, or was being used for organized racing or speed testing, or the like and therefore, from the reading of these judgments in Asha Rani's case (AIR 2003 SC 607), Devireddy Konda Reddy's case (AIR 2003 SC 1009), C. M. Jaya's case and Raj. State Road Transport Corp.'s cases, the irresistible conclusion is, that the provisions of Section 149 (2) and (7) stand entirely on independent footing, and are not controlled, or overridden by, the provisions of Section 149 (4) and (5).

165. Thus from a combined reading of the various judgments of Hon'ble the Supreme Court, starting from Itbar's case, up to the Constitutional Bench Judgment in C. M. Jaya's case, it is clear that the liability of the insurer is within the limits of the statute, obviously, of necessity as may be determined, after providing purposive, effective, and meaningful defense, as available to it under Section 149 (2), and not a millimeter more, in view of the language of Section 149(7), and the mandate in Itbar's case. And at the same time, the insurer cannot made liable otherwise than in accordance with Section 149(1) and (2). Of course, as held by Hon'ble SC in Skandia Insurance Co's case, so also in Kamla's case, and Lehru's case, it is for the insurer to prove the defense, in order to successfully avoid its liability. Likewise, in view of C. M. Jaya's case read with R.S. R. T. C.'s case, the insure cannot be compelled to make payment of any amount beyond the limits of its liability, so as to, or expressly leaving it open, to the insure to recover the amount, either wholly, or the excess part from the insured.

166. Taking up the effect of the provisions of Section 149 (4), its proviso, and Section 149(5), of course, these provisions do recognise the right of the insurer to recover back the amount from the insured. But then, can it be said that by recognising the right of the insurer, the aforesaid provisions attract the liability of the insurer, de hors the provisions of Section 149 (1) and 149(2), or whether these provisions can even be interpreted to that effect. Likewise, to properly comprehend their scope, I would venture to probe into the question, as to the object of this part of the legislation?

167. Coming to the various judgments of Hon'ble Supreme Court, dealing with this aspect, as referred to above, except in the case of Lehru, in all other cases, the insurer had already, or had already been made, to make the payments, pursuant to the orders of Hon'ble the Supreme Court, passed at the initial stage, and therefore, at the time of finally deciding, the rights of the insure were being settled. So far Lehru's case is concerned, I may again refer to the judgment of Hon'ble SC in Haryana financial Corporation's case (AIR 2002 SC 834) and more particularly, that of *Delhi Administration v. Manohar Lal's case* [68] This was a case where Hon'ble the SC was dealing with a matter under Section 433 (d) of the Criminal Procedure Code about extending the benefit of commutation of sentence to the life convicts. In that case the High Court had passed the orders of commutation following the earlier judgments of Hon'ble the SC and it is in that background, Hon'ble the SC made the observations, rather issued dictates in para 5, as quoted above.

168. In view of these two decisions of Hon'ble the Supreme Court, simply because in, some, or say good number of cases, the Hon'ble SC was pleased to direct the insurer, at the initial stage to make payment of entire awarded amount and then settled the rights of the insure on the anvil of Section 149 (4) and 149 (5), it cannot be said to be the ratio of the decision, and that does not entitle me to be merely swayed by considerations of judicial comity and propriety.

169. The another aspect of the matter being to interpret the provisions of Section 149(4) and 149 (5), in the background of the provisions of Section 149 (2), as beneficial piece of legislation, and being for the benefit of the claimants, even on that standpoint, I find that the provisions are required to be interpreted keeping in mind the established legal principle, expressed in the words "actus curie namimum gravbit" i.e. the act of the Court shall prejudice no man.

170. It is in the spirit of this maxim, that Section 144 C. P. C. has been enacted, according to which, in the event of any decree or order being varied or reversed in

appeal, revision or other proceedings, or being set aside or modified in any suit instituted for the purpose, the court which passed the decree or order, on the application of the party entitled by way of restitution or otherwise, is to make restitution, and such restitution is to be such, as, so far as may be, places the party in the position which they would have occupied, but for such decree or order, or such part thereof, as has been varied, reversed, modified or set aside. Thus, per force of this Section 144 C. P. C., if the Insurer had been actually made to pay to the claimants the amount awarded by the learned Tribunal, then in the event of the award of the learned. Tribunal being varied, reversed, or modified, the Insurer, ipso facto, becomes entitled for restitution, obviously by recovering back the amount from the claimants.

171. This situation was to bring about severe hardships, on the victims, or their legal representatives. Inasmuch as, even, without taking judicial notice, it can be conjectured that, the entire awarded compensation, seldom reaches the hands of the claimants intact. While in the event of enforcing restitution, the Insurer would obviously recover back the entire amount, and then the difficulties, the decree holder claimant is expected to face, in realizing the amount from the owner, or driver, by executing the award, can very well be comprehended, even in some rare cases, where, the owner or driver is possessed of means, capable of satisfying the decree, leaving apart, cases where the owner or driver are not possessed of sufficient means. It is to take care of this situation that the provisions of Section 149 (4) and (5) can be interpreted, to be in the nature of an exception to Section 144, C. P. C., rather as an exception to the aforementioned established legal principle "actus curie namimum gravbit", and they have been so interpreted, with a view to make the relief provided to the claimants as real as possible, leaving the difficulties of the Insurer to rest in the realm of 'the Insurer's misfortune ‘as observed by Hon'ble SC in Itbar's case. I may also notice here that the provisions of Section 149 (4) and (5), on being so interpreted, to provide non-restitution from the claimants, even in the event of the award of the learned tribunal being varied, reversed, or modified in the Insurer's appeal and while upholding the claim, exonerating the Insurer, clearly upholds the purpose and philosophy of this beneficial legislation and extends enough protection to the claimants.

172. Thus, these provisions of Section 149 (4) and (5) in my humble opinion, do not at all have the effect of attracting any liability of the insurer de hors the provisions of Section 149 (2) of the Act.

173. Consequently, it cannot be laid down as a legal proposition that in every case,

even where the insurer is able to properly take and prove, one or more of the defenses provided by Section 149 (2) of the new Act, or for that matter Section 96 (2) of the old Act, yet the insurer should make the payment to the claimant, and then should always be left only to recover from the insured. Of course, if for any reason, or under any circumstances, some how the insurer happens to be made to make payment of the awarded amount, which award subsequently happens to be varied, reversed, or modified in appeal, then in that event the insurer would be entitled to recover back the amount from the insured, instead of the claimants, only, in cases where the insured is found liable, however, if the claim is completely dismissed, then of course, the ordinary principles of Section 144, C. P. C. would be attracted.

174. After thus deciding the legal question involved, as noticed in the opening part of the judgment, now I shall proceed to take up each appeal on its own merits. Accordingly the registry is directed to list the appeals listed in Appendix-A for consideration on their individual merits, in the light of the above decision of the legal question.

Order accordingly.

Cases Referred.

1. AIR 1959 SC 1331
2. AIR 1964 SC 1736
3. (2001) 4 JT (SC) 235: (AIR 2001 SC 1419)
4. (2001) 4 JT (SC) 235: (AIR 2001 SC 1419)
5. (2003) 3 SCC 338
6. AIR 1959 SC 1331
7. 1988 Acc CJ 270: (AIR 1988 SC 719)
8. (1997) 7 SCC 558: (AIR 1997 SC 3824)
9. (1989) 4 SCC 128: (AIR 1989 SC 2002)
10. (1996) 6 JT (SC) 728: (AIR 1996 SC 2627)
11. (1987) 2 JT (SC) 43: 1987 (2) SCC 654: (AIR 1987 SC 1184)
12. (2003) 1 WLC (SC) Civil 129: (AIR 2002 SC 3350)
13. (2001) 2 SCC 491: (2000 AIR SCW 4535)
14. 2002 (2) SCC 278: (AIR 2002 SC 651)
15. (1995) 2 SCC 539: (AIR 1995 SC 1113)
16. (1998) 2 JT (SC) 484: (AIR 1998 SC 1433)

17. 2002 WLC 210: (AIR 2002 SC 834)
18. 2003 WLC (Raj) UC 341
19. (2003) 1 WLC Civil 129 (SC)
20. (2002) 10 JT (SC) 162: (AIR 2003 SC 607)
21. (2003) 1 ACC 368: (AIR 2003 SC 1446)
22. (1998) 1 SCC 371: (AIR 1998 SC 588
23. 2002 AIR SCW 298: (AIR 2002 SC 681)
24. AIR 1988 SC 1353
25. (2001) 4 SCC 448: (2001 AIR SCW 1846)
AIR 1988 SC 1353
26. (2001) 4 SCC 448: (2001 AIR SCW 1846)
27. (1998) 1 SCC 371: (AIR 1998 SC 588)
28. AIR 2000 SC 725
29. (1951 AC 737 at P. 761)
30. (1972) 2 WLR 537)
31. (2002) 6 JT (SC) 325: (AIR 2002 SC 3088)
32. AIR 1961 SC 647
33. AIR 1957 SC 907
34. AIR 1975 SC 1994
35. AIR 1965 SC 101
36. AIR 1981 SC 2059
37. AIR 1991 SC 259
38. (1994) 3 JT (SC) 214: AIR 1994 SC 2307
39. (1871) LR 6 CP 365, 371
40. (1889) 23 QBD 29, 32
41. (1876) LR 2 EX 115, 121
42. (1878) 3 CPD 439
43. (1934) 1 KB 343
44. (1931) 2 KB 21
45. 50 N.E. 2d 352, 356, 71 Ohio App. 485
46. 7 N.W 2d 566, 568, 233 Iowa 293
47. 126 P. 2d, 419, 52 CA 2d 297
48. 44 NE 2d 499, 502, 220 Ind 543
49. 200 So. 850, 851, 146 Fla. 262. 43 How Prac. 5, 15, 12 Abb Prac., N.S
50. 139,50 43 How Prac. 5, 15, 12 Abb Prac., N.S. 139, 148
51. 125F. 269, 270

52. 78 N.E. 2d 265, 268, 399 III. 520
53. AIR 1975 SC 1758
54. AIR 1987 SC 1281
55. 1999 (3) SCC 754: AIR 1999 SC 1398
56. AIR 1959 SC 1331
57. AIR 1987 SC 2158
58. AIR 1988 SC 719
59. (1996) 2 SCC 328: AIR 1996 SC 1150
60. 1977 (2) SCC 745: AIR 1977 SC 1735
61. AIR 2000 SC 1082
62. 1999 (9) JT 416: AIR 2000 SC 235
63. 1998 (8) JT 217: AIR 1999 SC 589
64. (2003) JT 1 (SC) 372: AIR 2003 SC 1009)
65. (AIR 2002 SC 3088)
66. (AIR 1995 SC 1113)
67. (AIR 1998 SC 1433)
68. (AIR 2002 SC 3088)