

K. Ramalingam Vs. Parvathi,

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Court : Chennai

Decided On : Aug-30-2002

Reported in : (2002)3MLJ415

Judge : A.S. Venkatachalamoorthy and ;K. Gnanaprakasam, JJ.

Acts : [Motor Vehicles Act, 1988](#) - Sections 94, 110(1), 110(A), 120 and 166; Code of Civil Procedure (CPC) - Sections 151

Appeal No. : C.M.A. No. 492 of 1993 and Cross Objection No. 57/94

Appellant : K. Ramalingam

Respondent : Parvathi, ;minor Deivayanai, ;minor Adhilakshmi, (Minors 2 and 3 Are Rep. by their Mother and Natura

Advocate for Def. : V. Manohar, Adv. For R-1 to R-5, ;R.T. Doraisamy, Adv. For R-6 and ;P. Sugumaran, Adv. For R-7

Advocate for Pet/Ap. : K. Srinivasan, Adv.

Disposition : Appeal allowed

Judgement :

A.S. Venkatachalamoorthy, J.

1. One Sundaram, a per meant resident at Periyathatchur Agaram Village, Dindivanam Taluk was returning from Kollidam Thaikkal with his hand cart to his house in Kalaignar Colony at about 20.00 hours on 16.01.1990, when a tractor bearing Registration No. TCO-6043 attached with a Trailor bearing Registration No. TCO-6044, belonging to the 2nd respondent in MCOP No. 206/90 (on the file of the Motor Accident Claims Tribunal, Nagapattinam), driven by one Jagannathan (first respondent in the MCOP) in a rash and negligent manner, came and dashed against him and the cart. In the said incident, the deceased Sundaram sustained serious injuries and subsequently died in Poosai Hospital at Kollidam. Respondents-1 to 4 herein, as petitioners, filed MCOP No. 206 of 1990 against the appellant and Respondents-5 to 7 herein, under Section 166 of the [Motor Vehicles Act, 1988](#), claiming compensation at Rs.1,25,000/-. The first respondent is the wife of the deceased Sundaram while Respondents-2 and 3 are the minor children and the 4th respondent is the sister of the said Sundaram.

2. The appellant herein viz., the owner of the said vehicle resisted the petition contending that the Tractor was driven by the driver slowly and cautiously and it was the deceased, who suddenly crossed the road without noticing the tractor, which ultimately resulted in the accident. Yet another contention has been raised to the effect that he purchased the tractor and trailor under Hire Purchase Scheme from the State Bank of India, Sirkali Branch, the 6th respondent in this appeal and who has agreed to insure the vehicle and renew the same from time to time till the entire loan is cleared and collect the premium from the appellant. In fact, the said Bank did so for the first three years, but however, omitted to renew the Insurance Policy probably due to oversight or negligence. Instead of renewing the policy on or before the expiry date, the Bank paid the premium only on 18.01.1990 that was on the 3rd day of the accident. As in law, the Bank alone is the owner of the Tractor and trailor till the loan is repaid and cleared and as the appellant was not the owner on the relevant date, the appellant is not liable to pay any amount. Thirdly, it is contended that in any event, the claim made by the appellant is excessive.

3. The Sixth respondent herein viz., State Bank of India, filed a counter statement, denying the claim that they paid the insurance premium for the vehicle to the

Insurance Company and therefore, they are liable to pay compensation to the claimants. It is further stated therein that the Insurance Premium is payable only by the owner of the vehicle and is being paid only by him. According to the Bank, the loan was advanced on an agreement for hypothecation of the vehicle and therefore, the petitioner has got a first charge over the vehicle for realisation of the loan advanced to the owner of the vehicle.

4. The 7th respondent herein viz., the Insurance Company claimed that since the accident was on 16.01.1990 and the Insurance Policy expired well before that, and the same was renewed only subsequently, that was on 18.1.1990, the Insurance Company is not in any way liable to pay any amount.

5. The Motor Accident Claims Tribunal, after due enquiry, came to the conclusion that the accident took place only due to the rash and negligent driving by its driver and fixed the compensation payable to the claimants at Rs.83,500/- with interest at 12% per annum thereon. Thirdly, it held that the said amount has to be paid only by the owner of the vehicle viz, the appellant herein and completely absolved the Insurance Company of the liability.

6. The owner of the vehicle viz., the appellant herein, being aggrieved by the said award, has filed the above appeal.

Respondents-1 to 4 viz., the claimants in the MCOP., have filed Cross Objection No. 57/94, claiming compensation as claimed in the Original Petition.

7. We heard the elaborate submissions made by the counsel for the respective parties. The materials available on record have also been perused.

8. Three questions arise for consideration viz., :-

(a) Whether the driver of the vehicle was negligent and because of which, the accident had happened?

(b) What is the amount of compensation payable to Respondents-1 to 4 viz., the claimants in the O.P.?

(c) Who is liable to pay the compensation?

9. As far as the first question is concerned, this Court can safely come to the conclusion that the accident had taken place only because of the rash and negligent driving of the driver of the tractor, for the following reasons:-

(i) PW-2 is an eye witness to the occurrence and who is also a person, carrying on a similar profession that of the deceased. He has categorically deposed that he was pulling his cart which was loaded with cement slabs and going behind the deceased, when the accident took place. We perused his testimony and we find no reason to disbelieve the same.

(ii) Secondly, the version given by the driver of the tractor is totally contrary to the contents that are found in the complaint given by him before the police.

(iii) Thirdly, the motor vehicle Inspector, after proper test, issued Ex.P-3 certificate, which is to the effect that there was no mechanical defect in the said vehicle.

(iv) Finally, the driver was prosecuted before the Criminal Court for an offence under Section 304(A) IPC., found guilty and paid fine.

10. The next question is as to what is the amount of compensation that is payable to R-1 to R-4, the claimants in the MCOP. In the petition, it is claimed that the deceased was earning Rs.1200/- per month. The wife of the deceased, as P.W.1, has deposed before Court that the deceased used to earn a sum of Rs.40 to 50/- per day and out of which, he used to pay Rs.10 to 15/- towards the hire charges for the cart. The Tribunal, proceeded on the basis that he would have earned for 25 days in a month, fixed the monthly income at Rs.625/-, and out of which, it deducted the amount which he would have spent for himself and applying the multiplier of 15, fixed the compensation at Rs.58,500/-.

11. We perused the Original Petition and the evidence of PW-1 so also PW-3. PW-1 would claim that her husband used to earn Rs.40/- to 50/- per day and out of which, he used to give Rs.10/- towards hire charges for the cart. PW.3, the owner of the cart has also deposed that he used to collect Rs.10/- from the deceased towards hire charges. So, even taking that the deceased was earning Rs.40/- per day and out of which, deducting Rs.10/- as hire charges, one would arrive at a

figure of Rs.30/-. Therefore, on that basis, it can be safely taken that he would have earned a sum of Rs.900/- per month. This Court, applying the unit method, decides to deduct Rs.250/- and take Rs.650/- as the amount he would have contributed to the family per month. Applying the multiplier of 13, we arrive at a figure of Rs.1,01,400/-. With this, we add Rs.15,000/- in all under various heads for special damages including transportation, damages to clothes, cremation expenses, loss of love and affection and arrive at the figure of Rs.1,16,400/- (Rupees one lakh sixteen thousand four hundred only) with interest thereon at 9% per annum from the date of petition.

12. The learned counsel appearing for the State Bank of India at this juncture would contend that since the appellant is questioning only the correctness of the order, in that the Tribunal has not fastened the liability on the bank, the cross objection is not maintainable. In this context, the learned counsel relied on the decision of a learned single Judge of this Court reported in 1997 (1) L.W. 414 (The Oriental Insurance Co. Ltd., Madurai v. Indira & Others). In that case the Court has ruled that the cross objection filed by the Insurance Company where the liability is not challenged, is not maintainable. But if one goes through the grounds of appeal, particularly ground Nos.5, 7, 10, the appellant has specifically questioned the quantum. That being so, there is no substance in the submission of the learned counsel for the State Bank of India.

13. The next question is, as to who is liable to pay the compensation. Learned counsel for the appellant contended that only because of the negligence on the part of the State Bank in not renewing the policy before it expired, he has been now made liable to pay and that further, in the facts and circumstances of the case, the Tribunal ought to have directed the State bank to pay the compensation. Learned counsel appearing for the State Bank would contend that though it reserved a right to pay the Insurance Policy if it so desires, no duty was cast on it as per the agreement and that being so, the Bank cannot be fastened with the liability.

14. The fact that the appellant hypothecated the vehicle and borrowed the money is not in dispute. There can be no doubt with regard to the ownership of the

vehicle. Or in other words, it is the appellant, who is the owner of the vehicle. It is true that in the hypothecation agreement, the Bank has reserved a right among other things to pay the Insurance Policy, if it so desires and in that event, it would recover the premium from the appellant by debiting in his account. In fact, the Bank paid the premium for two years and that expired on 3.1.1990 and the bank renewed the policy only on 18.01.1990. Admittedly, on the fateful day that was on 16.01.1990, there was no insurance coverage.

15. At this juncture, we deem it necessary to quote the relevant portion from the counter of the owner of the vehicle which reads thus,

'... The 3rd respondent has agreed to insure the vehicles, and renew it from time to time till the entire loan is cleared and collect the premium from this respondent. In fact, the 3rd respondent did so for the first three years and omitted to renew the insurance policy, probably due to oversight or negligence or indifference. Instead of renewing the policy on or before the expiry date paid the premium only on 18.1.1990. This respondent submits that the 3rd respondent should take steps to renew the policy on or before the expiry date. But the 3rd respondent failed to renew the insurance policy covering the date of accident. ... This respondent therefore submits that the 3rd respondent only is legally bound to protect this respondent from all risks concerning the use of the vehicle (Tractor & Tractor). Even if the claim is allowed the 3rd respondent is liable to satisfy the award.'

16. The 2nd respondent in the Claim Petition, who is the appellant herein, got examined himself as RW-2 and in the chief examination he has deposed that according to the agreement it is only the third respondent viz., the State Bank of India has to pay the premium. Let us quote the exact wordings spoken to by him,

'... vdf;Fk; Kd;whtJ vjph;kDjhuh; t';fpf;Fk; nkw;go tpgj;J rk;ge;jg;gl;l thfdk; rk;ge;jkhf cs;s xg;ge;jj;jpd;go ehd;fhtJ vjph;kDjhuUf;F fhg;gPl;Lj; bjhifia Kd;whtJ vjph;kDjhuh; t';fpjhd; brYj;j ntz;Lk;. ...'

In fact, the appellant has reiterated in the cross examination that as per the conditions of the agreement, only the third respondent in the petition and 6th respondent herein should pay the premium.

17. For this claim made by the appellant, the State Bank of India filed a counter statement, wherein it has denied this claim of the appellant. The relevant paragraph is paragraph 2 wherein it is stated as under,

'This respondent emphatically denies that they paid the insurance premium for the vehicle to the Insurance Company and that therefore they are liable to pay the compensation to the petitioner. Insurance premium is payable only by the owner of the vehicle and is being paid only by him.'

At this juncture, it is very relevant to point out that none was examined on behalf of the State Bank of India. That apart, when in the chief examination the appellant claimed that for two years prior to the accident (1988 and 1989), it was the bank which paid the premium and that the same was not disputed by it while cross examining the appellant.

18. The learned counsel for the State Bank of India would contend that the reading of condition No. VII of the agreement for hypothecation dated 29.10.1986 would only show that the bank reserved a right to insure the vehicle and that cannot be understood as if the bank has a duty to insure or undertook to insure. It is true as per the said clause, the bank only reserved a right. But when the bank had chosen to exercise the right and insured the vehicle for two years, i.e., during the years 1988 and 1989 (ending up to 3.1.1990), it cannot turn round and say that it has no duty to insure. This defence might have been available, had the bank sufficiently in advance i.e, prior to the expiry (3.1.1990) of insurance cover, called upon the appellant to insure the vehicle in question. It is also relevant to point out that it is not the case of the bank that when it called upon the appellant to do some act, which alone would enable the bank to renew beyond 3.1.1990 and the appellant refused to come and co-operate and only because of which bank was not able to renew the Policy.

19. At this juncture it is necessary to refer to the ruling of the Supreme Court reported in (Pradeep Kumar Jain v. Citibank and another), relied on by the learned counsel for the State Bank of India. In that case what happened was, the appellant borrowed money from the Citibank for purchase of a car. He also obtained, in respect of the car, a policy of insurance from the Oriental Insurance Company

covering the period from January 21, 1989 to January 20, 1990 and the policy was endorsed to indicate that the subject of hire purchase would be payable by the Bank. The appellant issued 36 cheques in favour of the Bank being the amount payable for monthly installment, to pay off the entire loan. He also issued two cheques in favour of the Oriental Insurance Company Limited towards insurance premium for two years beyond January 20, 1990. But however, the bank did not take follow up action. On 15.8.1990 when the appellant was driving the car along with others, met with an accident on the National Highway. The appellant claimed that the bank had grievously neglected its duty in not insuring the vehicle and made a claim before the National Consumer Disputes Redressal Commission, covering the loss of the car as well as damages payable towards those who died in the accident.

The Commission proceeded on the basis that if the first respondent had not neglected in its duty to take the renewal of the policy for the next year and had got the policy renewed, then the insurance company would have settled the claim within a reasonable period and thus the concession made by the first respondent would have to be taken to its logical end and the Commission passed an order to that effect.

Before the Supreme Court the contention put forward is that the Commission should have proceeded further and held that the Bank is liable for damages payable by the appellant for want of insurance of the vehicle as determined by the Motor Accident Claims Tribunal and inasmuch as insurance policy had not been taken out, the appellant has been left high and dry and, therefore, he had to meet that damage.

While examining that claim, the Supreme Court pointed out when the obligation was upon the appellant to obtain such a policy, merely by passing of a cheque to be sent to the insurance company would not obviate his liability to obtain such policy and that further it is not clear on the record as to the nature of the policy that had been obtained by the appellant earlier when he purchased the vehicle and which was to be renewed from time to time and so also it is not clear whether even in the case of renewal, a fresh application has to be made by the appellant or on

the old policy itself and endorsement would have been made. After so pointing out, the Supreme Court observed as under,

'... In the absence of such material on record, and the nature of the insurance policy or any anxiety shown by the appellant in obtaining the policy as he could not ply such vehicle without such an insurance policy being obtained, he cannot claim that merely because he had passed on the cheques, the entire liability to pay all damages arising would be upon the first respondent.'

20. Coming to the case on hand, we have set out earlier the entire facts and the same would show that the facts and circumstances are entirely different here. The bank took the Policy for two years prior to the accident, which expired on 3.1.1990. The accident was on 16.1.1990. Again it was the bank, which renewed the policy on 18.1.1990. While the policy was renewed in the year 1989 and on 18.1.1990, the same was done only by the bank itself and in the facts and circumstances of this case, there was nothing which the appellant had to do to get the policy renewed. In fact, if the premium for renewal is sent/paid by the State Bank of India before the expiry of the insured period, automatically it is renewed even without a formal requisition. The payment of money for renewal is itself considered as a request for renewal on the same terms and conditions. As already pointed out, it is not the case of the bank that when it called upon the appellant to do certain act or co-operate with the bank to get the policy renewed, he neglected to do so. In fact, at the risk of repetition, it may be pointed out, the stand taken in the counter is that the bank never paid any premium on behalf of the appellant. We have pointed out about the categorical claim that has been made by the appellant in the counter statement and again in his evidence before Court as RW-2. Though appellant (RW-2) was cross examined, no question was put to him disputing the claim (of the appellant) that it was the bank which paid the insurance premium for two years before the accident. In fact, the statement of accounts produced before this Court Ex.B-2 would show that on 4th January, 1988, the bank debited a sum of Rs.736/- viz., the amount paid by the bank by way of Insurance premium and again on 23rd December, 1988, it debited a sum of Rs.689/- being the amount paid by it towards insurance premium. The other entry is also available i.e, when the bank renewed the Insurance Policy after the accident, that was on 18.1.1990, a sum of Rs.998/-

had been debited in the account of the appellant.

21. The above discussion would clearly show that because of the failure on the part of the State Bank of India to renew the policy, the appellant has to pay the compensation from his pocket. Of course, once the appellant makes such a payment, he would be entitled to recover the same from the state Bank of India by way of damages. We have no hesitation to say that inasmuch as the State Bank of India has been made a party and it also filed counter statement and actively participated in the proceedings by cross examining the witnesses there are absolutely no chances for it to defend itself when the appellant claims reimbursement by way of damages by putting forth any other possible defence. Then the question would be whether this Court can in this proceeding directly call upon the State Bank of India alone to pay the compensation due to the claimants.

22. The learned counsel appearing for the Claimants contended that it is not as if the claim can only be against the Driver/Owner of the Insurance Company and that it can even against the another joint tort feisor or against all those who are guilty of composite negligence. The learned counsel elaborating his submission, contended that the State Bank of India has done some wrong for the injured viz., the appellant and that has indirectly affected the claimants from getting compensation certainly and expeditiously. It is also pleaded that inasmuch as the State Bank of India will have no defence in the event of the appellant paying the compensation to the Claimants and initiating the proceedings against State Bank of India, this Court by invoking its inherent powers under Section 151 of Code of Civil Procedure, to meet the ends of justice and to avoid multiplicity of proceedings, can straight away direct the State Bank of India to pay the compensation to the Claimants. The counsel for the respondents/claimants would contend that the claimants are none else than the mother, widow and two minor daughters of the deceased and that even after more than a decade, they have not seen the colour of the coin and in fact they come under the category of down trodden, they being carrying on the profession of Coolies. That being so, this is the fit case where Section 151 of the Code has to be invoked and the Court can straight away call upon the State Bank of India to pay the compensation.

23. The learned counsel for the State Bank of India would contend that certainly the Bank cannot be called as a joint tortfeasor as the bank had nothing to do with the accident as such and it cannot be called a wrong doer. The learned counsel further contended that Section 151 cannot be invoked where otherwise there is remedy under the Act or in other words, the counsel would submit that the liability of the State Bank would arise only when the appellant paid the amount and if the Court finds no substance in the defence that may be raised by the State Bank in the suit filed for recovery of money by the appellant by way of damages. Any order passed as requested by the counsel for the appellant would work grave injustice to the bank as the same would amount to preventing the State Bank of India from putting forth its defence. It is also contended by the State Bank that the order in a claim petition filed under Motor Vehicles Act can only be against the driver/owner of the vehicle or the Insurance Company or in the case of composite negligence, against the owner/driver of the other vehicle or Insurance Company of that vehicle.

24. On the above rival contentions, two questions arise for consideration, viz., (1) Whether the State Bank of India can be called as 'Joint Tortfeasor', and (2) Whether this Court can straight away by invoking inherent powers, pass a decree directing the State Bank of India, to pay the compensation on the ground, had it insured the vehicle the appellant would have been relieved of this burden or in other words, whatever amount paid by the appellant to the claimants could be recovered from the State Bank of India by way of damages sustained by him.

25. The learned counsel appearing for the appellant in his endeavour to substantiate his first point viz., the State Bank of India is a tortfeasor, placed reliance on two rulings.

(a) The first one is reported in (Union of India v. United India Insurance Co. Ltd & Others). That was a case, where a bus carrying some employees of Survey Department, Government of Tamilnadu, who were on a tour to various places in Kerala, crossed an unmanned level crossing at Akaparamoia at about 3.00 p.m. on 7.5.1979. The said railway crossing had no gates or stiles and even the caution board was moth eaten and the writings thereon could not be deciphered by any one even if one was inclined to read. The train was visible to the driver and the

passengers at a distance of 1 k.m. But however, the driver drove the bus and while crossing the railway line, it suddenly stopped on the track and did not move. The passengers cried and shouted in panic and in no time, the Jayanthi-Janatha Express dashed against the bus and pushed up to a distance of 500 meters and in that process 40 passengers and the driver died and some other passengers injured. The Tribunal in that case found that the bus driver was negligent and passed award against the owner of the bus and Insurance Company but dismissed the petition against the Railways on the ground that there was no negligence on the part of the driver of the railway engine. However, on appeal, the High Court held the railways also liable on account of its negligence in regard to the same accident. In that case, while considering the point whether the Tribunal has jurisdiction to adjudicate a claim against railways when a motor vehicle is hit by a railway train and whether the tribunal can pass the award under Section 120(b) of the Act against the railways also in addition to the award passed against the owner of the vehicle and Insurance Company, was considered. In that context, the Supreme Court ruled thus,

'... we hold that the claim for compensation is maintainable before the Tribunal against other persons or agencies which are held to be guilty of composite negligence or are joint tort feasons, and if arising out of use of the motor vehicle. We hold that an award could be passed against the Railways if its negligence in relation to the same accident was also proved. ...' (b) The second ruling is reported in 2002 (4) SBR 38 (Union of India v. Bhagwati Prasad (D) & Others). That was a case where a taxi with passengers came in collision against a passenger train. It was alleged that the accident occurred due to the negligence of the Railway staff at the railway crossing, the railway crossing having been kept open for the highway traffic at a time the train was to pass through the point. The railway administration resisted it by contending that the Motor Vehicles Act can be invoked only to make claim against the Insurer, owner or driver of the Motor vehicle and the Tribunal has no jurisdiction to entertain the claim against the Railway Administration. In that case, the Court held that the jurisdiction of the Tribunal to entertain application for compensation flows from the provisions contained in Section 110-A read with sub-section (1) of Section 110. The Court also ruled that once the jurisdiction is invoked and is exercised the said jurisdiction cannot be

divested of on any subsequent finding about the negligence of the tortfeasor concerned. The accident arising out of the use of Motor Vehicle depends essentially on the fact whether there had been any use of Motor Vehicle and once that is established the Tribunal's jurisdiction cannot be held to be ousted on a finding being arrived at a later point of time that it is the negligence of the other joint tortfeasor and not the negligence of the Motor vehicle in question. The Court found that the ruling in the earlier case that if later it is found that the accident took place only due to the sole negligence of the other parties/agencies, then on that finding the claim would go out of Section 110(1) of the Act because the case would then become one of the exclusive negligence of Railways and further if the accident had arisen only on account of the negligence of persons other than the driver/owner of the motor vehicle, the claim would not be maintainable before the Tribunal, is not correct in law.

26. We may straight away hold that these two rulings would not in any way advance the case of the claimants that the State Bank of India is a joint tortfeasor. A joint tortfeasor is a wrong doer and that must be in the happening of the accident. That being so, the negligence of the bank, though has resulted in some harm to the Claimants, it cannot be called joint tortfeasors.

27. Let us proceed to consider the second point. We have already discussed in detail the case of the appellant and the State Bank as to whether the Bank failed to perform its duty viz., renewing the Policy beyond 3.1.1990. We have also pointed out that the State Bank has filed rather a false counter statement in that it has even denied having paid premium for two years i.e., for 1988 and 1989, prior to the accident. The bank also did not cross examine the appellant on this aspect when he was in the witness box. We have also come to the conclusion that the bank has to make good the loss to the appellant when he pays the compensation amount to the claimants. In case if the bank fails to make the payment, it is also open to the appellant to file a suit. Certainly the bank will not have any defence. Even if it comes forward with any defence, that cannot be accepted and will not be accepted since before the Tribunal it failed to put-forth any defence and in fact, filed a false statement and did not choose to examine anyone.

28. Section 151 of the Code of Civil Procedure confers inherent powers on the Courts to pass orders to meet the ends of justice. Now in the normal course the appellant will have to pay the money to the claimants and if that is not done, the Claimants will have to initiate proper proceedings to recover the amount from the appellant. As we have already held the bank is guilty of negligence and it has to make good the loss to the appellant. The deceased was a coolie by profession and the claimants are none else than the mother, widow and two minor daughters, who are in the lower strata of the Society and have to work hard for every meal. The accident occurred about 12 years back. The appellant resorting to further proceedings to recover the money from the appellant would mean further hardship and delay in their getting the compensation and will result in multiplicity of proceedings. Hence if this Court passes an order directly calling upon the State Bank of India to pay the compensation, then, not only the claimants, who are down trodden, would get the amount early at least now after 12 years, but also the multiplicity of proceedings can be prevented. We are of the view that there is no bar for this Court to invoke Section 151 of the Code and call upon the State Bank of India to pay the compensation amount to the Claimants.

The ruling of the Supreme Court in *Skandia Insurance Co. Ltd. vs. Kokibaben Chandravadan* is uppermost in our mind and which has, in fact, prompted this court to invoke the inherent jurisdiction. Let us quote the relevant portion from the said Judgment:-

' Ordinarily it is not the concern of the legislature whether the owner of the vehicle insures his vehicle or not. If the vehicle is not insured any legal liability arising on account of third party risk will have to be borne by the owner of the vehicle. Why then has the legislature insisted on a person using a motor vehicle in a public place to insure against third party risk by enacting Section 94? Surely the obligation has not been imposed in order to promote the business of the insurers engaged in the business of automobile insurance. The provision has been inserted in order to protect the members of the community travelling in vehicles or using the roads from the risk attendant upon the user of motor vehicles on the roads. The law may provide for compensation to victims of the accidents who sustain injuries in the course of an automobile accident or compensation to the dependants of the

victims in the case of a fatal accident. However, such protection would remain a protection on paper unless there is a guarantee that the compensation awarded by the courts would be recoverable from the persons held liable for the consequences of the accident. A court can only pass an award or a decree. It cannot ensure that such an award or decree results in the amount awarded being actually recovered, from the person held liable who may not have the resources. The exercise undertaken by the law courts would then be an exercise in futility. And the outcome of the legal proceedings which by the very nature of things involve the time cost and money cost invested from the scarce resources of the community would make a mockery of the injured victims, or the dependants of the deceased victim of the accident, who themselves are obliged to incur not inconsiderable expenditure of time, money and energy in litigation.'

29. However, the learned counsel for the State Bank of India argued when there are express provisions in law by resorting to which the claimants can claim the money, this Court cannot invoke Section 151 of the Code. The learned Counsel at this juncture would draw the attention of this Court to the decision reported in (Nainsingh v. Koonwarjee and others) wherein in paragraph 4 of the said Judgment the Supreme Court observed as under,

'... In other words the Court cannot make use of the special provisions of Section 151 of the Code where a party had his remedy provided elsewhere in the Code and he neglected to avail himself of the same. Further the power under Section 151 of the Code cannot be exercised as an appellate power.'

In this case, though the claimants have a remedy, as on date the question of their neglecting to avail themselves of the same, does not arise.

30. In the result, the Civil Miscellaneous Appeal is allowed. The Cross Objection is allowed in part. The Claimants/respondents 1 to 4 are entitled to a compensation of Rs.1,16,400/- (Rupees one lakh sixteen thousand four hundred only) with an interest at the rate of 9% per annum from the date of filing of the original petition. The 6th respondent herein viz., State Bank of India, is solely made liable to pay the Compensation amount awarded herein to the Claimants. The amount of Rs.25,000/- deposited by the appellant before the Tribunal shall be refunded to

him.

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