

Chanchalaben and ors. Vs. Shaileshkumar and ors.

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Court : Gujarat

Decided On : Mar-06-1973

Reported in : AIR1974Guj145; (1974)15GLR364

Judge : J.B. Mehta and; S.H. Sheth, JJ.

Acts : [Motor Vehicles Act, 1939](#) - Sections 96 and 96 (2)

Appeal No. : First Appeal No. 631 of 1970

Appellant : Chanchalaben and ors.

Respondent : Shaileshkumar and ors.

Advocate for Def. : B.R. Shah,; N.R. Oza,; J.P. Patel, Advs. and;

Advocate for Pet/Ap. : S.B. Vakil, Adv.

Judgement :

S.H. Sheth, J.

1. On 17th January, 1968, original opponent No. 1 had been driving scooter No. GJE 3177 in the City of Ahmedabad. Opponent No 2 is the owner of that scooter and opponent No. 3 is its insurer. It was of Lambretta make Opponent No. 1 is here in after described as the Lambretta driver for the sake of clarity. Opponent No. 4 had been driving his own scooter No. GJE 4742. It was insured with

opponent No. 5. Opponent No. 4 is hereinafter described as the Vespa driver for the sake of clarity. The latter mentioned scooter was of Vespa make. On the pillion seat of the Vespa scooter, Gordhandas (hereinafter referred to as 'the deceased' for the sake of brevity), residing in the Pritamnagar Jain Society area of the City of Ahmedabad, had been sitting. The Lambretta driver and the Vespa driver had been proceeding on cross roads. At the intersection of the roads, the Lambretta scooter struck the Vespa scooter, as a result of which the latter scooter was thrown away into the fencing of a neighboring bungalow and it got entangled therein. The deceased, who was on the pillion seat of the Vespa scooter, fell down in the fencing and sustained multiple injuries and multiple compound and complicated fractures. He was removed to the hospital, where he died within an hour or two of the accident.

2. The claimants, who are his heirs and legal representatives, filed the present claim petition against the owner, the driver and the insurer of the Lambretta scooter and joined into this claim petition the owner and driver of the Vespa scooter and its insurer. They claimed from opponents Nos. 1, 2 and 3 driver, owner and insurer of the Lambretta scooter and opponent No. 5-the insurer of the Vespa scooter-a sum of Rs. 1,30,000/- in damages for having caused the accidental death of the deceased by rash and negligent driving of those scooters. In the course of the trial of the claim petition before the Motor Accidents Claims Tribunal, the original claim of Rs. 1,30,000/- was voluntarily reduced by the claimants to Rs. 75, 000/-. The Tribunal heard the claim petition and found that none of the scooter drivers was rash and negligent in driving his scooter and that therefore, the claimants were not entitled to claim any damages from the opponents. It appears that, in the opinion of the Tribunal, it was an inevitable accident. In view of its principal finding recorded by the Tribunal, it dismissed the claim petition.

3. It is that order of dismissal of the claim petition, filed under Section 110-A of the [Motor Vehicles Act, 1939](#), which is challenged by the claimants in this appeal.

4. Before we proceed with the examination of the evidence, it is necessary to note a couple of points. In the claim petition, the claimants, inter alia, averred that

opponent No. 1, the Lambretta driver, had been negligent in driving his vehicle and that his rash and negligent driving had led to the occurrence of the accident. So far as the Vespa driver, the opponent No. 4, was concerned, they averred that he was not directly or indirectly responsible for causing the said accident or contributing to it and that, therefore, he was not liable to pay any damages to the claimants. Having made this averment in favour of the Vespa driver, they did not pray for any decree against him. However, so far as the insurer of the Vespa scooter was concerned, they stated that it was liable to the claimants in damages. Therefore, they prayed for a decree against opponent No. 5. As a result of the averments made by the claimants in the claim petition~ they prayed for decree against opponents Nos. 1, 2, 3 and 5 and did not pray for any decree against opponent No. 4. In the course of the trial of the claim petition, an application was made by the claimants at Ex. 63 praying for an amendment of the claim petition. It was made on 13th February 1969. By the proposed amendment, they wanted to incorporate an alternative contention, so far as the Vespa driver was concerned, stating that, if the evidence disclosed that the Vespa driver was either wholly or partly liable for the accident in question, he should be held - liable to the claimants in damages. Consequent upon this proposed amendment, they also prayed for an amendment of the prayer clause whereby they intended to seek decree against opponent No. 4 also. The Tribunal, by its order, dated 28th February, 1969, rejected that application. Two reasons weighed with the Tribunal in rejecting that application for amendment. The first reason was that, if the proposed amendment was allowed to be made to the claim petition, it would convert the original claim petition into a claim for compensation against opponent No. 4, who had been absolved from all liability by the claimants in so far as the averments made in the original claim petition were concerned. The second reason was that a valuable right had accrued to opponent No. 4 from the bar of limitation, which had, at the date of the amendment application, become operative against the claimants. In this behalf, the Tribunal was further of the opinion that there was no reason why delay should be condoned and the claimants should be allowed to incorporate their claim against the opponent No. 4.

5. Mr. Vakil, in the first instance, tried to challenge this order made by the Tribunal below Ex. 63 on several grounds. He was quite vehement and assertive in his

challenge to the propriety and validity of that order. We, therefore, heard him at a considerable length. However, at the resumed hearing of the appeal, Mr. Vakil expressed his desire to give up all contentions against that order and told us that the claimants were acquiescing hat order. Therefore, that order has now become final and conclusive and we are not required to examine the validity and propriety of that order. One of the reasons, which appears to have weighed with Mr. Vakil in giving up his contention against that order, is that the deceased was the father-in-law of the opponent No. 4 and it is, therefore, that the claimants, the heirs and legal representatives of the deceased, were not interested in making any claim for compensation against the opponent No. 4.

6. In this state of affairs, since there is no claim made against opponent No. 4, no award can be made against him. The appeal against him, therefore, must fail. We are of the opinion that since no award has been sought against opponent No. 4 no award can be made against opponent No. 5, the insurer of opponent No. 4. we shall deal with it later on in the course of this judgment.

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23. It has been contended before us on behalf of opponent No. 3, the insurer of Lambretta scooter, that, in terms of the insurance policy issued by it, Ex. 103, read with Section 96 of the [Motor Vehicles Act, 1939](#), it is not liable to indemnify the opponent No. 2 and to pay the aforesaid amount to the claimants. It has been contended by Mr. Vakil on behalf of the claimants that, under Section 96 of the Act, such contention is not open to opponent No. 3. Mr. Patel, appearing for opponent No. 3, has sought to controvert that contention. It is necessary, therefore, to have a look at Section 96 of the Motor Vehicles Act. Sub clause (ii) of clause (b) of sub-section (2) of Section 96 provides that an insurance company to whom a notice of the proceeding has been given is entitled to defend the action on the ground that there has been a breach, inter alia, of the following condition of the policy:-

'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.'

Mr. Patel has, on the strength of the said clause, contended that the opponent No. 1, who had been driving the Lambretta scooter, was not a 'duly licensed' driver and that the opponent No. 2, the insured, had committed a breach of the said condition of the policy. Mr. Vakil appearing for the claimants has contended that the expression 'duly licensed' not only means a person holding a regular licence to drive but also includes a learner, who holds a learner's driving licence in order to bring name this contention, Mr. Vakil has relied upon Section 3 and clauses (5) and (5rA) of Section 2. Clause (5) of Section 2 defines the expression 'driver'. Clause (5A) of Section 2 defines the expression 'driving licence'. He has also relied upon subsection (2) of Section 3, read with Rule 16 of the Bombay Motor Vehicles Rules, 1959. Rule 16 read with sub-section (2) of Section 3 carves out an exception and provides for the circumstances under which a learner's licence can be issued to a person who will then not be subject to the neighbor of sub-section (1) of Section 3. Our attention has also been invited to form L.Lr. appended to the Rules. The expression used is 'licensed to drive as a learner'. The warning appended as a foot-note to the said form mentions 'duly licensed to drive'. The form L. Lr. A. appended to the said Rules uses the expression 'driving licence'. The first mentioned form is a form of learner's driving licence. The second mentioned form is a form of application for learner's driving licence. Clause G) of sub-rule (1) of Rule 16 uses the-expression 'learner's driving licence'. Sub-rule (6) of Rule 16 uses the expression 'driving'. All these expressions used in sub-section (2) of Section 3 and Rule 16- and the aforesaid two forms go to show, according to Mr. Vakil, that the learner's driving licence falls within the expression 'duly licensed'. Section 96 is relevant only in so far as we have to discover what defense is available to the insurance company against a third party. The expression 'duly licensed' used in sub-clause (ii) of clause (b) of sub-section (2) of Section 96 indeed permits an insurance company to raise a defence relating to the holding of a licence. If the appropriate term incorporated in the insurance policy is wider in connotation than what the expression 'duly licensed' permits, it shall not be available to the insurance company against the third party to the extent to which it

transgresses; beyond the confrontation of the expression 'duly licensed'. If an appropriate term in an insurance policy is more liberal in connotation than the expression 'duly licensed' permits can a third party rely upon it for the satisfaction of the judgment obtained by it against the insured? It is necessary, therefore, to see the appropriate term in the policy, Ex. 103. It reads as follows:-

'Limits of Liability:

Driver: Any of the following:-

(a) The Insured

The insured may also drive a motor cycle not belonging to him and not hired to him under a Hire Purchase Agreement.

(b) Any other person who is driving on the Insured's order or with his permission:

Provided that the person driving holds a licence to drive the Motor Cycle or has held and is not disqualified for holding or obtaining such a licence'.

The concept which emerges from the expression 'duly licensed' as contended by Mr. Patel, is more emphatic and is capable of permitting an insurance company to provide for a condition different from the one which we have quoted above. One thing is clear in our mind that the idea which is conveyed by the word 'duly' used in the expression 'duly licensed' does not find its place in the above quoted term of the policy. Since the term in the Policy appears to us more liberal, so far as third parties are concerned than what the expression 'duly licensed' used in Section 96 may connote, it is not necessary for us to determine the exact scope and connotation of the expression 'duly licensed'. We, therefore, do not decide whether the expression 'duly, licensed' includes within its ambit a person who holds a learner's driving licence and confine our decision to the interpretation of the aforesaid term of the policy, Ex. 103. In the instant case, the opponent No. 2 had not been driving the Lambretta scooter at the material time. Therefore, clause (a) in the above quoted term of the policy has no application to this case. There is no dispute before us that opponent No. 1 had been driving the Lambretta scooter with the Permission of the opponent No. 2, the owner of the Lambretta scooter. He had

a learner's driving licence, which had expired on 20th October, 1967, sometime before the accident occurred. Is he included within the meaning of the expression 'the person driving holds a licence to drive the motor cycle or has held' used in the proviso to clause (b) in the aforesaid term of the policy? Mr. Vakil has contended that the afore said term in the Policy does not expressly exclude a learner and that, therefore, we must construe the afore said clause so as to mean not only a regular and fully qualified driver but also a learner. He has also contended that opponent No. 3, the insurer, has made a departure while under writing the risk under the policy. Whereas Section 96 of the [Motor Vehicles Act, 1939](#) requires an insurance company to underwrite the risk arising out of the accidents committed by persons who are 'duly licensed' by the aforesaid term in the policy, the insurance company, opponent No. 3, has underwritten greater risk by deleting the concept emerging from the expression 'duly licensed'. In his turn, Mr. Patel has argued that the, risks involved in permitting an insured to have his vehicle driven by a learner and by a regular and fully qualified driver are different, According to him, in the case of a learner, the insurance company underwrites a greater risk, while in the case of a regular and fully qualified driver, it underwrites a lesser risk. The argument advanced by Mr. Patel is ex facie plausible but it cannot lead us to construe the policy in a particular manner. The construction of the relevant term in the policy depends upon the language which it has , employed. Now, with in the meaning of the proviso to clause (b) in the aforesaid term of the Policy, the opponent No. 3 has underwritten a risk arising out of an accident committed by a person while driving the motor cycle, if he 'holds a licence to drive the motor cycle or has held and is not disqualified for holding or obtaining such a licence'. Mr. Patel has tried to advance his contention on two grounds. His first ground is that the expression 'the person driving holds a licence to drive' means 'the person driving holds a regular to drive ' If we have to accept; the contention raised by Mr. Patel, we will have to add the word 'regular' be fore the word 'licence' and to qualify it. The question, therefore, which arises for our consideration is this, does the language employed in the Proviso to clause (b) in the -aforesaid term of the policy necessarily lead to that implication? In order to make good this contention, he has invited our attention to General Exception No. (3) (b) specified in the policy, Ex. 103. General Exception No. (3) (b) reads as under:-

'The Company shall not be liable under this policy in respect of

.....(3) any accident loss, damage and /
or liability caused, sustained or incurred whilst the Motor Cycle is

.....(b) being driven by any person
other than a Driver'.

He has asked us to read the aforesaid proviso in clause (b) in the above quoted term of the policy in light of General Exception (3) (b). When both are read together, one is not in a position to throw any light upon another, because the concept which emerges out of the expression 'driver' used in general exception (3) (b) is also the concept which emerges out of the expression 'the person driving holds a licence to drive' used in the proviso to clause (b) in the aforesaid term. One who drives a motor cycle is a driver. What is, therefore, the meaning of the Expression 'drive' or 'driver' appearing in the policy? If the insurance company had intended to subject the insured to the condition that his vehicle should be driven by a regular license-holder, there was nothing which prevented the insurance company from using the expression 'a regular licence' in place of the expression 'a licence' used in La Proviso to clause (b) in the aforesaid term. Secondly, can we say that a learner, when he drives a vehicle under the learner's driving licence, does not hold a licence to drive? The expression used in the policy has got to be construed in the light of the definition given in the Act . The expression 'driver' has been given an inclusive definition in the Act. It includes where a separate person acts as a steersman of a motor vehicle, that person as well as any other person engaged in the driving of the vehicle. Now, Rule 16 of the Bombay Motor Vehicles Rules, 1959, inter alia, provides that a learner driver must have an instructor by his side who is duly licensed to drive the vehicle. But the proviso to sub-rule (1) of Rule 16 lays down that the aforesaid requirement shall not apply to a person who is learning to drive a two-wheeled motor cycle with or without a side-car attached., It is, therefore, clear that a person, who has just taken out a learner's driving licence and who, on the strength of such a licence, wants to learn to drive a motor cycle is not required to have a duly licensed instructor by his side. In other words, such a person can be in full control of his motor cycle. He tries to drive the vehicle

and in the process tries to learn. He is in complete control of the vehicle. If a steersman, which is the expression used in the definition of 'driver' given in clause (5) of Section 2, means a person who handles the steering and if he is included within the definition of the expression 'driver', a learner, who is learning to drive a motor cycle is both a steersman in, the narrow sense and driver in the wider sense. The test which we apply where a learner has been driving a motor cycle is whether he is in full or partial control of the vehicle. So far as motor cycles are concerned, the learners are in full control of their vehicles. We have no doubt in our mind, therefore, that a learner drives a motor cycle when he tries to learn driving under a learner's driving licence. If that is what is meant by the expression 'drive', it must lead to the logical conclusion that the expression 'a licence to drive' not only means a regular licence to drive but also a learner's licence to drive. What is contemplated by sub-section (2) of Section 3 of the Act is also the concept of driving by receiving instruction to drive. Rule 16 of the Bombay Motor Vehicles Rules, 1959, which has been framed to give effect to sub-section (2) of Section 3, also contemplates that a learner drives when' it says that 'sub-section (1) of Section 3 shall not apply to any person driving a motor vehicle in a public place during the course of receiving instruction or of gaining experience in driving with the object of presenting himself for the test required by sub-section (6) of Section 7'. Clause (i) of sub-rule (1) of Rule 16 also contemplates that a person who holds a learner's driving licence is a driver and that such a person is entitled to drive his vehicle. Clause (ii) of sub-rule (1) of Rule 16 also contemplates that a learner is a driver, who, where it is required, must have an instructor by his side, who is duly licensed to drive the vehicle. It is, therefore, clear that where there is a learner and an instructor by his side, both are drivers and, where there is no instructor by the side of a learner, as in the case of a motor cycle, the learner is a driver. Form L. Lr. A. appended to the Rules also contemplates the same thing. An applicant for a learner's driving licence is required to state in his application as follows:- 'I hereby ,apply for a driving licence authorising me to drive as a learner a vehicle of the following class'. It is, therefore, clear that the Legislature contemplates that a learner also drives a vehicle. The form L. Lr. appended to the said Rules also states that the applicant (who is to be named by him) is licensed to drive as a learner. Driving, therefore, is common both to a fully qualified driver as

well as to a learner. Whereas a fully qualified driver drives a vehicle either for making an income or for pleasure, as in the, case of an owner-driver, a learner drives a vehicle in order to learn driving. Therefore, both drive a motor vehicle with different objects in view. The difference in the objects with which they drive a vehicle cannot cloud the concept of driving in the case of a learner. For the reasons stated above, we are of the opinion that the expression 'the person driving holds a licence to drive the motor cycle' means not only a fully qualified and regularly licensed driver but it also means a learner driver. Mr. Vakil has invited our -attention to a passage in 'Fire and Motor Insurance' by E. R. Hardy Ivamy, 1968 Edition. At p. 231, under the caption 'Licence' includes 'Provisional Licence'. It has been stated there that the expression 'licence' includes a provisional licence. The aforesaid observation made by the learned author has been based upon the decision of the Westminster County Court in *Rendlesham. v. Dunne* reported in (1964) 11 Lloyd's Rep 192. In that decision, Judge Herbert of the Westminster County Court has held that the meaning of the word 'licence' cannot be restricted to 'full licence'. Indeed, his decision has been based upon Road Traffic Act, 1960 of Great Britain. The scheme of the [Motor Vehicles Act, 1939](#), is largely Similar to Road Traffic Act, 1960. Mr. Vakil has also invited our attention to Road Traffic Offences by G. S. Wilkinson, 5th Edition. At P. 196, it has been observed that the expression 'who holds or has held a driving licence' includes a driver who has once held a licence, even though such a licence was provisional. That observation has also been made by the learned author on the strength of the aforesaid decision of the Westminster County Court in (1964) 1 Lloyd's Rep 192. We have made reference to the aforesaid two books just to show that in matters, which raise such questions, there is identical thinking in England also.

24. Mr. Patel has next contended that the learner's driving licence issued to the Lambretta driver had already expired in October 1967 and was not in force when the accident in question was committed. According to him, therefore, since the lambretta driver did not hold, on the date of the accident in question, an effective learner's driving licence. The insurer opponent No 3, cannot be made liable for the risk arising out of the accident committed by him. The examination of this contention takes us again to clause (b) in the said term in the policy. To repeat it states 'that the person driving holds a licence to drive the Motor Cycle or has held

and is not disqualified for holding or obtaining such a licence'. If opponent No. 1 had held some time in the Past a licence to drive a motor cycle and was not disqualified for holding or obtaining it, he would be the person, whole would be covered by the said proviso.¹ The contention which Mr. Patel has raised is that the expression 'has held' connotes that the-opponent No. 1 had held a licence in the past and that it continued to be in force on the date of the accident. It is impossible for us to uphold that contention of his. If the lambretta driver had held a licence in the past and if it was in force on the date of the accident, he would fall in the category of persons holding a licence. He cannot f411 under the category of a person who can be said to have held a licence. The expression 'has held', in our opinion, means a licence which was held by a person in the past and which was not effective on the date of the accident. If a person had held in the past a licence and was not disqualified for holding it or obtaining it at the date of the accident, such a person falls in the category of persons described by the proviso to clause (b) in the aforesaid term and the risk arising out of the accident counted by such a person is underwritten by the insurance company. 'The disqualifications for, holding a licence are those which are specified in Sections 15, 16 and 17 of the Act. The disqualification to obtain a licence appears to be one contemplated by Section 4 of the Act. If we are correct in our interpretation of the aforesaid proviso to clause (b) in both the respects, it means that the insurer, opponent No. 3, has underwritten the risk arising out of the accident committed by the learner driver, opponent No. 1, who once upon a time held a learner's driving licence and who did not have such an effective licence at the date of the accident.

25. Mr. Patel has invited our attention to the decision of the Madras High Court in Motor Owners' Insurance ,Company Ltd. v. V. Daniel, 1971 Acc CJ 318 = (AIR 1972 Mad 15). The learned Single Judge of the Madras High Court has held in that case that since the driver in that case had not a valid licence on the date of the accident, the liability of the insurance company was excluded. He has negatived the contention raised on behalf of the insured in that case that it would be sufficient if the driver of the point of time and that the licence need not be in force at the time of the accident. The observation made in that decision is a pure ipse dixit. No reasons have been stated by the learned Judge in support of his observation. In view of the express language employed in the proviso to clause (b)

in the aforesaid term in the policy, we are unable to agree with the observation made by the Madras High Court in that decision. The decision of the Queen's Bench Division in *Edwards v. Griffiths*, (1953) 2 All ER 874 (875) has been cited before us. In that case, the driver passed in 1951 a driving test and was granted a driver's licence for 12 months. After the expiration of the licence, he applied for a new licence, which was refused to him. In February, 1953, he drove a motor tractor belonging to his employer and was charged with driving a motor vehicle without a policy of insurance being in force. The certificate of insurance of his employer contained a proviso that the driver must hold a licence to drive the vehicle or that he must have held one and not be disqualified for holding or obtaining such a licence. It was held in that case that the facts that the driver held a licence in the past and that he was not disqualified from obtaining one were sufficient to exonerate him from the offence with which he was charged. The next decision, which has been cited before us, is an unreported decision of D. A. Desai, J. in First Appeal No. 190 of 1968, decided by him on 31st January, 1973 (Guj). On examination of an identical term in the Policy, with which he was concerned in that case, he has taken the view that an insurer is bound to make good the risk arising out of an accident committed by a driver, who once held a licence, though he did not have an effective licence on the date of the accident and was not disqualified from holding or obtaining it. For the reasons stated in our judgment, we are in complete agreement with the conclusion recorded by the learned Judge in that case. In view of our finding that a person who holds or has held a learner's driving licence is covered by the proviso to clause (b) and since the lambretta driver had held a learner's driving licence prior to the date of the accident and indisputably he was not disqualified from holding or obtaining it, the opponent No. 3 is liable to make good the risk which has arisen out of the accident committed by opponent No. 1. the lambretta driver. That opponent No. 1 was not disqualified from holding or obtaining a learner's driving licence is proved by the fact that, two days after the occurrence of the accident in question, on 19th January, 1968, his learner's driving licence was renewed for a further period of three months. In view of the finding recorded by us, we are of the opinion that opponent No. 3. The Commonwealth Insurance Co. Ltd. is liable to satisfy the judgment which we have pronounced against the opponents Nos. 1 and 2. The risk which the opponent No.

3 has underwritten under the policy is unlimited. Therefore, the said insurer is liable to satisfy the entire judgment with interest and costs.

26. Mr. Vakil has next contended that opponent No. 5, the insurer of the Vespa scooter, is also liable to satisfy the judgment pronounced by us. In this case, the claimants have not prayed for any decree nor have they made any claim against opponent No. 4, the owner and driver of the Vespa scooter of which the opponent No. 5 is the insurer. The question, therefore, which we have to consider is whether in the absence of any claim against the insured, judgment can be pronounced against his insurer. Subsection (1) of Section 96 of the Act, inter alia, provides as follows:-

'If, after a certificate of insurance has been issued under sub-section (4) of Section 95 in favour of the person by whom a policy has been effected, judgment in respect of any such liability as is required to be covered by a policy under clause (b) of sub-section (1) of Section 95 (being a liability covered by the terms of the policy) is obtained against any person 'insured by the policy, then, notwithstanding that the insurer may be entitled to avoid or cancel or may have avoided or cancelled the policy the insurer shall, subject to the provisions of this section, pay to the person entitled to the benefit of the decree any sum not exceeding the sum assured Payable there under, as if he were the judgment-debtor, in respect of the liability

The condition precedent to passing or enforcing a decree against an insurer is that it must first be obtained against the person insured by that insurer. If a claim has been made and decreed against an insured, the liability, which falls on such an insured, is to be made good by his insurer. If no claim has been made and no decree has been obtained against an insured, his insurer does not become liable to satisfy any decree, even though the evidence may disclose that there was negligence on the part of the insured, which had contributed to the accident. The deeming fiction incorporated in subsection (1) by the expression 'as if he were the judgment-debtor in respect of the liability' will turn into reality what is otherwise a fiction if a decree is passed against an insured. In the instant case, no claim has been made and no decree has been obtained against opponent No. 4. No decree

therefore can be passed against his insurer, the opponent No. 5. An insurer is a branch of a tree of which its insured is the trunk. A branch cannot stand unless there is a trunk. We are, therefore, of the opinion that no decree or award can be passed against the opponent No. 5, even though we have found that its insured was negligent in driving his vehicle.

27. In view of the findings recorded by us, we allow the appeal, set aside the order made by the Tribunal and make in favour of the claimants an award for Rs. 75,000/- with future interest at the rate of 6 per cent. per annum from the date of the institution of the claim petition until realisation and with costs of this litigation in both the Courts. The costs in both the Courts shall be taxed on the claim of Rs.75,000/-. The award, which we have made, will operate against original opponents Nos. 1, 2 and 3, who are directed to satisfy it. The appeal against opponents Nos. 4 and 5 is dismissed with no order as to costs.

28. Appeal allowed