section 43(2) will apply only to a case in which the child has been sent to a Certified School by the Court under section 35(e) and the State Government in exercise of powers under section 43(2) transfers him to a Borstal School after he attains the age of 16 years. The proviso to section 43(2) shall have no application where a child is ordered to be detained in a Certified School but by the State Government under section 34(2) of the Act.

(12) The learned counsel for the petitioner has argued that the High Court in Criminal Appeal No. 400-DB of 1981, decided on November 9, 1981, certified that the petitioner is not so unruly or of so depraved a character that he is not a fit person to be sent to a Certified School. The petitioner having been sent to a Certified School, though by the State Government under section 34(2), his detention could not be extended beyond the age of 18 years by the impugned order P.3. The contention is without merit. The observations of the High Court in Criminal Appeal No. 400-DB of 1981 regarding the petitioner being not so unruly or so depraved a character are hardly relevant in the context of his detention ordered by the State Government under section 34(2) beyond the age of 18 years even by sending him to a Certified School till he attained that age.

(13) The ratio of *Jayendra's case* (supra) and *Munna's case* (supra) is neither relevant nor applicable to the facts of the instant case. In Criminal Revision No. 31 of 1981 decided on January 22, 1981, the child convicted had been sent to the Certified School by the Court and not by the State Government under section 34(2) of the Act. The ratio of this authority can also be not pressed to the advantage of the petitioner.

(14) In view of discussion above, the petition fails and is dismissed with no order as to costs.

N. K. S.

Before D. S. Tewatia & Surinder Singh, JJ.

ORIENTAL FIRE & GENERAL INSURANCE CO. LTD., CHANDIGARH,—*Appellant.*

versus

SMT. BEASA DEVI AND OTHERS,—*Respondents.*

First Appeal from Order No. 452 of 1984

September 27, 1984

Motor Vehicles Act (IV of 1939)—Sections 92-A, 92-B, 92-E, 93(ba), 94, 95, 96 and 110-B—Motor accident resulting in the death

of a person—Claim for compensation under Section 92-A on the principle of no fault liability—Whether liable to be satisfied by the insurer of the offending vehicle—Liability of the insurer to satisfy such a claim—When arises—Enquiry into objections available to an insurer under section 96(2)—Stage of—Discussed.

Held, that person primarily responsible to pay compensation or damages for the accident to the injured or the claimants of the deceased is the owner of the offending vehicle. The liability of the insurer is spelled out *qua* the person or classes of persons specified in the policy that is *qua* the insured by sub-section (5) of section 95 of the Motor Vehicles Act, 1939 and *qua* the claimants of compensation from the insured under sub-section (1) of section 96. The name of the insurer figures in section 110-B also in view of the provisions of section 96 authorising the Tribunal to specify in the award the person to whom the compensation is to be paid and the party who has to pay in whole or part, i.e., the owner or the driver of the offending vehicle or the insurer. Neither sub-section (5) of section 95 nor section 96 makes any distinction in regard to the liability of the insurer in one case to indemnify the insured and in the other case to pay to the claimants the amount mentioned in the order or award as compensation without further inquiring as to whether the insured who was found liable to pay the said compensation amount to the claimants was so found on the principle of no fault liability or fault liability. That means, if an award is given against the insured holding him liable to pay certain amount as compensation or damages in regard to the claim arising out of an accident with his motor vehicle, then the liability of the insurer is absolute and the insurer cannot question whether the amount awarded was as a result of fault liability or otherwise. Thus, it is held that the insurer is liable to satisfy the compensation claim arising from the accident with the insured vehicle to the extent of the amount that the policy of the insurance in terms of section 95 happens to cover and, therefore, to the extent of the policy cover the insurer without inquiring as to whether the amount awarded is under section 92-A or otherwise shall be liable to pay the amount awarded to the person named in the award or awards.

(Paras 7, 8 & 9).

Held, that the insurance company can be saddled with the liability under section 92-A as insurer keeping in view the provisions of section 96, only if either the insurance company admits the fact that the offending vehicle had been insured or such a fact is *prima facie* established from the material on the record.

(Para 10).

Held, that the provision of section 92-A is a piece of beneficial and ameliorative legislation providing for an immediate aid to the hapless and helpless victims of the motor accidents. The moment it is either admitted by the owner of the vehicle that his vehicle was involved in the accident or from the evidence adduced on the

record, the Tribunal positively holds that the vehicle of the owner in question was involved in that accident, if he denied that fact and then if the Tribunal comes to a further *prima facie* conclusion that the vehicle was insured, then the Tribunal without inquiring into the correctness of other objections that may be raised by the insurance company would be entitled to make the award under section 92-A and require the insurance company to pay the given amount to the claimants forthwith and thereafter investigate and inquire into the correctness or otherwise of the other objections that are raised either by the insurance company or by the owner of the offending vehicle.

Held, that in the event of the Tribunal coming to the conclusion for valid reasons that the owner of the vehicle was not liable to pay any compensation on the principle of the fault liability, then obviously no compensation is to be awarded on that score to the claimants under section 110-B. Similarly, in the event of the Tribunal holding that the insurance company had proved such objections as under law avoided its responsibility to indemnify the owner of the offending vehicle totally, then the Tribunal in the final award by virtue of provisions of sub-section (4) of section 96 of the Act would direct the owner of the offending vehicle to pay to the insurance company the amount which the insurance company had paid to the claimants in pursuance of the award made under section 92-A of the Act.

(Paras 11 and 12).

First Appeal from Order of the Court of Shri B. S. Nehra, Motor Accident Claims Tribunal, Chandigarh, dated 23rd February, 1984, directing the respondent No. 2 (M/s Oriental Fire General Insurance Co.) to pay interim relief of Rs. 15,000 under section 92-A of Motor Vehicle Act, to the claimants, as prayed by the later for on the next date of hearing, i.e., 17th April, 1984 and also for filing written statements by the respondents.

V. P. Gandhi, Advocate, *for the Appellant.*

K. L. Arora, Advocate, *for Respondent No.* 4.

M. B. Singh, Advocate, for *Respondent Nos.* 1 *to* 3.

L. M. Suri, Advocate, as intervener.

JUDGMENT

D. S. Tewatia, J. (oral):

(1) On 17th June, 1983 at about 4.45 P.M. one Bishan Dass while going on the road dividing Sector 16 and 23 met with an accident with Motor Cycle No. CHU-6771 which struck against him from

behind and as a result of the injuries that he sustained, he died in the P.G.I. on 19th June, 1983. Smt. Beasa Devi, widow of Bishan Dass and his two daughters Miss Anita and Miss Sunita put in their claim for a sum of Rs. 3 lacs with a further prayer that a sum of Rs. 15,000 be immediately awarded to them under section 92-A read with section 92-B of the Motor Vehicles Act (hereinafter referred to as the Act) under no fault liability. To the claim petition besides the owner respondent No. 4 Gurdev Singh, the Oriental Fire and General Insurance Co. Ltd. (hereinafer referred to as the Insurance Company), was also impleaded as one of the respondents. The owner of the offending vehicle admitted the accident whereupon the Claims Tribunal ordered payment of Rs. 15,000 by the Insurance Company,—*vide* its order, dated 23rd February, 1984 under section 92-A of the Act, even though the Insurance Company is said to have taken up the stand that it was not liable to pay that amount. The main case was adjourned to 17th April, 1984 and then to 30th April, 1984, on which date the Insurance Company filed its written statement, therein taking the objection that vehicle was being driven by one Ajmer Singh, who did not have valid driving licence as he was in possession of the learning licence valid only in Punjab and not in Chandigarh and, therefore, the Company was not liable to pay any compensation. The Insurance Company has impugned the interim award, dated 23rd February, 1984, in this Court.

(2) Mr. Vijay Gandhi, counsel for the appellant Insurance Company, has canvassed before us that under section 92-A, only the owner is liable to pay the sum envisaged under that provision and not the Insurer Company. In the alternative, the learned counsel urged that, in any case, the Insurance Company as insurer was liable to pay only in the event if the defence available to it under section 96 of the Act is not raised or if raised not established by the Insurance Company.

(3) The question of law raised in the appeal appears to be of considerable merit and, therefore, appeal was admitted to the Division Bench and that is how, it is before us.

(4) Before adverting to the rival contentions advanced on behalf of the appellant and the respondent, the relevant provisions of statute deserve noticing at the threshold. Section 92-A, which provides for no fault liability is in the following terms:—

"92-A. *Liability to pay compensation in certain cases on the principle of no fault.*—(1) Where the death or permanent

disablement of any person has resulted from an accident arising out of the use of a motor vehicle or motor vehicles, the owner of the vehicle shall, or as the case may be, the owners of the vehicles shall, jointly and severally, be libale to pay compensation in respect of such death or disablement in accordance with the provisions of this section.

(2) The amount of compensation which shall be payable uner sub-section (1) in respect of the death of any person shall be a fixed sum of fifteen thousand rupees and the amount of compensaion payable under that sub-section in respect of the permanent disablement of any person shall be a fixed sum of seven thousand five hundred rupees.

(3) In any claim for compensation under sub-section (1), the claimant shall not be required to plead and establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act, neglect or default of tho owner or owners of the vehicle or vehicles concerned or of any other person.

(4) A claim for compensation under sub-section (1) shall not be defeated by reason of any wrongful act, neglect or default of the person in respect of whose death or permanent disablement the claim has been made nor shall the quantum of compensation recoverable in respect of such death or permanent disablement be reduced on the basis of the share of such person in the responsibility for such death or permanent disablement."

Section 92-B, which provides that claim under section 92-A would be in addition to the other claim of compensation on the principle of fault, is in the following terms :

"92-B. *Provisions as to other right to claim compensation for death or permanent disablement.*—(1) the right to claim compensation under section 92-A in respect of death or permanent disablement of any person shall be in addition to the other right (hereinafter in this section referred to as the right on the principle of fault) to claim

compensation in respect, thereof under any other provision of this Act or of any other law for the time being in force.

(2) A claim for compensation under section 92-A in respect of death or permanent disablement of any person shall be disposed of as expeditiously as possible and where compensation is claimed in respect of such death or permanent disablement under section 92-A and also in pursuance of any right on the principle of fault, the claim for compensation under section 92-A shall be disposed of as aforesaid in the first place.

(3) Notwithstanding anything contained in sub-section (1), where in respect of the death or permanent disablement of any person, the person liable to pay compensation under section 92-A is also liable to pay compensation in accordance with the right on the principle of fault, the person so liable shall pay the first-mentioned compensation and—

(a) if the amount of the first-mentioned compensation is less than the amount of the second-mentioned compensation, he shall be liable to pay (in addition the first mentioned compensation) only so much of the second-mentioned compensation as is equal to the amount by which it exceeds the first-mentioned compensation;

(b) if the amount of the first-mentioned compensation is equal to or less than the amount of the second-mentioned compensation, he shall not be liable to pay the second mentioned compensation."

Section 92-E providing for overriding effect is in the following terms :—

"92-E. *Overriding effect.*—The provisions of this Chapter shall have effect notwithstanding anything contained in any other provision of this Act or of any other law for the time being in force."

Relevant provision of section 93(ba) defining liability is in the following terms:—

> "(ba) 'Liability' wherever used in relation to the death of or bodily injury to any person includes liability in respect, thereof, under section 92-A."

Relevant provisions of section 94 which envisages necessity for insurance against third-party risk reads as under .—

> "94. *Necessity for insurance against third-party risk.*—(1) No person shall use except as a passenger or cause or allow any other person to use a motor vehicle in a public place, unless there is in force in relation to the use of vehicle by that person or that other person, as the case may be, a policy of insurance complying with the requirements of this Chapter."

Relevant provision of section 95 which deals with the requirements of policies and limits of liability reads:—

> 95. *Requirements of policies and limits of liability.*—(1) In order to comply with the requirements of this Chapter, a policy of insurance must be a policy which—
>
> (a) * * * *
>
> (b) insures the person or classes of persons specified in the policy to the extent specified in sub-section (2)—
>
> (i) against any liability which may be incurred by him in respect of the death of or bodily injury to any person or damage to any property of a third party caused by or arising out of the use of the vehicle in a public place;
>
> (ii) against the death of or bodily injury to any passenger of a public service vehicle caused by or arising out of the use of the vehicle in a public place:
>
> Provided that a policy shall not be required—
>
> (i) to cover liability in respect of the death, arising out of and in the course of his employment, of the

employee of a person insured by the policy or in respect of bodily injury sustained by such an employee arising out of and in the course of his employment other than a liability arising under the Workmen's Compensation Act, 1923 (8 of 1923) in respect of the death of, or bodily injury to, any such employee—

(a) engaged in driving the vehicle, or

(b) if it is a public service vehicle, engaged as a conductor of the vehicle or in examining tickets on the vehicle, or

(c) if it is a goods vehicle, being carried in the vehicle, or

(ii) except where the vehicle is a vehicle in which passengers are carried for hire or reward or by reason of or in pursuance of a contract of employment, to cover liability in respect of the death of or bodily injury to persons being carried in or upon or entering or mounting or alighting from the vehicle at the time of the occurrence of the event out of which a claim arises, or

(iii) to cover any contractual liability.

Explanation.—For the removal of doubts, it is hereby declared that the death of or bodily injury to any person or damage to any property of a third party shall be deemed to have been caused by or to have arisen out of, the use of a vehicle in a public place notwithstanding that the person who is dead or injured or the property which is damaged was not in a public place at the time of the accident, if the act or omission which led to the accident occurred in a public place.

* * * *

(5) Notwithstnding anything elsewhere contained in any law, a person issuing a policy of insurance under this

section shall be liable to indemnify the person or classes of person specified in the policy in respect of any liability which the policy purports to cover in the case of that person or those classes of person.

Relevant portion of Section 96 which provides for duty of insurers to satisfy judgments against persons insured in respect of third party risks is in the following terms :—

"96. *Duty of insurers to satisfy judgments against persons insured in respect of third party risks.* (1) If, after a certificate of insurance has been issued under sub-section (4) of section 95 in favour of the person by whom a policy has been effected, judgment in respect of any such liability as is required to be covered by a policy under clause (b) of sub-section (1) of section 95 (being a liability covered by the terms of the policy) is obtained against any person insured by the policy, then notwithstandng that the insurer may be entitled to avoid or cancel or may have avoided or cancelled the policy, the insurer shall, subject to the provision of this section, pay to the person entitled to the benefit of the decree any sum not exceeding the sum assured payable thereunder, as if he were the judgment-debtor, in respect of the liability, together with any amount payable in respect of costs and any sum payable in respect of interest on that sum by virtue of any enactment for relating to interest on judgments.

(2) No sum shall be payable by an insurer under sub-section (1) in respect of any judgment unless before or after the commencement of the proceedings in which the judgment is given the insurer had notice through the Court of the bringing of the proceedings, or in respect of any judgment so long as execution is stayed thereon pending an appeal; and an insurer to whom notice of the bringing of any such proceeding 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 the policy was cancelled by mutual consent or by virtue of any provision contained therein before the

accident giving rise to the liability, and that either the certificate of insurance was surrendered to the insurer or that the person to whom the certificate was issued has made an affidavit stating that the certificate has been lost or destroyed, or that either before or not later than fourteen days after the happening of the accident the insurer has commenced proceedings for cancellation of the certificate after compliance with the provisions of section 105; or

(b) that there has been a breach of 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 organised 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 ...

(c) 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.

* * * *

(4) If the amount which an insurer becomes liable under this section to pay in respect of a liability incurred by a person insured by a policy exceeds the amount for which the insurer would apart from the provisions of this section be liable under the policy in respect of that liabiiity, the insurer shall be entitled to recover the excess from that person."

Section 110-B of the Act provides for the Award of the Claims Tribunal, which reads as under:—

"110-B. *Award of the Claims Tribunal.* On receipt of an application for compensation made under Section 110-A, the Claims Tribunal shall, after giving the parties an opportuntiy of being heard, hold an inquiry into the claim or, as the case may be, each of the claims and, subject to the provisions of section 109-B, may make an award, determining the amount of compensation which appears to it to be just and specifying the person or persons to whom compensation shall be paid; and in making the award the Claims Tribunal shall specify the amount which shall be paid by the insurer or owner or driver of the vehicle involved in the accident or by all or any of them, as the case may be.

Provided that where such application makes a claim for compensation under section 92-A in respect of the death or permanent disablement of any person, such claim and any other claim (whether made in such application or otherwise) for compensation in respect of such death or permanent disablement shall be disposed of in accordance with the provisions of Chapter VII-A."

(5) Mr. Gandhi basing himself primarily on the wording of Section 92-A convassed that liability under section 92-A is envisaged only that of the owner and not of the insurer. If the framers of the statute had in view the liability of the insurer, then they would have instead of using the expression 'owner' would have used the expression 'owner' or 'insurer' as the case may be.

(6) We do not think there is any merit in the contention advanced on behalf of the appellant. If his interpretation of

section 92-A is to be accepted then the compensation to be granted on the principle of fault liability too shall have to be paid by the owner alone by virtue of the provisions of sub-section (3) of section 92-B which provisions read that the person liable to pay compensation under section 92-A is also liable to pay compensation in accordance with the right on the principle of fault.

(7) Person primarily responsible to pay compensation or damages for the accident to the injured or the claimants of the deceased is the owner of the offending vehicle. The liability of the insurer is spelled out *qua* the person or classes of persons specified in the policy that is *qua* the insured by sub-section (5) of section 95 and *qua* the claimants of compensation from the insured under sub-section (1) of section 96. The name of the insurer figures in section 110-B also in view of the provisions of section 96 authorising the Tribunal to specify in the award the person to whom the compensation is to be paid and the party who has to pay in whole or part i.e., the owner or driver of the offending vehicle or the insurer.

(8) Neither sub-section (5) of section 95 nor section 96 makes any distinction in regard to the liability of the insurer in one case to indemnify the insured and in the other case to pay to the claimants the amount mentioned in the order or award as compensation without further inquiring as to whether the insured who was found liable to pay the said compensation amount to the claimants was so found on the principle of no fault liability or fault liability. That means, if an award is given against the insured holding him liable to pay certain amount as compensation or damages in regard to the claim arising out of an accident with his motor vehicle, then the liability of the insurer is absolute and the insurer cannot question whether the amount awarded was as a result of fault liability or otherwise.

(9) In view of the above, we hold that the insurer is liable to satisfy the compensation claim arising from the accident with the insured vehicle to the extent of the amount that the policy of the insurance in terms of section 95 happens to cover and therefore, to the extent of the policy cover the insurer without inquiring as to whether the amount awarded is under section 92-A or otherwise shall be liable to pay the amount awarded to the person named in the award or awards.

(10) Mr. Gandhi, however, argued that the liability of the insurer is to idemnify the insured and if for instance the owner of the offending vehicle had not taken out any policy at all and if someone was to incorrectly and falsely make the insurance company a party to the claim application, would the insurance company even though it denied that it had issued any policy cover be liable to pay compensation awarded under section 92-A ? This query can be answered by a counter query would the owner of a vehicle be made to pay compensation under section 92-A if he were to deny that the accident in question had not taken place with his vehicle. In neither of the situations, the Tribunal could make the award under section 92-A unless either the owner of the vehicle admits the accident with his vehicle or it is proved that, in fact, the accident had taken place with his vehicle. The position in regard to the liability of the insurance company can be no different in regard to the award under section 92-A. The insurance company can be saddled with the liability under section 92-A as insurer keeping in view the provisions of section 96, only if either the insurance company admits the fact that the offending vehicle had been insured or such a fact is *prima facie* established from the material on the record.

(11) Now the question that falls for consideration is as to at what stage the Tribunal is to inquire into the objections available to the insurance company, under section 96(2) of the Act. Should such objections be treated as preliminary issue and be decided by the Tribunal in the first instance which in the nature of things would result in delay in regard to the payment of amount under section 92-A to the claimants, which may partly defeat the very purpose underlying the enactment of the said provision i.e. of providing immediate succour to the persons who had suffered disabling injury in an accident or the heirs of the persons who had died as a result of the accident. We are of the view that provision of section 92-A is a piece of beneficial and ameliorative legislation providing for an immediate aid to the hapless and helpless victims of the motor accidents. The moment it is either admitted by the owner of the vehicle that his vehicle was involved in the accident or from the evidence adduced on the record, the Tribunal positively holds that vehicle of the owner in question was involved in that accident, if he denied that fact and then if the Tribunal comes to a further *prima facie* conclusion that the vehicle was insured, then the Tribunal without inquiring into correctness of other objections that may be raised by the insurance company would be entitled to make

the award under section 92-A and require the insurance company to pay the given amount to the claimants forthwith and thereafter investigate and inquire into the correctness or otherwise of the other objections that are raised either by the insurance company or by the owner of the offending vehicle.

(12) In the event of the Tribunal coming to the conclusion for valid reasons that the owner of the vehicle was not liable to pay any compensation on the principle of the fault liability, then obviously no compensation is to be awarded on that score to the claimants under section 110-B. Similarly, in the event of the Tribunal holding that the insurance company had proved such objections as under law avoided its responsibility to indemnify the owner of the offending vehicle totally, then the Tribunal in the final award by virtue of provisions of sub-section (4) of section 96 would direct the owner of the offending vehicle to pay to the insurance company the amount which the insurance company had paid to the claimants in pursuance of the award made under section 92-A of the Act.

(13) Now while examining the facts of the present case in the light of the above discussion, it may be observed that the appellant insurance company had not taken the stand in its written statement that the offending vehicle had not been insured. The award given by the Tribunal in this case in the light of what we have held above is perfectly a legal award and the appellant insurance company has been rightly made liable to pay the amount awarded under section 92-A by the Tribunal. The Tribunal, however, shall investigate and inquire into the objections raised by the insurance company and if it comes to a conclusion that it was not liable to indemnify the insured, then it would direct the owner of the offending vehicle to pay to the insurance company the amount which it had paid to the claimants in pursuance of award given under section 92-A.

(14) In the result, the impugned award is sustained to the extent indicated and the appeal stands disposed of accordingly with no order as to costs.

Surinder Singh, J.—I agree.

N.K.S.