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(1998) 04 RAJ CK 0054

In the Rajasthan High Court

Case No : Civil Miscellaneous Appeal No. 414 of 1996

National Insurance Co. Ltd. APPELLANT

Vs

Heera and Others RESPONDENT

Date of Decision : 02-04-1998

Acts Referred:
Civil Procedure Code, 1908 (CPC) — Section 115, 3
Constitution of India, 1950 — Article 133, 134A, 227, 372
General Clauses Act, 1897 — Section 6
Motor Vehicles Act, 1988 — Section 140, 144, 147, 149, 166

Citation : (2000) ACJ 963 : (1999) 1 RLW 368 : (1999) 1 WLC 551 : (1998) 1 WLN 641

Hon'ble Judges : R.R. Yadav, J

Bench : Single Bench

Advocate : N.P. Gupta, for the Appellant; B.K. Bhatnagar, Suresh Kumbhat and Sambhoo Rathore, for the Respondent

Judgement

R.R. Yadav, J.—In the above 12 appeals common questions of law and facts are involved, hence, all these appeals can be conveniently disposed of by a composite order. S.B. Civil Misc. Appeal No. 414 of 1996 shall be treated as leading case.

2. The present bunch of cases arise out of a single accident that occurred on 28.12.1993 by overturning of the insured tractor-trolley bearing registration No. RJ-19-R-2453, which fell into an adjacent pit with the result some of the persons died and some of them were injured.

3. It is alleged that those who died and who suffered bodily injuries in the accident, were gratuitous passengers in the trolley and all of them were on a joy ride for darshan to the temple of Parshu Ram Mahadev and while returning from the darshan the ill-fated accident occurred.

4. The heirs and legal representatives of deceased persons who are respondents in these appeals, filed claim petitions under the Motor Vehicles Act, 1988

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(hereinafter referred to as ''the Act of 1988''). During the pendency of the claim petitions, they moved applications for compensation u/s 140 of the Act of 1988 on the principle of no fault liability, which were allowed by the Motor Accidents Claims Tribunal, Bali (hereinafter referred to as ''the Claims Tribunal''), awarding Rs. 50,000 to the heirs and representatives of each deceased person. The Claims Tribunal has given retrospective effect to amended Sub-section (2) of Section 140 of the said Act, made enforceable with effect from 14.11.1994, by virtue of which a fixed sum of Rs. 25,000, compensation in respect of death of any person, has been substituted with a fixed sum of Rs. 50,000 and, the amount of compensation payable under that sub-section in respect of permanent disablement of any person has been substituted from Rs. 12,000 to Rs. 25,000.

5. Aggrieved against passing of award by the Claims Tribunal u/s 140 of the Act of 1988 on the principle of no fault liability, National Insurance Co. Ltd. has filed these appeals on the grounds, inter alia, that the tractor-trolley was a goods vehicle and the victims were gratuitous passengers, having gone on a joy ride, hence, no liability can be fastened on it even for compensation under the said Section. Alternatively, it is submitted that even if any liability is found then since the accident is relatable to 28.12.1993, therefore, the limit of liability can be to the extent provided under Sub-section (2) of Section 140 of the said Act as it stood on the date of accident.

6. The learned counsel for the claimants-respondents Mr. B.K. Bhatnagar raised a preliminary objection regarding maintainability of these appeals u/s 173 of the Act of 1988. It is urged by the learned counsel for the claimants-respondents that an order passed u/s 140 of the Act of 1988 directing payment of compensation in case of death or permanent disablement, on principle of no fault liability, does not fall within the meaning of an ''award'' and, therefore, an appeal postulated u/s 173 of the Act of 1988 is not maintainable. In support of his contention, he placed reliance on two decisions rendered by Jammu and Kashmir High Court, in case of Oriental Fire & Genl. Ins. Co. Ltd. v. Maya Devi 1989 ACJ 1040 (J&K) and in another case of Janak Raj v. Union of India 1989 ACJ 1148 (J&K). He also invited my attention towards a decision rendered by a Division Bench of Punjab and Haryana High Court in case of Amita Baghi v. Tejwinder Singh 1995 ACJ 477 (P&H) . He also cited a decision rendered by single Bench of the Gauhati High Court in case of State of Assam Vs. Pranesh Debnath and Others,

7. Learned counsel appearing on behalf of the appellant, with equal vehemence, urged before me that order of compensation u/s 140 of the Act of 1988 is in the nature of passing an ''award'' and it is appealable u/s 173 of the said Act and, a revision u/s 115 of the CPC is not tenable. It is submitted by the learned counsel appearing for the appellant that if an order passed u/s 140 of the Act of 1988 is not held to be an ''award'', it would make its recovery impossible in absence of any provision relating to mode of recovery. In support of his contention, he placed reliance on a recent decision rendered by the learned single Judge of this

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court in case of The Oriental Insurance Co. Ltd. Vs. Mst. Hansi and Others, which is based on a Division Bench decision of Madhya Pradesh. High Court in case of Oriental Insurance Co. Ltd. v. Pritamlal 1989 ACJ 1129 (MP). The learned counsel for the appellant also placed reliance on a decision rendered by Allahabad High Court in the case of Sant Ram v. Surya Pal 1986 ACJ 202 (Allahabad).

8. From the aforesaid arguments of learned counsel for the parties and decisions cited by them, it emerges that there is no consensus of opinion amongst different High Courts regarding maintainability of an appeal, either u/s 110-D of the Motor Vehicles Act, 1939 (hereinafter referred to as ''the Act of 1939'') or corresponding Section 173 of the Act of 1988, in respect of an order awarding compensation u/s 92-A of the old Act of 1939 corresponding to Section 140 of the new Act of 1988. According to Madhya Pradesh High Court, Allahabad High Court and one judgment rendered by the learned single Judge of this court, an appeal u/s 173 of the Act of 1988 (corresponding to Section 110-D of the old Act of 1939) against an order passing award u/s 140 of the said Act (corresponding to Section 92-A of the old Act of 1939) is maintainable whereas according to Jammu & Kashmir High Court, Punjab & Haryana High Court and Gauhati High Court, it is held that against an order passed u/s 140 of the Act of 1988 (corresponding to Section 92-A of the old Act of 1939) no appeal u/s 173 of the Act of 1988 (corresponding to Section 110-D of the old Act of 1939) is maintainable.

9. I respectfully concur with the ratio decidendi propounded by the learned Judges of Madhya Pradesh, Allahabad and Rajasthan High Courts, holding that against an order u/s 140 of the Act of 1988 an appeal is maintainable u/s 173 of the said Act. I have the misfortune to be unable to agree with the erudite opinions of learned Judges of Jammu & Kashmir High Court, Punjab & Haryana High Court and Gauhati High Court, holding that against an order passed u/s 140 of the Act of 1988 corresponding to Section 92-A of the Act of 1939, no appeal is maintainable u/s 173 of the said Act corresponding to Section 110-D of the Act of 1939. I am of the view that the decision taken by the learned single Judge of this court in case of Hansi 1996 ACJ 571 (Rajasthan), holding that an appeal lies against an order passed u/s 140 of the Act of 1988 is a correct view. The learned single Judge of this court after placing reliance on a Division Bench decision of Madhya Pradesh High Court in case of Oriental Insurance Co. Ltd. v. Pritamlal 1989 ACJ 1129 (MP), correctly held that order of compensation u/s 92-A (old Act of 1939) is in the nature of passing an ''award'', which is appealable u/s 110-D (old Act of 1939) and revision u/s 115, CPC is not tenable. The Division Bench of Madhya Pradesh High Court in the aforesaid case had rightly held that if it is not construed as an ''award'' it would make recovery of such an award impossible in absence of any provision specifying mode of recovery and the very object of the legislature in introducing compensation to provide speedy relief to the victims of the motor accidents would be defeated.

10. I would like to add few lines of my own in support of the proposition of law

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that an order passed u/s 140 of the Act of 1988 is appealable u/s 173 of the said Act and a revision u/s 115, CPC is not tenable. It is to be noticed that neither under the old Act of 1939 nor under the new Act of 1988 the expression ''award'' is defined. Since the expression ''award'' is not defined either under the old Act or under the new Act, therefore, in my considered opinion, the expression ''award'' includes order for compensation passed u/s 140 of the Act of 1988, within the fold of ''award'' used u/s 173 of the said Act, subject to mandatory prohibition envisaged under Sub-section (2) of the said section which clearly provides that no appeal shall lie against an award of Claims Tribunal if the amount in dispute under appeal is less than ten thousand rupees.

11. A conjoint reading of Section 140, proviso to Sub-section (2) of Section 166 and proviso to Sub-section (1) of Section 168 reveal that these sections envisaged two kinds of awards. One is the award which is to be passed by Claims Tribunals based on the principle of no fault liability u/s 140 of the Act of 1988 and the other is based on the principle of fault of the owner of the vehicle u/s 168 of the said Act. Both these awards are to be passed by Claims Tribunal independently in the same claim petition at two different stages of the same proceedings after giving opportunity of hearing to the claimants, owner(s) of the vehicle as also to the insurer. In the former type of awards, the Claims Tribunals are to be prima facie satisfied only with regard to alleged involvement of the vehicle(s) in the accident and its insurance policy without undertaking any exercise to find out the fault of the owner of the vehicle, leading to accident arising out of use of a motor vehicle or vehicles or any defences available to owner of the vehicle and statutory defences available to the insurer whereas, in the latter type of awards, Claims Tribunals are called upon to find out the fault of the owner of the vehicle and also to examine the defences available to the owner of the vehicle(s) as well as statutory defences available to the insurer with full-fledged trial of the claim petition.

12. As regards maintainability of the revision, as held by some of the High Courts, suffice is to say that the aforesaid question regarding maintainability of revision against an order passed by the Claims Tribunal came up for consideration before me in case of Chhatar Lal v. Motor Accidents Claims Tribunal, Rajsamand 1997 (1) RLW 169, where it was held by me that the mandatory provisions envisaged u/s 169 of the Motor Vehicles Act, 1988 clearly provide that in holding an inquiry u/s 168 the Claims Tribunal may, subject to any Rules that may be made in this behalf, follow such summary procedure as it thinks fit.

13. After examining the mandatory provisions envisaged u/s 169 of the Act of 1988 as well as the Rules of 1990 framed thereunder, it was held by me in case of Chhatar Lal 1997 (1) RLW 169, in paras 7, 8, 9 which run as under:

(7) In my considered opinion, the Claims Tribunals established under the Act of 1988 and Rules framed thereunder have a colour of civil courts for limited purposes as envisaged u/s 169 of the said Act read with Rule 10.27 of the Rules

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framed thereunder. It is pertinent to mention here that there is no ambiguity under statutory Rule 10.27 of the Rajasthan Motor Vehicles Rules, which clearly named the various sections of the Code of Civil Procedure, 1908 which may be exercised by a Claims Tribunal. There is no mention in the aforesaid rule about the applicability of either Section 3 or Section 115, Civil Procedure Code, hence, these sections cannot be extended by taking recourse of construction holding District Judge who functions as a Claims Tribunal under the Act of 1988 to be subordinate to the High Court within the meaning of Section 3, CPC for making his order revisable u/s 115, Civil Procedure Code.

(8) It is to be remembered that a District Judge has dual capacity. When he functions as a District Judge, he is subordinate to the High Court u/s 3, Civil Procedure Code, hence a revision is maintainable u/s 115, CPC but when he functions as a Claims Tribunal he is subordinate to the High Court under Article 227 of the Constitution and his orders are amenable to writ jurisdiction under the aforesaid Article.

(9) I am of the view that if the provisions enshrined under Article 227 of the Constitution of India would have been brought to the notice of learned Judges constituting Division Bench in case of Darshan Singh (supra), the ratio of that case would have been otherwise. For this reason also, I hold the decision in case of Darshan Singh (supra) to be per incuriam.

14. In an identical situation the view taken in case of Chhatar Lal 1997 (1) RLW 169, came up for consideration before a single Bench of this court in case of Ladu Lal Jain v. Bank of Baroda 1997 DNJ 260 (Rajasthan), wherein the same view was reiterated. Again the Division Bench of this court in case of Main Kumari v. Punjab National Bank, in an unreported S.B. Civil Second Appeal on reference to larger Bench, accepted the ratio decidendi propounded in case of Chhatar Lal (supra). The view expressed by me in the case of Chhatar Lal (supra) is also buttressed by a Division Bench of this court (Hon''ble the then Chief Justice Gokul Chand Mittal and Hon''ble the then Justice R.S. Verma) in case of Bashir Khan Vs. Ranger, Social Vaniki and Others, holding that expression ''any court subordinate to High Court'' in Section 115, CPC is used in a narrow sense, meaning only a civil court in normal hierarchy of courts. This expression does not cover ''Tribunals'' established under special Acts to exercise jurisdiction in special matters. The decision of aforesaid Division Bench in case of Bashir Khan (supra) is based on a decision rendered by Apex Court in case of Associated Cement Companies Ltd. Vs. P.N. Sharma and Another,

15. I am of the view that the Claims Tribunals are camouflaged with the colour of civil courts for limited purposes, specifically mentioned u/s 169 of the Act of 1988 and the Rules of 1990, framed under the said Act, wherein neither Section 3 nor Section 115, CPC are made applicable before the Claims Tribunals.

16. From the aforesaid discussion, I have no hesitation to hold that these appeals are maintainable u/s 173 of the Act of 1988. The preliminary objection

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raised by the learned counsel appearing for claimants-respondents relating to maintainability of these appeals is hereby overruled.

17. It is contended by the learned counsel for the appellant that as the tractor and trolley was a goods vehicle and the victims were gratuitous passengers, having gone on a joy ride and thus, no liability of the appellant is attracted even for an award u/s 140 of the Act of 1988. It is submitted by the learned counsel for the appellant that a mere look at Section 149 of the Act of 1988 would show that it is by virtue of sub-section thereof only the insurer is made to stand in the shoes of the judgment-debtor and expressly provides certain requirements, viz., after issuance of certificate of insurance under Sub-section (3) of Section 147 in favour of the person by whom a policy has been effected, judgment or award in respect of any such liability as is required to be covered by a policy under Clause (b) of Sub-section (1) of Section 147 (being a liability covered by the terms of the policy) is obtained against any person insured by the policy then, notwithstanding that the insurer may be entitled to avoid or cancel or may have avoided or cancelled the policy the insurer shall, subject to this provision, pay to the person entitled to the benefit of the decree any sum not exceeding the sum assured payable thereunder as if he was the judgment-debtor in respect of the liability together with any amount payable in respect of costs and any sum payable in respect of interest on that sum. It is submitted by the learned counsel for the appellant that if these conditions precedent are satisfied in these appeals only then insurer is to satisfy the award given by the Claims Tribunal u/s 140 of the Act of 1988, as if the insurer himself is the judgment-debtor. As in the present case, the award is given u/s 140 of the said Act where the conditions precedent are not satisfied, hence, appellant is not liable to pay the compensation. According to Mr. N.P. Gupta, u/s 140 of the Act of 1988, the liability of the insurer is not postulated, therefore, liability cannot be fastened by taking recourse of construction. It is vehemently urged by Mr. Gupta that until and unless the liability for gratuitous passengers in a goods vehicle is covered under Clause (b) of Sub-section (1) of Section 147 of the Act of 1988, the insurer cannot be held liable for the payment of compensation awarded u/s 140 of the said Act.

18. In support of his aforesaid contention, Mr. Gupta placed reliance on catena of judgments rendered by different High Courts. He invited my attention to a decision given by a Full Bench of this court in case of Santra Bai v. Prahlad 1985 ACJ 762 (Rajasthan), with emphasis on para 32 of the aforesaid citation. The same view has been taken by this court in case of Kalu v. Deep Kanwar 997 ACJ 628 Likewise, recently, in case of Paroo v. Likhma Ram 1998 ACJ 628 (Rajasthan), while interpreting the provisions of the new Act, this court ruled to the same effect. He also referred in support of his contention a decision rendered by Full Bench of Bombay High Court, in Oriental Fire & Genl. Ins. Co. Ltd. v. Hirabai Vithal Nikam 1988 ACJ 494 and a Full Bench decision of Madhya Pradesh High Court in Kallu Maharaj v. Meenabai 1989 ACJ 770 He also invited my attention towards a Division Bench judgment of Gujarat High Court in New India

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Assurance Co. Ltd. Vs. Mohanbhai Ravjibhai and Others, In all these decisions, it is ruled that insurance company is not liable to pay compensation to a gratuitous passenger travelling in a goods vehicle otherwise than in accordance with law. The aforesaid argument advanced by learned counsel for the appellant Mr. N.P. Gupta is not acceptable to me for the reasons given hereinbelow.

19. An identical question came up for consideration in case of United India Insurance Co. Ltd. v. Khisi Devi, 1989 (1) RLR 107, wherein it has been held that at the stage of award of compensation on the basis of no fault liability, the Claims Tribunal cannot inquire into the merits of the defence available to the insurance company. Again, in case of National Insurance Co. Ltd. v. Savitri Bai 1991 ACJ 540 (MP) , it was held that the defence of the insurance company that the vehicle was being used in direct breach of conditions contained in the policy cannot be considered at the stage of grant of award on the principle of no fault liability and trial of such defence has to be postponed, as the same is bound to be time consuming and is likely to defeat the very purpose for which the provision for award of compensation has been enacted u/s 92-A of the old Act of 1939 corresponding to Section 140 of the new Act of 1988. The aforesaid question also came up for consideration before Hon''ble Supreme Court in case of K. Nandakumar Vs. Managing Director, Thanthal Periyar Transport Corpn., wherein while examining the provisions of Section 92-A of the Act of 1939 it is ruled by the Apex Court that the question of liability is not to be examined while awarding the interim compensation.

20. I am of the view that the decisions cited by the learned counsel for the appellant did not discuss the liability of the insurer u/s 140 of the Act of 1988 but the insurance companies have been exonerated from its liabilities for paying compensation after full-fledged trial of the claim petitions, therefore, the ratio decidendi of the decisions rendered by the Full Bench of this court, Full Bench of Bombay High Court, Full Bench of Madhya Pradesh High Court and other decisions cited by the learned counsel for appellant, are not applicable to the facts and circumstances of the present case. In those cases, the question of compensation awarded u/s 140 of the Act of 1988 on principle of no fault liability was not under consideration as in the present case.

21. Indisputably, in these appeals, the occurrence of the accident is admitted, leading to the death of the passengers travelling in the ill-fated tractor and trolley and it is further admitted that the tractor-trolley involved in accident was insured with the appellant insurance company. From these facts, I am of the view that the claimants are entitled to claim compensation u/s 140 of the Act of 1988 based on principle of no fault liability and appellant is liable to pay compensation to heirs and legal representatives of deceased persons, without fulfilling the conditions precedent contemplated u/s 149 of the Act of 1988 and also without examining defences available to it under the said Act.

22. It is held that the trial of statutory defences available to the appellant insurance company has to be postponed and it is to be tried along with other

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issues framed in the claim petition. If appellant insurance company succeeds to establish any defence available to it in accordance with law, then the owner of the vehicle is to be held liable to reimburse the amount paid by insurer appellant u/s 140 of the Act of 1988, at the stage of final award to be made by the Claims Tribunal, Bali in the present case.

23. In the alternative, it is contended by the learned counsel for the appellant that even if any liability for payment of compensation is found by the court payable by the appellant then since the accident is relatable to 28.12.1993, the liability can be to the extent provided under Sub-section (2) of Section 140 of the Act of 1988 as it stood on the date of accident. According to learned counsel for the appellant, the Claims Tribunal has committed serious error in increasing the limit of liability from Rs. 25,000 to Rs. 50,000 in case of death, on the basis of amendment, made enforceable with effect from 14.11.1994. It is urged by the learned counsel for the appellant that the amendment introduced with effect from 14.11.1994 increasing the limit of the liability is not retrospective in its operation but it is to be interpreted to be prospective. In support of his aforesaid contention, he placed reliance on a recent decision rendered by Division Bench of Himachal Pradesh High Court in United India Insurance Co. Ltd. v. Nako alias Naiku Devi 1996 ACJ 516 , holding that as the accident took place prior to amendment of Schedule IV of the Act, the compensation has to be assessed according to unamended Schedule. It is further held by the learned Judges constituting Division Bench in case of United India Insurance Co. Ltd. v. Nako (supra), that if retrospective operation is given to the amended Schedule IV it will take away vested rights of the owner and the insurance company. He also invited my attention towards similar views expressed by Punjab and Haryana High Court rendered in case of Oriental Fire & Genl. Ins. Co. Ltd. v. Moola Singh 1970 ACJ 401 , Nagpur Bench of Bombay High Court in Uttam v.Corporation of City of Nagpur 1984 (1) ILR , Allahabad High Court in U.P. State Road Trans. Corporation v. Abdul Hameed 1985 ACJ 832 (Allahabad) and Kerala High Court in Kochu Velu v. Purakkattu Joseph 1984 ACJ 630 (Kerala), holding that law on the date of accident, relating to payment of compensation by insurer, will be made applicable in such cases. It is urged by the learned counsel for the appellant that the award under these appeals passed by Claims Tribunal u/s 140 of the Act of 1988 is not sustainable in eye of law.

24. The learned counsel appearing on behalf of the claimants-respondents Mr. B.K. Bhatnagar vehemently opposed the aforesaid argument and urged before me that Sub-section (2) of Section 140 of the Act of 1988 is a beneficial piece of legislation, enacted with a view to confer the benefit of expedient payment of limited amount of compensation to the victims, therefore, it is to be interpreted to be retrospective. Learned counsel appearing on behalf of the claimants-respondents Mr. Bhatnagar in support of his aforesaid submission cited a recent decision rendered by the learned single Judge of Punjab and Haryana High Court in case of Sumitra Devi v. Danesh Kumar 1997 ACJ 981 (P&H), holding that the amended Sub-section (2) of Section 140 of the Act of 1988 is a beneficial piece

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of legislation, therefore, it should be interpreted in favour of those persons for whose benefit this amendment is made. On the basis of aforesaid reason, it is held in case of Sumitra Devi (supra) that amended Sub-section (2) of Section 140 of the Act of 1988 is to be interpreted to be retrospective in its operation and in that case, claimants were allowed compensation of Rs. 50,000 under no fault liability, considering the inflationary pressure and consequent loss of purchasing power of rupee. It is further held in case of Sumitra Devi (supra) that amount of Rs. 25,000 is really unrealistic. The learned single Judge set aside the order of the Claims Tribunal in case of Sumitra Devi (supra) and appeal was accordingly allowed, enhancing the compensation from Rs. 25,000 to Rs. 50,000 under amended Sub-section (2) of Section 140 of the Act of 1988 although accident had taken place prior to enforcement of amendment on 14.11.1994.

25. The learned counsel for claimants-respondents Mr. Bhatnagar also relied upon a recent decision rendered by a Division Bench of Madhya Pradesh High Court in case of Rajni Bai v. Avtar Singh 1997 ACJ 690 (MP), wherein the learned Judges constituting the Division Bench held in para 4 of their judgment that at the relevant time when the accident occurred, u/s 140 of the Act of 1988 the amount of Rs. 25,000 was payable in case of death which has been substituted by Rs. 50,000 by the amending Act, which has come into force from 14.11.94, therefore, even in no fault liability case the intention of Parliament is that the legal representatives of the deceased who died in a motor accident should be awarded minimum compensation of Rs. 50,000. Learned Judges constituting the Division Bench, relying on an unreported decision in Shiv Prasad v. Government of India, M.A. No. 268 of 1990; decided by them on 9.4.1996 and two single Bench decisions of that court, in Rukmani Bai v. Rahul 1988 (1) RAC 469; Ramsingh v. Sheikh Sikandar 1990 ACJ 801 (MP), directed the insurance company to pay Rs. 50,000 with interest thereon at the rate of 12 per cent per annum from the date of application till deposit. In case of Rajni Bai (supra), the appeal was allowed, the award passed by the Claims Tribunal was substituted by holding that the claimants-appellants shall be entitled to Rs. 50,000 with interest at the rate of 12 per cent per annum from the date of application till realisation, in default the amount was to carry interest at the rate of 18 per cent per annum.

26. It is to be noticed that in case of Rajni Bai 1997 ACJ 690 (MP), the learned Judges constituting Division Bench affirmed the findings of the Tribunal to the effect that the rash and negligent act of the driver is not established and it was the deceased himself who was responsible for the accident as he slept near the rear wheel of the truck, hence, dismissed the application for compensation although award on principle of no fault liability as stated above was awarded u/s 140 of the Act of 1988.

27. It is next contended by the learned counsel for the claimants-respondents Mr. Bhatnagar that amendment of Sub-section (2) of Section 140 of the Act of 1988 with effect from 14. 11.1994 is to be interpreted retrospective in its operation, as held by Hon''ble K.C. Agrawal (the then Chief Justice) of this court in the case of

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Kanhaiya Lal and Another Vs. Kailashi Devi and Others, The decision rendered by Rajasthan High Court in case of Yashoda Kumari v. Rajasthan State Road Trans. Corporation 1984 ACJ 716 (Rajasthan) and the decision rendered by Allahabad High Court in Ram Mani Gupta v. Mohammad Ibrahim 1985 ACJ 476 Allahabad), were distinguished in Kanhaiya Lal''s case. The aforesaid judgment rendered by the then Chief Justice in the case of Kanhaiya Lal (supra) was followed by a single Bench of this court in case of Devendra Kumar v. New India Assurance Co. Ltd. 1994 (2) WLC (Raj) 760. The learned single Judge in case of Devendra Kumar (supra), after referring the decision rendered by the then Chief Justice in case of Kanhaiya Lal (supra) in para 4 of his judgment, allowed the appeal.

28. From the aforesaid arguments of learned counsel for the parties, again the following contentious questions emerged for consideration in these appeals:

(1) Whether amendment enforced with effect from 14.11.94 under sub-section

(2) of Section 140 of the Act of 1988, substituting compensation amount from Rs. 25,000 to Rs. 50,000 in case of death and from Rs. 12,000 to Rs. 25,000 in case of bodily injuries leading to permanent disablement, is retrospective in its operation merely as it is beneficial piece of legislation?

(2) Whether accrual of cause of action for claiming compensation on principle of no fault liability u/s 140 of the Act of 1988 is relatable to the date of accident, hence, limit of right and correspondingly liability under Sub-section (2) of Section 140 of the said Act can be confined as it stood on the date of accident and, subsequent legislative changes introduced under said section enhancing and substituting the amount of compensation would not create new right to the claimants to demand any additional compensation increasing the liability of the owners of the vehicles qua insurers?

(3) Whether concept envisaged u/s 144 of the Act of 1988 providing overriding effect notwithstanding anything contained in any other provisions of the said Act or any other law for the time being in force read with Sub-section (4) of Section 217 of the said Act postulating general application of Section 6 of the General Clauses Act, 1897 with regard to effect of repeal of the Act of 1939, is importable to the interpretation of Sub-section (2) of Section 140 of the said Act enhancing compensation with effect from 14.11.1994?

(4) Whether the amended Sub-section (2) of Section 140 of the Act of 1988 is procedural law or substantive law, affecting the rights of the claimants and correspondingly the liabilities of the owners of the vehicles qua insurers?

29. With the aforesaid circumspection, this court is called upon to decide the above mentioned questions of law involved in these appeals.

30. It is to be imbibed that Supreme Court in case of Punjab Tin Supply Co., Chandigarh and Others Vs. Central Government and Others, , ruled that all laws which affect substantive rights generally operate prospectively and there is a presumption against their retrospectivity if they affect vested rights and

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obligations, unless the legislative intent is clear and compulsive. Such retrospective effect may be given where there are express words giving retrospective effect or where the language used necessarily implies that such retrospective operation is intended. According to Apex Court, in case of Punjab Tin Supply Co. Ltd. (supra), whether a statutory provision has retrospective effect or not depends primarily on the language it is couched in. If the language is clear and unambiguous, effect will have to be given to the provision in question in accordance with its tenor and, if the language is not clear then the court has to decide whether in the light of surrounding circumstances retrospective effect should be given to it or not.

31. It would be pertinent to refer to Maxwell on Interpretation of Statutes, 12th Edn. by P.St.J. Langan, p. 215, regarding retrospective operation of statutes:

4. Retrospective Operation of Statutes: Upon the presumption that the legislature does not intend what is unjust rests the leaning against giving certain statutes a retrospective operation. They are construed as operating only in cases or on facts which come into existence after the statutes were passed unless a retrospective effect is clearly intended. It is a fundamental rule of English law that no statute shall be construed to have a retrospective operation unless such a construction appears very clearly in terms of the Act, or arises by necessary and distinct implication.

32. An eminent jurist S.G.G. Edgar, author of Craies on Statute Law, 7th Edn., on p. 393 went on to say regarding retrospective operation of statutes as under:

... Words not requiring a retrospective operation, so as to affect an existing statute prejudicially, ought not to be so construed; but in Reynolds v. Att. Gen. for Nova Scotia it was held that this rule did not extend to protect from the effect of a repeal a privilege which did not amount to an accrued right.

33. The point of procedural law under the Motor Vehicles Act and the Rules framed thereunder came up for consideration before me in case of Smt. Indra Sharma and Others Vs. Chairman, RSEB, Jaipur, wherein, after surveying the legal historical background of the procedural laws followed in claim petitions regarding compensation arising out of motor accidents in State of Rajasthan, it was held that after establishment of Claims Tribunals in State of Rajasthan. the State Government in exercise of its powers conferred u/s 111-A of the old Act of 1939 framed the Rajasthan Motor Vehicles Rules 1964, wherein under Rule 20, it was provided that the provisions of Schedule 1 to the CPC shall be made applicable to the proceedings before the Claims Tribunal. The said Rules named some of the provisions contained under the Code of Civil Procedure, extending their applicability before the Claims Tribunal for determination of compensation against claims arising out of motor accidents. It was further noticed in the case of Indra Sharma (supra) that after passing of Motor Vehicles Act 1988, the State Government in the exercise of its statutory functions, repealed the Rules of 1964 and framed the Rajasthan Motor Vehicles Rules, 1990 wherein under Chapter

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10.28, Order 8, Rules 2 to 5 (both inclusive) along with Rules 9 and 10 of the CPC have been made applicable to the proceedings initiated for determination of compensation under Motor Vehicles Act, 1988 arising out of motor accidents, along with many other sections and rules of CPC before the Tribunal. Regarding retrospectivity of the procedural matters, it was held in paras 20 and 21 of the aforesaid decision, which read thus:

(20) I am of the view that when old Rules of 1964 were repealed by new Rules of 1990 then there should have been a saving clause in the Rules of 1990 but there is no such saving clause in these Rules. The basic question would be that if new Rules of 1990 have committed fault in not providing saving clause then whether such a situation is to be tackled by courts, especially in procedural matters? My answer to the aforesaid legal question would be in affirmation. It goes without saying that the question relating to repeal in the present case relates to procedural matters. Therefore, it is held that fault of rule making authority in not providing saving clause in the new Rules of 1990 will not detract this court from extending the applicability of the principle of evasive reply envisaged under Order 8, Rule 5, CPC in the present case.

(21) In my considered opinion, no one has vested right in any procedural matter unless any of the party acquired any substantial right before the change of procedure. Indisputably, in the present case before insertion of Order 8, Rule 5, CPC in the new Rules of 1990 no substantial right has accrued in favour of respondents, therefore, it is reiterated with emphasis that change of procedure by new Rules of 1990 relating to evasive reply is to be given retrospective effect in inquiry proceedings initiated before the change before the Claims Tribunals and an argument contrary to it is hereby repelled. Mere absence of the provisions of evasive reply envisaged under Order 8, Rule 5, CPC in old Rules of 1964 will not confer vested right on the respondents to give an evasive reply to paras 11 and 13 of the claim petition wherein rash and negligent driving of the jeep in question was pleaded by claimants-appellants. Mere absence of Order 8, Rule 5, CPC in the old Rules of 1964 will also not detract this court from its normal interpretation that it being procedural in character shall have to be applied to pending cases.

34. From the discussion made herein-above, it is held that retrospective operation is not to be given to a statute so as to impair right or obligation already accrued before amendment unless that effect cannot be avoided, without doing violence to the phraseology of the enactment. Before applying the principle of retrospectivity, the courts are to be satisfied that the statute is, in fact, retrospective. The presumption against retrospective operation is strong in those cases where if statute is allowed to operate retrospectively it would prejudicially affect the vested rights already accrued or impair legality of the past transactions or contract or impose new duty or attach new liability in respect of past transactions, before amendments are enforced. The principle of retrospectivity stated above can be departed only either by express enactment or by necessary

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implication from the language employed by the legislature, not otherwise, although procedural amendments are exceptions. However, in procedural matters, no one has vested right unless any of the party acquired any substantial right before change of procedure.

35. It is further easily deducible from the decision rendered by Apex Court in case of Punjab Tin Supply Co., Chandigarh and Others Vs. Central Government and Others, and from opinions of eminent jurists, that rules of construction governing the principle of retrospectivity is to be undertaken by the courts only because of the obligation imposed on it attaching an intelligible meaning to confuse and unintelligible language used by legislature but where words of an enactment of legislature are clear, there is no room for taking recourse of interpretation based on speculation, assumption and presumption, holding a piece of legislation retrospective, even in those cases where vested right has already accrued to a party. Thus, it is firmly established until date that if statutory provision is clear which is fairly capable of interpretation leading to its retrospectivity and prospectivity both, then it should be construed to be prospective and not retrospective. [See (1898) 2 QB pp. 551 & 552]. In re Athlumney, it has been observed:

...Perhaps no rule of construction is more firmly established than this-that a retrospective operation is not to be given to a statute so as to impair an existing right or obligation, otherwise than as regards matter of procedure, unless that effect cannot be avoided without doing violence to the language of the enactment. If the enactment is expressed in language which is fairly capable of either interpretation, it ought to be construed as prospective only....

36. The decision given by (1898) 2 QB (supra) held to be law in force in the territory of India immediately before the commencement of the Constitution, as enshrined under Article 372 of the Constitution. The aforesaid decision is binding upon this court unless overruled or departed by the Supreme Court. Nothing has been brought to my notice that aforesaid decision is either overruled or departed by the Apex Court, hence, proposition laid down in (1898) 2 QB (supra) regarding retrospectivity of a statutory provision is held to be binding upon this court.

37. It is also to be remembered while deciding retrospectivity of statutory provisions that the legislation in the modern State is actuated with some policy to curb and control some mischief or to effectuate some public benefit or to curb some evil. Before amending or passing a new enactment, the legislature used to base its legislation on information derived from the past and present experience.

38. In the above backdrop, it is noticed that amendment under Sub-section (2) of Section 140 of the Act of 1988, substituting the amount of compensation of Rs. 25,000 with Rs. 50,000 in case of death and Rs. 12,000 with Rs. 25,000 in case of bodily injuries leading to permanent disablement with effect from 14.11.1994, is based on the suggestion of Hon''ble Apex Court given in case of

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M.K. Kunhimohammed v. P.A. Ahmedkutty 1987 ACJ 872 (SC) and in case of Parmanand Katara v. Union of India 1990 ACJ 1021 (SC). The aforesaid valuable suggestions of Supreme Court were given due respect by the law-making machinery yet Parliament did not make it retrospective for the reasons best known to it. Thus, from the above facts and surrounding circumstances, intention of Parliament is clear that it did not intend to make the operation of Sub-section (2) of Section 140 of the Act of 1988 to be retrospective. To my mind, once it is established that Parliament did not intend to make the operation of Sub-section (2) of Section 140 of the Act of 1988 to be retrospective then courts by taking recourse to construction cannot presume it to be retrospective simply because it is beneficial piece of legislation. In the present case, if retrospectivity is attached to Sub-section (2) of Section 140 of the Act of 1988 then it would affect prejudicially the vested right of the appellant insurance company and its obligation to pay compensation which already accrued to it on 28.12.1993, when ill-fated accident occurred. In the present cases on hand even if, for argument sake, intention of Parliament is not clear even then I am satisfied that it is not compulsive to hold the operation of Sub-section (2) of Section 140 of the Act of 1988 to be retrospective, causing violence to the clear language with which it is couched and also causing prejudices to the vested rights, obligations and liabilities already accrued on the date of accident to the owner qua insurer of the vehicle involved in the accident.

39. I am of the view that it would be contrary to rules of interpretation to read words under Sub-section (2) of Section 140 of the Act of 1988 unless it is absolutely necessary to do so. The courts cannot re-frame legislation even for the very good reason including on the ground of beneficial piece of legislation, as it has no power to legislate. It can only interpret the amendment made by legislature under Sub-section (2) of Section 140 of the said Act, avoiding addition or substitution of words which do not find place in the aforesaid amending sub-section. It appears to me to be naked usurpation of legislative function under the thin disguise of interpretation attaching retrospectivity to Sub-section (2) of Section 140 of the Act of 1988 on the ground of beneficial piece of legislation.

40. Looking to the phraseology with which Sub-section (2) of Section 140 of the Act of 1988 is couched, I respectfully, agree with the proposition of law laid down by a single Bench of this court in case of Yashoda Kumari 1984 ACJ 716 (Rajasthan) and erudite views expressed by the learned Judges of Allahabad High Court constituting Division Bench in the case of Ram Mani Gupta 1985 ACJ 476 (Allahabad), based on Apex Court decisions holding that operation of amended Section 92-A of the old Act of 1939 corresponding to Section 140 of the new Act of 1988 is not retrospective in its operation and liability to pay compensation gave rise from that date when its payment became due on owner qua insurer.

41. It is next contended by the learned counsel for claimants-respondents that amended Sub-section (2) of Section 140 of the Act of 1988, enforced with effect

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from 14.11.1994, is procedural law, therefore, retrospectivity is to be attached to this sub-section as a matter of course. According to him, in case of Smt. Indra Sharma and Others Vs. Chairman, RSEB, Jaipur, decided by me on 26.2.98, I have no occasion to identify whether aforesaid sub-section is procedural or substantive law, therefore, this question is to be decided in the present cases. There is substance in the argument of the learned counsel for claimants-respondents. Hence, 1 propose to decide the point raised by the learned counsel for the claimants-respondents with reference to Sub-section (2) of Section 140 of the said Act enforced with effect from 14.11.1994 whether it deals with substantive law or whether it is a provision which is only procedural?

42. It is to be imbibed that Sub-section (2) of Section 140 of the aforesaid Act, enforced with effect from 14.11.1994, had brought in substantial change enhancing a fixed sum of Rs. 25,000 to Rs. 50,000 in case of death and from Rs. 12,000 to Rs. 25,000 in case of bodily injuries leading to permanent disablement. Erudite comments by John Salmond, from Salmond on Jurisprudence, 12th Edn. by P.J. Fitzerald at p. 461 are relevant in this regard which are reproduced hereinbelow for ready reference:

The substantive part of the criminal law deals, not with crimes alone, but with punishments also. So in the civil law, the rules as to the measure of damages pertain to the substantive law, no less than those declaring what damage is actionable; and rules determining the classes of agreements which will be specifically enforced are as clearly substantive as are those determining the agreements which will be enforced at all....

43. From the aforesaid discussion, it is held that the amended Sub-section (z) or Section 140 of the Act of 1988 increasing the liability of owner qua insurer from Rs. 25,000 to Rs. 50,000 in case of death and from Rs. 12,000 to Rs. 25,000 in case of bodily injury leading to permanent disablement, is not a procedural law but it is substantive law which affects rights, obligations and liabilities already accrued to the owners of the vehicles qua insurers on the date of accident.

44. I am of the view that in these appeals rights and corresponding liabilities for compensation accrued on the date of accident on 28.12.1993 which gave rise to cause of action to claimants-respondents to claim compensation u/s 140 of the Act of 1988 against the appellant insurance company which cannot be made dependent upon the amending Sub-section (2) of Section 140 of the said Act, which is made enforceable with effect from 14.11.1994. Mere fact that in these appeals claim petitions claiming compensation on ground of fault of the owner of the vehicle and applications claiming compensation on principle of no fault liability remained pending up to the date of amendment prescribing enhanced compensation cannot be interpreted to impose additional liability on the appellant insurance company and vice versa and the claimants-respondents cannot be allowed to demand additional compensation. In the present cases, the Claims Tribunal erred in passing award of Rs. 50,000 in favour of heirs and legal representatives of each deceased person in place of Rs. 25,000, which

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compensation is relatable to the date of accident within the meaning of Sub-section (2) of Section 140 of the Act of 1988, as it stood on the date of accident.

45. I am further of the view that in these appeals it can be safely held that the material date for ascertaining the extent of liability of the owner qua insurer would be the date of accrual of cause of action relatable to the date of accident, i.e., 28.12.93 for a claim arising out of a tractor-trolley accident, on which date the insurer became liable to indemnify the liability of the owner u/s 140 of the Act of 1988, as it stood on the date of accident, without determining the question relating to prospectivity or retrospectivity of the amendment of the said section with effect from 14.11.1994 as ruled by Supreme Court in case of Padma Srinivasan v. Premier Insurance Co. Ltd. 1982 ACJ 191 .

46. An identical question of interpretation of amended Sub-section (2) of Section 95 of the old Act of 1939 came up for consideration before Supreme Court in Padma Srinivasan''s case 1982 ACJ 191 (SC), wherein liability of the insurer from Rs. 20,000 to Rs. 50,000 was increased. Said amendment came into force on 2.3.70 and the accident which gave rise to those proceedings for compensation arising out of use of motor vehicle occurred on 5.4.70.

47. In the above mentioned case, the Claims Tribunal, Bangalore had given effect to the amendment introduced under Sub-section (2) of Section 95 of the Act of 1939 as on the date of accident the liability of respondent insurer was limited to a sum of Rs. 50,000 and not Rs. 20,000.

48. In case of Padma Srinivasan 1982 ACJ 191 (SC), it is noticed that aggrieved against the award given by Claims Tribunal, Bangalore, the respondent insurer filed an appeal in the High Court of Karnataka, contending that on the date on which the insurance policy was alleged to have been issued by it, its statutory liability was limited to a sum of Rs. 20,000 only and, therefore, the Claims Tribunal was in error in passing an award against it in the sum of Rs. 50,000. This contention was accepted by the High Court, against which SLP was filed by claimants before Supreme Court.

49. In case of Padma Srinivasan 1982 ACJ 191 (SC), Hon''ble Supreme Court noticed in para 6 of its decision that the judgment rendered by Karnataka High Court is based on principles governing retrospectivity of statute, holding that the amendment introduced by Amending Act No. 56 of 1969, enhancing liability of insurer from Rs. 20,000 to Rs. 50,000 is prospective in nature and cannot be given retrospective effect. Hon''ble Apex Court after critical analysis, ruled that High Court failed to appreciate the true nature of issue before it. The judgment of High Court was set aside and appeal was allowed with costs throughout and the award of the Claims Tribunal was restored. In the aforesaid para 6 of their Lordships'' judgment, it was specifically ruled which reads thus:

...Since the liability of the insurer to pay a claim under a motor accident policy arises on the occurrence of the accident and not until then, one must necessarily have regard to the state of the law obtaining at the time of the accident for

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determining the extent of the insurer''s liability under a statutory policy. In this behalf, the governing factor for determining the application of the appropriate law is not the date on which the policy of insurance came into force but the date on which the cause of action accrued for enforcing liability arising under the terms of the policy...If the parties to a contract agree that one shall pay to the other damages for breach of contract in accordance with the law contained in any particular statute, without identifying the law as the provision which is in force on the date of the contract, the law which will apply for determining the quantum of damages is the one which is in force on the date on which the breach of contract is committed, that being the date on which the cause of action arises, and not the law which was in force on the date on which the contract was made.

50. Thus, my aforesaid view regarding interpretation of Sub-section (2) of Section 140 of the Act of 1988 is buttressed from the decision rendered by Apex Court in case of Padma Srinivasan 1982 ACJ 191 (SC), as the proposition of law laid down by Supreme Court in that case is interchangeable to the facts and circumstances of the present case. In case of Padma Srinivasan (supra) the amendment under Sub-section (2) of Section 95 of the Act of 1939 enhancing liability of the insurer from Rs. 20,000 to Rs. 50,000 was made enforceable with effect from 2.3.1970 whereas accident occurred on 5.4.1970, much after enforcement of amendment, therefore, amended liability of Rs. 50,000, as it stood on the date of accident, was imposed on the insurer. In the present case, accident occurred on 28.12.1993, much before amendment under Sub-section (2) of Section 140 of the Act of 1988 making it enforceable with effect from 14.11.1994, enhancing the liability on the principle of no fault liability from Rs. 25,000 to Rs. 50,000 in case of death, hence, liability of the insurer in these appeals is to be limited under the said section as it stood on the date of accident on which date cause of action accrued to the claimants-respondents to claim compensation on the principle of no fault liability against insurer appellant.

51. The learned counsel for claimants-respondents Mr. Bhatnagar in these appeals relied on the judgment of the then Chief Justice K.C. Agrawal in Kanhaiya Lal and Another Vs. Kailashi Devi and Others, holding operation of Section 140 of the Act of 1988 to be retrospective, which came up for consideration before Division Bench of this court in case of Rajastha State Road Transport Corporation Vs. Smt. Ogam and Others, In both cases, the accident occurred prior to enforcement of the Act of 1988 when repealed Act of 1939 was in force. Claim petitions claiming compensation on the ground of fault of the owner of the vehicles and applications u/s 140 of the new Act of 1988 claiming compensation on ground of no fault liability under the said section were filed after the Act of 1988 came into force. Division Bench of this court in case of Rajasthan State Road Trans. Corporation (supra) noticed Kanhaiya Lal (supra) in paras 18 and 19 of its judgment and found that in Kanhaiya Lal''s case, accident had occurred prior to commencement of the Chapter VII-A under the Act of 1939 and the claim petition itself was decided on 9.2.1972, much before Section 92-A of the Act of 1939 was inserted in the statute book. Taking the aforesaid fact into

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account, the case of Kanhaiya Lal (supra) was distinguished and it was held by the Division Bench in case of Rajasthan State Road Trans. Corporation (supra) that question of retrospective operation of provisions of Section 140 of the Act of 1988 does not arise in view of overriding effect contemplated u/s 144 of the said Act read with Section 6 of the General Clauses Act, although provisions postulated under Sub-section (4) of Section 217 of the said Act escaped notice of the learned Judges constituting the Division Bench.

52. In the judgment rendered by Division Bench in case of Rajastha State Road Transport Corporation Vs. Smt. Ogam and Others, it was ruled by the learned Judges constituting the Division Bench that the crucial date for determining the question of compensation to be awarded as no fault liability would be the date on which the Claims Tribunals or courts are required to award compensation for no fault liability though the event for which compensation is to be measured has taken place on an antecedent date. Both cases relied upon by the learned counsel for the claimants-respondents are of no assistance to the claimants-respondents in these appeals as the facts of these cases are distinguishable to the facts of these appeals. Moreover, both these cases were dealing with a situation where rights and liabilities under the Act of 1939 were altogether abrogated by repeal of the said old Act and replaced by the new Act of 1988. The provisions of Section 92-A of the old Act of 1939 corresponding to Section 140 of the new Act of 1988 were interpreted with the assistance of Section 144 providing overriding effect under the new Act of 1988 together with Section 6 of the General Clauses Act, as envisaged under Sub-section (4) of Section 217 of the said Act whereas, the cases on hand are not cases of creation of new rights and liabilities arising out from repeal of Act of 1939 but in these cases determination of quantum to be awarded as compensation on principle of no fault liability u/s 140 of the Act of 1988 is to be interpreted with reference to amendment introduced under Sub-section (2) of Section 140 of the said Act, without taking into account Section 144 of the Act providing overriding effect and Sub-section (4) of Section 217 of the new Act, extending the benefit of Section 6 of the General Clauses Act. Thus, the concept on interpretation envisaged u/s 144 of the Act of 1988 giving overriding effect read with Sub-section (4) of Section 217, extending the benefit of Section 6 of the General Clauses Act, is not importable to the interpretation of Sub-section (2) of Section 140 of the said Act, enhancing compensation on principle of no fault liability with effect from 14.11.1994.

53. There is one more additional reason to arrive at the aforesaid conclusion. In case of Kanhaiya Lal 1991 ACT 518 (Rajasthan), the decision rendered by Supreme Court in case of Padma Srinivasan 1982 ACJ 191 (SC) , escaped notice of the then Hon''ble Chief Justice K.C. Agrawal and the aforesaid judgment rendered by the Apex Court also escaped notice of learned Judges constituting the Division Bench in case of Rajastha State Road Transport Corporation Vs. Smt. Ogam and Others, In case of Padma Srinivasan (supra), it is clearly laid down that liability of the insurer would depend upon the law as it stood on the date of

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accident.

54. The learned counsel for claimants-respondents after comprehending the aforesaid situation, emphasised on two recent judgments, one rendered by a single Bench of Punjab and Haryana High Court in case of Smt. Sumitra Devi and Others Vs. Danesh Kumar and Others, and another judgment rendered by the learned Judges constituting the Division Bench of Madhya Pradesh High Court in case of Rajni Bai 1997 ACJ 690 (MP), wherein Section 140 of the Act of 1988 is declared to be retrospective in its operation, being beneficial piece of legislation and enhanced compensation under amended Sub-section (2) of Section 140 of the said Act had been awarded, although in those cases accident occurred prior to the date of amendment. It is strenuously urged by the learned counsel for the claimants-respondents relying on aforesaid two recent decisions that amendment dated 14.11.1994 under Sub-section (2) of Section 140 of the Act of 1988 applies even to those accidents which had taken place prior to enforcement of the amendment with effect from 14.11.1994.

55. It is noticed that the decision rendered by Apex Court in case of Padma Srinivasan 1982 ACJ 191 (SC), was not brought to notice of the learned single Judge of Punjab and Haryana High Court while deciding the case of Sumitra Devi (supra) and it was also not brought to the notice of learned Judges constituting the Division Bench of Madhya Pradesh High Court while deciding case of Rajni Bai (supra). With great respect, I am unable to agree with the view taken in both these cases that no fault liability created under amended Sub-section (2) of Section 140 of the Act of 1988 with effect from 14.11.94 applies to accidents which took place prior to the date on which the said sub-section came into force especially when Parliament has not chosen to give retrospective effect to the aforesaid Sub-section (2) of Section 140 of the said Act. I am of the view that decision rendered by Supreme Court in case of Padma Srinivasan (supra) fully covers the question of law arising for decision in these appeals.

56. For better and deeper understanding of interpretation of Sub-section (2) of Section 140 of the Act of 1988 which is made enforceable with effect from 14.11.1994, also deserves to be examined hypothetically. To my mind, if the limit of liability of the owner qua insurer under Sub-section (2) of Section 140 of the said Act is not made relatable to the date of accident then it would lead to classic anomalous result beyond reconciliation while contrary to it, if the date of accident is taken to be relevant date then it would avoid conflicting compensation from two different accidents arising out of the use of an offending motor vehicle or motor vehicles occurring on the same day. For illustration, if two persons, namely, A and B died on 28.11.1993, which is date of accident in the present cases, by two different offending motor vehicles, then if in case of ''A'' the owner of the offending vehicle qua insurer paid the compensation on principle of no fault liability immediately to heirs and legal representatives of deceased, then liability would be limited up to Rs. 25,000 only in accordance with law, as it stood on the date of accident under aforesaid Sub-section (2) of Section 140 of the

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said Act as, by that date the aforesaid amendment was not brought on the statute book under the said section but, if the owner of the other offending vehicle qua other insurer in case of ''B'' delayed the payment up to 14.11.1994 or thereafter to the heirs and legal representatives of deceased person ''B'' then they would be liable to pay Rs. 50,000 as compensation. Thus, if the date of accident is taken to be a relevant date then aforesaid anomalous conflicting irrational results can be easily avoided. The delay in payment of compensation can be easily compensated by awarding interest at an appropriate rate to the heirs and legal representatives of the deceased in case of death and in case of bodily injuries leading to permanent disablement to the injured persons treating the amendment to be a beneficial piece of legislation.

57. In the penultimate conclusion, it is held that the amended Sub-section (2) of Section 140 of the Act of 1988 enforced with effect from 14.11.1994 is relatable to the date of accident on which date cause of action accrued to the claimant(s) to claim compensation on the principle of no fault liability and delayed payment of such compensation is to be compensated by awarding appropriate interest to the victims from owner(s) of offending vehicle(s) qua insurer(s) treating it to be beneficial piece of legislation, otherwise it would open pandora''s box giving a chance to the claimant(s) to claim additional compensation from enforcement of the Act of 1988 although the language of the aforesaid sub-section with which it is couched is clear and there is no room for any confusion or ambiguity. To my mind, for the reasons stated hereinabove, Parliament had not chosen to make the provisions of Sub-section (2) of Section 140 of the Act of 1988 to be retrospective in its operation though it is beneficial piece of legislation.

As a result of aforementioned discussion, these appeals are partly allowed and the award for interim compensation passed by learned Claims Tribunal, awarding Rs. 50,000 to the claimants-respondents of each deceased person on the basis of amendment enforced with effect from 14.11.1994 u/s 140 of the Act of 1988, is hereby modified, reducing the amount of compensation awarded to the claimants-respondents from Rs. 50,000 to Rs. 25,000 with interest thereon at the rate of 12 per cent per annum from the date of application till deposit is made by the appellant. The appellant insurance company is directed to deposit the amount of compensation within two months from today. In case of default, the amount shall carry interest at the rate of 18 per cent per annum.

Costs are made easy.

2nd April, 1998

After pronouncement of the judgment, learned counsel for claimants-respondents Mr. Bhatnagar made an oral application for giving certificate for appeal to the Apex Court within the meaning of Article 134A read with Clause 1 of Article 133 of the Constitution as substantial questions of general importance are involved in these appeals.

2. There is substance in the oral application of the learned counsel for claimants-

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respondents. In these appeals following substantial questions of general importance are involved over which there is no consensus of opinion amongst different High Courts:

(a) Whether against order awarding compensation u/s 140 of the Act of 1988 an appeal is maintainable u/s 173 of the said Act or revision u/s 115 is tenable?

(b) Whether Motor Accidents Claims Tribunals are subordinate to the High Courts within the meaning of Section 3 of the CPC hence, revision is tenable against its order u/s 115, CPC or Claims Tribunals are subordinate to the High Courts under Article 227 of the Constitution of India hence, the writ is maintainable?

(c) Whether the amendment enforced w.e.f.14.11.1994 under Sub-section (2) of Section 140 of the Act of 1988 substituting compensation amount from Rs. 25,000 to Rs. 50,000 in case of death and from Rs. 12,000 to Rs. 25,000 in case of bodily injuries leading to permanent disablement is retrospective in its operation merely as it is a beneficial piece of legislation although the language of the aforesaid sub-section with which it is couched is clear and there is no room for any confusion or ambiguity?

(d) Whether accrual of cause of action for claiming compensation on principle of no fault liability u/s 140 of the Act of 1988 is relatable to the date of accident, hence, limit of right and correspondingly liability under Sub-section (2) of Section 140 of the said Act can be confined as it stood on the date of accident and subsequent legislative changes introduced under said section w.e.f. 14.11.1994, enhancing the amount of compensation would not create any new right to the claimants to demand additional compensation increasing the liability of the owners of the offending vehicles qua insurers, which had already accrued on the date of accident without going into the question governing the principle of retrospectivity attributable to the aforesaid sub-section?

(e) Whether amended Sub-section (2) of Section 140 is procedural law or substantive law, affecting the rights of the claimants and correspondingly liabilities of the owner of the vehicles qua insurer?

The aforesaid substantial questions of general importance need to be decided authoritatively by Hon''ble Supreme Court to settle the controversy for all time to come. I, therefore, grant certificate to special leave to appeal to Hon''ble Apex Court under Article 134A read with Clause 1 of Article 133 to the claimants-respondents.

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