* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% ***Reserved on : 29th September 2026***
Pronounced on : 06th November 2026
Uploaded on : 06th November 2026

\# **CNR No. DLHC011644812018**

\+ **MAC.APP. 610/2018 & CM APPL. 26578/2018**

ORIENTAL INSURANCE CO LTD .....Appellant

Through: Mr. Tarkeshwar Nath, Mr. Harshit Singh, Mr. Satyam Roy, Advocates.
Mr. Abhinav Kumar, Dy. Manager, OIC (through VC).

versus

SANJAY & ORS .....Respondents

Through: Mr. Manish Maini, Mr. Abhinav Sharma, Ms. Anjali Singh, Ms. Aastha Chauhan, Advocates for Respondent No.1.
Mr. Sameer Nandwani, Advocate/ *Amicus Curiae.*

\# **CNR No. DLHC010067272019**

\+ **MAC.APP. 45/2019**

SANJAY .....Appellant

Through: Mr. Manish Maini, Mr. Abhinav Sharma, Ms. Anjali Singh, Ms. Aastha Chauhan, Advocates.

versus

ORIENTAL INSURANCE COMPANY LTD & ORS....Respondents

Through: Mr. Tarkeshwar Nath, Mr. Harshit Singh, Mr. Satyam Roy, Advocates for Respondent No.1.
Mr. Abhinav Kumar, Dy. Manager,

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OIC (through VC).
Mr. Sameer Nandwani, Advocate/ Amicus Curiae.

CORAM:
HON'BLE MR. JUSTICE ANISH DAYAL

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JUDGMENT

ANISH DAYAL, J.

1. These appeals raise the issue of third-party liability owed by the Insurance Company in cases where the cheque for payment of premium, issued by the insured, was dishonoured prior to the accident.

2. These cross-appeals have been filed assailing impugned award dated 19th May 2018 passed by the Motor Accident Claims Tribunal, Shahdara District, Karkardooma Courts, Delhi ('***Tribunal/MACT***') in *MACT No.541/2016*. While, *MAC.APP.610/2018* has been filed by the Insurance Company, pleading for exoneration from liability basis that the cheque for payment of premium for insurance bounced and the insurance policy stood cancelled. *MAC.APP. 45/2019* on the other hand, has been filed by *Sanjay* (hereinafter, '***claimant***'), seeking enhancement of compensation.

3. By order dated 09th July 2018, notice had been issued in *MAC.APP.610/2018*, directing the Insurance Company to deposit the entire awarded amount, subject to which enforcement of the impugned award had been stayed. Thereafter, on 11th November 2022, 50% of the awarded amount along with interest, had been released to the claimant.

The Accident

4. The accident occurred on 10th October 2014 at about 06:40 am, when the claimant left his house and was travelling to his office at Municipal Corporation of Delhi ('***MCD***'), Karkardooma by bicycle. He was hit by a mini-bus bearing registration No. DL-1PB-9872 (hereinafter, '***offending vehicle***'). FIR No.789/2014 was registered under Sections 279/338 of

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Indian Penal Code, 1860 (*IPC*) with P.S. *Farsh Bazar* and the driver had been arrested and charge-sheeted.

5. Driver and owner did not contest the claim petition before MACT and were proceeded *ex-parte vide* order dated 07th August 2015. Driver and owner did not appear before this Court as well, and the matter was contested between the Insurance Company and claimant through their respective counsels, *Mr. Harshit Singh* and *Mr. Manish Maini*. Attempts for service was made on driver & owner and ultimately, they were served through publication; however, nobody has appeared for many dates since 2018 till 2026.

6. Offending vehicle was insured with the Insurance Company, however, the cheque against payment of premium had been dishonoured and this had been communicated by Insurance Company to the owner, as well as, to the Regional Transport Office ('***RTO***'). MACT, however, relied on certain decisions to conclude that subsequent cancellation of insurance policy does not affect the rights of third-party, which accrue as on the date of accident and mere right of recovery had been granted.

7. Insurance Company was directed to pay the compensation amount with rights of recovery from driver & owner, who were held jointly and severally liable to pay the amount of compensation. Compensation of *Rs.9,25,000/-* along with 9% interest was awarded and directions for staggered release from fixed deposits was given.

Submissions on behalf of parties

8. *Mr. Harshit Singh*, counsel for Insurance Company, first placed the undisputed facts before the Court.

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9. The insurance policy was effective from 19th January 2014 to 18th January. Subsequently, the insurance policy was cancelled due to dishonour of cheque on account of '*insufficient funds*' on 20th January 2014. The accident had occurred nine months thereafter on 10th October 2014.

10. Communication regarding cancellation of the insurance policy was sent to the owner and RTO, as under:

a. *R3W1/1* was the cheque issued on 10th January 2014;

b. *R3W1/2* was the Return Memo;

c. *R3W1/3* was the endorsement for the cancelled insurance policy and schedule;

d. *R3W1/4* was the letter dated 21st January 2014 issued to the owner;

e. *R3W1/5* was the letter dated 21st January 2014 to the RTO;

f. *R3W1/6* was dispatch noting and postal receipts, regarding issuance of letter of cancellation to the owner; and

g. *R3W1/7* was dispatch noting and postal receipts, regarding issuance of letter of cancellation to the RTO.

11. The Court has perused these documents and finds them to be in order, proved by the testimony of *Ms. Vinita Bajaj,* Assistant Manager, Oriental Insurance Company ('***R3W1***'). Return date of the cheque was 17th January 2014. On 20th January 2014, an endorsement schedule was issued which stated that, "*it is hereby declared that consequent upon dishonour of the cheque, this policy has become void ab initio for want of consideration. Therefore, the Company shall have no liability of whatsoever nature under this policy.*" Thereafter, on 21st January 2014, a communication was

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addressed to the owner-*Rajan Kumar* (*the insured*), stating that the cheque had been dishonoured and that the insurance policy stands cancelled and, no claim shall be entertained.

12. On the same date, a communication was sent to the RTO, stating that the cheque had been dishonoured and the insurance policy stands cancelled from their end, "*right from inception of the policy*". It was further noted that, "*there is no cover for vehicle number DL-01PB-9872*". Notes from the dispatch register of the Insurance Company sent to owner-*Rajan Kumar*, as well as, to the RTO has been noted and the speed-post receipt has been exhibited.

13. Further, during the proceedings, notice was issued under Order XII Rule 8 of the Code of Civil Procedure, 1908 ('***CPC***') to owner of the offending vehicle to produce the original insurance policy, which had been declared '*void ab initio*' on account of dishonour of the cheque, with all the details thereafter provided. The Insurance Company had taken an objection upfront, in their written statement, which has also been perused.

14. *Mr. Harshit Singh*, counsel for Insurance Company, relied upon the decisions of Supreme Court in ***Deddappa & Ors. v. Branch Manager, National Insurance Co. Ltd.*** (2008) 2 SCC 595, ***National Insurance Company Ltd. v. Seema Malhotra*** (2001) 3 SCC 151, ***National Insurance Company Ltd. v. Yellamma & Anr.*** (2008) 7 SCC 526, ***National Insurance Company Ltd. v. Parvathneni*** (2009) 8 SCC 785, ***United India Insurance Company Ltd. v. Laxmamma & Ors.*** (2012) 5 SCC 234, ***Oriental Insurance Company Limited v. Inderjit Kaur*** (1998) 1 SCC 371, ***New India Assurance Company Ltd. v. Rula & Ors.*** (2000) 3 SCC 195. Reliance has also been placed on Section 64VB of Insurance Act, 1938

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('***Insurance Act***') which provides that no risk is to be assumed, unless premium is received in advance.

15. Additionally, reliance was also placed on decisions of this Court in ***HDFC Ergo General Insurance Company Limited v. Chander Kala Devi*** 2023:DHC:4979 and ***Bhagwat Prasad Sharma & Anr. v. Satish Kumar & Anr.*** 2025:DHC:509.

Submissions on behalf of claimant

16. *Mr. Manish Maini*, counsel for claimant, contended that once the insurance policy was issued, the Insurance Company was liable to cover the liability of insured/owner. Insurance Company could not be exonerated, merely because premium had not been paid due to dishonour of cheque. In any event, he stated that rights of recovery have been rightly granted. He further stated that the Insurance Company had consciously violated the provisions of Section 64 VB of Insurance Act, while issuing the insurance policy and assuming the risk without pocketing any premium. In his support, he placed reliance was placed on the decision of Supreme Court in ***Inderjit Kaur*** (*supra*) and decisions of this Court in ***Usha Aggarwal v. Pramod Kumar Gupta & Ors.*** 2013:DHC:6092, as also ***National Insurance Company Ltd. v. Poonam & Ors.*** 2014:DHC:1833.

Submissions on behalf of Amicus Curiae

17. Pursuant to the submissions, certain issues arose for consideration before the Court, *inter alia*, whether a cover note is an interim document which does not fully assume the risk; whether the risk is assumed on the date of issuance of the insurance policy and would the risk not be assumed

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on the date of receipt of payment; does the Insurance Company provide a caveat through the cover note that this will not amount to a contract of insurance, until premium has been received and to that extent, does the Insurance Company have the right of *voidability* of contract in case of dishonour of cheque or non-receipt of premium.

18. For the purposes of understanding these aspects, the Court appointed *Mr. Sameer Nandwani*, Advocate, who regularly appears in motor accident appeals as *Amicus Curiae* to provide assistance to the Court.

19. *Mr. Nandwani*, *Amicus Curiae* appeared along with *Mr. Abhinav*, Deputy Manager, Oriental Insurance Company Ltd. *Mr. Nandwani* stated that the cover note issued by the Insurance Company is equal to a certificate of insurance till the expiry of sixty days, after which, it comes to an end by efflux of time.

20. Otherwise, issuance of insurance policy crystalizes the contract in terms of assuming the risk. For this, he placed reliance upon the decision of this Court in ***Oriental Insurance Co. v. Vinod Kumar***, 2007 SCC OnLine Del 609, the decision dealt with the question of law relating to third party liability of insurance company under the Motor Vehicles Act, 1988 (hereinafter, '***MV Act***'), even after the cheque issued by the insured had bounced and notice terminating the contract of insurance had been served. Court noted that under the law of contract, if one party commits fundamental breach of terms, the other party is entitled to terminate the contractual relationship and be absolved from performance. Default in payment is a fundamental breach of contract.

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21. However, MV Act being a beneficial legislation, this aspect is treated differently to ensure that the legislative intent and benefit is not nullified by Insurance Companies on the basis of contractual terms to the contract. Notably, the Court noted that, "*courts have always endeavoured to ensure maximum protection of the third-parties, who suffer as a result of road accident so that they are not penalized.*"

22. In that case, cheque had been issued on 22nd February 1997 [*sic December*] and the insurance policy was valid for a period of one year from 22nd December 1997 onwards. The cheque was dishonoured and communication was made *vide* letter dated 7th January 1998 to owner of the car that the insurance cover stood cancelled and no claim will be entertained.

23. The accident occurred on 6th October 1998 much after the same. The Tribunal relied on ***Inderjit Kaur*** (*supra*) and ***Rula*** **(***supra*) granting recovery rights. In their support, the Insurance Company relied on ***Seema Malhotra*** (*supra*). Supreme Court had also noted the Gazette Notification dated 17th October 2002 issued by Insurance Regulatory and Development Authority ('***IRDA***') which stated as under:

> "*4. Commencement of Risk: In all cases of risks covered by the policies issued by an insurer, the attachment of risk to an insurer will be in consonance with the terms of Section 64 VB of the Act and except in the cases where the premium has been paid in cash, in all other cases the insurer shall be on risk only after the receipt of the premium by the insurer.*
> *Provided that in the case of a policy of a general insurance that where the remittance made by the proposer or the policy holder is not realized by the insurer, the policy shall be treated as void ab-initio.*

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Provided further that in the case of a policy of life insurance, the continuance of the risk or otherwise shall depend on the terms and conditions of the policy already entered into."

(emphasis added)

24. The Court traversed various provisions of the MV Act and the Central Motor Vehicles Rules, 1989 (hereinafter, '***MV Rules***') to provide its analysis, effectively stating that there are *three* stages of documentation by Insurance Company *inter alia first,* issuance of a cover note under Form 52 in MV Rules; *second*, issuance of a certificate of insurance; and *third*, issuance of the insurance policy. Once a cover note is issued, the same will be valid for a period of sixty days and not thereafter. After the expiry of that period, if the Insurance Company does not issue the insurance policy, the duty is on the Insurance Company to notify the registering authority under Section 147(4) of MV Act within seven days. The Court held that the Act does not provide for consequences of violation of Section 147(4) and, therefore, Insurance Company would not be liable to third parties, if there is a default in informing the registering authority.

25. However, once a certificate of insurance is issued followed by an insurance policy, as per Section 149(1) of MV Act, the Insurance Company would be entitled to pay third parties, even if they are entitled to avoid or cancel the policy or may have avoided or cancelled the policy. What would be left is only right of recovery, which was indeed granted. The Court recognized that in ***Inderjit Kaur*** (*supra*) and ***Rula*** **(***supra*), the Insurance Company was held liable to pay compensation, even if the cover note was cancelled and recovery rights had been granted. ***Seema Malhotra*** (*supra*)

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was, however, distinguished as the facts related to a claim filed before the Consumer Court.

26. In a recent judgment of the Supreme Court in ***National Insurance Co. Ltd. v. Sunita Devi & Ors.*** 2025 SCC OnLine SC 1647, the issue related to the insurance policy issued for the offending vehicle which stood cancelled and the owner and the RTO had been informed prior to the date of accident. The Tribunal held that they have a right to recover from the owner. Insurance Company placed reliance upon ***Seema Malhotra*** (*supra*), ***Deddappa*** (*supra*) and ***Laxmamma*** (*supra*).

27. The Supreme Court noted that in ***Deddappa*** (*supra*), the Court had held that contract of insurance stood rescinded due to failure of consideration and intimation to that effect had been given. However, in exercise of powers under Article 142, the Insurance Company had been directed to compensate and recover the amount from the insured.

28. Even in ***Laxmamma*** (*supra*), despite the cancellation, the Court had upheld the right to pay and recover. In ***Sunita Devi*** (*supra*) itself, the Supreme Court noted that non-payment of premium would, in law, absolve the Insurance Company from liability to pay compensation, once intimation of cancellation has been sent to the parties concerned. However, in the final directions, the Court directed release of 50% compensation to claimants, which could not be recovered from them. Insurance Company was directed to recover this amount from the owner. As for the balance 50%, the claimants were entitled to recover the same from the owner.

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Analysis

29. Before diving into the various decisions, which counsel have cited, it would be apposite to extract the relevant provisions, as applicable. Though the accident occurred in 2014, the provisions of MV Act prior to the Motor Vehicles (Amendment) Act, 2019 (hereinafter, '***2019 amendment***') would apply. For purposes of completeness, the discussion below accounts for post 2019 amendment provisions as well.

30. Relevant provisions (*pre and post 2019 amendment*) for the purposes of our discussion are extracted as under:

> ***Prior to Motor Vehicles Amendment Act, 2019***
> "***Section 145. Definitions-****in this Chapter*
> *(b)"certificate of insurance" means a certificate issued by an authorised insurer in pursuance of section 147 and includes a cover note complying with such requirements as may be prescribed, and where more than one certificate has been issued in connection with a policy, or where a copy of a certificate has been issued, all those certificates or that copy, as the case may be;*
> *……*
> *(d)"policy of insurance" includes certificate of insurance.*
> "***Section 147. Requirements of policies and limits of liability***
> *(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.*

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

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

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

(1) If, after a certificate of insurance has been issued under sub-section (3) of section 147 in 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.

……

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(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."

Post Motor Vehicles Amendment Act, 2019

Section 145. Definitions-*in this Chapter*

(b) "certificate of insurance" means a certificate issued by an authorised insurer in pursuance of section 147 and includes a cover note complying with such requirements as may be prescribed, and where more than one certificate has been issued in connection with a policy, or where a copy of a certificate has been issued, all those certificates or that copy, as the case may be;

…….

(f) "policy of insurance" includes certificate of insurance;

Section 147. Requirement of policies and limits of liability

(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

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prescribed matters; and different forms, particulars and matters may be prescribed in different cases;

……

(5) Where a cover note issued by the insurer under the provisions of this Chapter or the rules or regulations made thereunder is not followed by a policy of insurance within the specified 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 or to such other authority as the State Government may prescribe;

(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.

Section 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

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> *payable in respect of interest on that sum by virtue of any enactment relating to interest on judgments.*
> .....
> *(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.*
>
> (emphasis added)

31. After the 2019 amendment, *Section 147* continued to be in the same form, except, *Section 147(4)* and *Section 147(5)* became *Section 147(5)* and *Section 147(6)* respectively; *Section 149(1) and Section 149(4)* morphed into *Section 150(1) and Section 150(4)* respectively, though, with a notable omission of the '*pay and recovery*' clause. Definitions provided under *Section 145(b)* and *Section 145(d)* prior to the 2019 amendment retained form, except, are now stated in *Section 145(b)* and *Section 145(f)*.

32. Relevant provisions of the MV Rules, which deal with issuance of certificate of insurance, cover notes are extracted as under:

> "***Rule 141. Certificate of insurance***
> *An authorised insurer shall issue to every holder of a policy of insurance, a certificate of insurance in Form 51 in respect of each such vehicle.*
> ***Rule 142. Cover notes***
> *(1) Every cover note issued by an authorised insurer shall be in Form 52.*
> *(2) A cover note referred to in sub-rule (1) shall be valid for a period of sixty-days from the date of its issue and the insurer shall issue a policy of insurance before the date of expiry of the cover note.*

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Rule 143. Issue of certificates and cover notes
Every certificate of insurance or cover note issued by an insurer in compliance with the provisions of this Chapter shall be duly authenticated by such person as may be authorised by the insurer."

(emphasis added)

33. For the sake of completeness, *Form 51* and *Form 52*, as provided in the MV Rules, are also extracted hereunder for reference:

Form 51

FORM 51

[Refer Rule 141]

Certificate of insurance in respect of.....

Certificate No. ..... Policy No. .....

1. Registration mark of the vehicle insured	.....
2. Description of the vehicle	.....
3. Make and year of manufacture	.....
4. Engine number or motor number in the case of Battery Operated Vehicles	.....
Chassis number	.....
4A. FASTag ID	.....
5. Carrying capacity	.....
5A. Seating capacity (including driver)	.....
5B. Standing capacity	.....
5C. Sleeper capacity	.....
6. Name and address of the insured	.....
6A. Validated Mobile number of the vehicle owner	.....
7. Effective date and time of commencement of insurance	.....
8. Date of expiry of insurance	.....
9. Persons or classes of persons entitled to drive:—	.....

Stage carriage/contract carriage/private service vehicle	Any person including insured : PROVIDED that a person driving holds an effective driving licence at the time of the accident and is not disqualified from holding or obtaining such a licence: PROVIDED ALSO that the person holding an effective learner's licence may also drive the vehicle when not used for the transport of passengers at the time of the accident and that such a person satisfies the requirements of rule 3 of the Central Motor Vehicles Rules, 1989.
Goods carriage	Any person including insured : PROVIDED that a person driving holds an effective driving licence at the time of the accident and is not disqualified from holding or obtaining such a licence: PROVIDED ALSO that the person holding an effective learner's licence may also drive the vehicle when not used for the transport of goods at the time of the accident and that such a person satisfies the requirements of rule 3 of the Central Motor Vehicles Rules, 1989.
Non-transport vehicles	Any person including insured : PROVIDED that a person driving holds an effective driving licence at the time of the accident and is not disqualified from holding or obtaining such a licence:

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		PROVIDED ALSO that the person holding an effective learner's licence may also drive the vehicle and that such a person satisfies the requirements of rule 3 of the Central Motor Vehicles Rules, 1989.
10.	Limitations as to use:—Stage carriage/contract carriage/goods carriage/ private service vehicle	The policy covers use only under a permit within the meaning of the Motor Vehicles Act, 1988, or such a carriage falling under sub-section (3) of section 66 of the Motor Vehicles Act, 1988. The policy does not cover use for— (a) organised racing (b) speed testing.
11.	Private service vehicle and non-transport vehicle	The policy covers use for any purpose other than— (a) hire or reward, (b) organised racing, or (c) speed testing.
12.	All vehicles	The policy does not cover liability for death, bodily injury or damage as excluded in section 150(2)(ii) and (iii); (b) and (c) of the Motor Vehicles Act, 1988.

We hereby certify that the policy to which this certificate relates as well as the certificates of insurance are issued in accordance with the provisions of Chapter X or XI of the Motor Vehicles Act, 1988.

Authorised insurer

Form 52

FORM 52

[Refer Rule 42(1)]

COVER NOTE

1. Registration mark, number and description of the vehicle insured .....
2. Name and address of insured .....
3. Effective date and time of commencement of insurance for the purpose of this Act. .....
4. Date of expiry of insurance .....
5. Persons or classes of persons entitled to drive .....
6. Any limitations as to use of motor vehicle .....
7. The period of validity of this cover note will expire on .....

I/We hereby certify that this cover note is issued in accordance with the provisions of Chapter XI of the Motor Vehicles Act, 1988.

Authorised insurer

34. Additionally, the relevant provision of the Insurance Act, Section 64VB, is extracted as under:

> "***Section 64VB. No risk to be assumed unless premium is received in advance***
> *(1) No insurer shall assume any risk in India in respect of any insurance business on which premium is not ordinarily payable outside India unless and until the premium payable is received by him or is guaranteed to be paid by such person in such manner and within such time as may be prescribed or unless and until*

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deposit of such amount as may be prescribed, is made in advance in the prescribed manner.
(2) For the purposes of this section, in the case of risks for which premium can be ascertained in advance, the risk may be assumed not earlier than the date on which the premium has been paid in cash or by cheque to the insurer.
Explanation.--Where the premium is tendered by postal money order or cheque sent by post, the risk may be assumed on the date on which the money order is booked or the cheque is posted, as the case may be.
(3) Any refund of premium which may become due to an insured on account of the cancellation of a policy or alteration in its terms and conditions or otherwise shall be paid by the insurer directly to the insured by a crossed or order cheque or by postal money order and a proper receipt shall be obtained by the insurer from the insured, and such refund shall in no case be credited to the account of the agent.
(4) Where an insurance agent collects a premium on a policy of insurance on behalf of an insurer, he shall deposit with, or dispatch by post to, the insurer, the premium so collected in full without deduction of his commission within twenty-four hours of the collection excluding bank and postal holidays.
(5) The Central Government may, by rules, relax the requirements of sub-section (1) in respect of particular categories in insurance policies.
(6) The Authority may, from time to time, specify, by the regulations made by it, the manner of receipt of premium by the insurer."

(emphasis added)

35. As can be seen from the provisions extracted above, MV Act has used the phrases *policy of insurance, certificate of insurance and cover note* rather interchangeably, thereby, muddying clear interpretation and application. An attempt is made below to demystify and declutter this

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aspect, employing, not only holistic interpretation of the relevant provisions of the MV Act and the MV Rules, but also judicial interpretations that precede.

Statutory mandate of third-party insurance

36. Chapter XI of MV Act mandates insurance of motor vehicles against third-party risks. While *Section 145* is the definition clause relating to the Chapter, *Section 146(1)* mandates that a motor vehicle can be used in a public place, only if there is a policy of insurance complying with the requirements of the Chapter.

37. As per *Section 145(d) [Section 145(f) post 2019 amendment]*, the *policy of insurance* includes a *certificate of insurance*. *Rule 141* of MV Rules also uses both the terms and specifies *Form 51* as the mandated form for both policy of insurance/certificate of insurance. Such a policy must comply with certain requirements as prescribed under *Section 147(1)*. *Section 147(3)* mandates that a policy shall be of no effect unless a certificate of insurance is issued in the prescribed form. A holistic reading of the above leads to the inexorable conclusion that the statute mandates that a contract of insurance comes into play once a *policy of insurance/certificate of insurance* is issued in the prescribed form *viz. Form 51* and complies with the requirements specified in *Section 147(1)*.

Duty of insurer to satisfy awards and judgments

38. *Section 149(1) [Section 150(1) post 2019 amendment]* mandates that once a *certificate of insurance/policy of insurance* is issued in favour of the insured, and any judgment/award is passed in respect of liability as required

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under *Section 147* or under *Section 163A [Section 164 post 2019 amendment]*, then the insurer is mandated to pay to the successful claimant (decree holder) the sum awarded. This duty is mandatory and notwithstanding the insurer's entitlement to avoid or cancel the policy, and even if the insurer has avoided or cancelled the policy.

39. It is, therefore, *ex facie* clear by the plain language of *Section 149(1) [Section 150(1) post 2019 amendment]* that once the *policy of insurance/certificate of insurance* is issued, the insurer steps into the judgment debtor's shoes in respect of the liability, including costs and interest. This would include situations where the insurer would have issued the *policy of insurance/certificate of insurance* even though premium had not been received, or if received through a cheque, the cheque stood dishonoured.

40. The statutory obligation, therefore, kicks in on the issuance of the *policy of insurance/certificate of insurance* in the prescribed form. It is for the insurer to be careful and secure itself from mandatory liability to not issue a *policy of insurance/certificate of insurance*, in case the premium has not been finally received by the Insurance Company either through omission of the agent or due to dishonour of the cheque, or for any other reason. Insurance Company ought to issue a *policy of insurance/certificate of insurance* only when they actually receive the premium, or else they will be under the risk of the statutory mandate under *Section 149(1) [Section 150(1) post 2019 amendment]*.

41. *Section 64VB of Insurance Act* conflates well with this mandate since it states that the risk of an insurer commences on the receipt of premium. However, there is an overlay through the special legislation of Motor

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Vehicles Act, which creates a deeming fiction that, despite the premium not being received, the Insurance Company chooses or opts to issue a *policy of insurance/certificate of insurance*, then the mandatory liability gets triggered. This interpretation also finds resonance in the judgment of a Single Judge of the High Court of Karnataka in ***Neelamma & Ors. v. Jetteppa & Anr.*** 2024 SCC OnLine Kar 27100.

Cover note

42. A cover note which is quite a ubiquitous document issued by Insurance Companies either directly or through agents to persons, who propose a risk cover for their vehicle, is inherently an interim document but has engendered much dispute around it on the aspect of liability. However, the procedure under the MV Act and the MV Rules is quite clear and if it is followed by Insurance Companies, it would not create any complications.

43. *Rule 142(1)* of the MV Rules requires a cover note to be in *Form 52*, whereas, *Rule 142(2)* prescribes the validity of such a cover note for sixty days. This provision itself categorically denotes that the cover note is a document of an interim nature and survives only for sixty days.

44. *Section 145(b)* of the MV Act introduces a bit of a sidewind for this creature termed as '*Cover Note*'. *Section 145(b)* while defining '*certificate of insurance*' includes within its purview "*a cover note complying with such requirements as may be prescribed.*" Potentially this could mean that a cover note is equal to a certificate of insurance and, therefore, once issued has a permanent character triggering mandatory liability under *Section 149(1) [Section 150(1) post 2019 amendment]* as also crystallizing the contract of insurance under *Section 147(3)*.

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45. However, the statute has to be read in a harmonious, holistic manner and needs to be interpreted to promote consistency in its application and its intent. If a cover note is taken as a certificate of insurance, then it ought to be in *Form 51* instead of *Form 52* under *Rule 141* of MV Rules, as opposed to *Rule 142*. Both of these forms are distinctive, in that, *Form 52* provides details of the insured, the vehicle insured, date of the commencement and expiry of insurance and persons or classes entitled to drive, the limitations, while *Form 51* fleshes out a fair amount of detail on each of these aspects.

46. In the opinion of this Court, to provide some meaning to *Section 145(b)* would require interpreting the phrase, "*includes a cover note complying with such requirements as may be prescribed*" to mean a cover note which masquerades as a certificate of insurance and complies with all the requirements that a certificate of insurance ought to comply with *i.e.* Rule 141 read with *Form 51* and Section 147(3).

47. If such an amplified cover note is issued, seeming to comply with all the formalities provided by MV Act and MV Rules for a certificate of insurance, though, titled as a cover note, the statute would deem it to be a certificate of insurance, thereby, triggering a mandatory liability which cannot be avoided under *Section 149(1) [Section 150(1) post 2019 amendment]*.

48. Insurance companies ought to take note of this if they intend to issue what is only an interim document, *i.e.* a cover note while retaining the option of not issuing a policy of insurance/certificate of insurance after expiry of the validity of sixty days.

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49. *Section 147(4) [Section 147(5) post 2019 Amendment*] categorically provides that a cover note not followed by a policy of insurance within the prescribed time [*sixty days, as per Rule 142 (2)*], requires the insurer to notify the registering authority or any authority prescribed by the State Government within 7 days of expiry of this sixty days' period.

50. Therefore, after issuing the cover note, if the insurer chooses not to enter into a final contract of insurance, it has the option of not issuing the insurance policy after the expiry of sixty-day deadline. The duty to notify the registering authority under *Section 147(4) [Section 147(5) post 2019 Amendment]*, though preceded by the phrase '*shall'*, has been interpreted to not attract any penal action in relation to such an omission, as per the decision of this Court in ***Vinod Kumar*** (*supra*).

51. In the opinion of this Court, the duty is mandated on the Insurance Company. Considering it is resident in the MV Act under Chapter XI, any omission to notify may be interpreted as the Insurance Company not wishing to avoid the contract of insurance and, therefore, liability. Omitting to notify the registering authority within 67 days of having issued the cover note, would effectively transfer the duty on the insured to chase the Insurance Company in order to confirm the insurance policy and the issuance of certificate of insurance. Being a just and beneficial legislation, this burden cannot be transferred to the insured, since it would effectively leave an insured unprotected only because of an omission by the Insurance Company.

52. In all practical terms, the insured assumes that it is covered once it has received a cover note and is cannot be ascribed with detailed knowledge of legal provisions in order to be cast with the duty to pursue

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the Insurance Company for crystallization of its contract of insurance. The duty would therefore, be on the Insurance Company to inform the owner if it does not wish to issue the certificate of insurance *i.e.* not crystallize the contract. Further, by bringing it to the notice of the registering authority, it ensures that it is officially aware that the concerned vehicle runs without a valid third-party liability insurance. The Insurance Company has an implicit duty to inform the insured as well to whom the cover note was issued.

Avoidance of contract

53. As per the above discussion, the window available to an Insurance Company to avoid crystallizing a contract of insurance, is within 67 days of issuing a cover note. In case, it does not receive premium or the insurance policy during that period, the Insurance Company can choose to inform not only the registering authority, but also the insured that they will not issue the insurance policy or the certificate of insurance.

54. Till the time, the Insurance Company issues such a notification to the registering authority and to the insured, the assumption of risk would be with the Insurance Company. The cover note is, therefore, rightly an interim document and the Insurance Companies have been given a facility to issue an interim cover till all the other aspects fructify, *inter alia* the receipt of premium and other details required for issuance of a policy of insurance/certificate of insurance. To that extent, the cover note therefore holds the ground as far as liability is concerned.

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Interplay with Insurance Act, 1938

55. Issuance of the cover note triggers an assumption of risk since the premium has been received either as direct transfer or by tendering of a negotiable instrument. A Negotiable Instrument tendered, as per the Negotiable Instruments Act, 1881 ('***NI Act***') is deemed to be a valid payment. This emanates out of the Explanation to Section 64VB (2) of Insurance Act which provides that premium may be tendered by postal money order or cheque sent by post.

56. The explanation to Section 64VB provides that, if premium is tendered by postal money order or cheque is sent by post, risk may be assumed on the date on which the money order is booked or the cheque is posted, as the case may be. As per Section 64VB (4) of the Insurance Act, if an insurance agent collects premium on an insurance policy on behalf of the Insurance Company, they are mandated to deposit, dispatch by post to the Insurance Company the premium so collected in full without deduction of his commission, within twenty-four hours of the collection, excluding bank and postal holiday.

57. Section 64VB(1) of the Insurance Act also provides that assumption of risk can also be taken if premium is "*guaranteed to be paid by such person in such manner and within such time as may be prescribed or unless and until deposit of such amount, as may be prescribed, is made in advance in the prescribed manner*".

58. By notification dated 16th October 2002, the IRDA published the Insurance Regulatory and Development Authority (Manner of Receipt of Premium) Regulations, 2002 (hereinafter, '***IRDA Regulations***'). *Regulation*

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no. 3 provides the manner of premium payments, which *inter alia*, includes cash, recognized negotiable instrument, postal money orders, direct transfers, etc.

59. *Regulation no.4* of the IRDA Regulations provides for commencement of risk, which will be in consonance with the terms of Section 64 VB of the Insurance Act, except where premium has been paid in cash, the risk shall be after the receipt of premium by the Insurance Company.

Liability to pay and right of recovery

60. Therefore, the question before the Court is whether the Insurance Company will be liable to seek recovery from the insured, rather than exoneration from payment of compensation. For this, it would be useful to advert to the judgments cited by the parties, which are discussed as follows:

I. In ***Oriental Insurance Company Limited v. Inderjit Kaur*** (1998) 1 SCC 371, the insurance policy was issued on 30th November 1989, the premium was paid by cheque which was subsequently dishonoured. A letter communicating this was sent to the insured on 23rd January 1990. Premium was then paid in cash on 02nd May 1990. In the meantime, the accident took place on 19th April 1990.

   Insurance Company relied on Section 64VB of Insurance Act to state that no risk was assumed. Relying upon *Section 147(5)* and *Section 149(1)* of MV Act, the Court held that once an insurance policy was issued, the Insurance Company becomes liable to indemnify third parties and to satisfy awards of compensation, notwithstanding that it

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could avoid or cancel the policy. The policy of insurance was held to be a representation on which authorities and third parties were entitled to act and therefore, the Insurance Company was not absolved and its remedies lay against the insured.

II. The Supreme Court in ***New India Assurance Company Ltd. v. Rula & Ors.*** (2000) 3 SCC 195 was dealing with a case where the insurance policy had been issued on 08th November 1991. The insured vehicle met with an accident around midnight on the same day. The cheque which had been issued towards payment of premium on 08th November 1991, was dishonoured on 16th November 1991 and resultantly the insurance policy stood cancelled. The Insurance Company relied on Section 64VB of Insurance Act and Section 2(d), (e), (f) and (h) of Indian Contract Act, 1872 (hereinafter, '***ICA***').

The Supreme Court held that, as per Chapter XI of MV Act, the third party, who is not a signatory to the contract of insurance, is nevertheless protected by such contract. It stated that a third party is not concerned and does not come into the picture at all in the matter of payment of premium. Whether the premium has been paid or not, is not the concern of the third party. It is only concerned with the fact that the insurance policy had been issued in respect of the offending vehicle and on this basis, the claim petition can be maintained. Relying upon the decision in ***Inderjit Kaur*** (*supra*), the Apex Court held that subsequent cancellation of insurance policy on the ground that the cheque was dishonoured, would not affect the rights of third party, which had accrued on the issuance of the insurance policy.

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Therefore, the claimant was indemnified and the appeal filed by Insurance Company was dismissed.

III. ***National Insurance Company Ltd. v. Seema Malhotra*** (2001) 3 SCC 151 was a case that had emanated from a claim which had been filed before the State Consumer Commission and had been appealed before the High Court and thereafter, it reached Supreme Court, where the issue was regarding validity of insurance policy in case of dishonour of the cheque given for premium.

The Court noted that there was no dispute that the Insurance Company was liable against third parties. Though, the Insurance Company had disputed liability, since the claim had been made by the insured himself through his legal heirs without there being involvement of any third party. The Court took into account the decisions in both ***Inderjit Kaur*** (*supra*) and ***Rula*** (*supra*) and assessed the matter on the basis of Section 64 VB of Insurance Act and Sections 51, 52 and 54 of ICA.

The Court noted that in a contract of insurance, when the insured gives a cheque towards payment of premium, such a contract consists of reciprocal promise. The drawer of the cheque promises the insurer that the cheque will yield the amount in cash on presentation. It was noted that the Bill of Exchange is an instrument in writing containing an unconditional order, directing someone to pay a certain sum of money to another person and, involves a promise that such money should be paid.

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The Court noted that when the insured fails to pay the premium promised and when the cheque issued towards premium is returned due to dishonour, the Insurance Company need not perform their end of the promise. Relying upon Section 25 of ICA, the Court held that an agreement made without consideration is void. Section 65 of ICA provides that when a contract becomes void, any person who has received an advantage under such contract, is bound to restore it to the person from whom he received it.

Therefore, even if the Insurance Company has disbursed the amount covered by the insurance policy to the insured before the cheque was returned dishonoured, the Insurance Company is entitled to get the amount back. However, if the insured makes up for the premium, even after the cheque had been dishonoured, but before the date of the accident, it would be a different case and consideration would be treated as paid. Accordingly, the appeal of Insurance Company was allowed.

IV. In ***Deddappa & Ors. v. Branch Manager, National Insurance Co. Ltd.*** (2008) 2 SCC 595, the insurance policy was valid from 17th October 1997 to 16th October 1998. While the owner had made payment through cheque on 15th October 1997, the same had been dishonoured on 21st October 1997 due to insufficient funds and communication of the cancellation of insurance policy had been made. Thereafter, the accident occurred on 6th February 1998. Placing reliance on the decision in ***Seema Malhotra*** (*supra*), the Court held that while payment by cheque is ordinarily accepted as valid payment, same is subject to the encashment. A distinction

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between statutory liability under MV Act and liability in other cases was drawn, holding that if the contract of insurance has been cancelled and the concerned parties have been intimated, the Insurance Company would not be liable to satisfy the claim. However, in the exercise of their powers under Article 142 of the Constitution of India, 1950 ('***Constitution***'), recovery rights had been granted to the Insurance Company after making payment to the claimant.

V. The factual matrix in ***National Insurance Company Ltd. v. Yellamma & Anr.*** (2008) 7 SCC 526, was that the insured was the owner of a mini bus and had issued a third-party cheque towards payment of insurance premium. Inadvertently, a cover note had been issued. It was noted that premium had not been tendered and the original cover note was returned and the cheque had been taken back. The insurance cover was valid from 03rd September 1991 to 02nd September 1992 and the accident in question had occurred on 12th September 1991.

Compensation provided by the Tribunal had been enhanced by the High Court. Supreme Court noted that the cheque for payment of premium had not been encashed and since no payment had been received, Section 64VB of the Insurance Act would come into play. Noting the decision of Supreme Court in ***Deddappa*** (*supra*), as well as, in ***Seema Malhotra*** (*supra*), the Court noted that while the cheque is already accepted as a valid tender, same would be subject to its encashment.

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However, a distinction exists between statutory liability *vis-a-vis* third parties in terms of Sections 147 & 149 of MV Act and liability in other cases. But it is clear that if contract of insurance had been cancelled and the concerned parties had been intimated, the Insurance Company would not be liable to satisfy the claim. However, exercising jurisdiction under Article 142 of the Constitution, the Supreme Court directed that the awarded amount be paid by the Insurance Company with liberty to recover it from the owner.

VI. In ***National Insurance Company Ltd. v. Parvathneni*** (2009) 8 SCC 785, the question was regarding the dishonour of cheque which had been issued towards payment of premium on 29th November 2003. The accident in question occurred on 30th November 2003. While, the Insurance Company resisted the claim, the High Court passed directions for pay and recover. Supreme Court stated that *prima facie* they were of the opinion that, if the Insurance Company is able to prove that it has no liability to pay, it cannot be compelled to make payment and recover it later.

The Supreme Court noted various decisions, including, ***Yellamma*** (*supra*) and stated they had some reservations about the correctness of the decision. If the Insurance Company had no liability to pay, then it cannot be compelled to pay the same and recover by the order of Supreme Court under Article 142 of the Constitution. In their view, Article 142 does not cover such type of cases. Thereafter, directions were given for placing the papers before the Chief Justice for the constitution of a larger bench.

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While the issue is yet to be decided, an application for impleadment had come up before the Court in ***National Insurance Co. Ltd. v. Parvathneni***, (2018) 9 SCC 657, which was dismissed and so was the Special Leave Petition ('***SLP***'), considering that it was a meagre amount. It was also held that the question of law raised in the petition was kept open to be decided at an appropriate stage.

VII. In ***United India Insurance Company Ltd. v. Laxmamma & Ors.*** (2012) 5 SCC 234, the accident in question occurred on 11th May 2004. The insurance policy had been issued on 14th April 2004, for a period of 16th April 2004 till 15th April 2005, however, the cheque for payment of premium had been dishonoured. The policy had been cancelled after the accident had taken place and the intimation of cancellation had been sent to the owner on 21st May 2004. Compensation was awarded by the Tribunal and affirmed by the High Court. Insurance Company contended that the view taken by the Supreme Court in ***Inderjit Kaur*** (*supra*) had been diluted by the decision in ***Seema Malhotra*** (*supra*) and ***Deddappa*** (*supra*). The Court discussed ***Inderjit Kaur*** (*supra*), ***Rula*** (*supra*)***, Seema Malhotra*** (*supra*) and ***Deddappa*** (*supra*) and stated as under:

> *"**25.** In Seema Malhotra [(2001) 3 SCC 151 : 2001 SCC (Cri) 443], the claim was by the legal heirs of the insured for the damage to the insured vehicle. In this peculiar fact situation, the Court held that when the cheque for premium returned dishonoured, the insurer was not obligated to perform its part of the promise. Insofar as Deddappa [(2008) 2 SCC 595 : (2008) 1 SCC (Cri) 517 : (2008) 1 SCC (Civ) 638] is concerned, that*

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was a case where the accident of the vehicle occurred after the insurance policy had already been cancelled by the insurance company.

26. *In our view, the legal position is this: where the policy of insurance is issued by an authorised insurer on receipt of cheque towards the payment of premium and such a cheque is returned dishonoured, the liability of the authorised insurer to indemnify the third parties in respect of the liability which that policy covered subsists and it has to satisfy the award of compensation by reason of the provisions of Sections 147(5) and 149(1) of the MV Act unless the policy of insurance is cancelled by the authorised insurer and intimation of such cancellation has reached the insured before the accident. In other words, where the policy of insurance is issued by an authorised insurer to cover a vehicle on receipt of the cheque paid towards premium and the cheque gets dishonoured and before the accident of the vehicle occurs, such insurance company cancels the policy of insurance and sends intimation thereof to the owner, the insurance company's liability to indemnify the third parties which that policy covered ceases and the insurance company is not liable to satisfy awards of compensation in respect thereof."*

(emphasis added)

In the facts of this case, the Court held that since the policy had been cancelled by the Insurance Company after the accident, therefore, the Insurance Company became liable to satisfy the award. However, they were granted liberty to recover the said amounts from the insured.

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VIII. ***National Insurance Co. Ltd. v. Sunita Devi & Ors.*** 2025 SCC OnLine SC 1647 is a recent decision on this subject. In this case, the accident in question had occurred on 22nd August 2005. The Insurance Company had submitted that the insurance policy was cancelled and the owner and RTO had been informed, therefore, the policy did not subsist on the date of accident. Taking a view, Tribunal passed the direction for pay and recover and in appeal, the High Court did not interfere with the Tribunal's order.

The Insurance Company placed reliance on the decisions of Supreme Court in ***Seema Malhotra*** (*supra*), ***Laxmamma*** (*supra*) and ***Deddappa*** (*supra*). In ***Sunita Devi*** (*supra*), there was a gap of three months between the cancellation of the insurance policy and when the accident had taken place. In view of the decision passed in ***Deddappa*** (*supra*) and ***Laxmamma*** (*supra*), the Court directed that 50% amount which had already been paid to the claimants would not be recovered through, but the Insurance Company was given liberty to recover the same from the owner. As for the balance 50%, claimants were held entitled to recover from the owner.

61. On the issue of pay and recovery, reliance may also be placed upon the decision of Supreme Court in ***New India Assurance Co. v. Kamla***, (2001) 4 SCC 342, where the Court was adjudicating the issue of a fake driving license and whether the Insurance Company would be liable to pay compensation to third parties. The Court traversed through the provisions of MV Act, notably, *Section 147* and *Section 149* and held that if an insurance policy has been issued in respect of the vehicle, the Insurance Company will be liable to pay the said amount to third parties and recover

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such sum from the insured. Relevant observations of the Court are extracted hereunder:

> *"**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 the 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."*
>
> (emphasis added)

62. It seems from the above, that while facts relating to cancellation of insurance policy may be different in each case, *i.e.* the cheque was dishonoured before the accident or the cheque was dishonoured after the accident, there is agreement in various Benches of the Supreme Court over the cases cited above, that there is a rescission of the contract of insurance. The only difference in the view, is regarding the liability of payment, despite the rescission of contract and recovery from the insured.

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Predominantly, the Supreme Court has exercised its powers under Article 142 of Constitution to award recovery rights. Prior to the 2019 amendment, the proviso to *Section 149(4)* provided for recovery of the discharge of any liability by the Insurance Company from the insured.

63. Courts have consistently provided a right of recovery to the Insurance Company with the primary liability of payment. In the opinion of this Court, considering that *Section 149(1)[Section 150(1) post 2019 amendment]* of MV Act categorically provides that even though the Insurance Company is entitled to avoid or cancel the policy, or has avoided or cancelled the insurance policy, it is bound to satisfy the decree, in case a policy of insurance/certificate of insurance has been issued, it would not be able to wriggle out of the same purely on the basis of a statutory mandate.

64. The right of recovery is an added direction which is in the discretion of the Court, which can be awarded relying upon Section 65 of ICA and in view of the aspects not only provided as per the proviso to *Section 149(4)* of MV Act with respect to conditions providing breach of insurance policy. It has also been successively recognised by the Supreme Court in various decisions, in the interest of justice, since the insured would then have escaped liability without paying premium.

65. In furtherance to the principle of granting recovery rights, advertence may be made to Section 65 of ICA, which states as under:

> "***65. Obligation of person who has received advantage under void agreement, or contract that becomes void.*** *When an agreement is discovered to be void, or when a contract becomes void, any person who has received any advantage under such agreement or contract is*

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bound to restore it, or to make compensation for it to the person from whom he received it."

66. Section 65 rides on the principle of restitution, whereby, the benefit which has been received in an agreement which is later discovered to be void has to be returned. As pithily discussed by *R Yashod Vardhan* in the chapter on Section 65 in *Pollock & Mulla's The Indian Contract Act (15th edition)*, the section aims at preventing unjust enrichment and from preventing a party avoiding an agreement and retaining the benefits received under it. The section embodies the principle of *quantum meruit*, which does not create a new contract between the parties, but restores the advantage received by one party.

67. In ***Kuju Collieries Ltd. v. Jharkhand Mines Ltd.*** (1974) 2 SCC 533, the Supreme Court elaborated upon the scope of Section 65 to cover agreements enforceable by law, which were later discovered to be void. Observations of the Court are extracted as under for ease of reference:

"6. We are of the view that Section 65 of the Contract Act cannot help the plaintiff on the facts and circumstances of this case. Section 65 reads as follows:

"When an agreement is discovered to be void, or when a contract becomes void, any person who has received any advantage under such agreement or contract is bound to restore it, or to make compensation for it, to the person from whom he received it."

The section makes a distinction between an agreement and a contract. According to Section 2 of the Contract Act an agreement which is enforceable by law is a contract and an agreement which is not enforceable by law is said to be void. Therefore, when the earlier part of the section speaks of an agreement being discovered

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> *to be void it means that the agreement is not enforceable and is, therefore, not a contract. It means that it was void. It may be that the parties or one of the parties to the agreement may not have, when they entered into the agreement, known that the agreement was in law not enforceable. They might have come to know later that the agreement was not enforceable. The second part of the section refers to a contract becoming void. That refers to a case where an agreement which was originally enforceable and was, therefore, a contract, becomes void due to subsequent happenings. In both these cases any person who has received any advantage under such agreement or contract is bound to restore such advantage, or to make compensation for it to the person from whom he received it. But where even at the time when the agreement is entered into both the parties knew that it was not lawful and, therefore, void, there was not contract but only an agreement and it is not a case where it is discovered to be void subsequently. Nor is it a case of the contract becoming void due to subsequent happenings. Therefore, Section 65 of the Contract Act did not apply.*"
>
> (emphasis added)

68. Therefore, upon a collective reading of the provisions of MV Act, MV Rules and Section 65 of ICA, this Court is of the opinion that recovery rights can be granted to the Insurance Company, upon them satisfying the awarded amount payable to third parties.

69. In view of the above analysis, this Court finds that the policy of insurance issued by the Insurance Company, effective from 19th January 2014 and the accident having occurred on 10th October 2014, during the period of its validity, applying *Section 149(1) [Section 150(1) post 2019 amendment]*, despite the insurer having avoided or cancelled the policy, it

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shall still be liable to cover the compensation awarded to the claimant. However, as noted in *paragraph no.68* above, recovery rights would have to be granted to the insurer, since no premium was received and the insured cannot go scot free for an insurance it never really paid for.

Guideposts

70. In view of the above discussion, the following principles can be culled out:

i. Once the payment of premium is tendered, either through cash, direct transfer or *vide* a cheque and a cover note is issued, the risk will be assumed by the Insurance Company. This follows from a combined reading of *Section 147(4) [Section 147(5) post 2019 Amendment*], *Rule 142* of MV Rules and *Section 64VB* of the Insurance Act.

ii. The same process would follow, if instead of a cover note, a policy of insurance/certificate of insurance is issued. This emanates from a combined reading of *Rule 141* of MV Rules read with *Section 147(3) [Section 147(4) post 2019 Amendment*] and *Section 64VB* of Insurance Act.

iii. If cover note is issued without receipt of premium then the Insurance Company can void the cover note within 67 days from issuance of the cover and inform the RTO and the insured person, otherwise it would be presumed that premium has been received. Failure to inform would result in a presumption that the Insurance Company does not wish to avoid the contract of insurance and consequently, the liability. Therefore, during the

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sixty days' period if the premium has not been received, the Insurance Company may be entitled to cancel the cover note and avoid liability.

iv. The Insurance Company has an implicit duty to inform the RTO, as well as, the insured if it does not wish to issue a certificate of insurance/policy of insurance.

v. If the Insurance Company has issued a policy of insurance/certificate of insurance, it will continue to have a liability to pay to the person who is entitled to the benefit of the judgment or award, if they choose to void or cancel the policy. This emanates from a reading of *Section 149(1) [Section 150(1) post amendment]*. Pay and recovery shall be granted according to the facts and circumstances of the case.

Quantum of compensation

71. On the issue of quantum of compensation, claimant has sought that the functional disability be considered at 16% instead of 8% as awarded by the MACT. Permanent disability had been certified at 16% in relation to left lower limb, as proved by the disability certificate testified by *Dr. Hemant Sharma* ('***PW-2***').

72. Claimant was working as a *Safari Karamchari* in MCD and was stated to be earning *Rs.10,000/-* per month. Claimant was examined as *PW1* and he stated that the injury had curtailed his working capacity and, therefore, he was unable to continue with his work.

73. In the cross-examination, he stated that he had been working as a temporary employee in EDMC and had not received reimbursement of

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medical expenses. Regularization of his service was due and his file had gone to higher authorities for approval. He further stated that he had come to the Court on foot for his cross-examination.

74. No other evidence has been filed by the claimant in order to support his plea for enhancement of the assessment of functional disability. As per the medical documents, it was stated that the patient was admitted with pain and swelling at multiple sides of the body, a lacerated wound over the forehead, right-side, inability to walk and difficulty in breathing. The operative procedure was performed on the *tibia* and on the *fibula* and the *left femur* along with locking plate. Considering the nature of injuries suffered, it seems to be a case of fractures which was dealt with by locking plates and therefore, the claimant would have been treated for it.

75. As regards the assessment of functional disability, reliance may be placed upon the decision of Supreme Court in ***Raj Kumar v. Ajay Kumar*** (2011) 1 SCC 343, the Supreme Court held that the Tribunal must assess not merely the extent of permanent disability but its actual impact on the claimant's earning capacity, which may differ from the medical percentage of disability. This requires evaluating the claimant's pre-accident vocation, the functions affected, and whether livelihood can still be earned despite the disability. The Court emphasised that disability and loss of earning capacity are distinct concepts, except in cases where evidence shows they coincide. Relevant paragraphs are extracted as under:

> "***11.*** *What requires to be assessed by the Tribunal is the effect of the permanent disability on the earning capacity of the injured; and after assessing the loss of earning capacity in terms of a percentage of the income, it has to be quantified in terms of money, to*

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arrive at the future loss of earnings (by applying the standard multiplier method used to determine loss of dependency). We may however note that in some cases, on appreciation of evidence and assessment, the Tribunal may find that the percentage of loss of earning capacity as a result of the permanent disability, is approximately the same as the percentage of permanent disability in which case, of course, the Tribunal will adopt the said percentage for determination of compensation. (See for example, the decisions of this Court in Arvind Kumar Mishra v. New India Assurance Co. Ltd. [(2010) 10 SCC 254 : (2010) 3 SCC (Cri) 1258 : (2010) 10 Scale 298] and Yadava Kumar v. National Insurance Co. Ltd. [(2010) 10 SCC 341 : (2010) 3 SCC (Cri) 1285 : (2010) 8 Scale 567])

12. *Therefore, the Tribunal has to first decide whether there is any permanent disability and, if so, the extent of such permanent disability. This means that the Tribunal should consider and decide with reference to the evidence:*

(i) whether the disablement is permanent or temporary;

(ii) if the disablement is permanent, whether it is permanent total disablement or permanent partial disablement;

(iii) if the disablement percentage is expressed with reference to any specific limb, then the effect of such disablement of the limb on the functioning of the entire body, that is, the permanent disability suffered by the person.

If the Tribunal concludes that there is no permanent disability then there is no question of proceeding further and determining the loss of future earning capacity. But if the Tribunal concludes that there is permanent disability then it will proceed to ascertain its extent. After the Tribunal ascertains the actual extent of permanent disability of the claimant based on the medical evidence, it has to determine whether such

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> *permanent disability has affected or will affect his earning capacity.*
>
> ***13.*** *Ascertainment of the effect of the permanent disability on the actual earning capacity involves three steps. The Tribunal has to first ascertain what activities the claimant could carry on in spite of the permanent disability and what he could not do as a result of the permanent disability (this is also relevant for awarding compensation under the head of loss of amenities of life). The second step is to ascertain his avocation, profession and nature of work before the accident, as also his age. The third step is to find out whether (i) the claimant is totally disabled from earning any kind of livelihood, or (ii) whether in spite of the permanent disability, the claimant could still effectively carry on the activities and functions, which he was earlier carrying on, or (iii) whether he was prevented or restricted from discharging his previous activities and functions, but could carry on some other or lesser scale of activities and functions so that he continues to earn or can continue to earn his livelihood.*"
>
> (emphasis added)

76. Accordingly, at best, functional disability will be enhanced to 10%.

77. As regards non-pecuniary damages, MACT awarded Rs. 1,00,000/- towards pain and suffering, which is sustained by this Court. However, compensation awarded under the head of loss of amenities of life may be enhanced, considering the nature and extent of the injuries to Rs. 1,00,000/-

78. Accordingly, the revised computation is as under:

S. no.	Heads	Awarded by the Tribunal	Awarded by this Court
PECUNIARY LOSS			
1.	Expenditure on Medical	Rs. 4,94,563/-	Rs. 4,94,563/-

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	Bills and medical treatment (A)		
2.	Expenditure on conveyance & special diet (B)	Rs. 15,000/-	Rs. 15,000/-
3.	Attendant Charges (C)	Rs. 15,000/-	Rs. 15,000/-
4.	Income of injured per month (D)	Rs.8,632	Rs. 8,632/-
5.	Add: Future prospects (E)	Rs. 3,315/-*	Rs. 3,453/-
6.	Loss of income (F)	Rs. 25,896/-	Rs. 25,896/-
7.	Multiplier (G)	15	15
8.	Functional disability (H)	8%	10%
9.	Loss of future income/future earnings [(D+E) x 12 x G x H] = (I)	Rs. 1,74,030/-	Rs. 2,17,530/-
NON-PECUNIARY LOSS			
10.	Pain and suffering (J)	Rs. 1,00,000/-	Rs. 1,00,000/-
11.	Loss of amenities of life and future prospects (K)	Rs. 40,000/-	Rs. 1,00,000/-
12.	Mental and physical shock (L)	Rs. 35,000/-	Rs. 35,000/-
13.	Disfigurement (K)	Rs. 25,000/-	Rs. 25,000/-
14.	Total compensation (A + B + C + F + I+ J+ K + L + K)= (M)	Rs. 9,25,000/- (rounded off Rs. 9,24,489/-)	Rs. 10,28,000/- (rounded off Rs. 10,27,989/-)
15.	Interest awarded	9% per annum	9% per annum
16.	Enhanced compensation	**Rs. 1,03,000/-**	

*Future prospects wrongly added at a later stage

Conclusion

79. For the aforesaid reasons, compensation has been enhanced by *Rs.1,03,000/-* ["***enhanced amount***"].

80. Enhanced amount along with 9% interest per annum from the date of filing the petition shall be deposited before MACT within a period of four

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weeks by the Insurance Company, which shall be released as lumpsum within two weeks thereafter.

81. By order dated 9th July 2018, this Court had directed the Insurance Company to deposit the entire originally awarded amount before MACT, and by order dated 11th November 2022, 50% of the said amount had been released to the claimant. The balance compensation amount shall continue to be released as per the terms of impugned award.

82. In view of the above discussion, this Court does not intercede with the observation made by MACT in *paragraph no. 23* whereby, rights of recovery against the driver and owner have been granted to the Insurance Company. Accordingly, the recovery rights granted by the MACT are upheld.

83. Accordingly, the appeals stand disposed of with above directions.

84. Pending applications, if any, are rendered infructuous.

85. Copy of this judgement be sent to concerned MACT.

86. Copy of this judgement shall also be sent to concerned bank.

87. Statutory deposit, if any, shall be refunded to Insurance Company, only if the order of deposit has been complied with.

88. Judgment be uploaded on the website of this Court.

(ANISH DAYAL)
JUDGE

NOVEMBER 6, 2026/ak/*sp*

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