

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 13th August, 2012
Pronounced on: 27th November, 2012

+ **MAC.APP. 167/2008**

ORIENTAL INSURANCE COMPANY LTD. Appellant
Through: Mr. Joy Basu, Advocate

versus

BABY KOMAL & ANR. Respondents
Through: Ms. Manjeet Chawla, Advocate for
Claimant.
Mr. P.K. Seth, Advocate for
Respondent/Tagore International School.

+ **MAC.APP. 168/2008**

ORIENTAL INSURANCE COMPANY LTD. Appellant
Through: Mr. Joy Basu, Advocate
versus

SOMPAL & ORS. Respondents
Through: Ms. Manjeet Chawla, Advocate for
Claimant.
Mr. P.K. Seth, Advocate for
Respondent/Tagore International School.

+ **MAC.APP. 169/2008**

THE ORIENTAL INSURANCE COMPANY LTD. Appellant
Through: Mr. Joy Basu, Advocate

versus

RAM AVTAR & ANR. Respondents

Through: Ms. Manjeet Chawla, Advocate for
Claimant.
Mr. P.K. Seth, Advocate for
Respondent/Tagore International School.

+ **MAC.APP. 170/2008**

ORIENTAL INSURANCE COMPANY LTD. Appellant
Through: Mr. Joy Basu, Advocate

versus

BISHAMBAR & ANR. Respondents
Through: Ms. Manjeet Chawla, Advocate for
Claimant.
Mr. P.K. Seth, Advocate for
Respondent/Tagore International School.

+ **MAC.APP. 171/2008**

ORIENTAL INSURANCE COMPANY LTD. Appellant
Through: Mr. Joy Basu, Advocate

versus

SMT. CHEENA & ANR. Respondents
Through: Ms. Manjeet Chawla, Advocate for
Claimant.
Mr. P.K. Seth, Advocate for
Respondent/Tagore International School.

+ **MAC.APP. 172/2008**

THE ORIENTAL INSURANCE COMPANY LTD. Appellant
Through: Mr. Joy Basu, Advocate

versus

MAHINDER & ANR. Respondents

Through: Ms. Manjeet Chawla, Advocate for
Claimant.
Mr. P.K. Seth, Advocate for
Respondent/Tagore International School.

+ **MAC.APP. 173/2008**

THE ORIENTAL INSURANCE COMPANY LTD. Appellant
Through: Mr. Joy Basu, Advocate

versus

SOMPAL & ANR. Respondents
Through: Ms. Manjeet Chawla, Advocate for
Claimant.
Mr. P.K. Seth, Advocate for
Respondent/Tagore International School.

+ **MAC.APP. 197/2008**

THE ORIENTAL INSURANCE COMPANY LTD. Appellant
Through: Mr. Joy Basu, Advocate

versus

SMT. SUMARTI DEVI & ORS. Respondents
Through: Ms. Manjeet Chawla, Advocate for
Claimants.
Mr. P.K. Seth, Advocate for
Respondent/Tagore International School.

+ **MAC.APP. 199/2008**

THE ORIENTAL INSURANCE COMPANY LTD. Appellant
Through: Mr. Joy Basu, Advocate

versus

SMT. AMARWATI & ANR. Respondents
Through: Ms. Manjeet Chawla, Advocate for

Claimant.
Mr. P.K. Seth, Advocate for
Respondent/Tagore International School.

+ MAC.APP. 200/2008

THE ORIENTAL INSURANCE COMPANY LTD. Appellant
Through: Mr. Joy Basu, Advocate

versus

SHRI VIJENDER & ANR. Respondents
Through: Ms. Manjeet Chawla, Advocate for
 Claimant.
 Mr. P.K. Seth, Advocate for
 Respondent/Tagore International School.

+ MAC.APP. 201/2008

THE ORIENTAL INSURANCE COMPANY LTD. Appellant
Through: Mr. Joy Basu, Advocate

versus

SMT. SAVITRI & ANR. Respondents
Through: Ms. Manjeet Chawla, Advocate for
 Claimant.
 Mr. P.K. Seth, Advocate for
 Respondent/Tagore International School.

+ MAC.APP. 202/2008

THE ORIENTAL INSURANCE COMPANY LTD. Appellant
Through: Mr. Joy Basu, Advocate

versus

SMT. CHANDRA DEVI & ORS. Respondents
Through: Ms. Manjeet Chawla, Advocate for
Claimants.
Mr. P.K. Seth, Advocate for
Respondent/Tagore International School.

+ **MAC.APP. 203/2008**

ORIENTAL INSURANCE COMPANY LTD. Appellant
Through: Mr. Joy Basu, Advocate

versus

SMT. PREMWATI & ORS. Respondents
Through: Ms. Manjeet Chawla, Advocate for
Claimants.
Mr. P.K. Seth, Advocate for
Respondent/Tagore International School.

+ **MAC.APP. 204/2008**

ORIENTAL INSURANCE COMPANY LTD. Appellant
Through: Mr. Joy Basu, Advocate

versus

SMT. SANTOSH & ORS. Respondents
Through: Ms. Manjeet Chawla, Advocate for
Claimants.
Mr. P.K. Seth, Advocate for
Respondent/Tagore International School.

+ **MAC.APP. 205/2008**

THE ORIENTAL INSURANCE COMPANY LTD. Appellant
Through: Mr. Joy Basu, Advocate

versus

SOMPAL & ANR. Respondents
Through: Ms. Manjeet Chawla, Advocate for
Claimant.
Mr. P.K. Seth, Advocate for
Respondent/Tagore International School.

+ **MAC.APP. 209/2008**

THE ORIENTAL INSURANCE COMPANY LTD. Appellant
Through: Mr. Joy Basu, Advocate

versus

MASTER ABHISHEK & ANR. Respondents
Through: Ms. Manjeet Chawla, Advocate for
Claimant.
Mr. P.K. Seth, Advocate for
Respondent/Tagore International School.

+ **MAC.APP. 210/2008**

THE ORIENTAL INSURANCE COMPANY LTD. Appellant
Through: Mr. Joy Basu, Advocate

versus

SURESH & ORS. Respondents
Through: Ms. Manjeet Chawla, Advocate for
Claimants.
Mr. P.K. Seth, Advocate for
Respondent/Tagore International School.

+ **MAC.APP. 211/2008**

THE ORIENTAL INSURANCE COMPANY LTD. Appellant
Through: Mr. Joy Basu, Advocate

versus

MASTER ANKIT & ANR. Respondents
Through: Ms. Manjeet Chawla, Advocate for
Claimant.
Mr. P.K. Seth, Advocate for
Respondent/Tagore International School.

+ **MAC.APP. 212/2008**

THE ORIENTAL INSURANCE COMPANY LTD. Appellant
Through: Mr. Joy Basu, Advocate

versus

SMT. AMARWATI & ORS. Respondents
Through: Ms. Manjeet Chawla, Advocate for
Claimant.
Mr. P.K. Seth, Advocate for
Respondent/Tagore International School.

CORAM:
HON'BLE MR. JUSTICE G.P.MITTAL

J U D G M E N T

G. P. MITTAL, J.

1. These 19 Appeals (MAC APP.167/2008, 168/2008, 169/2008, 170/2008, 171/2008, 172/2008, 173/2008, 197/2008, 199/2008, 200/2008, 201/2008, 202/2008, 203/2008, 204/2008, 205/2008, 209/2008, 210/2008, 211/2008 and 212/2008) are directed against a common judgment dated 30.11.2007 whereby the Appellant's plea of breach of the

terms and conditions of the policy in 19 Claim Petitions (in Suit Nos. 335/2007, 336/2007, 337/2007, 338/2007, 339/2007, 340/2007, 341/2007, 342/2007, 343/2007, 344/2007, 345/2007, 346/2007, 347/2007, 348/2007, 349/2007, 350/2007, 351/2007, 352/2007 and 353/2007) was rejected and the Claim Petitions were allowed.

2. Before turning to the legal question raised in the Appeals, I may delve into the facts of the case and the plea taken by the respective parties.
3. Nineteen Claim Petitions were filed with the allegation that some residents of Dakshinpuri, New Delhi had travelled to Gogamedi, for a pilgrimage, in Swaraj Mazda No.DL-IV-2571, a school bus, on 19.08.1999. On 20.08.1999, they were on their return journey. At about 11:00 A.M. the bus reached near the Electricity Board Office, Bhadra. It is alleged that Fazal Haque, the driver of the bus was driving the same in a rash and negligent manner. While taking a turn near the Electricity Board Office, the driver lost control of the bus which went off the road and collided against a house resulting in grievous injuries to the occupants. Some of the occupants succumbed to the injuries.
4. Respondent Tagore International School (the owner of the bus hereinafter referred to as the 'School') contested the Claim Petitions by way of filing separate written statements. While denying negligence on the part of its driver Fazal Haque (who died during pendency of the Claim Petitions) the school took up the plea that the bus was sent to Kali Banga where some of its students had gone to study the remains of *Harappa*, an ancient civilization. In the evening of 18.08.1999 an intimation was received that there was acute shortage of drinking water and food for the students. It

was decided to send some drinking water and food packets. On the next day, the school arranged food packets and drinking water and stacked it in the dicky of the earlier said bus. Later on, the school authorities came to know that the bus met with an accident and a number of persons were travelling in the said bus at that time. It was revealed that some poor people had requested the driver for a lift up to Gogamedi where a traditional fair was being organized, which was on way to Kali Banga. On humanitarian grounds, the driver had offered them lift without any charge or reward. The school took up the plea that neither the management of the school nor any person from the school authorized the driver to give lift or to allow any person to board the bus on the way.

5. The school also took up the plea that a number of Claim Petitions arising out of the same accident filed before the Motor Accident Claims Tribunal (the Claims Tribunal) Shahpura, District Jaipur were settled before the Lok Adalat and, therefore, the Appellant Insurance Company was estopped from denying its liability.
6. The Appellant Insurance Company (Respondent No.3 before the Claims Tribunal) contested the Claim Petitions on the ground that the School (the insured) committed breach of terms and conditions of the policy and was therefore, not liable to pay any compensation to the Claimants. A plea was also raised that since the Appellant had covered risk of 32 passengers only and more than 32 passengers were found travelling in the bus at the time of the accident, it would be liable to pay compensation (in case its liability is proved) to not more than 32 passengers. This plea is not of any consequence as it is admitted case of the parties that only 11 Claim

Petitions were filed before the Claims Tribunal, Shahpura and 19 before the Claims Tribunal, Delhi.

7. On the basis of pleadings of the parties, the following issues were framed by an order dated 06.05.2003.

“(i) Whether deceased Sh. Ramcharan suffered fatal injuries in an accident which took place on 20.8.99 due to rash and negligent driving of vehicle No.DL IV 2571, driven by R1 owned by R2 and insured with R3? OPP.

(ii) Whether R3 is not liable to pay compensation on account of preliminary objections No.2 and 3, taken in its written statement? OPR.

(iii) Whether Petitioner is entitled for compensation? If so, what amount and from whom?

(iv) Relief.”

8. Thereafter, by an order dated 23.08.2003 a preliminary issue was framed which is treated as Issue No.(iii) and Issue No.(iii) was re-numbered as Issue No.(iv). The same is extracted hereunder:-

“Whether Respondent No.3 is estopped from contesting the petition for the reasons that 11 cases pertaining to the same accident have already been settled by R.No.3, in the Court of Ld. Motor Accident Claim Tribunal, Shahpura, Distt. Jaipur, Rajasthan?”

9. On appreciation of evidence and while relying on *State of Haryana through Secretary Transport Chandigarh v. Sudesh Raizada & Ors. 1991 ACJ 54; State of Punjab v. Mehar Devi & Ors. 1990 ACJ 274* the Claims Tribunal held that the finding on negligence having attained finality in a connected case is binding in the subsequent case and cannot be

challenged in subsequent proceedings arising out of the same accident. The Claims Tribunal further relied on a judgment of the Karnataka High Court in *Sandhya v. Karnataka State Road Transport Corporation* 2000 ACJ 1565 where it was held that the finding on negligence as in an earlier Claim Petition cannot be re-agitated being *res judicata*.

10. While dealing with the issue of liability, the Claims Tribunal held that the onus was on the Appellant Insurance Company to prove that there was breach of the terms and conditions of the Insurance Policy on the part of the insured which the Appellant failed to establish. The Claims Tribunal relied upon the report of the Supreme Court in *Chagga Lal Keshav Lal Mehta v. Patel Narain Dass Hari Bhai* AIR 1982 SC 121 and held that the plea of breach of the terms and conditions of policy having not been taken in the earlier Claim Petitions at Shahpura, the Appellant was estopped from raising a plea of breach of terms and conditions of the policy in this case as it cannot be permitted to shift stands in different Claim Petitions. Thus, the Claim Petitions were allowed and various amount of compensation were awarded in different Claim Petitions.
11. The finding on negligence is not challenged by the Appellant Insurance Company. The same has, therefore, attained finality.
12. The quantum of compensation has also not been challenged by the Appellant Insurance Company. However, some Appeals have been filed by the Claimants for enhancement of compensation which are to be taken up for disposal after decision of these Appeals.
13. The question for consideration in the instant Appeals are :-

- (i) Whether the Appellant is estopped from raising plea of breach of terms and conditions of policy on account of settlement of 11 Claim Petitions before the Claims Tribunal, Shahpura, Rajasthan.
- (ii) If it is not estopped from raising such a plea, whether the Appellant successfully proved the breach of the terms and conditions of the policy.

QUESTION NO.1:

14. Section 149 of the Act enjoins the insurer of a motor vehicle to satisfy judgments and awards against persons insured in respect of third party risk when a policy of insurance is obtained in respect of any motor vehicle. Sub-section 2 permits the insurer to avoid indemnification of the insured in case of breach of the specified conditions of the policy as laid down under Section 149 (2)(a) and (b) of the Act. Section 149(2) of the Act is extracted herein:-

“149. Duty of insurers to satisfy judgments and awards against persons insured in respect of third party risks-

(1)

(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 of 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 disqualification; or

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

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

which was false in some material particular.”

15. Section 66 of the Act makes it mandatory for owners of certain vehicles to obtain permit in order to ply it in any public place. Sub-section 3, which is in the shape of proviso to Section 66 of the Act exempts the vehicles owned by Central Government/State Government etc. and those used for govt. purposes and unconnected with any commercial enterprises from obtaining the permit as stated in sub-section 1. This accident took place on 19th August 1998. At that time Clause (h) of sub-Section 3 exempted educational institution to obtain any permit for any transport vehicle owned by it provided the same was used solely for the purpose of the educational institution. Clause (h) as it was on the statute book at the relevant time (omitted w.e.f. 11th August 2000), reads as under:-

Section 66 (3):- The provision of sub section (1) shall not apply-

(h) to any transport vehicle owned by, and used solely for the purposes of any educational institution which is recognised by the Central or State Government or whose managing committee is a society registered under the Societies Registration Act, 1860 (21 of 1860) or under any law corresponding to that Act in force in any part of India.

16. It is urged by the learned counsel for the Appellant that there cannot be any estoppel against a statute. Even for waiver there has to be conscious relinquishment of the right. The learned counsel argues that if for any reason, the Appellant Insurance Company, either under some mistake or for any other reason failed to take the defence of breach of the terms and conditions of the policy on the part of the insured, it cannot be asked to

perpetuate the mistake particularly when the earlier claim petitions (before Shahpura Court) were not decided on merits.

17. The Appellant's plea is that the school had allowed the bus to be used for the purpose of carrying certain passengers on hire to a place called Gogamedi. Thus, the school used the vehicle for a purpose other than that of the educational institution; the school was, therefore, required to have a permit as the exemption granted under Clause (h) mentioned above vanished.
18. On the other hand, it is contended by Mr. P.K. Seth, learned counsel for the school that since the school was exempted from obtaining any permit there could not be any violation of Section 149 (2)(a)(i)(c) of the Act and the Appellant ought to have proved that the bus was being used for hire and reward under Section 149 (2)(a)(i)(c) of the Act in order to avoid the liability.
19. I would examine a little later whether the school required the permit if the school bus was being used for a purpose other than that of the educational institution. At this juncture, I would deal with the issue whether the Appellant is estopped from raising a plea of breach of the terms and conditions of the policy.
20. In support of his contention that there cannot be any estoppel against a statute, the learned counsel for the Appellant places reliance on *K. Kochunni @ Muppil Nayyar v. K. Kuttanunni @ Elaya Nayar & Ors.* AIR (35) 1948 PC 47, *Vanguard Fire & General Insurance Co. Ltd. v. Sarla Devi & Ors.* AIR 1959 Punjab 297, *Collector of Customs and Central*

Excise, West Bengal & Ors. v. Hindustan Motors Ltd. & Anr. 1979 ELT (J313), Kolhapur Cane Sugar Works Ltd. & Anr. v. UOI & Ors. 1986 (24) ELT 205 (Del), Maheshwari Meals Ltd. v. Union of India, 1992 (59) ELT 9 (Gujarat) and Chhaganlal Keshavlal Mehta v. Patel Narandas Haribhai AIR 1982 SC 121.

21. In *K. Kochunni* (Supra), the Privy Council held that when no one was misled into doing anything to his detriment as a result of the mistaken view; there was no representation; no acting on it; no misleading; no change of position on such representation; there can neither be any estoppel nor waiver nor acquiescence. Similarly in *Sarla Devi* (Supra) while holding that there cannot be any estoppel against the statute, the Punjab High Court held that on plaintiffs' failure to rely specifically on a statutory provision (Section 96 of the Motor Vehicles Act in the said case) the Appellant cannot invoke the principle of estoppel.
22. In *Hindustan Motors Ltd.* (Supra) the facts were that in March 1969, 21 drums of primary nickel were shipped from Bulgaria against orders placed by Hindustan Motors Ltd. They also opened the letter of credit in terms of the licence. The goods were cleared by Customs Authorities from the bonded warehouse after full payment of customs duty from time to time. Between October 4, 1969 and October 22, 1969 there were searches and seizures (of documents) by the Enforcement Directorate of the Central Government at the factory premises, the office premises of Hindustan Motors Ltd., and the residence of some of the officers of the company under Section 19D of the Foreign Exchange Regulation Act, 1947. Thereafter, the Customs Authorities effected a seizure of 9 drums

of primary nickel under Section 110 of Customs Act, 1962. The Customs Authorities took the plea that permission to clear the goods was given by mistake. The Calcutta High Court held that the assessee cannot raise the plea of estoppel and cannot claim protection, as it was contrary to law and it was his duty to obey the law.

23. In Chhaganlal (Supra) the facts can be extracted from paras 2 to 7 of the judgment hereunder:-

“2. The property in dispute, situated in Baroda city, originally belonged to Motibhai Bapubhai Shibandi Baxi (for short ‘Motibhai’). He created a mortgage with possession of the disputed property in favour of one Nanaji Balwant Pilkhanewala (for short ‘Nanaji’) in 1871 for a sum of Rs 800. In 1890 a second mortgage was created in favour of the same mortgagee and the amount secured by this second mortgage was Rs 375. Somewhere between 1890 and 1912 the original mortgagee Nanaji died leaving behind his two sons Hari and Purshottam as his heirs and legal representatives. The two sons of Nanaji sold the entire mortgagee rights and interest to one Ganpatram Mugutram Vyas (for short “Ganpatram” [AIR 1930 Bom 466: (1930) 54 Bom 625] on July 4, 1912. Ganpatram in his turn sold the mortgagee rights in a part of the mortgaged property, viz. common latrine, to one Vamanrao Laxmanrao Nirkhe (for short ‘Vamanrao’).

3. Ganpatram died and his son Chhotalal Ganpatram (for short ‘Chhotalal’) sold away his rights as a mortgagee in possession in respect of the rest of the properties which still remained with him, to Chhaganlal Keshavlal Mehta (for short ‘Chhaganlal Mehta’).

4. Mortgagor Motibhai also died leaving behind his son Chimanrai Motibhai Baxi (for short 'Chimanrai'). Chimanrai died leaving behind his widow Chhotiba and a daughter Taralaxmibai. On September 12, 1950 Taralaxmibai sold her right, title and interest in the suit property to one Shantilal Purshottamdas Dalia (for short "Shantilal"). Later on Shantilal conveyed his right, title and interest in the property to the plaintiff, Narandas Haribhai Patel (for short 'Narandas')"

5. It appears that during the lifetime of Chimanrai, Ganpatram, the mortgagee, had sent a notice, Ex. 77, dated April 15, 1913 to Chimanrai informing him that the mortgaged property was in a dilapidated condition and required repairs. He had already spent some amount towards repairs but still substantial repairs were needed and the same should be got done by him or he should pay the mortgage amount and redeem the property. On receipt of this letter Chimanrai made the following endorsement:

"During the lifetime of my father, I had become separated from him without taking any kind of the movable or immovable property belonging to him and even after his death, I have not taken any kind of his properties nor have I kept my right over the said properties and so I am not in any way responsible for your any transaction whatsoever in connection with his properties. Be it known to you. And while giving you a definite assurance to that effect I have made attestation on the aforesaid document in respect of purchase of the mortgagee's rights, which may also be known to you".

6. Long after the death of Chimanrai, Chhotalal, son of Ganpatram, gave a similar notice, Ex. 68, October 6, 1933 to Chhotiba, the widow of

Chimanrai calling upon her to redeem the mortgage in question. On this notice similar endorsement on behalf of Chhotiba was made on October 10, 1933 by Lomeshprasad Hariprasad Desai (for short 'Lomeshprasad'), her daughter's son, as had been made by Chimanrai earlier on the notice given by Ganpatram. Yet another notice, Ex.78, dated September 21, 1933 was sent by Chhotalal to Taralaxmibai, daughter of Chimanrai to the same effect. In her reply, Ex. 73, dated October 3, 1933 to the notice, Taralaxmibai stated inter alia that her father Chimanrai had forgone all rights whatsoever in the property of his father, Motibhai, during his lifetime and hence she had no concern with the property of Motibhai. It was further stated that her own mother Chhotiba was alive (in October 1933) and, therefore she had no concern whatsoever with the property of Motibhai or the liabilities arising out of the dealings of Motibhai.

7. Narandas after the purchase of the mortgagor's rights from Shantilal filed a suit for redemption impleading both the assignees of the mortgagee's rights, Chhaganlal Keshavlal Mehta, as the 1st defendant, and Vamanrao Laxmanrao Nirkhe, as the 2nd defendant.”

The High Court held that estoppel deals with questions of fact and not of rights. A person cannot be estopped from asserting his right even if at any time he had represented that he would not assert it. The Supreme Court laid down eight essential conditions to be satisfied in order to entitle a party to raise a plea of estoppel. Paras 22 and 23 of the report are extracted hereunder:-

22. It may be pointed out that estoppel deals with questions of facts and not of rights. A man is not estopped from asserting a right which he had said that he will not assert. It is also a well-known principle that there can be no estoppel against a statute. After the death of Motibhai his son Chimanrai succeeded in law.

23. To bring the case within the scope of estoppel as defined in S. 115 of the Evidence Act: (1) there must be representation by a person or his authorised agent to another in any form – a declaration, act or omission; (2) the representation must have been of the existence of a fact and not of premises *de futuro* or intention which might or might not be enforceable in contract; (3) the representation must have been meant to be relied upon; (4) there must have been belief on the part of the other party in its truth; (5) there must have been action on the faith of that declaration, act or omission, that is to say, the declaration, act or omission must have actually caused another to act on the faith of it, and to alter his former position to his prejudice or detriment; (6) the misrepresentation or conduct or omission must have been the proximate cause of leading the other party to act to his prejudice; (7) the person claiming the benefit of an estoppel must show that he was not aware of the true state of things. If he was aware of the real state of affairs or had means of knowledge, there can be no estoppel; (8) Only the person to whom representation was made or for whom it was designed can avail himself of it. A person is entitled to plead estoppel in his own individual character and not as a representative of his assigned.

24. There cannot be any dispute about the proposition of law that there cannot be any estoppel against a statute. The eight conditions enumerated

in para 23 in *Chhaganlal* must be satisfied before a party can be permitted to raise a plea of estoppel.

25. Turning to the facts of the instant case, it is not in dispute that 11 claim petitions were filed before the Claims Tribunal, Shahpura, Rajasthan. The claim petitions before the Claims Tribunal, Delhi were filed on 20th January, 2000. The written statement by the Appellant Insurance Company was filed on 7th September 2001, which shows that it was aware of filing of several claim petitions in different cities in 2001. The proposal for settlement in Shahpura Court was made on 19th July 2002 and settlement was reached in the Lok Adalat on 28th September 2002. The settlement of the claims of 11 petitioners was an admission of negligence (of the driver) and liability was of the Insurance Company to pay the compensation.
26. The claim petitions before Shahpura Court were contested by the school. Thus from the Appellant's admission, there was a representation made by it to the school regarding admission of driver, negligence and its liability to pay the compensation. As urged by the learned counsel the school was entitled to dispute its liability on the factum of negligence on the part of its driver. An admission of negligence and liability was a representation made by the Appellant which was relied upon by the school. There could not be any doubt about its truth. On account of the representation made by the Appellant, the school is now estopped from challenging the finding on negligence. Thus the representation made by the Appellant would prejudice the school if it is now permitted to take the plea that there is breach of terms and conditions of insurance policy by the school.

27. Of course, there cannot be any estoppel against the statute, but there can be estoppel against factual assertion made by the party. In the instant case, since there was an admission of the liability there is no question of estoppel against the statute. The authorities relied upon by the learned counsel for the Appellant are thus not attracted to the facts of the case. In the circumstances, in my view the Claim Tribunal rightly held that the Appellant is estopped from raising the plea of breach of the terms and conditions of the policy.

QUESTION NO.II

28. Even if it is assumed that the Appellant is not estopped from raising the plea of breach of the policy; has it succeeded in proving willful breach of the terms and conditions on the part of the school i.e. the insured. It is urged by the learned counsel for the Appellant that it was impossible for the school bus to cover a distance of 349 Kms from Delhi to Gogamedi and Kali Banga and then another 300 Kms from Gogamedi to Bhadra (the place of accident) in a period of just one day.
29. No evidence was brought in by the Appellant Insurance Company to prove that the distance upto Bhadra could not be travelled from 19.08.1999 (11.00 AM) to 20.08.1999 (11:30 AM). In order to prove that the school bus carried water and food packets to the students at Kali Banga the school examined RW1 Nalin Chester.
30. The learned counsel for the Appellant states that a vehicle for carrying a group of passengers to a destination is always booked in advance. Thus, the hiring of the bus could not have been done without the active

participation, connivance and knowledge of the insured (the school). The learned counsel for the Appellant drew my attention to the Claim Form Ex.R1W1/X1R3 and urged that many columns like; for what purpose the vehicle was being used at the time of accident; was the vehicle plied for hire; number of passengers carried; number of passengers permitted etc. were left blank which would go to show that the school(the insured) tried to hide important information and an inference of guilty intention on the part of the insured must be drawn.

31. The learned counsel for the Appellant stated that although the insured tried to build up a case that the school children had gone to Kali Banga on an educational trip to study the remains of *Harappa* an ancient civilization, yet neither any teacher, nor any student nor even the conductor or the driver of the bus who carried the teachers and the students to Kali Banga were produced to prove these facts. Thus, it is argued that the plea raised by the school that the bus was sent to Kali Banga with packets of food and water is only a made-up story and cannot be believed.
32. The learned counsel for the Appellant referred to the testimony of SI Abdul Kayum Khan, the Investigating Officer (R3W4) of the accident case who testified that from his investigation it transpired that the passengers had booked the bus from Delhi to Gogamedi to visit a fair and the bus met with the accident on its return journey. The learned counsel stated that the IO of the case was an independent witness and from the result of the investigation, it was evident that the insured committed breach of the terms and conditions of the policy. The learned counsel

urged that the Claims Tribunal erred in rejecting the report Ex.R3W5/15 of Intiaz Ahmed, Investigator appointed by the Insurance Company. He stated that the report of the Investigator could have been taken into consideration at least to corroborate other evidence produced by the Appellant to prove breach of the terms and conditions of the policy.

33. On the other hand, the learned counsel for the School (the insured) stated that no reliable, cogent and convincing evidence was produced by the Appellant Insurance Company to prove the breach of the terms and conditions of the policy. The Appellant not having discharged the onus of proving the breach cannot shift the onus on the insured. The insured led sufficient evidence to prove that it did not allow the school bus to be used for carrying the passengers.
34. The Appellant Insurance Company examined Neeraj Bidani (R3W1), UDC, Transport Department, Rajpur Road, Delhi and M.John (R3W3), Assistant Secretary RTO, Rajpur Road, Delhi to prove that the school bus was exempted from obtaining permit and that it was also exempted from payment of road tax. R3W1 proved a number of conditions imposed on the school so as to avail the exemption from the payment of road tax as Ex.R3W2/2 which, inter alia, included that the bus could not be used even by any other branch of the same school. While dealing with the question whether there was any breach of the terms and conditions of the policy, I am not concerned whether the conditions imposed for obtaining exemption from payment of road tax were complied with by the school or not. It goes without saying that a recognized educational institution was exempted from taking a permit for any transport vehicle owned by it,

provided, it was used only for the purpose of the educational institution. Once it is proved by the Appellant that the school bus was being used for a purpose other than that of educational institution, the exemption granted under Section 66(3)(h) of the Act would become ineffective and the educational institution would be required to have a permit for such a transport vehicle. I would agree with the learned counsel for the Appellant Insurance Company that if it is proved that the school bus was being used for purpose other than that of educational institution, that is, for hire and reward or even for any other purpose, the exemption granted would disappear.

35. Before analyzing the evidence adduced by the parties, it would be appropriate to have a look at the law as to the onus of proving the breach of the terms and conditions of the policy.
36. Section 146 of the Act makes it mandatory for every person using a motor vehicle (except as a passenger) to have a policy of insurance complying with the requirement of Chapter 11 of the Act. Failure to obtain an insurance policy has been made a criminal offence punishable under Section 196 of the Act. Section 147 of the Act deals with the requirement of the insurance policy and the limits of liability; an authorised insurer is not empowered to issue an insurance policy which does not cover the risk as provided under Section 147 of the Act. Section 149(i) of the Act makes it obligatory on the insurer to satisfy the claim in respect of the third party after a certificate of insurance has been issued under Section 147(c) of the Act. Sub-section (2) of Section 149 entitles an insurer to avoid its liability to indemnify the insured on the grounds as

mentioned in the said Sub-section. The Supreme Court has interpreted Sub-section (2) that the infringement or violation of permits or breach of the terms and conditions of the policy on the part of the insured must be established by the Insurance Company. Further the insurer must show that the violation or breach on the part of the insured is wilful.

37. In *Sohan Lal Passi v. P. Sesh Reddy*, (1996) 5 SCC 21; the three Judge Bench decision of the Supreme Court while referring to Section 96 (2) (b) (ii) of the Motor Vehicles Act, 1939 held that this Section cannot be interpreted in a technical manner. Section 96 (2) (b) (ii) only enables the Insurance Company to defend the liability to pay the compensation on the grounds mentioned in sub-section (2) including that there has been a contravention of the condition excluding the vehicle being driven by any person who is not duly licensed. It was held that if the person who has got the vehicle insured has allowed the vehicle to be driven by a person who is not duly licensed then only that clause shall be attracted. The Supreme Court held that the insurer has to satisfy the Tribunal that such violation or infringement on the part of the insured was willful. The relevant part of the report is extracted hereunder:-

“12. According to us, Section 96(2)(b)(ii) should not be interpreted in a technical manner. Sub-section (2) of Section 96 only enables the insurance company to defend itself in respect of the liability to pay compensation on any of the grounds mentioned in sub-section (2) including that there has been a contravention of the condition excluding the vehicle being driven by any person who is not duly licensed. This bar on the face of it operates on the person insured. If the person who has got the vehicle insured has allowed the vehicle to be driven by a person who is not duly licensed then only that clause shall be attracted. In a case where

the person who has got insured the vehicle with the insurance company, has appointed a duly licensed driver and if the accident takes place when the vehicle is being driven by a person not duly licensed on the basis of the authority of the driver duly authorised to drive the vehicle whether the insurance company in that event shall be absolved from its liability? The expression 'breach' occurring in Section 96(2)(b) means infringement or violation of a promise or obligation. As such the insurance company will have to establish that the insured was guilty of an infringement or violation of a promise. The insurer has also to satisfy the Tribunal or the Court that such violation or infringement on the part of the insured was wilful. If the insured has taken all precautions by appointing a duly licensed driver to drive the vehicle in question and it has not been established that it was the insured who allowed the vehicle to be driven by a person not duly licensed, then the insurance company cannot repudiate its statutory liability under sub-section (1) of Section 96. In the present case far from establishing that it was the appellant who had allowed Rajinder Pal Singh to drive the vehicle when the accident took place, there is not even any allegation that it was the appellant who was guilty of violating the condition that the vehicle shall not be driven by a person not duly licensed. From the facts of the case, it appears that the appellant had done everything within his power inasmuch as he has engaged a licensed driver Gurbachan Singh and had placed the vehicle in his charge. While interpreting the contract of insurance, the tribunals and courts have to be conscious of the fact that right to claim compensation by heirs and legal representatives of the victims of the accident is not defeated on technical grounds. Unless it is established on the materials on record that it was the insured who had wilfully violated the condition of the policy by allowing a person not duly licensed to drive the vehicle when the accident took place, the insurer shall be deemed to be a judgment-debtor in respect of the liability in view of sub-section (1) of Section 96 of the Act.....”

38. Similarly, in *National Insurance Company Limited v. Swaran Singh & Ors.*, (2004) 3 SCC 297, the Supreme Court observed that in order to

avoid its liability it is not sufficient for insurer to show that the person driving at the time of the accident was not duly licensed but it must further be established that there was breach on the part of the insured.

39. Now I turn to the facts of the instant case.
40. It has come in the evidence of Nalin Chester (RW1) that the distance between Delhi and Gogamedi was about 300 kms. If the school's version is to be accepted, then the bus would have travelled from Delhi to Gogamedi without any instructions and authorization from the school and then to Kali Banga. Thereafter the driver must have picked up passengers from Gogamedi on his way back to Delhi when the bus met with an accident near the Electricity Board Office at Bhadra. The exact distance from Kali Banga to Bhadra has not come on record. Moreover, it is not proved by the Appellant Insurance Company by producing any evidence that the distance of 600 to 700 kms could have been travelled by a bus in about 24 hours. Thus, it cannot be said that the bus had straightway gone to Kali Banga and was returning from there when it met with the accident.
41. With regard to the circumstances under which the school bus travelled to Kali Banga and met with an accident at Bhadra, the school examined Nalin Chester, its Administrative Officer as RW1. Mr. Nalin Chester swore his affidavit as RW1/A. He testified that an educational cum leadership development tour of some students of the school went to Kali Banga (Rajasthan). The students were accompanied by a teacher who travelled to Kali Banga in another vehicle. In the evening of 18.08.1999, the school received an intimation that the students were facing an acute

shortage of drinking water and suitable food. He deposed that it was decided by the Principal that some food packets and water will be sent to the students on the morning of 19.08.1999. The material was arranged and packed in Swaraj Mazda No.DL-IV-2571. The driver of Swaraj Mazda was instructed to immediately deliver the food material and then return to the school. He testified that the driver left the school on 19.08.1999. On 20.08.1999, he (RW1) received a call from the police that the vehicle had met with an accident and a number of people travelling in the bus had suffered injuries. The witness deposed that the driver of the school bus on humanitarian grounds without any charges and without any permission or authority of the school gave lift to a few people who wanted to go to Gogamedi for some fair and while the said bus was returning it met with an accident. In cross-examination, this witness deposed that they made inquiries from the driver as to how the passengers came in the school bus. The driver informed them that some people were standing on the way as their bus had broken down and that he (the driver) had given lift to them on humanitarian grounds. In further cross-examination, RW1 admitted that in the claim form they had not mentioned the description of the person and the capacity in which they were travelling in the bus. The witness admitted that he had not brought any circular or notice to show that the school bus had gone for the trip. The witness denied that the school had violated the terms and conditions of the insurance policy. Thus, no substantial evidence could be brought in the cross-examination of RW1 to show that there was willful breach of the terms of the policy.

42. The Appellant heavily relies on the testimony of SI Abdul Kayum Khan (R3W4) who was IO of the case FIR No.368/99 under Section 279, 337/304A IPC. In his examination-in-chief, he did testify that from his investigation he came to know that the passengers travelling in the bus had booked the bus from Delhi to Gogamedi fair on a pilgrimage. In cross-examination on behalf of the Claimants, the IO stated that by booking of the bus, he meant that the bus was hired by the passengers. In cross-examination on behalf of the school, R3W4 stated that he did not know the name of the persons who had hired the bus. He stated that the witnesses had not told the name of the person who had hired the bus. He was given a suggestion that the passengers had not told him that they had hired the bus to travel from Delhi to Gogamedi which of course was denied by him. Thus, a perusal of the IO's testimony reveals that he could not disclose the name of the persons who informed him about hiring of the bus. No such statement under Section 161 Cr.P.C. was recorded by the IO nor placed on record by the Appellant Insurance Company.
43. As against the IO's testimony, some of the Respondents (Claimants) who were eye witnesses to the accident and had travelled in the bus came forward to appear as their own witnesses. PW1 Sompal, an injured filed his affidavit Ex.PW1/X1. In para 9 of the affidavit, he testified that the driver of the bus had informed them that he was driving the bus to Kali Banga for some school work as per the direction of the school authorities. In para 10 of the affidavit, Sompal PW1 deposed that the driver told them that he was going without passengers and he offered them a lift as

requested by the passengers on humanitarian grounds. In cross-examination, Sompal denied the suggestion that he paid any hire charges to travel in the bus. To the same effect is the testimony of Premwati (PW2), Ram Avtar (PW3), Amravati (PW7), Chandra Devi (PW8), Suresh (PW9) Savitri(PW11), Mahender (PW12), Vijender (PW13) and Bishambar (PW16). In view of the overwhelming evidence of the Claimants (the injured), it is difficult to believe that the passengers were carried for hire and reward.

44. It is true that the school did not produce any teacher or student to prove that any group of students had gone to Kali Banga for any study, but it is not material in view of the fact that initial onus was on the Appellant Insurance Company to prove breach of the terms and conditions of the policy which the Appellant Insurance Company has failed to prove in view of the law which is well-settled.
45. I have before me the claim form Ex.R1W1/X1R3. It is true that a number of columns on page 2 have been left blank. The Appellant Insurance Company should have returned the claim form to the school for getting it filled up. Moreover, a perusal of the column shows that a large number of columns which were left blank were totally immaterial and had nothing to do with the manner of the accident. In the circumstances, I am not inclined to attach much importance to the same. In any case, it does not show that there was any willful breach of the terms and conditions of the policy.
46. In order to prove breach of the terms and conditions of policy the Appellant also examined Imtiyaz Ahmed (R3W6) an investigator and

relied on his report Ex.R3W5/15. The Claims Tribunal rejected his evidence holding that it was not credible and was only hearsay evidence. In para 27 of the impugned judgment, the Claims Tribunal held as under:-

“27. The Insurance Company also examined R3W6 Sh. Imtiyaz Ahmad who is the investigator for the Insurance Company. He submitted his report alongwith the photographs Ex.R3W5/15. The objections were raised regarding the inadmissibility of the evidence as the entire evidence was hearsay evidence. Interestingly, in his cross examination witness stated that the accident pertains to the year 1999 and he had for the first time visited the site on 12.5.07. Admittedly, he is not the eye witness and he had investigated the matter on behalf of Insurance Company after expiry of about eight years. The evidence of the witness is based on the statement of other witness who were not examined by the Insurance Company, therefore, his evidence is firstly inadmissible and secondly not reliable and no credence can be given to his evidence.”

47. The evidence of R3W6 was in the nature of hearsay evidence. The Claims Tribunal rightly discarded the same.
48. In view of the forgoing discussion, I am of the view that the Appellant is estopped from taking up the plea that there was any breach of the terms and conditions of the policy. Even if the Appellant was entitled to take such a plea, it has failed to prove conscious and willful breach of the terms and conditions of the policy.
49. The Appeals, therefore, have to fail; the same are accordingly dismissed.
50. Fifty percent of the compensation awarded has already been released in favour of the Claimants. Rest of the compensation shall be released in terms of the order passed by the Claims Tribunal.

51. Statutory amount, if any, shall be refunded to the Appellant Insurance Company.
52. Pending Applications stand disposed of.

(G.P. MITTAL)
JUDGE

NOVEMBER 27, 2012
vk/ag/pst