

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE CIVIL JURISDICTION

**FIRST APPEAL NO.522 OF 2017
WITH
CIVIL APPLICATION NO.1153 OF 2017**

The Oriental Insurance Company Limited ...Appellant
vs.
Karbhari Daga Gaikwad and Another ...Respondents

Mr. Devendra Joshi, for the Appellant
Mr. Pritesh Bohade, for the Respondent Nos. 1 to 4.

CORAM : N.J. JAMADAR, J.
RESERVED ON : 4th OCTOBER, 2021
PRONOUNCED ON : 16th NOVEMBER, 2021

JUDGMENT :

1. This appeal is directed against the judgment and award dated 28th March, 2014 passed by the learned Member, MACT, Nashik in MACP No. 288 of 2009 whereby the appellant/insurer was held jointly and severally liable to pay compensation of Rs. 6,68,400/- along with interest @ 9% p.a. from the date of the petition to the respondents/claimants for the death of Milind Karbhari Gaikwad (the deceased), in a vehicular accident.

2. The background facts leading to this appeal can be stated in brief as under:

a] On 4th February, 2009 the deceased, who was the son of

VISHAL
SUBHASH
PAREKAR

Digitally signed by
VISHAL
SUBHASH
PAREKAR
Date: 2021.11.16
15:06:05 +0530

respondent Nos. 1 and 2 and the brother of respondent Nos. 3 and 4, was riding a motor-cycle bearing registration number MH-41/M-7593 on his way to Satpur MIDC. When he reached near ITI signal, Satpur, Nashik, a TVS motor-cycle bearing registration number MH-15/BT-4275, owned by the respondent No. 5/original opponent No. 1 and insured with the appellant/original opponent No. 2, gave a violent dash to the motor-cycle of the deceased. Eventually, the deceased succumbed to his injuries. The deceased was 27 years old. He was a bachelor. The respondents/original claimants instituted the petition under section 166 of the Motor Vehicles Act, 1988 (the Act 1988) asserting that the deceased was earning Rs. 5,000/- p.m. and all the respondents were dependent on the deceased. The claimants averred that the offending vehicle was insured with the appellant/insurer.

b] The respondent No. 5 / original opponent did not appear before the Tribunal despite service of the notice and thus petition proceeded ex-parte against the opponent No. 1/owner. The appellant /opponent No. 2 resisted the claim qua the insured on the principal ground that on the date of the accident the offending vehicle was not insured with the insurer. It was contended that the opponent No. 1 had insured the offending vehicle with the insurer for the period 17th June, 2006 to 16th October, 2007. The policy was,

however, not renewed. Thus, the insured was not liable to indemnify the insurer.

3. The learned Member of the Tribunal recorded the evidence of Karbhari Gaikwad (PW.1), the claimant No.1; Ashok Shinde (PW.2), the Manager of Tricom India Limited where the deceased was working as a Data Processor, and Mohan Gondhalekar (DW.1), the Assistant Regional Manager of the insurer. After appraisal of the evidence and the documents tendered for his perusal, the learned Member was persuaded to allow the petition holding inter alia that the accident occurred due to rash and negligent driving of the offending motor-cycle by its driver and at the time of the accident, the said vehicle was insured with the appellant under the scheme of “One Time Insurance” and thus the appellant as well as the insured/owner of the vehicle were jointly and severally liable to pay compensation to respondent Nos. 1 to 4/ claimants. To arrive at the said conclusion, the learned Member banked upon the entry made in the record maintained by the RTO wherein it was noted that the vehicle was insured under “One Time Insurance Scheme”.

4. Being aggrieved by and dis-satisfied with the aforesaid finding, as regards the liability of the insurer/opponent No. 2, the

appellant/insurer has preferred this appeal. The principal ground of appeal is the erroneous finding by the learned Member of the Tribunal that the vehicle was insured with the appellant on the date of the accident.

5. I have heard Mr. Devendra Joshi, learned counsel for the appellant and Mr. Pritesh Bohade, learned counsel for the Respondent Nos. 1 to 4/original claimants at length. With the assistance of the learned counsels for the parties, I have perused the pleadings before the Tribunal, depositions of the witnesses, documents tendered for the perusal before the Tribunal and the material on record.

6. Mr. Joshi, learned counsel for the appellant strenuously urged that the learned Member committed a manifest error in recording a finding that the offending vehicle was insured with the appellant under "One Time Insurance Scheme". Amplifying the submission, Mr. Joshi would urge that in arriving at the said finding, the learned Member of the Tribunal, on the one hand, failed to consider the certificate of insurance (Exhibit 43), which was duly proved in evidence of DW.1, in its correct perspective, and, on the other hand, the learned Member gave undue weight to the information

furnished by RTO and the circular dated 17th May, 2015 whereby the insurers were allowed to issue long term Act only policy for two wheelers. Mr. Joshi would urge that the learned Member lost sight of the fact that the said proposal authorizing the issue of Long Term Act Policy was never implemented and by the subsequent communication dated 29th June, 2005 implementation of Long Term Act Policy only for two wheeler w.e.f. 1st July, 2005 was decided to be kept in abeyance. A grievance was made on behalf of the appellant that despite the said position having been brought to the notice of the learned Member, there was no adequate consideration which resulted in the passing of the impugned award holding the appellant liable to satisfy the award though there was no subsisting contract of insurance between the insured/owner and the appellant/insurer.

7. In opposition to this, Mr. Pritesh Bohade, learned counsel for the respondents No. 1 to 4 banked upon the information furnished by RTO wherein under the caption of the Insurance Particulars the validity of the insurance policy, issued vide Cover Note No. 1357679 is shown: "17th October, 2006 - One Time Insurance". Mr. Bohade further submitted that it is not the case that there was no authorization for issuance of one time insurance policy. In view of

the circular dated 17th May, 2005, the authorized insurers were authorized to issue Long Term Act Policy only for two wheelers and if it was the stand of the appellant/ insurer that the said Long Term Act Only Policy was kept in abeyance it was for the respondents to lead evidence and establish the same before the Tribunal. Having failed to lead cogent evidence, at this juncture, according to Mr. Bohade, the appellant cannot be permitted to agitate the ground that there was no valid of contract of insurance.

8. In the backdrop of the aforesaid submissions, it would be contextually relevant to note, at this stage itself, as to how the learned Member of the Tribunal dealt with the said ground. The learned Member recorded that Mohan Gondhalekar (DW.1) conceded in the cross examination that the offending vehicle was insured with the appellant and on the basis of cover note issued by the appellant, the said vehicle was registered with RTO. Thus an inference was drawn by the learned Member that the entry in the RTO record, to the effect of 'One Time Insurance' was made on the basis of the information furnished by the appellant. Since, the appellant did not lead evidence in support of its claim that "Long Term Act Only Policy" for two wheelers was kept in abeyance and there was nothing to show that the policy initially issued by the

appellant was cancelled, the appellant was held liable to indemnify the insured.

9. Evidently, the controversy lies in a narrow compass. Whether the offending vehicle was insured with the appellant on the date of the accident, is the moot question. It is trite that existence of a valid contract of insurance is a per-requisite for fastening the liability on the insurer. The insurance policy issued by the insurer to the insured represents a contract between the parties. The insurer undertakes to compensate the insured for the losses covered under the contract of insurance subject to terms and conditions of the policy. Section 149 of the Act of 1988 incorporates the duty of insurer to satisfy the judgment and award against the insured in respect of third party risk. The entitlement to avail the benefit under the statutory provision, would enure if on the date of accident there is a valid contract of insurance between the insurer and insured. To put it in other words, if on the date of the accident, there is a policy of insurance in respect of the offending vehicle, the third party would have a claim against the insurance company and the later is obligated to indemnify the owner of the vehicle (insured), in respect of the claim of the third party.

10. The question of liability of the insurer thus turns upon the existence of contract of insurance and, if it is proved that there was a contract of insurance, then the construction of the terms of the said contract. A contract of insurance is required to be construed according to the principles of construction generally applicable to commercial contracts.

11. In a recent pronouncement in the case of **Bajaj Allianz General Insurance Co. Ltd and Anr. vs. State of Madhya Pradesh¹**, the Supreme Court expounded the nature of contract of the insurance and principles of construction of contract of insurance. The observations in paragraphs 15 and 16 are material and hence extracted below:

15] MacGillivray on Insurance Law 10 elucidates the principles which govern the interpretation of insurance contracts:

“11-007 It is an accepted canon of construction that a commercial document, such as an insurance policy, should be construed in accordance with sound commercial principles and good business sense, so that its provisions receive fair and sensible application. Several consequences flow from this principle...

11-008 It follows that in interpreting any clause of a policy, it is correct to bear in mind: (1) the commercial object of purpose of the contract; and (2) the purpose or function of the clause and its apparent relation to the contract as a whole... ”

16] The provisions of an insurance contract must be imparted a reasonable business like meaning bearing in mind the intention conveyed by the words used in the policy document. Insurance policies should be construed according to the principles of construction generally

1 2020 SCC OnLine SC 401.

applicable to commercial and consumer contracts. The court must interpret the words in which the contract is expressed by the parties and not embark upon making a new contract for the parties. A reasonable construction must therefore be given to each clause in order to give effect to the plain and obvious intention of the parties as ascertainable from the whole instrument. The liability of the insurer cannot extend to more than what is covered by the insurance policy. In order to determine whether the claim falls within the limits specified by the policy, it is necessary to define exactly what the policy covered and to identify the occurrence of a stated event or the accident prior to the expiry of the policy. Hence, while considering the rival submissions, it is necessary to preface our analysis with the provisions of the policy.

(emphasis supplied)

12. A profitable reference can also be made to the judgment of the Supreme Court in the case of **New India Assurance Co. Ltd. vs. Harshadbhai Amrutbhai Modhiya**² wherein the manner of construction of contract of insurance was expounded in paragraph 23 as under:

23] The law relating to contracts of insurance is part of the general law of contract. So said Roskill Lord Justice in Cehave vs. Bremer ([1976] Q.B. 44). This view was approved by Lord Wilberforce in Reardon Smith vs. Hanson-Tangen (1976 [1 WLR] 989, wherein he said:

"It is desirable that the same legal principles should apply to the law of contract as a whole and that different principles should not apply to the different branches of that law".

A contract of insurance is to be construed in the first place from the terms used in it, which terms are themselves to be understood in their primary, natural, ordinary and popular sense. (See Colinvaux's Law of Insurance 7th Edition paragraph 2-01). A policy of insurance has therefore to be construed like any other contract. On a construction of the contract in question it is clear that the insurer had not undertaken the liability for interest and penalty, but had undertaken to indemnify the employer only to reimburse

2 (2006) 5 Supreme Court Cases 192.

the compensation the employer was liable to pay among other things under the Workmen's [Compensation Act](#). Unless one is in a position to void the exclusion clause concerning liability for interest and penalty imposed on the insured on account of his failure to comply with the requirements of the Workmen's [Compensation Act](#) of 1923, the insurer cannot be made liable to the insured for those amounts.

(emphasis supplied)

13. In the case of **Deddappa and Others vs. Branch Manager, National Insurance Co. Ltd.**³, where the insurance company had cancelled the insurance policy consequent to dishonour of cheque issued by the insurer towards the premium and subsequently the vehicle had met with an accident, the Supreme Court after adverting to the pronouncement in the case of **Harshadbhai Modhiya** (supra) enunciated the legal position in the following words:

24] We are not oblivious of the distinction between the statutory liability of the Insurance Company vis-à-vis a third party in the context of [Sections 147 and 149](#) of the Act and its liabilities in other cases. But the same liabilities arising under a contract of insurance would have to be met if the contract is valid. If the contract of insurance has been cancelled and all concerned have been intimated thereabout, we are of the opinion, the insurance company would not be liable to satisfy the claim.

25] A beneficial legislation as is well known should not be construed in such a manner so as to bring within its ambit a benefit which was not contemplated by the legislature to be given to the party. In [Regional Director, Employees' State Insurance Corporation, Trichur v. Ramanuja Match Industries](#) [AIR 1985 SC 278], this Court held (SCC pp.224-25, para 10) :

"10..... "We do not doubt that beneficial

3 (2008) 2 Supreme Court Cases 595.

legislations should have liberal construction with a view to implementing the legislative intent but where such beneficial legislation has a scheme of its own there is no warrant for the Court to travel beyond the scheme and extend the scope of the statute on the pretext of extending the statutory benefit to those who are not covered by the scheme."

We, therefore, agree with the opinion of the High Court.

(emphasis supplied)

Holding thus the Supreme Court had, however, exercised the extraordinary jurisdiction under Article 142 and directed the insurer to pay the amount of compensation and recover the same from the owner of the vehicle.

14. On the aforesaid touchstone reverting to the facts of the case, it is imperative to note that certificate of insurance (Exhibit 43) explicitly records that the period of insurance of the offending vehicle was from 4 am of 17th October, 2006 to midnight of 16th October, 2007. The schedule of premium reveals that Rs. 612/- were accepted towards the basic own damage cover and Rs. 160/- towards the basic third party cover. In addition, the premium of Rs. 50/- was accepted to cover the risk of owner/driver. The certificate of insurance, thus, makes it abundantly clear that the contract of insurance was valid for the period 17th October, 2006 to midnight of 16th October, 2007. It is not the case of the respondents that the said contract of insurance was renewed beyond 16th October, 2007, by

paying premium. On a plain construction of certificate of insurance, in accordance with the norm of construction of commercial contracts, an inference becomes inescapable that the contract of insurance was valid for the period of one year, commencing from 17th October, 2006 to 16th October, 2007. Indisputably, the offending vehicle met with an accident on 4th February, 2009.

15. The respondent Nos. 1 to 4/ claimants have banked upon the information furnished by RTO on 25th February, 2009 wherein it is recorded that the validity of the cover note 1357679 was “17th October, 2006 – one time insurance”. Support was sought to be drawn to the aforesaid entry from the circular dated 17th May, 2005 whereby it was decided to permit insurers to issue Long Term Act Only policy for two wheelers for fresh insurance and renewal effective 1st July, 2005 subject to certain terms and conditions.

16. For the purpose of determination of the controversy at hand, the following terms and conditions are relevant:

1] Issue of long term Act Only policy shall be compulsory in all those States/Union Territories where one time tax is collected by RTOs on two wheelers.

4] The long term policy one issued shall not be allowed to be cancelled except on cancellation of registration of the vehicle by the RTO following total loss of the vehicle or for wrongful use of the vehicle, etc. In any event, no refund of premium shall be

admissible on cancellation.

8] The policy shall bear the title "Long Term Act Only Policy". The standard form of Liability Only Policy given in Section 6 of India Motor Tariff shall be used mentioning the Limit of Liability under section 1(ii) of the Policy as Rs. 6,000/-.

9] Separate annual own damage or Liability Only policy (minus the Act liability) can be issued by an insurance company where long terms Act Only Policy is taken either from them or from another insurance company.

17. The learned Member of the Tribunal was of the view that since the registration particulars were recorded on the basis of cover note issued by the insurer, if the said policy of issue of one time insurance was not implemented and/or kept in abeyance, it was for the insurer to disclose the said fact to RTO. Secondly, since clause 4, extracted above, prohibited cancellation of such long term policy except on cancellation of the registration of the vehicle, it was not open to the insurer to contest the liability as there was nothing on record to indicate that the insurer has cancelled the insurance policy issued in favour of the opponent NO.1 / insured.

18. I find it rather difficult to agree with the view recorded by the learned Member of the Tribunal. Even if it is held that the insurer did not succeed in establishing that the proposal of issue of "One Time Long Term Act Only Policy" was kept in abeyance by the subsequent circular dated 29th June, 2005, followed by the internal

circular issued by the Assistant General Manager of the appellant on 6th July, 2005, yet, in the face of the material on record, it would be impermissible to draw an inference that the insurer had issued one time act only policy. For this purpose, of necessity, the recourse is required to be made to the contract of insurance as is evident from the certificate of insurance (Exhibit 43). As indicated above, on a plain construction of the said certificate of insurance, it becomes explicitly clear that the period of insurance was specifically provided; 17th October, 2006 to 16th October, 2007. Conversely, the certificate of insurance does not contain the terms which would be in conformity with the conditions under which the insurers were permitted to issue a “Long Term Act Only Policy”, extracted above. First and foremost, under clause 8, such policy was to bear the title, Lone Term Act Only Policy. Secondly, clause 9, extracted above, provided that separate own damage or liability only policy could be issued by the insurance company where long term act only policy was taken either from them or another insurance company. Both these conditions have not been fulfilled.

19. Further, in the case at hand, the certificate of insurance indicates that it was a package policy in contradistinction to Act only policy. A major component of premium i.e. Rs. 612/- was

towards the own damage cover. Thus, the policy was one of comprehensive insurance. In this view of the matter, in the absence of the terms and conditions which spell out clearly that the policy was “Long Term Act Only Policy”, an inference of One Time Insurance could not have been drawn merely on the basis of entry in the RTO particulars, especially when the certificate of insurance specifically incorporated the period of insurance. The learned Member thus committed an error in recording a finding that it was a case of one time contract of insurance.

20. Once, a finding is recorded that there was no subsisting contract of insurance between the insurer and insured, on the date of accident, the insurer cannot be fastened with the liability to satisfy the award. The Court is, however, confronted with the question as to whether the insurer can be directed to first satisfy the award and then recover the amount from the insured by resorting to the principles of “Pay and Recover”.

21. Mr. Joshi, learned counsel for the appellant, urged with tenacity that there is a distinction between a case where there exists a contract of insurance and the insurer is exonerated from the liability on account of breach of conditions and the case where there

is no valid contract of insurance between the insurer and insured. In the later case, according to Mr. Joshi, the principle of “Pay and Recover” cannot be resorted to. In contrast, Mr. Bohade, learned counsel for the respondent Nos. 1 to 4/ claimants would urge that there is no impediment in directing the insurer to first pay and then recover the amount from the insured lest the claimants would be left in the lurch and the beneficial object of the provisions of the Act, 1988 would be defeated.

22. In order to appreciate the aforesaid submission in a correct perspective, it may be expedient to trace, in brief, the evolution of the principle of “Pay and Recover”. This principle has been resorted to, to ensure that the victim or claimants are able to reap the benefit of the award of compensation without undergoing the rigour of seeking execution of the award against the owner of the vehicle which is fraught with elements of uncertainty, delay and arduous persuasion.

23. In the case of **National Insurance Co. Ltd. vs. Baljit Kaur and Ors.**⁴ where the insurance company was not held liable to satisfy the award, the Supreme Court directed the insurer to first satisfy the award and then recover the amount from the insured by adverting

4 (2004) 2 Supreme Court Cases 1.

to the scope and purport of adjudication under section 168 of the Act, 1988. Following observations are instructive and hence extracted below:

21] The upshot of the aforementioned discussions is that instead and in place of the insurer the owner of the vehicle shall be liable to satisfy the decree. The question, however, would be as to whether keeping in view the fact that the law was not clear so long such a direction would be fair and equitable. We do not think so. We, therefore, clarify the legal position which shall have prospective effect. The Tribunal as also the High Court had proceeded in terms of the decisions of this Court in Satpal Singh (supra). The said decision has been overruled only in Asha Rani (supra). We, therefore, are of the opinion that the interest of justice will be sub-served if the appellant herein is directed to satisfy the awarded amount in favour of the claimant if not already satisfied and recover the same from the owner of the vehicle. For the purpose of such recovery, it would not be necessary for the insurer to file a separate suit but it may initiate a proceeding before the executing court as if the dispute between the insurer and the owner was the subject matter of determination before the tribunal and the issue is decided against the owner and in favour of the insurer. We have issued the aforementioned directions having regard to the scope and purport of [Section 168](#) of the Motor Vehicles Act, 1988 in terms whereof it is not only entitled to determine the amount of claim as put forth by the claimant for recovery thereof from the insurer, owner or driver of the vehicle jointly or severally but also the dispute between the insurer on the one hand and the owner or driver of the vehicle involved in the accident inasmuch as can be resolved by the Tribunal in such a proceeding.

24. Aforesaid pronouncement was followed by the Supreme Court in the case of **Oriental Insurance Co. Ltd. vs. Nanjappan and Others**⁵ and the procedure to be followed before releasing the amount, where the principle of “Pay and Recover” is resorted to was delineated. Paragraph 8 reads as under:

5 (2004) 13 Supreme Court Cases 224.

8] Therefore, while setting aside the judgment of the High Court we direct in terms of what has been stated in Baljit Kaur's case (supra) that the insurer shall pay the quantum of compensation fixed by the Tribunal, about which there was no dispute raised, to the respondents-claimants within three months from today. For the purpose of recovering the same from the insured, the insurer shall not be required to file a suit. It may initiate a proceeding before the concerned Executing Court as if the dispute between the insurer and the owner was the subject matter of determination before the Tribunal and the issue is decided against the owner and in favour of the insurer. Before release of the amount to the insured, owner of the vehicle shall be issued a notice and he shall be required to furnish security for the entire amount which the insurer will pay to the claimants. The offending vehicle shall be attached, as a part of the security. If necessity arises the Executing Court shall take assistance of the concerned Regional Transport authority. The Executing Court shall pass appropriate orders in accordance with law as to the manner in which the insured, owner of the vehicle shall make payment to the insurer. In case there is any default it shall be open to the Executing Court to direct realization by disposal of the securities to be furnished or from any other property or properties of the owner of the vehicle, the insured. The appeal is disposed of in the aforesaid terms, with no order as to costs.

25. In the case of **National Insurance Company Limited vs. Parvathneni and Another**⁶ a two judge Bench of the Supreme Court, being confronted with the question as to whether the insurance company who has no liability at all can be compelled to first pay the compensation and later recover it from the owner of the vehicle, referred, inter alia, the following question for determination by larger Bench.

If an Insurance Company can prove that it does not have any liability to pay any amount in law to the claimants under the Motor Vehicles Act or any other enactment, can the Court yet compel it to pay the amount in question giving

6 (2009) 8 Supreme Court Cases 785.

it liberty to later on recover the same from the owner of the vehicle ?

26. As recorded in a recent decision, in the case of **Shamanna and Another vs. Divisional Manager, Oriental Insurance Company Limited and Others**⁷ the aforesaid reference in **Parvathneni** (supra) has been disposed of on 17th September, 2013 by the three judge Bench keeping the questions of law open to be decided in an appropriate case. In the case of **Shamanna** (supra), the Supreme Court held that the principle of “Pay and Recover” can be resorted to. The observations in paragraph Nos. 12 to 14 clarify the position:

12] The above reference in Parvathneni case has been disposed of on 17.09.2013 by the three-Judges Bench keeping the questions of law open to be decided in an appropriate case.

13] Since the reference to the larger bench in Parvathneni case has been disposed of by keeping the questions of law open to be decided in an appropriate case, presently the decision in Swaran Singh case followed in Laxmi Narain Dhut and other cases hold the field. The award passed by the Tribunal directing the insurance company to pay the compensation amount awarded to the claimants and thereafter, recover the same from the owner of the vehicle in question, is in accordance with the judgment passed by this Court in Swaran Singh and Laxmi Narain Dhut cases. While so, in our view, the High Court ought not to have interfered with the award passed by the Tribunal directing the first respondent to pay and recover from the owner of the vehicle. The impugned judgment of the High Court exonerating the insurance company from its liability and directing the claimants to recover the compensation from the owner of the vehicle is set aside and the award passed by the Tribunal is restored.

14] So far as the recovery of the amount from the owner of the vehicle, the insurance company shall recover as held in the decision in [Oriental Insurance Co. Ltd. v. Nanjappan and](#)

⁷ (2018) 9 Supreme Court Cases 650.

others (2004) 13 SCC 224 wherein this Court held that:

“8.....For the purpose of recovering the same from the insured, the insurer shall not be required to file a suit. It may initiate a proceeding before the concerned Executing Court as if the dispute between the insurer and the owner was the subject matter of determination before the Tribunal and the issue is decided against the owner and in favour of the insurer.”

27. In view of the aforesaid pronouncement, there is no impediment to resort to the principle of Pay and Recover. However, the said principle can be legitimately resorted to where there exists a contract of insurance but the insurer is exonerated from the liability to indemnify the insurer on account of breach of conditions of insurance or causes of like nature. If there exists no contract of insurance at all between the owner of the vehicle and the insurer who is sought to be held liable to first satisfy the award, I am afraid the principle of Pay and Recover can be resorted to in such a case.

28. Undoubtedly, the beneficial nature of the legislation must be kept in view. Yet, the principle of purposive construction cannot be stretched to such an extent as to fasten the liability on a party who is not at all liable to satisfy the award, for the only reason that in the past there was a contract of insurance between the insurer and insured. A case where the insurer has issued an insurance policy for

a particular period and subsequently cancelled the insurance policy for default in payment of premium on the part of the insured, stands on a different footing. But for the default on the part of the insured to pay the premium, a contract of insurance would have been valid and operative. However, where post expiry of period of insurance there is a complete non renewal, to fasten the liability on the insurer on the basis of historical fact of the existence of a prior contract of insurance would be in complete derogation of the principles of construction of contract of insurance. The jural relationship between erstwhile insurer and insured gets snapped with the term of insurance coming to an end.

29. The aforesaid proposition may operate rather harshly in the facts of the given case. However, the liability cannot be fastened where none exists for the reason that the claimants would find it difficult to execute the award against the owner of offending vehicle.

30. The upshot of the aforesaid consideration is that the impugned order fastening the liability upon the appellant/ insurer is legally unsustainable. In the circumstances of the case, even the recourse to the principle of Pay and Recover would also be not justifiable. Consequently, the appeal deserves to be allowed and the appellant/

insurer deserves to be exonerated from the liability completely.
Hence, the following order.

ORDER

- 1] The appeal stands allowed.
- 2] The impugned order fastening the liability upon the appellant/ insurer to jointly and severely satisfy the impugned award stands quashed and set aside.
- 3] The appellant/ insurer stands exonerated from the liability to satisfy the award.
- 4] By way of abundant caution, it is clarified that the impugned award shall be operative and executable against respondent No. 5/ opponent No. 1/ owner of the offending vehicle.
- 5] As the appeal succeeds, the application for withdrawal of the amount i.e. Civil Application No. 1153 of 2017 filed by the respondent Nos. 1 to 4/ claimants does not survive and accordingly stands disposed of.
- 6] The amount deposited by the appellant/ insurer along with interest accrued thereon as well as statutory deposit be refunded to the appellant/ insurer, after a period of six weeks.
- 7] In the circumstances, there shall be no order as to costs.

(N.J. JAMADAR, J.)