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**IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR**

**BEFORE
HON'BLE SHRI JUSTICE VIVEK AGARWAL**

ON THE 30th OF JANUARY, 2023

MISC. APPEAL No. 3831 of 2019

BETWEEN:-

**NATIONAL INSURANCE CO.LTD. THROUGH ASSTT.
MANAGER T.P. HUB, JABALPUR (M.P.) (MADHYA
PRADESH)**

.....APPELLANT

(BY SMT AMRIT KAUR RUPRAH - ADVOCATE)

AND

- 1. SMT. SUNITA TIWARI W/O LATE AJIT TIWARI,
AGED ABOUT 48 YEARS, R/O PREMNAGAR LANE
NO.1 SATNA, TEHSIL RAGHURAJNAGAR, DISTT.
SATNA (M.P.) (MADHYA PRADESH)**
- 2. KU.ANKITA TIWARI D/O LATE AJIT TIWARI, AGED
ABOUT 21 YEARS, R/O PREMNAGAR LANE NO.1
SATNA, TEHSIL RAGHURAJNAGAR, DISTT. SATNA
(M.P.) (MADHYA PRADESH)**
- 3. KU.SHRUTI TIWARI D/O LATE AJIT TIWARI, AGED
ABOUT 19 YEARS, R/O PREMNAGAR LANE NO.1
SATNA, TEHSIL RAGHURAJNAGAR, DISTT. SATNA
(M.P.) (MADHYA PRADESH)**
- 4. ASHUTOSH TIWARI S/O LATE AJIT TIWARI, AGED
ABOUT 11 YEARS, OCCUPATION: THROUGH HIS
MOTHER AND NATURAL GUARDIAN SMT.SUNITA
TIWARI R/O PREMNAGAR LANE NO.1 SATNA,
TEHSIL RAGHURAJNAGAR, DISTT. SATNA (M.P.)
(MADHYA PRADESH)**
- 5. ARJUN KASHYAP S/O KANHAIYALAL KASHYAP,
AGED ABOUT 22 YEARS, KALYANPUR PS SITAPUR
(UTTAR PRADESH)**
- 6. RAMNARESH KUSHWAH S/O RAMESHWAR
PRASAD, AGED ABOUT 40 YEARS, VILLAGE
BHAMA POLICE CHOWKI SHIVRAMPUR P.S**

KARVI (UTTAR PRADESH)

7. **RAJENDRA KUMAR GAUTAM S/O YOGEDRA KUMAR GAUTAM VILLAGE AND P.O.PARA PS BISANDA (UTTAR PRADESH)**

.....RESPONDENTS

**(RESPONDENT NOS. 1 TO 4 BY SHRI ABHISHEK SINGH - ADVOCATE)
(RESPONDENT NOS. 6&7 BY SHRI VINEET KUMAR PANDEY - ADVOCATE)**

CIVIL REVISION No. 449 of 2019

BETWEEN:-

NATIONAL INSURANCE CO. LTD THR ASSTT. MANAGER TP HUB OFFICER CHOURASIA COMPLEX (MADHYA PRADESH)

.....APPELLANT

((BY SMT AMRIT KAUR RUPRAH - ADVOCATE)

AND

1. **RAVI KUSHWAHA S/O SHRI NATHULAL KUSHWAHA, AGED ABOUT 35 YEARS, OCCUPATION: SELLIN FLOWERS R/O AHIRAN MOHALLA BAJRAHA TOLA P.S. CITY KOTWALI (MADHYA PRADESH)**
2. **SHRI ARJUN KASHYAP S/O KANHAIYALAL KASHYAP, AGED ABOUT 22 YEARS, OCCUPATION: DRIVER KALYANPUR P.S SITAPUR DISTT. SULTANPUR (UTTAR PRADESH)**
3. **RAMNARESH KUSHWAHA S/O SHRI RAMESHWAR PRASAD, AGED ABOUT 40 YEARS, OCCUPATION: DRIVER R/O. VILL. BHAMAI POLICE CHOWKI SHIVRAMPUR PS KARVI (UTTAR PRADESH)**
4. **RAJENDRA KUMAR GAUTAM S/O YOGENDRA KUMAR GAUTAM OCCUPATION: OWNER OF VEHICLE R/O. VILL. AND P.O. PARA PS BISANDA (UTTAR PRADESH)**

.....RESPONDENTS

(RESPONDENT NOS.3&4 BY SHRI VINEET KUAMR PANDEY - ADVOCATE)

MISC. APPEAL No. 3830 of 2019

BETWEEN:-

NATIONAL INSURANCE COMPANY LTD. THR. ASSTT.
MANAGER T.P.HUB, JABALPUR (M.P.) (MADHYA
PRADESH)

.....APPELLANT

(BY SMT AMRIT KAUR RUPRAH - ADVOCATE)

AND

1. ANITA TIWARI W/O SHRI NARENDRA TIWARI,
AGED ABOUT 40 YEARS, R/O KATIATOLA
MAIHAR, P.S. AND TAHSIL MAIHAR, DISTT.
SATNA (MADHYA PRADESH)
2. SHRI ARJUN KASHYAP S/O KANHAIYALAL
KASHYAP, AGED ABOUT 22 YEARS, R/O
KALYANPUR P.S.SITAPUR (UTTAR PRADESH)
3. RAMNARESH KUSHWAHA S/O SHRI RAMESHWAR
PRASAD, AGED ABOUT 40 YEARS, R/O VILLAGE
BHAMAI POLICE CHOWKI SHIVRAMPUR
P.S.KARVI (UTTAR PRADESH)
4. RAJENDRA KUMAR GAUTAM S/O YOGENDRA
KUMAR GAUTAM R/O VILLAGE AND P.O. PARA
P.S.BISANDA, (UTTAR PRADESH)

.....RESPONDENTS

(RESPONDENT NO.1 BY SHRI DEVENDRA SHUKLA - ADVOCATE)

(RESPONDENT NOS.3&4 BY SHRI VINEET KUAMR PANDEY - ADVOCATE)

MISC. APPEAL No. 3832 of 2019

BETWEEN:-

NATIONAL INSURANCE COMPANY LTD. THROUGH
ASSTT. MANAGER T.P. HUB, JABALPUR (M.P.) (MADHYA
PRADESH)

.....APPELLANT

(BY SMT AMRIT KAUR RUPRAH - ADVOCATE)

AND

1. MUS. JYOTI AGRAWAL W/O LATE RAMKUMAR
AGRAWAL, AGED ABOUT 48 YEARS, R/O PUNJABI
MOHALLA DALIBABA CHAUK SATNA, P.S. CITY

KOTWALI, TEHSIL RAGHURAJNAGAR DISTT.
SATNA (M.P.) (MADHYA PRADESH)

2. KU. POOJA AGRAWAL D/O LATE RAMKUMAR AGRAWAL, AGED ABOUT 19 YEARS, R/O PUNJABI MOHALLA DALIBABA CHAUK SATNA, P.S. CITY KOTWALI, TEHSIL RAGHURAJNAGAR DISTT. SATNA (M.P.) (MADHYA PRADESH)
3. PANKAJ AGRAWAL S/O LATE RAMKUMAR AGRAWAL, AGED ABOUT 17 YEARS, R/O PUNJABI MOHALLA DALIBABA CHAUK SATNA, P.S. CITY KOTWALI, TEHSIL RAGHURAJNAGAR DISTT. SATNA (M.P.) (MADHYA PRADESH)
4. KU. POONAM AGRAWAL D/O LATE RAMKUMAR AGRAWAL, AGED ABOUT 15 YEARS, OCCUPATION: THROUGH MOTHER SMT. JYOTI AGRAWAL R/O PUNJABI MOHALLA DALIBABA CHAUK SATNA, P.S. CITY KOTWALI, TEHSIL RAGHURAJNAGAR DISTT. SATNA (M.P.) (MADHYA PRADESH)
5. SHRI ARJUN KASHYAP S/O KANHAIYALAL KASHYAP, AGED ABOUT 22 YEARS, KALYANPUR P.S SITAPUR DISTT. SULTANPUR (UTTAR PRADESH)
6. RAMNARESH KUSHWAHA S/O SHRI RAMESHWAR PRASAD, AGED ABOUT 40 YEARS, VILLAGE BHAMAI POLICE CHOWKI SHIVRAMPUR P.S KARVI (UTTAR PRADESH)
7. RAJENDRA KUMAR GAUTAM S/O YOGENDRA KUMAR GAUTAM VILLAGE AND PO PARA PS BISANDA (UTTAR PRADESH)

.....RESPONDENTS

(RESPONDENT NOS.1 TO 4 BY SHRI KAPIL PATWARDHAN - ADVOCATE)
(RESPONDENT NOS.6&7 BY SHRI VINEET KUAMR PANDEY - ADVOCATE)

MISC. APPEAL No. 3833 of 2019

BETWEEN:-

NATIONAL INSURANCE COMPANY LTD. THROUGH
ASSTT. MANAGER T.P. HUB, JABALPUR (M.P.) (MADHYA
PRADESH)

.....APPELLANT

(BY SMT AMRIT KAUR RUPRAH - ADVOCATE)

AND

1. MST. MITHILA CHOUDHARY W/O LATE SHRI UMESH CHOUDHARY, AGED ABOUT 24 YEARS, R/O DHAWARI LANE NO.E HARIJAN BASTI, P.S. CITY KOTWALI, TEHSIL RAGHURAJNAGAR, DISTT. SATNA (M.P.) (MADHYA PRADESH)
2. MST.JANKI CHOUDHARY W/O LATE SHANKARLAL CHOUDHARY, AGED ABOUT 50 YEARS, DHAWARI LANE NO. 4 HARIJAN BASTI P.C. CITY KOTWALI TEHSIL RAGHURAJNAGAR (MADHYA PRADESH)
3. VINEET CHOUDHARY S/O LATE UMESH CHOUDHARY, AGED ABOUT 3 YEARS, OCCUPATION: THROUGH HER MOTHE AND NATURAL GUARDIAN SMT.MITHILESH CHOUDHARY DHAWARI LANE NO. 4 HARIJAN BASTI P.C. CITY KOTWALI TEHSIL RAGHURAJNAGAR (MADHYA PRADESH)
4. KU.NITYA CHOUDHARY D/O LATE UMESH CHOUDHARY, AGED ABOUT 3 YEARS, OCCUPATION: THROUGH HER MOTHER AND NATURAL GUARDIAN SMT.MITHILA CHOUDHARY DHAWARI LANE NO. 4 HARIJAN BASTI P.C. CITY KOTWALI TEHSIL RAGHURAJNAGAR (MADHYA PRADESH)
5. ARJUN KASHYAP S/O KANHAIYALAL KASHYAP, AGED ABOUT 22 YEARS, KALYANPUR PS SITAPUR (UTTAR PRADESH)
6. RAMNARESH KUSHWAH S/O RAMESHWAR PRASAD, AGED ABOUT 40 YEARS, VILLAGE BHAMAI POLICE CHOWKI SHIVRAMPUR P.S KARVI (UTTAR PRADESH)
7. RAJENDRA KUMAR GAUTAM S/O YOGENDRA KUMAR GAUTAM VILLAGE AND P.O. PARA PS BISANDA (UTTAR PRADESH)

.....RESPONDENTS

(RESPONDENT NOS.1 TO 4 BY SHRI KAPIL PATWARDHAN - ADVOCATE)
(RESPONDENT NOS.6&7 BY SHRI VINEET KUAMR PANDEY - ADVOCATE)

MISC. APPEAL No. 3834 of 2019

BETWEEN:-

NATIONAL INSURANCE COMPANY LTD. THROUGH
ASSTT. MANAGER T.P. HUB, JABALPUR (M.P.) (MADHYA
PRADESH)

.....APPELLANT

(BY SMT AMRIT KAUR RUPRAH - ADVOCATE)

AND

1. HASEENA RAWAT W/O SHRI NARENDRA TIWARI,
AGED ABOUT 40 YEARS, R/O KATIATOLA
MAIHAR, P.S. AND TAHSIL MAIHAR, DISTT.
SATNA (M.P.) (MADHYA PRADESH)
2. SHRI ARJUN KASHYAP S/O KANHAIYALAL
KASHYAP, AGED ABOUT 22 YEARS, R/O
KALYANPUR P.S.SITAPUR (UTTAR PRADESH)
3. RAMNARESH KUSHWAHA S/O SHRI RAMESHWAR
PRASAD, AGED ABOUT 40 YEARS, R/O VILLAGE
BHAMA POLICE CHOQKI SHIVRAMPUR
P.S.KARVI, (UTTAR PRADESH)
4. RAJENDRA KUMAR GAUTAM S/O YOGENDRA
KUMAR GAUTAM R/O VILLAGE AND P.O.PARA
P.S.BISANDA, (UTTAR PRADESH)

.....RESPONDENTS

(RESPONDENT NOS.3&4 BY SHRI VINEET KUAMR PANDEY - ADVOCATE)

MISC. APPEAL No. 3835 of 2019

BETWEEN:-

NATIONAL INSURANCE COMPANY THR ASSTT.
MANAGER TP HUB JABALPUR CHOURASIA COMPLEX
SEMARIA CHOWK SATNA (MADHYA PRADESH)

.....APPELLANT

(BY SMT AMRIT KAUR RUPRAH - ADVOCATE)

AND

1. VIVEK MISHRA S/O LATE RAMESHWAR PRASAD,
AGED ABOUT 20 YEARS, R/O NEAR MALERIA
OFFICE MUKHTAIAR GANJ SATNA P.C. CITY
KOTWALI TEHSIL RAGHURAJNAGAR (MADHYA

PRADESH)

2. SHRI ARJUN KASHYAP S/O KANHAIYALAL KASHYAP, AGED ABOUT 22 YEARS, KALYANPUR PS SITAPUR (UTTAR PRADESH)
3. RAMNARESH KUSHWAHA S/O SHRI RAMESHWAR PRASAD, AGED ABOUT 40 YEARS, VILLAGE BHAMAI POLICE CHOWKI SHIVRAMPUR P.S KARVI (UTTAR PRADESH)
4. RAJENDRA KUMAR GAUTAM S/O YOGENDRA KUMAR GAUTAM VILLAGE AND PO PARA PS BISANDA (UTTAR PRADESH)

.....RESPONDENTS

(RESPONDENT NOS.3&4 BY SHRI VINEET KUAMR PANDEY - ADVOCATE)

MISC. APPEAL No. 3836 of 2019

BETWEEN:-

NATIONAL INSURANCE COMPANY LTD. THROUGH ASSTT.MANAGER T.P. HUB, JABALPUR (M.P.) (MADHYA PRADESH)

.....APPELLANT

(BY SMT AMRIT KAUR RUPRAH - ADVOCATE)

AND

1. BRIJENDRA SINGH S/O SHRI RAMDEV SINGH, AGED ABOUT 28 YEARS, OCCUPATION: LABOUR R/O Dinpura Bagaichi, P.S. UCHEHRA, DISTRICT SATNA (M.P.) (MADHYA PRADESH)
2. ARJUN KASHYAP S/O KANHAIYALAL KASHYAP, AGED ABOUT 22 YEARS, KALYANPUR PS SITAPUR (UTTAR PRADESH)
3. RAMNARESH KUSHWAH S/O RAMESHWAR PRASAD, AGED ABOUT 40 YEARS, VILLAGE BHAMAI POLICE CHOWKI SHIVRAMPUR P.S KARVI (UTTAR PRADESH)
4. RAJENDRA KUMAR GAUTAM S/O YOGENDRA KUMAR GAUTAM VILLAGE AND PO PARA PS BISANDA (UTTAR PRADESH)

.....RESPONDENTS

*(RESPONDENT NOS.3&4 BY SHRI VINEET KUAMR PANDEY - ADVOCATE)***MISC. APPEAL No. 3837 of 2019****BETWEEN:-**

NATIONAL INSURANCE COMPANY LTD. THROUGH
ASSTT. MANAGER T.P. HUB, JABALPUR (M.P.) (MADHYA
PRADESH)

.....APPELLANT

*(BY SMT AMRIT KAUR RUPRAH - ADVOCATE)***AND**

1. ALOK SHUKLA S/O SHRI RAMESH PRASAD SHUKLA, AGED ABOUT 31 YEARS, R/O VILLAGE DELORA, WARD NO. 37, SHUKLA TOLA, BELHATA, P.S. KOLGAWAN, TAHSIL RAGHURAJNAGAR, DISTRICT SATNA (M.P.) (MADHYA PRADESH)
2. SHRI ARJUN KASHYAP S/O KANHAIYALAL KASHYAP, AGED ABOUT 22 YEARS, KALYANPUR P.S SITAPUR DISTT. SULTANPUR (UTTAR PRADESH)
3. RAMNARESH KUSHWAHA S/O SHRI RAMESHWAR PRASAD, AGED ABOUT 40 YEARS, VILLAGE BHAMAI POLICE CHOWKI SHIVRAMPUR P.S KARVI (UTTAR PRADESH)
4. RAJENDRA KUMAR GAUTAM S/O YOGENDRA KUMAR GAUTAM VILLAGE AND PO PARA PS BISANDA (UTTAR PRADESH)

.....RESPONDENTS

*(RESPONDENT NOS.3&4 BY SHRI VINEET KUAMR PANDEY - ADVOCATE)***MISC. APPEAL No. 497 of 2021****BETWEEN:-**

NATIONAL INSURANCE CO. LTD. THR. IN CHARGE TP
HUB DEEP COMPLEX REWA VIJAY NAGAR JABALPUR
(MADHYA PRADESH)

.....APPELLANT

(BY SMT AMRIT KAUR RUPRAH - ADVOCATE)

AND

1. RAMKALI SAKET W/O LATE RAMESHWAR PRASAD SAKET, AGED ABOUT 63 YEARS, VILL. AKAURI P.S. GARH TEH.SIRMAUR DIST. REWA MP (MADHYA PRADESH)
2. SUKHLAL SAKET S/O LATE RAMESHWAR PRASAD SAKET, AGED ABOUT 42 YEARS, VILLAGE AKAURI PS GARH TEHSIL SIRMAUR (MADHYA PRADESH)
3. NANDLAL SAKET S/O LATE RAMESHWAR PRASAD SAKET, AGED ABOUT 40 YEARS, VILLAGE AKAURI PS GARH TEHSIL SIRMAUR (MADHYA PRADESH)
4. SANTLAL SAKET S/O LATE RAMESHWAR PRASAD SAKET, AGED ABOUT 63 YEARS, VILLAGE AKAURI PS GARH TEHSIL SIRMAUR (MADHYA PRADESH)
5. ARJUN KASHYAP S/O KANHIYALAL KASHYAP, AGED ABOUT 22 YEARS, VILLAGE KALYANPUR PS SITAPUR (UTTAR PRADESH)
6. RAMNARESH KUSHWAHA S/O RAMESHWAR PRASAD KUSHWAHA, AGED ABOUT 40 YEARS, VILLAGE BAMHAI PS KARBI (UTTAR PRADESH)
7. RAJENDRA KUMAR GAUTAM S/O YOGENDRA KUMAR GAUTAM VILLAGE PARA PS BISANDA (UTTAR PRADESH)

.....RESPONDENTS

(RESPONDENT NOS.6&7 BY SHRI VINEET KUAMR PANDEY - ADVOCATE)

These appeals coming on for orders this day, the court passed the following:

ORDER

Miscellaneous Appeal No.3831/2019, Miscellaneous Appeal No.3830/2019, Civil Revision No.449/2019, Miscellaneous Appeal No.3832/2019, Miscellaneous Appeal No.3833/2019, Miscellaneous Appeal No.3833/2019, Miscellaneous Appeal No.3835/2019, Miscellaneous Appeal

No.3836/2019, Miscellaneous Appeal No.3837/2019 & Miscellaneous Appeal No.497/2021 have been filed by the National Insurance Company Limited being aggrieved of award dated 16.4.2019 passed in Claim Case No.9/2014, Claim Case No.85/2014, Claim Case No.105/2014, Claim Case No.12/2013, Claim Case No.10/2013, Claim Case No.104/2014, Claim Case No.66/2014, Claim Case No.96/2014, Claim Case No.53/2014, Claim Case No.146/2013 by the II Motor Accident Claims Tribunal, Satna on the ground that the Claims Tribunal while allowing the claim petitions and passing the impugned award overlooked the fact that the Truck bearing registration No.UP90-T-3044 owned by Rajendra Kumar Gautam (Non-Applicant No.3) and insured with National Insurance Company Limited (Appellant Herein) was authorised to be driven by Ram Naresh Kushwaha (Non-Applicant No.2) but Unauthorised Driver Arjun Kashyap (Non-Applicant No.1) had driven the said Truck rashly & negligently and while coming from the side of Unchehara had dashed it in Chowk Bazar crushing several Scooters, Bikes & Handcarts, as a result of which, some people died and several received injuries.

The allegation is that on 6.8.2013 at 4:45 PM, when the offending Truck was being driven by Ram Naresh Kushwaha, who was travelling with his Cleaner Pintu Gautam at Village Piprikala, there was a road block and the Driver of the Offending Truck was waiting for clearing of the traffic blocked, at that time, Arjun Kashyap armed with a Screw Driver in one hand and Vegetable Knife in another hand boarded the Truck and tried to hit Pintu Gautam, as a result of which, the Truck Driver Ram Naresh Kushwaha left the Truck leaving the keys intact in the ignition and Arjun Kashyap took control of the Truck and started driving resulting in the said accident.

The contention put forth by learned counsel for National Insurance

Company Limited is that the Truck was being driven by an unauthorised person, therefore, National Insurance Company Limited is not liable to pay compensation. She places reliance on Division Bench Judgment of this Hon'ble High Court in **United India Insurance Company Limited versus Kishorilal & Others 2005 ACJ 1399** to contend that in the said case, the keys of the vehicle were snatched from the Driver by respondent No.6 Santosh Gupta and he drove the vehicle causing the accident, therefore, the Insurance Company was not held liable to indemnify the owner.

Learned counsel for the claimants, on the other hand, places reliance on the Judgment of Hon'ble Karnataka High Court in **Manager, Bajaj Alliaanz General Insurance Company Limited versus Bhimraj & Another I.L.R 2015 Karnataka 4759**, the judgment of Hon'ble Division Bench of the High Court of Judicature at Allahabad in **National Insurance Company Limited Through Its Regional Manager versus Smt.Golana & Another 2014 ACJ 1165** and the judgment of Hon'ble the Supreme Court in **National Insurance Company Limited versus Nitin Khandelwal (2008) 11 SCC 259** to contend that merely a fact that the vehicle was stolen will not result in exoneration of the Insurance Company from its liability. He also submits that the vehicle was insured. The liability is for an untoward incident taken place from the said vehicle and the compensation will not be dependent on whether the vehicle was stolen or not. He further submits that the Insurance Company has not examined any witness to point out as to which of the term & condition of the Insurance Policy was violated on the vehicle being stolen and taken away by Arjun Kashyap (Non-Applicant No.1). Neither any investigation report nor statement of any of the witnesses are available on record, therefore, the Insurance

Company having failed to prove breach of terms & conditions of the Insurance Policy is not entitled to seek any indulgence. He lastly submits that in **United India Insurance Company Limited versus Kishorilal & Others (supra)**, the Division Bench of this Hon'ble High Court has not adverted to the fact that mere snatching of the keys of the vehicle resulted in violation of which of the condition of the Insurance Policy entitling the Insurance Company to repudiate the claim, therefore, that judgment being silent, cannot be treated to be legal precedent.

After hearing learned counsel for the parties and going through the record, it is evident that the National Insurance Company Limited has not examined any witness before the Claims Tribunal to show that which of the term & condition of the Insurance Policy was violated. Admittedly, the vehicle in question was comprehensively insured undertaking the risk for third party. In the present case, all deceased/injured are those who met with an accident while on road when the Truck being driven rashly & negligent had hit them causing injury/death.

The fact of the case as narrated in the impugned award brings it under the definition of Theft. Section 378 of the Indian Penal Code, 1860 defines Theft, which is being reproduced thus:- "Whoever, intending to take dishonestly any moveable property out of the possession of any person without that person's consent, moves that property in order to such taking, is said to commit Theft".

Similar fact situation is dealt with by Hon'ble the Supreme Court in **National Insurance Company Limited versus Nitin Khandelwal (supra)** wherein a Mahindra Scorpio registered as a Private Vehicle was stolen and after the theft, it was used as a Taxi for carrying passengers on payment. the Insurance Company has repudiated the claim solely on the ground that the

vehicle was used contrary to the terms and conditions of the Insurance Policy. The Apex Court held that in case of theft of a vehicle, the nature of use of the vehicle cannot be looked into and the Insurance Company cannot repudiate the claim on that basis.

In the present case, Arjun Kashyap (Non-Applicant No.1) has filed his written statement and that written statement is available on record. In the written statement, Arjun Kashyap has categorically mentioned that he was not driving Truck No.UP90-T-3044. He has further stated that he was sitting in the Truck and the Truck was being driven by Authorised Driver Ram Naresh Kushwaha (Non-Applicant No.2) and after the incident took place, he had run away from the spot. The public at the scene of incident had beaten Non-Applicant No.1 Arjun Kashyap and he has been falsely implicated in this case. The written statement filed on behalf of Arjun Kashyap bears endorsement of receipt on 8.7.2015. Even Non-Applicant No.2 Ram Naresh Kushwaha and Non-Applicant No.3 Rajendra Kumar Gautam have filed their written statements denying the contention of Non-Applicant No.1 Arjun Kashyap but the fact of the matter is that none of them have bothered to appear in the Witness Box to dispute the rival submissions and prove them on record.

It is beyond comprehension that if the story as framed by the National Insurance Company Limited is to be believed then a person responsible for theft of a Truck will appear before the Claims Tribunal and file its written statement. Hence, the contention of Non-Applicant No.1 Arjun Kashyap that he was travelling in the Truck and when the accident took place, the Authorised Driver ran away and he was falsely implicated, appears to be possible and just argument because a person guilty of theft would not have appeared before the Claims

Tribunal to reply to the contentions put forth in the Claim Petition(s). It appears that the Owner & Driver of the Offending Vehicle with or without connivance of the National Insurance Company Limited have falsely implicated Non-Applicant No.1 Arjun Kashyap so as to avoid their liability. In any case, the law laid down by the Apex Court in **National Insurance Company Limited versus Nitin Khandelwal (supra)** is crystal clear on the subject.

Similarly, the Hon'ble Division Bench of the High Court of Judicature at Allahabad in **National Insurance Company Limited versus Smt.Golana & Another (supra)** has also held that in statutory contract, the rights of the parties are governed by the provisions of the particular statute under which the contract has been entered into between the parties. In such cases, the doctrine enshrines in Section 56 of the Indian Contract Act, 1872 cannot be invoked. Their Lordships of the Division Bench in Paragraph Nos.31,32,33 have held thus:-

"(31) The legal maxim '**impossibilium nulla obligatio est**' [means that there is no obligation of doing an impossible act] and another maxim of law '**Impotentia excusat legem**' [means when a person is unable to perform an act the incapability of doing such act may be an answer to it] in given facts and circumstances of this case are applicable and favours the owner of the vehicle involved in this case. We fortified our view from a judgment of Apex Court reported in **AIR 2007 SC 269, Kishan Singh Tomer Vs.Municipal Corporation of City of Ahemdabad**, wherein it has been observed that the maxim of law **impotentia excusat legem** is intimately connected with another maxim of law **lex non cogit ad impossibilia**. Impotentia excusat legem is that when there is a

necessary or invincible disability to perform the mandatory part of the law that impotentia excuses. The law does not compel any one to do which one cannot possibly perform. "Where the law creates a duty or charge, and the party is disabled to perform it, without any default in him." Therefore, when it appears that the performance of the formalities prescribed by a statute has been rendered impossible by circumstances over which the persons interested had no control, the circumstances will be taken as a valid excuse.

(32) While interpreting the statutory provision of compulsory insurance of vehicle their Lordships after taking into consideration the several judgment of Supreme Court in its judgment in **UPSRTC Vs. Kulsum and others, (2011) 8 SCC 142** observed in paragraph 31 at page 152 as under:-

"31. The liability to pay compensation is based on a statutory provision. Compulsory insurance of the vehicle is meant for the benefit of the third parties. The liability of the owner to have compulsory insurance is only in regard to third party and not to the property. Once the vehicle is insured, the owner as well as any other person can use the vehicle with the consent of the owner. Section 146 of the Act does not provide that any person who uses the vehicle independently, a separate insurance policy should be taken. The purpose of compulsory insurance in the Act has been enacted with an object to advance social justice."

(33) In the case in hand the situation is some how peculiar. In this case it is not in dispute that offending motor cycle belongs to Ghanshyam, the respondent No.2 . It is also not denied that he kept the motorcycle in safe custody of parking agent of the office of Loco Railway Station, Lucknow from where the motor cycle was stolen and recovered after the accident and handed over to owner through process of Court. The respondent No.2 also lodged FIR of this incident against the parking agent. In this criminal case police submitted closer report because the person causing accident as well as the person who committed theft could not be traced out by the police. The Final Report was accepted. The stolen motorcycle was returned to the Respondent no.2. In such circumstances it could not be said that Respondent no.2 was in exclusive knowledge of the fact as to who was driving the motor cycle at the time of accident. It is well settled proposition of law that a person cannot be compelled to do which is not possible to be done. In such situation the Appellant cannot take advantage of **Bhuvan Singh's Case (supra)** and cannot escaped from its liability by mere pleadings of alleged breach of terms of policy of insurance."

Similar view was taken in **Sunnam Sarttaih versus State of Andhra Pradesh 1980 AP 18**. The Hon'ble High Court of Karnataka in **Manager, Bajaj Alliaanz General Insurance Company Limited versus Bhimraj & Another (supra)** has held that in case of theft of a vehicle, the breach of terms and conditions of the Insurance Policy is not germane. The Insurance Company cannot repudiate the claim in a case of loss of vehicle due to theft. The

Insurance Company is liable to indemnify the owner of the Vehicle when the insured has obtained comprehensive policy for the loss caused to the insured.

Thus, in view of the judgments rendered in **Manager, Bajaj Alliaanz General Insurance Company Limited versus Bhimraj & Another (supra)**, **National Insurance Company Limited Through Its Regional Manager versus Smt.Golana & Another (supra)** and **National Insurance Company Limited versus Nitin Khandelwal (supra)**, there is no iota of doubt that even if the theory of theft is accepted then also the Insurance Company is liable to pay compensation and it cannot be exonerated from its liability especially when it failed to lead any evidence to prove the factum of theft or the vehicle being driven by the unauthorised person or violation of any specific term & condition of the Insurance Policy. Even otherwise, the theory of theft appears to be an afterthought because no Robber will appear before the Claims Tribunal to submit his written statement and to deny the factum of his involvement in the accident. The Property Seizure Memo of the Truck Exhibit P/5 also does not reveal that it was seized from the possession of Arjun Kashyap (Non-Applicant No.1).

Another interesting facet of the case is that Authorised Driver Ram Naresh Kushwaha (Non-Applicant No.2) lodged a report at Unchehara Police Station against Arjun Kashyap (Non-Applicant No.1) giving his particulars etc as is available on record but not exhibited, which is contrary to the story that at Unchehara, there was a Jam and a person boarded the Truck with a kitchen knife and a pair of scissors in his hands when Driver had jumped as he was attacking Cleaner Pintu Gautam then how his vital details like, name, father's name, age etc could be connected on 9.8.2013 when the FIR was lodged by

Ram Naresh Kushwaha for an accident, which took place on 6.8.2013. There is another dark alley that why Ram Naresh Kushwaha had not lodged report on 6.8.2013 after he had jumped from the Truck when Thief Arjun Kashyap had boarded the Truck with some arms in his hands, which too has not been explained either by Owner/Driver or Insurer of the Truck, therefore, all these dark alleys lead to an irrepressible conclusion that the Claims Tribunal has not committed any error in passing the impugned award jointly & severally against the Owner, Driver & Insurer of the Offending Truck holding that National Insurance Company Limited has failed to prove violation of terms & conditions of the Insurance Policy.

Resultantly, Miscellaneous Appeal No.3831/2019, Miscellaneous Appeal No.3830/2019, Civil Revision No.449/2019, Miscellaneous Appeal No.3832/2019, Miscellaneous Appeal No.3833/2019, Miscellaneous Appeal No.3833/2019, Miscellaneous Appeal No.3835/2019, Miscellaneous Appeal No.3836/2019, Miscellaneous Appeal No.3837/2019 & Miscellaneous Appeal No.497/2021 fail & are dismissed.

Let record of the Claims Tribunal be sent back.

(VIVEK AGARWAL)
JUDGE