National Insurance Company Ltd. Br. Tirupathi Vs M.A. Annapoornamma and three others

Court: Andhra Pradesh High Court

Date of Decision: April 26, 2012

Acts Referred: Motor Vehicles Act, 1988 â€" Section 147, 149, 149(2)(a)(ii), 15(1), 166
Penal Code, 1860 (IPC) â€" Section 304A

Citation: (2012) 5 ALT 26

Hon'ble Judges: R. Kantha Rao, J

Bench: Single Bench

Advocate: Nisaruddin Ahmed Zaddi, for the Appellant; V. Sudhakar Reddy Counsel for respondents 1 to 3, for the Respondent

Judgement

Hon"ble Mr Justice, R. Kantha Rao

1. This appeal arises out of the order dated 25.03.2011 passed by the Motor Accidents Claims Tribunal-cum-IV Additional District Judge,

Tirupathi in O.P. No. 448 of 2008. The National Insurance Company Limited which is the second respondent before the Tribunal preferred the

appeal challenging the order passed by the Tribunal on various grounds; namely the finding of the Tribunal that the accident was due to the rash

and negligent driving of the lorry bearing AP-11-W-8029 is erroneous, the quantum of compensation granted is on higher side and the finding that

the 4th respondent owner of the offending vehicle and the appellant insurance company are jointly and severally liable to pay compensation is also

not correct.

2. Along with the appeal, the appellant filed MACMAMP No. 3977 of 2011 seeking stay of the operation of the order passed by the learned

Tribunal below and this Court granted stay on condition of the appellant depositing 50% of the award amount together with costs and interest and

the appellant-insurance company has complied with the said order.

3. Thereafter, the claimants filed MACMAMP No. 5079 of 2011 seeking permission to withdraw the amount deposited by the appellant-

insurance company pursuant to the order of stay granted by this Court. When the said application came up for hearing, the learned counsel

appearing for the appellant-insurance company objected for withdrawal of the amount by the claimants on the ground that the driver of the

offending vehicle had no valid driving licence on the date of the accident, on account of which the insurance company is entitled to avoid or disown

its liability. The learned counsel appearing for the appellants contended that notwithstanding the fact whether the insurance company can disown its

liability, it is under a duty to satisfy the award insofar as the innocent third parties are concerned and therefore, the application seeking permission

to withdraw the amount deposited by the insurance company cannot be objected to.

4. At that stage, this Court with the consent of both the learned counsel took up the main appeal itself for hearing.

5. I have heard the learned counsel appearing for the appellant-insurance company and the learned counsel appearing for the respondents 1 to

3/claimants.

6. On 17.08.2008 at about 6.30 p.m. while M.Sreeramulu Reddy, hereinafter called "the deceased" was proceeding on his bajaj motorcycle

towards Yerpedu in a slow and steady manner on the left side of the road and when he reached Rama Vilas circle of Renigunta and Srikalahasthi

main road, the lorry bearing No. AP-11-W-8029 driven in a rash and negligent manner at high speed dashed the deceased. The deceased fell

down and received severe head injury besides injuries on the chest and left leg. Immediately he was shifted to SVRRGG Hospital, Tirupathi for

treatment and from there to Christian Medical College, Vellore where he succumbed to injuries on 30.08.2008 while undergoing treatment.

7. On these grounds, the claimants filed claim case u/s 166 of the Motor Vehicles Act seeking compensation of Rs.8,50,000/- on account of the

death of the deceased. According to them, the deceased was a carpenter besides doing contract works and earning Rs.9,000/- per month. They

also pleaded before the Tribunal that they had spent an amount of Rs.2.5 lakhs for the treatment of the deceased from the date of the accident till

his death. The appellant-insurance company filed an application before the Tribunal u/s 170 of the Motor Vehicles Act and was permitted to

contest the case on all or any of the grounds that are available to the person against the owner without prejudice to the provisions contained in sub-

section (2) of Section 149 of the M.V. Act. In the course of its counter, the appellant insurance company contended as follows: The accident

occurred due to gross negligence on the part of the deceased in riding the motorcycle himself, that there was no negligence on the part of the driver

of the lorry, the deceased while he was admitted in the hospital gave a false statement to the police attributing rashness and negligence on the part

of the driver of the lorry and the police having colluded with the claimants charge sheeted the driver of the lorry for the said offence. It was further

contended that the age of the deceased and his earnings mentioned in the claim petition are not correct, the claimants made exaggerated claim of

medical expenses ad that they might not have incurred such huge expenditure since the treatment of the deceased was in government hospitals. It

was also contended that the driver of the lorry bearing No. AP-11-W-8029 had no valid driving licence at the material time of the accident and

therefore, the insurance company is not liable to pay compensation. The learned Tribunal below made an enquiry into the claim by framing the

issues viz. whether the accident was due to rash and negligent driving of the driver of the lorry bearing No. AP-11-W-8029 belonging to the first

respondent which was insured with the second respondent, whether the claimants are entitled for any compensation, if so, to what amount and

from whom. Before the learned Tribunal below, PWs.1 to 3 were examined on behalf of the claimants and Exs.A-1 to A-8 were marked.

Whereas, on behalf of the respondents, RW-1 was examined and Exs. B-1 to B-3 were marked. Exs. X-1 and X-2 were marked by court. The

learned Tribunal after going through the evidence on record in the light of the pleadings of both the parties, answered all the issues in the affirmative

and in favour of the claimants, partly allowed the claim preferred by the claimants granting compensation of Rs.6,75,000/- with proportionate costs

and interest from the date of the petition till the date of realization.

8. Basing on the rival contentions, the following points would arise for determination in the present appeal:

i) Whether the Tribunal below is right in holding that the accident was solely on account of the rash and negligent driving of the driver of the lorry

bearing No. AP-11-W-8029?

ii) Whether the compensation granted by the Tribunal below to the claimants is excessive or just and reasonable warranting no interference in this

appeal?

iii) Whether the finding of the Tribunal that the 4th respondent owner of the offending vehicle and the appellant-insurance company with which it

was insured are jointly and severally liable to pay compensation to the claimants is correct?

iv) Even if it is held that the insurance company can be exonerated from liability to pay compensation, whether it can be directed to pay the

awarded amount to the claimants in the first instance, then recover it from the owner of the offending vehicle

POINT NO. 1

9. The claimants pleaded in their claim petition that the accident was solely on account of the rash and negligent driving of the driver of the lorry

bearing No. AP-11-W-8029. According to them, the deceased was riding the motorcycle towards Yerpedu in a slow and steady manner on the

left side of the road, the lorry driver drove the offending lorry in a rash and negligent manner and dashed the deceased who was riding the

motorcycle. The appellant-insurance company contended that the accident was due to gross negligence on the part of the deceased himself who

was riding the motorcycle without having any valid driving licence. In support of their version, the claimants examined T.Mohan as PW-3, an

eyewitness to the accident. PW-3 stated in his evidence before the Tribunal that he was running the lorry broker office under the name Reddy

Brokers Office on Renigunta Srikalahasthi main road and his office is situate near the place of accident. His version is that on 17.08.2008 at about

6.30 pm, he after going out of the office, was standing outside, he saw the deceased proceeding on bajaj pulsar motorcycle towards Yerpedu on

the left side of the road, the lorry bearing No. AP-11-W-8029 driven in a rash and negligent manner at high speed came in the opposite direction

and dashed the deceased who was riding the motorcycle, due to which he received severe head injury, injuries on the chest and left leg. PW-3 is a

natural witness who witnessed the incident by standing in front of his office. He also specifically stated in the cross examination that there was no

negligence on the part of the deceased in riding the motorcycle as he was riding the motorcycle on the left side of the wide and straight road. This

apart, the contents of certified copy of FIR Ex.A-1 which was registered at the earliest point of time basing on the statement of the deceased also

reveals that the accident was on account of the rash and negligent driving of the lorry. Ex.A-5 certified copy of the charge sheet also reveals that

the police after thorough investigation found that the driver of the lorry was solely responsible for the accident and accordingly they charge sheeted

him for the offence u/s 304-A of IPC. Except barely contending that the accident was on account of the fault of the deceased himself, no contra

evidence has been let in by the appellant insurance company on this issue. This is a case wherein the claimants by cogent, reliable, and

unimpeachable evidence of natural witness PW-3 who is also an independent witness proved that the accident was due to the rash and negligent

driving of the driver of the lorry bearing No. AP-11-W-8029. Therefore, the learned Tribunal is perfectly justified in recording a finding that the

accident was solely due to the rash and negligent driving of the lorry bearing No. AP-11-W-8029.

POINT NO. 2

10. As regards the quantum of compensation, the version of the claimants is that the deceased was a carpenter by profession aged 45 years and

was also doing some contract works. According to them, he was earning Rs.9,000/- per month from both the sources. The appellant-insurance

company only contended that the income of the deceased was exaggerated by the claimants. It has not specifically denied the occupation of the

deceased. In Ex.A-2 inquest report, and Ex.A-3 post mortem certificate, the age of the deceased was mentioned as 44 years. The learned

Tribunal therefore basing on the pleadings and relying on Exs.A-2 and A-3 rightly considered the age of the deceased between 40 and 45 years.

The learned Tribunal basing on the evidence on record arrived at a positive conclusion that the deceased was carpenter by profession and was

also doing business in furniture. Though, the claimants contended that the deceased apart from working as carpenter doing some contract works,

did not specifically plead that he was doing any business. However, doing contract works also can be understood as doing business. Even

otherwise, since it is made out from the evidence on record that the deceased was a carpenter and as there was no specific denial to the profession

of the deceased by the appellant insurance company, the learned Tribunal in my view rightly considered the income of the deceased at Rs.4,000/-

per month for the purpose of computing the compensation. The learned Tribunal below basing on the judgment of Smt. Sarla Verma and Others

Vs. Delhi Transport Corporation and Another, had taken the multiplier relevant to the age of the deceased as "15", deducted 1/3rd towards

personal and living expenditure of the deceased, applied multiplier 15 and granted an amount of Rs.4,80,000/- towards loss of dependency.

Against the medical and hospital expenses claimed by the claimants for the treatment of the deceased from the date of the accident till he

succumbed to the injuries of an amount of R.2,50,000/-, the leaned Tribunal considering the evidence of PW-2, E.Hariharan who is an employee

in CMC Vellore. Exs.X1, X2 and A7 hospital bills rightly granted an amount of Rs.1,65,000/-. The learned Tribunal also rightly granted an amount

of Rs.5,000/- towards transport charges and Rs.5,000/- towards funeral expenses and Rs.5,000/- towards loss of estate. As per the Sarala

Varma case (first cited above), the first claimant, who is the widow of the deceased is entitled for an amount of Rs.10,000/- towards loss of

consortium and thus an amount of Rs.5,000/- has to be deducted from the total sum awarded by the Tribunal. If so, deducted, the total

compensation comes to Rs.6,70,000/-. Therefore, the claimants are entitled for total compensation of Rs.6,70,000/- together with interest @

7.5% per annum with proportionate costs from the date of petition till the date of realization. Thus, the compensation granted by the learned

Tribunal below is only reduced to Rs.5,000/-. This point is answered accordingly.

POINT No. 3

11. The contention of the appellant/insurance company to disown its liability to pay compensation to the claimants is that the driver was not holding

a valid driving license at material time. According to the appellant, the driver was possessing only a light motor vehicle driving license and he is not

supposed to drive a lorry which is a heavy goods vehicle. Ex.B.2 is the extract of driving license of the driver of the offending lorry. It shows that

the driver was issued by the RTA license to drive light motor vehicle transport and non transport with effect from 20.01.1989. Therefore,

indisputably the driver of the offending vehicle had no driving license to drive a heavy goods vehicle and he drove the vehicle only by possessing a

license in respect of light motor vehicle, it is certainly a violation of terms and conditions of the policy of insurance.

12. In this context, the crucial questions to be addressed are:

whether the insurance company proved that the driver of the offending vehicle had no driving license to drive the said vehicle

and whether the owner of the said vehicle is guilty of committing breach of terms of contract of insurance and also the provisions of the Act

13. Three Judge Bench in National Insurance Co. Ltd. Vs. Swaran Singh and Others, by following the ratio laid down in Skandia Insurance Co.

Ltd. Vs. Kokilaben Chandravadan and Others, and Sohan Lal Passi Vs. P. Sesh Reddy and others, held that it is not enough on the part of the

insurer to establish that the vehicle was driven by a person who is not qualified, but the insurer has to further establish that the breach committed by

the insured is willful and deliberate. The insurance company will succeed in establishing its defence only in the event of its proving that the insured

knowingly allowed the driver, who is not qualified to drive a particular vehicle. Therefore, the breach of contract of insurance must be willful or

intentional. Further the burden to prove that there is breach of terms and conditions of the policy or the provisions of the statue is on the insurer. If

we examine the facts of the present case, in the light of the ratio laid down in Swaran Singh case second supra here is a case wherein the insurance

company filed Ex.B.2 extract of driving license which shows that the driver of the offending vehicle had only license to drive light motor vehicle,

transport and non transport with effect from 20.01.1989. It will be very difficult for the insurer to adduce positive evidence showing that the driver

had no license to drive heavy goods vehicle. The insurance company can discharge its burden not only by adducing positive evidence, but also by

bringing on record the circumstances showing that the driver of the offending vehicle had no valid driving license. In the instant case, in my view the

insurance company had discharged its initial burden by producing Ex.B.2, extract of driving licence, which only shows that the driver of the

offending vehicle had driving license to drive a light motor vehicle. Then the burden shifts on to the insured to prove that the driver in fact, had a

valid driving license to drive a heavy goods vehicle, but the insured did not adduce any evidence to show that apart from having license to drive

light motor vehicle his driver was also having valid driving license to drive heavy goods vehicle. In the absence thereof an adverse inference can be

drawn against the owner of the vehicle that the driver of the offending vehicle was having only license to drive light motor vehicle. Knowing the said

fact fully well the owner of the vehicle allowed him to drive the lorry, which is a heavy goods vehicle. Therefore, I do not agree with the contention

urged by the learned counsel appearing for the respondents/claimants that the insurer in this case failed to establish that the driver had valid driving

licence to drive the offending vehicle viz. the lorry at material time.

14. The result which follows now is that the finding of the tribunal below that the fourth respondent/owner of the offending vehicle and the

appellant/insurance company, its insurer are jointly and severally liable to pay compensation to the claimants is unsustainable and is liable to be set

aside. Accordingly, the same is set aside and it is held that for breach of terms and conditions of the policy as well as the statutory provisions, the

appellant/insurance company is not liable to pay compensation to the claimants, but the fourth respondent, who is the owner of the offending

vehicle alone is liable to pay compensation to the claimants.

POINT No. 4

15. Then the crucial question which arises for consideration is that if the insurance company is held not liable to pay compensation to the claimants

whether it can be directed to pay the awarded amount to the claimants in the first instance and then recover the same from the owner of the

offending vehicle.

16. To answer this question, it would be relevant to refer the ratio laid down by the Supreme Court in the following judgments

1) United India Insurance Company Ltd. Vs. Lehru and Others, the Supreme Court held as follows:

17. In spite of above enunciation of law the Insurance Companies still continue to disclaim liability on the ground that the licence was fake. In the

case of New India Assurance Co., Shimla Vs. Kamla and Others etc. etc., the question was whether by virtue of Section 149(2)(a)(ii) an

Insurance Company could avoid liability if it is proved that the driving licence was fake. This Court considered, in detail, Section 149 of the Motor

Vehicles Act. 1988 and held that the insurer has to pay to third parties on account of the fact that a policy of insurance has been issued in respect

of the vehicle. It is held that the insurer may be entitled to recover such sum from the insured if the insurer was not otherwise liable to pay such sum

to the insured by virtue of the contract of insurance. The question as to whether or not the insured would be protected if he had made all enquiries

was left open. However, this point has been squarely dealt with in Skandia''s and Sohan Lal Passi''s cases (supra).

Under sub-section (1) of Section 149 of the Motor Vehicles Act, 1988, 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 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

indicate 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 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).

Just to take an example, suppose a vehicle is stolen. Whilst it is being driven by the thief there is an accident. The thief is caught and it is

ascertained that he had no licence. Can the Insurance Company disown liability? The answer has to be an emphatic ""No"". To hold otherwise

would be to negate the very purpose of compulsory insurance. The injured or relatives of person killed in the accident may find that the decree

obtained by them is only a paper decree as the owner is a man of straw. The owner himself would be an innocent sufferer. It is for this reason that

the Legislature, in its wisdom, has made insurance, at least third party insurance, compulsory. The aim and purpose being that an Insurance

Company would be available to pay. The business of the Company is to insurance In all businesses there is an element of risk. All persons carrying

on business must take risks associated with that business. Thus it is equitable that the business which is run for making profits also bears the risk

associated with it. At the same time innocent parties must not be made to suffer or loss. These provisions meet these requirements. We are thus in

agreement with what is laid down in aforementioned cases viz that in order to avoid liability it is not sufficient to show that the person driving at the

time of accident was not duly licensed. The Insurance Company must establish that the breach was on the part of the insured.

If it ultimately turns out that the licence was fake, the Insurance Company would continue to remain liable unless they prove that the owner/insured

was aware or had noticed that the licence was fake and still permitted that person to drive. More importantly, even in such a case, the Insurance

Company would remain liable to the innocent third party, but it may be able to recover from the insured.

(emphasis supplied)

17. 2) The law laid down by the three Judge Bench of the Apex Court in National Insurance Company Co. Ltd. v. Baljit Kaur and Others (2004)

2 SCC on the issue is as under:

(19.) In Asha Rani (supra) it has been noticed that sub-clause (i) of clause (b) of sub-section (1) of Section 147 of the 1988 Act speaks of liability

which may be incurred by the owner of a vehicle in respect of death of or bodily injury to any person or damage to any property of a third party

caused by or arising out of the use of the vehicle in a public place. Furthermore, an owner of a passenger-carrying vehicle must pay premium for

covering the risks of the passengers travelling in the vehicle. The premium in view of the 1994 Amendment would only cover a third party as also

the owner of the goods for his authorised representative and not any passenger carried in a goods vehicle whether for hire or reward or otherwise.

(20.) It is, therefore, manifest that in spite of the amendment of 1994, the effect of the provision contained in Section 147 with respect to persons

other than the owner of the goods or his authorized representative remains the same. Although the owner of the goods or his authorized

representative would now be covered by the policy of insurance in respect of a goods vehicle, it was not the intention of the legislature to provide

for the liability of the insurer with respect to passengers, especially gratuitous passengers, who were neither contemplated at the time the contract

of insurance was entered into, nor any premium was paid to the extent of the benefit of insurance to such category of people.

(21.) The upshot of the aforementioned discussions is that instead and in place of the insurer the owner of the vehicle shall be liable to satisfy the

decree. The question, however, would be as to whether keeping in view the fact that the law was not clear so long a direction would be fair and

equitable. We do not think so. We, therefore, clarify the legal position which shall have prospective effect. The Tribunal as also the High Court had

proceeded in terms of the decisions of this Court in Satpal Singh (supra). The said decision has been overruled only in Asha Rani (supra). We,

therefore, are of the opinion that the interest of justice will be sub-served if the appellant herein is directed to satisfy the awarded amount in favour

of the claimant if not already satisfied and recover the same from the owner of the vehicle. For the purpose of such recovery, it would not be

necessary for the insurer to file a separate suit but it may initiate a proceeding before the executing court as if the dispute between the insurer and

the owner was the subject matter of determination before the tribunal and the issue is decided against the owner and in favour of the insurer. We

have issued the aforementioned directions having regard to the scope and purport of Section 168 of the Motor Vehicles Act, 1988 in terms

whereof it is not only entitled to determine the amount of claim as put forth by the claimant for recovery thereof from the insurer, owner or driver of

the vehicle jointly or severally but also the dispute between the insurer on the one hand and the owner or driver of the vehicle involved in the

accident inasmuch as can be resolved by the tribunal in such a proceeding.

(Emphasis Supplied)

18. Further in National Insurance Company Limited v. Jarnail Singh and Others (2007)15 SCC 28 it was held as follows:

In the present case, the fact that the driving licence was renewed only with effect from 28.10.1996 shows that the first proviso to Section 15(1)

had applied and its corollary is that driver had no licence to drive the vehicle on the date of accident i.e. 20.10.1996. There is no dispute that the

policy stipulated a condition that the vehicle would not be driven by a person without a valid driving licence. It means that the policy condition had

been violated. The Supreme Court held in New India Assurance Co., Shimla Vs. Kamla and Others etc. etc., that the insurance company is

nonetheless liable to pay the compensation to the third party on the strength of the valid insurance policy issued in respect of a vehicle., but the

remedy of theinsurer when there was breach or violation of the policy condition was to recover the amount from the insured. The appeal is allowed

by permitting the appellant Insurance Company to realize the said amount from respondent 3, the insured. It is open to the insurance company to

apply to the authorities concerned for execution of this direction as per law.

19. In National Insurance Company Limited v. Geeta Bhat and Others (2008)12 SCC 4269 it was held as follows:

Liability of an insurer to reimburse the insured, as an owner of the vehicle not only depends upon the terms and conditions laid down in the contract

of insurance but also the provisions of the Motor Vehicles Act, 1988 (the Act). The owner of vehicle is statutorily obligated to obtain an insurance

for the vehicle to cover the third-party risk. A distinction has to be borne in mind in regard to a claim made by the insured in respect of damage of

his vehicle or filed by the owner or any passenger of the vehicle as contradistinguished from a claim made by a third party. In a case where a third

party has raised a claim, National Insurance Co. Ltd. Vs. Swaran Singh and Others, would apply, in a claim made by the owner of the vehicle or

other passengers of a vehicle, it would not (emphasis supplied)

20. From the ruling of the Apex Court what all can be under stood is that, after notice to the insurer when the award has been passed, the position

of the insurer is that of a Judgment Debtor and it has legal obligation to satisfy the award, despite the fact that it is entitled to avoid liability on the

ground of breach of terms and conditions of the contract or the statutory provisions so long as there is a valid third party insurance. A distinction

has to be drawn between the defences which the insurance company can take u/s 149 of the Motor Vehicles Act and its obligation to satisfy the

decrees and awards in so far as victims/third parties are concerned.

21. It has been argued on behalf of the appellant/insurance company that u/s 168 of the Motor Vehicles Act the claims Tribunal is only empowered

to make an award determining the amount of compensation and it is not competent to issue any direction to the insurance company to pay the

award amount in the first instance and then recover the same from the owner of the vehicle. In Kusum Lata and Others Vs. Satbir and Others, the

Supreme Court held that that Insurance Company has inherent power to issue such direction. It was also argued that in some cases the Supreme

Court in exercise of its powers u/s 136 and 141 of the Constitution of India issued directions to the insurance company to satisfy the award in the

first instance and then recover the same from the owner of the offending vehicle, but the Tribunals or High Courts are not competent to issue any

such directions. There is absolutely no force in the contention in view of the judgment in Kusum and others case 9th cited supra. Further the Apex

Court in Baljit Kour case 6th cited supra has not laid down that the power to issue direction to the insurance company to satisfy the award in the

first instance and then recover from the owner of the vehicle has to be exercised only by the Supreme Court. The Supreme Court laid down that

the law in general terms and said that by issuing such direction interest of justice will be sub-served and also emphasized that it has issued the

aforesaid direction having regard to the scope and purport of Section 168 of the Motor Vehicles Act,1988, and has laid down the legal position in

categorical and clear terms that the Tribunal is not only entitled to determine the amount of compensation claimed as put forth by the claimant for

recovery thereof from the insurer, owner or driver of the vehicle jointly and severally, but also the dispute between the insurer on the one hand and

the owner or driver of the vehicle involved in the accident inasmuch as can be resolved by the Tribunal in such proceeding. Therefore, the argument

advanced by the learned counsel goes contra to the ratio laid down in Baljit Kour case 6th cited supra and the same cannot be sustained. The

Tribunal by virtue of its power and jurisdiction u/s 168 of the Motor Vehicles Act can issue direction to the insurer to satisfy the award in the first

instance in favour of the victims/third parties and then to recover the amount so paid from the insured.

22. For what all stated herein above, the finding of the learned Tribunal below that the 4th respondent/owner and the appellant/insurance company

are jointly and severally liable to pay compensation to the claimants is set aside and it is held in this appeal that the appellant/insurance company is

not liable to pay compensation to the claimants, but the 4th respondent/owner of the vehicle alone is liable to pay compensation to the claimants.

However, the appellant/insurance company is directed to pay the compensation amount to the claimants in the first instance and it is entitled to

recover the same from the owner of the offending vehicle by filing execution petition without bringing any independent suit. In the result, the appeal

filed by the appellant/insurance company is partly allowed. MACMA.M.P. No. 5079 of 2011 is allowed and the claimants/respondents 1 to 3 are

permitted to withdraw the amount deposited by the appellant/insurance company pursuant to the order passed by this Court while granting stay of

execution of award dated 22.09.2011 in MACMAMP No. 3977 of 2011. There shall be no order as to costs.