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First Appeal From Order No 2174 of 2014

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United India Insurance Co Ltd

Vs

Smt Shashi Prabha Sharma & 4 Ors

Appearance:

For the appellant :- Shri Vishesh Kumar Gupta, Advocate

F**or the respondents :-** Shri S D Ojha, Advocate

Hon'ble Dr Dhananjaya Yeshwant Chandrachud, Chief Justice
Hon'ble Dilip Gupta, J
Hon'ble Pradeep Kumar Singh Baghel, J

(Per Dr D Y Chandrachud, CJ)

During the course of the hearing of a First Appeal From Order[1] arising out of a decision of the Motor Accident Claims Tribunal at Saharanpur dated 6 May 2014, a Division Bench of this Court formulated the following questions for consideration by a Full Bench[2]:

> (i) Where on account of a breach of an insurance policy, the owner of an offending vehicle has been held liable to pay compensation (the insurer having been held not to be liable) but a direction is issued to the insurer to pay the compensation awarded to the claimant and to recover it from the owner of the offending vehicle, does the insurer have a right to appeal under Section 173 of the Motor Vehicles Act, 1988[3]?
>
> (ii) If question (i) above is answered in the affirmative, to what extent and on what grounds will the insurer have the right to

1 FAFO
2 The questions have been slightly reformulated to bring greater clarity to the issues involved.
3 the Act

challenge an order of the Tribunal?

(iii) In a situation where the Motor Accident Claims Tribunal[4] has fastened the liability to pay compensation only on the owner of the offending vehicle but the insurer has been directed to pay the compensation to the claimant and recover it from the owner subject to the owner furnishing security to the extent of the compensation awarded and if the owner fails to furnish security, either due to incapability or for any other reason, should the award be allowed to be frustrated for want of security, thereby defeating the object of the legislature to protect the right of third parties?

The incident which had led to the proceedings before the Division Bench in an FAFO took place at 6.30 pm on 24 December 2010 when Surya Prakash Sharma boarded a tempo at Saharanpur. During the course of the journey, the tempo collided with a tractor and trolley coming from the opposite direction. Surya Prakash Sharma sustained multiple injuries and was declared dead at the District Hospital at Saharanpur. The place of the occurrence was before the Air Station Sarsawa, near Sourana on the Saharanpur Sarsawa road.

The claim petition was filed before the Tribunal at Saharanpur by the widow on her behalf and for three minor children who were respectively of the ages of one, fourteen and sixteen. United India Insurance Company Limited[5], the appellant, was impleaded as a party to the claim petition. The Tribunal held that the insurance company was not liable to pay compensation on the ground that (i) the driver did not have a valid and

4 the Tribunal
5 insurance company

effective driving licence on the date of the accident and there was a violation of the conditions of the insurance policy; and (ii) the tempo was being driven in violation of its route permit. The Tribunal came to the conclusion that the accident took place because of the rash and negligent manner in which the tempo was being driven. The claim for compensation was allowed in the amount of Rs 19,10,665/- together with interest at the rate of seven percent per annum. The insurance company was directed to satisfy the award by paying the compensation awarded to the claimants subject to its right to recover the amount from the insured.

We will now proceed to analyse the three questions which have been referred to the Full Bench for being considered.

Re Questions (i) and (ii)

Section 173 of the Act provides as follows:

> **"173. Appeals.**–(1) Subject to the provisions of sub-section (2), any person aggrieved by an award of a Claims Tribunal may, within ninety days from the date of the award, prefer an appeal to the High Court:
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> Provided that no appeal by the person who is required to pay any amount in terms of such award shall be entertained by the High Court unless he has deposited with it twenty-five thousand rupees or fifty per cent of the amount so awarded, whichever is less, in the manner directed by the High Court:
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> Provided further that the High Court may entertain the appeal after the expiry of the said period of ninety days, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal in time.

> (2) No appeal shall lie against any award of a Claims Tribunal if the amount in dispute in the appeal is less than ten thousand rupees."

A right of appeal against an award of the Tribunal has been made available by sub-section (1) of Section 173 to 'any person aggrieved' by the award subject to the amount in dispute in the appeal being above the threshold specified in sub-section (2). The issue before the Court is whether the insurance company is a person aggrieved within the meaning of sub-section (1). If it is, the further question that needs to be addressed is in regard to the scope of the appellate remedy.

Chapter XII of the Act provides for Claims Tribunals. Section 165 provides for the establishment of a Tribunal to adjudicate upon claims for compensation in respect of accidents involving the death of, or bodily injury to, persons arising out of the use of motor vehicles, or damages to any property of a third party so arising, or both. Section 166 provides for an application for compensation. The Tribunal can be moved either upon an application for compensation under sub-section (1) of Section 166 or even upon proceedings initiated suo motu by treating a report of an accident forwarded to the Tribunal under Section 158 (6) as an application for compensation under Section 166 (4). Under sub-section (1) of Section 168, on receipt of an application for compensation under Section 166, the Tribunal, after furnishing a notice of the application to the insurer and after allowing the parties including the insurer, an opportunity of being heard, is required to enquire into the claim. The Tribunal has to make an award (i)

determining the amount of compensation which appears to it to be just; (ii) specifying the person or persons to whom the compensation shall be paid; and (iii) specifying the amount to be paid by the insurer or owner or driver of the vehicle involved in the accident or by all the three of them, as the case may be. Under sub-section (3) of Section 168, the person who is required to pay any amount in terms of the award, has to deposit the entire amount awarded in the manner in which the Tribunal may direct, within thirty days from the date of the award. In making its enquiry, the Tribunal under sub-section (1) of Section 169 has to follow a summary procedure as it thinks fit.

Where a claim is brought before the Tribunal under Section 166, the driver and owner have to be impleaded as respondents. The claimant may or may not implead the insurer as a party to the proceedings. However, sub-section (2) of Section 149 provides that no sum shall be payable by the insurer under sub-section (1) in respect of a judgment or award unless, before the commencement of the proceedings, the insurer had notice of the proceedings. The insurer to whom a notice of the proceedings is given, shall be entitled to be made a party thereto. Section 149 forms a component of Chapter XI which provides for insurance of motor vehicles against third party risks. Section 146 makes it obligatory to obtain an insurance policy covering third party risks. No person can allow or cause to allow a motor vehicle to be used in a public place without an insurance policy being in force in accordance with the requirements of the Chapter. Section 147 defines the requirements of such a policy and the limits of liability. If a judgment or award in respect of the liability which has to be covered under

Section 147 (3) (b) is obtained against the insured, after a certificate of insurance is obtained, the insurer is obligated to pay the compensation payable to the person to whom the benefit of the decree enures, even though the insurer is entitled to or has actually cancelled or avoided the policy.

Sub-section (2) of Section 149 provides the grounds on which an insurer to whom notice of the bringing of the proceedings is given, can defend the action. Sub-sections (1) and (2) of Section 149 provide as follows:

> **"**(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) [6][or under the provisions of Section 163-A] is obtained against any person insured by the policy then, notwithstanding that the insurer may be entitled to avoid or cancel or may have avoided or cancelled the policy, the insurer shall, subject to the provisions of this Section, pay to the person entitled to the benefit of the decree any sum not exceeding the sum assured payable thereunder, as if he were the judgment debtor, in respect of the liability, together with any amount payable in respect of costs and any sum payable in respect of interest on that sum by virtue of any enactment relating to interest on judgments.
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> (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

6 Ins by Act 54 of 1994, S.47 (w.e.f. 14-11-1994)

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 side-car being attached where the vehicle is a motor cycle; or

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

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

(b) that the policy is void on the ground that it was obtained by the non-disclosure of a material fact or by a

representation of fact which was false in some material particular."

Section 170 of the Act provides for the impleadment of the insurer in certain cases and is as follows:

> **"170. Impleading insurer in certain cases.–**Where in the course of any inquiry, the Claims Tribunal is satisfied that–
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> (a) there is collusion between the person making the claim and the person against whom the claim is made, or
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> (b) the person against whom the claim is made has failed to contest the claim,
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> it may, for reasons to be recorded in writing, direct that the insurer who may be liable in respect of such claim, shall be impleaded as a party to the proceeding and the insurer so impleaded shall thereupon have, without prejudice to the provisions contained in sub-section (2) of Section 149, the right to contest the claim on all or any of the grounds that are available to the person against whom the claim has been made."

Two eventualities are contemplated in Section 170 in which the Tribunal may, in the course of its enquiry, direct that the insurer who may be liable in respect of the claim, shall be impleaded as a party to the proceedings. The first is, where the Tribunal is satisfied that there is a collusion between the claimant and the person against whom the claim is made. The second is, where the person against whom the claim has been

made, has failed to contest the claim. Upon being impleaded, the insurer shall have, without prejudice to the provisions of sub-section (2) of Section 149, the right to contest the claim on all or any of the grounds that are available to the person against whom the claim has been made.

A Bench three learned Judges of the Supreme Court in **National Insurance Co Ltd Vs Nicolletta Rohtagi**[7], considered the question whether, in a situation where the insured had not preferred an appeal under Section 173, it would be open to the insurer to prefer an appeal against an award of the Tribunal questioning the quantum of compensation as well as the finding in regard to the negligence of the offending vehicle. The Supreme Court observed that under the provisions of Section 149 (2), the insurer was conferred the right to be made a party to the case and to defend it. The right being a creature of the statute, its content would depend upon the statutory provision. In that context, the Supreme Court observed as follows:

> "...After the insurer has been made a party to a case or claim, the question arises what are the defences available to it under the statute. The language employed in enacting sub-section (2) of Section 149 appears to be plain and simple and there is no ambiguity in it. It shows that **when an insurer is impleaded and has been given notice of the case, he is entitled to defend the action on grounds enumerated in the sub-section, namely, sub-section (2) of Section 149 of 1988 Act, and no other ground is available to him**. The insurer is not allowed to contest the claim of the injured or heirs of the deceased on

7 AIR 2002 SC 3350

> other ground which is available to an insured or breach of any other conditions of the policy which do not find place in sub-section (2) of Section 149 of 1988 Act. If an insurer is permitted to contest the claim on other grounds it would mean adding more grounds of contest to the insurer than what the statute has specifically provided for."[8] (emphasis supplied)

The Supreme Court held that the insurer could not avoid its liability on any ground except those mentioned in sub-section (2) of Section 149:

> "...the statutory defences which are available to the insurer to contest a claim are confined to what are provided in sub-section (2) of Section 149 of 1988 Act and not more and for that reason if an insurer is to file an appeal, the challenge in the appeal would confine to only those grounds."[9]

The Supreme Court adverted to its decision in **Shankarayya Vs United India Insurance Co Ltd**[10], where it was laid down that an insurance company which is impleaded as a party by the Court could be permitted to contest the proceedings on merits only if the conditions precedent mentioned in Section 170 were satisfied and for that, the insurer would have to obtain an order in writing from the Tribunal. Unless this procedure was followed, the insurer would not have a wider defence on merits than what was available by way of statutory defences under Section 149 (2). In the absence of the conditions precedent mentioned in Section 170 existing, the insurer was not entitled to file an appeal on merits questioning the quantum of compensation. The Supreme Court, adverting to the earlier decisions, held as

8 Id at para 13, p 3356
9 Id at para 16, p 3357
10 (1998) 3 SCC 140

follows:

> "...Thus, unless an order is passed by the tribunal permitting the insurer to avail the grounds available to an insured or any other person against whom a claim has been made on being satisfied of the two conditions specified in Section 170 of the Act, it is not permissible to the insurer to contest the claim on the grounds which are available to the insured or to a person against whom a claim has been made. Thus where conditions precedent embodied in Section 170 is satisfied and award is adverse to the interest of the insurer, the insurer has a right to file an appeal challenging the quantum of compensation or negligence or contributory negligence of the offending vehicle even if the insured has not filed any appeal against the quantum of compensation. Sections 149, 170 and 173 are part of one Scheme and if we give any different interpretation to Section 172 of the 1988 Act, the same would go contrary to the scheme and object of the Act."[11]

The Supreme Court observed that the main object of enacting Chapter XI was to protect the interest of victims of motor vehicle accidents and it was for that reason the insurance of all motor vehicles has been made statutorily compulsory. The Act was enacted to protect the interest of persons travelling on or using roads from the risks attendant upon the use of motor vehicles. The judgment in **Nicolletta Rohtagi (supra)**, therefore, laid down that unless the conditions which are prescribed in Section 170 are satisfied, an insurer had no right of appeal to challenge the award on merits. In a situation where the Tribunal does not implead the insurer though the conditions

11 Id at para 26, pp 3358 & 3359

specified in Section 170 are fulfilled, it is open to an insurer to seek the permission of the Tribunal to contest the claim on grounds available to the insured or those available to the person against whom the claim is made. If permission is granted and the insurer is allowed to contest the claim on merits, it would be open to it to file an appeal against the award on merits. However, if the Tribunal has rejected the application for permission erroneously, it would be open to the insurer to challenge that part of the order while filing an appeal on the grounds specified in Section 149 (2).

In 2011, a Bench of three learned Judges of the Supreme Court in **United India Insurance Co Ltd Vs Shila Datta**[12] considered the ambit of the provisions of Section 149 (2) and Section 173 in a reference made on the correctness of the three Judge Bench decision in **Nicolletta Rohtagi (supra)**. The following questions were formulated for consideration:

> "(i) Whether the insurer can contest a motor accident claim on merits, in particular, in regard to the quantum, in addition to the grounds mentioned in Section 149 (2) of the Act for avoiding liability under the policy of insurance; and
>
> (ii) Whether an insurer can prefer an appeal under Section 173 of the Motor Vehicles Act, 1988, against an award of the Motor Accident Claims Tribunal, questioning the quantum of compensation awarded."[13]

Five submissions were urged before the Supreme Court on behalf of the Insurance Companies, these being:

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12 (2011) 10 SCC 509
13 Id at para 2, p 513

"(i) There is a significant difference between insurer as a `noticee' (a person to whom a notice is served as required by Section 149 (2) of the Act) in a claim proceeding and an insurer as a party-respondent in a claim proceeding. Where an insurer is impleaded by the claimants as a party, it can contest the claim on all grounds, as there are no restrictions or limitations in regard to contest. But where an insurer is not impleaded by the claimant as a party, but is only issued a statutory notice under Section 149 (2) of the Act by the Tribunal requiring it to meet the liability, it is entitled to be made a party to deny the liability on the grounds mentioned in Section 149 (2).

(ii) When the owner of the vehicle (insured) and the insurer are aggrieved by the award of the Tribunal, and jointly file an appeal challenging the quantum, the mere presence of the insurer as a co-appellant will not render the appeal, as not maintainable. When insurer is the person to pay the compensation, any interpretation to say that it is not a `person aggrieved' by the quantum of compensation determined, would be absurd and anomalous.

(iii) When an insurer is aggrieved by the quantum of compensation, it is not seeking to avoid or exclude its liability, but merely wants determination of the extent of its liability. The restrictions imposed upon the insurers to defend the action by the claimant or file an appeal against the judgment and award of the Tribunal will apply, only if it wants to file an appeal to avoid liability and not when it admits its liability to pay the amount awarded, but only seeks proper determination of the quantum of compensation to be paid.

(iv) Appeal is a continuation of the original claim proceedings. Section 170 provides that if the person against

whom the claim is made, fails to contest the claim, the insurer may be permitted to resist the claim on merits. If and when an award is made by the Tribunal which is excessive, arbitrary or erroneous, the owner of the vehicle has to challenge the same by filing an appeal before the High Court. If the insured (owner of the vehicle) fails to challenge an award even when it is erroneous or arbitrary or fanciful, it can be considered that the insured has failed to contest the same and consequently under Section 170, the High Court or the Tribunal may permit the insurer to file an appeal and contest the award on merits.

(v) The Act creates a liability upon the insurer to satisfy the judgments and awards against the insured. The Act expressly restricts the right of the insurer to avoid the liability as insurer, only to the grounds specified in Section 149 (2) of the Act. Though it is impermissible to add to the grounds mentioned in the statute, the insurer has a right, if it has reserved such a right in the policy, to defend the action in the name of the insured. If it opts to step into the shoes of the insured, it can defend the action in the name of the insured and all defences open to the insured will be available to it and can be urged by it. Its position contesting a claim under Section 149 (2) of the Act is distinct and different, when it is contesting the claim in the name of or on behalf of the insured owner of the vehicle. In cases, where it is authorized by the policy to defend any claim in the name of the insured, and the insurer does so, it can not be restricted to the grounds mentioned in Section 149 (2) of the Act, as the defence is on behalf of the owner of the vehicle."[14]

The Supreme Court observed that issues (i) and (ii) did not arise for

14 Id at para 3, pp 514 & 515

consideration in **Nicolletta Rohtagi (supra)** nor were they considered. Since the Bench hearing **Shila Datta's case** was also a Bench of three Hon'ble Judges, issues (i) and (ii) were resolved since they had not been considered in the earlier decision of three learned Judges in **Nicolletta Rohtagi (supra)**. Issues (iii), (iv) and (v) would require reconsideration of the decision in **Nicolletta Rohtagi** and were referred to a larger Bench. For the purpose of the present reference, the law laid down in issue (i) in **Shila Datta** assumes significance. Though issues (iii), (iv) and (v) have been referred to a larger Bench, **Nicolletta Rohtagi** will in the meantime continue to be a precedent laying down binding principles. Presently we turn to the decision in **Shila Datta** on issue (i) which has a bearing on this reference.

The Supreme Court held in **Shila Datta (supra)** that there is a distinction between (i) a case where merely a notice has been issued to the insurer under Section 149 (2); and (ii) a case where the insurer is a respondent to the proceedings. If the insurer is merely furnished with a notice under Section 149 (2), the only ground which would be available to the insurer would be the statutory grounds provided in that sub-section. However, if the insurer has been impleaded as a respondent to the proceedings, it can raise not only the statutory defences available under Section 149 (2) but all other grounds available to a person against whom the claim is made. The insurer may be impleaded as a party upon the conditions specified in Section 170 being fulfilled. Upon this happening the insurer has

open a full range of defences which were available to a person against whom a claim is brought, apart from the defences under Section 149 (2). Moreover, if a claimant impleads the insurer as a party to the proceedings for whatever reason, the insurer would be entitled to urge all contentions and grounds as may be available to it. If the insurer is already a party to the proceedings, having been impleaded, it is not necessary for it to seek the permission of the Tribunal under Section 170 to raise grounds other than those mentioned in Section 149 (2).

Chapters XI and XII envisage that a claim petition may be brought only against an owner and driver, and the Tribunal issues a notice under Section 149 (2) to the insurer so that it can be made liable to pay the amount awarded and, if necessary, to deny the liability by availing of a statutory defence under Section 149 (2). If only a notice has been issued to the insurer under Section 149 (2), it can defend the claim on one of the statutory defences available under sub-section (2) and no more. Where, however, the insurer is a respondent to the proceedings either because it has been impleaded under Section 170 by the Tribunal upon the conditions precedent set out therein being satisfied or has been impleaded by the claimant as a respondent to the claim petition voluntarily, it would be open to the insurer to contest the matter on all counts without being restricted to the statutory defences under Section 149 (2).

This position is enunciated in the following observations of the Supreme Court in **Shila Datta**:

> "Therefore, where the insurer is a party-respondent, either on account of being impleaded as a party by the Tribunal under Section 170 or being impleaded as a party-respondent by the claimants in the claim petition voluntarily, it will be entitled to contest the matter by raising all grounds, without being restricted to the grounds available under Section 149 (2) of the Act. The claim petition is maintainable against the owner and driver without impleading the insurer as a party.
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> When a statutory notice is issued under Section 149 (2) by the Tribunal, it is clear that such notice is issued not to implead the insurer as a party-respondent but merely to put it on notice that a claim has been made in regard to a policy issued by it and that it will have to bear the liability as and when an award is made in regard to such claim. Therefore, it cannot, as of right, require that it should be impleaded as a party-respondent. But it can however be made a party-respondent either by the claimants voluntarily in the claim petition or by the direction of the Tribunal under Section 170 of the Act. Whatever be the reason or ground for the insurer being impleaded as a party, once it is a party-respondent, it can raise all contentions that are available to resist the claim."[15]

In a recent judgment of a Bench of two learned Judges of the Supreme Court in **Josphine James Vs United India Insurance Co Ltd**[16], the Supreme Court held that the insurance company was not entitled to file an appeal questioning the quantum of compensation awarded but had only a

15 Id at paras 19 & 20, p 522
16 2013 (4) TAC 22 (SC)

limited defence as provided in Section 149 (2). The case was, therefore, covered by the principle laid down in **Nicolletta Rohtagi** where, evidently, no permission had been obtained under Section 170. The Supreme Court also held that in the absence of permission obtained under Section 170 (b) by the insurance company from the Tribunal to avail of the defence of the insured, the insurer was not permitted to contest the case on merits as held in **Nicolletta Rohtagi (supra)**.

The position as it emerges from the decisions of the two three Judge Bench judgments of the Supreme Court in **Nicolletta Rohtagi** and **Shila Datta (supra)** is as follows:

(I) Where the insurer has not been impleaded as a respondent to the claim proceedings and a notice is issued by the Tribunal as required by Section 149 (2), the position of the insurer is that of a mere noticee who can contest the proceeding only on one of the grounds available under sub-section (2);

(II) Under Section 170, the Tribunal can implead the insurer where, in the course of its enquiry, it is satisfied that (i) there is a collusion between the person making the claim and the person against whom the claim is made; or (ii) the person against whom the claim is made, has failed to contest the claim;

(III) Once the insurer is impleaded by the Tribunal on the satisfaction of the conditions specified in Section 170, the insurer has a right to contest the claim on grounds which are available to the insured or to a person against

whom the claim has been made. In such a situation, where the award is adverse to the interest of the insurer, the insurer has a right to file an appeal challenging the award on all available grounds including the issue of negligence or contributory negligence of the offending vehicle as well as on the quantum of compensation even if the insured has not filed an appeal. In such a situation, the insurer is not confined to contesting the appeal only on the statutory defences available under Section 149 (2); and

(IV) Where the insurance company has already been impleaded as a respondent, either by virtue of its being impleaded as a party by the Tribunal under Section 170 [covered by (II) and (III) above] or as a party respondent by the claimants in the claim petition, it would be entitled to contest the claim petition by raising all grounds without being restricted to the statutory defences under Section 149 (2). Whatever be the reason or ground for the insurer being impleaded as a party, it is entitled to raise all contentions that are available to resist the claim, once it is a party respondent to the proceedings. Consequently, in the appeal, the insurer would not be restricted to contesting the award only on the basis of the statutory defences available under Section 149 (2) but can challenge the award on all grounds available to the insured or the person against whom the claim has been made.

Questions (i) and (ii) are answered accordingly.

Re Question (iii)

Chapter XI of the Act was legislated by Parliament to provide for insurance of motor vehicles against third party risks. Section 146 (1)

provides 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 in relation to the use of the vehicle by that person or that other person, a policy of insurance which complies with the requirements of the Chapter. Section 147 lays down the requirements which a policy of insurance has to fulfill in order to comply with the provisions of the Chapter and the limits of liability. Clause (b) of sub-section (1) of Section 147 requires the policy to ensure against the following risks:

> "(b) …
>
> (i) against any liability which may be incurred by him in respect of the death of or bodily injury to any person [17][, including owner of the goods or his authorised representative carried in the vehicle] or damage to any property of a third party caused by or arising out of the use of the vehicle in a public place;
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> (ii) against the death of or bodily injury to any passenger of a public service vehicle caused by or arising out of the use of the vehicle in a public place:"

Sub-section (1) of Section 149 stipulates that after a certificate of insurance has been issued under Section 147 (3) and a judgment or award in respect of a liability required to be covered by Section 147 (1) (b) is obtained against a person insured by the policy then, even if the insurer is entitled to avoid or cancel the policy or has avoided or cancelled the policy, it shall pay to the person entitled to the benefit of the decree, a sum not exceeding the sum assured as if he was the judgment debtor. Section 149 (1)

17 Ins by Act 54 of 1994, S 46 (w.e.f. 14-11-1994)

obligates the insurer to satisfy the award against a person insured by the policy. This obligation is predicated upon three conditions: first, that a certificate of insurance has been issued under Section 147 (3); second, that the judgment or award is in respect of a liability required to be covered by Section 147 (1) (b) and third, that the judgment or award is against the person insured by the policy. The insurer is made liable on the basis of a legal fiction which is that the insurer must pay "as if" he is the judgment debtor. The insurer must pay even if it is entitled to cancel or avoid the policy or has cancelled or avoided it. Sub-section (4) of Section 149 provides 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:
>
> **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**." (emphasis supplied).

The proviso to sub-section (4) enables the insurer to recover any sum paid by it towards the discharge of a liability of any person covered by the policy, from that person. The proviso provides a statutory recourse to the insurer against the discharge of whose liability an insurer has paid the

amount due under a judgment or award.

The provisions contained in Chapter XI were introduced by Parliament, conscious as the legislature was, of the plight of the victims of accidents. Dangers inherent in the use of roads and the growth of road traffic seriously impinges upon the lives, safety and property of third parties. Beneficial provisions were introduced by Parliament to protect the interests of claimants so as to enable them to claim compensation from the owner or insurance company in connection with the accident (See in this connection **Sohan Lal Passi Vs P Sesh Reddy**[18]).

In **National Insurance Co Ltd Vs Swaran Singh**[19], a Bench of three learned Judges of the Supreme Court explained the rationale for introducing the beneficial provisions contained in the Act to cover third party risks. The Supreme Court dealt with the provisions of Section 149 (2) thus:

> "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

18 (1996) 5 SCC 21
19 AIR 2004 SC 1531

> 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."[20]

The Supreme Court held that the provisions of Section 149 indicated that once the assured proved that the accident was covered by the compulsory insurance clause, it was for the insurer to prove that it falls within an exception. The liability of the insurer was held to be statutory and its liability to satisfy the decree passed in favour of the third party was also held to be of the same character. The Supreme Court held that in this background, sub-sections (4) and (5) of Section 149 may be considered as the liability of the insurer to satisfy the decree in the first instance.

In **Swaran Singh (supra)**, the Bench of three learned Judges noted that the social need of a victim who is to be compensated had been elucidated as far back as in 1959 by another Bench of three learned Judges of the Supreme Court in **British India General Insurance Co Ltd Vs Captain Itbar Singh**[21]. In the earlier decision, it was emphasised that if the insurer was made to pay something which, under the contract of insurance, he was not bound to pay, it was open to him to recover it from the assured:

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20 Id at para 43, p 1546
21 (1960) 1 SCR 168

> "...Secondly, if he has been made to pay something which on the contract of the policy he was not bound to pay, he can under the proviso to sub-section (3) and under sub-section (4) recover it from the assured. **It was said that the assured might be a man of straw and the insurer might not be able to recover anything from him. But the answer to that is that it is the insurer's bad luck. In such circumstances the injured person also would not have been able to recover the damages suffered by him from the assured, the person causing the injuries**..."[22] (emphasis supplied)

Again, this principle was emphasised in the following observations:

> "...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. ...**The right to avoid liability in terms of sub-section (2) of Section 149 is restricted as has been discussed herein before. 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**

22 Id at para 73, p 1552

> **apart and require contextual reading**."[23] (emphasis supplied)

These observations indicate that there are two distinct aspects which have to be borne in mind. The first is the defence which the insurance company is entitled to raise under sub-section (2) of Section 149. The second is that even if the defence is accepted, the Tribunal would have the power to direct the insurer to satisfy the decree in the first instance by permitting recovery of the amount which was paid from the owner. These are two separate issues. The first attaches to the availability of a statutory defence. The second attaches an obligation to pay in the first instance and allows a remedy to recover from the person upon whom the liability has actually fallen. The Supreme Court in its conclusions, held that the liability of the insurance company to satisfy the decree in the first instance and to recover the awarded amount from the owner or driver had held the field for a long time and the doctrine of *stare decisis* mandated that it should not be deviated from. However, it was held that a discretion is vested in the Tribunal and the Court so that if a direction is issued to the insurer to pay the amount awarded in the first instance, despite the fact that the insurer had been able to establish that there was a breach of the contract of insurance, the insurer would be entitled to realise the awarded amount from the owner or driver of the vehicle in execution of the award in view of the provisions of Sections 165 and 168 of the Act. In this context, the Supreme Court observed thus:

> "We may, however, hasten to add that the Tribunal

23 Id at para 78, p 1553

> and the Court must, however, exercise their jurisdiction to issue such a direction upon consideration of the facts and circumstances of each case and in the event such a direction has been issued despite arriving at a finding of fact to the effect that the insurer has been able to establish that the insured has committed a breach of contract of insurance as envisaged under sub-clause (ii) of clause (a) of sub-section (2) of Section 149 of the Act, the insurance company shall be entitled to realise the awarded amount from the owner or driver and the vehicle, as the case may be, in execution of the same award having regard to the provisions of Sections 165 and 168 of the Act..."[24]

Sections 165 and Section 168 empower the Tribunal to adjudicate upon all claims in respect of accidents involving death or bodily injury or damage to the property of a third party, arising out of the use of a motor vehicle. This power of the Tribunal is held not only to be restricted to decide claims inter se between the claimant on the one hand, and the insured, insurer and the driver on the other. In the course of adjudicating the claim for compensation, and while deciding upon the availability of defences to the insurer, the Tribunal has power and jurisdiction to decide disputes inter se between the insurer and the insured. Where the insurer has satisfactorily proved its defence under Section 149 (2), the Tribunal could direct the insurer to be reimbursed by insured for the compensation which it was required to be paid under the authority of the Tribunal. Such a determination would be enforceable and the moneys found due to the insurer from the insured would be recoverable on a certificate issued by the Tribunal to the

24 Id at para 102, p 1557

Collector as arrears of land revenue under Section 174:

> "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."[25]

In several decisions of the Supreme Court thereafter, it has been held that where the insurer is directed to satisfy the award despite the absence of a legal liability, it could be left open to the insurer to 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 had been decided against owner. In **National Insurance Co Ltd Vs Challa Upendra Rao**[26], the Supreme Court observed as follows:

> "...Considering the beneficial object of the Act, it

25 Id at para 105 (x), p 1558

26 (2004) 8 SCC 517 (Party name changed as per Official Corrigendum No. F.3/Ed.B.J./96/2004 dated 1 December 2004)

would be proper for the insurer to satisfy the award, though in law it has no liability. In some cases the insurer has been given the option and liberty to recover the amount from the insured. **For the purpose of recovering the amount paid from the owner, the insurer shall not be required to file a suit. It may initiate a proceeding before the concerned 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. **Before release of the amount to the claimants, owner of the offending vehicle shall furnish security for the entire amount which the insurer will pay to the claimants. The offending vehicle shall be attached, as a part of the security. If necessity arises the Executing Court shall take assistance of the concerned Regional Transport Authority. The Executing Court shall pass appropriate orders in accordance with law as to the manner in which the owner of the vehicle shall make payment to the insurer. In case there is any default it shall be open to the Executing Court to direct realization by disposal of the securities to be furnished or from any other property or properties of the owner of the vehicle i.e. the insured. In the instant case considering the quantum involved we leave it to the discretion of the insurer to decide whether it would take steps for recovery of the amount from the insured.**"[27] (Emphasis supplied)

The same principle was adopted in the decision of the Supreme Court in **Oriental Insurance Co Ltd Vs Nanjappan**[28] in which the Supreme Court

27 Id at para 13, p 523
28 AIR 2004 SC 1630

issued following directions:

> "...For the purpose of recovering the same from the insured, the insurer shall not be required to file a suit. It may initiate a proceeding before the concerned 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. Before release of the amount to the insured, owner of the vehicle shall be issued a notice and he shall be required to furnish security for the entire amount which the insurer will pay to the claimants. The offending vehicle shall be attached, as a part of the security. If necessity arises the Executing Court shall take assistance of the concerned Regional Transport Authority. The Executing Court shall pass appropriate orders in accordance with law as to the manner in which the insured, owner of the vehicle shall make payment to the insurer. In case there is any default it shall be open to the Executing Court to direct realization by disposal of the securities to be furnished or from any other property or properties of the owner of the vehicle, the insured..."[29]

A similar direction was issued in **National Insurance Co Ltd Vs Baljit Kaur**[30].

These judgments have been followed in a more recent judgment of the Supreme Court in **Manager, National Insurance Co Ltd Vs Saju P Paul**[31] where the Supreme Court has noted that by an order dated 19 January 2007 in **National Insurance Co Vs Roshan Lal**[32], in the light of an argument

29 Id at para 8, p 1632
30 (2004) 2 SCC 1
31 (2013) 2 SCC 41
32 SLP(C) No 5699 of 2006

raised before a two-Judge Bench that a direction ought not to be issued to the insurance company to discharge the liability under the award first and then recover it from the owner, the matter has been referred to a larger Bench. Similarly in **National Insurance Co Ltd Vs Parvathneni**[33], the following two questions were referred to a larger Bench for consideration:

> "(1) If an Insurance Company can prove that it does not have any liability to pay any amount in law to the claimants under the Motor Vehicles Act or any other enactment, can the Court yet compel it to pay the amount in question giving it liberty to later on recover the same from the owner of the vehicle.
>
> (2) Can such a direction be given under Article 142 of the Constitution, and what is the scope of Article 142?"[34]

In **Saju P Paul (supra)**, the Supreme Court has held that the pendency of consideration of the above questions by a larger Bench did not mean that the course that was followed in **Baljit Kaur** and **Challa Upendra Rao (supra)** should not be followed particularly in the facts of that case. Accordingly, the insurance company was permitted to recover the amount paid from the owner by following the procedure laid down in **Challa Upendra Rao**. Undoubtedly, the issue as to whether a direction can be issued to the insurance company to pay the amount in the first instance and to recover it thereafter from the owner, following the procedure which is laid down in **Challa Upendra Rao** is a matter which is pending reconsideration before a larger Bench of the Supreme Court. However, as the Supreme Court

33 (2009) 8 SCC 785
34 Id at para 7, p 786

has held, the pendency of the reference to a larger Bench by itself does not mean that the same course should not be followed in the meantime.

In these circumstances, we hold that where the insurer is directed to pay the amount in the first instance despite having been held not to be under a legal liability to pay the awarded amount, while permitting the insurer to recover the amount from the owner, the procedure which has been laid down in **Challa Upendra Rao (supra)** would have to be followed. This would envisage that before the amount is released to the claimant, the owner of the offending vehicle shall furnish security for the amount which the insurer has to pay to the claimants. The offending vehicle is to be attached as a part of the security for the purpose of recovering the amount from the insured. The insurer shall not be required to file a suit and may initiate a proceeding before the executing Court. The executing Court may pass appropriate orders in accordance with law as to the manner in which the insured, namely the owner of the vehicle, shall make payment to the insurer. In the event that there is any default, it is open to the executing Court to direct realisation by the disposal of the securities to be furnished or from any other property or properties of the owner of the vehicle. In the event that the person on whose behalf payment has been made by the insurer, does not furnish security or is not in a position to furnish security to the insurer, the insurer should promptly move the executing Court. The executing Court shall then duly ensure that it exercises all its available powers in execution in accordance with law so that while on one hand payment is made to the person to whom it is due, the concerns of the insurer are duly balanced. We may only add

here that all necessary and proper steps should be taken by the executing Court to ensure that the intent and object of the legislature in enacting the beneficial provisions of the Act is duly preserved and are expeditiously implemented.

The reference is answered in the aforesaid terms. The FAFO shall now be placed before the appropriate Bench according to the roster of work for disposal in the light of the answers furnished above.

August 11, 2015
AHA

(Dr D Y Chandrachud, CJ)

(Dilip Gupta, J)

(P K S Baghel, J)