

(2015) 05 SHI CK 0123

In the High Court Of Himachal Pradesh

Case No : FAO Nos. 224, 225 to 231 of 2008 and C.O. Nos. 604, 611, 612 and 674 of 2008

Hem Ram and Others

APPELLANT

Vs

Krishan Chand and Others

RESPONDENT

Date of Decision : 29-05-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 8 Rule 8, 107
Constitution of India, 1950 — Article 41
Criminal Procedure Code, 1973 (CrPC) — Section 173(2)
Motor Vehicles Act, 1988 — Section 147, 147(1)(b)(ii), 149, 149(2), 158
Penal Code, 1860 (IPC) — Section 279, 304A, 304-A, 337, 338

Citation : (2015) 05 SHI CK 0123

Hon'ble Judges : Mansoor Ahmad Mir, C.J

Bench : Single Bench

Advocate : Jyotsna Rewal Dua, for the Appellant; G.C. Gupta, Senior Advocate and Meera Devi, Advocates for the Respondent

Judgement

Mansoor Ahmad Mir, C.J—A vehicular traffic accident has given birth to eight appeals and four cross objections in hand, thus, I deem it proper to determine all these appeals and cross objections by this judgment.

2. The owner-insured and the driver of the offending vehicle are the appellants in all the eight appeals have called in question the award, dated 20.07.2007, made by the Motor Accident Claims Tribunal-II, Sirmaur District at Nahan, H.P. (for short "the Tribunal") in a batch of eight claim petitions, whereby compensation stood awarded in favour of the claimants and the owner-insured and the driver came to be saddled with liability (for short "the impugned award").

3. Some of the claimants/victims, by the medium of the cross-objections, have questioned the impugned award on the ground of adequacy of compensation.

4. The insurer and some of the claimants/victims have not questioned the impugned award on any ground.

5. In view of the above, the following questions are to be determined in these appeals and cross-objections:

"(i) Whether the Tribunal has rightly saddled the owner-insured and the driver of the offending vehicle with liability and exonerated the insurer?

(ii) Whether the amount awarded is just and appropriate?"

6. In order to determine the said questions, it is necessary to give brief resume of the case, the womb of which has given birth to these appeals and the cross-objections.

7. The claimants in five claim petitions, i.e. MAC Petitions No. 37-N/2 of 2002, 41-N/2 of 2002, 43-N/2 of 2002, 59-N/2 of 2002 and 33-N/2 of 2003 (subject matters of FAO No. 229 of 2008 and CO No. 611 of 2008, FAOs No. 226, 227, 225 of 2008 and FAO No. 231 of 2008 and CO No. 674 of 2008, respectively), are the dependents of the deceased who have lost their lives in the said traffic accident.

8. The claimants in three claim petitions, i.e. MAC Petitions No. 53-N/2 of 2002, 94-N/2 of 2002 and 35-N/2 of 2003 (i.e. subject matters of FAO No. 230 of 2008 and CO No. 612 of 2008, FAO No. 224 of 2008 and FAO No. 228 of 2007 and CO No. 612 of 2008, respectively), are the victims, who have sustained injuries in the said accident.

9. In all the claim petitions, it is averred that the driver, namely Shri Vijender Singh, had driven the offending vehicle, i.e. Mahindra Utility, bearing registration No. HP-18A-0165, rashly and negligently, on 15.04.2002, at about 8.00 A.M., near Kanlog, Tehsil Pachhad, District Sirmaur, H.P. and caused the accident, in which five persons, namely Randeep Singh, Vikram Singh, Dinesh Kumar, Hoshiar Singh and Om Prakash, sustained injuries and succumbed to the injuries and three persons, namely Krishan Chand, Partap Singh and Laxmi Singh sustained injuries.

10. The claimants have claimed compensation, as per the break-ups given in the respective claim petitions.

11. The owner-insured and the driver of the offending vehicle have filed joint replies in all the eight claim petitions. The insurer has also contested the claim petitions by the medium of the replies.

12. The Tribunal, after noticing the facts of the cases read with the fact that the five claim petitions are outcome of one accident and similar evidence is to be led in all the five claim petitions, clubbed the petitions, being MAC Petitions No. 37-N/2 of 2002, 41-N/2 of 2002, 43-N/2 of 2002, 53-N/2 of 2002 and 94-N/2 of 2002 and framed the following issues on 04.12.2002 in the lead case being MAC Petition No. 37-N/2 of 2002:

"1) Whether Randeep Singh Son of late Sunder Singh, Vikram Singh son of Sardar Singh and Dinesh Kumar son of Inder Prakash died in a motor accident

caused by rash and negligent driving of a Mahindra Utility (No. HP-18 A-0165) by its driver Respondent 2, Vijender Singh, at Kanlog (Beuri) Village in Tehsil Pachhad, on April 15, 2002? ...OPP

2) Whether petitioners Laxmi Singh and Krishan Chand sustained grievous injuries in a motor accident caused by rash and negligent driving of a Mahindra Utility (No. HP-18 A-0165) by its driver respondent 2, Vijender Singh at Kanlog (Beuri) village in Tehsil Pachhad, on April 15, 2002? ...OPP

3) If above issues are proved, whether the petitioners are entitled to compensation? If so, to what amount and from whom? ...OPP

4) Whether the deceased and injured were unauthorised passengers and the Mahindra Utility was being plied in violation of the terms and conditions of the insurance policy. If so, what effect? ...OPR

5) Whether the driver of the Mahindra Utility did not possess a valid and effective driving licence at the time of the accident. If so, to what effect? ...OPR

6) Relief."

13. Following issues came to be framed in MAC Petition No. 59-N/2 of 2002 on 4.12.2002:

"1) Whether Om Parkash, son of Asha Ram died in a motor accident caused by a Mahindra Utility (No. HP-18-A-0165) at a place known as Kanlog in Tehsil Pachhad, on April 15, 2002 at about 8.00 A.M.? ...OPP

2) If above issue is proved, whether the petitioners are entitled to compensation? If so, to what amount and from whom? ...OPP

3) Whether the driver of the Mahindra Utility did not possess a valid and effective driving licence at the time of the accident. If so, to what effect? ...OPR-3

4) Whether the vehicle in question was being plied in violation of the terms and conditions of the Insurance Policy? ...OPR-3

5) Relief."

14. Similar set of issues were framed by the Tribunal in MAC Petitions No. 33-N/2 of 2003 and 35-N/2 of 2003 on 26.08.2003. I deem it proper to reproduce the issues framed in one of the claim petitions, i.e. MAC Petition No. 33-N/2 of 2003 herein:

"1) Whether Hoshiar Singh died in a motor accident caused by rash and negligent driving of a Mohindra Utility (No. HP-18-A-0165) by respondent 2, Vijender Singh near Kanlog village in Pachhad Tehsil on April 15, 2002? ...OPP

2) If issue 1 is proved, what amount the petitioners are entitled to receive as compensation and from whom? ...OPP

3) Whether the driver of the vehicle in question did not have any valid and

effective driving licence at the time of the accident. If so, to what effect? ...OPR-3

4) Whether the vehicle involved in an accident was being plied in violation of the terms and conditions of the insurance policy at the material time. If so, its effect? ...OPR-3

5) Whether the deceased was an unauthorised passenger in the vehicle in question. If so, what effect? ...OPR-3

6) Relief."

15. It is apt to record herein that MAC Petitions No. 33-N/2 of 2003 and 35-N/2 of 2003 were clubbed with MAC Petition No. 37-N/2 of 2002 vide orders, dated 26.11.2003.

16. The claimants in all the claim petitions, except MAC Petition No. 59-N/2 of 2002, led evidence in MAC Petition No. 37-N/2 of 2002 and examined Kanta Devi as PW-1, Sher Singh as PW-2, Laxmi Singh as PW-3, Sardar Singh as PW-4, Surinder Kumar as PW-5, Dr. Sandeep Sharma as PW-6, Jaimanti as PW-7, Inder Parkash as PW-8, Kishan Chand as PW-9, Rattan Singh as PW-10 and Partap Singh as PW-11. The respondents have not examined any witness, however, owner-insured-Hem Ram and the driver-Vijender Singh appeared in the witness box as RW-3 and RW-4, respectively.

17. The claimants in MAC Petition No. 59-N/2 of 2002, one of the claimants, namely Asha Ram, appeared in the witness box as PW-1 and examined Kesar Singh as PW-2. The insurer examined Bhim Singh, Criminal Ahlmad of the Court of Sub Judge, Rajgarh as RW-1 and Bishan Thakur, the Investigating Officer, as RW-2.

18. Parties have also produced documents/copies of the documents, which stand exhibited, details of which have been given separately in the prescribed proforma - Form-A and Form-B annexed with the impugned award.

19. It appears that the Tribunal has scanned and discussed the entire evidence together and returned the findings on all issues except assessment of the compensation. The Tribunal has assessed the compensation in each of the claim petitions separately.

20. The claimants in Claim Petitions No. 37-N/2 of 2002, 41-N/2 of 2002, 43-N/2 of 2002, 33-N/2 of 2003 and 35-N/2 of 2003 have specifically pleaded that the deceased/injured were travelling in the offending vehicle alongwith goods/articles. It is apt to record herein that in Claim Petition No. 37-N/2 of 2002, it has been pleaded that the deceased had gone to Thakar Dawara Jee in connection with marriage work, had to come back alongwith his articles, hired the vehicle for Rs. 100/-, which were paid to the driver of the offending vehicle. In Claim Petitions No. 53-N/2 of 2002, 59-N/2 of 2002 and 94-N/2 of 2002, it has been pleaded that the deceased/injured were walking on the road as pedestrian when the offending vehicle hit them.

21. The owner-insured and the driver of the offending vehicle have not specifically denied the said factum, however, they have made evasively denial. They have admitted that accident has taken place but have stated that the claimants are not entitled to any compensation as the accident was outcome of mechanical defect. Their replies are evasive, which can be said to be admission in terms of the mandate of Order VIII of the Code of Civil Procedure, 1908 (for short "CPC").

22. It was for the insurer to plead and prove that the owner-insured has committed breach by using the vehicle for which route permit and registration was not granted. The insurer has neither produced the copies of the registration certificate and the route permit nor has taken steps to ask the driver and owner-insured for the production of the said documents, not to speak of making request to the Tribunal for summoning the said record from the Registration Authority.

23. The insurer has examined two witnesses in support of its defence. One is the Criminal Ahlmad from the Court of Sub Judge, Rajgarh, who was dealing with the file in criminal case and the another is the Investigating Officer, who had conducted the investigation and presented the charge sheet/final report in terms of the mandate of Section 173(2) of the Code of Criminal Procedure (for short "Cr.P.C.") before the said Court (for short "the Magistrate").

24. On the other hand, the claimants in all the claim petitions have led evidence and all the witnesses have stated that the deceased/injured were travelling in the offending vehicle as owner of goods/articles and some of them were pedestrians.

25. The Magistrate has dismissed the criminal case registered against the driver of the offending vehicle while holding that the prosecution has failed to prove the case beyond reasonable doubt. The Magistrate, while recording the judgment, in paras 14, 15 and 17 held that the evidence is contradictory and prosecution case is shrouded in doubts. It is apt to reproduce paras 18 and 19 of the judgment rendered by the Magistrate, Ext. RW-4/A, herein:

"18. The aforesaid evidence as well as law cited shows that death and receiving injuries are not sufficient to hold the accused guilty for the offences for which he is charged. There should must be direct nexus between rashness or negligence between driving and occurrence of accident. In the prosecution case prosecution witnesses have deposed two different versions which has causes doubt in the prosecution case. In view of the same, I have no option accept to inferred that the insufficient evidence of the prosecution has causes doubt, in the prosecution case. Accordingly, in my opinion, the accused is entitled for benefit of doubt. hence, the points are decided in negatives.

19. In view of my aforesaid discussions and findings, the accused is acquitted after giving him benefit of doubt u/ss 279, 337, 338 and 304-A IPC. His bail bonds are discharged. The file after needful be consigned to records room."

26. The Magistrate has made the foundation of the dismissal order in view of the

contradictory evidence brought by the prosecution on record. One set of evidence on record is that all the deceased/injured were travelling in the vehicle and another set is that some were travelling in the vehicle and some of them were walking on the road. There is also evidence on the file that some of the persons were travelling in the vehicle alongwith articles. Even, the Magistrate has held that the evidence of the Investigating Officer is not worth credence, hence, unbelievable.

27. Thus, the prosecution has failed to prove whether the said persons were travelling in the vehicle with articles or without articles or whether some of them were walking on the road. Moreover, that cannot be a ground to show door to the claimants read with the fact, at the cost of repetition, that the owner-insured has made evasive denial, as discussed hereinabove.

28. The question is - whether the findings recorded by the Criminal Court can be made basis for holding that the driver has not driven the vehicle rashly and negligently and the deceased/injured were gratuitous passengers?

29. It is beaten law of land that if conviction is recorded by the Criminal Court, that is the best ground to hold that the driver had driven the vehicle rashly and negligently, but, if the driver earns acquittal, that cannot be a ground for dismissal of the claim petitions.

30. My this view is fortified by the judgment rendered by the Apex Court in N.K.V. Bros. (P) Ltd. Vs. M. Karumai Ammal and Others, (1980) ACJ 435 : AIR 1980 SC 1354 : (1980) 41 FLR 152 : (1980) 3 SCC 457 : (1980) SCC(Cri) 774 : (1980) 3 SCR 101 : (1980) 12 UJ 414 wherein a bus hit an over-hanging high tension wire resulting in 26 casualties. The driver earned acquittal in the criminal case on the score that the tragedy that happened was an act of God. The Apex Court held that the plea that the criminal case had ended in acquittal and that, therefore, the civil suit must follow suit, was rightly rejected by the Tribunal. It is apt to reproduce para 2 of the judgment herein:

"2. The Facts: A stage carriage belonging to the petitioner was on a trip when, after nightfall, the bus hit an over-hanging high tension wire resulting in 26 casualties of which 8 proved instantaneously fatal. A criminal case ensued but the accused-driver was acquitted on the score that the tragedy that happened was an act of God. The Accidents Claims Tribunal which tried the claims for compensation under the Motor Vehicles Act, came to the conclusion, affirmed by the High Court, that, despite the screams of the passengers about the dangerous overhanging wire ahead, the rash driver sped towards the lethal spot. Some lost their lives instantly; several lost their limbs likewise. The High Court, after examining the materials, concluded:

"We therefore sustain the finding of the Tribunal that the accident had taken place due to the rashness and negligence of R. W. 1 (driver) and consequently the appellant is vicariously liable to pay compensation to the claimant."

The plea that the criminal case had ended in acquittal and that, therefore, the civil suit must follow suit, was rejected and rightly. The requirements of culpable rashness under Section 304A, I.P.C. is more drastic than negligence sufficient under the law of tort to create liability. The quantum of compensation was moderately fixed and although there was, perhaps, a case for enhancement, the High Court dismissed the cross-claims also. Being questions of fact, we are obviously unwilling to re-open the holdings on culpability and compensation."

31. It is also profitable to reproduce relevant portion of para 8 of the judgment rendered by the High Court of Karnataka in a case titled Vinobabai and Others Vs. K.S.R.T.C. and Another, (1979) ACJ 282 :

"8..... Thus, the law is settled that when the driver is convicted in a regular trial before the Criminal Court, the fact that he is convicted becomes admissible in evidence in a civil proceeding and it becomes prima facie evidence that the driver was culpably negligent in causing the accident. The converse is not true; because the driver is acquitted in a criminal case arising out of the accident, it is not established even prima facie that the driver is not negligent, as a higher degree of culpability is required to bring home an offence."

32. Reliance is also placed on the judgment made by this Court in Himachal Road Transport Corporation and another versus Jarnail Singh and others, reported in Latest HLJ 2009 (HP) 174, wherein it has been held that acquittal of the driver in the criminal trial will have no bearing on the findings to be recorded by the Motor Accident Claims Tribunal whether the driver was negligent or not in causing the accident. It is apt to reproduce relevant portion of para 15 of the judgment herein:

"15. In view of the definitive law laid down by their Lordships of the Hon"ble Supreme Court and the judgments cited hereinabove, it is now well settled law that the acquittal of the driver in the criminal trial will have no bearing on the findings to be recorded by the Motor Accident Claims Tribunal whether the driver was negligence or not in causing the accident..... "

33. Having said so, the Tribunal as well as the Appellate Court have to scan the evidence and return findings while keeping in mind the aim and object of granting of the compensation.

34. It is well settled that aim, object and purpose of granting compensation is social one, it is a welfare legislation, is to be achieved as early as possible and cannot be defeated while invoking the hyper technicalities, mystic maybes and niceties. Procedural wrangles and tangles have no role to play and cannot be made ground to defeat the claim petitions.

35. My this view is fortified by the judgment of the Apex Court in N.K.V. Bros."s case (supra). It is apt to reproduce relevant portion of para 3 of the judgment herein:

"3. Road accidents are one of the top killers in our country, specifically when

truck and bus drivers operate nocturnally. This proverbial recklessness often persuades the courts, as has been observed by us earlier in other cases, to draw an initial presumption in several cases based on the doctrine of *res ipsa loquitur*. Accident Tribunals must take special care to see that innocent victims do not suffer and drivers and owners do not escape liability merely because of some doubt here or some obscurity there. Save in plain cases, culpability must be inferred from the circumstances where it is fairly reasonable. The court should not succumb to niceties, technicalities and mystic maybes. We are emphasising this aspect because we are often distressed by transport operators getting away with it thanks to judicial laxity, despite the fact that they do not exercise sufficient disciplinary control over the drivers in the matter of careful driving. The heavy economic impact of culpable driving of public transport must bring owner and driver to their responsibility to their "neighbour". Indeed, the State must seriously consider no-fault liability by legislation. A second aspect which pains us is the inadequacy of the compensation or undue parcimony practised by tribunals. We must remember that judicial tribunals are State organs and Art. 41 of the Constitution lays the jurisprudential foundation for state relief against accidental disablement of citizens. There is no justification for niggardliness in compensation. A third factor which is harrowing is the enormous delay in disposal of accident cases resulting in compensation, even if awarded, being postponed by several years. The States must appoint sufficient number of tribunals and the High Court should insist upon quick disposals so that the trauma and tragedy already sustained may not be magnified by the injustice of delayed justice. Many States are unjustly indifferent in this regard.

(Emphasis supplied)"

36. The Jammu and Kashmir High Court in the case titled as *Oriental Insurance Co. Vs. Mst. Zarifa and Others*, (1996) ACJ 222 : AIR 1995 J&K 81 , held that the MV Act is Social Welfare Legislation and the procedural technicalities cannot be allowed to defeat the purpose of the Act. It is profitable to reproduce para 20 of the judgment herein:

"20. Before concluding, it is also observed that it is a social welfare legislation under which the compensation is provided by way of Award to the people who sustain bodily injuries or get killed in the vehicular accident. These people who sustain injuries or whose kith and kind are killed, are necessarily to be provided such relief in a short span of time and the procedural technicalities cannot be allowed to defeat the just purpose of the Act, under which such compensation is to be paid to such claimants."

37. It is also apt to reproduce relevant portion of para 12 of the judgment of the Apex Court in the case titled as *Sohan Lal Passi Vs. P. Sesh Reddy and others*, (1996) 2 ACC 617 : (1996) ACJ 1044 : AIR 1996 SC 2627 : (1998) 91 CompCas 526 : (1996) 5 JT 728 : (1996) 114 PLR 311 : (1996) 5 SCALE 388 : (1996) 5 SCC 21 : (1996) 3 SCR 647 Supp : (1996) 2 UJ 525 , herein:

"12..... While interpreting the contract of insurance, the Tribunals and Courts have to be conscious of the fact that right to claim compensation by heirs and legal representatives of the victims of the accident is not defeated on technical grounds. Unless it is established on the materials on record that it was the insured who had wilfully violated the condition of the policy by allowing a person not duly licensed to drive the vehicle when the accident took place, the insurer shall be deemed to be a judgment-debtor in respect of the liability in view of sub-section (1) of Section 96 of the Act. It need not be pointed out that the whole concept of getting the vehicle insured by an insurance company is to provide an easy mode of getting compensation by the claimants, otherwise in normal course they had to pursue their claim against the owner from one forum to the other and ultimately to execute the order of the Accident Claims Tribunal for realisation of such amount by sale of properties of the owner of the vehicle. The procedure and result of the execution of the decree is well known."

38. While going through the pleadings, the evidence and the impugned award read with the judgment made by the Magistrate in the criminal case, prima facie, it appears that the claimants have proved that the deceased/injured in Claim Petitions No. 37-N/2 of 2002, 41-N/2 of 2002, 43-N/2 of 2002, 33-N/2 of 2003 and 35-N/2 of 2003 were travelling in the offending vehicle as owner of the goods/articles, which has not been denied by the other side, as discussed hereinabove.

39. Deriving support from the judgment in the criminal case, it can be safely said that the insurer has not dislodged the evidence led by the claimants because the insurer has examined only the investigating officer, who has been disbelieved by the Magistrate and his statement was made basis for dismissing the case. Thus, his statement cannot be relied in these proceedings also in the given circumstances.

40. The claimants in other three claim petitions, i.e. 53-N/2 of 2002, 59-N/2 of 2002 and 94-N/2 of 2002, it has been pleaded that the deceased/injured were walking on the road side, were hit by the offending vehicle, which has not been denied specifically.

41. There is evidence on the file and even evidence has come before the Magistrate to this effect, thus, it cannot be said that some of the deceased/injured were not walking on the road side or some of them were not travelling in the vehicle.

42. It was for the insurer to plead and prove that the deceased/injured were gratuitous passengers, which it has failed to do so and the owner-insured and the driver have given evasive replies to the pleadings of the claimants. Even, the driver has stated before the Tribunal, while appearing as RW-4, that none was travelling in the vehicle.

43. It is worthwhile to record herein that the driver of the offending vehicle, while appearing as RW-4, has admitted in his cross-examination that many

persons were standing at the place of accident, who were dragged into the gorge alongwith the offending vehicle.

44. Having said so, all the claimants have proved that five persons, namely Randeep Singh, Vikram Singh, Dinesh Kumar, Hoshiar Singh and Partap Singh, were travelling in the offending vehicle alongwith goods/articles at the time of the accident, and three persons, namely Laxmi Singh, Om Prakash and Krishan Chand, were hit by the offending vehicle while walking on the road side.

45. The pedestrians, i.e. Laxmi Singh, Om Prakash and Krishan Chand, are the third parties. The factum of insurance is admitted and the insurer has not proved that the owner-insured has committed willful breach. Thus, the insurer is to be saddled with liability to satisfy the award in three claim petitions, i.e. Claim Petitions No. 53-N/2 of 2002, 59-N/2 of 2002 and 94-N/2 of 2002.

46. In Claim Petitions No. 37-N/2 of 2002, 41-N/2 of 2002, 43-N/2 of 2002, 33-N/2 of 2003 and 35-N/2 of 2003, it has been specifically pleaded that the deceased/injured were travelling in the offending vehicle alongwith goods/articles. The risk of "1 + 3" is covered in terms of the insurance contract, Ext. RW-3/A. Meaning thereby, the policy covers the risk of the driver and three passengers. Thus, the insurer is to be saddled with liability of three passengers.

47. My this view is fortified by the judgment of the Apex Court in the case titled as United India Insurance Co. Ltd. Vs. K.M. Poonam and Others, (2011) ACJ 917 : (2011) 3 JT 149 : (2011) 162 PLR 477 : (2011) 2 RCR(Civil) 194 : (2011) 2 SCALE 568 : (2011) 2 SCR 1026 : (2011) 3 TAC 376 : (2011) AIRSCW 2802 . It is apt to reproduce para 24 of the judgment herein:

"24. The liability of the insurer, therefore, is confined to the number of persons covered by the insurance policy and not beyond the same. In other words, as in the present case, since the insurance policy of the owner of the vehicle covered six occupants of the vehicle in question, including the driver, the liability of the insurer would be confined to six persons only, notwithstanding the larger number of persons carried in the vehicle. Such excess number of persons would have to be treated as third parties, but since no premium had been paid in the policy for them, the insurer would not be liable to make payment of the compensation amount as far as they are concerned. However, the liability of the Insurance Company to make payment even in respect of persons not covered by the insurance policy continues under the provisions of Sub-section (1) of Section 149 of the Act, as it would be entitled to recover the same if it could prove that one of the conditions of the policy had been breached by the owner of the vehicle. In the instant case, any of the persons travelling in the vehicle in excess of the permitted number of six passengers, though entitled to be compensated by the owner of the vehicle, would still be entitled to receive the compensation amount from the insurer, who could then recover it from the insured owner of the vehicle."

48. It is also apt to reproduce para 15 of the judgment of the Apex Court in the

case titled as National Insurance Company Limited versus Anjana Shyam and others, reported in 2007 AIR SCW 5237, herein:

"15. In spite of the relevant provisions of the statute, insurance still remains a contract between the owner and the insurer and the parties are governed by the terms of their contract. The statute has made insurance obligatory in public interest and by way of social security and it has also provided that the insurer would be obliged to fulfil his obligations as imposed by the contract and as overseen by the statute notwithstanding any claim he may have against the other contracting party, the owner, and meet the claims of third parties subject to the exceptions provided in Section 149(2) of the Act. But that does not mean that an insurer is bound to pay amounts outside the contract of insurance itself or in respect of persons not covered by the contract at all. In other words, the insured is covered only to the extent of the passengers permitted to be insured or directed to be insured by the statute and actually covered by the contract. The High Court has considered only the aspect whether by overloading the vehicle, the owner had put the vehicle to a use not allowed by the permit under which the vehicle is used. This aspect is different from the aspect of determining the extent of the liability of the insurance company in respect of the passengers of a stage carriage insured in terms of Section 147(1)(b)(ii) of the Act. We are of the view that the insurance company can be made liable only in respect of the number of passengers for whom insurance can be taken under the Act and for whom insurance has been taken as a fact and not in respect of the other passengers involved in the accident in a case of overloading."

49. This Court in a batch of appeals, FAO No. 257 of 2006, titled as National Insurance Company Ltd. versus Smt. Sumna @ Sharda and others, being the lead case, decided on 10.04.2015, has held that the insurer has to satisfy the awards which are on higher side.

50. In view of the judgments (supra), the insurer has to satisfy the award in three claim petitions, wherein compensation awarded is on higher side and the owner-insured has to satisfy the award in two claim petitions, wherein compensation awarded is on the lower side.

51. The insurer has pleaded in all the claim petitions that the driver of the offending vehicle was not having a valid and effective driving licence and the owner-insured has committed breach. The insurer has not led any evidence to prove that the driver was not having a valid and effective driving licence, however the Tribunal has recorded findings that the driver was having a valid and effective driving licence. The said findings have not been questioned by the insurer, have attained finality. However, I have gone through the record. The insurer has not led any evidence to prove the said issue, thus, has failed to discharge the onus.

52. As discussed hereinabove, the insurer has failed to prove that the offending vehicle was being driven in violation of the terms and conditions of the insurance

policy and the owner-insured has committed willful breach in terms of the mandate of Section 149 of the Motor Vehicles Act, 1988 (for short "the MV Act"). Thus, the findings on the said issue is recorded in favour of the claimants, the owner-insured and the driver and against the insurer.

53. Having said so, the Tribunal has fallen in an error in exonerating the insurer and saddling the owner-insured with liability in all the claim petitions.

Cross Objections No. 604 of 2008 in FAO No. 228 of 2008

54. Claimant-injured-Partap Singh has sought enhancement of compensation on the grounds taken in the cross objections read with the claim petition

55. I have gone through the claim petition and the assessment made by the Tribunal in para 85 of the impugned award and am of the considered view that the Tribunal has fallen in an error in assessing the just and appropriate compensation.

56. It is beaten law of land that while assessing compensation in injury cases, guess work is to be made and compensation is to be awarded under two heads : pecuniary damages and non-pecuniary damages, which has not been done in the present case.

57. My this view is fortified by the judgments made by the Apex Court in the cases titled as R.D. Hattangadi Vs. M/s. Pest Control (India) Pvt. Ltd. and Others, (1995) 1 ACC 281 : (1995) ACJ 366 : AIR 1995 SC 755 : (1995) 1 JT 304 : (1995) 110 PLR 298 : (1995) 1 SCALE 79 : (1995) 1 SCC 551 : (1995) 1 SCR 75 : (1995) 1 UJ 407 , Arvind Kumar Mishra versus New India Assurance Co. Ltd. and another, reported in 2010 AIR SCW 6085, Ramchandruppa versus The Manager, Royal Sundaram Alliance Insurance Company Limited, reported in 2011 AIR SCW 4787, and Kavita versus Deepak and others, reported in 2012 AIR SCW 4771.

58. It is proved and held that the claimant-injured remained admitted in PGI, Chandigarh w.e.f. 15.04.2002 to 20.04.2002, remained under treatment upto 18.06.2002. On perusal of the cash memos, Ext. PW-11/B to Ext. PW-11/K, amounting to Rs. 2,959/- it can be safely said that the claimant-injured would have spent a huge amount for his treatment, special diet and transportation charges.

59. By guess work, it can be safely said that the claimant-injured would have spent at least Rs. 30,000/- as treatment charges, special diet charges and transportation charges, also Rs. 2,959/- for medicines, has not been able to earn for about two months, is to be granted, by guess work, at least 10,000/- under the head "loss of earning capacity for the said period".

60. The Tribunal has awarded Rs. 3,000/- under the head "attendant charges", which is meager, because the claimant-injured remained under treatment for two months, was suffering for a pretty long time and had engaged an attendant,

accordingly, Rs. 10,000/- is awarded under the head "attendant charges".

61. The claimant-injured has sustained head injury with IIIrd, IVth and Vth Rib Fracture right side in terms of medical certificate, Ext. PW-6/C, thus, would have suffered pain and sufferings during the said period and has to undergo the same in future also. Accordingly, Rs. 50,000/- is awarded under both the heads "pain and sufferings undergone and pain and sufferings in future".

62. Accordingly, the compensation is enhanced and the claimant-injured is held entitled to compensation to the tune of Rs. 30,000/- + Rs. 2,959/- + Rs. 10,000/- + Rs. 10,000/- + Rs. 50,000/- = Rs. 1,02,959/- in Claim Petition No. 35-N/2 of 2003. The cross-objections are answered/allowed.

Cross Objections No. 611 of 2008 in FAO No. 229 of 2008

63. By the medium of cross-objections, the claimants/dependents of deceased Randeep Singh have sought enhancement of compensation.

64. I have gone through the assessment made. The Tribunal in paras 62 to 65 of the impugned award has made discussion and has arrived at the conclusion and awarded compensation to the tune of Rs. 3,56,000/- in favour of the claimants.

65. I am of the considered view that the amount awarded can neither be said to be excessive nor meager, but is just and appropriate, and is accordingly upheld.

66. Viewed thus, cross objections are dismissed.

Cross Objections No. 612 of 2008 in FAO No. 230 of 2008

67. The Tribunal has made discussions in para 73 of the impugned award as to what amount of compensation the claimant-injured-Laxmi Singh was entitled to.

68. I have gone through the pleadings and para 73 of the impugned award and the evidence. Admittedly, the claimant-injured has suffered head injury and multiple injuries, was admitted in Civil Hospital, Sarahan, wherefrom he was referred to PGI Chandigarh, had to go to PGI for follow-up, was admitted there w.e.f. 13.05.2002 to 21.05.2002. The injured-claimant has also placed on record cash memos, Ext. P-18 to Ext. P-52, amounting to Rs. 12,909/-.

69. Thus, it can be said that the claimant-injured was dependent on attendants, would have also spent a huge amount as treatment charges, the injuries have also affected his earning capacity for at least two months, had undergone pain and sufferings for the said period and has to undergo the same in future also.

70. Thus, by guess work, it is held that the claimant-injured is entitled to Rs. 30,000/- under the head "treatment charges" in addition to Rs. 12,909/-, Rs. 50,000/- under the heads "pain and sufferings undergone and pain and sufferings in future", Rs. 10,000/- under the head "loss of earning capacity for the said period", Rs. 10,000/- under the head "attendant charges and Rs. 10,000/- under the head "conveyance charges"; the total compensation to the tune of Rs. 30,000/- + Rs. 12,909/- + Rs. 50,000/- + Rs. 10,000/- + Rs.

10,000/- + Rs. 10,000/- = Rs. 1,22,909/-.

71. Accordingly, the cross objections are allowed and the claimant-injured is held entitled to compensation to the tune of Rs. 1,22,909/- in Claim Petition No. 53-N/2 of 2002.

Cross Objections No. 674 of 2008 in FAO No. 231 of 2008

72. Perused para 77 of the impugned award. The compensation awarded is just and appropriate, cannot be said to be meager or excessive. The cross-objections are not tenable.

FAO No. 227 of 2008

73. Mr. Deepak Kaushal, learned counsel for the claimants, argued that though the claimants have not filed cross-objections and have not applied for enhancement of compensation, but under law, are entitled to enhanced compensation and the Court can grant the same after considering the argument. Further argued that the Tribunal has fallen in an error in assessing the compensation and has drawn my attention to the assessment made by the Tribunal.

74. After considering para 71 of the impugned award, it is held that the Tribunal has fallen in an error in assessing the compensation.

75. The moot question is - whether the Tribunal or Appellate Court is/are within its/their jurisdiction to enhance the compensation without the prayer being made for the same?

76. It would be profitable to reproduce Section 168(1) of the MV Act herein:

"168. Award of the Claims Tribunal.--On receipt of an application for compensation made under section 166, the Claims Tribunal shall, after giving notice of the application to the insurer and after giving the parties (including the insurer) an opportunity of being heard, hold an inquiry into the claim or, as the case may be, each of the claims and, subject to the provisions of section 162 may make an award determining the amount of compensation which appears to it to be just and specifying the person or persons to whom compensation shall be paid and in making the award the Claims Tribunal shall specify the amount which shall be paid by the insurer or owner or driver of the vehicle involved in the accident or by all or any of them, as the case may be:

..... "

77. The mandate of Section 168(1) (supra) is to "determine the amount of compensation which appears to it to be just".

78. Keeping in view the object of granting of compensation and the legislature's wisdom read with the amendment made in the MV Act in the year 1994, it is for the Tribunal or the Appellate Court to assess the just compensation and is within its powers to grant the compensation more than what is claimed and can

enhance the same.

79. This Court in a case titled as United India Insurance Company Ltd. versus Smt. Kulwant Kaur, reported in Latest HLJ 2014 (HP) 174, held that the Tribunal as well as the Appellate Court is/are within the jurisdiction to enhance the compensation and grant more than what is claimed. It is apt to reproduce paras 41 to 45 of the judgment herein:

"41. Before I determine what is the just and adequate compensation in the case in hand, it is also a moot question - whether the Appellate Court can enhance compensation, even though, not prayed by the medium of appeal or by cross-objection.

42. The Motor Vehicles Act, 1988 (hereinafter referred to as "the MV Act") has gone through a sea change in the year 1994 and sub-section (6) has been added to Section 158 of the MV Act, which reads as under:

"158. Production of certain certificates, licence and permit in certain cases.--

.....

(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."

In terms of this provision, the report is to be submitted to the Tribunal having the jurisdiction.

43. Also, an amendment has been carried out in Section 166 of the MV Act and Sub-section (4) stands added. It is apt to reproduce sub-section (4) of Section 166 of the MV Act herein:

"166. Application for compensation.--

.....

(4) 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."

It mandates that a Tribunal has to treat report under Section 158(6) (supra) of the MV Act as a claim petition. Thus, there is no handicap or restriction in granting compensation in excess of the amount claimed by the claimant in the claim petition.

44. Keeping in view the purpose and object of the said provisions read with the mandate of Section 173 of the MV Act, I am of the view that the Appellate Court

is exercising the same powers, which the Tribunal is having. Also, sub-clause (2) of Section 107 of the Code of Civil Procedure (hereinafter referred to as "the CPC") mandates that the Appellate Court is having all those powers, which the trial Court is having. It is apt to reproduce Section 107 sub-clause (2) of the CPC herein:

"107. Powers of Appellate Court.--

.....

(2) Subject as aforesaid, the Appellate Court shall have the same powers and shall perform as nearly as may be the same duties as are conferred and imposed by the Code on Courts of original jurisdiction in respect of suits instituted therein."

45. Thus, in the given circumstances, the Tribunal as well as the Appellate Court is within the jurisdiction to enhance the compensation. "

80. The same view was taken by the Apex Court in the case of Nagappa Vs. Gurudayal Singh and Others, (2003) ACJ 12 : AIR 2003 SC 674 : (2002) 10 JT 144 : (2003) 2 SCC 274 : (2003) 1 UJ 159 . It is apt to reproduce paras 7, 9 and 10 of the judgment herein:

"7. Firstly, under the provisions of Motor Vehicles Act, 1988, (hereinafter referred to as "the MV Act") there is no restriction that compensation could be awarded only up to the amount claimed by the claimant. In an appropriate case where from the evidence brought on record if Tribunal/Court considers that claimant is entitled to get more compensation than claimed, the Tribunal may pass such award. Only embargo is - it should be "Just" compensation, that is to say, it should be neither arbitrary, fanciful nor unjustifiable from the evidence. This would be clear by reference to the relevant provisions of the M.V. Act. Section 166 provides that an application for compensation arising out of an accident involving the death of or bodily injury to, persons arising out of the use of motor vehicles, or damages to any property of a third party so arising, or both, could be made (a) by the person who has sustained the injury; or (b) by the owner of the property; (c) where death has resulted from the accident, by all or any of the legal representatives of the deceased; or (d) by any agent duly authorised by the person injured or all or any of the legal representatives of the deceased, as the case may be. Under the proviso to sub-section (1), all the legal representatives of the deceased who have not joined as the claimants are to be impleaded as respondents to the application for compensation. Other important part of the said Section is sub-section (4) which provides that "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." Hence, Claims Tribunal in appropriate case can treat the report forwarded to it as an application for compensation even though no such claim is made or no specified amount is claimed.

8.....

9. It appears that due importance is not given to sub-section (4) of Section 166 which provides that the Tribunal shall treat any report of the accidents forwarded to it under sub-section (6) of Section 158, as an application for compensation under this Act.

10. Thereafter, Section 168 empowers the Claims Tribunal to "make an award determining the amount of compensation which appears to it to be just". Therefore, only requirement for determining the compensation is that it must be "just". There is no other limitation or restriction on its power for awarding just compensation."

81. In the case titled as State of Haryana and Another Vs. Jasbir Kaur and Others, (2003) ACJ 1800 : AIR 2003 SC 3696 : (2003) 1 JT 601 Supp : (2003) 135 PLR 414 : (2003) 6 SCALE 113 : (2003) 7 SCC 484 : (2003) 2 SCR 245 Supp : (2003) 2 UJ 1527 : (2003) AIRSCW 4198 : (2003) 6 Supreme 206 , the Apex Court has discussed the expression "just". It is apt to reproduce para 7 of the judgment herein:

"7. It has to be kept in view that the Tribunal constituted under the Act as provided in S. 168 is required to make an award determining the amount of compensation which is to be in the real sense "damages" which in turn appears to it to be "just and reasonable". It has to be borne in mind that compensation for loss of limbs or life can hardly be weighed in golden scales. But at the same time it has to be borne in mind that the compensation is not expected to be a windfall for the victim. Statutory provisions clearly indicate the compensation must be "just" and it cannot be a bonanza; nor a source of profit; but the same should not be a pittance. The Courts and Tribunals have a duty to weigh the various factors and quantify the amount of compensation, which should be just. What would be "just" compensation is a vexed question. There can be no golden rule applicable to all cases for measuring the value of human life or a limb. Measure of damages cannot be arrived at by precise mathematical calculations. It would depend upon the particular facts and circumstances, and attending peculiar or special features, if any. Every method or mode adopted for assessing compensation has to be considered in the background of "just" compensation which is the pivotal consideration. Though by use of the expression "which appears to it to be just" a wide discretion is vested on the Tribunal, the determination has to be rational, to be done by a judicious approach and not the outcome of whims, wild guesses and arbitrariness. The expression "just" denotes equitability, fairness and reasonableness, and non-arbitrary. If it is not so it cannot be just. (See Mrs. Helen C. Rebello and Others Vs. Maharashtra State Road Transport Corpn. and Another, (1998) 2 ACC 512 : (1999) ACJ 10 : (1998) 7 AD 269 : AIR 1998 SC 3191 : (1999) 95 CompCas 509 : (1998) 6 JT 418 : (1998) 5 SCALE 339 : (1999) 1 SCC 90 : (1998) 1 SCR 685 Supp : (1999) 1 UJ 174 : (1998) AIRSCW 3105 : (1998) 7 Supreme 404 ."

82. The same view has been taken by the Apex Court in a case titled as The Divisional Controller, KSRTC Vs. Mahadeva Shetty and Another, (2003) ACJ 1775 : AIR 2003 SC 4172 : (2005) 139 PLR 6 : (2003) 6 SCALE 16 : (2003) 7 SCC 197 : (2003) 2 SCR 14 Supp : (2004) 1 UJ 44 : (2003) AIRSCW 3797 : (2003) 5 Supreme 266 : (2003) 8 Supreme 279 .

83. The Apex Court in a case titled as A.P.S.R.T.C. and another versus M. Ramadevi and others, reported in 2008 AIR SCW 1213, held that the Appellate Court was within its jurisdiction and powers in enhancing the compensation despite the fact that the claimants had not questioned the adequacy of the compensation.

84. The Apex Court in the case titled as Oriental Insurance Co. Ltd. versus Mohd. Nasir and Anr., reported in 2009 AIR SCW 3717 , laid down the same principle while discussing, in para 27 of the judgment, the ratio laid down in the judgments rendered in the cases titled as Nagappa Vs. Gurudayal Singh and Others, (2003) ACJ 12 : AIR 2003 SC 674 : (2002) 10 JT 144 : (2003) 2 SCC 274 : (2003) 1 UJ 159 ; Devkinangan Bangur and Others Vs. State of Haryana and Others, (1993) 2 ACC 605 : (1995) ACJ 1288 : (1993) 104 PLR 523 ; Syed Basheer Ahamed and Others Vs. Mohd. Jameel and Another, (2009) ACJ 690 : AIR 2009 SC 1219 : (2009) CLT 554 : (2009) 1 JT 296 : (2009) 1 SCALE 222 : (2009) 2 SCC 225 : (2009) 2 SCR 14 : (2009) 1 UJ 275 : (2009) AIRSCW 3462 : (2009) AIRSCW 3525 : (2009) AIRSCW 493 : (2009) 3 Supreme 83 : (2009) 1 Supreme 266 ; National Insurance Co. Ltd. Vs. Laxmi Narain Dhut, (2007) 2 ACC 28 : (2007) ACJ 721 : AIR 2007 SC 1414 : (2007) 136 CompCas 678 : (2007) 4 JT 169 : (2007) 146 PLR 510 : (2007) 4 SCALE 36 : (2007) 3 SCC 700 : (2007) 3 SCR 579 : (2007) AIRSCW 1782 : (2007) 2 Supreme 800 ; Punjab State Electricity Board Ltd. Vs. Zora Singh and Others, AIR 2006 SC 182 : (2005) 3 CPJ 35 : (2005) 7 JT 258 : (2005) 6 SCC 776 : (2005) 2 SCR 524 Supp : (2005) AIRSCW 5676 : (2005) 5 Supreme 660 ; State of Haryana and Others Vs. Shakuntla Devi, AIR 2009 SC 869 : (2008) 119 FLR 1169 : (2008) 12 JT 48 : (2008) 13 SCALE 621 : (2009) 2 SLJ 183 : (2009) 2 SLR 633 .

85. The Apex Court in another case titled as Ningamma and another versus United India Insurance Co. Ltd., reported in 2009 AIR SCW 4916, held that the Court is duty bound to award just compensation to which the claimants are entitled to. It is profitable to reproduce para 25 of the judgment herein:

"25. Undoubtedly, Section 166 of the MVA deals with "Just Compensation" and even if in the pleadings no specific claim was made under section 166 of the MVA, in our considered opinion a party should not be deprived from getting "Just Compensation" in case the claimant is able to make out a case under any provision of law. Needless to say, the MVA is beneficial and welfare legislation. In fact, the Court is duty bound and entitled to award "Just Compensation" irrespective of the fact whether any plea in that behalf was raised by the claimant or not. However, whether or not the claimants would be governed with the terms and conditions of the insurance policy and whether or not the

provisions of Section 147 of the MVA would be applicable in the present case and also whether or not there was rash and negligent driving on the part of the deceased, are essentially a matter of fact which was required to be considered and answered at least by the High Court."

86. The Apex Court in a latest judgment in a case titled Sanobanu Nazirbhai Mirza and others versus Ahmedabad Municipal Transport Service, reported in 2013 AIR SCW 5800, has specifically held that compensation can be enhanced while deciding the appeal, even though prayer for enhancing the compensation is not made by way of appeal or cross appeal/objections. It is apt to reproduce para 9 of the judgment herein:

"9. In view of the aforesaid decision of this Court, we are of the view that the legal representatives of the deceased are entitled to the compensation as mentioned under the various heads in the table as provided above in this judgment even though certain claims were not preferred by them as we are of the view that they are legally and legitimately entitled for the said claims. Accordingly we award the compensation, more than what was claimed by them as it is the statutory duty of the Tribunal and the appellate court to award just and reasonable compensation to the legal representatives of the deceased to mitigate their hardship and agony as held by this Court in a catena of cases. Therefore, this Court has awarded just and reasonable compensation in favour of the appellants as they filed application claiming compensation under Section 166 of the M.V. Act. Keeping in view the aforesaid relevant facts and legal evidence on record and in the absence of rebuttal evidence adduced by the respondent, we determine just and reasonable compensation by awarding a total sum of Rs. 16,96,000/- with interest @ 7.5% from the date of filing the claim petition till the date payment is made to the appellants."

87. The Apex Court in a latest judgment in the case titled as Smt. Savita versus Bindar Singh and others, reported in 2014 AIR SCW 2053, has laid down the same proposition of law and held that the Tribunal as well as the Appellate Court can ignore the claim made by the claimant in the application for compensation. It is apt to reproduce para 6 of the judgment herein:

"6. After considering the decisions of this Court in Santosh Devi as well as Rajesh v. Rajbir Singh (supra), we are of the opinion that it is the duty of the Court to fix a just compensation. At the time of fixing such compensation, the court should not succumb to the niceties or technicalities to grant just compensation in favour of the claimant. It is the duty of the court to equate, as far as possible, the misery on account of the accident with the compensation so that the injured or the dependants should not face the vagaries of life on account of discontinuance of the income earned by the victim. Therefore, it will be the bounden duty of the Tribunal to award just, equitable, fair and reasonable compensation judging the situation prevailing at that point of time with reference to the settled principles on assessment of damages. In doing so, the Tribunal can also ignore the claim made by the claimant in the application for compensation with the prime object

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

88. Having said so, the Tribunal/Appellate Court is within its powers to enhance the compensation.

89. Admittedly, the age of the deceased-Dinesh Kumar was 19 years at the time of the accident, was studying in 10th class, would have become earning hand after some time. By guess work, it can be safely said that even if he would have been working as a labourer, would have been earning not less than Rs. 5,000/-, was the source of hope and help to the parents in their old age. Keeping in view the age of the parents and the deceased, multiplier of "12" is applicable.

90. It can be safely held that the claimants have lost their source of hope and help and dependency/income to the tune of Rs. 2,500/- per month in view of the law laid down by the Apex Court in the case titled as Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, (2009) ACJ 1298 : AIR 2009 SC 3104 : (2009) CLT 1055 : (2009) 6 JT 495 : (2009) 6 SCALE 129 : (2009) 6 SCC 121 : (2009) 5 SCR 1098 : (2009) 5 UJ 2280 : (2009) AIRSCW 4992 : (2009) 3 Supreme 487 and upheld by a larger Bench of the Apex Court in the case titled as Reshma Kumari and others versus Madan Mohan and another, reported in 2013 AIR SCW 3120. Thus, the claimants are held entitled to compensation to the tune of Rs. 2,500 x 12 x 12 = Rs. 3,60,000/- in Claim Petition No. 43-N/2 of 2002.

FAO No. 224 of 2008

91. While examining the claim petition and the record, it appears that the compensation awarded to the claimant-injured-Krishan Chand in Claim Petition No. 94-N/2 of 2002 is too meager.

92. The Tribunal has fallen in an error while making assessment in paras 74 to 76 of the impugned award. The disability certificate, Ext. PW-9/B, does disclose that the claimant-injured has suffered 25% disability.

93. The claimant-injured sustained grievous injuries, was taken to Civil Hospital, Sarahan, was referred to PGI, Chandigarh, where he remained admitted w.e.f. 15.04.2002 to 18.04.2002, would have spent a huge amount on his treatment, attendant charges, transportation charges, would have undergone pain and sufferings and has to undergo pain and sufferings in future.

94. Having said so, by exercising guess work, it can be safely held that the claimant-injured is entitled to Rs. 20,000/- under the head "treatment charges", Rs. 25,000/- under the head "pain and sufferings undergone", Rs. 25,000/- under the head "pain and sufferings in future", Rs. 10,000/- under the head "attendant charges, Rs. 10,000/- under the head "transportation charges". The injury has also affected the earning capacity of the claimant-injured, his physical frame, thus, Rs. 30,000/- is awarded under the said head.

95. Accordingly, the claimant-injured is held entitled to total compensation to the tune of i.e. Rs. 20,000/- + Rs. 25,000/- + Rs. 25,000/- + Rs. 10,000/- + Rs. 10,000/- + Rs. 30,000/- = Rs. 1,20,000/- in Claim Petition No. 94-N/2 of 2002.

96. The Tribunal has awarded interest @ 7.5 % per annum in all the claim petitions, is maintained.

97. Having said so, the impugned award is modified and the insurer is directed to satisfy the award in Claim Petitions No. 53-N/2 of 2002, 59-N/2 of 2002, 94-N/2 of 2002, 43-N/2 of 2002, 37-N/2 of 2002 and 33-N/2 of 2003 and the owner-insured has to satisfy the award in Claim petitions No. 41-N/2 of 2002 and 35-N/2 of 2003.

98. The claimants have been driven because of the negligence of the driver of the offending vehicle right from the Tribunal to this Court read with the fact that the owner-insured and the driver have not taken the specific stand. Had they taken specific stand and not made evasive denial, they would not have been in a position as they are today. Thus, the actions and conduct of the owner-insured demand that he should be saddled with costs throughout. Accordingly, Rs. 10,000/- is awarded in each claim petition as costs in favour of the claimants and the owner-insured is directed to satisfy the same in all the claim petitions.

99. The insurer and the owner-insured are directed to deposit the awarded amount within eight weeks before the Registry. On deposit of the amount, the same be released in favour of the claimants strictly as per the terms and conditions contained in the impugned award.

100. Excess amount, if any deposited by the owner-insured be released in his favour through payee's account cheque.

101. Having said so, all the appeals and the cross-objections are disposed of and the impugned award is modified, as indicated hereinabove.

102. Send down the record after placing copy of the judgment on each of the Tribunal's files.