CASE NO.:
Appeal (civil) 5825 of 2006

PETITIONER:
THE ORIENTAL INSURANCE COMPANY LIMITED

RESPONDENT:
MEENA VARIYAL & ORS

DATE OF JUDGMENT: 02/04/2007

BENCH:
C.K. THAKKER & P.K. BALASUBRAMANYAN

JUDGMENT:
J U D G M E N T

P.K. BALASUBRAMANYAN, J.

1. One Suresh Chandra Variyal was employed as a Regional Manager in M/s Apace Savings and Mutual Benefits (India) Ltd., the owner of a motor vehicle, respondent No.3 herein. Variyal was provided with a car by the employer. The vehicle was insured with the appellant company in terms of the Motor Vehicles Act, 1988. There was no special contract. On 14.6.1999, the vehicle met with an accident. Suresh Chandra Variyal, died. The widow and daughter of Suresh Chandra Variyal, filed a claim petition under Section 166 of the Motor Vehicles Act, 1988, before the Motor Accidents Claims Tribunal, Nainital. Therein, they claimed compensation to the tune of Rs.15 lakhs. According to the claim, the deceased was driving along with his 'companion' Mahmood Hasan after completing his work for the employer. At about 11.30 pm the car collided with a tree due to the rash and negligent driving of the driver. The car was being driven by Mahmood Hasan at the time of the accident. The deceased was an occupant of the car. The car was being used for the business and for the benefit of the employer of the deceased at the time of the accident. The deceased was earning Rs. 9,000/- per month. He had a bright career ahead. Mahmood Hasan had lodged a first information report the same day (reiterated in the counter affidavit filed in this Court) giving wrong facts to escape from any prosecution. It was not specified in the application as to what was the wrong fact or what were the wrong facts mentioned in the complaint filed by Mahmood Hasan. The claimants as dependants were entitled to compensation as claimed.

2. The claim was filed against the employer, the owner of the motor vehicle and against the insurance company. Mahmood Hasan, who was allegedly driving the car and that too negligently, at the time of the accident, was not impleaded. No reason was given in the claim for his not being impleaded. The owner of the car, the company that employed the deceased, did not appear and did not file any written statement. The insurance company filed a written statement. It pleaded that the driver and the owner of the vehicle have colluded and the alleged driver of the car had not been impleaded. As a matter of fact, the deceased himself was driving the vehicle. Hence he was not entitled to claim any compensation since the accident occurred on account of his own negligence. The insurance company had no liability.

The compensation claimed was exorbitant and the claim was liable to be dismissed.

3. In support of the claim, the wife of Variyal was examined as P.W.1 and another person, who was allegedly travelling in the car when it met with the accident, was examined as P.W. 2. P.W. 1 asserted that the vehicle was being driven at the time of the accident by Mahmood Hasan and her husband was travelling in the car. This was sought to be supported by P.W. 2 who claimed that he was also travelling in the same car at the time of the accident. He gave evidence that Variyal was employed as a Regional Manager with the owner of the car, M/s Apace Savings and Mutual Benefits (India) Ltd. P.W. 2 also gave evidence that sometimes Variyal himself used to drive the vehicle but Mahmood Hasan usually drove the car. Mahmood Hasan had lodged a First Information Report at 4.40 p.m. on the day of the accident. Therein, Mahmood Hasan had stated that Variyal was driving the car at the time of the accident.

4. No independent evidence was adduced to show what exactly was the salary that was being earned by Variyal from his employer. The employer was a limited liability company and in the normal course, should have been maintaining the relevant records showing the salary paid to a Regional Manager like Variyal. No attempt was made to get them produced. The widow contented herself by asserting in her oral evidence that Variyal was earning a salary of Rs. 9,000/- per month. The Motor Accident Claims Tribunal held that the evidence disclosed that Variyal was driving the vehicle since what was more acceptable was the first version regarding the accident and not the oral assertions of P.Ws. 1 and 2 in support of the claim. It also held that Variyal was not holding a valid driving licence when he drove the car. Purporting to accept the interested, unsupported version of P.W. 1 that the income of her husband was Rs. 9,000/- per month, the Tribunal calculated the dependency at Rs. 6,000/- per month and applying the multiplier of 10, arrived at the compensation payable as Rs. 7,20,000/-. The Tribunal held that the claimants were entitled to receive the amount from the owner of the vehicle, the employer, but the insurance company was not liable, since the vehicle was being driven by the deceased himself who was an employee of the owner of the car and the policy of insurance did not cover such an employee. Thus, the claim was ordered directing the owner of the car to pay the claimant a sum of Rs. 7,20,000/- with interest thereon.

5. The claimants filed an appeal before the High Court. The insurance company, which had been exonerated by the Tribunal, alone resisted the appeal. The owner of the vehicle kept away. The claimants, the appellants before the High Court, contended that the Tribunal was in error in finding that the insurance company was not liable and in not granting them a decree against the insurance company. The insurance company pointed out that the deceased was not a third party covered by the insurance policy, was an employee of the owner of the vehicle and was not covered by the policy. Even otherwise, he was driving the car himself as found by the Tribunal and since the accident was caused by his own negligence, the insurance company was not liable.

6. The only argument attempted on behalf of the claimants, the appellants in the High Court, was that in the light of the decision of this Court in National Insurance Co. Ltd. Vs. Swaran Singh & Ors. [(2004) 3 S.C.C. 297], the

insurance company was liable to pay the amount awarded even if there was breach of a policy condition and if there was a dispute between the insured and the insurer, it had to be fought elsewhere and they cannot be denied the benefit of the insurance. The insurance company pointed out that the ratio in Swaran Singh (supra) had no application to the case and in the face of the finding that the deceased was himself driving the vehicle belonging to his employer, the insurance company had no liability. There was no special contract and since it was only a policy in terms of the Motor Vehicles Act, the insurance company cannot be asked to pay the amount awarded which was even otherwise not supported by any admissible or acceptable evidence. The High Court, stating that they had in so many cases held, in view of the ratio in Swaran Singh (supra), that it is not open to the insurance company to avoid liability under the Act, simply directed the insurance company to pay the amount as ordered by the Tribunal, leaving it to the insurance company to take recourse to recover the amount from the insured in accordance with the directions of this Court in Swaran Singh (supra).

7. We must say that one would have expected the High Court to apply its mind to the question arising, in a better manner and to specifically answer the question that arose for decision in the case. For instance, we may observe that it has not reversed the finding of the Tribunal that the deceased was himself driving the vehicle. Then, what was the position? The position was that a Regional Manager of the Company, which was owner of the vehicle, was himself driving the vehicle of the Company and during the course of it, he died in an accident, whether the accident occurred due to his negligence or otherwise. It appears to us that mere going by some decision or other, without appreciating the facts in a given case, in the light of the law, if any, declared by this court, does not lead a court or Tribunal to a correct conclusion in the normal course.

8. On behalf of the insurance company, the appellant, it is contended that the policy was only one in terms of the Motor Vehicles Act, 1988 and the policy did not cover the employee of the owner, the insured, who was driving the vehicle while attending to the business of the employer company. The deceased was not "a third party" in terms of the policy or in terms of the Act. The Act did not provide for statutory coverage of such a person. This would be the position even if the deceased was only travelling in the car in his capacity as a Regional Manager of the owner \026 Company and the vehicle was being driven by Mahmood Hasan as claimed. Since the High Court has not interfered with the finding of the Tribunal that the deceased was himself driving the car at the time of the accident and that he did not have a valid licence to drive a vehicle, there was absolutely no question of the insurance company being made liable under any principle of law. It was also submitted that without impleading Mahmood Hasan who was allegedly driving the car, the claim ought not to have been entertained, especially since there was controversy as to whether the car was being driven by Mahmood Hasan or by the deceased as sought to be projected by the claimants. The claimants were obliged to prove the negligence of the driver and the principles of general law in that regard, have not been jettisoned by the Motor Vehicles Act. On the other hand, the law expounded by this Court earlier had been accepted by the Legislature by enacting Section 163A of the Act. Thus, this was a case where High Court grossly erred in directing the insurance company to pay the compensation decreed by the Tribunal, which in itself was

a figure unsupported by any legal evidence and in purporting to apply the ratio of Swaran Singh (supra) to compel the insurance company to pay the amount awarded and then to have recourse to the insured. The learned counsel for the claimant - respondent on the other hand submitted that the vehicle, at the relevant time, was being driven by Mahmood Hasan and the Tribunal was wrong in entering a finding that the deceased himself was driving the vehicle in the light of the evidence of P.Ws. 1 and 2. The burden was on the insurance company, on the scheme of the Act, to show that it had no liability and in that context to show that the deceased himself was driving the vehicle and not Mahmood Hasan. Learned counsel further submitted that this Court in Swaran Singh (supra) has laid down the law and that principle applies in all cases involving an insurance company and a policy issued by the Company in terms of the Act and whenever there is an award against the insured, the insurer is obliged to satisfy the award and have recourse to the insured even if the insurance company was really not liable under the policy. He therefore submitted that the High Court was justified in directing the insurance company to pay the compensation. He urged that Chapter XI of the Act contained beneficent provisions to protect the victims and the relevant sections should not be construed restrictively.

9. Before we proceed to consider the main aspect arising for decision in this Appeal, we would like to make certain general observations. It may be true that the Motor Vehicles Act, insofar as it relates to claims for compensation arising out of accidents, is a beneficent piece of legislation. It may also be true that subject to the rules made in that behalf, the Tribunal may follow a summary procedure in dealing with a claim. That does not mean that a Tribunal approached with a claim for compensation under the Act should ignore all basic principles of law in determining the claim for compensation. Ordinarily, a contract of insurance is a contract of indemnity. When a car belonging to an owner is insured with the insurance company and it is being driven by a driver employed by the insured, when it meets with an accident, the primary liability under law for payment of compensation is that of the driver. Once the driver is liable, the owner of the vehicle becomes vicariously liable for payment of compensation. It is this vicarious liability of the owner that is indemnified by the insurance company. A third party for whose benefit the insurance is taken, is therefore entitled to show, when he moves under Section 166 of the Motor Vehicles Act, that the driver was negligent in driving the vehicle resulting in the accident; that the owner was vicariously liable and that the insurance company was bound to indemnify the owner and consequently, satisfy the award made. Therefore, under general principles, one would expect the driver to be impleaded before an adjudication is claimed under Section 166 of the Act as to whether a claimant before the Tribunal is entitled to compensation for an accident that has occurred due to alleged negligence of the driver. Why should not a Tribunal insist on the driver of the vehicle being impleaded when a claim is being filed? As we have noticed, the relevant provisions of the Act are not intended to jettison all principles of law relating to a claim for compensation which is still based on a tortious liability. The Tribunal ought to have, in the case on hand, directed the claimant to implead Mahmood Hasan who was allegedly driving the vehicle at the time of the accident. Here, there was also controversy whether it was Mahmood Hasan who was driving the vehicle or it was the deceased himself. Surely, such a question could have been

decided only in the presence of Mahmood Hasan who would have been principally liable for any compensation that might be decreed in case he was driving the vehicle. Secondly, the deceased was employed in a limited company. It was necessary for the claimants to establish what was the monthly income and what was the dependency on the basis of which the compensation could be adjudged as payable. Should not any Tribunal trained in law ask the claimants to produce evidence in support of the monthly salary or income earned by the deceased from his employer Company? Is there anything in the Motor Vehicles Act which stands in the way of the Tribunal asking for the best evidence, acceptable evidence? We think not. Here again, the position that the Motor Vehicles Act vis-'-vis claim for compensation arising out of an accident is a beneficent piece of legislation, cannot lead a Tribunal trained in law to forget all basic principles of establishing liability and establishing the quantum of compensation payable. The Tribunal, in this case, has chosen to merely go by the oral evidence of the widow when without any difficulty the claimants could have got the employer \026 company to produce the relevant documents to show the income that was being derived by the deceased from his employment. Of course, in this case, the above two aspects become relevant only if we find the insurance company liable. If we find that only the owner of the vehicle, the employer of the deceased was liable, there will be no occasion to further consider these aspects since the owner has acquiesced in the award passed by the Tribunal against it.

10. Chapter XI of the Act bears a heading, "Insurance of Motor Vehicles against third party risks". The definition of "third party" is an inclusive one since Section 145(g) only indicates that "third party" includes the Government. It is Section 146 that makes it obligatory for an insurance to be taken out before a motor vehicle could be used on the road. The heading of that Section itself is "Necessity for insurance against third party risk". No doubt, the marginal heading may not be conclusive. It is Section 147 that sets out the requirement of policies and limits of liability. It is provided therein that in order to comply with the requirements of Chapter XI of the Act, a policy of insurance must be a policy which is issued by an authorised insurer; or which insures the person or classes of persons specified in the policy to the extent specified in sub-section (2) against any liability which may be incurred by the owner in respect of the death of or bodily injury or damage to any property of a third party caused by or arising out of the use of the vehicle in a public place. With effect from 14.11.1994, injury to the owner of goods or his authorised representative carried in the vehicle was also added. The policy had to cover 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. Then, as per the proviso, the policy shall not be required to cover liability in respect of the death, arising out of and in the course of his employment, of the employee of a person insured by the policy or in respect of bodily injury sustained by such an employee arising out of and in the course of his employment, other than a liability arising under the Workmen's Compensation Act, 1923 in respect of the death of, or bodily injury to, an employee engaged in driving the vehicle, or who is a conductor, if it is a public service vehicle or an employee being carried in a goods vehicle or to cover any contractual liability. Sub-section (2) only sets down the limits of the policy. As we understand Section 147 (1) of the Act, an insurance policy thereunder need not cover the liability in

respect of death or injury arising out of and in the course of the employment of an employee of the person insured by the policy, unless it be a liability arising under the Workmen's Compensation Act, 1923 in respect of a driver, also the conductor, in the case of a public service vehicle, and the one carried in the vehicle as owner of the goods or his representative, if it is a goods vehicle. It is provided that the policy also shall not be required to cover any contractual liability. Uninfluenced by authorities, we find no difficulty in understanding this provision as one providing that the policy must insure an owner against any liability to a third party caused by or arising out of the use of the vehicle in a public place, and against death or bodily injury to any passenger of a public service vehicle caused by or arising out of the use of vehicle in a public place. The proviso clarifies that the policy shall not be required to cover an employee of the insured in respect of bodily injury or death arising out of and in the course of his employment. Then, an exception is provided to the last forgoing to the effect that the policy must cover a liability arising under the Workmen's Compensation Act, 1923 in respect of the death or bodily injury to an employee who is engaged in driving the vehicle or who serves as a conductor in a public service vehicle or an employee who travels in the vehicle of the employer carrying goods if it is a goods carriage. Section 149(1), which casts an obligation on an insurer to satisfy an award, also speaks only of award in respect of such liability as is required to be covered by a policy under clause (h) of sub-section (1) of Section 147, (being a liability covered by the terms of the policy). This provision cannot therefore be used to enlarge the liability if it does not exist in terms of Section 147 of the Act.

11. The object of the insistence on insurance under Chapter XI of the Act thus seems to be to compulsorily cover the liability relating to their person or properties of third parties and in respect of employees of the insured employer, the liability that may arise under the Workmen's Compensation Act, 1923 in respect of the driver, the conductor and the one carried in a goods vehicle carrying goods. On this plain understanding of Section 147, we find it difficulty to hold that the insurance company, in the case on hand, was liable to indemnify the owner, the employer Company, the insured, in respect of the death of one of its employees, who according to the claim, was not the driver. Be it noted that the liability is not one arising under the Workmen's Compensation Act, 1923 and it is doubtful, on the case put forward by the claimant, whether the deceased could be understood as a workman coming within the Workmen's Compensation Act, 1923. Therefore, on a plain reading of Section 147 of the Act, it appears to be clear that the insurance company is not liable to indemnify the insured in the case on hand.

12. The argument that the proviso does not keep out employees from coverage though the claims under the Workmen's Compensation Act are specified, cannot be accepted on the plain language of the proviso. The proviso enacts an exemption and carves out an exception to that exemption. The suggested interpretation would result in ignoring the effect of the language employed by the proviso, exempting the owner from covering his employees under insurance except in cases where the liability in respect of them is, one arising under the Workmen's Compensation Act. Obviously, as determined by that Tribunal.

13. We shall now examine the decision in Swaran Singh (supra) on which practically the whole of the arguments on behalf of the claimants was rested. On examining the facts, it is found that, that was a case which related to a claim by a third party. In claims by a third party, there cannot be much doubt that once the liability of the owner is found, the insurance company is liable to indemnify the owner, subject of course, to any defence that may be available to it under Section 149(2) of the Act. In a case where the liability is satisfied by the insurance company in the first instance, it may have recourse to the owner in respect of a claim available in that behalf. Swaran Singh (supra) was a case where the insurance company raised a defence that the owner had permitted the vehicle to be driven by a driver who really had no licence and the driving licence produced by him was a fake one. Their Lordships discussed the position and held ultimately that a defence under Section 149(2)(a)(ii) of the Act was available to an insurer when a claim is filed either under Section 163A or under Section 166 of the Act. The breach of a policy condition has to be proved to have been committed by the insured for avoiding liability by the insurer. Mere absence of or production of 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 party. The insurance company to avoid liability, must not only establish the available defence raised in the concerned proceeding but must also establish breach on the part of the owner of the vehicle for which the burden of proof would rest with the insurance company. Whether such a burden had been discharged, would depend upon the facts and circumstances of each case. Even when the insurer, is able to prove breach on the part of the insured concerning a policy condition, the insurer would not be allowed to avoid its liability towards the insured unless the said breach of condition is so fundamental as to be found to have contributed to the cause of the accident. The question whether the owner has taken reasonable care to find out whether the driving licence produced by the driver was fake or not, will have to be determined in each case. If the vehicle at the time of the accident was driven by a person having a learner's licence, the insurance company would be liable to satisfy the award. The amount that may be awarded to the insurance company against the insurer in an appropriate case could be recovered even by way of the enforcement of the very award. The insurance company had to satisfy the claim of the insured in cases where a defence under Section 149(2) has been established by the Company in terms of a fake licence or the learner's licence. Their Lordships distinguished Malla Prakasarao Vs. Malla Janaki & Ors. [(2004) 3 S.C.C. 343] wherein it was held that the insurance company had no liability to pay any compensation where an accident resulted by a vehicle being driven by a driver without a driving licence. In other words, a distinction between a case of no licence and a case of licence which turned out to be fake or deficient was drawn and the liability was held to stand on different footings.

14. It is difficult to apply the ratio of this decision to a case not involving a third party. The whole protection provided by Chapter XI of the Act is against third party risk. Therefore, in a case where a person is not a third party within the meaning of the Act, the insurance company cannot be made automatically liable merely by resorting to the Swaran Singh (supra) ratio. This appears to be the position. This position was expounded recently by this Court in National Insurance Co. Ltd. Vs. Laxmi Narain Dhut [2007 (4) SCALE 36]. This

Court after referring to Swaran Singh (supra) and discussing the law summed up the position thus:
"In view of the above analysis the following situations emerge:

1. The decision in Swaran Singh's case (supra) has no application to cases other than third party risks.

2. Where originally the licence was a fake one, renewal cannot cure the inherent fatality.

3. In case of third party risks the insurer has to indemnify the amount and if so advised, to recover the same from the insured.

4. The concept of purposive interpretation has no application to cases relatable to Section 149 of the Act.

The High Courts/Commissions shall now consider the mater afresh in the light of the position in law as delineated above."

We are in respectful agreement with the above view.

15. In New India Assurance Co. Ltd. Vs. Asha Rani and others [(2003) 2 S.C.C 223) this Court had occasion to consider the scope of the expression "any person" occurring in Section 147 of the Act. This Court held:
"that the meaning of the words "any person" must also be attributed having regard to the context in which they have been used i.e. " a third party". Keeping in view the provisions of the 1988 Act we are of the opinion that as the provisions thereof did not enjoin any statutory liability on the owner of a vehicle to get his vehicle insured for any passenger travelling in a goods vehicle, the insurers would not be liable therefor."

In other words, this Court clearly held that the apparently wide words "any person" are qualified by the setting in which they occur and that "any person" is to be understood as a third party.

16. In United India Insurance Co. Ltd., Shimla Vs. Tilak Singh & Ors. [(2006) 4 S.C.C. 404 ], this Court made a survey of the prior decisions and discountenanced an attempt to confine the ratio of Asha Rani (supra). This Court stated that although the observations in Asha Rani were in connection with carrying passengers in a goods vehicle, the same would apply with equal force also to gratuitous passengers in any other vehicle. This Court also noticed that the decision to the contrary in New India Assurance Co. Vs. Satpal Singh [(2000) 1 S.C.C. 237] was specifically overruled in Asha Rani's case (supra). In other words, it was re-emphasised that a policy in terms of Section 147 of the Act is not intended to cover persons other than third parties.

17. The Court of Appeal in Cooper vs. Motor Insurers' Bureau (1985 (1) Queen's Bench Division 575) considered the

interpretation of Section 143 and 145 of the Road Traffic Act, 1972 corresponding to Section 146 and Section 147 of the Act. The Court of Appeal held:

"that Section 143(1) of the Act of the 1972 imposed an obligation on the owner to insure against the risk of injury or death to third parties resulting from the use by him or any other person of his vehicle on the road; that "third party risks" in section 143(1) did not include risks to the driver of the vehicle at the relevant time so that "any person" in section 145(3)(a) was therefore restricted to persons other than the driver of the vehicle and its owner; and that, accordingly, since the liability of the owner to the plaintiff was not one that was required to be covered by a policy of insurance by the Act of 1972, the Motor Insurers' Bureau were not liable under the terms of the agreement to compensate the plaintiff in the sum of the unsatisfied judgment."

18. In Halsbury's Laws of England, Fourth Edition, in paragraph 761, the position as regards 'employees' is stated as follows:

"A policy is not required to cover liability in respect of the death of or bodily injury sustained by a person in the employment of a person insured by the policy where the death or injury arises out of and in the course of that employment. This exclusion is framed in the language of the Workmen's Compensation Acts and is presumably intended to reflect the well-established distinction in the insurance world between public liability risks and employers' liability risks. The distinctions which are involved are very finely drawn."

19. In New India Assurance Co. Ltd. Vs. Rula & Ors. [(2000) 3 S.C.C. 195], this Court postulated that the contract of insurance in respect of motor vehicles has to be construed in the light of Sections 146(1),147(5) and 149(1) of the Motor Vehicles Act, 1988. The manifest object of Section 146(1), which contains a prohibition on the use of motor vehicles without an insurance policy having been taken in accordance with Chapter XI of the Act is to ensure that the third party, who suffers injuries due to the use of the motor vehicle, may be able to get damages from the owner of the vehicle and recoverability of the damages may not depend on the financial condition or solvency of the driver of the vehicle who had caused the injuries. Thus, any contract of insurance under Chapter XI of the Motor Vehicles Act, 1988 contemplates a third party who is not a signatory or a party to the contract of insurance but is, nevertheless, protected by such contract. That this was the object was reiterated in New India Assurance Co. Shimla Vs. Kamla & Ors. [(2001) 4 S.C.C. 342], wherein it was stated that the raison d'etre for the legislature making it prohibitory for motor vehicles being used in public places without covering third-party risks by a policy of insurance is to protect the members of the community who become sufferers on account of accidents arising from the use of motor vehicles. The object of Chapter XI has thus always been recognised as one intended to protect third parties as understood in the context of the Act unless of course there is a

special contract in respect of protection to others.

20. We are thus satisfied that based on the ratio in Swaran Singh (supra), the insurance company cannot be made liable in the case on hand to pay the compensation first and to recover it from the insured, the owner of the vehicle. The deceased being an employee not covered by the Workmen's Compensation Act, of the insured, the owner of the vehicle, has not to be covered compulsorily under the Act and only by entering into of a special contract by the insured with the insurer could such a person be brought under coverage. There is no case that there is any special contract in that behalf in this case.

21. It was argued by learned counsel for the appellant that since on the finding that the deceased was himself driving the vehicle at the time of the accident, the accident arose due to the negligence of the deceased himself and hence the insurer is not liable for the compensation. Even if the case of the claimant that the car was driven by Mahmood Hasan was true, then also, the claimant had to establish the negligence of the driver before the insured could be asked to indemnify the insured. The decision in Minu B. Mehta & Anr. Vs. Balkrishna Ramchandra Nayan & Anr. [(1977) 2 S.C.R. 886], of a three Judge Bench of this Court was relied on in support.

22. In that decision, this Court considered the question whether in a claim for compensation under the Motor Vehicles Act, 1939, proof of negligence was essential to support a claim for compensation. On the facts in that case, their Lordships found that the appeal was liable to be dismissed subject to certain directions issued therein. But their Lordships, in the light of the fact that the High Court had discussed the law on the question and it was of some importance, felt that it was necessary to state the position in law. Noticing that the liability of the owner of the car to compensate the victim in a car accident due to negligent driving of his servant is based on the law of tort, the court discussed the scheme of the Act of 1939 and the law on the question. Regarding the view of the High Court that it was not necessary to prove negligence, the court held:

"The reasoning of the two learned judges is unacceptable as it is opposed to basic principles of the owner's liability for negligence of his servant and is based on a complete misreading of the provisions of Chapter VIII of the Act. The High Court's zeal for what it considered to be protection of public good has misled it into adopting a course which is nothing short of legislation."

Their Lordships also noticed that proof of negligence remained the lynch pin to recover compensation. Their Lordships concluded by saying,

"We conclude by stating that the view of the learned Judges of the High Court has no support in law and hold that proof of negligence is necessary before the owner or the insurance company could be held to be liable for the payment of compensation in a motor accident claim case."

23. Learned counsel for the respondent contended that there was no obligation on the claimant to prove negligence on the part of the driver. Learned counsel relied on Gujarat

State Road Transport Corporation, Ahmedabad vs. Ramanbhai Prabhatbhai and another (1987 (3) SCC 234) in support. In that decision, this Court clarified that the observations in Minu B. Mehta's case (supra) are in the nature of obiter dicta. But, this Court only proceeded to notice that departures had been made from the law of strict liability and the Fatal Accidents Act by introduction of Chapter VIIA of the 1939 Act and the introduction of Section 92A providing for compensation and the expansion of the provision as to who could make a claim, noticing that the application under Section 110A of the Act had to be made on behalf of or for the benefit of all the legal representatives of the deceased. This Court has not stated that on a claim based on negligence there is no obligation to establish negligence. This Court was dealing with no-fault liability and the departure made from the Fatal Accidents Act and the theory of strict liability in the scheme of the Act of 1939 as amended. This Court did not have the occasion to construe a provision like Section 163A of the Act of 1988 providing for compensation without proof of negligence in contradistinction to Section 166 of the Act. We may notice that Minu B. Mehta's case was decided by three learned Judges and the Gujarat State Road Transport Corporation case was decided only by two learned Judges. An obiter dictum of this Court may be binding only on the High Courts in the absence of a direct pronouncement on that question elsewhere by this Court. But as far as this Court is concerned, though not binding, it does have clear persuasive authority. On a careful understanding of the decision in Gujarat State Road Transport Corporation (supra) we cannot understand it as having held that in all claims under the Act proof of negligence as the basis of a claim is jettisoned by the scheme of the Act. In the context of Sections 166 and 163A of the Act of 1988, we are persuaded to think that the so called obiter observations in Minu B. Mehta's case (supra) govern a claim under Section 166 of the Act and they are inapplicable only when a claim is made under Section 163A of the Act. Obviously, it is for the claimant to choose under which provision he should approach the Tribunal and if he chooses to approach the Tribunal under Section 166 of the Act, we cannot see why the principle stated in Minu B. Mehta's case should not apply to him. We are, therefore, not in a position to accept the argument of learned counsel for the respondents that the observations in Minu B. Mehta's case deserve to be ignored.

24. We think that the law laid down in Minu B. Mehta & Anr. Vs. Balkrishna Ramchandra Nayan & Anr. (supra) was accepted by the legislature while enacting the Motor Vehicles Act, 1988 by introducing Section 163A of the Act providing for payment of compensation notwithstanding anything contained in the Act or in any other law for the time being in force that the owner of a motor vehicle or the authorised insurer shall be liable to pay in the case of death or permanent disablement due to accident arising out of the use of the motor vehicle, compensation, as indicated in the Second Schedule, to the legal heirs or the victim, as the case may be, and in a claim made under sub-section (1) of Section 163A of the Act, the claimant shall not be required to plead or establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act or neglect or default of the owner of the vehicle concerned. Therefore, the victim of an accident or his dependants have an option either to proceed under Section 166 of the Act or under Section 163A of the Act. Once they approach the Tribunal under Section 166 of the Act, they have necessarily to take

upon themselves the burden of establishing the negligence of the driver or owner of the vehicle concerned. But if they proceed under Section 163A of the Act, the compensation will be awarded in terms of the Schedule without calling upon the victim or his dependants to establish any negligence or default on the part of the owner of the vehicle or the driver of the vehicle.

25. In Pushpabai Purshottam Udeshi & Ors. Vs. M/s Ranjit Ginning & Pressing Co. (P) Ltd. & Anr. [(1977) 3 S.C.R. 372], two of the learned judges who constituted the Bench in Minu B. Mehta (supra) held that when a car is driven by the owner's employee on owner's business, the normal rule was that it was for the claimant for compensation to prove negligence. When the Manager of the owner while driving the car on the business of the owner took in a passenger, it would be taken that he had the authority to do so, considering his position unless otherwise shown. If due to his negligent driving an accident occurred and the passenger died, the owner would be liable for compensation. The court noticed that the modern trend was to make the master liable for acts of his servant which may not fall within the expression "in the course of his employment" as formerly understood. With respect, we think that the extensions to the principle of liability has been rightly indicated in this decision.

26. On the facts of this case, there is no finding that Mahmood Hasan, another employee of the owner was driving the vehicle. Even if he was, there is no finding of his negligence. The victim was the Regional Manger of the Company that owned the car. He was using the car given to him by the Company for use. Whether he is treated as the owner of the vehicle or as an employee, he is not covered by the insurance policy taken in terms of the Act --- without any special contract --- since there is no award under the Workmen's Compensation Act that is required to be satisfied by the insurer. In these circumstances, we hold that the appellant \026 Insurance Company is not liable to indemnify the insured and is also not obliged to satisfy the award of the Tribunal/Court and then have recourse to the insured, the owner of the vehicle. The High Court was in error in modifying the award of the Tribunal in that regard.

27. We therefore allow the appeal and reversing the decision of the High Court, restore the award of the Tribunal exonerating the appellant from liability. We make no order as to costs.