FULL BENCH

Before S. S. Sandhawalia, C.J., S. C. Mital and S. P. Goyal, JJ.

THE ORIENTAL FIRE & GENERAL INSURANCE CO. LTD.,—*Appellant.*

versus.

BACHAN SINGH and others,—*Respondents.*

F.A.O. No. 473 of 1980.

January 5, 1982.

Motor Vehicles Act (IV of 1939)—Sections 96, 110 to 110-F—Claim for compensation in a motor accident—No award given by the Tribunal against the owner of the vehicle-Insurer—Whether

could be made liable independently of the insured—Sections 110 to 110-F—Whether affect the general principles relating to tortious liability—Provisions thereof—Whether procedural—Section 96 (2)—Whether applicable to Tribunals as well.

Held, that the language of section 96 of the Motor Vehicles Act, 1939, is no warrant for the proposition that the Legislature in enacting this section intended to make the insurer liable Independently of the insured. A plain reading of sub-section (1) of section 96 would indicate that herein the pre-condition of the liability of the insurer arises when a judgment is obtained against the insured person who has taken out the policy of insurance. It is then and then alone that the insurer is obliged to pay the claimant the amount due under such a judgment as if the insurer was the judgment-debtor. Therefore, in the absence of a judgment obtained against the insured no liability whatsoever would arise against the insurer according to the language of sub-section (1). When read with sections 94 and 95, it would appear that the patent intent of the Legislature was to compel insurance against third party risk in cases of motor vehicles and in order to avoid the multiplicity of proceedings (that is, the necessity of the claimant first obtaining a judgment against the insured and later suing his insurer to be indemnified therefor) it was made possible to execute the judgment against the insurer directly as if he were the judgment-debtor for the satisfaction of the claim against the insured. The statute does not intend plainly to do more than this. Even here, further safeguards were provided to the insurer by making it mandatory that he should be made a party to the proceedings instituted by the claimant against the insured and then to defend the action on specified, though limited grounds. Section 96 of the Act consequently makes it plain that it was never intended by the Legislature nor does it flow from its language that the insurer would become liable *de hors* the insured and even when the insured has been wholly exonerated of any liability. (Para 9).

New India Assurance Company *v.* Norati Devi, A.I.R. 1978 Punjab & Haryana 113.

OVERRULED.

Held, that Sections 110 to 110-F do not and were not intended to make any redical change in the substantive law for tortious liability in general and that of the insured and the insurer inter-se in particular. They are primarily procedural in nature. The whole purpose was to substitute the rather tardy procedure of the ordinary civil courts with the expeditious and summary procedure before a Motor Accident Claims Tribunal with regard to the urgent claims of compensation by the victims of motor vehicles accidents. A plain look on Section 110-B of the Act would indicate that it is purely procedural providing for the modus of making

the Award by the Tribunal and in cases where compensation is directed to be payable, it is prescribed that the Tribunal should specify the amounts to be paid by the insurer, the owner or the driver of the vehicle or by all or any of them as the case may be. It does not even remotely pretend to lay down the substantive law for determining such a liability. Further, a reference to sub-section (2-A) of Section 110-C of the Act would, on the other hand, indicate that far from in any way burdening the insurer with any liability, it is only intended for their protection and safeguarding their interest. Sub-section (2) of section 96 of the Act had severely limited the defences open to the insurer in an action against the insured to those in clauses (a), (b) and (c) thereof only. Sub-section (2-A) of Section 110-C of the Act which was inserted much later by Act No. 56 of 1969 (with effect from 2nd March, 1970), indeed provides thereby that where there was collusion between the claimant and the insured or where there was a failure on the part of the insured to contest the claim, the Tribunal, for reasons to be recorded, would give the insurer the right to contest the claim on all or any of the grounds that were available to the insured. It is thus manifest that this provision far from in any way extending the liability of the insurer is plainly for their protection and safeguarding of their interests in cases of collusion between the claimant and the insured or the failure of the insured to contest the same. (Paras 11 and 12).

Held, that section 96(2) is applicable to proceedings before the tribunals as well and not merely to proceedings before the civil court only. (Para 17).

K. Gopalakrishnan *vs.* Sankara Narayanan and others A.I.R. 1968 Mad. 436.

Madras Motor & General Insurance Co. *v.* Katanreddi Subbareddy etc. A.I.R. 1974 A.P. 310. (DISSENTED FROM).

Case referred by S. P. Goyal to a Full Bench on 22nd September, 1981 for the decision of an important question of law involved in the case. The larger Bench consisting of Hon'ble the Chief Justice Mr. S. S. Sandhawalia, Hon'ble Mr. Justice S. C. Mital and Hon'ble Mr. Justice S. P. Goyal again referred the case to the learned Single Judge on 5th January, 1982 for decision on merits in accordance with law.

First Appeal from order of the Court of Shri Raj Kumar Gupta, Motor Accidents Claims Tribunal, Karnal, dated the 21st February, 1980 awarding the compensation to the petitioners to a

sum of Rs. 16,600 *with interest at the rate of* 6 *per cent per annum from the date of filing the petition, till realisation, with Costs, against Prabh Dayal, and the Oriental Fire & General Insurance Company.*

V. P. Gandhi, Advocate L. M. Suri, R. M. Suri and S. S. Dhaliwal, Advocates, with him, *for the appellant.*

U. S. Sahni, Advocate, Sudarshan Goel, Advocate for Nos. 6 & 7, *for the Respondents.*

JUDGMENT

S. S. Sandhawalia, C.J.

(1) Whether the insurer can still be held liable under section 96 of the Motor Vehicles Act, 1939, when the insured has himself been exonerated of such liability is the pristinely legal question which falls for determination before this Full Bench. Equally at issue in this context is the direct discordance of views in the two Division Bench judgments of this Court in *Alwar Motor Association (P) Ltd., Alwar* v. *Hazari Lal and others* (1) and *New India Assurance Co. Ltd., New Delhi* v. *Norati Devi* (2).

2. The facts, though brief disclose a long delay which sometime occurs even in the urgent compensation cases of claims by victim of motor vehicle accidents. Way back on the 4th of December, 1970, Gurmel Singh deceased the son of Bachan Singh respondent was fatally run over by truck No. HRK 6664. An application for compensation on behalf of the dependents of the deceased was preferred against Prabh Dayal, the driver of the truck, Dai Ram the alleged owner thereof, and the Oriental Fire and General Insurance Company Ltd., who were the insurers of the offending vehicle. The case of the claimants rested on the ground that the truck was being rashly and negligenly driven by Prabh Dayal driver. In resisting the claim application the respondents took the plea that Dai Ram was not the owner of the truck though it was admitted that it stood insured with the Oriental Fire and General Insurance Co., Ltd., and was driven by Prabh Dayal at that time. The Tribunal on issue No. 3 held that Dai Ram was not the owner of the truck and in fact M/s Bal Kishan

(1) 1964 P.L.R. 804.

(2) A.I.R. 1978 Pb. & Haryana 113.

Ram Dhari of Samalkha were its real owners who were not impleaded as such. It was, however, found that the death of Gurmel Singh deceased was on account of rash and negligent driving by Prabh Dayal and compensation, therefore, was assessed at Rs. 16,600. The claim petition, however, was dismissed in view of the aforesaid finding on issue No. 3. However, on appeal the dismissal of the claim application was set aside and the matter was remanded to the Tribunal to decide the same afresh in the light of the observations of the appellate Court. For the purposes of this reference it is unnecessary to advert to the chequred history of the second trial before the Tribunal and it suffices to mention that during the course thereof Prabh Dayal driver died and the counsel for the claimants made a statement to the effect that he had left no estate and consequently his name be struck off from the array of respondents which was accordingly done. The Tribunal then found that M/s. Bal Kishan Ram Dhari were the owners of the truck and not Dai Ram respondent. The firm stand taken on behalf of the owners before the tribunal was that the evidence recorded at the original trial when they were not parties to the proceedings could not be looked at for fastening them with liability. Consequently it was contended that there was no evidence against them that the death of the deceased was caused by rash and negligent driving of the truck by Prabh Dayal, after they were impleaded as parties. This stand found favour with the Tribunal and as a necessary corollary thereof M/s. Bal Kishan Ram Dhari the owners were exonerated from all liability. Nevertheless the Tribunal found that the appellant insurer M/s. oriental Fire and General Insurance Co., Ltd., would continue to be liable in view of the observations in Norati Devi's case (supra).

3. This appeal first came up before my learned brother S. P. Goyal, J., learned counsel for the parties placed reliance on the conflicting views in Hazari Lal's and Norati Devi's cases. Noticing that there was a direct conflict betwixt the two judgments, the matter has been referred to the Full Bench.

4. At the very outset it deserves highlighting that there is a long line of unbroken precedent (to which reference would inevitably follow hereinafter) in favour of the view that the liability of the insurer is conditional on a judgment or award against the insured. Nevertheless the matter calls for some examination on principle as

also in the peculiar context of the Provisions of the Motor Vehicles Act, 1939 (hereinafter referred as 'the Act').

5. At the very threshold, the true nature of the contract of insurance deserves highlighting. That the very corner stone thereof is the principle of indemnity is now so well settled that it would be wasteful to elaborate this aspect. It suffices to recall the following from the authoritative treatise of Porter's Law of Insurance:—

> "*Indemnity.*—Indemnity is the controlling principle in insurance law, and by reference to that principle most difficulties arising on insurance contracts must be settled. Except in insurance on life and against accident, the insurer contracts to indemnify the assured for what he actually loses by the happening of the events upon which the insurer's liability is to arise; and in no circumstances is the assured in theory entitled to make a profits of his loss."

6. Equally authoritative is the following enunciation of law in Leake on Contracts:—

> "*Insurance is a contract of indemnity only*:—consequently, an insurer of property, upon payment of the amount due under the contract, is subrogated to the assured, that is, considered in equity as standing order in the place, and may pursue his remedies against a person primarily liable for the loss.

Now the statutory definition of a contract of indemnity is in the following terms in Section 124 of the Indian Contract Act:—

> "A contract by which one party promises to save the other from loss caused to him by the conduct of the promisor himself, or by the conduct of any other person, is called a "contract of indemnity."

7. It seems unnecessary to elaborate the matter because by the language of the statute itself in a contract of insurance (barring some exceptions), the insurer promises to indemnify the insured for any loss or liability caused to him by his own conduct or the conduct

of any other person. Under the general law, no right would accrue to any third party under such a contract. It is the more so because it is well settled that a contract of insurance is one of **uberrima fides.** It involves the utmost good faith betwixt the insurer and the insured including within it the obligation of the insured to disclose all material facts to the insurer. This is pithily stated as follows in Colinvaux's well-known work on the 'Law of Insurance':—

> ".. .. .. This is expressed by saying that it is a contract of the utmost good faith—**uberrima fides.** Moreover, this utmost good faith is required not only from the assured but also from the insurer, and the insurer is, therefore, under a similar duty of disclosure. The doctrine applies equally to all kinds of insurance, including life insurance."

It would follow from the above, and indeed it seems to be well settled, that in a contract of insurance, the privity of contract is strictly between the insurer and the insured only, and further it is one of the utmost confidence.

8. As a necessary consequence of the aforesaid legal position, and even otherwise, it seems to be well settled that in a claim for damages for a tortious act against the tortfesor, the insurer of the latter is neither a necessary party nor in any way liable to the claimant under the general law. This is plainly so because of the absence of any privity of contract between the claimant on the one hand and the insurer of the tort-feasor on the other. It bears repetition that this privity of contract exists only betwixt the insurer and the insured who mutually bind themselves and no rights or liabilities accrue thereunder to any third party. Therefore, in a claim for tort, the common law visualizes a decree or an award against the tort-feasor alone in the first instance. It is only thereafter that the insured tort-feasor could possibly claim to be indemnified by his insurer under the contract of insurance. It is thus elementary that de hors any special statutory provisions, a judgment or an award could be executed only against the tort-feasor and not against his insurer because no direct liability of the insurer arises qua the claimant. Equally if the insured himself was not saddled with any liability or loss, he could not make any claim against his insurer. Such a claim can only arise where the insured himself is fastened with liability or a judgment or an award is rendered against him.

To put it in other words, the insurer's liability is secondary and conditional to that of the insured. Once that is so, it seems plain on principle that unless liability is first fastened on the insured, none can possibily fall on the insurer who has only undertaken to indemnify the loss or damage suffered by the insured. It can, therefore, be said as a distum (subject of course to qualification) that, no judgment against the insured—no judgment against the insurer.

9. Though under the general law, a judgment against the tort-feasor could not be executed directly against his insurer, yet undoubtedly it can be so done by express provisions to the contrary in a statute. Indeed, before us it was conceded that but for Section 96 of the Motor Vehicles Act, 1939, the Award against the insured could not be executed directly against the insurer-company by the claimant. Since in this particular context the issue must also turn on the language of the statutory provision, it becomes necessary to read the relevant parts of Section 96, at this stage:—

> "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 favour 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 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 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 provisions 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 tthat 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 candition excluding driving by a named person or or persons or by any person who is duly licensed,

.....or by any person who has been disqualified for holding or obtaining a driving licence during the period of disqualification; or

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

(c) that the policy is void or 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."

Now what indeed was the intent of the legislature in enacting the aforesaid section 96 and the true import thereof is the crucial question. Did it intend thereby to make the insurer liable independently of the insured I do not think so. The language of section 96 plainly is no warrant for this rather radical proposition. Indeed it seems to be a clear pointer to the contrary. A plain reading of sub-section (1) of section 96 would indicate that herein the pre-condition of the liability of the insurer arises when a judgment is obtained against the insured person who has taken up the policy of insurance. It is then and then alone that the insurer is obliged to pay the claimant the amount due under such a judgment as if the insurer was the judgment-debtor. Therefore, in the absence of a judgment obtained against the insured no liability whatsoever would arise against the insurer, according to language of sub-section (1). When read with sections 94 and 95 it would appear that the patent intent of the legislature was to compel insurance against third party risk in case of motor vehicles and in order to avoid the multiplicity of proceedings (that is, the necessity of the claimant first obtaining a judgment against the insured and the later suing his insurer to be indemnified therefor) it was made possible to execute the judgment against the insurer directly as if he were the judgment-debtor for the satisfaction of the claim against the insured. The statute does not intend plainly to do more than this. Even here further safeguards were

provided to the insurer by making it mandatory that he should be made a party to the proceedings instituted by the claimant against the insured and then to defend the action on specified, though limited grounds. Section 96 of the Act consequently makes it plain that it was never intended by the Legislature nor does it flow from its language that the insurer would become liable **do hors** the insured and even when the insured has been wholly exonerated of any liability.

10. Both principle and the language of this statute being loaded against him and further faced with a stone-wall of precedent, Mr. Sahni, the learned counsel for the resuondents attempted to make a flanking movement by contending that Sections 110 to 110-F of the Act which were introduced in the statute later in 1956, had brought about a radical change in the substantive law applicable to the insured and the insurers in this context. Particularly with regard to precedent it was sought to be submitted that the judgments relied upon on behalf of the petitioners (to which detailed reference would follow) had not expressly taken into consideration the effect of Sections 110 to 110-F of the Act. Particular reliance was sought to be placed on sub-section (2-A) of Section 110-C of the Act which was even added later with effect from March 2, 1970. On this specific provision, it was sought to be contended in the alternative that where the insurer-Company has availed a right of contestng the claim on all the grounds that were available to the insured, the insurer could be saddled with liability **de hors** any judgment or Award against the insured.

11. The question that frontally arises in the context of the aforesaid submission is whether the insertion of Section 110 to 110-F of the Act by Act No. 100 of 1956 (and the later amendments made therein), was intended to make any radical change in the substantive law for tortious liability in general and that of the insured and the insurer in particular. I do not think so. A plain reading of these provisions collectively would indicate that in true essence they are primarily procedural in nature. The whole purpose was to substitute the rather tardy procedure of the ordinary civil courts with the expeditious and summary procedure before a Motor Accident Claims Tribunal with regard to the urgent claims of compensation by the victims of motor vehicles accidents. Though this seems to be

patent from the very language of Sections 110 to 110-F, it is unnecessary to elaborate this matter because within this jurisdiction the issue is settled by authority. *In Shri Ram Partap* v. *General Manager, the Punjab Roadways, Ambala* (3), an identical argument was repelled by Dua, J., in the following terms:—

> "Dealing with the second point first, it is true that section 110-B of the Motor Vehicles Act does not in terms lay down that it is only when negligence on the part of the driver of the vehicle concerned is established that compensation can be awarded, but then it should be borne in mind that this bunch of sections (110 to 110-F) merely deal with the subject of the substitution of Motor Accidents Claims Tribunal in place of civil courts for the purpose of adjudicating on claims for compensation in respect of accidents involving the death or bodily injury to persons arising out of the use of motor vehicles. They do not deal with the question as to who is to be held liable and in what circumstances, if any injury results from an accident. In order, therefore, to discover the criterion or test for fixing liability, we have, in the absence of any statutory provision fixing liability irrespective of negligence, to turn to the law of torts according to which indisputably negligence in causing the accident in question is generally speaking essential to hold the negligent person liable. Nothing has been stated at the bar to persuade me to hold that the bunch of sections mentioned above in any way override the law of Torts. The cardinal principle of liability in tort, when death or bodily injury has been caused to a person, is negligence or failure to take the requisite amount of care required by law. It has not been argued and, indeed, not even a suggestion has been thrown, that the claim in question before me is based on any scheme of insurance, contractual or statutory. I have therefore, no hesitation in repelling this contention."

12. Again it appears to me that the reliance on Sections 110-B and 110-C by Mr. Sahni is hardly well-conceived. A plain look on Section 110-B of the Act would indicate that it is purely procedural providing for the modus of making the Award by the Tribunal and

(3) 1962 P.L.R. 448.

in cases where compensation is directed to be payable, it is prescribed that the Tribunal should specify the amounts to be paid by the insurer, the owner or the driver of the vehicle or by all or any of them as the case may be. It does not even remotely pretend to lay down the substantive law for determining such a liability. Further a reference to sub-section (2-A) of Section 110-C of the Act would, on the other hand, indicate that far from in any way burdening the insurer with any liability, it is only intended for their protection and safeguarding their interest. It deserves recalling that sub-section (2) of Section 96 of the Act had severely limited the defences open to the insurer in an action against the insured to those in clauses (a), (b) and (c) thereof only. Sub-section (2-A) of Section 110-C of the Act which was inserted much later by Act No. 56 of 1969 (with effect from 2nd March, 1970) indeed provides thereby that where there was collusion between the claimant and the insured or where there was a failure on the part of the insured to contest the claim, the Tribunal, for reasons to be recorded, would give the insurer the right to contest the claim on all or any of the grounds that were available to the insured. It is thus manifest that this provision far from in any way extending the liability of the insurer is plainly for their protection and safeguarding of their interests in cases of collusion between the claimant and the insured or the failure of the insured to contest the same.

13. The decks are now clear for adverting to the mass of precedent tilted primarily in favour of the appellant. *In Minu B. Mehta and another* v. *Balkrishna Ramchandra Nayan and another* (4), their Lordships of the Supreme Court whilst adverting to the scope of Section 96 of the Act, have observed as follows:—

> "Section 96 of the Act also makes the position clear. It provides that when a judgment in respect of such a liability as is required to be covered by a policy is obtained against any person insured by the policy, then the insurer shall pay to the person entitled the benefit of the decree as if he were a judgment debtor. The liability is thus limited to the liability as is covered by the policy."

(4) 1977 A.C.J. 118.

Again a Full Bench of the Madhya Pradesh High Court in *Mangilal* v. *Parasram and others* (5), after fully considering the provisions of Sections 110 to 110-F of the Act has directly concluded as follows, on this point:—

> " * * * However, the ingredients of the liability of the insurer are nowhere provided in this special statute. Necessarily, therefore, that aspect of the matter will be governed by the general substantive law, which remains untouched by this special law. We have already shown that it is on the contract of indemnity that the insurer is liable to pay compensation only if the insured is liable to pay damages to the claimant. If the insured is not liable, then the insurer is also not liable. In other words, the liability of the insurer depends upon the liability of the insured....."

14. An identical question arose before a Division Bench of the Karnataka High Court in *New India Assurances Co. Ltd.* v. *Parvathamma and others* (6), and was again answered in categoric terms as follows:—

> ".... The question for decision is as to whether the insurance Co. was liable even though there was no liability imposed on the insured. The answer, in our opinion, must be in the negative."
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> * * * * * * *
> * * * * * * *

And again,

> ".... But in all cases there must be liability of the insured so as to bind the insurer and make him liable to answer the claim...."

In *Barrala Ramaswamy* v. *Bhamidipati Satyanarayana and another* (7), it was observed as follows in this context:—

> "So, it is clear from the language of S. 96 (1) that the suit must be filed as against the insured, and a judgment obtained

(5) 1970 A.C.J. 86.
(6) 1977 A.C.J. 469.
(7) A.I.R. 1958 A.P. 309.

against him. It is only after the judgment is obtained against the insured that the sum is recoverable from the insurer, i.e., the Insurance Company. Section 96 (2) provides for the issue of notice to the Insurance Company and the defences that might be raised by the Insurance Company if made a party. From the terms of S. 96 (2), it is implicit that no suit as against the Insurance Company can be maintained by the third party taking advantage of the Insurance policy, Section 97 supports this conclusion."

In *Abdul Ghafoor and others* v. *New India Assurance Co. Ltd. and others* (8), the Division Bench of the Allahabad High Court, after an analysis of the statutory provisions has again concluded as follows:—

"The above provisions places an obligation on the insurer to pay the amount which may have been awarded against the owner of the vehicle subject to certain conditions and qualifications. *The first condition is that there should be a judgment or decree against a person insured.* The second condition is that the judgment must be in respect of liability covered by the policy under clause (b) of sub-section (1) of section 95. The third condition is that the liability, in fact, must be covered by the terms of the policy. If any of these three conditions is not satisfied, the insurer will not be responsible to pay compensation for the bodily injury or death which may have been caused to a third-party. These provisions clearly show that in absence of a decree against the owner (person insured), an insurer has no liability to satisfy the claim of a third-party as under the policy the insurer is liable to satisfy the liability which may have been accrued against the person insured....."

Though not on all fours, analogous observations have been made to this effect in *The Hindustan Ldeal Ins. Co. Ltd.* v. *Pokanti Aukish & others* (9). *Hindustan Ideal Ins. Co. Ltd.* v. *Pappu Roojary and others* (10) and *The New Asiatic Insurance Co. Ltd.* v. *Kulwant Devi and another* (11).

(8) 1981 A.C.J. 340.

(9) 1969 A.C.J. 60 (AP).

(10) 1972 A.C.J. 434.

(11) A.I.R. 1959 J&K 90.

15. In line with the aforesaid mass of precedent within this Court also, the view has been consistently the same. In *Shri Nand Singh Virdi* v. *Punjab Roadways, Amritsar and another* (12), Pandit, J., expressed the following opinion in unequivocal terms :—

> ".. .. .. The insurer only incurs the liability of the assured and that also to the extent for which the vehicle is insured. Therefore, the third party has first of all to establish the liability of the assured and it is only then that it can recover the amount of compensation awarded against the assured from the insurer. If he is unable to prove his claim against the assured, then he cannot get any compensation from the insurer. The provisions of the Motor Vehicles Act have not, in any way, changed the general law under which compensation is claimed by one person from another... .. .."

The aforesaid view was unhesitatingly affirmed by the Division Bench in *Alwar Motor Association (Private) Ltd., Alwar and another* v. *Hazari Lal and others* (1 supra) after quoting a part of the aforesaid passage with approval.

16. With the massive weight of precedent ranged against him, Mr Sahni, the learned counsel for the respondent, was forced to concede that there was no direct authority (apart from the observations in *New India Assurance Co. Ltd., New Delhi* (supra), holding that an insurer would be liable *de bors* the insured and even where the insured had been exonerated of all the liability. Learned counsel, however, by way of analogy squarely placed reliance on *K. Gopalakrishnan Minor by next friend Gurdian father B. R. Krishnan* v. *Sankara Narayana and others* (13), to contend that Section 96 (2) of the Act had no applicability to proceedings before a Claims Tribunal and was attracted only in regard to a trial in civil court. The aforesaid view has been later followed in *Madras Motor & General Insurance Co.* v. *Katanreddi Subhareddy and others* (14).

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(12) 1962 P.L.R. 917.
(13) A.I.R. 1968 Madras 436.
(14) A.I.R. 1974 A.P. 310.

17. It would follow from a plain look at Sections 110 to 110-F of the Act that a Motor Accident Claims Tribunal when constituted, Section 96 of the Act would be *ipso facto* attracted to the situation. would substitute the civil courts and, therefore, the provisions of It is unnecessary to elaborate the matter because the issue came up pointedly before a Division Bench of the Calcutta High Court in *Hukam Chand Insurance Co. Ltd.* v. *Subhashini Roy and another* (15), and expressly dissenting from the veiw in *K. Gopalakrishnan Minor's case* (supra), and *Madras Motor and General Insurance Co. case* (supra), it observed as follows :—

> "From study into the above sections it would thus appear that the only change that has been introduced in matters of adjudication of claims for compensation by the amended provision is that the courts are replaced by the Claims Tribunal whenever set up for the purpose in any area by notification made by the State Government for adjudication of claims for compensation following a summary procedure with right of appeal to High Court. It, therefore, follows that although section 96(2) has not been suitably amended, whenever a Claims Tribunal is set up for any area the word 'court' occuring in section 96(2) must be interpreted to mean Claims Tribunal. Any other interpretation would lead to anomalous and absurd result ....."

I am in respectful agreement with the aforesaid observations and for the detailed reasons recorded in the judgment, I would record my dissent with the observations in *K. Gopalakrishnan Minor's case* (supra), and *Madras Motor & General Insurance Co.s' case* (supra), also.

18. In fairness to Mr. Sahni, it must be noticed that he also placed reliance on the *Vanguard Insurance Co. Ltd.* v. *Foolchand Mandal and others* (16), and *M/s Assam Corporation* v. *Binu Rani Ao and others* (17). Undoubtedly, the observations made therein

(15) 1971 A.C.J. 156.
(16) A.I.R. 1967 Patna 342.
(17) 1974 A.C.J. 381.

would lend some assistance to his stand. However, in view of the detailed discussion, both on principle, the language of the statute and the massive weight of precedent to the contrary, I am unable to subscribe to the same and with the greatest respect feel compelled to record a dissent therefrom as well.

19. In the end, one must necessarily advert to *New India Assurance Co. Ltd. New Delhi's case,* (supra), which indeed has necessitated this reference to the Larger Bench. A perusal of the judgment would disclose that the matter was not adequately canvassed before the Division Bench and this is manifest from the fact that it was disposed of *in limine.* The learned Judges expressed only a tentative opinion and observed as follows :

> ".. .. .. As at present advised, we cannot subscribe to the broad proposition that an Insurance Company can never be held liable so long as the insurer is not impleaded as a party to the proceedings, or having been impleaded his name is ordered to be stuck off from the array of respondents on the basis that he enjoys diplomatic immunity from being sued in Court."

Counsel were plainly remiss is not bringing to the notice of the court, the Division Bench case in *Alwar Motor Association (Private) Limited, Alwar's case* and the previous Single Bench decision in *Shri Nand Singh Virdi* v. *Punjab Roadways, Amritsar,* (18), on which it was rested. Equally, the long line of precedent, which has been noticed in this context by me, were not even remotely referred to. The larger principle involved and the specific provisions of the statute which were attracted, were not brought to the notice of the Bench.

20. It would also seem that the equity of the case was tilted heavily in favour of the respondent-claimant because the insured therein was a member of the diplomatic corps and, therefore, was immune from civil process. Undoubtedly, such cases would raise grave hardship against the claimants who are the victims of accidents occuring owing to the negligence of persons entitled to diplomatic immunity. This, however, is a matter which deserves the urgent consideration of the legislature, but cannot be made a ground

(18) (1962) 64 P.L.R. 917.

for deviating from the law as settled on both principle, and by unbroken precedent. With the greatest respect, therefore, it must be held that *New India Assurance Co. Limited's case* (supra), is not correctly decided and is hereby over-ruled.

21. To conclude, the answer to the meaningful question formulated at the very outset is rendered in the negative and it is held that the insurer cannot be held liable under Section 96 of the Act, where the insured himself stands exonerated of any such liability. The Division Bench judgment in *Alwar Motor Association (Pvt.) Ltd., Adwar's case* (supra), is hereby affirmed and that in *New India Assurance Company Ltd's., case* (supra), is over-ruled.

22. The issues referred to the Full Bench have been answered as above, the case would now go back to the learned Single Judge for decision on merits, in the light thereof.

S. C. Mital, J.—I agree.

S. P. Goyal, J.—I also agree.

N.K.S.

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