

# Pay and Recover Orders

Prof. S P Srivastava

# BRITISH INDIA GENERAL INSURANCE VS CAPTAIN ITBAR SINGH, (1960) SCR 168

- ▶ Right to defend being a statutory right, Insurer could take only those defences which are permitted by Section 96(2) of 1939 Act.
- ▶ If the Insurer had reserved a right under the policy to defend in the name of assured then all the defences would be available.
- ▶ If Insurer is made to pay which he was not bound to pay under the contract, he can recover it from assured under proviso to sub-s 3 and sub-s.4.
- ▶ If recovery is not possible from the assured the loss must fall on the insurer as he is carrying on this business of insurance.

# NEW INDIA ASSURANCE VS KAMLA (2001) 4 SCC 342

- ▶ Truck driver had a renewed forged document.
- ▶ Held- renewal would not robe a forged document with validity.
- ▶ Owner argued even if DL was fake that would not absolve Insurance Co.
- ▶ Insurance Co.- if breach of any of condition is established that would exonerate Insurance Co.
- ▶ Pay and recover order explained.

# UNITED INDIA INSURANCE CO. VS LEHRU (2003) 3 SCC 338

- ▶ SC reconsidered the effect Fake licence on the liability of insurance Company.
- ▶ Skandia 's Sohan Lal Passi 's and Kamla 's cases were reaffirmed and approved.
- ▶ SC held that where the owner has satisfied himself that the driver has a licence and is driving competently there would be no breach of Section 149(2)(a)(ii)
- ▶ If it ultimately turns out that the licence was fake the Insurance Company would continue to remain liable unless they prove that the owner/insured was aware or had noticed that the licence was fake and still permitted that person to drive.
- ▶ even in such a case the Insurance Company would remain liable to the innocent third party, but it may be able to recover from the insured.

# NATIONAL INSURANCE CO. LTD VS SWARAN SINGH & ORS (2004) 3 SCC 297

- ▶ Despite the fact that the defence under Section 149(2) has been accepted, the Tribunal has power to direct Insurance Co to satisfy the decree and recovery of the same from the owner.
- ▶ The liability of the insurance company to satisfy the decree at the first instance and to recover the awarded amount from the owner or driver thereof has been holding the field for a long time.
- ▶ ‘The doctrine of stare decisis persuades us not to deviate from the said principle.’

# MALLAWWA VS Oriental Ins Co (1999) 1 SCC 403.

- ▶ Udeshi's opinion reaffirmed.
- ▶ Gratuitous passengers as also owner of goods or his representative in Goods Vehicle were not be required to be covered under 1939 Act.
- ▶ It would not be proper to consider a 'goods vehicle' as a passenger vehicle

# SKANDIA INS. CO. VS KOKILABEN (1987) 2 SCC 654

- ▶ ‘Breach’ of specified conditions explained- must be wilful violation.
- ▶ Exclusion clause is not absolute
- ▶ Even if absolute there was sufficient compliance
- ▶ The exclusion clause must be read down so that it is not at war with the main purpose of the provision.
- ▶ The purpose of compulsory insurance is not to boost the business of Insurance Cos.

# NEW INDIA ASSURANCE CO. VS ASHA RANI (2003) 2 SCC 223

- ▶ Mallawwa and Pushpabai Udeshi were followed and affirmed.
- ▶ ‘Third party’ would not include owner of goods or his authorised representative carried in goods vehicle.
- ▶ The meaning of ‘any person’ must be attributed in context in which they have been used i.e. ‘Third party’



# ORIENTAL INS.CO VS MEENA VARIYAL (2007) 5 SCC 428

- ▶ V, a regional manager of the company was using the car given by the company. He expired in an accident.
- ▶ Whether V is treated as owner of car or employee of the company, he will not be covered by a statutory police.
- ▶ Unless a person is a 'third party' insurance company cannot be made liable by resorting to Swaran Singh's case.
- ▶ Section 149(1) cannot be invoked to enlarge the liability is not there under Section 147.