
(2003) 04 KL CK 0055

In the High Court Of Kerala

Case No : M.F.A. No's. 696 and 874 of 1997 and 1017/99

National Insurance Co. Ltd.

APPELLANT

Vs

Malathi C. Salian

RESPONDENT

Date of Decision : 11-04-2003

Acts Referred:

Motor Vehicles Act, 1988 — Section 163A

Citation : (2003) ACJ 2033 : (2003) 3 KLT 460 : (2003) 4 RCR(Civil) 745

Hon'ble Judges : Jawahar Lal Gupta, C.J.;K.S. Radhakrishnan, J;Cyriac Joseph, J

Bench : Full Bench

Advocate : Mathews Jacob and Thomas Mathew Nellimoottil, for the Appellant; T.D. Rajalakshmi, B.R. Venkateswaran, Srihari P. Srihari, V.V. Ajaikumar, P. Vawi and C.J. Joy, for the Respondent

Final Decision : Dismissed

Judgement

K.S. Radhakrishnan, J.—The question that has come up for consideration before us is whether a claim u/s 163A of the Motor Vehicles Act, 1988 (in short "the Act") for compensation for death or permanent disablement be met by the Insurance Company on establishing that the death or permanent disablement was caused due to any wrongful act, neglect or default of the person in respect of whose death or permanent disablement claim has been made.

2. These cases have been placed before us on a reference made by a Division Bench of this Court after having felt that an authoritative pronouncement on the scope and ambit of Section 163A is necessary. In all these cases applications were made by the legal heirs of the deceased claiming compensation u/s 163A of the Act. Tribunal awarded compensation relying upon the structured formula prescribed in Schedule II. Contention raised by the Insurance Company that Section 163A of the Act did not create any new right or liability and the claim could be defeated by the Insurance Company by adducing evidence was rejected by the Tribunal holding that the liability is absolute. Tribunal also found that the Insurance Company had not adduced any evidence to prove that there was

negligence on the part of the deceased. All these appeals could have been disposed on the ground that no evidence was adduced by the Insurance Companies with regard to negligence of the deceased, but counsel appearing for the Insurance Company prayed for an authoritative pronouncement on the scope and ambit of Section 163A of the Act since such questions are likely to arise for consideration in large number of cases.

3. In order to examine the scope and ambit of the provision, it is necessary to refer to the related provisions which enable the Claims Tribunal to consider the application for compensation in cases of death or disablement which comes u/s 140 read with Section 166 and also under u/s 163A of the Motor Vehicles Act. Reference may also be made to cases which fall under "hit and run" category u/s 161 of the Act.

4. The Motor Vehicles Act, 1988 (Act 59 of 1988) was enacted to consolidate and amend the law relating to motor vehicles in India. The Act has been amended on several occasions in accordance with the socio economic and social legal relationship and to achieve the social responsibility to protect victims of motor accidents. The Act also enabled the State Government to issue notification constituting Motor Accidents Claims Tribunals in the State for compensation in respect of accident or fatal injury to persons arising out of the use of the motor vehicles or damages to any property of a third party so arising or both. Claims Tribunals have been constituted and the claims are being adjudicated by the Tribunals.

5. Before the setting up of the Tribunals for entertaining claims for compensation, claimants had to approach civil courts for redressing their grievances. Motor Vehicles Act, 1939 was enacted to consolidate and amend the law relating to motor vehicles. Before that Fatal Accidents Act, 1855 governed the field. Due to proliferation of motor vehicles on the roads there has been considerable increase in the volume of traffic resulting in a corresponding increase in the motor accidents on the road. Hit and run cases are also on the rise and in many cases offending vehicles could not be apprehended. In order to meet to some extent the responsibility of the society to the deaths and injuries caused in road accidents there has been a continuous agitation throughout the world to make the concept of absolute liability or strict liability for damages arising out of motor vehicle accidents to a liability without fault. This was not due to any moral relaxation in law but was a social necessity. Introduction of the maxim "res ipsa loquitur" in motor accident cases has simplified the law of evidence to great extent but the introduction of "no fault" theory in motor vehicle accident cases and unlimited liability of insurance companies are found to be a social necessity.

6. Parliament following the 85th Law Commission Report had introduced Chap.VIIA to the Motor Vehicles Act, 1939 incorporating Sections 92-A to Section 92-E therein. The scope of Section 92-A of the old Act came up for consideration before a Full Bench of this Court in *Neeli v. Padmanabha Pillai* 1992 (2) KLT 807 .

This Court elaborately considered the scope of Chap.VIIA and the provisions contained therein and held that no fault liability is a new liability created by the statute outside the law of tort and that it belongs to substantive law and to that extent it modified the liability under the law of torts. Reference was also made to the decision of the Supreme Court in Gujarat State Road Transport Corporation, Ahmedabad Vs. Ramanbhai Prabhatbhai and Another, and Shivaji Dayanu Patil and another Vs. Smt. Vatschala Uttam More, wherein the Apex Court also took the view that rights created u/s 92A belong to substantive law and cannot be treated as a preferential proof which is based on rule of evidence. Further it was also held by the Supreme Court that Section 92A is created by a new statute outside the law of tort with the presumption that one need not plead or prove negligence.

7. Motor Vehicles Act, 1939 was repealed by the Parliament and enacted Motor Vehicles Act,, 1988. A new Chapter was introduced in place of Chap.VIIA of the old Act. Provisions of Sections 92A to 92E in the said Chapter were replaced by Chap.X and with Sections 140 to 144 with the heading "Liability without fault in certain cases". Section 140 is given below for easy reference.

140. Liability to pay compensation in certain cases on the principle of the fault. -

(1) Where death or permanent disablement of any person has resulted from an accident arising out of the use of a motor vehicle or motor vehicles, the owner of the vehicle shall, or, as the case may be, the owners of the vehicles shall, jointly and severally, be liable to pay compensation in respect of such death or disablement in accordance with the provisions of this section.

(2) The amount of compensation which shall be payable under Sub-section (1) in respect of the death of any person shall be fixed sum of (fifty thousand rupees) and the amount of compensation payable under that sub-section in respect of the permanent disablement of any person shall be a fixed sum of (twenty five thousand rupees).

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

(4) A claim for compensation under Sub-section (1) shall not be defeated by reason of any wrongful act, neglect or default of the person in respect of whose death or permanent disablement the claim has been made nor shall the quantum of compensation recoverable in respect of such death or permanent disablement be reduced on the basis of the share of such person in the responsibility for such death or permanent disablement:

(5) Notwithstanding anything contained in Sub-section (2) regarding death or bodily injury to any person, for which the owner of the vehicle is liable to give

compensation for relief, he is also liable to pay compensation under any other law for the time being in force.

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

Scope of Section 140 also came up for consideration before a Full Bench of this Court in *Oriental Insurance Co. Ltd. v. Sheela Ratnam* 1996 (2) KLT 695 and the Bench reiterated that Section 140(2) deals with substantive law. The above mentioned judicial pronouncements would conclusively show that Chap.X and the provisions contained therein is substantive law and has created new rights and liabilities in favour of the claimants. u/s 140 of the Act claim for compensation can be made where death or permanent disablement of any person has resulted from an accident arising out of the use of the motor vehicle or motor vehicles. If such a claim is made claimant shall not be required to plead or establish that the death or disablement in respect of which claim has been made was due to any wrongful act, neglect or default of the owner or owners of the vehicle concerned, or of any other person and the claimant need only show that claimant is the legal heir of the deceased or the disabled person and that the death or permanent disablement has resulted from, an accident arising out of the use of the motor vehicle or motor vehicles. The claimant shall not be called upon to plead and establish that the death or permanent disablement had occurred due to the wrongful act, neglect or default of the deceased or the disabled person. Claimant has to prove that death or permanent disablement has resulted from an accident arising out of the use of the motor vehicle and the liability automatically cast on the owner of the vehicle or the Insurance Company or the owners of the vehicle jointly and severally. The question as to whether accident was due to any wrongful act, neglect or default of the deceased is foreign to an enquiry u/s 140 of the Act. As far as claimant is concerned, he need only prove two factors; (i) death or disablement has resulted from an accident arising out of the use of the motor vehicle, and (ii) that the claimant is the legal heir of the deceased or the disabled person, as the case may be.

8. Kerala Motor Vehicles Rules, 1989 have been framed by the State of Kerala under the Motor Vehicles Act, 1988. Rule 393 dealing with Section 140 reads as follows:

393. Award of claims u/s 140. - The Claims Tribunal shall proceed to award the claims u/s 140 of the Act on the basis of the following:

- (1) Registration Certificate of the motor vehicles involved in the accident.
- (2) Insurance Certificate or policy relating to the insurance of the vehicle against third party risks;
- (3) Copy of the First Information Report.
- (4) Post-mortem Certificate or certificate of injury from the Medical Officer; and

(5) The nature of treatment given by the Medical Officer, who has examined the victim.

On the claimant producing registration certificate of the motor vehicle involved in the accident, insurance certificate or policy relating to the insurance of the vehicle against third party risks, copy of First Information Report, Post-mortem certificate or certificate of injury from the Medical Officer and the nature of treatment given by the Medical Officer who has examined the victim, Claims Tribunal is obliged to determine what are the claims u/s 140 of the Act and no further enquiry is contemplated. Section 140(4) of the Act stipulates that a claim for compensation u/s 140(1) shall not be defeated by reason of any wrongful act, neglect or default of the person in respect of whose death or permanent disablement the claim has been made nor shall the quantum of compensation recoverable in respect of such death or permanent disablement be reduced on the basis of the share of such person in the responsibility for such death or permanent disablement. The above provision has been inserted since claim u/s 140 is followed by the application u/s 166 of the Act which deals with higher claims on proof of negligence relying on fault theory. Claim for compensation over and above what has been claimed u/s 140(2) by the claimant would be defeated by the Insurance "Company if it could plead and establish that the death or permanent disablement of the person had resulted due to the wrongful act, neglect or default of the person in respect of whose death or permanent disablement claim has been made. Rule 371 of the Motor Vehicles Rules says that every application for payment of compensation shall be made in Form Comp. A and shall be accompanied by the prescribed fee. Statutory form is prescribed for ascertaining various details of the claim unlike in the case of claim u/s 140. Details called for dealing with an application under Sections 140 and 166 are different because higher compensation has to be determined on the basis of evidence adduced by the parties.

9. We will now examine the scope of Section 163A in contra distinction to Section 140 read with Section 166. Sections 163A was introduced for the first time by the Motor Vehicle (Amendment) Act 54 of 1994 with effect from 14.11.1994. That provision is extracted below for easy reference.

163A. (1) Notwithstanding anything contained in this Act or in any other law for the time being in force or instrument having the force of law, the owner of the motor vehicle of the 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, compensations, 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.

(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.

Section 163A was not there in the original Act of 1988 but was inserted by Act 54 of 1994. It is therefore necessary to examine the reasons for the introduction of Section 163A. The reasons and objects for the introduction of Section 163A have been elaborately considered by the Apex Court in *The Oriental Insurance Co. Ltd. etc. Vs. Hansrajbhai V.Kodala and Others etc. etc.*, , I need only reiterate what the Apex Court has explained which is as follows:

"In this context if we refer to the Review Committee's report, the reason for enacting Section 163A is to give earliest relief to the victims of the motor vehicle accidents. The Committee observed that determination of cases takes a long time and, therefore, under a system of structural compensation, the compensation that is payable for different classes of cases depending upon the age of the deceased, the monthly income at the time of death, the earning potential in the case of a minor, loss of income on account of loss of limb etc. can be notified and the affected party can then have option of their accepting lump sum compensation under the Scheme of structural compensation or of pursuing his claim through the normal channels.....

As per the objects and reasons, it is a new predetermined formula for payment of compensation to road accident victims on the basis of age/income, which is more liberal and rational. On the basis of the said recommendation after considering the report of the Transport Development Council, the Bill was introduced with "a new predetermined formula for payment of compensation to road accident victims on the basis of age/income, which is more liberal and rational" i.e. Section 163A. It is also apparent that compensation payable u/s 163A is almost based on relevant criteria for determining the compensation such as annual income, age of the victim and multiplier to be applied....

This would clearly indicate that the Scheme is in alternative to the determination of compensation on fault basis under the Act. The object underlining the said amendment is to pay 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 vehicle accidents in a fast moving society. Further, the law before insertion of Section 163A 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 163A 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.

Statement and objects of the amending Act also provide as under:

- (h) increase in the amount of compensation to the victims of hit and run cases;
- (k) a new pre-determined formula for payment of compensation to road accident victims on the basis of age/income, which is more liberal and rational.

Both Sections 140 and 163A deal with case of death and permanent disablement. The expression permanent disablement has been defined u/s 142 so far as Section 140 is concerned. So far as Section 163A is concerned, the expression "permanent disability" shall have the same meaning and extent as in the Workmen's Compensation Act, 1923. Both Sections 140 and 163A deal with cases of no fault liability. In order to prefer a claim u/s 140(2) claimant need not plead or establish that death or permanent disablement in respect of which claim has been made was due to any wrongful act, neglect or default of the deceased or the disabled person. Similarly under Sections 163A also claimant shall not be required to plead or establish that death or permanent disablement in respect of which claim has been made was due to any wrongful act, neglect or default of the deceased or the injures, as the case may be. In other words, an enquiry as to who is at fault is foreign to the determination of a claim u/s 140 as well as Section 163A. Claim u/s 140 as well as Section 163A shall not be defeated by the Insurance Company or the owner of the vehicle as the case may be, by reason of any wrongful act, neglect or default of the person in respect of whose death or permanent disablement the claim has been made; nor of the quantum of compensation recoverable in respect of such death or permanent disablement be reduced on the basis of share of such person in the responsibility for his death or permanent disablement.

10. Counsel appearing for the appellants have raised a contention, that since there is no similar provision such as Sub-clause (4) of Section 140 in Section 163A, it would be open to the Insurance Company to contend that the death or permanent disablement occurred due to the wrongful act, neglect or default of the deceased or disabled person or has contributed by the deceased or permanent disabled man. I am of the view that if such a contention is allowed to be urged the very purpose and object of Section 163A would be defeated and render the provision otiose and a claimant would prefer to make a claim u/s 140 rather than u/s 163A by exercising option u/s 163B. Further if a claim u/s 140 is raised because of Section 140(4) such a claim would not be defeated by the owner of the vehicle or Insurance Company, as the case may be, and the claimant would get a fixed sum prescribed u/s 140(2). Sub-section (4) of Section

140 has been introduced by the Legislature since claim u/s 140 would be followed by Section 166. So far as Section 140 is concerned it is well settled that the Insurance Company or the owner, as the case may be, is bound to honour and pay the compensation u/s 140(2) Rs. 50,000/- in the case of death and Rs. 25,000/- in the case of permanent disablement. Claim for any further amount could be defeated by the Insurance Company or the owner or owners of the vehicle, as the case may be, if they could establish that the death or disablement occurred due to wrongful act, neglect or default of the deceased or disabled person. So far as claim u/s 163A is concerned, claim is restricted on the basis of pre-determination formula unlike in the case of application u/s 166. Sections 140, 161 and 163A have all got a purpose to achieve. Section 161 was introduced formulating a scheme to pay compensation in respect of death of any person resulting in hit and run motor vehicle accident and fixed sum of Rs. 25,000/- is for death and a sum of Rs. 12,500/- for permanent disablement. Sections 140, 163A and 161 are all benevolent provisions intended to mitigate the sufferings of the legal heirs of the deceased as well as disabled persons themselves. In my view, claim made under Sections 140, 161, 166 and 163A cannot be defeated by the Insurance Company or the owner, as the case may be, on the plea that death or disablement occurred due to the wrongful act, neglect or default of the deceased or the disabled person though claim u/s 161 is subject to Sections 162 and 163 of the Act. They all fall under the realm of substantive law creating new rights and liabilities and governed by the principle of no fault liability. The expanding role of social security and social justice envisaged that the liability to pay compensation must be on no fault, liability.

11. A Division Bench of the Gujarat High Court had occasion to consider a similar question in *Ramdevsing V. Chudasma Vs. Hansrajbhai V. Kodala*, . Contention was raised by the claimant that the compensation payable u/s 163A as per a structured formula basis is in addition to the compensation payable u/s 166 of the Act. The contention raised by the Insurance Company was that the grant of award u/s 163A without giving an opportunity to the Insurance Company or the owner, as the case may be, either to pay up their defence or dispute the liability and also dispute the factors on which claim was raised would be illegal. The court repelled the second contention and held as follows.

"Therefore, we would like to say that even hypothetically if the person had rushed to the vehicle with an intention to commit suicide, then also, it is an event happening without the concurrence of the will of the person by whose agency it was caused as such person is not relieved from his duty to take utmost care. It is he who has to show that he has taken utmost care, even to avoid accident, be it suicide. It is only when an occurrence takes place and as soon as it is an occurrence where the motor vehicle is involved, it is covered u/s 163A and/or Section 166 or u/s 140. Accident referred in Sections 140 and 163A of the Act, is the occurrence wherein a motor vehicle is involved and the consequence of that occurrence is either fatal or disablement. If the Insurance Company is permitted to prove that insured is not at fault, though his vehicle is involved then

the whole purpose of Legislature of introducing Section 163A will be frustrated."

The court also concluded:

"If the Insurance Company is permitted to prove the negligence even of the victim or no negligence of the insured, then the purpose for which the Legislature introduced Section 163A would be frustrated. It will be relevant to state that vide Section 163B a person is entitled to claim compensation u/s 140 or Section 163A. u/s 163A minimum compensation provided is Rs. 50,000/- in case of fatal accident. Therefore, a claimant who contemplates for a higher compensation also on heads not available u/s 163A may file an application u/s 166 and claim for an interim compensation u/s 140 of the Act, but this does not debar the claimant from filing application u/s 163A of the Act."

The court however upheld the plea of the claimant that a claim u/s 163A would be in addition to the claim u/s 166. Judgment of the Gujarat High Court was taken up in appeal before the Apex Court in *The Oriental Insurance Co. Ltd. etc. Vs. Hansrajbhai V.Kodala and Others etc. etc.*, . The court held that the claimant who opts for accepting the lump-sum compensation based on structured formula would get the relief at the earliest. The court also referred to the decision in *Gujarat State Road Transport Corporation, Ahmedabad Vs. Ramanbhai Prabhatbhai and Another*, and pointed out that it also gives vital advantage of not pleading or establishing any wrongful act or neglect or default of the owner of the offending vehicle or vehicles. The Apex Court noted that the no fault liability appears to have been introduced on the basis of the suggestion of the Law Commission to the effect that the expanding notions of social security and social justice envisage that liability to pay compensation must be "no fault liability" in order to meet to some extent the responsibility of the society to the deaths and injuries caused in road accidents. We may in this connection point out that the question whether compensation claimed u/s 163A is in addition to the compensation claimed u/s 166 however stands referred to a Larger Bench in *Deepal Girishbhai Soni and Others Vs. United India Insurance Co. Ltd., Baroda*, .

12. In this connection, we may also refer to the decision of the Bombay High Court in *Latabai Bhagwan Kakade and Others Vs. Mohammed Ismail Mohd. Saab Bagwan and Others*, . Contention was raised that the concept of liability u/s 163A cannot be equated with no fault liability. Contention was also raised that if the Insurance Company is not permitted to take such a defence the same would be illegal and violative of Article 14 of the Constitution of India. Division Bench of the Bombay High Court repelled the contention and held Section 163A is not violative of Article 14 of the Constitution of India. Contention was also raised that in the absence of clause similar to Sub-section (4) of Section 140 in Section 163A such a defence could be raised by the Insurance Company. Rejecting the contention the court held that if it is established by the claimants that the death or permanent disablement was caused due to accident arising out of the use of the motor vehicle then they will be entitled to payment of compensation in accordance with the structured formula in the Second Schedule. The court

further held as follows:

"If we accept the interpretation suggested by the insurance companies it would mean that the claimants will have to necessarily prove the element of negligence on the part of the driver of the vehicle although the Legislature has clearly stipulated that it is not necessary for the claimants to plead or prove negligence on the part of the driver of the motor vehicle because if the owner of the vehicle or the Insurance Company is permitted to prove contributory negligence or default on the part of the victim or claimants, naturally the claimants will have to lead evidence in rebuttal to prove the negligence on the part of the driver of the motor vehicle. Surely the Legislature did not intend to create such a situation as it would defeat the very object of introducing the provisions of Section 163A conferring cheap, efficacious and speedy remedy on the claimants to claim compensation on the basis of no fault liability as per the structured formula contained in the Second Schedule."

The contention that Section 163A is violative of Article 14 of the Constitution was also repelled holding that such a provision was introduced with due deliberation by the Legislature and hence not violative of the equality clause.

13. A Division Bench of the Himachal Pradesh High Court in *Kokla Devi Vs. Chet Ram and Another*, has also considered similar situation. In that case according to the Insurance Company the death had occurred due to negligence of the driver himself and Insurance Company cannot be made liable. After elaborately surveying the various decisions on the point the court held as follows:

"Looking to the provisions of law and decisions referred to herein above we are of the view that the claim petition was maintainable on behalf of the claimant u/s 163A 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 Acts compared to the provisions of Motor Vehicles Act, 1939 and then by Central Act 54 of 1994. At the risk of repetition we may also observe that Section 163A (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 163A 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 163A, 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."

The court also held as follows:

"Section 163A 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."

It was held that Insurance Company can challenge the claim only on the ground of no contract at all, i.e., no insurance or on the above stated grounds. It was not a 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, or that the accident had never occurred or that the claimants are not the legal heirs of the deceased. The court also held as follows:

"Regarding licence the scheme of the provisions of Section 163A 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 163A as stated earlier the sums on ad hoc basis under social obligation has to be paid notwithstanding other provisions."

We are in full agreement with the reasoning of the Division Bench of the Gujarat High Court, Bombay High Court as well as the Himachal Pradesh High Court that Insurance Company cannot defeat a claim u/s 163A on the ground that the death or disablement had occurred due to the wrongful act, neglect or default on the part of the deceased or the disabled person as the case may be.

14. The Apex Court in Smt. Rita Devi and Others Vs. New India Assurance Co. Ltd. and Another, also held that a conjoint reading of the two sub-sections of Section 163A shows that a victim or his heirs are entitled to claim from the owner/Insurance Company a compensation for death or permanent disablement suffered due to accident arising out of the use of the motor vehicle without having to prove wrongful act or neglect or default of anyone. The court held that if it is established by the claimants that the death or disablement was caused due to an accident arising out of the use of the motor vehicle then they will be entitled for payment of compensation. The Apex Court in Smt. Kaushnuma Begum and Others Vs. The New India Assurance Co. Ltd. and Others, . found though the accident had occurred not due to any negligence of the driver or the owner as the case may be, directed the Insurance Company to pay the compensation applying the structured formula u/s 163A.

15. The liability to pay compensation u/s 163A is on the principle of no fault and, therefore, the question as to who is at fault is immaterial and foreign to an enquiry u/s 163A. Section 163A does not make any provision for apportionment of the liability. If the owner of the vehicle or the insurance company is permitted to prove contributory negligence or default or wrongful act on the part of the victim of claimants naturally the claimants will have to lead evidence which would defeat the object and purpose of Section 163A. Legislature never wanted the claimant to plead or establish negligence on the part of the owner or the driver. Once it is established that death or disablement occurred during the course of the user of the vehicle and the vehicle is insured the insurance company or the owner, as the case may be, shall be liable to pay the

compensation. This is a statutory obligation. Claimant is therefore entitled to get legitimate amount on the basis of the structured formula based on the no fault theory from the insurance company or the owner or owners of the vehicle on the plea that the liability is joint and several.

16. Counsel for the Insurance Company also raised a contention that since Section 163A is incorporated in Chap.XI with the heading "Insurance of Motor Vehicles against Third Party Risks" and driver-cum-owner is not a third party and hence if the death or permanent disablement has resulted due to his or her wrongful act or neglect or default claim is not maintainable. We find it difficult to accept this contention. The heading of the Chapter was there even before the introduction of Section 163A. The word "third party" has been defined as an inclusive definition under Clause (g) of Section 145. An enquiry as to whether tortfeasor is a third party, owner or driver does not arise when a claim is considered u/s 163A. No fault liability u/s 163A is one created by the statute falls outside the purview of tort, there being no necessity to enter into an enquiry as to who was the wrong-doer. Similar view is taken by the Division Bench of this Court in *New India Assurance Co. Ltd. v. Leela* 1995 (2) KLT 822.

17. The Division Bench in its reference order referred to the defects pointed out by the Apex Court in *Trilok Chander's* case 1996 (2) KLT 218. The defects pointed out were later taken note of by the Apex Court in *Hansraj Bai's* case and appropriate directions have been given to the Additional Solicitor General for bringing necessary correction in the Second Schedule to the Act.

18. For the aforesaid reasons we are of the considered view that a claim u/s 163A of the Motor Vehicles Act, 1988 shall not be defeated by the Insurance Company on the ground that death or permanent disablement has occurred due to the wrongful act, neglect or default on the part of the deceased or the disabled person and the Insurance Company is statutorily obliged to discharge the liability under the structured formula as per Section 163A of the Motor Vehicles Act. In view of the above mentioned reasons, all these appeals would stand dismissed. Claimants are entitled to compensation as awarded by the Tribunal. However, they would be entitled to interest only at the rate of 9% per annum from the date of petition till payment. Amount, if any, paid would be given credit to and the balance amount would be paid within three months from today.