

---

**(2013) 03 AP CK 0081**

**In the Andhra Pradesh High Court**

**Case No : M.A.C.M.A. No. 570 of 2006**

Dadi Komurawa, Dadi Anitha and Dadi Pochalu

APPELLANT

Vs

Garshe Buchaiha, M/s. Ideal Industrial Explosive LDD Ltd.,  
Md. Sadiq and The United India Insurance Co. Ltd.

RESPONDENT

---

**Date of Decision : 15-03-2013**

**Acts Referred:**

Motor Vehicles Act, 1988 — Section 140, 158, 163A, 165, 165(1)

**Citation :** (2013) 4 ALD 634 : (2013) 4 ALT 327

**Hon'ble Judges :** B. Chandra Kumar, J

**Bench :** Single Bench

**Advocate :** Kota Subba Rao, for the Appellant; I. Naveen Kumar for Respondent No. 2 and Sri. V. Sambasiva Rao, for the Respondent

**Final Decision :** Dismissed

---

## **Judgement**

B. Chandra Kumar, J.—The claimants before the Motor Accidents Claims Tribunal (I Additional District Judge), at Karimnagar, challenging the dismissal order, dated 21.02.2003, passed in OP No. 361 of 1998, filed this appeal. The parties hereinafter will be referred to as they are arrayed before the Tribunal for the sake of convenience.

2. The first claimant is the wife of late Dadi Odelu and the second claimant is their daughter and the third claimant is the adoptive father of late Dadi Odelu. On 23.02.1995 at about 11.30 AM the deceased and others were proceeding in an Auto bearing No. ABT 9291 being driven by one Md. Sadiq, the third respondent in the claim petition. When the said auto reached Mangalampalli bus stage, the Van bearing No. AP-9T-5724 being driven by the first respondent in a rash and negligent manner came from opposite direction and hit the auto. As a result of which, the deceased sustained multiple injuries and he was shifted to Singareni Hospital, wherein it was declared that he was brought dead. The driver of the auto and other passengers also sustained injuries. Alleging that the accident occurred due to negligence of the first respondent i.e., van driver the

claimants claimed compensation against respondents 1 and 2.

3. The first respondent is the driver and the second respondent is the owner of the said Van. The third respondent is the driver of the auto. The fourth respondent is the Insurance Company with which the Van of the second respondent is insured. The third respondent remained ex parte. The first and second respondents filed a common counter. The fourth respondent filed a separate counter. It is the case of the respondents 1, 2 and 4 that the accident occurred due to the negligence of the auto driver i.e., the third respondent. It is also their case that one of the passenger lodged a complaint to the police against the auto driver basing on which the police registered a case in Crime No.41 of 1995 against the third respondent- auto driver. The other averments of the claimants with regard to the manner in which accident was occurred and income of the deceased etc., have been denied.

4. The Tribunal framed the following issues.

1. Whether the accident was caused by the first respondent/driver by his rash or negligent driving of the vehicle?

2. Whether the petitioners are entitled to recover compensation and if so, to what amount and from whom?

3. To what relief?

5. On behalf of the claimants, the first claimant was examined as PW. 1 and PWs.2 to 4 were also examined and Exs. A1 to A11 were marked. On behalf of the respondents RWs. 1 and 2 were examined and Exs. B1 to B3 were marked.

6. On appreciation of entire oral and documentary evidence, the Tribunal came to the conclusion that the accident occurred due to rash and negligent driving of the auto driver. The Tribunal also came to the conclusion that the claimants are entitled to a compensation of Rs. 4,22,112/-. The Tribunal also held that the claimants cannot claim compensation from the respondents 1, 2 and 4 and there is no claim against the third respondent and accordingly dismissed the claim petition. Aggrieved by the said award, this appeal has been filed.

7. The main contention of Sri Kota Subba Rao, learned counsel for the claimants, is that the Tribunal failed to appreciate the evidence of PW.2 and wrongly relied on Ex. A1. It is also argued that the auto being small vehicle when compared to the Van, the Tribunal ought to have held that the driver of the Van is responsible for the incident. It is also argued that mere use of the vehicle on public road is enough to claim compensation and when two vehicles are involved it cannot be definitely said that the driver of one vehicle is totally innocent. In support of his contentions he has relied on several decisions.

8. Learned counsel for the respondents submitted that soon after the accident, the passenger traveling in the auto lodged a complaint to the police, wherein it was categorically mentioned that the accident occurred due to negligence of the

auto driver and in the above circumstances the findings of the Tribunal cannot be disturbed.

9. The points that arise for consideration are;

1. Whether the accident occurred due to the negligence of Van driver or auto driver or whether there is composite negligence?

2. Whether the Tribunal can base its findings on the FIR when the de facto complainant is an illiterate and what should be the basis for deciding the negligence aspect?

3. Is it necessary to prove the rough and negligent driving in all the cases?

10. It is not in dispute that both the vehicles i.e., the auto and van are involved in the accident. It appears that one Ramagiri Lingaiah lodged a complaint to the police, basing upon which the police registered a case in Crime No.41 of 1995. As seen from the recitals of Ex. A1-FIR, on 23.02.1995 the said Ramagiri Lingaiah and others were proceeding in the auto. The deceased was also sitting in the auto. It is a fact that in Ex. A1 it is mentioned that the driver of the auto Md. Sadiq had driven the auto in zigzag manner and in a rash and negligent manner and dashed against the Van. The police after completing investigation filed charge sheet against the said Sadiq. The recitals of the charge sheet go to show that the police conducted panchanama at the place of accident and had drawn a rough sketch of the place of accident. The Motor Vehicle Inspector also seems to have examined the auto and opined that the accident is not due to any mechanical defects of the vehicle. The wife of the deceased was examined as PW. 1. She is not an eye witness to the incident. PW. 2 is the crucial witness. According to him, on the date of accident, he along with the deceased and others were proceeding in the auto. They boarded the auto at Mangalampalli bus stage. According to him, their auto was hit by a Van which came from opposite direction and the accident occurred due to the rash and negligent driving of the Van driver and that the auto driver was not negligent. According to him, the police obtained his statement, but he did not state before the police that the driver of the auto drove the same in a rash and negligent manner and the auto went towards wrong side and hit the Van. PW.2 had put his thumb impression on his deposition. It is not clear from the certified copy of complaint that PW.2 had put his thumb impression on the original complaint.

11. The van driver is examined as RW. 1. Admittedly, he was driving the van on the date of accident. According to him, he was working under the second respondent and that while he was slowly driving the van along the left side of the road, the auto driven by the third respondent came in opposite direction in a jig jag manner and hit against his van on its rear portion and turned turtle. He admitted that the passengers traveling in the auto sustained injuries. According to him he had not driven the van in rash and negligent manner. According to him, somebody took the injured to the hospital and he did not give any report to the police. He remained at the place of accident till the police came there and

enquired him about the accident. He denied the suggestion that at the instance of his owner the police registered a case against the driver of the auto. He has also denied the suggestion that he had absconded from the scene of accident soon after the accident. The evidence of RW. 1, the driver of the Van, does not inspire confidence. Admittedly, he has not shifted the injured to the hospital, which is his obligation. He had not reported the matter to the police. According to him, the auto hit his van on its rear portion. But, it is nobody's case. The contents of the FIR go to show that the auto dashed against the Van and both the vehicles were coming in opposite direction. There remains the evidence of PW. 2. A written complaint seems to have been given to the police. PW.2 being a person who affixed his thumb impression must have depended on some other person to reduce the complaint into writing. The scribe of the original complaint is not examined and his name is not mentioned anywhere in the FIR. Therefore, it is not clear as to who is the original author of the FIR and on whose information it is mentioned that the auto driver drove the same in a rash and negligent manner and dashed against the Van. The time of accident is noted as 11.30 AM in the FIR. In Form-54 i.e., in Ex. A4 the time of accident is noted as 09.30 hours. In the Motor Vehicle Inspector's report Ex. A6 the time of accident is noted as 09.30 hours and time of inspection as 10-00 hours. Thus, it is clear that the police had information by 09.30 AM and the Motor Vehicle Inspector visited the place of accident by 10.00 AM. It is also clear that the name of the first informant is not mentioned any where. Thus, it is clear that the first information has been suppressed and PW.2 is not the first informant. As seen from the evidence, it appears that the accident occurred much prior to 09.30 AM. Including the driver of the auto, PW.2, the deceased and others,- who were travelling in the auto, were injured and they were immediately shifted to the hospital. According to the driver of the van, he did not shift any of the injured to the hospital and he did not give any police report. According to the driver of the van, the police came to the scene of offence at about 03:00 PM. When the police station is only at a distance of about 4 kilometers from the place of the accident, it is not clear as to why the police took 6 1/2 hours to reach the scene of offence. In that view of the matter, the contents of the FIR need not be given much importance. When it cannot be definitely said that PW.2 is the author of the FIR, it cannot be definitely said that he has re-assailed from his original version, because what is the original version is not available. If at all PW.2 had been the scribe of the original complaint, then it could have been definitely said that he has re-assailed from the original version. PW.2 further deposed that the police obtained his signature on a written report. Probably the word signature in the FIR appears to be incorrect. It must be thumb impression because PW.2 is an illiterate and he had put his thumb impression in his deposition. PW.2 denied the suggestion that he had stated before the police that the driver of the auto was rash and negligent in driving the auto and that the auto went on wrong side and hit the Van. He denied the suggestion that only to help the claimants and since the auto was not insured he is deposing against the driver of the Van. It has to be seen that no suggestion is given to this witness that the auto hit on the rear

side portion of the van. Though on behalf of the Insurance Company RW.2 was examined, admittedly he is not an eye witness. Therefore, his evidence is not useful. According to PW.2 the driver of the auto also sustained injuries. The contents of the FIR also go to show that the auto driver also sustained injuries. It appears that all the injured were shifted to Area Hospital, Godavarikhani. Admittedly, the van driver did not give report to the police. In the above circumstances it cannot be said that the contents of the FIR reveal the true facts.

12. The claimants have also filed Ex. A11 certified copy of judgment in C.C. No. 165 of 1995 on the file of the Special Judicial Magistrate of First Class (Mobile), Manthani. It shows that after trial the learned Magistrate has acquitted the driver of the auto. It appears that the Investigating Officer was not examined in the criminal case.

13. The claimants' allegation is that the accident occurred due to the rash and negligent driving of the driver of the van, but respondents 1 and 2 managed the police and got registered a case against the third respondent. However, respondents 1 and 2 have denied the said averment.

14. Learned counsel for the appellant had relied on the judgment in the case between Andhra Pradesh State Road Transport Corporation Vs. N. Krishna Reddy and Others, . In that case, it was alleged that the accident took place due to the rash and negligent driving of the driver of the bus belonging to the appellants. The accident occurred as a result of collusion between the van which the deceased was driving and the bus belonging to the appellant. The bus driver was examined as R.W. 1. Since R.W. 1 was charge-sheeted and P.W. 1 stated that the accident occurred due to the rash and negligent driving of the driver of the bus, the Tribunal held that the accident occurred due to rash and negligent driving of the driver of the bus. Thus, it is observed as follows:-

Merely because the police charge sheeted RW1 it cannot be presumed that the allegations therein are true. The allegations in the charge sheet have to be proved by adducing oral evidence. It is significant to note that Ex. A2, certified copy of the charge sheet, does not show that the investigating officer took pains to visit the scene of accident and verify as to how actually the accident took place. He did not even take pains to conduct a panchanama of the scene of accident and draw a sketch of the scene of accident though the driver of the van died in the accident.

15. Thus, it appears that in fatal accident cases, panchanama and sketch of scene of offence are very important because they reveal the position of the vehicles and the skid marks after the accident and that would help the Court to come to a correct conclusion and the contents of FIR or the charge-sheet cannot be treated as conclusive proof. In this case, admittedly, criminal case filed against the auto driver ended in acquittal. In that view of the matter, no importance can be given to the contents of FIR.

16. Learned counsel for the appellant had also relied on the judgment in the case

between Repaka Rajya Laxmi and Others Vs. Poldasari Komuraiah and Others, wherein the eyewitness was not cited as witness by the police in the charge-sheet, this Court observed that mere non mentioning of the name of the witness in the charge sheet as eyewitness cannot be a ground to reject his testimony.

17. In the case between Syed Ibrahim Vs. The Union of India (UOI) and Another, , this Court observed that the findings of the judgment of the trial Court are not binding on the Tribunal or civil Court and the evidence adduced before the Tribunal has to be taken into consideration. It was also observed that the purpose of filing of FIR and charge-sheet is only to establish the factum of the accident and receiving of injuries as a result thereof by the injured. Merely because the police issued FIR or laid charge sheet against a driver, the contents of the FIR and charge sheet cannot be the basis for deciding the negligence aspect. The Tribunal should appreciate the evidence adduced before it in proper perspective.

18. Learned counsel for the appellant had also relied on the judgment in the case between Sombathina Ramu Vs. T. Srinivasulu and Another, . In that case, the theory of contributory negligence was discussed. Since the deceased has not played any role in the accident, the question of contributory negligence does not arise in this case and when two vehicles are involved in the accident, it has to be decided whether there is a contributory negligence of the drivers of the two vehicles or whether any one of the is solely responsible for the accident or when both of the drivers are involved in the accident, the apportionment of negligence has to be done between those two drivers.

19. Learned counsel for the appellant had also relied on the judgment in the case between United India Insurance Co. Ltd. Vs. P. Prabhavathi and Others In that case, the vehicle damaged in a bomb blast arising out of factious disputes was involved in the accident. This Court had relied on the judgment of a Division Bench in the case between Bhupathi Prameela and Others Vs. The Superintendent of Police and Others, , wherein, the Division Bench elaborately discussed the issue of claimants entitlement to compensation irrespective of the proof of rash and negligent driving by the driver of the vehicle. The Division Bench held that negligence is breach of duty imposed by law and when an act is done without due care and caution or done with recklessness and indifference to consequences, such act has to be treated as rash and negligent act. The Division Bench further, on exhaustive examination of the case law, concluded that the vehicle need not be in motion at the time of the accident and even where the owner of the vehicle fails to take care to check the mechanical defects of the vehicle or where there is no evidence that owner has taken all necessary precautions for maintenance of the vehicle, such acts also should be treated as negligent acts in using the vehicle. It is also observed that where the owner or the driver or conductor had not taken necessary precautionary measures for the safety of passengers although terrorist attacks suspected and the vehicle met with an accident in terrorist attacks, that circumstance is sufficient to hold that

there is rash and negligent driving of the vehicle. In such circumstances, use of the vehicle in public place is sufficient and compensation should be awarded treating it as an application filed u/s 163-A of the M.V. Act.

20. Therefore, it appears that a broader outlook is necessary while dealing with the claim arising out of use of motor vehicles.

21. Reliance has also been placed on the judgment in the case between *Kore Laxmi and Others Vs. United India Insurance Company Limited and Others*, . In that case, the dependents of the deceased driver, whose lorry collided with another lorry, claimed compensation u/s 166 of the Motor Vehicles Act. The Tribunal found that the accident occurred due to negligence of the deceased driver, but however, restricted their claim to the amount they claimed by applying the table given in Second Schedule in Motor Vehicles Act u/s 163-A of the Act. While dealing with Section 163-A of the Motor Vehicles Act, the Division Bench of this Court observed as follows-

It would be suffice to claim compensation to prove that the vehicle was involved in the accident. In fact, subsection (2) of section 163-A makes it clear that the claimant is not required to plead or establish that the death or permanent disablement in respect of which the claim has been made due to any wrongful act or negligent or default of the owner of the vehicle or vehicles concerned or of any other person and under sub-section (3) the compensation payable in the case of fatal accidents as well as death were given.

22. In that case, the claimants filed an application u/s 166 of the Motor Vehicles Act and it was argued that the Tribunal erred in applying the table given in Second Schedule in Motor Vehicles Act u/s 163-A of the Act. The Division Bench of this Court rejected the said objection holding that such objection cannot be sustained since the Supreme Court, as early as in 1950 held that even if a party approaches the Court invoking a wrong provision, the Court is always bound to do justice by applying the correct law.

23. Sri Kota Subba Rao, learned counsel for the claimants, heavily relies on the rule laid down in the case between *Rylands Vs. Fletcher* {1861-73 All ER 1 : (1868) LR 3 HL 330}, which decision was referred by the Apex Court in the case between *Smt. Kaushnuma Begum and Others Vs. The New India Assurance Co. Ltd. and Others*, . In that case, the claim was dismissed solely on the ground that there was neither rashness nor negligence in driving the vehicle. The claimants were unsuccessful before the Division Bench of the High Court of Allahabad. The matter was carried to the Apex Court. The jeep involved in the accident was capsized due to bursting of front tyre of the jeep and in that process hit the deceased whose dependants claimed compensation for his death. Having found that the front wheel of the jeep suddenly got burst resulting in the disbalance, it was held that the rashness and negligence of the driver is not established. The question that came up for consideration before the Apex Court is "Should there necessarily be negligence of the person who drove the vehicle if

a claim for compensation is to be sustained?" While referring to Sections 165(1) and 175 of the Motor Vehicles Act, 1988 (for short "the Act") the Apex Court, in paras. 10, 11, 14, 15, 18 and 19, observed as follows.

It must be noted that 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.

Even if there is no negligence on the part of the driver or owner of the motor vehicle, but accident happens while the vehicle was in use, should not the owner be made liable for damages to the person who suffered on account of such accident? This question depends upon how far the Rule in *Rylands vs.*

*Fletcher* (supra) can apply in motor accident cases. The said Rule is summarised by Blackburn, J, thus:

The true rule of law is that the person who, for his own purposes, brings on his land, and collects and keeps there anything likely to do mischief if it escapes, must keep it at his peril, and, if he does not do so, he is *prima facie* answerable for all the damage which is the natural consequence of its escape. He can excuse himself by showing that the escape was owing to the plaintiffs default, or, perhaps, that the escape was the consequence of *vis major*, or the act of God; but, as nothing of this sort exists here, it is unnecessary to inquire what excuse would be sufficient.

24. The Rule in *Rylands vs. Fletcher* has been referred to by this Court in a number of decisions. While dealing with the liability of industries engaged in hazardous or dangerous activities P.N. Bhagwati, C.J., speaking for the Constitution Bench in *M.C. Mehta and another Vs. Union of India and others*, , expressed the view that there is no necessity to bank on the Rule in *Rylands vs. Fletcher*. What the learned Judge observed is this:

We have to evolve new principles and lay down new norms which would adequately deal with the new problems which arise in a highly industrialised economy. We cannot allow our judicial thinking to be constricted by reference to the law as it prevails in England or for the matter of that in any other foreign country. We no longer need the crutches of a foreign legal order.

25. It is pertinent to point out that the Constitution Bench did not disapprove the Rule. On the contrary, learned judges further said that "we are certainly prepared to receive light from whatever source it comes." It means that the Constitution Bench did not foreclose the application of the Rule as a legal proposition.

26. Like any other common law principle, which is acceptable to our jurisprudence, the Rule in *Rylands vs. Fletcher* can be followed at least until any other new principle which excels the former can be evolved, or until legislation provides differently. Hence, we are disposed to adopt the Rule in claims for

compensation made in respect of motor accidents.

27. "No Fault Liability" envisaged in Section 140 of the MV Act is distinguishable from the rule of strict liability. In the former the compensation amount is fixed and is payable even if any one of the exceptions to the Rule can be applied. It is a statutory liability created without which the claimant should not get any amount under that count. Compensation on account of accident arising from the use of motor vehicles can be claimed under the common law even without the aid of a statute. The provisions of the MV Act permits that compensation paid under "no fault liability" can be deducted from the final amount awarded by the Tribunal. Therefore, these two are resting on two different premises. We are, therefore, of the opinion that even apart from Section 140 of the MV Act, a victim in an accident which occurred while using a motor vehicle, is entitled to get compensation from a Tribunal unless any one of the exceptions would apply. The Tribunal and the High Court have, therefore, gone into error in divesting the claimants of the compensation payable to them.

Para 17 of the said judgment is as follows.

28. In Gujarat State Road Transport Corporation, Ahmedabad Vs. Ramanbhai Prabhatbhai and Another, the question considered was regarding the application of the Rule in cases arising out of motor accidents. The observation made by E.S. Venkataramiah, J. (as he then was) can profitably be extracted here:

Today, thanks to the modern civilization, thousands of motor vehicles are put on the road and the largest number of injuries and deaths are taking place on the roads on account of the motor vehicles accidents. In view of the fast and constantly increasing volume of traffic, the motor vehicles upon the roads may be regarded to some extent as coming within the principle of liability defined in Rylands v. Fletcher. From the point of view of the pedestrian the roads of this country have been rendered by the use of the motor vehicles highly dangerous. "Hit and run" cases where the drivers of the motor vehicles who have caused the accidents are not known are increasing in number. Where a pedestrian without negligence on his part is injured or killed by a motorist whether negligently or not, he or his legal representatives as the case may be should be entitled to recover damages if the principle of social justice should have any meaning at all. In order to meet to some extent the responsibility of the society to the deaths and injuries caused in road accidents there has been a continuous agitation throughout the world to make the liability for damages arising out of motor vehicles accidents as a liability without fault.

29. It appears that the provisions of the Motor Vehicles Act are required to be amended so as to render complete justice to all the victims of motor accidents. There should be a social security, legislation covering all the victims of the motor accidents and the dependants of the persons who died in the motor accidents. Irrespective of the terms and conditions of the policy, the victims should be paid compensation. In fact the injured or the dependants of the deceased are no way

concerned with the terms and conditions of the policy. They are not parties to the insurance policy and therefore not bound by the terms and conditions of the policy. In most of the cases they are only either pedestrians or traveling in the vehicles. They are not expected to know that the vehicle which caused the accident was being driven by a person who had no driving licence or that he was under the influence of alcohol. The dispute should be between the insured and insurer. In most of the cases, the victims are not responsible as to the manner of occurring the accident. Whether one vehicle is involved or more than one vehicle is involved, whether there is composite negligence of drivers of both the vehicles or whether the accident occurred due to improper maintenance of the vehicle, in any case the victims are not responsible. They are also not responsible for the road conditions and if any person while driving the vehicle violates the relevant rules, the victims should not be denied compensation for the mistakes committed by the owners of the vehicles. If violations are continuing, it is the responsibility of the concerned Government and it's concerned officials. It is for the officials who had to check those vehicles and prevent the violations of relevant rules. If the victims are denied compensation on any one of these technical grounds it amounts to rendering great injustice to such persons. Therefore, it is for the legislature to consider these aspects and do the needful. Steps have to be taken to see that compensation is paid to the victims at the first instance. The Insurance Companies should take steps to attach the movable and immovable properties of the owners of the vehicle. The police must inform the insurance companies as soon as an accident occurs and immediate steps should be taken to attach the vehicle and other properties of the owner of the vehicle if it appears that there are violations of the terms and conditions of the policy.

30. Having regard to the ground realities it appears that the rule in *Reliance v. Frecher* should be made applicable to the relevant cases to avoid injustice.

31. The Tribunals are constituted u/s 165 of the Act for the purpose of adjudicating upon claims for compensation in respect of accidents involving the death of, or bodily injury to, persons arising out of the use of motor vehicles, or damages to any property of a third party so arising, or both. The word used in this section is the "use of motor vehicles."

32. Section 166 of the Act deals with an application for compensation arising out of an accident of the nature specified in sub-section (1) of Section 165.

33. Section 167 of the Act is as follows.

Section 167 - Option regarding claims for compensation in certain cases:- Notwithstanding anything contained in the Workmen's Compensation Act, 1923 (8 of 1923) where the death of, or bodily injury to, any person gives rise to a claim for compensation under this Act and also under the Workmen's Compensation Act, 1923, the person entitled to compensation may without prejudice to the provisions of Chapter X claim such compensation under either of those Acts but not under both.

34. In fact the question whether the driver of the vehicle had driven the vehicle in a rash and negligent manner or not do not find place in any one of the sections referred above. Anyhow Sub-section (3) of Section 140 of the Act envisages that in any claim for compensation under subsection (1), the claimant shall not be required to plead and establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act, neglect or default of the owner or owners of the vehicle or vehicles concerned or of any other person.

35. Sub-section (5) of Section 140 is as follows.

(5) Notwithstanding anything contained in sub-section (2) regarding death or bodily injury to any person, for which the owner of the vehicle is liable to give compensation for relief, he is also liable to pay compensation under any other law for the time being in force:

Provided that the amount of such compensation to be given under any other law shall be reduced from the amount of compensation payable under this section or u/s 163-A.

36. It appears as from the scheme the compensation u/s 140 has to be paid as expeditiously as possible as an interim measure. It has to be seen that the legislature in their wisdom have introduced Section 163-A which is as follows.

163-A. Special provisions as to payment of compensation on structured formula basis:- (1) Notwithstanding anything contained in this Act or in any other law for the time being in force or instrument having the force of law, the owner of the motor vehicle of the authorized insurer shall be liable to pay in the case of death or permanent disablement due to accident arising out of the use of motor vehicle, compensation, as indicated in the second schedule, to the legal heirs or the victim, as the case may be.

Explanation:- For the purposes of this sub-section, "permanent disability" shall have the same meaning and extent as in the Workmen's Compensation Act, 1923 (8 of 1923)

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

(3) The Central Government may, keeping in view the cost of living by notification in the Official Gazette, from time to time amend the second schedule.

37. Thus, it is clear that when a claim is made u/s 163-A, the claimant shall not be required to plead and establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act, neglect or default of the owner or owner of the vehicle or vehicles concerned or of any

other person.

38. Sub-section (6) of Section 158 is as follows.

(6) As soon as any information regarding any accident involving death or bodily injury to any person is recorded or report under this section is completed by a police officer, the officer incharge of the police station shall forward a copy of the same within thirty days from the date of recording of information or, as the case may be, on completion of such report to the Claims Tribunal having jurisdiction and a copy thereof to the concerned insurer, and where a copy is made available to the owner, he shall also within thirty days of receipt of such report, forward the same to such Claims Tribunal and Insurer.

39. Thus, the police have to forward a report to the Claims Tribunal having jurisdiction.

40. It has to be seen that under sub-section (4) of Section 166 the Claims Tribunal shall treat any report of accidents forwarded to it under sub-section (6) of section 158 as an application for compensation under this Act. Thus, a report of accident forwarded to the Tribunal under sub-section (6) of Section 158 is to be treated as an application for compensation. There is nothing to say that such report should be treated as an application u/s 166 of the Act. It can be treated as an application either u/s 166 or u/s 163-A of the Act. Irrespective of section of law or a particular rule under which an application has been made the Tribunal has to award just and reasonable compensation. If it appears to the Tribunal that it would be just and reasonable to award compensation u/s 163-A the Tribunal may treat an application even u/s 166 of the Act as an application filed u/s 163-A and award just and reasonable compensation. The object of the Act is to award just and reasonable compensation to the claimants. No claim shall be rejected merely on the ground that the claim is made under incorrect section of law. The ultimate object should be to render complete justice to the parties.

41. Coming to the negligence aspect there is another aspect. The van driver seems to be in advantageous position. When there was a collision between a bus and scooter resulting the death of scooterist the Madras High Court in case between Dheeran Chinnamalai Transport Corporation Ltd. Vs. Donald Vassou and Others, observed that the driver while driving the bus from an elevated position would have been in a position to visualize the movement of the vehicle in front. In the said case, the Madras High Court, referring to another case of the same High Court in Alagammai alias Indirani and Another Vs. Managing Director, Marudhu Pandian Trans. Corpn. and Another, observed as follows.

.....the driver of the bus driving from an elevated position, would be able to visualize the movement of the vehicle in front of him because of his position and that had he been more diligent, he could have avoided the accident and that merely because the rider of the scooter came in the wrong direction, the apportionment of the negligence fixed by the Tribunal 50:50 between the bus driver and the rider of the scooter cannot be accepted to be a correct one. In the

said case, the Division Bench of this Court fixed the negligence on the part of the driver and the victim as 60:40.

42. Having regard to the above discussion, the facts have to be appreciated. It appears that three persons were sitting in the back seat of the auto. There were two persons on either side of the driver of the auto. Thus, the driver of auto was sitting between two persons on his driving seat. Thus, it is clear that auto was also over loaded with passengers. Admittedly, the van driver being in elevated position would be able to visualize the movement of the auto which was coming from his opposite direction. Had he been more diligent he could have avoided the accident. It cannot be said that the accident occurred solely due to the negligence of the auto driver. It is a fact that the auto driver is also not examined in this case. It is also a fact that the rough sketch of the scene of offence is not filed in this case as well as in criminal case. The panchanama prepared at the scene of offence is also not filed in this case. Of course it was filed in criminal case, but the said record is not available. Since the accident occurred on 23.02.1995 i.e., about 17 years back, it may not be possible to secure those records at present. According to PW.2, the Van driver is negligent. Having regard to the fact that the auto was over loaded and the fact that the driver of the Van was in elevated position and could have visualized the movements of the auto, it may be just and reasonable to apportion the negligence between the van driver and auto driver as 60:40.

43. The next point that arises for consideration is what is the just and reasonable compensation that can be awarded in the circumstances of the case?

44. The claimants have claimed compensation of Rs. 10,00,000/-. The claimants averred that the deceased was earning Rs. 3,500/- per month. After amending their claim petition they have examined PW.4, the Deputy Personnel Manager of Singareni Collieries Limited. Ex. A8 is the salary certificate of the deceased issued by the Senior Divisional Engineer, Opencast Project No. 1, Ramagundam-IV. It shows that the deceased was drawing gross salary of Rs. 5143-67 ps., and net salary of Rs. 4083/-. It also shows that the deceased was entitled to daily basic of Rs. 47-84 ps., for 26 days and if he works more musters he would get more amount. The claimants also examined PW.3 who deposed that the deceased would have got 60% more of his wages when he would have got promotion to category III. According to PW. 1 her husband was earning Rs. 5,000/- per month.

45. The deceased was admittedly aged 37 years as on the date of accident. Having regard to the principles laid down in case between Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, , there should be increase of 1/4th in the income of the deceased. If the income of the deceased is taken at Rs. 5,000/- per month, having regard to his expected enhancement of salary, the income of the deceased should be calculated at Rs. 6,250/- per month. Since there are three dependents 1/3 has to be deducted towards his personal expenses. If the same is deducted loss of dependency comes to Rs. 4170/- per

month and annual loss of dependency comes to Rs. 50,040/-. The appropriate multiplier would be "15". If "15" multiplier is applied the total loss of dependency comes to Rs. 7,50,600/-. The claimants are also entitled to Rs. 20,000/- i.e., Rs. 10,000/- towards consortium, Rs. 5,000/- towards funeral expenses and Rs. 5,000/- towards transportation charges etc. Thus, total compensation comes to Rs. 7,70,600/-. Respondents 1, 2 and 4 are jointly and severally liable to pay 60% of the awarded amount. The third respondent is liable to pay 40% of the compensation amount in view of the apportionment of the negligence between the van driver and the third respondent-driver of the auto. The rate of interest shall be 7.5% p.a., from the date of petition till realization. Out of the amount awarded, the first claimant shall take Rs. 4,00,000/-, the second claimant shall take Rs. 3,00,000/- and the third claimant shall take Rs. 70,600/-. The second claimant is aged about 6 years as on the date of filing of the petition and it appears that as on date he attained majority. In view of the age of the third claimant he is permitted to withdraw the amount awarded to him. Similarly, the first and second claimants are permitted to withdraw half of the amount awarded to them with accrued interest thereon and the first claimant is permitted to withdraw the costs of the petition. The remaining amount awarded to the first and second claimants shall be kept in fixed deposit for a period of three years. However, if they are in need of money, they may approach the Tribunal seeking permission to withdraw the amount with accrued periodical interest on those fixed deposits and the Tribunal having regard to their necessity, if satisfied, may permit them to withdraw the amount.

46. Accordingly, the MACMA is allowed in part. No costs. As a sequel, the miscellaneous petitions, if any, shall stand closed.