courtkutchehry.com

Company: Sol Infotech Pvt. Ltd.
Website: www.courtkutchehry.com
Printed For:
Date: 16/12/2025

(2014) 10 AP CK 0026

Andhra Pradesh High Court

Case No: MACMA No. 2072 of 2011 and MACMAMP No. 5411/2011

Bajaj Allianz General Insurance Company Limited		APPELLANT
	Vs	
Gande Manohar		RESPONDENT

Date of Decision: Oct. 17, 2014

Acts Referred:

- Evidence Act, 1872 - Section 3
- General Insurance Business (Nationalisation) Act, 1972 - Section 9
- Motor Vehicles Act, 1988 - Section 140, 140, 140(1), 140(2), 140(3)

Citation: (2015) 1 ALT 637

Hon'ble Judges: B. Siva Sankara Rao, J

Bench: Single Bench

Advocate: T. Mahender Rao, Advocate for the Appellant; K. Venkata Ram Reddy, Advocate for the Respondent

Judgement

B. Siva Sankara Rao, J.

The Bajaj Allianz General Insurance Company Limited (2nd respondent) insurer of the bike of the 1st respondent-insured to the claim petition filed this appeal having been aggrieved by the order/award of the learned Family Court-cum-Additional District Judge, Mahabubnagar (for short ''the tribunal'') in O.P. No. 612 of 2008 dated 18.04.2011, awarding compensation of Rs. 2,60,000/- as against the claim of Rs. 4,00,000/-. The claim petition was filed by the parents of the deceased-Sravan Kumar under Section 163-A of the Motor Vehicles Act (in brief ''the Act''). In the appeal, the claimants are shown as respondent Nos. 1 and 2 and the owner of the bike as 3rd respondent.

2. The parties hereinafter are referred to as arrayed before the Tribunal for the sake of convenience in the appeal.

3. The facts in brief are that the deceased-G. Sravan Kumar, unmarried, aged 20 years as per Ex. A3-Post Mortem report (son of the claimants-G. Manohar and Laxmi aged between 40 and 45 years), is no other than one of the two pillion riders of the Hero Honda motor cycle bearing No. AP 28 AU 1683 belongs to the 1st respondent-A. Kishore Kumar Goud. On 19.08.2007 while the rider with two pillion riders were proceeding to Shadnagar, at about 11.00 A.M., when they reached near Thimmapur petrol pump, the accident occurred due to collision between the bike and the commander jeep bearing No. AP 02 U 5972.

4. The claim petition averments are that it was due to the bike rider''s rash and negligent driving, the bike dashed the opposite coming commander jeep and as a result of which the deceased, who was one of the pillion riders fell down and on the same day succumbed to the injuries while undergoing treatment in Osmania General Hospital, Hyderabad, and there from, the claim petition was filed under Section 163-A of the Act against the owner and insurer of the bike, without impleading driver or owner or insurer of the jeep.

5. The tribunal under Section 163-A of the Act, while answering the contentions with reference to the facts and legal position within its notice, in paras 27 to 30 on issue Nos. 3 to 5 held that the respondents i.e., owner and insurer of the bike are jointly and severally liable to pay compensation to the claimants, by taking into consideration as per by then settled law of the age of the mother of the deceased boy at 40 years and by deducting 50% towards personal expenses of the deceased, out of earnings estimated from the deceased was being M.C.A., student at Rs. 36,000/- p.a. with multiplier ''14'' for Rs. 2,52,000/- + Rs. 2000/- towards funeral expenses as per the schedule and Rs. 6,000/- towards love and affection (even not provided in the schedule for love and affection, but for loss of estate) for total of Rs. 2,60,000/- with interest at 7 1/2% p.a. and impugning the same, present appeal is filed by the insurer.

6. The contentions in the grounds of appeal as well as oral submissions by the learned counsel for the insurer in impugning the award of the tribunal in nutshell are that:

(i) The tribunal erred in awarding the compensation against insurer and owner of the bike, by left out the jeep driver''s negligence and liability there from of owner and insurer of the jeep if any, though supposed to apportion even not impleaded, from the facts that Ex. A1-F.I.R. was registered against the driver of the jeep even later police filed charge sheet against the bike rider. Negligence, though not needed to plead and prove by the claimants in a claim filed under Section 163-A of the Act, the contributory negligence or negligence of the opposite vehicle or of the deceased/injured as the case may be can be established by the insurer/owner of the vehicle in opposing the claim in discharge of the burden even the claim is under Section 163-A, including to establish any other plea like injured/deceased is not a third party to indemnify by the insurer and placed reliance upon mainly the Apex

Court''s expression in National Insurance Company Ltd. Vs. Sinitha and Others, .

(ii) It is also the contention from the grounds of appeal and oral submissions that, the quantum of compensation awarded by the tribunal is also excessive and exorbitant, so also rate of interest at 7 1/2% p.a., even it is 6% that is just as awarded in Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, referred by the Tribunal and the other contentions are award of Rs. 6,000/- towards love and affection, even not provided in the II Schedule of the Act, for the claim under Section 163-A, is untenable besides other contentions developed in the course of arguments saying there is no specific evidence as to who was riding the bike or deceased only a pillion rider but for plea and in the absence of showing deceased was pillion rider, the rider of the bike even not owner cannot be a third party to indemnify by insurer, so as to exonerate the insurer in such a claim but for subject to policy covering the risk if any to make a claim for personal accident coverage of insured and thereby in all sought to exonerate the insurer by dismissing the award of the Tribunal so far as against the insurer concerned.

7. Whereas, it is the contention of the claimants through their counsel that the award of the Tribunal on the quantum of compensation is low, but for no cross objections to entitle to seek enhancement, however they are entitled to defend the quantum on one ground or other, even Rs. 6,000/- shown is not covered by the Schedule of the Act to award for love and affection, that in a claim under Section 163-A, not only that the claimants need not establish negligence other than proof of accident while the vehicle in use and the deceased breathed lost out of injuries in the accident, but also the respondent owner and insurer of the crime vehicle involved as per the claim cannot be permitted to raise any defence of negligence of the deceased or that of opposite vehicle or that of contributory or composite negligence and hence, the several contentions raised in the grounds of appeal are untenable, so also the contention regarding the alleged triple riding as violation of permit is not a breach so fundamental to exonerate the insurer from liability for not shown as contributed to the accident as rightly concluded by the Tribunal and sought for dismissal of the appeal.

8. The owner of the vehicle, who appeared before the tribunal through advocate, not filed counter and later remained ex parte, having been served did not put forth appearance herein and thus taken as heard to decide on merits.

9. Perused the material on record and the decisions relied by both sides in support of respective and rival submissions at length.

10. Now the points that arise for consideration are:

1. Whether the accident dated 19.08.2007, in which the deceased was traveling along with two others, by the triple riding, of the two wheeler bearing No. AP 28 AU 1683, sustained injuries and breathed the last, was due to any negligence of the deceased or any negligence of opposite coming jeep (whose driver or owner or

insurer are not impleaded as parties) and if so from said triple riding as violation of the terms of the policy, the insurer has to be exonerated as contended, in the claim filed and decided under Section 163-A of the Act, by permitting such contention of the insurer and also as to any contributory negligence of both vehicles and if so said contention is open to raise by the insurer as to proportionate liability to fix from so called contributory negligence or non-liability from no proof of deceased was not rider but one among the two pillion riders and for the triple riding against double riding of the two wheeler as part of violation of terms of the policy and if so with what observations?

2. Whether the compensation awarded by the tribunal under Section 163-A of the Act is excessive so far as against the 1st respondent-owner of the bike subject to indemnify or not from point No. 1 supra by the insurer so also rate of interest and if so to what compensation and with what interest rate?

3. To what relief?

POINT No. 1:

11. Before discussing the further facts, it is necessary to state the scope of the provisions of the Motor Vehicles Act, 59 of 1988, amended by Act, 54 of 1994 and further amended by Act, 39 of 2001. The Act contains 14 chapters and 2 schedules with rules and-notifications, Central Rules and State Rules including of the A.P.M.V. Rules, 1989; of which the chapters 10 to 12 are mainly relevant for purpose of adjudicating the lis. It is needless to say, the chapters 10 to 12 are not only inter-related but also interlinked.

12. For example-In Chapter XII - Section 165, speaks-constitution of claims Tribunal, Sections 167 with non-obstante clause r/w 143 of Chapter X of the Act speak on the option to proceed under the Workmen Compensation Act, 1923 or under the Motor Vehicles Act, 1988, irrespective of what is contained in the WC Act, for workman injured or died in the course of employment and where negligence of driver if deceased or injured need not even be gone into but for to show the accident occurred while in use of the vehicle and in the course of employment for the statutory liability of Act policy as per Sections 147 & 149 of the Act, unless shown for claim of more to Act liability, if policy is comprehensive - vide National Insurance Company Vs. Prembhai Patel and another 2005 (c) SAR 485 & National Insurance Co. Ltd. Vs. Mastan and Another, .

13. The claim before the Tribunal needless to say is either final claim under Section 166 (of Chapter XII) with interim measure under section 140 or final claim under Section 163-A (chapter XI) or interim measure under Section 161 as the case maybe.

14. Once a claim is made under section 140 (chapter X) for interim compensation, final claim under Section 163-A (chapter XI) won''t lie, but for under Section 166 (of chapter XII). Further in a claim under Section 166, claim under Section 140 can also

be made; but in a claim under Section 163A, claim under Section 140 cannot be made.

15. The claim for hit and run cases (of Chapter XI) covered by Section 161 also says provisions of section 166 shall apply to make such applications. It speaks from Section 165 that there is no bar to make application for hit and run cases before the Tribunal, but for to say from reading of Section 163 of formulation of the special scheme by the Central Government with the authority who has to adjudicate such claims for recommending and granting reasonable compensation, which need not confine to the sums fixed in Section 161. There are certain an expression on either side in saying (i) it gives concurrent jurisdiction on one side also from reading of Section 168 with speaks subject to Section 162 and not of Section 163 or Section 161 & (ii) it gives no jurisdiction on other side from the Section 163 as a special provision to prevail (known as solatium scheme, 1989) even not provided with non-obstante clause of specific exclusion. However, a close perusal of the Sections 161 with 162 and also Section 163 by keeping together shows that Sections 161 and 163 each deals with different type; to say Section 161 deals with fixed sum of Rs. 25,000/- for death and Rs. 12,500/- for grievous hurt injuries, whereas Section 163 deals with the solatium scheme, 1989 under which there is no rider to recommend only of Rs. 25,000/- for death and Rs. 12,500/- for grievous hurt injuries; for the enquiry officer (Revenue Sub-divisional Officer or Tahsildar as the case may be) can recommend more than that in Form III read with Clause 21 of the scheme. When Section 161(3) is intended to immediate relief (like in Section 140 in a claim under Section 166(1)) before the Tribunal and such grant by claim petition is not a bar for recommending and awarding final compensation on application made as per the solatium scheme of 1989 by the authorities after given deduction of any amount awarded and paid under Section 161 of the Act-vide decision of another bench this Court in MACMA No. 148 of 2009, dt. 02-01-2014. As it also speaks like in Section 140, for claim under Section 161 or application under section 163 as per section 162, amount recovered to be adjusted/refunded in the event of final claim for compensation filed and allowed under Section 163-A or 166 of the Act.

16. Section 144 of Chapter X speaks that the chapter X got overriding effect over other provisions of the Act or any other law. Further Sections 146-159 speak compulsory insurance coverage and statutory and contractual liability of insurer to indemnify the insured for third party risk, once policy covers the risk irrespective of breach of policy terms and conditions, save those are not fundamental a breach, insolvency of insured (section 154) and its consequences, death of insured is not a bar to survival of cause of action (section 155). Like wise sections 165-175 are also the general provisions with some of Which applicable respectively to Chapter X and XI or to both.

17. 11(A) Chapter XII of the Act:

11(A)(a) Section 168 of the Act reads as under:

"On receipt of an application for compensation made under section 166, the Claims Tribunal shall, after giving notice of the application to the insurer and after giving the parties (including the insurer) an opportunity 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 162 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 applicant makes a claim for compensation under section 140 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 X.

The Claims Tribunal shall arrange to deliver copies of the award to the parties concerned expeditiously and in any case within a period of fifteen days from the date of the award.

When an award is made under this section, the person who is required to pay any amount in terms of such award shall, within thirty days of the date of announcing the award by the Claims Tribunal, deposit the entire amount awarded in such manner as the Claims Tribunal may direct.

11(A)(b) Sections 169 and 176 speak of the summary procedure and as per C.P.C. (subject to rules See APMV Rules made under Section 176 or 164 of the Act) and powers of the Claims Tribunals in inquiry under Section 168 (supra) and Section 170 speaks of the power of the Tribunal in directing for impleading of insurer with right to contest, where in the course of enquiry the claims tribunal has satisfied that there is a collision between the person making the claim and the person against whom the claim is made or the person against whom the claim is made has failed to contest the claim, in directing.

11(A)(c) Sections 165 and 175 speak for constitution of claims tribunals by State Government and bar of civil Court jurisdiction therefrom, for adjudicating upon claims for compensation in respect of accidents involving the death of, or bodily injury to, persons arising out of the use of motor vehicles including under Sections 140 and 163-A or damages to any property of a third party so arising, or both.

11(A)(d) Section 166(1) speaks application for compensation arising out of the accident in the nature specified in Section 165(1) that - an application for compensation may be made - (a) by a person who sustained injuries or (b) by the owner of the property; or (c) where death has resulted from the accident, by all or any of the them on behalf of all or for the benefit of all 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. Subsection (2) of Section 166 speaks of jurisdiction of the tribunal where accident occurred or where the claimant/s reside/s or carries on business or where the defendant resides and in such form with such particulars prescribed. It speaks in the application under Section 166, the interim compensation claim can even included as a separate para before verification of contents and signature of claimant/s. Section 166(4) speaks that the claims tribunal shall treat any report of accidents forwarded to it under Section 158(6) as an application for compensation under this Act.

11(A)(e) Sections 171 and 172 speak powers of Tribunal to award interest on compensation and compensation costs. Section 173 speaks right of appeal (to read with Section 170 for Insurer and with Order 41 CPC as per the settled expressions). Section 174 speaks for recovery of the compensation awarded (needless to say it can be executed as a civil court decree and drawing of a decree from the award is a must). The provisions supra are incorporated in chapter XII of the Act.

11(B) Chapter XI of the Act under the title insurance of motor vehicles against third parties:

11(B)(a) Section 163-A incorporated by the Amended Act, 54 of 1994 speaks as a special provision as to payment of compensation on structured formula basis and it reads:

(1) Notwithstanding anything contained in this Act or any other law for the time being in force or instrument having the force of law, the owner of the motor vehicle or the authorized insurer shall be 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 legal heirs or the victim, as the case may be.

The explanation speaks permanent disability shall have the same meaning and extend as in Workmen''s Compensation Act, 8/1923;

(2) In a claim for compensation under Section (1), the Claimants shall not be required to plead or establish that the death or permanent disablement in respect of which claim has been made was due to any wrongful act or neglect or default of the owner of the vehicle or vehicles concerned or of any other person.

11(B)(b) The Central Government may, keeping in view the cost of living, by notification in the official gazette from time to time, amend the Second Schedule Kishan Gopal and Another Vs. Lala and Others, .

11(B)(c) Section 163(b) speaks that where a person is entitled to claim compensation under Section 140 and under Section 163-A, he shall file the claim under either of subsections and not under both.

18. Section 161(1) speaks the special provisions relating to hit and run motor accident cases, where grievous hurt as defined in I.P.C. caused or death caused

there from, under a scheme framed under Section 163 of the Act. Section 161(2) speaks of the GIC of India formed under section 9 of GIBN Act, 1972 and the insurance companies carrying on business of insurance in India shall provide for paying said compensation in accordance with the provisions of this Act and the scheme,..... and Section 161(3) speaks subject to the provisions of this Act and the schemes, they shall be paid compensation in respect of death Rs. 25,000/- (w.e.f., 14.11.1994) and in respect of grievous hurt Rs. 12,500/-.

19. Section 161(4) speaks that, Section 166(1) shall apply for the purpose of making applications for compensation under this Section as they apply for purpose of making applications for compensation referred to in that sub-section.

20. Section 163 speaks of the scheme for payment of compensation in case of hit and run motor accidents and these Sections 161 to 163 for the case purpose at present no way relevant to have further discussion in addition to what is referred supra.

21. Now, coming back to the other relevant provisions, Section 140 which is incorporated in chapter 10 of the Act under the heading liability without fault in certain cases out of Sections 142 to 144 of the chapter.

Section 140(1): Where 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 liable 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 under sub-section (1) in respect of the death of any person shall be a fixed sum of twenty-five thousand rupees and the amount of compensation payable under that Sub-section in respect of the permanent disablement of any person shall be a fixed sum of twelve thousand 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 the 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.

(5) Notwithstanding anything contained in Sub-section (2), regarding the death or bodily injury to any person for which the owner of the vehicle is liable to give

compensation for the relief he is liable to pay compensation and any other law for the time being in force.

Provided that, the amount of such compensation shall be given under any other law shall be reduced from the amount of compensation payable under this Section or under Section 163-A.

22. In this Section 140(5) given with overriding affect to Section 140(2) and the expression used is negative of the fact that the owner of the vehicle would be additionally liable to pay compensation under any other law for the time being in force subject, however, to the condition has been laid in the proviso appended thereto, that the amount of such compensation to be given under any other law should be reduced from the amount of compensation payable there under or under Section 163A. Having regard to the fact that no procedure for refund or adjustment of compensation (like in) Section 140 and 161 from the amount of compensation payable under the award on the basis of fault liability under Section 166 of the Act (as expressly been provided for) has been provided for in relation to the proceedings under Section 163A of the Act, it must be held that the scheme of the provisions under Section 163A and 166 are distinct and separate.

23. Where in Chapter XI, Section 158(6) is also by the Amended Act, 54/1994 incorporated of the information regarding accident involving the death or bodily injury recorded or report contemplated by a police officer in charge of a police station. Sub-section (1) is also incorporated, which speaks report received by the tribunal to take as a claim petition. It is also to say in this context that the report to receive as the claim for compensation by the tribunal is under what provision as to under Section 140 or 163Aor 166 concerned, it is by virtue of incorporation of Section 166(4) by the Amended Act that, the tribunal shall treat the report as an application for compensation under this Act and not specifically under Section 166 it is only to take as is appropriate, to say even it is hit and run case even under Sections 161 and otherwise either under Section 163A or under 166 if any also under Section 140 as it appears there from.

24. From the above provisions of the Act, Section 140 is incorporated in Chapter X, Section 163A is incorporated in Chapter XI and Section 166 is incorporated in Chapter XII. It is further necessary to mention that among these chapters X to XII of the provisions supra, the wording of Section 140(3) is with self same wording of Section 163A(2), however, there is no similar wording of Section 140(4) in Section 163A to take away the defence right specifically like in Section 140(4). It is to say, in a claim filed under Section 140 or 163A, the claimant shall not be required to plead and establish the death or permanent disablement relating to the claim were due to wrongful act, neglect or default of owner or owners of the vehicle or vehicles concerned or any other person. A close reading of this provision speaks the claimants are not required to plead or prove negligence of the deceased or injured as well as negligence of the person owned the vehicle against whom the claim is

made or in case of more than one vehicle involved of negligence of any one of them or composite or contributory negligence as the case may be of the vehicles drivers or other person.

25. So far as the claim under Sections 140 and 163A is concerned, it is as stated supra clearly provided by Sections 163-B & 141 that the claim can be filed under these sections by any person, shall file under either of said sections and not under both. It clearly provides that, though a person who filed application under Section 140 is entitled to file an independent application under Section 166 with claim therein or simultaneously or later subject to these provisions as the case may be; once application filed under Section 140, another application under Section 163-A is not maintainable. To say, in so arranging the sections within the respective chapters are to achieve the respective purposes and there from so far as claim under Section 163A concerned, there is no requirement and proof of fault even not an interim measure.

26. Similarly, from reading of Section 168 r/w 166 of the Act, Section 168(1) speaks the claim under Section 166 in determining subject to provisions of Section 162 in the award, the amount of compensation appears it to be just and specifying the person or persons to whom compensation shall be paid and 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. It indicates the determination specifically including to the extent of liability in claim under Section 166 on fault liability from pleading and proof. Whereas such rider is not there for Section 140 and 163A from what is stated supra in Section 163A(2) and 140(3). A close reading of these provisions in the three chapters (leave about sections 167 r/w 163A or 166) the compensation that can be claimed under Workmen''s Compensation Act for death or bodily injury under that Act, anything contained in that Act the claimants are entitled to compensation may claim such compensation under either of these two Acts but not under both indicate that even the claim under Section 140 is an interim measure with a right to entertain an efficacious claim under fault liability later under Section 166 as a final measure; whereas the claim under Section 140 even an interim measure as supra again the claim under Section 163A won''t lie but for if at all under Section 166. Whereas a claim under Section 163-A as a final measure with no proof of fault once made, no claim again can be made under Section 166. It appears from said arrangement also of Section 140 is incorporated in Chapter X-of totally no fault liability-on proof of accident while vehicle in use, where as Section 163A is incorporated in Chapter XI-of semi fault liability-on proof of accident while vehicle in use claimant is entitled to compensation, however does not prohibit the respondent to raise plea of negligence or fault of injured/deceased or his or his vehicle driver contributory or composite negligence for no similar prohibitory clause in Section 163A similar to Section 140 and needless to say Section 166 is incorporated in Chapter XII-of totally fault liability from said combined reading of the three provisions of the three chapters in Juxtaposition, more in particular noticing the

difference between Section 140(3 & 4) with Section 163A(2) detailed supra.

27. In this regard, if two applications are filed under both the provisions, one under Section 163A and other under Section 166, both cannot be, being final measure proceedings one under proof of fault and the other without proof of fault respectively cannot be proceeded with simultaneously but for the claimant to opt before commencement of enquiry as per the expression of the Apex Court in The Oriental Insurance Co. Ltd. etc. Vs. Hansrajbhai V.Kodala and Others etc. etc., . It is to say both being final remedies cannot be simultaneously proceeded but to opt by claimants only one of the two to proceed. It was also confirmed by the three judges'' bench expression of the Apex Court in Deepal Girishbhai Soni and Others Vs. United India Insurance Co. Ltd., Baroda, at page 405 para 57. Subsequent to the above, it was held by the Division Bench of this Court in Bhupathi Prameela and Others Vs. The Superintendent of Police and Others, that since the M.V. Act provisions to claim compensation by victims of accidents from the object of the Act meant to benefit the claimants being the social legislation and even both Section 163A and Section 166 quoted in the claim application, for technicalities won''t come in the way to render substantial justice between the parties, the Court can take the application as filed under Section 166 which is beneficial to the claimants.

28. In fact, but for to say from the above as to sections 163-A and 166 are both independent and meant for getting relief by invoking anyone of these. As the claim is undisputedly filed under section 163A and accordingly proceeded by the tribunal and also the appeal against which filed under section 173 of the Act r/w Order 41 C.P.C. from the provisions of C.P.C. are applicable even to the appeals under M.V. Act as per the settled law of the Apex Court including from the latest expression in this regard in Ranjana Prakash and Others Vs. Divisional Manager and Another, .

29. Now it is to be seen whether section 163A is on fault liability or not from section 166 is undisputedly on fault liability specifically to plead and prove.

30. Even Section 163A speaks the claimants need not plead and prove the fault or wrongful act, the general principles under the law of torts giving a right to the other party that is the driver, owner and insurer against whom the claim is made to plead and prove any wrongful act or negligent act of the deceased/injured or the vehicle in which deceased/injured was traveling or the opposite vehicle driver concerned, in establishing self negligence of deceased/injured or composite negligence or contributory negligence of the drivers of both vehicles respectively. It is because to say or to decide section 163-A is with any element of fault liability need not be decided solely based Section 163-A enables the claimant to maintain a claim without pleading or proving negligent act or wrongful act. It is also to be taken into consideration to say on fault liability or tort from the opposite parties right under the general law of torts from the general principles to attract the claim on the grounds of self negligence of the deceased/injured or composite negligence of both the vehicles if involved or the claimants/injured and the other persons or

contributory negligence of drivers of both vehicles if involved. A combined reading of these provisions in these three chapters supra communicate that such defence not being made available so far as section 140 of the Act under chapter X concerned as it is only an interim measure and such right to oppose the claim on merits is available in a efficacious claim to be made under Section 166. So the opposite parties right so to plead and prove apart from the claimant''s duty to plead and prove the wrongful act or negligent act required by law and remedy available there. In so far as Section 163-A of the Act concerned, if that right is to be taken away, there will be no remedy to the opposite party contestants to the claim even there is negligence or wrongful act on the part of the injured/deceased in respect of the claim or the vehicle in which he was traveling or the opposite vehicle concerned. It is thus to say though under Section 140 that right is impliedly taken away, so far as section 163A concerned that right is impliedly provided. It is also for the reason that all these provisions are incorporated in three different chapters and section 140 is a first ladder from which there is a right to step up to the second ladder whereas section 163-A is only a single step ladder and as such under Section 166 the duty to plead and prove wrongful or negligent act on the claimants and to defend in this regard by the owner/insurer respondents to the claim automatically there, not there under Section 163-A for the claimants for no duty to plead or prove, like in section 140 for an interim measure that is not taken away in Section 163A so far as the defence concerned for the reasons that section 140 and section 163-A respectively used the same wording in sub-sections (3) and (2) of the sections respectively one is an interim measure and the other is a final measure and as such so far as section 163-A is concerned it is though not on absolute fault liability, not on absolute no fault liability. As the opposite parties right is impliedly inherent from the general law of torts to defend and prove the wrongful act or negligent act in seeking non-liability or contributory negligence or composite negligence as the case may be, for not taken away statutorily by the wording of Section 163-A of the Act, like in Section 140 of the Act where by its wording it is taken away statutorily.

31. This conclusion no doubt lends support from the recent two judge bench expression of the Apex Court in National Insurance Corporation Ltd., v. Sinitha (supra) wherein it was held by referring to the earlier two judge bench expression of the Apex Court in Hansrajbhai V. Kodala (supra) and in answering in affirmative on the aspect of claim for compensation under Section 163A of the Motor Vehicles Act can be defeated either by the owner or by the insurance company by pleading and establishing that the accident in question was based on the contributory negligence of the offending vehicle. It was observed that Section 140(3) and Section 163A(2) both are pari-materia provisions and there is no provision corresponding to Section 140(4) in Section 163A and thereby the claim for compensation under Section 163A held is fault based liability from the contributory negligence or fault negligence of deceased/claimant or disabled victim in causing the accident compensation may be reduced on such proof. However, the onus to prove contributory negligence remain

on the defence in opposing the claim under Section 163A i.e. the owner and insurer can defend the claim and the Hansrajbhai V. Kodala (supra) did not decide that determination of compensation under Section 163A is based on no fault liability principle. The claim for compensation raised in Section 163-A need not be based on pleadings or proof of claimants showing absence of contributory negligence, but for onus to proof of contributory or composite or total negligence of injured/deceased or of his traveling vehicle driver; lies on the shoulders of the owner or insurer, opposing and defending the claim to so establish in discharge of the burden lies on them. It was observed for the conclusion that where claim cannot be defeated on account of contributory negligence then such provision would fall under no fault liability principle. It is thereby as per Section 140(4), both claim and defence are precluded from raising any ground of fault and whereas Section 163-A is an independent provision with non-obstinate clause having over riding effect over all other provisions of the Act. It is also a rationale behind it, in saying as fault liability principle from where large compensation amount involved or compensation amount is likely to be high, it is legitimate that insurance company is not fastened with liability when offending vehicle suffered fault (wrongful act, neglect or doubtful) under alleged act. The appellant/insurance company also placed reliance upon the decision of Bandana and Others Vs. Rajesh Kumar and Others, wherein it was held by mainly relying upon Sinitha and Hansrajbhai (supra) besides Minu B. Mehta and Another Vs. Balkrishna Ramchandra Nayan and Another, , that negligence of the victim can be decided by allowing the insurer and owner - being the opposite parties to the claim to defend and fixed 25% contributory negligence on the deceased.

32. However, it is important to notice that after Hansrajbhai and before Sinitha, where correctness of the law laid down in Hansrajbhai under Section 163A came for consideration on reference made, was answered by the three judge bench expression in Deepal Girishbhai Soni (supra) in the affirmative. While so answering, it was held that though both Sections 166 and 163A are final proceedings, under Section 166 on fault liability, the duty is on the claimants to plead and prove wrongful or negligent act of opposite party to get higher compensation, whereas under Section 163A on no fault liability, there is no duty on the claimants to plead and prove wrongful or negligent act of opposite party to get compensation under the structured formula. It did not specifically say the opposite parties right to defend in this regard by the owner/insurer respondents to the claim of negligence or fault or contribution on the injured/deceased or their vehicle driver, available under Section 166 is not there and taken away under Section 163-A. Even for so holding it was not specifically considered referring to the Section 140(3) and Section 163A(2) of both are pari-materia provisions and there is no provision corresponding to Section 140(4) in Section 163A and thereby the claim for compensation under Section 163A held is fault based liability from the contributory negligence or fault negligence of deceased/claimant or disabled victim in causing the accident compensation may be

reduced on such proof, that was in fact referred and answered in Sinitha supra. But for that both the expression in Sinitha and in Deepal Girishbhai Soni (supra) confirmed law laid down in Hansrajbhai (supra). In fact on this aspect that Deepal Girishbhai Soni was not referred in Sinitha while holding Section 163A is founded on fault liability principle, correctness of the law in Sinitha was referred to a larger bench in United India Insurance Company Ltd. Vs. Sunil Kumar and Another, and it is pending. In fact in Deepal Girishbhai Soni, it was observed in paras 39 to 42 that

"Section 163A was introduced in the Act by way of a social security scheme. It is a code by itself. Section 140 of the Act dealt with interim compensation but by inserting Section 163-A, the Parliament intended to provide for making of an award consisting of a pre-determined sum without insisting on a long-drawn 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".

33. In the other decision relied upon by the claimants in B.V. Nagaraju Vs. M/s. Oriental Insurance Co. Ltd., Divisional Officer, Hassan, it was held that overloading does not absolve the insurer from liability in the absence of showing the accident was the result of overload. In the other expression of the Apex Court in National Insurance Co. Ltd. Vs. Anjana Shyam and Others, it was held that in case of over loading beyond the permit capacity of a vehicle and where it is difficult to decide among the persons victims of the accident who are the authorized passengers within the permitted limit and who are not, the proper procedure would be the compensation payable by the insurer to identify for the higher money claims of the permitted limit and for the rest to personally made liable the owner and then to apportion entire compensation in proportion to the claims allowed - in case the claims filed and allowed are more than the permitted capacity of the vehicle. Here, that difficulty also does not arise for having not shown other injured also filed the claim but for the deceased pillion rider and the standard policy admittedly covers the risk of the deceased pillion rider-Vide National Insurance Company Ltd. Vs. Balakrishnan and Another, referring to the IRDA Regulations dt. 16-11-2009.

34. Thus, from a combined reading of the provisions (supra) with reference to the law as laid down in Sinitha, confirming Hansrajbhai V. Kodala including with reference to Deepal Girishbhai Soni (supra) that for the efficacious and as final relief under Section 163-A that can be maintained even negligence is on the part of the victim/claimant for there is no need of proof required much less plea, but for proof of accident while the vehicle in use, as a deviation from general law of burden on

the Claimant to plead and prove negligence of the other side and with no fault of victim/claimant; however, it no way speaks from said combined reading in juxtaposition of these provisions that opposite parties are prohibited from taking defence plea and prove any negligence of victim/complainant or their vehicle driver for non-liability or proportionate liability, as maintainability of claim is one thing proved or not proved or disproved as contemplated by the general principles and as defined in Section 3 of the Indian Evidence Act is other thing.

35. Leave apart, even in case of negligence of the victim once claim is maintainable under Section 163-A to plead and prove, there is no duty on the claimant/s and they can ignore their negligence and maintain a claim, but for the controversy as to does it take away the opposite party''s right to plead and prove under the common law but for such deviation is only to the extent of exempting the complainant from duty to plead and prove to avail quick relief.

36. In this case coming to the factual matrix, the appellant insurance company''s contention is not opposed on negligence of the deceased/victim, but saying there is contributory negligence of the opposite coming jeep from collision of both vehicles and that should have been impleaded as one of the co-respondent i.e., its driver, owner and insurer for the liability though not to apportion in fixing common liability and therefrom the claim is not maintainable. Once the claimants have no duty to plead and prove either self negligence or opposite party''s negligence to maintain the claim under Section 163-A, it is maintainable against the bike owner and Insurer, even without impleading the jeep driver, owner and insurer if any; but for to say if there is contributory negligence on the part of the jeep driver in the pre-determined structured formula amount, the claimants without proof of any negligence being entitled, can be apportioned between the two vehicles for the claimants right to claim by separate proceedings against the jeep, driver, owner and insurer or for the Insurer herein to pay and recover from that opposite vehicle driver, owner and insurer in proportion to their negligence. It is because their entitlement is only under structured formula for the death of the pre-deceased son and now the Court''s decision is the said sum who among the vehicles involved in the accident to apportion to pay the pre-determined structured formula sum to the claimants and not to reduce any amount out of it even there is any self negligence of the deceased/injured in awarding amount as per the pre-determined structured formula in favour of the claimants.

37. Here, coming to the facts Ex. A1 is the FIR placed reliance by the very claimants which is based on the report given by N. Narasimha which reads that, on 19.08.2007 at about 11:10 am his son on his motor cycle bearing No. AP 28 AU 1683 aged about 23 years along with two persons Sravan Kumar and Lakshman proceeded from his house to go to Shad Nagar and near at Kottur Indian Oil Corporation Petrol pump, on NH 7 road, driver of the opposite coming Commander jeep bearing No. AP 02 U 5972, driving in a rash and negligent manner while coming from behind the

motorcycle, dashed against the bike and dragged the bike for about 50 feet. All the three persons i.e., his son and two persons sustained bleeding injuries and the jeep driver''s name is one Aziz, hence to take action. The report is given within no time after the occurrence at about 11:30 am by 12:30 noon and the charge-sheet also filed by the investigating officer against the driver of the Commander jeep by citing N.K.K. Goud, the defacto-complainant''s son whose bike was involved in the accident is shown as LW 2 and another Laxman Goud (L.W. 3) both injured and the charge-sheet also shows said Sravan Kumar, who is one of the three persons of the bike breathed the lost. Ex. A3 post mortem report shows said Sravan Kumar; the deceased sustained multiple injuries almost all on right site including injury to the head. It shows that deceased was not definitely the rider apart from the bike belongs to charge-sheet-LW 2 to presume and infer under Section 3 of the Indian Evidence of the only indication to any man of ordinary prudence in the factual scenario of he was the rider, for there is no any material to show other person-Laxman Goud is the rider and there is nothing from the Respondents-appellants to make out such a contention to prove. Thus, suffice to say, the deceased and another person Laxman Goud were the pillion riders and from the manner of injuries it shows the deceased is only one of the pillion riders must be the second pillion rider. There is no M.V. report filed, much less scene observation report, by either side. There is no basis for the contention of the insurer of the bike who is the appellant herein to say the deceased is to be presumed as rider of the bike. Even in the counter at para 6, it is categorically pleaded that 1st respondent driver of the Hero Honda motorcycle (son of defacto complainant) was not having valid driving licence to say the deceased was only pillion rider not the bike rider from the said version in the counter also. In fact Ex. A7 is the driving license of the 1st respondent and Ex. A8 is the R.C. of the bike of the 1st respondent, for which Ex. B1 policy issued by the claim petitioner 2nd respondent insurance company and RW 1 employee of the insurance company also deposed these facts. There is no even worth suggestion in the cross-examination of P.W. 1 but for saying jeep driver alone at fault and insurer of the bike not liable even 1st respondent owner of the bike liable. P.W. 1 no doubt admitted that as per the charge sheet the driver of the jeep alone was found fault. Jeep dashed the motorcycle from behind. It is thereby establishes that the main negligence is on the part of the jeep driver besides there is contribution of the 1st respondent bike rider also did not dispute much less by filing any counter of his negligence pleaded and P.W. 1 also deposed about 1st respondent at fault to indemnify by 2nd respondent averred by policy. Here from the above there is no any negligence of the deceased but for to say is not supposed to travel on the two wheeler with 1+1 capacity including him 2+1 to say one of the pillion rider is unauthorized and it is difficult to say in the facts also from no evidence in this regard as to who was the second pillion rider and it is not the case of the insurer that it is not the standard policy and even IRDA Regulations of 2009 dated 16.11.2009 clearly speaks to cover the risk of pillion rider risk is not covered by the policy. Merely because deceased appears to sat as second pillion

rider, that is not criteria, but for to say who boarded first with rider among the two and that too when it is not possible to say among the two pillion riders, who is authorised and who is unauthorized for the Insurer not even cause examined 1st respondent bike owner the proper person to say as court witness in this regard, only as per the expression of the Apex Court in Anjana Syam (supra), the Insurer has to indemnify the claim from Ex. B1 policy standard package policy, subject to liability, as it is not even the case that the other injured pillion rider Laxman Goud made any claim against the insurer and thus the insurance company has to indemnify under Section 163-A of the Act.

38. No doubt, as discussed supra, there is nothing to say the triple riding contributed to the accident, but for the vehicle from behind dashed and therefrom if not run over, dragged the bike and deceased. Here the Insurer could establish the same from said facts, however, for the negligence on the part of the jeep driver and owner concerned, the appellant 2nd respondent Insurer has to pay to the claimants and recover against the jeep driver and owner concerned by separate proceedings or by filing execution in the same proceedings against them as the principle of law detailed supra says in the claim under Section 163-A even from what is concluded of contributory or composite or main negligence on part of opposite vehicle and no negligence of rider of bike where deceased pillion rider, with such plea can be raised and proved, for not chosen by the Insurer of bike to implead the opposite vehicle owner and Insurer, the Insurer cannot avoid, but to pay and recover from the opposite vehicle owner and Insurer if any and on that ground, the structured formula compensation entitled by the claimants cannot be reduced, but for the respondents i.e. owner and insurer of the bike, to pay and satisfy the claim and recover for the negligence of the other vehicle from that vehicle driver, owner and insurer, if any. In the factual matrix it clearly indicates that there is total negligence on the part of the jeep driver for him and its owner and insurer to pay to the 2nd respondent insurer of the bike who has to first indemnify the 1st respondent, owner and rider of the bike to pay to the claimants in the claim under Section 163-A and then to recover.

39. The decisions relied upon by the bike Insurer-appellant of Ningamma and Another Vs. United India Insurance Co. Ltd., holding that both of the claimants in motor accident who borrowed the vehicle from another person, he cannot be a third party for the claim under Section 163A to satisfy has no application for the deceased here is not rider of the bike, but 1st respondent being its owner, as concluded supra. So also the other decision in Oriental Insurance Co. Ltd. Vs. Rajni Devi and Others, where owner of the bike and another person were proceeding and there is no evidence as to who was driving the bike and the vehicle lost control and caused the death of rider and pillion rider and insured was paid personal accident insurance coverage i.e. the owner one of the deceased persons of rider and pillion rider and again the claim filed by legal representatives of the deceased owner under 163-A is not a third party and not maintainable and this decision also has no application.

40. In Reshma Kumari and Others Vs. Madan Mohan and Another, three judges Bench approving Sarla Verma it was held in a claim for compensation under Section 163-A for the claim as per structured formula, the claimants are not required to plead or establish that death or permanent disablement was due to any wrongful act or neglect or default of the owner of the vehicle concerned and the structured formula that is applicable to a claim under Section 163A and the Second Schedule in terms did not apply to determine compensation for a claim under Section 166 where to award just compensation of the term used in Section 168 for such fault liability to plead and establish and thereby the principles relating to determination of liability and enhancement of compensation one under Section 163A and other under Section 166 to opt anyone.

41. In Minu B. Mehta and Another Vs. Balkrishna Ramchandra Nayan and Another, three judgment bench of the Apex Court held "under Section 92A of the Act 1939 that, it is not necessary to prove any negligence on the part of the driver for holding liability of owner of the car to compensate the victim in a car accident due to driver''s negligence to compensate by owner; for the reason, in Section 92A(1) it is provided that the claimant shall not be required to plead and establish that death or permanent disablement in respect of which the claim has been made was due to any wrongful act or negligence of driver or owner of the vehicle concerned and of no other person.

42. In Gujarat State Road Transport Corporation, Ahmedabad Vs. Ramanbhai Prabhatbhai and Another, , the two judge Bench referred to Section 92A of the Act, 1939 and held entitled to compensation without proof of negligence on the part of the vehicle owner or any other person which is clear departure to the common law principle that the claimant should establish negligence on the part of the owner or driver of the vehicle before claiming compensation.

43. Coming to the contributory negligence, the recent expression in National Insurance Company Ltd. Vs. Savitri Devi and Others etc., by referring to paras 14 and 15 of the earlier expression in National Insurance Co. Ltd. Vs. Rattani and Others, that on the question of burden of proof (lies on the defence-respondents to the claim) has been discharged or not depends upon the facts and circumstances and the facts admitted or sufficient material has been brought on record is relevant so as to enable a Court to arrive at a definite conclusion and it is idle to contend that the party on whom the burden of proof lie would still be liable to produce direct evidence to establish that fact. The F.I.R. as such may or may not be taken into consideration for the purpose of arriving at a finding in regard to the question raised, but, when the F.I.R. itself has been made a part of the claim petition, there cannot be any doubt whatsoever that the same can be looked into for the aforesaid purposes. Thus, when the very F.I.R. and charge sheet pin pointing the negligence of the opposite vehicle driver while coming from behind, mainly to the cause of accident and from the manner of accident out of triple riding, one of the two pillion

riders met with the death i.e. the deceased herein and rider and another pillion rider sustained injuries, the entire negligence is of jeep driver and noting of bike driver. However, in so arriving, it does not absolve the respondents herein, but for to satisfy the claim of the claimants under Section 163-A of the Act under the structured formula and to recover from opposite vehicle owner and Insurer if any as detailed supra.

44. Now, coming to the quantum of compensation under structured formula, there is no dispute from both sides on the age of the mother of the deceased that to be taken into consideration for the deceased a bachelor more particularly from the latest expression of the Apex Court in Kishan Gopal and Another Vs. Lala and Others, in saying the age of the mother from the deceased bachelor criteria and also that in the claim under Section 163-A from the increase in the cost of index the price even no proof of earnings what is provided by II Schedule under the structured formula under Section 163-A of the Act of Rs. 15,000/- p.a., to take has to be increased to minimum Rs. 30,000/- per annum from the expression of the Apex Court in Lata Wadhwa and Others Vs. State of Bihar and Others, , from the age of the mother of the deceased taken of 40 years as concluded by the tribunal at Para 33 in issue No. 4, it is the structured formula table that is applicable and not the table in the Apex Court expressions in Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, that was approved in Reshma Kumari and Others Vs. Madan Mohan and Another, and Rajesh and Others Vs. Rajbir Singh and Others, held that the if a person aged up to 40, multiplier 16 and 41 to 45 ''15'' and even the claim petition mentioned the age of mother of the deceased at 39 and the tribunal taken at 40 its multiplier 16 applicable and as per the structured formula from Rs. 30,000/- p.a. income of the deceased taken as per Kishan Gopal (supra) and the table speaks 1/3rd to be deducted for personal expenses in all cases deduction of personal expenses depend upon proof of claimants and in case of bachelor where parents are claimants to take 1/2 laid down in Sarla Verma since not applicable to the claim under Section 163A, if 1/3rd deducted, the contribution to the claimants comes to Rs. 20,000/- p.a. X 16 = Rs. 3,20,000/- and further Rs. 2,000/- towards funeral expenses and claimants are entitled as per Schedule II loss of estate Rs. 2500/-. Then it comes to Rs. 3,24,500/-. Thus, what the tribunal awarded of Rs. 2,60,000/- is no way excessive, and even though it is less, this Court has no right to enhance for want of cross objections from the claimants as per Ranjan Prakash (supra). Even coming to rate of interest awarded by the tribunal under Section 171 of the Act though in Sarla Verma it is 6% awarded earlier expression of the Apex Court in Tamil Nadu State Transport Corporation Ltd. Vs. S. Rajapriya and Others, by considering steep fall in bank lending rate it was held by elaborate discussion at 7.5% p.a. interest under Section 171 of the Act and the claimants under the Act is just, thereby for this Court while sitting in appeal, there is no need to reduce much less interfere with the said rate of interest. Accordingly points 1 and 2 are answered.

POINT No. 3:

45. In the result, appeal is partly allowed while holding respondent Nos. 1 and 2 of whom the 2nd respondent (appellant) insurer of the 1st respondent bike owner cum rider shall indemnify the 1st respondent to the claim of claimants parents of the deceased pillion rider of the bike from Ex. B1 policy covers the risk to satisfy the claim under Section 163-A of the Act as awarded by the tribunal of Rs. 2,60,000/- with interest at 7.5% p.a. However, by giving liberty to the insurer to maintain a separate proceeding or by filing application before the tribunal for execution and recover the same from the jeep owner and Insurer, needless to say, they being not parties herein, can raise any defence against the respondents 1 & 2 herein of theirs is to a proportionate and not total liability, to decide on other merits also with reference to the above as to extent of proportionate liability to share. There is no order as to costs of the appeal.