Neutral Citation No. - 2025:AHC:14110

Reserved on 09.01.2025

Delivered on 31.01.2025

A.F.R.

Court No. - 36

Case :- FIRST APPEAL FROM ORDER No. - 1780 of 2024

Appellant :- ICICI Lombard General Insurance Co Ltd
Respondent :- Smt. Arti Devi and 8 Others
Counsel for Appellant :- Rahul Sahai
Counsel for Respondent :- Abhinav Trivedi, Adarsh Kumar, Shreesh Srivastava

Connected with

Case :- FIRST APPEAL FROM ORDER No. - 1776 of 2024
Appellant :- ICICI Lombard General Insurance Co Ltd
Respondent :- Smt Arti Devi and 4 others
Counsel for Appellant :- Abhinav Trivedi, Adarsh Kumar, Rahul Sahai
Counsel for Respondent :- Shreesh Srivastava

and

Case :- FIRST APPEAL FROM ORDER No. - 1777 of 2024

Appellant ICICI Lombard General Insurance Co. Ltd.
Respondent :- Smt. Rajeshwari and 8 others
Counsel for Appellant :- Rahul Sahai
Counsel for Respondent :- Abhinav Trivedi, Adarsh Kumar,

Shreesh Srivastava

and

Case :- FIRST APPEAL FROM ORDER No. - 1789 of 2024

Appellant :- ICICI Lombard General Insurance Co Ltd
Respondent :- Smt Guddi and 10 others
Counsel for Appellant :- Rahul Sahai
Counsel for Respondent :- Abhinav Trivedi, Adarsh Kumar, Shreesh Srivastava

Hon'ble Kshitij Shailendra,J.

EFFECT OF MOTOR VEHICLES (AMENDMENT) ACT, 2019 (32 of 2019) ON INSURER'S RIGHT TO RECOVER COMPENSATION FROM OWNER

1. Heard Shri Aditya Singh Parihar, learned counsel for the appellant-Insurance Company, Shri S.D. Ojha, and Shri Shreesh Srivastava, learned counsel for the claimant-respondents and Shri Abhinav Trivedi as well as Shri Adarsh Kumar, learned counsel for vehicle owner and driver in all the connected appeals.

2. All these appeals involve common questions of fact and law and, hence, are being decided by a common judgment. For the sake of convenience, First Appeal From Order No. 1780 of 2024 shall be treated as leading case.

3. The present appeal at the instance of Insurance Company challenges the award dated 01.06.2024, whereby the Presiding Officer, Motor Accident Claims Tribunal, Kanpur Dehat has allowed M.A.C. No. 186 of

2022 (Smt. Aarti Devi and others vs. Manager I.C.I.C.I. Lombard General Insurance Company Limited and others) in part awarding a sum of Rs.20,11,800/- towards compensation against the owner and driver of the offending vehicle with an observation that vehicle being insured with the appellant-Company, the appellant shall have right to recover the amount of compensation from the owner and the driver. Initial liability to pay compensation has been fastened upon the appellant-Insurance Company.

4. Brief facts giving rise to the instant appeal are that a road accident took place on 29.05.2022 in which one Pradeep Kumar, who was sitting in Eco Car No. U.P. 90 U-9831, suffered injuries and succumbed to the same on the spot. The accident was caused by Bus No. U.P. 77 T-5052, which was insured with the appellant-Insurance Company. A claim petition was filed by the legal representatives of the deceased claiming compensation. The Tribunal, after framing issues as regards rash and negligent driving of the bus driver and the car driver and as to whether the drivers were having valid driving license on the date of accident, factum of insurance and liability to pay compensation by which party and to what extent, decided the claim petition by the impugned judgment and order.

5. When the appeal came up for consideration on the first date, this Court, after noting down submissions advanced by the appellant including a legal plea raised in the light of omission of proviso to sub-section (4) of

Section 149 of the Motor Vehicles Act, 1988 (herein after referred to as Act, 1988) by way of **Motor Vehicles (Amendment) Act, 2019 (32 of 2019)**, admitted the appeal on 27.09.2024 and issued notices to the unrepresented respondents. After the parties were represented, the Court, by an order dated 08.11.2024, summoned the record of the Tribunal. The appeal was heard at length on 09.01.2025 and judgment was reserved.

THE LEGAL ISSUE INVOLVED

6. The decision in these appeals raises a very significant question of law in the light of **Motor Vehicles (Amendment) Act, 2019 (32 of 2019**) and not yet decided in India, as informed to the Court. Vide notification dated 25.02.2022 issued in exercise of powers under Section 1(2) of the Amending Act, 2019, various sections including Section 51 of the Amending Act came into force w.e.f. 01.04.2022. It is Section 51 that replaces Chapter XI of the Act of 1988 by a new Chapter XI that is relevant for the instant case. When read with Section 166 (3) of the Act where limitation to present a claim petition within 6 months from the occurrence of accident has been prescribed, it infers that the provisions of newly substituted Chapter XI would deal with cases arising from accidents taking place after 01.04.2022. The **question** is as to whether mere omission of proviso attached to sub-section (4) of Section 149 of Act, 1988 after its replacement by Section 150 by Amendment Act, 2019 would mean that

the liability of the insurer to pay and its right to recover the amount from the owner has been taken away and does not survive in relation to accidents occurring after 01.04.2022.

ARGUMENTS ON BEHALF OF INSURER

7. Learned counsel for the appellant has vehemently argued that since the accident took place after coming into force of the Amendment Act, the Tribunal was not justified in issuing a direction to the appellant to pay compensation to the claimants with a right to recover. Elaborating his submissions, it is urged that Insurance Company's right to recover compensation from the owner of the offending vehicle flows from the proviso attached to sub-section (4) of Section 149 of Motor Vehicles Act, 1988, however, the said proviso has been omitted by Act of 2019 and, therefore, in case of a breach of policy, it is only the owner against whom award can be directly made and Insurer is liable to be relieved from any liability to indemnify the owner. It is further submitted that language used in the statute being plain and simple, nothing can be read which the statute does not contain and, hence, earlier judgments laying down proposition to first pay compensation to the claimants and then have right to recover the same from the owner, would have no application as in none of the authorities so far, the effect of amendments made by the Act of 2019 has been examined. Entire Chapter XI of the Act of 1988 has been replaced by new Chapter XI and in place of

Section 149 of the Act of 1988, Section 150 has been substituted, which does not contain any provision/proviso as was earlier attached to sub-section (4) giving right to the Insurer to recover the amount in case of breach of policy. Placing reliance upon Statement of Objects and Reasons behind enactment of Act of 2019, it is urged that after considering numerous representations and recommendations in the form of grievances and suggestions from various stake-holders, legislature has, in its wisdom, brought into existence the Amendment Act to minimize road accidents and disregard traffic rules and regulations and to improve road safety and transport system. There is flood of cases where either fake claims are raised or the claimants collude with the owners of the offending vehicle and proceed in such a manner so that ultimately, though breach of insurance policy is found, liability to pay compensation at the first instance is enforced against the Insurance Company, knowing well that owner's role would come into picture when the recovery is issued against him by which time the claimants would have been compensated and a situation would arise where for years together, owners would remain absolved of liability.

8. Elaborating his submissions, it is urged by Shri Parihar as under:-

(a) Section 149 (4) and amended provision section 150 (4) reflect that the unamended section 149 (2) provided two defences to the Insurance Co.:

i. Case of breach of policy mentioned section 149 (2)(a) of the Act and

ii. policy being void as per section 149 (2) (b) of the Act.

(b) The unamended provision laid down that except under the situation provided by section 149 (2)(b), the insurer would not be in a position to avoid the liability because it has got right against the owner under the above provision. So, in a situation of breach of policy as provided u/s 149 (2)(a), the Insurance Co. would be held liable and it can recover the same in light of the proviso to Section 149(4).

(c) The amended Section 150 (2) provides three defences to the Insurance Co.:

i. Case of breach of policy-mentioned u/s 150 (2)(a) of the Act,

ii. Policy being void as per sec. 150 (2)(b) of the Act, and

iii. Non-receipt of premium.

(d) The amended provision, i.e. Section 150(4) provides that except under the situations provided by S.150(2), the insurer would not be in a position to avoid the liability. Meaning thereby that if the case falls under any of the defences reflected in Section 150(2) of the Act, the Insurer can avoid the liability.

(e) All the earlier precedents lose their precedential value as they relate to earlier unamended provision and, hence, do not contemplate the new amended provision and its implication. If the arguments of claimants are accepted that even after deletion of proviso by way of amendment Act, Insurance Company would be liable to pay compensation, permitting it to raise grounds of challenge would be a redundant provision and in no case, defence of Insurance Company would be entertainable.

(f) The power under Article 142 of the Constitution of India is in the exclusive domain of the Apex Court and can be exercised by the Apex Court alone to serve the ends of justice in the peculiar facts and circumstances of a case. Hence all the judgements of the Hon'ble Supreme Court invoking its power under Article 142 of the Constitution of India cannot be relied upon.

(g) The leading judgment in relation to Insurance Company's right to recover from the owner, i.e., **National Insurance Company Limited vs. Swaran Singh and others, JT 2004 (1) SC 109,** was pronounced when the proviso to sub-section (4) of Section 149 existed in the Statute Book and the matter before the Supreme Court had arisen out of interpretation of Section 149 *vis-a-vis* the proviso and once the proviso does not find place after amendment, any law laid down by the Supreme Court or this Court would not be read in relation to

those cases where accident took place after the Amendment Act has come into operation.

(h) The doctrine of “Stare decisis” directs courts to follow prior decisions of higher courts when resolving cases involving similar facts and law. The argument of the respondents and the judgments relied upon by them presented as examples of stare decisis suggesting that insurers cannot avoid liability and that 'Pay and Recover' still remains where liability is disputed, hold no ground as they are based on the now-deleted provisions of the Act, 1988.

(i) The amendments in Act are prospective in nature and, hence, the mandate of **Swaran Singh's** case would hold ground for all cases wherein the occurrence of accident predates the coming into force of the amendment, i.e. 1.4.2022, but not otherwise.

(j) It is a trite law that primary rule of interpretation/ construction is that the intention of the legislature must be found in the words used by the legislature itself. The Hon'ble Apex Court, in the case of **Satheedevi vs Prasanna, (2010) 5 SCC 622**, has held that 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.

(k) In the case of **Union of India vs. Deoki Nandan Aggarwal,1991 AIR SCW 2754,** the Hon'ble Apex Court has held that court cannot rewrite recast or reframe the legislation. A court cannot add words to a statute or read words which are not there in it. Even if there is a defect or an omission in the statute, the court cannot correct the defect or supply the omission.

(l) The Supreme Court has upheld the *Causus Omissus* maxim in several judgments, explicitly stating that such omissions cannot be addressed by judicial interpretation. In **M/s Unique Butyle Tube Industries Pvt. Ltd. vs. UP Financial Corporation and Others, AIR 2003 SC 2103**, it was held that the legislature's omissions (if any) cannot be filled by judicial interpretation. If a statute leaves out a particular situation, the courts cannot insert words to address that omission. In such a circumstance, reading something into a provision when the legislature in its wisdom has specifically omitted, deleted or repealed a provision or its part, would amount to doing violence to the statute and the same should not be done to the clear and plain language of the statute.

(m) Even laws that are beneficial must follow the constraints of statutory language ensuring a balance between legislative intent and literal interpretation The principle that "*the law is what the text say*s" underlines court judgments. While beneficial legislation plays an important role, it cannot override the clear and specific language of statutes as drafted by the legislature. The court cannot go beyond the framework established by the legislature.

9. In support of his submissions, learned counsel for the appellant has placed reliance upon the following authorities:-

(1) ***New India Assurance Co., Shimla vs. Kamla and others***, 2001(4) SCC 342

(2) ***National Insurance Co. Ltd. vs. Swaran Singh and others,*** JT 2004 (1) SC 109

(3) ***S. Iyyapan vs. United India Insurance Co. Ltd. And another,*** 2013 (7) SCC 62

(4) ***M/s Unique Butyle Tube Industries Pvt. Ltd. vs. U.P. Financial Corporation and others***, AIR 2003 SC 2103

(5) ***Satheedevi vs. Prasanna and another***, 2010 (5) SCC 622

(6) ***Union of India vs. Deoki Nandan Aggarwal***, 1991 AIR SCW 2754

(7) ***ICICI Lombard General Insurance Co. Ltd. vs. Suresh and 2 others***, 2024 (2) ADJ 576.

ARGUMENTS ON BEHALF OF CLAIMANTS AND OWNER

10. Per contra, learned counsel for the claimants-respondents as well as owner and driver of offending vehicle submit as under:-

(a) Amendments incorporated by the Act of 2019 would not absolve the liability of the Insurer to first pay compensation and irrespective of deletion of proviso to sub-section (4) of Section 149 by virtue of newly substituted Section 150, the Insurer shall have to pay compensation and right to recover compensation so paid from the owner would still remain intact.

(b) Requirements of issuance of insurance policy and limiting liability as per section 147 of Act of 1988 has to be read in the light of various sub-sections especially sub-section (1) (a), (b) and (5) thereof and a conjoint reading of the said provision with the previous sub-section (4) in Section 149 and newly substituted sub-section (4) of Section 150 would reveal that there is no change as far as indemnifying the owner of the vehicle by the Insurance Company is concerned.

(c) Even as on today, the Supreme Court has passed certain judgments whereby right to recover has been given to the Insurance Company and considering the fact that the Act is a beneficial legislation having benevolent object, the argument of Insurance Company that the award has to be

made against the owner and the Insurance Company has to be completely freed from indemnifying the owner cannot be accepted.

(d) Claimants being dependents of the deceased or themselves injured would not be in a position to recover the amount from the owner of the vehicle and, therefore, keeping in view the object of the Act, immediate compensation has to be paid to the claimants by the Insurance Company.

(e) If the Insurance Company keeps on issuing insurance policy and renew it without examining the requirements such as existence of a valid driving license or permit or other such components, in case breach of policy comes into light during the course of proceedings before Tribunal, the Company being at fault, it cannot absolve itself from liability to pay compensation and then recover from the owner.

(f) Despite replacement of Section 149 by substituted Section 150, liability of Insurance Company to indemnify the risk as provided under Section 147(5) of the Act of 1988 prior to amendment has not been taken away, rather the said sub-section has now been reintroduced as sub-section (6) of the Act after amendment and, therefore, liability of Insurance Company to first pay the amount to the claimants does not vanish.

(g) Insurance policy is a contract between insurer

and the owner and third party being alien to the contract, in case of breach of policy, claimants cannot suffer and beneficial legislation and object behind it containing provision of indemnifying the risk would stand frustrated if mere non-inclusion of proviso in sub-section (4) of Section 150 is interpreted to absolve the Insurance Company to first pay the amount to the claimants.

11. In support of their submissions, reliance has been placed upon the following authorities:-

(1) ***Praveenbhai S. Khambhayata vs. United India Insurance Company Ltd. & others*** 2015 (11) SCC 417

(2) ***National Insurance Co. Ltd. vs. Santro Devi and others***, 1997 (9) Supreme 458

(3) ***Amrit Paul Singh and another vs. Tata AIG General Insurance Company Limited and others***, 2018 (7) SCC 558

(4) ***National Insurance Co. Ltd. vs. Swaran Singh and others***, 2004 (3) SCC 297

(5) ***S. Iyyapan vs M/s United India Insurance Company Ltd. and another***, 2013 (7) SCC 62

(6) ***Shivawwa and another vs. The Branch Manager, National India Insurance Co. Ltd. And another,*** 2018 (5) SCC 762

(7) ***Balu Krishna Chavan vs. The Reliance General Insurance Company Ltd. And others***, 2023 ACJ 1546.

(8) ***Pappu and others vs. Vinod Kumar Lamba***

and another, 2018 (3) SCC 208

(9) ***Dhondubai vs. Hanmantappa Bandappa Gandigude (since deceased) through his LRs and others***, 2023 ACJ 1979.

(10) ***Oriental Insurance Company Ltd. Allahabad vs. Smt. Chandra Devi and another***, 2010 (5) AWC 4607

(11) ***Oriental Insurance Co. Ltd. vs. Sunita Rathi and others***, AIR 1998 SC 257

(12) ***V. Ravi vs. M/s New India Assurance Company Ltd.*** 1998 ACJ 598

(13) ***Uttar Pradesh State Road Transport Corporation vs. Kulsum and others***, 2011 (8) SCC 142.

(14) ***Manuara Khatun and others vs. Rajesh Kumar Singh and others***, 2017 (4) SCC 796.

(15) ***Shamanna and another vs. The Divisional Manager, The Oriental Insurance Co. Ltd. and others***, 2018 (9) SCC 650.

(16) ***Rishi Pal Singh vs. New India Assurance Co. Ltd. And others***, 2022 (3) ACC 556.

ANALYSIS OF RIVAL CONTENTIONS

12. Having heard learned counsel for the parties, this Court proceeds to deal with some relevant provisions of Act of 1988, both before and after amendments made in the year 2019.

Motor Vehicles Act, 1988

“147. Requirements of policies and limits of liability.—

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

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

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

(i) against any liability which may be incurred by him in respect of the death of or bodily injury to any person, including owner of the goods or his authorized representative carried in the vehicle or damage to any property of a third party caused by or arising out of the use of the vehicle in a public place;

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

Provided that a policy shall not be required—

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

(a) engaged in driving the vehicle, or

(b) if it is a public service vehicle engaged as 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, up to the following limits, namely:—

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

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

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

(3) A policy shall be of no effect for the purposes of this Chapter unless and until there is issued by the insurer in favour of the person by whom

the policy is effected a certificate of insurance in the prescribed form and containing the prescribed particulars of any condition subject to which the policy is issued and of any other prescribed matters; and different forms, particulars and matters may be prescribed in different cases.

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

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

.....

"149. Duty of insurers to satisfy judgments and awards against persons insured in respect of third party risks.—

(1) If, after a certificate of insurance has been issued under sub-section (3) of section 147 in favour of the person by whom a policy has been effected, judgment or award in respect of any such liability as is required to be covered by a policy under clause (b) of sub-section (1) of section 147 (being a liability covered by the terms of the policy) or under the provisions of

section 163A is obtained against any person insured by the policy, then, notwithstanding that the insurer may be entitled to avoid or cancel or may have avoided or cancelled the policy, the insurer shall, subject to the provisions of this section, pay to the person entitled to the benefit of the decree any sum not exceeding the sum assured payable thereunder, as if he were the judgment debtor, in respect of the liability, together with any amount payable in respect of costs and any sum payable in respect of interest on that sum by virtue of any enactment relating to interest on judgments.

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

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

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

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

(b) for organized racing and speed testing, or

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

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

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

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

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

(3) .....

(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.

Motor Vehicles Act, 1988 [As amended by Motor Vehicles (Amendment) Act, 2019]

"150. Duty of insurers to satisfy judgments and awards against persons insured in respect of third party risks.-

(1) If, after a certificate of insurance has been issued under sub-section (3) of section 147 in favour of the person by whom a policy has been effected, judgment or award in respect of any such liability as is required to be covered by a policy under clause (b) of sub-section (1) of section 147 (being a liability covered by the terms of the policy) or under the provisions of section 164 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 award any sum not exceeding the sum assured payable thereunder, as if that person were the decree holder, 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 its execution is stayed pending an appeal; and an insurer to whom notice of the bringing of any such proceedings is so given shall be entitled to be made a party thereto, and **to defend the action on any of**

the following grounds, namely:—

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

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

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

(B) for organised racing and speed testing; or

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

(D) without side-car being attached where the vehicle is a two-wheeled vehicle; or

(ii) a condition excluding driving by a named person or by any person who is not duly licenced or by any person who has been disqualified for holding or obtaining a driving licence during the period of disqualification or driving under the influence of alcohol or drugs as laid down in section 185; 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 nondisclosure of any material fact or by representation of any fact which was

false in some material particular; or

(c) that there is non-receipt of premium as required under section 64VB of the Insurance Act, 1938.

(3) .....

(4) Where a certificate of insurance has been issued under sub-section (3) of section 147 to the person by whom a policy has been effected, so much of the policy as purports to restrict the insurance of the persons insured thereby, by reference to any condition other than those in 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.

FEW AUTHORITIES ON COMPULSORY INSURANCE

13. The Supreme Court, in ***United India Insurance Company Limited v. Santro Devi and Ors.,*** **(2009) 1 SCC 558** observed that the provisions of compulsory insurance have been framed to advance a social object. It is in a way part of the social justice doctrine. When a certificate of insurance is issued, in law, the insurance company is bound to reimburse the owner. There cannot be any doubt whatsoever that a contract of insurance must fulfill the statutory requirements of formation of a valid contract but in case of a third- party risk, the question has to be considered from a different angle. It was further held that section 146 of the Act gives complete protection to Third Party in respect of death or bodily injury or damage to the property while using the vehicle in public

place. For that purpose, insurance of the vehicle has been made compulsory to the vehicles or to the owners. This would further reflect that compulsory insurance is obviously for the benefit of Third Parties. The judgment in ***Santro Devi (supra)*** was followed by Supreme Court in ***Uttar Pradesh State Road Transport Corporation vs. Kulsum and other,*** **2011 (8) SCC 142.**

14. In ***G. Govindan vs. New India Assurance Co. Ltd. and others***, 1999 (3) SCC 754, the Supreme Court, dealing with mandatory requirement of statute governing insurance qua third party risks, observed in paragraph Nos. 12, 13 and 15 as under:-

> "12. The heading of Chapter VIII of the old Act reads as "Insurance of Motor Vehicles against Third Party Risks". A perusal of the provisions under Chapter VIII makes it clear that the Legislature made insurance of motor vehicles compulsory against third-party (victims) risks. This Court in *New Asiatic Insurance Co. Ltd. v. Pessumal Dhanamal Aswani & Ors.*, AIR (1964) SC 1736 **after noticing the compulsory nature of insurance against third- party observed that once the company had undertaken liability to third parties incurred by the persons specified in the policy, the third parties' right to recover any amount under or by virtue of the provisions of the Act is not affected by any condition in the policy.**
>
> 13. In our opinion that both under the old act and under the new Act the Legislature was anxious to protect the third party (victim) interest. It appears that what was implicit in the provisions of the old Act is now made

explicit, presumably in view of the conflicting decisions on this aspect among the various High Courts.

15. As between the two conflicting views of the full bench judgments noticed above, **we prefer to approve the ratio laid down by the Andhra Pradesh High Court in *Kondaiah's* case (*Madineni Kondaiah v. Yaseen Fatima: AIR 1986 AP 62*) as it advances the object of the Legislature to protect the third party interest.** We hasten to add that the third party here will not include a transferee whose transferor has not followed procedure for transfer of policy. In other words in accord with the well- settled rule of interpretation of statutes **we are inclined to hold that the view taken by the Andhra Pradesh High Court in *Kondaiah's* case is preferable to the contrary views taken by the Karnataka (*National Insurance Co. Ltd. v. Mallikarjun: AIR 1990 Kant 166*) and Delhi *(Anand Sarup Sharma v. P.P. Khurana: 1989 ACJ 577 (Del) (FB)* High Courts (supra) even assuming that two views are possible on the interpretation of relevant sections as it promotes the object of the Legislature in protecting the third party (victim) interest.** The ratio laid down in the judgment of Karnataka & Delhi High Courts (supra) differing from Andhra Pradesh High Court is not the correct one."

LEADING AUTHORITIES ON 'PAY AND RECOVER'

15. In ***Kamla*** (supra), the Supreme Court dealt with the then existing Chapter XI of the Act of 1988 and 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 were 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."

16. Indisputably, the Supreme Court in ***Kamla*** (supra), ***Swaran Singh*** (supra) and other judgments cited on that line was dealing with unamended provisions which, had not come into light by that time as the amending Act was enacted in 2019. First paragraph of ***Swaran Singh*** (supra) reads as under:-

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

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

The relevant ratio of ***Swaran Singh*** (supra) in the form of summary of findings is as under:-

> **"108.** The summary of our findings to the various issues as raised in these petitions are as follows:
>
> (i) **Chapter XI of the Motor Vehicles Act, 1988 providing compulsory insurance of vehicles against third party risks is a social welfare legislation to extend relief by compensation to victims of accidents caused by use of motor vehicles. The provisions of compulsory insurance coverage of all vehicles are with this paramount object and the provisions of the Act have to be so interpreted as to effectuate the said object.**
>
> (ii) .....
>
> (iii) The breach of policy condition e.g., disqualification of driver or invalid driving licence of the driver, as contained in sub-section (2)(a)(ii) of section 149, have to be proved to have been committed by the insured for avoiding liability by the insurer. Mere absence, fake or invalid driving licence or disqualification of the driver for driving at the relevant time, are not in themselves defences available to the insurer against either the insured or the third parties. To avoid its liability towards insured, the insurer has to prove that the insured was guilty of negligence and failed to exercise reasonable care in the matter of fulfilling the condition of the policy regarding use of vehicles by duly licensed driver or one who was not disqualified to drive at the relevant time.
>
> (iv) The insurance companies are, however, with a view to avoid their liability must not only establish the available defence(s) raised in the

said proceedings but must also establish 'breach' on the part of the owner of the vehicle; the burden of proof wherefor would be on them.

(v) .....

(vi) Even where the insurer is able to prove breach on the part of the insured concerning the policy condition regarding holding of a valid licence by the driver or his qualification to drive during the relevant period, the insurer would not be allowed to avoid its liability towards insured unless the said breach or breaches on the condition of driving licence is/ are so fundamental as are found to have contributed to the cause of the accident. The Tribunals in interpreting the policy conditions would apply "the rule of main purpose" and the concept of "fundamental breach" to allow defences available to the insured under section 149(2) of the Act.

(vii) .....

(viii) .....

(ix) .....

(x) **Where on adjudication of the claim under the Act the tribunal arrives at a conclusion that the insurer has satisfactorily proved its defence in accordance with the provisions of section 149(2) read with sub-section (7), as interpreted by this Court above, the Tribunal can direct that the insurer is liable to be reimbursed by the insured for the compensation and other amounts which it has been compelled to pay to the third party under the award of the tribunal. Such determination of claim by the Tribunal will be enforceable and the money found due to the insurer from the insured will be recoverable on a certificate issued by the tribunal to the Collector in the same manner under Section 174 of the Act as arrears of**

land revenue. The certificate will be issued for the recovery as arrears of land revenue only if, as required by sub-section (3) of Section 168 of the Act the insured fails to deposit the amount awarded in favour of the insurer within thirty days from the date of announcement of the award by the tribunal.

(xi) .....

17. The Court, in the light of judicial precedents referred above, now proceeds to deal with the object of the Act, spirit of relevant provisions, both before and after amendments and to answer the core question involved.

18. Section 147 of the Act, after amendment, remains unchanged except renumbering of one or the other sub-section. According to it, a policy of insurance insures the person or classes of persons specified in the policy to the extent specified in sub-section (2) against any liability which may be incurred by him in respect of the death of or bodily injury to any person including owner of the goods or his authorised representative carried in the motor vehicle or damage to any property of a third party caused by or arising out of the use of the motor vehicle in a public place; against the death of or bodily injury to any passenger of a transport vehicle, except gratuitous passengers of a goods vehicle, caused by or arising out of the use of the motor vehicle in a public place. It is, therefore, apparent that insurance policy covers **third party risks** in case of death of or of bodily injury.

19. Sub-section (2) of Section 149, before amendment, contemplates grounds on which an Insurance Company can defend its liability to pay compensation and one of the grounds is that there has been a breach of specified condition of the policy. The conditions have also been specifically enumerated. The question is as to whether in a case of breach of policy, the Insurance Company would be liable to pay compensation or to indemnify the owner at the first instance and as to whether right to recover is still available available to the insurer.

20. It is clear that when conditions other than those mentioned in clause (b) of sub-section (2) of Section 149 exist, the policy shall be of no effect. In such event, though the sum is initially payable by the insurer towards discharge of liability covered by the policy, the same shall be recoverable by the insurer from the person, who is actually liable to pay compensation, i.e. owner of the offending vehicle. The substituted Section 150 does not contain any such provision giving right of recovery. As a matter of fact the proviso has been omitted and sub-section (2) of Section 150 clearly lays down that Insurance Company can defend the action on any of the grounds mentioned therein which include breach of a specified condition of the policy, specifying the conditions of breach also.

21. When the language used in sub-Section (4) of Section 149 prior to amendment as replaced by sub-Section (4) of Section 150 by the Amendment Act of

2019, is carefully examined, the words **"<u>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</u>"** would only mean that under the circumstances covered by sub-Section (4), either of Section 149 or Section 150, the insurer would be well within its rights to avoid liability flowing from the insurance policy. Meaning thereby that the insurer would be absolved of bearing liability to pay compensation to the claimants. It does not mean that the insurer would also be absolved from its liability to indemnify the owner's risk. Such indemnification will still continue to remain alive and the insurer shall have to first pay the compensation through indemnification and, then, it shall have a right to recover from the owner the amount paid as the ultimate liability shall have to be borne by the owner and not by insurer. In such an event, there would be no financial loss to the insurer as it would be compensated through recovery from the owner. **The aforesaid provisions are expressly to give defence to the insurer and have to be read to that extent only and not to interpret as if the liability to indemnify stands washed away.** It therefore follows that even if the proviso to sub-Section (4) would not have been there before the amendment, the indemnification concept would have still remained alive and operative and, hence, mere omission of the proviso by the Amendment Act of 2019 would be of no avail.

22. Therefore, when Shri Parihar urges that if, in

every case, liability to pay compensation has to be borne by the Insurance Company, there would be no effect of providing grounds for defence either under sub-section (2) of the Act prior to amendment or under sub-section (2) of the Act after amendment, this Court finds no force in the submission. The reason is that providing grounds of defence under the said provisions would be read so as to give an opportunity to the Insurance Company to avoid passing of award against it, i,e, holding it liable to bear the award. The said liability to have an award against the Insurance Company is distinct from the situation where award is against the owner and insurer is made liable to pay compensation to the claimants and then recover the same from the owner. Non-receipt of premium as required under Section 64(V)B of the Insurance Act, 1938 has now been added in Section 150(2). It reflects that even in a case where premium is not received by the Insurance Company, it can raise a ground of challenge so as to avoid passing of award against it and, in that event also, award would be drawn against the owner. When payment or non-payment of premium is significant after amendment and has been made a ground of defence, the Court observes that a third party risk is covered under the policy which is a contract and premium qua third party risk is received by the insurer in relation to the contract. Therefore, policy continues to subsist to cover third party risk so long the premium is received and non-payment thereof would absolve the Insurance Company from its liability of an award being passed against it.

CONCEPT OF 'PAY AND RECOVER'

23. To better understand as to whether 'PAY AND RECOVER' aspect is still left after amendment, words "**any sum paid by the insurer in or towards the discharge of any liability of any person which is covered by the policy**" used in proviso attached to section 149(4) need to be read and understood with great caution. The words used are **"paid by the insurer"** and not **"payable by the insurer"**. There is a distinction between **"paid"** and **"payable"** as per the scheme of the Act. The sum shall become payable by the insurer when the award is passed against it holding it liable to bear the award on its shoulders for all time to come without any further shift in such liability. The proviso existed earlier gives the insurer a right to recover the amount from the owner which **has been paid by it** and **not payable by it.**

24. Award is made under Section 168 of the Act. Sub section (3) of Section 168 reads as under:-.

> **"168 – Award of the Claims Tribunal-**
>
> (3) When an award is made under this section, the person who is required to pay any amount in terms of such award shall, within thirty days of the date of announcing the award by the Claims Tribunal, deposit the entire amount awarded in such manner as the Claims Tribunal may direct."

Words "**a person who is required to pay any amount in terms of such award"** mentioned in sub-section (3)

of Section 168 not only mean a person who has to finally satisfy the award but also include a person, who has been directed to pay any amount in terms of the award. The said person may also be insurer and that is why whenever the insurer is directed to pay any amount in terms of award and the right of recovery is also given to it, the insurer has to deposit the amount before the Tribunal within thirty days. In such situation, it does not mean that if the insurer deposits the amount, its right to recover stands vanished, rather such right is specifically conferred upon the insurer under the award itself. **The said provision does not mean that it is the liability of the Insurance Company to bear the award for all time to come but it only means that it has to pay the amount only for transitional period and the chapter is not closed forever as the right to recover is very much there. The award has to be read as a whole and not in piece-meal.**

25. The Court cannot overlook an aspect that Section 147(5) of the Act, prior to amendment has been replaced by Section 147(6) of the Act after amendment but there are no qualifying words referable to section 150. Sub-section (6) of section 147 reads as under:-

> "(6) Notwithstanding anything contained in any other 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."

From renumbering of the sub-section, as above, it follows that once the liability to indemnify the person specified in the policy, as per sub-section (6) of Section 147, even after amendment, continues to exist in the Statute book and it excludes applicability of any other law for the time being in force, indemnification by the insurer does not vanish even after amendments incorporated by the Act of 2019. The right to recover the amount paid to the claimants as per conditions mentioned in section 150 would still be available to the insurer as indemnification has not been taken away by the legislature nor has it been explained by adding words to section 147 or anywhere else.

26. This Court also finds that since the contract of insurance is between insurer and the owner and has no concern with the claimants who are in fact victims of the accident, language used in Section 149 (prior to amendment) and Section 150 (after amendment) would show that notwithstanding the fact that the insurer may be entitled to avoid or cancel the policy on account of breach of terms thereof, it shall pay to the person entitled to the benefit of the award. Therefore, whether Insurance Company cancels or does not cancel an insurance policy, the same has nothing to do with the claimants and they are entitled to get the amount from insurer. It means that claimants' right to receive compensation from the insurer at the first instance is unaffected by the *inter-se* rights and liabilities arising out of contract between the insurer and the owner.

27. Words "**no sum shall be payable by the insurer under sub-section (1)**" used either in Section 149 of the Act of 1988 (prior to amendment) in Section 150 (after amendment) would mean that if the grounds of defence set-forth in sub-section (2) of Section 149 or Section 150, as the case may be, exist, no sum shall be payable by the insurer. **It does not mean that the sum shall not be paid by the insurer if the award contains a direction to the insurer to pay and recover**. Liability to pay the amount has to be segregated from actual payment made by the insurer in case of survival and existence of insurance policy issued under Section 147 of the Act. Word **"liability"** has to be understood as the **"final liability to bear the award for all time to come"** separate from concept of indemnification by the insurer by making immediate payment.

28. Whenever a claim petition is decided by the Tribunal, thirty days' time is granted under section 168(3) by the Tribunal for depositing the amount, failing which recovery proceedings in terms of Section 174 of the Act would be initiated. Section 174 is quoted for a ready reference:-

> **"174. Recovery of money from insurer as arrear of land revenue.**—Where any amount is due from any person under an award, the Claims Tribunal may, on an application made to it by the person entitled to the amount, issue a certificate for the amount to the Collector and the Collector shall proceed to recover the same

> in the same manner as an arrear of land revenue."

Certainly, recovery as arrears of land revenue in the State of U.P. would then be ensured as per Chapter X of the **Uttar Pradesh Zamindari Abolition & Land Reforms Rules, 1952**. Now suppose Tribunal issues a recovery certificate on account of non-deposit of amount by the insurer in terms of the award towards indemnification and if, during the period of limitation for filing the appeal under Section 173 of the Act, the insurer approaches the High Court where on one or the other ground, an interim order is passed, the insurer, in almost all cases, barring few exceptions, is put to financial terms in such a way that the claimants get some financial relief even during the pendency of appeal. This is done as per the legislative mandate contained under sub-Rule (5) of Rule 5 of Order XLI of the Code of Civil Procedure (as applicable in the State of U.P.), which reads as under:-

> "(5) Notwithstanding anything contained in the foregoing sub-rules where the appeal is against the decree for payment of money, the Appellate Court shall not make an order staying the execution of the decree, unless the appellant shall, within such time as the Appellate Court may allow, deposit the amount disputed in the appeal or furnish such security in respect thereof as the Appellate Court may think fit."

29. Therefore, when the provisions of the Act of 1988 are read with C.P.C., it becomes clear that as soon as an award is passed, the claimants become entitled to

get the amount of compensation and they get financial relief even during the pendency of the appeal filed by the insurer.

30. At this juncture, this Court also thinks it appropriate to make a reference of the Statement of Objects and Reasons behind introducing the Amendment Act, 2019. The relevant clauses of the same are quoted hereunder:-

> **Statement of Objects and Reasons**
>
> "The Motor Vehicles Act, 1988 (the Act), was enacted with a view to consolidate and amend the laws relating to motor vehicles. The Act was enacted to give effect to the suggestions made by the Supreme Court in M.K. Kunhimohammed Vs P. A. Ahmedkutty (1987) 4 SCC 284.
>
> 2. The Act was amended several times to adapt to the technological up gradation emerging in road transport, passenger and freight movement and in motor vehicle management. With rapidly increasing motorisation, India is facing an increasing burden of road traffic injuries and fatalities. **The emotional and social trauma caused to the family which loses its bread winner, cannot be quantified.** India is signatory to the Brasilia Declaration and is committed to reduce the number of road accident fatality by fifty per cent. by the year 2020. The road transport sector also plays a major role in the economy of the country.
>
> 3. Numerous representations and recommendations in the form of grievances and suggestions from various stakeholders have been received in the Ministry, citing

cases of increase in road accidents, delay in issue of driving licences, the disregard of traffic rules and regulations, etc. Therefore, in order to improve road safety and transport system, certain amendments are required to be made in the Motor Vehicles Act, 1988 to address safety and efficiency issues in the transport sector.

4. In view of the above, it has become necessary to amend certain provisions of the said Act. The proposed Motor Vehicles (Amendment) Bill, 2019 seeks to address the issues relating to road safety, citizen facilitation, strengthening public transport, automation and computerisation.

5. The Motor Vehicles (Amendment) Bill, 2019, inter alia, provides for the following, namely:—

(a) to facilitate grant of online learning licence;

(b) to replace the existing provisions of insurance with simplified provisions in order to provide expeditious help to accident victims and their families;

(c) to increase the time limit for renewal of driving licence from one month to one year before and after the expiry date;

(d) to increase the period for renewal of transport licence from three years to five years;

(e) to enable the licensing authority to grant licence even to the differently abled persons;

(f) to enable the States to promote

public transport, rural transport and last mile connectivity by relaxing any of the provisions of the Act pertaining to permits;

(g) to increase the fines and penalties for violation of provisions of the Act; and

(h) to make a provision for protection of Good Samaritans.

6. The Notes on clauses explain in detail the various provisions contained in the Bill.

7. The Bill seeks to achieve the above objectives."

.....

"Clause 51 seeks to substitute Chapter XI of the Act with a new Chapter XI. **This Chapter aims to simplify the third party insurance for motor vehicles**. It empowers the Central Government to prescribe the minimum premium and the corresponding liability of the insurer for such a policy. **It also provides for compensation on the basis of no-fault liability, scheme for the treatment of accident victims during the golden hour and provides for increase in the compensation to accident victims to five lakh rupees in the case of death and two and a half lakh rupees in the case of grievous hurt. It also provides a scheme for interim relief to be given to claimants."**

31. A bare perusal of clause 2 read with clause 5 (b) and clause 51 reflects that the intention of the legislature was never to withdraw protection and reliefs as regards compensation ensured by the previous existing provisions. Rather, the Bill strives more towards ensuring expeditious help to the accident victims and their families. **The emotional and social trauma caused to the family which loses its bread winner, is still one of the special considerations as set forth in the Statement above, The Bill was brought with an object to replace the existing provisions of insurance with simplified provisions in order to provide expeditious help to accident victims and their families**. There is nothing in the Statement of Objects and Reasons which may, either directly or indirectly, infer withdrawal of insurer's liability to pay compensation as soon as the award is declared, even in case of occurrence of breach of policy or other existence of similar grounds of defence available to the insurer. Therefore, the purpose behind bringing amendments in the Act of 1988 was clearly to provide immediate financial help to the accident victims and their dependents and not to create a situation where they are made to run from pillar to post even after an award is declared in their favour.

PURPOSIVE INTERPRETATION OF STATUTE

32. Jurisprudence of statutory interpretation has moved from literal interpretation to purposive interpretation, which advances the purpose and object

of a legislation. The Supreme Court in catena of judgments has dealt with the issue of literal interpretation vis-a-vis purposive interpretation. The Apex Court, in **Central India Spinning and Weaving Manufacturing Comp. versus Municipal Committee, Wardha, AIR 1958 SC 341** has held that it is a recognized principle of construction that general words and phrases however wide and comprehensive they may be in their literal sense must usually be construed as being limited to the actual objects of the Act.

33. In **Girdhari Lal & Sons versus Balbir Nath Mathur); 1986 (2) SCC 237**, it was held that the primary and foremost task of a Court in interpreting a statute is to ascertain the intention of the legislature, actual or imputed. Having ascertained the intention, the Court must then strive to so interpret the statute as to promote and advance the object and purpose of the enactment. For this purpose, where necessary the Court may even depart from the rule that plain words should be interpreted according to their plain meaning. There need no meek and mute submission to the plainness of the language. To avoid patent injustice, anomaly or absurdity or to avoid invalidation of a law, the court would be well justified in departing from the so-called golden rule of construction so as to give effect to the object and purpose of the enactment by supplementing the written word if necessary. Ascertainment of legislative intent is a basic rule of statutory construction and that a rule of construction should be preferred

which advances the purpose and object of a legislation and that though a construction, according to plain language, should ordinarily be adopted, such a construction should not be adopted where it leads to anomalies, injustices, or absurdities, vide **K.P. Varghese v. ITO,** (1981) 4 SCC 173, **State Bank of Travancore v. Mohd. M. Khan,** (1981) 4 SCC 82, **Som Prakash Rekhi v. Union of India** (1981) 1 SCC 449, **Ravula Subba Rao v. CIT,** AIR 1956 SC 604, **Govindlal V Agricultural Produce Market Committee,** (1975) 2 SCC 482 and **Babaji Kondaji v. Nasik Merchants Co-op Bank Ltd.** (1984) 2 SCC 50.

34. Utkal Contractors & Joinery Pvt. Ltd. versus State of Orissa; 1987 (3) SCC 279 is an authority holding that a statute is best understood if we know the reason for it. The reason for a statute is the safest guide to its interpretation. The words of a statute take their colour from the reason for it. There are external and internal aids. The external aids are Statement of Objects and Reasons when the Bill is presented to Parliament, the reports of Committees which preceded the Bill and the reports of Parliamentary Committees. Occasional excursions into the debates of Parliament are permitted. Internal aids are the Preamble, the scheme and the provisions of the Act. Having discovered the reason for the statute and so having set the sail to the wind, the interpreter may proceed ahead. No provision in the statute and no word of the statute may be construed in isolation. Every provision and every word must be looked at generally

before any provision or word is attempted to be construed. The setting and the pattern are important. It is again important to remember that Parliament does not waste its breath unnecessarily. Just as Parliament is not expected to use unnecessary expressions, Parliament is also not expected to express itself unnecessarily. Even as Parliament does not use any word without meaning something, Parliament does not legislate where no legislation is called for. Parliament cannot be assumed to legislate for the sake of legislation; nor can it be assumed to make pointless legislation. [See- **Eera (through Dr. Manjula Krippendorf) v. State (NCT of Delhi) and Anr** 2017(15) SCC 133].

35. The Apex Court, in **Reserve Bank of India Vs. Peerless General Finance and Investment Co. Ltd. & Ors.** (1987) 1 SCC 424, held that Interpretation must depend on the text and the context. They are the bases of interpretation. One may well say if the text is the texture, context is what gives the colour. Neither can be ignored. Both are important. That interpretation is best which makes the textual interpretation match the contextual. A statute is best interpreted when we know why it was enacted. With this knowledge, the statute must be read, first as a whole and then section by section, clause by clause, phrase by phrase and word by word. If a statute is looked at, in the context of its enactment, with the glasses of the statute-maker, provided by such context, its scheme, the sections, clauses, phrases and words may take colour and appear

different than when the statute is looked at without the glasses provided by the context. With these glasses we must look at the Act as a whole and discover what each section, each clause, each phrase and each word is meant and designed to say as to fit into the scheme of the entire Act. No part of a statute and no word of a statute can be construed in isolation. Statutes have to be construed so that every word has a place and everything is in its place.

36. Same view has been reiterated in **S. Gopal Reddy Vs. State of Andhra Pradesh**, (1996) 4 SCC 596, **Prakash Kumar Alias Prakash Bhutto Vs. State of Gujarat,** (2005) 2 SCC 409, **Anwar Hasan Khan Vs. Mohd. Shafi & Ors.** (2001) 8 SCC 540, **Union of India & Ors. Vs. Filip Tiago De Gama of Vedem Vasco De Gama**, (1990) 1 SCC 277, **Reserve Bank of India v. Peerless General Finance and Investment Co. Ltd.,** (1987) 1 SCC 424: (AIR 1987 SC 1023) and **N. K. Jain v. C. K. Shah** (1991) 2 SCC 495: (AIR 1991 SC1289).

37. From the over all discussion made above, it is crystal clear that the object of the Motor Vehicles Act, 1988, either before the amendment or thereafter, particularly covered by Chapter XI thereof, is to compensate victims of accidents in case of an insurance policy being in existence. In view of the interpretation made, holding that omission of the proviso would exonerate the insurer of its liability to indemnify at the first instance would be too wild a proposition and would

result in creating a situation where the insurer would be out of scene despite an insurance policy being there and the claimants would have to again fight for getting the amount of compensation through execution proceedings in one way or the other, searching the owner through the process of Court. In such an event, the claimants would face further harassment and nobody knows that despite a money decree in the nature of an award being there in their favour, as to whether the claimants would ever be able to get the compensation realized through recovery proceedings directly from the owner. Accordingly, the legislative intent becomes clear and there is nothing to support the insurer's arguments flowing from interpretation of Statute or *Causus Omissus*. The contention advanced on behalf of insurer stands discarded.

CONCLUSION

38. The Court, therefore, holds that mere omission of proviso attached to sub-section (4) of Section 149 of Motor Vehicles Act, 1988 after its replacement by Section 150 of Motor Vehicles (Amendment) Act, 2019 (32 of 2019), neither takes away the liability of the insurer to pay the claimants nor its right to recover the said amount from the owner. The law to this effect remains intact and unaffected by Amendment Act, 2019 and, hence, insurer shall continue to indemnify the owner's risk in relation to accidents taking place after 01.04.2022 and "PAY & RECOVER" principle will still continue to govern the field advancing social object of

the Statute protecting third party interest. Principle of law laid down by the Supreme Court in **National Insurance Company Limited vs. Swaran Singh and others, JT 2004 (1) SC 109** has not lost its significance and binding effect despite omission of proviso**.** Held accordingly.

39. Consequently, all the appeals fail and are **dismissed**.

Order Date :- 31.01.2025
Sazia

(Kshitij Shailendra, J.)