**(2016) 02 GUJ CK 0158**

**GUJARAT HIGH COURT**

**Case No:** First Appeal No. 3936 of 2009

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| United India Insurance Co. Ltd. | APPELLANT |
| Vs | |
| Mohammed Haji Abdulla and Others | RESPONDENT |

**Date of Decision:** Feb. 19, 2016

**Acts Referred:**

- Motor Vehicles Act, 1988 - Section 145, Section 147, Section 147(3), Section 149, Section 149 (2), Section 149(2), Section 149(2)(a), Section 149(2)(a)(i), Section 149(2)(a)(ii), Section 163, Section 163A, Section 165, Section 166, Section 168, Sectio

**Hon'ble Judges:** M.R. Shah, J.

**Bench:** Single Bench

**Advocate:** Vibhuti Nanavati, Advocate, for the Appellant; M.A. Kharadi, Advocate, for the Respondent

**Final Decision:** Allowed

**Judgement**

M.R. Shah, J.

1. Feeling aggrieved and dissatisfied with the impugned judgment and award passed by the learned Motor Accident Claims Tribunal (Auxi), Ahmedabad City passed in Motor Accident Claims Petition No. M-51 of 2004, by which, the learned Tribunal has held and directed the original opponent No. 2 - United India Insurance to pay the compensation to the original claimants, the original opponent No. 2 - insurer has preferred present First Appeal.

2. At the outset, it is required to be noted that as such the original claimants submitted the aforesaid claim petition before the learned Tribunal claiming the compensation under Section 163A of the Motor Vehicles Act and it was the case on behalf of the Insurance Company that as the deceased was gratuitous passenger and was traveling in the goods vehicle as unauthorized passenger and therefore, the Insurance Company is not statutorily liable to pay the compensation. However, by impugned judgment and award, the learned Tribunal has held that as the

application for compensation was under Section 163A of the Motor Vehicles Act, the Insurance Company cannot take such a defence and therefore, cannot be absolved from the liability to pay the compensation.

2.1. Therefore, the short question which is posed for consideration of this Court is whether the insurer is entitled to raise a defence in claim petition filed under Section 163A of the Motor Vehicles Act inter alia in terms of Section 149 of the Motor Vehicles Act ?

3. Shri Vibhuti Nanavati, learned advocate has appeared on behalf of the insurer, Shri Hiren Modi, learned advocate has appeared on behalf of the original claimants and Shri M.A. Kharadi, learned advocate has appeared on behalf of the original owner.

3.1. Shri Nanavati, learned advocate for the insurer has submitted that as such heavily relied upon the decision of the Hon''ble Supreme Court in the case of National Insurance Company Limited v. Swaran Singh reported in , AIR 2004 SC 1531 and relying upon the said decision, more particularly, para 105, it is vehemently submitted that as such now issue involved in the present appeal is not now res-integra. It is vehemently submitted on behalf of the insurer that in the aforesaid decision, the Hon''ble Supreme Court has specifically observed and held that insurer is entitled to raise a defence in a claim petition filed under Section 163 or Section 166 of the Motor Vehicles Act, 1988, inter alia in terms of Section 149(2)(a)(ii) of the said Act.

3.2. It is submitted that therefore, in the present case as the policy was an Act policy and the deceased was traveling in a goods vehicle as unauthorized passenger and therefore, considering the provision of Section 149 of the Act the insurer is not liable to pay the compensation as the risk is statutorily not covered and therefore, insurer cannot be made liable to pay compensation may be application is under Section 163A of the Motor Vehicles Act.

3.3. It is vehemently submitted by Shri Nanavati, learned advocate for the insurer that solely the nomenclature is changed i.e. claim petition is purported to be under Section 163A of the Motor Vehicles Act, if insurer is statutorily not liable to pay compensation considering Section 149 of the Act, Insurance Company cannot be liable to pay the compensation merely because application is submitted under Section 163A of the Motor Vehicles Act, 1988.

3.4. It is further submitted by Shri Nanavati, learned advocate for the insurer that claim petition even when filed under Section 163A of the Motor Vehicles Act, the Insurance Company has right to raise statutory defences.

3.5. It is further submitted by Shri Nanavati, learned advocate for the insurer that as such learned Tribunal has no jurisdiction to travel beyond the terms and conditions and exceptions and limitation has to use with respect to the contract of insurance in

question. It is submitted that therefore, insurance company has right to contest the claim petition on all statutory grounds available under the Act. It is further submitted by Shri Nanavati, learned advocate for the insurer that when the Tribunal has given a finding that when claim petition is filed under Section 163A of the Act, the Insurance Company has no statutory right to contest the claim petition on any of legal defence as available under Section 149(2) of the Act r/w Section 147 of the Act, in that case, the provision of Sections 147 and 149 of the Act would become debatory and/or nugatory. It is submitted that Legislature could not have and has never intended such position of law. It is submitted that as such the learned Tribunal was required to interpret Section 163A and other provisions of the Motor Vehicles Act harmoniously.

3.6. Shri Nanavati, learned advocate for the insurer has relied upon the definition of "Goods Carriage" contained in Section 2(14); definition of "Permit" contained in Section 2(31); definition of "Public Service Vehicle" contained in Section 2(35) and has also heavily relied upon the provision of Sections 147 and 149 of the Motor Vehicles Act.

3.7. It is further submitted by Shri Nanavati, learned advocate for the insurer that in the present case admittedly, the vehicle having registration No. GRY 4782 was goods carriage vehicle. Policy of insurance (Exh. 19) which was before the learned Tribunal was "liability only", meaning thereby the policy covered basic risk i.e. third party risk only wherein basic third party premium was paid by the owner of the vehicle. It is submitted that said owner had paid additional premium for WC to employees 2. It is submitted that he has further paid contractual premium for compulsory PA to owner-driver. The RC Book clearly suggested that the vehicle was registered as tanker - goods truck. The registered sitting capacity is for 2 persons (including the driver). The Registration Certificate of the vehicle concerned was before the learned Tribunal at Exh. 23.

3.8. It is submitted that on a bare reading of the insurance policy and the RC Book, it would be clear that vehicle bearing registration No. GRY 4782 was goods carriage vehicle as per Section 2(14) of the Act. The vehicle was not public service vehicle within the meaning of Section 2(35) of the Act. Shri Nanavati, learned advocate for the insurer has also relied upon Sections 77 and 79 of the Motor Vehicles Act, 1988.

3.9. It is further submitted that as per the grant of goods carriage permit, the owner/driver is permitted to ply the vehicle as goods carriage only. They cannot be permitted to ply such vehicle other than the permit.

3.10. Shri Nanavati, learned advocate for the insurer has submitted that Section 163A of the Motor Vehicles Act is part of Chapter XI of the Motor Vehicles Act - Insurance of Motor Vehicles against the third party risk. It is submitted that Section 147 is for necessity for insurance against third party risk whereby it has been mandated that no person shall use, except as a passenger or cause or allow any

other person to use a motor vehicle in a public place, unless there is in force any rule to the use of the Vehicle by that person or that other person, as the case may be, a policy of insurance complying with the requirements of this Chapter.

3.11. It is further submitted that the insurance company is entitled to raise legal defence as per Section 149(2) that the policy was issued under Section 147 as Section 149 further provides non-obstante clause with respect to defence available to the Insurance Company. Accordingly, as per Section 149(2)(a)(i) a condition excluding use of the vehicle (c) for a purpose not allowed by permit under which the vehicle is used, where the vehicle is a transport vehicle.

3.12. It is submitted that when risk of unauthorized passenger is not covered statutorily or contractually as per Section 147 of the Act or under the contract of insurance, then the claimants cannot pray for an order of "pay and recover" in view of the decision of this Court rendered in First Appeal No. 710 of 2007 dated 7.4.2014 wherein this Court has discussed all the decisions of the Hon''ble Apex Court and also considered the decision of the Full Bench of the Madras High Court in the case of Branch Manager, Unite India Insurance Company Limited v. Nagammal reported , 2009 ACJ 865. It is submitted that ultimately the specific question with regard to pay and recovery has been discussed in the judgment in para 53.2 and found that when the passengers in the offending vehicle are gratuitous passengers, provision of sub-section (4) and (5) of Section 149 of the Act would not be attracted and therefore, the Tribunal had no power to issue such direction to the insurance company to first pay and thereafter recover the amount from owner.

Making above submissions and relying upon the following decisions of the Hon''ble Supreme Court, it is vehemently submitted that even in an application under Section 163A of the Motor Vehicles Act, the insurer is entitled to raise legal defences as per Section 149(2).

"1. National Insurance Company Limited v. Swaran Singh reported in , AIR 2004 SC 1531.

2. National Insurance Co. v. Geeta Bhat reported in , AIR 2008 SC 1837.

3. Oriental Insurance Co. Ltd. v. Rajni Devi & Ors. reported in , (2008) 5 SCC 736.

4. Oriental Insurance Company Limited v. Sudhakaran K.V. reported in , (2008) 7 SCC 428.

5. National Insurance Co. Ltd. v. Cholleti Bharatamma and others reported in , (2008) 1 SCC 423."

3.13. It is further submitted by Shri Nanavati, learned advocate for the insurer that in the present case even otherwise the learned Tribunal ought to have dismissed the claim petition on the ground that claimants have perpetrated fraud by pleading that deceased was pedestrian at the time of the accident on 8.2.2004, whereas, as per

the FIR and other relevant police papers, it was specifically proved that the deceased was traveling as unauthorized passenger in goods carriage vehicle bearing registration No. GRY 4782 at the time of accident. It is submitted that only with a view to come out with the said fact, the original claimant come out with a false theory/case. It is submitted that the learned Tribunal has observed in the impugned judgment and award in para 10 that "advocate for the applicant also made it clear that in raising such plea regarding the manner of the accident, there was no intention on the part of the applicant to mislead the Tribunal."

3.14. It is submitted that therefore, when the deceased at the time of accident was traveling in the goods vehicle as an unauthorized passenger and insurance policy was an Act policy only and therefore, considering Section 149(2) of the Motor Vehicles Act, the insurer is not statutorily liable to indemnify the award and/or to pay compensation. It is submitted that therefore, the learned Tribunal has materially erred in not permitting the insurer to raise statutorily defence available under Section 149(2) of the Act and consequently has materially erred in holding and directing the appellant insurer to pay compensation.

Making above submissions and relying upon above decisions, it is requested to allow the present appeal and to quash and set aside the impugned judgment and award so far as holding the appellant Insurance Company liable to pay the compensation.

4. Present Appeal is vehemently opposed by Shri Hiren Modi, learned advocate for the original claimants and Shri Kharadi, learned advocate for the original owner.

4.1. Shri Modi, learned advocate for the original claimants has heavily relied upon the decision of the Division Bench of this Court in the case of National Insurance Co. v. Rukhsanabanu reported in , 2006 (3) GLR 2561 as well as decision of the learned Single Judge in the case of New India Assurance Co. Ltd. v. Saguna reported in , 2008 (2) GLR 1357. In support of his above submissions that the learned Tribunal has rightly not permitted the insurer to take defence that as the deceased was gratuitous passenger, the insurer is not liable to pay the compensation. Shri Modi, learned advocate for the original claimants has heavily relied upon para 5 of the decision of the Division Bench in the case of Rukhsanabanu (supra). Shri Modi, learned advocate for the original claimants has heavily relied upon para 9 of the decision of the learned Single Judge in the case of P. Saguna (supra). It is submitted that against the decision in the case of P Saguna (supra), the Insurance Company preferred Civil Appeal before the Hon''ble Supreme Court. It is submitted that initially the Hon''ble Supreme Court was pleased to stay the order passed by the learned Single Judge, however subsequently the Hon''ble Supreme Court has dismissed the Civil Appeal, however keeping the question of law open to be agitated in an appropriate case. It is submitted that therefore, so far as the decision of the learned Single Judge in the case of P Saguna (supra) is concerned, the same is binding upon this Court and the Hon''ble Supreme Court has kept the aforesaid

question of law open to be considered by the Hon''ble Supreme Court. It is submitted that therefore, in view of the above judgment, it is very clear that as the original application was under Section 163A of the Motor Vehicles Act, notwithstanding anything contained in any other provision including Sections 147 and 149 of the Act, the Insurance Company is liable to satisfy the award even in case of gratuitous passenger.

Making above submissions and relying upon the above decisions, it is requested to dismiss the present appeal.

5. Shri Kharadi, learned advocate for the original owner has also opposed the present appeal by submitting that as such driver of truck involved in the accident was not at all responsible and/or negligent for the accident and that as such no accident was committed by the truck owned by original respondent No. 1.

5.1. In reply to the submission made by Shri Modi, learned advocate for the original claimant and reliance placed upon the decision of the Division Bench of this Court in the case of Rukhsanabanu (supra), decision of the learned Single Judge in the case of P Saguna (supra) by the learned advocate for the original claimant, Shri Nanavati, learned advocate for the insurer has vehemently submitted that before the Division Bench, decision of the Hon''ble Supreme Court in the case of Swaran Singh (supra) was not brought to the notice of the Hon''ble Division Bench. It is submitted that even the provision of Section 149 were also not brought to the notice of the Division Bench. It is submitted that therefore, the said decision of the Division Bench in the case of Rukhsanabanu (supra) shall not be applicable to the facts of the case on hand and/or cannot be permitted to be relied upon by the original claimants, more particularly, in light of the decision of the Hon''ble Supreme Court in the case of Swaran Singh (supra).

5.2. It is further submitted that as such the aforesaid decision in the case of Rukhsanabanu (supra) was considered by the learned Single Judge in the case of P. Saguna (supra). It is submitted that the learned Single Judge of this Court in another case and in the case of National Insurance Company Limited v. Heirs and Lrs of Hiteshbhai reported in , 2011 (2) GLR 1003 while deciding the appeal wherein the claim petition was also filed under Section 163A, had an occasion to deal with the decision in the case of P Saguna (supra) and ultimately has observed that controversy is now not res-integra in view of the decision of the Hon''ble Supreme Court in the case of Ningamma wherein identical question came to be considered by the Hon''ble Supreme Court. It is submitted that as such in the case of P. Saguna (supra) the learned Single Judge in fact was considered the issue involves in the present appeal.

Making above submissions, it is requested to allow the present appeal.

6. Heard the learned advocates for the respective parties at length. As observed herein above, the only question posed for consideration of this Court is whether

insurer is entitled to raise a defence in a claim petition filed under Section 163A of the Motor Vehicles Act inter alia in terms of Section 149(2)(a)(ii) of the Act ?

7. At the outset, it is required to be noted that as such the aforesaid issue is now not res integra in view of the decision of the Hon''ble Supreme Court in the case of Swaran Singh (supra). In para 30, 31, 34, 35, 36, 43, 45, 50, 52, 56, 61, 64, 65, 66, 68, 75, 76, 77 and 78 Hon''ble Supreme Court has observed as under:

"30. For the aforementioned reasons, the provisions contained in Chapter XI of the Motor Vehicles Act, 1988 must be construed in that light.

31. Sub-section (1) of Section 149, casts a liability upon the insurer to pay to the person entitled to the benefit of the decree as if he were the judgment debtor. Although the said liability is subject to the provision of this section, it prefaces with a non-obstante clause that the insurer may be entitled to avoid or cancel or may have avoided or cancelled the policy. Furthermore, the statute raises a legal fiction to the effect that for the said purpose the insurer would be deemed to be judgment debtor in respect of the liability of the insurer.

34. The question as to whether an insurer can avoid its liability in the event it raises a defence as envisaged in Sub-section (2) of Section 149 of the Act corresponding to subsection (2) of Section 96 of the Motor Vehicles Act, 1939 had been the subject matter of decisions in a large number of cases.

35. It is beyond any doubt or dispute that under Section 149(2) of the Act an insurer, to whom notice of the bringing of any proceeding for compensation has been given, can defend the action on any of the grounds mentioned therein.

36. However, Clause (a) opens with the words "that there has been a breach of a specified condition of the policy", implying that the insurer''s defence of the action would depend upon the terms of the policy. The said sub-clause contains three conditions of disjunctive character, namely, the insurer can get away from the liability when (a) a named person drives the vehicle; (b) it was being driven by a person who did not have a duly granted licence; and (c) driver is a person disqualified for holding or obtaining a driving licence.

43. Furthermore, the insurance company with a view to avoid its liabilities is not only required to show that the conditions laid down under Section 149(2)(a) or (b) are satisfied but is further required to establish that there has been a breach on the part of the insured. By reason of the provisions contained in the 1988 Act, a more extensive remedy has been conferred upon those who have obtained judgment against the user of a vehicle and after a certificate of insurance is delivered in terms of Section 147(3) a third party has obtained a judgment against any person insured by the policy in respect of a liability required to be covered by Section 145, the same must be satisfied by the insurer, notwithstanding that the insurer may be entitled to avoid or to cancel the policy or may in fact have done so. The same obligation

applies in respect of a judgment against a person not insured by the policy in respect of such a liability, but who would have been covered if the policy had covered the liability of all persons, except that in respect of liability for death or bodily injury.

45. Under the Motor Vehicles Act, holding of a valid driving licence is one of the conditions of contract of insurance. Driving of a vehicle without a valid licence is an offence. However, the question herein is whether a third party involved in an accident is entitled to the amount of compensation granted by the Motor Accidents Claims Tribunal although the driver of the vehicle at the relevant time might not have a valid driving licence but would be entitled to recover the same from the owner or driver thereof.

50. A contract of insurance also falls within the realm of contract. Thus, like any other contract, the intention of the parties must be gathered from the expressions used therein.

52. In the event the terms and conditions of policy are obscure it is permissible for the purpose of construction of the deed to look to the surrounding circumstances as also the conduct of the parties.

56. The insurer''s liability arises both from contract as well as statute. It will, therefore, may not be proper to apply the rules for interpretation of a contract for interpreting a statute.

61. A bare perusal of the provisions of Section 149 of the Act leads to only one conclusion that usual rule is that once the assured proved that the accident is covered by the compulsory insurance clause, it is for the insurer to prove that it comes within an exception.

64. The proposition of law is no longer res integra that the person who alleges breach must prove the same. The insurance company is, thus, required to establish the said breach by cogent evidence. In the event, the insurance company fails to prove that there has been breach of conditions of policy on the part of the insured, the insurance company cannot be absolved of its liability. (See Sohan Lal Passi (supra).

65. Apart from the above, we do not intend to lay down anything further i.e. degree of proof which would satisfy the aforementioned requirement inasmuch as the same would indisputably depend upon the facts and circumstances of each case. It will also depend upon the terms of contract of insurance. Each case may pose different problem which must be resolved having to a large number of factors governing the case including conduct of parties as regard duty to inform, correct disclosure, suppression, fraud on the insurer etc. It will also depend upon the fact as to who is the owner of the vehicle and the circumstances in which the vehicle was being driven by a person having no valid and effective licence. No hard and fast rule

can therefor be laid down. If in a given case there exists sufficient material to draw an adverse inference against either the insurer or the insured, the Tribunal may do so. The parties alleging breach must be held to have succeeded in establishing the breach of conditions of contract of insurance on the part of the insurer by discharging its burden of proof. The Tribunal, there cannot be any doubt, must arrive at a finding on the basis of the materials available on records.

66. In the aforementioned backdrop, the provisions of subsections (4) and (5) of Section 149 of the Motor Vehicles Act, 1988 may be considered as the liability of the Insurer to satisfy the decree at the first instance.

68. 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.

75. In Kamla''s case (supra), a Division Bench of this Court summed up the legal position:

"The position can be summed up thus: The insurer and the insured are bound by the conditions enumerated in the policy and the insurer is not liable to the insured if there is violation of any policy condition. But the insurer who is made statutorily liable to pay compensation to third parties on account of the certificate of insurance issued shall be entitled to recover from the insured the amount paid to the third parties, if there was any breach of policy conditions on account of the vehicle being driven without a valid driving licence. Learned counsel for the insured contended that it is enough if he establishes that he made all due enquiries and believed bona fide that the driver employed by him had a valid driving licence, in which case there was no breach of the policy condition. As we have not decided on that contention it is open to the insured to raise it before the Claims Tribunal. In the present case, if the Insurance Company succeeds in establishing that there was breach of the policy condition, the Claims Tribunal shall direct the insured to pay that amount to the insurer. In default the insurer shall be allowed to recover that amount (which the insurer is directed to pay to the claimant third parties) from the insured person."

76. The submissions made on behalf of the petitioner may now be noticed. According to the learned counsel, subsection (4) of Section 149 deals with the situation where the insurer in the policy purports to restrict the insurance of the persons insured thereby by reference to any condition other than those in clause (b) of sub-section (2) of Section 149 and in that view of the matter no liability is covered for driving of a vehicle without licence or fake licence. The submission ignores the plain and unequivocal expression used in sub-section (2) of Section 149 as well as the proviso appended thereto. With a view to construe a statute the scheme of the Act has to be taken into consideration. For the said purpose the entire Act has to be read as a whole and then chapter by chapter, section by section and word by word. [See Reserve Bank of India etc. v. Peerless General Finance and Investment Co. Ltd. and others [, (1987) 1 SCC 424 Para 33].

77. 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 any effective meaning can be attributed to the liability clause of the insurance company contained in sub-section (1). The decision in Kamla''s case (supra) has to be read in the aforementioned context.

78. 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 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 direct recovery of the same from the owner. These two matters stand apart and require contextual reading.
WHEN ADMITTEDLY NO LICENCE WAS OBTAINED BY A DRIVER."

7.1. That ultimately summary of the findings are contained in para 105 which reads as under:

"105. The summary of our findings to the various issues as raised in these petitions are as follows:

(i) Chapter XI of the Motor Vehicles Act, 1988 providing compulsory insurance of vehicles against third party risks is a social welfare legislation to extend relief by compensation to victims of accidents caused by use of motor vehicles. The provisions of compulsory insurance coverage of all vehicles are with this paramount object and the provisions of the Act have to be so interpreted as to effectuate the said object.

(ii) Insurer is entitled to raise a defence in a claim petition filed under Section 163A or Section 166 of the Motor Vehicles Act, 1988 inter alia in terms of Section 149(2)(a)(ii) of the said Act.

(iii) The breach of policy condition e.g., disqualification of driver or invalid driving licence of the driver, as contained in subsection (2)(a)(ii) of section 149, have to be proved to have been committed by the insured for avoiding liability by the insurer. Mere absence, fake or invalid driving licence or disqualification of the driver for driving at the relevant time, are not in themselves defences available to the insurer against either the insured or the third parties. To avoid its liability towards insured, the insurer has to prove that the insured was guilty of negligence and failed to exercise reasonable care in the matter of fulfilling the condition of the policy regarding use of vehicles by duly licensed driver or one who was not disqualified to drive at the relevant time.

(iv) The insurance companies are, however, with a view to avoid their liability must not only establish the available defence(s) raised in the said proceedings but must also establish ''breach'' on the part of the owner of the vehicle; the burden of proof wherefore would be on them.

(v) The court cannot lay down any criteria as to how said burden would be discharged, inasmuch as the same would depend upon the facts and circumstance of each case.

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

(vii) The question as to whether the owner has taken reasonable care to find out as to whether the driving licence produced by the driver, (a fake one or otherwise), does not fulfil the requirements of law or not will have to be determined in each case.

(viii) If a vehicle at the time of accident was driven by a person having a learner''s licence, the insurance companies would be liable to satisfy the decree.

(ix) The claims tribunal constituted under Section 165 read with Section 168 is empowered to adjudicate all claims in respect of the accidents involving death or of bodily injury or damage to property of third party arising in use of motor vehicle. The said power of the tribunal is not restricted to decide the claims inter se between claimant or claimants on one side and insured, insurer and driver on the other. In

the course of adjudicating the claim for compensation and to decide the availability of defence or defences to the insurer, the Tribunal has necessarily the power and jurisdiction to decide disputes inter se between insurer and the insured. The decision rendered on the claims and disputes inter se between the insurer and insured in the course of adjudication of claim for compensation by the claimants and the award made thereon is enforceable and executable in the same manner as provided in Section 174 of the Act for enforcement and execution of the award in favour of the claimants.

(x) Where on adjudication of the claim under the Act the tribunal arrives at a conclusion that the insurer has satisfactorily proved its defence in accordance with the provisions of section 149(2) read with sub-section (7), as interpreted by this Court above, the Tribunal can direct that the insurer is liable to be reimbursed by the insured for the compensation and other amounts which it has been compelled to pay to the third party under the award of the tribunal. Such determination of claim by the Tribunal will be enforceable and the money found due to the insurer from the insured will be recoverable on a certificate issued by the tribunal to the Collector in the same manner under Section 174 of the Act as arrears of land revenue. The certificate will be issued for the recovery as arrears of land revenue only if, as required by sub-section (3) of Section 168 of the Act the insured fails to deposit the amount awarded in favour of the insurer within thirty days from the date of announcement of the award by the tribunal.

(xi) The provisions contained in sub-section (4) with proviso thereunder and sub-section (5) which are intended to cover specified contingencies mentioned therein to enable the insurer to recover amount paid under the contract of insurance on behalf of the insured can be taken recourse of by the Tribunal and be extended to claims and defences of insurer against 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."

8. In view of the aforesaid observations and the findings recorded by the Hon''ble Supreme Court and the law laid down by the Hon''ble Supreme Court the insurer is entitled to raise the defence in a claim petition filed under Section 163A or Section 166 of the Motor Vehicles Act, 1988 inter alia in terms of Section 149(2)(a)(i) of the Act. Therefore, as such the learned Tribunal has materially erred in not permitting the insurer to raise statutory defences available in terms of Section 149 (2) of the Act.

8.1. The aforesaid issue is even otherwise required to be considered from another angle. To appreciate the question which is posed for the consideration of this Court provisions of Sections 147 and 149 are required to be read conjointly and are required to be given full effect. Sections 147 and 149 of the Motor Vehicles Act, reads as under:

"Section 147. Application for goods carriage permit:

An application for a permit to use a motor vehicle for the carriage of goods for hire or reward or for the carriage of goods for or in connection with a trade or business carried on by the applicant (in this Chapter referred to as a goods carriage permit) shall, as far as may be, contain the following particulars, namely:--

(a) the area or the route or routes to which the application relates;

(b) the type and capacity of the vehicle;

(c) the nature of the goods it is proposed to carry;

(d) the arrangements intended to be made for the housing, maintenance and repair of the vehicle and for the storage and safe custody of the goods;

(e) such particulars as the Regional Transport Authority may require with respect to any business as a carrier of goods for hire or reward carried on by the applicant at any time before the making of the application, and of the rates charged by the applicant;

(f) particulars of any agreement, or arrangement, affecting in any material respect the provision within the region of the Regional Transport Authority of facilities for the transport of goods for hire or reward, entered into by the applicant with any other person by whom such facilities are provided, whether within or without the region;

(g) any other particulars which may be prescribed.

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

(1) If, after a certificate of insurance has been issued under sub-section (3) of section 147 in favour of the person by whom a policy has been effected, judgment or award in respect of any such liability as is required to be covered by a policy under clause (b) of sub-section (1) of section 147 (being a liability covered by the terms of the policy) [or under the provisions of section 163A] is obtained against any person insured by the policy, then, notwithstanding that the insurer may be entitled to avoid or cancel or may have avoided or cancelled the policy, the insurer shall, subject to the provisions of this section, pay to the person entitled to the benefit of the decree any sum not exceeding the sum assured payable there under, as if he were the judgment debtor, in respect of the liability, together with any amount payable in respect of costs and any sum payable in respect of interest on that sum by virtue of any enactment relating to interest on judgments.

(2) No sum shall be payable by an insurer under sub-section (1) in respect of any judgment or award unless, before the commencement of the proceedings in which the judgment or award is given the insurer had notice through the Court or, as the

case may be, the Claims Tribunal of the bringing of the proceedings, or in respect of such judgment or award so long as execution is stayed thereon pending an appeal; and an insurer to whom notice of the bringing of any such proceedings is so given shall be entitled to be made a party thereto and to defend the action on any of the following grounds, namely:--

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

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

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

(b) for organised racing and speed testing, or

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

(d) without sidecar being attached where the vehicle is a motor cycle; or

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

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

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

8.2. As per sub-section (2) of Section 149 of the Act, no sum shall be payable by an insurer under sub-section (1) in respect of any judgment of award, if the insurer is able to prove that there has been breach of a specified condition of the policy, being one of the conditions mentioned in Section 149(2)(a) of the Act. Therefore, as such insurer is entitled to raise defence and/or has right to defend the action on any of the grounds mentioned in Section 149(2)(a) of the Act. Therefore, on facts if it is found that there has been breach of specified conditions of policy and/or insurer is able to raise the defence and/or avoid liability on the eventuality and/or ground mentioned in Section 149(2)(a) of the Act, same is not payable by the ensurer under sub-section (1) in respect of any judgment. If that be so, merely because the application is filed under Section 163A of the Motor Vehicles Act, the insurer cannot be saddled with the liability to pay the compensation and the insurer cannot be restrained from taking/raising statutory defences, which may be available under Section 149(2) of the Act. If it is read in such a manner, Sections 147 and 149 of the Act would become nugatory and/or redundant. In other word, when it is found by the claimant that they cannot get the compensation from the Insurance company

considering Section 149(2) of the Act, to get rid of provisions of Section 149(2) of the Act, such claimant would file claim petition under Section 163A of the Motor Vehicles Act and thereby provision of Section 149(2) of the Act would become redundant and/or nugatory. There cannot be such intention of the Legislature. It is settled proposition of law that the provision of the statute is to be read and interpreted in such a manner that other provisions may not become redundant and/or nugatory.

8.3. Now, so far as reliance placed upon the decision of the Division Bench of this Court in the case of Rukhsanabanu (supra) by the learned advocate for the original claimants is concerned, at the outset, it is required to be noted that when the Division Bench decided the said matter, the decision of the Hon''ble Supreme Court in the case of Swaran Singh (supra), was not brought to the notice of the Division Bench. Under the circumstances and in light of the contrary decision of the Hon''ble Supreme Court in the case of Swaran Singh (supra) no reliance can be placed upon the decision of the Division Bench in the case of Rukhsanabanu (supra). Under the circumstances, the decision of the Division Bench in the case of Rukhsanabanu (supra) shall not be of any assistance to the original claimants.

8.4. Similarly, so far as decision of the learned Single Judge in the case of V.P. Saguna wd/o P Balakrishna (supra), relied upon by the learned advocate for the original claimant is concerned, at the outset, it is required to be noted that before the learned Single Judge the main question was with respect to whether in an application under Section 163A of the Motor Vehicles Act, the claimants are required to prove the negligence or not and/or whether tort-feasor or heirs of the tortfeasor himself are entitled to compensation under the provision of Section 163A of the Act or not. Therefore, as such observations made by the learned Single Judge in the aforesaid decisions, which are relied upon by the original claimants can be said to be passing observations and not with respect to controversy/issue involved in the appeal before the learned Single Judge. Even otherwise, it is required to be noted that against the said decision, the Insurance Company did prefer appeal/SLP before the Hon''ble Supreme Court and initially the Hon''ble Supreme Court did stay the judgment and order passed by the learned Single Judge passed in case of V.P. Saguna wd/o P Balakrishna (supra), however subsequently the Hon''ble Supreme Court has dismissed the said SLP/appeal, however has specifically observed that question of law is kept upon. Under the circumstance and considering the direct decision of the Hon''ble Supreme Court in the case of Swaran Singh (supra) referred to herein above, the decision of the learned Single Judge in the case of V.P. Saguna wd/o P. Balakrishna (supra) also shall not be of any assistance to the original claimants.

9. In view of the above and for the reasons stated above and on conjoint reading of Section 147 r/w Section 149 of the Motor Vehicles Act and the decision of the Hon''ble Supreme Court in the case of Swaran Singh (supra), it is held that even in an application under Section 163A of the Motor Vehicles Act the insurer shall be

entitled to raise statutory defences which may be available to the insurer provided under-sub-section (2) of Section 149 of the Motor Vehicles Act.

10. Now, so far as impugned judgment and award passed by the learned Tribunal holding insurer liable to pay compensation is concerned, it is required to be noted that though learned Tribunal has specifically observed and held that deceased was traveling as gratuitous passenger on the goods vehicles at the time of accident, learned Tribunal has held insurer liable to pay compensation solely on the ground that the original claim petition has been filed under Section 163 of the Motor Vehicles Act. The aforesaid cannot be sustained. In light of the observations made herein above and considering Section 149(2) of the Motor Vehicles Act and it is held that insurer can raise statutory defence which may be available to it under Section 149(2) of the Motor Vehicles Act and once it is held that the deceased was traveling as gratuitous passenger on the goods vehicle at the time of accident considering the sub-section(2) of Section 149 of the Motor Vehicles Act, the insurer cannot be held liable to pay compensation as in such a situation the insurer can avoid the liability to pay the compensation as the insurer is not statutorily liable to pay the compensation as the deceased was traveling as a gratuitous passenger on the goods vehicle at the time of accident.

10.1 Under the circumstance, the impugned judgment and order passed by the learned Tribunal holding the appellant - insurer liable to pay the compensation or indemnify the award cannot be sustained and same deserves to be quashed and set aside.

11. In view of the above and for the reasons stated above, appeal succeeds. The impugned judgment and award in so far as holding the appellant - insurer - original opponent No. 2 -United India Insurance Company Limited liable to pay the compensation to the original claimants for the death of deceased is hereby quashed and set aside. On allowing the present appeal and quashing and setting aside the impugned judgment and award passed by the learned Tribunal so far as appellant Insurance Company is concerned, the appellant Insurance Company is concerned, the appellant Insurance Company shall be entitled to get back the amount which the appellant had deposited pursuant to the impugned judgment and award passed by the learned Tribunal. However, it is required to be noted that pursuant to the interim order passed by this Court dated 5.10.2009 passed in Civil Application No. 10896 of 2009 in First Appeal No. 3936 of 2009 the original claimant No. 1- Manjulaben wd/o Maheshbhai Ranchhodbhai Rohit (Chamar) was permitted to withdraw 30% of the amount and rest of the amount was directed to be invested in the name of original claimants in any Nationalized Bank but FDRs shall remain with Nazir of Claims Tribunal, Ahmedabad City, which require periodical renewal till First Appeal is decided by this Court and the original claimant No. 1- Manjulaben wd/o Maheshbhai Ranchhodbhai Rohit (Chamar) was allowed to receive the monthly interest from the said FDR. By now more than 7 years have passed and original

claimant No. 1 -Manjulaben wd/o Maheshbhai Ranchhodbhai Rohit (Chamar) must have spent entire 30% which was permitted to withdraw and even periodical interest for their maintenance, it is observed that amount already withdrawn by the original claimants may not be recovered from them by the Insurance Company, however interest shall be entitled to get back the said amount from the owners of the vehicle involved in the accident. However, the appellant - Insurance Company shall be entitled to get back remaining amount from the Fixed Deposit Receipts lying with the Nazir of the Tribunal which were directed to be invested in the name of original claimants and which were directed to be kept in the Nazir, Ahmedabad City, without filing Execution Petition and the Tribunal is directed to pay the said amount to the appellant -Insurance Company on production of certified copy of the present judgment and order. With this, present appeal is allowed. No costs.