

(1995) 07 AHC CK 0077

In the Allahabad High Court

Case No : F.A.F.O. No's. 278 of 1994, 464 and 466 of 1995

New India Assurance Company Ltd., Etawah

APPELLANT

Vs

Smt. Shakuntala Devi

RESPONDENT

Date of Decision : 28-07-1995

Acts Referred:

Allahabad High Court Rules, 1952 — Rule 12, 9
Civil Procedure Code, 1908 (CPC) — Order 13 Rule 3, Order 13 Rule 4, Order 18 Rule 4, Order 18 Rule 5, Order 41 Rule 11
Constitution of India, 1950 — Article 235
Motor Vehicles (Amendment) Act, 1957 — Section 110C(2A), 110C(2D), 96, 96(2)
Motor Vehicles Act, 1939 — Section 110, 110(1), 3A, 96(2)
Motor Vehicles Act, 1988 — Section 147(1), 147(3), 149, 149(1), 149(2)
Uttar Pradesh Motor Vehicles Rules, 1998 — Rule 21, 22

Citation : (1996) ACJ 342 : AIR 1996 All 188

Hon'ble Judges : V.P. Goel, J;R.B. Mehrotra, J

Bench : Division Bench

Advocate : A.B. Saran and Vineet Saran, for the Appellant;

Final Decision : Disposed Of

Judgement

R.B. Mehrotra, J.—Sri A.B. Saran, learned Senior Advocate appearing for New India Assurance Company in F.A.F.O. No. 278 of 1994 has raised following two submissions for consideration at the outset which also arise for consideration in other two F.A.F.O."s mentioned above, as such, all the three F.A.F.O."s are being decided together.

2. The procedure contemplated for deciding First Appeal From Order before the High Court should be same as the procedure contemplated by S. 96 of C.P.C. in deciding the First Appeals and since there has been a long consistent practice of this Court that the First Appeals have never been dismissed in limine, the same procedure should be applied for deciding the F.A.F.O. and the notice should be issued to the opposite parties as a matter of right and record of the case should be summoned in every case.

3. Though under S. 149 of the Motor Vehicles Act, 1988 (hereinafter referred to as the Act) the Insurance Company can resist the claim of the insurer only on the grounds contemplated by S. 149(2) of the Act, but at the stage of appeal filed by the Insurance Company under S. 173 of the Act, the Insurance Company is entitled to urge all the points which the Insurance Company was not permitted to raise under S. 149(2) of the Act i.e. the Insurance Company at the stage of appeal is entitled to contest the claim even outside the provisions contained under S. 149(2) of the Act.

First Point:

4. Whether a F.A.F.O. under S. 173 of the Act can be dismissed in limine?

5. Motor Accident Claims Tribunals are constituted under S. 165 of the Act. which is *pari materia* with S. 110(1) of the Motor Vehicles Act, 1939 (Old Act). The procedure for making application has been provided under the Rules framed by the State Government under S. 169 of the Act. Section 170 provides the circumstance under which the insurer can be impleaded as opposite party in the claim application. Section 171 contemplates provisions for awarding interest in cases where claim is allowed. Section 172 contemplates award of compensatory costs in certain cases. Section 173 provides that any person aggrieved by an award of Claims Tribunals may prefer an appeal to the High Court.

6. In exercise of powers under S. 3-A of the Old Act, the Governor of Uttar Pradesh has made rules providing procedure for making applications before the Claims Tribunal and the procedure for deciding the claims applications, determination of issues, method of recording evidence, local inspection etc. and the manner in which the Claims Tribunals are required to give judgment and pass orders. Under R. 12, the Claims Tribunal is required to make a brief memorandum of the substance of deposition of a witness before the Claims Tribunal and the said brief memorandum is required to be reduced in writing by the Claims Tribunal or by one of its members if the Claims Tribunal is constituted of more than one member. The said memorandum is to form part of the record.

7. Rule 21 provides that O. V, Rr. 9 to 13 and 15 to 23; O. IX; O. XIII, Rr. 3 to 10; O. XVI, Rr. 2 to 21; O. XVII and O. XVIII, Rr. 1 to 3 shall apply to the proceedings before the Claims Tribunal. Rule 22 contemplates that an appeal against the award of a Tribunal shall be preferred in the form of a memorandum stating concisely the grounds in which the appeal is preferred. No procedure for deciding the appeal is prescribed either under the Act or under the Rules. Since the appeal is to be decided by the High Court, the procedure contemplated by the High Court Rules for the decision of the appeal is relevant for the purposes of determining the controversy involved herein.

8. Chapter-XI, R. 9 of the Rules of the Court provides procedure for hearing of the appeals by this Court. The same is being reproduced hereinbelow for convenient reference :

"Hearing under O. XLI, Rule 11 of the Code- If the Bench before which a motion is made for the admission of an application or memorandum of an appeal or objections finds that it is accompanied by the necessary papers, if any, and is otherwise in order and has been presented within time, it shall-

(a) in the case of a First Appeal (other than an execution First Appeal) on a memorandum of objections make an order admitting it and directing notice to be issued;

(b) in the cases of any other appeal admit it and after admitting it-

(1) if it deems fit, hear it the same day under Rule-11 of Order XLI of the Code and if it is not dismissed under that Rule, direct that notice be issued; or

(2) direct that the appeal be put up for hearing under Rule 11 of Order XLI of the Code on a future date;

(c) in the case of an application, pass such order as may be considered proper:

Provided that nothing contained in this Rule shall-

(1) preclude such Bench from hearing any First Appeal, if consented to by the appellant, under Rule 11 of Order XLI of the Code the same day or directing that it be put up for hearing under that rule on some future date; or

(ii) require such Bench to direct notice on an application or memorandum of objections to be issued where notice of such application or memorandum of objections has already been served on the other party or his advocate."

9. The above Rule draws the distinction between the First Appeal and other appeals. Under R. 9(2) the First Appeal is to be admitted and notice is to be issued. In cases of other Appeals the provisions of O. XLI, R. 11 are to be applied. Order XLI, R. 11 of C.P.C. contemplates that the appellate Court has power to dismiss the appeal without sending notice to lower Court. Order XLI, R. 11, sub-rule (4) provides that where the appellate Court dismiss the appeal without sending notice to the Court from whose decree the appeal is preferred and without sending notice on the respondent or his pleader, it shall deliver the judgment recording in brief the grounds for doing so, but the High Court is an exception to that procedure. meaning thereby that the High Court can dismiss an appeal under O. XLI, R. 11 of C.P.C. without recording reasons for rejecting the appeal without serving notice on the respondent or his pleader and without sending notice to the Court from whose decree the appeal is preferred. "

10. Section 96 of C.P.C. contemplates that an appeal shall lie from every decree passed by any court exercising original jurisdiction to the Court authorised to hear appeals from the decision of such court. The judgment is required to be pronounced by S. 33 of C.P.C. which is to be followed by a decree.

11. Where an appeal is to be decided under S. 96 of C.P.C., which is preferred against a judgment followed by the decree, the court under the Civil P. C. records

the evidence under O. XVIII, Rr.4 and 5 of C.P.C. Order XVIII, Rule 5 provides a detailed procedure for recording of evidence. In cases where an appeal is provided, the statement of the witnesses is to be taken down in the language of court in writing or in the presence and under personal direction and superintendence of the Judge. This provision requires a verbatim recording of statement.

12. An analysis of the aforesaid provisions, makes it clear that under S. 96 of C.P.C., the appeal lies to the cases where the evidence is recorded in detail and the judgment is delivered also taking into account such oral evidence of the witnesses who have deposed before the court.

13. The basic distinction between an appeal under S. 96 of C.P.C. and Appeal under S. 173 of the Act is that under the provisions of the Rules framed under the Act only a summary of testimony of the witnesses is to be kept on record by the Claims Tribunal for the purposes of giving the award. This procedure contemplates a summary enquiry in the matter and giving award on the aforesaid basis, the logical conclusion is, that the provisions of the Act for awarding compensation in the Motor Accidents Claims cannot be equated with a regular suit tried under the provisions of C.P.C.

14. The two provisions, one under S. 96 of C.P.C, providing appeal and the other under S. 173 of the Act both providing appeal before the High Court cannot be equated. Under S. 96 of C.P.C. the appeal will lie against a judgment and decree of the court. Under the Civil P. C. a Civil Court is to decide a suit after following the detailed procedure prescribed under the Code, recording evidence in detail as per statement of the witnesses, whereas from a perusal of the provisions of the Motor Vehicles Act so far as constituting the Claims Tribunals and deciding the claims applications in the Motor Accident Claims Cases read with Rules framed thereunder, it is clear that a summary procedure is to be adopted for expeditiously deciding the claim application made in the Motor Accident Claims Cases. The provisions of Chapter-XI, R.9(b) of the High Court Rules are attracted in appeals u/S. 173 of the Act which permit the High Court to dismiss the appeal under O. XVI, R. 11 of C.P.C.

15. Learned Counsel for the appellant, Sri A. B. Saran has placed reliance on a Division Bench decision of this Court in the case of U. P. State Road Transport Corporation v. Smt. Geeta Devi, reported in 1983 TAC 224 : (AIR 1983 All 124), wherein the Court considering the provisions of S. 110 of the Motor Vehicles Act, 1939, which is *pari materia* with present S. 173 of the Motor Vehicles Act, 1988, held (at p. 126 of AIR):

"Under S. 110D of the Motor Vehicles Act under which the appeal has been preferred, this Court has jurisdiction to go into the questions of fact and examine itself the correctness of the findings recorded on the same. It is like an appeal which is filed under S. 96 of the Civil P. C. There is nothing in the Motor Vehicles Act laying down the procedure to be followed by the High Court in the appeals

filed before it. In the regard, the law settled is that if the Special Act is silent in respect of the procedure to be followed by the appellate Court, the appellate jurisdiction has to be exercised in the same manner as the High Court exercises its general appellate jurisdiction and the appeal so filed must be regulated by the method and procedure of the High Court. It is a well settled rule that when a statute directs that an appeal shall lie to a court already established, then the appeal should be regulated by the procedure of that court. Viscount Saldane L.C. in *National Telephone Company Limited, and His Majesty's Postmaster General* (1913) AC 546 stated:

"When a question is stated to be referred to an established court without mode, it in my opinion imports that the ordinary incidents of the procedure of that court are to attach, and also that any general right of appeal from its decisions likewise attaches."

That being the position, and appeal under S. 110D of the Motor Vehicles Act is equivalent to one that is filed under S. 96 of the Civil P. C. In such an appeal, the High Court is obliged to consider the evidence and to record its findings on the various controversies arising for decision therein."

16. Placing reliance on the aforesaid decision, the learned Counsel has contended that it is an obligation on this Court to consider the evidence and record its findings on various controversies arising for decision in an appeal filed under S. 173 of the Act.

17. In the aforesaid decision, the record of the Tribunal was destroyed by fire, as a result whereof the court did not have the benefit of considering the evidence. The Court was satisfied that on the basis of the grounds of appeal and the points urged in it, it is necessary for the court to consider the oral evidence led by the parties before the Claims Tribunal. In the aforesaid circumstances, the Court directed for reconstruction of record and if necessary for that reconstruction of record, it was directed that detail evidence again can be taken. It was the case where the court felt necessity of examining the record. There is no dearth of power in the court where the court wants to examine the record. The said decision does not lay down that the court has no power to dismiss an appeal under S. 110-D of the Motor Vehicles Act in limine, if the court is not satisfied from the points urged and the grounds raised in the appeal. The aforesaid decision is not an authority for proposition that in every case where an appeal is filed under S. 110-D of the Motor Vehicles Act, 1939 (equivalent to S. 173 of the Motor Vehicles Act, 1988), the Court is under an obligation to call for the record and issue notice to the opposite parties.

18. In *The New India Assurance Company Ltd., Saharanpur Vs. Shri Sudesh Bhalla and others*, , a Division Bench of this Court has held that the provisions of O. XLI, C.P.C. apply to cases where an appeal is filed in the High Court under S. 110-D of the Motor Vehicles Act, 1939. The Court held that though the provision has not been made applicable by R. 21 of the Accidents Claims Tribunal Rules, U.

P., the procedure which is to be followed by the High Court is obviously to be governed by the Code of Civil Procedure. It has already been noticed earlier that under the Rules of the Court a distinction has been made in cases where a First Appeal is filed and in other cases where Appeals are otherwise filed. An appeal under S. 173 of the Motor Vehicles Act, 1988 cannot be equated with the First Appeal as contemplated by Chapter-11, R. 9(a) of the Rules of the Court. The appeal under S. 173 of the Act will be covered by Chapter-11, R. 9(b) of the Rules of the Court and as provided in the Rules, such an appeal can be dismissed under O. XLI, R. 11.

19. Justice B.L. Loomba in his Article "Why Lok Adalats" published in Souvenir of 34th Conference of U. P. Judicial Officers has stated:

"This is again a fact that those who are mainly the victims of motor accidents are from lower or middle strata of society; they are the persons who are on roads as pedestrian, on cycle, scooters, motor cycle, tempos and buses. Monetary compensation can never be equal or adequate for loss of life or permanent disability, but whatever little is admissible under the law must reach the victim's family soon after a claim for the purpose is brought before the court. Position of such matter, to my mind is likened to an "emergency patient" in a hospital."

20. We are in agreement with the aforesaid statement and we are of the view that if as a matter of routine in every appeal the opposite parties are called upon to appear in this Court, this will be defeating justice and putting hardship on those poor persons who have either been injured in motor accident or the heirs of the deceased who are already imperilled due to the death of bread winner of the family.

21. There is another aspect of the matter. Normally in all accidents, the persons who have suffered injuries or heirs of the persons whose death has been caused in accidents, are entitled to claim damages under the law of Torts by filing a regular suit. A special procedure provided under Motor Vehicles Act for deciding Motor Accidents Claims and the Rules framed thereunder, show that the claim is to be decided by summary procedure. These provisions have been enacted to ensure expeditious decision of accidents claims cases. The very purpose and object of providing special procedure will be defeated if the submission of the learned Counsel for the appellant is accepted that in every case High Court should issue notice to the opposite party and call for the record of the case, this will give a long hand to the Insurance Company and to the owners of the vehicles for prolonging the agony of the victim or the heirs of the deceased. Such an interpretation will be defensive of the legislative intent. In a case where on the basis of findings recorded by the Claims Tribunals and on a perusal of the grounds of appeal, the court is satisfied that it is a case where notice need not be issued to the opposite parties, it will be, put appropriate for upholding the legislative intent that the court should deal with the appeal under S. 173 of the Act, under O. XLI, R. 11, C.P.C. read with Chapter-XI, R.9(b) of the Rules of the Court. The Court will be failing in its duty in not discharging its obligation in the

manner indicated above. The contrary interpretation is to result in a situation wherein the agony of the injured or heirs of the deceased will be prolonged and it will be defensive of not only of legislative intent but also cause of justice.

22. We accordingly reject the submission of the learned Counsel for the appellant on the first point and hold that in an appeal under S. 173 of the Act, the Court should exercise its powers as an appellate Court in accordance with O. XLI, R. 11, C.P.C. read with Chapter-11, R. 9(b) of the Rules of the Court. In appropriate cases the court can decide not to issue notice to the opposite party, not to summon the record and dismiss the appeal in limine even without recording the reasons.

Second Point:

23. Whether an Insurance Company can urge additional points under S. 173 of the Act in addition to points on which it is permitted to defend the action of the insurer as contemplated by S. 149(2) of the Motor Vehicles Act?

24. For appreciating the aforesaid submission, certain provisions of the Motor Vehicles Act need be noticed. Section 149(1) of the Act contemplates that after a certificate of insurance has been issued under subsection (3) of S. 147 in favour of a 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 Cl. (b) of subsection (1) of S. 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 the provisions of this section, pay to the person entitled to the benefit of decree, any sum not exceeding the sum assured payable thereunder, as if he were 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 by virtue of any enactment relating to interest of judgment.

25. Section 149(2) of the Act provides that no sum shall be payable by insurer under sub-section (1) in respect of any judgment or award unless, before the commencement of the proceedings in which the judgment or award is given, the insurer had notice through the court, or, as the case may be, the Claims Tribunals of the bringing of the proceedings, or in respect of such judgment or award so long as execution is stayed thereon pending an appeal, and an insurer to whom notice of the bringing or any such proceedings so given shall be entitled to be made party thereto and to defend the action on any of the grounds mentioned in the section.

26. Ground (a) contemplates that if there has been a breach of a specified condition of the policy, relating to a condition prescribed under the aforesaid provision; Ground (b) contemplates that the policy is void on the ground that it was obtained by non-disclosure of a material fact or by a representation of fact which is false in some material particular. Section 170 of the Motor Vehicles Act

contemplates that where in the course of any inquiry, the Claims Tribunal is satisfied that there is collusion between the person making the claim and the person against whom the claim is made has failed to contest the claim in such cases the Tribunal may for reasons to be recorded in writing, direct that the insurer who may be liable in respect of such claim, shall be impleaded as a party to the proceeding and the insurer so impleaded shall thereupon, have without prejudice to the provisions contained in sub-section (2) of S. 149, the right to contest the claim on all or any of the grounds that are available to the persons against whom the claim has been made. The two provisions read together makes it clear that the Insurance Company can defend the claim in accident claims matter only on the grounds contemplated by S. 149(2) i.e. where either the policy is void or there is a breach of conditions contemplated in the policy. The exception to the aforesaid Rule is contemplated by S. 170 of the Act, which provides that if there is a collusion between the persons making a claim and the persons against whom the claim is made or the owner has not come forward to contest the claim, the court can permit Insurance Company for reasons to be recorded to defend the claim on all grounds. Since the Insurance Company is permitted to defend the claim on the grounds contemplated by S. 149(2) or in exceptional cases where the court is satisfied that the parties are colluding, or the owner is not coming forward to contest, the court, may permit the Insurance Company to defend the claim on all the grounds available to the owner of the vehicle; in cases where the Insurance Company is defending the claim under provisions in response to a notice issued by Claims Tribunal under S. 168 of the Act and the conditions contemplated by S. 170 of the Act are not attracted, the Accident Claims Tribunal will consider only those defences of Insurance Company which are permissible under S. 149(2) of the Act.

27. In *British India General Insurance Co. Ltd. Vs. Captain Itbar Singh and Others*, , the Hon'ble Supreme Court held that the Insurance Company can be permitted to defend the claim only on the grounds permissible by S. 96(2) of the Motor Vehicles Act, 1939, which is para materia with S. 149(2) of the Act of 1988.

28. In *United India Fire and General Insurance Co. Ltd., Kanpur and Another Vs. Gulab Chandra Gupta*, , a Division Bench of this Court held that an appeal under S. 110-D of the Motor Vehicles Act, 1939 (equivalent to S. 173 of the Act of 1988) by an Insurance Company is to be restricted to the grounds permissible under S. 96(2) of the Motor Vehicles Act, 1939 (equivalent to S. 149(2) of the Motor Vehicles Act, 1988). The Division Bench of the Court placed a reliance on the case of *Captain Itbar Singh (supra)* for taking a view that the appeal under S. 110-D of the Motor Vehicles Act, 1939 by an Insurance Company is to be restricted to the grounds permissible under S. 96(2) of the Motor Vehicles Act, 1939.

29. However, another Division Bench of this Court in *Oriental Fire and General Insurance Co. Ltd., New Delhi and Another Vs. Smt. Rajendra Kaur*, (for convenience referred as "latter" Division Bench) took the view that in an appeal

filed by Insurance Company it is open to the Insurance Company to assail the finding of the Claims Tribunal on all the grounds, which may be confined to grounds mentioned in S. 96(2) of the Old Act. The Division Bench in this decision has dissented from the decision of the earlier Division Bench in the case of Smt. Sushma Vs. Vikramaditya, . There seems to be no conflict of opinion between the two Division Benches on the scope and construction of S. 110-D of the Motor Vehicles Act, 1939. The reasoning given by the later Division Bench, for taking a view that the claim of the Insurance Company cannot be confined in appeal to the provisions of S. 96(2) of the Motor Vehicles Act, 1939, is reproduced for appreciation.

"It may be recalled that Claims Tribunals were established after an amendment had been made in the Motor Vehicles Act in 1957. Section 96(2) earlier provided that the insurer will not be liable for satisfying the judgment unless the insurer had a notice of the commencement of the proceedings and the insurer had the right to seek its impleadment and to defend the action but the grounds available to it were only those as are stated therein. When an application for compensation is made before the Claims Tribunal it is not incumbent upon the claimant to implead the Insurance Company and thus for this reason S. 110C(2A) made a provision that in certain contingencies mentioned therein, the Insurance Company will have a right to defend the claim even on grounds other than those mentioned in S. 96(2). In the present case, it is undisputed that the owner had kept away and, therefore, the Insurance Company was in the normal course, entitled to contest the claim petition on all such grounds as were available to the owner of the vehicle. It is true that in the present case no formal application in this respect has been made but it is obvious from the written statement that for all practical purposes the Insurance Company was entitled to defend the claim as an owner of the vehicle. At one stage, the claim had been decreed ex parte but an application made by the Insurer, the order was set aside and it was allowed to contest the claim on merits. When no objection at any stage was taken by the claimant that the grounds taken in the written statement of the Insurer were not confined to the grounds available to it u/S. 96(2)(c), any objection raised when the claimant's witnesses were cross-examined by the Insurer on the lines much beyond the scope of S. 96. It would, therefore, be quite fair to assume that although no orders had been recorded in writing by the Tribunal, it did allow the Insurance Company to contest the claim on the grounds which were available to the owner of the vehicle. It is now too late for the claimant to contend that rights of insurer are confined to the grounds mentioned in S. 96(2) of the Act. We are, therefore, of the opinion that in the facts and circumstances of this case, the Insurance Company must be deemed to have been permitted to contest the claim on those grounds also which were available to the owner of the vehicle. We hold accordingly."

30. The reasoning of the latter Division Bench stands obliterated by the new Act of 1988. Under the New Act, S. 149(2) again continues the right of the insurer to defend the claim on the same grounds on which the Insurance Company was

permitted to defend the claim under S. 96(2) of the Old Act. The Legislature was conscious of the provisions of the Motor Vehicles Act providing for the Claims Tribunals and the limited scope on which the Insurance company can defend the claim. The exception to the general rule is contemplated by S. 170 of the Motor Vehicles Act. In this case essentially the Court was impressed by the circumstances that the owner had kept away and, therefore, the Insurance Company was in normal course, entitled to contest the claim petition and the claim was dismissed at one stage ex parte and the same was set aside at the instance of the Insurance Company. In the facts of the case, the Division Bench took a view that Insurance Company should be permitted to contest the appeal on the grounds other than contemplated by S. 96(2). The aforesaid decision is confined to the facts of the case and does not lay down a general proposition that in every case Insurance Company should be permitted to defend the claim beyond the permissible limits of Section 96(2) of the Old Act.

31. We may say to with all respect that reasoning of latter Division Bench for taking a view that in the Old Act the Insurance Company could defend the case when the owner is absent and so in all cases where owner absents himself the Insurance Company gets a automatic right to defend the claim also on the grounds not covered by Section 96(2) is in the teeth of Section 110C(2A) of the Old Act. The statute permitted such defence only for the reasons to be recorded in writing. We with all respect are unable to agree with this view. We are bound by the decision of Supreme Court in *British India General Insurance Co. Ltd. Vs. Captain Itbar Singh and Others*, and are in agreement with earlier Division Bench decision in the case of *United India Fire and General Insurance Co. Ltd., Kanpur and Another Vs. Gulab Chandra Gupta*, .

32. Though we are conscious of the situation that if there is a conflict between the two Division Bench decisions of this Court, the judicial discipline requires that the matter should be referred to a larger Bench, but since we are taking a view that latter Division Bench in *Oriental Fire and General Insurance Co. Ltd., New Delhi and Another Vs. Smt. Rajendra Kaur*, was confined to its facts and in view of the Act of 1988, the reasoning of the latter Division Bench of this Court is not relevant for the purposes of controversy raised by Sri Saran on the second point. We are also of the view that the facts of this case do not at all attract the reasoning of the latter Division Bench.

33. We have ourselves examined the impugned award given by the Accident Claims Tribunal. The claim was contested by the owner of the vehicle as well as by the Insurance Company. The Insurance Company has contested the claim by only on the grounds permissible by Section 149(2) of the Act. The owner of the vehicle has appeared and duly contested the claim. Exception carved out by Section 170 of the New Act or Section 110C (2A) of the Old Act are not attracted, as such, even assuming that the reasoning of the latter Division Bench is applied to the case, the Insurance Company cannot be permitted to raise additional points other than contemplated by Section 149(2) of the Act in the facts of this

case.

34. We accordingly reject the submissions of the appellant's counsel that Insurance Company should be permitted to raise grounds in appeal beyond the scope of Section 149(2) of the Motor Vehicles Act. Accordingly both the points raised by the learned counsel for the appellant have no force and are accordingly rejected.

35. Now we propose to examine the additional points raised by Sri Saran in F.A.F.O. No. 278 of 1994.

36. Smt. Shakuntla Devi and others filed a Motor Accident Claims Case No. 30 of 1991 against Sri Shanker Tiwari, New India Assurance Company and others. The facts of the case stated in the claim were that on 7-11-1990 at 5.15 p.m. Sri Ram Gopal Shukla was cautiously and with a reasonable speed driving his Maruti Car No. UAI1778. When the car reached near Ajit Mal Town on National Highway No. 2, a truck No. UMO 9661 came in front with rash speed. The driver of the truck was rashly and negligently driving the truck. The driver dashed the truck in Maruti car resulting in death of Sri Ram Gopal Shukla. The applicants before the Claims Tribunal were wife and children of aforesaid Sri Ram Gopal Shukla. The age of the deceased was 40 years. He was drawing a salary of Rs. 1000/- per month. It was contended that the deceased has left behind him, his wife, Smt. Shakuntla Devi, his major son Sri Arvind Kumar, minor daughters, Asha, Anju and Manju and minor son, Pawan. It was also contended that the compensation should be awarded at the rate of Rs. 750/- per month for a period of 25 years totalling Rs. 2,25,000/-. Besides that Rs. 750/- were claimed for loss of clothes and shoes, Rs. 5000/- were claimed for funeral rites, Rs. 3000/- were claimed for agony caused to the deceased before death, Rs. 8500/- were claimed for agony caused to the family members of the deceased, Rs. 20,000/- were claimed for separation, Rs. 15,000/- were claimed by the applicant No. 1 for leading life of a widow and Rs. 18,000/- were claimed by the applicants Nos. 2 to 6 for their future development and education, thus a total claim for Rupees 3,18,850/- was made. The Claims Tribunal on the basis of the pleadings of the parties framed issues and held that the accident was caused due to rash and negligent driving of truck No. UMO 7661. For computing compensation, life expectancy of the deceased was fixed as 65 years and dependency of the family of the deceased was fixed at Rs. 600/- and it was held that the deceased was spending on himself Rs. 400/-. However, keeping in mind the uncertainties of future the compensation was calculated at the rate of Rs. 7,200/- per year multiplied only by 20 years, which came to Rs. 1,44,000/-. Besides that Rs. 10,000/- were awarded to applicant No. 1, for separation from her husband, Rs. 10,000/- were awarded to the children for being deprived of the fatherly affection and Rs. 5,000/- were awarded for funeral rites. Thus a total Rs. 1,69,000/- was determined as compensation amount. It was held that the applicants will be entitled to receive the aforesaid amount from New India Assurance Company, appellant in the present matter.

37. Sri Saran has mainly contended two points in support of his appeal.

38. Firstly he has contended that in the facts of the case it was established from the record that it was a case of contributory negligence and as such, the Claims Tribunal was in error in recording a finding that the accident was caused due to rash and negligent driving of the truck. Sri Saran has next contended that in view of the ratio laid down by the Hon''ble Supreme Court in the case of General Manager, Kerala State Road Transport Corporation, Trivandrum Vs. Mrs. Susamma Thomas and others, the compensation has been determined by the Claims Tribunal applying wrong principles by multiplying the life expect any with the expected amount which the deceased was supposed to spend on his family. According to Mr. Saran on the basis of the ratio laid down in the aforesaid decision the amount of compensation should be determined for insuring that much of amount which the deceased was supposed to spend on his family by getting deposited the necessary amount in fixed deposit, whereby the interest accruing from the aforesaid deposit should assure the amount which family members of the deceased were supposed to receive, if the deceased would have been alive.

39. So far as the first point is concerned, we have examined the finding recorded by the Tribunal and we are satisfied that cogent reasons have been recorded by the Claims Tribunal on the basis of the evidence on record that the driver of the truck was driving the truck rashly and negligently which caused accident and resulted into the death of the deceased. No interference is called for in the said findings nor any material has been placed before us to demonstrate that the said finding was perverse or was based on misreading. We are also of the view that petitioner cannot be permitted to agitate this issue according to view we have taken earlier dealing with second point of opening submission of Shri Saran.

40. Learned Senior Advocate, Sri Saran has laid stress on second point that in view of the law laid down by Hon''ble Supreme Court in General Manager, Kerala State Road Transport Corporation, Trivandrum Vs. Mrs. Susamma Thomas and others, , the Claims Tribunal has adopted wrong principles for determining the compensation Sri. Saran has placed reliance on the following observations of the Supreme Court in the aforesaid decision (at p. 1635 of AIR):

"It is necessary to reiterate that the multiplier-method is logically sound and legally well established. There are some cases which have proceeded to determine the compensation on the basis of aggregating the entire future earnings for over the period the life expectancy was lost, deducted a percentage therefrom towards uncertainties of future life and award the resulting sum as compensation. This is clearly unscientific. For instance if the deceased was, say 25 years of age at the time of death and the life expectancy is 70 years, this method would multiply the loss of dependency for 45 years-virtually adopting a multiplier of 45 and even if one-third or one-fourth is deducted therefrom towards the uncertainties of future life and for immediate lump sum payment, the effective multiplier would be between 30 and 34. This is wholly

impermissible..... The multiplier represents the number of years" purchase on which the loss of dependency is capitalised. Take for instance a case where annual loss of dependency is Rs. 10,000/-. If a sum of Rs. 1,00,000 is invested at 10% annual interest, the interest will take care of the dependency perpetually. The multiplier in this case works out to 10. If the rate of interest is 5% per annum and not 10% then the multiplier needed to capitalise the loss of the annual dependency at Rupees 10,000/- would be 20. Then the multiplier, i.e. the number of years" purchase of 20 will yield the annual dependency perpetually. The allowance to scale down the multiplier would have to be made taking into account the uncertainties of the future, the allowances for immediate lump sum payment, the period over which the dependency is to last being shorter and the capital feed also to be spent away over the period of dependency is to last etc. Usually in English Courts the operative multiplier rarely exceeds 16 as maximum. This will come down accordingly as the age of the deceased person (or that of the dependants, whichever is higher) goes up."

41. On the basis of the aforesaid observations, Sri Srarn has contended that for insuring the monthly income of Rs. 600/- to the dependants of the family, which comes to Rs. 7200/- per year a deposit of a sum of Rs. 72,000/- ensuring 10% interest per annum, could have been sufficient to insure the aforesaid amount to the dependence of the deceased. The submission is that contrary principle adopted by the Claims Tribunal in determining compensation has vitiated the award.

42. In Kerala State Road Transport Corporation case (AIR 1994 SC 1631)(supra) the actual income of the deceased was Rs. 1,032/- at the time of his death, whereas the Hon"ble Supreme Court having regard to the prospects of the advancement in the future career, estimated monthly income to Rupees 2,000/- and multiplier of 12 was applied, which was thought appropriate to each of the deceased. Besides that Rs. 15,000/- were added for loss of consortium and loss of the estate each in the conventional sum of Rs. 15,000/-, thus a figure of Rs. 2,25,000/-was arrived at.

43. In the present case even on the basis of the principle applied in the said case, if the income of Rs. 1,000/- is doubled to Rs. 2,000/- having regard to prospects of future career, the dependents of the deceased will be entitled for an amount of Rs. 1200/-per month which will come to Rs. 14,400 per year for assuring the aforesaid amount from interest it will require a sum of Rs. 1,44,000/-to be deposited for assuring the amount of Rs. 1200/- per month which deceased would have spend on his dependants had he been alive.

44. The compensation in this case would have been the same, even on the ratio of decision, in Kerala State Road Transport Corporation case (supra). In the facts of the case, no interference is called for in the impugned award even assuming that Sri Saran is right that the principles laid down in the General Manager, Kerala State Road Transport Corporation case (supra) for determining compensation are applied.

45. However, in the later decisions Hon''ble Supreme Court in the case of Urmilla Pandey and others Vs. Khalil Ahmad and others, decided on 10-5-1994, held that the Tribunal was in error in assuming the life expectancy to be 58 years. It should not have been less than 65 years, the Hon''ble Supreme Court also decried the deduction of 33% in lump sum payment.

46. In another later decision in the case of S. Chandra and Others Vs. Pallavan Transport Corporation, decided on 17-1-1994 the Hon''ble Supreme Court reversed the decision of this Court wherein the decision of this Court had taken the life expectancy at 55 years and applied the multiplier of 13. The Hon''ble Supreme Court while reversing the decision of this Court held that life expectancy even in 1979 was 65 years and accordingly multiplier of 20 was appropriate in the facts of the case.

47. The view which has been taken in the latter decision of the Supreme Court, the approach of the Claims Tribunal in determining compensation stands justified. Taking over all the situation into account, we are of the view that no interference is called for in the matter. The First Appeal From Order has no merit and is accordingly rejected under Order XLI, Rule 11, C.P.C. read with Chapter II, Rule 9 (b) of the Rules of the Court.

48. So far as the other two cases are concerned, namely, F.A.F.O. No. 466 of 1995 New India Assurance Company v. Smt. Krishna Devi and F.A.F.O. No. 464 of 1995, we are of the view that in view of the discussion we have already made above, it is not necessary for us to deal in detail the facts of "the case, as we are satisfied that the Accident Claims Tribunal has recorded findings on the basis of evidence on record and has rightly held that the accident has been caused due to negligence of the driver of the Truck and in both the aforesaid cases, the claims Tribunal has properly determined compensation. No interference is called for. Both the F. A.F.O.S"are also dismissed under Order XLI, Rule 11, C.P.C. read with Chapter 11, Rule 9(b) of Rules of the Court.

49. All the aforesaid three F.A.F.O.S" are accordingly rejected under Order XLI, Rule 11.

50. Appeals dismissed.