

C.M.A(MD)Nos.517 of 2025 and 213, 327, 419, 432, 442 of 2026

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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RESERVED ON : 28.04.2026

PRONOUNCED ON : 01.06.2026

CORAM:

**THE HON'BLE MR JUSTICE N.ANAND VENKATESH
AND
THE HON'BLE MR JUSTICE K.K.RAMAKRISHNAN**

C.M.A(MD)Nos.517 of 2025 and 213, 327, 419, 432, 442 of 2026
and CMP (MD) Nos.1874, 2962, 3943, 4103, 4212 of 2026 &
8904 of 2025

C.M.A(MD)No.517 of 2025

The Branch Manager
ICICI Lombard General Insurance Company Limited
No.2849/1B, Nanjikottai Road,
Thanjavur.

... Appellant/
2nd respondent

Vs.

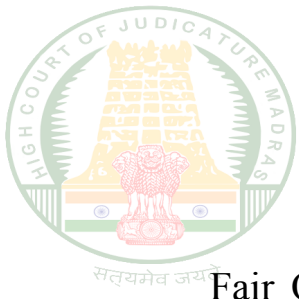
1.Mariyapushpam
2.Antonysamy
3.Velankanni

... 1 to 3 respondents/
Claimants

4.Kamatchi

... 4th respondent/
1st respondent

PRAYER:- Civil Miscellaneous Appeal filed under section 173 of
the Motor Vehicles Act, 1988 to call for the records pertaining to the



C.M.A(MD)Nos.517 of 2025 and 213, 327, 419, 432, 442 of 2026

Fair Order passed by the Motor Accident Claims Tribunal/Special District Judge, Thanjavur in MCOP No.24 of 2024 dated 18.11.2024, set aside the same by allowing the appeal.

For Appellant : Ms.K.R.Shivashankari

For Respondents : Mr.Gokul Prasanth for R1 and R2

C.M.A(MD)No.213 of 2026

The New India Assurance Co.Ltd.,
The Branch Manager
No.161-A, East Veli Street, Mahal Area,,
Madurai Main, Madurai – 625001.

... Appellant/
2nd respondent

Vs.

1.Banupriya
2.Minor M.Sanjana
3.Minor Prathipkannan
4.Guruvammal
5.Ramar

... 1 to 5 respondents/
1 to 5 petitioners
... 6th respondent/
1st respondent

6.D.Bruntha

(Minors 2 and 3 are represented through his next friend and guardian their mother, 1st respondent)

PRAYER:- Civil Miscellaneous Appeal filed under section 173 of Motor Vehicles Act to set aside the order made in M.C.O.P. No. 1471 of 2023 dated 21.03.2025, on the file of the Motor Accident Claims Tribunal Cum Special District Court to deal with MCOP Cases



C.M.A(MD)Nos.517 of 2025 and 213, 327, 419, 432, 442 of 2026

Madurai.
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For Appellant : Mr. N.Shyllappakalyan

For Respondents : Mr.A.Selvaraj for R1 to R5

C.M.A(MD)No.327 of 2026

The Oriental Insurance Company Ltd.,
through its Divisional Manager
No.16, KJR Complex, North Veli Street,
Madurai North, Poonthottam, Madurai

... Appellant/
2nd respondent

Vs.

1.Kanishda
2.Minor Mayuran
3.Minor Sadhurshana

... 1 to 3 respondents/
1 to 3 petitioners
... 4th respondent/
1st respondent

4.Bharaneedharan

(Minors 2 and 3 are represented through his next friend and guardian their mother, 1st respondent)

PRAYER:- Civil Miscellaneous Appeal filed under section 173 of Motor Vehicles Act to set aside the award dated 21st November 2025 passed in MCOP No 117 of 2024 on the file of the Special District Judge (Motor Accident Claims Tribunal) of Madurai by allowing this appeal.



C.M.A(MD)Nos.517 of 2025 and 213, 327, 419, 432, 442 of 2026

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For Appellant : Mr. V.Sakthivel

For Respondents : Ms.R.Ananda Lakshmi for R1 to R3

C.M.A(MD)No.419 of 2026

Reliance General Insurance Co., Ltd.,
Having its office at Door No.55
Sree Meenatchi Plaza First Floor
80 Feet Road, Anna Nagar
Madurai – 625 020.

... Appellant/
4th respondent

Vs.

1.Subhashini
2.Minor Hariharan
3.Minor Gurudev
4.Ranjitham

5.Anthonysamy

6.Rajkumar

... 1 to 4 respondents/
1 to 4 petitioners
... 5th respondent/
1st respondent
... 6th respondent/3rd respondent

PRAYER:- Civil Miscellaneous Appeal filed under section 173 of Motor Vehicles Act to set aside the order passed in MCOP No.519 of 2024 dated 30.04.2025, on the file of the Motor Accident Claims Tribunal cum Honourable Special Subordinate Court, Dindigul.

For Appellant : Mr. N.Shyllappakalyan



C.M.A(MD)Nos.517 of 2025 and 213, 327, 419, 432, 442 of 2026

C.M.A(MD)No.432 of 2026

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Bajaj Allianz General Insurance Company Ltd.,
through its Branch Manager,
No.184/25, Bye Pass Road, Shopping Arcade,
Madurai – 10.

... Appellant/
2nd respondent

Vs.

1.Kala
2.Sivapandi

... 1 to 2 respondents/
1 to 2 petitioners

Jeyakumar (Died)
3.Indra

... 3rd respondent/
1st respondent

PRAYER:- Civil miscellaneous appeal filed under section 173 of motor vehicles act to set aside the Award passed in M.C.O.P.No. 1920 of 2023 on the file of the Motor Accident Claims Tribunal, Special District Court for MCOP Cases, Madurai dated 11.11.2025 and allow the Civil Miscellaneous Appeal.

For Appellant : Ms. K.R.Shivashankari

For Respondents : Mr.Gokul Prasanth for R1 to R2

C.M.A(MD)No.442 of 2026

M/s.United India Insurance Company Ltd.,
through its Branch Manager
Door No.7A, West Velli Street,
Madurai – 1.

... Appellant/
2nd respondent



C.M.A(MD)Nos.517 of 2025 and 213, 327, 419, 432, 442 of 2026

Vs.

1.Somu
2.Banupriya
3.Maheswari

4.Revathy

... 1 to 3 respondents/
1 to 3 petitioners
... 4th respondent/
1st respondent

PRAYER:- Civil Miscellaneous Appeal filed under section 173 of Motor Vehicles Act to set aside the order of the Tribunal of MACT cum Special District Court, Madurai made in M.C.O.P. No. 1140 of 2023 dated 14.03.2025 and allow the appeal with costs.

For Appellant : Mr.C.Jawahar Ravindran

For Respondents : Mr.S.Varatharajan for R1 to R3

J U D G M E N T

**(Judgment of the Court was delivered by
N.ANAND VENKATESH, J.)**

These statutory appeals under Section 173 of the Motor Vehicles Act, 1988, at the instance of various insurance companies, raises an important question of law concerning the doctrine of “*pay and recover*” under the Motor Vehicles Act, 1988.

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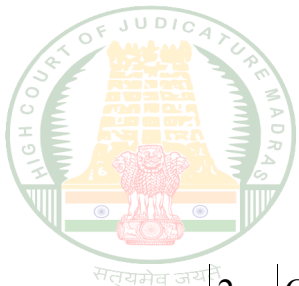


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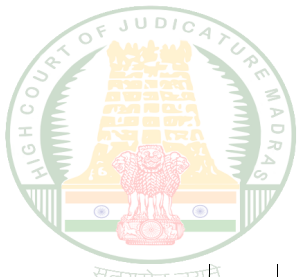
2.For the sake of convenience and clarity, the nature of claims made, and award(s) passed thereon together with the issues raised by the insurance companies are tabulated hereunder:

Sl. No.	Case No.	Name of the Insurance Company	Nature of claim made	Award passed	Issue raised
1.	CMA (MD) No.517 of 2025	ICICI Lombard General Insurance Company Limited	The deceased was standing nearer a garment shop and at that point of time, the offending vehicle, which is a two-wheeler, was driven in a rash and negligent manner and it hit the deceased. As a result of which he succumbed to the injuries. The claimants are wife, son and daughter.	MACT, Thanjavur, in MCOP No. 640 of 2023, by award dated 18.11.2024, fixed a total compensation of Rs. 7,83,600/- payable with 7.5% interest per annum was awarded.	Rider of the two-wheeler did not possess a valid driving licence and there was a policy violation. However, the Tribunal ordered pay and recovery.



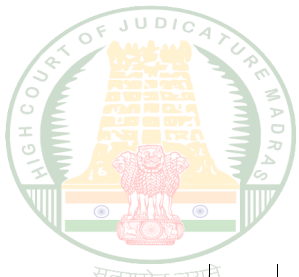
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2.	CMA (MD) No.432 of 2026	Bajaj Allianz General Insurance Company Limited	The deceased was riding his two-wheeler in Madurai to Theni road and when the two-wheeler came near Sai Hospital, Nagamalai Pudukottai, the offending vehicle, which was also a two-wheeler, came in the opposite direction and it was driven in a rash and negligent manner and it hit the two-wheeler driven by the deceased. The deceased sustained grievous injuries and succumbed to the injuries. The claimants are mother and father of the deceased.	MACT, Madurai, in M.C.O.P. No. 1920 of 2023, by award dated 11.11.2025, fixed a total compensation of Rs. 19,24,400/- payable with interest at the rate of 7.5% per annum.	Rider of the two-wheeler did not possess a valid driving licence and there was a policy violation. However, the Tribunal ordered pay and recovery.
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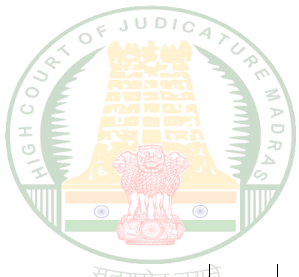
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3.	CMA (MD) No.419 of 2026	Reliance General Insurance Company Limited	The deceased was travelling in a two-wheeler as a pillion rider of the vehicle was plying at Dindigul–Oddanchatram Highway and when it came near Mankarai Division, the offending vehicle was driven in a rash and negligent manner and hit the vehicle in which the deceased was travelling. The deceased sustained grievous injuries and succumbed to the injuries. The claimants are wife, 2 sons and the mother of the deceased.	MACT, Dindigul, in M.C.O.P. No. 519 of 2024, by award dated 30.04.2025, fixed a total compensation of Rs. 34,37,000/- payable with interest at the rate of 7.5% per annum.	Rider of the two-wheeler possessed only a learner's licence and therefore, there is a policy violation. However, the Tribunal ordered pay and recovery.
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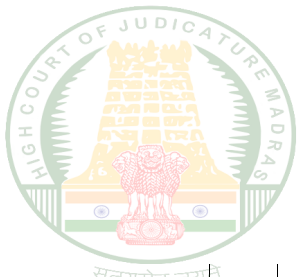
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4.	CMA (MD) No.213 of 2026	The New India Assurance Co.Ltd.	The deceased was riding a two-wheeler at Sayalgudi to Aruppukottai road and when the vehicle was plying near Sankar Ganesh Hotel, the offending vehicle, which is a lorry, coming from the opposite direction was driven in a rash and negligent manner and it hit the two-wheeler. As a result of which, the deceased sustained grievous injuries and he succumbed to the injuries. The claimants are wife, two minor children of the deceased, mother and father of the deceased.	MACT, Madurai, in M.C.O.P. No. 1471 of 2023, by award dated 21.03.2025, fixed a total compensation of Rs. 37,70,104/- payable with interest at the rate of 7.5% per annum.	The vehicle was plying without valid permit and fitness certificate and therefore, there is a policy violation. However, the Tribunal ordered pay and recovery.
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5.	CMA (MD) No.442 of 2026	M/s.United India Insurance Company Ltd.	The deceased was riding a two-wheeler at Pollachi–Coimbatore Road and when the vehicle was plying near Cheran Nagar, the offending vehicle, which is a TATA Benz recovery van/towing van, was driven in a rash and negligent manner and hit the two-wheeler. As a result of which, the deceased sustained grievous injuries and succumbed to the injuries. The claimants are father and two sisters of the deceased.	MACT, Madurai, in M.C.O.P. No. 1140 of 2023, by award dated 14.03.2025, fixed a total compensation of Rs. 24,56,700/- payable with interest at the rate of 7.5% per annum.	The driver of the offending vehicle had consumed alcohol and was under its influence and therefore, there is a policy violation. However, the Tribunal ordered pay and recovery.
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6.	CMA (MD) No.327 of 2026	The Oriental Insurance Company Ltd.	The deceased was travelling in a two-wheeler as a pillion rider and when the vehicle was plying near Sathankulam Bus Stop, the offending vehicle, which is also a two-wheeler, was driven in a rash and negligent manner and hit the two-wheeler in which the deceased was travelling as a pillion rider. The claimants are wife and two children of the deceased.	MACT, Madurai, in M.C.O.P. No. 117 of 2024, by award dated 21.11.2025, fixed a total compensation of Rs. 24,34,800/- payable with interest at the rate of 7.5% per annum.	Rider of the offending vehicle did not possess a valid driving licence. However, Tribunal ordered pay and recovery.
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3.The main ground raised in these appeals is that there was a policy violation in terms of not possessing a valid driving license/driving the vehicle under the influence of alcohol or driving the vehicle without a valid permit, despite which, the Tribunal, in each of these cases, has



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directed the insurance companies to pay the claimants and thereafter recover the same from the respective insured.

4.The sum and substance of the contention raised on behalf of the insurance companies is that by virtue of the Motor Vehicles (Amendment) Act, 2019 (Central Act 32 of 2019), Chapter XI of the Motor Vehicles Act, 1988 has been substituted whereby Section 149 of the Act has now become Section 150. According to the insurance companies, the doctrine of pay and recover was founded on the proviso to clause (4) of Section 149 as well as clause (5) of Section 149, as it stood prior to the Motor Vehicles (Amendment) Act, 2019 (Central Act 32 of 2019). Post the amendment, the proviso to clause (4) of Section 149 as well as clause (5) of Section 149 have been consciously omitted in the corresponding Section 150. The inference sought to be drawn is that in view of the said deletion, the legislature has consciously done away with the doctrine of “*pay and recover*” and consequently the MACTs were not justified in directing the insurance companies to pay and recover. They also urge that their case is squarely covered by an



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order dated 06.02.2026 of a Division Bench of this Court in ***Manager v***

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Tamil Selvi, CMA 747 & 753 of 2025.

5.In almost all cases, this Court ordered the insurance company to deposit the entire compensation amount, with accrued interest, within the stipulated time and the said condition has been complied with.

6.Considering the importance of the issue involved, this Court also sought the assistance of the members of the Bar in dealing with the issue raised in these appeals.

7.We have heard Mr. V. Raghavachari, learned Senior Counsel, assisted by Mr.P.Pethurajesh, learned counsel appearing for the appellant/ICICI Lombard General Insurance Company Limited; Mr.M.B.Raghavan, assisted by Ms.K.R.Shivashankari, learned counsel appearing for the SBI General Insurance Company Limited; Mr.S.Srinivasa Raghavan, learned counsel appearing for M/s.Royal Sundaram Insurance Company Limited; Mr. A.N.Krishnasamy, learned



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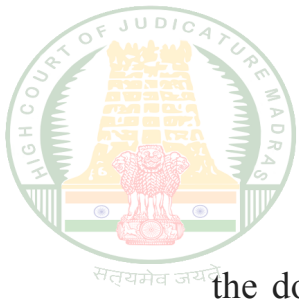
counsel for Ms. K.R.Shivashankari, learned counsel appearing for the appellant/Bajaj Allianz General Insurance Company Limited; Mr. N.Shyllappakalyan, learned counsel appearing for the appellant/The New India Assurance Company Limited and Sriram Insurance Company Limited and Mr. V. Sakthivel, learned counsel appearing for the appellant/The Oriental Insurance Company Limited.

8.On the side of the claimants we have heard Mr. Sharath Chandran, learned counsel, assisted by N. Sudhagar, learned counsel; Mr. A. Elango, Mr. K. Gurunathan and Mrs. R. Anandalakshmi, learned counsel appearing on behalf of the claimants in various CMA's.

RIVAL CONTENTIONS

9.On the side of the appellants/insurance companies, the following contentions were made:

a. Mr.V.Raghavachari, learned senior counsel, invited the attention of this Court to the decision of the Supreme Court in *National Insurance Co v Swaran Singh, 2004 (3) SCC 297*, and submitted that



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the doctrine of pay and recover which has been recognized in the said decision was based upon the proviso to Section 149(4) and Section 149(5) which no longer exist today in the corresponding Section 150. He submitted that the substitution of Chapter XI by the Motor Vehicles (Amendment) Act, 2019 has resulted in the deletion of the proviso as well as Clause (5). This deletion, it is submitted, was a conscious omission by the legislature which leads to the conclusion that Parliament had intentionally done away with pay and recover. The learned senior counsel also invited the attention of this Court to the decision of the Supreme Court in *Tribhovandas Haribhai Tamboli v State of Gujarat*, (1991) 3 SCC 442, to point out the function of a proviso in a statute, and also referred to the decision *National Insurance Co v Vidyadhar Mahariwala*, AIR 2009 SC 208, and submitted that insurance companies had been exonerated in the past where violation of policy conditions were established.

b. Mr.M.B.Raghavan, learned counsel appearing on behalf of the SBI General Insurance Company submitted that Section 150 has been

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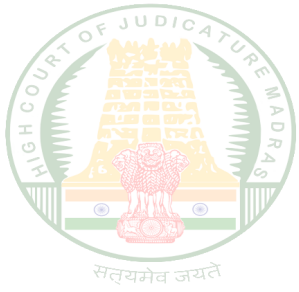


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extensively amended by Parliament thereby widening the defenses available to the insurance companies, and removing the proviso to Section 149(4) corresponding to Section 150(4). It was submitted that Parliament has also introduced new Section 150(2)(a)(ii) adding a defense of the vehicle being driven under the influence of alcohol/drugs, as well as non-receipt of premium under Section 64-VB of the Insurance Act, 1938. It was submitted that the legislature had deliberately inserted Section 147(4) to draw a bright line between policies prior to 01.04.2022 and policies issued thereafter which would be governed by Section 150 without any option to pay and recover.

c. The sum and substance of the argument of learned counsel is that since the doctrine of pay and recover is a creature of statute traceable to proviso to Section 149(4) and Section 149(5), its removal in the corresponding Section 150 puts an end to the practice of ordering pay and recover. The learned counsel relied upon a number of decisions which counsel us to be careful of rewriting the provisions of the statute.



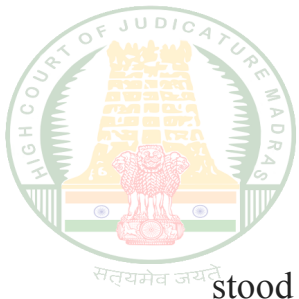
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d. The learned counsel also referred to the decision of a learned single judge of this Court in ***SBI General Insurance Co v Muthulakshmi***, 2025 MHC 991, and pointed out that this decision did not consider the implication of Section 147(4) nor did it pay close attention to the express words of Section 149(4) proviso which stipulated that the amount was payable “*by virtue only of this sub-section*” shall be recoverable by the insurer from the insured. In any event, the basis of the decision in ***National Insurance Co v Swaran Singh***, 2004 (3) SCC 297, was founded on the proviso to Section 149(4) and 149(5) which no longer exist today. That apart, the characterization of the proviso to Section 149(4) as merely declaratory in nature was not correct. The learned counsel finally submitted that the law has been laid down correctly in ***SBI General Insurance v Tamilselvi***, (CMA (MD) 747 & 753 OF 2025, order dated 06.02.2026).

e. Mr. A.N.Krishnaswamy, learned counsel submitted that the doctrine of pay and recover does not rest on equitable considerations. It rested on a purely statutory basis under the 1939 and the 1988 Act, as it

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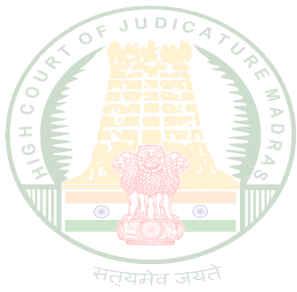


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stood prior to the 2019 Amendment. The effect of deletion of the proviso to Section 149(4) and Section 149(5) removes the statutory basis of this doctrine, and the Court cannot by way of interpretation put back what Parliament has consciously removed.

f. That apart, Section 147(6) has no application since its purpose is to override other laws and not to override Section 150. The defenses which have been expanded must be allowed to operate freely else the very purpose of the amendment would be defeated. The learned counsel also pointed out that the decision of the learned single judge in ***SBI General Insurance Co v Muthulakshmi***, 2025 MHC 991 was clearly erroneous and could not be said to have laid down good law. Reference was also made to Form No 51 inserted in the Motor Vehicles Rules with effect from 01.04.2022 in particular to Serial No 12 therein which exclude liability for cases falling under Section 150(2)(ii) (iii) and (b) and (c) of the Act.



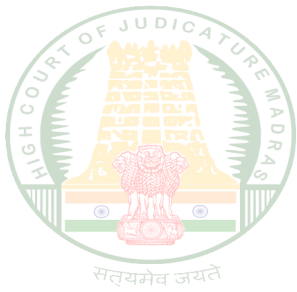
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g. Similar submissions were made by Mr. Shylappakalyan and other learned counsel who appeared for the insurance companies.

10. On the other hand, on the side of the respondents/claimants, Mr. Sharath Chandran, learned counsel appearing on behalf of Mr. Sudhagar, counsel on record in CMA(MD) 1065 of 2025 made the following submissions:

a. The entire argument of the insurance companies rested on the understanding that the proviso to Section 149(4) formed the basis of the doctrine of pay and recover. This was the basis for the decision of the Division Bench *SBI General Insurance v Tamilselvi*, (CMA (MD) 747 & 753 of 2025, order dated 06.02.2026) to conclude that the removal of the proviso puts an end to the doctrine of pay and recover. It was submitted that the decision of the Division Bench, has not noticed the decision of the Supreme Court in *United India Insurance Co. Ltd. v. Lehu*, (2003) 3 SCC 338, wherein it was held that the proviso to Section 149(4) was only illustrative in nature.



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b. It was submitted that as correctly pointed out by S. Sounthar,

J in ***SBI General Insurance Co v Muthulakshmi***, 2025 MHC 991 the liability of the insurance company is a blend of statutory and contractual liability. The liability fastened on the insurance company *vis-a-vis* third party is statutory in character whereas the liability of the insurance company vis-à-vis the insured is contractual in nature governed by the contract of insurance. Breach of a contractual condition may give the right to the insurance company to repudiate the contractual liability between itself and the insurer, but it would not absolve the insurer from its statutory obligation under Section 150(1) to pay the sum to the third party. In such cases, the only right of the insurance company is to proceed against the insured after meeting the claim of the third party.

c. It was then submitted that Section 149(5) operated only a specific type of case as was pointed out by the Supreme Court in ***National Insurance Co v Swaran Singh***, 2004 (3) SCC 297. It was submitted that the provision operated only in cases where the liability of the insurance company was limited. It was submitted that the deletion of

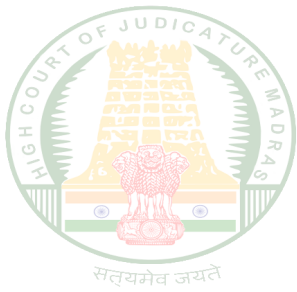


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Section 149(5) was of no consequence particularly since Parliament had expressly made the liability of the insurance companies unlimited under Section 147(2) after the 2019 Amendment and the Motor Vehicles (Third Party Insurance Base Premium and Liability) Rules, 2022 which has been introduced pursuant to the powers under Section 147(2). The attention of this Court was also drawn to the provisions of the Motor Vehicles Bill 2016 and the Report of the Standing Committee of the Rajya Sabha making recommendations to the above Bill which eventually became the 2019 Amendment to show that it was never the intention of Parliament to tinker with the doctrine of pay and recover.

d. Lastly it was submitted that the actual basis of the doctrine flows from Section 150(1) as was pointed out in ***SBI General Insurance Co v Muthulakshmi***, 2025 MHC 991 and not the proviso to Section 149(4). It was submitted that if the interpretation made by the insurance companies is supported, the very objective of compulsory third party insurance would be rendered otiose.



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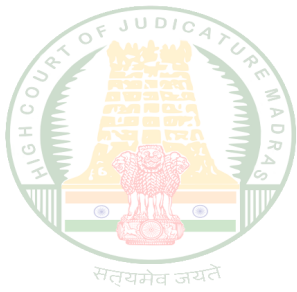
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e. The aforesaid submissions were adopted by Mr. K. Gurunathan, Mr. A. Elango, Mrs. R. Anandalakshmi and other learned counsel who appeared on behalf of the claimants. The learned counsel also emphasized that the Motor Vehicles Act, 1988 is a beneficial piece of legislation which must receive liberal interpretation in favor of an innocent third party who is very often the victim of a motor vehicle mishap. If the view propounded by the insurance companies is accepted there will be no effective purpose for taking compulsory motor vehicle insurance in as much as the protection for the innocent third party would be defeated.

HISTORY OF COMPULSORY MOTOR VEHICLE INSURANCE

11.To examine the legal issue raised in these appeals, we must perforce travel back in time to understand the objective of introducing compulsory third-party insurance for the use of a motor vehicle. For this purpose, it is imperative to first notice the evolution of the law on third party insurance under the Motor Vehicles Act, 1939 followed by the Motor Vehicles Act, 1988.

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12.A contract of insurance is first and foremost a contract of guarantee. A contract of guarantee is defined in Section 124 of the Contract Act, 1872 as under:

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

Under the general law, a contract is an agreement enforceable by law which binds parties and their privies. When a motor vehicle injures or kills a third party, the common law provided a remedy in tort for the injured or the legal representatives of the deceased to sue the assured alone as he was the tortfeasor. This was because the contract of insurance is a contract between the insurer and the insured to which the third party is not a party. Therefore, a third party, being a stranger to the contract of insurance, and there being no privity could not sue the insurer directly under the general law of contract. Many a time it was found that the decree obtained against the insured could not be enforced as he did not possess the means. Thus, the innocent victim of a road accident suffered a double whammy: suffering injury or death and obtaining no compensation despite obtaining a decree against the owner or driver of

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the vehicle. The introduction of compulsory motor vehicle insurance was an attempt to resolve this unsatisfactory situation.

13.The development of motor vehicles law in India began with the enactment of the Indian Motor Vehicles Act, 1914 (Central Act VIII of 1914) which applied to the whole of British India. The focus of this Act was on two aspects: (i) prescribing the requirement of a license to drive a motor vehicle (Section 6) and (ii) prohibiting the use of a motor vehicle unless the same was registered in the manner prescribed and a certificate of registration was issued for the said vehicle (Section 10).

14.With the growth of the automobile industry, the sale and manufacture of cars increased manifold in the late 1910's and early 1920's. Expansion naturally led to complexity as instances of accidents involving motor vehicle became common. In England, prior to 1930 it was voluntary on the part of car owners to take out insurance against third party risks. The contract of insurance was, however, only between the insurer and the assured. The third party being a stranger to the



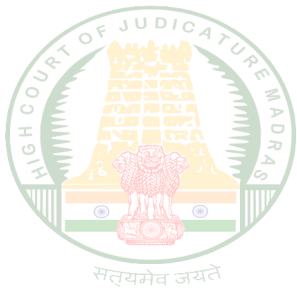
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contract could not sue the insurance company directly due to lack of privity and was perforce required to sue the car owner for damages in tort. As pointed out earlier, decrees obtained by an innocent third party who was injured or the legal heirs of a third party who had been killed in a road accident remained unsatisfied as the car owner/judgment debtor did not possess the means to satisfy the decree or would file for bankruptcy.

15.The same position existed in India prior to the Motor Vehicles Act, 1939 as is seen in the decision of the Bombay High Court in *British India General Insurance Co., Ltd. v. Janardan Vishwanath Naik*, AIR 1938 Bom 217, where the legal representatives of one Balakrishna filed a suit against the driver, the owner and the insurance company which had insured the bus which had met with an accident resulting in the death of Balakrishna. The trial court passed a decree against all three defendants, which was affirmed on appeal. The High Court set aside the decree against the insurance company holding as under:

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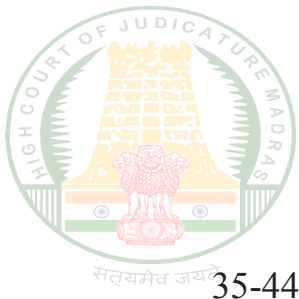


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“The only point taken is that Balkrishna being a stranger to the contract of insurance could not sue the insurance company. It is not disputed that the general law is that. a stranger to a contract cannot sue on it, though it is a rule which is subject to certain exceptions. The English rule as regards contracts of insurance (apart from certain statutory provisions not in force in India) is laid down as follows in Halsbury, Vol. 18 para 859;

“The person who has suffered the injury or damage for which the assured is liable is not a party or privy to the contract of insurance, and had not, either at Common law or in equity, any right to the money payable under the policy which he could enforce directly against either the insurers or the assured.”

16.In England the situation became so acute that a Royal Commission was appointed to go into the matter and find a solution. The Commission submitted its Report titled *“The Control of Traffic on Roads”* in July 1929 and proposed a Bill which eventually became the Road Traffic Act, 1930. This Act provided for the regulation of the use of motor vehicles on public road and for protection of third parties against risks arising out of the use of automobiles. Part II of the Act (Sections 27/102



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35-44) made it mandatory for every motor vehicle to be compulsorily insured before it was used in a public place. Section 35 made it penal for any person to use a motor vehicle unless there existed an insurance policy in respect of third-party risks specified in the Act. The purpose of introducing compulsory insurance was explained by the Government on the floor of the House of Commons as under:

“There have been a large number of cases of persons, sometimes poor persons, killed or injured in a motor accident, where the driver was convicted of negligence or bad driving, but because the driver was not insured and was not a person of substance, the relatives of the person killed or the person injured were unable to get damages for the injury done. As against that, the Government had to face the great difficulties involved in compulsory third party insurance, but, on balance, we decided that we would face the difficulties and deal with an intolerable injustice which ought not to be allowed to exist.”

17. Section 36 of the Act required the policy to be taken out from an authorized insurer and was required to cover any liability which the insured may incur on account of the death of or bodily injury to a



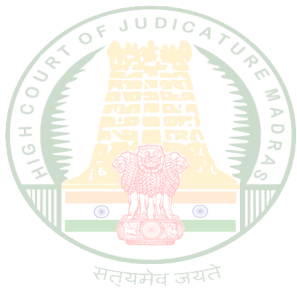
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person caused by or arising out of the use of the car on the road. Section 38 of the Act provided that the claims of third parties shall not be affected by any conditions in a policy except those which relate to something which the policy requires to be done or omitted after the occurrence of the event giving rise to a claim under the policy.

18.The Third Parties (Right against Insurers) Act, 1930 was enacted thereafter. This Act sought to partly remedy the situation by providing that third parties could sue the insurer in the event of the insured going bankrupt or being wound up. This limited protection was however found to be illusory as could be seen from the decision in ***Richards v Port of Manchester Insurance Co Limited***, (1934) 50 Ll. L. Rep. 88 where the insurers were permitted to escape from liability by relying on a clause which exempted them if, at the time of accident, the car was being driven by a Jew, a bookmaker or an actor ! This bizarre result made the Court of Appeal in the UK to make the following observations in ***Zurich General Accident and Liability Insurance Co v Morrison***, 1942 2 KB 53:

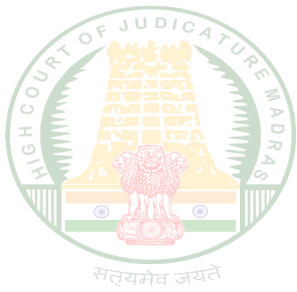
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“Part II. of the Road Traffic Act, 1934 , was passed to remedy a state of affairs that became apparent soon after the principle of compulsory insurance against third party risks had been established by the Road Traffic Act of 1930. That Act and the Third Parties' (Rights against Insurers) Act, passed in the same year, would naturally have led the public, at least those who were neither lawyers nor connected with the business of insurance, to believe that if thereafter they were, through no fault of their own, injured or killed by a motor car they or their dependants would be certain of recovering damages, even though the wrong-doer was an impecunious person. How wrong they were quickly appeared. Insurance was left in the hands of companies and underwriters who could impose what terms and conditions they chose. Nor was there any standard form of policy, and any company who could fulfill the not very onerous financial requirements that were necessary for acceptance as an approved insurer could hedge round the policies with so many warranties and conditions that no one advising an injured person could say with any certainty whether, if damages were recovered against the driver of the car, there was a prospect of recovering against the insurers.”

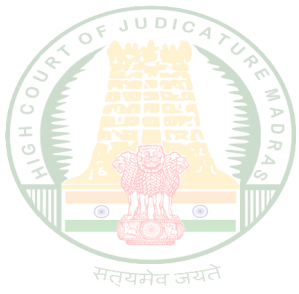


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19.To remedy the situation, the UK Parliament introduced the Road Traffic Act, 1934. Section 10 of the said Act purported to alter the common law that a stranger to a contract could not sue to recover by declaring that the insurer was bound to satisfy any judgment which was obtained by the third party against the insured.

20.After the enactment of the Road Traffic Act, 1934 in the UK, the Government of India constituted the Motor Vehicles Insurance Committee in 1936 under the Chairmanship of N.J Roughton, ICS. The Committee made a detailed empirical study of the obtaining legal position in the Presidencies and the Provinces. For instance, in Madras it was noted that suits had been filed for damages and decrees had been passed for a sum of Rs 2018 was passed out of which only Rs 732 was realized. The Committee recommended that insurance against third party risks should be made compulsory. For the present purpose, the following two recommendations in Chapter XX of the Report are relevant:



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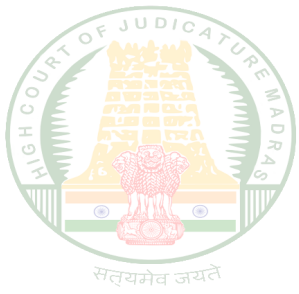
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“(9) Injured parties should be given the right to proceed against the insurer when a decree has been passed against the assured (paragraph 80)

“(10) The English law should be followed so far as third parties are protected against any repudiation of policies by insurers. on certain grounds.”

21.In the light of the above recommendations, the Motor Vehicles Act, 1939 was enacted but Chapter VIII dealing with “Insurance of Motor Vehicles Against Third Party Risks” was not brought into effect till 01.07.1943. Section 95 of the 1939 Act dealt with requirements of policies and limits of liability and was borrowed from Section 36 of the Road Traffic Act, 1930 (as amended). Section 95(1) set out the requirements of a valid policy of insurance. Section 95(2) prescribed the limits of liability which was classified on the basis of the nature of the vehicle. It is important to note that unlike Section 147(2)(a) of the Motor Vehicles Act, 1988 which prescribes unlimited liability, the provisions of Section 95(2) pegged the maximum monetary liability of the insurer to certain specified limits based on the nature of the vehicle used.

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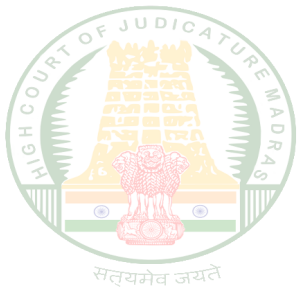
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22. Section 96 of the Motor Vehicles Act, 1939 dealt with the duty of the insurers to satisfy judgments and decrees and was borrowed substantially from the provisions of Sections 10 & 12 of the Road Traffic Act, 1934 as has been already pointed out, *supra*. Section 96(1) of the 1939 Act corresponds to Section 149(1) of the Motor Vehicles Act, 1988. After the Motor Vehicles Amendment Act, 2019 Section 149(1) has become Section 150(1).

23. A Full Bench of the Kerala High Court in *National Insurance Co. Ltd. v. Roy George*, (1993) ACJ 343, has held that there can be no dispute that Section 10 of the Road Traffic Act, 1934 is the precursor of Section 96 of the Motor Vehicles Act, 1939 which corresponds to Section 149 and presently Section 150 of the Motor Vehicles Act, 1988. For better appreciation, Section 10 of the Road Traffic Act, 1934 reads as follows:

“Section 10: Duty of insurers to satisfy judgments against persons insured in respect of third-party risks

(1) If, after a certificate of insurance has been delivered under subsection (5) of section thirty-six of the principal Act



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to the person by whom a policy has been effected, judgment in respect of any such liability as is required to be covered by a policy under paragraph (b) of subsection (1) of section thirty-six of the principal Act (being a liability covered by the terms of the policy) is obtained against any person insured by the policy, then, notwithstanding that the insurer may be entitled to avoid or cancel, or may have avoided or cancelled, the policy, the insurer shall, subject to the provisions of this section, pay to the persons entitled to the benefit of the judgment any sum payable thereunder in respect of the liability, including 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 the foregoing provisions of this section—

(a) in respect of any judgment, unless before or within seven days after the commencement of the proceedings in which the judgment was given, the insurer had notice of the bringing of the proceedings; or

(b) in respect of any judgment, so long as execution thereon is stayed pending an appeal; or

(c) in connection with any liability, if before the happening of the event which was the cause of the death or bodily injury giving rise to the liability, the policy was cancelled by mutual consent or by virtue of any provision contained therein, and either—



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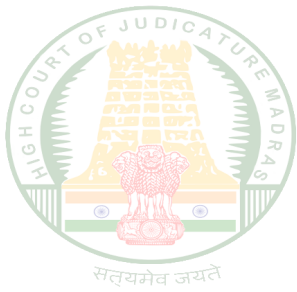
(i) before the happening of the said event the certificate was surrendered to the insurer, or the person to whom the certificate was delivered made a statutory declaration stating that the certificate had been lost or destroyed, or

(ii) after the happening of the said event, but before the expiration of a period of fourteen days from the taking effect of the cancellation of the policy, the certificate was surrendered to the insurer, or the person to whom the certificate was delivered made such a statutory declaration as aforesaid, or

(iii) either before or after the happening of the said event, but within the said period of fourteen days, the insurer has commenced proceedings under this Part of this Act in respect of the failure to surrender the certificate.

(3) No sum shall be payable by an insurer under the foregoing provisions of this section, if, in an action commenced before, or within three months after, the commencement of the proceedings in which the judgment was given, he has obtained a declaration that, apart from any provision contained in the policy, he is entitled to avoid it 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, or, if he has avoided the policy on that ground, that he was entitled so to do apart from any provision contained in it:

Provided that an insurer who has obtained such a declaration



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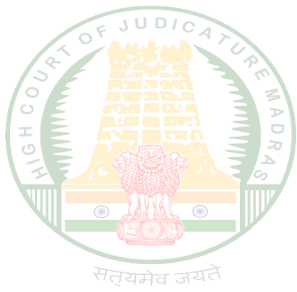
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as aforesaid in an action shall not thereby become entitled to the benefit of this subsection as respects any judgment obtained in proceedings commenced before the commencement of that action, unless before or within seven days after the commencement of that action he has given notice thereof to the person who is the plaintiff in the said proceedings specifying the non-disclosure or false representation on which he proposes to rely, and any person to whom notice of such an action is so given shall be entitled, if he thinks fit, to be made a party thereto.

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

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

(6) In this Part of this Act references to a certificate of insurance in any provision relating to the surrender, or the



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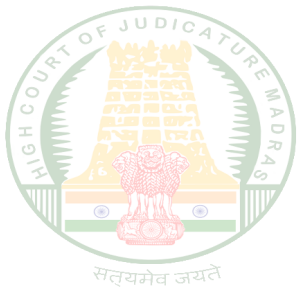
loss or destruction, of a certificate of insurance shall, in relation to policies under which more than one certificate is issued, be construed as references to all the certificates, and shall, where any copy has been issued of any certificate, be construed as including a reference to that copy.”

24.The interpretation of Section 10(1) was considered by the Privy Council in ***Motor and General Insurance Co Ltd v Pavy***, (1994) 1 WLR 462, where the following was observed:

“The third party must rely on section 10(1) of the Act. The relevant words, having regard to the 1974 amendment of section 4(1)(b), may for present purposes be paraphrased as follows: “If judgment in respect of any liability arising from the death of or bodily injury to or damage to the property of a third party (being a liability covered by the terms of the policy) is obtained against the insured, then the insurers shall pay to the third party the sum payable under the judgment in respect of the liability.” The insurers must therefore pay provided the insured's liability is a liability covered by the terms of the policy. These words are defined in section 10(5) as:

“a liability which is covered by the policy or which would be so covered but for the fact that the insurer is entitled to avoid or cancel, or has avoided or cancelled, the policy.”

It should be noted that third parties are entitled to recover



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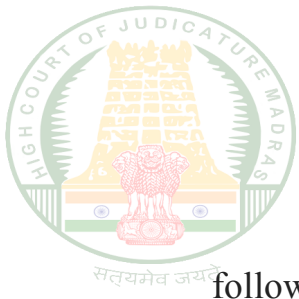


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from the insurers under section 10(1) in every case in which judgment is obtained and section 4(1)(b), as amended, applies, and not only in cases where the insured is insolvent or is in breach of or not covered by the policy.

The insurers contend, as they must if they are to succeed, that the liability which has been incurred by the insured in the present case is not a liability covered by the terms of the policy on the ground that liability ceased and they were no longer on risk because of the breach of condition 1 by the insured. This argument, in the view of their Lordships, involves a misinterpretation of the relevant words. The definition in section 10(5) shows that a liability which is covered by the terms of the policy does not fail to be so covered unless the insurer either is entitled to avoid or cancel the policy or has actually done so. But the insured's breach after the event which gave rise to the claim entitled the insurers, not to avoid or cancel the policy, but merely to repudiate liability in respect of that particular event; the policy remained in force and (in the absence of a special condition) the insurers would still have been on risk if a subsequent event giving rise to a claim had occurred during the currency of the policy.”

25.It will be seen that Section 10(1) like Section 149(1) presently Section 150(1) of the Motor Vehicles Act, 1988 uses the

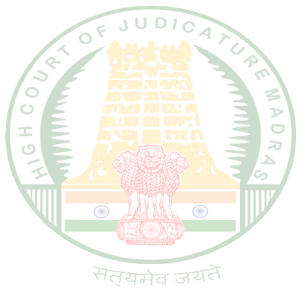


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following phrase “notwithstanding that the insurer may be entitled to avoid or cancel, or may have avoided or cancelled, the policy, the insurer shall, subject to the provisions of this section, pay to the persons entitled to the benefit of the judgment any sum payable thereunder in respect of the liability”

26. Section 10(5) of the Road Traffic Act, 1934 defines *“liability covered by the terms of the policy”* to mean *“a liability which is covered by the policy or which would be so covered but for the fact that the insurer is entitled to avoid or cancel, or has avoided or cancelled, the policy.”* Section 10(5) of the 1934 is in *pari materia* with Section 150(6) of the Motor Vehicles Act, 1988 where the expression *“liability covered by the terms of the policy”* has been identically defined. Explanation (c) to Section 150(6) defines it to mean *“a liability which is covered by the policy or which would be so covered but for the fact that the insurer is entitled to avoid or cancel or has avoided or cancelled the policy.”*



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27. In his treatise on the *Law of Motor Insurance* (1949 Edition, Butterworths & Co), Christopher Shawcross has examined the meaning of the expression “*liability covered by the terms of the policy*” occurring in Section 10(5) of the Road Traffic Act, 1934 and has observed that the phrase is capable of two meanings (pages 280-81):

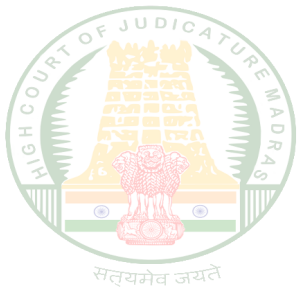
“a liability in respect of which an indemnity is enforceable under the terms of the policy or which would be so enforceable but for the fact that the insurers are entitled to avoid or cancel the policy”

or

“a liability within the risks specified in the policy or which would be within the risks specified in the policy but for the fact that the insurers are entitled to avoid or cancel the policy ... or are entitled to evade liability ...”

Shawcross points out that if the first alternative is adopted the “*whole object of this part of this Act would be defeated.*” He suggests that the expression “*a liability covered by the policy*” means:

“liability which comes within (or arises out of) a risk apparently insured by the express terms of the policy, whether or not it is a ... liability in respect of which the insurers are entitled to refuse an indemnity on the



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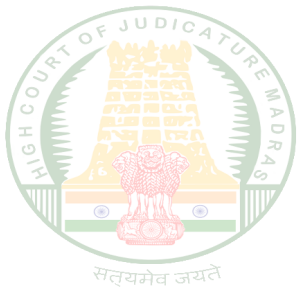
ground that the assured has committed some breach of the terms of the policy.”

Thus, to trigger Section 10(1) of the Road Traffic Act, 1934 corresponding to Section 150(1) of the Motor Vehicles Act, 1988 what is required is that the liability is one which comes within the terms of the policy notwithstanding the fact that the insurers are entitled to avoid or cancel the same for breach of some policy condition. The aforesaid suggestion of Shawcross has been approved as the correct view by the Privy Council in *Motor and General Insurance Co Ltd v Pavy*, 1994 1 WLR 46.

BASIS OF LIABILITY: SECTION 149(1)

28. Section 149(1) of the Motor Vehicles Act, 1988 as it stood prior to its amendment vide Act 32 of 2019 was as follows:

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



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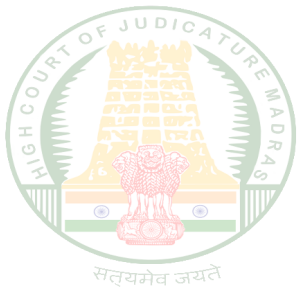


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(b) of sub-section (1) of section 147 (being a liability covered by the terms of the policy) [or under the provisions of section 163A] is obtained against any person insured by the policy, then, notwithstanding that the insurer may be entitled to avoid 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.

Though Section 149(1) is worded rather complexly, its ingredients can be broken down as under:

- i. There must be a certificate of insurance issued under Section 147(3) containing the prescribed particulars and conditions of the policy.
- ii. A judgment or award ought to have been passed against any person insured by the policy in respect of a liability covered under Section 147(1)(b) ie., **(a)** 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



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caused by or **(b)** arising out of the use of the motor vehicle in a public place or 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 or **(c)** a judgment or award passed under Section 163-A.

iii.If (i) and (ii) are satisfied then notwithstanding that the insurer may be entitled to avoid or cancel or may have avoided or cancelled the policy, the insurer shall

iv.subject to the provisions of this section

v.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.

29.It should be emphasized that Section 149 is titled “*duty of the insurer to satisfy judgments and awards against persons insured in*

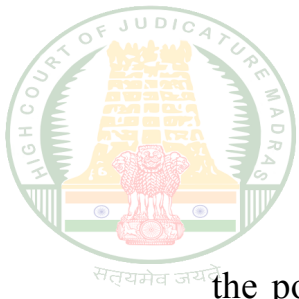


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respect of third-party risks.” Thus, Section 149 casts a statutory duty on the insurer who has issued the policy to satisfy an award obtained by a third party against the insured. In his seminal work titled ‘*Fundamental Legal Conceptions*’ published in (1913) 23 Yale Law Journal 16, W.N Hohfeld explains the concept of a “*right*” in relation to the “*duty*” it creates in another person. Therefore, wherever a right exists in one person, a duty must exist in the other. This relationship has been termed as the jural correlative. Thus, the right of the third party to enforce a judgment or award in respect of a liability under the policy against an insured creates a correlative duty on the insurance company to honor and satisfy such claims. This right-duty relationship envisaged by Section 149(1) is statutory in character in contradistinction with the relationship between an insurer and an insured which is contractual in nature.

30.In *New India Assurance Co v Yallava*, 2020 ACJ 2560, a Full Bench of the Karnataka High Court considered the question as to whether pay and recover could be ordered in cases where there is a breach under Section 149(2)(b) entitling the insurance company to treat



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the policy as null and void. In her concurring judgment, Nagarathna, J
(as the Hon'ble Judge then was) observed:

“44. The question is, as to, whether, the insurer is still liable to satisfy the award when the policy itself is void? The answer to the same is found in sub-section (1) of Section 149 as well as sub-section (4) of Section 149. It is already noted that sub-section (1) of Section 149 makes the insurer liable as if it were a judgment debtor, is subject to the provisions of Section 149. Sub-section (4) of Section 149 states that where a certificate of insurance has been issued under Section 147 (3) of the Act to any person by whom a policy has been effected so much of the policy as purports to restrict insurance of a person thereby by reference to any condition other than those in clause (b) of sub-section (2) of Section 149 shall, as respects such liability as are required to be covered by a policy under Section 147 (1) (b) is of no effect. That means the liability to satisfy an award or judgment under Section 149 (1) of the Act by an insurer would apply even when any of the defences under Section 149(2) of the Act would arise. Section 149 (2)(b) of the Act, deals with a situation where the policy itself is void. In such a case, an exception has been made under sub-section (4) of Section 149 of the Act. But, under Section 149(1), any restriction or defence raised with regard to Section 149(2) of the Act would have no effect and the insurer would have to satisfy the

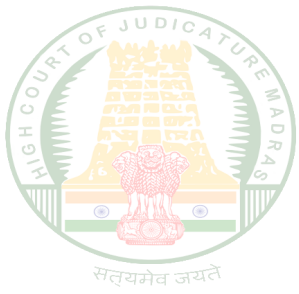


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award or judgment having regard to sub-section (1) of Section 149 of the Act. Thus, sub-section (1) of Section 149 of the Act being subject to the other provisions of Section 149, sub- section (4) of Section 149 would have to be read harmoniously having regard to the non-obstante clause in Section 149(1) of the Act.”

The learned judge thereafter referred to Section 149(6) and noted as under:

“In this regard it is necessary to refer to sub-section (6) of Section 149 which categorically states that the expression "liability covered by the terms of the policy" means a liability, which is covered by the policy or which would be so covered but for the fact that the insurer is entitled to avoid or cancel or has avoided to cancel the policy. The expression "but for the fact", in sub-section (6) of Section 149 is significant. In other words, if an insurer is entitled to avoid or tried to cancel or avoided the policy, in such a case, whether the insurer is still liable to place his defence under Section 149(2)(b) of the Act and whether the liability covered by the terms of the policy cannot be enforced in such a situation? The question further arises, even in a case falling under Section 149(2)(b), whether, the insurer is liable to satisfy judgment or award under Section 149 (1) of the Act.”

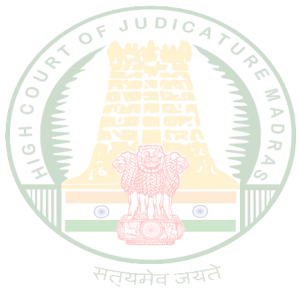


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Finally, the Hon'ble Judge concluded as under:

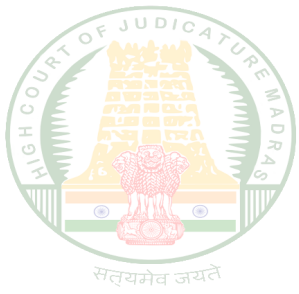
“45. I am of the view that in such a situation also, the insurer is liable to satisfy the judgment and award. This is because, sub-section (1) of Section 149 uses the expression "notwithstanding that the insurer may be entitled to avoid or cancel or may have avoided or cancelled the policy, the insurer shall pay to the person entitled to the benefit of the decree". The said expression is couched alongside another expression namely, "subject to the provisions of this section" i.e., Section 149. Also, in sub- section (6) of Section 149, the expression "liability covered by the terms of the policy" is defined to mean "a liability which is covered by the policy or which would be so covered but for the fact that the insurer is entitled to avoid or cancel or has avoided or cancelled the policy". On a conjoint reading of the aforesaid provisions with particular emphasis on the aforesaid expressions, it would emerge that even when a defence under Section 149(2)(b) is raised by an insurer to the effect that the policy is void on account of non-disclosure of a material fact or a misrepresentation of a fact which was false in material particular at the time of obtaining policy by the insured is proved in such an event also, the insurer cannot avoid or cancel the policy and will be liable to satisfy the judgment or award under sub-section (1) of Section 149.



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46. *It is noted that sub-section (1) of Section 149 contains a non-obstante clause, and, the same has to be read along with other sub-sections of Section 149. When the same are read holistically, it would reveal that when a policy is found to be void and the defence under Section 149(2)(b) is established by the insurer or the insurer has avoided or cancelled the policy i.e., repudiated the contract in such a case also, the insurer can be directed to satisfy the judgment of award. Though the Parliament has used the expression "subject to the provisions of this section in Section 149(1)" and also, the expression "but for the fact that the insurer is entitled to avoid or cancel or has avoided or cancelled the policy" in sub-section (6) of Section 149 nevertheless the same has to be read in light of the non-obstante clause in Section 149 (1) of the Act particularly in the context of compulsory coverage of risks as per Section 147 (1) (b) of the Act which includes third party risk. Therefore, the Parliament, being conscious of the fact that a void policy cannot be enforced and the insured cannot be indemnified on the basis of a void policy in general law of contract and the judgment or award obtained by a third party against such an insured cannot be given effect to, has incorporated the non-obstante clause in Section 149 (1) of the Act, which is by way of an exception to the general contract law. This is to protect the interest of innocent third parties whose risk is considered under Section 147 (1)(b) of the Act."*

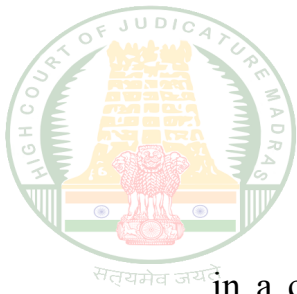


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31.We are in respectful agreement with the aforesaid view which, in our considered opinion is clearly in line with the object and purpose of the statute. As pointed out by Nagarathna, J (as she then was) the key expression in Section 149(1) are the words “*notwithstanding that the insurer may be entitled to avoid or cancel or may have avoided or cancelled the policy*” the object of which is to override the general law of contract under which the insurer is obliged to “*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.*”

32.It was, however, contended by Mr. M.B Raghavan, learned counsel, that the provisions of Section 149(1) are subject to the other provisions in the section particularly Section 149(2), and consequently the non-obstante clause in Section 149(1) cannot be pressed into service



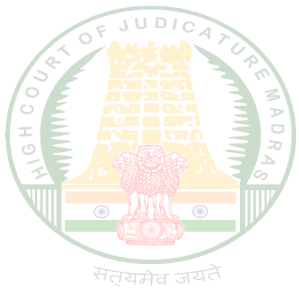
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in a case of this nature when there is a breach entitling the insurer to avoid liability. We are unable to agree.

33.Section 149(2) sets out the defenses which the insurance company may take to avoid its liability under the policy. In view of the mandate of Section 147(7) the insurer is debarred from taking any other defense other than those permitted under Section 149(2). The law in this regard has been settled by the Supreme Court in ***British India General Insurance Co v Captain Itibar Singh, AIR 1959 SC 1331.***

34.However, what is often overlooked is the fact that the defenses under Section 149(2) operate only against the insured and not against the third party. To be precise, a contract of insurance between the insurer and the insured can be avoided or repudiated only as against between themselves ie., the contracting parties and not as against a third party. Repudiation is of the contract of insurance, and it would be incorrect to speak of repudiation as between an insurer and a third party with whom no contract of insurance exists.

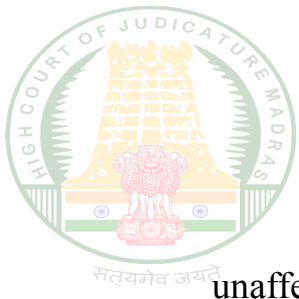


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35. In the context of defenses available to the insurer, if the insurer is unable to make out a case under Section 149(2) the consequence is that he would be liable to settle the claims of the third party in full without recourse to the insured. Conversely, if the insurer can make out a case under Section 149(2) the consequence is that he would be liable to settle the claims of the third party and thereafter proceed against the insured for recovery of the sums paid. The breach of a policy condition prescribed under Section 149(2) gives the right to the insurer to proceed against the insured which flows from Section 125 of the Contract Act, 1872.

36. From the standpoint of a third party, in either of the two scenarios pointed out above, the statutory duty of the insurer *vis-à-vis* third party to satisfy the sums payable under a decree flowing from Section 149(1) remains unaffected. This conclusion is fortified by the expression “notwithstanding that the insurer may be entitled to avoid or cancel or may have avoided or cancelled the policy” which clearly points to the fact that the duty of the insurer to satisfy an award remains



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unaffected by the fact that the insurer has actually avoided or cancelled or is entitled to avoid or cancel the policy on any of the grounds specified in Section 149(2).

37.The aforesaid construction is fortified by the fact that under Section 150(1) as it presently stands, insurer is under a statutory duty to satisfy a “*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)*”. The expression “*liability covered by the terms of the policy*” occurring in Section 150(1) is defined in Explanation (c) to Section 150 as under:

“(c) “*liability covered by the terms of the policy*” means the liability which is covered by the policy or which would be so covered **but for the fact** that the insurer is entitled to avoid or cancel or has avoided or cancelled the policy;”

Thus, the expression “*liability covered by the terms of the policy*” covers both scenarios viz., (a) a liability which, in fact, is actually covered by



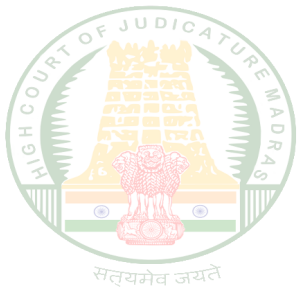
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the policy and (b) a liability which would be covered but for the fact that the insurer has or intends to avoid or cancel the policy in terms of Section 150(2). This is a clear indicator that for the purposes of statutory liability vis-à-vis an insurer and a third party in terms of Section 150(1), the fact that the insurer can avoid a policy or has actually avoided the policy for breach of a policy condition vis-à-vis itself and the insured does not absolve it of its statutory duty to satisfy the claims of a third party under the award.

38.We are supported in taking the aforesaid view by a judgment of the Supreme Court in ***New Asiatic Insurance Co. Ltd. v. Pessumal Dhanamal Aswani***, AIR 1964 SC 1736, wherein it was held as follows:

“The Act contemplates the possibility of the policy of insurance undertaking liability to third parties providing such a contract between the insurer and the insured, that is, the person who effected the policy, as would make the company entitled to recover the whole or part of the amount it has paid to the third party from the insured. The insurer thus acts as security for the third party with respect to its



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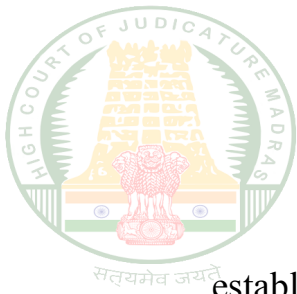
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realising damages for the injuries suffered, but vis-a-vis the insured, the company does not undertake the liability or undertakes it to a limited extent. It is in view of such a possibility that various conditions are laid down in the policy. Such conditions, however, are effective only between the insured and the company, and have to be ignored when considering the liability of the company to third parties.”

The Supreme Court finally concluded as follows:

“Thus the contract between the insured and the company may not provide for all the liabilities which the company has to undertake vis-a-vis the third parties, in view of the provisions of the Act. We are of opinion 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.”

Consequently, in view of the above discussion we hold that the insurance company cannot evade its duty to satisfy the award to the third-party claimant in terms of Section 150(1) of the Act (as amended by Act 32 of 2019). In cases where the insurance company can plead, prove and



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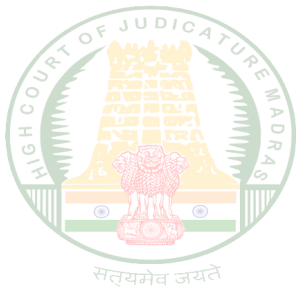
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establish a defense under Section 150(2), it is required to first pay the sum under the award to the third party and thereafter recover the same from the insured.

BENEFICIAL CONSTRUCTION

39.We cannot also lose sight of the fact that the compulsory insurance regime itself was brought to tackle the problem of third parties suing the insured and failing to recover the sum payable under the decree. As pointed out by the Supreme Court in *New Asiatic Insurance Co. Ltd. v. Pessumal Dhanamal Aswani*, AIR 1964 SC 1736, the insurer “acts as security for the third party with respect to its realising damages for the injuries suffered” (emphasis supplied by us). Vis-à-vis the insured “*the company does not undertake the liability or undertakes it to a limited extent.*”

40.In the context of motor vehicles law, the Supreme Court had observed in *Shivaji Dayanu Patil v. Vatschala Uttam More*, (1991) 3 SCC 530, as under:



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“In the matter of interpretation of a beneficial legislation the approach of the courts is to adopt a construction which advances the beneficent purpose underlying the enactment in preference to a construction which tends to defeat that purpose.”

41.In **K.H. Nazary.Mathew K. Jacob**, (2020) 14 SCC 126, it was held:

“11. Provisions of a beneficial legislation have to be construed with a purpose-oriented approach. [Kerala Fishermen's Welfare Fund Boardv.Fancy Food, (1995) 4 SCC 341] The Act should receive a liberal construction to promote its objects. [Bombay Anand Bhavan Restaurantv.ESI Corpn., (2009) 9 SCC 61 : (2009) 2 SCC (L&S) 573 andUnion of Indiav.Prabhakaran Vijaya Kumar, (2008) 9 SCC 527 : (2008) 3 SCC (Cri) 813] Also, literal construction of the provisions of a beneficial legislation has to be avoided. It is the Court's duty to discern the intention of the legislature in making the law. Once such an intention is ascertained, the statute should receive a purposeful or functional interpretation. [Bharat Singhv.New Delhi Tuberculosis Centre, (1986) 2 SCC 614 : 1986 SCC (L&S) 335]”

Once it is clear that the very purpose of Chapter XI in the Motor Vehicles Act, 1988 is to protect the innocent third party from the vagaries of the

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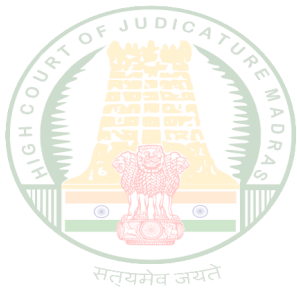
solvency of the insured upon obtaining an award, we are under an obligation to place an interpretation upon Section 150 that preserves the remedy of the intended beneficiary ie.,the third party who is an innocent victim in a motor vehicle accident.

EVOLUTION OF DOCTRINE OF ‘PAY AND RECOVER’

42.The doctrine of pay and recover under the MV Act, 1988 came for discussion before the Supreme Court in *New India Assurance Co. v. Kamla*, (2001) 4 SCC 342, *United India Insurance Co. Ltd. v Lehru*, (2003) 3 SCC 338 and *National Insurance Co. Ltd. v Swaran Singh*, (2004) 3 SCC 297.

43.In ***Kamala’s case***, the question was whether the insurance company could avoid payment of compensation in respect of a motor accident which had occurred while the vehicle was being driven by a person holding a sham license. It was contended that once it was found that the licence was fake, the company was entitled to avoid liability in terms of Section 149(2). Rejecting this contention it was held:

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“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.”

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.”

44.In **United India Insurance Co. Ltd. v. Lehu**,(2003) 3 SCC

338, it was contended that the decision in **Kamla’s case** was incorrectly decided in as much as the insurer ought to have been exonerated as soon

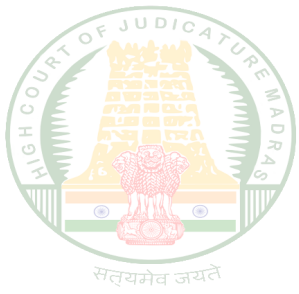


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it has established a defense under Section 149(2)(ii). After advertng to the provisions of Section 149, it was held:

“Thus under sub-section (1) the insurance company must pay to the person entitled to the benefit of the decree, notwithstanding that it has become “entitled to avoid or cancel or may have avoided or cancelled the policy”. The words “subject to the provisions of this section” mean that the insurance company can get out of the liability only on grounds set out in Section 149. Sub-section (7), which has been relied on, does not state anything more or give any higher right to the insurance company. On the contrary, the wording of sub-section (7) viz. “no insurer to whom the notice referred to in sub-section (2) or sub-section (3) has been given shall be entitled to avoid his liability” indicates that the legislature wanted to clearly indicate that insurance companies must pay unless they are absolved of liability on a ground specified in sub-section (2). This is further clear from sub-section (4) which mandates that conditions, in the insurance policy, which purport to restrict insurance would be of no effect if they are not of the nature specified in sub-section (2). The proviso to sub-section (4) is very illustrative. It shows that the insurance company has to pay to third parties but it may recover from the person who was primarily liable to pay. The liability of the insurance company to pay is further emphasised by sub-section (5). This also shows that the insurance company must first pay, then it can recover. If



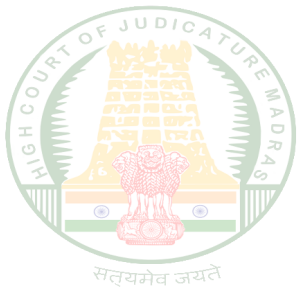
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Section 149 is read as a whole it is clear that sub-section (7) is not giving any additional right to the insurance company. On the contrary it is emphasising that the insurance company cannot avoid liability except on the limited grounds set out in sub-section (2).”

45.It is clear from the aforesaid observations of the Supreme Court, that the proviso to Section 149(4) was characterized only as being “very illustrative” in nature. It would therefore be obvious that the Supreme Court has not regarded Section 149(4) as being exhaustive or as the source or sole repository of power to order pay and recover as has been sought to be contended by the insurance companies. We cannot interpret the provision in a manner that is exactly the opposite of what the Supreme Court had intended. Furthermore, as we have pointed out earlier the substantive basis to fasten statutory liability on the insurer is traceable to Section 149(1) of the Motor Vehicles Act, 1988 and not to the proviso to Section 149(4).



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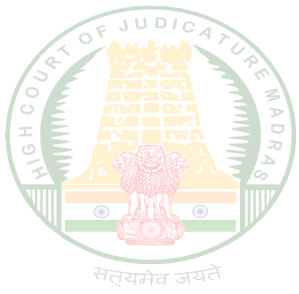
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46. The correctness of the decisions in ***Kamla's case*** and ***Lehru's case*** came up for consideration before a bench of three judges of the Supreme Court in ***National Insurance Co. Ltd. v. Swaran Singh***, (2004) 3 SCC 297. After considering all the decisions on the point the following observations were made:

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

*82. Proviso appended to sub-section (4) of Section 149 is referable only to sub-section (2) of Section 149 of the Act. It is an independent provision and must be read in the context of Section 96(4) of the Motor Vehicles Act, 1939. Furthermore, it is one thing to say that the insurer will be entitled to avoid its liability owing to breach of terms of a contract of insurance but it is another thing to say that the vehicle is not insured at all. If the submission of the learned counsel for the petitioner is accepted, the same would render the proviso to sub-section (4) as well as sub-section (5) of Section 149 of the Act otiose; nor can any effective meaning be attributed to the liability clause of the insurance company contained in sub-section (1) of Section 149. The decision in *Kamla case* [(2001) 4 SCC 342 : 2001 SCC (Cri) 701] has to be read in the aforementioned context.”*

(emphasis supplied)

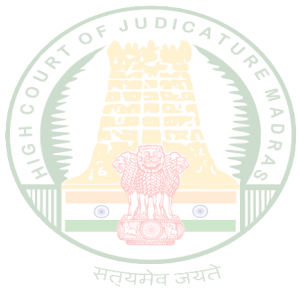


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47.It is evident from the above, that the Supreme Court had regarded Section 149(1) as the liability clause and not the proviso to Section 149(4) or 149(5). Adverting to Section 149(5) it was held:

“Sub-section (5) of Section 149 which imposes a liability on the insurer must also be given its full effect. The insurance company may not be liable to satisfy the decree and, therefore, its liability may be zero but it does not mean that it did not have initial liability at all. Thus, if the insurance company is made liable to pay any amount, it can recover the entire amount paid to the third party on behalf of the assured.If this interpretation is not given to the beneficent provisions of the Act having regard to its purport and object, we fail to see a situation where beneficent provisions can be given effect to. Sub-section (7) of Section 149 of the Act, to which pointed attention of the Court has been drawn by the learned counsel for the petitioner, which is in negative language may now be noticed. The said provision must be read with sub-section (1) thereof. The right to avoid liability in terms of sub-section (2) of Section 149 is restricted as has been discussed hereinbefore. It is one thing to say that the insurance companies are entitled to raise a defence but it is another thing to say that despite the fact that its defence has been accepted having regard to the facts and circumstances of the case, the Tribunal has power to direct them to satisfy the decree at the first instance and then



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direct recovery of the same from the owner. These two matters stand apart and require contextual reading.”

48.The above observations must be read in conjunction with the following conclusions in sub-paragraphs (x) and (xi) of paragraph 110 of the judgment which is as follows:

“(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.

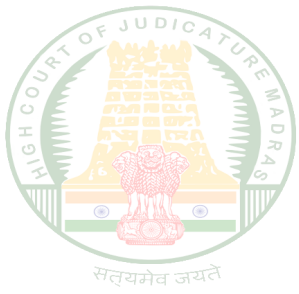


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(xi) The provisions contained in sub-section (4) with the proviso thereunder and sub-section (5) which are intended to cover specified contingencies mentioned therein to enable the insurer to recover the amount paid under the contract of insurance on behalf of the insured can be taken recourse to by the Tribunal and be extended to claims and defences of the insurer against the insured by relegating them to the remedy before regular court in cases where on given facts and circumstances adjudication of their claims inter se might delay the adjudication of the claims of the victims.”

From the above, it is clear that Section 149(4) and its proviso as well as Section 149(5) were intended to only cover “specified contingencies mentioned therein” as pointed out by the Supreme Court. Section 149(4) and (5), as it stood prior to the amendment, was as follows:

“(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:



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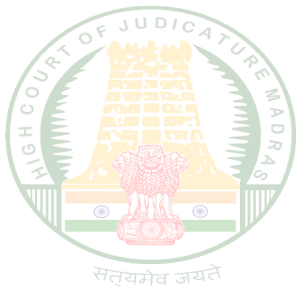


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Provided that any sum paid by the insurer in or towards the discharge of any liability of any person which is covered by the policy by virtue only of this sub-section shall be recoverable by the insurer from that person.

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

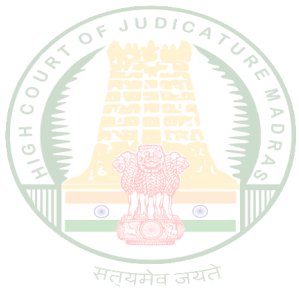
49. On a close reading of Section 149(4) and its proviso it becomes clear that its object is to disable the insurer from setting up defenses by setting up conditions other than those contained in clause (b) of Section 149(2) by declaring that such conditions outside the scope of Section 149(2) (b) were void and of no effect. It is further clear that the operation of the proviso to Section 149(4) is restricted to sums paid by the insurer “*by virtue only of this sub-section*”. This is one type of specified contingency.



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50.The other is set out in Section 149(5) which is *in pari materia* with Section 10(4) of the Road Traffic Act, 1939. The expression “*exceeds the amount for which the insurer would apart from the provisions of this section be liable under the policy in respect of that liability*” occurring in Section 149(5) is crucial. So also, the phrase “*insurer shall be entitled to recover the excess from that person*” which immediately follows the said expression is equally important. As pointed out by Shawcross in his “*Treatise on the Law of Motor Insurance*”, (page 313) that Section 10(4) which corresponds to Section 149(5) was intended to apply to cases where the insurers have limited their liability in respect of third-party claims under the policy to a certain sum. It must be pointed out that Section 149(5) corresponds to Section 96(4) of the Motor Vehicles Act, 1939. Section 95(2) of the 1939 Act expressly limited the liability of the insurance company to certain fixed sums. The scope of Section 96(4) of the Motor Vehicles Act, 1939 came up for consideration before a Full Bench of the Kerala High Court in ***National Insurance Co v Roy George***, 1993 ACJ 343, the following observations were made:

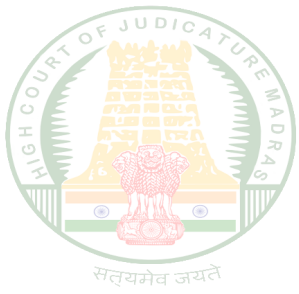


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“No doubt, Section 96(4) enables the insurer to recover the "excess" from the insured. But this does not refer to a situation where the insurer pays the entire amount covered by the judgment to the claimants and to its recovering the excess over the statutory liability from the insured. This is because the basic liability of the insurer is only to the statutory liability covered by Section 95(1)(b) read with Section 95(2). But, the provisions of Section 96(4) are not redundant or otiose. They have a meaning and are meant to cover at least one of two different situations. In a case where the entire policy is avoided under Section 96(6) by the insurer on grounds mentioned in Section 96(2) as against the insured, the insurer may, after paying to the claimants the amount covered up to its statutory liability under Section 95(1)(b) read with Section 95(2), recover whatever it has so paid to the claimants, from the insured. In that case, it can get back the whole of the amount covered by the statutory liability from the insured and it would be a case of "excess over nil" as stated by Lord Diplock in Harker's case [1980] 1 Lloyd's Rep 556. There can also be a second situation where after paying to the claimants the amount covered by the statutory liability under Section 95(1)(b) read with Section 95(2) together with interest and costs, the insurer could recover the "excess" amount over and above the specific statutory figure, governing its liability under Section 95(1)(b) read with Section 95(2) and obviously the word "excess" would then mean that the insurer could recover the costs and interest from



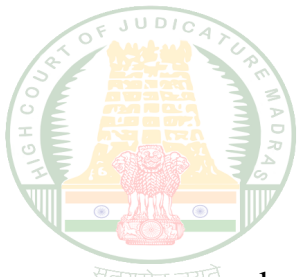
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the insured. Of course, there is no practice in our country for the general insurance companies to proceed to recover the interest and costs from the insured nor are we to be understood as permitting such a course by laying down a new convention.”

51.The same view has been taken by a Constitution Bench of the Supreme Court in ***New India Assurance Co. Ltd. v. C.M. Jaya, (2002) 2 SCC 278***.The aforesaid decision makes it clear that Section 96(4) applied to a situation where the insurer avoids the policy in its entirety under Section 96(6) on one or more of the grounds specified in Section 96(2). In such a situation, the insurer was liable to pay the claimant the sum up to the maximum specified in Section 95(2) and could recover the said amount also from the insured. However, under the Motor Vehicles Act, 1988, Section 147(2)(a), made it clear the liability of the insurer is unlimited in respect of claims for death and bodily injury. Thus, the concept of “excess” in the sense indicated by the Kerala High Court in ***National Insurance Co v Roy George***, 1993 ACJ 343 did not arise except in cases where the damage was in respect of property of the third party in which case the statutory maxima was pegged at Rs 5000



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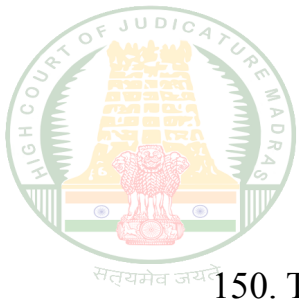
under Section 147(2)(b).

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MOTOR VEHICLES (AMENDMENT) ACT, 2019

52.We must now address the sheet anchor of the case of the insurance companies which is to the effect that Parliament had deliberately and consciously deleted the proviso to Section 149(4) and Section 149(5) in the corresponding Section 150 in the newly substituted Chapter XI pursuant to the Motor Vehicles (Amendment) Act, 2019. Consequently, the doctrine of “pay and recover” has met its Waterloo with the deletion of these provisions. The learned counsel appearing for the insurance companies repeatedly harped upon the point that Parliament has consciously omitted proviso to Section 149(4) and Section 149(5) signaling a clear intention to do away with the doctrine of pay and recover.

53.The precursor to the 2019 Amendment Act is the Motor Vehicles (Amendment) Bill, 2016. Clause 49 of the said Bill sought to substitute Chapter XI of the Act and replace Section 149 with Section



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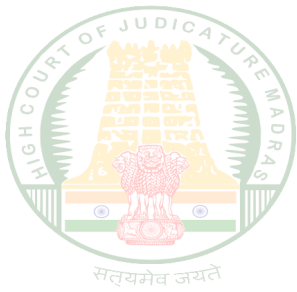
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150. The proposed Section 150 was as follows:

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

150. (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 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



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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—

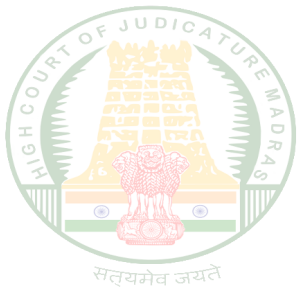
(A) for hire or reward, where the vehicle is on the date of the contract of insurance a vehicle not covered by a permit to ply for hire or reward; or

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



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(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) Where any such judgment or award as is referred to in subsection (1) is obtained from a court in a reciprocating country and in the case of a foreign judgment is, by virtue of the provisions of section 13 of the Code of Civil Procedure, 1908 conclusive as to any matter adjudicated upon by it, the insurer (being an insurer registered under the Insurance Act, 1938 and whether or not that person is registered under the corresponding law of the reciprocating country) shall be liable to the person entitled to the benefit of the decree in the manner and to the extent specified in subsection (1), as if the judgment or award were given by a court in India: Provided that no sum shall be payable by the insurer in respect of any such 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 concerned of the bringing of the proceedings and the insurer to whom notice is so given is entitled under the



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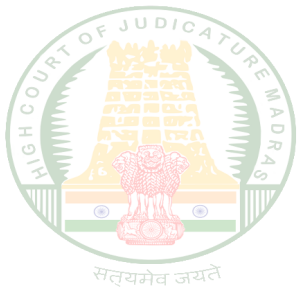
corresponding law of the reciprocating country, to be made a party to the proceedings and to defend the action on grounds similar to those specified in subsection (2).

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

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 of this sub-section shall be recoverable by the insurer from that person.

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

(6) No insurer to whom the notice referred to in sub-section (2) or sub-section (3) has been given shall be entitled to avoid his



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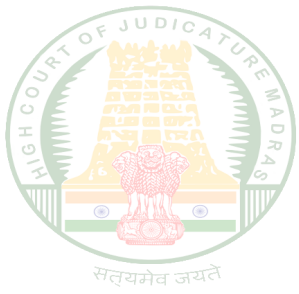


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liability to any person entitled to the benefit of any such judgment or award as is referred to in sub-section (1) or in such judgment as is referred to in sub-section (3) otherwise than in the manner provided for in sub-section (2) or in the corresponding law of the reciprocating country, as the case may be. (7) If on the date of filing of any claim, the claimant is not aware of the insurance company with which the vehicle had been insured, it shall be the duty of the owner of the vehicle to furnish to the tribunal or court the information as to whether the vehicle had been insured on the date of the accident, and if so, the name of the insurance company with which it is insured.

(7) If on the date of filing of any claim, the claimant is not aware of the insurance company with which the vehicle had been insured, it shall be the duty of the owner of the vehicle to furnish to the tribunal or court the information as to whether the vehicle had been insured on the date of the accident, and if so, the name of the insurance company with which it is insured.

Explanation.— For the purposes of this section,— (a) "award" means an award made by the Claims Tribunal under section 168; 165; (b) "Claims Tribunal" means a Claims Tribunal constituted under section (c) "liability covered by the terms of the policy" means the liability which is covered by the policy or which would be so covered but for the fact that the insurer is entitled to avoid or cancel or has avoided or cancelled the



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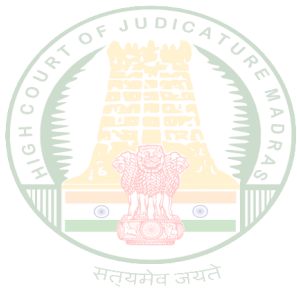
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policy; and (d) "material fact" and "material particular" means, respectively, a fact or particular of such a nature as to influence the judgment of a prudent insurer in determining whether he shall take the risk and, if so, at what premium and on what conditions."

It is clear from a reading of Section 150, proposed under the Motor Vehicles Bill, 2016, that the proviso to Section 150 (4) as well as Section 150(5) corresponding to proviso to Section 149 (4) as well as Section 149(5) were retained.

54.At this juncture we must also notice Section 147(2) as proposed by the Motor Vehicles Bill, 2016 which was as follows:

(2) Notwithstanding anything contained under any other law for the time being in force, for the purposes of third party insurance related to either death of a person or grievous hurt to a person, the Central Government shall prescribe a base premium and the liability of an insurer in relation to such premium for an insurance policy under subsection (1) in consultation with the Insurance Regulatory and Development Authority:



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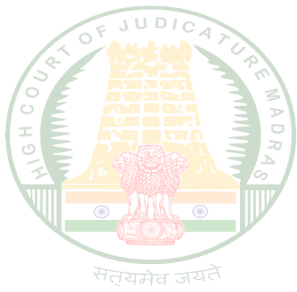
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Provided that the payment to a person by an insurer, under the third party insurance policy, shall be a sum of not exceeding ten lakh rupees in case of death and not exceeding five lakh rupees in case of grievous hurt, as may be prescribed by the Central Government from time to time.”

55.Thus, under the 2016 Bill as originally conceived, the liability of an insurance company was capped at Rs 10 lakhs for death and 5 lakhs for grievous hurt under the proviso to Section 147(2). In other words, the law makers wanted to originally do away with the concept of unlimited liability under Section 147(2)(a) and replace it with limited liability as was the case under its previous avatar under Section 95(2) of the 1939 Act.

56.The 2016 Bill was thereafter referred to a Standing Committee of the Rajya Sabha which submitted its 243rdReport to Parliament on 8thFebruary 2017. After referring to Clause 49 of the Bill and in particular with reference to the changes proposed to be made to Section 147(2) and new Section 150 it was observed:

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“189. The Ministry further added that the Motor Vehicles (Amendment) Bill, 2016 aims to reform the third party motor vehicle insurance by providing for-

1.Fixing the limits of minimum compensation so as to ensure a fair and reasonable compensation to accident victims from present limit of Rs.50000/- to the revised limit of upto Rs.10 lacs in cases of no-fault liability ; 2. Providing for payment of part of compensation as interim relief ; 3. Increased compensation in hit & run cases of Rs.2 lacs as against the present provision of Rs. 25000/- in case of death and Rs.50000/- as against Rs.12500/- in case of grievous hurt. 4. Treatment to the accident victims during golden hour. 5. Inclusion of hired drivers for compensation payment. 6. Specifying the upper limit for which the insurance company would be liable for.”

The Committee finally concluded:

“190. The Committee was informed that under section 147(2) of the Bill it is proposes to cap the liability of general insurance companies to Rs.5 lakh to 10 lakh in compensating the third party claims in case of road accident. It was submitted to the Committee that the proposal would expose millions of Third Party Vehicle insurance policy holders to unlimited risk. If a Tribunal or court awards compensation above 5 lakhs in case of injury and Rs.10 lakhs in case of death, the owner of the vehicle has to bear the burden of paying over and above to the third

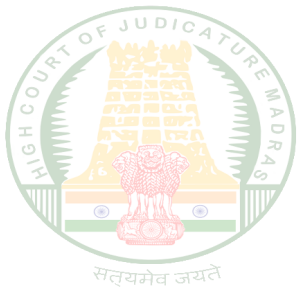


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party. The Committee is of the view that the basic aim of insurance is to defray individual risk collectively over a vast group of premium contributors especially when the risk apprehended is likely to be beyond all the means of the individual. If this main purpose to save the individual is defeated there seems to be no necessity for insurance policy to mitigate the risk which an individual could not meet by himself. There is no mens rea in accidents and very purpose of insurance is to underwrite the cost of unforeseen contingencies. FDI was liberalized in insurance to strengthen the concept of insurance in a country in which life essentially is exposed to all sorts of unforeseen contingencies and calamities. Insurance Companies cannot run away from their basic responsibilities after collecting hefty amount of no claim insurance premium.

191. The Committee, therefore, recommends that the capping of liability of the insurance companies under third party insurance policy is patently incorrect and against the interest of the millions of road users. The Committee, therefore, recommends that proviso to section 147 (2) as included in Clause 49 may be omitted.”

It is thus, obvious, that Standing Committee had taken serious exception to the proposed amendment which sought to limit the statutory liability of insurance companies.



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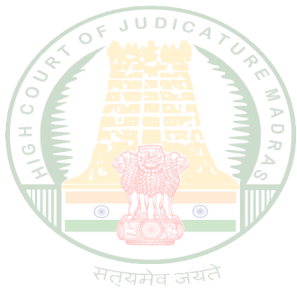
57.In response to the aforesaid recommendations of the Standing Committee, notice of amendments were given to Parliament by the Minister for Transport on 05.04.2017. Serial No 21 purported to give effect to the recommendations of the Standing Committee by deleting the proviso to Section 147(2) which capped the liability of the insurance company. Simultaneously, the proviso to Section 150(4) and Section 150(5) in the Motor Vehicles Bill, 2016 were deleted via Serial No 26 & 27 of the notice of amendments. Thereafter, the Bill was reintroduced in Parliament as the Motor Vehicles Amendment Bill 2017.

58.When the Bill was tabled before the Lok Sabha on 10.04.2017 by the Hon'ble Minister for Road Transport Shri Nitin Gadkari, the following was the assurance given on the floor of the House:

Free English translation runs as follows:

SHRI NITIN GADKARI: Madam, regarding the important issues raised here by the hon. Members and the concerns expressed, I definitely agree with some of their points and also wish to clarify certain matters. The hon. Members

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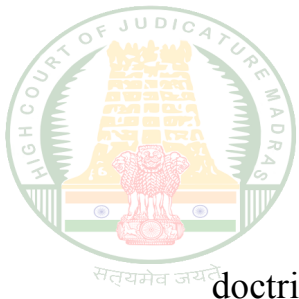
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Shrimati Arpita Ghosh, Shri Shankar Prasad Datta, and some other members have expressed concerns about third-party insurance. I want to make it clear in this regard that in this Bill, there is no upper limit set on the amount of compensation by the Claims Tribunal. Therefore, please do not worry about this. Secondly, accepting the recommendation of the Standing Committee, a provision has also been made that the full amount of compensation will be paid by the insurance companies. If they have got their vehicle insured, then no liability will fall on the vehicle owners.... (Interruption)

59. Thus, the real debate in Parliament was whether the liability of the insurer should be capped, which was the position under Section 95(2) of the Motor Vehicles Act, 1939 or should be made unlimited. We have extensively gone through the Standing Committee Reports as well as the debates on the floor of Parliament in respect of the Motor Vehicle Bills which eventually culminated in the Motor Vehicles Amendment Act, 2019 and we are unable to find any discussion therein to show that Parliament had consciously intended to do away with the doctrine of pay and recover. We are therefore unable to subscribe to the inference sought to be drawn by the insurance companies that the deletion of the proviso to Section 149(4) and Section 149(5) sounded the death knell of the

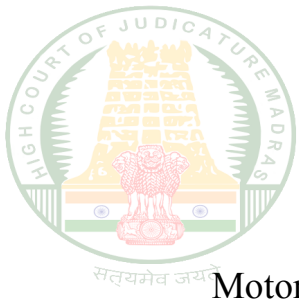


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doctrine of pay and recover.

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60. On the contrary, we are of the considered view that the deletion of Section 149(5) was necessary consequence of the liability of the insurance company being made unlimited under Section 147(2) after the 2019 Amendment. We have already pointed out that operation of Section 149(5) was confined only to a specified contingency, as pointed out in ***Swaran Singh's case***, where the statutory maxima was pegged at Rs 5000 under Section 147(2)(b) for damage caused to the property of a third party. In such situations, Section 149(5) enabled the insurance company to first pay the entire amount to the third party and then recover the excess sum paid over and above the statutory maxima ie., Rs 5000 from the insured. Under the new regime, Section 147(2) read with Rule 2 of the Third-Party Insurance (Base Premium and Liability) Rules, 2022 makes the liability of the insurance company unlimited rendering the concept of “excess” under old Section 149(5) redundant. It was for this reason that Section 149(5) was deleted simultaneously with the proviso to Section 147(2) limiting the liability of insurance companies in the



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Motor Vehicles Bill 2017.

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61.Turning to Section 149(4) we are of the opinion that the deletion of the proviso does not alter the consequences flowing from Section 149(1). Even under the regime prior to the Motor Vehicles (Amendment) Act, 2019, the proviso to Section 149(4) was being employed to order pay and recover in cases falling under Section 149(2) (a) alone. As pointed out by the Supreme Court in *United India Insurance Co. Ltd. v. Lehu*, (2003) 3 SCC 338, the proviso to Section 149(4) was merely illustrative in nature. It was for this reason that the Full Bench of the Karnataka in *New India Assurance Co v Yallava*,2020 *ACJ 2560*, had held that the power to order pay and recover flows from the statutory command of Section 149(1) and can be ordered even in cases falling under Section 149(2)(b) which fell outside the scope of Section 149(4) and its proviso.

62.At this juncture it is necessary to notice the changes made in Section 150(2) by the Motor Vehicles (Amendment) Act, 2019.



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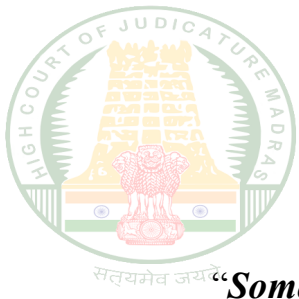
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Section 150(2) has expanded the list of defenses to include cases where the vehicle was being driven under the influence of alcohol or drugs. There is also an exclusion for non-receipt of premium under Section 64VB of the Insurance Act, 1938. Section 150(4) has now been recast as follows:

“(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.”

A close reading of Section 150(4) with its previous avatar in Section 149(4) would show that under the new regime, any defense other than those under Section 150(2) are rendered void unlike Section 149(4) which rendered void any condition other than those in Section 149(2)(b).

63.The changes made in Section 150(2) were recommended by the Law Commission of India way back in 1994 in its 149threport on 83/102

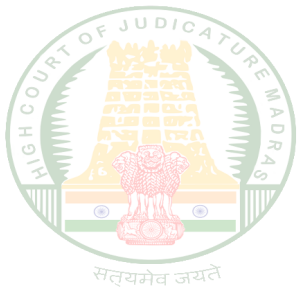


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“Some Deficiencies in the Motor Vehicles Act, 1988”. In the said report it was observed as follows:

“4.3. In the 1988 Act, S. 149 replaces the S. 96 of the 1939-Act, Ss. 149(1), (3), (4), (5), (6) & (7) of the 1988-Act re-enacts Ss. 96(1), (2-A), (4), (5) and (6) of the 1939-Act respectively with minor changes not material for our present purposes. S. 149(2), however, re-enacts S. 96(2) of the 1939 Act with one major difference, viz., the omission of cl. (a) thereof. Thus, S. 149(2) has only two cl. (a) and which correspond to cls. (b) and (c) of S. 96(7) of the 1939 Act. In other words, the new Act, in enacting S. 149, intended no material deviation from the provisions of S. 96, save only the omission of S. 96(2)(a). S. 149(4). however, repeats the language of S. 96(3) of the 1939 Act verbatim, except that “sub-s. (4) of S. 95” and “cl. (b) of sub-s. (1) of S. 95” have been replaced by “sub-s. (3) of S. 147” and “cl. (b) of sub-s. (1) of S. 147” consequent on the re-enactment of S. 95 of the old Act as S. 147 with some changes. But it retained the reference to “conditions other than those in cl. (b) of sub-s. (2)” overlooking that the said “cl. (b)” had become “cl. (a)” in the new S. 149(2). This is clearly a mistake. We, therefore recommend that, in S. 149(4) of the Act, the words “cl. (a) of sub-s. (2)” should be substituted for the words “Cl. (b) of sub-s. (2)”



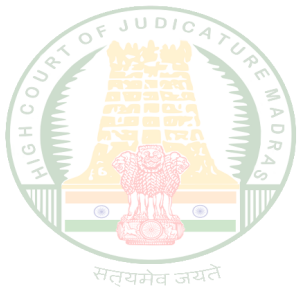
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64.It is a matter of some surprise that Courts across the country have been interpreting Section 149(4) as voiding the defenses under Section 149(2)(a) and thereby ordering pay and recover when such an obvious error was flagged by the Law Commission way back in 1994. It has taken nearly 25 years for the Parliament to set right the anomaly pointed out by the Law Commission. We suppose that it is better late than never. We are therefore unable to subscribe to the argument of the insurance companies that the deletion of the proviso to Section 149(4) presently Section 150(4) puts an end to the doctrine of pay and recover.

65.We must also notice the decision of S Sounthar, J in ***SBI General Insurance Co v Muthulakshmi***, (2025) 1 TN MAC 597, where the learned judge has held as follows:

“17. In case, the insurer becomes successful in pleading and proving defences available to it under Section 150 Sub-Section 2, it need not honour its duty under the contract of insurance towards the insured. However, the statutory liability under Section 150(1) towards third party remains unaffected, the natural corollary would be after making payment under Section 150 (1), the insurer

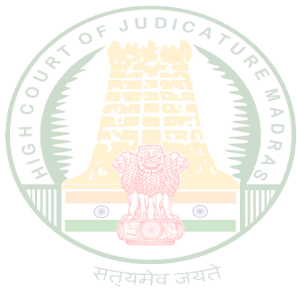


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is entitled to recover the said amount from the insured by virtue of its successful defence raised under Section 150 (2). The liability of insurer under Section 149 (1) [New Section 150 (1)] is a statutory liability and on the other hand it is concomitant with liability of insurer towards insured. If we say that the liability of insurer to satisfy award passed against insured is subject to terms and conditions of contract between insurer and insured, over which innocent third party victims have no control, the very object of statutory liability enshrined in Section 147 (1)(b) read with Section 149 (1) [New Section 147 (1)(b) read with Section 150 (1)] of Motor Vehicles Act will get defeated. The object of said provision is better served by concept of “pay and recovery” enunciated in Swaran Singh case cited infra. Infact, in Swaran Singh case (in paragraphs 96 and 97), the Apex Court emphasised that the concept of pay and recovery has been holding the field for a long time and the same need not be deviated. The concept of “pay and recovery” will achieve the object of providing hassle free mechanism for poor accident victims to recover the damages awarded to them with certainty and on the other hand it also takes care of insurer's right under contract of insurance by enabling insurer to recover the amount paid by it to third parties,



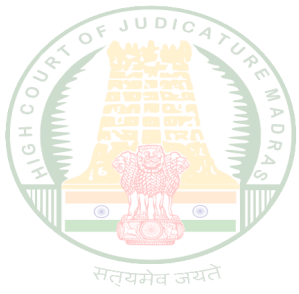
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which insurer is not bound to pay to the insured.

18. Therefore, the insurer has to pay and recover in the event of it's success in respect of defences under Section 150 (2). This position has been clearly declared by Apex Court in National Insurance Co. Ltd. v. Swaran Singh, (2004) 3 SCC 297, wherein Apex Court held that in the event of insured being guilty of negligence or has failed to exercise reasonable care in fulfilling conditions of contract of insurance and the breach was so fundamental and was found to have contributed to the accident, the insurer is entitled to avoid it's liability towards insured. I would like to emphasis, even in that event insurer is not entitled to avoid it's statutory liability towards third parties. It can only avoid it's liability under contract of insurance towards insured and hence, entitled to recover the amount paid by it from insured. I would like to add that liability of insurer under Motor Vehicles Act is a blend of liability under statute and liability under contract of indemnity. Its liability under Section 150(1) towards third party is a statutory one. Its liability towards insured is under contract of indemnity (contract of insurance).

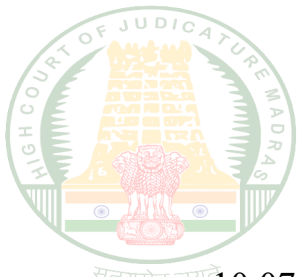


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We are in complete agreement with the aforesaid exposition of law which correctly sums up the basis of liability of the insurance company to a third party as being traceable to Section 150(1) of the Act.

66.The learned counsel for the insurance companies took exception to the finding of the learned single judge in paragraph 25 of the judgment in *Muthulakshmi's case*, supra where the learned judge proceeds to observe that the proviso to Section 149(4) is merely declaratory in character. It may perhaps have been more appropriate to characterize the same as being illustrative in nature as was done by the Supreme Court in *United India Insurance Co. Ltd. v. Lehu*, (2003) 3 SCC 338. We accordingly clarify the aforesaid aspect while agreeing with the ultimate conclusions of the learned single judge. We are also informed that a similar conclusion has been arrived at by the Allahabad High Court in *ICICI Lombard General Insurance Co v Aarti Devi*, 2025 Supreme(All) 2741. A similar view has been taken by one of us (K.K Ramakrishnan, J) in C.M.A.(MD)No.653 of 2025 dated, 88/102



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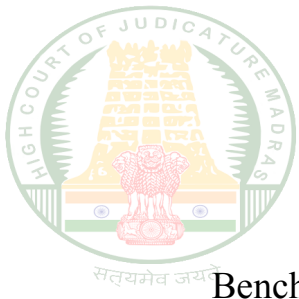
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67.Our attention was drawn to a Division Bench judgment of this Court in ***Manager v Tamil Selvi***, CMA 747 & 753 of 2025, which was rendered on 06.02.2026. We have carefully gone through the said decision, and we must confess our inability to comprehend what exactly is sought to be conveyed by the Division Bench. In paragraph 12, the Division Bench has stated as follows:

“12.Thus, it is clear that the amendment to Section 150 of the Motor Vehicles Act came into effect on 01.04.2022. As per the amendment, the proviso states that any sum paid by the insurer in or towards the discharge of any liability of a person covered by the policy, by virtue only of this sub-section, shall be recoverable by the insurer of that person.”

13.This proviso now applies as per the amendment effective from 01.04.2022.”

With utmost respect to the Division Bench, we are constrained to point out that the aforesaid conclusions are incorrect. The Amendment Act which came into force from 01.04.2022 deleted the proviso to Section 150(4) ie., old Section 149(4) which has been referred to by the Division



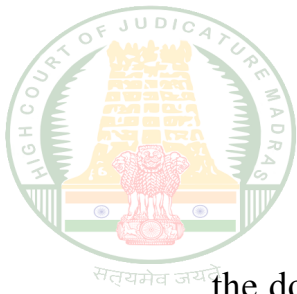
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Bench in paragraph 12 as having come into force on 01.04.2022. We are therefore extremely surprised to find that the Division Bench has concluded that the proviso had come into force on 01.04.2022 when in reality the same had been deleted with effect from 01.04.2022. It appears that the Division Bench realized this later because in paragraph 15 it has been observed as follows:

“15. When the particular provision of Section 149 of the Motor Vehicles Act, 1988, was deleted by way of amendment in Section 150 of the Motor Vehicles (Amendment) Act, 2019, with effect from 01.04.2022, the pay and recovery cannot be ordered by the Courts. When the legislature specifically deleted the proviso for pay and recovery, it is the duty of the Court to act in accordance with the intent of the legislature.”

Thus, on the one hand the Division Bench in paragraphs 12 and 13 states that the proviso, which in reality had been deleted, has come into effect from 01.04.2022 and in another paragraph (paragraph 15) it holds that the very same proviso has been deleted. We are, therefore, unable to follow this decision as it does not appear to lay down any coherent reasons which constitutes binding precedent. That apart, in attempting to conclude that the deletion of the proviso to Section 149(4) put an end to



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the doctrine of pay and recover, the Division Bench did not consider the decision of the Supreme Court in *United India Insurance Co. Ltd. v. Lehru*, (2003) 3 SCC 338, wherein it was held “*The proviso to subsection (4) is very illustrative*”.

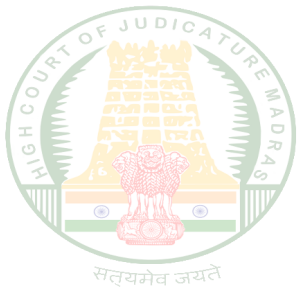
FORM 51 CENTRAL MOTOR VEHICLES RULES, 1989

68.We must now deal with the contention raised by the insurance companies on the basis of Form 51 of the Central Motor Vehicle Rules, 1989. Form 51 deals with the format of certificate of insurance and is issued under Rule 141 of the Central Motor Vehicle Rules, 1989. For ease of reference, Rule 141 reads as follows:

“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.”

69.Under Form 51, as it stood prior to the Amendment, contained 11 items and for the present purpose Serial Nos 10 and 11 were as follows:

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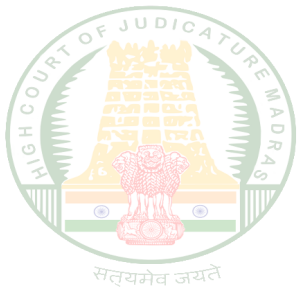
“10. Limitations as to use:Stage carriage/contract carriage/ goods carriage/private service vehicle The policy covers use only under a permit within the meaning of the Motor Vehicles Act, 1988, or such a carriage falling under sub-section (3) of section 66 of the Motor Vehicles Act, 1988. The policy does not cover use for -- (a) organized racing, or (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) organized racing, or (c) speed testing.”

The aforesaid limitations were traceable to Section 149(2)(a)(i)(a) and Section 149(2)(a)(i) (b).

70.After the coming into force of Central Act 32 of 2019, and substitution of Chapter XI in the Motor Vehicles Act, 1988 by the said amendment, Form 51 has been amended to add a 12thcolumn which reads as follows:

“12. All vehicles The policy does not cover liability for death, bodily injury or damage as excluded in section



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150(2)(ii) and (iii); (b) and (c) of the Motor Vehicles Act, 1988.”

By relying on the aforesaid column in Form 51 it was contended that the insurance companies were under no obligation to pay anything to the third party in the event of breach of the conditions of the policy attracting Section 150(2)(ii) and (iii); (b) and (c) respectively.

71.In the first place, we must immediately point out that this contention is based on a completely fallacious understanding that the forms prescribed in a subordinate legislation can control the interpretation given in the parent enactment. The law is otherwise. In ***CIT v. Tulsyan NEC Ltd.***, (2011) 2 SCC 1, it was held:

*“Lastly, it is immaterial that the relevant form prescribed under the Income Tax Rules, at the relevant time (i.e. before 1-4-2007), provided for set-off of MAT credit balance against the amount of tax plus interest i.e. after the computation of interest under Section 234-B. This was directly contrary to a plain reading of Section 115-JAA(4). **Further, a form prescribed under the Rules can never have any effect on the interpretation or operation of the parent statute.**”*



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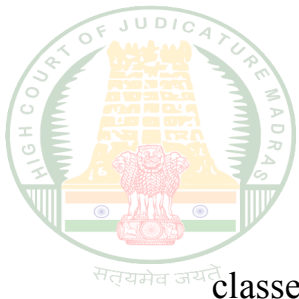
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Consequently, we cannot permit the tail to wag the dog by allowing the form to control the meaning and interpretation to be given to Section 150.

72. Section 147(1) spells out that every policy of insurance must insure the person or classes of persons specified in the policy to the extent specified Section 147(2). Section 147(2) reads as follows:

“(2) Notwithstanding anything contained under any other law for the time being in force, for the purposes of third party insurance related to either death of a person or grievous hurt to a person, the Central Government shall prescribe a base premium and the liability of an insurer in relation to such premium for an insurance policy under sub-section (1) in consultation with the Insurance Regulatory and Development Authority.”

73. Pursuant to Section 147(2), the Central Government has framed the Motor Vehicles (Third Party Insurance Base Premium and Liability) Rules, 2022. Rule 2 of the said Rules prescribes the base premium for third party insurance for unlimited liability for the various

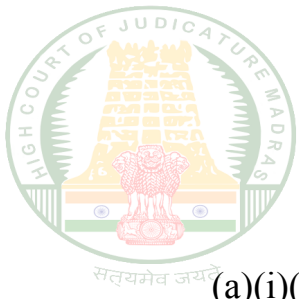


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classes of vehicles set out in the table therein. Section 150(2)(ii) and (iii); (b) and (c) respectively are defences which are available to the insurer in terms of Section 150(5). As we have already pointed out earlier, the liability of the insurer to the third party flowing from Section 150(1) is notwithstanding the fact that the insurer may be entitled to avoid or cancel or may have avoided or cancelled the policy. This is further clarified by Explanation (c) to Section 150. Consequently, breach of a condition falling within Section 150(2)(ii) and (iii); (b) and (c) may entitle the insurer to repudiate the contract of insurance between itself and the insured. However, the statutory obligation to first satisfy the claim of the third party under Section 150(1) does not vanish. The insurer must first satisfy and then proceed against the insured in such cases.

74. We are fortified in taking this view since even under the unamended Form 51, Serial Nos 10 and 11 stated that the policy does not cover use for -- (a) organized racing, or (b) speed testing and (c) use for hire or reward which were all permissible defences under Section 149(2)



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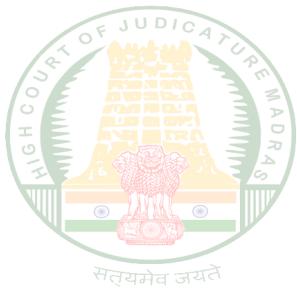
(a)(i)(a) and 149(2)(a)(i)(b). However, even under the regime which existed prior to the Motor Vehicles (Amendment) Act, 2019 in all such cases also the insurer was first bound to satisfy the claim of the third party under the award and then proceed to recover the same from the insurer. Consequently, this contention also fails.

CONCLUSION

75.For the reasons stated above, we hold and declare that:

a. The deletion of the proviso to Section 149(4) and Section 149(5) in the Motor Vehicles Act, 1988, as it stood prior to the amendment by the Motor Vehicles (Amendment) Act, 2019 (Act 32 of 2019), does not have the effect of obliterating the statutory duty of the insurer to pay the claims made under an award or decree in respect of liability covered under a policy of insurance.

b. The duty vis-à-vis a third party is statutory in character and flows from Section 150(1) of the Motor Vehicles Act,



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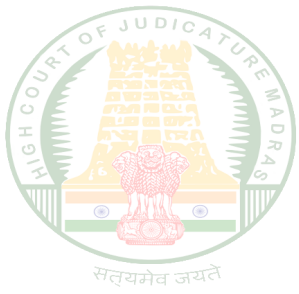


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1988, as amended by Act 32 of 2019, and remains unhindered by the fact that the insurance company has succeeded in establishing a contractual defense permitted under Section 150(2).

c. In the event the insurance company succeeds in establishing a defense under Section 150(2), the insurer will stand absolved from its contractual liability *vis-à-vis* the insured. Consequently, the insurer, after satisfying its statutory liability under Section 150(1) can proceed to recover the sum so paid from the insured. The insurance company can proceed to recover the same in terms of the directions contained in paragraph 110 (x) of the decision of the Supreme Court in ***National Insurance Co. Ltd v Swaran Singh, (2004) 3 SCC 297.***

d. Conversely, if the insurance company does not succeed in establishing a defense under Section 150(2) the burden to meet the entire claim will fall on the insurer by virtue of



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Section 147(2) as amended by Act 32 of 2019, and Rule 2 of the Third-Party Insurance (Base Premium and Liability) Rules, 2022 which provides for unlimited liability in respect of third party insurance under Chapter XI of the Act.

76.In these batch of appeals, there is a factual finding of a violation of one of the policy conditions on one or more grounds set out in Section 150(2) of the Motor Vehicles Act, 1988. Consequently, the Motor Accident Claims Tribunals (MACT) has directed the insurance companies to first pay the third party and thereafter recover the sums so paid under the award from the insured. In so far as CMA (MD) 213 of 2026 is concerned, we observe that in *Sunita v United India Insurance Company*, 2025 SCC Online SC 1464, the Supreme Court directed pay and recover even in the absence of a fitness certificate which constituted a breach of a policy condition.

77.In so far as the quantum of compensation fixed by the Tribunal in each of these cases, we have carefully gone through the



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various heads under which compensation has been fixed, and we find the same to be just and proper in the facts and circumstances of the respective cases.

78.In view of the discussion made and the conclusions arrived at, *supra*, we find absolutely no error in the aforesaid directions to pay and recover made by the MACT in all these appeals.

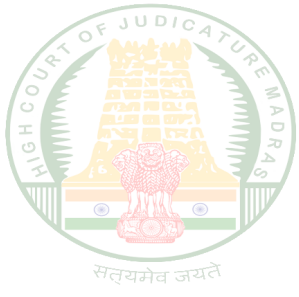
79.In the result, these appeals fail and will stand dismissed. The claimants are at liberty to withdraw the sums deposited into this Court on proper identification. Costs made easy. Consequently, the connected miscellaneous petitions are closed.

[N.A.V., J.] [K.K.R.K., J.]
01.06.2026

NCC :Yes
Index :Yes

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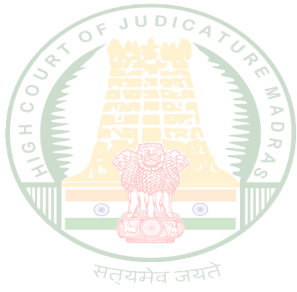
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To
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- 1.The Motor Accident Claims Tribunal/Special District Judge,
Thanjavur.
2. The Motor Accident Claims Tribunal Cum Special District Court
to deal with MCOP Cases Madurai.
- 3.The Motor Accident Claims Tribunal cum Honourable Special
Subordinate Court, Dindigul.
- 4.The Record Keeper (Vernacular Records),
Madurai Bench of Madras High Court,
Madurai.



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N. ANAND VENKATESH,J.

AND

K.K.RAMAKRISHNAN,J.

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