
(2001) 11 SHI CK 0029
In the High Court Of Himachal Pradesh
Case No : F.A.O. (MVA) No. 470 of 2000

Kokla Devi

APPELLANT

Vs

Chet Ram and Another

RESPONDENT

Date of Decision : 13-11-2001

Acts Referred:

Motor Vehicles Act, 1988 — Section 163A

Citation : (2002) 1 ACC 650 : (2002) ACJ 650 : (2002) 1 ShimLC 204

Hon'ble Judges : Kamlesh Sharma, J;Arun Kumar Goel, J

Bench : Division Bench

Advocate : B.M. Chauhan, for the Appellant; O.P. Sharma and Ashwani Kumar Sharma, for the Respondent

Final Decision : Allowed

Judgement

Arun Kumar Goel, J.—Kokla Devi, appellant, preferred petition u/s 163-A of the Motor Vehicles Act 1988 (hereinafter referred to as "the Act"), for grant of compensation. This was claimed on account of death of her son Mohinder Singh Chauhan. This petition has been dismissed by the learned Tribunal below, hence this appeal by her.

2. Facts on which parties were not at variance at the time of hearing of this appeal need to be briefly noted.

3. Gypsy bearing registration No. HP 09-0929 was owned by Chet Ram, respondent No. 1. It met with an accident on 20.5.1997 when deceased was going to his native place from the place of his work. It was deceased who was driving it. At about 8 p.m. at Kainchi more near Koku Nala because of some mechanical defect it rolled down the road. This resulted in the death of Mohinder Singh Chauhan. In this background a claim petition was filed by the appellant on the plea that she, her daughter and a son were dependent on the deceased for their livelihood. Her further case was that the deceased was earning Rs. 12,000 per month by working in partnership as a contractor with the brother of Chet

Ram, respondent No. 1.

4. The respondent No. 1, owner of the vehicle, while admitting the factum of accident, pleaded that accident was the outcome of vehicle being driven in a rash and negligent manner by the deceased. His income being Rs. 12,000 per month was also denied. Plea of the petitioner as well as younger brother and sister of deceased being dependent on him was also repudiated.

5. Insurer respondent No. 2 pleaded that the petition was not maintainable as it lacked material particulars. Respondent No. 1, owner, did not give any intimation about the accident to the insurer, as such it stands absolved. Vehicle was alleged to be driven in violation of the terms and conditions of the policy and deceased did not have a valid and effective driving licence nor there were valid documents in respect of the vehicle, as such it prayed for being absolved of its liability for payment of any compensation.

6. On the basis of aforesaid pleadings of the parties, Tribunal framed the following issues:

(1) Whether Mohinder Singh, son of the petitioner died as a result of the accident and as such the petitioner is entitled to compensation, if so, how much and from whom? ... OPP

(2) Whether the vehicle was being driven in violation of the terms and conditions of the insurance policy at the time of occurrence of the accident? ... OPR-2

(3) Whether the person who was driving the vehicle at the time of accident did not possess a valid and effective driving licence? ...OPR-2

(4) Relief.

After conclusion of the trial the death of Mohinder Singh was found under issue No. 1 to have taken place, but appellant was held not entitled for payment of any compensation because the accident was on account of use of vehicle by the deceased himself. Issue Nos. 2 and 3 were decided against insurance company. In view of the findings on issue No. 1, claim petition was dismissed. Hence this appeal at the instance of the claimant.

7. Motor Vehicles Act, 1988 came into force w.e.f. 1.7.1989. Prior to it Motor Vehicles Act, 1939 was in force. Looking to the increase in the number of motor vehicular accidents and with a view to provide some immediate relief to the victims/claimants, in the year 1982 provisions were made for payment under no fault liability as well as on the doctrine of hit and run where the motor vehicle causing accident was not traceable and/or its whereabouts were not known.

8. Under the no fault liability, certain amounts were made payable immediately without proof of negligence in case of death or permanent disability, as the case may be. Keeping in view the observations made from time to time by the High Courts as well as Supreme Court of India, while enacting the Act in the year 1988 an attempt was made to broad base the provisions relating to payment of

compensation in the Act. Amongst other things in the Act after its amendment in the year 1994 u/s 166 an application u/s 166 (1) can now be filed on the option of the claimant in the Claims Tribunal having jurisdiction over the area in which the accident occurred or before a Tribunal within local limits of whose jurisdiction the claimant resides or carries on his business or within the limits of whose jurisdiction the defendant resides; whereas under Act of 1939 it could only be filed within the limits of the jurisdiction of the Tribunal where the accident had occurred. Amount originally payable under no fault liability was enhanced from Rs. 25,000 to Rs. 50,000 in case of death and from Rs. 12,000 to Rs. 25,000 in case of permanent disablement in the year 1994, by the amending Section 140 of the Act by Section 43 vide Central Act No. 54 of 1994.

9. By the said Act of 1994 special provision as to payment of compensation on structured formula basis was also added in the shape of Section 163-A as well as giving option to file claims in certain cases as per Section 163-B. Compensation payable u/s 163-A was as per the Second Schedule of the Act.

10. The sole intention of making provisions in 1939 Act in 1982 by adding Sections 92-A to 92-E supra, as well as in the Act as initially promulgated and then after its amendment, from time to time was to provide immediate relief to the victim of an accident or to his legal representatives, as the case may be, on account of injury/death that was the result of such an accident without negligence being established. This was an exception to the general rule based on torts providing for payment of compensation as per Chapter XII of the Act, i.e., u/s 168 of the Act.

11. For ready reference Sections 163-A as well as 163-B are reproduced herein-below which are as under:

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

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

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

(3) The Central Government may, keeping in view the cost of living by

notification in the Official Gazette, from time to time amend the Second Schedule.

163-B. Option to file claim in certain cases.-Where a person is entitled to claim compensation u/s 140 and Section 163-A, he shall file the claim under either of the said sections and not under both.

12. Before proceeding further with the matter, it will be in the fitness of things if a reference is made to the objects and reasons which were taken into note of by the legislature when Central Act No. 54 of 1994 was introduced and passed by it, were as under:

Prefatory Note-Statement of Objects and Reasons to Amending Act 54 of 1994.-The Motor Vehicles Act 1988 (59 of 1988) consolidated and rationalised various laws regulating road transport. The Act came into force with effect from 1.7.1989 replacing the Motor Vehicles Act, 1939.

(2) After the coming into force of the Motor Vehicles Act, 1988, Government received a number of representations and suggestions from the State Governments, transport operators and members of public regarding the inconvenience faced by them because of the operation of some of the provisions of the 1988 Act. A Review Committee was, therefore, constituted by the Government in March, 1990 to examine and review the 1988 Act.

(3) The recommendations of the Review Committee were forwarded to the vState Governments for comments and they generally agree with these recommendations. Government also considered a large number of representations received, after finalisation of the Report of the Review Committee, from the transport operators and public for making amendments in the Act. The draft of the proposals based on the recommendation of the Review Committee and representations from the public were placed before the Transport Development Council for seeking their views in the matter. The important suggestions made by the Transport Development Council relate to, or are on account of,-

(a) the introduction of newer type of vehicles and fast increasing number of both commercial and personal vehicles in the country;

(b) providing adequate compensation to victims of road accidents without going into long-drawn procedure;

(c) protecting consumers' interests in transport sector;

(d) concern for road safety standards, transport of hazardous chemicals and pollution control;

(e) delegation of greater powers to State Transport Authorities and rationalising the role of police authorities in certain matters;

(f) the simplification of procedures and policy liberalisation in the field of road transport;

(g) enhancing penalties for the traffic offenders.

(4) Therefore, the proposed legislation has been prepared in the light of the above background. The Bill, inter alia, provides for-

(a) modification and amplification of certain definitions of new type of vehicles;

(b) simplification of procedure for the grant of driving licences;

(c) putting restrictions on the alteration of vehicles;

(d) certain exemptions for vehicles running on non-polluting fuels;

(e) ceilings on individuals or company holdings removed to curb "benam" holdings;

(f) States authorised to appoint one or more State Transport Appellate Tribunals;

(g) punitive checks on the use of such components that do not conform to the prescribed standards by manufacturers and also stocking/sale by the traders;

(h) increase in the amount of compensation to the victims of hit and run cases;

(i) removal of time-limit for filing of application by road accident victims for compensation;

(j) punishment in case of certain offences is made stringent;

(k) a new predetermined formula for payment of compensation to road accident victims on the basis of age/income, which is more liberal and rational.

(5) The Law Commission in its 119th Report had recommended that every application for a claim be made to the Claims Tribunal having jurisdiction over the area in which the accident occurred or to the Claims Tribunal within the local limits of whose jurisdiction the claimant resides or carries on business or within the local limits of whose jurisdiction the defendant resides, at the option of the claimant. The Bill also makes necessary provision to give effect to the said recommendation.

(6) The Bill seeks to achieve the above objectives.

13. What was the purpose of enacting Section 163-A came up for consideration before the Hon"ble Apex Court of India in the case of The Oriental Insurance Co. Ltd. etc. Vs. Hansrajbhai V.Kodala and Others etc. etc., and it was observed as under:

(16) ...The object underlining the said amendment is to pay the compensation without there being any long-drawn litigation on a predetermined formula, which is known as structured formula basis which itself is based on relevant criteria for determining compensation and the procedure of paying compensation after determining the fault is done away. Compensation amount is paid without pleading or proof of fault, on the principle of social justice as a social security

measure because of ever increasing motor vehicles accidents in a fast moving society. Further, the law before the insertion of Section 163-A was giving limited benefit to the extent provided u/s 140 for no fault liability and determination of compensation amount on fault liability was taking a long time. That mischief is sought to be remedied by introducing Section 163-A and the disease of delay is sought to be cured to a large extent by affording benefit to the victims on structured formula basis. Further, if the question of determining compensation on fault liability is kept alive it would result in additional litigation and complications in case claimants fail to establish liability of the owner of the defaulting vehicles.

14. Regarding interpretation and construction of Section 163-A, it was held as under:

(21) Lastly, for interpretation and construction of Section 163-A, we would refer to its heading and language. The heading is "Special provisions as to payment of compensation on structured formula basis". At the outset, we would make it clear that for interpretation of the words of section the language of the heading cannot be used to control the operation of the section, but at the same time being part of the statute it prima facie furnishes some clue as to the meaning and purpose of section. [Re: K.P. Varghese Vs. Income Tax Officer, Ernakulam and Another, In case of ambiguity or doubt heading can be referred to as an aid in construing the provision. This heading indicates that the legislature has envisaged special provision for paying compensation on structural formula basis instead of paying the compensation by long-drawn litigation after establishing fault liability. Section also begins with non obstante clause "notwithstanding anything contained in this Act or any law for the time being in force". This would mean that it is not subject to any adjudication of right to claim compensation as provided under the Act. The owner of the motor vehicle or the authorised insurer would be liable to pay compensation due to accident arising out of the use of motor vehicle. Section 163-B further clarifies that claim petition can be filed either u/s 140 or u/s 163-A but not under both sections.

15. In the context of Sections 140, 141 and 163-A and whether last section provides that the payment of compensation on no fault liability on the basis of structured formula is in addition to liability to pay compensation in accordance with the right to get compensation on the principle of no fault liability or not, what was held in this judgment was as under:

(23) In the result, the contention of the claimants that right to get compensation u/s 163-A is additional to claim compensation on no fault liability (Sic. fault liability) is rejected for the following reasons:

(1) There is no specific provision in the Act to the effect that such compensation is in addition to the compensation payable under the Act. Wherever the legislature wanted to provide additional compensation, it has done so. [Sections 140 and 141).

(2) In case where compensation is paid on no fault liability under Sections 140

and 161 in case of "hit and run motor accident", the legislature has provided adjustment or refund of the said compensation in case where compensation is determined and payable under the award on the basis of fault liability u/s 168 of the Act. There is no such procedure for refund or adjustment of compensation paid where the compensation is paid u/s 163-A.

(3) The words "under any other law for the time being in force" would certainly have different meaning from the words "under this Act" or "under any other provision of this Act".

(4) In view of the non obstante clause "notwithstanding anything contained in this Act" the provisions of Section 163-A would exclude determination of compensation on the principle of fault liability.

(5) The procedure of giving compensation u/s 163-A is inconsistent with the procedure prescribed for awarding of compensation on fault liability. u/s 163-A compensation is awarded without proof of any fault while for getting compensation on the basis of fault liability claimant is required to prove wrongful act, neglect or default of the owner of the vehicle or vehicles concerned.

(6) Award of compensation u/s 163-A is on predetermined formula for payment of compensation to road accident victims and that formula itself is based on criteria similar to determining the compensation u/s 168. The object was to avoid delay in determination of compensation.

16. Here we may also observe that with a view to ensure that claim of the claimants of motor vehicle accident does not get defeated on account of it being filed beyond the period of limitation prescribed u/s 166(3) of the Act, this provision was also done away with by amendment of 1994 supra. As such cumulative effect of all the changes made in the Act after its promulgation in the year 1988 and thereafter its amendment in the year 1994, was intended to make approach of the Tribunals justice oriented with a view to achieve the object of providing expeditious compensation.

17. As a step-in aid in the direction of achieving the above object of the Act, Section 163-A and Second Schedule were added along with other provisions.

18. Now before considering the respective submissions, evidence examined by the parties in this case also need to be briefly noted.

19. PW 1 is Lalita Chauhan from the office of the Registration and Licensing Authority, Shimla. She on the basis of official records brought by her has proved the entries regarding issuance of licence in favour of the deceased, copy whereof is Exh. P-1. There is no cross-examination directed to her. PW 2 is Hatinder Singh who had brought the register of F.I.R. of Police Station, Kotkhai and has proved Exh. P-2, copy of F.I.R. No. 55 of 1997 relating to accident in question. PW 3 is Dr. Yashpal, who had conducted autopsy on the body of deceased Mohinder Singh Chauhan. PW 4 is Secretary, Gram Pan-chayat, Halaila, who has proved Exh. PW 4/A on the basis of requisitioned record, i.e., Parivar Register of

the Panchayat.

20. PW 5 is Kokla Devi appellant, who had stated that the deceased was her son aged 23 years and as contractor was earning Rs. 4,000 to Rs. 5,000 per month. According to her she had to engage Gurkhas to work in orchard and she pays Rs. 5,000 per month to them as wages. On behalf of respondent No. 1, owner of the vehicle, it was suggested that income of the deceased was not more than Rs. 2,000 to Rs. 3,000 from all sources. No evidence has been led on behalf of either the owner of the vehicle or its insurer respondent No. 2.

21. Thus, only conclusion that can be arrived at on the basis of the above evidence is that deceased was having a valid driving licence on the date of accident and could have driven the same; both as per provisions of the Act, as well as in terms of the contract of insurance between the respondent Nos. 1 and 2, i.e., policy, copy whereof is placed as Exh. RX-1 on the record.

22. In the context of the contract of insurance between the parties Exh. RX-1, amongst other things it is provided in it that any person who holds driving licence was entitled to drive the vehicle.

23. Mr. Chauhan, learned Counsel for the appellant, submitted that so far his client is concerned, she was only required to show that there was accident of a motor vehicle and the deceased was holding a valid driving licence in accordance with the provisions of the Act/Rules framed thereunder, his age and income. Nothing more is required to be proved while claiming compensation on structured formula u/s 163-A supra. He further submitted that his client being entitled to claim compensation u/s 163-A had preferred only one claim in view of the bar of Section 163-B supra. According to him learned Tribunal below had fallen into error by rejecting the claim of the appellant which is not only illegal and arbitrary, but cannot be sustained. While buttressing this line of argument, Mr. Chauhan submitted that the judgments relied upon by the Tribunal below are all under the provisions of Motor Vehicles Act, 1939 wherein there was no provision like Section 163-A or 163-B. According to him on a bare reading of Section 163-A, it is clear from this section which starts with non obstante clause. Thus it overrides all other provisions of the Act including those in Chapter XII of the Act, (this Chapter deals with the determination of claims on the basis of torts and negligence is required to be established). Whereas this provision of law (section 163-A) is an exception to the general rule in the matters relating to assessment of compensation. Thus he has prayed for allowing this appeal.

24. On the other hand, Mr. Ashwani Sharrna, learned Counsel appearing for the insurance company has controverted all these pleas urged on behalf of the appellant. According to Mr. Sharma, assessment of compensation under structured formula of Section 163-A does not either deny or defeat the defences available to his client u/s 149 of the Act. Thus, according to him, even while assessing the compensation u/s 163-A whenever a defence is put up by the insurer, the matter needs to be determined by the Tribunal. Therefore, he

submitted that for the actions of the deceased, driver in the present case, owner cannot be held liable. As such, dismissal of claim petition deserved to be upheld. So far insurance company is concerned its liability only arises as an indemnifier after owner is held responsible for payment of compensation. Alternatively, he submitted that insurance company is liable only in case of a paid driver that too, as per provisions of Workmen's Compensation Act, 1923. The present case being that of an unpaid driver order of dismissal of claim petition deserves to be upheld on this ground additionally. Lastly, it was urged that Section 163-A is to be read along with Sections 165 and 166 of the Act and not in isolation. Only exception, according to him, is in the matter of assessment of compensation which otherwise is assessable u/s 168 as per Chapter XII of the Act, but has to be assessed when a claim is made u/s 163-A as per Second Schedule. Therefore, he has prayed for dismissal of the appeal.

25. Reference was made by Mr. Ashwani Kumar Sharma, Advocate, to a few precedents which are being referred to hereinafter.

26. In *B. Prabhakar and Another Vs. Bachima*, a Division Bench of that court observed as under:

From Section 110-A A, it is clear that before an application can be entertained, the accident must have occurred due to the actionable negligence of the owner or driver of the vehicle. When the accident has occurred due to actionable negligence of the deceased who was himself the driver, no claim by his legal representatives can be entertained under the Act. That being so Section 110-AA will not come into play at all.

27. In *Hansihai v. National Insurance Co. Ltd.* 1986 ACJ 144 (Rajasthan), in the context of claim of compensation, it was held that Act was procedural and it does not provide machinery for adjudication of claims. Liability for payment of compensation was determined according to law of Torts or 1855 Act. It was further held that application by heirs of driver for payment of compensation where the accident was caused due to his negligence was not maintainable.

28. In *Y.R. Shanbhag Vs. Mohammed Gouse and Others*, a Division Bench of Karnataka High Court held that where driver sustained injury due to his own driving, he cannot maintain a petition under the Motor Vehicles Act and the remedy available to him is under the Workmen's Compensation Act.

29. In *The Oriental Insurance Co. Vs. Ram Kumar and Another*, an identical view was taken by the Punjab & Haryana High Court.

30. In *K. Nandakumar Vs. Managing Director, Thanthai Periyar Transport Corporation Ltd.*, a Division Bench of Madras High Court while considering the case of collision between a bus and motor-cyclist, due to negligence of the latter who sustained injuries, held that since motor-cyclist was solely responsible for the accident, he could not claim compensation on no fault liability. This decision was reversed by the Hon''ble Supreme Court in *K. Nandakumar Vs. Managing*

Director, Thanthal Periyar Transport Corpn., and it was held that the motor-cyclist is entitled to the payment of compensation under no fault liability. Thus Rs. 7,500 was allowed to him. In this judgment while dealing with the provisions of Section 92-A of the Motor Vehicles Act, 1939, (which is *pari materia* to Section 140 of the Act), it was held as under:

(4) By reason of Sub-section (1) of Section 92-A, an absolute liability is cast upon the owner of a vehicle to pay compensation in respect of death or permanent disablement resulting from an accident, arising out of its use. By reason of Sub-section (3), the claimant is not required to plead or establish that the death or disablement was due to a wrongful act or neglect or default of the owner or any other person. Sub-section (4) is in two parts. The first part states that a claim for compensation under the section is not defeated by reason of any wrongful act, neglect or default of the person who had died or suffered permanent disablement. The second part states that the quantum of compensation is not to be diminished even if the person who had died or suffered permanent disablement bore some responsibility for his death or disablement.

(5) There was, therefore, on a plain reading of Section 92-A, particularly the first part of Sub-section (4) thereof, no basis for holding that a claim thereunder could be made only if the person who had died or suffered permanent disablement had not been negligent. The provision being clear, no external aid to its construction, such as the Statement of Objects and Reasons, was called for.

31. In *New India Assurance Co. Ltd. Vs. Meenal and Others*, a Division Bench of Madras High Court held that the insurance company is not liable for payment of compensation where death of driver of a car being the result of his own negligence was there and no wrong or tort having been committed by the owner was either pleaded or proved by claimants.

32. Keeping in view the decision of the Apex Court of India in *K. Nandakumar Vs. Managing Director, Thanthal Periyar Transport Corpn.*, as also the fact that there was no provision like Section 163-A of the Act in the Motor Vehicles Act, 1939, none of the aforesaid decisions has any relevance in the context of present appeal.

33. On the other hand, when Section 163-A of the Act was incorporated, legislature was well aware that Sections 147 and 149 were already there on the statute book. Both these sections provide defences available to an insurer and extent of its liability under the Act. Similarly, Chapter XII was already there when this provision was incorporated in the year 1994. As such the object and reasons assume significance in the context of consideration of Section 163-A which starts with non obstante clause, we feel that it was intended to have an overriding effect on all the provisions of the existing law. Otherwise, there was nothing that prevented the legislature to have provided something in Section 163-A itself enabling the insurance company to contest the claim where it had some defence to offer under the Act.

34. In fact while lodging a claim under this provision of law even proof of negligence has also been done away with. Thus, the compensation is assessed on structured formula and becomes payable at once, subject of course to fulfilment of other conditions. Otherwise, if a claimant had to contest and fight out the insured as well as insurer (as urged by Mr. Sharma), he would file a regular claim petition u/s 166 of Chapter XII of the Act and would get just compensation without any deductions or otherwise, as per Section 168 thereof.

35. In Pankajbhai Chandulal Patel Vs. Bharat Transport Co. and Another, a Division Bench of Gujarat High Court while considering the provisions of Section 92-A of 1939 Act and Section 163-A of the Act held as under:

(4) In order to help the victims of the motor accidents, the tortious act, necessary provisions in the Motor Vehicles Act have been made so that they can get fair compensation and make the loss good; but the compensation is not to be awarded mechanically or as a matter of course on the happening of the incident. The party, praying for compensation filing petition u/s 166 of Motor Vehicles Act, 1988 (section 110-A of the Motor Vehicles Act, 1939) dealing with the fault liability, has not only to allege the negligence on the part of the driver of the offending vehicle(s); or the other agency responsible in law to provide motorable facilities or facilities for the traffic and safety devices but has also to establish the same leading necessary evidence, failing which he cannot succeed. In order to establish negligence, the party has to show what was the duty of the driver, the driver committed the breach of that duty and the result of the breach of that duty was injury to his person and/or property. But let us make it clear that if the compensation is claimed under the principle of no fault liability u/s 140 (section 92-A of Motor Vehicles Act, 1939) or on the basis of structured formula u/s 163-A of the Motor Vehicles Act, 1988 negligence being not the essential ingredient, is not required to be alleged or established.

36. In Oriental Insurance Co. Ltd., Pollachi Vs. Santha and Others, a Full Bench of that court while considering the nature of claim u/s 140 of the Motor Vehicles Act, held as under:

(11) It is, therefore, evident from the above mentioned statutory provisions that the claim for compensation for death or permanent disablement has to be disbursed immediately without casting any burden on the claimant to plead or establish the absence of negligence. Nature of inquiry contemplated u/s 140 is very limited. The liability for compensation for death or permanent disablement u/s 140 is made indefeasible, peremptory and total. In order to sustain a claim u/s 140, there is no necessity for the claimant to plead or establish that the death or permanent disablement was due to wrongful act, neglect or default of the owner or owners of the vehicles.

(19) The approach of the Tribunal in adjudicating the claims under Sections 140 and 166 of the Act is different. Tribunal is required to satisfy itself that the accident has arisen out of the use of the motor vehicle, that the said accident has

resulted in permanent disablement of the person who is making the claim or death of the person, whose legal representatives are making the claim, a claim is made against the owner and insurer of the motor vehicle involved in the accident. These informations are to be furnished by the claimants in their claim petition. Once these particulars are furnished the Tribunal is bound to order compensation, irrespective of the fact whether the claim is made by a third party or not. Therefore, the finding of the Division Bench in Thomas Vs. Mathew N.M. and Others, that the no fault liability is intended only to meet the claims of third parties cannot be accepted. We, therefore, hold that the claimants are entitled to get the benefit of no fault liability u/s 140, whether the accident occurred due to the victim's negligence or not.

(20) In view of the above mentioned legal principles we are of the view that the Division Bench in Thomas Vs. Mathew N.M. and Others, has not laid down the law correctly and the same is overruled. The Division Bench in New India Assurance Co. Ltd. 's case ACJ 1246 (Kerala), had laid down the law correctly and we approve the same. Accordingly, we hold that the Tribunal is right in granting the interim relief prayed for by the claimants. We hold that claimants are entitled to get the amount awarded by the Tribunal with interest at 12 per cent per annum from the date of claim petition till date of payment or realisation. It is so ordered.

M.F.A. is disposed of as above. Orders accordingly.

37. In Smt. Rita Devi and Others Vs. New India Assurance Co. Ltd. and Another, provisions of Motor Vehicles Act were extended to a case wherein a claim was made u/s 163-A of the Act on account of death of one Dashrath Singh during the course of his employment under one Lalit Singh. This, according to the claimants, was caused in accident arising out of the use of the vehicle. Deceased was the driver of an autorickshaw, which was being used as a public carrier for hire by the passengers. On the fateful day it was hired by unknown passengers. It was reported to have been stolen and body of driver Dash-rath Singh was recovered by the police on the next day. The Claims Tribunal allowed compensation which in appeal at the instance of the insurance company was set aside by the Gauhati High Court. The Hon''ble Supreme Court while allowing the appeal of the claimants allowed the compensation.

38. In New India Assurance Co. Ltd. Vs. Muna Maya Basant, a Division Bench of Gujarat High Court while considering the provisions of Section 163-A and Second Schedule of the Act held as under:

(9) The historical background leading Parliament to enact the provision of Section 163-A is, referring several decisions of the Apex Court and commentaries of different learned authors on the books on Tort, stated by this Court in the case of Ramdevsing V. Chudasma Vs. Hansrajbhai V. Kodala, We, therefore, do not restate the same. Suffice it to say at this stage that the Government, because of the direction given and hope expressed by the Apex Court and recommendation

made by the Law Commission found that compensation on the ground of fault liability was not effectively assuaging the miseries, distress and woes being suffered by several victims of the motor accidents as several victims had to retreat or feel dejected by losing the legal battle; and by passage of time when the concept of social obligation of the State to help the subject in case of need or exigencies in life developed which was also the voice echoed by the Supreme Court in several decisions referred to in the above-referred case, Parliament thought it fit to introduce necessary provision. With the result, Section 163-A came to be introduced expanding the frontiers of the liability and making the room for the principle of no fault liability. It contemplates the principle of no fault liability making the owner, driver and insurer of the vehicle or vehicles involved in the accident liable to pay the compensation on predetermined formula nevertheless fault liability and non obstante clause by which Section 163-A begins indicates that regardless of other provisions in the Act about fault liability compensation to the victim shall be paid on the principle of no fault. Section 163-A is, therefore, the provision based on no fault liability and not on tortious liability for the aforesaid object. In short, by introduction of Section 163 A, the ambit of liability under the Act is expanded covering non-tortious liability also.

(10) This court, in *Ramdevsing V. Chudasma Vs. Hansrajbhai V. Kodala*, has with regard to the liability on no fault principle, made it clear that the application u/s 163-A is a substantive application for compensation under the two heads, i.e., pecuniary and general damages only for which the ceiling is provided under Second Schedule of the Act. If the general damages are to be claimed in excess of the amounts award-able under structured formula, or not: covered by the said formula, a separate petition u/s 166 for a full-fledged hearing and determination, has to be filed, otherwise not. In the said decision, different decisions of the Supreme Court throwing light on the history and object of introduction of Section 163-A are referred to. By passage of time pressing need to have a scheme for compensation to make the loss good at the earliest on ad hoc basis without undergoing the arduous long drawn procedure, u/s 166, Motor Vehicles Act or meeting with any challenge or risk of losing fully or partly found necessary to be fulfilled, so that the victim may have some amount conclusively and irrevocably as solatium from the opposite parties, viz., driver, owner and insurer of the vehicle involved in vehicular accident on ex gratia help-principle or ad hoc basis arose, as a result of which Section 163-A by way of soothing provision came to be inserted. Under the said provision vide Second Schedule, "structured formula" for making payment of certain amounts on ad hoc basis is provided. As per that formula without entering into the fault of any party or merits of the rival cases, ex gratia payment on ad hoc basis is to be finally made by the opposite parties. If the party claiming compensation is not satisfied with the amounts award-able under structured formula, it is for him to decide whether he should file the petition for compensation u/s 166 and face the woven risk. He cannot be compelled to file the petition u/s 166 of the Act. The provision, therefore, does not contemplate filing of another application u/s 166 and have compensation

after meeting with the challenge of the opposite party. The opposite parties in other words have no right to challenge the claim u/s 163-A on any ground except on the ground of involvement of the vehicle or any limitation or grounds recognised by Section 163-A, namely, income of the victim, deduction to be made, age, locus siandi, no insurance or cessation of insurance, ownership of the vehicle, mode of assessment as per structured formula and the like, or to seek the order directing the victim to prefer the application u/s 166 for full-fledged hearing. The provision of Section 163-A, to put differently, makes the opposite parties liable to pay the lump sum amount as ex gratia payment to be calculated as per structured formula with no right to challenge on the grounds available in the petition filed u/s 166 of the Act; and payment u/s 163-A is not made subject to the inquiry contemplated u/s 166 of the Act. The appellant, therefore, cannot be allowed to lament on the ground that it does not get a right to challenge or defend putting forth a case it desires to, or contend that the application u/s 166 when not filed and ordered to pay u/s 163-A of the Act, its right to defend is jeopardised. In view of such law and position of Section 163-A, the compensation under no fault liability on predetermined formula has to be awarded and for such award of compensation, petition u/s 166 of the Act is not a condition precedent. Irrespective of one's own stand except permissible as aforesaid, the party liable has to pay as per predetermined formula u/s 163-A of the Act so as to assuage the miseries and woes or distress of the victims of the motor accident. The contention raised in this regard, therefore, cannot sustain.

(12) In the case cited, this Court considering the provisions of Sections 93, 96 and 97 of the then Motor Vehicles Act, 1939, held that the claimant being a tortfeasor cannot claim compensation for the tortious act committed by him. In other words, it is held that if the claimant is found to be negligent he cannot come forward and say pay me the compensation for my own negligence. Such principle is beyond the purview of the Act. But this decision cannot be pressed into the services of the appellant because it is rendered qua the old provision. Section 163-A, the new provision about no fault liability, came to be introduced from 14.11.94. When the decision was rendered by this Court on 14.10.1985, Section 163-A introducing the concept of no fault liability was absent and the principle to claim compensation on no fault liability was foreign to the then Act in force. The decision rendered keeping old law in mind is, therefore, not applicable. Section 163-A brought about drastic change in the concept of tortious liability prevailing prior to it. It by non obstante clause permits even the tortfeasor to claim compensation on the principle of no fault liability which otherwise he is (if employee and has done wrong in the discharge of his duty) entitled to under Workmen's Compensation Act, 1923; or under the contract of insurance. The contention, therefore, fails. The insurance company who is the appellant can challenge the claim only on the ground of no contract at all, i.e., no insurance, or on the above-stated grounds. It may be stated that it is not the case of the appellant that the vehicle in question was not insured with it or that the insurance was not in force at the time of accident.

(14) Under the Act, the liability of the insurance company is statutory and that can be spelt out from Section 147. Charging extra premium, the insurance company may prefer to cover higher liability or risk or unlimited liability. In any case, therefore, the contractual liability will not be less than the statutory liability. It may be stated that by introduction of Section 163-A, the liability as arising thereunder must now be deemed to have been covered under statutory liability regardless of the pecuniary limit in that regard specified in the policy, or premium charged. In other words, the limits of the statutory liability should be deemed to have been extended or enlarged appropriately so as to cover the liability that arises u/s 163-A. For the said liability, extra premium is not to be charged or specific contract is not required to be entered into. When that is so, it cannot be said that the insurance company will have to pay more. However, in some cases, where third party does not come in picture if the court directs the insurance company to pay more than its statutory or contractual liability, as the case may be, it would be open to the insurance company under the terms of the contract to recover, from the insured, the excess amount paid pursuant to the order or in execution and discharge of the order of the court/Tribunal. In case the insurance company has to pay more than its liability or risk covered under the policy, to a third party, it can invoke Sections 147 and 149 (4) or (5) of the Act for the recovery of the amounts paid in excess of the liability. Regarding licence the scheme of the provisions of Section 163-A does not provide a scope to raise a plea in defence so as to challenge the claim on the ground of no licence or category thereof being different because u/s 163-A as stated earlier the sums on ad hoc basis under social obligation has to be paid notwithstanding other provisions. The contention, therefore, gains no ground to stand upon.

39. Looking to the provisions of law and decisions referred to hereinabove we are of the view that the claim petition was maintainable on behalf of the claimant u/s 163-A of the Act and on fulfilment of the requirements as envisaged thereunder, she was entitled for payment of compensation. Decisions relied upon by the Tribunal below while rejecting the claim of the appellant, were of no consequence keeping in view the change in law as made by the Act as compared to the provisions of Motor Vehicles Act, 1939 and then by Central Act No. 54 of 1994. At the risk of repetition we may also observe that Section 163-A (supra) starts, firstly, with non obstante clause and further makes owner of the vehicle or the authorised insurer liable to pay in case of death or permanent disability due to accident arising out of the use of a motor vehicle as indicated in the Second Schedule. Another marked distinction in Section 163-A and Section 166 of the Act is that under the former legal heirs or the victim, as the case may be, is entitled for payment of compensation u/s 163-A; whereas in the latter provision compensation payable in case of death (with which we are concerned in the present case) is claimable by the legal representatives of the deceased.

40. It is by now well-known rule of interpretation that where language is clear, meaning is simple, external aids are not required for examining/interpreting such provision of law, (section 163-A of the Act in the present case). Similarly nothing

is to be read down into such a provision of law. Following this rule of interpretation, if what was urged by Mr. Sharma is accepted, it will result in defeating the purpose of enacting Section 163-A (supra). Thus denying the benefit of payment of compensation on structured formula basis in the present case.

41. In a recent decision, Hon"ble Apex Court in Anwar Hasan Khan Vs. Mohammad Shafi and Others, while considering as to how a provision of law is to be interpreted held that provision is to be construed so as to give effect to all the provisions and a construction (as was urged by Mr. Sharma) that reduces its one of the provisions to be a dead letter is not harmonious construction. Relevant extract from this judgment is as under:

(8) It is settled that for interpreting a particular provision of an Act, the import and effect of the meaning of the words and phrases used in the statute has to be gathered from the text, the nature of the subject matter and the purpose and intention of the statute. It is cardinal principle of construction of a statute that effort should be made in construing its provisions by avoiding the conflict and adopting a harmonious construction. The statute or rules made thereunder should be read as a whole and one provision should be construed with reference to the other provision to make the provision consistent with the object sought to be achieved. The well-known principle of harmonious construction is that effect should be given to all the provisions and a construction that reduces one of the provisions to be a "dead letter" is not harmonious construction. With respect to law relating to interpretation of statute, this Court in Union of India and Others Vs. Filip Tiago De Gama of Vedem Vasco De Gama, held:

The paramount object in statutory interpretation is to discover what the legislature intended. This intention is primarily to be ascertained from the text of enactment in question. That does not mean the text is to be construed merely as a piece of prose, without reference to its nature or purpose. A statute is neither a literary text nor a divine revelation. "Words are certainly not crystals, transparent and unchanged" as Justice Holmes has wisely and properly warned in *Towne v. Eisner* 245 US 418, 425 (1918), learned Hand, i., was equally emphatic when he said: "Statutes should be construed, not as theorems of Euclid, but with some imagination of the purpose which lie behind them". (*Lenigh Valley Coal Co. v. Yen Savage*, 218 FR 547, 533).

42. Examining the present appeal in the light of what has been observed herein-above, we are of the view that award passed by the Tribunal below in MACC No. 140-S/2 of 1988, dated 5.5.2000 is liable to be reversed and it is ordered accordingly. So far assessment of compensation in the present case is concerned, there is no difficulty in view of the Second Schedule of the Act. And we feel that remand of the case for that purpose is not in the interest of the parties. As such we proceed to determine it.

43. Deceased was 23 years of age at the time of accident. His income even if

when taken on lower side, say at Rs. 2,000 per month comes to Rs. 24,000 per annum. It works to Rs. 4,32,000 as per the Second Schedule. Reducing it by 1/3rd, it comes to Rs. 2,38,000. In addition to this amount, appellant is also entitled to Rs. 2,000 on account of funeral expenses and Rs. 2,500 on account of loss to the estate. Thus the appellant is held entitled to a total sum of Rs. 2,92,500. Both the respondents are held liable to pay the same jointly and severally. This amount, however, shall be deposited in the Registry by respondent No. 2 on or before 31.12.2001; failing which it shall be liable to pay 12 per cent interest on it w.e.f. the date of filing of claim petition, i.e., 25.8.1998 till this amount is deposited in the Registry of this Court. Appellant shall get a sum of Rs. 92,500, whereas brother and sister respectively of the deceased shall get Rs. 1,00,000 each. And in the event of interest becoming payable all three of them shall be entitled to proportionate interest also. The appeal is allowed in the aforesaid terms with no order as to costs.