Oriental Insurance Company Ltd. Vs Sh. Sihnu Ram

Court: High Court of Himachal Pradesh

Date of Decision: Sept. 28, 2016

Acts Referred: Civil Procedure Code, 1908 (CPC) - Section 96
Motor Vehicles Act, 1988 - Section 163A, Section 166, Section 173

Citation: (2016) AAC 2461

Hon'ble Judges: Mr. Mansoor Ahmad Mir, CJ. and Mr. Sandeep Sharma, J.

Bench: Division Bench

Advocate: Mr. Varun Rana, Advocate, for the Respondent Nos. 1 and 2; Nemo, for the Respondent Nos. 3 and 5; Mr. D.N. Sharma, Advocate, vice Mr. R.S. Chandel, Advocate, for the Respondent No. 4; Mr. Ashwani K. Sharma, Senior Advocate, with Mr. Ishan Thakur, Advocate

Final Decision: Dismissed

Judgement

Mr. Mansoor Ahmad Mir, C.J. - This reference has been made by a learned Single Judge of this Court on noticing the conflicting judgments

made by this Court. The matter was put up on administrative side before the Chief Justice and was ordered to be listed before the Division Bench.

This is how the instant reference came up for consideration before this Court.

2. The learned Single Judge, vide order, dated 21st July, 2016, while recording the reasons as to why reference was required, has referred the

following questions for adjudication by the larger Bench:

(i) Whether the claim petition under Section 163A of the Motor Vehicles Act (for short the "Act") was maintainable since according to the

claimants themselves, income of the deceased was Rs. 6,000/- per month, i.e. Rs. 72,000/- per annum which is in excess of the upper limit of

income i.e. Rs. 40,000/- provided under second schedule of the Act? and

(ii) Whether the claimants, after pleading an income more than what is prescribed in the second schedule, can abandon a part of their claim and

restrict the same to Rs. 40,000/- per annum or less so as to bring inconformity with the schedule?

3. Before we deal with the questions (supra) and determine the reference, it is profitable to give a brief history as to how compensation was

granted to the persons, who sustained injuries in the vehicular accidents or to the legal representatives of the persons, who sustained injuries and

succumbed to the said injuries, as per the mandate of Law of Torts.

4. In earlier days, a suit was to be filed by an aggrieved person for grant of compensation and with the development of law, different legislation was

made in order to provide speedy and better remedies enabling the aggrieved person to have compensation as early as possible.

5. The Apex Court in the case titled as Syad Akbar v. State of Karnataka, reported in (1980) 1 Supreme Court Cases 30, has dealt with

the issue.

6. The Motor Vehicles Act came into force in the year 1939. Section 110 of the said Act provided for grant of compensation. The claim petition

was to be filed by the injured-claimant or the legal representatives of the deceased, which was to be tried by the Tribunal headed by a District

Judge. Thereafter, an amendment was made in the year 1982 and Section 92A was introduced in order to grant immediate relief by way of an

interim award.

7. Thereafter, the Motor Vehicles Act, 1988 (for short ""MV Act) came into force with effect from 1st July, 1989, replacing the Motor Vehicles

Act, 1939. In the year 1994, the MV Act has gone through sea change with sole aim and object to provide speedy and effective relief to the

victims, the details of which are given as under:

8. Chapter X of the MV Act, consisting of Sections 140 to 144, provides how to grant compensation ''On The Principle Of No Fault''.

9. Chapter XI of the MV Act mandates for insurance of the motor vehicles against third party risks. It contains Sections 145 to 164. Section 158

(6) provides that as soon as any information regarding any accident involving death or bodily injury to any person is recorded or report under this

section is completed by a police officer, it is the duty of the officer incharge of the police station to forward a copy of the same to the Claims

Tribunal having jurisdiction. Chapter XI also contains Section 163A which provides for compensation ''On Structured Formula Basis''.

10. Chapter XII of the MV Act contains Sections 165 to 176. Section 166 (4) mandates the Claims Tribunal to treat the police report relating to

vehicular accidents forwarded to it under Section 158 (6) as an application for compensation under this Act. Section 167 provides an option to the

claimants, who also have remedy available under the Workmen''s Compensation Act, 1923 (for short ""WC Act""). They can claim compensation

either under the MV Act or WC Act.

11. The Apex Court has discussed the said provisions of law in a judgment rendered in the case titled as Jai Prakash v. National Insurance

Company Limited and others, reported in (2010) 2 Supreme Court Cases 607. It is apt to reproduce paras 9, 11, 12 and 20 to 22 of the

judgment herein:

9. The Legislature tried to reduce the period of pendency of claim cases and quicken the process of determination of compensation by making

two significant changes in the Act, by Amendment Act 54 of 1994, making it mandatory for registration of a motor accident claim within one month

of receipt of first information of the accident, without the claimants having to file a claim petition. Subsection (6) of Section 158 of the Act provides:

158. (6) As soon as any information regarding any accident involving death or bodily injury to any person is recorded or report under this section

is completed by a police officer, the officer-in-charge of the police station shall forward a copy of the same within thirty days from the date of

recording of information or, as the case may be, on completion of such report to the Claims Tribunal having jurisdiction and a copy thereof to the

concerned insurer, and where a copy is made available to the owner, he shall also within thirty days of receipt of such report, forward the same to

such Claims Tribunal and insurer.

Subsection (4) of Section 166 of the Act reads thus:

166. (4) The Claims Tribunal shall treat any report of accidents forwarded to it under Subsection (6) of Section 158 as an application for

compensation under this Act.

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11. This Court in General Insurance Council v. State of A.P., 2007 12 SCC 354, emphasised the need for implementing the aforesaid

provisions. This Court directed: (SCC p. 358, para 10)

10. It is, therefore, directed that all the State Governments and the Union Territories shall instruct, Ã¯Â¿Â½.all police officers concerned about the need

to comply with the requirement of Section 158(6) keeping in view the requirement indicated in Rule 150 and in Form 54, Central Motor Vehicles

Rules, 1989. Periodical checking shall be done by the Inspector General of Police concerned to ensure that the requirements are being complied

with. In case there is noncompliance, appropriate action shall be taken against the erring officials. The Department of Road Transport and

Highways shall make periodical verification to ensure that action is being taken and in case of any deviation immediately bring the same to the

notice of the State Governments/Union Territories concerned so that necessary action can be taken against the officials concerned.

12. But unfortunately neither the police nor the Motor Accidents Claims Tribunals have made any effort to implement these mandatory provisions

of the Act. If these provisions are faithfully and effectively implemented, it will be possible for the victims of accident and/or their families to get

compensation, in a span of few months. There is, therefore, an urgent need for the concerned police authorities and Tribunals to follow the

mandate of these provisions.

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20. The Registrar General of each High Court is directed to instruct all Claims Tribunals in his State to register the reports of accidents received

under Section 158(6) of the Act as applications for compensation under Section 166(4) of the Act and deal with them without waiting for the filing

of claim applications by the injured or by the family of the deceased. The Registrar General shall ensure that necessary Registers, forms and other

support is extended to the Tribunal to give effect to Section 166(4) of the Act.

21. For complying with Section 166(4) of the Act, the jurisdictional Motor Accident Claims Tribunals shall initiate the following steps:

(a) The Tribunal shall maintain an Institution Register for recording the AIRs which are received from the Station House Officers of the Police

Stations and register them as miscellaneous petitions. If any private claim petitions are directly filed with reference to an AIR, they should also be

recorded in the Register.

(b) The Tribunal shall list the AIRs as miscellaneous petitions. It shall fix a date for preliminary hearing so as to enable the police to notify such date

to the victim (family of victim in the event of death) and the owner, driver and insurer of the vehicle involved in the accident. Once the claimant/s

appear, the miscellaneous application shall be converted to claim petition. Where a claimant/s file the claim petition even before the receipt of the

AIR by the Tribunal, the AIR may be tagged to the claim petition.

(c) The Tribunal shall enquire and satisfy itself that the AIR relates to a real accident and is not the result of any collusion and fabrication of an

accident (by any ''Police Officer Advocate Doctor'' nexus, which has come to light in several cases).

(d) The Tribunal shall by a summary enquiry ascertain the dependent family members/legal heirs. The jurisdictional police shall also enquire and

submit the names of the dependent legal heirs.

(e) The Tribunal shall categories the claim cases registered, into those where the insurer disputes liability and those where the insurer does not

dispute the liability.

(f) Wherever the insurer does not dispute the liability under the policy, the Tribunal shall make an endeavour to determine the compensation

amount by a summary enquiry or refer the matter to the Lok Adalat for settlement, so as to dispose of the claim petition itself, within a time frame

not exceeding six months from the date of registration of the claim petition.

(g) The insurance companies shall be directed to deposit the admitted amount or the amount determined, with the claims tribunals within 30 days of

determination. The Tribunals should ensure that the compensation amount is kept in Fixed deposit and disbursed as per the directions contained in

General Manager, KSRTC v. Susamma Thomas, 1994 2 SCC 176.

(h) As the proceedings initiated in pursuance of Section 158(6) and 166(4) of the Act, are different in nature from an application by the victim/s

under Section 166(1) of the Act, Section 170 will not apply. The insurers will therefore be entitled to assist the Tribunal (either independently or

with the owners of the vehicles) to verify the correctness in regard to the accident, injuries, age, income and dependents of the deceased victim and

in determining the quantum of compensation.

22. The aforesaid directions to the Tribunals are without prejudice to the discretion of each Tribunal to follow such summary procedure as it deems

fit as provided under Section 169 of the Act. Many Tribunals instead of holding an inquiry into the claim by following suitable summary procedure,

as mandated by Section 168 and 169 of the Act, tend to conduct motor accident cases like regular civil suits. This should be avoided. The

Tribunal shall take an active role in deciding and expeditious disposal of the applications for compensation and make effective use of Section 165

of the Evidence Act, 1872, to determine the just compensation.

12. The Apex Court in the case titled as Puttamma and others v. K.L. Narayana Reddy and another, reported in 2014 AIR SCW 165,

has also laid down the same ratio.

13. The question is Ã¯Â¿Â½ Once the jurisdiction of the Claims Tribunal has been invoked and during the trial, evidence comes on record to the effect

that the accident was outcome of rash and negligent act and income of the victim was more than Rs. 40,000/- per annum, whether the petition

under Section 163A of the MV Act can be dismissed? The answer is in the negative for the following reasons:

14. While going through the scheme, aim, object and mandate of Sections 158 (6) and 166 (4) of the MV Act and the ratio laid down by the

Apex Court, it can be safely held that a claim petition under Sections 163A or 166 of the MV Act cannot be dismissed on flimsy grounds and

petition under Section 140 of the MV Act can be filed only under Section 166 of the MV Act, is based "On The Principle Of No Fault" and is an

interim measure.

15. The Second Schedule appended with the MV Act provides the income slab. Thus, petition under Section 163A of the MV Act can be

maintained in case the income of the victim of a vehicular accident is less than Rs. 40,000/- per annum.

16. In the case titled as National Insurance Company Ltd. v. Sinitha & Ors., reported in 2012 AIR SCW 10, the Apex Court held that in

the claim petitions filed under Section 163A of the MV Act, the claimants are not required to prove the wrongful act or neglect or default of the

offending vehicle. It is apt to reproduce para 15 of the judgment herein:

15. The heading of Section 163A also needs a special mention. It reads, ""Special Provisions as to Payment of Compensation on Structured

Formula Basis"". It is abundantly clear that Section 163A, introduced a different scheme for expeditious determination of accident claims.

Expeditious determination would have reference to a provision wherein litigation was hitherto before (before the insertion of Section 163A of the

Act) being long drawn. The only such situation (before the insertion of Section 163A of the Act) wherein the litigation was long drawn was under

Chapter XII of the Act. Since the provisions under Chapter XII are structured under the ""fault"" liability principle, its alternative would also

inferentially be founded under the same principle. Section 163A of the Act, catered to shortening the length of litigation, by introducing a scheme

regulated by a pre-structured formula to evaluate compensation. It provided for some shortcuts, as for instance, only proof of age and income,

need to be established by the claimant to determine the compensation in case of death. There is also not much discretion in the determination of

other damages, the limits whereof are also provided for. All in all, one cannot lose sight of the fact, that claims made under Section 163A can result

in substantial compensation. When taken together the liability may be huge. It is difficult to accept, that the legislature would fasten such a

prodigious liability under the ""no-fault"" liability principle, without reference to the ""fault"" grounds. When compensation is high, it is legitimate that the

insurance company is not fastened with liability when the offending vehicle suffered a ""fault"" (""wrongful act"", ""neglect"", or ""defect"") under a valid Act

only policy. Even the instant process of reasoning, leads to the inference, that Section 163A of the Act is founded under the ""fault"" liability

principle.

17. The mandate of Section 163A of the MV Act is to provide compensation "On Structured Formula Basis" finally and is not an interim measure.

Once it is granted, the victims cannot file claim petition under Section 166 of the MV Act for grant of enhanced compensation. But, in case the

Claims Tribunal comes to the conclusion that the income of the victim is more than Rs. 40,000/- per annum, it is not supposed to dismiss the claim

petition. If the claim petition is dismissed on this ground then the aim, purpose and object of Sections 158 (6), 163A and 166 (4) of the MV Act

would be defeated.

18. The Apex Court in the case titled as Deepal Girishbhai Soni and others v. United India Insurance Co. Ltd., Baroda, reported in

(2004) 5 Supreme Court Cases 385, has dealt with the issue and held that claimants can file petition either under Section 163A or Section 166

of the MV Act, is an option, rather, an election/exception. It is worthwhile to reproduce paras 52 and 57 of the judgment herein:

52. It may be true that Section 163B provides for an option to a claimant to either go for a claim under Section 140 or Section 163A of the Act,

as the case may be, but the same was inserted exabundanti cautela so as to remove any misconception in the mind of the parties to the lis having

regard to the fact that both relate to the claim on the basis of no-fault liability. Having regard to the fact that Section 166 of the Act provides for a

complete machinery for laying a claim on fault liability, the question of giving an option to the claimant to pursue their claims either under Section

163A or Section 166 does not arise. If the submission of the learned Counsel is accepted the same would lead to an incongruity.

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57. We, therefore, are of the opinion that remedy for payment of compensation both under Sections 163A and 166 being final and independent of

each other as statutorily provided, a claimant cannot pursue his remedies thereunder simultaneously. One, thus, must opt/elect to go either for a

proceeding under Section 163A or under Section 166 of the Act, but not under both.

19. In the case titled as Surinder Kumar Arora & another v. Dr. Manoj Bisla & others, reported in 2012 AIR SCW 2241, it has been

held that the claimant has option to seek compensation either under Section 166 or under Section 163A of the Act. It is apt to reproduce para 9 of

the judgment herein:

9. Admittedly, the petition filed by the claimants was under Section 166 of the Act and not under Section 163A of the Act. This is not in dispute.

Therefore, it was the entire responsibility of the parents of the deceased to have established that respondent No.1 drew the vehicle in a rash and

negligent manner which resulted in the fatal accident. Maybe, in order to help respondent No.1, the claimants had not taken up that plea before the

Tribunal. Therefore, High Court was justified in sustaining the judgment and order passed by the Tribunal. We make it clear that if for any reason,

the claimants had filed the petition under Section 163A of the Act, then the dicta of this Court in the case of Kaushnuma Begum (Smt.) & Ors.

(AIR 2001 SC 485 : 2001 AIR SCW 85) (supra) would have come to the assistance of the claimants.

20. The Apex Court in another case tilted as Reshma Kumari & Ors. v. Madan Mohan & Anr., reported in 2013 AIR SCW 3120, has laid

down the same principle.

21. In the case titled as United India Insurance Company Ltd. v. Sunil Kumar & Anr., reported in 2013 AIR SCW 6694, the Apex Court,

while discussing the judgments in Deepal Girishbai Soni''s and Sinitha''s cases (supra), has referred the matter to the larger Bench. It is apt to

reproduce para 5 of the judgment herein:

5. We find difficult to accept the reasoning expressed by the Two Judge Bench in Sinitha''s case. In our view, the principle laid down in

Hansrajbhai V. Kodala''s case has not been properly appreciated or applied by the Bench. In fact, another Division Bench of this Court vide its

order dated 19.4.2002 had doubted the correctness of the judgment in Hansrajbhai V. Kodala''s case and referred the matter to a Three Judge

Bench to examine the question whether claimant could pursue the remedies simultaneously under Sections 166 and 163A of the Act. The Three

Judge Bench of this Court in Deepal Girishbhai Soni & Ors. v. United India Insurance Co. Ltd., Baroda, 2004 5 SCC 385 made a detailed

analysis of the scope of Sections 166 and 163A and held that the remedy for payment of compensation both under Sections 163A and 166 being

final and independent of each other, as statutorily provided, a claimant cannot pursue his remedies thereunder simultaneously. The Court also

extensively examined the scope of Section 163A and held that Section 163A was introduced in the Act by way of a social security scheme and is

a Code by itself. The Court also held that Section 140 of the Act deals with interim compensation but by inserting Section 163A, the Parliament

intended to provide for making of an award consisting of a predetermined sum without insisting on a long drawn trial or without proof of negligence

in causing the accident. The Court noticed that Section 163A was inserted making a deviation from the common law liability under the Law of

Torts and also in derogation of the provisions of the Fatal Accidents Act. The Three Judge Bench also held that Section 163A has an overriding

effect and provides for special provisions as to payment of compensation on structured formula basis. Subsection (1) of Section 163A contains a

non-obstante clause, in terms whereof the owner of the motor vehicle or the authorised insurer is liable to pay, in the case of death or permanent

disablement due to accident arising out of the use of motor vehicle, compensation, as indicated in the Second Schedule, to the legal heirs or the

victim, as the case may be. The Court also held that the scheme of the provisions of Section 163A and Section 166 are distinct and separate in

nature. In Section 163A, the expression ""notwithstanding anything contained in this Act or in any other law for the time being in force"" has been

used, which goes to show that the Parliament intended to insert a non obstante clause of wide nature which would mean that the provisions of

Section 163A would apply despite the contrary provisions existing in the said Act or any other law for the time being in force. Section 163A of the

Act covers cases where even negligence is on the part of the victim. It is by way of an exception to Section 166 and the concept of social justice

has been duly taken care of. The above-mentioned Three Judge Bench judgment was not placed before the learned Judges who decided the

Sinitha"s case.

22. The larger Bench has not yet decided the said reference and is still on the dockets of the Apex Court. But in para 5 of the said judgment,

quoted herein above, it has specifically been held that filing a claim petition under Section 163A of the MV Act is an exception to Section 166 of

the MV Act.

23. At the cost of repetition, the Claims Tribunals have powers under Section 166 (4) of the MV Act read with Section 158 (6) of the MV Act

and the Motor Vehicles Rules to treat any petition either under Section 163A or Section 166 of the MV Act. The scope, aim, object and

reasonable logic behind such legislation nowhere empowers the Claims Tribunals to dismiss a claim petition filed by the victim on the ground of

income slab, who has chosen to file the same under Section 163A of the MV Act with a hope that he will get compensation as early as possible.

The Claims Tribunals have the power to treat the same under Section 166 of the MV Act so as to redress the grievances of the victims. If the

claim petition is dismissed on such grounds, that will defeat the purpose of the Act and will amount to succumbing to the technicalities.

24. While going through the aim and object of the MV Act, one comes to an inescapable conclusion that the wisdom of the Legislature was to

provide compensation to the victims as early as possible and that is why amendments were made from time to time with a sole object that the

claimants do not suffer and fall prey to social evils.

25. The Apex Court and other High Courts have held that the Courts should not succumb to the procedural wrangles and tangles,

hypertechnicalities and mystic maybes and that should not be a ground to dismiss the claim petition and to defeat the rights of the claimants.

26. The same principle has been laid down by the Apex Court in the cases titled as N.K.V. Bros (P.) Ltd. v. M. Karumai Ammal and others

etc., reported in AIR 1980 Supreme Court 1354; Sohan Lal Passi v. P. Sesh Reddy and others, reported in AIR 1996 Supreme Court

2627; and Dulcina Fernandes and others v. Joaquim Xavier Cruz and another, reported in (2013) 10 Supreme Court Cases 646; and

by this Court in FAO No. 339 & 340 of 2008, titled as NIC v. Parwati & others; FAO No. 172 of 2006, titled as Oriental Insurance Company

v. Shakuntla Devi & others; FAO No. 396 of 2012, titled as Asha & others v. Moti Ram & others; FAO No. 4248 of 2013, titled as Magni Devi

& others v. Suneel Kumar & others, decided on 13.03.2015; FAO No. 17 of 2008, titled as United India Insurance Company Limited v. Smt.

Brijbala & others, decided on 20.03.2015; and FAO No. 186 of 2008, titled as Oriental Insurance Co. Ltd. v. Shri Kishan Chand & others,

decided on 01.05.2015.

27. The Apex Court in a latest judgment rendered in the case titled as Smt. Savita v. Bindar Singh & others, reported in 2014 AIR SCW

2053, has held that the niceties or technicalities have no role to play. It is worthwhile to reproduce para 6 of the judgment herein:

6. After considering the decisions of this Court in Santosh Devi (supra), AIR 2012 SC 2185 : 2012 AIR SCW 2892, as well as Rajesh v.

Rajbir Singh, (2013) 9 SCC 54, we are of the opinion that it is the duty of the Court to fix a just compensation. At the time of fixing such

compensation, the court should not succumb to the niceties or technicalities to grant just compensation in favour of the claimant. It is the duty of the

court to equate, as far as possible, the misery on account of the accident with the compensation so that the injured or the dependants should not

face the vagaries of life on account of discontinuance of the income earned by the victim. Therefore, it will be the bounden duty of the Tribunal to

award just, equitable, fair and reasonable compensation judging the situation prevailing at that point of time with reference to the settled principles

on assessment of damages. In doing so, the Tribunal can also ignore the claim made by the claimant in the application for compensation with the

prime object to assess the award based on the principle that the award should be just, equitable, fair and reasonable compensation.

28. The Apex Court in another case titled as Ningamma & another v. United India Insurance Co. Ltd., reported in 2009 AIR SCW 4916,

held that it is the bounden duty of the Court to award just compensation in favour of the claimants to which they are entitled to, irrespective of the

fact whether any plea in that behalf was raised by the claimants or not. It is profitable to reproduce para 25 of the judgment herein:

25. Undoubtedly, Section 166 of the MVA deals with ""Just Compensation"" and even if in the pleadings no specific claim was made under section

166 of the MVA, in our considered opinion a party should not be deprived from getting ""Just Compensation"" in case the claimant is able to make

out a case under any provision of law. Needless to say, the MVA is beneficial and welfare legislation. In fact, the Court is duty bound and entitled

to award ""Just Compensation"" irrespective of the fact whether any plea in that behalf was raised by the claimant or not. However, whether or not

the claimants would be governed with the terms and conditions of the insurance policy and whether or not the provisions of Section 147 of the

MVA would be applicable in the present case and also whether or not there was rash and negligent driving on the part of the deceased, are

essentially a matter of fact which was required to be considered and answered at least by the High Court.

29. In Sinitha''s case (supra), the Apex Court has held that it is open to the owner or the insurer to defeat a claim under Section 163A of the MV

Act by pleading and establishing through cogent evidence a wrongful act or neglect or default.

30. Subsection (2) of Section 163A of the MV Act provides that the claimant is not required to plead or establish the wrongful act or neglect or

default of the owner of the vehicle. Perhaps that was the reason that the Apex Court in Sunil Kumar''s case (supra) made a reference to the larger

Bench, which is yet to be decided. So, we refrain from making discussion and return findings.

31. The Apex Court in the case titled as United India Insurance Co. Ltd. v. Shila Datta & Ors., reported in 2011 AIR SCW 6541, has

made discussions about the aim and object of the legislation and has also provided what is the procedure to be followed by the Claims Tribunals

while determining the claim petitions. Five points were framed for determination in the said reference and points No. (iii) to (v) were further

referred to a larger Bench. It is not known whether said reference has been answered. However, we have laid our hands on order, dated 12th

November, 2013, in terms of which the appeal, which had given birth to the said reference, has been dismissed.

32. It is also worthwhile to record herein that in Sunil Kumar''s case (supra), points No. (iii) to (v) framed in Shila Datta''s case (supra) have also

been referred to a larger Bench. Meaning thereby, the reference is yet to be answered. But, the findings in para 5 of the judgment in Shila Datta''s

case (supra) were not the subject matter of the reference and have attained finality. It is profitable to reproduce para 5 of the judgment in Shila

Datta''s case (supra) herein:

5. A claim petition for compensation in regard to a motor accident (filed by the injured or in case of death, by the dependant family members)

before the Motor Accident Claims Tribunal constituted under section 165 of the Act is neither a suit nor an adversarial lis in the traditional sense. It

is a proceedings in terms of and regulated by the provisions of Chapter XII of the Act which is a complete Code in itself. We may in this context

refer to the following significant aspects in regard to the Tribunals and determination of compensation by Tribunals:

(i) A proceeding for award of compensation in regard to a motor accident before the Tribunal can be initiated either on an application for

compensation made by the persons aggrieved (claimants) under section 166(1) or section 163A of the Act or suo motu by the Tribunal, by treating

any report of accident (forwarded to the tribunal under section 158(6) of the Act as an application for compensation under section 166 (4) of the

Act.

(ii) The rules of pleadings do not strictly apply as the claimant is required to make an application in a form prescribed under the Act. In fact, there

is no pleading where the proceedings are suo motu initiated by the Tribunal.

(iii) In a proceeding initiated suo motu by the tribunal, the owner and driver are the respondents. The insurer is not a respondent, but a noticee

under section 149(2) of the Act. Where a claim petition is filed by the injured or by the legal representatives of a person dying in a motor accident,

the driver and owner have to be impleaded as respondents. The claimants need not implead the insurer as a party. But they have the choice of

impleading the insurer also as a party respondent. When it is not impleaded as a party, the Tribunal is required to issue a notice under section

149(2) of the Act. If the insurer is impleaded as a party, it is issued as a regular notice of the proceedings.

(iv) The words "receipt of an application for compensation" in section 168 refer not only to an application filed by the claimants claiming

compensation but also to a suo motu registration of an application for compensation under section 166(4) of the Act on the basis of a report of an

accident under section 158(6) of the Act.

(v) Though the tribunal adjudicates on a claim and determines the compensation, it does not do so as in an adversarial litigation. On receipt of an

application (either from the applicant or suo motu registration), the Tribunal gives notice to the insurer under section 149(2) of the Act, gives an

opportunity of being heard to the parties to the claim petition as also the insurer, holds an inquiry into the claim and makes an award determining

the amount of compensation which appears to it to be just. (Vide Section 168 of the Act).

(vi) The Tribunal is required to follow such summary procedure as it thinks fit. It may choose one or more persons possessing special knowledge

of and matters relevant to inquiry, to the assist it in holding the enquiry (vide section 169 of the Act).

(vii) The award of the Tribunal should specify the person/s to whom compensation should be paid. It should also 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. (Vide section 168 of the Act).

(viii) The Tribunal should deliver copies of the award to the parties concerned within 15 days from the date of the award. (Vide section 168 (2) of

the Act).

We have referred to the aforesaid provisions to show that an award by the tribunal cannot be seen as an adversarial adjudication between the

litigating parties to a dispute, but a statutory determination of compensation on the occurrence of an accident, after due enquiry, in accordance with

the statute.

33. This Court also in the case titled as Smt. Asha & others v. Sh. Moti Ram & others, reported in Latest HLJ 2014 (HP) 595, while

relying upon the various pronouncements made by the Apex Court, has held that granting of compensation is just to ameliorate the woes of the

victims of the vehicular accidents and the hypertechnicalities, mystic maybes and procedural wrangles and tangles cannot be made a ground to

defeat the social purpose of granting compensation.

34. In the case titled as United India Insurance Company Limited v. Smt. Samitra Devi & others, reported in Latest HLJ 2015 (HP) 85,

this Court held that claim petitions cannot be scuttled away enroute on the ground that the claimants have not claimed the amount to which they are

entitled to. Further held that the Claims Tribunal is within its powers to grant compensation more than what is claimed and the Appellate Court has

the same powers even if the claimants have not filed appeal or cross-objections. It would be profitable to reproduce paras 27, 28 and 31 of the

judgment herein:

27. The Tribunal has also fallen in error in making such a finding. It is beaten law of land that compensation should be just and proper and claim

petition cannot be scuttled away enroute on the ground that the claimants have not claimed the amount to which they are entitled to.

28. I believe that the Tribunal has lost sight of the mandate of Section 158 (6) of the Motor Vehicles Act, 1988 (hereinafter referred to as ""the MV

Act"") read with Section 166 (4) of the MV Act.

29. Ã¯Â¿Â½.....

30. Ã¯Â¿Â½.....

31. My this view is fortified by the judgment of the Apex Court in the case of Nagappa v. Gurudayal Singh and others, reported in AIR 2003

Supreme Court 674. It is apt to reproduce paras 7, 9 and 10 of the judgment herein:

7. Firstly, under the provisions of Motor Vehicles Act, 1988, (hereinafter referred to as ""the MV Act"") there is no restriction that compensation

could be awarded only up to the amount claimed by the claimant. In an appropriate case where from the evidence brought on record if

Tribunal/Court considers that claimant is entitled to get more compensation than claimed, the Tribunal may pass such award. Only embargo is Ã¯Â¿Â½

it should be "Just" compensation, that is to say, it should be neither arbitrary, fanciful nor unjustifiable from the evidence. This would be clear by

reference to the relevant provisions of the M.V. Act. Section 166 provides that an application for compensation arising out of an accident involving

the death of or bodily injury to, persons arising out of the use of motor vehicles, or damages to any property of a third party so arising, or both,

could be made (a) by the person who has sustained the injury; or (b) by the owner of the property; (c) where death has resulted from the accident,

by all or any of the legal representatives of the deceased; or (d) by any agent duly authorised by the person injured or all or any of the legal

representatives of the deceased, as the case may be. Under the proviso to subsection (1), all the legal representatives of the deceased who have

not joined as the claimants are to be impleaded as respondents to the application for compensation. Other important part of the said Section is

subsection (4) which provides that ""the Claims Tribunal shall treat any report of accidents forwarded to it under subsection (6) of Section 158 as

an application for compensation under this Act."" Hence, Claims Tribunal in appropriate case can treat the report forwarded to it as an application

for compensation even though no such claim is made or no specified amount is claimed.

8. .....

9. It appears that due importance is not given to subsection (4) of Section 166 which provides that the Tribunal shall treat any report of the

accidents forwarded to it under subsection (6) of Section 158, as an application for compensation under this Act.

10. Thereafter, Section 168 empowers the Claims Tribunal to ""make an award determining the amount of compensation which appears to it to be

just"". Therefore, only requirement for determining the compensation is that it must be "just". There is no other limitation or restriction on its power

for awarding just compensation.

35. The same principle has been laid down in the cases titled as Smt. Shrestha Devi and others v. Kishori Lal and others, being FAO No. 465 of

2009, decided on 1st July, 2016; and Dinesh Kumar v. Puran Singh and others, being FAO (MVA) No. 189 of 2011, decided on 5th August,

2016.

36. The proceedings instituted under Sections 163A or 166 of the MV Act are to be taken to the logical end by following a summary procedure

as per the mandate of MV Act read with the Motor Vehicle Rules.

37. The Apex Court in the case titled as Malati Sardar v. National Insurance Company Ltd. and others, reported in AIR 2016 Supreme

Court 247, has held that the award passed in a claim petition cannot be set aside on account of lack of territorial jurisdiction unless it has caused

prejudice because that will amount to defeat the aim, object and purpose of the MV Act. The ratio of the said judgment is that the Claims

Tribunals/Courts shall reach the victims as early as possible and grant compensation to which they are entitled to as per the norms applicable. It is

apt to reproduce para 14 of the judgment herein:

14. The provision in question, in the present case, is a benevolent provision for the victims of accidents of negligent driving. The provision for

territorial jurisdiction has to be interpreted consistent with the object of facilitating remedies for the victims of accidents. Hyper technical approach

in such matters can hardly be appreciated. There is no bar to a claim petition being filed at a place where the insurance company, which is the main

contesting parties in such cases, has its business. In such cases, there is no prejudice to any party. There is no failure of justice. Moreover, in view

of categorical decision of this Court in Mantoo Sarkar, (AIR 2009 SC 1022) supra, contrary view taken by the High Court cannot be sustained.

The High Court failed to notice the provision of Section 21 CPC.

38. The Claims Tribunals have the power, as discussed herein above, to treat the claim petition under Section 163A or Section 166 of the MV

Act, but that power can be exercised before final award is made. After passing such order, the Claims Tribunals have to provide opportunities to

the parties to plead their case and take all defences available, so that no prejudice is caused to the parties, in order to ensure that the grievance of

the claimants is redressed, which is the aim and object of granting compensation.

39. If a claim petition filed under Section 163A of the MV Act is dismissed on account of income slab or on the ground of rash and negligent

element involved, the claimants can file a fresh claim petition under Section 166 of the MV Act and can take all such grounds, but that would be

against the concept of granting compensation and would defeat the very purpose. It would really be a travesty of justice to constrain the claimant(s)

to file fresh claim petition under Section 166 of the MV Act for the reason that the claim petition can be filed at any time as the rigour of delay

stands taken away by the amendment made in the year 1994 and Section 166 (3) of the MV Act stands deleted.

40. The Apex Court in the case titled as Dhannalal v. D.P. Vijayvargiya and others, reported in AIR 1996 Supreme Court 2155, has

discussed the purpose of amendment made in the year 1994 deleting subsection (3) of Section 166 of the MV Act and taking away the rigour of

limitation. The ratio of the said judgment and the purpose of deletion of subsection (3) of Section 166 of the MV Act is aimed at to provide

compensation to the victims of the vehicular accident at any time in order to achieve the purpose of granting compensation in terms of the mandate

of the MV Act.

41. In the given circumstances, it can be safely held that there is no legal impediment in treating the claim petition under Section 166 of the MV

Act, which has been filed under Section 163A of the MV Act and granting compensation.

42. If a claim petition filed for grant of compensation under Section 163A of the MV Act is granted, the claimants are precluded from filing fresh

claim petition under Section 166 of the MV Act for enhanced compensation because the award made under Section 163A of the MV Act is final

and operates as Res Judicata and Estoppel.

43. The Apex Court in Deepal Girishbhai Soni"s case (supra) has also held that the proceedings under Section 163A of the MV Act are aimed at

to provide speedy and quick relief to the claimants and the award made is a final award. It would be profitable to reproduce paras 41 to 43 of the

judgment herein:

41. Section 140 of the Act dealt with interim compensation but by inserting Section 163A, the Parliament intended to provide for making of an

award consisting of a predetermined sum without insisting on a longdrawn trial or without proof of negligence in causing the accident. The

Amendment was thus a deviation from the common law liability under the law of torts and was also in derogation of the provisions of the Fatal

Accidents Act. The Act and the Rules framed by the State in no uncertain terms suggest that a new device was sought to be evolved so as to grant

a quick and efficacious relief to the victims falling within the specified category. The heirs of the deceased or the victim in terms of the said

provisions were assured of a speedy and effective remedy which was not available to the claimants under Section. 166 of the Act.

42. Chapter XI was, thus, enacted for grant of immediate relief to a section of people whose annual income is not more than Rs. 40,000/- having

regard to the fact that in terms of Section 163A of the Act read with the Second Schedule appended thereto, compensation is to be paid on a

structured formula not only having regard to the age of the victim and his income, but also the other factors relevant therefor. An award made

thereunder, therefore, shall be in full and final settlement of the claim as would appear from the different columns contained in the Second Schedule

appended to the Act. The same is not interim in nature. The note appended to column 1 which deals with fatal accidents makes the position

furthermore clear stating that from the total amount of compensation one third thereof is to be reduced in consideration of the expenses which the

victim would have incurred towards maintaining himself had he been alive. This together with the other heads of compensation as contained in

column Nos. 2 to 6 thereof leaves no manner of doubt that the Parliament intended to lay a comprehensive scheme for the purpose of grant of

adequate compensation to a section of victims who would require the amount of compensation without fighting any protracted litigation for proving

that the accident occurred owing to negligence on the part of the driver of the Motor Vehicle or any other fault arising out of use of a Motor

Vehicle.

43. The submission of learned Counsel appearing on behalf of the appellants to the effect that Sections 140 and 163A provide for similar scheme

cannot be accepted for more than one reason. Payment of the amount in terms of Section 140 of the Act is ad hoc in nature. A claim made

thereunder, as has been noticed hereinbefore, is in addition to any other claim which may be made under any other law for the time being in force.

Section 163A of the Act does not contain any such provision.

44. The appeal under Section 173 of the MV Act is alike the appeal under Section 96 of the Code of Civil Procedure, 1908 (for short, ""CPC"").

Therefore, the Court is under obligation to decide all factual and legal issues arising in a case.

45. The Apex Court in U.P.S.R.T.C. v. Km. Mamta and others, reported in AIR 2016 Supreme Court 948, held that remedy under Section

173 of the MV Act and the first appeal under Section 96 CPC are alike and, therefore, the High Court has to decide all issues arising in the case.

It is profitable to reproduce paragraph 24 of the said judgment hereunder:

24. An appeal under Section 173 of the M.V. Act is essentially in the nature of first appeal alike Section 96 of the Code and, therefore, the High

Court is equally under legal obligation to decide all issues arising in the case both on facts and law after appreciating the entire evidence.

46. Keeping in view the above discussion, it is not mandatory to file claim petition by the claimants because even a police report can be treated as

a claim petition.

47. Having glance of the above discussions, the judgments made by this Court in the case titled as New India Assurance Company Ltd. v.

Chanchal Devi & ors., reported in Latest HLJ 2014 (HP) 250, and FAO No. 394 of 2007, titled as Oriental Insurance Company Ltd.

v. Meena & ors., decided on 11th July, 2014, are in accordance with the judgments made by the Apex Court (supra), and the judgments in the

cases titled as Sudhir Mahajan v. United India Insurance Company Ltd. & anr., reported in 2007 (2) Shim.LC 305; Shanti Devi & anr.

v. National Insurance Company & ors, reported in 2008 (2) Shim.LC 125; Satya Devi v. Bakshi Ram & ors., reported in 2009 (2)

Shim.LC 381; and New India Assurance Company v. Smt. Veena Devi & ors., reported in Latest HLJ 2009 (HP) 770, are not in tune

with the ratio laid down by the judgments made by the Apex Court, as discussed herein above, and are also not in accordance with the aim and

object of the said Legislation.

48. The protection provided under Section 163A of the MV Act is to the victims whose income slab is up to Rs. 40,000/- per annum and that

remedy is not available to the victims whose income slab is more than Rs. 40,000/- per annum. If the Claims Tribunal comes to the conclusion that

the income slab of the victim is more than Rs. 40,000/-, the remedy under Section 163A of the MV Act cannot be pressed into service, but, as

discussed herein above, it can be treated as claim petition under Section 166 of the MV Act by providing opportunity to the claimants to prove

rash and negligent element, which is sine quo non for determining the claim petition under Section 166 of the MV Act and opportunity is also

required to be provided to the respondents to raise all defences available to them in terms of the mandate of the MV Act.

49. The claimants cannot be permitted to abandon a part of their claim and restrict the same to Rs. 40000/- per annum in order to avail the remedy

under Section 163A of the MV Act. That is not the aim, object and scope of the Legislation. If that would have been so, then there was no need

to prescribe the income slab and in case the claimants are allowed to do so, it will amount to rewriting the provisions of Section 163A of the MV

Act.

50. Having said so, the claimants/victims cannot be permitted to abandon a part of their claim and restrict the same to Rs. 40,000/- per annum in

order to maintain the claim petition under Section 163A of the MV Act.

51. It is worthwhile to record herein that the Division Bench of this Court in the case titled as Sukhwant Kaur and others v. Sher Singh and

another, reported in 2008 (3) Shim.LC 93, has held that claim petition under Section 163A of the MV Act was not maintainable in view of the

fact that the income of the deceased was more than Rs. 40,000/- per annum (para 3); and the claim petition was treated under Section 166 of the

MV Act in terms of para 4 of the judgment, but was dismissed on the ground that negligence was not proved.

52. Thus, it cannot be said that the judgment in Chanchal Devi''s case (supra) is in conflict with the judgment in Sukhwant Kaur''s case (supra).

53. The reference is answered accordingly.

54. Whether the appeal in hand be sent to the learned Single Judge for determination is also a moot question. The claimants have already suffered

because of the procedure adopted, is travesty of justice and judicial process. So, we deem it proper to determine the appeal also.

55. The claim petition was filed under Section 163A of the MV Act for grant of compensation, as per the breakups given in the claim petition, on

the grounds taken therein.

56. The respondents in the claim petition resisted the same on the grounds taken in the respective memo of objections.

57. Following issues came to be framed by the Tribunal on 26th October, 2007:

1. Whether the deceased Girdhari Lal died in an accident as a result of rash and negligent driving of Bus No. HP 09 A 0698 by the respondent

No. 2 and on account of rash and negligent act of respondent No. 3, as alleged? OPP

2. If issue No. 1 is proved in affirmative, whether the petitioners are entitled for compensation, if so to what amount and from whom? OPP

3. Whether there has been breach of specific terms and conditions of the Insurance Policy because the respondent No. 1 has sold the vehicle to

one Sh. Surat Ram, as alleged? OPR4

4. Whether the driver of the vehicle i.e. respondent No. 2 was not holding any valid and effective driving licence at the time of the accident? OPR4

5. Whether the vehicle was not holding fitness certificate at the time of the accident, if so its effect? OPR4

6. Whether the vehicle was not having required route permit and there is a violation of the Policy and statute, as alleged? OPR4

7. Relief.

58. The claimants have examined three witnesses and one of the claimants has himself stepped into the witness box. It is apt to record herein that

the respondents, including the insurer, have not led any evidence. Thus, they have failed to prove the defences taken by them and issues No. 3 to 6

came to be decided against the insurer.

59. The claimants, owner-insured, driver and conductor of the offending vehicle have not questioned the impugned award on any count, thus, has

attained finality so far it relates to them.

60. The appellant-insurer has questioned the impugned award mainly on the ground that the claim petition was not maintainable for the reason that

the monthly income of the deceased was alleged to be Rs. 6,000/- per month, i.e. Rs. 72,000/- per annum.

61. This ground is not available to the insurer for the reason that, as discussed herein above, the claim petition cannot be dismissed on that ground

and it can be treated as claim petition under Section 166 of the MV Act. Though, the claimants have averred that the income of the deceased was

Rs. 6,000/- per month, but, the Tribunal has held that the income of the deceased was Rs. 3300/- per month. Thus, his income was not more than

Rs. 40,000/- per annum, and the claim petition under Section 163A of the MV Act was maintainable.

62. Even otherwise, if we treat the claim petition under Section 166 of the MV Act, rash and negligent driving of the offending vehicle by its driver

has been proved, which is sine quo non for maintaining the claim petition and granting compensation under the said Section. In para 24 of the claim

petition, it has specifically been averred that the deceased was travelling on the roof top of the bus and was hit on head by an over hanging branch

of tree, which factum has not been denied by the driver and conductor of the bus. Allowing a person to travel on the roof of the bus, on the face of

it, is an act of negligence and rashness of the driver.

63. In a case titled as N.K.V. Bros. (P.) Ltd. v. M. Karumani Ammal and others, reported in AIR 1980 Supreme Court 1354, a bus hit an

overhanging high tension wire resulting in 26 casualties. The Apex Court upheld the findings recorded by the Tribunal and the High Court that the

accident had taken place due to the rashness and negligence of the driver of the bus despite the fact that the driver earned acquittal in the criminal

case on the score that the tragedy that happened was an act of God.

64. The Apex Court in the case titled as Shivaji Dayanu Patil and another v. Vatschala Uttam More, reported in 1991 ACJ 777, has

interpreted the words and expression ''use of motor vehicle'' and held that these have a wide connotation. It is apt to reproduce paras 35 and 36 of

the judgment herein:

35. In the same case, Windeyer, J. has observed as under :

The words ''injury by or arising out of the use of the vehicle'' postulate a causal relationship between the use of the vehicle and the injury. ''Caused

by'' connotes a ''direct'' or ''Proximate'' relationship of cause and effect. ''Arising out of'' extends this to a result that is less immediate; but it still

carries a sense of consequence.

36. This would show that as compared to the expression ''caused by'', the expression ''arising out of'' has a wider connotation. The expression

''caused by'' was used in sections 95(1)(b)(i) and (ii) and 96(2)(b)(ii) of the Act. In section 92A, Parliament, however, chose to use the expression

''arising out of'' which indicates that for the purpose of awarding compensation under section 92A, the causal relationship between the use of the

motor vehicle and the accident resulting in death or permanent disablement is not required to be direct and proximate and it can be less immediate.

This would imply that accident should be, connected with the use of the motor vehicle but the said connection need not be direct and immediate.

This construction of the expression ""arising out of the use of a motor vehicle"" in section 92A enlarges the field of protection made available to the

victims of an accident and is in consonance with the beneficial object underlying the enactment.

65. While going through the judgment (supra), one comes to an inescapable conclusion how the accident and injury/death have relationship with

use of motor vehicle.

66. In the case titled as New India Assurance Co. Ltd. v. Shanti Bai (Smt) and others, reported in (1995) 2 Supreme Court Cases 539,

the deceased was travelling on the roof top of the bus, met with an accident, claim petition was filed, was granted by the Claims Tribunal, awarded

compensation in favour of the claimants and saddled the insurer, owner-insured and driver of the bus with liability. The said decision was upheld by

the High Court, was again assailed by the insurer before the Apex Court. The Apex Court upheld the award but saddled the insurer with liability

limited to Rs. 15,000/- in terms of the insurance policy.

67. It is apt to record herein that the said judgment has been upheld by Constitutional Bench of the Apex Court in the case titled as New India

Assurance Co. Ltd. v. C.M. Jaya and others, reported in (2002) 2 Supreme Court Cases 278.

68. The Full Bench of the High Court of Karnataka at Bangalore in the case titled as North East Karnataka Road Trans. Corpn. v.

Vijayalaxmi and others, reported in 2012 ACJ 1968, held that no contributory negligence or fixed percentage of contribution could be

attributed to a passenger merely because he was travelling on roof of the bus. It has further been held that travelling on the roof of the bus is a

negligent act.

69. This Court in FAO No. 44 of 2010, titled as Himachal Road Transport Corporation & Anr. v. Kamlesh Kumari and others, decided on 8th

April, 2016, held that allowing a person to travel on the roof of a bus in itself amounts to negligence on the part of the driver and the conductor of

the bus.

70. Applying the test to the instant case, the deceased, while travelling on the roof of the bus, was hit by an over hanging branch of a tree, due to

which he fell down, sustained injuries and succumbed to the injuries. Thus, it can be safely said that it was an act of negligence on the part of the

driver and conductor of the bus.

71. If the claim petition is treated under Section 163A, the income of the deceased is less than Rs. 40,000/- per annum and if it is treated under

Section 166 of the MV Act, the rash and negligent driving of the offending vehicle has also been proved, is maintainable on both counts.

72. The purpose behind filing of the claim petition by the claimants was that they will be able to get the compensation as early as possible, but,

unfortunately, the deceased has died on 7th October, 2003, the claim petition was filed on 5th December, 2003, about thirteen years has elapsed

and the claimants have yet to reap the fruits, is a terrible commentary on the process and speaks how the insurer is contesting the claim petition.

73. The purpose of Section 163A of the MV Act is just to give a speedy compensation to the victims of the vehicular accidents, which has been

thrown to winds. So, we deem it proper to saddle the insurer with costs.

74. The adequacy of compensation is not in dispute. However, we have gone through the impugned award read with the record and are of the

considered view that the amount awarded is rather inadequate, but, as the claimants have not questioned the same, is reluctantly upheld.

75. The factum of insurance is also not in dispute. Thus, the Tribunal has rightly saddled the insurer with liability.

76. Having said so, the impugned award merits to be upheld. Accordingly, the impugned award is upheld and the appeal is dismissed with costs

quantified at Rs. 10,000/- payable to the claimants.

77. The insurer is directed to deposit the costs before the Registry of this Court within four weeks. On deposition of the costs, the awarded

amount along with costs be released in favour of the claimants strictly as per the terms and conditions contained in the impugned award through

payees'' account cheque or by depositing the same in their respective bank accounts.

78. Send down the records after placing a copy of the judgment on the Tribunal''s file.