

(2000) 04 GUJ CK 0021
In the Gujarat High Court
Case No : First Appeal No. 5315 of 1995

Dr. Urmila J. Sangani

APPELLANT

Vs

Pragjibhai Mohanlal Luvana and Others

RESPONDENT

Date of Decision : 07-04-2000

Acts Referred:

Motor Vehicles Act, 1939 — Section 110B
Motor Vehicles Act, 1988 — Section 166, 168

Citation : (2000) ACJ 1125 : AIR 2000 Guj 211 : (2000) 2 GLR 1281 : (2000) 3 RCR(Civil) 467

Hon'ble Judges : M.S. Parikh, J;Kundan Singh, J;J.M. Panchal, J

Bench : Full Bench

Advocate : B.G. Jani, for the Appellant; P.V. Nanavati and Vibhuti Nanavati, for the Respondent

Judgement

Panchal, J.—This First Appeal has been placed before the Larger Bench in view of an order of reference made by the learned Single Judge on January 19, 1996.

2. In order to understand the scope of the reference, it would be necessary to notice the facts of the case in brief which are as under :

The appellant was travelling on June 15, 1986 in luxury bus bearing registration No. GRP-3586 and was going from Bombay to Junagadh. When the bus reached near Vadtal Chokdi on Ahmedabad-Bombay Highway, the bus driver noticed a truck lying in front of the bus. He, therefore, after giving signal, started overtaking the truck and at that time, a public carrier bearing registration No. GTW-4156 owned by the respondent No. 4 and driven by its driver came with full speed from opposite direction and dashed with the right hand side of the bus. As a result of the accident, the appellant was injured. Therefore, she filed a claim petition u/s 110-A of the Motor Vehicles Act, 1939 before the Motor Accident Claims Tribunal (Auxi.), Nadiad, District Kheda claiming compensation of Rs. 58,100/-, against the bus driver and the bus owner as well as the United India Assurance Company Ltd. with which the luxury bus was insured and the truck

owner as well as the New India Assurance Company Ltd., with which the truck was insured. The driver of the truck involved in the accident was initially impleaded as one of the opponents, but was subsequently deleted in view of order passed below Exh. 24.

Neither the bus driver, nor the bus owner filed any written statement disputing the averments made in the claim petition. So also, no written statement was filed on behalf of the truck owner, but the New India Assurance Company with which the truck was insured as well as the United India Assurance Co. with which the luxury bus was insured filed written statements and contested the claim petition. In view of the pleadings of the parties, necessary issues for determination were raised by the Tribunal. The appellant examined herself in support of her claim for compensation as well as Dr. Mithawala and Dr. Snehal Desai, who had treated the appellant for her injuries and issued disability certificates. On appreciation of evidence, the Tribunal held that the total amount of compensation payable to the appellant was Rs. 75,000/-. However, the appellant had claimed Rs. 58,100/-. The Tribunal has, therefore, awarded the amount claimed with interest at the rate of 15% per annum and costs by award dated February 1, 1995. According to the appellant, the Tribunal has power or jurisdiction to award higher amount of compensation though not claimed by the claimant and, therefore, the appellant ought to have been awarded compensation of Rs. 75,000/-. Under the circumstances, the appellant has filed above-numbered appeal u/s 173 of the Motor Vehicles Act, 1988.

2A. When the matter was placed for admission hearing before the learned Single Judge, it was contended that the Claims Tribunal has power or jurisdiction to award higher amount of compensation though not claimed by the claimant. The learned Single Judge felt that there was conflict between the decision of Division Bench of this High Court rendered in Babu Mansa Vs. The Ahmedabad Municipal Corporation and Others, , wherein it is propounded that so long as the amount awarded does not exceed the amount claimed, the amount awarded can be suitably split-up and awarded under different heads and even if specific amount is claimed under a particular head, the Tribunal has power to award an excess amount under that very head without amendment of claim application provided the evidence justifies it and the decision of Division Bench of Bombay High Court in Municipal Corporation of Greater Bombay and Another Vs. Kisan Gangaram Hire and Others, wherein a view has been taken that if the amount awardable to the claimant as worked out by the Tribunal exceeds the amount claimed by the claimant, the Tribunal has power or jurisdiction to award higher amount of compensation though not claimed by the claimant. The learned Single Judge has, therefore, referred following questions for determination to the Larger Bench :--

(1) Whether u/s 166 read with Section 168 of the Motor Vehicles Act, 1988 and Section 110-B of the Motor Vehicles Act, 1939, it is open to Claims Tribunal to award the amount of compensation higher than the amount claimed by the claimant in the claim petition on the ground that the Tribunal has jurisdiction to

award "just compensation"?

(2) Whether the decision of Division Bench of the Bombay High Court reported in *Municipal Corporation of Greater Bombay and Another Vs. Kisan Gangaram Hire and Others*, lays down the correct law when compared to the decision of the Division Bench of this Court reported in *Babu Mansa Vs. The Ahmedabad Municipal Corporation and Others*, and subsequent decision of the Bombay High Court reported in 1989 (2) ACJ 750?

(3) If the claimant has not resorted to the remedy of amending the claim petition at any stage, the Tribunal on its own or the First Appellate Court on its own, would be justified in enhancing the amount of compensation because according to the Tribunal or the Court, the amount awardable is higher than the amount claimed by the claimant?

3. Mr. B. G. Jani, learned counsel for the appellant urged that power or jurisdiction of the Tribunal to award just compensation includes the power to award the amount of compensation higher than the amount claimed by the claimant in the claim petition and, therefore, the appellant ought to have been awarded a sum of Rs. 75,000/- which was found payable by the Tribunal. It was claimed that it is the duty of the Claims Tribunal to pass an award for compensation which appears to be just and, therefore, claim advanced by the claimant in the claim petition would not preclude the Tribunal from passing an award of higher amount of compensation though not claimed by the claimant. According to the learned counsel, Section 110-B of the Motor Vehicles Act, 1939 did not require the claimant to specify the grounds on which compensation was claimed and the only requirement being that of mentioning of factum of accident, the Tribunal ought to have awarded the sum which according to it was found payable to the appellant. What was maintained was that having come to the conclusion that the appellant was entitled to compensation of Rs. 75,000/- instead of awarding the amount claimed in the petition, the Tribunal ought to have directed the appellant to move an amendment application and after service of the same to the opponents, ought to have passed an award for Rs. 75,000/-. In support of his submissions, the learned counsel for the appellant placed reliance on the decisions rendered in : (i) *Municipal Corporation of Greater Bombay v. Kisan Gangaram Hire*, 1987 Acc CJ 311, (ii) *New India Assurance Co. Ltd. Vs. G. Lakshmi and Others*, , (iii) *Sharifunnisa v. B. R. Date* 1986 ACJ 792, (iv) *Kela Devi and Others Vs. Ram Chand and Others*, , and (v) *Dayali Bai and Others Vs. State of Rajasthan and Another*, .

4. Mr. P. V. Nanavati, learned counsel for the Insurance Companies submitted that the claim petition has to be presented before the Claims Tribunal in the prescribed form, wherein the requirement is that the claimant should amongst other things specify the amount claimed and as the opponents have to meet the case pleaded in the claim petition. It is not open to the Claims Tribunal to award the amount of compensation higher than the amount claimed by the claimant. According to the learned counsel, so long as the amount awarded does not

exceed the amount claimed, the amount awardable can be suitably split-up and awarded under the different heads and even if specific amount is claimed under a particular head, the Tribunal has power to award an excess amount under that very head without amendment of the claim application provided evidence justifies it and, therefore, power to award just compensation should not be construed to mean that the Tribunal has jurisdiction to award higher amount of compensation though not claimed by the claimant. What was emphasised was that the view taken by the Division Bench of this High Court in Babu Mansa, (AIR 1978 Guj 1341 (supra) is supported by the decision of Supreme Court in Adikanda Sethi (Dead) through Lrs. and Another Vs. Palani Swami Saran Transports and Another, and, therefore, the questions referred to the Larger Bench should be answered in negative.

5. We have heard the learned Counsel for the parties and taken into consideration the provisions of the Motor Vehicles Act, 1939, Bombay Motor Vehicles Rules, 1959. The Motor Vehicles Act, 1988, as well as Gujarat Motor Vehicles Rules, 1989. The Motor Vehicles Act, 1939 is repealed by the provisions of the Motor Vehicles Act, 1988, but some matters arising under the repealed Act are pending in the High Court. Therefore, we propose to refer to in detail the scheme of relevant provisions of the Motor Vehicles Act, 1988 and Gujarat Motor Vehicles Rules, 1989 and in brief the provisions of the Motor Vehicles Act, 1939 as well as the Bombay Motor Vehicles Rules, 1959. The Claims Tribunal was constituted u/s 110 of the Motor Vehicles Act, 1939. Section 110-A provided for an application for compensation to be made by the persons belonging to categories (a) to (c) in Sub-Section (1) thereof. Sub-Section (2) of Section 110-A was as under :

"(2) Every application under Sub-Section (1) shall be made to the Claims Tribunal having jurisdiction over the area in which the accident occurred, and shall be in such form and shall contain such particulars as may be prescribed.

Provided that where any claim for compensation u/s 92-A is made in such application, the application shall contain a separate statement to that effect immediately before the signature of the applicant."

Relevant part of Rule 291 of the Bombay Motor Vehicles Rules, 1959 which made provision regarding compensation arising out of accidents was as under :--

"291. Procedure regarding compensation arising out of accidents--

(1) An application for compensation arising out of accident of the nature specified in Sub-Section (1) of Section 110 by persons specified in Sub-Section (1) of Section 110A made to the Motor Accidents Claims Tribunal having jurisdiction over the area in which the accident occurred shall be in Form Comp A, to these rules and shall contain the particulars specified in that form."

As is evident from above quoted rule, an application for compensation was required to be in Form Comp. A, which inter-alia required quantification of

quantum of compensation claimed and basis thereof.

So far as new Motor Vehicles Act, 1988 is concerned, Section 166 of the said Act enables a claimant to file an application for compensation and Sub-Section (2) of Section 166 which is relevant for our purpose is as under :--

"(2) Every application under Sub-Section (1) shall be made to the Claims Tribunal having jurisdiction over the area in which the accident occurred, and shall be in such form and shall contain such particulars as may be prescribed :

Provided that where any claim for compensation u/s 140 is made in such application, the application shall contain a separate statement to that effect immediately before the signature of the applicant."

The Government of Gujarat has framed rules called The Gujarat Motor Vehicles Rules, 1989" and Rule 211 of the Rules governs procedure regarding compensation arising out of accident. The relevant part of the said rule is as under :

"(1) An application for compensation under Sub-Section (1) of Section 166 shall be made to the Claims Tribunal Form Comp .A, and shall contain the particulars specified in that form".

In the new rule also, it is provided that an application for compensation has to be made in Form Comp.A and contain the particulars specified in that form. Form Comp.A as prescribed in the Rules of 1989 is as under :--

"Form Comp .A

(See Rule 211 (1))

Application for compensation arising out of the use of motor vehicles.

To

The Motor Accidents Claims Tribunal

.....residing at.....Applicant(s)

versus

.....residing

at.....Opposite party

1. Full name(s) of applicant(s) with age :

i.

ii.....

iii.

2. If accident had caused death:

- (a) relationship of each applicant with the accused
- (b) age of deceased.....
- 3. Local address of applicant.....
- 4. Permanent address of applicant.....
- 5. Monthly income of injured person or deceased.....
- 6. Nature of injuries sustained and disablement caused.....
- 7. Date and place of accident.....
- 8. Registration mark of the motor vehicle involved.....
- 9. Name and address (if known) of
 - (a) driver of the motor vehicle.....
 - (b) owner of the vehicle.....
 - (c) the insurer of the motor vehicle.....
- 10. Brief particulars of the accident.....
- 11. Quantum of compensation and basis thereof.....
- 12. Grounds on which compensation is claimed
(mention briefly the cause of action)
- 13. Whether demand for compensation has been made, if so, from when and with what result.....
- 14. If claim for compensation is not made within sixty days of the accident, the grounds thereof.....

I hereby certify that the statement of facts contained above are to the best of my knowledge and belief true.

Date :

Place : Signature of claimant or authorised agent"

Section 168(1) of the Motor Vehicles Act, 1988 which is corresponding to Section 110-B of the Motor Vehicles Act, 1939, provides that the Claims Tribunal after making an inquiry into the claim or as the case may be, each of the claims, determine the amount of compensation which appears to it to be just.

6. It is clear from the above provisions that it enacts a complete code in itself in regard to claims which lie before the Claims Tribunal. The substantive power conferred upon the Claims Tribunal is to fix just compensation. What the just compensation is, would depend upon the facts and circumstances of each case. However, there are certain guidelines which are available and which have been

evolved by the Courts in deciding the cases arising under the provisions of the Motor Vehicles Act. Sections 110 to 110-F of the Motor Vehicles Act, 1939 (New Sections 166 to 175) were introduced by Act 100 of 1956. Prior to this, compensation could be claimed by institution of suits for damages only, through the medium of the Civil Court, on payment of ad valorem Court-fee. The group of Sections 166 to 175 furnishes a self contained code. The scheme of the said provisions is that the Legislature has provided a cheap and speedy remedy for claims for compensation in respect of accidents, involving death of, or bodily injury to, persons, arising out of the use of a motor vehicle and also damage to any property to a third party so arising, or both. The liability of the owner of the vehicle is based on tort and Sections 166 to 175 do not create any fresh liability. Though, in the above-mentioned provisions, a new forum is created, they have only changed the forum and the process by substituting the Motor Vehicles Claims Tribunal for the Civil Court. For determining liability, the Motor Accidents Claims Tribunal, commonly known as Claims Tribunal, has still to look to the substantive law in the Law of Torts and the Fatal Accidents Act, 1855, or to the principles thereof. If compensation is claimed by instituting a civil suit, normally Court would not pass decree for more damages than claimed in the plaint. Prima facie it appears that there is no limitation upon powers of the Claims Tribunal in granting just compensation. But, as provided by the statutory provisions, an application has to be in the prescribed form wherein claimant is required to specify the amount claimed. Rule 212 of the Gujarat Motor Vehicles Rules, 1989 further provides for payment of fees by the claimant when an application for compensation under Rule 211 is made, which means that unless and until the claimant has enhanced the claim for compensation by way of amendment, he should not be awarded more amount than claimed in the application. Moreover, the opponents are expected to meet that case which is pleaded in the claim petition. Even issues are also required to be framed on the basis of pleadings of the parties and normally parties lead evidence in support of their respective claims advanced in their pleadings. Under the circumstances, though the Tribunal is conferred with the powers to award just compensation, we are of the opinion that, that power does not confer jurisdiction on the Tribunal to award higher amount of compensation though not claimed by the claimant. In *Babu Mansa*, (AIR 1978 Gujarat 134) (supra), the Division Bench comprising Hon'ble Mr. Justice P. D. Desai (as he then was) and Hon'ble Mr. Justice M. K. Shah, considered the question whether on the true assessment of evidence led at the trial, claimant can be awarded higher amount than claimed under one particular head. The said question has been answered by the Division Bench in following terms in Para 24 of the reported judgment :

"It is true that in the claim application the compensation claimed by the appellant under this head was confined to Rs. 1000/-. However, so long as the total amount to be awarded does not exceed the total amount claimed, there should be no objection in awarding higher amount than that claimed under one particular head, if on the true assessment of the evidence led at the trial, the

claimant is found entitled to the same. In an application for compensation made u/s 110 (1) of the Motor Vehicles Act, 1939 read with Rule 291 of the Bombay Motor Vehicles Rules, 1959 and the prescribed form Comp.A, the relevant particular which the claimant has to set out relates to the quantum of compensation and basis thereof. The basis has to be broadly indicated on estimates. Besides, heads of compensation have to be regarded separately as aids to reaching a just amount. The Tribunal's power to award just and proper compensation is, therefore, not fettered by the specification of an amount in the claim application under any head. We are supported in the view which we are taking by the decision in *Bai Nada and Others Vs. Patel Shivabhai Shankerbhai and Others*, . It was there held at page 691 that once loss under both the heads comprised in Secs. 1A and 2 of the Fatal Accidents Act, "855 has been claimed and so long as the amount awarded does not exceed the amount claimed, the amount awarded can be suitably split up and awarded under the said two sections. The same principle will apply in cases of personal injury. So long as the award does not exceed the total amount claimed, there should be no objection in splitting it up under different heads and even if a specific amount is claimed under a particular head, the Tribunal has the power to award an excess amount under that very head without amendment of the claim application provided the evidence justifies it."

7. As is evident, the Division Bench which decided the case of *Babu Mansa*, has relied on the decision of the Division Bench of this Court rendered in the case of *Bai Nada and Others Vs. Patel Shivabhai Shankerbhai and Others*, . The Division Bench in case of *Bai Nanda* was concerned with the question of computing loss to the estate of the deceased. In the said case, it was argued on behalf of the respondents that there was no specific claim under the said head in the claim petition and, therefore, claimants were not entitled to compensation under the head of loss to the estate of the deceased. While negating the said contention, the Division Bench comprising Hon^{ble} Mr. Justice J. B. Mehta (as he then was) and Hon^{ble} Mr. Justice M. U. Shah, held that the claim made by the dependants as heirs of the deceased was not only for their maintenance, marriage, education, clothing etc. but was also for compensation on account of premature death of the deceased resulting in mental agony and forced widowhood. The Division Bench has observed on page 691 of the reported decision that the claim clearly included loss under both the heads and so long as the amount awarded did not exceed the amount claimed, the amount awarded could be suitably split up and awarded under two Sections 1-A and 2 of the Fatal Accidents Act, 1865.

From the above referred to decisions of our High Court, it becomes manifest that so long as the total amount to be awarded does not exceed the total amount claimed, there should be no objection in awarding higher amount than that claimed under one particular head, if on true assessment of the evidence led at the trial, the claimant is found to be entitled for the same. In First Appeal No. 523 of 1975 decided on September 9, 1977, the injured claimant had instituted a claim petition wherein the claim for compensation was restricted to Rs. 9,999/-.

The Tribunal, on assessment of evidence had found :

- (1) that there was contributory negligence to the extent of 50% on the part of the claimant;
- (2) that having regard to the evidence on record, the claimant was entitled to an award in the sum of Rs. 21,000/-;
- (3) that, however, the claimant having restricted his claim to Rs. 9,999/-, he was not entitled to claim damages in excess of the said sum; and
- (4) that since the liability in respect of the accident was apportioned between the claimant and the tort-feasor in the ratio of 50 : 50, the claimant was entitled to damages in the sum of Rs. 4,999.50 paise being 50 per cent of the amount claimed,

The claimant feeling aggrieved by the said award, preferred the aforesaid First Appeal and, inter-alia, contended that the Tribunal, even if it was right in apportioning the blame for the accident between the claimant and the tort-feasor in the proportion of 50 : 50, ought to have awarded damages in the sum of Rs. 9,000/- being the damages, claimed and not in the sum of Rs. 4,999.50 paise, being 50 per cent of the amount claimed by way of damages. The Court upheld the contention of the claimant in the following terms

".....having reached the conclusion that the appellant was in law entitled to damages in the sum of Rs. 21,000/-, all that the Tribunal could have done was to have made allowance to the extent of 50% in the said amount of Rs. 21,000/- and held that the appellant was entitled to Rs. 10,500/- on the basis of 50 : 50 apportionment of liability between the appellant and the first respondent. Since the amount of damages arrived at as aforesaid, namely, Rs. 10,500 was in excess of the amount claimed, the Tribunal ought to have allowed the full claim made by the appellant. It is not open, in case like the present to allow the apportionment to project into the claim made in the claim petition. Since even in the case of a restricted claim the Tribunal has to first arrive at the conclusion as to what is the true amount of damages which are awardable to a claimant, suitable allowance or deduction on account of apportionment of liability has first to be made after having arrived at the principal amount of damages. If on account of such allowance or deduction the amount awardable is less than the amount claimed, then, of course, the award cannot exceed the sum awardable as aforesaid. If, however, the sum awardable as aforesaid is in excess of the claim made by the claimant, then no further reduction is required to be made and the claimant would be entitled to the full amount claimed in the petition. Damages awardable and damages claimed are two distinct concepts and in a case like the present any deduction of allowance to be made on account of apportionment of liability has to be effected in the damages awardable and not the damages claimed. The Tribunal was, therefore, in error in the facts and circumstances of the present case, in not awarding to the appellant the full amount of Rs. 9,999/- claimed by him inasmuch as the said amount was less than the amount which

was awardable, i. e. Rupees 10,500/-."

In *United India Insurance Co. Ltd. Vs. Jyotsnaben and Others*, , the amount awardable was found to be Rs. 3,56,680/-, whereas the compensation claimed was Rs. 3,00,000/-. It was argued on behalf of the claimant that as the Tribunal has power to award more compensation than claimed, an award of Rs. 3,56,680/- should be passed in favour of the claimant. After referring to several decisions on the point, the Division Bench has held that amount more than claimed by the claimant cannot be awarded. All these decisions would indicate that the Gujarat High Court has taken consistent view that a claimant in a claim petition cannot be awarded more amount of compensation than claimed.

8. As noted earlier, in an application for compensation u/s 110-A (2) of the Motor Vehicles Act, 1939 read with Rule 291 of the Bombay Motor Vehicles Rules 1959 as well as Section 166(2) of the Motor Vehicles Act, 1988 read with Rule 211 of the Gujarat Motor Vehicles Rules, 1989, the application has to be in the prescribed form. The claimant has to set out relevant particulars in the application which is to be submitted in the prescribed form and one of the relevant particulars relates to quantum of compensation and basis thereof. The basis has to be broadly indicated on estimates and though the Tribunal has power to award just and proper compensation, it does not mean that the Tribunal can award compensation more than what is claimed in the claim petition. In *Fizabai and Others Vs. Nemichand and Others*, , the Division Bench of Madhya Pradesh High Court has taken the view that though compensation claimed need not be itemised, but the total figure of compensation claimed should be mentioned in the claim petition and the limitation in such cases should be that the Claims Tribunal should not award compensation exceeding the total figure of compensation mentioned in the application. Moreover, the Division Bench of Kerala High Court in *P.G. Hari, by his Next Friend Vs. Director General, Indian Council of Agricultural Research and Others*, has considered this question and has held as under :--

"We are not able to accept the plaintiffs contention. Plaintiff has, for his own reasons, limited the claim to an amount of Rupees 60,000/-. It is not open to the Court to grant a larger amount than that claimed in the plaint. It is not for the Court to go into a roving enquiry as to what could be the just amount of compensation and award more than what is claimed. It is for the plaintiff to estimate the amount that he wants to recover from the defendants and pay the Court-fee thereon. It is that claim that the defendants are also called upon to meet. In a suit of this nature, it is necessary for the plaintiff to be precise about the amount that he wants to recover. It is true that he can only estimate the amount of general damages. But then it is open to him to amend the plaint, if at any point of time he seeks to enlarge his claim. We do not read the observation of this Court extracted above to give a carte blanche to the Court to award amounts in excess of what has been prayed for in the plaint. In fact, this Court itself only proceeded on the basis that the plaintiff should pay the Court-fee on

any larger amount that he desires to get before the decree is passed. All that this Court meant was that the plaintiff need not necessarily be pinned down to the amount sought in the original plaint, but that he may reserve to himself liberty to make a larger claim before the decree is passed if he is able to sustain such a claim. We have viewed the decision in *Veeran and Another Vs. T.V. Krishnamoorthy and Another*, only in this way and not as enabling the Court to pass a decree for amounts larger than those claimed in the plaint by itself without even an amendment of the plaint."

We may state that though this question is not specifically dealt with or decided by the Supreme Court, we notice that in case of *Adikanda Sethi (Dead) through Lrs. and Another Vs. Palani Swami Saran Transports and Another*, the Supreme Court on assessment of evidence concluded that the claimants were entitled to get Rupees 1,40,000/- towards compensation, but as the claim was limited to Rs. 1 lac, the Supreme Court held that the claimant would be entitled to get Rs. 1 lac as compensation with interest. It would also be instructive to refer to judgment of the Supreme Court in *Ujjain Vikas Pradhikaran Vs. Tarachand and another etc.*, where the question considered was whether Court can grant compensation higher than claimed by the claimant under the Land Acquisition Act, 1894. In that case, the Land Acquisition Officer had awarded compensation at the rate of Rs. 27,500/- per hectare. On reference, the District Judge had enhanced compensation to Rs. 50,000/- per hectare. On an appeal. High Court had enhanced compensation to Rs. 1,25,000/- per hectare. Before the Supreme Court, it was pleaded on behalf of the appellant that the respondents having confined their claim to enhancement of compensation to Rupees 20,000/- per bigha in the memorandum filed in the High Court, High Court was clearly in error in awarding compensation at the rate of Rs. 1,25,000/- per hectare. On behalf of the respondents, it was contended that there was no prohibition to the respondents to claim higher compensation after the Amendment Act, 1984 had come into force and the High Court was justified in enhancing compensation. While allowing the appeal, Supreme Court had made following pertinent observations (Para 7) :

"It is true that u/s 25(2) of the Act, prior to the Amendment, the Court was prohibited to enhance the compensation in excess of the amount claimed pursuant to notices issued under Sections 9 and 10 of the Act. Since Sub-section (2) of Section 25 was deleted by Amendment Act 68 of 1984, the limitation on the exercise of the power of the Court was taken away. Nonetheless, it would always be open to a party to claim a particular amount and having claimed at the rate, the question arises: whether the Court could grant compensation higher than that claimed by the party ? It would be obvious that when a party claims compensation at a particular rate, he assesses the market value of the land at that particular rate and seeks compensation on that basis. Having assessed the compensation at that particular rate, the question emerges; whether the Court could grant higher compensation than was assessed by the party ? We find the answer in the negative. This principle squarely applies to the facts of these

cases. The party having limited the compensation to Rs. 20,000/- per bigha in the memorandum of appeal filed in the High Court, it would be obvious that the respondents claimed that they were entitled to the maximum of the compensation @ Rs. 20,000/- per bigha. Thereby the Court was precluded to award compensation beyond the amount claimed by the party and award in excess thereof would be obviously illegal. The power of the Court would be confined to the difference of the amount awarded by the reference Court and the amount claimed in the memorandum of the appeal, but not in excess thereof."

Applying the principles laid down by the Supreme Court, it will have to be held that the Claims Tribunal cannot award more compensation than claimed. Now, we will refer to the decision of the Division Bench of the Bombay High Court on the basis of which the present reference is made to the Larger Bench.

9. In *Municipal Corporation of Greater Bombay and Another Vs. Kisan Gangaram Hire and Others*, , in the application, the applicants claimed compensation of Rs. 75,000/-. In calculating the compensation, the Tribunal held that the deceased was contributing at least Rupees 500/- per month to the household expenses and that he would have worked at least for 20 to 25 years more. The total amount of dependency was thereafter calculated by applying multiplier of 15 years having regard to the uncertainty of life and also to the fact that the compensation would be paid in lump sum. Thus, calculated, the amount came to Rs. 90,000/-. To this amount, the Tribunal added Rs. 5,000/- on account of loss of expectancy of life and Rs. 10,000/- on account of loss to consortium. Thus, the Tribunal worked out the total amount payable to the applicants at Rs. 1,05,000/- as just compensation. The Tribunal held that although the claimants had claimed only Rs. 75,000/- as compensation, it did not restrict the power of Tribunal to award just compensation even if it was more than what was claimed. According to the Tribunal, what the applicants are expected to do while filing the application is to mention on estimated amount and that amount does not restrict its power to determine what is the just compensation. The Tribunal accordingly, directed the opposite party-Corporation to pay the compensation of Rs. 1,05,000/- together with interest at the rate of 12% per annum from the date of application till realisation and also costs of the application and further directed the applicants to pay Court-fees on the difference of Rs. 30,000/- between the claim and the awarded amount. The Bombay High Court while dismissing the appeal has held as under :

"The amount of compensation claimed" in the petition does not require the applicant to state the amounts claimed under different Sub-heads such as dependency benefit, medical expenses, pain and suffering etc. The amounts of compensation claimed are nothing, but the particulars of the claim made and cannot always be calculated precisely..... The amount of compensation being the consequences of the accident which is the cause of action and since that amount would keep varying or fluctuating even till the date of the decision of the application, enough leeway is necessary in the matter of both claiming and

granting compensation. In all cases, the quantum is to be justified by the claimant by leading necessary evidence. It is neither fair nor realistic to insist that he shall not claim more than what is claimed by him at the initial stage or that in spite of the evidence on record, the Tribunal shall not grant more than what is claimed in the application. The Act itself nowhere lays down that the Tribunal will not grant amount in excess of the amount claimed in the application. Before awarding higher compensation, a proper notice should be given to the opposite parties to contest the claim even by leading evidence, if necessary. The additional claim should as far as possible be taken in writing which should also indicate the reason why the additional claim is made."

10. It is true that in *Municipal Corporation of Greater Bombay and Another Vs. Kisan Gangaram Hire and Others*, and other decisions which are relied on by the learned counsel for the appellant, a view is expressed that as the Tribunal has to determine just compensation, the Tribunal can award compensation more than the amount claimed in the claim petition, but in our respectful opinion, it cannot be said that the decision of the Division Bench of the Bombay High Court reported in *Municipal Corporation of Greater Bombay and Another Vs. Kisan Gangaram Hire and Others*, lays down the correct law when compared to the decisions of two different Division Benches of this Court reported in *Babu Mansa Vs. The Ahmedabad Municipal Corporation and Others*, and *Bai Nada and Others Vs. Patel Shivabhai Shankerbhai and Others*, as well as subsequent decisions of (1) Bombay High Court, reported in 1989 (2) ACJ 750, (2) JT (1997) 5 (SC) 434 and (3) *Ujjain Vikas Pradhikaran Vs. Tarachand and another etc.*, . We are of the respectful opinion that the view expressed by the Division Bench of this Court in *Babu Mansa* (supra) and *Bai Nanda* (supra) lays down correct proposition of laws that the Tribunal has no power or jurisdiction to award higher compensation though not claimed by the claimant. It is to be noted that the decision of the Division Bench of this Court was not pointed out to the Division Bench of the Bombay High Court which decided the case of *Municipal Corporation of Greater Bombay* (supra). Further it is settled law that the decision of the Tribunal must be confined to questions raised by the parties and it cannot travel beyond the pleadings. If power or jurisdiction to award higher amount of compensation though not claimed by the claimant is read, it is likely to result into startling results. Take an example; where the claimant has claimed total compensation of Rs. 2 lacs and the Tribunal feels that the claimant should be awarded compensation of Rs. 5 lacs. If the power or jurisdiction to award higher amount of compensation though not claimed by the claimant is acceded to. the Tribunal can award a sum of Rs. 5 lacs, which would not only cause prejudice to the opposite parties, but will also nullify the scheme of pleadings envisaged by the provisions of the Motor Vehicles Act, 1939 and Motor Vehicles Act, 1988. In *Union of India Vs. E.I.D. Parry (India) Ltd.*, , there was no pleading that the Rule providing for treatment of groups of railway box wagons as one unit for the purpose of levying demurrage was ultra vires the Railways Act, 1890. In absence of pleading to that effect, the Trial Court did not frame any issue on that

question. The High Court on its own proceeded to consider the validity of the Rule and ultimately held that it was not in consonance with the relevant provisions of the Railways Act, 1890 and consequently held that it was ultra vires. The Supreme Court has held this view is contrary to the settled law that a question which did not form part of the pleadings or in respect of which the parties were not at variance and which was not the subject-matter of any issue could not be decided by the Court. According to the Supreme Court, the scope of the suit was limited and the pleadings comprising of the averments set out in the plaint and the defence put up by the appellant in the written statement did not relate to the validity of the Rules struck down by the High Court. The Supreme Court, therefore, did not sustain the judgment of the High Court on this question by holding that High Court had travelled beyond the pleadings in declaring the Rule to be ultra vires. Thus, it becomes evident that the decision of the Court must be confined to question raised by the parties and it cannot travel beyond the pleadings. Therefore, it would not be correct to say that the Tribunal has power or jurisdiction to award higher amount of compensation though not claimed by the claimant. We may passingly observe that in a subsequent decision rendered by another Division Bench of Bombay High Court in the case of Maharashtra State Road Transport Corporation v. Kamalabai 1989 (2) ACJ 750, a different note has been struck holding that even in absence of specific pleading, amount of compensation can be granted under different heads provided the award does not exceed the total compensation claimed. Thus, the subsequent Division Bench of Bombay High Court has taken the view which is consistent with the view of the Division Bench of this Court. We may mention that when the claimant feels that he is entitled to more compensation than what is claimed in the petition, it is always open to him/her to amend the claim petition and if the same is in consonance with the equity, justice and good conscience, there is no reason why the Claims Tribunal should not grant amendment. Before compensation more than claimed is awarded, the opposite parties should be put to notice, the requisite additional issue/issues should be raised and the parties should be permitted to adduce their evidence on the additional issues, but if no such opportunity is given, the procedure would obviously suffer from material irregularity affecting the decision. The Supreme Court in catena of decisions has ruled that an amendment for enhancing the amount of claim as and when prayed for should be liberally granted and that the Tribunal should not be rigid about granting of amendment. Thus, it is always open to the claimant to move an amendment application claiming higher compensation and if it is granted, opposite parties can be permitted to adduce evidence in support of their case, after which higher compensation can always be awarded to the claimant. Therefore, the view which we propose to take that the Tribunal has no power or jurisdiction to award higher amount of compensation though not claimed by the claimant, is not likely to cause any prejudice to the claimant at all.

In view of the above discussion, we answer the reference as under :

(1) u/s 166 read with Section 168 of the Motor Vehicles Act, 1988 and Section

110-B of the Motor Vehicles Act, 1939, it is not open to a Claims Tribunal to award the amount of compensation higher than the amount claimed by the claimant in the claim petition on the ground that the Tribunal has jurisdiction to award just compensation. ,

(2) The decision of Division Bench of Bombay High Court, reported in Municipal Corporation of Greater Bombay and Another Vs. Kisan Gangaram Hire and Others, does not lay down the correct law when compared to the decision of the Division Bench of this Court, reported in 19 GLR 492 and subsequent decision of the Bombay High Court reported in 1989 (2) ACJ 750.

(3) If the claimant has not resorted to the remedy of amending the claim petition even at any stage, the Tribunal on its own or the First Appellate Court on its own, would not be justified in enhancing the amount of compensation because according to the Tribunal or Court, the amount awardable is higher than the amount claimed by the claimant.

Office is directed to notify this appeal before the learned single Judge taking-up such matters for further orders.