CASE NO.:
Appeal (civil) 1140 of 2007

PETITIONER:
National Insurance Co. Ltd

RESPONDENT:
Laxmi Narain Dhut

DATE OF JUDGMENT: 02/03/2007

BENCH:
Dr. ARIJIT PASAYAT & S.H. KAPADIA

JUDGMENT:
J U D G M E N T
(Arising out of SLP (C) No.25305 of 2004)
WITH
(Civil Appeal NO.1141/2007 @SLP (C) No.1617/2005)
Civil Appeal NO.1142/2007 @SLP (C) No.12857/2005)
Civil Appeal NO.1143/2007 @SLP (C) No.15728/2005)
Civil Appeal NO.1144/2007 @SLP (C) No. 869/2006)
Civil Appeal NO.1145/2007 @SLP (C) No. 5048/2006)
Civil Appeal NO.1146/2007 @SLP (C) No.6208/2006)
Civil Appeal NO.1147/2007 @SLP (C) No. 11596/2005)
Civil Appeal NO.1148/2007 @SLP (C) No.8608/2006)
Civil Appeal NO.1149/2007 @SLP (C) No. 16568/2006)
Civil Appeal NO.1150/2007 @SLP (C) No. 22203/2005)
Civil Appeal NO.1151/2007 @SLP (C) No. 22957/2005)

Dr. ARIJIT PASAYAT, J

Leave granted.

In all these cases identical questions are involved and therefore the appeals are disposed of by this common judgment.

In each of the impugned judgments the concerned High Court held that the principles laid down by this Court in National Insurance Co. Ltd. v. Swaran Singh (2004 (3) SCC 297) is applicable even to claims other than third party claims. Some of these appeals also relate to orders passed by the National Consumer Disputes Redressal Commission, New Delhi (in short the 'Commission') where a similar view has been taken.

Since there has been elaborate analysis of the factual position it would be appropriate to decide the basic principles in law and ask the High Courts/Commissions to decide the cases afresh keeping in mind the view expressed in the present judgment.

The decision in Swaran Singh's case (supra) applied to claims which involved only the insurance company and the owner of the vehicle i.e. where there was no third party involved. It has been highlighted by learned counsel for the appellants that Swaran Singh's case (supra) was rendered in the background of Section 149 of the Motor Vehicles Act, 1988

(in short the 'Act') which has no application to cases where there is no third party involved.

In response, learned counsel appearing for the respondents have submitted that there can be no difference of approach in cases where the dispute relates to the claim relating to the insurer and the insured. According to them, purposive interpretation of provisions is called for in view of the fact that the statute itself is a beneficial piece of legislation.

In order to appreciate the rival submissions, few provisions of the Act and the corresponding provisions in the Motor Vehicles Act, 1939 (hereinafter referred to as the 'Old Act') would be necessary.

Section 149 of the Act relates to duty of insurers to satisfy judgments and awards against persons insured in respect of third party risks. The language of the provision is clear that it only relates to third party risk. The corresponding provision in the Old Act is Section 96. Section 166 of the Act relates to application for compensation. The same corresponds to Section 110-A of the Old Act. Section 168 of the Act relates to award of the Claims Tribunal which corresponds to Section 110-B of the Old Act. Section 170 deals with impleadment of the insurer in certain cases. Section 149 of the Act needs to be noted in full. The same reads as follows:

"149. Duty of Insurers to satisfy judgments and awards against persons insured in respect of third party risks- (1) If, after a certificate of insurance has been issued under sub-section (3) of Section 147, in favour of the person by whom a policy has been effected, judgment or award in respect of any such liability as is required to be covered by a policy under clause (b) of sub-section (1) of Section 147 (being a liability covered by the terms of the policy) 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 avoid 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 were the judgment debtor, in respect of the liability, together with any amount payable in respect of costs and any sum payable in respect of interest on that sum by virtue of any enactment relating to interest on judgments.

(2) No sum shall be payable by an insurer under sub-section (1) in respect of any judgment or award unless, before the commencement of the proceedings in which the judgment or award is given the insurer had notice through the Court or, as the case may be, the Claims Tribunal of the bringing of the proceedings, or in respect of such judgment or award so long as execution is stayed thereon pending an appeal; and an insurer to whom notice of the bringing of any such proceedings is so given shall be entitled to be made a party

thereto and to defend the action on any of the following grounds, namely:-

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

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

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

(b) for organized 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 dis-qualification; 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.

(3) Where any such judgment as is referred to in sub-section (1) is obtained from a Court in a reciprocating country and in the case of a foreign judgment is, by virtue of the provisions of section 13 of the Code of Civil Procedure, 1908 (5 of 1908) conclusive as to any matter adjudicated upon by it, the insurer (being an insurer registered under the Insurance Act, 1938 (4 of 1938) and whether or not he is registered under the corresponding law of the reciprocating country) shall be liable to the person entitled to the benefit of the decree in the manner and to the extent specified in sub-section (1), as if the judgment were given by a Court in India:

Provided that no sum shall he payable by the insurer in respect of any such judgment unless, before the commencement of the proceedings in which the judgment is given, the insurer had notice through the Court

concerned of the bringing of the proceedings and the insurer to whom notice is so given is entitled under the corresponding law of the reciprocating country, to be made a party to the proceedings and to defend the action on grounds similar to those specified in sub-section (2).

(4) Where a certificate of insurance has been issued under sub-section (3) of section 147 to the person by whom a policy has been effected, so much of the policy as purports to restrict the insurance of the persons insured thereby by reference to any condition other than those in clause (b) of sub-section (2) shall, as respects such liabilities as are required to he 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.

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

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

(7) No insurer to whom the notice referred to in sub-section (2) or sub-section (3) has been given shall be entitled to avoid his liability to any person entitled to the benefit of any such judgment or award as is referred to in sub-section (1) or in such judgment as is referred to in sub-section (3) otherwise than in the manner provided for in sub-section (2) or in the corresponding law of the reciprocating country, as the case may be.

Explanation: For the purposes of this section, "Claims Tribunal" means a Claims Tribunal constituted under Section 165 and "award" means an award made by that Tribunal under Section 168."

In Swaran Singh’s case (supra) on which learned counsel

for the parties have placed reliance undisputedly related to a case under Section 149 of the Act. This Court elaborately dealt with the scope and ambit of Sections 147 and 149 of the Act and after tracing the history of compulsory insurance and the rights of the third parties, held that the concerned cases were mainly concerned with third party rights under the policy. It was held in that context that any condition in the policy whereby the right of the third party is taken away would be void, as noted in para 23 of the judgment.

In paras 69 and 70 the principles were culled out in the following terms:

"The Insurance Company is required to prove the breach of the condition of the contract of insurance by cogent evidence. In the event the Insurance Company fails to prove that there has been breach of conditions of the policy on the part of the insured, the Insurance Company cannot be absolved of its liability. This Court did not lay down a degree of proof, but held that the parties alleging the breach must be held to have succeeded in establishing the breach of the condition of the contract of insurance, on the part of the Insurance Company by discharging its burden of proof. The Tribunal, must arrive at a finding on the basis of the materials available on the records".

In para 110 also the summary of the findings were recorded which reads as follows:

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

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

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

the policy regarding use of vehicles by a duly licensed driver or one who was not disqualified to drive at the relevant time.

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

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

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

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

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

(ix) The Claims Tribunal constituted under Section 165 read with Section 168 is empowered to adjudicate all claims in respect of the accidents involving death or of bodily injury or damage to property of third party arising in use of motor vehicle. The said power of the Tribunal is not restricted to decide the claims inter se between claimant or claimants on one side and insured, insurer and driver on the other. In the course of adjudicating the claim for compensation and to decide the availability of defence or defences to the insurer, the Tribunal has necessarily the power and jurisdiction to decide disputes inter se between the insurer and the insured. The decision rendered on the claims and disputes inter se between the insurer and insured in the course of adjudication of claim for compensation by the claimants and the award made thereon is enforceable and executable in the same manner as provided in Section 174 of

the Act for enforcement and execution of the award in favour of the claimants.

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

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

At this juncture, it would be necessary to test the logic behind Section 149 of the Act. The conditions under the said provision relate only to third party risks and claims.

The Indian Law on motor vehicle insurance has is origin in English Law. Motor Insurance Law in England had its foundations in the Third Party Rights Against Insurers' Act, 1930. An illustrious case which related to the said statue is Re Harrington Motor Co. ex-parte Chaplin (1928 Ch 105 C.A.) The principles laid down in the said case need to be noted in brief. It was inter alia held as follows:

"The liquidator has in hand the 4201. 3s. 10d., and the question I have to decide is whether the plaintiff is entitled to have that sum paid over to him or whether it constitutes assets available for the general body of the company's creditors? The plaintiff's claim is put forward on the ground that there is, or should be, an equity binding the liquidator to apply the moneys, towards satisfying the liability in respect of which they have come to his hands

and not the less because they are insufficient to give the plaintiff the full compensation to which he has been held to be entitled. I fail to see how any such equity can be raised. The liquidator, as recipient of the fund, stands in no fiduciary relation to the plaintiff. The money has been recovered under a contract made between the company, and the insurers, to which the plaintiff was not and could not in the circumstances have been a party; he has no concern and was not in any way connected with the company and, indeed, probably did not know of its existence until its vehicle inflicted these injuries upon him. In these circumstances neither the company nor the Liquidator can be treated as a trustee for him in enforcing the claim against the insurers.

Here the right of the company to be indemnified was created by a contract to which the plaintiff is no party, and I cannot see upon what ground he can be held to have any valid claim either at law or in equity to the moneys in the hands of the liquidator.

In spite of a strenuous and able and, I may add, helpful argument on the part of Mr. Stable, we feel compelled to dismiss this appeal, and to hold that the decision of Eve J. was right. It is, perhaps, unfortunate that one should have to give a judgment which would, at first sight, appear to run counter to what 1 might call the common-sense view of the proceedings. None the less it is necessary for us to administer the law as it stands, and if any alteration is to be made in it that must be made by the proper authorities and by the proper means.

On careful consideration of the authorities I would only say that that view, however cogent it might at first sight appear, is untenable. The company had insured themselves against what are commonly called third party risks with the Universal Automobile Insurance Company, and they had paid the premiums.

The liquidation of a company or the bankruptcy of an individual bars the right of a creditor to proceed any further against the company or the bankrupt.

There is an absolute break in the relationship between the creditor who has suffered the accident and the insurance company, and there cannot be a privity under which, when the bankruptcy or liquidation supervenes, you can cancel out the defendants and then say that a privity arises between the creditor and the insurance company and that the latter has to make good this principal sum to the former It is, therefore, clear to my mind, after considering the nature of the bar to further proceedings-namely, by bankruptcy-

that there is an absolute break in the relation or suggested relation between the creditor and the insurance company. The money which is being received and which will be distributed by the liquidator is a sum which the debtors, the company, have secured should be paid to them in certain events, but which has been secured by their own contract made with the insurance company, and not by any intervention of the creditor, Mr. Chaplin, although it was in consequence of an accident which he suffered that the loss arose, in respect of which the insurance company has made the payment.

It may be that the present case is one that ought to be provided for by the Legislature. But as the authorities stand it is impossible, I think, to vary the order of Eve J., which was made upon a true reading of the authorities, and for these reasons it appears to me that this appeal must be dismissed, even though one may regret that it is not possible to earmark this sum and to say that the liquidator ought to be allowed to receive it and to pay it over, inasmuch as it was the misfortune of Mr. Chaplin which caused this sum to be received, a sum which will enure to the benefit of all the creditors of the company and not to the particular advantage of the man who suffered the loss which quantified the risk which the insurance company had taken. The appeal must be dismissed with costs.

ATKIN L.J. In this case I am of the opinion that the applicant has a real grievance, and if it were possible to decide for him I should very willingly do so. But it appears to me that the general rules of law which govern cases of insurance and indemnity have been laid down in such terms that it is impossible to make an exception in the particular class of cases of which this forms one, and I am bound to say that 1 myself should be well satisfied if, by the decision of a higher tribunal or by legislation, the general rule of law were altered so as to cover this particular case".

In a later case i.e. Hood’s Trustees v. Southern Union General Insurance Co. of Australasia Ltd. (1928 Ch 793) the Chancery Division noted the plight of the third party victims and observed as follows:

"As it seems to me it does not differ substantially from the position in In re Harrington Motor Co.

In giving judgment Atkin L.J. said that he thought that the appellant had a real grievance; but the general rule of law was too strong to allow the Court to make any exception, however the Court might sympathize with the appellant. The position in law was quite clear, and it was that the appellant had no right or claim against the insurance company or against money paid by

the insurance company. The assured had a direct right of recourse against the insurance company, but a third party had no such right, because there was no privity between him and the insurance company, and it was difficult to see how a special right could be said to exist against the insurance company, or any right to claim money paid over by the insurance company, merely because the assured happened to be in financial difficulties.

Upon what grounds of equity or legal logic can it be argued that, because the law, on grounds of public policy, compels the creditor, the liability to whom is the event upon which the right of a bankrupt or of an insolvent company to payment of the sum covered by the contract arises, to be content with such share of the assets of the bankrupt or the company in liquidation as a pari passu distribution between creditors will give, these assets are not to include the payment due under the contract? "That seems to me," said Atkin L.J., "to be a direct statement by the learned Lord Justice; indeed a statement of the law that the third party is compelled by the law to be content with such a share of the assets as a pari passu distribution between the creditors will give.

Now so far as this case is concerned everything which has been said applies here.

It seems to make no difference in principle, whether the person whose claim gives rise to a claim for indemnity, is able against the assured to claim a dividend in the bankruptcy of the assured, or whether his claim is not provable in that bankruptcy at all - that seems to make no difference. In re Harrington Motor Co. was the case of the liquidation of a company in which the claimant was in the position of being able, at any rate, to claim a dividend, he did get something out of it, he could not claim to be paid in full, but he could claim his dividend. Here, by reason of the fact that the particular claim is not provable in this bankruptcy, he will never get anything in this bankruptcy, he cannot make a claim in this bankruptcy, but that does not seem to affect the principle.

I think I must take the principles which are indicated in In re Harrington Motor Co. as being the more appropriate to the particular case I am now deciding. The result of that is that I must come to the conclusion - however unfortunate - that in fact the benefit of the indemnity vested in the trustee, notwithstanding that the claim of Caddy was not provable in the first bankruptcy."

The Third Party Rights Against Insurer’s Act, 1930 appears to have been enacted to set right, anomalies in the law. It was provided in the said Act that where the insured

was insured against the third party risk, then in the event of his being made bankrupt, his rights against the insurer, notwithstanding anything in any Act or rule of law to the contrary, are transferred and vest in the third party to whom the liability has been incurred.

The High Court and the Commission seem to have proceeded on the basis that the defences available to insured are only those provided in Section 149(2) of the Act and the said provision has to be interpreted strictly in view of the fact that it is a social legislation.

Section 149 is part of Chapter XI which is titled "Insurance of Motor Vehicles against Third Parties". A significant factor which needs to be noticed is that there is no contractual relation between the insurance company and the third party. The liabilities and the obligations relatable to third parties are created only by fiction of Sections 147 and 149 of the Act.

It is also to be noted that the terms of the policy have to be construed as it is and there is no scope for adding or subtracting something. However liberally the policy may be construed, such liberalism cannot be extended to permit substitution of words which are not intended. (See United India Insurance Co. Ltd. V Harchand Rai Chandan Lal (2004 (8) SCC 644 and Polymat India (P) Ltd. V. National Insurance Company Ltd. and Ors. (2005 (9) SCC 174).

The primary stand of the insurance company is that the person driving the vehicle did not have a valid driving license. In Swaran Singh's case (supra) the following situations were noted:

(i) the driver had a license but it was fake;
(ii) the driver had no license at all;
(iii) the driver originally had a valid license but it had expired as on the date of the accident and had not been renewed;
(iv) the license was for a class of vehicles other than that which was the insured vehicle;
(v) the license was a learner's license.

Category (i) may cover two types of situations. First, the license itself was fake and the second is where originally that license is fake but there has been a renewal subsequently in accordance with law.

Chapter II contains Sections 3, 4 and 5 of the Act relating to licensing of drivers driving the motor vehicles.

Where the claim relates to own damage claims, it cannot be adjudicated by the insurance company. But it has to be decided by an other forum i.e. forum created under the Consumer Protection Act, 1985 (in short the 'CP Act'). Before the Tribunal, there were essentially three parties i.e. the insurer, insured and the claimants. On the contrary, before the consumer forums there were two parties i.e. owner of the vehicle and the insurer. The claimant does not come in to the picture. Therefore, these are cases where there is no third party involved.

According to learned counsel for the appellants, in such cases the logic i.e. let the insurer pay and recover from the insured company does not apply.

As noted above, there is no contractual relation between the third party and the insurer. Because of the statutory intervention in terms of Section 149, the same becomes operative in essence and Section 149 provides complete insulation.

In the background of the statutory provisions, one thing is crystal clear i.e. the statute is beneficial one qua the third party. But that benefit cannot be extended to the owner of the offending vehicle. The logic of fake license has to be considered differently in respect of third party and in respect of own damage claims.

It would be appropriate to take note of what was stated in Complete Insulations (P) Ltd. v. New India Assurance Co. Ltd. (1996 (1) SCC 221). In paras 9 and 10 it was observed as follows:

"9. Section 157 appears in Chapter XI entitled "Insurance of Motor vehicles against Third Party Risks" and comprises Sections 145 to 164. Section 145 defines certain expressions used in the various provisions of that Chapter. The expression "Certificate of Insurance" means a certificate issued by the authorised insurer under Section 147(3). "Policy of Insurance" includes a certificate of insurance. Section 146(1) posits 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, as the case may be, a policy of insurance complying with the requirements of this chapter". Of course this provision does not apply to vehicles owned by the Central or State Government and used for Government purposes not connected with any commercial enterprise. This provision corresponds to Section 94 of the old Act. Section 147 provides that the policy of insurance to be issued by the authorized insurer must insure the specified person or classes of persons against any liability incurred in respect of death of or bodily injury to any person or damage to any property of a third party as well as against the death of or bodily injury caused to any passenger of a public service vehicle caused by or arising out of the use of the vehicle in a public place. This provision is akin to Section 95 of the old Act. It will be seen that the liability extends to damage to any property of a third party and not damage to the property of the owner of the vehicle, i.e., the insured. Sub-section (2) stipulates the extent of liability and in the case of property of a third party the limit of liability is Rupees six thousand only. The proviso to that sub-section continues the liability fixed under the policy for four months or till the date of its actual expiry, whichever is earlier, Sub-section (3) next provides that the policy of insurance shall be of no effect unless and until the insurer has issued a certificate of insurance in the prescribed form. The next

important provision which we may notice is Section 156 which sets out the effect of the certificate of insurance. It says that when the insurer issues the certificate of insurance, then even if the policy of insurance has not as yet been issued the insurer shall, as between himself and any other person except the insured be deemed to have issued to the insured a policy of insurance conforming in all respects with the description and particulars stated in the certificate. It is obvious on a plain reading of this provision that the legislature was anxious to protect third-party interest. Then comes Section 157 which we extracted earlier. This provision lays down that when the owner vehicle in relation whereto a certificate of insurance is issued transfers to another person the ownership of the motor vehicle, the certificate of insurance together with the policy described therein shall be deemed to have been transferred in favour of the new owner of the vehicle with effect from the date of transfer. Sub-section (2) requires the transferee to apply within fourteen days from the date of transfer to the insurer for making necessary changes in the certificate of insurance and the policy described therein in his favour. These are the relevant provisions of Chapter XI which have a bearing on the question of insurer's liability in the present case.

10. There can be no doubt that the said chapter provides for compulsory insurance of vehicles to cover third-party risks. Section 146 forbids the use of a vehicle in a public place unless there is in force in relation to the use of that vehicle a policy of insurance complying with the requirements of that chapter. Any breach of this provision may attract penal action. In the case of property, the coverage extends to property of a third party i.e. a person other than the insured. This is clear from Section 147(1)(b)(i) which clearly refers to "damage to any property of a third party" and not damage to the property of the 'insured' himself. And the limit of liability fixed for damage to property of a third party is Rupees six thousand only as pointed out earlier. That is why even the Claims Tribunal constituted under Section 165 is invested with jurisdiction to adjudicate upon claims for compensation in respect of accidents involving death of or bodily injury to persons arising out of the use of motor vehicles, or damage to any property of a third party so arising, or both. Here also it is restricted to damage to third-party property and not the property of the insured."

The restrictions relating to appeal in terms of Section 173 (2) does not apply to own damage cases.

A plea has been taken about the desirability of purposive construction.

"Golden Rule" of interpretation of statutes is that statutes

are to be interpreted according to grammatical and ordinary sense of the word in grammatical or liberal meaning unmindful of consequence of such interpretation. It was the predominant method of reading statutes. More often than not, such grammatical and literal interpretation leads to unjust results which the Legislature never intended. The golden rule of giving undue importance to grammatical and literal meaning of late gave place to 'rule of legislative intent'. The world over, the principle of interpretation according to the legislative intent is accepted to be more logical.

When the law to be applied in a given case prescribes interpretation of statute, the Court has to ascertain the facts and then interpret the law to apply to such facts. Interpretation cannot be in a vacuum or in relation to hypothetical facts. It is the function of the legislature to say what shall be the law and it is only the Court to say what the law is-

In JT. Registrar of Co-op. Societies v. T.A. Kuttappan (2000 (6) SCC 127), Associated Timber Industries v. Central Bank of India (2000 (7) SCC 73), Allahabad Bank v. Canara Bank (2000 (4) SCC 406), K.Duraiswamy v. State of Tamil Nadu (2001 (2) SCC 538), Reserve Bank of India v. Peerless General Finance and Investment Co. Ltd. (1987 (1) SCC 424), Chief Justice of A.P. v. L. V. A. Dikshitulu (AIR 1979 SC 193), Kehar Singh v. State (Delhi Admn.) (AIR 1988 SC 1883), and Indian Handicrafts v. Union of India (2003 (7) SCC 589), this court applied the principle of purposive construction.
In Reserve Bank of India's case (supra) this Court observed:

"Interpretation must depend on the text and the context, They are the bases of interpretation. One may well say if the text is the texture, context is what gives the colour. Neither can be ignored. Both are important. That interpretation is best which makes the textual interpretation match the contextual. A statute is best interpreted when we know why it was enacted. With this knowledge, the statute must be read, first as a whole and then section by section, clause by clause, phrase by phrase and word by word. If a statute is looked at, in the context of its enactment, with the glasses of the statute-maker, provided by such context, its scheme, the sections, clauses, phrases and words may take colour and appear different than when the statute is looked at without the glasses provided by the context. With these glasses we must look at the Act as a whole and discover what each section, each clause, each phrase and each word is meant and designed to say as to fit into the scheme of the entire Act. No part of a statute and no word of a statute can be construed in isolation, Statutes have to be construed so that every word has a place and everything is in its place.

In Dikshitulu's case (supra) a Constitution Bench of this Court observed as under:
"The primary principle of interpretation is that a constitutional or statutory provision should be construed 'according to the intent of they

that made it' (Code). Normally, such intent is gathered from the language of the provision. If the language of the phraseology employed by the legislation is precise and plain and thus by itself, proclaims the legislative intent in unequivocal terms, the same must be given effect to, regardless of the consequences that may follow. But if the words used in the provision are imprecise, protean, or evocative or can reasonably bear meaning more than one, the rule of strict grammatical construction ceases to be a sure guide to reach at the real legislative intent. In such a case, in order to ascertain the true meaning of the terms and phrases employed, it is legitimate for the court to go beyond the arid literal confines of the provision and to call in aid other well-recognised rules of construction such as its legislative history, the basic scheme and framework of the statute as a whole, each portion throwing light on the rest, the purpose of the legislation, the object sought to be achieved and the consequences that may flow from the adoption of one in preference to the other possible interpretation".

In Kehar Singh v. State (Delhi Admn.) it was held:

"During the last several years, the 'golden rule' has been given a goby. We now look for the 'intention' of the legislature or the 'purpose' of the statute. First we examine the words of the statute. If the words are precise and cover the situation on hand, we do not go further. We expound those words in the natural and ordinary sense of the words. But if the words are ambiguous, uncertain or any doubt arises as to the terms employed, we deem it as our paramount duty to put upon the language of the legislature rational meaning. We then examine every word, every section and every provision. We examine the Act as a whole. We examine the necessity which gave rise to the Act. We took at the mischiefs which the legislature intended to redress. We look at the whole situation and not just one-to-one relation. We will not consider any provision out of the framework of the statute. We will not view the provisions as abstract principles separated from the motive force behind. We will consider the provisions in the circumstances to which they owe their origin. We will consider the provisions to ensure coherence and consistency within the law as a whole and to avoid undesirable consequences".

A statute is an edict of the Legislature and in construing a statute, it is necessary to seek the intention of its maker. A statute has to be construed according to the intent of those who make it and the duty of the court is to act upon the true intention of the Legislature. If a statutory provision is open to more than one interpretation the Court has to choose that

interpretation which represents the true intention of the Legislature. This task very often raises difficulties because of various reasons, inasmuch as the words used may not be scientific symbols having any precise or definite meaning and the language may be an imperfect medium to convey one's thought or that the assembly of Legislatures consisting of persons of various shades of opinion purport to convey a meaning which may be obscure. It is impossible even for the most imaginative Legislature to foresee all situations exhaustively and circumstances that may emerge after enacting a statute where its application may be called for. Nonetheless, the function of the Courts is only to expound and not to legislate. Legislation in a modern State is actuated with some policy to curb some public evil or to effectuate some public benefit. The legislation is primarily directed to the problems before the Legislature based on information derived from past and present experience. It may also be designed by use of general words to cover similar problems arising in future. But, from the very nature of things, it is impossible to anticipate fully the varied situations arising in future in which the application of the legislation in hand may be called for, and, words chosen to communicate such indefinite referents are bound to be in many cases lacking in clarity and precision and thus giving rise to controversial questions of construction. The process of construction combines both literal and purposive approaches. In other words the legislative intention i.e., the true or legal meaning of an enactment is derived by considering the meaning of the words used in the enactment in the light of any discernible purpose or object which comprehends the mischief and its remedy to which the enactment is directed. (See District Mining Officer and Ors. v. Tata Iron & Steel Co. & Anr. JT 2001 (6) SC 183).

It is also well settled that to arrive at the intention of the legislation depending on the objects for which the enactment is made, the Court can resort to historical, contextual and purposive interpretation leaving textual interpretation aside.

Francis Bennion in his book "Statutory Interpretation" described "purposive interpretation" as under:

"A purposive construction of an enactment is one which gives effect to the legislative purpose by-

(a) following the literal meaning of the enactment where that meaning is in accordance with the legislative purpose, or

(b) applying a strained meaning where the literal meaning is not in accordance with the legislative purpose."

More often than not, literal interpretation of a statute or a provision of a statute results in absurdity. Therefore, while interpreting statutory provisions, the Courts should keep in mind the objectives or purpose for which statute has been enacted. Justice Frankfurter of U.S. Supreme Court in an article titled as Some Reflections on the Reading of Statutes (47 Columbia Law Reports 527), observed that, "legislation has an aim, it seeks to obviate some mischief, to supply an adequacy, to effect a change of policy, to formulate a plan of Government. That aim, that policy is not drawn, like nitrogen, out of the air; it is evidenced in the language of the statutes, as read in the light of other external manifestations of

purpose".

The inevitable conclusion therefore is that the decision in Swaran Singh's case (supra) has no application to own damage cases. The effect of fake license has to be considered in the light of what has been stated by this Court in New India Assurance Co., Shimla v. Kamla and Ors. (2001 (4) SCC 342). Once the license is a fake one the renewal cannot take away the effect of fake license. It was observed in Kamla's case (supra) as follows:

"12. As a point of law we have no manner of doubt that a fake licence cannot get its forgery outfit stripped off merely on account of some officer renewing the same with or without knowing it to be forged. Section 15 of the Act only empowers any Licensing Authority to "renew a driving licence issued under the provisions of this Act with effect from the date of its expiry". No Licensing Authority has the power to renew a fake licence and, therefore, a renewal if at all made cannot transform a fake licence as genuine. Any counterfeit document showing that it contains a purported order of a statutory authority would ever remain counterfeit albeit the fact that other persons including some statutory authorities would have acted on the document unwittingly on the assumption that it is genuine".

As noted above, the conceptual difference between third party right and own damage cases has to be kept in view. Initially, the burden is on the insurer to prove that the license was a fake one. Once it is established the natural consequences have to flow.

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 license 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 matter afresh in the light of the position in law as delineated above.

The appeals are allowed as aforesaid with no order as to costs.