AWARD IN MOTOR ACCIDENT CASES

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GRANT OF COMPENSATION UNDER THE MOTOR VEHICLE ACT

1. It is a matter of common knowledge that India has one of the highest numbers of road accidents in the world. India tops the world in road crash deaths and injuries. It has 1% world's vehicles but accounts for 11% of all road crash deaths, 53 road crashes every hour, killing 1 person every 4 minutes. This figure does not include the unreported cases as many people in India don't approach the police or other authorities after the accidents. With the increase in population and modern development, there is tremendous increase in use of vehicles. Resultantly, accidents have become a common feature on the roads. When the British's directly took over administration of country, after the first War of Independence 1857, the parliament of Britain passed Government of India Act 1858 which authorized the Britishers to take over the administration of Indian territories from the East India Company. Later on, the Indian High Courts Act 1861 was enacted by the British parliament with the main object to establish High Courts in the presidencies the Kolkata, Bombay and Madras. Accordingly, the High Court of judicature at Fort William in Bengal (the present Kolkata High Court) was established on 1st July 1862. The Letter patent for the establishment of the High Courts of Bombay and Madras was issued in 1862. The charter High Courts were vested with the variety of jurisdiction i.e. Civil Criminal, testamentary, original appellate and matrimonial jurisdiction. At that time, there was no uniform system to deal with civil or accident cases. In most of areas under princely states, the system administration of justice varied from one state to other. There was no certainty and uniformity in implementation of civil or criminal law which was uncodified and depended upon wish of the Rajas.

2. Fatal Accidents Act, 1855 was the first Indian legislation that provided a right to claim compensation for the death of a person caused by wrongful Act of another. It was enacted in accordance with English Fatal Accident Act, 1846. Section 1A of the Indian Fatal Accidents Act, 1855 reads as under:

"[1A] Suit for compensation to the family of a person for loss occasioned to it by his death by actionable wrong? Whenever wrongful act, neglect, or default, and the act,

neglect or default is such as would (if death had not ensued have entitled the party injured to maintain an action and recover damages in respect thereof, the party who would have been liable if death had not ensued, shall be liable to an action or suit for damages, notwithstanding the death of person injured, and although the death shall have been caused under such circumstances as amount in law to felony or other crime).

[3] [***] Every such action or suit shall be for the benefit of the wife, husband, parent and child, of any, of the person whose death shall have been so caused, and shall be brought by and in the name of the person deceased;

And in every such action, the court may give such damages as it may think proportioned to the loss resulting from such death and for whose benefit such action shall be brought, and the amount so recovered, after deducting all costs and expenses, including the costs not and expenses, including the costs not recovered from the defendant, shall be divided amongst the before-mentioned parties, or any of them, in such shares as the court by its judgment or decree shall direct."

3. The above Act followed the principles contained in English Fatal Accident Act with regard to payment of damage/compensation. Normally, the damages/compensation proportionate to the loss suffered by the deceased used to be granted under this Act.

Since there were several shortcomings in the above Act, as there was no definite system of grant of compensation, a new Act i.e. The Motor Vehicle Act was enacted in 1939. Later on this Act was also amended again in 1957 and claim Tribunals were constituted under section 110 of the Act. Thereafter, in 1988, Motor Vehicles Act 1939 was repealed and Motor Vehicles Act 1988 came into force. In fact the Supreme Court in **M.K. Kunhimohammed Vs. P.A. Ahmedkutty (1987) 4 S.C.C. 284**, has made certain suggestions to raise the limit of compensation payable as a result of motor accidents in respect of death and permanent disablement in the event of there being no proof of fault on the part of the person involved in the accident and also in

hit and run motor accidents and to remove certain disparities in the liability of the insurer to pay compensation depending upon the class or type of vehicles involved in the accident. The above suggestions made by the Supreme Court have been incorporated in the Act.

It is necessary to mention here that grant of compensation under Indian Act is a bit different from the English law where normally damages were paid are proportionate to the loss suffered by the victim or injured as a case may be whereas under the Motor Vehicle Act 1988 the compensation payable to the victim has of an accident has to be just fair and reasonable. The court or Tribunal must try to provide compensation under the different heads which were evolved by various High Courts and Honorable Apex Court from time to time in various judgments.

CHAPTER 12 OF THE MOTOR VEHICLE ACT 1988 CONTAINING SECTION 165 TO 176

4. Chapter 12 of the Motor Vehicle Act, 1988 containing Section 165 to 176 deals with the Constitution of the Claim Tribunals, filing of the application, award of the Claim Tribunals and procedure etc. to be followed by the Claim Tribunals while deciding the accident cases. It is specifically provided under Section 175 of the Act that Where any Claim Tribunals has been constituted for any area, no Civil Court shall have jurisdiction to entertain any question relating to any claim for compensation which may be adjudicated upon by the Claim Tribunals for the area, and no injunction in respect of any action taken or to be taken by or before the Claim Tribunals in respect of claim for compensation shall be granted by the Civil Court under Section 176 the State Government is empowered to frame rules for the purpose of carrying into effect the provisions of section 165 to 174.

Under Section 165 of the Act, the State Government is empowered to constitute one or more Motor Accidents Claim Tribunals (hereinafter referred to as the Claim Tribunals) for such area as may be specified in the notification for the purpose of adjudicating the claims for compensation in respect of accidents involving the death

or bodily injury to persons arising out of the use of the motor vehicle or damages to any property of a third party.

Jurisdiction under Section 165 of the Act is attracted if there is an accident involving death of or bodily injury to, a person arising out of the use of a motor vehicle. The primary fact which, therefore, attracts the jurisdiction of the Tribunal is the use of a motor vehicle. The word 'use' is used in this section in a wider sense. It covers all employment of the motor vehicles, so that whenever the vehicle is put into action or service, there is 'user' of the vehicle within the provisions of Section 165 of the Act, whether the vehicle was being driven, or repaired or simply parked or kept stationary or left unattended. In that sense, the vehicle is used, without anything more, is sufficient to attract Section 165 of the Act. Therefore, whenever the vehicle is driven out for some purpose or it is kept stationary, then without anything more, is sufficient to attract Section 165 of the Act. Therefore, whenever any accident occurs, causing death of or injury to persons because of the vehicle or its user, the jurisdiction of the Claim Tribunals is attracted. Any accident occurring in the course of the user for carriage of passengers or otherwise is liable to be compensated through the Forum provided under Section 165 of the Act. The basic requirement of such claim is only that it should arise out of the use of motor vehicle. There is no warrant for the contention that the accident should take place at a time when the vehicle was in motion or the accident has resulted in damage to the property as held in **New India Insurance Company Limited Vs. Laxmi 1 (2001) ACC 117 (DB) Kerala and United India Insurance Company Limited Vs Sardari Lal 2005(1) SLJ 604(H.P)**. **In Shivaji Dhayanu Patel Vs. Vats Challa 1991ACJ777(SC)** the Apex Court interpreted the expression "arising out of" to be of wider connotation and observed that it is not necessary that the motor vehicle should be mobile but the compensation can be granted even if it was stationary to which we feel that the facts involved therein need to be understood. The facts emanating from the said decision relate to a collision between a petrol tanker and a truck on the national highway. As a resultant effect, the petrol tanker went off the

road and overturned at a considerable distance from the national highway and because of the leakage of the petrol, an explosion took place causing severe injuries to the persons assembled near the petrol tanker and some of them succumbed to such injuries and the heirs of such persons approached the Tribunal for compensation under the Motor Vehicles Act, 1939. It was further held that a claim petition can be filed by a person who was just entering into the bus or alighting from a bus dehors whether such a person has purchased the ticket or not. This position has been clarified by Apex Court in **Noor Jahan Vs. Sultan Rajia 1997 ACJ 1 (SC)**.

5. Section 166 of the Act clearly provides that an application for compensation arising out of an accident may be filed by the person who has sustained the injury, or by owner of the property, or where the death has resulted from the accident, by all or any of the legal representatives of the deceased etc. The proviso to above Section clearly provides that all the legal representatives of the deceased who have not joined as applicants are required to be impleaded as respondents in the said application. Sub-Section (2) of Section 166 clearly gives an option to the claimant to file such an application for compensation before the Claim Tribunals having jurisdiction over the area in which accident occurred, or within whose local limits the claimant resides or carries on business or within the local limits of whose jurisdiction the defendant resides.

6. Under Section 166 of the Act compensation is to be awarded to the injured or to the legal representative to the victim of an accident. The compensation is to be awarded to all the legal representatives of the deceased whether they have joined as claimants or not. Such a claim petition has to be made on behalf of or for the benefit of all the legal representative of the deceased. The legal representative who had not joined as claimants are to be impleaded co-respondents in the claim petition. The Apex Court in the case of **Gujarat State Road Transport Corporation, Ahmedabad Vs. Ramanbhai Prabhatbhai and another AIR 1987 SC 1692** while interpreting the expression 'legal representatives' as used in

the Act observed that the same should be given a wider meaning and it should not be confined to the spouse, parents and children of the deceased. In Indian family brothers, sisters and brother's children and sometimes foster children live together and they are dependent upon the bread-winner of the family and if the bread-winner is killed in an accident, there is no justification to deny them compensation relying upon the provisions of Fatal Accidents Act. It is fairly settled that even father who is not a class-I heir under Hindu Section Act 1956 to the estate of his son, is entitled to file claim petition along with his son and wife in respect of death of his son. Compensation cannot be denied on the ground that father is not a Class-I heir. Even in some cases the courts allowed compensation to brother, married daughter or to the person who was looking after the deceased and was also dependent on his income. In a case where widow of the deceased has re-married after the accident, it was held that re-marriage of a window is no ground to deny her compensation. Her entitlement to compensation is to be seen at the time of the death of husband which is the relevant date. This view was taken by our High Court in **Laxmi Chand Vs. Chaman Lal Latest HLJ 2000 H.P. 212.** However, it was held in **HRTC Vs. Subhadra Devi 2004 ACJ 1973 H.P.** that second or third wife of deceased is not entitled to compensation on account of death of the husband when first wife at the relevant time was alive. **In Hari Singh Vs. Mewa Ram 1987 ACJ 979 Delhi** compensation was denied by the Tribunal for the death of the son to the father on the ground that father is not Class-I heir. Particularly, when the son and widow of the deceased are alive, who were also party to the claim petition. It was held by High court that Father is also entitled for compensation along with widow and son though he is not class-I Heir. **In T.C. Bhatia Vs. Oriental Insurance Company 2000 ACJ 327= 1999 SLJ (1) 545 H.P.** It was held legal heir are entitled for compensation even though they are not dependent upon deceased. Therefore, where the claimants were not dependent upon income of the deceased, they can still maintain a claim petition for compensation under the law. This position has been explained elaborately in **C.K. Subarmaniyam Case 1990 ACJ 110 SC**.

7. It is thus clear that the claim for compensation must arise out of an accident by use of vehicle. There is no definition of the word "accident" given in the Act, however an attempt was made in **Jyoti Ademmavs. Plant Engineer Nellore, AIR 2006 2830,** wherein it was hold that accident means any untoward mishap which is not expected or designed.

8. **In Alka Shukla Vs. LIC of India 2019 ACJ 2179 SC** it was held by a bench of three judges that accident postulates mishap or an untoward incident or happening which is unexpected or unforeseen. In making above observations reliance was placed upon the case of **Union of India Vs. Sunil Kumar 1984 ACJ 719 SC.** It is thus clear that in popular or ordinary sense an accident means mishap or untoward happening or an occurrence which is unnatural and unforeseen or unexpected.

It is necessary to mention here that the Tribunal Constituted under the Act do not have any jurisdiction to entertain claims regarding damage to goods/property being carried in a goods vehicle as damage or loss to such property is governed as per contract of carriage or under the law of torts by filling a suit for damages. Under section 165, claims for compensation for damage to property are restricted only to the property belonging to a third party. That would also not call for coverage under an 'Act policy' as issued under section 147. A full bench of our High Court in the case of **Jagdish Chand Sharma Vs. Bachan Singh 2010 ACJ 1229= AIR 2010 HP 49** dealt with the question of maintainability of the claim petition when the damage to the property is caused to the goods (live stock) carried in the vehicle. It was held that the property of the consignor carried in the vehicle would not come within the ambit of expression third party nor such a person would be included within the meaning of phrase 'any person' as used in section 147 of the Act. The relevant observation made by High Court are as under:

"(38) The position which emerges is that the Apex Court has consistently held that the phrase 'any person' in section 147 (1) (b) is restricted to third parties. When we come to damage to property both in section 147 (1) (b) (i) as well as in section 165,

the legislature in its wisdom has specifically used the phrase 'property of a third party'. If a gratuitous passenger in a vehicle is not a third party, it is obvious that the goods being carried in a vehicle cannot be said to be the goods of a third party. Some courts had earlier taken the view that other than the insurer and the insured, all other persons are third parties. This has not been accepted to be the correct position of law and, therefore, the Apex Court has held that the insurance company is not liable in respect of death of gratuitous or unauthorized passengers. In fact, till the amendment of section 147 of the Act was carried out by the Amendment Act 54 of 1994 w.e.f. 14.11.1994, the Apex Court had held that even the risk to the owner of the goods or his authorized representative was not covered. They were not treated as third parties. If all these authorities of the Apex Court were taken into consideration, it is obvious that gratuitous passengers, unauthorized passengers, even employees not covered under the Workmen's Compensation Act and pillion riders who were all travelling in a vehicle have not been considered to be third parties. It is, therefore, obvious that the Apex Court has not upheld the view expressed by certain courts including the view expressed by a learned single Judge in **Noor Dass case, 2006 ACJ 142 (HP).**, that other than the insurer and insured, all other persons are third parties. Therefore, this plea of the claimants cannot be accepted. It is therefore, obvious that the words 'third party' cannot include such person."

(39) When a person sends his goods by a goods vehicle, he enters into a contract with the owner of the goods vehicle and, therefore, the owner of the goods vehicle becomes contractually liable to transport the goods in a safe condition. This is a contractual liability covered under the carrier Act and not a tortuous liability covered under the Motor Vehicle Act. The owner of the goods cannot by any stretch of imagination be said to be a third party vis-à-vis the insured. It is contracting party with the insured and in our view, the risk cannot be said to be that of a third party.

9. The ratio of Jagdish Chand Sharma case Supra was followed in **New India Assurance Co. Limited O.S. Varghese 2021 ACJ 1965 Kerala.** It was a case where death of an elephant took place in an accident when the same was being carried in ill fated vehicle. The owner of the elephant file the claim petition against the owner and driver of the vehicle and claim Tribunal allowed the claim of the owner of the elephant. In as much as elephant is duly covered within the definition of goods as defined under the Act. However, in appeal the High Court set aside the award of the Tribunal by holding that the owner of the goods does not come within the definition of the third party and for the loss of elephant, owner can file either a separate suit for damages or a case under the carrier Act. It is thus clear the phrase 'any property of a third party' occurring in sections 147 and 165 of the Motor Vehicles Act will mean property which is outside the goods vehicle and not being carried in the goods vehicle.

10. In another case i.e. **United India Insurance Company Vs. Satish Kumar 2011 ACJ 2814 (HP)** the question of maintainability of a claim petition came for consideration when a truck carrying apple met with an accident, resulting in damage to the apple boxes. A claim petition was filed by owner of the apples. It was held that such a claim petition is not legally maintainable before the Claim Tribunal, as Tribunal has no jurisdiction to entertain claim regarding damage to goods carried in goods carriage vehicle. It is a contractual liability and owner can file a case for recovery of damages under a carrier Act or a suit for recovery of such amount.

11. In another case i.e. **Oriental Insurance Co. Ltd. Vs. Bimla Devi 1(2008) ACC 812 (HP)** the court was concerned with the question of maintainability of a claim petition as the income of the victim was more than 40,000 per annum. The Tribunal allowed the claim taking the income of the deceased victim as 40,000 per annum. However, in appeal it was held that such a claim petition is not maintainable under section 163-A of the Act when the income of the deceased victim was above Rs. 40,000 per annum. However, the permission was granted to

the applicant to file appropriate application before the tribunal for converting the claim petition to under section 166 of the Act. But in Santosh Kumari Vs. New India Assurance Company (2008) 3 SLJ 1772 it was held that acclaim petition filed under section 163-A of the Act was rightly dismissed on the ground that income of the deceased was more than Rs 40,000 per annum. It was also held that the petitioner cannot be permitted to file a fresh petition under section 163-A by reducing the income below Rs. 40,000 per annum. Some High Courts have taken contrary view on this aspect and it is high time that there should be some emphatic pronouncement of the Apex Court so as to clear the foggy situation.

PROCEDURE AND AWARD IN M.A.C.T. CASES

12. "Section 168 of the Act deals with award of the Claim Tribunals (1) and it provides that on receipt of an application for compensation made under Section 166, the Claim Tribunals 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 claims 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 Claim Tribunals shall specify the amount which shall be paid by the insurer or owner or driver of the vehicle involved in the accident or by all or any of them, as the case may be:

Provided that where such application makes a claim for compensation under Section 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 provisions of Chapter X.

Thus, under Section 168 of the Motor Vehicles Act, 1988 it is clear that the amount of compensation payable would be which appeared to be just and fair. Section 163-A provides for grant of interim compensation irrespective of the fault or negligence

on the part of the driver of the vehicle. According to the English Law damages were payable according to the proportionate loss suffered by the victim, whereas in India compensation is payable under the different heads and which appears to the Tribunal to be just and reasonable.

13. Section 169 of the Act clearly provides that a Tribunal while holding inquiry may follow such summary procedure as it thinks fit. Further sub Section 2 of Section 169 provides that Tribunal shall have all the power of a court for the purpose of taking evidence on oath and enforcing the attendance of witness etc. Thus, under Section 169 Tribunal is to follow summary procedure as was clarified in the case of **Bimlesh Vs. New India Insurance Company Limited AIR 2010 SC 2591 = 2010 (8) SCC 591.** It was held that purpose of the said summary procedure is to ensure that claim application is heard and decided by the Tribunal expeditiously. The Tribunal is not to follow the rigours of the civil procedure which is normally followed in disposal of civil cases. **In Bimla Devi Vs. HRTC AIR 2009 SC 3104 = 2009 (2) SLJ 925 SC** it was held that in a claim Tribunal (petition) under section of 168 the Act Tribunal is not stricto-sensu bound by the pleading of the parties. It is the statutory function of tribunal to determine the amount of the compensation. It is true that occurrence of an accident having regard to the provision of the Act is Sine qua non for entertaining a claim petition.

14. In latest judgment in the case of Anita Sharma Vs. New India Assurance Company Limited 2021 ACJ 17 SC it was held as under:

"Equally, we are concerned over the failure of the High Court to be cognizant of the fact that strict principles of evidence and standards of proof like in a criminal trial are inapplicable in M.A.C.T. claim cases. The standard of proof in such like matters is one of preponderance of probabilities, rather than beyond reasonable doubt. One needs to be mindful that the approach and role of courts while examining evidence in accident claim case ought not to be find fault with non-examination of some best eyewitnesses, as may happen in a criminal trial; but, instead should be only to analyze the material placed on record by the parties to ascertain whether the claimant's version is more likely than not true. A somewhat

similar situation arose in **Dulcina Fernandes Vs. Joaquin Xavier Cruz, 2013 Act 2712 (SC),** wherein this court reiterated that":

"(7) It would hardly need a mention that the plea of negligence on the part of the respondent No. 1 who was driving the pickup van as set up by the claimants was required to be decided by the learned Tribunal on the touchstone of preponderance of probabilities and certainly not on the basis of proof beyond reasonable doubt. **[Bimla Devi Vs. Himachal Pradesh Road Transport Corporation, 2009 ACJ 1725 (SC)]."**

It is necessary to remember that a claim before the claim Tribunal is neither a civil suit nor a criminal trial. In a criminal case the prosecution or state is required to prove its case beyond reasonable doubt and in a civil case the matter is to be decided on the basis of pre-pondrance of the evidence. Whereas a claim before a tribunal is to be decided by mere pre-pondrance of probabilities. The tribunal can take into consideration circumstantial evidence and such documents which are not strictly proved as per law. A heavy duty is cast upon the Tribunal to play a proactive role in adjudication of cases so as to grant relief to the victim of an accident. The Tribunal is not expected to follow or adopt the principles of niceties of Civil or Criminal case. After all, it is summary inquiry and this legislation is for the welfare of the victims. The Tribunal should not succumb to niceties and technicalities and mystic maybes. The Tribunal is bound to take a broader and holistic view of the whole matter. Equally settled is the law that mere acquittal of a driver in a criminal case is not legally enough to hold that driver was not rash and negligent while driving the vehicle. The Tribunal is required to take independent view on the basis of the evidence adduced by the parties. This view was taken in **Gurshai Ram Vs. Secretary Transport Punjab Latest HLJ 2002 HP 274**. It was also held in **Shanti Kumar Panda Vs. Shankuntla Devi AIR 2004 SC 115** that a decision of criminal court does not bind the civil court. Whereas a decision of civil court is binding upon the criminal court. The SC in the case of **Mangla Ram Vs. Oriental Insurance Company Limited, 2018 ACJ 1300** (SC) held as under:

"(18) It will be useful to advert to the dictum in **N.K.V. Bros. (p) Limited Vs. M. Karumai Ammal, 1980 ACJ 435 (SC)**, wherein it was contended by the vehicle owner that the criminal case in relation to the accident had ended in acquittal and for which reason the claim under the Motor Vehicles Act ought to be rejected. This court navigated the said argument by observing that the nature of proof required to establish culpable rashness, punishable under the Indian Penal Code, is more stringent than negligence sufficient under the law of Tort to create liability. The observation made in Para 3 of the judgment would throw some light as to what should be the approach of the Tribunal in motor accident cases.

In the above case the Hon'ble Apex Court directed the Tribunals to adopt liberal and reasonable approach while considering the factum of accident. Thus, the judgment of the Criminal Court is relevant only for a limited purpose as to whether accused has faced trial in a criminal court or whether the trial resulted in his acquittal or conviction.

15. In **HDFC Ergo General insurance CO. Ltd. VS Mukesh Kumar AIR 2021 S.C 533** It was held that under the ACT there can't be more than one award in an accident as there is no provision in the ACT. In a case where injury to an injured victim requires periodical treatment, and medical expenses, in that situation, lump sum amount for treatment or replacement of limb be awarded to the injured victim. In the instant case, a child in an accident had suffered 70% disability, which High Court has held to be 100% .High Court has ordered life time warranty for prosthetic limb and its continuance maintenance by insurance co. This direction was set aside by Apex Court. High Court was directed to examine the matter afresh and award appropriate lump sum amount along with multiplier.

GRANT OF COMPENSATION SECTION 140, 163 A AND 166/168 OF THE ACT

16. The Motor Vehicles Act, 1939 initially provided for the award of compensation on the principle of "fault" only. The Supreme Court in **Manushri Raha Vs. B.L. Gupta (1996) 4 S.C.C. 362** and the Law Commission of India

recommended the introduction of "no faulty" liability. The 1939 Act was according amended by Motor Vehicles (Amendment) Act, 1982 incorporating Sections 92-A to 92-E to provide, for the first time payment of compensation on the principle of "no fault".

The 1939 Act, as amended by the 1982 Amendment Act was however, later repealed. A new Act "Motor Vehicles Act, 1988" (Act 59 of 1988) was enacted. It came into force from 1st July, 1989. In this Act Sections 140 to 144 (corresponding to earlier Section 92-A to 92-E) were inserted. The Act also provided for award of compensation resulting from an accident arising out of the use of motor vehicles under the following three cases:

(a) In cases of hit and run motor accidents (Section 161)

(b) In case of right to just compensation on the principle of "Fault" (Section 166 and 168)

(c) In case of award of compensation on the principle of "No Fault" (Chapter X Sections 140 to 144)

All these three sets of provisions are independent and are mutually exclusive. The Motor Vehicles Act, 1988 was again amended by the Amendment Act 54 of 1994. It came into force on November 14, 1994. By this Amendment Act, Sections 163-A and 163-B have been inserted in Chapter XI "Insurance of Motor Vehicles against Third Party Risks".

It is clear from bare perusal of language of section 163-A, the use of 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 Parliament intended to insert a non obstante clause of wide nature which would mean that the provisions of section 163-A would apply despite the contrary provisions existing in the said Act or any other law for the time being in force. Thus, section 163-A of the Motor Vehicle Act covers even the cases where negligence is on the part of the victim." This position has been lucidly explained in **United Indian Insurance Company Limited Vs. Sunil Kumar, 2013 ACJ 2856 SC**:

"We are, therefore, of the view that liability to make compensation under Section 163-A is on the principle of no fault and therefore, the question as to who is at fault is immaterial and foreign to an inquiry under Section 163-A. Section 163-A does not make any provision for apportionment of the liability. If the owner of the vehicle or the insurance company is permitted to prove contributory negligence or default or wrongful act on the part of the victim or claimant, naturally it would defeat the very object and purpose of section 163-A of the Act. Legislature never wanted the claimant to plead or establish negligence on the part of the owner or the driver. Once it is established that death or permanent disablement occurred during the course of the user of the vehicle and the vehicle is insured, the insurance company or the owner, as the case may be, shall be liable to pay the compensation, which is a statutory obligation."

17. **In United India Insurance Company Limited Vs. Sunil Kumar, 2018 ACJ 1 SC**: it was observed as under:

"(8) from the above discussion, it is clear that grant of compensation under Section 163-A of the Act on the basis of the structured formula is in the nature of a final award and the adjudication there under is required to be made without any requirement of any proof of negligence of the driver/owner of the vehicle(s) involved in the accident. This is made explicit by section 163-A (2). Though the aforesaid section of Act does not specifically exclude a possible defense of the insurer based on negligence of the claimant as contemplated by section 140 (4), to permit such defense to be introduced by the insurer and/or to understand the provisions of section 163-A of the Act to be contemplating any such situation would go contrary to the very legislative object behind introduction of section 163-A of the Act, namely, final compensation within a limited time frame on the basis of the structured formula to overcome situation where the claims of compensation on the basis of fault liability were taking an unduly long time. In fact, to understand section 163-A of the Act to permit the insurer to raise the defense of negligence would be to bring a proceeding under Section 163-A of the Act at par with the proceeding under

Section 166 of the Act which would not only be self-contradictory but also defeat the very legislative intention.

18. It is clear from a conjoint reading of Section 140, 163-A and 166 of the Act that proceeding under Section 140 of the Act is interim in nature and the interim amount awarded under this section has to be included in the final award made under Section 168 of the Act. It does not in any manner detract or defeat the provision of Section 166 of the Motor Vehicle Act. A bare reading of Section 163-A shows that claim under Section 163-A based upon no fault liability and negligence is not required to pleaded and proved, whereas claim under Section 166 of the Act is based upon fault liability. In fact Section 163 A was introduced in the Act in 1994 so as to provide speedier and immediate remedy to the victim of the accident. Since there was a divergence of opinion amongst the High Courts, a bench of three judges the Apex Court in the case of **Deepal Girish Bhai Soni Vs United Insurance Company Limited AIR 2004 SC 2017** held that the remedy of payment of compensation filed under section 163-A and 166 of the Act are final and independent of each other. Whereas Section 140 of the Act deals with interim compensation which does not bar the claimant from claiming compensation under any other law. The claimant cannot pursue his remedy both in 163-A and 166 simultaneously. One thus must opt/elect to go either for a proceeding under Section 163-A or 166 of the Act **but not under the both**. While laying down the above law, the Apex Court partly overruled the contrary observation made in **Oriental Insurance Company Limited Vs. Hans Raj AIR-2001SC-1832.**

It was observed by Supreme Court that in sub Section 5 of Section 140 of the Act the expression "also" has been used which is indicative 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. Proviso appended to sub-section (5) of Section 140 states that the amount of compensation payable under any other law for the time being in force is to be reduced from the amount of the compensation payable under sub-section (2) thereof or under Section 163-A of the Act. Right to claim compensation under Section 140, having regard to the provisions contained in

Section 141 is in addition to any other right to claim compensation on the principle of fault liability. Such a provision does not exist in Section 163-A. If no amount is payable under the fault liability or the compensation which may be received from any other law, no refund of the amount received by the claimant under Section 140 is postulated in the scheme. Section 163-A, on the other hand, nowhere provides that the payment of compensation of no-fault liability in terms of the structured formula is in addition to the liability to pay compensation in accordance with the right to get compensation on the principle of fault liability. It is also not correct to contend that the expression "any other law for the time being in force" used in Section 140(5) would include any other provisions of the Motor Vehicles Act. Had the intention of the Parliament been include the other provisions of Motor Vehicles Act within the meaning of the expression "any other law for the time being in force", it could have said so expressly. The very fact that the Parliament has chosen to use the expression "any other law", the same, in our considered opinion, would mean a law other than the provisions of the Motor Vehicles Act. The proviso appended to sub-section (5) of Section 140 of the Act is required to be given a purposive meaning. The Tribunal must bear in mind that proceeding under Section 163A are maintainable only when the Annual Income of the decease is up to Rs. 40,000 per annum all other claims are required to be determine under Section 166 of the Act. The application 140 of the Act is required to be dealt in some different manner dehors the negligence of the part of driver of vehicle. The main object of the section is to provide urgent or immediate relief to the victim of the accident including the kith and kin. However, an order made under Section 140 of the Act is also an award and is appealable like a regular claim award passed under Section 168 of the Act. It is also true that section 163-B provides for an option to claimant to either file a claim under Section 140 or Section 163 of the Act as the case may be. This appears to have been purposely done so as to avoid any confusion or misconception in the minds of the parties to the case. Having regard to the language of Section 166 it is clear that that it provide a complete procedure for assessment of compensation on the basis of fault liability. Though expression "rash" or negligent

Act has not been used in Section 166 or other relevant sections under the Act but the very fact that claim under 163-A and 140 is to be decided on the basis of no fault liability or without proving any negligent or wrongful Act on the part of the insured or driver, goes to show that requirement of negligence or wrongful Act is implicit as such same is required to be alleged and proved for a claim petition under Section 166 of the Act.

19. **In Oriental Insurance Company Limited Vs Brahmi, 2018 ACJ 225 (H.P),** it has categorically been held that to seek compensation in terms of section 166 of the Act, proof of negligence is necessary for saddling the owner or the insurance company with the liability.

20. **In Minu B. Mehta, 1977 ACJ 118 SC,** the Honorable Supreme Court was considering a question as to whether in a claim for compensation under the Motor Vehicles Act, 1939, proof of negligence was essential to support a claim for compensation. It was noted that the liability of the owner of a car to compensate the victim in a car accident due to negligent driving of his servant is based on the law of Torts. The Honorable Supreme Court observed that the argument canvassed that the Tribunal is entitled to award compensation which appears to be just when it is satisfied on proof of injury to a third party arising out of the use of a vehicle in a public place without proof of negligence, if accepted would lead to strange result. The Honorable Apex Court held that proof of negligence remained the lynchpin to recover compensation and proof of negligence is necessary before the owner or the insurance company could be held to be liable for the payment of compensation in a motor accident claim case.

21. A decade after **Minu B. Mehta case, the Supreme Court in Gujarat State Road Transport Corporation Vs. Ramanbhai Prabhatbhai AIR 1987 SC 1690** candidly admitted that

"the observations of this Court on the above question were in the nature of obiter dicta since there was no necessity to go into the question whether proof of negligence on the part of the driver was necessary or not to claim damages since it

has been found both by the High Court and this Court that such negligence has been in fact established".

22. No doubt, a different view was taken in **S Kaushnuma Begum Vs. The New India Assurance Company Limited AIR 2001 SC 485** wherein it was held as under:

Claim petition can be maintained under the Motor Vehicle Act even though there is no fault of the driver i.e. Rash and Negligent Act. The owner is liable under the principle of strict liability. The jurisdiction of the Tribunal is not restricted to decide claims arising out of negligence in the use of motor vehicles. Negligence is only one of the species of the causes of action for making a claim for compensation in respect of accidents arising out of the use of motor vehicles. There are other premises for such cause of action. It was further observed that owner can be made vicariously liable for damages to dependents of victim even if there is no negligence on the part of the driver or owner of motor vehicle. Thus, the driver of the offending vehicle was held to be liable on the basis of strict liability propounded in **Rylands Vs. Fletcher's Case (1861-73) of England Reports**.

There may be cases of accidents where the driver of the vehicle may have no role or minimal role when accident is caused by a Motor Vehicle. There may be cases arising out of the use of motor vehicle in which the driver could have been very well passive and helpless spectators. The legislature in its wisdom purposely did not use the word rash or negligent Act in Section 166 of the Act and used broader expression i.e., "arising out of use of vehicle".

For example when an accident takes place due to falling of a boulder or a branch of a tree on a vehicle, washing away of the bridge due to heavy rainfall resulting in death of passengers travelling in a bus, bomb explosion in a moving bus or injury cause to driver in a moving bus by a terrorist travelling in the bus resulting in the accident etc. Such cases can be numerous in number without any the fault on the part of the driver.

It is thus clear from the various decisions that both under the Motor Vehicle Act, 1939 and 1988 Act the expressions 'caused by' and 'arising out of' have a wider connotation. Though the accident should be connected with the use of motor vehicle but the said connection need not be direct and immediate. The expression 'arising out of use of motor vehicle' as mentioned in section 92-A of the 1939 Act and section 165 of 1988 Act enlarges the field of protection made available to the victims of an accident and is in consonance with the beneficial object underlying the enactment. From the expression employed, namely, 'accident arising out of the use of a motor vehicle' in the place of 'accident caused by the use of motor vehicle', it is clear that the legislature wanted to enlarge the scope of the word 'use'. Accordingly it is now clear that the test should be whether the accident was reasonably proximate to the use of a motor vehicle, whether or not the motor vehicle was in motion then.

The courts or Tribunal in accident cases have also applied the principle of res ipsa loquitur so as to hold wrongdoer liable Res Ipsa Loquitur is a Latin term which means the thing speaks for itself. In the law of torts, it is very popular doctrine. In cases, where evidence is itself sufficient to prove the guilt of the wrongdoer or defendant, the maxim is used there. The principle of res ipsa loquitur is only a rule of evidence to determine the onus of proof in actions relating to negligence. The said principle has application only when the nature of the accident and the attending circumstances would reasonably lead to the belief that in the absence of negligence, the accident would not occurred and that the thing which caused the injury is shown to have been under the management and control of alleged wrongdoer. In **Sayed Akbar Vs. Sate of Karnataka, (1980) 1 SCC 30** the principle was explained as under:

"As a rule, mere proof that an event has happened or an accident has occurred, the cause of which is unknown, is not evidence of negligence. But the peculiar circumstances constituting the event or accident, in a particular case, may themselves proclaim in concordant, clear and unambiguous voices the negligence of

somebody as the cause of the event or accident. It is to such cases that the maxim res ipsa loquitur may apply, if the cause of the accident is unknown and no reasonable explanation as to the cause is coming forth from the defendant.

To emphasize the point, it may be reiterated that in such cases, the event or accident must be of a kind which does not happen in the ordinary course of things if those who have the management and control use due care. But, according to some decisions, satisfaction of this condition alone is not sufficient for res ipsa to come into play and it has to be further satisfied that the event which caused the accident was within the defendant's control.

The reason for this second requirement is that where the defendant has control of the thing which caused the injury, he is in a better position than the plaintiff to explain how the accident occurred. Instances of such special kind of accidents which "tell their own story" of being offsprings of negligence, are furnished by cases, such as where a motor vehicle mounts or projects over a pavement and hurts somebody there or travelling in the vehicle; one car ramming another from behind, or even a head-on collision on the wrong side of the road. (See per Lord Normand **in Barkway Vs. South Wales Transport Company, (1950) 1 All ER 392, 399; Cream Vs. Smith [(1961) 8 AER 349]; Richley Vs. Faull, [(1965) 1 WLR 1454 : (1965) 3 All ER 109])**

Thus, for the application of the maxim res ipsa loquitur "no less important a requirement is that the res must not only bespeak negligence, but pin it on the defendant.

It is thus clear that principle of res ipsa loquitur is applied primarily in those cases, where at the first instance the negligence on the part of defendant is evident and without which the injury would not have occurred. Thus, where the facts without anything more clearly and unerringly points to the negligence. This principle has been followed frequently by the courts.

23. **In IFFCO Tokio General insurance Company Limited Vs. Pearls Beverages Limited (2021) SCCR 738,** the Honorable Apex Court held that simply because driver of the vehicle is under the influence of liquor or drunkard the principle of res ipsa loquitur cannot be pressed into service for that reason alone. It may be another matter that though principle as such is inapplicable, manner in which accident occurred may along with other circumstances point to drivers negligence in driving the vehicle and causing the accident while under the influence of alcohol. In the law of torts, to prove somebody's negligence the burden of proof is on the plaintiff but the application of principle of res ipsa loquitur shifts the burden on the proof of defendant Honorable Apex Court in M C Mehta Vs. Union of India AIR 1987 SC 965 has applied the this principle in accessing the negligence as well as damage.

24. **In Oriental Insurance Company Limited Meena Variyal AIR 2007 SC 1609** a Division Bench of SC held that proof of negligence of driver of the vehicle is necessary in order to succeed in a claim petition under Section 166 of the Act. In this case, it was observed that the remedy under Section 166 of the Act is based upon the common law of Torts where wrongful Act is required to be alleged and proved so as to succeed in a claim petition. Unfortunately, the attention of the Supreme Court in this case was not invited to the other co-ordinate bench i.e. Kaushnuma Begum case supra wherein a contrary view has been taken. It is necessary to mention here that judicial discipline as well as judicial propriety requires that a co-ordinate bench must respect the judgment of other co-ordinate Bench and in case there is any doubt regarding the ratio of law laid down in earlier judgment, the appropriate course for the subsequent Bench is to refer to matter to the larger Bench. But subsequent bench cannot take a contrary view in as much as the earlier view would still hold the field, despite a contrary expression of opinion by the subsequent Bench. A constitution Bench in **SC Pranay Sethi case 2017ACJ 2700** strongly deprecated the practice being followed by some judges of the High Courts as well as Honorable Apex Court by observing as under:

It is pertinent to mention here that the Motor Vehicle Amendment Act 2019, has repealed the provision of the Section 140 of the Act for the reason that most of the claim cases in fact were getting delayed as tribunal were taking lot of time for disposal of the applications under 140 of the Act. The interim amount of compensation of Rs. 50,000/- in case of death and Rs. 25,000/- in case of permanent disablement is even otherwise required to be adjusted at the time of passing final award under Section 168 of the Act.

LIMITATION UNDER THE OLD AND NEW MOTOR VEHICLE ACT

25. Lastly, Motor Vehicle Act 1988 was again amended in 2019 and some cosmetic changes in various provisions were made by our parliament. Now the parliament has repealed Section 163-A which deals with grant of compensation on structural formula basis. In fact Section 163-A came into force on 14 November 1994. It is pertinent to mention here that previously, there was no limitation provided for filling claim petition before the Tribunals. However, under the amended Act of 2019 sub section (3) in Section 166 has been inserted and it's specifically says "no application for compensation shall be entertained unless it is made within six months of the occurrence of the accident". Further, sub Section (5) of Section 166 of the new Act contains an overriding proviso which clarifies that Right of person to claim compensation for injury in an accident shall, upon the death of the injured person, survive to his legal representatives, irrespective of whether the cause of death is relatable to or head any nexus with the injury or not. However, the provision relating to limitation has not been implemented by way of issuance of notification by the Central Government.

Under the Fatal Accident Act, 1855 there is no particular period of limitation prescribed in the Act for filing the suit. However, under Article 82 of the limitation Act, suit under Section 1A of Fatal Accident Act, 1855 has to be filed within two years from the date of death. Therefore, the period of limitation under the said Act is

not to be taken as three years from the date of death of the person which is the period provided when there is no specific provision contained in Limitation Act for filing of the suit.

Previously, under Motor Vehicle Act 1988 there was no limitation to file a claim petition under Section 166 or 166/3-A of the Act.

The aforesaid sub section 3 of Section 166 was there earlier in the Motor Vehicle Act 1988 and same was omitted by Act 54 of 94 with effect from 14.11.1994. Prior to 1988 under the MV Act of 1939 the period of limitation was six months. It was in the year 1988 when a proviso was added in sub section 3 of Section 166 of the Act which provided that period of limitation for filing a claim petition can further be extended by period of six months, if sufficient cause is shown by the claimant in filing the petition late. In view of the proviso to above sub Section 3 of Section 166, the maximum period of delay which can be condoned by the Tribunal was six months. Resultantly, a claimant has to file a petition for compensation within a period of one year from accident and claim Tribunals were not competent to condone the delay, if period of one year has elapsed from the date of accident.

Now, with the insertion of sub Section 3 in sub Section 166 the legislature has maintained the pre 1988 position as was under the MV Act of 1939. In fact Section 166 of Motor Vehicle Act 1988 corresponds to 110-A of Old Motor Vehicle Act 1939. However, in the latest Act of 2019 there is no proviso attached to sub Section 3 of Section 166 which was there in Section 110-A of the Old Act of 1939. The said proviso of 1939 is as under:

“110-A. “provided that the Claim Tribunal may entertain the application after the expiry of the said period of six months if it is satisfied that the applicant was prevented by sufficient cause from making the application in time”.

Reason for inserting the above section in the latest Act are that in most of the cases claimant were filing petition very late even after lapse of 10 to 15 years and Tribunal were facing difficulty in deciding the cases in as much as parties were not in a position to adduce proper evidence due to lapse of time. **In New Indian Insurance Co. Vs. Padma 2003 ACJ 1999 =(2003) 7 SCC 713** the Apex Court has interpreted the provision of section 166(3) of the Act.

It was a case of Motor Accident which took place on 2.11.1995. The Tribunal rejected the claim petition on the ground of limitation and revision petition was also dismissed by the High Court. However, SC held that since clause 3 of Section 163 stands deleted, the Tribunal was bound to entertain such petition without taking note of the date of accident which took place when the limitation was six months for filing the same. It was further held that Article 137 of the limitation Act cannot be invoked because Act is a beneficial legislation and it a self contained code.

26. **In Dhana Lal Vs. D. P. Vijay Vargiya 1996 ACJ 1013 SC** it was held when accident has also taken place when sub Section 3 of Section 166 was in operation and claim petition was filed after deletion of sub Section 3 (w.e.f. 14.11.1994), in that situation the claim petition was held not to be time barred. In view of the legal position discussed above it is clear that claimant is legally entitled to get the benefit of procedural law of limitation.

It is pertinent to mention here that the Motor Vehicle Amendment Act 2019, has repealed the provision of the Section 140 of the Act for the reason that most of the claim cases in fact were getting delayed as Tribunal were taking lot of time for disposal of the applications under 140 of the Act. The interim amount of compensation of Rs. 50,000/-in case of death and Rs. 25,000/- in case of permanent disablement is even otherwise required to be adjusted at the time of passing final award under Section 168 of the Act.

27. The Honorable Apex Court **in the case of Purohit and Company Vs. Khatoonbee, 2017 ACJ 1255** observed that there is no prescribed period of

limitation for lodging a claim petition after the amendment of section 166 of the Motor Vehicle Act 1988 whereby sub-section (3) of section 166 came to be deleted w.e.f. 14.11.1994. It was further held that it was imperative for the claim Tribunal to determine whether at the juncture when the claimant approached the Claim Tribunal, the claim was live and surviving claim. The Honorable Apex Court further went on to hold that if the claim is not so, the same may not be entertained. It was also observed that the claimant must approach the Tribunal within a reasonable time and the question of reasonability would depend upon fact and circumstances of each case. To my mind, it is also settled legally position in law that when no period of limitation is prescribed under a statute, in that eventuality the residuary article 137 of the Limitation Act should apply which gives three years period of limitation when the cause of action has accrued. In **New India Assurance Company Limited Vs. Ghulam Mohammad Sheikh 2021 ACJ 2103 (J & K)** the court dealt with the question of limitation under M.V. ACT 1988 when a claim petition was filed after 17 years of the accident in respect of an accident which took place on 30.11.1986 the claim was resisted by the insurance company mainly on the ground that claim petition has been filed after 17 years of the occurrence and, as such, the same is not maintainable. The claim Tribunal held the petition to be legally maintainable as no period of limitation is prescribed under the Act. In appeal High Court also upheld the decision of the Tribunal by putting reliance upon Purohit case supra.

In a case where accident has occurred on 23.04. 2019, the claim application was filed by the petitioners on 17.02.2020. The Claim Tribunal dismissed the claim petition as time barred as it was filed beyond the period of six months from the date of accident as provided under Section 165 (3) of the amended Act. It was held in appeal by the High Court that all provisions of the amended Act of 2019 are not notified by the Central Government to be operational with effect from 1.09.2019 and Section 53 of the amended which deals with limitation of six months under 166 (3) of the new Act has not been so far notified. Accordingly, claim petitioner was to be held within time and case was remanded to the Tribunal for decision in accordance with law.

28. **In Mukesh Patle Vs. Shatiendra Verma 2022 ACJ 79 Bilaspur H.C**, the question of limitation under the latest amended Act was considered by the Honorable High Court, in a case where accident has occurred on 23.04.2019. The claim application was filed by the petitioners on 17.02.2020 the claim Tribunal dismissed the claim petition as the time barred, as it was filed beyond the period of six months from the date of accident as provided under section 166 (3) of the amended Act. It was held in the appeal by the High Court that all provisions of the amended Act of 2019 are not notified by the Central Government to be operational with effect from 1.09.2019 and Section 53 of the amended which deals with limitation of six months under 166 (3) of the new Act has not been so far notified. Accordingly, claim petitioner was to be held within time and case was remanded to the Tribunal for decision in accordance with law.

29. It is also of vital importance to mention here that the latest amendments Made in Motor Vehicle Act in 2019 have not been fully implemented by way of notification and only the following provisions have been notified by the Union Government which are as under:-

SI No.	**Provision Contained under the Amendment Act**	**Provisions contained under the Principal Act**
1	Section 50	Section 140 to 144 (Chapter X)
2	Section 51	Sections 145 to 164 (Chapter XI)
3	Section 52	Section 165
4	Section 53	Section 166
5	Section 54	Section 168
6	Section 55	Section 169
7	Section 56	Section 170
8	Section 57	Section 173

A careful perusal of the above provisions shows that Section 50 to 57 of the Amendment Act are yet to be notified. In fact, sections 50 to 57 of the Amendment Act relate to sections 140 to 144, sections 145 to 164, section 165, section 166, section 168, section 169, section 170 and section 173, respectively, of the Principal Act. In simple words, sections 140 to 144 of the Principal Act (Chapter X) have not been omitted as yet and continue to operate. Similarly sections 145 to 164 (Chapter XI) and section 165, section 166, section 168, section 169, section 170 and section 173 of the Principle Act would continue to operate with full vigour till the time sections 51 to 57 of the Amendment Act are notified in the official Gazette.

30. In **National Insurance Company Limited Vs. Kamlesh Kumari 2021 ACJ 1589 High Court of Punjab** was dealing with a claim petition originally filed under Section 163-A of the Act. However, the Tribunal awarded the compensation under Section 166 of the Act when the matter was taken up in appeal filed by insurance company, it was strongly urged that compensation has to be awarded under Section 163-A of the Act and Tribunal has no power to convert the same suo motu into a petition U.S. 166 of the Act. It was held that law is well settled that while granting compensation under Section 163-A of the Act, the courts are to be guided strictly by the II schedule to the Act. The Tribunal was totally wrong in ignoring the mandate of Section 163-A and converting the claim petition suo moto to under Section 166 of the Act which was held to be totally erroneous by the Honorable High Court. But High Court, in my humble opinion wrongly granted compensation under the amended provisions of Section 164 of the New Act of 2019 on the premise that Section 163-A of the Act stands repealed. Reference has been made to be notification issued by Central Government vide which section 163-A has been taken away. It is pertinent to mention here, though Amended Act of 2019 has repealed Section 163- A of 1988 Act, yet the same has not been made applicable as yet as discussed above and new provision of section 164 of the Motor Vehicle Act 2019 are not applicable so long the said provision is not made applicable by issuance of notification. The Honorable High Court in the above case referred to the

provision of section 164 of the New Act 2019 and awarded compensation of Rs. 5,50,000/- on the basis new provision contained in section 164 assuming the said provision has been notified by the Central Government. In fact under section 164 of the New Act the compensation is to be awarded in the following manner:

"1. (A) Fatal Accidents:

Compensation payable in case of death shall be five lakh rupees.

(B) Accident resulting in permanent disability:

Compensation payable shall be = [Rs. 5,00,000 x Percentage disability as per Schedule I of the Employee's Compensation Act, 1923 (8 of 1923)]:

Provided that the minimum compensation in case of permanent disability of any kind shall not be less than fifty thousand rupees.

(C) Accidents resulting in minor injury:

A fixed compensation of twenty-five thousand rupees shall be payable.

2. On and from the date of 1st day of January 2019 the amount of compensation specified in clauses (a) to (c) of paragraph (1) shall stand increased by 5 per cent annually."

It is not in dispute that while deciding pending claim application/appeals post 22.5.2018, the new Schedule ought to be applied.

Keeping in view the facts of the case, it is thus evident from the new Schedule that Rs. 5,00,000/- is payable under clause 1 of Second Schedule to the Act from claim arising out of death. The amount of compensation is to be increased by an amount of 5 per cent per annum from 1st day of January 2019 as per clause 2 of the Schedule of the Act. Thus, the claimants are entitled to a further sum of Rs. 50,000/-.

In fact, on 9.8.2009 the Motor Vehicles (Amendment) Act 2019 was published in the Gazette of India (hereinafter referred as 'the Amendment Act'). By this

amendment, the Motor Vehicle Act, 1988 (hereinafter referred as 'the Principal Act') has been drastically amended.

Section 1 of the Amendment Act is relevant for the present discussion, therefore, same is reproduced herein under:

"Section 1 (1) This Act may be called the Motor Vehicles (Amendment) Act, 2019.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint and different dates may be appointed for different provisions of this Act and any reference in any such provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision."

In exercise of the powers conferred by sub-section (2) of section 1 of the Amendment Act, the Central Government appointed 1.9.2019 as the date on which the following sections of the Amendment Act shall come into force, namely---

"Section 2, section3, clauses (i) to (iv) of section 4, clauses (i) to (iii) of section 5, section 6, clause (i) of section 7, sections 9 to 10, section 14, section 16, clause (ii) of section 17, section 20, clause (ii) of section 21, section 22, section 24, section 27, clause (i) of section 28, section 29 to 35, sections 37 to 38, sections 41 to 43, section 46, sections 48 and 49, sections 58 to 73, section 75, sub-clause (i) of clause (B) of section 77, sections 78 to 87, section 89, sub-clause (a) of clause (i) and clause (ii) of section 91 and section 92 of the Amendment Act. Admittedly sections 50 to 57 of the Amendment Act are not notified till date."

There is no mention of Section 51 of the Amended Act2019 in the above notification which deals with repeal of section 145 To 164 of M.V.ACT 1988

31. Recently, Honorable Supreme Court in the case of **Ram Khiladi Vs. United India Insurance Co. Ltd., 2020 ACJ 627 (SC)** held that amendment in second schedule relating to section 163-A of the Act is prospective and not retrospective. It is thus clear that pending cases would be governed by unamended act. In **Yunus**

Mira Vs. Mohd. Shafis 2021 ACJ 2184 Allahabad, the question before the court was whether the amendment introduced w.e.f. 09.08.2019 has to take effect prospectively and would not apply to pending cases when the amendment came into force. In this case claimant filed claim petition was filed for damages as a bus hit his shop resulting in damage. The claim Tribunal awarded for Rs. 38696 as damages and directed insurance company to pay Rs. 6000/-. The balance amount was to be paid by the owner of the bus. It was urged in the High Court that in view of the amendment made in the Act the aforesaid limitation has been removed and insurance co. is liable to satisfy the entire amount so awarded by the Tribunal. This contention was not accepted by the High Court and it was held that the amendment made in section 147 repealing the limit of Rs. 6000/- in relation to damage of third party property, has to be applied prospectively w.e.f. 09.08.2019 and pending cases would be governed by unamended Act. In para 15 it was held as under:

"Coming to the other submissions regarding the effect of the legislative amendment which has been incorporated in the Motor Vehicles Act, 1988 w.e.f. 09.08.1994, it is stated that the said legislative amendment has to take effect prospectively. It is not in dispute that the alleged accident occurred on 01.10.1994, the liability arises out of a contractual dispute between the insurer and the insured. The legislature has done away with the limit by means of the amendment which has been introduced on 09.08.2019. This amendment cannot come to the rescue of the appellant to give him benefit of a contractual condition which was prevalent in the Act both at the time of accident as well as the decision rendered by the Motor Accident Claims Tribunal. Moreover, the appeal was filed in the year 2000 when the aforesaid amendment did not exist. Merely because the appeal remained pending before this court for 19 years during which the amendment came into force will not entitle the appellant for the benefit thereof. It is also to be noted that the amendment is not in the nature of beneficial legislation in so far as the insured is concerned. It is merely a contractual condition which has a statutory force which is between the insurer and the insured".

32. It was held in **Oriental Insurance Company Limited Vs. Dhanbai (2011) 11 SCC 513** that once a claimant has obtained compensation 163-A of the

Act, such a claimant is precluded from proceeding further with a petition under 166 of the Act. Claimant cannot pursue remedies under both Section 163-A and 166 of the Act simultaneously. Some High Courts have taken the view that if claim petition has been filed under 163-A, the same can be amended to be converted to a regular claim petition under 166 of the Act and vice-versa when the case is at the initial stage of hearing. However, this will not apply when interim compensation under Section 140 of the Act has been received by the claimant, in that eventuality; claimant cannot be allowed to convert the same to under Section 166 of the Act.

33. **In Neema vs Shri Sohan Singh 2020 (1) SLC 147 H.P.** A claim petition was filed under Section 163- A was dismissed by the Claim Tribunal on the ground that same was not maintainable as income of the deceased was more than RS. 40000/- per annum. In appeal H.C. held that once jurisdiction of tribunal has been invoked and during trial, evidence has come that accident was result of rash & negligent act 0f driving, in that eventuality claim petition can`t be dismissed on merit, only for this reason that income of the deceased was more than Rs. 40000 Per annum. In taking this view reliance was placed upon the division Bench ruling of High Court, in the case of **Oriental insurance Co. Ltd. Vs Shri Sihnu Ram Fao No.474 of 2010** wherein a similar view was taken. It was observed that aim and object of Section 158(6) &1666(4) of the Act is to help victim of accidents. Accordingly the appeal was allowed and case was remanded to the Claim Tribunal to decide the same afresh on merit.

COMPENSATION IN DEATH CASES

34. The Courts or Tribunals are daily faced with a problem as to how to make assessment of compensation payable to the claimants who are legal representative of the victim of the road accidents. It is necessary to mention previously different High Courts were adopting different methods and following different principles while making assessment of compensation in some cases the High Court's adopted the multiplier (varying from 30 to 34) in case of death of a young person the age group of 25 to 35. Some high courts were following "interest method" while some were following "split method" to calculate amount of compensation. There was also no

direct or clear pronouncement of the Apex Court on the point of assessment of compensation to the victim of the accident.

35. In a landmark judgment, the Honorable Apex Court in the case of **General Manager, Kerala State Road Transport Corporation Vs. Susamma Thomas AIR 1994 SC 1631:(1994)** SCC 176 so as to bring uniformity and certainty in granting just and fair compensation based upon multiplier which is accepted method for determining and ensuring payment of just compensation. When this judgment was pronounced the amended Act of 1994 has not been brought into operation nor the multiplier given in second schedule under Section 163-A was there. Thereafter honorable Apex Court in **UP state Road Transport Corporation and others Vs. Trilok Chandra and others, (1996) 4 SCC 362** dealt exhaustively with the principles to be followed by the Tribunal in granting compensation and the multiplier to be adopted having due regard to the age of deceased and that of claimant whichever is higher. In this case a young man of 26 was knock down by a bus and his legal representative preferred a claim petition under the Act. The claim Tribunals awarded an amount of Rs. 57600/- by way of compensation which was raised to Rs. 81600/- by High Court. The question before the Apex Court was whether the multiplier of 24 adopted Tribunal and 34 adopted by High Court were proper. It was finally held by Apex Court that multiplier of 34 was excessive. The Supreme Court also gave illustration as to how the income of the deceased is to be computed and held that normally 1/3 of the total income is to be deducted as personal expenses of the deceased. Thereafter, annual income or multiplicand of the deceased is to be determined having due regard to the future prospect and same is to be multiplied by an appropriate multiplier, which cannot be more than 18. A critical appraisal of the various rulings delivered by the Honorable Apex Court would show that despite the judgment in Susamma Thomas case where multiplier 12 was adopted, the High Court's as well as subsequent benches of the Supreme Court did not strictly follow the dicta laid down in Susamma Thomas case as well as Trilock Chandra case which is amply clear from the perusal of the following judgments.

1. In S. Chandra and others Vs. Pallavan Transport Corporation, (1994) 2 SCC 189

The Multiplier applied is 20.

2. In Sarla Dixit (Smt.) and another Vs. Balwant Yadav and others, (1996) 3 SCC 189: (AIR 1996 SC 1274) : 1996 AIR SCW 1369)

– The multiplier applied is 15.

3. In U.P. State Road Transport Corporation and others Vs. Trilok Chandra others, (1996) 4 SCC 362 – The multiplier applied is 15. This court further held that multiplier cannot exceed 18 years purchase factor.

4. In Jyoti Kaul and others Vs. State of M.P. and another, (2002) 6 SCC 306: (AIR 2000 SC 3582: 2000 AIR SCW 3789)

– The multiplier applied is 15

5. In T.N. State Transport Corporation Limited Vs. S Rajapriya and others, (2005) 6 SCC 236: (AIR 2005 SC 2985: 2005 AIR SCW 2542

– The multiplier applied is 12.

6. In New India Assurance Corporation Vs. Charlie and another, (2005) 10 SCC 720: (AIR 2005 SC 2157 : 2005 AIR SCW 1801)

– The multiplier applied is 18.

7. In U.P. State Road Transport Corporation Vs. Krishna Bala and others, (2006) 6 SCC 249: (AIR 2006 SC 2688: 2006 AIR SCW 3613)

- The multiplier applied is 13.

8. In New India Assurance Corporation Limited Vs. Kalpalan (Smt.) and others, (2007) 3 SCC 538 : (AIR 2007 SC 1243 : 2007 AIR SCW 1316)

– The multiplier applied is 13.

9. **In Oriental Insurance Company Limited Vs. Jashuben and others, (2008) 4 SCC 162 : (AIR 2008 SC 1734 : 2008 AIR SCW 2393)**

– The multiplier applied is 13.

However, in Jyotsana Dey and Ors. Vs. State of Assam and &Ors. V. Rajasthan State Transport Corporation and Anr., (1992) 2 SCC 567 : (AIR 1992 SC 1261 : 1992 AIR SCW1213), this Court applied a multiplier of 24 years.

Keeping in view the variation in adoption of multiplier, the Honorable Apex Court in **Sarla Verma Vs. Delhi Corporation 2009 ACJ 1298 SC** considered the entire spectrum of the case law mentioned above and formulated the principles for assessment of compensation and adoption of multiplier very lucidly which is as under:-

"(9) Basically only three facts need to be established by claimants for assessing compensation in the case of death:

(a) Age of the deceased; (b) income of the deceased; and (c) the number of dependents. The issues to be determined by the Tribunal to arrive at the loss of dependency are: (i) additions/deductions to be made for arriving at the income; (ii) the deduction to be made towards the personal living expenses of the deceased; and (iii) the multiplier to be applied with reference to the age of the deceased. If these determinants are standardized, there will be uniformity and consistency in the decisions. There will be lesser need for detailed evidence. It will also be easier for the insurance companies to settle the accident claims without delay. To have uniformity and consistency, Tribunals should determine compensation in case of death, by the following well settled steps:

Step 1 (Ascertaining the multiplicand):

The income of the deceased per annum should be determined. Out of the said income a deduction should be made in regard to the amount which the deceased would have spent on himself by way of personal and living expenses. The balance, which is considered to be the contribution to the dependent family, constitutes the multiplicand.

Step 2 (Ascertaining the multiplier):

Having regard to the age of the deceased and period of active career, the appropriate multiplier should be selected. This does not mean ascertaining the number of years he would have lived or worked but for the accident. Having regard to several imponderables in life and economic factors a Table of multipliers with reference to the age has been identified by this court. The multiplier should be chosen from the said Table with reference to the age of the deceased.

Step 3 (Actual Calculation):

The annual contribution to the family (multiplicand) when multiplied by such multiplier gives the 'loss of dependency' to the family."

The Apex Court also drew the following table for the adoption of multiplier in case of death of a victim keeping in view the multipliers contained in the Act as well as aforementioned authorities.

Principle laid down in Susamma Thomas, 1994 ACJ 1 (SC), Trilok Chandra, 1996 ACJ 831 (SC) and New India Assurance			Co. Ltd. Vs Charlie, 2005 ACJ 1131 (SC) and gave the following Table for multiplier:		
Age of the decease	Multiplier scale as envisaged in Susamma Thomas	Multiplier scale as adopted in Trilok Chandra	Multiplier scale in Trilok Chandra as clarified in Charlie	Multiplier specified in second column in the Table in Second Schedule to MV Act	Multiplier actually used in Second Schedule to MV Act (as seen from the quantum of compensation)
1	2	3	4	5	6
U	-	-	-	15	20
1	16	18	1	16	19
2	15	17	1	17	18
2	14	16	1	18	17
3	13	15	1	17	16
3	12	14	1	16	15
4	11	13	1	15	14
4	10	12	1	13	12
5	9	11	1	11	10
5	8	10	9	8	8
6	6	8	7	5	6
A	5	5	5	5	5

10. Further, in Sarla Verma (supra) the above table was lucidly explained in the following manner:

"42. We therefore, hold that the multiplier to be used should be as mentioned in

Column (4) of the table above (prepared by applying Susamma Thomas, Trilok Chandra and Charlie), which starts with an operative multiplier of 18 (for the age groups of 15 to 20 and 21 to 25 years), reduced by one unit for every five years, i.e. M-17 for 26 to 30 years, M-16 for 31 to 35 years, M-15 for 36 to 40 years, M-14 for 41 to 45 years, and M-13 for 46 to 50 years, then reduced by two units for every five years, i.e., M-11 for 51 to 55 years, M-9 for 56 to 60 years, M-7 from 61 to 65 years and M-5 for 66 to 70 years."

This Court laid down the above guidelines to ensure uniformity and consistency in the selection of multiplier while awarding compensation in motor accident claims made under Section 166.

The application of multiplier fell for consideration recently before three-judges Bench in **Reshma Kumari & Ors. V. Madan Mohan ANR., 2013 ACJ 1253**. In the said case Apex Court held as under:

11. Also, **in Sarla Verma (AIR 2009 SC 3104: 2009 AIR SCW 4992)** for the selection of multiplier, it was clarified that multiplier has to be adopted on the basis of the death of the deceased victim and Tribunal need not take into consideration the age of the claimants. There is reason for adoption of date of death of the deceased as relevant date for multiplier in as much as the date of Birth of the claimants likely to very where there are several in number this appears to has been purposely done, though contrary to the table given in the Second Schedule of the Act, so as not to leave anything to the whims and fancies. The table has been prepared in Sarla Verma having regard to the three decisions of this Court, namely, **Susamma Thomas (AIR 1994 SS 1631: 1994 AIR SCW 1356); Trilok Chandra and Charlie (AIR 2005 SC 2157: 2005 AIR SCW 1801)** for the claims made under Section 166 of the 1988 Act. The Court said that multiplier shown in column (4) of the table must be used having regard to the age of the deceased. Perhaps the biggest advantage by employing the table prepared in Sarla Verma is that the uniformity and

consistency in selection of the multiplier can be achieved. The assessment of extent of dependency depends on examination of the unique situation of the individual case. Valuing the dependency or the multiplicand is to some extent an arithmetical exercise. The multiplicand is normally based on the net annual value of the dependency on the date of the deceased's death. Once the net annual loss (multiplicand) is assessed, taking into account the age of the deceased, such amount is to be multiplied by a 'multiplier' to arrive at the loss of dependency. In Sarla Verma, this Court has endeavored to simplify the otherwise complex exercise of assessment of loss of dependency and determination of compensation in a claim made under Section 166. It has been rightly stated in Sarla Verma that claimants in case of death claim for the purpose of compensation must establish (a) age of the deceased; (b) income of the deceased; and (c) the number of dependents. To arrive at the loss of dependency, the Tribunal must consider (i) additions/deduction to be made for arriving at the income; (ii) the deductions to be made towards the personal living expenses of the deceased; and (iii) the multiplier to be applied with reference to the age of the deceased. We do not think it is necessary for us to re-visit the law in the point as we are in full agreement with the view in Sarla Verma.

12. If the multiplier as indicated in Column (4) of the table read with paragraph 42 of the judgment in Sarla Verma is followed, the wide variations in the selection of multiplier in the claims of compensation in fatal accident cases can be avoided. A standard method for selection of multiplier is surely better than a criss-cross of varying methods.

13. If for the selection of multiplier, column (4) of the table in Sarla Verma is followed, there is no likelihood of the claimants who have chosen to apply under Section 166 being awarded lesser amount on proof of negligence on the part of the driver of the motor vehicle than those who prefer to apply under Section 163-A. As regards the cases where the age of the victim happens to be upto 15 years, we are of the considered opinion that in such cases irrespective

of Section 163-A or Section 166 under which the claim for compensation has been made, multiplier of 15 and the assessment as indicated in the Second Schedule subject to correction as pointed out in Column (6) of the table in Sarla Verma should be followed. This is to ensure that claimants in such cases are not awarded lesser amount when the application is made under Section 166 of the 1988 Act. In all other cases of death where the application has been made under Section 166, the multiplier as indicated in Column (4) of the table in Sarla Verma should be followed.

36. In **Rajesh vs. Rajveer 2013 SCJ 1403** a bench of three judges of Apex Court considered the question of grant of just compensation in the light of Sarla Verma case as well as subsequent pronouncement made by honorable Apex Court with regard to adoption of multiplier. The honorable Apex Court expressed doubt regarding the rational for the observation made in Sarla Verma case that where the deceased was self-employed or was on a fixed salary without provision for annual increment, the Tribunal will normally take only the actual income of the deceased at the time of his death. Thus no addition income on account of future prospects was required to be made as per dictum laid down in Sarla Verma case. Even some of the benches of the honorable Apex Court did not adopt the multiplier on the basis of the death of the deceased and preference was given to the age of the claimant which is contrary to the observation made in Sarla Verma case.

37. **Later on, the ratio of the judgment of the Sarla Verma case (Supra) was cited with approval in P.S. Somannathan Vs District Insurance Officer 2011 ACJ 737 SC, K. R. Madhusudhan Vs. Administrative Officer 2011 ACJ 743 SC, National Insurance Company Vs Shyam Singh 2011 ACJ 1890 SC, Santoshi Devi Vs. National Insurance Company Limited 2012 ACJ 1428 SC, Reshma Kumari Vs. Madan Mohan AIR 2013 SCW 3120=(2013) 9 SC cases 65, Rajesh Vs. Rajveer Singh 2013 ACJ 1403 SC, Puttamma Vs. K. L. Narayana 2014 ACJ 526 = AIR 2014 SC 706. Kirti vs. Oriental insurance Co. Ltd 2021 ACJ 1 ==AIR 2021 S.C 3913 [3Judge Bench]**

However, it was noticed that there was difference of opinion amongst judges in Reshma Kumari case and Rajesh Vs. Rajveer case mentioned above, as such another two judge bench in **National Insurance company Limited Vs. Pushpa** referred the matter to a Constitution bench of five judges for an authoritative pronouncement in **National Insurance Company Limited Vs. Pranay Sethi (2017) 16 SCC 680=2017ACJ 2700** regarding the payment of compensation to the claimant when the victim was getting fixed salary or engaged in private job or was self-employed. The Honorable Apex Court after considering the entire gamut of the case law on the subject held that law laid down with regard to adoption of multiplier and payment of compensation under head. "Income on account of future prospects", approved the ratio of the decision in Reshma Kumari case. It was further clarified that para 30, 31 and 32 of Sarla Verma case as approved in Reshma Kumari case are to be followed by the Tribunal while making the assessment of income and adoption of multiplier etc.

38. Further more, in the above land mark judgment, **National Insurance Company Limited Vs. Pranay Seth (2017) 16 SCC 680= 2017ACJ 2700** the constitution bench considered the entire spectrum of the case law on the subject and answered the reference made in view of the divergence of the opinion of the Supreme Court in the cases of **Reshma Kumari & Ors. V. Madan Mohan and Rajesh and Others Vs. Rajbir Singh and Others** with reference to Sections 163-A and 166 of the Motor Vehicles Act, 1988 (the Act) and the methodology of computation of future prospects. The constitution bench held that Section 168 of the Act Motor Vehicles Act, 1988 deals with the concept of 'just compensation' and the same has to be determined on the foundation of fairness, reasonableness and equitability on an acceptable legal standard. The aim is to achieve an acceptable degree of proximity to arithmetical precision on the basis of materials brought on record in an individual case. The constitution bench after considering the earlier judgment of Reshma Kumari finally held that method of assessment of compensation as provided in Sarla Verma case should be followed by the Tribunal and ratio of the law laid down in Reshma Kumari case was held to be a binding

precedent which was delivered at earlier point of time. It was further clarified that para 30, 31 and 32 of SARLA VERMA CASE are to be followed by the tribunals. This judgment shines like pole star in the galaxy of precedents and provides enough light to all those who are lost in mist of legal confusion. The following guidelines were laid down for determination of compensation.

1. While determining the income, an addition of 50% of actual salary to the income of the deceased towards future prospects, where the deceased had a permanent job and was below the age of 40 years, should be made. The addition should be 30 %, if the age of the deceased was between 40 to 50 years. In case the deceased was between the ages of 50 to 60 years, the addition should be 15%. Actual salary should be read as actual salary less tax.

2. In case the deceased was self-employed or on a fixed salary, an addition of 40% of the established income should be the warrant where the deceased was below the age of 40 years. An addition of 25% where the deceased was between the age of 40 to 50 years and 10% where the deceased was between the ages of 50 to 60 years should be regarded as the necessary method of computation. The established income means the income minus the tax component.

3. For determination of the multiplicand, the deduction for personal living expenses, the tribunals and the court shall be guided by paragraphs 30 to 32 of Sarla Verma which we have reproduced hereinbefore.

4. The selection of multiplier shall be as indicated in the Table in Sarla Verma read with paragraph 42 of that judgment.

5. The age of the deceased should be the basis for applying the multiplier.

6. The Honorable Apex Court in its constitution bench decision also dealt with the question whether grant of compensation under the head “loss of consortium” and “loss of love and affection” to be granted separately, to the claimants who happened to be spouse, parents or children of the deceased. It was strongly urged on behalf of insurance company or insurer that only wife is entitled for the amount of consortium and thereafter no further payment of compensation on account of loss of love and affection can be made to the claimant

wife or legal heir were party before the Tribunal. The Constitution Bench on the issue pertaining to award of compensation under the head loss of consortium held that the expression compensation is comprehensive term that includes a claim for damages. Compensation is by way of atonement for the injury caused. While dealing with the meaning of the word Consortium. It was held, "The word "consortium" has been defined in Black's Law Dictionary, 10th edition. Black's law dictionary also simultaneously notices the filial consortium, parental consortium, and spousal consortium in the following manner":-

"Consortium: The benefits that one person, esp. A spouse is entitled to receive from another, including companionship, cooperation, affection, aid, financial support, and (between spouses) sexual relations a claim for loss of consortium.

(i) Filial consortium A child's Society, affection and companionship given a parent.

(ii) Parental consortium A parent's society, affection and companionship given to a child.

(iii) Spousal consortium A spouse's society, affection and companionship gave to the other spouse."Broadly speaking, consortium is right of spouse to the company, care, help, comfort, guidance, society, affection or sexual relation with his/her mate.

The Apex Court held that not only spouse even parents or children's are entitled for compensation under the head loss of consortium and there is no justification for further payment of the compensation in the under head loss of love and affection.

39. **<u>In The New India Assurance Company Limited Vs. Somavati 2020 ACJ 2321</u>** a division bench of the Apex Court clarified Compensation can be awarded towards loss of filial consortium in terms of principles laid down in Magma General Insurance Company Limited 2018 ACJ 2782 (SC) and United Indian Insurance Company Limited Vs. Satinder Kaur 2020 ACJ 2131 (SC). The constitution bench in Pranay Sethi case (supra) restricted the amount of compensation under the head loss of consortium to Rs. 40,000/- and same was to

be enhanced @ of 10 % in every three years. This amount of Rs. 40,000/- is to be awarded to each of the claimants (spouse, parents and children).

40. In **United India Insurance Company Vs. Satinder Kaur 2020 ACJ 2131 SC** (three judge bench) it was reiterated that grant of compensation for consortium loss of love and affection cannot be granted simultaneously, and only compensation for loss of consortium is admissible under the law. It is thus clear from the perusal of the above authorities that ratio of the judgment in Sarla Verma as approved in Reshma Kumari (supra) as well as several subsequent pronouncements is to be followed by the Tribunal while considering the question of grant of compensation under the Act. The legal principles and preposition adumbrated in these cases have been considered and tested by the Apex Court from time to time and on all occasions the Apex Court reiterated the principles contained therein. In fact, the ratio summarized therein has become locus-classicus and even the lapse of time has not eroded the forensic worth of principle contained in this judgment. Much water has flown in Ganges since the passing of judgment in Trilok Chandra case and Sarla Verma case supra. Nonetheless, principles propounded in these judgment shine like pole star in the galaxy of precedents, guiding the Court when lost in the mist of legal confusion.

41. In a latest judgment i.e. **Kiriti Vs Oriental Insurance Company 2021 ACJ 1 SC=AIR 2021 Supreme Court 353**. A full bench of Honorable Apex Court dealt with the question of grant of compensation to the claimants who were minor daughters and father of deceased husband and wife who died in an accident on12.4.2004 in Delhi. In this case High Court has not granted any additional income for future prospects. The Tribunal in this case adopted the minimum wage as applicable in Delhi for computing the income and granted 25% increase for future prospects the Tribunal awarded Rs. 4071000/- to the claimants in appeal the High Court observed that there was no proof of the income of the deceased and thus reduced the notional income of the deceased to the unskilled workers. Resulting in reduction of the total compensation. when the matter was taken in appeal by the claimants, the Honorable Apex Court strongly applied on the ratio of

Pranay Sethi case 2017 ACJ 2700 SC. Relying upon Para 61 of Pranay Sethi case it was held that the grant of compensation on account of future prospects is available to such victim who was self-employed or on a fixed salary. Resultantly 40 % increase was granted though the deceased was not permanent employee it was clarified that future increase has to be awarded

society the members of the society after joining the said society address such Head as Brother. Such a Brother severs his all relation with his natural family and bound by the constitution of the society. The claim petition was filed against the driver and owner of the vehicle by the said society. the question of maintainability of the claim petition for want of local standi of the claimant was not pressed by the opposite party as well as insurance company. the Tribunal awarded compensation to the other members of the society who had filed the claim. The insurance company filed a writ petition against the award of the Tribunal which was allowed by the High Court on the ground that claimant was not competent to claim compensation under the Act. When the matter reached the Supreme Court it was urged that expression Legal Representative has not been defined in the Act and a broad and liberal meaning has to be given to the said expression. The contention of the insurance company was that guidance can be taken from Section 1-A of Fatal Accident Act as such claim should be confined only for the wife, husband, parents and children of the deceased. This contention was out rightly rejected by the Apex Court and claim petition was held to be legally maintainable it was held that the registered society was dependent upon the income of the deceased head master who has renounced the world as such society through its member entitled for compensation, more so, when no objection of maintainability or locus standi was taken by insurance company before claim Tribunal.

42. In Rasmita Biswal Vs. Divisional Manager, National Insurance Company Limited AIR 2022 SC85- 2022 ACJ 207 SC, the Honorable Apex Court observed that in order to curtail the pendency of appeal before High Courts and for speedy disposal of appeals concerning payment of compensation to the victims of the road accident, it would be proper to consider constituting, **"Motor**

Vehicle Appellate Tribunals" by amending Section 173. In this case deceased Manoj Kumar died in Motor accident which occurred on 9.5.2013 the claim petition was filed by his widow and two minor sons. Deceased was 33 years and was working as supervisor in a construction company drawing Rs. 15000 per month at the time of accident. Tribunal awarded 22,60000/- as compensation and High Court without assigning any reason reduced it to Rs. 17,0000/- Apex Court relied upon the salary certificate where income was shown as Rs. 15000/- per month and adopted multiplier of 16. The Apex court also added 40% towards future prospectus and deducted ¼ towards personal expenses. The Apex Court granted total compensation as under:

"In Pranay Sethi, 2017 ACJ 2700 (SC), this court has awarded a total sum of Rs. 70,000 under conventional heads, namely, loss of estate, loss of consortium and funeral expenses. The said judgment of the Constitutional Bench was pronounced in the year 2017. Therefore, the claimants are entitled to 10 per cent enhancement. Rs. 16,500/- each is awarded towards loss of estate and funeral expenses and Rs. 44,000/- is awarded towards loss of spousal consortium. Thus, the total compensation payable to the claimants is as under:-

(1) Towards loss of dependency	Rs. 30, 24,000/-
(2) Towards loss of estate	Rs. 16,500/-
(3) Funeral expenses	Rs. 16,500/-
(4) Loss of spousal consortium	Rs. 44,000/-
Total:	**Rs. 31,01,000/-**

It is significant to note here that Honorable Apex Court has given the 10% enhancement on funeral expenses and loss of estate and Tribunals are also expected to follow the above dictum as propounded in Pranay Sethi case Supra. Since there is increase in price index and inflation every year, an increase of 10% after three years as per judgment of Pranay Sethi case as well as subsequent judgment is a welcome step.

43. **In Shashikala vs. Ganga Lakshmma 2015 ACJ 1239,** it was held by the Apex Court that income of the deceased can be assessed on basis of last income tax return filed by the deceased.

COMPENSATION IN INJURIES CASES

44. In injury or disablement cases, it is necessary to bear in mind that Tribunal has to award compensation under the various heads keeping in view the gravity of bodily injury or permanent disability suffered by the claimant. The damages which are to be awarded for a tort are those which money can compensate and will give the injured party reparation for the wrongful act.

45. The Apex Court in the case of **R.D. Hattangadi Vs. Pest Control (India) Pvt. Limited and others, 1995 ACJ 366**, dealt at length with the principles relating to grant of compensation to an injured claimant and classified the compensation between pecuniary damages and non-pecuniary damages.

Pecuniary damages are generally designed to make good the pecuniary loss which is capable of being calculated in terms of money. Non-pecuniary damages are those which are incapable of being assessed by arithmetical calculation. Pecuniary damages generally include four sub-heads: (i) expenses incurred by the claimant in respect of injury which may include medical expenses, special diet, cost of nursing or attendant, (ii) loss of earning or profit up to the date of trial; (iii) loss of earning capacity which may include incapability to earn in future years and also incapability in the labour market, loss of earning on account of termination of services or discontinuance of any trade, business or profession, and (iv) other material loss which required any special treatment or aid to the injured or claimant for the rest of life. Non-pecuniary loss (general damages) includes a number of elements. Generally, these include four sub-heads: (i) damages for mental and physical shock, pain, sufferings already suffered by the claimant or likely to be suffered in future; (ii) damages to compensate for the loss of amenities of life which may include a variety of matters, e.g. on account of the injury the claimant may not be able to

walk, run, sit or loss of marriage prospects, sexual intercourse and loss of other amenities of life, (iii) damages for the loss of expectation of life, e.g., on account of injury the normal longevity of the person concerned is shortened; and (iv) inconvenience, hardship, discomfiture/discomfort, disappointment, frustration and mental stress in life. The heads and sub-heads mentioned above are not exhaustive in nature. There might be special circumstances depending on the facts of a case and it would always be open to the Tribunal or the Court to take these special circumstances into consideration in determining the compensation.

1. But for arriving at a particular figure on each of the aforesaid head, the claimant is duty bound to produce relevant materials, on the basis of which a determination could be made as to what would be the best compensation. Normally, it cannot be expected that the bills and vouchers for purchase of medicines, fees of the doctors, purchase of fruits, etc., would be obtained at the time when the injured was lying in a grave condition. Therefore, the evidence adduced, even without bills and vouchers, has to be broadly assessed in the context of the circumstances of each case.

46. It is now well settled law that in disablement case the compensation has always to be higher than even in case of death since it is given to the living victim of the accident both for his personal loss and for economic loss. It can be said that the bodily injury is to be treated as a deprivation which entitled the victim to claim damages which vary according to the gravity of the injury. Further, due to this injury, there can be loss of earnings completely or partial due to the accident on his capacity to earn the same. Another consequence may be the loss he suffers on account of the enjoyment of life or full pleasures of living.

The Tribunal has also to keep in mind that while making assessment of compensation an element of guesswork as well as hypothetical considerations are involved. It is thus clear that the compensation payable to the victim of an accident is divided in two parts i.e. pecuniary damages and non-pecuniary damages.

47. The Apex Court in the case of **Yadava Kumar Vs. The Divisional Manager, National Insurance Company Limited, AIR 2010 SC, 3741**. While

considering the question of payment of compensation observed that when the victim of an accident has permanent earning, the Tribunal is required to determine loss of future earning and award the same under a specific head. Not only this, the Apex Court also cautioned the Courts that the multiplier is to be applied in injury cases also, in a claim petition filed under Section 168 of the Act. While determining the quantum of compensation in case of permanent disablement, the Tribunal must be liberal and not niggardly in as much as in a free country law must value life and limb on a generous scale.

48. It was also clearly held by the Apex Court that award in injury cases must be just which means that compensation should, to the extent possible, fully and adequately restore the claimant to the position prior to the accident. The object of awarding damages is to make good the loss suffered as a result of wrong done as far as money can do so, in a fair, reasonable and equitable manner. The court or Tribunal shall have to assess the damages objectively and exclude from consideration any speculation or fancy, though some conjecture with reference to the nature of disability and its consequences, is inevitable. A person is not only to be compensated for the physical injury, but also for the loss which the suffered as a result of such injury. This means that he is to be compensated for his inability to lead a full life, his inability to enjoy those normal amenities which he would have enjoyed but for the injuries, and his inability to earn as much as he used to earn or could have earned.

49. **In Govind Yadav Vs. New India Assurance Company Limited IV (2011) ACC 668 SC**, it was held that compensation in case of total or partial disablement would include not only expenses incurred for immediate treatment, but also amount which is likely to be incurred for future medical treatment for a particular injury or disability caused by the accident. The Apex Court followed the ratio of **R.D. Hatangadi case and Raj Kumar Vs Ajay Kumar (2011) 1 SCC 343** wherein it was held as under:

"The provision of the Motor Vehicles Act, 1988 ("the Act", for short) makes it clear that the award must be just, which means that compensation should, to the extent

possible, fully and adequately restore the claimant to the position prior to the accident. The object of awarding damages is to make good the loss suffered as a result of wrong done as far as money can do so, in a fair, reasonable and equitable manner. The Court or the Tribunal shall have to assess the damages objectively and exclude from consideration any speculation or fancy, though some conjecture with reference to the nature of disability and its consequences, is inevitable. A person is not only to be compensated for the physical injury, but also for the loss which he suffered as a result of such injury. This means that he is to be compensated for his ability to lead a full life, his inability to enjoy those normal amenities which he would have enjoyed but for the injuries, and his inability to earn as much as he used to earn or could have earned.

50. **In Arvind Kumar Mishra Vs. New India Assurance Company Limited (2010) 10 SCC 254** the Apex court considered the plea for enhancement of compensation when a student of final year of engineering had suffered 70% disability. It was held that basis for assessment of all damages for person injury is compensation. The whole idea is to put claimant in the same position as he was in so far as money can. Perfect compensation is hardly possible but one has to keep in mind that victim has suffered at the hands of the wrongdoer and court must take care to give him full and fair compensation. The question whether there can be separate claim petition for future medical expenses has not been dealt directly by Honorable Apex Court but in Nagappa Vs. Gurudayal Singh (2003) ACJ 12 SCC 274 that it was not permissible to award compensation in installment or recurring compensation to meet the future medical expenses of the victim.

51. The Honorable Supreme Court in **Raj Kumar Vs. Ajay Kumar 2011 ACJ 1 SC,** has given some guidelines and has observed as follows:

"(6) Disability refers to any restriction or lack of ability to perform an activity in the manner considered normal for a human being. Permanent disability refers to the residuary incapacity or loss of use of some part of the body, found existing at the end of the period of treatment and recuperation, after achieving the maximum bodily improvement or recovery which is likely to remain for the remainder life of the

injured. Temporary disability refers to the incapacity or loss of use of some part of the body on account of the injury, which will cease to exist at the end of the period of treatment and recuperation. Permanent disability can be either partial or total. Partial permanent disability to a person's inability to perform all the duties and bodily functions that he could perform before the accident, though he is able to perform some of them and is still able to engage in some gainful activity. Total permanent disability refers to a person's inability to perform any avocation or employment related activities as a result of the accident. The permanent disabilities that may arise from motor accident injuries are of a much wider range when compared to the physical disabilities which are enumerated in the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 ('Disabilities Act' for short). But if any of the disabilities enumerated in section 2 (i) of the Disabilities Act are of the result of injuries sustained in a motor accident, they can be permanent disabilities for the purpose of claiming compensation.

(9) Therefore, the Tribunal has to first decide whether there is any permanent disability and if so, the extent of such permanent disability. This means that Tribunal should consider and decide with reference to the evidence: (i) Whether the disablement is permanent or temporary; (ii) if the disablement is permanent, whether it is permanent total disablement or permanent partial disablement; (iii) if the disablement percentage is expressed with reference to any specific limb, then the effect of such disablement of the limb on the functioning of the entire body, that is, the permanent disability suffered by the person. If the Tribunal concludes that there is no permanent disability then there is no question of proceeding further and determining the loss of future earning capacity. But if the Tribunal concludes that there is permanent disability then it will proceed to ascertain its extent. After the Tribunal ascertains the actual extent of permanent disability of the claimant based on the medical evidence, it has to determine whether such permanent disability has affected or will affect his earning capacity.

(10) Ascertainment of the effect of the permanent disability on the actual earning capacity involves three steps. The Tribunal has to first ascertain what activities the

claimant could carry on in spite of the permanent disability and what he could not do as a result of the permanent ability [sic disability] (this is also relevant for awarding compensation under the head loss of amenities of life). The second step is to ascertain his avocation, profession and nature of work before the accident, as also his age. The third step is to find out whether (i) the claimant is totally disabled from earning any kind of livelihood, or (ii) whether in spite of the permanent disability, the claimant could still effectively carry on the activities and functions which he was earlier carrying on or (iii) Whether he was prevented or restricted from discharging his previous activities and functions, but could carry on some other or lesser scale of activities and functions so that he continues to earn or can continue to earn his livelihood…

(11) If a doctor giving evidence uses technical medical terms, the Tribunal should instruct him to sate in addition, in simple non-medical terms, the nature and the effect of the injury. If a doctor gives evidence about the percentage of permanent disability, the Tribunal has to seek clarification as to whether such percentage of disability is the functional disability with reference to the whole body or whether it is only with reference to a limb. If percentage of permanent disability is stated with reference to a limb, if Tribunal will have to seek the doctor's opinion as to whether it is possible to deduce the corresponding functional permanent disability with reference to the whole body and if so the percentage."

In conclusion the Apex Court also summarized as under:

"(13) we may now summarize the principles discussed above:

(i) All injuries (or permanent disabilities arising from injuries) do not result in loss of earning capacity.

(ii) The percentage of permanent disability with reference to the whole body of a person cannot be assumed to be the percentage of loss of earning capacity. To put it differently, the percentage of loss of earning capacity is not the same as the percentage of the permanent disability (except in a few cases where the Tribunal, on the basis of evidence, concludes that percentage of loss of earning capacity is the same as percentage of permanent disability).

(iii) The doctor who treated an injured-claimant or who examined him subsequently to assess the extent of his permanent disability can give evidence only in regard to the extent of permanent disability. The loss of earning capacity is something that will have to be assessed by the Tribunal with reference to the evidence in entirety.

(iv) The same permanent disability may result in different percentages of loss of earning capacity in different persons, depending upon the nature of profession, occupation or job, age, education and other factors.

(v) The assessment of loss of future earnings is explained below with reference to the following illustrations:

Illustration 'A': The injured, a workman, was aged 30 years and earning Rs. 3,000/- per month at the time of accident. As per doctor's evidence, the permanent disability of the limb as a consequence of the injury was 60 per cent and the consequential permanent disability to the person was quantified at 30 per cent. The loss of earning capacity is, however, assessed by Tribunal as 15 per cent on the basis of evidence, because the claimant is continued in employment, but in a lower grade. Calculation of compensation will be as follows:

(a) Annual income before the accident Rs. 36000/-

(b) Loss of future earnings per annum
(15 per cent of the prior annual income) Rs. 5400/-

(c) Multiplier applicable with reference to age Rs. 17

(d) Loss of future earnings (Rs. 5400 x 17) Rs. 91800/-

Illustration 'B': The injured was a driver aged 30 years, earning Rs. 3000/- per month. His hand is amputated and his permanent disability is assessed at 60 per cent. He was terminated from his job as he could no longer drive. His chances of getting any other employment were bleak and even if he got any job, the salary was likely to be a pittance. The Tribunal, therefore, assessed his loss of future earning capacity as 75 per cent. Calculation of compensation will be as follows:

(a) Annual income prior to the accident Rs. 36000/-

(b) Loss of future earnings per annum
(75 per cent of the prior annual income) Rs. 27000/-

(C) Multiplier applicable with reference to age Rs. 17

(d) Loss of future earnings (Rs. 27,000 x 17) Rs. 459000/-

Illustration 'C': The injured was 25 years and a final year engineering student. As a result of the accident, he was in coma for two months, his right hand was amputated and vision was affected. The permanent disablement was assessed as 70 per cent. AS the injured incapacitated to pursue his chosen career and as he required the assistance of a servant throughout his life, the loss of future earning capacity was also assessed as 70 per cent. The calculation of compensation will be as follows:

(a) Minimum annual income he would have got
if had been employed as an engineer Rs. 60,000/-

(b) Loss of future earnings per annum
(70 percent of the expected annual income) Rs. 42000/-

(C) Multiplier applicable (25 years) Rs. 18

(d) Loss of future earnings (Rs. 42,000 x 18) Rs. 756000/-

[Note: The figures adopted in illustrations (A) and (B) are hypothetical. The figures in illustration (C0, however, are based on actual taken from the decision in **Arvind Kumar Mishra, 2010 ACJ 2867 (SC)]**.

(15) After the insertion of section 163-A in the Act (with effect from 14.11.1994), if a claim for compensation is made under the that section by an injured alleging disability, and if the quantum of loss of future earnings claimed falls under the Second Schedule to the Act, the Tribunal may have to apply the following principles laid down in note (5) of the Second Schedule to the Act to determine compensation:

'5. Disability in non-fatal accidents:

The following compensation shall be payable in case of disability to the victim arising out of non-fatal accidents:

Loss of income, if any, for actual period of disablement not exceeding fifty two weeks.

Plus either of the following:

(a) In case of permanent total disablement the amount payable shall be arrived at by multiplying the annual loss of income by the multiplier applicable to the age on the date of determining the compensation, or

(b) In case of permanent partial disablement such percentage of compensation which would have been payable in the case of permanent total disablement as specified under item (a) above.

Injuries deemed to result in Permanent Total Disablement/Permanent Partial Disablement and percentage of loss of earning capacity shall be as per Schedule I under Workmen's Compensation Act, 1923'."

It was also held in the above case that 1/3rd of expenses from the income of injured are not to be deducted as personal expenses from the income of the injured while computing his future loss of earning.

52. **In Navjot vs. Harpreet Singh 2020 ACJ 2152 SC** in a case where accident took place on 10.12.2013 the injured suffered multiple injuries ultimately resulting in the amputation of his right leg. Though there was no proof of his income yet having regard to his age notional income of Rs. 10000/- was taken and in view of judgment of Apex Court **National Insurance Company Limited Vs. Pranay Sethi 2017 ACJ 2700 SC**. The compensation was enhanced by Apex Court in following manner**:**

Sl. No	**Head**	**Amount**
1	Notional income per month	Rs. 10000/-

2	40 per cent increase towards future prospects	Rs. 10000 + Rs. 4000/- Rs. 14000/-
3	Annual income	Rs. 14000 x 12 = Rs. 1,68,000/-
4	Income after applying multiplier of 18	Rs. 1,68,000 x 18 = Rs. 30,24,000/-
5	40 per cent of the total income assessed towards loss of future earnings	Rs. 12,09,600/-

If the compensation for loss of future earnings on account of permanent disability is taken as Rs. 12, 09,600/- the total amount of compensation would work out as follows:

SI. No	**Head**	**Amount**
1	Loss of future earnings on account of permanent disability	Rs. 12,09,600/-
2	Medical bills/treatment charges	Rs. 4,52,000 (as awarded by the Tribunal)
3	Pain and suffering/mental agony	Rs. 1,50,000/-
4	Loss of marriage prospects including loss of amenities of life	Rs. 2,00,000/-
5	Hospitalization charges and special diet	Rs. 50,000/- (as awarded by the Tribunal)
6	Attendant charges	Rs. 10,000/- (as awarded by the Tribunal)
7	Total	Rs. 20,71,600/-

53. Honorable Apex Court in **Papu Dev Yadava Vs. Naresh Kumar 2020 ACJ 2695 SC** dealt with the question of principle of assessment of compensation in

case of permanent disability when injured had suffered 89% disability in relation to his right upper limb. It was held that impact on the injury upon earning capacity of the victim has to be judged in relation to his profession, vocation or business. In the instant case, injured was a typist/data entry operator and full functioning of his hands was essential to earn his livelihood. The injured was a young man of 20 years. Accordingly, Apex Court assessed overall disablement at 65% injured was earning Rs. 12000/- per month and Tribunal assessed his income to be Rs. 8000/- per month which was affirmed by High Court. Apex Court taking into consideration the minimum wages for skilled workers assess the income of the injured at 10000/- per month. Multiplier was 17 was adopted keeping in view his age. The Apex Court made 40 % increases on account of future prospects. Accordingly, the compensation payable for disability was assessed (i.e., Rs. 14000 x 12 x 65% x 18= 19,65,600). Dealing with the plight of such injured person it was held as under:

In parting, it needs to be underlined that courts should be mindful that a serious injury not only permanently imposes physical limitations and disabilities but too often inflicts deep mental and emotional scars upon the victim. The attendant trauma of the victim having to live in a world entirely different from the one she or he is born into, as an invalid, and with degrees of dependence on others, robbed of complete personal choice or autonomy, should forever be in the Judge's mind, whenever tasked to adjudge compensation claims. Severe limitations inflicted due to such injuries undermine the dignity (which is now recognized as an intrinsic component of the right to life under Article 21) of the individual, thus depriving the person of the essence of the right to a wholesome life which she or he had lived hitherto. From the world of the able-bodied, the victim is thrust into the world of the disabled, itself most discomfiting and unsettling. If courts nit-pick and award niggardly amounts oblivious to these circumstances, there is resultant affront to the injured victim.

54. **It has been held in Machindera Nath Vs. D.S. Mylarappa AIR 2008 SC2545** that in a claim petition it is a duty of the tribunal to specify the amount of compensation which shall be paid by owner or driver of the vehicle involved in the

accident. Therefore, driver of the vehicle should be normally impleaded as a party in proceedings before the Tribunal though he may not be a necessary party under the law. By presence of driver is essential and in the interest of justice in some cases when there is a collision between two vehicles or when there is not FIR and witnesses to the accident.

55. **In Nagarajappa Vs. Divisional Manager OIC Limited AIR 2011 SC 1785** it was held that where the injured was working as a coolie and met with accident resulting in permanent gross deformity of left forearm wrist. The doctor has assessed the disability of the left arm but overall disability by the whole body was quite less. It was held by the Supreme Court that his disability/deformity has affected his overall working as a coolie. Therefore, his functional disability is to be computed while considering question of loss of income.

56. **In Anthony @ Swamay Vs. Managing Director K.S.R.T.C. 2020 SCCR 860** the Honorable Apex Court observed that functional disability has to be considered having due regard to the occupation of the injured victim and court has to award just and proper compensation towards **loss of future earnings.** In this case also strong reliance was placed upon **Raj Kumar Vs. Ajay Kumar (2011) 1 SCC 343** wherein the principles to be followed a grant of compensation in case of permanent physical, functional disability laid down as under:

Where the claimant suffers a permanent disability as a result of injuries, the assessment of compensation under the head of loss of future earnings would depend upon the effect and impact of such permanent disability on his earning capacity. The Tribunal should not mechanically apply the percentage of permanent disability as the percentage of economic loss or loss of earning capacity. In most of the cases, the percentage of economic loss, i.e., the percentage of loss of earning capacity, arising from a permanent disability will be different from the percentage of permanent disability. Some Tribunals wrongly assume that in all cases, a particular extent (percentage) of permanent disability would result in a corresponding loss of earning capacity, and consequently, if the evidence produced show 45% as the permanent

disability, will hold that there is 45% loss of future earning capacity. In most of the cases, equating the extent (percentage) of loss of earning capacity to the extent (percentage) of permanent disability will result in award of either too low or too high a compensation.

What requires to be assessed by the Tribunal is the effect of the permanent disability on the earning capacity of the injured; and after assessing the loss of earning capacity in terms of a percentage of the income, it has to be quantified in terms of money, to arrive at the future loss of earnings (by applying the standard multiplier method used to determine loss of dependency). We may however note that in some cases, on appreciation of evidence and assessment, the Tribunal may find that the percentage of loss of earning capacity as a result of permanent disability is approximately the same as the percentage of permanent disability, in which case, of course, the Tribunal will adopt the said percentage for determination of compensation.

57. **In Smt. Kamla Devi Vs. Ram Kishan AIR 2008 HP 84 = 2008 SLJ 1016 HP-(2)** it was held that one party has filed a claim petition under section 166 of the act along with the application for interim compensation under section 140 of the Act and award has been passed under section 140 of the Act, in that eventuality, such a party cannot be permitted to convert the original petition filed under section 166 of the Act to a petition under section 163-A of the Act.

58. **In Jitenderan Vs. New India Assurance Company Limited 2021 ACJ 2736 SC** the Supreme Court dealt with the principle of assessment in an injury case when injured aged 21 years, a jewellery worker suffered head injury resulting in Asphasia and 69 percent permanent disability with severe permanent cognitive impairment and remained admitted in Hospital for 191 days. The injured at the time of filing claim is bed ridden and needs support of his day to day activities. Supreme Court observed that injured is in-capacitated for life requiring full time assistance. Considering that injured cannot be expected to be rely on gratuitous service of his family members. The Tribunal has awarded Rs. 574320 as compensation which was enhanced to Rs. 1431752 by the High Court. In appeal, the Honorable Apex Court

held that Act is in the nature of social welfare legislation and compensation should be justly determined. It was further held as under:

The test for determining the effect of permanent disability on future earning capacity involves the following three steps as was laid down in Raj Kumar Vs. Ajay Kumar, 2011 ACJ 1 (SC) and reiterated by **Justice Indu Malhotra in Chanappa Nagappa Muchalagoda Vs. Divisional Manager, New India Assurance Company Limited 2020 ACJ 704 (SC),** as under:

"(10) Ascertainment of the effect of the permanent disability on the actual earning capacity involves three steps. The Tribunal has to first ascertain what activities the claimant cold carry on in spite of the permanent disability and what he could not do as a result of permanent ability (sic disability) (this is also relevant for awarding compensation under the head loss of amenities of life). The second step is to ascertain his avocation, profession and nature of work before the accident, as also his age. The third step is to find out whether (i) the claimant is totally disabled from earning any kind of livelihood, or (ii) whether in spite of permanent disability, the claimant could still effectively carry on the activities and functions which he was earlier carrying on, or (iii) whether he was prevented or restricted from discharging his previous activities and functions so that he continues to earn or can continue to earn his livelihood…."

The above yardstick to be adopted in such exigencies was reaffirmed by Justice S. Ravindra Bhat in Pappu Deo Yadav V. Naresh Kumar, 2020 ACJ 2695 (SC). The following was set out by the three-judge Bench:

"(13) the factual narrative discloses that the appellant, a 20 years old Data Entry Operator (who had studied upto 12^{th} standard), incurred permanent disability, i.e. loss of his right hand (which was amputated). The disability was assessed to be 89 per cent. However, the Tribunal and the High Court re-assessed the disability to be only 45 per cent, on the assumption that the assessment for compensation was to be on a different basis, as the injury entailed loss of only one arm. This approach, in the opinion of this court, is completely mechanical and entirely ignores realities. Whilst it is true that assessment of injury of one limb or to one pat may not entail permanent

injury to the whole body, the enquiry which the court had to conduct is the resultant loss which the injury entails to the earning or income generating capacity of the claimant. Thus, loss of one leg to someone carrying on a vocation such as driving or something that entails walking or constant mobility, result in severe income generating impairment or its extinguishment altogether. Likewise, for one involved in a job at that, loss of an arm (more so functional arm) leads to near extinction of income generation. If the age of the victim is beyond 40, the scope of rehabilitation too diminishes. These individual factors are of crucial importance which are to be borne in mind while determining the extent of permanent disablement for the purpose of assessment of loss of earning capacity.

As noted earlier, the impact on the earning capacity of the claimant by virtue of his 69 per cent disability must not be measured as a proportionate loss of his earning capacity. The earning life for the appellant is over and as such his income loss has to be quantified as 100 per cent. There is no other way to assess the earning loss since the appellant is incapacitated for life and is confined to home. In such circumstances, his loss of earning capacity must be fixed at 100 per cent. As his monthly income was Rs.4500/- adding 40 per cent towards future prospects thereto, the monthly loss of earning is quantified as Rs. 6300/-. We therefore deem it appropriate to quantify Rs 1360800/- (Rs. 6300 x 12 x 8) as compensation for 100 per cent loss of earnings for the claimant. Accordingly, under this head, the amount awarded by the High Court is enhanced proportionately.

The lesser amount for loss of earning of 6 months during hospitalization must also be corrected. The claimant was awarded Rs. 12000/- for his hospitalization in the aftermath of the accident. But the lower figure does not correctly correspond to six months' loss, when the income was Rs. 4500/- p.m. Accordingly, the amount under this head is corrected as Rs. 27,000 (Rs. 4500 x 6).

Following the above conclusion, additional compensation is found merited for the appellant and the same is ordered. The payable amount under the four specific heads is indicated as under:

Sl.No.	Head	Amount
1	Expense for bystander	Rs. 10,80, 000/-
2	Future medical expenses	Rs. 3,00,000/-
3	Compensation for permanent disability and loss of earning power	Rs. 13,60,800/-
4	Loss of earnings	Rs. 27,000/-
	Total	Rs. 27,67,800/-

COMPENSATION IN RESPECT OF DEATH OF HOUSE WIFE, HOUSEKEEPER OR HOMEMAKER

59. The position of a woman, in an Indian family is sui genris. She is administrator of household activities and the entire family depends on her. It is difficult to imagine an Indian family without a house wife. Women are key to sustainable development and quality of life in the family. The varieties of role the women assume in the family are those of wife, leader, administrator, manager and servant of family and last but not the least mother. But it most unfortunate the service rendered by a house wife or mother remain unrecognized and tribunals are not granting just and fair compensation in the event of death of a housewife or mother when she dies or an injury is caused to her, as a result of which entire family becomes crippled. However, the Honorable Apex Court in a number of cases have highlighted the role played by an Indian woman or housewife in strengthening and maintaining the entire family.

60. The Honorable Apex Court in the case of **New India Assurance Company Limited Vs. Kamla, 2001 ACJ 843 (SC) [sic Lata Wadhwa Vs. State of Bihar, 2001 ACJ 1735 (SC)]**, has stated thus:

"(10) So far as the deceased housewives are concerned, in the absence of any data and as the housewives were not earning any income, attempt has been made to determine the compensation on the basis of services rendered by them to the house. On the basis of the age group of the housewives , appropriate multiplier has been applied, but the estimation of the value of services rendered to the house by the housewives, which has been arrived at Rs. 12,000/- per annum in cases of some and Rs. 10,000/- for others, appears to us to be grossly low. It is true that the claimants,

who ought to have given data for determination of compensation, did not assist in an manner by providing the data for estimating the value of services rendered by such housewives. But even in the absence of such data and taking into consideration the multifacrious services rendered by the housewives for managing the entire family, even on a modest estimation, should be Rs. 3,000/- per month and Rs. 36,000/- per annum. This would apply to all those housewives between the age group of 34 to 59 and as such who were active in life. The compensation awarded, therefore, should be re-calculated, taking the value of services rendered per annum to be Rs. 36000/- and thereafter applying the multiplier, as has been applied already and so far as the conventional amount is concerned, the same should be Rs. 50,000/- instead of Rs. 25000/- given under the report. So far as the elderly ladies are concerned, in the age group of 62 to 72, the value of services rendered has been taken at Rs. 10,000/- per annum and multiplier applied is eight. Though the multiplier applied is correct but the value of services rendered at Rs. 10,000/- per annum cannot be held to be just and we, therefore, enhance the same to Rs. 20,000/- per annum. In their case, therefore, the value of services rendered at Rs. 20,000/- per annum and then after applying the multiplier, as already applied and thereafter adding Rs. 50,000/- towards the conventional figure."

The above referred judgments of the Hon'ble SC make it abundantly clear that the loss to the husband and children consequent upon the death of the housewife or mother has to be computed by estimating the loss of personal care and attention given by the deceased to her children as a mother and to her husband as a wife and further for loss of gratuitous and multifarious services rendered y the housewives for managing the entire family. The Hon'ble SC observed that estimation should be Rs. 3,000/- per month and Rs. 36,000/- per annum in respect of those housewives between the age group of 34 to 59 and as such who were active in life.

Thus, while estimating the "services" of the housewife, a narrow meaning should not be given to the meaning of the word "services" but it should be constructed

broadly and one has to take into account the loss of "personal care and attention" by the deceased to her children, as a mother and to her husband, as a wife.

61. The Honorable Apex Court had an occasion to consider the importance of role of a house wife in the family in the case of **Arun Kumar Agarwal & Anr. Vs. National Insurance Company Limited & Ors., AIR 2010 SC 3426= 2010 ACJ 2161,** dealt at length with the question of grant of compensation when the victim of accident is a housewife. The Apex Court strongly deprecated the practice being followed by the Tribunals, when the services rendered by the house wife were compared with the services of beggar or servant. The Apex Court observed that the time spent by a woman is doing household work as homemakers are the time which they can devote to paid work or to their education. The pecuniary loss which husband suffers normally in case of death of house wife consists of loss of services that the deceased provided to husband gratuitously including the other family members. The gratuitous services rendered by house wife have to be replaced by keeping a domestic help or other modes which will take pecuniary expenditure. The Apex Court also strongly criticized that under the Census Act, house wives has been classified as non-workers and hereby equating them with beggars, prostitutes and prisoners, it really smacks of gender bias. The Supreme Court expressed the hope that such classification would be corrected in near future. In Para 32 the Apex Court lamented as under:-

39 "It is highly unfair, unjust and inappropriate to compute the compensation payable to the dependents of a deceased wife/mother, who does not have regular income, by comparing her services with that of a housekeeper or a servant or an employee, who works for a fixed period. The gratuitous services rendered by wife/mother to the husband and children cannot be equated with the services of an employee and no evidence or date can possible be produced for estimating the value of such services. In its wisdom, the legislature had, as early as in 1994, fixed the notional income of a non-earning person at Rs. 15,000/- per annum and in case of a spouse, 1/3rd income of the earning/surviving spouse for the purpose of computing

the compensation. Though, Section 163-A does not, in terms apply to the cases in which claim for compensation is filed under Section 166 of the Act, in the absence of any other definite criteria for determination of compensation payable to the dependents of a non-earning housewife/mother, it would be reasonable to rely upon the criteria specified in clause 6 of the Second Schedule and then apply appropriate multiplier".

The Apex Court also highlighted the role of a wife or homemaker in an Indian family by observing as under:

"(23) In India the courts have recognized that the contribution made by the wife to the house is invaluable and cannot be computed in terms of money. The gratuitous services rendered by wife with true love and affection to the children and her husband and managing the household affairs cannot be equated with the services rendered by others. A wife mother does not work by the clock. She is in the constant attendance of the family throughout the day and night unless she is employed and is required to attend the employer's work for particular hours. She takes care of all the requirements of the husband and children including cooking of food, washing of clothes, etc. She teaches small children and provides invaluable guidance to them for their future life. A housekeeper or maidservant can do the household work, such as cooking food, washing clothes and utensils, keeping the house clean, etc., but she can never be a substitute for a wife/mother who renders selfless services to her husband and children.

(24) It is not possible to quantify any amount in lieu of the services rendered by the wife/mother to the family, i.e., husband and children. However, for the purpose of award of compensation to the dependants, some pecuniary estimate has to be made of the services of the housewife/mother. In that context, the term 'services' is required to be given a broad meaning and must be construed by taking into account the loss of personal care and attention given by the deceased to her children as a mother and to her husband as a wife. They are entitled to adequate compensation in

lieu of the loss of gratuitous services rendered by the deceased. Amount payable to the dependants cannot be diminished on the ground that some close relation like a grandmother may volunteer to render some of the services to the family which the deceased was giving earlier".

62. Yet, in another case **Kirti Vs. Oriental Insurance Co. Limited 2021 ACJ 1=AIR 2021 Supreme Court 353= AIR online 2021 SC 5 (3J)** a bench of three judges dealt with the principles to be followed for the grant of compensation, in case of death of a housewife who died in an accident along with her husband while commuting on a motorcycle on 12.04.2014 in Delhi when the same was hit by a Santro car resulting in death of couple. The SC heavily relied upon the ratio of Arun Kumar Agarwal case Supra and expressed great anguish upon the census report of 2011 wherein the work of a housewife has not been given due importance. it was also observed that such a bias is not only prevalent in India but all over the world. It is strange that services rendered by women enter into dividend when they are rendered in exchange for wages in factory or other business establishments, but do not get any similar reward or wages when such services are done by women in houses.

Regarding the manner of computing the income of a housewife or a housemaker it was observed as under:

One method of computing the notional income of a homemaker is by using the formula provided in the Second Schedule to the Motor Vehicles Act, 1988, which has now been omitted by the Motor Vehicles (Amendment) Act, 2019. The Second Schedule provided that the income of a spouse could be calculated as one-third of the income of the earning surviving spouse. This was the method ultimately adopted by the court in **Arun Kumar Agarwal's case, 2010 ACJ 2161 (SC).** However, rationale behind fixing the ratio as one-third is not very clear.

Apart from the above, scholarship around this issue could provide some guidance as to other methods to determine the notional income for a homemaker. [See Ann

Chadeau: What is Household' Non-Market Production Worth, OCED Economic Studies No. 18 (1992); also see **United Nations Economic Commission for Europe: Guide on Valuing Unpaid Household Service Work, 2 (2017)]**. Some of these methods were highlighted by a Division Bench of **Madra High Court in the case of Deepika, 2010 ACJ 2221 (Madras)**, which held as follows:

"(10) The Second Schedule to the Motor Vehicles Act gives a value to the compensation payable in respect of those who had no income prior to the accident and for a spouse, it says that one-third of the income of the earning surviving spouse should be the value. Exploration on the internet shows that there have been efforts to understand the value of a homemaker's unpaid labour by different methods. One is, the opportunity cost which evaluates here wages by assessing what she would have earned had she not remained at home, viz., the opportunity lost. The second is the partnership method which assumes that a marriage is an equal economic partnership and in this method, the homemaker's salary is valued at half her husband's salary. Yet another method is to evaluate homemaking by determining how much it would cost to replace the homemaker with paid workers. This is called the replacement method."

However, it must be remembered that all the above methods are merely suggestions. There can be no exact calculation or formula that can magically ascertain the true value provided by an individual gratuitously for those that they are near and dear to. The attempt of the court in such matters should, therefore, be towards determining, in the best manner possible, the truest approximation of the value added by a homemaker for the purpose of granting monetary compensation.

Whichever method a court ultimately chooses to value the activities of a homemaker, would ultimately depend on the facts and circumstances of the case. The court needs to keep in mind its duty to award just compensation, neither assessing the same conservatively, nor so liberally as to make it a bounty to

claimants (**National Insurance Co. Limited Vs. Pranay Sethi, 2017 ACJ 2700 (SC); Kajal Vs. Jagdish Chand, 2020 ACJ 1042 (SC)**].

63. It was also held that increase for future prospects is also to be granted while calculating the total income of deceased housewife. In this regard, the principle to be followed by the Tribunal would be in the case of self employed or a personal who is on fix salary. As was held in Pranay Sethi Case Supra. Thus, increase in future prospects is to be granted invariably in all such where compensation is being assess on the basis of notional income etc.

Finally, the compensation was assessed the Apex Court in the following manner:-

S. No.	Head	Tribunal	High Court	Supreme Court
A	Monthly income	Rs. 9438	Rs. 5,547.1	Rs. 5,547.1
B	Deduction for personal expenses	None	33 per cent	25 per cent
C	Age-multiplier	17	17	17
D	Adjustment for future prospects	25 per cent	None	40 per cent
E	Increase for special circumstances	None	25 per cent	25 per cent
F	Funeral charges and loss of estate	Rs. 2,50,000/-	Rs. 2,50,000/-	Rs. 2,50,000/-
G	Total Rounded off	Rs. 26,56,690/- Rs. 26,57,000/-	Rs. 11,93,007/- Rs. 11,95,000/-	Rs. 17,35,236/- Rs. 17,40,000/-
	Total Compensation	Rs, 40,71,00	Rs. 22,00,000/-	Rs. 33,20,000/-

		0/-		

64. **<u>In Jitendra Khimshankar Trivedi Vs. Kasam Daud Kumbhar, 2015 ACJ 708 (SC),</u>** the Apex Court reiterated the law laid down in **<u>Arun Kumar Agrawal, 2010 ACJ 2161 (SC)</u>**. In Jintendra Khimshankar Trivedi, the accident occurred on 21.09.1990. The deceased, who was aged 22 years, succumbed to the injuries. In the claim petition it was averred that at the time of accident, the deceased was a housewife, who was doing embroidery and knitting work. She was earning Rs. 900/- per month from the said work and was maintaining her family. The Tribunal observed that in the district of Kutch embroidery work, stitching work and local traditional embroidery workin is doing well and had the deceased been alive she would have earned Rs. 1500/- per month. Therefore, the Tribunal took the monthly income of the deceased as Rs. 1500/-. After deducting 1/3rd towards personal and living expenses of the deceased and adopting the multiplier of 18, Tribunal calculated loss of dependency at Rs. 2,16,000/-. Adding conventional damages of Rs. 8,000/-, the Tribunal awarded total compensation of Rs. 2,24,000/-. In the appeal filed by respondents, the High Court of Gujarat at Ahmedabad reduced the monthly income of the deceased to Rs. 1350. After deducting 1/3rd towards personal and living expenses of the deceased and adopting dissatisfied with the quantum of compensation awarded by the High Court, the claimants approached the Apex Court. The Apex Court held that as the claimants approached the Apex Court. The Apex Court held that as observed by the Tribunal, embroidery work, stitching work and local traditional embroidery work was doing well in the district of Kutch and there was good earning. Considering the nature of the work and the oral evidence of the father-in-law and the mother-in-law of the deceased, had the deceased been alive she would have earned not less than Rs. 3,000 per month. Even assuming that the deceased was not self-employed doing embroidery and tailoring work, the fact remains that she was a housewife and a homemaker. It is hard to monetize the domestic work done by a housewife. The services of the mother/wife are available 24 hours and her duties

are never fixed. Courts have recognized that the contribution made by the wife to the house is invaluable and that it cannot be computed in terms of money. A housewife/homemaker does not work by the clock and she is in constant attendance of the family throughout and such services rendered by the homemaker have to be necessarily kept in view while calculating the loss of dependency. Thus even otherwise, taking the deceased as the homemaker, it is reasonable to fix her income at Rs. 3,000/- per month.

65. **In Jitendra Khimshankar Trivedi, 2015 ACJ 708 (SC)**, the Apex Court noticed that as against the award passed by the Tribunal awarding a total compensation of Rs. 2,24,000/-, the claimants have not filed any appeal. Therefore, the Apex Court considered the question as to whether the income of the deceased could be increased and compensation could be enhanced. The Apex Court held that in terms of section 168 of the Motor Vehicle Act, the courts/Tribunals are to pass awards determining the amount of compensation as to be fair and reasonable and accepted by the legal standards. The power of the courts in awarding reasonable compensation was emphasized in **Nagappa Vs. Gurudayal Singh, 2003 ACJ 12 (SC); Oriental Insurance Company Limited Vs. Mohd. Nasir, 2009 ACJ 2742 (SC); and Ningamma Vs. United Indian Insurance Company Limited, 2009 ACJ 2020 (SC).** As against the award passed by the Tribunal even though the claimants have not filed any appeal, as it is obligatory on the part of courts/Tribunal to award just and reasonable compensation, the Apex Court deemed it appropriate to increase the compensation. In order to award just and reasonable compensation, the monthly income of the deceased was taken as Rs. 3,000/-. After deducting 1/3rd towards personal and living expenses of the deceased and adopting the multiplier of 18, the Supreme Court calculated loss of dependency at Rs. 4,32,000/-.

66. Our own High Court in the case of **Oriental Insurance Company Vs. Mool Chand Bisht 2014 ACJ 834** dealt with principles of assessment in the case of death of a housewife aged 41 who was survived by her husband working in a bank. The Husband had orchard of 80 Bigas and was earning Rs. 4,00,000 per

annum. The question which arose for consideration was whether the husband and children of the deceased wife can be denied compensation on the ground that husband is an earning hand and death of deceased wife had not caused any monetary loss as husband was not dependent on her. It was held that husband and children are entitled for compensation as deceased wife was assisting the family in agricultural pursuits. The Tribunal had assessed the loss of dependency as Rs. 3000/- per month and applied the multiplier of 15, awarding Rs. 5,55,000/- as compensation. The High Court enhanced the compensation by an additional amount of Rs. 15,000/-.

67. **In Jatindera Khim Shankar Vs. Ksasam (2015) 4 SCC 237** it was held by Apex Court that services rendered by a house wife are multifarious in nature. It is difficult to monetize domestic work done by her in terms of money. In this case, SC enhanced the compensation from Rs. 296480/- to Rs. 6,47,000/- though no appeal was filed by the claimants.

68. In the case of **Rajender Singh Vs. National Insurance Company Limited (2020) SCCR 663** the Apex Court considered the question of grant of compensation in case of death of a housewife aged 30 years, who died along with her minor daughter while travelling in a horse cart on 25.12.2012. The Horse cart was hit by a bus resulting in a death. The Tribunal accessed the notional income to the deceased house wife Rs. 36000/- per annum and after 1/4th deduction towards personal expense, with a multiplier of 17 awarded a compensation of Rs. 4,59,000/-. The Tribunal then deducted 50% on ground of contributory negligence as the horse cart was stated to have been in the middle of the road when the accident took place. A sum of Rs. 1,00,000/- was then added as loss of consortium and Rs. 25,000/- towards funeral expenses leading to an award total of Rs. 3,54,500/- with interest at the rate of 7.5%.

69. Yet again, a bench of three judges of Honorable Apex Court in **Rahul Sharma Vs. National Insurance Company Limited AIR 2021 SC 2255 = 2021 ACJ 1450 SC 236** considered the question of payment of compensation in case of a death of a mother aged 37 years who died in an accident in May 2010 and the

claim was filed by the son of the deceased. The deceased was self-employed but was an income tax assessee. The Tribunal accessed her annual income to be Rs. 2,55,349/-. Based upon the dictum in **Sarla Verma case 2009 ACJ 1298 SC** 50% addition was made towards future prospects and multiplier of 15 was adopted. The deceased mother has two dependents and 1/3rdof her income was deducted on account of personal and living expenses. An amount of Rs. 4155235/- with 9% interest were awarded as compensation. Feeling aggrieved, insurance company preferred am appeal against the award before Delhi High Court and High Court calculated the pecuniary compensation as Rs. 19,16,000/- and non-pecuniary damages as Rs. 2,50,000/-. Thus total compensation was reduce to Rs. 21,66,000/-. The claimant filed an appeal before the Honorable Apex Court and putting reliance upon the judgment upon **National Insurance Company limited Vs. Pranay Sethi 2017 ACJ 2700 SC** it was held that when the deceased was self-employed and below the age of 40 years in that eventuality 40 % addition is to be made in her income a future prospects. Since, deceased was self-employed and 37 years she was entitled for 40 % of the increase as future prospect instead of 50 % as awarded by the Tribunal. In the light of the legal position discussed above the annual income of the deceased was taken Rs. 2,55,349/- and 1/3rd were liable to be deducted her personal and living expenses. The claimants were granted compensation to the tune of Rs. 38,24,890/- to be paid by the Insurance Company.

70. In **National Insurance Company Limited Vs. Neelam Verma latest HLJ 2020 (HP) (1) 180** the question of grant of compensation to the claimants who were minor daughter and son and husband of deceased Asha Devi was considered when deceased died on road accident on 10.11.2013. The claim Tribunal granted 145000/- with 7.5% interest from the date of the petition. The claimants have alleged that deceased had two cows and she was selling milk as a result her monthly income alleged to be Rs. 20000/-. Highs Court after considering the evidence observed that cows did not yield milk throughout the year and there was no positive evidence that deceased was earning Rs. 20,000/- per month. Keeping in view the price index income of the deceased was held to be

Rs 6000/- per month. The High Court after making reference to the constitution bench decision in Pranay Sethi case Supra as well as Sarla Verma case Supra granted the compensation as under:

i) Loss of future loss of income	Rs. 10,08,000/-
ii) Loss of estate	Rs. 15,000/-
iii) Funeral Charges	Rs. 15,000/-
iv) Loss of consortium	Rs. 40,000/-
Total =	Rs. 10,78,000/-

It is now trite law that grant of compensation on a pecuniary basis with respect to housemaker is well settled and granting of compensation for future prospectus on notional income is vital component of just compensation.

DEATH OF INFANT, YOUNG CHILD OR BACHELOR

71. One of the difficult areas where Tribunal are facing immense difficulty is regarding assessment of compensation is in case of death of young children or a bachelor or school or college going students. In all these cases mostly there is no visible income earned by the deceased at the time of accident and the duty of the Tribunal very becomes onerous to assess the compensation payable to the claimants.

72. Yet, Apex Court made a bold attempt in the case of **Lata Wadhwa and others Vs. State of Bihar and others, AIR 2001 SC 3218** by laying standard principles and guidelines for the grant of compensation to the parents, in case of death of young children. It was a case of fire which took place in a Pandal and there were several persons including young children, who died in the fire during a function organized by TISCO. The Apex Court while considering the question of quantum of compensation observed that the parents of the deceased children were well placed officers and deceased children were mostly in the age group of 5-10 years, as such, granted Rs. 1,50,000/- as compensation, in case of death of a child and also added conventional amount of Rs. 50,000/- in each case and thus made a payment of Rs. 2,00,000/- to every claimant. It was adjudged that there is no

requisite evidence regarding the claim of such infant or their prospectus of getting the good job and the same was rejected by the Apex Court by observing as under:-

"In case of death of an infant, there may have been no actual pecuniary benefit derive by its parents during the child's lifetime. But this will necessarily bar the parent's claim ad prospective loss will found a valid claim provided that the parents establish that they had a reasonable expectation of pecuniary benefit if the child had lived. At the same time, it must be held that a mere speculative possibility of benefit is not sufficient. Question whether the exists a reasonable expectation of pecuniary advantage is always a mixed question of fact and law"

In the case of death of an infant, there may have been no actual pecuniary benefit derived by its parents during the child's life-time. But this will not necessarily bar the parents claim and prospective loss will found a valid claim provided that the parents establish that they had a reasonable expectation of pecuniary benefit if the child had lived, speculative possibility of benefit is not sufficient. Question whether, there exists a reasonable expectation of pecuniary advantage is always a mixed question of fact and law.

73. Yet in another case **Kaushalya Devi Vs. Karan Arora & Ors., AIR 2007 SC 1912**, the SC considered the question of grant of compensation in case of death of young children of tender age and observed as under:-

"These are some aspects of human life which are not capable of monetary measurement, but the totality of human life is like the beauty of sunrise or the splendor of the stars, beyond the reach of monetary tape-measure. The determination of damages for loss of human life is an extremely difficult task and it becomes all the more baffling when the deceased is a child and/or a non-earning person. The future of a child is uncertain. Where the deceased was a child, he was earning nothing but had a prospect to earn. The question of assessment of compensation, therefore, becomes stiffer. The figure of compensation in such cases

involves a good deal of guesswork. In cases, where parents are claimants, relevant factor would be age of parents".

74. In another case, **R.K. Malik & Anr. Vs. Kiran Pal & Ors, AIR 2009 SC 2506**, the Apex Court considered the question of compensation in case of death of school going children, who were going in a bus which got drowned in Yamuna River in Delhi. The parents filed the petition under Section 163-A read with Second Schedule of the Act. The Tribunal by its common award awarded Rs. 1,55,000/- to the parents of the children who were in the age group of 10-15 years and Rs. 1,65,000/- between 15-18 years. Three of the children were less than ten years, in case of their death amount of Rs. 1,05,000/- to Rs. 1,30,000/- were awarded when the matter was taken in the appeal to the High Court, the above amount was further enhanced to Rs. 75,000/- in all the cases. While considering the question of grant of compensation in the above cases, the Apex Court extensively invoked the principles laid down in Lata Wadhwa case, supra.

It was observed that notional income mentioned in the Second Schedule and the multiplier specified therein can form basis so as to determine the compensation. The Supreme Court also observed that the injury inflicted by deprivation of life of a child is extremely difficult to quantify. The Courts, therefore, have used expression "standard compensation", global amount so as to get over this difficulty.

However, now the compensation has to be awarded infant or young children in the light of the legal principles adumbrated in Sarla Verma case as well as Pranay Sethi case.

75. The Honorable Apex Court in the case of **Kadar Kunju Vs. Mahaswaran (1999) 9 SC 207** dealt with the question of grant of compensation when the deceased was 17 years boy and was mechanical engineer student. The Tribunal having due regard to the age of the parents who were in the age group of 45 to 47 adopted multiplier or 16. In view of the age of the deceased and according a compensation of Rs. 2,30,000 with 12% interest. In **State of H.P. Vs. Ram**

Sawroop in (1998) 2 current law journal 158 H.P, the deceased was 16 years old when he died in an accident. There was no evidence of earning any money a global amount of Rs. 40,000/- awarded as compensation under the old Act. In **HRTC Vs. Vimla Devi 2000 (2) SLJ 1355** our High Court dealt with the question of grant of compensation when a student studying in class 8 died. The Tribunal awarded Rs. 50,000 and High court enhanced the amount to Rs. 84,000/-. In **Gulzar Mohammad Vs. Bikka 2000 (1) latest HLJ 247** an amount of Rs. 60,000/- was awarded when only son of the parents was died. All these case were decided prior to the judgment passed **in Sarla Verma Case** as well as **Pranay Sethi case** Supra. Now the Tribunal has to decide the cases of death relating to infant, young children and unmarried student etc. by adopting a holistic and rational approach.

76. In **Faquirappa Vs. Karanataka Cement Pipe Factory 2004 SCC (Criminal) 577=2004 (2) SLJ 1124 SC** the question of grant of compensation on account of major bachelor was considered and it was held there is no rigid rule nor any formula of universal application which can determine the percentage of deductions to be made in case of death of a bachelor. The Apex Court in this case instead of deducting 50% from the annual income, as fixed by the Tribunal and approved by the High Court as personal expenses, restricted the same to 1/3rd of the monthly income.

77. In **Sayeed Basheer Ahamed Vs. Mohd. Jameel 2009 (2) SCC 227** the Apex Court consider the question of compensation in case a death of young businessman of 20 years when the claimants were parents. The deceased was filing income tax return also it was held that normally in case a death of bachelor 50 % of deduction is to be made towards his personal expenses etc. as general rule. In **New India Insurance Company Limited Vs. Satinder AIR 2007 SC 324** the question of payment of compensation in respect of death of a child 9 years was subject matter of consideration before the Tribunal who has awarded 4.5 lakh, but Honorable Apex Court reduced the same to Rs. 1,80,000/-.

78. In a latest judgment i.e. Kurvan Ansari Vs. Shyam Kishore Murmu 2022 ACJ 166 SC, New Delhi a child of seven year was studying in class II met

with an accident and claim petition was filed by his maternal grand mother u/s 163-A of the Act. The Tribunal taking the notional income of the decease at Rs. 15000 per annum, adopted multiplier of 15 and awarded 2,25,000/- as compensation with interest at the rate of 6% per annum the appeal filed by the insurance company was dismissed and other appeal filed by claimant was partly allowed by awarding Rs. 15000 towards funeral expenses. Thus, in all 2,40,000/- was awarded a compensation . In further appeal filed by the claimants the Hon'ble Apex Court observed that notional income of Rs. 15000/- per annum is very low as Central Government has failed to revise the schedule as per section 163-A (3) of the Act. Resultantly, the notional income was taken as 25,000/- per annum and compensation was enhanced in the following manner.

In view of the above, we deem it appropriate to take notional income of the deceased at Rs. 25000/- per annum. Accordingly, when the notional income is multiplied with applicable multiplier '15' , as prescribed in Schedule II for the claim under section 163-A of the Motor Vehicle Act, 1988, it comes to Rs. 3,75,000/- (Rs. 25,000 x multiplier 15) towards loss of dependency. The appellants are also entitled to a sum of Rs. 40,000/- each towards loss of filial consortium and Rs. 15,000/- towards funeral expenses. Thus, the appellants are entitled to the following amounts towards compensation:

(a) Loss of dependency	Rs. 3,75,000/-
(b) Loss of filial consortium (Rs. 40,000x2)	Rs. 80,000/-
(c) Funeral expenses	Rs. 15,000/-
Total	Rs. 4,70,000/-

79. It is thus clear from the perusal of the above authority no uniform pattern was being followed by the courts or Tribunal while making assessment of compensation in case of death of infant, bachelor or young girls etc. However, the legal position has now been clarified by the Apex Court in **National Insurance Company Vs. Pranay Sethi 2017 ACJ 2700, Rajesh Vs. Rajveer Singh 2013 ACJ 2003 and Reshma Kumari case 2013 ACJ 1253**. In all these cases the Apex Court has emphatically held that assessment of the compensation and adoption of

multiplier has to be in the light of guidelines laid down in **Sarla Verma Case 2009 ACJ 1998 and Pranay Sethi case (supra).** Our High Court in **Ameena Bibi Vs. Siria 2021 ACJ 168** dealt with a question of grant of compensation when deceased, an unmarried aged18 died in an accident which took place on 11.07.2010. The deceased was alleged to be working in a company under a contractor and getting Rs. 5,000/- per month. She was also stated to be earning Rs. 4,000/- per month by doing tailoring work. The Tribunal computed the income of decease as 3600/- per month and made deduction of Rs. 50% from her total income towards her personal living expenses. After adopting multiplier of 18, Rs. 3,88,800/- was assessed as total dependency in which for Rs. 15,000 were added funeral charge and Rs. 10,000 as loss of estate. In all Rs. 4,13,800 was awarded total compensation with 9% interest for the date of petition. It was observed by the High court in appeal that the awarded was not in consonance with the guidelines issued by constitution bench in **Pranay Sethi case (supra)**. The Honorable High court in a very elaborate and lucid manner dealt with the principles of grant of compensation under the different heads in the light of law laid down in the above authorities. Reliance was also placed upon **Magama General Insurance Company Limited Vs. Nanu Ram, 2018 ACJ 2782 SC** Wherein Apex Court held that compensation towards loss of consortium is to be granted to the claimant @ of Rs. 40,000/- each. In view of the aforesaid legal position the High Court revised the compensation as under:

80. The issue with regard to the grant of compensation in respect of death of bachelor was again subject matter of discussion before Apex Court in respect of whether the multiplier to be applied in a case of death of a bachelor, should be computed on the basis of the age of the deceased, or the age of the claimants/ parents, is no longer res integra. This issue has been recently settled by a three judge bench of SC in **Royal Sundaram Alliance Insurance Company Limited Vs. Mandala Yadagari Goud & Ors. (2019) 5 SCC 554.** Wherein it has been held that the Multiplier has to be applied on the basis of the age of the deceased.

The issue with regard to the grant of compensation in respect of death of bachelor was again subject matter of discussion before a three judge bench of Apex Court in **Royal Sundaram Alliance Insurance Company Limited Vs. Mandala Yadagari Goud & Ors. (2019) 5 SCC 554** where the sole question was whether the age of the deceased of the bachelor or the age of the dependents/claimants is to be taken into account for adoption of the multiplier. It was retreated that it is age of the deceased and not of the dependents/claimants which is to be considered for the purpose of multiplier.

81. Subsequently the ratio of this authority was followed by SC in **Joginder Singh Vs. ICCI Lomband General Insurance Company Latest HLJ 2020 SC (1) 35**. In this case apex Court considered the question of grant of compensation in respect of death of a student named Ambika Thakur who was undertaking training as Air Hostess. On 10.09.2009 Ambika traveling in a car from Chandigarh to Bathinda when it met with an accident with TATA ACE. There was held on collusion between the two vehicles resulting in death of Ambika Thakur on the spot. The claimants were the parents of the deceased Ambika who filed claim petition at Shimla and Tribunal Awarded Rs. 1040000/- as compensation. An appeal filed by the insurance company dismissed by the High Court ,in appeal to the Apex Court it was clarified that multiplier of 11 adopted by the Tribunal was wrong as the same was on the basis of age of the parents and it has to be on the basis of the age of the deceased. Accordingly, SC adopted the multiplier of 18 having regard to the age of the deceased even the High Court not noticed this grave error committed by the Tribunal, Further, it was held that claimants are entitled to compensation under the Head, future prospectus, and an increase of 40% was allowed in the income of the deceased. In view of the mandate of the constitution bench in **National Insurance Vs. Pranay Sethi Ors. 2017 ACJ 2700.** Accordingly, the compensation awarded to the claimants was a follows.

i) Income: Rs. 15000/-

ii) Future Prospects: Rs. 6000/- (i.e. 40 % of the income)

iii) Deduction towards 50%

Personal Expenses

iv) Total income: Rs. 10,500/- (i.e. 50% of 15000+6000)

v) Multiplier: 18

vi) Loss of Future Income Rs. 2268000/- (i.e. 10,500 x 12 x 18)

vii) Enhanced Amount: Rs. 1278000/- (i.e. 2268000 – 9,90,000)

viii) Loss of Consortium of each of the Appellants:

(i.e. after deducting 25,000 awarded by the MACT from 40,000 each = 80,000)

ix) Loss of Estate: Rs. 15,000/-

Total enhancement: Rs. 13,48,000/-

82. Sapna vs. United Indian Insurance Company Limited and Another[2] is the case of a 12 year old girl who suffered 90% disability in her left leg. Apex Court granted a lump sum amount of Rs.2,00,000/- on these heads.

S. No.	**Award passed by the Tribunal**	**Award passed by the Tribunal**	**Modified award by this court**
1	Loss of dependency to the family: Rs. 3,88,800/-	Loss of dependency to the family: Rs. 3,88,800/-	Loss of dependency to the family: Rs. 8,46,720
2	Loss of estate: Rs. 10,000/-	Loss of estate: Rs. 10,000/-	Loss of estate: Rs. 15,000/-
3	Funeral charges: Rs. 15,000/-	Funeral charges: Rs. 15,000/-	Funeral charges: Rs. 15,000/-
4		-	Loss of filial consortium Rs. 40,000 each to The Nos. 1 and 2 being parents of the

			deceased
5	Total Rs. 4,13,800/-	Total Rs. 4,13,800/-	Total : Rs. 9,56,720/-

83. **In Iranna vs. Mohammad Ali Khadarsab Mulla and Another**[3], a Division Bench of the Karnataka High Court granted an amount of Rs.4,00,000/- on these heads to the child who suffered 80% permanent disability.

84. In Kum. Michael vs. Regional Manager, Oriental Insurance Company Limited and Another, Apex Court considered the case of an eight year old child suffering a fracture on both legs with total disability only to the tune of 16%. It was held that the child should be entitled to an amount of Rs.3,80,000/- on these counts.

85. In another case **Munna Lal Jain Vs. Vipin Kumar Sharma (2015) 6 SCC 347** a Bench of three judges considered the question of grant of just compensation when the deceased was self-employed aged 30 years working as a Pandit and was also bachelor. The parents were the claimants before the Tribunal who were granted Rs. 6,59,000/- as compensation. The High Court enhanced the compensation by fixing monthly the income Rs. 12000/- adding 30 % towards future prospects, 50% amount was deducted towards personal expenditure. The High Court applied multiplier of 13 and fixed compensation Rs. 12,61,800/- with 7.5% interest. In appeal, it was held by Apex Court that multiplier has to be with regard to the age of the deceased and not those of the dependents. Thus High Court has committed error in following ratio of **Santoshi Devi case (2012) 6 SCC 421** by adopting multiplier of 13. The Apex Court followed the ratio of three judge bench decision in **Reshma Kumari (2013) 9 SC 65** and reiterated that multiplier is to be used with reference to the age of the deceased and in the present case age of the deceased was between 26 to 30 years as such multiplier of 17 was appropriate. This is perfectly inconsonance with the Sarla Verma case which was cited with approval in constitution Bench decision of Pranay Sethi case supra.

86. In another case, **Kunjan Sadana Vs. Mahesh Kumar 2020 ACJ 812** the Apex Court dealt with the question of grant of compensation when a bachelor aged 19 who was self-employed, died in an accident. High Court did not consider future prospects while computing compensation. The claimants were the widow mother and young brother of the deceased. High Court had adopted the multiplier of the 15 relevant to the age of mother of the deceased. However, in appeal the Honorable Apex Court followed the ratio of **Pranay Sethi 2017 ACJ 2700 SC** and held that multiplier of 18 has to be adopted keeping in view the age of the deceased and enhancement of 40 % of income towards future prospects was also granted after deducting half of the income for personal expenses of the deceased.

87. Another area where acute difficulty is being faced by the Tribunals is with regard to the assessment of compensation in case of injury or disability to a child or young person. There is no hybrid formula or rule of thumb dealing with grant of compensation most of the law in this area is based upon various judgment of the High Court as well as Supreme Court.

88. **In Master Malikarujun Vs Divisional Manager, The National Insurance Company Limited AIR 2014 SC 736** Honorable Apex Court laid down guidelines for assessment of just and fair compensation in case of disability suffered by a child aged 12 in a Motor Accident. In this case the negligence was proved to be the rider of the vehicle and child has suffered the deformity in the right leg coupled with other injuries child was admitted for 58 days in hospital and was also operated upon later on it was found that there was shortening of right lower limb and child could not walk properly. The claim Tribunal awarded only Rs. 63500/- under different heads. High Court enhanced the compensation to Rs. 109500/- this enhancement was mainly under the head, “loss of future amenities”. The Honorable Apex Court expressed anguish regarding the manner in which Tribunal and High Court had awarded the meager compensation while placing reliance upon R.D. Hattangadi case supra it was held as under:-

Though it is difficult to have an accurate assessment of the compensation in the case of children suffering disability on account of a Motor Vehicle Accident, having regard to the relevant factors, precedents and the approach of various High Court, we are of the view that the appropriate compensation on all other heads in addition to the actual expenditure for treatment, attendant, etc., should be, if the disability is above 10% and up to 30 % to the whole body, Rs. 3 Lakhs; upto 60%, Rs. 4 lakhs; up to 90%, Rs. 5 lakhs and above 90%, it should be Rs. 6 lakhs. For permanent disability up to 10, it should be Rs. 1 lakh, unless there are exceptional circumstances to take different yardstick.

In the instant case Apex Court has awarded the compensation as under:-

HEAD	**COMPENSATION AMOUNT**
Pain and suffering already Undergone and to be suffered in Future, mental and physical shock, Hardship, inconvenience, and Discomforts, etc., and loss of Amenities in life on account of Permanent disability.	Rs.3,00,000/-
Discomfort, inconvenience and loss Of earnings to the parents during The period of hospitalization.	Rs.25,000/-
Medical and incidental expenses during the period of hospitalization for 58 days.	Rs.25,000/-
Future medical expenses for Correction of the mal union of Fracture and incidental expenses For such treatment.	Rs.25,000/-

TOTAL:- Rs.3,75,000/-

The Honorable Apex Court in Kiran Vs. Sajjan Singh, 2014 ACJ 2550 (SC), also referred to the ratio of the above case, particularly with regard to future loss of income due to permanent disability suffered by a minor.

89. It is necessary to remember that Honorable Apex Court in the case of **Raj Kumar Vs Ajay Kumar 2011 ACJ 1** while dealing with the question of general principles relating to grant of compensation in injury cases, held as under:-

The Tribunal should not be a silent spectator when medical evidence is tendered in regard to the injuries and their effect, in particular the extent of permanent disability. Sections 168 and 169 of the Act make it evident that the Tribunal does not function as a neutral umpire as in a civil suit, but as an active explorer and seeker of truth who is required to 'hold an enquiry into the claim' for determining the 'just compensation'. The Tribunal should therefore take an active role to ascertain the true and correct position so that it can assess the 'just compensation'. While dealing with personal injury cases, the Tribunal should preferably equip itself with a Medical Dictionary and a Handbook for evaluation of permanent physical impairment (for example the Manual for Evaluation of Permanent Physical Impairment for Orthopedic Surgeons, prepared by American Academy of Orthopedic Surgeon of its Indian equivalent or other authorized texts) for understanding the medical evidence and assessing the physical and functional disability. The Tribunal may also keep in view the first schedule to the Workmen's Compensation Act, 1923 which gives some indication about the extent of permanent disability in different types of injuries, in the case of workmen. If a Doctor giving evidence uses technical medical terms, the Tribunal should instruct him to state in addition, in simple non-medical terms, the nature and the effect of the injury. If a doctor gives evidence about the percentage of permanent disability, the Tribunal has to seek clarification as to whether such percentage of disability is the functional disability with reference to the whole

body or whether it is only with reference to a limb. If the percentage of permanent disability is stated with reference to a limb, the Tribunal will have to seek the doctor's opinion as to whether it is possible to deduce the corresponding functional permanent disability with reference to the whole body and if so the percentage.

90. In some cases claim petition are filed in respect of death of unborn child Apex Court in the case of **National Insurance Company Limited Vs. Kasuma 2011 ACJ 2432** dealt with the grant of compensation in case of death of a foetus (unborn Child) in this case woman was pregnant for the last 7 month when the death of foetus took place in her womb and claimant was granted Rs. 50,000 by the Tribunal for the death of unborn child and Rs. 10,000 towards pains and suffering. In appeal, High Court enhance the amount to Rs. 180,000 which was upheld by the Apex Court. **In Parkash Vs. Arun Kumar Saini 2010 ACJ 2184** the unborn child aged 5 months died and claimant was awarded Rs. 1,50,000/-. In a latest judgment **Radhe Shyam Vs. Rajendera 2021 ACJ 808 M.P. High Court**, in case of death of 7 months old child in the womb granted Rs. 1,50,000/- to the claimant.

COMPOSITE NEGLIGENCE VS. CONTRIBUTORY NEGLIGENCE

91. It is matter of common experience that in cases where two or more vehicles are involved in an accident the question of composite or joint negligence of the vehicle is oftenly raised in claim petitions. As a result, the main issue regarding liability to pay compensation becomes secondary and the primary question would be which of the two vehicles has caused the accident or what is the liability of each vehicle in causing the said accident? This is not an easy task and such a situation is subject to pleading and proof to be adduced by party during the course of claim proceedings. There is a distinction between composite negligence and contributory negligence which is required to be decided by the Tribunal before fixing inter se liability for compensation between joint tortfeasors.

92. The Honorable Apex Court in the case of **T.O. Anthony Vs. Karvarnan 2008 ACJ 1165 SC** death with the meaning expression composite negligence held as under:

"(6) Where a person is injured as a result of negligence on the part of two or more wrongdoers, it is said that the person was injured on account of composite negligence of those wrongdoers. In such a case each wrongdoer is jointly and severally liable to the injured for payment of the entire damages and the injured person has the choice of proceeding against all or any of them. In such a case, the injured need not establish the extent of responsibility of each wrongdoer separately, nor it is necessary for the court to determine the extent of liability of each wrongdoer separately." Whereas contributory negligence as observed by Apex Court in **Usha Rajkhowa and Ors. v. Paramount Industries and Ors. [Civil Appeal No.1088 of 2009** (arising out of SLP (C) No.16647 of 2008)] it was held that:

"10. The question of contributory negligence on the part of the driver in case of collision was considered by this Court in Pramod kumar Rasikbhai Jhaveri v. Karmasey Kunvargi Tak and Ors. reported in (2002) 6 SCC 455. That was also a case of collision between a Car and a truck. It was observed in Para 8:

"The question of contributory negligence arises when there has been some act or omission on the claimant's part, which has materially contributed to the damage caused, and is of such a nature that it may properly be described as `negligence'. Negligence ordinarily means breach of a legal duty to care, but when used in the expression "contributory negligence", it does not mean breach of any duty. It only means the failure by a person to use reasonable care for the safety of either himself or his property, so that he becomes blameworthy in part as an author of his own wrong."

The principle of 50:50 in cases of contributory negligence has been discussed and applied in many cases before this court. In Sri Krishna Vishweshwar Hede v. The General Manager, K.S.R.T.C. (2008 ACJ 1617), this court upheld the judgment of

the Tribunal assessing the ratio of liability at 50:50 in view of the fact that there was contributory negligence on the part of the appellant and fixed the responsibility for the accident in the ratio of 50:50 on the driver of the bus and the appellant. In this case, the truck was stationary. Some amount of negligence on the part of the deceased cannot be ruled out.

93. It has also been held by the Apex Court that normally when there is head on collision between two vehicle being driven at a high speed resulting in an accident in that eventuality the drivers of both vehicle are equally (50:50) at fault and their liability under the law is joint and several. This view was taken by SC in **Vijay Kumar Dugar Vs. Bidyadhar Dutta AIR 2006 SC 1255=II (2006) ACC 36.**

94. In **Sudhir Kumar Rana Vs. Suridner Singh 2008 ACJ 1834 SC** held that "contributory negligence may be defined as negligence in not avoiding the consequences arising from the negligence of some other person, when means and opportunity are afforded to do so. The question of contributory negligence would arise only when both parties are found to be negligent. If a person drives a vehicle without a license, he commits an offence. The same, by itself, may not lead a finding of negligence as regards the accident. It has been held by the courts below that it was the driver of the minitruck which was being driven rashly and negligently. It is one thing to say that appellant (rider of the two-wheeler) was not possessing any license but no finding of fact has been arrived at that he was riding the two-wheeler rashly and negligently. If he was not driving rashly and negligently which contributed to the accident, only because he was not having a license, he would not be held to be guilty of contributory negligence. The matter might have been different if, by reason of his rash and negligent driving, the accident had taken place".

95. A three judge Bench of Honorable Apex Court in the case of **Meera Devi Vs. Himachal Road Transport Corporation 2014 ACJ 1012** held that to prove contributory negligence there must be cogent evidence to prove that accident has taken place due to rash and negligent driving of the claimant or deceased. In the

absence of any material evidence, the doctrine of Contributory Negligence cannot be applied in a given case. Normally the plea of contributory negligence is taken when a pedestrian walking on road, a cyclist or a child driving a small vehicle on road resulting in accident when such pedestrian or child is hit by a vehicle from the other side. This plea is oftenly taken by the driver of the vehicle so as to escape from the liability under the law. In **Khenyei Vs. New India Assurance Company Limited and others (2015) 9 SCC 273** the Hon'ble Apex Court dealt in extensor with the question of liability inter se joint tortfeasors and plea of contributory negligence which is normally taken by the Insured/Owner of the offending vehicle to avoid the liability. It was held that there is a difference between contributory and composite negligence. In the case of contributory negligence, a person who has himself contributed to the accident cannot claim compensation for the injuries sustained in the accident to the extent of his own negligence. Extent of his negligence is required to be determined as damages recoverable by him in respect of the injuries have to be reduced in proportion to his contributory negligence. However, in the case of composite negligence, a person who has suffered has not contributed to the accident but due to the outcome of combination of negligence of two or more other persons. In such case, the plaintiff/claimant is entitled to sue both or any other person. In such case, the plaintiff/claimant is entitled to sue both or any one of the joint tortfeasors and to recover the entire compensation as liability of joint tortfeasors is joint and several.

96. In **Rajender Singh Vs. National Insurance Company Limited 2020 SCCR 663** deceased housewife was travelling with her minor children in a horse cart. The horse cart was hit by a bus on 25.12.2012 resulting in her death. The owner of bus took the plea of contributory negligence and Tribunal deducted 50 % amount on account of contributory negligence of the deceased as evidence was adduced that horse cart was in the middle of the road at the time of accident. The Honorable Apex Court held that no fault can be attributed to the deceased housewife and deduction of 50 % on account of contributory negligence was held to be totally unjustified and unsustainable.

97. In another case **Mohd. Siddique Vs National Insurance Company Limited AIR 2020 SC 520** it was held that simply because deceased was driving motor cycle along with two persons on pillion rider seat may not, by itself, without anything more, make him guilty of contributory negligence. At the most, it would make him guilty of being party to violation of section 128 of MV Act which places restriction on driver of motor cycle, not to carry more than one person on such vehicle. In this case deceased was knocked down after the car hit his motor cycle from behind. Similarly, simply because driver of a vehicle not holding a valid or effective license to drive a vehicle is no ground to presume the driver was negligent in driving the vehicle or has contributed in the cause of accident. A party alleging contributory negligence against the other party is required to allege and prove the same by placing adequate material on record, so as to draw such presumption. While making above observations, reliance was placed upon by Apex Court on the case of **T.O. Anthony Vs. Hemlatha, (2008) 3 SCC 748 : (2008) 1 SCC (Civ.) 832 : (2008) 2 SCC (Cri.) 738**. In the above case it was also held that when the accident is the result of composite negligence among joint tortfeasors there liability under the law is joint and several. When the accident occurred due to composite negligence of more than one person it was held that they being joint tortfeasors, would be liable jointly as well as severally to pay compensation. Hence, victim/claimant is entitled to sue any of the joint tortfeasors or all of them for recovery of entire amount of compensation. Extent of liability of each of them separately is neither required to be established by victim/claimant, nor required to be determined by court/Tribunal for purpose of payment of compensation. Thus in case of composite negligence between joint tortfeasors where injuries have been caused to the claimants by their combined wrongful act, all such joint tortfeasors who directly or indirectly joined in the committal of wrongful act are liable. In such a case, liability is always joint and several. The owner, driver and insurer of one of the vehicles can be sued and it is not necessary to sue to the owner, driver and insurer of the both the vehicles. The claimant may implead the owner, driver and insurer of both the vehicles and any one of them.

However, even if all joint tortfeasors are impleaded and tribunal is able to determine the extent of negligence of each of the driver that is for the purpose of inter se liability between the joint tortfeasors but their liability would remain joint and several so as to satisfy the claimant. The extent of negligence of the joint tortfeasors in such a case is immaterial for the satisfaction of the claim of the claimant and need not to be determined by the court. In the case of composite negligence, apportionment of the compensation between tortfeasors for making payment to the plaintiff (Claimant) is not permissible as the plaintiff (Claimant) has right to recover the whole damages from any one of them. The easiest target in such a case is solvent defendant. As discussed, it is not necessary to implead all joint tortfeasors and due to failure of impleadment of all joint tortfeasors, compensation cannot be reduce to the extent of negligence of non-impleaded tortfeasors. The liability of each and every tortfeasors vis-à-vis to the plaintiff (Claimant) cannot be bifurcated as it is joint and several liabilities.

It was further held in **Khenyei Case** Supra as under:

"The question also arises as to the remedies available to one of the joint tortfeasors from whom the compensation has been recovered. When the joint tortfeasor(s) have not been impleaded, obviously question of negligence of non-impleaded driver could not be decided. Apportionment of composite negligence cannot be made in the absence of impleadment of joint tortfeasors. Therefore, it would not be appropriate for the court/Tribunal to determine the extent of composite negligence of the drivers of two vehicles in the absence of impleadment of the joint tortfeasors. In such a case, impleaded joint tortfeasor should be left, in case he so desires, to sue the other joint tortfeasor in independent proceedings after passing of the decree or award.

However, in case all the joint tortfeasors have been impleaded and evidence is sufficient, it is open to the court/Tribunal to determine inter se extent of composite negligence of the drivers. However, the determination of the extent of negligence

between the joint tortfeasors ids only for the purpose of their inter se liability so that one may recover the sum from the other after making whole of the payment to the plaintiff/claimant to the extent it has satisfied the liability of the other. In case both of them have been impleaded and the apportionment/extent of their negligence has been determined by the court/Tribunal, in main case, one joint tortfeasor can recover the amount from the other in the execution proceedings.

DEATH OF OWNER OR BORROWER OF VEHICLE IN AN ACCIDENT

98. The Tribunals are also facing difficulty in determining the liability when owner of the vehicle is driving the vehicle at the time of accident or owner was sterling in his car when the accident was caused by his driver. There are also cases where a vehicle was borrowed by a friend from the registered owner and it subsequently, resulting in death of the borrower. In such type of cases the primary question before the Tribunal is as to whether the claim petition is legally maintainable against the insurer qua liability towards the legal representatives of the deceased owner or injured owner.

99. It is necessary to mention here that Sections 145 to 164 of the Act provide for mandatory third party insurance which is compulsory under the Act for the owner of the vehicle. Such policy is not mandatory in respect of vehicle owned by Govt. but Govt. has the option to obtain such policy or not. The words "Act Policy is referred to normally third party insurance owner of the vehicle and owner of vehicle is at liberty to obtain different kinds of policies e.g. comprehensive policy, personal accident cover policy or Act policy. In an Act policy insurance company is liable to pay compensation only when the claim is made by third party from the insured. In common parlance, the word first party refers to the owner, second party is the insurance company and other than insurer or insured, everyone else is termed as third party. Under the Act there is no precise definition. However, under Section 145-G of the Act, third party includes the Government.

100. **In Dhanraj Vs. New India Insurance com Limited AIR 2004 SC 4767= 2005 ACJ 1 SC** the question of liability of insurance company was considered

when the owner suffered injury in an accident along with other persons on 26.08.2000while travelling in his jeep there was only Act policy or third party claim policy in respect of the jeep involved in the accident. The claim petition was filed by injured/owner Dhanraj which was allowed by claim Tribunal who directed the insurance company to pay the compensation. In appeal the High court set aside the order of the Tribunal by holding that injured was owner of the vehicle and was not covered by the Act policy, resulting in exoneration of insurance company. When the matter reached the Apex Court, it was observed that where the insured, i.e. owner of the vehicle, has no liability to third party, the insurance company cannot be held liable to indemnify the amount of compensation. Referring to the provision of Section 147 of the Act the Court held that this Section does not require any insurance company to assume the risk for the death or injury to owner of the vehicle. In this case, as stated above the policy did not cover the risk for the injury to the owner.

101. **In Oriental Insurance Company Limited Vs. Jhuma Saha 2007 ACC 420 =2007 SC 1054** the deceased was owner of the Maruti Van and while driving the same caused accident in order to save goat crossing the road. The van hit the tree on road side and owner died in the accident. Deceased himself was to be blamed for the accident and accident did not involve any other vehicle other than which deceased was driving. No additional premium was paid to cover risk of the owner. It was held that Insurance Company is not liable.

102. **In New India Assurance Company Limited Vs. Sadananad 2009 SLJ Shimla Law Journal 27 (SC)** son of the owner of motor cycle driving the same caused an accident on 08.09.2000 as stray dog in front of the motor cycle resulting in death of the son in the accident it was held that owner of the motor cycle cannot file a claim petition and the same was not held not to be legally maintainable for the reason that owner of the vehicle cannot be claimant as well as recipient of the said claim. The insurance company has to indemnify the owner when third party is claimant in an accident. It was held in Oriental Insurance Company Sunita Rathi, AIR 1989 SC 257 that owner/insurer cannot claim compensation in the absence of

personal accident insurance coverage. A similar view has been taken by our own High Courts in Oriental Insurance Company Vs. Smt. Kamlo 2005 (2) SLJ 1592 (H.P.).

103. **In Prabha Tyagi Vs National Insurance Company Limited 2020 ACJ 3023 SC** the Apex Court dealt with the question of grant of compensation in respect of death of owner/insured who has obtained a personal accident cover policy. In an accident while driving his vehicle he died and wife of the owner/insured filed the complaint before the District Forum who allowed the complaint by awarding Rs. 1,00,000/- though the policy was to the extent of Rs. 2,00,000/-. This error was later on the District Forum who awarded Rs. 2,00,000/- to the widow. When the matter reached the Apex Court the decision of the district court was upheld and it was observed by the court that the P.A. cover under the policy covered the loss of Rs. 2,00,000/-.

104. Yet, in another case **Royal Sundaram Alliance insurance Company Limited Vs. Vemavaram Sudheer Babu 2020 ACJ 1631 Hyderabad**, the owner of the car was driving the car and his wife was also sitting in the same car, when it met with an accident resulting in his death and of his wife. Car was insured under comprehensive policy and owner insured under personal accident cover. The claim was filed by the children for the death of their parents and grant mother of the children was arrayed as respondent as she became owner of the car. It was strongly urged on behalf of insurance company that the claim is not legally maintainable by the legal representative of the deceased owner who cannot be both giver and recipients. The contention of the insurance company was rejected by the court. It was held that since car was covered by a comprehensive policy and above that by personal accident cover, therefore, the insurance company cannot escape the liability.

105. **In Oriental Insurance Company Limited Vs. Rajni Devi 2008 5 SCC 736** the owner of the motor cycle while driving the same died in an accident on 07.09.2004. A claim petition was filed under Section 163-A by the heirs of the owner. The claim Tribunal allowed the claim petition on the ground that the

liability under 163-A of the Act is of the owner of the vehicle a respective of any fault or negligence on his part. Insurance company objected a person cannot be both claimant as well as recipients. The heir of the deceased owner could not have maintained a claim in terms of section 163-A of the Act. The policy in the said case was comprehensive tribunal held the insurance company to be liable on the basis of use of vehicle. This view by Apex Court was not held to be fully corrected. However, according to the contract of insurance, liability of company confined to Rs. 1,00,000/- only and claim of the legal heir to this extent was allowed.

106. **In Oriental Insurance Company Limited Vs. MACT Sirmaur 2008 (1) SLC 313 H.P.** it was a case where deceased and his wife owner of a jeep while traveling met with an accident their son was also travelling in said jeep who died in the accident. Claim petition filed through grandmother of the children of the deceased and wife co-owner was impleaded correspondent. The High Court held that the petition is legally maintainable.

107. **In Sukhwant Kaur Vs. Sher Singh 2004 latest HLJ 1264 (ii) H.P. = 2005 SLJ (1) 600 H.P.** the question whether in a case a claim petition under Section 163-A or 166 of the Act is maintainable when the accident occurred not because of the vehicle being driven by some third party but because the vehicle was being driven non-else than the very person for whose death the claim was being asked for. The High Court held such a petition to be not legally maintainable for the simple reason that Insurance Company is liable when the fault or negligent driving is that of driver of the owner of the vehicle resulting in an accident and claim petition has been filed by third party claiming compensation from the insured/owner of the offending vehicle.

108. In a latest judgment our own High Court in **Pooja Vs. Tota Ram 2021 ACJ 504**, it was a case where deceased Lata Devi was owner of the car while travelling in the said car suffered fatal injuries when car met with an accident on 4.5.2011. The claimants were the children of the deceased Lata Devi father of the claimant was impleaded as respondent no. 1 who admitted the factum of the

accident and death of deceased wife. Respondent no. 2 was driver of ill-fated vehicle. The claim Tribunal dismissed the application as being not mantainable. The claimant filed appeal in the High Court where from perusal of record it was found that claimants have not pleaded or proved that accident was the outcome of rash and negligent driving on the part of the driver. Which is sine qua non for maintaining a claim petition under Section 166 of the Act. Insurance Company strongly relied upon the ratio of **New India Insurance Company Limited Vs. Sadanand Mukhi 2009 ACJ 998 SC**. It was also noticed by the Honorable High Court that from the perusal of Insurance policy Exh. RX policy, it was clear that only the vehicle was insured only for third party risk. As such no fault can be found with the finding of the Tribunal. Resultantly, claim petition was dismissed on the ground that rash and negligent driving has neither been alleged nor proved so as to claim compensation under the Act. IN my humble opinion in such like situation the court can grant interim compensation under Section 140 of the Act in as much as plea of rash or negligent driving is neither required to be alleged nor proved. In **Ningamma, vs united insurance co. 2009 ACJ 2020 (SC)**, the Hon'ble Apex Court dealt with the following issue ;

"[13] IN the light of the aforesaid submissions, the question that falls for our consideration is whether the legal representative of a person, who was driving a motor vehicle, would be entitled for compensation under section 163- A of MVA or under any other provisions of law and also whether the insurer who issued the insurance policy would be bound to indemnify the deceased or his legal representatives ?" It was held as under:

"[19] We have already extracted section 163 – A of the MVA herein before. A bare perusal of the said provision would make it explicitly clear that persons like the deceased in the present case would step into the shoes of owner of the vehicle. In a case where victim died or where he was permanently disabled due to an accident arising out of the aforesaid vehicle in that event the liability to make payment of the compensation is on the insurance company or the owner, as the

case may be, as provided under section 163– A .But if it is proved that driver is owner of the motor vehicle, in that case owner could not himself be a recipient of compensation, as the liability to pay the same is on him…..”Accordingly L.R. of deceased who have stepped into the shoes of owner of the motor vehicle could not have claimed compensation U.S. 163 – A of the act. It was also held that section 166 deals with just compensation and even if in the pleadings no specific claim was made under section 166 of the Act, a party should not be deprived of getting just compensation in case the claimant is able to make out a case under any provision of law. It was held that the Act being a beneficial and welfare legislation, the court is duty-bound and entitled to award just compensation irrespective of the fact as to whether any plea in that behalf was raised by the claimant or not. SC also in Raj Rani Vs. Oriental Insurance Company Limited decided on 06.05.2009 has taken the view that it is not necessary in a proceeding under the MVA Act to go by any rules of pleadings or evidence. Section 166 of the Act speaks about just compensation. Thus, it is the duty of the court to try to arrive at the finding of negligence irrespective of the fact as to whether any plea in that behalf was raised by the claimant or not. Moreover, in view of provisions of section 158 (6) of the Motor Vehicle Act there is no requirement of filling pleadings at the initial or later stage in as much as this section mandates the police officer to forward a copy of the FIR or police report to the claim Tribunals, having jurisdiction. **In National Insurance Council Vs. State of A.P. 2007 (3) SLJ 1939 Supreme Court** has highlighted the importance of this section and directions were issued to all the State Governments and U.T.’[s] to instruct all the concerned official about the need to comply with the above provision. Recently, in latest judgment Hon’ble Apex Court has reiterated the need to treat such police report or FIR as claim petitions and thereafter proceed in a summary manner to adjudicate the claim after holding summary inquiry.

109. In Sudhir Mahajan Vs. United India Insurance Company 2007 (2) SLC 305 = 2007 (2) SLJ 1565, petitioner was driving a car owned by his wife

respondent no. 1 and insured with respondent no. 2 while saving a child an accident occurred resulting in injuries to the petitioner who suffered permanent disability. Tribunals dismiss the claim petition holding that petition himself was responsible for accident. However, in appeal High Court set aside the award of the Tribunal as no rash and negligent act is required under Section 163-A of the Act.

110. In Ram Khiladi Vs. United India Insurance Company Limited 2020 ACJ 627 SC the question before the Court was whether the owner of the vehicle is liable to indemnify the compensation whose vehicle has been borrowed by a person who while driving the said motor cycle met with fatal accident due to negligence of another motor cycle. The legal heir of the deceased filed claim application under 163-A of the Act against the owner and insurance company of borrowed motor cycle. Neither the owner/driver nor the driver of the other motor cycle was impleaded as party. Now the question before the court was whether claim application under 163-A of the Act by the heirs of the borrower of the vehicle who stepped into the shoes of the owner, for the death of the borrower is maintainable. It was held such claim petition is not maintainable as ultimately liability under Section 163-A is on the owner of the vehicle and borrower of the vehicle in the present case has stepped into the shoes of the registered owner, when he was using the motor cycle which met with an accident. Since a person cannot be both a claimant and also a person on home liability faults as such insurance company is not liable to pay any compensation as the liability of insurance company is qua third party and **not to the owner as a claimant.** While making above observation reliance was placed upon the cases of **Dhanraj Vs. New India Insurance company Limited 2005 ACJ 1 SC**. Naveen Kumar Vs. Vijay Kumar, 2018 ACJ 677 SC, New India Assurance Company Limited Vs. Sadanand Mukhi, 2009 ACJ 998 SC, Ningamma Vs. united India Insurance Company Limited, 2009 ACJ 2020 SC, Oriental Insurance Company Limited Vs. Jhuma Saha, 2007 ACJ 818 SC, Oriental Insurance Company Limited Vs. Rajni Devi, 2008 ACJ 1441 SC, Prem Kumari Vs. Prahlad Dev, 2008 ACJ 776 SC, Reshma Kumari Vs. Madan Mohan, 2013 ACJ 1253 SC.

However, in the present case the Honorable Apex Court granted compensation of 1 lakh to the claimants (heir of the Borrower of the Vehicle) as additional premium had been paid towards personal accident cover as the borrower of the vehicle virtually stepped into the shoes of the owner of vehicle. In taking the above view reliance was placed upon the case of **National Insurance Company Limited Vs. Ashalata Bhowmik 2018 ACJ 2825 SC**.

111. Honorable Supreme Court has considered a similar issue with regard to the sale of motor vehicle by registered owner to some other person, but the name of the transferee or purchaser was not reflected in the record of the registering authority. Regarding the liability to pay compensation, it was held as under:

"(12) The consistent thread of reasoning which emerges from the above decisions is that in view of the definition of the expression 'owner' in section 2 (30), it is the person in whose name the motor vehicle stands registered who, for the purposes of the Act, would be treated as the 'owner'. However, where a person is a minor, the guardian of the minor would be treated as the owner. Where a motor vehicle is subject to an agreement of hire-purchase, lease or hypothecation, the person in possession of the vehicle under the agreement is treated as the owner. In a situation such as the present where the registered owner has purported to transfer the vehicle but continues to be reflected in the records of the registering authority as the owner of the vehicle, he would not stand absolved of liability. Parliament has consciously introduced the definition of the expression 'owner' in section 2 (30), making a departure from the provisions of section 2 (19) in the earlier Act of 1939. The principle underlying the provisions of section 2 (30) is that the victim of a motor accident or, in the case of a death, the legal heirs of the deceased victim should not to be burdened with following a trail of successive transfer, which are not registered with the Registering Authority. To hold otherwise would be to deafeat the salutary object and purpose of the Act. Hence, the interpretation to be placed must facilitate the fulfillment of the object of the law. In the present case, the

respondent No. 1 was the 'owner' of the vehicle involved in the accident within the meaning of section 2 (30). The liability to pay compensation stands fastened upon him. Admittedly, the vehicle was uninsured. The High Court has proceeded upon a misconstruction of the judgments of this court in **Reshma 2015 ACJ 1 (SC) and Purnya Kala Devi, 2014 ACJ 1269 (SC).**"

Honorable Supreme Court in the aforementioned judgment in clear terms clarified that in view of specific definition of 'owner' as envisaged under section 2 (30) of the Motor Vehicles Act, 1988 and the principle underlying it, the deceased/victim should not be left in a state of uncertainty for the purpose of claiming compensation following a trail of successful transfers.

112. In **K Indumathi Vs. M Periyasamy 2021 ACJ 1404 Madras** a similar view was taken. It was a case where the deceased Vasudevan was borrower of the motor cycle on 26.11.2013 deceased Vasudevan was driving motor cycle owned by Periyasamy, without his permission. He met with an accident and sustained head injury resulting in his death. The claim petition was filed by his widow, minor daughter and mother which was dismissed by the tribunal as not legally maintainable in view of dictum of the Honorable SC in **Nigamma vs. United India Insurance Company 2009 ACJ 2020**. It was also observed that deceased was neither a third party nor employee under the owner. As a borrower of the vehicle he had stepped into the shoes of owner. So, the insured registered owner is not vicariously liable to pay compensation to the borrower of his vehicle for accident caused with his vehicle. The insurance company was also not responsible to indemnify the owner since the policy does not cover such borrower. Admittedly in the present case no other vehicle was involved in the accident. Hence, the petition was filed under Section 163-Aof the Act without attributing negligence. In appeal, High Court examined the insurance policy exhibit R1 and observed that there was personal accident cover for owner to the extent of 1 lakh. In view of this insurance company was legally liable to indemnify the owner cum driver under P.A. cover within six month from the date of accident. The High Court also relied upon the ratio of **Ram khiladi case 2020 ACJ 627** and held as under:

"(5.5) It is true that, in a claim under Section 163-A of the Act, there is no need for the claimants to plead or establish negligence and/or that the death in respect of which the claim petition is sought to be established was due to wrongful act, neglector default of the owner of the vehicle concerned. It is also true that the claim petition under section 163-A of the Act is based on the principle of no fault liability. However, at the time, the deceased has to be a third party and cannot maintain a claim under Section 163-A of the Act against owner/insurer the owner and he cannot maintain a claim under Section 163-A of the Act against the owner and insurer of the vehicle bearing registration No. RJ 02-SA 7811. In the present case the parties are governed by the contract of insurance and under the contract of insurance the liability of the insurance company would be qua third party only. In the present case, as observed hereinabove, the deceased cannot be said to be a third party with respect to the insured vehicle bearing registration No. RJ 02-SA 7811. There cannot be any dispute that the liability of the insurance company would be as per the terms and conditions of the contract of insurance. As held by this court in the case of **Dhanraj, 2005 ACJ 1 SC**, an insurance policy covers the liability incurred by the insured in respect of death of or bodily injury to any person (including an owner of the goods or his authorized representative) carried in the vehicle or damage to any property of a third party caused by or arising out of the use of the vehicle. In the said decision, it is further held by this court that section 147 does not require an insurance company to assume risk for death or bodily injury to the owner of the vehicle.

113. In another interesting case, **Manager, New India Assurance Company Limited Vinayagamoorthy 2021 ACJ 1060 Madras,** the claim petition filed by claimant who was driving the car through flooded water over a stream and in the said car his wife and minor children was also travelling. The car was swept by the strong currents of the water. The claimants manage to safe his life but had the misfortune of helplessly witnessing his wife and two minor children drifting in the car in turbulent water. The claimant had filed the petition under 166 of the act

which was allowed by the Tribunal. Insurance Company went an appeal in the High Court and contended that claimant was responsible for the death of the deceased as he drove the car through flooded road. Accordingly, in the contention of insurance company he was tortfeasor as such not entitle to claim compensation. After discussing the various authorities, High Court held that claimant is not entitled to compensation under 166 of the Act. As he himself is a tortfeasor and cannot claim compensation for his own fault. Moreover, the claimant is not a third party for he himself was driving the insured card in which his family perished so as to fasten the liability upon the insurance company. However, claimant is entitled to compensation under 140 of the Act**.**

114. In another latest case, Sunita Gupta vs Gurusharan 2021 ACJ 2120 Chhattisgarah H.C(D.B), claimants were widow and minor son of deceased,who died in accident on 18.10.2009 while driving a borrowed van. Tribunal dismissed the application as deceased himself was responsible for accident. The question in appeal before H.C. was whether claim for death of borrower of vehicle ,who steps into the shoes of owner, is maintainable U.S. 163 – A of the Act ?While placing reliance upon the cases of Ningamma and Ram khiladi supra, it was held that borrower of a vehicle steps into the shoes of owner, therefore, borrower of vehicle or his L.R. cant maintain a claim U.S. 163 – A of the Act.

GUIDELINES FOR DEPOSIT AND APPORTIONMENT TO THE VICTIMS OF ACCIDENT

115. After the determination of the compensation the most vital question before the Tribunal is how to order deposit of the same and its apportionment inter see the claimant or legal representative who have approach the Tribunal and entitle for compensation. The Honorable Apex Court in the case of Susham Thomas supra Naggappa Gurdiyal has issued the guidelines to the Tribunals:

1. The Claim Tribunal should, in the case of minor, invariably order the amount of compensation awarded to the minor be invested in long term fixed deposits at least till the date of the minor attaining majority. The expenses incurred by the guardian or next friend may, however, be allowed to be withdrawn:

2. In the case of illiterate claimants also, the claim Tribunals should follow the procedure set out in (i) above, but if lump sum payment is required for effecting purchases of any movable or immovable property, such as, agriculture implements, rickshaw, etc., to earn a living, the Tribunal may consider such request after making sure that the amount is actually spent for the purpose and the demand is not a rogue to withdraw money;

3. In the case of semi-literate persons the Tribunal should ordinarily resort to the procedure set out in (i) above unless it is satisfied, for reasons to be stated in writing that the whole or part of the amount is required for expanding any existing business or for purchasing some property as mentioned in (ii) above for earning his livelihood, in which case the Tribunal will ensure that the amount is invested for purpose for which it is demanded and paid;

4. In the case of literate persons also the Tribunal may resort to the procedure indicated in (i) above, subject to the relaxation set out in (ii) and (ii) above, if having regard to the age, fiscal background and strata of society to which the claimant belongs and such other consideration, the Tribunal in the larger interest of the claimant and with a view to ensuring the safety of the compensation awarded to him thinks it necessary to so order;

5. In the case of widows, the Claim Tribunals should invariably follow the procedure set out in (i) above;

6. In personal injury cases, if further treatment is necessary the Claim Tribunals on being satisfied about the same, which shall be recorded in writing, permit withdrawal of such amount as is necessary for incurring the expenses for such treatment;

7. In all cases in which investment in long term fixed deposits is made it should be on condition that the bank will not permit any loan or advance on the

fixed deposit and interest on the amount invested is paid monthly directly to the claimant or his guardian as the case may be;

8. In all cases Tribunal should grant to the claimants liberty to apply for withdrawal in case of an emergency. To meet with such a contingency, if the amount awarded is substantial, the Claim Tribunals may invest it in more one fixed deposit so that if need be one such F.D.R. can be liquidated.

The ratio of the above authority and the guidelines discussed above have been reiterated

116. **In Naggappa Vs. Gurdiayal Singh 2003 ACJ 12** as well as in all subsequent authorities without any exception. It has been highlighted time and again that it is a duty Tribunal to award just equitable, fair and reasonable compensation to the claimant and legitimate claims of the parties are not to be defeated or scuttled on procedural grounds. Tribunal must remember that this Act is social welfare legislation to help the injured or victim of the accident with a view to rehabilitate them as far as possible.

117. **In A.V. Padma Vs. R Venugopal 2012 ACJ 698**, the Honorable Apex Court clarified that long term fixed deposit of amount of compensation is mandatory only in case of minors, illiterate claimants and widows. In other cases, sufficient discretion has to be given to Tribunals to release even the whole amount of compensation in case of literate persons. The Tribunal has to examine the overall circumstances and need of the claimant who is making request for release of the amount. When a widow required money for construction of house or marriage of a daughter it was held that there was no legal impediment in releasing the entire or substantial amount of her share the Tribunal must not adopted ridged attitude and approach should be purely rational and holistic.

118. There is no provision in the Act which deals with the manner of apportionment of compensation inter see the claimants where are several claimants i.e. son, daughter, parents, nephew, brother and sister etc. and only few of them were actually dependent upon the income of the deceased. In such cases, the role of the Tribunal becomes very onerous and share has to be given to each of

the claimant as per their entitlement. The law on this purely based upon various judgments of the High court as well as Apex Court. it is noticed that in most of the cases where window along with sons and daughter have filed a claim petition, the Tribunal has granted a substantial share of the amount of compensation to such widow.In kirti vs. oriental insurance co. Ltd..AIR 2021 S.C 353 Apex Court apportioned the amount of compensation of RS 33.20 lakhs between grandfather and two daughters of deceased couple in the ratio of 1:2:2.

119. The provisions of the Act are silent on the point as what rate of interest should be awarded to the claimants at the time of pronouncement of the award.

120. In **Supe Dei Vs. National Insurance Company Limited, 2002 ACJ 1166 (SC)**, Honorable Apex Court held that 9 per cent per annum would be the appropriate rate of interest to be awarded in motor accident claim compensation cases.

121. In **Municipal Corporation of Delhi Vs. Association of victims of Uphaar Tragedy, 2012 ACJ 48 (SC) and Syed Sadiq Vs. Divisional Manager, United India Insurance Company Limited. 2004 ACJ 627 (SC),** interest was awarded at the rate of 9 per cent per annum.

122. In **Sube Singh Vs. Shyam Singh, 2018 ACJ 737 (SC),** rate of interest of 6 per cent per annum awarded by the Motor Accidents Claims Tribunal was modified by Honorable Supreme Court to 9 per cent per annum.

123. **In Josphine James Vs. United India Insurance Company Limited 2013 ACJ 2418** The Apex Court enhanced the rate of interest to 9 per cent per annum as insurance has been contesting the award of the Tribunal on untenable ground which are not maintainable in law.

124. **In Sanjay Batham Vs. Munnalal Parihar 2011 ACJ 2869** Apex Court while dealing with the concept of just and fair compensation raised the rate of interest from 7 per cent to 9 per cent per annum which in the opinion of the Apex Court was wrongly reduced to 7 per cent by the High Court.

125. It is now well settled position of law that rate of interest has to be awarded at the prevalent bank rates. Thus, the apportionment of compensation inter see the

claimants as well as rate of interest is in the discretion of the Tribunal and same has to be exercised in a judicious and holistic manner with due regard to factual scenario in each case.

TRANSFER OF VEHICLE

126. The question of ownership of vehicle becomes pertinent and relevant in those cases where the vehicle involved in the accident is alleged to be sold by the registered owner to a third person. In some cases though a formal document i.e. affidavit or sale agreement is executed and possession of the vehicle is also transferred in favour of transferee after exchange of sale consideration. However, the situation becomes ticklish when the registration authority under the Act is not informed by either party and necessary documents relating to the transfer are not submitted to the registering authority. Thus, in records of the registering authority, such a vehicle remains in the name of original owner despite the factum of formal transfer on the basis of affidavit or sale agreement in favour of transferee. In fact, sale of Motor Vehicle is governed by sale of goods Act and section 31 of the said Act prescribes procedure for the transfer of the vehicle. Whereas a registration of vehicle is governed by Motor Vehicle Act and Section 50 of the Act contains procedure to be followed by the parties to such transfer. Section 50 reads as under:

1. Where the ownership of any motor vehicle registered under this Chapter is transferred,-

(a) The transferor shall, -

(i) In the case of a vehicle registered within the same State, within fourteen days of the transfer, report the fact of transfer, in such form with such documents and in such manner, as may be prescribed by the Central Government to the registering authority within whose jurisdiction the transfer is to be effected and shall simultaneously send a copy of the said report to the transferee; and

(ii) In the case of a vehicle registered outside the State, within forty-five days of the transfer, forward to the registering authority referred to in sub-clause (i)-

(A) The no objection certificate obtained under Section 48, or

(B) In a case where no such certificate has been obtained,-

(I) The receipt obtained under sub-Section (2) of Section 48;

(II) The postal acknowledgement received by the transferor if he has sent an application in this behalf by registered post acknowledgement due to the registering authority referred to in section 48,

Together with a declaration that he has not received any communication from such authority refusing to grant such certificate or requiring him to comply with any direction subject to which such certificate may be granted;

(b) The transferee shall, within thirty days of the transfer, report the transfer to the registering authority within whose jurisdiction he has the residence or place of business where the vehicle is normally kept, a the case may be, and shall forward the certificate of registration to that registering authority together with the prescribed fee and a copy of the report received by him from the transferor in order that particulars of the transfer of ownership may be entered in the certificate of registration.

127. **In Vinod Kumar Vs. Nirmala Devi AIR 2009 H.P. 37** the question of the liability of compensation between the registered owner and transferee was involved. The owner has received the sale consideration and delivered the vehicle to the transferee, however, other mandatory requirements to transfer under the Act were complied with. The registered owner continued to be shown as owner in the record relating to the vehicle. Resultantly, it was held by the High Court that he cannot absolved from the liability to pay compensation to the claimants. Thus, both transferor and transferee along with driver vicariously liable.

128. **In Pusha Vs. Shakuntla 2011 ACJ 705** in a similar situation where after the transfer of vehicle, codal formalities were not completed regarding the change of the name of the owner in certificate of registration. It was held by Apex Court that the original owner must be deemed to continue as owner of the vehicle even though under the civil law he ceased to owner after the sale of the vehicle.

129. Yet again, in **U.P.S.R.T. Corporation Vs. Kulsun (2011) 8 SCC 142** it was held that once the vehicle is insured, owner and any other person can use the

vehicle with the consent of owner. In this case, the vehicle was released to the State Corporation under an agreement. It was held that the vehicle shall be deemed to be transfer with the insurance policy in view of proviso contained to Section 157 which clearly provides that when the owner of the vehicle has transferred ownership of the Motor Vehicle in favour of third person, in respect of which insurance policy has been taken, such transfer shall deem to include transfer of rights and liabilities of the said certificate of insurance and policy of insurance.

130. **In State of H.P. Vs. Deepa Devi 2006 ACJ 1677 H.P.** it was held that when the vehicle was requisitioned by the State Government for the election purpose and the said vehicle met with an accident resulting to an injury to a person. The Tribunal awarded the compensation against the State Government exonerating the insurance company on the ground that the vehicle continued to remain registered in the name of original owner but at the relevant time it was being used by state government under a valid agreement as such state government is liable. When the matter was taken in appeal before High Court the decision of the Tribunal was set aside on the ground that the owner is legally liable being the registered owner of the vehicle and insurance company cannot escape the liability under the law.

131. **In M/s Godavari Finance company Vs. Degala Satyanaryan Air 2008 SC 2493** it was held when a motor vehicle is subjected to higher purchase agreement by a finance company, in that eventuality, finance company cannot be treated as owner of the vehicle as the person who is in possession of vehicle as per the agreement is the owner of the vehicle for all legal purposes.

132. **In a latest judgment, H.P. High Court in the case of Chaman Lal Vs. Murat Ram 2021ACJ 721** dealt exhaustively with a question of liability qua third party when there is transfer of vehicle.

In this case, a bus met with an accident on 6.2.2007 and the claimant was travelling in the ill fated bus at the time of accident. the registered owner took the plea before the Tribunal that he has transferred the vehicle, though he continue to be reflected as owner in RTO records as codal formalities in term of Section 50

were not done. In fact, he has sold the bus to respondent t no 2 on 7.4.2006 much before the accident and said respondent no 4 further sold the bus to respondent no. 2 Roop Lal. The Tribunal pass the award against the registered owner along with 7 % interest in appeal the contention of the appellant chaman Lal was not accepted by the High Court and it was held that he continued to be registered owner as the necessary formalities in terms of 50 of the Act regarding transfer word not all. In drawing such conclusion, the High Court put reliance upon the decision of **Apex Court in Prakash Chand Daga Vs. Saveta Sharma 2019 ACJ SC** where in it was held that mere transfer of vehicle would not absolve the registered owner of his liability to third person so long as the name of the registered owner continues in the RTO records.

133. A similar view has been taken in **Pusha Vs. Shakuntla 2011 ACJ 705 SC** in this case also vehicle belong to Rajendera Gupta registered owner he sole the same to Sailing Ram on 2.2.1993 and handed over the possession of vehicle to him. Despite the said sale no efforts were done to get the name entered in the name of transferee. The earlier insurance policy later on expired and transferee took a fresh insurance policy in the name of original owner Jatinder Gupta in an accident which took place on 7.5.1994 two persons died and their legal representatives filed separate claim before the Tribunal. The question arose as to who was liable i.e. registered owner Jatinder Gupta or transferee owner. Admittedly, registered owner had no control over the vehicle and possession of the same was already with the transferee owner at the time of accident. In view of this it has held that registered owner Jatinder Gupta must be deemed to continue as the owner of the vehicle for the purpose of the Act even though under the civil law he ceased to be owner after its sale on 2.2.1993. The Apex Court in this case adverted to the ratio of Naveen Kumar 2018 ACJ 677 and held as under:

"(12) The consistent thread of reasoning which emerges from the above decisions is that in view of the definition of the expression 'owner' in section 2 (30), it is the person in whose name the motor vehicle stands registered who, for the purposes of

the Act, would be treated as the 'owner'. However, where a person is a minor, the guardian of the minor would be treated as the owner. Where a motor vehicle is subject to an agreement of hire-purchase, lease or hypothecation, the person in possession of the vehicle under that agreement is treated as the owner. In a situation such as the present where the registered owner has purported to transfer the vehicle but continues to be reflected in the records of the registering authority as the owner of the vehicle, he would not stand absolved of liability. Parliament has consciously introduced the definition of the expression 'owner' in section 2 (30), making a departure from the provisions of Section 2 (19) in the earlier Act of 1939. The principle underlying the provisions of Section 2 (30) is that the victim of a motor accident or, in the case of a death, the legal heirs of the deceased victim should not be left in a state of uncertainty. A claimant for compensation ought not to be burdened with following a trail of successive transfer, which are not registered with the registering authority. To hold otherwise would be to defeat the salutary object and purpose of the Act. Hence, the interpretation to be placed must facilitate the fulfillment of the object of the law. In the present case, the respondent No.1 was the 'owner' of the vehicle involved in the accident within the meaning of section 2 (30). The liability to pay compensation stands fastened upon him. Admittedly, the vehicle was uninsured. The High Court has proceeded upon a misconstruction of the judgments of this court in **Reshma, 2015 ACJ 1 (SC) and Purnya Kala Devi, 2014 ACJ 1269 (SC).**

(13) The submission of the petitioner is that a failure to intimate the transfer will only result in a fine under Section 50 (3) but will not invalidate the transfer of the vehicle. In Dr. T.V. Jose, 2001 ACJ 2059 (SC), this court observed that there can be transfer of title by payment of consideration and delivery of the car. But for the purposes of the Act, the person whose name is reflected in the records of the registering authority is the owner. The owner within the meaning of Section 2 (30) is liable to compensate. The mandate of the law must be fulfilled.

The legal position thus can be summarized as under:

‘(4) Even though in law there would be a transfer of owner of the vehicle, that, by itself, would not absolve the party, in whose name the vehicle stands in RTO records, from liability to a third person…Merely because the vehicle was transferred does not mean that such registered owner stands absolved of his liability to a third person. So long as his name continues in RTO records, the remains liable to a third person.’

The High Court was, therefore, absolutely right in allowing the appeal. The challenge raised by the appellant must fail.

134. It is however necessary to clarify that the amount of compensation so paid by the registered owner can be legally recovered by him from the insurance company by filing a suit etc. as there was a valid policy in respect of the vehicle at the time of accident. In my humble opinion it would have been in the interest of justice if the insured owner would have been given the right to recover the said amount by filing execution application before the same Tribunal.Now U.S,169(4) of amended Act 2019, a claim Tribunal has all the powers to execute its award like a decree of civil court. Even under the Act of 1988, There are numerous judgments that award of a Tribunal under the Act can be enforced like a decree of the Civil Court, otherwise, it would lead to multiplicity of litigation. In a latest judgment, Uttar Pradesh state road transport vs. National insurance co.ltd. 2021 SCCR 720 Honble Apex Court dealt with the question of transfer of a bus hired by UPSRT corporation under an agreement dt.20.5.1998.The bus was duly insured with Respondent insurance CO. On 25.08.1998 afatal accident took place resulting in death of one Raju. A claim petition was filed by L.Rs. and claim Tribunal awarded compensation, holding that insurance Co. is liable tosatisfy the award. An appeal was filed by insurance co. mainly on the ground that corporation was operating the bus at the relevant time, when accident took place. High Court allowed the appeal, holding that insurance co. is not liable to pay compensation to third party in the event bus is operated under the control of corporation. In an appeal filed by corporation before Apex Court, the question was ;

135. If an insured vehicle is plying under an agreement with the corporation on the route as per permit, and in case of an accident during that period , whether insurance co. would be liable to pay compensation or would it be responsibility of the corporation or owner ? The question was answered as under:

(8) This question has been answered by this court in **UTTAR PRADESH STATE ROAD TRASPORT CORPORATION VS. KULSUM 2011)8SCC 142=2011ACJ 2145** which is an identical case where the Supreme Court examined the agreement entered into between the corporation and owner of the vehicle. The court has come to the conclusion that when effective control and command of the bus is with the corporation, the corporation becomes the owner of the vehicle for the specified period. It was further held that when the actual possession of the vehicle is with corporation the vehicle, the driver and conductor were under the direct control and supervision of corporation. Therefore through definition of" vicarious liability" it can be inferred that the person supervising the driver is liable to pay compensation to the victim. During such time, it will be deemed that the vehicle was transferred along with the insurance policy, even if it were insured at the instance of original owner. Thus the insurance company would not be able to escape its liability to pay amount of compensation."

DEFENCES AVAILABLE TO INSURANCE COMPANY

136. When a vehicle is insured with an insurance company, normally the liability is of the insurance company so as to indemnify the insured qua the liability as determined by the Tribunal. Under Section 170 and 147(2) of the Act, the defences which are available to the insurance company are limited in nature and insurance cannot contest a claim petition on merits like the insured or join tort-feasors. An insurance company can contest the claim petition on merits if the claim Tribunal is satisfied that-

(a) There is collusion between the person making the claim and the person against whom the claim is made, or

(b) The person against whom it claim is made has failed to contest the claim,

In such a situation the claim Tribunal may for reasons to be recorded in writing permit the insurance company to contest on merits. It is necessary bear in mind that the permission cannot be granted to insurance company as a matter of course but only on fulfillment of either or both the conditions mentioned above.

137. Under the law an insurance company thus cannot contest a claim petition unless the requisite permission is granted by the Tribunal. Resultantly, neither the insurance company can cross examine the witness on the question of negligence or quantum of compensation to which the claimants entitled under the law. It is no well settled position in law that an insurance company cannot file an appeal against an award purely on the ground of negligence or quantum of compensation. This view has been taken by Honorable Apex Court in the case of National Insurance Company Limited Vs. Nicolletta Rohtagi AIR 2002 SC 3350. It was specifically held in this case that right of insurance company to challenge the award on merit is not there under the Act unless condition stipulated in Section 170 are satisfied. This embargo is absolute irrespective of the fact that insured has not filed any appeal. Right to file appeal is a creation of statute and no party as a matter of right can claim the same, unless right is there. In **Rekha Jani Vs. National Insurance Company AIR 2013 SC 3458 and AIR 2013 SC 3429** It was held that in the absence of permission from the Tribunal to avail defense on behalf of insurer as required under 170 of the Act, insurance company has no right to file an appeal so as to challenge quantum of compensation.

138. A full bench of the Honorable Apex Court in the case of **United India Insurance Company Limited Vs. Shila Datta AIR 2012 SC 86 = 2011 ACJ 2729** has doubted the ratio of Nicolletta Rohtagi case supra and matter has been referred to a larger bench.

In some cases an interesting situation may arise, when an appeal has been filed by insurance company against the award of the Tribunal on the ground that insurance company is not liable in as much as insured is guilty of breach of conditions of

insurance policy. No appeal in most of the cases is filed by the claimant when liability to pay compensation has been fastened upon the insurance company and claimants are simply co-respondent before the High Court. No cross objection or cross appeal is normally filed by most of the claimants feeling satisfied with the award of the Tribunal. However, in appeal High Court feels that compensation granted is inadequate. The question is; whether the High Court has the power to enhance the amount of compensation without there being any appeal filed by the claimants. This question was answered in the affirmative in **Oriental Insurance Company Limited Vs. Vithabha AIR 2011 SC 2838**.

139. Yet, in another case, the Honorable Apex Court i.e. **Jitendra Khemshankar Tridevi Vs. Kasamdaud Kumbhar (2015) 4 SC cases 237** while dealing with the question of grant of compensation in case of death of housewife considered the question of enhancement of compensation in the absence of any appeal by claimant against the award of the Tribunal. Where in Tribunal has granted Rs. 296480/- as compensation. The Apex Court while exercising power under article 142 of the constitution enhanced the compensation to Rs. 647000/-. It was held as under:

"In terms of Section 168 of the Motor Vehicles Act, the courts/the Tribunals are to pass award determining the amount of compensation as to be fair and reasonable and accepted by the legal standards. Against the award passed by the Tribunal even though the claimants have not filed any appeal, as it is obligatory on the part of Courts/Tribunal to award just and reasonable compensation, it is appropriate to increase the compensation."

140. In National Insurance com Limited Vs. Darshani Devi 2017 SCC online 888 it was held by HP High Court that in the absence of independent appeal or a cross objection by claimant court is competent to enhance the amount of compensation so as to insure just award of compensation in favour of the claimant.

141. It has been held IN Ranjana Parkash VS Divisional Manager,new India Assurance co. Ltd.2011 ACJ 2418(S.C) THAT WHEN an appeal is

filed,challenging the quantum of compensation ,IRRESPECTIVE OF WHO FILES AN APPEAL,the appropriate course for the HIGH COURT is to examine the facts and determine just compensation. The relevant observations are as under :

(8)"where an appeal is filled challenging the quantum of compensation, irrespective of who files an appeal, the appropriate course for the High COURT is to examine the facts and by applying the relevant principles, determine the just compensation. If the compensation determined by it is higher than the compensation awarded by the tribunal, the High Court will allow the appeal, if it is by the claimants and dismiss the appeal, if it is by owner/insured. Similarly if compensation determined by the High Court is less than the compensation awarded by the Tribunal, High Court will dismiss any appeal by the claimants for enhancement, but allow any appeal by owner insurer for reduction. The High Court obviously cant increase the compensation in an appeal filed by owner insurer for reducing the compensation, nor it can reduce the compensation in an appeal by claimants seeking enhancement of compensation."

No doubt, in some cases HONBLE APEX COURT has enhanced the compensation, even when appeal was filed by owner/insured seeking reduction in compensation or total exemption of liability as no accident having taken place with offending vehicle. But that was done by resorting to provision of article 142 0f constitution. This power is not available to High Court. The Honorable APEX COURT in the case of C.M. SINGH VS H/P.KRISHI VISHVA VIDYALA (1999)9 SCC 40 has held that power to do complete justice is conferred on it and HIGH COURT does not have such powers.

A similar view appears to have been taken in the case of Ramla vs. National insurance co. Ltd. 2019 ACJ 559 (S.C)

142. The Honorable Apex Court in a series of cases has taken the holistic and rational view that it is the duty of the court/Tribunal to award just and fair compensation having due regard to the fact and circumstances of the case. IN this regard, specific reference can be made to the case of **Naggapa Vs. Gurdyala Singh 2003 ACJ 12 S.C. Sarla Verma Vs. Delhi Transport Corporation 2009 ACJ 1298 S.C, Ningamma Vs. United India Insurance company limited 2009 ACJ 2020 S.C., Sanjay Bathan Vs. Munna Lal Parihar 2011 ACJ 2869 S.C Ibrahim Vs Raju 2011 ACJ 2845 S.C** and constitution bench decision in the National Insurance Company Limited Vs. Pranay Sethi 2017 ACJ 2700 S.C. Thus the legal position is crystal clear that claimant can be awarded compensation more than the amount claimed by such claimant as it is the duty of the Tribunal to award just and fair compensation. It is also no more res integra that in an appeal filed by the insurance company the cross objection can be legally filed by the claimants. This view has been taken in **Urmila Devi Vs. Branch Manager, National Insurance Company Limited 2020 ACJ 771 (SC)**. A Contrary taken by some of the High Courts in this regard stands now impliedly over ruled in view of the ratio of Urmila Devi case Supra.

143. **In Josphine James vs. United India insurance co. Ltd. 2013ACJ 2418** Apex Court ,when insured was ex parte before the tribunal, dealt with question of maintainability of appeal filed by insurance co. without obtaining permission of the tribunal under Section 170 of the Act'. In this case the insurance company had filed appeal against the award of the Tribunal without seeking permission under Section 170(B) of the Act challenging the quantum of compensation as well as liability of the insurance company to pay the compensation. The High Court in its judgment eroniously reduced the amount of compensation. it was urged on the behalf of the insurance that an appeal under the Act is continuation of the original proceedings and when owner of the vehicle has been proceeded ex parte, there is no impediment for the court to hear the appeal on merits dehors the permission under 170(B) of the Act. In fact High Court placed reliance upon the case **United India Co. limited s. Bushan Sachdeva 2002 ACJ 333 (SC)** and held that words,

fail to contest in Section 170 (B) of the Act must mean fail to file an appeal , since appeal is continuation of original proceedings. High Court was fully cognizant that insured/owner has not filed any appeal against the award and thus permitted the insurance company to challenge the quantum of compensation in appeal, as a result of which compensation granted by the Tribunal was reduced. In appeal before the Apex Court it was held that Bushan Sachdeva case Supra had been overruled by three judge bench in **National Insurance Co. Limited Vs. Nicolletta Rohtagi 2002 ACJ 1950**. The Apex Court set aside the judgment of the High Court by holding that High Court was required to follow ratio of the three judge bench in Nicolletta Rohtagi case Supra and earlier decisions wherein Apex Court while interpreting 170 of the Act has held that in the absence of permission obtained by the insurance company from the Tribunal to avail the defences of the insured, it is not permitted to contest the case on merits. Though the correctness of the Nicolletta case Supra, a three judge bench decision has been doubted by another three judge bench in **United India Insurance Company Limited Vs. Shila Datta 2011 ACJ 2729 (SC)**. But so long as the above judgment is not overruled by an another bench the courts/Tribunal are required to follow the ratio of the law in Nicolletta Rohtagi case supra. Accordingly, the insurance company is not entitled to file any appeal questioning the quantum of compensation in favour of the claimant as it had only limited defence as provided under Section 149 (2) of the Act. It is necessary to mention here that permission under Section 170 of the Act is not to be granted to the insurance company as a matter of course but by a speaking order.

DEATH OF INJURED OR CLAIMANT/ABATEMENT

144. Normally, during the pendency of a claim petition, in the event of death of injured or claimant, the question of maintainability of claim petition is oftenly raised by the Insurance Company or the owner of the vehicle against whom claim petition has been filed. Though the provisions of civil procedure code have limited application and mere late filling of application to bring legal representatives of the

injured on record would not result in abatement of the proceedings in as much as provisions of order 22 CPC are not applicable. In **Narender Kaur Vs. State 1991 ACJ 767 Himachal Pradesh**, the question of maintainability of claim petition was considered by a Division Bench of the High Court when death of the injured claimant took place during the pendency of claim petition. It was held by the Division Bench of our High Court that a claim petition does not abate in Toto as claim in respect of "loss of estate" is not covered by exception contained in section 306 of Indian Succession Act, resultantly, the claim filed by a Legal Representative of the claimant will be legally maintainable in respect loss of estate due to the death of the injured.

145. **In Prem Lata Vs. Himachal Pradesh Road Transport Corporation 2005 ACJ 557 = 2004 (2) Shimla Law Journal 1625** a similar view was taken in the said case, however, it was held a separate claim petition filed by Legal Representatives of the deceased on the plea that death was caused as consequences of injuries suffered in the accident was allowed to proceed and adjudicated on merits, if it was proved that death was due to the injuries suffered in the accident. While taking the aforesaid view reliance was placed by the Honorable High Court upon AIR 1988 SC 506 and 1986 ACJ 440

146. **In Mamta Bai Vs. Vijay Kumar Kashyap 2021 ACJ 1071** the death of the claimant took place during the pendency of the claim petition. In fact, in the said case deceased Satish Kumar while driving a tractor met with an accident on 23.01.2007 resulting in his death. The claim petition was filed by grandmother and brother of the deceased under 163-A of the Act. During the pendency of the claim petition both claimant i.e. grandmother and brother of the deceased expired, after the sad demise of the claimants, wife and children of the claimant/Kush Kumar, brother of the deceased Satish Kumar moved an application under Order 22 Rule 3 Rule 9 CPC for their substitution in place of said Kush Kumar. This application was rejected by the claim Tribunal by observing that it was made beyond the period of limitation as claim petition has already abated. It was also held that wife and children of Kush Kumar were not dependent on Satish Kumar, therefore, they

could not be substituted in the case so as to continue to petition. When the matter reached the High Court it was held that there is no question of abatement of claim petition in as much as provisions of order 22 of CPC are not applicable. It was also held that observation made by the claim Tribunal that proposed Legal Representatives were not dependent upon the deceased Satish Kumar and as such not entitled to be substituted in place of the original claimants, is liable to be set aside.

147. The High Court relied upon that while taking the above view upon the case of **Manjuri Bera Vs. Oriental Insurance Company Limited 2007 ACJ 1279 (Supreme Court)** wherein it was held that in order to continue the claim petition filed by the their predecessor in interest. The question of dependency of the proposed legal representatives upon the deceased or original claimant is wholly irrelevant. Therefore, the finding of the claim Tribunal was set aside and petition was held to be legally maintainable.

148. Honorable Apex Court in Custodian Branches Banco National Ultramarino Vs. Nalini Bai Naique, AIR 1989 SC 1589 while interpreting the words legal representative as defined in 2 (11) of the Act held that the definition of legal representative contained in Section 2 (11), CPC is inclusive in character and its scope is wide, it is not confined to legal heirs only. Instead it stipulates that a person who may not be legal heir competent to inherit the property of the deceased can represent the estate of the deceased person. It includes heirs as well as persons who represent the estate even without title either as executors or administrators in possession of the estate of the deceased. All such persons would be covered by the expression 'legal representative'. As observed in Gujarat State Road Transport Corporation Vs. Ramanbhai Prabhabhai, 1987 ACJ 561 (SC), a legal representative is one who suffers on account of death of a person due to a motor vehicle accident and need not necessarily be a wife, husband parent and child.

149. Judged in that background where a legal representative who is not dependent files an application for compensation, the quantum cannot be less than the liability referable to section 140 of the Acts. Therefore, even if there is no loss

of dependency the claimant if he or she is a legal representative will be entitled to compensation, the quantum of which shall be not less than the liability flowing from section 140 of the Act.

It is, thus clear from the above legal principles that even if a legal representative, who is not dependent upon the deceased, can maintain an application for compensation.

150. **In Oriental Insurance Company Limited Vs. Kahlon AIR 2021 Supreme Court 3913** the question of the maintainability of the claim petition was considered when original clamant was severely injured in a Motor Accident on 2.5.1999. The injured filed a claim petition under 166 of the Act and was awarded on 02.11.2006 a sum of Rs. 1 lakh with 9% interest by the claim Tribunal. The injured claimant filed an appeal before the High Court but unfortunately, he died on 06.11.2015 **during the pendency of appeal, not attributed to the injury suffered in the accident.** The daughter of the claimant who was unmarried aged 21 years was substituted in his place and High Court substantially enhanced the compensation. The Insurance Company took the matter in an appeal before the Apex Court and it was strongly urged that cause of action being personal to the injured abates on his death, which was not caused due to an accident. It was also contended that legal heir is not entitled to compensation under the head loss of estate, future prospectus, pain and suffering along with attendant charges as they do not form part of the estate of the deceased. This contention of the Insurance Company was refuted strongly by the legal heir of the injured/deceased. The Honorable Apex Court while considering the various authorities on the subject held that the claim for personal injury will not survive on death of the injured unrelated to the accident but the legal representatives could pursue the claim for enhancement of the claim for loss of the estate which would include expenditure on medical expenses, travelling, attendant, diet, doctor's fee and reasonable monthly annual accretion to the estate for a certain period. It is trite that the income which a person derives compositely form part of the expenditure on

himself, his family and the savings go to the estate. The unforeseen expenses as aforesaid naturally have to be met from the estate causing pecuniary loss to the estate. Thus the Tribunal has wrongly on technical ground rejected the claim for salary, medical expenses and percentage of disability as a result a meager compensation of Rs. 1 Lakh was granted by a cryptic order. It was held that Tribunal has to award just and fair compensation on account of loss of estate to the legal representative of the deceased.

151. **In Maimuna Begum Vs. Taju 1989 Mh LJ 352** the defense under Section 306 of the Indian Succession Act, 1925 on the old English Common Law maxim "action personal is moritur cum persona" was rejected opining that it would be unjust to – the heirs on that ground. It was also observed that the Act was a social welfare legislation providing for compensation by award to people who sustain bodily injuries or get killed. The grant of compensation had to be expeditious as procedural technicalities could not be allowed to defeat the just purpose of the act. The Courts in construing social welfare legislations had to adopt a beneficial rule of construction which fulfils the policy of the legislation favorable to those in whose interest the Act has been passed. Judicial discipline demanded that the words of a remedial statute be constructed so far as they reasonably admit so as to secure that relief contemplated by the statute and it shall not be denied to the class intended to be relieved. Rejecting the maxim of "action personal is moritur cum persona", on the premise that it has limited application, it was observed as under.

The question as to whether injury was personal or otherwise is of no significance so far as the wrong doer is concerned and he is obliged to make good the loss sustained by the injured. Legal heirs and legal representatives would have also suffered considerable mental pain and agony due to the accident caused to their kith and kin. Possibly they might have looked after their dear ones in different in monetary terms. We are therefore in full agreement with the view expressed by the Learned Single Judge of this Court in Gujarat State Road Transport Corporation's

case (supra) that even after death of the injured, the claim petition does not abate and right to sue survives to his heirs and legal representatives.

152. It was also observed by the Apex Court the Act is a beneficial and welfare legislation. Section 166 (1) (a) of the Act provides for a statutory claim for compensation arising out of an accident by an award to the person who has sustained the injury. Under Clause (b) of Section 166, compensation is payable to the owner of the property. In case of death, the legal representative of the deceased can pursue the claim. Property, under the Act, will have a much wider connotation than the conventional definition. If the legal heirs can pursue claims for loss of property akin to estate of the injured if he is deceased subsequently for reasons other than attributable to the accident or injuries under Clause 1(c) of Section 166. Such a claim would be completely distinct from person injuries to the claimant and which may not be the cause of death. Such claims of personal injuries would undoubtedly abate with the death of the injured. What would the loss of estate mean and what items would be covered by it are issues which has to engage our attention. The appellant has a statutory obligation to pay compensation in motor accident claim cases. This obligation cannot be evaded behind the defence that it was available only for personal injuries and abates on his death irrespective of the loss caused to the estate of the deceased because of injuries.

153. The Apex Court also held that court does not find any reason to deviate from the consistent judicial view taken by more than one High Court that loss of estate would include expenditure on medicines, treatment, diet attendant, Doctor's fee, etc, including income and future prospects which would have caused reasonable accretion to the estate but for the sudden expenditure which had to be met from and depleted the estate of the injured subsequently decreased.

154. However, the compensation under the head pain and suffering being personal injuries is held to be unsustainable and is disallowed. The High Court has not awarded anything towards medical expenses despite hospitalization for six months being an admitted fact. We therefore award a sum of Rs. 1,00,000/-

towards medical expenses. Hence, the reassessed total compensation would be Rs. 28,42,175/-, calculated hereunder:

Sr. No	Heads	Calculations
1	Annual Salary	Rs. 25084 *12= Rs. 3,01,008/- After deducting 25% 75 % of the annual salary will be= Rs. 2,25,756/-
2	15 % Future Prospects	15% of 2,25,756 = Rs. 33,863.4 Rs. 2,25,756 +33,863 = Rs. 2,59,619/-
3	Applying multiplier of 11	Rs 2,59,619 *11 = Rs. 28,55,809/-
4	10 % of the income tax deducted for 15 years	Rs. 2,25,7561,50,000, 10% of 75,756 = 7575.60/-
5	Medical Expenses	Rs. 1,00,000/-
6	Attendant Charges	Rs. 1,00,000/-
7	Grand Total Rs.	29,42,175/-
8	Compensation already awarded by the Tribunal and paid	Rs. 1,00,000/-
9	Net Total (7) –(8)	Rs. 28,42,175/-

109. It is thus clear that legal position is now well settled and a claim petition can continue in the event of death of injured or claimant irrespective of the fact whether death of injured is due to the injury suffered in the alleged accident or not. The question of dependency not much relevant so as to continue the claim petition under the Act. It is pertinent to mention here that amendment has been made in 2019 Section 166 so as to set at rest the controversy regarding the continuation of claim petition in the event of death of an injured Section 166 (5) notwithstanding anything contained. The newly added sub Section (5) in 166 is as under:

Notwithstanding anything in this Act or any other law for the time being in force, the right of a person to claim compensation for injury in an accident shall, upon the death of the person injured, survive to his legal representatives, **irrespective of**

whether the cause of death is relatable to or had any nexus with the injury or not.

This amendment has been made applicable vide a Section 53 of the amendment Act.

The Tribunals are also faced with a question whether a claim application which has been dismissed in default on account of non appearance of the claimant can be legally be restored or not. In this regard, it is appropriate to refer HP Motor Vehicle Rule 1999 frame under the Act and are as under:

The following provisions of the first schedule to the code of Civil Procedure, 1908 shall so far as may be, apply to proceedings before the claims Tribunal, namely, Order V, Rules 9 to 13 and 15 to 30: Order IX, Order XIII: Rule 3 to 10: Order XVI, Rules 2 to 21, Order XVII: Order XXI and Order XXIII, Rules 1 to 3.

169 and 176 (C)

Rules 233: Powers of Claims Tribunal:-

In endorsing the orders, the claims Tribunal shall have all the powers in regard to contempts, resistance and the like which a Civil Court may exercise in the execution of a decree.

It is thus clear from the perusal of the above rules that provision of order 9 which deals with restoration and setting aside of ex party order are applicable in proceeding before Claim Tribunal. In **United India Insurance Company Vs. Paras Ram 2002 ACJ 243 H.P.** It was held order 9 is applicable in proceedings under the Act as such an application filed by insurance company for setting aside ex-parte order is maintainable. Further, in case of any delay, an application under Section 5 of the limitation Act can also be filed by the aggrieved party for condonation of delay.

155. **In an interesting case K. Trivikaran Vs. Mohan Abdul Khan 2001 (2) T.A.C. 431** it was held that when a claim petition which has been dismissed in default can be restored by the Tribunal even if there is any delay in filing such application. In the said case even the restoration application filed by claimant was also dismissed in default, thereafter, a revision was filed in the High Court by the aggrieved claimant which was also dismissed. Claimant approached Honorable Apex Court which allowed the restoration of the application having regard to the peculiar situation and particularly the fact that the claimant has suffered several injuries. The court also observed that claims of the parties should not be defeated on procedural or technical grounds.

156. However, if the death of the claimant takes place during the pendency of an appeal filed by such claimant for enhancement of compensation, in that event, such an appeal would abate as cause of action does not survive Legal Representative of the deceased claimant. Resultantly, neither the appeal can continue nor the cross objection. This view has been taken in **Ram Asri Vs. State of HP 2005 (1) SLC 359= latest HLJ 2005 HP 438**.

157. Sometime the question as to grant of interest is also raised by the parties to the claim petition and there is a long line of decisions of the Apex Court that Compensation is to be granted from the date of filing the claim petition till the payment of the amount of compensation by the owner or insurer of the offending vehicle. There are no hard and fast rules for granting interest. However, in **Puttamma Vs. K.L. Narayana Reddy, 2014 ACJ 526 (SC)**, Honorable SC observed in para 60 as under:

"This court in **Arati Bazbaruah Vs. Deputy Director General, Geological Survey of India, 2003 ACJ 680(SC)**, noticed that varying rate of interest is being awarded by the Tribunals, High Courts and this court. In the said case, this court held that the rate of interest must be just and reasonable depending on the facts and circumstances of the case and should be decided after taking into consideration relevant factors like inflation, change in economy, policy being

adopted by the Reserve Bank of India from time to time, how long the case is pending, loss of enjoyment of life, etc."

158. **In Supe Devi Vs. National Insurance Company Limited, 2002 ACJ 1166 (SC)** Honorable Apex Court held that 9 per cent per annum would be the appropriate rate of interest to be awarded in motor accident claim compensation case.

159. **In Municipal Corporation of Delhi Vs. Association of Victim of Uphaar Tragedy, 2012 ACJ 48 (SC) and Syed Sadiq Vs. Divisional Manager, United India Insurance Company Limited, 2014 ACJ 627 (SC)**, interest was awarded at the rate of 9 per cent per annum.

160. **In Sube Singh Vs. Shyam Singh, 2018 ACJ 737 (SC),** rate of interest of 6 per cent per annum awarded by the Motor Accidents Claims Tribunals was modified by Honorable Supreme Court to 9 per cent per annum.

In view of the observations in above referred judicial precedents, RBI's lending rate of interest, mercantile rate of interest prevalent in the locality, rate of interest allowed on fixed deposit receipts and charged on loans by nationalized banks and other relevant factors, it will be appropriate to modify the rate of interest of 6 per cent per annum awarded by the Tribunal to 9 per cent annum.

EXECUTION OF AWARD

161. Section 174 of the Act deals with the execution of the award asked by the claim Tribunal and it reads as under:

Recovery of money from insurer as arrear of land revenue- Where any amount is due from any person under an award, the Claims Tribunal may, on an application made to it by the person entitled to the amount, issue a certificate for the amount to the Collector and the Collector shall proceed to recover the same in the same manner as an arrear of land revenue.

162. Now an amendment has been made in Section 169 vide a Motor Vehicles (Amendment) Act 2019 and the same is as under:

"For the purpose of enforcement of its award, the Claim Tribunal shall also have all the powers of a civil court in the execution of a decree under the Code of Civil Procedure, 1908, as if the award were a decree for the payment of money passed by such court in a civil suit."

Section 169 as it stood before the amendment on 9.08.2019 was enacted reads as follows:

"169. Procedure and powers of Claims Tribunals:- (1) in holding any inquiry under section 168, the Claims Tribunal may, subject to any rules that may be made in this behalf, follow such summary procedure as it thinks fit.

(2) The Claims Tribunal shall have all the powers of a civil court for the purpose of taking evidence on oath and of enforcing the attendance of witnesses and of compelling the discovery and production of documents and material objects and for such other purposes as may be prescribed: and the Claims Tribunal shall be deemed to be a civil court for all the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974).

(3) subject to any rules that may be made in this behalf, the Claims Tribunals may, for the purpose of adjudicating upon any claim for compensation, choose one or more persons possessing special knowledge of any matter relevant to the inquiry to assist it in holding the inquiry."

At this stage it is also necessary to refer to HP motor vehicle rules 1999 framed by our state under the provision of the Act:

Rule 232: The following provisions of the first schedule to the code of Civil Procedure, 1908 shall so far as may be, apply to proceedings before the claims Tribunal, namely, Order V. Rules 9 to 13 and 15 to 30: Order IX, Order XIII: Rule

3 to 10: Order XVI, Rules 2 to 21, Order XVII: Order XXI and Order XXIII, Rules 1 to 3.

169 to 176 (C)

Rules 233: Powers of Claims Tribunal:-

In endorsing the orders, the claims Tribunal shall have all the powers in regard to contempt's, resistance and the like which a civil Court may exercise in the execution of a decree.

163. The question of power of the Tribunal to execute the award in the wake of the latest amendment discussed above came for consideration before the High Court of Punjab and Haryana in **Baljit Kaur Vs. National Insurance Company Limited 2021 ACJ 794** the moot point before the court was whether section 169 (4), as stated above would apply retrospectively to pending proceedings and the same was answered in the affirmative. In fact, in the instant case execution application was filed before the Claim Tribunal by the Decree holder/claimants seeking assistance of the court by way of attachment of the bank accounts of judgment writer. The Tribunal issued a necessary certificate relegating the petitioners to the collector so as to recover the amount of compensation as arrears of land revenue. The High Court referred to the M.V. rules both in the state of Punjab and Haryana which are similar to the rule framed by state of H.P. It was also held that power of execution of the Claim Tribunal to enforce its award is not limited to only the one method namely, issuance of certificate to the collector for recovery of the amount due under the award as arrears of land revenue. The Tribunal possesses inherent jurisdiction to enforce its own award in accordance with provision of CPC as applicable to the execution of the orders and decrees passed by the civil court. The court observed that procedural laws are hand maid to the administration of justice and not the mistress of the justice delivery system. Accordingly, impugned order passed by the passed Claim Tribunal was set aside and held to be bad in law.

164. A full bench of Madhya Pradesh High Court **in Sarmaniyabai Vs. MP Raja Privhan Nigam 1990 ACJ 862** similarly held that Claim Tribunal has jurisdiction to enforce their awards by adopting procedure contained in C.PC. It possess inherent jurisdiction to impose his own award in accordance with provisions of CPC as applicable to execution of the order in decree. In the same manner the Tribunal has power to execute the interim award passed under Section 140 of the Act. Since there was divergence of opinion amongst the various High Courts on the issue of mode of execution of the award vis attachment of account, detention of Judgment Writer etc. The parliament has noticed the fact that holders of the awards facing great difficulty in executing the same before the collector and most of the tribunal are shedding of their responsibility by issuing a certificate to the collector. Accordingly, now position has been clarified by inserting sub section 4 in section 169.

165. **In V. KalaBharati Vs. Oriental Insurance Co. Limited 2014 ACJ 1612 (SC)** A three judge bench considered the question whether the amount deposited by the judgment debtor in a claim case is to be adjusted first towards interest or towards the principle amount and it was held that the amount is to be adjusted towards interest and cost first and thereafter towards the principle amount. It was further held that award of the Tribunal is to be treated like a decree of a civil court. Particularly, when under the rules the Claim Tribunal is invested with such powers.

INSURANCE OF MOTOR VEHICLES AGAINST THIRD PARTY RISKS

166. Chapter XI i.e. Section 145-149 deal with insurance of Motor Vehicles against Third party risks. Section 146 specifically provides that no person shall use, except as a passenger or allow any other person to use a motor Vehicle in a public place unless there is in force a policy of insurance. The expression third party is defined in Section 145(G) and it simply says third party includes the government. It is also provided in Sub Section 2 of Section 146 that the provision

relating to insurance policy shall not apply to any vehicle owned by the Central or State Government but this does not mean that vehicle owned by the state government cannot obtain policy from an insurance company. It is optional for the centre or the state government to obtain the policy of insurance in respect of vehicle belonging to the Centre or State government. Section 147 of the deal with the requirement and limits of liability in respect of policy issued by the insurance company. The Tribunals are required to examine the certificate of insurance, insurance policy as well as terms and condition contained therein before fastening the liability on insurance company. Most of the insurance companies are issuing different kinds of policies so as to cover different type of risks. However, Act policy or third party insurance is the minimum policy which is required to be obtained by the owner of the vehicle so as to use the vehicle in a public place.

167. Normally, in every case, insurance company raises the plea of breach of conditions of insurance policy so as to escape its liability under the law. The breach of conditions of insurance policy may relate to driver not holding a valid and effective license, vehicle being driven without route permit or gratuitous passenger being carrying in a commercial vehicle or a personal car etc.

168. Previously, the law was clear that in case driver of the offending vehicle is not holding a valid and effective driving license or vehicle being driven without a driving license. The insurance company is not legally liable to indemnify the insured. Sections 3 of the Act clearly provides that no person shall drive a Motor Vehicle in any public place unless he holds an effective driving license issued by the competent authority. It also provides that no personal shall drive a transport vehicle hired for his own use or rented any scheme unless his driving license specifically entitled him to drive such transport vehicle. The Act also defines the various categories of vehicle weight wise and the requirement of law is a person holding driving license for a particular category of vehicle is not entitled to use such driving license for different or higher category of vehicles. for example a person holding license to drive light motor vehicle i.e. scooter or motor cycle etc cannot drive a heavy vehicle. There are also cases where the driver is holding a

fake or forged driving license with or without the knowledge of the owner of the vehicle. Some time accident is caused by the driver of such vehicle and question of liability of the insurance company in such like cases qua third party become important.

169. The insurance company normally cannot avoid its liability except on the grounds mentioned in Section 149 (2) of the Act and in order to escape the liability the insurance company must plead and prove the defense taken in the pleadings. The insurance company is also legally required to tender in evidence the insurance policy so as to determine the question of breach of condition of insurance policy as well as its liability qua third party. Onus to prove the breach of condition of insurance policy is always upon the insurance company. In case proper material is not brought on record, the insurance company shall remain liable, even if the defense of breach of conditions of insurance policy is available.

170. Section 147 deals with the limits of liability of the insurance company, however, there is no bar for the insurance company to cover a higher liability i.e. liability for a greater amount than that mentioned in the Act. Thus, the insured and insurer can enter into a contract so as to provide for higher liability. However, as discussed above, the insurance company cannot avoid the liability except on the grounds and not any other ground, which have been provided in Section 149 (2)of the Act. In recent time, Supreme Court while dealing with the provisions of Motor Vehicle Act has held that even if the defense has been pleaded and proved by the Insurance Company, insurance co. is not absolved from liability to make payment to the third party but can recover such amount from the owner insured. The courts, one after one, have held that the burden of proving availability of defense is on Insurance Company and Insurance Company has not only to lead evidence as to breach of condition of policy or violation of provisions of Section 149 (2) but has to prove also that such act happened with the connivance or knowledge of the owner. If knowledge or connivance has not been proved, the Insurance Company shall remain liable even if defence is available.

171. The Honorable Apex Court **in the case Sohan Lal Passi Vs. P. Shesh Reddy 1996 ACJ 1044 and Skandia Insurance Company Limited Vs Kokilaben Chandravadan and others, 1987 ACJ 411** considered the question whether there was any breach of contract between owner of the vehicle and the insurance company the factual matrix shows that vehicle was handed over by the owner to a licensed driver and the driver during the course of journey handed over the vehicle to the cleaner without the knowledge of the owner of the vehicle the cleaner ultimately caused the accident and the insurance company took the plea of breach of condition of insurance policy in as much as cleaner was not holding any valid or effective driving license. Ultimately, the Apex Court observed that in order to bring the case within the mischief of "breach" it has to be proved that there was a willful default on the part of the insured. Court has already stated above that no sane person would like to give the custody or keys of the vehicle to his minor son aged 14 years much less to the friend of the minor. Had owner of vehicle parted the possession of the vehicle to unlicensed driver or a minor directly, he would have contemplated very easily that doing so he would have invited the trouble. The Honorable Supreme Court in 1987 ACJ 411: 1987 (1) TAC 471, while interpreting the expression "breach" came to the conclusion that if it proved on the record that the owner of the vehicle had done everything in his power to engage driver by examining or verifying his license, in such a situation he cannot be held guilty of a deliberate breach. There is no evidence on the record to indicate that the owner of the vehicle parted the keys of the vehicle to his son deliberately or knowingly. If in the absence of the father, son takes the keys of the vehicle and drives the vehicle for a fun and caused accident, it cannot be said that there was an express or implied consent on the part of the owner.

172. It is thus clear that insurance company cannot escape its liability to pay compensation to the third party merely by taking shelter under the plea of breach of condition. As held in above authorities, such breach must be willful or intentional or fundamental in nature so as to escape the liability under the law. The Apex Court also observed that contract of insurance is normally in a printed form

and insurer is invariably incorporating such condition so as to escape the liability under the law. These conditions are to be interpreted in a rational manner so as to help the victims of the accident.

173. There was divergence of opinion in the various decisions of high courts as well as the Honorable Supreme Court on the question whether a driver who is having a license to drive 'light motor vehicle' and is driving a 'transport vehicle' of that class, is required additionally to obtain an endorsement authorizing him to drive a transport vehicle. **In Ashok Gangadhar Maratha V. Oriental Insurance Company Limited, 2000 ACJ 319 (SC); S. Iyyapan Vs. United India Insurance Company Limited, 2013 ACJ 1944 (SC) and Nagashetty Vs. United Indian Insurance Company Limited, 2001 ACJ 1441 (SC)**, the view taken by Honorable Supreme Court was that when a driver is holding a license to drive 'light motor vehicle', he is competent to drive a 'transport vehicle' of that category without specific endorsement to drive the transport vehicle; whereas **in New India Assurance Company Limited Vs. Prabhu Lal 2008 ACJ 627 (SC)**, a view had been taken that before 2001 also, it was necessary for a driver possessing driving license to drive light motor vehicle to obtain an endorsement to drive transport vehicle of that class; whereas in **National Insurance Company Limited Vs. Annappa Irappa Nesaria, 2008 ACJ 721 (SC)**, a distinction was made in the legal position which existed before 28.03.2001, i.e. the date of amendment of the form and subsequent thereto. It was opined that before 28.03.2001 it was not necessary for the holder of a license to drive light motor vehicle to obtain an endorsement to drive transport vehicle of that class. He could drive transport vehicle of light motor vehicle category on the basis of holding a license to drive light motor vehicle. **In New India Assurance Company Limited Vs. Roshanben Rahemansha Fakir, 2008 ACJ 2161 (SC) and Oriental Insurance Company Limited Vs. Angad Kol, 2009 ACJ 1411 (SC)**, the view had been taken that a drive holding license to drive light motor vehicle in order to drive 'transport vehicle' of that class has to obtain a specific endorsement on license authorizing him to drive a transport vehicle.

174. In view of the conflicting decisions, following seminal questions were referred for decision to the larger Bench **in Mukund Dewangan Vs. Oriental Insurance Company Limited, 2017 ACJ 2011 (SC)**,

"(1) What is the meaning to be given to the definition of 'light motor vehicle' as defined in section 2 (21) of the Motor Vehicles Act? Whether transport vehicles are excluded from it.

(2) Whether 'transport vehicle' and 'omnibus' the 'gross vehicle weight' of either of which does not exceed 7500 kg would be a 'light motor vehicle' and also motor car or tractor or a road-roller, 'unladen weight' of which does not exceed 7500 kg and holder of a license to drive the class of 'light motor vehicle' as provided in section 10 (2) (d) would be competent to drive a transport vehicle or omnibus, the 'gross vehicle weight' of which does not exceed 7500 kg or a motor car or tractor or road-roller, the 'unladen weight' of which does not exceed 7500 kg?

(3) What is the effect of the amendment made by virtue of Act 54 of 1994 w.e.f. 14.11.1994 while substituting clauses (e) to (h) of section 10 (2) which contained 'medium goods vehicle', medium passenger ;motor vehicle', 'heavy goods vehicle' and 'heavy passenger motor vehicle' by 'transport vehicle'? Whether insertion of expression 'transport vehicle' under section 10 (2) (e) is related to said substituted classes only or it also excluded transport vehicle of light motor vehicle class from the purview of sections 10 (2) (d) and 2 (41) of the Act?

(4) What is the effect of amendment of Form 4 as to the operation of the provisions contained in section 10 as amended in the year 1994 and whether the procedure to obtain the driving license for transport vehicle of the class of 'light motor vehicle' has been changed?"

The said questions were answered by the larger Bench in that case in para 46 of the judgment which is reproduced as under:

(46) Section 10 of the Act requires a driver to hold a license with respect to the class of vehicles and not with respect to the type of vehicles. In one class of vehicles, there may be different kinds of vehicles. In one class of vehicles, there may be different kinds of vehicles. If they fall in same class of vehicles, no separate endorsement is required to drive such vehicles. As light motor vehicle includes transport vehicle also, a holder of light motor vehicle license can drive all the vehicles of that class including transport vehicles. It was the pre-amended position as well the post-amended position of Form 4 as amended on 28.03.2001. Any other interpretation would be repugnant to the definition of 'light motor vehicle' in section 2 (21) and the provisions of section 10 (2) (d), rule 8 of the Rules of 1989, other provisions and also the forms which are in tune with the provisions and also the form which are in tune with the provisions. Even otherwise the forms never intended to exclude transport vehicles from the category of 'light motor vehicles' and for light motor vehicle from the category of 'light motor vehicles' and for light motor vehicle, the validity period of such license holds good and applies for the transport vehicle of such class also and the expression 'transport vehicle' in section 10 (2) (e) of the Act would include medium goods vehicle, medium passenger motor vehicle, heavy goods vehicle, heavy passenger motor vehicle which earlier found place in section 10 (2) (e) to (h) and our conclusion is fortified by the syllabus and rules which we have discussed. Thus we answer the questions which are referred to us thus:

(i) 'Light Motor Vehicle" as defined in section 2 (21) of the Act would include a transport vehicle as per the weight prescribed in section 2 (21) read with sections 2 (15) and 2 (48). Such transport vehicles are not excluded from the definition of light motor vehicle by virtue of the Amendment Act 54 of 1994.

(ii) A transport vehicle and omnibus, the gross vehicle weight of either of which does not exceed 7500 kg, would be a light motor vehicle and also motor car or tractor or a road-roller, 'unladen weight' of which does not exceed 7500 kg and holder of a driving license to drive class of 'light motor vehicle' as provided in

section 10 (2) (d) is competent to drive a transport vehicle or omnibus, the gross vehicle weight of which does not exceed 7500 kg or a motor car or tractor or road-roller, the 'unladen weight' of which does not exceed 7500 kg. That is to say, no separate endorsement on the license is required to drive a transport vehicle of light motor vehicle class as enumerated above. A license issued under section 10 (2) (d) continues to be valid after Amendment Act 54 of 1994 and 28.03.2001 in the Form.

(iii) The effect of the amendment made by virtue of Act 54 of 1994 w.e.f. 14.11.1994 while substituting clauses (e) to (h) of section 10 (2) which contained 'medium goods vehicle' in section 10 (2) (e), 'medium passenger motor vehicle' in section 10 (2) (f), 'heavy goods vehicle' in section 10 (2) (g) and 'heavy passenger motor vehicle' in section 10 (2) (h) with expression 'transport vehicle' as substituted in section 10 (2) (e) related only to the aforesaid substituted classes only. It does not exclude transport vehicle from the purview of section 10 (2) (d) and section 2 (41) of the Act, i.e., light motor vehicle.

(iv) The effect of amendment of Forum 4 by insertion of 'transport vehicle' is related only to the categories which were substituted in the year 1994 and the procedure to obtain driving license for transport vehicle of class of 'light motor vehicle' continues to be the same as it was and has not been changed and there is no requirement to obtain separate endorsement to drive transport vehicle, and if a driver is holding license to drive light motor vehicle, he can drive transport vehicle of such class without any endorsement to that effect."

175. In view of the decision of **Honorable Supreme Court in Mukund Dewangan's case, 2017 ACJ 2011 (SC)**, a driving license for LMV would be valid for driving transport vehicles falling within the category of LMV, therefore, respondent No. 1, who was having driving license authorizing him to drive LMV at the time of accident, was entitled to drive the offending transport vehicle, which was registered as 'light goods vehicles' but due to having gross vehicle weight of 2750 kg fell within the category of LMV, without requirement of any endorsement

for driving of transport vehicle. Therefore, respondent No. 1 must be held to be having valid and effective driving license.

176. Earlier, not holding a valid driving license was a good defense to the insurance Company to avoid liability. It has been held by the Supreme Court that the Insurance Company is not liable for claim if driver is not holding effective & valid driving license. It has also been held that the learner's license absolves the insurance company from liability, but lateron Supreme Court in order to give purposeful meaning to the Act has made this defence very difficult. In Sohan Lal Pasi's case it has been held for the first time by the Supreme Court that the breach of condition should be with the knowledge of the owner. If owner's knowledge or willful default with reference to fake driving license held by driver is not proved by the Insurance Company, such defence, which was otherwise available, cannot absolve insurer from the liability.

177. A Bench of three Judges of Honorable Apex Court **in National Insurance Company Limited vs. Swaran Singh 2004 ACJ 1 (SC)** in an exhaustive and elaborate judgment dealt with the question of violations of terms and condition of Insurance policy issued under the Act in a relation to fake or Invalid license of the driver. After referring to the earlier case law on the subject and critical analysis of the relevant provisions and case law, it was held in para 102 as under:

(i) "Chapter XI of the Motor Vehicles Act, 1988 providing compulsory insurance of vehicles against third party risks is a social welfare legislation to extend relief by compensation to victims of accidents caused by use of motor vehicles. The provisions of compulsory insurance coverage of all vehicles are with this paramount object and the provisions of all vehicles are with this paramount object and the provisions of the Act have to be so interpreted as to effectuate the said object.

(ii) An insurer is entitled to raise a defence in a claim petition filed under Section 163-A or section 166 of the Motor Vehicles Act, 1988, inter alia, in terms of section 149 (2) (a) (ii) of the said Act.

(iii) The breach of policy condition, e.g., disqualification of the driver or invalid driving license of the driver, as contained in sub-section (2) (a) (ii) of section 149, has to be proved to have been committed by the insured for avoiding liability by the insurer. Mere absence, fake or invalid driving license or disqualification of the driver for driving at the relevant time, are not in themselves defences available to the insurer against either the insured or the third parties. To avoid its liability towards insured, the insurer has prove that the insured was guilty of negligence and failed to exercise reasonable care in the matter of fulfilling the condition of the policy regarding use of vehicles by a duly licensed driver or one who was not disqualified to drive at the relevant time.

(iv) The insurance companies, however, with a view to avoid their liability must not only establish the available defence(s) raised in the said proceedings but must also establish 'breach' on the party of the owner of the vehicle; the burden of proof where for would be on them.

(v) The court cannot lay down any criteria as to how the said burden would be discharged, in as much as the same would depend upon the facts and circumstances of each case.

(vi) Even where the insurer is able to prove breach on the part of the insured concerning the policy condition regarding holding of a valid license by the driver or his qualification to drive during the relevant period, the insurer would not be allowed to avoid its liability towards the insured unless the said breach or breaches of the condition of driving license is/are so fundamental as are found to have contributed to the cause of the accident. The Tribunals in interpreting the policy conditions would apply 'the rule of main purpose' and the concept of 'fundamental breach' to allow defences available to the insurer under section 149 (2) of the Act.

(vii) The question as to whether the owner has taken reasonable care to find out as to whether the driving license produced by the driver (a fake one or otherwise) fulfils the requirements of law or not will have to be determined in each case.

(viii) If a vehicle at the time of accident was driven by a person having a learner's license, the insurance companies would be liable to satisfy the decree.

(ix) The Claims Tribunal constituted under Section 165 read with section 168 is empowered to adjudicate all claims in respect of the accidents involving death or bodily injury or damage to property of third party arising from use of motor vehicle. The said power of the Tribunal is not restricted to decide the claims, inter se, between claimant or claimants on one side and insured, insurer and driver on the other. In the course of adjudicating the claim for compensation and to decide the availability of defence or defences to the insurer, the Tribunal has necessarily the power and jurisdiction to decide disputes, inter se, between insurer and the insured. The decision rendered on the claims and disputes, inter se, between the insurer and insured in the course of adjudication of claim for compensation by the claimants and the award made thereon is enforceable and executable in the same manner as provided in section 174 of the Act for enforcement and execution of the award in favour of the claimants.

(x) Where on adjudication of the claim under the Act the Tribunal arrives at a conclusion that the insurer has satisfactorily proved its defence in accordance with the provisions of section 149 (2) read with sub-section (7), as interpreted by this court above, the Tribunal can direct that the insurer is liable to be reimbursed by the insured for the compensation and other amounts which it has been compelled to pay to the third party under the award of the Tribunal. Such determination of claim by the Tribunal will be enforceable and the money found due to the insurer from the insured will be recoverable on a certificate issued by the Tribunal to the Collector in the same manner under section 174 of the Act as arrears of land revenue. The certificate will be issued for the recovery as arrears of land revenue only if, as required by sub section (3) of section 168 of the Act, the insured fails to deposit the amount awarded in favour of the insurer with thirty days from the date of announcement of the award by the Tribunal.

(xi) The provisions contained in sub-section (4) with the proviso there under and sub-section (5) which are intended to cover specified contingencies mentioned

therein to enable the insurer to recover amount paid under the contract of insurance on behalf of insured can be taken recourse to by the Tribunal and be extended to claims and defences of insurer against insured by relegating them to the remedy before regular court in cases where on given facts and circumstances adjudication of their claims inter se might delay the adjudication of the claims of the victims."

The ratio of the above authority was also cited with approval by **the Apex Court in a Oriental Insurance Company Limited Vs. Nangappan 2004 ACJ 721** wherein it was held as under:

"(7)…'We, therefore, are of the opinion that the interest of justice will be subserved if the appellant herein is directed to satisfy the awarded amount in favour of the claimant if not already satisfied and recover the same from the owner of the vehicle. For the purpose of such recovery, it would not be necessary for insurer to file a separate suit but it may initiate a proceeding before the executing court as if the dispute between the insurer and the owner was the subject-matter of determination before the Tribunal and the issue is decided against the owner and in favour of the insurer'."

In view of the decisions of the Apex Court referred to above, this court is of the view that the appellant insurer has to pay the amount of compensation to the claimants initially and in turn can recover the same from the insured.

178. In Papu Kumar Vs. Vinod Kumar Lamba 2018 ACJ 690 it was held by Apex Court that mere producing of valid insurance certificate in respect of offending truck is not enough for the owner to make insurance company liable to discharge liability arising from rash and negligent driving by the driver of the vehicle. The insurance company can be fastened with the liability on the basis of the valid insurance policy only after basic facts are pleaded and established that the vehicle was not duly insured but also that it was driven by an authorized person having a valid driving license. The insurance company would become liable only after such foundational facts are pleaded and proved by the other side. In the said case the owner of the vehicle respondent no. 1 had produced the

insurance certificate indicating that vehicle No. DIL 5955 was comprehensively insured by the respondent No. 2-insurance company for unlimited liability. Applying the dictum in the case of National Insurance Company Limited, 2004 ACJ 1 (SC), to subserve the ends of justice, the insurer, respondent NO. 2, shall pay the claim amount awarded by the Tribunal to the appellant in the first instance, with liberty to recover the same from the owner of the vehicle, respondent No. 1, in accordance with law."

179. Earlier to this also, **in New India Insurance Company Vs Kamla AIR 2001 (SC) 1419** it was held that a fake driving license even if renewed by the licensing authority cannot legally transform a fake license to a genuine license in as much as forgery being antithesis to legality. A fake license cannot get its forgery outfit stripped off merely on account of some officer renewing such a fake or forged license. It is just possible that licensing authority may not have been knowledge or means to ascertain the geniuses of such license. However, insurance company is statutory liable to pay compensation to third party and can recover the said amount from the insured/owner a similar view was taken in the case of **United India Insurance Company Vs. Laru AIR 2003 SC 1292**. It was also held that in order to avoid its liability, it is not sufficient that person driving at the time of accident was not duly licensed, the insurance company must establish that breach was on the part of insured who has not been due caution at the time of engaging the driver. Normally, at the time of engaging a driver the insured owner is accepted to formally examine the driving license and also insuring that driver is competent to drive such a vehicle.

180. **In National Insurance Company Limited Vs. Kusum Rai II (2006) ACC 19** (S.C), it was a case where a jeep was being used as a taxi i.e. commercial vehicle. The driver of the jeep was holding license for L.M.V. whereas he was driving a commercial vehicle i.e. taxi. The owner has not appeared for witness box and the victim in the same case was 12 year boy form a poor family. While putting reliance upon the case of Swaran Singh Supra it was observed that

Insurance Company is liable to indemnify the compensation with a right to recover the same. It is necessary mention here that in view of ratio of the decision in Mukund Dewagun Case Supra, the license of the driver in the above said case cannot be said to be invalid in as much as a three judge bench in Mukund case has held that there is no requirement to obtain a separate endorsement to drive transport vehicle. It was further stated in the case that if a driver is holding license to drive a light motor vehicle, he can drive transport vehicle also of such class without any endorsement to that effect.

181. **In Oriental Insurance Company Limited Vs. Vidya 2006 ACJ 723 S.C** the license of both the driver was found to be fake on verification by the insurance company the owner of the vehicle have not filed any reply to the claim petition nor furnished particular of the driving license. Even the owner did not mention in the pleading that he had verified the particulars of the driving license. In such a factual background, it was held insurance company would pay the amount of compensation initially with a right to recover the same from the insured/owner. It is thus clear from the legal position discussed above that even when driver of the offending vehicle is driving without a valid license or the said license was forged or fake, it will not initially absolve the insurance company from making the payment to claimant i.e. third party but the insurance company can recover the amount of compensation from the insured without filing a separate case.

182. **In Oriental Company Limited Vs. Vidya Devi 2008 (1) TAC 162 HP= latest HLJ 2008 HP 1488** the driver was holding only a fake license on the date of accident. The owner and driver of the vehicle did not appear before the claim tribunal as such both were proceeded ex parte. Neither any reply was filed on behalf of the owner and driver nor owner or the driver entered into the witness box so as to explain the circumstances leading to the accident or to prove that owner had taken due care and examined the driving license of the driver at the time of his engagement. Thus, there was nothing on the record to show that driver had a valid driving license to drive the vehicle. It was held by the high Court that it is well

established rule of evidence that no party can be expected to lead evidence to prove the negative. It is the owner only who can come and state in the court that he has verified the driving license. The driver license may on a mere look appears to be genuine. Resultantly, the owner and driver of the vehicle were held vicariously liable to pay the compensation. However, in view of the decision of the Honorable Apex **Court in Swaran Singh case Supra and National Insurance Company Vs. Baljeet Kaur 2004 ACJ 428**. It was held that insurance company will initially pay the amount of compensation so awarded to the claimant and will be at liberty to recover the same from the insured owner.

183. **In oriental Insurance Company Limited Vs. Parkasho Devi 2011 ACJ 2282 HP** the question of the validity of the driving license which was alleged by the insurance company to be fake was considered by our High Court qua third party liability. The driver in his evidence has clearly stated that all the relevant documents were shown to the owner of the vehicle at the time of his engagement. Insurance Company did not cross examine the drive on this aspect though driver license fake but it was renewed from time to time by license authority which also could not discover that license was fake. The Tribunal has passed the award directing the insurance company to satisfied the same. The only question raised in the appeal was whether the driver had a valid driving license or the same was fake. It was urged on behalf of insurance company that owner of the vehicle has not stepped into the witness box so as to depose whether he had made necessary verification or examine the license at the time of engagement of the driver. The High held that driver has clearly stated in his statement that he had shown all the relevant document to the owner and there was no cross examination of the driver on this aspect of the matter by the insurance company. No question was put to driver as to what were the documents shown by him to the owner accordingly the award pass by the claim Tribunal directing the insurance company to satisfy the same was upheld. A similar was taken in **National Insurance Company Limited Vs. Parveen Kumar 2013 ACJ 1787** In this case the claimant had suffered several injuries in an accident and the insurance company took the plea that driver

of the offending vehicle had no valid driving license. The driver had produced his driving license before the claim tribunal. owner of the vehicle also stated that he had examined the license and bona fidely believed that it was genuine. It was held by HP High Court that there is no violation of the terms of insurance policy and insurance company cannot be exempted its liability to satisfy the award though the license may ultimately to form to be fake.

184. **In United India insurance co. Ltd. Vs Raj Bahadur 2013ACJ 2701 H.P.** the insurance co. alleged the driving licence to be fake. The owner of vehicle stated that she believed that driver was holding a valid licence and his driving licence was renewed by licensing authority many times. It was held by High Court that mere fact of a fake licence is not enough to absolve the liability of insurance co. as insurance co. was required to prove that owner was guilty of breach of policy conditions. It was also required to lead evidence that owner had reasons to know that licence was fake or forged. there was no reason to disbelieve the version of owner, particularly when forgery could not be detected by licensing authority. Resultantly insurance co. was held liable to pay compensation. **In Lal Chand Vs. Oriental Insurance Company Limited 2006 ACJ 2161 Hon'ble Apex Court** held that where the owner had seen and examined the driving license produced by the driver and also taken driving test, but later on his licesne was discovered to be fake. It was held that what was within the competence of the owner he has done all that and insurance company is liable to satisfy the award. Reliance was placed in taking the above view upon the case of **United India Insurance Company Limited Vs. Lehru 2003 ACJ 611 (SC) and National Insurance Company Limited Vs. Greeta Bhat 2008 ACJ 1498 SC**.

185. **In PEPSU Road Transport Corporation Vs. National Insurance Company Limited 2013 ACJ 2440** it was a case when bus (PEPSU Road Transport Corporation- PRTC) met with an accident on 02.10.2001 resulting in death of one Gujinder Singh Modi the insurance company disputed the validity of license which was allege to be fake whereas PRTC- owner of the bus allege that driver was imparted training of driving and he had six years of experience when

the accident took place. The Corporation has also examined the documents of the driver at the time of his engagement which appears to be genuine. The tribunal pass award against the owner/driver of the company absolving the insurance company of its liability to pay the award as the license of the driver was fake. The insurance company took the help of local commissioner who examine the driving license issued at Darjeeling on verification no such license available in the record it was reported that the driving license of the driver was never issued by the license authority Darjeeling. No relieve was granted to the owner of the vehicle in the High Court as such an appeal was filed before the Apex Court it was strongly contended on behalf of the owner/driver that proper training was given to the driver at Driving school Patiala and reasonable steps were taken by the Insured at the time of the engagement of the driver It was urged that there was no breach of the insurance policy the apex court set aside the judgment of Tribunal and held that there was no fault of corporation as such insurance company cannot be exempted from its liability to indemnify the award . In taking this view, the Apex Court put reliance on the case of

Skandia Insurance Company Limited Vs. Kokilaben Chandravadan, 1987 ACJ 411 SC

Sohan Lal Passi Vs. P Sesh Reddy, 1996, ACJ 1044 SC

New India Assurance Company Limited Vs. Kamla, 2001 ACJ 843 SC

United India Insurance Company Limited Vs. Lehru, 2003 ACJ 611 SC

National Insurance Company Limited Vs. Swaran Singh, 2004 ACJ 1 SC

National Insurance Company Limited Vs. Laxmi Narain Dhut, 2007 ACJ 721 SC.

186. **In Kajal shiv Vs. Kuldeep Singh 2021 ACJ 273 JK** the question of liability of insurance was seriously raised on the ground that driver not having a valid driving license to drive the vehicle. In fact in the said case driver of the bus

was driving the same in a rash and negligent manner resulting in an accident on 03.01.2007. The passenger suffered injuries and some of them died The Tribunal asked the award against the owner but the driver of the bus and exonerated the insurance company on the ground that driver of the bus was holding license to drive light motor vehicle (LMV) but he was driving heavy passenger vehicle. An official of the RTO concerned could not initially produce record of driving license but deposed that driver was holding license to drive Motorcycle/LMV. An appeal was filed against the said award and Honorable High Court placing reliance on case of **Swaran Singh Supra Kusum Lata Vs. Satbir 2011 ACJ 1926** held as under.

187. Assuming though not admitting that the respondent NO. 1 was not holding a valid and effective driving license authorizing him to drive the offending vehicle, which as claimed was a heavy passenger vehicle, in that eventuality also by operation of section 149 of the Motor Vehicles Act, 1988 and the law laid down in the case of National Insurance Company Limited Vs. Swaran Singh, 2004 ACJ 1 (SC), which was followed later in the case of **Kusum Lata Vs. Satbir, 2011 ACJ 926 SC**, the respondent No. 3 was liable to satisfy the award and pay compensation to the third party, i.e., the appellants herein and thereafter could have recovered the same from respondent No. 2, the insured, who was guilty of committing the breach of fundamental condition of the policy of insurance. In no way, the respondent No. 3 could have been absolved of its liability absolutely as has been done by the Tribunal. In para 13 of Kusum Lata's case, the SC held thus:

"(13) In respect of the dispute about license, the Tribunal has held and, in our view rightly, that the insurance company has to pay and then may recover it from the owner of the vehicle. This court is affirming that direction in view of the principles laid down by a three-judge Bench this court in the case of **National Insurance Company Limited Vs. Swaran Singh 2004 ACJ 1 (SC).**"

144. Needless to say that the breach of any essential condition of the contract of insurance may absolve the insurer to indemnify the insured, but its statutory

liability created under section 149 of the Motor Vehicles Act in so far as third party is concerned shall subsist notwithstanding that the insurer may, for breach of such condition, cancel or withdraw the policy of insurance. In such situation, as provided under section 149 of the Act, the appellant insurance company, which is made to meet the statutory liability, shall be entitled to recover the said amount from the insured. In any case, the award qua the third party is required to be satisfied by the insurer if it had issued the certificate of insurance/insurance policy qua the offending vehicle and the same was in operation at the time of accident.

188. Likewise, **in National Insurance company Limited Vs. Naresh Kumar Jav singh Bamaniya 2021 ACJ 995** the accident occurred on 19.06.2007 when driver was driving a tractor in rash and negligent manner in which passengers were sitting in trolley attached with tractor, due to rash and negligent driving the tractor along with trolley turned turtle. several claim petitioner were filed by the injured claimants and Tribunal came to the conclusion that accident was the result of rash and negligent driving of the driver. Tribunal also held that onus was upon the insurance company to adduce evidence that driving license of the driver was not valid to drive tractor. Feeling aggrieved the insurance company field appeal in High Court and strongly raised the issue of driving license in the High Court. It was submitted that there was breach of terms and conditions of the insurance policy as driver was driving a heavy vehicle, the unladen weight of which was 9500 kg. It was also argued that the offending vehicle did not fall within the definition of Light Motor Goods vehicle as such insurance company is not liable. On behalf of owner it was urged that issue of driving license was not raised before the claim Tribunal and burden to prove breach of condition of insurance policy was upon the insurer. The High Court put reliance the case of Swaran Singh case Supra and held that finding of Tribunal regarding onus to prove the driving license is contrary to law as initial onus is upon the insured/driver to prove that he was holding valid driving license to drive the vehicle. However, insurance company was directed to initially indemnify the award at the first instance and liberty was

reserved to the insurance company to recover the amount hereafter from the owner/insured. It is thus clear from the case law discussed above that the insurance company is legally obliged to indemnify the award qua third party liability even if there is breach of condition of insurance policy vis driver not holding any license or fake/invalid license at the time of accident or when insured owner has not taken due care and caution at time of engaging driver.

LIABILITY OF INSURANCE COMPANY QUA PILLION RIDER, GRATUITOUS PASSENGERS, UNAUTHORIZED PERSONS IN GOODS CARRIAGE

189. **In United India Insurance Shimla Vs. Tilak AIR 2006 SC 1576** an accident took place in 1989 when scooter was being driven and the victim was pillion rider on the said scooter. The legal representative of the pillion driver filed claim petition under Section 166 of the Act. Claim Tribunal absolved the insurance company from the liability and held the owner liable to pay the compensation as previous owner had not given any notice of the sale of the scooter to the insurance company. In appeal High Court upheld the finding qua quantum of compensation but made the insurance jointly and severally liable to pay the compensation to the claimants, as there was valid Act policy in operation at the time of accident. When the matter of was taken in appeal to Apex Court by the insurance company the issue was: Whether the statutory insurance policy/Act policy would cover the risk of death or injury to gratuitous passenger (pillion rider) in a private vehicle. The Apex Court held that since no premium was paid for the coverage of pillion rider on the scooter and owner has only obtained Act policy as such insurance company cannot be held liable to pay the amount of compensation. There is clear indication in the judgment that a pillion does not fall within the definition of third party so as to bring such person with the ambit, so as to fasten the liability upon the insurance company in case where only Act policy has been obtained. In taking the above view the Apex Court referred to the decision of a three judge bench, **New India**

Insurance Company limited Vs. Asha Rani (2003) 2 SCC 223 = 2003 ACJ 1 SC. It was held that although the observations made in Asha Rani case are in connection with carrying passengers in goods vehicle, the same would apply with equal force to gratuitous passengers in any other vehicle also. Thus, we must uphold the contention of the appellant Insurance Company that it owed no liability towards the injuries suffered by the deceased Rajinder Singh who was a pillion rider, as the insurance policy was a statutory policy, and hence it did not cover the risk of death of or bodily injury to a gratuitous passenger.

190. The question of liability of insurance company in a case when deceased was travelling as a pillion rider on a scooter was again considered **in the General Manager United Insurance Co. limited Vs. M. Laxmi 2009 ACJ 104** in this case in fact accident took place on 08.10.1996 resulting in death of pillion rider travelling on a scooter. The scooter in fact hit a bull cart as driver was driving rash and negligence. The pillion rider named Ramulu felled down from the scooter and sustained fatal injuries. The scooter was insured and owner of the scooter remained ex parte before the Tribunal. The insurance company took the plea that it has no liability to indemnify the insured/owner as deceased was a pillion rider and also gratuitous passenger. It was urged that deceased does not come with the definition of third party as such no liability can be imposed on the insurance company. The Tribunal exonerated the insurance company. An appeal was filed in the High Court by the claimant and reliance was placed upon the circular of the Tariff advisory committee so as to hold the insurance company liable. The High Court allowed the appeal of the claimant resulting in filling of SLP by the insurance company in the Apex Court. The SC held that the circular relied by the claimant only refers to comprehensive policy and not the Act policy. Relying upon the ratio of Asha Rani,& Tilak Singh cases, the order passed by the Tribunal was resorted and judgment of the High Court was set aside.

191. **In Bernad Vs. Elsy Jose 2021 ACJ 1141 (Kerala)** The question of liability of insurance company qua pillion rider on a motorcycle which met with an accident on 16.04.2002 resulting in death of pillion rider was considered. The

owner remained ex parte before Tribunal and insurance company alone contested the claim. The insurance company urged that risk of the pillion rider is not covered under the policy, accordingly only the insured/owner was held liable along with driver to pay the amount of compensation. In appeal, the contents of the insurance policy were perused meticulously by the High Court and it was found that it was not an ACT POLICY but a PACKAGE POLICY or Comprehensive Policy. While placing reliance upon the case of **New India Insurance company limited Vs. Hydrose 2009 ACJ 416 (Kerala)** it was held that if the policy provided for risk of gratuitous passengers on motorcycle provided that person (Pillion Rider) is not carried for hire or reward, then insurance company is liable to pay compensation for pillion rider. Reference was also made to the case of **National Insurance Co. Limited Vs. Bala Krishnan 2013 ACJ 199** wherein it is specifically held the liability of the insurance company under the Act will be only when the said policy is a comprehensive or package policy. The reference was also made to circular no. IRDA/NL/CIR/F&U/073/11/2009 dated 16.11.2009 of the Insurance Regulatory and Development Authority which would also show that in the case of a standard motor package policy (also called comprehensive policy) for private car and two-wheeler, subject to the limits of liability as laid down in the Schedule, the insurance company will indemnify the insured in the event of an accident caused by or arising out of the use of the insured vehicle against all sums which the insurer shall become legally liable to pay in respect of death or bodily injury to any person including occupants carried in the vehicle, provided that such occupants are not carried for hire or reward. In view of this, the insurance company was held liable to pay the compensation to the claimant. After the issuance of the above circular now insurance companies are issuing package policy in respect of two wheelers covering the risks of pillion rider also. **The High Court of Delhi in Yashpal Luthra Vs. United India Insurance Co. Limited 2011 ACJ 1415** summoned the Senior Official of the Tariff Advisory Committee (TAC) and Insurance Regulatory Development Authority and thereafter considered the above circular dated 16.11.2009 direction has been issued to all the CEO's of all the insurance

companies clarifying regarding the liabilities of insurance companies in respect of a pillion rider on a two wheeler and occupants in a private car under the comprehensive/package policy.

192. There is detailed discussion of the above circular as well as direction issued to all the CEO's in **National Insurance Co. Limited Vs. Bala Krishnan 2013 ACJ 1999 SC** After the issuance of this circular several judgments have been rendered by the various High Courts holding that a pillion rider travelling on a two wheeler as gratuitous passenger stands duly covered in a comprehensive/package policy. The law which emerges from the above decisions is that liability of the insurance company in a case where there is an only a Act policy is not extended to pillion rider of the motorcycle/scooter unless the requisite amount of premium for covering the said risk has been paid. Resultantly, it is the package/comprehensive policy which would fasten the liability upon the insurance company and in such a situation insurance company cannot take the defence that pillion rider was a gratuitous passenger.

193. The question of liability of the insurance company in case of gratuitous passenger travelling in a goods vehicle or goods carriage has been subject matter of discussion in several cases under the Motor Vehicle Act 1939 (in short 1939 Act) the Apex Court in the case of **PushaBai Purshottam Udesh Vs. Ranjeet Ginning and Pressing company AIR 1977 SC 1735** the question of liability of passenger travelling in a goods vehicle came for consideration in the said case insurance company has raised the contention that scope of statutory insurance under Section 95 of 1939 Act, does not cover the injury suffered by a passenger the contention of the insurance company was such passengers are not covered under the insurance policy and the risk and liability insurance company would be limited to the extent it was specifically covered in the policy. After referring to the English Road Traffic Act, 1960, and Halsbury's Law of England. the Court came to the conclusion that Section 1995 Act required that the policy of insurance must be a policy insuring the insured against any liability incurred by him in respect of death or bodily injury to a third party and rejected the contention that the words "third

party" were wide enough to cover all persons except the insured and the insurer. This court held as under:

Therefore it is not required that a policy of insurance should cover risk to the passengers who are not carried for hire or reward. As under Section 95 the risk to a passenger in a vehicle who is not carried for hire or reward is not required to be insured the plea of the counsel for the insurance company will have to be accepted and the insurance company held not liable under the requirements of the Motor Vehicles Act."

194. **In Dr. T.V. Jose Vs. Chacko P.M. alias Thankachan and Others (2001) 8 SCC 748** Apex Court had an occasion to survey the law with regard to the liability of insurance companies in respect of gratuitous passengers. Alter referring to a number of decisions, Apex Court observed "the law on this subject is clear, a third –party policy does not cover liability to gratuitous passengers who are not carried for hire or reward." The insurer company was held not liable to reimburse the appellant.

Thus, under the 1939 Act the established legal position was that unless there was a specific coverage of the risk pertaining to a gratuitous passenger in the policy the insurer was not liable.

195. It is pertinent to note here that section 95 of 1939 Act correspond to Section 147 of Motor Vehicle Act 1988, Section 147 of 1988 Act is substantially different from section 95 of 1939 Act as under the new provision there is no upper limit for insurer regarding the amount of compensation awarded in respect of death or bodily injury of a victim of the accident, under sub Section 2 of Section 147 of the 1988 Act. It is, therefore, clear that the limit contained in the old Act has been removed and insurance policy under the 1988 Act would cover the liability incurred to the victim of an accident. **In New India Insurance Satpal Singh AIR 2000 SC 235,** a young girl of 10 years met with an accident while travelling in a truck a claim petition was filed by brother and sister jointly and claim Tribunal

awarded Rs. 25000 this was challenge by both the parties in the High Court and Division Bench doubled the amount of compensation. When the matter reached the Apex Court the issue was whether the insurance company had liability towards the gratuitous passenger (girl) under the 1988 Act prior to amendment in 1994. The Apex Court while referring to the provision of Section 147 based its conclusion on amended section 147 where the expression is, "injury to any person which later on was substituted by the words," "injury to any person including owner of the goods or his authorized representative carried in the vehicle." Accordingly, it was held that use of word any person would include the gratuitous passenger travelling in goods vehicles. However, this interpretation was later on overruled in the case of **New India Insurance Company Vs. Asha Rani AIR 2003 SC 607 = 2003 ACJ 1**. This case was a reference from a two judge bench which was dealing with batch of appeals.

196. A three judge Bench in Asha Rani case considered the provisions of section 95 of the 1939 Act and section 147 of the 1988 Act in detail and also the amendments effected to section 147 (1) (b) (i) by the Amendment Act 54 of 1994 and came to the conclusion that in Satpal Singh's case (Supra), this court had proceeded on the assumption that the provisions of section 95 (1) of the Motor Vehicles Act, 1939, were identical to the provisions of section 147 (1) of the Motor Vehicles Act, 1988 as it stood before its amendment. It was held that section 147 of the new Act deals with the requirements of the policy and limits of liability incurred to third party risks, but the proviso thereto makes an exception to the main provision. The Honorable Apex Court referred to the definitions of goods vehicle under the Act of 1939 and goods carriage under the amended Act of 1994 and the same are under:

Section 2(8) goods Vehicles means any motor vehicle constructed for adapted for use for carriage of goods or any Motor Vehicle not so constructed or adapted when used for the carriage of goods solely or in addition to passengers

Section 2 (14) goods carriage means any motor vehicle constructed or adapted for use solely for the carriage of goods, or any motor vehicle not so constructed or adapted when used for the carriage of goods.

197. A comparative reading of the above provisions makes it clear that there is difference in the language of goods vehicle as defined in the old Act and goods carriage defined in the Act of 1988. It is clear that new definition of goods carriage prohibit goods vehicle from carrying any passenger. This is clear from the expression 'in addition to passengers' as contained in definition of 'goods vehicle' in the old Act. The position becomes further clear because the expression used in new Act is 'goods carriage'. Goods carriage is solely for the carriage of goods'. Carrying of passengers in a goods carriage is not contemplated in the Act.

There is no reference to any passenger in 'goods carriage". The inevitable conclusion, therefore, is that provisions of the new Act do not enjoin any statutory liability on the owner of a vehicle to get his vehicle is insured for any passenger travelling in a goods carriage and the insurer would have no liability.

198. It was also held by the Apex Court that as far as employees of the owner of the Motor Vehicle were concerned, as per the proviso to Section 147, an insurance policy was not required to be taken in relation to their liability, other than arising in terms of the provisions of workmen compensation Act 1923. Accordingly, the Apex Court held as follows:

"It is held that the insurer will not be liable for paying compensation to the owner of the goods or his authorized representative on being carried in a goods vehicle when that vehicle meets with an accident and the owner of the goods or his representative dies or suffers any bodily injury."

Justice S.B. Sinha in his concurring judgment held as follows:

"Section 147 of the 1988 Act, inter-alia, prescribes compulsory coverage against the death of or bodily injury to any passenger of 'public service vehicle'. Proviso

appended thereto categorically states that compulsory coverage in respect of driers and conductors of public service vehicle and employees carried in a goods vehicle would be limited to the liability under the Workmen's Compensation Act. It does not speak of any passenger in a 'goods carriage'

In view of the changes in the relevant provisions in the 1988 Act vis-à-vis, we are of the opinion that the meaning of the words "any person" must also be attributed having regard to the context in which they have been used i.e. "a third party". Keeping in view the provisions of the 1988 Act, we are of the opinion that as the provisions thereof do not enjoin any statutory liability on the owner of a vehicle to get his vehicle insured for any passenger travelling in a goods vehicle, the insurer would not be liable therefore."

199. This matter again come up for consideration in **Oriental Insurance Company Vs. Devi Reddy Konda Reddy, (2003) 2 SCC 339.** The Apex Court considered the difference between the definition of 'goods vehicle' appearing in the Motor Vehicle Act, 1939 and 'goods carriage' appearing in the Motor Vehicle Act, 1988 and held as follows:

"The difference in the language of "goods vehicle" as appearing in the old Act and "goods carriage" in the Act is of significance. A bare reading of the provisions makes it clear that the legislative intent was to prohibit goods vehicle from carrying any passenger. This is clear from the expression "in addition to passengers" as contained in the definition of "goods vehicle" in the old Act. The position becomes further clear because the expression used is "goods carriage" is solely for the carriage of "goods". Carrying of passengers in a goods carriage is not contemplated in the Act."

Thus, the Apex Court held that passengers cannot be carried in a goods vehicle.

200. A similar question again came after consideration before three judge bench in **National Insurance Company Limited Vs. Baljeet Kaur 2004 ACJ 428** and in context of the provision of Section 147 (1) (b) of the 1988 Act after its

amendment in 1994. The Apex Court held that after the amendment of 1994, the Insurance Company was bound to cover liability in respect of owner of the goods or his authorized representative travelling in the goods vehicle. However, it further held that no passenger can be carried in a goods vehicle and the Insurance Company was not liable to pay compensation with respect to passengers especially gratuitous passengers. The Apex Court held thus:

"it is, therefore, manifest that in spite of the amendment of 1994, the effect of the provision contained in Section 147 with respect to persons other than the owner of the goods or his authorized representative remains the same. Although the owner of the goods or his authorized representative would now be covered by the policy of insurance in respect of a goods vehicle, it was not the intention of the legislature to provide for the liability of the insurer with respect to passengers, especially gratuitous passengers, who were neither contemplated at the time the contract of insurance was entered into, nor was any premium paid to the extent of the benefits of insurance to such category of people.

201. The Apex Court also considered this point in **National Insurance Company Limited Vs. Ajit Kumar and Others (2003) 9 SCC 668.** After considering the definitions and various provisions of the Motor Vehicles Act both amended and un-amended, the Apex Court held as follows:-

"The difference in the language of "goods vehicle" as appearing in the old Act ad "goods carriage" in the Act is of significance. A bare reading of the provisions makes it clear that the legislative intent was to prohibit goods vehicle from carrying any passengers" as contained in the definition of "goods vehicle" in the old Act. The position becomes further clear because the expression used in "goods carriage" is solely for the carriage of goods". Carrying of passengers in goods carriage is not contemplated in the Act. There is no provision similar to clause (ii) of the proviso appended to Section 95 of the old Act prescribing requirement of the insurance policy. Even Section 147 of the Act mandates compulsory coverage against death of or bodily injury to any passenger of "public service vehicle". The proviso makes

it further clear that compulsory coverage in respect of drivers and conductors of public service vehicle and employees carried in goods vehicle would be limited to liability under the Workmen's Compensation Act, 1923 (in short "the WC Act). There is no reference to any passenger in "goods carriage".

Following the aforesaid judgments, a similar view was taken by the Apex Court in **National Insurance Company Vs. Chinnamma and Others (2004) 8 SCC 697**.

202. In **National Insurance Company Limited Vs. Cholleti Bharatamma & Others (2008) page-423,** the Apex Court was dealing with a matter in which a large number of persons were travelling in a goods carriage vehicle. It was contended o behalf of the claimants that all these persons were travelling as owner of the goods and hence, the Insurance Company was liable to pay the compensation. The Apex Court rejected this contention and held as follows:-

The Act does not contemplate that a goods carriage shall carry a large number of passengers with small percentage of goods as considerably the insurance policy covers the death or injury either of the owner of the goods or his authorized representative."

203. In **Fahin Ahmed Vs. United India Insurance Co. Limited AIR 2014 SC 2187** the question of liability to pay compensation by the insurance company fell for consideration when a tractor was being driven at high speed in a rash and negligent manner, hit the deceased from behind. A claim was filed and insurance company was held liable to pay the amount of compensation as the tractor was duly insured with the insurance company. An appeal was filed by Insurance Company in the High Court which was partly allowed holding that amount of compensation so awarded by the Tribunal shall be paid initially by insurance company but, it shall have a right to recover the same from the owner of the offending tractor as there was breach of condition of insurance policy. This was so held because at the time of accident tractor was carrying sand i.e. Being used for commercial purpose. Ultimately the matter reached the Apex Court and it was found that plea of breach

of condition of policy was not raised before the Tribunal nor any issue was framed. No evidence adduce by the insurance company as such insurance company was held liable to pay the amount of compensation without any right of recovery. The ratio of this judgment clearly shows that insurance company must specifically allege material facts regarding the breach of condition of policy and adduce evidence so as to prove the same.

204. In **National Insurance Co. Limited Vs. Reena Devi 2013 ACJ 1046 HP**, accident took place on 11.03.2004 as the deceased was crushed under the wheels of tractor. Though the owner of the tractor took the plea that deceased had tried to board the tractor from the rear i.e. trolley and accident occurred because of that. But this plea was not upheld by the Tribunal and award was passed against the insurance company. In appeal it was urged that when a trolley is attached with tractor the same can be used for carriage of the goods and not for carrying passenger. The sitting capacity of the tractor was only 1 and it was meant for agriculture purpose the High Court put reliance upon the case of **National Insurance Company Limited Vs. V. Chinnamma, 2004 ACJ 1909 (SC)**. The Apex Court after taking into consideration the various authorities on the subject held as under:

'(15)' A tractor fitted with a trolley may or may not answer the definition of goods carriage contained in section 2 (14) of the Motor Vehicles Act. The tractor was meant to be used for agriculture purpose. The trolley attached with tractor, thus necessarily is required to be used for agricultural purposes, unless registered otherwise. It may be, as has been contended by Mrs. K. Sharda Devi, that carriage of vegetables being agricultural produce would lead to an inference that the tractor was being used for agricultural purposes but the same by itself would not be constructed to mean that the tractor and trolley can be used for carriage of goods by another person for his business activities. The deceased was a businessman. He used to deal in vegetables. After he purchased the vegetables he was to transport the same to the market for the purpose of sale thereof and not for any agricultural

purpose. The tractor and trolley, therefore, were not being used for agricultural purposes. However, even if it be assumed that the trolley would answer the description of 'goods carriage' as contained in section 2 (14) of the Motor Vehicles Act, the case would be covered by the decision of this court in Asha Rai and other decision following the same, as the accident had taken place on 21.11.1991 i.e., much prior to coming into force of the 1994 amendment.'

In the present case also admittedly, the vehicle in question was a tractor and the insurance policy has been proved on record as Exh. RC. As per the insurance policy, the risk covered is only for the driver and not the passenger and there is no liability on the insurance company with regard to pay compensation to any passenger sitting on the said tractor. Therefore, the insurance company cannot be held liable."

205. In **Oriental Insurance Company Limited Vs. Brij Mohan, 2007 ACJ 1909 (SC)**, the Apex Court, following its earlier decision in Chinnamma, 2004 ACJ 1909 (SC) held that no liability can be fastened on the insurance company. However, while disposing of Brij Mohan's case (Supra) it was directed:

"(13) However, respondent No. 1 is a poor labourer. He had suffered grievous injuries. He had become disabled to a great extent. The amount of compensation awarded in his favour appears to be on a lower side. In the aforementioned situation, although we reject the other contentions of Ms. Indu Malhotra, we are inclined to exercise our extraordinary jurisdiction under Article 142 of the Constitution of India so as to direct that the award may be satisfied by the appellant but it would be entitled to realize the same from the owner of the tractor and the trolley wherefore it would not be necessary for it to initiate any separate proceedings for recovery of the amount as provided for under the Motor Vehicles Act."

In these circumstances, the appeal of Insurance Company was allowed and insurance company was directed to satisfy the award by making payment to the

claimant with right to recover the same, as per decision in Oriental Insurance Company Limited Vs. Brij Mohan 2007 ACJ 1909 (SC).

206. In **National Insurance Company Limited Vs. Chollete Bhartamma 2008 (1) SLJ 2019= 2008 ACJ 268** it was held that travelling with the goods as owner of the goods or his authorized representative will mean on the person who travels in the cabin of the vehicle. The Act does not contemplate that a goods carriage shall carry a large number of passengers with small percentage of goods.

207. In **Sanjeev Kumar Samrat Vs. National Insurance Co. Limited 2013 ACJ 1** a truck was hired on 12.04.2000 for carrying iron rods and cement by one Durga Singh who was travelling in the said truck along his two labourers the truck met with an accident. As a result of which the above two labourers Nagru Ram and Desh Raj along with Durga suffered injuries resulting in the death. Separate Claim petitions were filed by the legal heirs of the deceased and learned Tribunal saddled the liability on insurance company as truck was duly insured. in appeal it was held that Durga Singh admittedly was owner of the goods and entitled to travel in the truck. As such the insurer was liable to pay compensation. Tribunals also found that the risk of six employees covered under the insurance policy as such award was to be indemnified by the insurance company. However, the High Court held that the risk of the employees of hirer of vehicle was not covered under the policy and insurance company was not liable. It is not out of place to mention here that insurance company had already deposited the amount of compensation and High Court in view of ratio of **Baljit Kaur case 2004 ACJ 428 (SC)** directed the insurance company shall be entitled to recover the amount of compensation from the owner/insured by initiating a execution proceedings before the Tribunal. Finally, the Apex Court dealt extensively with the question of liability of the insurance company qua employee of the owner of the goods. After referring to the entire spectrum of earlier judgment on the subject, it was held as under:

On a contextual reading of the provision, schemata analysis of the Motor Vehicles Act, 1988 and Workmen's Compensation Act, 1923. It is quite limpid that the

statutory policy covers only the employees of the insured, either employed or engaged by him in a goods carriage. It does not cover any other kind of employee and, therefore, someone who travels not being an authorized agent in place of the owner of goods and claims to be an employee of the owner of goods, cannot be covered by the statutory policy and to hold otherwise would tantamount to causing violence to the language employed in the statue.

208. It is thus clear when owner of the goods travelling in the goods carriage along with goods, his employees were also travelling in the said goods vehicle were not to be covered in the insurance policy. The Apex Court had mainly relied upon the ratio of case in **New India Insurance Company Limited Vs. Asha Rani 2003 ACJ 1 (SC), Baljeet Kaur 2004 ACJ 428 and New India Insurance Company Limited Vs. Vedwati 2007 ACJ 1043,** wherein it is clearly held that provisions of the Act do not enjoin any statutory liability on the owner of the vehicle to get his vehicle insured for any passenger travelling in a goods carrier. Further it was observed that employee of the owner of the goods would not come within the ambit and sweep of the term employee as use in section 147 (1) of the Act. It is quite clear that statutory policy only covers the employee of the insured either employed or engaged by him in a goods carriage. It does not cover any kind of employee and therefore someone who travels not being an authorized agent in place of the owners of the goods, and claims to be an employee of the owner of the goods vehicle cannot be covered by statutory policy.

Learned counsel for the appellant has also placed reliance on the case of **New India Assurance Co. Limited Vs Vedwati 2007 ACJ 1043 (SC)**, in which the SC has held as under:

"(15) The Tribunal and the High Court were not justified in holding that the insurer had the liability to satisfy the award.

(16) This position was also considered in **Oriental Insurance Company Limited Vs. Devireddy Kondda Reddy, 2003 ACJ 468 (SC)**. Subsequently, also in

National Company Limited Vs. Ajit Kumar, 2003 ACJ 1931 (SC), in National Insurance Company limited Vs, Baljit Kaur, 2004 ACJ 428 (SC) and in National Insurance Company Limited Vs, Bommithi Subbhayamma, 2005 ACJ 721 (SC), the view taken in Asha Rani's case, 2003 ACJ 1 (SC), was reiterated."

209. It is clear from the discussion made above that the Honorable Apex Court while considering the question of breach of condition of insurance policy issued in the favour of the insured owner kept in mind the beneficial and benevolent nature of the Act and awarded compensation to the claimants to be paid by the insurance company even though insurance company has primafacie established the breach of condition of the insurance policy. In majority of the cases as is evident from the ratio of judgment in Swaran Singh case Supra Baljeet Kaur Supra Devireddy case Supra & Ajit Kumar Case Supra, apex Court followed the principle of pay and recover which clearly shows that initially that amount of compensation is required to be paid by the insurance company and later on the same is to be recovered from the insured/owner by filling execution application before the Tribunal without resorting to the procedure of filing is separate suit for recovery of the amount paid by the insurance to the claimant as the same would result in multiplicity of the proceedings. Taking a cue from the aforementioned judgments of the Honorable Apex Court, majority of the High Courts also followed the principle of pay and recover particularly in cases where the driver was holding fake or forged license or was driving the vehicle without any licence at all. It is clear that , the ratio of the law in Swaran Singh Case Supra has been cited with approval in all subsequent pronouncements whenever the question of the validity of the driving license was the focal issue. Yet, some of the High Courts and Tribunals are blindly following the principle of pay and recover even when the insured owner of the vehicle at the time of engagement of a driver has taken due care and caution to prima-facie examine the driving license and also took the driving test of the said driver. In my humble and considered opinion there is no question of pay and recover in such like cases as the owner of the vehicle has taken all precautions at the time of the

engagement of the such driver whose license later on to be found fake or forged ,. In some cases such licenses were renewed repeatedly which clearly shows even the licensing authority at the time of the renewal of the license could not detect the factum of the forgery or the original license being fake. The Hon'ble Apex Court in PEPSU Transport Road Case Supra held the insurance company to liable to pay the amount of compensation without any right of recovery despite the fact that insurance company proved the said license fake by examining the official of the licensing authority who deposed that no such driving license was originally issued in favour of such driver. The driver was admittedly given training by the corporation and his driving license took renew from time to time. Resultantly, No right was given to insurance company to recover the amount of compensation from the insured owner after making its payment to the claimants. This is perfectly in consonance with Swaran Singh Case Supra.

210. In **United India Insurance Company Limited Vs. K.M. Poonam 2011 ACJ 917** the question of liability of insurance company arose when a jeep with sitting capacity of 6 persons including the driver met with an accident on 18.08.2004 while carrying 15 passenger for village the driver cause the accident as he was rash and negligent the above vehicle duly insured for third party coverage with unlimited liability. The claim Tribunal passed an award against the insurance company and held that carrying of large number of passengers beyond the permissible limit did not amount to breach of the terms and conditions of the policy.

The High Court dismissed the appeal filed by insurance company and ultimately matter reached the Apex Court at the behest of Insurance Company. It was urged on behalf of the insurance that liability to compensation by the insurance company would be limited to the number of passengers validly permitted to be carried in the vehicle (jeep) as per the insurance policy. In support of his submission a reliance was place upon the **National Insurance Co. Limited Vs. Anjana Shyam 2007 ACJ 2129 (SC) and National Insurance Co. Limited Vs. Challa Bharathamma**

2004 ACJ 2094 (SC). The Apex Court after considering the ratio of Baljit Kaur case and Anjana Shyam case held inn26 as under:

"Having arrived at the conclusion that the liability of the insurance company to pay compensation was limited to six persons travelling inside the vehicle only and that the liability to pay the others was that of the owner we, in this case, are faced with the same problem as had surfaced in **Anjana Shyam's case, 2007 ACJ 2129 (SC)**. The number of persons to be compensated being in excess of the number of persons who could validly be carried in the vehicle, the question which arises is one of apportionment o the amounts to be paid. Since there can be no pick and choose method to identify the five passengers, excluding the driver, in respect of whom compensation would be payable by the insurance company, to meet the ends of justice we may apply the procedure adopted in **Baljit Kaur's case, 2004 ACJ 428 (SC)** and direct that the insurance company should deposit the total amount of compensation awarded to all the claimants and the amounts so deposited be disbursed to the claimants in respect to their claims, with liberty to the insurance company to recover the amounts paid by it over and above the compensation amounts payable in respect of the persons covered by the insurance policy from the owner of the vehicle, as was directed in Baljit Kaur's case (supra)".

211. In **National Insurance Company Limited Vs. Smt. Reena Devi 2012 latest HLJ 582(HP)** the question of liability of insurance co. came for consideration before our High Court when the tractor attached with trolley caused the accident. The victim was travelling in tractor loaded with sand the Tribunal passed the award holding the insurance company liable to pay the amount of compensation. In appeal High Court exonerated the insurance company from the liability as tractor was being used for commercial purpose in violation of policy; however, direction was given to initially the pay the amount of compensation subject to recovery from the owner and driver of the vehicle who were held vicariously liable.

212. **In ICICI Lombard General Insurance Company Limited Vs. Ram Kumar 2014 ACJ 160** it was a case where the vehicle was driven without a route permit and the said vehicle met with an accident. The Insurance Company attempted to avoid its liability on the ground that there is violation of condition of insurance policy as such insurance company is not liable to pay the amount of compensation. Our High Court having regard to the ratio of the law discussed above held that insurance company is initially liable to pay the amount of compensation to the claimants with a right to recover the same thereafter.

213. **In National insurance company Limited Vs. Tsewang Dorjey 2021 ACJ 1424 J &K** the question of liability of insurance company when gratuitous passenger being carried in a goods vehicles (tipper), was considered by the High Court in the accident a minor girl who was travelling in the goods vehicle (Tipper) died when vehicle met with accident the claim Tribunal passed the award and directed that amount of compensation, in the first instance, shall be satisfied by the insurance company with a right to recover the same for the owner. Feeling aggrieved, insurance company filed an appeal in the High Court and it was strongly urged that principle of pay and recovery cannot be followed by the claim Tribunal in as much as SC has granted this relief in few cases by resorting to its extraordinary jurisdiction under Article 142 of the constitution. Reference was also made to the Baljit Kaur case Supra where the principle of pay and recovery was followed by the Apex Court. The High Court relying upon Baljit Kaur case supra held as under:

The aforesaid judgment of the Hon'ble Supreme Court has been consistently followed in several other subsequent judgments including the one in the case titled **Manuara Khatun Vs. Rajesh Kumar Singh, 2017 ACJ 1031 (SC)**. In the said case, the Hon'ble Apex Court took note of the observations made by the said court in the case of Manager, **National Insurance Company Limited Vs. Saju P. Paul, 2013 ACJ 554 (SC)**, wherein the Hon'ble Apex Court had held on the facts that since the victim was travelling in the offending vehicle as gratuitous passenger, the

insurance company cannot be held liable to suffer the liability arising out of the accident on the strength of the insurance policy. However, keeping in view the benevolent object of the Act and other relevant factors arising in the case, the court issued a direction against the insurance company to pay the awarded sum to the claimants and then recover the same from the insured in the same proceedings by applying the principle of pay and recover. In the said case, the Hon'ble Apex Court, faced with the arguments that consideration of the issue with regard to pay and recover in a case of gratuitous passenger is pending before a larger Bench, observed as under.

"(25) The pendency of consideration of the above questions by a larger Bench does not mean that the course that was followed in **Baljit Kaur, 2004 ACJ 428 (SC) and Challa Bharathamma, 2004 ACJ 2094 (SC)** should not be followed.

214. However, some Highs Courts are applying the principle of pay and recover only in those cases where the owner has not taken due care and precaution at the time of engagement of driver and such driver has caused accidents. These High Courts are of the view that principle of pay and recover is only to be followed as is evident from the directions and law laid down in Swaran Singh case Supra where the driving license is fake or forged or driver is guilty of driving without driving licence. These high Court have taken the view that in case where there is gross violation of the policy i.e. carrying of passenger in goods carriage or vehicle being driven without a route permit or other similar violations being committed by the insured owner, in that eventuality, the insurance company cannot be fastened with any liability nor the principle of pay and recover can be followed. The liability has to be borne by the insured owner and/or driver of the vehicle causing the accident. In the opinion of these High Courts, the SC has issued direction of pay and recover in such like cases by invoking the provision of article 142 of Constitution of India which power is only available to the SC and not to the High Court's. Reference in this regard.

215. But some of the High Court's while considering the question of route permit or carrying of passenger in goods carriage by the insured owner did not follow the principle of payment of amount of compensation by the insurance company first with the right to recover said amount later on from the insured owner. The Honorable judges of the High Court in such cases are of the view that SC has given the direction of payment of compensation by the insurance company even when there is gross violation of provision of section 147 of the Act (e.g. carrying of passengers in goods carriage or violation of route etc.) by exercise of power under Article e142 of Constitution of India and such direction, **of pay and recover** can only be issued by the Apex Court in the exercise of its inherent/residuary power under Article 142 of the Constitution and no such power is available to the High Courts. Reference in this regard can be made of **State of Punjab Vs, Rafiq Masih, (2014) 8 SCC 883**, a three judge Bench of the Apex Court affirmed the view taken in ABS Marine Products case. (2006) 5 SCC 72, holding that the directions issued under Article 142 do not constitute a binding precedent unlike Article 141 of the Constitution of India. They are directions issued to do proper justice and exercise of such power cannot be considered as law laid down by the Supreme Court under Article 141 of the Constitution of India. The Apex Court held further that the directions of the court under Article 142 of the Constitution, while moulding the relief, that relax the application of law or exempt the case in hand from the rigour of the law in view of the peculiar facts and circumstances, do not comprise the ratio decidendi and, therefore, lose its basic premise of making it a binding precedent. Paras 11 to 13 of the judgment read thus:

"(11) Article 136 of the Constitution of India was legislatively intended to be exercised by the highest court of the land, with scrupulous adherence to the settled judicial principle well established by precedents in our jurisprudence. Article 136 of the Constitution is a corrective jurisdiction that vests a discretion in the SC to settle the law clearly and make the law operational to make it a binding precedent

for the future instead of keeping it vague. In short, it declares the law, as under Article 141 of the Constitution.

3(12) Article 142 of the Constitution is supplementary in nature and cannot supplant the substantive provisions, though they are not limited by the substantive provision in the statue. It is a power that gives preference to equity over law. It is a justice-oriented approach as against the strict rigours of the law. The directions issued by the court can normally be categorized into one, in the nature of moulding of relief and the other, as the declaration of law, 'Declaration of law' as contemplated in Article 141 of the Constitution, is the speech express or necessarily implied by the highest court of the land. This court in the case of **Indian Bank Vs. ABS Marine Products (P) Limited., (2006) 5 SCC 72, Ram Pravesh Singh Vs. State of Bihar, (2006) 8 SCC 381 and in State of U.P. Vs. Neeraj Awasthi, (2006) 1 SCC 667**, has expounded the principle and extolled the power of Article 142 of the Constitution of India to new heights by laying down that the directions issued under Article 142 do not constitute a binding precedent unlike Article 141 of the Constitution of India. They are directions issued to do proper justice and exercise of such power cannot be considered as law laid down by the SC under Article 141 of the Constitution of India. The court has compartmentalized and differentiated the relief in the operative portion of the judgment by exercise of power under Article 142 of the Constitution as against the law declared. The directions of the court under Article 142 of the Constitution, while moulding the relief that relax the application of law or exempt the case in hand from the rigour of the law in view of the peculiar facts and circumstances, do not comprise the ratio decidendi and, therefore, lose its basic premise of making it a binding precedent. This court on the qui vive has expanded the horizons of Article 142 of the Constitution by keeping it outside the purview of Article 141 of the Constitution and by declaring it a direction of the court that changes its complexion with the peculiarity in the facts and circumstances of the case.

(13) Therefore, in our opinion, the decisions of the court based on different scales of Article 136 and Article 142 of the Constitution of India cannot be best weighed on the same grounds of reasoning and thus in view of the aforesaid discussion, there is no conflict in the views expressed in the first two judgment and the latter judgment."

216. There is hardly any quarrel with the preposition of law discussed above, however, the principle of pay and recovery which was initially used by Honorable Apex Court in **Baljeet Kaur case, Brij Mohan** case and other subsequent pronouncements where question of violation of the insurance policy in terms of provision section 147 of the Act was the main plank of discussion. Even a careful scanning of the judgment of Apex Court in Swaran Singh case supra which primarily dealt with the questions of fake or forged license vis-à-vis the liability of insurance company, would show that there is clear indication in the said judgment that even the Claim Tribunal are to follow the principle of pay and recover. I find support to this view from the case of **Maanbai Vs. Jai Singh 2021 ACJ 460 Chhattisgarh**, Wherein High Court was primarily concerned with the question of liability of the insurance company in case of breach of insurance policy, when tractor trolley turned turtle resulting in death of the deceased who was travelling in the said tractor. The claim Tribunal awarded compensation in favour of the claimant exonerating the insurance from its liability on the ground of violation of insurance policy. In appeal the award of the claim Tribunal was partly set aside and insurance company was held liable to pay the amount of compensation to the claimant first and realize the same from the insured owner and driver respectively. An argument was advanced in the said case that principle of pay & recover is only available to Apex Court and not the High Court which was rejected by observing as under.

13. As far as the question regarding the principle of 'pay and recover' is concerned, the said issue is, however, no more res integra in view of the principles laid down in the matter of National Insurance Co. Limited Vs. Swaran Singh, 2004 ACJ 1

(SC). In the said matter, it was contended by the insurance company that once the defence taken by the insurer is accepted by Tribunal, it is bound to discharge the insurer and fix the liability only on the owner and/or the driver of the vehicle. **However, it was held that even if the insurer succeeds in establishing its defence, the Tribunal can direct the insurance company to pay the award amount to the claimants and, in turn, recover the same from the owner of the vehicle.** At para 99, it was observed as under:

"(99) We may, however, hasten to add that the **Tribunal and the court must**, however, exercise their jurisdiction to issue such a direction upon consideration of the facts and circumstances of each case and in the event such a direction has been issued despite arriving at a finding of fact to the effect that the insurer has been able to establish that the insured has committed a breach of contract of insurance as envisaged under sub-clause (ii) of clause (a) of sub-section (2) of section 149 of the Act, the insurance company shall be entitled to realize the awarded amount from the owner of driver of the vehicle, as the case may be, in execution of the same award having regard to the provisions of sections 165 and 168 of the Act. However, in the event, having regard to the limited scope of inquiry in the proceedings before the Claims Tribunal, it had not been able to do so, the insurance company may initiate a separate action therefore against the owner or the driver of the vehicle or both, as the case may be. Those exceptional cases may arise when the evidence becomes available to or comes to the notice of the insurer at a subsequent stage or for one reason or the other, the insurer was not given opportunity to defend at all. Such a course of action may also be restored to when a fraud or collusion between the victim and the owner of the vehicle is detected or comes to knowledge of the insurer at a later stage."

217. Similarly in the case of **Shivawa Vs. Branch Manager, National Insurance Company Limited, 2008 ACJ 1288 (SC),** after following the principles stated in the case of Swaran Singh, the Supreme Court held that :

Assuming for the sake of argument that the insurance company was not liable to pay compensation amount awarded to the claimants as the offending tractor was duly insured, the insurer would still be liable to pay the compensation amount in the first instance with liberty to recover the same from the owner of the vehicle (respondent No. 2), in the light of the exposition in the case of **National Insurance Co. Limited Vs. Swaran Singh, 2004 ACJ 1 (SC)."**

218. Recently, in the case of **Anu Bhanvara V. Iffco-Tokio General Insurance Co. Limited 2019 ACJ 2902** the SC has held as under:

"(9) The principle of pay and recover would be invoked even in case of a gratuitous passenger in a goods vehicle. The insurance company should thus be made liable for the payment of compensation to the appellants and in turn they would have the right to realize/recover the same from the owner and driver of the vehicle".

219. Yet, in another case of **Parminder Singh Vs. New India Assurance Co. Limited 2019 ACJ 2401 (SC),** the Supreme Court after allowing the appeal directed the insurance company to make out a demand draft in the name of the appellant, which can be used for his care for the rest of his life. The insurance company was held entitled to recover the amount from the owners and drivers of the offending vehicles.

220. In a latest judgment i.e. **United Indian Insurance Company Limited Vs. Nirmala Devi 2020 (1) SLC 281** our own High Court in a very elaborate and exhaustive manner dealt with the question: whether the power to order or pass direction of pay and recover, where there is violation of condition of insurance policy in a goods carriage can be passed by the Tribunal or the Honorable High Court. It was a case where son of the claimant died in an accident involving a jeep on 15/16 June 2010 the deceased Ravi Kumar after attending marriage was coming back in the ill fated jeep when it met with an accident the Tribunal granted compensation to the claimant and liability was fastened upon the insurance company to pay the compensation. In appeal insurance company cited various authorities of the Apex Court discussed above and strongly urged that deceased

was a gratuitous passenger and the ill fated jeep was primarily a goods carriage vehicle as such not meant to carry in passenger other than the one specified in policy of insurance. The honorable High Court considered the entire spectrum of the case law on the subject and held that insurance company is not legally and statutorily required to cover the liability in respect of passengers in a goods vehicle. It further held that no direction can be passed by the Trial Court to the insurance company to pay and recover in case when passengers are travelling in a goods carriage. Thus the power to issue direction regarding pay and recover is only available to SC under Artilc2 142 constitution of India. Finally, while placing strong reliance upon **Bharti AXA General Insurance Company Limited Vs. Aandi, 2019 ACJ 1975** It was also held that "none of the judgments referred to viz., **National Insurance Company Limited Vs. Swaran Singh 2004 ACJ 1 (SC); Mangla Ram Vs. Oriental Insurance Company Limited 2018 ACJ 1300 (SC); Rani Vs. National Insurance Company Limited., 2018 ACJ 2430 (SC) and Manuara Khatun Vs. Rajesh Kumar Singh, 2017 ACJ 1031 (SC),** the question regarding the liability of the Insurance Company to pay the compensation in respect of an unauthorized passenger in the goods vehicle did arise for consideration. We are, therefore, of the considered opinion that the judgment of the two judge bench in **Shivaraj Vs. Rajendra, 2018 ACJ 2755(SC)**, cannot be taken as a precedent to conclude that the Insurance Company would be liable to pay the compensation even in respect of an unauthorized passenger in a goods vehicle, in the light of categorical pronouncement of larger bench of the Hon'ble Supreme Court in **New India Assurance Company Vs. Asha Rani, 2003 ACJ 1 (SC) and National Insurance Company Limited Vs. Baljit Kaur, 2004 ACJ 428 (SC).** We therefore conclude that the Tribunal, in the case on hand, was not right in directing the insurance company to pay the compensation and giving it the liberty to recover the same from the owner.

221. As a matter of fact, the issue of pay and recover in such circumstances is no longer res integra in view of the recent judgment of the Hon'ble Supreme Court in **Shamanna and another Vs. Divisional Manager, Oriental Insurance**

Company Limited and others, (2018) 9 SCC 650, wherein it was held that if the insurance company has no liability to pay at all, then it cannot be compelled to pay the compensation amount and later on recover it from the owner of the vehicle".

222. No doubt it many cases the claimant may not be able to realize the amount of compensation from the owner of the vehicle involved in the accident. But the said factual situation alone take a view which is not warranted under the law. It is high time that Hon'ble Apex Court should clarify the legal position having regard to the divergent opinion being expressed by different Benches High Courts as well as Supreme Court under similar set of circumstances.

There are many cases previously decided by HP High court after decision in Asha Rani case, Swaran Singh case, where in the principle of pay and recover has been followed when violation of the insurance policy in terms of provisions of section 147 was established. In many cases, various High Courts have generously followed the principle of pay and recovery as enunciated in the various judgment of the Apex Court discussed above. But in view of latest decision in Niemala Devi case supra, Tribunals are to follow ratio of this judgment.

223. In ICICI Lombard General Insurance Company Limited Vs. Chavda Gomatben Galabhai 2021 ACJ 1522 Gujarat. In this case an accident took place on 20.10.2011, when the deceased was travelling in an auto rickshaw, sitting just by the side of driver on driver seat and the seating capacity of the driving seat was only one. The insurance company took the plea of breach of conditions of policy as deceased was a gratuitous or unauthorized passenger in the ill fated auto rickshaw. However, Tribunal held that insurance company liable to satisfy the award. In appeal, before the High Court, it was urged that deceased was an unauthorized passenger and insurance company is not liable to satisfy the award. This contention of insurance company was upheld by the High Court. However, principle of "Pay and Recover" was followed by directing the insurance company to satisfy the award first and right was given to recover the same from the insured owner by putting reliance upon the judgments of the Supreme Court by Holding as under;

8."Even as above is held that the insurer is required to be absolved from its liability to pay the compensation, the immediate next question would be whether the insurance company should be first asked to pay the amount of compensation and subsequently may be allowed to recover. The Apex Court has propounded the principle of 'pay and recover' considering the object of the legislation of the Motor Vehicles Act, 1988. Learned advocate for the respondents on this aspect relied on the decision of the Supreme Court in **Manuara Khatun Vs. Rajesh Kumar Singh, 2017 ACJ 1031 (SC)**. Another decision of the Full Bench of this court in **Shantaben Vs. Yakubbhai Ibrahimbhai Patel, 2012 ACJ 2715 (Gujarat)**, was also pressed into service.

8.1 In Manuara Khatun (supra), the case was of a gratuitous passenger, who died due to rash and negligent driving of the offending vehicle. The Apex Court applied 'pay and recover' principle and granted recovery rights to the insurer. In Shantaben (supra), the Full Bench of this court in the facts of the case before it, where the insurer had limited liability, permitted recover excess amount but firstly requiring to pay the entire amount."

8.2 In National Insurance Company Limited Vs. Anjana Shyam, 2007 ACJ 2129 (SC), the Supreme Court while dealing with the case where number of victim in accident exceeding the number of persons permitted to be carried, granted decree to the insurance company to recover the amount from the owner. The Apex Court in **Manuara Khatun, 2017 ACJ 1031 (SC)**, noticed other decisions also on the aspect to observe that the question was no long re integra:

"(15) The aforesaid question, in our opinion, remains no more res integra. As we notice, it was subject-matter of several decisions of this court rendered by three-judge Bench and two-Judge Bench in past, viz., **National Insurance Company Limited Vs. Baljit Kaur, 2004 ACJ 428 (SC); National Insurance Company Limited Vs. Challa Bharathamma, 2004 ACJ 2094 (SC); National Insurance Company Limited Vs. Kaushalaya Devi, 2008 ACJ 2144 (SC); National**

Insurance Company Limited Vs. Roshan Lal, SLP No. 5699 of 2006; decided on 19.1.2007 and National Insurance Company Limited Vs. Parvathneni, (200) 8 SCCC 785."

Undoubtedly, the purpose and object of the Motor Vehicle Act, 1988, is beneficial, to accord compensatory benefit to the persons who were either injured or died in a vehicular accident. It subserves a social beneficial purpose. Keeping in view this, and considering other attendant aspects of the case, the court deems appropriate to apply the 'pay and recover' doctrine."

224. Keeping in view the ratio of authorities discussed above, one thing is apparent that different High Courts have adopted different approach while applying the ratio of law regarding the principle of pay and recover propounded in the various authorities. It is high time that Honorable SC should clear this hazy situation by an authoritative pronouncement so that the claim Tribunals who are sometime groping in darkness for want of clarity as well as divergent rulings on the same facts and circumstance are not left in the lurch., The Honorable Apex Court in **National Insurance Co. Limited Vs. Praney Sethi AIR 2017 SC 5157= 2017 ACJ** deprecated strongly the practice being followed by some Benches of the High Courts as well as Apex Court not to follow the judgment of another co-ordinate bench or larger bench so as to create confusion and observed as under:

"Law will be bereft of all its utility if it should be thrown into a state of uncertainty by reason of conflicting decisions, and it is therefore desirable that in case of difference of opinion, the question should be authoritatively settled. It sometimes happens that an earlier decision given by a Bench is not brought to the notice of a Bench hearing the same question, and a contrary decision is given without reference to the earlier decision. The question has also been discussed as to the correct procedure to be followed when two such conflicting decisions are placed before a later Bench. The practice in the Patna High Court appears to be in those cases, the earlier decision is followed and not the later. In England the practice is, as noticed in the judgment in **Seshamma Vs. Vemlata Marasimharao** that the

decision of a court of appeal is considered as a general rule to be binding on it. There are exceptions to it, and one of them is thus stated in Halsburys Laws of England, 3rd Edn., Vol.22, para 1687, pp.799-800:"

225. The court is not bound to follow a decision of its own If given per incuriam. A decision is given per incuriam when the court has acted in ignorance of a provision of statute or a previous decision of its own or of a court of a co-ordinate jurisdiction which covered the case before it. In Associate **Builders VS DDA [2015]3 SCC 49** it was held that a single judge of High Court is bound by a prior decision of a single judge of High Court. Similarly, judgment of Division Bench of High Court is binding on subsequent Division Bench.

226. Judicial discipline and judicial propriety demands that constitution Bench decision in Pranay Sethi case supra is followed in letter and spirits by one and all in the hierarchy of judiciary, in as much as it deals exhaustively with the concept of just and fair compensation, which deals with concept of fairness, reasonableness and equitability on acceptable legal standards. The concept of "just compensation" has to be viewed through prism of fairness, reasonableness and non violation of the principle of equitability. The legal principle adumbrated in this judgment has been cited with approval by Apex Court and High courts in subsequent cases in emphatic manner time and again. The ratio contained therein has become locus classicus and guiding spirit for the courts. The doctrine of binding precedent is of utmost importance in the administration of our judicial system. It promotes certainty and consistency in judicial decisions. Judicial consistency promotes confidence in the system, therefore, there is this need for consistency in the enunciation of legal principles in the decisions of High Courts & Supreme Court.

227. It is high time that Honorable Apex Court should render an emphatic judgment so as to clear the cleavage of opinion and hazy situation regarding the principle of **pay and recover**, created by different judgments of different High Courts wherein, principle of "pay and recover" has been followed by putting reliance upon earlier judgments of Apex Court discussed above, in such cases

where insured has committed breach of condition of insurance policy by carrying unauthorized or gratuitous passengers in a goods carriage. Whereas it is evident from the some of judgments discussed above the principle of "pay and recover" has not been followed by putting reliance upon Asha Rani case as well as Baljit Kaur case in as much as the direction to pay the amount of compensation by the insurer to the claimant or victims of accident was passed by resorting to provision of Article 142 of the constitution. However, in some judgments High Courts have taken view that principle of pay and recover is to be followed by the Tribunals in case of third party liability, as Act is social and beneficial legislation. It is neither in doubt nor in dispute that such a power is only available to the honorable Apex Court under the Constitution. But there are cases where directions have been made by the Honorable Apex Court under Article 142 of the constitution and subordinate courts are accordingly following such directions to do justice to the parties. In my humble view, subordinate courts normally follow directions of the Supreme Court given under Article 142 of the constitution only when SC has directed the subordinate to follow the such direction in future. It goes without saying that the power enjoyed by the honorable Apex Court under article 142 of the constitution is extraordinary nature and even honorable High Courts do not have such powers to pass appropriate direction when a special enactment is silent on particular aspect of the case.

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