

(2007) 03 AHC CK 0205
In the Allahabad High Court

Smt. Manjula Devi, Master Ankur minor through Smt.
Manjula Devi (Natural Guardian as real Mother) and Smt.
Kamla Devi

APPELLANT

Vs

Commercial Motors, Chhedi Lal Tripathi and National
Insurance Co. Ltd.

RESPONDENT

Date of Decision : 02-03-2007

Acts Referred:

Land Acquisition Act, 1894 — Section 23

Motor Vehicles Act, 1988 — Section 110, 140, 141, 163A, 165

Citation : (2008) ACJ 1624 : (2007) 3 ADJ 255 : AIR 2007 All 122 : (2007) 2
AWC 2050

Hon'ble Judges : V.M. Sahai, J;Sabhajeet Yadav, J

Bench : Division Bench

Final Decision : Allowed

Judgement

V.M. Sahai and Sabhajeet Yadav, JJ.—This appeal has been filed by the widow, son and mother of the deceased Awadhesh Kumar Mishra claiming compensation Rs. 11,40,000/- for the death of Awadhesh Kumar Mishra in an accident that took place on 23.1.1994 while Awadhesh Kumar Mishra driver along with his co-driver and the cleaner was proceeding on truck No. UP 78B/0449 on 23.1.1994 at about 12.30 P.M. from Fatehpur to Kanpur via G.T. Road. The deceased Awadhesh Kumar Mishra was driving the truck. As soon as the truck reached in front of Chauhan hotel situated at G.T. Road, some mischievous and unruly boys who were standing by the side of the hotel gave signal to stop the truck. The deceased driver declined to stop the truck which infuriated the aforesaid boys and they started pelting brick-bats at the vehicle. The brick-bats hit Awadhesh Kumar Mishra over his eyes, as a result of which the vehicle was dis-balanced and fell into a ditch and dashed against a Babool tree lying on the side of the road. Consequently Awadhesh Kumar Mishra, driver and co-driver Dharmendra both died on the spot instantaneously. These deaths were attributed to the injuries sustained by the deceased in the aforesaid accident which occurred on

account of mischievous and unruly felonious act of the aforesaid boys who pelted the brick-bats. The report of the incident was lodged at police station Kalyanpur, district Fatehpur. The post mortem report on the body of the deceased was conducted. At the time of the accident the driver Awadhesh Kumar Mishra was found aged about 25 years and he left behind wife Manjula Devi, his son Ankur aged about 3 years, Kamla Devi, mother of the deceased. A claim petition was filed by the claimants on 19.4.1994 wherein monthly income of the deceased Awadhesh Kumar Mishra was claimed to be 3000/-. The claimants were dependents of the deceased and total compensation to tune of Rs. 11,40,000/- was claimed by them.

2. The claim petition was contested by the owner as well as the insurer of the vehicle on the ground that accident was not attributable to any negligent act of the driver of the vehicle and it was alleged that the deceased was involved in the accident which was result of his own individual act and such type of claim was not covered by the insurance policy. The claim was excessive, the claim was bad for non-joinder of necessary parties. The claim petition was also contested by the insurance company on the ground that the claim does not fall within the ambit of Motor Vehicles Act, the truck was driven by the deceased Awadhesh Kumar Mishra himself and the accident occurred when the deceased himself lost balance and the vehicle fell into the ditch. There was no negligence on the pan of the owner of the vehicle and the insurance company could not be saddled with any liability to pay the compensation. The tribunal has no jurisdiction to entertain the claim petition and the claimants were not the dependents of the deceased nor the deceased driver was having a valid driving licence.

3. The Motor Accident Claims Tribunal held by judgment and award dated 1.5.1997 that the Tribunal has jurisdiction to decide the claim petition and it affirmed the findings recorded by order dated 4.4.1995 that the issue as to whether the claim petition was cognizable under the Motor Vehicles Act or Workmen's Compensation Act holding that this claim petition could be decided by the Motor Accident Claims Tribunal. The tribunal while deciding the issue as to whether accident occurred on 23.1.1994 due to the composite negligence of some outside agency and driver of truck No. UP 78-B/0449 resulting in the death of the driver and whether the deceased was having a valid driving licence at the time of the accident, held on the appreciation of the statement of PW-1 Smt. Manju Devi that the vehicle was insured and at the time of the accident the deceased Awadhesh Kumar Mishra was driving the truck, having a valid driving licence but accident in question is attributable to some outside agency, which was solely responsible for accident. He placed reliance on a Full Bench decision of this Court in Union of India Vs. Smt. Sushila Devi and others, wherein the Full Bench of this Court has held that where the accident could be attributable to wholly outside agency and it was not caused by negligent driving of the offending motor vehicle, in that eventuality Motor Accident Claim Tribunal has no jurisdiction to award any compensation therefor.

4. We have heard Sri Shakti Dhar Dubey, learned Counsel for the appellants, Sri R.C. Gupta and Sri N.C. Srivastava, learned Counsel appearing for the respondents.

5. Learned Counsel for the appellants has vehemently urged that the Full Bench decision in Sushila Devi's case is not correct and runs contrary to the several decisions of Hon''ble Apex Court, therefore, even if the accident had occurred due to involvement of some outside agency but the same had arisen out of use of motor vehicle, in that eventuality the compensation could be awarded under Sections 166 and 168 of the Motor Vehicle Act (New). However, even if the Motor Vehicle was not driven negligently and accident was caused solely due to some act of out side agency even then the compensation could be awarded u/s 163A of the Act under the no fault liability. He has lastly urged that if compensation is not payable under the Act, then the appellants will have to be granted opportunity to file a claim petition under the Workmen's Compensation Act. In support of his aforesaid submissions, he has placed reliance upon several authorities of Hon''ble Apex Court and this Court as well, which we will discuss at the relevant places hereinafter.

6. In support of his first proposition the learned Counsel for the appellants Sri S.D. Dubey has placed strong reliance upon Shivaji Dayanu Patil and another Vs. Smt. Vatschala Uttam More, , Smt. Rita Devi and Ors. v. New India Assurance Co. Ltd. and Anr. AIR 2000 SC 1930 and Smt. Kaushnuma Begum and Others Vs. The New India Assurance Co. Ltd. and Others, , but before we proceed to deal with the decisions of Hon''ble Apex Court cited by learned Counsel for the appellants, we would like to refer the decision of Full Bench of this Court rendered in Sushila Devi's case.

7. In para 6 and 7 of the decision Hon''ble Full Bench of this Court in Sushila Devi's case (supra) has placed reliance upon a Full Bench decision of the Punjab and Haryana High Court in the case of Rajpal Singh Vs. The Union of India and Others, which reads as under:

6. Section 110 of the Act and the crucial words quoted above were also the subject of consideration by a Full Bench of the Punjab and Haryana High Court in the case of Rajpal Singh Vs. The Union of India and Others, The majority opinion was delivered by S.P. Goyal, J. Speaking for the majority S.P. Goyal, J. observed thus in paragraph 31 of the judgment:

The answer to the problem, therefore, entirely depends on the interpretation of Section 110 under which the Claims Tribunals are set up and conferred with the jurisdiction to deal with the claims for compensation. According to this provision, the Claims Tribunal is set up to adjudicate upon claim for compensation in respect of the accidents involving the death of or bodily injury to persons arising out of the use of motor vehicles, or damages to any property of a third party so arising, or both. So, the Tribunal has not been conferred with the jurisdiction to deal with the claims of compensation in respect of all kinds of accidents. Instead,

its jurisdiction is confined to claims of compensation in respect of those accidents which arise out of the use of motor vehicles. In other words, the use of motor vehicle must be the cause of the accident howsoever slight it may be and unless the accident is the effect caused by the use of the motor vehicle it would not be possible to say that it has arisen out of the use of motor vehicle. The interpretation of similar words came up for consideration before a Five Judges Bench of the High Court of Australia in *Government Insurance Office of New South Wales v. R.J. Green and Loyd Pty. Ltd.* 1967 ACJ 329 The words used in the insurance policy were "injury caused by or arising out of the use of the vehicle". Windeyer, J. while agreeing with the judgment written by Barwick. C.J. observed:

The words, "injury caused by or arising out of the use of the vehicle" postulate a casual relationship between the use of the vehicle and the injury" caused by connotes a "direct" or "proximate" relationship of cause and effect. Arising out of extends this to a result that is less immediate; but it still carries a sense of consequence. It excludes cases of bodily injury in which the use of the vehicle is a merely casual concomitant not considered to be, in a relevant casual sense, a contributing facts.

(emphasis added).

7. With respect we entirely agree that the jurisdiction to claims for compensation u/s 110 would arise only where the allegation is that the use of motor vehicle was the cause of the accident, that is, the accident was caused by the use of the motor vehicle. It may, however, be mentioned that the Full Bench of Punjab and Haryana High Court was concerned with a claim which was directed solely against the railway authorities alleging that the accident took place entirely because of their carelessness and negligence and that of the driver of the train and the gateman. The Full Bench specifically noticed that in the claim petition before them there was no allegation that the motor vehicle in any way contributed to the cause of the accident. Their Lordships of the Full Bench also noticed the decision of this Court in the case of *Union of India (UOI) Vs. Bhagwati Prasad and Others*, but distinguished it on the ground that that was an instance of a composite claim which was directed against both the owner and the driver of the motor vehicle as well as its insurer on the one hand and the railways on the other. That is why, the majority opinion emphasized that in the claim petition before them there was no allegation that the motor vehicle in question had contributed in any way to the cause of the accident. Their Lordships, therefore, held that the claim could not thus be said to be in respect of an accident arising out of the use of the motor vehicle. His Lordship Tewatia, J. delivering the minority opinion, also expressed total agreement with the decision of this Court in *Bhagwati Prasad's* case. The majority, however, did not dissent from the view expressed in this Court in the case of "s case but distinguished it on the ground mentioned above.

8. Thereafter Hon"ble Full Bench of this Court has placed reliance upon another

Full Bench decision of Gujarat High Court in Gujarat State Road Transport Corporation Vs. Union of India and Others, and dealt with the same from paras 8 to 13 of the decision and recorded its concluded opinion in paras 14 and 15 of the decision. The pertinent observations made in aforesaid paragraphs are as under:

8. Another decision which must be noticed in view of the fact that the law on the subject has been dealt with and expounded exhaustively dealing with almost every aspect of the question arising for our consideration. The decision is reported in Gujarat State Road Transport Corporation Vs. Union of India and Others, His Lordship Majumdar. delivering the judgment of the Court analysed the entire scheme of the Act pertaining to compulsory insurance of motor vehicles as well as adjudication of claims in respect of accidents involving the death of or bodily injury to persons arising out of the use of motor vehicles or damages to any property of a third party so arising or both. His Lordship also noticed almost all the decisions on the subject, namely, the scope and interpretation of Section 110 rendered by the Supreme Court as well as the various High Courts. The learned Judge summed up the law thus at pages 18 and 19:

It is, therefore, obvious that the phraseology employed by the legislature in Section 110(1) laying down Junctions to be performed by the Claims Tribunal for adjudicating upon the claims for compensation in respect of accidents involving injuries to persons arising out of use of motor vehicles must necessarily be treated to mean that the Claims Tribunal will be entitled to adjudicate upon the claims for compensation in respect of accidents arising out of negligent use of the motor vehicles and not any innocuous use or in other words, it should be misuse of the motor vehicle or rash and negligent use of the motor vehicle which must have contributed to or must have caused the accident in question. Claims for compensation arising out of only such accidents can be entertained by the Claims Tribunal u/s 110(1).

(emphasis supplied).

The bench went on to consider also a contingency where the accident may have been casual not only by the negligent or careless use of the motor vehicle by the driver but also by some external agency. The Bench answered the question thus at page 19:

The question arises, as to whether the claimant before the Claims Tribunal properly moved by him for adjudication of the claim for compensation, on account of the accident caused by the negligent use of the motor vehicle can urge that the accident in question was caused not only by rash and negligent use of the motor vehicle, but also by some outside agency which contributed its mite and was also partly responsible for the causing of the accident, or in other words, can claimant legitimately urge that there was, in addition to the motor vehicle driver who was a tortfeasor, another joint tortfeasor being some other person

who might not have used any motor vehicle but nonetheless who might have contributed to the causing of the accident? As it is well settled that the Claims Tribunal has to adjudicate upon claims on the basis of the tortious liability of the tortfeasor brought before it, of necessity, such disputed claims can encompass to the adjudication of claims even against all joint tortfeasors contributing to the accident in question as they would also remain in the domain of tortious liability. It is also well settled that once it is decided that the accident in question has been caused by joint tortfeasor, two or more, each one of them would remain jointly and severally liable to meet the claim of the claimant. All these questions, therefore, can legitimately fall within the scope and ambit of the jurisdiction of the Claims Tribunal u/s 110(1) the moment it is shown that the accident in question, if not wholly, at least in part, is caused by negligent use of the motor vehicle. We do not find anything in the language of Section 110(1) or any other provision of the succeeding sections to contra-indicate the legislative intention underlying conferment of exclusive jurisdiction of the Claims Tribunal for adjudication of claims for compensation in such cases. It is also interesting to note that Section "110-A which provides for procedure for applying for compensation before the Tribunal nowhere indicates as to against whom such application can be filed. As the claims before the Tribunal have to be based on tortious liability, as seen above, it necessarily follows that application can be filed against either sole tortfeasor viz. the driver of the offending motor vehicle causing the accident or against one or more of joint tortfeasors who are involved in the accident. Some of the joint tortfeasors might be agencies not utilising any motor vehicle in contributing to such accident. Consequently, claim petition can legitimately be filed not only against the driver, owner and insurer of the offending motor vehicles, which has been rashly and negligently used at the relevant time for causing the accident but can also be filed against joint tortfeasors who might have contributed to the accident along with the driver of the motor vehicle and who by themselves may not have utilised any motor vehicle while so contributing to the accident.

(emphasis supplied).

9. With respect we entirely endorse the opinion expressed by the learned Judges of the Gujarat High Court with regard to the scope of Section 110 as well as a composite claim for compensation based on the allegation that the death or bodily injury occurred in an accident which was caused not only by the use of the motor vehicle but some outside agency. In such cases, all the tortfeasors who may have contributed to or caused the accident may be legitimately brought before the Tribunal by means of a claim petition u/s 110 provided, of course, one of the factors contributing to the accident is the use of a motor vehicle. After a very learned and exhaustive exposition of the law on the subject, the Gujarat High Court divided the category of cases which can give rise to claims for compensation in respect of accidents involving the use of the motor vehicle as follows:

25. Let us now take stock of the situation. On the aforesaid discussion of the relevant provisions of the Act and various decisions of the High Courts, it appears clear to us that following four types of cases can give rise to claims for compensation:

I. Claims for compensation in cases where it is alleged that motor vehicle driver was solely responsible for causing accidental injuries giving rise to the claims for compensation.

II. Claims for compensation in cases of accidents where it is alleged that accident is caused not on account of rash or negligent driving of driver of the motor vehicle but is solely caused on account of rashness or negligence of any outside agency who might have rashly or negligently used any vehicle other than the motor vehicle causing the accidental injuries or who might have been solely responsible for the accident even otherwise.

III. Claims for compensation in case where it is alleged that the accident giving rise to the claim is being the result of composite negligence not only of the driver of the motor vehicle but also of outside agency or driver of another vehicle which may not be motor vehicle but who might be found negligent contributing to the causing of the accident, meaning thereby, claims for compensation against joint tortfeasors, one of which at least is the driver of a motor vehicle.

IV. Cases where it is alleged that accidental injuries have been caused on account of composite negligence of driver of the motor vehicle as well as any other person who might be jointly responsible for causing the accident. But when ultimately, on evidence, it is found by the Tribunal that driver of the motor vehicle was not at all responsible, not even to the slightest extent and that sole responsibility for causing of the accident rested on the shoulders of the driver of the vehicle which is not a motor vehicle or on the shoulders of any other agency.

10. The Bench held that so far as the first type of cases is concerned it is the Claims Tribunal which alone can entertain the claim u/s 110(1) of the Act and adjudicate upon it and if it was found that the motor vehicle driver was negligent, appropriate compensation can be awarded against the driver, owner and insurer of the vehicle as the case may be.

11. In regard to the second type of cases, the Bench held that the Tribunal shall have no jurisdiction to entertain the same because the claim does not allege that the accident was caused by the negligence in the use of motor vehicle.

12. So far as the third type of cases is concerned the learned Judges ruled that such a composite claim would be triable by the accident Tribunal on the principle that apart from the fact that the accident was caused by the negligent use of the motor vehicle, the outside agency (other than the motor vehicle) had also contributed to the accident in such cases inter se liability can be adjudicated by the Tribunal fixing just compensation and making it payable by the joint tortfeasors, jointly or severally. Their Lordships held that thereby future litigation

as regards the extent of the liability of joint-feasors can be avoided.

13. In respect of the last category of cases, the Bench held that where the accident is alleged to have been caused on account of composite negligence of the driver of the vehicle or any other vehicle or outside agency, claim for compensation would be maintainable by the Claims Tribunal but if after hearing the parties the Tribunal comes to the conclusion that the accident was caused not on account of the rash and negligent use of the motor vehicle but solely on account of negligence or rashness of some outside agency like railway engine, carts, etc. the case would go out of the purview of Section 110(1) and the Tribunal may thereupon reject the claim petition on the ground of lack of jurisdiction to award compensation.

14. Having given the matter our careful consideration we agree with the conclusion reached by the Gujarat High Court as to the circumstances in which the Claims Tribunal shall have jurisdiction to entertain petitions filed u/s 110 as well as the cases in which it shall have no jurisdiction to entertain the petition at the very threshold or subsequently on a finding that the accident was not caused by the use of the motor vehicle but solely by some outside agency.

15. The upshot of the above discussion, therefore, is that the Claims Tribunal shall have jurisdiction to entertain all claims for compensation in respect of accidents involving the death of, or bodily injuries to persons where the accident is caused by the use of the motor vehicle or the use of the motor vehicle contributes, whether by itself or along with some other joint tort-feasors, to the accident. As a corollary, this Court holds that the mere fact that the motor vehicle was involved in the accident by itself, and without more would not confer on the Tribunal jurisdiction to entertain a claim. We further hold that where the claim for compensation alleges that the accident was caused by the negligence of the driver of the motor vehicle as well as by some outside agency, then too the Tribunal shall have jurisdiction to entertain the petition provided that if the Tribunal ultimately finds that the accident was caused wholly by the outside agency and not by the driver of the motor vehicle it will cease to have any jurisdiction to grant any relief to the claimant. We also hold that where the claim petition is directed solely against outside agencies, i.e. other than the driver, owner or the insurer of the vehicle and the allegation is, as was the case before the Full Bench of the Punjab and Haryana High Court Rajpal Singh Vs. The Union of India and Others, that the accident was caused entirely by the negligence of that outside agency, the Tribunal shall have no jurisdiction even to entertain the petition at the very threshold. The first and the second questions are answered accordingly.

9. Now coming to the decision rendered by Hon"ble Apex Court in Shivaji Dayanu Patil's case (supra) wherein a collision between a petrol tanker and a truck took place on a national highway on 29.10.1987 at about 3 a.m. as a result of which the tanker went off the road and fell on its left side at a distance of about 20 feet from the highway. Due to overturning of the tanker, the petrol contained in it

leaked out and collected nearby. At about 7.15 a.m. an explosion took place in the tanker causing burn injuries to those assembled near it including respondent's son who later succumbed to his injuries. The respondent as legal representative of her deceased son filed a claim petition before Tribunal u/s 92-A as well as u/s 110 of Motor Vehicles Act, 1939. The Tribunal dismissed the petition u/s 92-A on the ground that the explosion and the fire which took place after four hours could not be said to be an accident "arising out of the use" of the tanker within the meaning of that provision. The Tribunal observed that the villagers tried to take the benefit of the earlier accident and tried to pilfer petrol from the petrol tanker and while thus pilfering the petrol there was friction which caused ignition and explosion and thus an outside agency was responsible for the explosion and fire. The High Court, however, allowed the claim of respondent and also observed that there was no evidence that the victim was himself committing theft or pilferage of petrol at the time of his death and that he could have only been a curious by-stander at the site of the accident. Feeling aggrieved against the decision of High Court the owner of the tanker and insurer has filed appeal before Hon"ble Apex Court inter alia on the grounds that (1) since before the explosion and fire the petrol tanker was lying immobile it could not be said that the petrol tanker, even if it be assumed that it was a motor vehicle, was in use as a motor vehicle at the time of the explosion and fire; and (2) there was no causal relationship between the collision which took place between the petrol tanker and the truck at about 3 a.m. and the explosion and fire in the petrol tanker which took place about four and half hours later and it could not be said that explosion and fire in the petrol tanker was an accident arising out of the use of motor vehicle.

10. Dismissing the SLP with cost Hon"ble Apex Court has held in para 26,27,36 and 37 of the decision as under:

26. These decision indicate that the word "use", in the context of motor-vehicles, has been construed in a wider sense to include the period when the vehicle is not moving and is stationary, being either parked on the road and when it is not in a position to move due to some breakdown or mechanical defect. Relying on the above mentioned decisions, the appellate bench of the High Court has held that the expression "use of a motor vehicle" in Section 92-A covers accidents which occur both when the vehicle is in motion and when it is stationary. With reference to the facts of the present case the learned Judges have observed that the tanker in question while proceeding along National Highway 4 (i.e. while in use) after colliding with a motor lorry was lying on the side and that it cannot be claimed that after the collision the use of the tanker had ceased only because it was disabled. We are in agreement with the said approach of the High Court. In our opinion, the word "use" has a wider connotation to cover the period when the vehicle is not moving and is stationary and the use of a vehicle does not cease on account of the vehicle having " been rendered immobile on account of a breakdown or mechanical defect or accident. In the circumstances, it cannot be said that the petrol tanker was not in the use at the time when it was lying on its

side after the collision with the truck.

27. The only other question which remains to be considered is whether the explosion and fire which caused injuries to the deceased son of the respondent can be said to have taken place due to an accident arising out of the use of a motor vehicle viz. the petrol tanker....

36. This would show that as compared to the expression "caused by", the expression "arising out of" has a wider connotation. The expression "caused by" was used in Sections 95(l)(b)(i) and (ii) and 96 (2)(b)(ii) of the Act. In Section 92-A, Parliament, however, chose to use the expression "arising out of which indicates that for the purpose of awarding compensation u/s 92-A, the causal relationship between the use of the motor vehicle and the accident resulting in death or permanent disablement is not required to be direct and proximate and it can be less immediate. This would imply that accident should be connected with the use of the motor vehicle but the said connection need not be direct and immediate. This construction of the expression "arising out of the use of a motor vehicle" in Section 92-A enlarges the field of protection made available to the victims of an accident and is in consonance with the beneficial object underlying the enactment.

37. Was the accident involving explosion and fire in the petrol tanker connected with the use of tanker as a motor vehicle? In our view, in the facts and circumstances of the present case, this question must be answered in the affirmative. The High Court has found that the tanker in question was carrying petrol which is a highly combustible and volatile material and after the collision with the other motor vehicle the tanker had fallen on one of its sides on the sloping ground resulting in escape of highly inflammable petrol and that there was grave risk of explosion and fire from the petrol coming out of the tanker. In the light of the aforesaid circumstances the learned Judges of the High Court have rightly concluded that the collision between the tanker and the other vehicle which had occurred earlier and the escape of petrol from the tanker which ultimately resulted in the explosion and fire were not unconnected but related events and merely because there was interval of about four to four and half hours between the said collision and the explosion and fire in the tanker, it cannot be necessarily inferred that there was no causal relation between explosion and fire. In the circumstances, it must be held that the explosion and fire resulting in the injuries which led to the death of Deepak Uttam More was due to an accident arising out of the use of the motor vehicle viz. the petrol tanker No. MKL 7461.

11. From a close analysis of the decision rendered by Hon"ble Apex Court, it is clear that in para 27 of the decision the Hon"ble Apex Court has specifically formulated the question as to whether the explosion and fire which caused injuries to the deceased son of respondent can be said to have taken place due to an accident arising out of use of motor vehicle viz. the petrol tanker? Earlier to it, in para 26 of the said decision the Hon"ble Apex Court has already held that

the word "use" has a wider connotation to cover the period when the vehicle is not moving and is stationary and the use of vehicle does not cease on account of vehicle having been rendered immobile on account of breakdown or mechanical defect or accident and further held that in the circumstances, it cannot be said that petrol tanker was not in use at the time when it was lying on its side after the collision with the truck. In para 36 of the decision while comparing the expression "caused by" with the expression "arising out of Hon"ble Apex Court has held that the expression "arising out of has wider connotation than that of expression "caused by" and further held that the causal relationship between the use of the motor vehicle and the accident resulting in death or permanent disablement is not required to be direct and proximate and it can be less immediate. This would imply that accident should be connected with the use of motor vehicle but the said connection need not be direct and immediate. In para 37 of the decision the Hon"ble Apex Court has held that collision between the tanker and the other vehicle which had occurred earlier and the escape of petrol from the tanker which ultimately resulted in the explosion and fire were not unconnected but related events and merely because there was interval of about four to four and half hours between the said collision and the explosion and fire in the tanker, it cannot be necessarily inferred that there was no causal relation between collusion, explosion and fire. In the circumstances, it must be held that the explosion and fire resulting in the injuries which led to the death of Deepak Uttam More was due to an accident arising out of the use of the motor vehicle viz. the petrol tanker.

12. Thus, from the aforesaid discussion, it is categorically clear that the explosion and fire resulting in injuries, which lead the death of Deepak Uttam More was due to an accident arisen out of the use of the motor vehicle viz. the petrol tanker. Although the case was decided by the Hon"ble Apex Court with reference to Section 92-A of Old Motor Vehicle Act but the same was decided by construing the expression accident "arising out of the use of the motor vehicle", which is similarly used under both the Sections 110 of the Old Motor Vehicle Act 1939 and 165 of the New Motor Vehicle Act, 1988.

13. In Smt. Rita Devi's case (supra) a driver of the autorickshaw was employed by the owner for driving autorickshaw for carrying passengers on hire who had accepted the demand of fare paying passengers to transport them to a place of their destination. During the course of this duty the passengers had decided to commit an act of felony of stealing the autorickshaw and they had eliminated the driver of autorickshaw. In aforesaid case the Hon"ble Apex Court has held that the stealing of autorickshaw was the object of the felony and the murder that was caused in the said process of stealing the autorickshaw was only incidental to the act of stealing of the autorickshaw. Therefore, the murder of deceased autorickshaw driver was due to an accident arising out of user of Motor Vehicle. Accordingly the claimants who were wife and children of deceased were entitled for compensation claimed by them under Motor Vehicle Act. While coming to the aforesaid conclusion the Hon"ble Apex Court has placed reliance upon *Challis v.*

London and South Western Railway Company (1905) 2 KB 154 and Nisbet v. Rayne and Burn (1910) 2 KB 689. In this connection Hon^{ble} Apex Court has quoted the pertinent observations of aforesaid cases in para 11 and 12 of the decision and in para 13 of the decision it has been pointed out that judgment of the Court of Appeal in Nisbet case has been followed by the majority judgment of the House of Lords and in paras 14 and 18 Hon^{ble} Apex Court had recorded its concluded opinion. The pertinent observations of Hon^{ble} Apex Court in para 11 to 14 and 18 of the decision are as under:

11. In Challis v. London and South Western Railway Company (1905) 2 KB 154, the Court of Appeal held where an engine driver while driving a train under a bridge was killed by a stone wilfully dropped on the train by a boy from the bridge, that his injuries were caused by an accident. In the said case, the Court rejecting an argument that the said incident cannot be treated as an accident held:

The accident which befell the deceased was, as it appears to me, one which was incidental to his employment as an engine driver in other words it arose out of his employment. The argument for the respondents really involves the reading into the Act of a proviso to the effect that an accident shall not be deemed to be within the Act, if it arose from the mischievous act of a person not in the service of the employer. I see no reason to suppose that the Legislature intended so to limit the operation of the Act. The result is the same to the engine driver, from whatever cause the accident happened; and it does not appear to me to be any answer to the claim for indemnification under the Act to say that the accident was caused by some person who acted mischievously.

12. In the case of Nisbet v. Rayne and Burn (1910) 2 KB 689, where a cashier, while travelling in a railway to a colliery with a large sum of money for the payment of his employers' workmen, was robbed and murdered. The Court of Appeal held:

That the murder was an "accident" from the standpoint of the person who suffered from it and that it arose "out of" an employment which involved more than the ordinary risk, and consequently that the widow was entitled to compensation under the Workmen's Compensation Act, 1906. In this case the Court followed its earlier judgment in the case of Challis (*supra*). In the case of Nisbet, the Court also observed that "It is contended by the employer that this was not an "accident" within the meaning of the Act, because it was an intentional felonious act which caused the death, and that the word "accident" negatives the idea of intention. In my opinion, this contention ought not to prevail. I think it was an accident from the point of view of Nisbet, and that it makes no difference whether the pistol shot was deliberately fired at Nisbet or whether it was intended for somebody else and not for Nisbet.

13. The judgment of the Court of Appeal in Nisbet's case (1910) (2) KB 689 was followed by the majority judgment by the House of Lords in the case of Board of

14. Applying the principles laid down in the above cases to the facts of the case in hand, we find that the deceased, a driver of the auto rickshaw, was duty bound to have accepted the demand of fare paying passengers to transport them to the place of their destination. During the course of this duty, if the passengers had decided to commit an act of felony of stealing the auto rickshaw and in the course of achieving the said object of stealing the auto rickshaw, they had to eliminate the driver of the auto rickshaw then it cannot but be said that the death so caused to the driver of the auto rickshaw was an accidental murder. The stealing of the auto rickshaw was the object of the felony and the murder that was caused in the said process of stealing the auto rickshaw is only incidental to the act of stealing of the auto rickshaw. Therefore, it has to be said that on the facts and circumstances of this case the death of the deceased (Dasarath Singh) was caused accidentally in the process of committing the theft of the auto rickshaw.

1. In the instant case, as we have noticed the facts, we have no hesitation in coming to the conclusion that the murder of the deceased (Dasarath Singh) was due to an accident arising out of the use of motor vehicle. Therefore, the trial court rightly came to the conclusion that the claimants were entitled for compensation as claimed by them and the High Court was wrong in coming to the conclusion that the death of Dasarath Singh was not caused by an accident involving the use of motor vehicle.

14. From a close analysis of the observations of the Hon''ble Apex Court in Smt. Rita Devi's case (supra) it appears that the Apex Court has placed reliance upon a decision of Court of Appeal in Challis case (supra) where an engine driver while driving a train under a bridge was killed by a stone wilfully dropped on the train by a boy from the bridge. The injuries were caused by said accident. Rejecting the argument that the said incident cannot be treated as an accident, the Court of Appeal had held that the accident which befell the deceased was incidental to his employment as an engine driver. In other words, it arose out of his employment. It was further observed that the argument for the respondents really involves the reading into the Act of a proviso to the effect that an accident shall not be deemed to be within the Act, if it arose from the mischievous act of a person not in the service of the employer. Another case relied upon by Hon''ble Apex Court was the case of Nisbet v. Rayne and Burn, which was also decided by Court of Appeal wherein while travelling in a railway to a colliery with a large sum of money for the payment of his employers' workmen, a cashier was robbed and murdered. The Court of Appeal had held that the murder was an "accident" from the standpoint of the person who suffered from it and that it arose "out of an employment which involved more than the ordinary risk, and consequently held that the widow was entitled to compensation under the Workmen's Compensation Act, 1906. In this case the Court of Appeal has followed its earlier judgment in the case of Challis (supra). In the aforesaid case the contention of

employer that this was not an "accident" within the meaning of the Act, because it was an intentional felonious act which caused the death, and that the word "accident" negatives the idea of intention has been rejected on the ground that it was an accident from the point of view of Nisbet, and that it makes no difference whether the pistol shot was deliberately fired at Nisbet or it was intended for somebody else and not for Nisbet. The aforesaid judgment of Nisbet's case has also been followed by majority judgement by House of Lord in Kelly's case (supra). Thus it seems that inspite of fact that the decisions in Challis case and Nisbet case were pertaining to Workmen's Compensation Act but the meaning assigned to the expression "arising out" of employment under the provisions of aforesaid Act has been imported by Hon"ble Apex Court to describe and demarcate the ambit and scope of the expression "arising out of use of motor vehicle" under the provisions of Motor Vehicle Act. Thus Hon"ble Apex Court has held that although death of deceased Dasarath Singh driver of Autorickshaw was caused accidentally in the process of committing theft of autorickshaw but the same was due to accident "arising out of the use of the motor vehicle.

15. In Smt. Kaushnuma Begum and Others Vs. The New India Assurance Co. Ltd. and Others, , an accident which gave rise to the claim occurred on 20th March, 1986. The accident was attributed to bursting of tyre of front wheel of the jeep as a result of which the jeep had dashed one Haji Mohammad Hanif who was walking on the road at the moment and subsequently died due to the injuries sustained in that accident. The widow and children of Haji Mohammad Hanif, filed claim petition before the Tribunal in 1986 itself claiming a sum of Rs. 2,36,000/- as total compensation. The owner of the jeep disclaimed the liability even by denying the accident in which his jeep was involved. Alternatively, he contended that any liability found against him in respect of the said jeep the same should be realised from the Insurance Company as the vehicle was covered by valid insurance policy. The Tribunal had dismissed the claim with the finding that it appears that the front wheel of the jeep suddenly got burst resulting in disbalance and occurrence of this accident as mentioned in Ex.-2 to the report of Police Station. Whatever is the circumstances, the rash and negligence of the alleged jeep is not established. However, the Tribunal directed the Insurance Company to pay Rs. 50,000/- to the claimants under "No Fault Liability" envisaged by Section 140 of the Motor Vehicles Act, 1988 (Corresponding to Section 92-A of Old Act). Aggrieved by the said decision of tribunal, the appellants preferred appeal, as per the provisions of the Act before this Court, a Division Bench of this Court vide order dated 28th April 1999 dismissed the appeal holding that the tempo overturned and there were no negligence or rashness of the driver. Feeling aggrieved the claimants filed appeal before Hon"ble Apex Court, which was allowed.

16. To better understand the controversy, it would be useful to extract the observations of the Hon"ble Apex Court made in para 8, 10 to 13, 19 and 20 of the aforesaid decision as under:

8. We have to proceed on two premises based on the finding of the Tribunal. The first is that there was no negligence or rashness on the part of the driver of the jeep. Second is that the deceased was knocked down by the jeep when its front tyre burst and consequently the vehicle became disbalanced and turned turtle. Should there necessarily be negligence of the person who drove the vehicle if a claim for compensation (due to the accident involving that vehicle) is to be sustained?

10. Section 165(1) of the Motor Vehicles Act confers power on the State Government to constitute one or more Motor Accidents Claims Tribunals by notification in the Official Gazette for such area as may be specified in the notification. Such Tribunals are constituted for the purpose of adjudicating upon claims for compensation in respect of accidents involving the death of or bodily injury to persons arising out of the use of motor vehicles, or damages to any property of a third party so arising or both. Section 175 of the Motor Vehicles Act contains a prohibition that "no Civil Court shall have jurisdiction to entertain any question relating to any claim for compensation which may be adjudicated upon by the Claims Tribunal.

11. It must be noted that the jurisdiction of the Tribunal is not restricted to decide claims arising out of negligence in the use of motor vehicles. Negligence is only one of the species of the causes of action for making a claim for compensation in respect of accidents arising out of the use of motor vehicles. There are other premises for such cause of action.

12. Even if there is no negligence on the part of the driver or owner of the motor vehicle, but accident happens while the vehicle was in use, should not the owner be made liable for damages to the persons who suffered on account of such accident? This question depends upon how far the Rule in *Rylands v. Fletcher* 1861 ALLER 1 can apply in motor accident cases. The said Rule is summarised by Blackburn, J. thus:

The true rule of law is that the person who, for his own purposes, brings on his land, and collects and keeps there anything likely to do mischief if it escapes, must keep it at his peril, and, if he does not do so, he is prima facie answerable for all the damage which is the natural consequence of its escape. He can excuse himself by showing that the escape was owing to the plaintiff's default, or, perhaps, that the escape was the consequence of vis major, or the act of God; but, as nothing of this sort exists here, it is unnecessary to inquire what excuse would be sufficient.

13. The House of Lords considered it and upheld the ratio with the following dictum:

We think that the true rule of law is that the person who, for his own purposes, brings on his land and collects and keeps there anything likely to do mischief if it escapes, must keep it at his peril, and, if he does not do so, he is prima facie answerable for all the damages which is the natural consequence of its escape.

He can excuse himself by showing that the escape was owing to the plaintiff's default, or, perhaps, that the escape was the consequence of vis major or the act of God; but, as nothing of this sort exists, here, it is unnecessary to inquire what excuse would be sufficient.

19. Like any other common law principle, which is acceptable to our jurisprudence, the Rule in *Rylands v. Fletcher* can be followed at least until any other new principle which excels the former can be evolved, or until legislation provides differently. Hence, we are disposed to adopt the Rule in claims for compensation made in respect of motor accidents.

20. ...We are, therefore, of the opinion that even apart from Section 140 of the Motor Vehicles Act, a victim in an accident which occurred while using a motor vehicle, is entitled to get compensation from a Tribunal unless any one of the exceptions would apply. The Tribunal and the High Court have, therefore, gone into error in divesting the claimants of the compensation payable to them.

17. From a close analysis of the aforesaid decision it is clear that in para 8 of the decision, the Hon'ble Apex Court has formulated specific question i.e. should there necessarily be negligence of the person who drove the vehicle if claim for compensation (due to the accident involving that vehicle) is to be sustained? Thereafter in para 11 of the decision it has been categorically held that it must be noted that the jurisdiction of Tribunal is not restricted to decide claims arising out of negligence in the use of motor vehicles. The negligence is only one of the species of the causes of action for making a claim for compensation in respect of accident arising out of use of motor vehicles. There are other premises for such cause of action. In para 12 of the decision Hon'ble Apex Court again emphasised that even if there is no negligence on the part of driver or owner of motor vehicle but accident happens while the vehicle was in use should not owner be liable for damage to the persons who suffered on account of such accident? Thereafter Hon'ble Apex Court has dealt with the rule of strict liability propounded in *Rylands v. Fletcher*'s case (supra) wherein Blackburn (J) had summarised the rule that the person who for his own purposes, brings on his land and collects or keeps there any thing likely to do mischief if it escapes, must keep it at his peril, and if he does not do so, he is prima facie answerable for all the damage which is the natural consequence of its escape and ultimately in para 20 of the decision the Hon'ble Apex Court gave a concluded opinion that even apart from Section 140 of Motor Vehicles Act, a victim in an accident which occurred while using a vehicle is entitled to get compensation from the Tribunal unless any one of the exceptions provided in *Rylands v. Fletcher* would apply.

18. Thus in view of aforesaid observations it is clear that the allegation and proof of negligence in the use of motor vehicle on the part of driver or owner of the motor vehicle was found not a condition precedent for entertaining the claim for compensation of the victims of the accident by the tribunal. What is essential, is that the accident should be incidental to the use of motor vehicle. In this case, although the Hon'ble Apex Court has determined the quantum of compensation

on structural formula basis as provided in Schedule II in view of the provisions contained u/s 163A of the New Motor Vehicle Act, but the question of jurisdiction of tribunal and liability to pay compensation to the victims of accident has been decided by Hon''ble Apex Court by interpreting the expression "arising out of use of motor vehicle" and under the rule of strict liability propounded in Rylands v. Fletcher's case, therefore, in our opinion the proposition of law laid down by Hon''ble Full Bench of this Court in Sushila Devi's case to the aforesaid extent runs contrary to the decision of Hon''ble Apex Court. Similarly, Full Bench decision of Punjab & Haryana High Court and Gujarat High Court relied upon by Full Bench of this Court in Shushila Devi's case to that extent are also in conflict of the aforesaid decisions of the Hon''ble Apex Court.

19. Although the case of Shivaji Dayanu Patil (supra) was a case of no fault of liability u/s 92-A of Old Motor Vehicle Act and Smt. Rita Devi was also a case of no fault of liability u/s 163A of New Motor Vehicle Act but in both the cases the Hon''ble the Apex Court has held that the death was caused due to an accident "arising out of use of motor vehicle", thus by interpreting the expression "arising out of use of motor vehicle. The same expression "arising out of use of motor vehicle" has been similarly used u/s 165(1) of the New Motor Vehicle Act. For ready reference the provisions of Sections 163A and 165 of New Motor Vehicle Act are reproduced as under:

163-A. Special provisions as to payment of compensation on structured formula basis.- (1) Notwithstanding anything contained in this Act or in any other law for the time being in force or instrument having the force of law, the owner of the motor vehicle 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, compensation, as indicated in the Second Schedule, to the legal heirs or the victim, as the case may be.

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

(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.

165. Claims Tribunals.- (1) A State Government may, by notification in the Official Gazette, constitute one or more Motor Accidents Claims Tribunals (hereafter in this Chapter referred to as Claims Tribunal) for such area as may be specified in the notification for the purpose of adjudicating upon claims for compensation in respect of accidents involving the death of, or bodily injury to,

persons arising out of the use of motor vehicles, or damages to any property of a third party so arising, or both.

Explanation.- For the removal of doubts, it is hereby declared that the expression "claims for compensation in respect of accidents involving the death of or bodily injury to persons arising out of the use of motor vehicles" includes claims for compensation u/s 140 (and Section 163A).

20. Thus from a careful reading of the provisions of Section 163A and Section 165(1) both of Motor Vehicle Act (New) it is clear that u/s 163A, the owner or authorised insurer shall be liable to pay compensation in case of death or permanent disablement due to accident arising out of use of motor vehicle, whereas u/s 165(1) of New Act, also same phraseology has been used to the effect that for the purpose of adjudicating upon the claims for compensation in respect of accidents involving the death or bodily injury to persons arising out of use of Motor Vehicles or damage to any property of third party so arising or both, the tribunals are constituted by the State Government. Although, we are conscious about the proposition that same expression takes different colour depending upon the context of the statutes, but there is nothing to indicate contrary in context of Section 165 of the Act inasmuch as others provisions subsequent thereto under Chapter XII of the Motor Vehicle Act (New) so as to gather different intention therefrom particularly in view of the clear legal position enunciated by Hon''ble Apex Court in Kaushnuma Begum's case (supra). Therefore, the interpretation of the expression "arising out of use of motor vehicle" given by Hon''ble Apex Court in aforesaid decisions will equally apply in respect of Section 165(1) also and in such a situation the causal relationship between the use of motor vehicle and the accident involving the death or bodily injury is not required to be direct and proximate and it can be less immediate. In other words, the accident would be connected with the use of motor vehicle but said connection need not be direct and immediate. In our considered opinion, therefore, the crucial question for determination of Motor Accident Claim Tribunal is to see whether the accident is "incidental" to the "use of motor vehicle" instead of examining it to be caused by negligence in use of motor vehicle or solely caused by outside agency or use of motor vehicle has contributed it.

21. Thus the aforesaid discussion leads towards a further inescapable conclusion that it would be sufficient to plead and prove that the accident is incidental to the use of motor vehicle. The jurisdiction of Tribunal is not restricted to decide the claim arising out of negligence alone in the use of motor vehicle. The negligence is only one of the species of causes of action for making a claim for compensation in respect of accident arising out of use of motor vehicles. If the pleading and proof of negligence would have been essential condition precedent for exercise of jurisdiction of claims Tribunal instead of using the expression "arising out of use of motor vehicles", different words and phraseology would have been appropriately used and employed u/s 165(1) of the Motor Vehicle Act so as to include the negligence in use of motor vehicle instead of employing the

expression "arising out of use of motor vehicle" simpliciter. Therefore, in our considered opinion, the jurisdiction of tribunal should not be restricted to entertain and decide the claims arising out of negligence alone in use of motor vehicle. Restricting the claim for compensation and jurisdiction of tribunal to decide such claims arising out of negligence alone in the use of motor vehicle would be carving out of a proviso u/s 165(1) of the Motor Vehicle Act to exclude the jurisdiction of claims tribunal for awarding compensation in respect of such category of cases where the death or bodily injury is caused in the accident arising out of use of motor vehicle but without negligence in use of such motor vehicle and where the accidents are caused due to the use of motor vehicle but outside agency is found to be solely responsible for such accident, the use of which Legislature has deliberately omitted while enacting the provisions of Section 165 of Motor Vehicle Act.

22. At this juncture, we would like to add further that having given our thoughtful consideration to the ambit and scope of provisions of Section 165(1) of New Motor Vehicles Act in the wake of decision of the Hon'ble Apex Court in Kaushnuma Begum's case (supra), it seems that rules of strict liability of owner of mischievous things propounded in *Rylands v. Fletcher*'s case, have been embodied under the provisions of Section 165(1) of the New Motor Vehicle Act, but without incorporating any of exceptions of the aforesaid rules. Seven exceptions as defence were provided under the aforesaid rules of strict liability of owner, such as (1) consent of the plaintiff i.e. *volenti non fit injuria*, (2) common benefit i.e. where the source of danger is maintained for the common benefit of plaintiff and defendant, the defendant is not liable for its escape, (3) Act of stranger, i.e. if the escape was caused by the act of unforeseeable act of stranger, the rule does not apply, (4) exercise of statutory authority i.e. the rule will stand excluded either when the act was done under a statutory duty or when a statute provides otherwise. (5) Act of God i.e. circumstances which no human foresight can provide against and of which human prudence is not bound to recognize the possibility. (6) Default of plaintiff where the damage is caused on his count, the rule will not apply. (7) Remoteness of consequences. But assuming for sake of arguments, the aforesaid exceptions of law of torts and common law are still available to the owner of mischievous things, thus the same may be available to the owner of the motor vehicle while in use, even then those exceptions would not exclude the jurisdiction of tribunal to entertain a claim under Sections 165 and 166 of the Motor Vehicle Act, at the most, such exceptions may be pleaded by the owner of motor vehicle as defence against such claims of the victims of the accident, therefore, on this count also the jurisdiction of claims tribunal cannot be excluded. In our opinion, the concept of negligence in use of motor vehicle cannot be imported from common law and law of Torts to oust the jurisdiction of claims tribunal u/s 165(1) of New Motor Vehicle Act in the wake of express provision under statute, which does not necessarily involves the negligence in use of motor vehicle. It is no doubt true that expression "arising out of use of motor vehicle" is wide enough to embrace in it,

negligence in use of motor vehicle also but it cannot be held to be necessary concomitant of it and while determining the ambit and scope of jurisdiction to entertain the claim and determine the compensation the expression "negligence" cannot be imported to interpret the meaning of expression "arising out of use of motor vehicle" to exclude such category of cases from the jurisdiction of tribunal where the accidents happens without negligent driving of motor vehicle or the accident occurred due to use of motor vehicle but the outside agency was found solely responsible for such accident, unless plain reading of provisions of Section 165 leads to anomaly and absurdity in consequence. Giving restricted meaning to the aforesaid expression would deprive such class of persons from the benefits of compensation who are otherwise entitled if the fair and a reasonable meaning is given to the aforesaid expression. The aforesaid view also stands fortified from statement of law made u/s 175 of Motor Vehicle Act, where the claims tribunal shall have exclusive jurisdiction to entertain any claim for compensation which may be adjudicated upon by the claims tribunal for that area in total exclusion of the jurisdiction of Civil court. In case such other persons or outside agency which may be joint tort feasons or found to be guilty of composite negligence or found solely responsible in causing the accident are excluded from the jurisdiction of tribunal if the accident arises out of use of motor vehicle , the victims to motor accident would be rendered remediless against such joint tort feasons. Thus that would be complete distortion of purpose underlying Sections 165 and 175 of New Motor Vehicle Act. For all the above reasons, we hold that the claim for compensation is maintainable before the Tribunal against other persons or agencies which are held to be guilty of composite negligence or are joint tort feasons or found to be solely responsible for causing accident if arising out of use of the motor vehicle. Thus having regard to the beneficial object of legislation the restricted meaning to the expression "arising out of use of motor vehicle" can not be given which would deny the relief reasonably contemplated by the statute.

23. At this juncture it is to be pointed out that confusion might have arisen due to use of expression "liability to pay compensation in certain cases on the principle of no fault" in the heading of Sections 92-A and 92-B inasmuch as provisions contained thereunder and in Chapter VII-A of Old Motor Vehicle Act and so also under Sections 140 141 and 163A of New Motor Vehicle Act, which distinguished the liability to pay compensation on the principle of no fault from that of right to claim compensation on principle of fault. But from the perusal of provisions of Chapter XII of New Motor Vehicle Act, which contains the provision right from Sections 165 to 176, there is nothing to indicate that while making claim for compensation under Chapter XII of the New Motor Vehicle Act the claimants are required to plead and prove the negligence in use of motor vehicle or if the outside agency is found to be solely responsible in causing the accident involving the death or bodily injury to persons or damage to any property of third party so arisen or both, the claimants would be divested from claiming compensation under the aforesaid provisions of Act, thus, import of the concept of negligence from common law and law of Torts to exclude the jurisdiction of

Claims Tribunal on the principle of fault required to be established by victims and legal representative of victim cannot be reasonably inferred from any of the provisions contained under Chapter XII of the Motor Vehicle Act. In our opinion, provisions contained under Sections 140 141 of Chapter X and Section 163A of Chapter XI of New Motor Vehicle Act, despite having overriding effect to extent indicated thereunder cannot be interpreted as controlling provisions of the Sections 165 and 166 of New Motor Vehicle Act, particularly when the words and expressions used u/s 165 of the New Motor Vehicle Act are clear, plain, unambiguous, and meant to serve beneficial object of the statute, without involving any anomaly, inconsistency and absurdity in consequence. We do not find any difficulty in accepting the same meaning of the expression "arising out of use of motor vehicle" as given in Shivaji Dayanu Patil's case and Smt. Rita Devi's case in the wake of dictum of Hon''ble Apex Court in Kaushnuma Begum's case u/s 165 as well.

24. In view of aforesaid discussion, we are of the considered opinion that the conclusions drawn by Full Bench of this Court in Smt. Sushila Devi's case to the effect that the mere fact that motor vehicle was involved in the accident by itself, and without more would not confer on the Tribunal's jurisdiction to entertain the claim and further where the claim for compensation alleges that the accident was caused by negligence of driver of motor vehicle as well as by some outside agency and if the Tribunal ultimately finds that the accident was wholly caused by outside agency and not by the driver of the motor vehicle it will cease to have any jurisdiction to grant any relief to the claimant and where the claim petition is directed solely against a outside agencies, i.e. other than the driver, owner or the insurer of the vehicle, the tribunal shall have no jurisdiction even to entertain the petition at the very threshold, appears to be contrary to the dictum's of Hon''ble Apex court in aforesaid cases, indicated herein before. In our opinion, the aforesaid statements of law laid down by Full Bench of this Court are clearly in conflict of dictums of Hon''ble Apex Court stated hereinbefore. With due respect we are not able to persuade ourselves to agree with the aforesaid conclusions drawn by Hon''ble Full Bench. In other words the conclusion drawn by the Full Bench in respect of second and fourth category of cases, in our considered opinion, are clearly contrary to the dictum of Hon''ble Apex Court as indicated hereinbefore, therefore, can be held to be no longer good law.

25. Now before applying the law enunciated hereinbefore in the facts and circumstances of the case in question, we would like to extract the findings recorded by Motor Vehicle Claims Tribunal on the issue of jurisdiction and entitlement of relief claimed in the claim petition as under:

In the instant case a cursory glance at the evidence produced by the petitioners themselves show that this accident was a result of the pelting or the stones by unruly boys. These boys got infuriated on account of refusal on the part of driver to stop the vehicle at their indication and they indulged in stone pelting which damaged glasses and as a result of this fact driver lost balance and vehicle fell

into the ditch and eventually dashed against a Babool tree. These facts show that this act is wholly attributable to outside agency and that the driver of the vehicle was neither rash nor negligent in driving the vehicle. Thus in such cases no relief could be given to the claimants.

26. Thus in view of law enunciated herein before, we are not in agreement with the conclusions drawn by the Tribunal based on the aforesaid findings. It appears that said conclusions are based on Full Bench decision of this Court rendered in Smt. Shushila Devi's case which we have already dealt with in some detail and have held that conclusions drawn by the Hon''ble Full Bench of this Court in respect of second and forth categories of cases referred in the judgment of Hon''ble Full Bench are in conflict of decision of Hon''ble Apex Court referred herein before Therefore, in our opinion, the conclusions drawn by Tribunal cannot be sustained and liable to be set aside. We further hold that in given facts and circumstances of the case the Tribunal had jurisdiction to grant relief claimed by the claimants/appellants and claimants were entitled for relief claimed before the Tribunal, because of the reason that the accident in question arose out of use of motor vehicle. It can not be inferred that accident in question was wholly unconnected with the use of motor vehicle. It is immaterial that Tribunal has found that outside agency was solely responsible for said accident and it was not caused on account of rash and negligent driving of motor vehicle. In given facts and circumstances of the case, in our opinion the accident in question was incidental to the use of motor vehicle, it is immaterial whether it was caused by rash and negligent driving of motor vehicle or it was solely caused by outside agency or offending motor vehicle had contributed it or not.

27. Since the accident took place in the year 1994 i.e. 23 January 1994 and a period of more than 13 years have passed, therefore, in stead of remitting the matter back to the Tribunal for disposal of the claim petition as fresh after hearing to the parties on merits, in order to shorten the litigation between the parties we think it proper and appropriate to decide the claim petition on merits as sufficient materials have been brought by the appellants through the paper book submitted before this Court in appeal and counsel appearing for respondents have no objection with regard to the contents of paper book submitted by the appellants but before proceeding to determine quantum of compensation, it would be noted that second schedule of the Motor Vehicle Act, providing structural formula for determination of quantum of compensation, has been inserted in the aforesaid Act, by virtue of Section 163A of the Act, which too was added by Section 51 of Act No. 54 of 1994. The amended Act No. 54 of 1994 has come into force vide notification dated 6.10.1994 w.e.f. 14.11.1994, therefore, further question arises for consideration as to whether the aforesaid second schedule of the Act can be taken into aid for determination of compensation or the computation has to be based on the methods in vogue while commencement of the provisions of Section 163A of New Motor Vehicle Act? This question would further depend upon answer of another question as to whether the provisions of said section would apply prospectively or have retrospective

operation?

28. So far as question whether the structural formula provided under the provisions of Section 163A of the Act can be taken into aid to determine quantum of compensation is concerned, it is to be noted that in case of U.P. State Road Transport Corporation and Others Vs. Trilok Chandra and Others, the Hon''ble Apex Court has held that multipliers provided under schedule can be used only as guide but in Deepal Girishbhai Soni and Others Vs. United India Insurance Co. Ltd., Baroda, in para 67 of the decision Hon''ble Apex Court has held that only those whose annual income is upto Rs. 40,000/- can take benefit of aforesaid schedule second and all other claims are required to be determined in terms of Chapter-XII of the Act and further in para 57 of the decision held as under:

57. We, therefore, are of the opinion that remedy for payment of compensation both under Sections 163A and 166 being final and independent of each other as statutorily provided, a claimant cannot pursue his remedies thereunder simultaneously. One, thus, must opt/elect to go either for a proceeding u/s 163A or u/s 166 of the Act, but not under both.

29. In view of the aforesaid legal position settled by Hon''ble Apex Court since we have already held that the claimant/appellants are entitled to claim compensation and get relief u/s 166 of New Motor Vehicle Act, therefore, the claim of claimants/appellants is not needed to be examined under the provisions of Section 163A of Motor Vehicle Act but so far as methods of determination of compensation is concerned, we still need to examine its applicability in given facts and circumstances of this case. In this regard, it is pointed that from the record it reveals that the income of deceased Sri A.K. Mishra at the time of accident and his death was Rs. 3000/- per month, therefore, his annual income would come to Rs. 36,000/- which is within the limit of Rs. 40,000/-, thus the quantum of compensation to be awarded to the claimants/appellants can be determined and computed according to second schedule of the Act. But this too would depend upon answer of question formulated herein before. Therefore, it is necessary to deal with the issue as to whether Section 163A of New Motor Vehicle Act would apply to the pending case of claimants/appellants or not?

30. In this connection learned Counsel for the appellants has cited several authorities before us that the provisions of Section 163A of Motor Vehicle Act have retrospective operation more so covers the pending cases on the date of commencement of amending Act and in some cases Hon''ble Apex Court itself has applied the multiplier provided under second schedule of the Motor Vehicle Act in respect of past accidents occurred much earlier to the date of commencement of aforesaid provisions, but he could not bring any direct authority in support of his submission where the question has been dealt with eloquently and with some detail, therefore we need not to refer them. However contrary to it, in Guruanna Wadi and Anr. v. General Manager, Karnataka State Road Transport Corporation and Anr. 2001 (3) TAC 329, Hon''ble Full Bench of Karnataka High Court has held that the provisions of Section 163A of Act deals

with substantive right, therefore, prospective in operation but we will deal it a little later.

31. In this connection it would be useful to refer a Constitution Bench decision of Hon"ble Apex Court rendered K.S. Paripoornan Vs. State of Kerala and Others, wherein the Hon"ble Apex Court has occasion to consider the impact and implication of Section 23 (1 A) inserted by Amendment Act 68 of 1984 in Land Acquisition Act in respect of acquisition proceedings initiated prior to commencement of Amendment Act whereby the provision relating payment of additional amount of compensation under Section(1A) of Section 23 apart from market value of the land acquired was provided. While delivering the majority judgment Hon"ble Justice S.C. Agrawal (as he then was) has drawn the distinction between statute dealing with the substantive right and a statute, which relates to procedure or evidence or declaratory in nature and held that a statute dealing with the substantive rights is prima facie prospective unless it is expressly or by necessary implication made to have retrospective effect whereas a statute concerned mainly with matters of procedure or evidence or which is declaratory in nature has to be construed as retrospective unless there is clear indication that such was not the intention of the legislature. The pertinent observation made by Hon"ble Apex Court in this regard in para 44,45,47 and 48 of the decision are quoted as under:

44. A statute dealing with substantive rights differs from a statute which relates to procedure or evidence or is declaratory in nature inasmuch as while a statute dealing with substantive rights is prima facie prospective unless it is expressly or by necessary implication made to have retrospective effect, a statute concerned mainly with matters of procedure or evidence or which is declaratory in nature has to be construed as retrospective unless there is a clear indication that such was not the intention of the Legislature. A statute is regarded as retrospective if it operates on cases or facts coming into existence before its commencement in the sense that it affects, even if for the future only, the character or consequences of transactions previously entered into or of the other past conduct. By virtue of the presumption against retrospective applicability of laws dealing with substantive rights transactions are neither invalidated by reason of their failure to comply with formal requirements subsequently imposed, nor open to attack under powers of avoidance subsequently conferred. They are also not rendered valid by subsequent relaxations of the law, whether relating to form or to substance. Similarly, provisions in which a contrary intention does not appear neither impose new liabilities in respect of events taking place before their commencement, nor relieve persons from liabilities then existing, and the view that existing obligations were not intended to be affected has been taken in varying degrees even of provisions expressly prohibiting proceedings. {See Halsbury's Laws of England, 4th Edn. Vol. 44, paras 921, 922, 925 and 926}.

45. These principles are equally applicable to amendatory statutes. According to Crawford:

Amendatory statutes are subject to the general principles relative to retroactive operation. Like original statutes, they will not be given retroactive construction, unless the language clearly makes such construction necessary. In other words, the amendment will usually take effect only from the date of its enactment and will have no application to prior transaction, in the absence of an expressed intent or an intent clearly implied to the contrary. Indeed there is a presumption that an amendment shall operate prospective. {See Crawford's Statutory Construction pp. 622, {23}}.

47. In the instant case we are concerned with the application of the provisions of Sub-section (1-A) of Section 23 as introduced by the amendment Act to acquisition proceedings which were pending on the date of commencement of the amending Act. In relation to pending proceedings, the approach of the Courts in England is that the same are unaffected by the changes in the law so far as they relate to the determination of the substantive rights and in the absence of a clear indication of a contrary intention in an amending enactment, the substantive rights of the parties to an action fall to be determined by the law as it existed when the action was commenced and this is so whether the law is changed before the hearing of the case at the first instance or while an appeal is pending. (See Halsbury's Laws of England, 4th Edn., Vol.44, para 922). Similar is the approach of the Courts in India. In AIR 1941 16 (Federal Court) Sulaiman, J. has observed:

Undoubtedly, an Act may in its operation be retrospective, and yet the extent of its retrospective character need not extend so far as to affect pending suits, Courts have undoubtedly leaned very strongly against applying a new Act to pending action, when the language of the statute does not compel them to do so." (p. 163 of FCR) : (at p. 37 of AIR).

To the same effect are the observations of Varadachariar, J., who has stated:

There can be little doubt that there is a well recognised presumption against construing an enactment as governing the rights of the parties to a pending action.... There are two recognised principles, that vested rights should not be presumed to be affected and that the rights of the parties to an action should ordinarily be determined in accordance with the law as it stood at the date of the commencement of the action. The language used in an enactment may be sufficient to rebut the first presumption, but not the second. Where it is intended to make a new law applicable even to pending actions, it is common to find the Legislature using language expressly referring to pending actions." (pp. 185-186 of FCR): (at pp. 46 and 47 of AIR).

48. In the words of S.R. Das, C. J., "The golden rule of construction is that, in the absence of anything in the enactment to show that it is to have retrospective operation, it cannot be so construed as to have the effect of altering the law applicable to a claim in litigation at the time when the Act was passed." (See Garikapatti Veeraya Vs. N. Subbiah Choudhury, In order that the provisions of a

statute dealing with substantive right may apply to pending proceedings the Court has insisted that the law must speak in language which expressly or by clear intendment, takes in even pending matters. {See Smt. Dayawati and Another Vs. Inderjit and Others, and Lakshmi Narayan Guin and Others Vs. Niranjana Modak,

32. Thereafter the Hon'ble Apex Court has dealt with the issue as to whether Section 23(1-A) of Land Acquisition Act have retrospective operation so as to be applicable to the acquisition proceedings which were commenced prior to the date of enactment of said provision if so what extent with the aid of amending provision in paragraphs 49, 50, 51 and 54 of the decision as under:

49. The provisions of Section 23(1-A) have to be construed in the light of the aforementioned principles. If thus construed, it would be evident that u/s 23(1-A) an obligation to pay an additional amount by way of compensation has been imposed. Such an obligation did not exist prior to the enactment of the said provisions by the amending Act. If the said provision is applied to the acquisition proceedings which commenced prior to its enactment and an additional obligation in the matter of payment of compensation is imposed for such acquisition the effect would be that the said provision would be operating retrospectively in respect of transitions already past. We are, therefore, unable to agree with the view expressed in Union of India (UOI) and Another Vs. Zora Singh and Others, that Section 23(1-A) would only operate prospectively and will not have retrospective operation if it is construed as applying to proceedings which were pending before the Reference Court on the date of the commencement of the amending Act and in which the Reference Court makes the award after the commencement of the amending Act.

50. The next question which needs to be considered is whether any indication has been given by Parliament that Section 23(1-A) will have retrospective operation so as to be applicable to acquisition proceedings which were commenced prior to the date of the enactment of the said provision. The learned Counsel for the claimants have urged that such an indication has been given by the words "in every case" used in Section 23(1-A). We are, however, of the view that Parliament has given a clear indication of its intention in this regard in Section 30(1) of the amending Act. Since express provision is contained in Section 30(1) of the amending Act indicating the intention of Parliament as to the extent to which the provision of Section 23(1-A) would apply to pending proceedings there is no scope for speculating about the said intention of Parliament by reading Section 23(1-A) in isolation without reference to Section 30(1) of the amending Act.

51. Section 30 of the amending Act bears the heading "Transitional provisions". Explaining the role of transitional provisions in a statute, Bennion has stated:

Where an Act contains substantive, amending or repealing enactments, it commonly also includes transitional provisions which regulate the coming into

operation of those enactments and modify their effect during the period of transition. Where an Act fails to include such provisions expressly, the Conn is required to draw inferences as to the intended transitional arrangements as, in the light of the interpretative criteria.

[Francis Bennion: Statutory Interpretation, 2nd Edn., P.213]

The learned author has further pointed out:

Transitional provisions in an Act or other instrument are provisions which spell out precisely when and how the operative parts of the instrument are to take effect. It is important for the interpreter to realise, and bear constantly in mind, that what appears to be the plain meaning of a substantive enactment is often modified by transitional provisions located elsewhere in the Act. (P.213)

Similarly Thornton in his treatise on Legislative Drafting has stated:

The function of a transitional provision is to make special provision for the application of legislation to the circumstances which exist at the time when that legislation comes into force.

For the purpose of ascertaining whether and, if so, to what extent the provisions of Sub-section (1-A) introduced in Section 23 by the amending Act are applicable to proceedings that were pending on the date of the commencement of the amending Act, it is necessary to read Section 23(1-A) along with the transitional provisions contained in Sub-section (1) of Section 30 of the amending Act.

54. If Sub-section (1-A) of Section 23 is construed in the light of the provisions contained in Sub-section (1) of Section 30 of the amending Act there is no escape from the conclusion that Section 23(1-A), by itself, has no application to proceedings which had commenced prior to the enactment of the amending Act and the applicability of the said provision to pending proceedings is governed exclusively by Sub-section (1) of Section 30 of the amending Act. A perusal of Sub-section (1) of Section 30 of the amending Act shows that it divides the proceedings for acquisition of land which had commenced prior to the date of the commencement of the amending Act into two categories, proceedings which had commenced prior to April 30, 1982 and proceedings which had commenced after April 30, 1982. While Clause (a) of Section 30(1) deals with proceedings which had commenced prior to April 30, 1982, Clause (b) deals with proceedings which commenced after April 30, 1982. By virtue of Clause (a) Section 23(1-A) has been made applicable to proceedings which had commenced prior to April 30, 1982 if no award had been made by the Collector in those proceedings before April, 30, 1982. It covers (a) proceedings which were pending before the Collector on April 30, 1982 wherein award was made after April 30, 1982 but before the date of the commencement of the amending Act, and (b) such proceedings wherein award was made by the Collector after the date of the commencement of the amending Act. Similarly Section 30(1)(b) covers (a) proceedings which had commenced after April 30, 1982 wherein award was

made prior to the commencement of the amending Act, and (b) such proceedings wherein award was made after the commencement of the amending Act. It would thus appear that both the Clauses [(a) and (b)] of Sub-section (1) of Section 30 cover proceedings for acquisition which were pending on the date of the commencement of the amending Act and to which the provisions of Section 23(1-A) have been made applicable by virtue of Section 30(1). If Section 23(1-A), independently of Section 30(1), is applicable to all proceedings which were pending on the date of the commencement of the amending Act Clauses (a) and (b) of Section 30(1) would have been confined to proceedings which had commenced prior to the commencement of the amending Act and had concluded before such commencement because by virtue of Section 15 the provisions of Section 23(1-A) would have been applicable to proceedings pending before the Collector on the date of commencement of the amending Act. there was no need to so phrase Section 30 (1) as to apply the provisions of Section 23(1-A) to proceedings which were pending before the Collector on the date of the commencement of the amending Act. This only indicates that but for the provisions contained in Section 30(1), Section 23(1-A) would not have been applicable to proceedings pending before the Collector on the date of commencement of the amending Act.

33. Thus, from the aforesaid discussion it is clear that 0 the aforesaid Constitution Bench of Hon''ble Apex Court has considered the prospective and retrospective operation of the provisions of amendment made in the statute which was found to be dealing with substantive right with the aid of amending provisions containing transitional provisions under amending statute.

34. In this connection it would not be out of place to extract para 21 of the decision of Hon''ble Apex Court rendered in Mahadeo Prasad Singh and Another Vs. Ram Lochan and Others, wherein Hon''ble Apex Court has propounded general rule of interpretation of statute in respect of prospective and retrospective applicability of statute as under:

21. ...As a general rule, a statute which takes away or impairs substantive rights acquired under the existing law is construed to have a prospective operation unless the language of that statute expressly or by inevitable intendment compels a contrary construction. But this presumption as to prospective operation of a statute does not apply to an enactment affecting procedure or practice such as the Code of Civil Procedure. The reason is that no person has a vested right in any course of procedure. "The general principle indeed seems to be that alterations in the procedure are always retrospective, unless there be some good reason against it.

35. In this connection it would also be useful to refer a decision of Hon''ble Apex Court rendered in Sree Bank Ltd. Vs. Sarkar Dutt Roy and Co., , wherein Hon''ble Apex Court has held that in order to determine prospective or retrospective applicability of statute the intent of legislature can also be gathered from the aims and object of statute. The pertinent observation made in this regard in para

4,5 and 38 of the decision are extracted as under:

4...The general rule no doubt is, as was stated by Wright, J. in *In re, Athlumney; Exparte, Wilson* 1898 2 QB 547 at procedural provision. 551-552.

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.

5. Two reasons have operated on my mind to lead me to the conclusion that the general rule should not be applied in the present case. First, it is recognised that the general rule is not invariable and that it is a sound principle in considering whether the intention was that the general rule should not be applied, to "look to the general scope and purview of the statute, and at the remedy sought to be applied, and consider what was the former state of the law and what it was that the Legislature contemplated." see *Pardo v. Bingham* (1869) 4 ChA 735. Again in *Craies on Statute Law*, 6th Ed. it is stated at p. 395.

If a statute is passed for the purpose of protecting the public against some evil or abuse, it may be allowed to operate retrospectively, although by such operation it will deprive some person or persons of a vested right.

To the same effect is the observation in *Halsbury's Laws of England*, 3rd Ed. Vol. 36, p. 425. This seems to me to be plain commonsense. In ascertaining the intention of the legislature it is certainly relevant to enquire what the Act aimed to achieve....

38. It is not necessary for the retrospective operation of the provision of an Act that it must be stated that its provisions would be deemed to have always existed. That is one mode and may be an effective mode of providing that the provisions would have retrospective effect. Retrospective effect of an enactment can also be gathered from its language and the object and intent of the legislature in enacting it.

36. In this connection it would also be pertinent to refer a decision of the Hon"ble Apex Court rendered in *Lakshmi Narayan Guin and Others Vs. Niranjan Modak*, wherein Hon"ble Apex Court has considered the effect of change in law during the pendency of appeal. The pertinent observation made by Hon"ble Apex Court in this regard in para 8 and 9 of the decision are extracted as under:

8. The next point is whether Sub-section (1) of Section 13 can be invoked where the suit was instituted before the Act came into force. In the instant case, the suit was instituted long before the Act was extended to Memari. Sub-section (1) of Section 13 directs the Court not to make any order or decree for possession subject, of course, to the statutory exceptions. The legislative command in effect deprives the Court of its unqualified jurisdiction to make such order or decree. It

is true that when the suit was instituted the Court possessed such jurisdiction and could pass a decree for possession. But it was divested of that jurisdiction when the Act was brought into force. The language of the sub-section makes that abundantly clear, and regard must be had to its object. In *Shah Bhojraj Kuverji Oil Mills and Ginning Factory Vs. Subbash Chandra Yograj Sinha*, a Bench of five Judges of this Court had occasion to consider Sub-section (I) of Section 12 of the *Bombay Resnts. Hotel and Lodging House Rates Control Act, 1947*. Sub-section (1) of Section 12 provided:

A landlord shall not be entitled to the recovery of possession of any premises so long as the tenant pays, or is ready and willing to pay, the amount of the standard rent....

On the question whether the provision applied to pending suits for possession, the learned Judges drew attention to the point of time specifically mentioned in the sub-section. It operated, they said, "when the decree for recovery of possession will have to be passed" and did not refer back to the institution of the suit. By a unanimous judgment the learned Judges held that the subsection applied to pending suits. In passing, it may be noted that the learned Judges expressed a degree of hesitation on whether a statutory injunction of that nature could be applied retrospectively to appeals against decrees already made. But any doubt on the point must be considered to have been finally removed by this Court when in *Rafiquennessa Vs. Lal Bahadur Chetri (Dead) through his Representatives and Others*, another Bench of five Judges, which included J.C. Shah J. who was a member of the Bench in the earlier case, held on an interpretation of Clause (a) of Sub-section (1) of the *Assam Non-Agricultural Urban Areas Tenancy Act, 1955*, which prohibited the eviction of a tenant, that the statutory provision came into play for the protection of the tenant even at the appellate stage. The learned Judges relied on the principle that an appeal was a continuation of the suit and that the appeal would be governed by the newly enacted Clause (a) of Sub-section (I) of Section 5 even though the trial Court decree had been passed earlier.

9. That a change in the law during the pendency of an appeal has to be taken into account and will govern the rights of the parties was laid down by this Court in *Ram Sarup Vs. Munshi and Others*, which was followed by this Court in *Mula and Others Vs. Godhu and Others*, this Court observed:

If the new law speaks in language, which, expressly or by clear intendment, takes in even pending matters, the Court of trial as well as the Court of appeal must have regard to an intention so expressed and the Court of appeal may give effect to such a law even after the judgment of the Court of first instance.

37. Before applying the principles enunciated herein before, it is necessary to state some more facts having material bearing with the question in issue. Section 163A of the *Motor Vehicle Act* has been inserted by Section 51 of the *Motor Vehicle Amendment Act 1994* (for short "Act No. 54 of 1994"). Sub Section

2 of Section 1 of Act No. 54 of 1994 provides that it shall come into force on such dates, the Central Government may by notification in the official gazette appoint and different dates may be appointed for different provisions of this Act and any reference in any such provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision. The amending Act No. 54 of 1994 has received the assent of the President on 10.9.1994 and published in gazette of India on 12.9.1994. The provisions contained in the amending Act have given effect by notification dated 6.10.1994 w.e.f. 14.11.1994 but it is well settled that the commencement of the provisions of an enactment is one thing and effect of the operation of provisions of enactment is another thing. Therefore, it requires to be examined by the Court before applying the said provisions.

38. Now on examination of the statute in question we find that there appears no provision in the Amending Act, like transitional provision which regulate the coming into operation of those enactment and modify their effect during the period of their transition, which is normally found in Amending Act, containing substantive, amending or repealing enactments. Where an amending Act fails to include such provisions expressly, the Court is required to draw inferences as to the intended transitional arrangements in the light of interpretative criteria. Transitional provisions in an Act or other instruments are provisions, which spell out precisely, when and how the operative part of the instrument are to take effect (Francis Bennion: Statutory Interpretation, 2nd Edition; P.213). Since the amending Act No. 54 of 1994 fails to contain any transitional provision as to when and how the provisions of Section 163A would apply, therefore, Court is required to draw inference as to the intended transitional arrangement by interpretation. But at the same time failure to contain any transitional provisions under amending Act to the effect that as to when and how the amendment would apply, it seems to us that amended provisions are not necessarily dealing with substantive rights. At this juncture, it is necessary to point out that substantive law means, that part of law which creates and defines rights; not adjective law which defines, method of enforcing rights (Law Lexicon-Page 1229 5th Edition).

39. Now on a close analysis of the provisions of Section 163A of the Act, it appears that Sub-section 1 of said section clearly postulates that notwithstanding anything contained in this Act or any other law for the time being in force or instrument having the force of law, the owner of the Motor Vehicle or the authorised insurer, shall be liable to pay in case of death or permanent disablement due to accident arising out of the use of the Motor Vehicle, compensation as indicated in the second schedule to the legal heirs or the victims as case may be. Thus the aforesaid compensation has to be based on structural formula provided under second schedule of the Act. Sub-section 2 of Section 163A further provides that 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 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 persons, thus Sub-section (2) deals with method of pleadings and standard of proof of the claim. It is no doubt true that schedule appended to a statute forms integral part of the statute and it often gives the details and modes for working out the policy underlying the statute, but question that remains to be considered, would be what is intended to be done by the provisions of entire Section 163A including the second schedule of the Act?

40. In this connection, it is pointed out that a joint reading of provisions of Section 165 166 and 168 of the Act, clearly indicates that similar claim for compensation by the victims or legal heirs is also maintainable under the aforesaid sections for death or bodily injury, due to accident arising out of use of motor vehicle and claims tribunal is empowered to award just compensation after making necessary inquiry. u/s 166 of the Act, although the application is to be made for compensation but no particular mode of pleading and proof has been provided, therefore, what is new and special provided under the provisions of Section 163A of the Act seems to be a structural formula for method of computation of compensation to be awarded by the accident claims tribunal and method of pleading and standard of proof in respect of such claim. The right to receive compensation, in our considered opinion, still flows from accident arising out of use of motor vehicles, as existing under earlier statute. Thus the changes brought about by new statute i.e. by Section 163A of the Act appears to be only in respect of mode and method of enforcement of right to receive compensation and it has nothing to do with the creation of any new right or obligation in respect thereof. Therefore, in our opinion, the aforesaid provisions, merely dealing with the new method of enforcement of rights existing under earlier existing statute. It does neither create any new right or obligation nor impose new liability nor takes away or impairs any vested right acquired under existing law, thus as distinguished from a statute dealing with substantive rights, it can be termed as an adjective statute dealing with methods of establishing the rights. Thus in our opinion, the provisions contained thereunder appear to be nature of remedial statute, which is also of procedural in nature providing method of computation of compensation and method of pleading and standard of proof of the claim and cannot be held to be statute dealing with substantive rights. In this view of the matter, presumption as to prospective operation of a statute does not apply to an enactment affecting procedure or evidence. The reason is that no person has a vested right in any course of procedure. The general principle indeed seems to be that alteration in procedure are always, retrospective, unless there be some good reason against it. In view of the aforesaid discussion, there can be a little scope for doubt to hold that since the provision contained u/s 163A of the Motor Vehicle Act cannot be said to be a statute dealing with the substantive rights rather contains statute relating to procedure and evidence, therefore, presumption as to prospectivity of the statute does not apply.

41. At this juncture it is necessary to point out that as held by a Constitution Bench of the Hon'ble Apex Court in para 12 of the decision rendered in Shah

Bhojraj Kuverji Oil Mills" case (supra), that a section may be prospective in some parts and retrospective in other parts, while it is ordinary rule that substantive rights should not be held to be taken away except by express provision or clear implication. Many Acts, though prospective in form have been given retrospective operation, if the intention of legislature is apparent. This is more so when Acts are passed to protect the public against some evil or abuse (see Craies on statute law 5th Edition P. 365).

42. Thus in view of aforesaid legal position, assuming for the sake of argument that provisions contained in Section 163A(1) of Motor Vehicle Act are substantive in nature as it confers new favour or remedy and creates new obligations, even then the intent of legislature can be gathered from language employed under Sub-section (1) of Section 163A of Motor Vehicle Act and object sought to be achieved by it, wherein the legislature by using non-obstante clause has clearly mandated that the owner of motor vehicle or authorised insurer shall be liable to pay in case of death or permanent disablement due to accident arising out of use of motor vehicle, compensation to the legal heirs or victims as case may be without any cut of date as to whether the accident occurred prior to date of commencement of the aforesaid provisions of the Act or on or after the commencement of the Act. It implies that the mandate of legislature can be complied with only when Claims Tribunal award compensation to the victims or legal heirs in situations, visualised under the provisions of aforesaid section. If the claim tribunals would refuse to award such compensation keeping the view in mind the date of commencement of the aforesaid provisions vis-a-vis date of occurrence of the accident, they would certainly defy the clear mandate of legislation in this regard. Therefore, in our considered opinion the law laid down by Hon"ble Apex Court in Shah Bhojraj Kuverji Oil Mills" case (supra) and Lakshmi Narayan"s case (supra) would clearly apply in such situation and the provisions of Section 163A of Motor Vehicle Act will apply even in pending cases before Claims Tribunal as well as in pending statutory appeals at higher forum including this Court, irrespective of the fact as to whether accident occurred prior to the date of commencement or on or after the date of commencement of the aforesaid provisions of Act, accordingly, we hold that even assuming that the provisions of Section 163A of the Act are substantive in nature even then have retrospective operation.

43. Viewing the matter from the historical backdrop of the Act it is to be noticed that prior to commencement of the New Motor Vehicle Act, old Motor Vehicle Act 1939 was in operation and Section 166 of New Motor Vehicle Act is corresponding to the Section 110-A of Old Motor Vehicle Act, wherein the application for compensation was required to be moved in respect of accident of the nature specified in Sub-section (1) of Section 110. Sub-section (3) of Section 110-A of Old Motor Vehicle Act provided period of limitation for moving such application within six months from the date of occurrence of accident. Subsequently the aforesaid period of limitation u/s 166 Clause (3) of New Motor Vehicle Act was liable to be extended for a period of 12 months on satisfaction of tribunal that

the applicant was prevented by sufficient cause from making the application in time and by virtue of Act No. 54 of 1994 the aforesaid Sub-section (3) of Section 166 of new Motor Vehicle Act has been omitted/deleted leaving no period of limitation for moving application for compensation u/s 166 of New Motor Vehicle Act, 1988. Similarly there exist no provision u/s 163A of New Motor Vehicle Act providing any period for limitation for moving an application for compensation. Thus the scheme underlying the statute leads to a conclusion that for applicability of provisions contained in Section 163A of New Motor Vehicle Act, the period of limitation cannot be introduced by way of interpretation by applying the cut of date of commencement of amended Act to exclude the claim of compensation in respect of accident which occurred prior to the date of commencement of the aforesaid provisions of Amendment Act or in respect of the claims which were pending on the date of commencement of the Act thus providing any period of limitation as a cut of date for operation of the aforesaid provisions of Act would defeat the very purpose of statute which has been deliberately omitted from earlier existing provisions of statute. Therefore, in our opinion, giving prospective effect to the provisions of Section 163A of Act would be contrary to mandate of legislature inasmuch as would also defeat the beneficial intent and object of the legislature.

44. In this connection, it is pointed out that it is well settled that the words of "remedial statute" must be construed as far as they reasonably admit, that relief contemplated by the statute shall not be denied to the persons intended to be relieved. It is also well recognized principle of interpretation that when a statute is passed for the purpose of protecting the public against some evil or abuse keeping in view the dominant object of the statute departure from general rule of construction of statute has sometime been made. The court should adopt construction, which advances, fulfills and furthers object of the Act rather than which would defeat the same and rendered the protection illusory. In our opinion, there can be no doubt about that the provisions of statute contained in Section 163A of Motor Vehicle Act are remedial and beneficial in nature in the sense that it confer new favour or remedy to the claimant and the remedial Act are generally enacted to improve and facilitate remedies already existing for enforcement of rights and for redress of wrongs or injuries as well as to correct defects, mistakes and omission in a former law. Since the statute in question in our opinion, is also social security statute and intended to facilitate the remedy for expeditious disposal of claims inasmuch as intended to cure mischief and defect in existing procedure, therefore, we have no hesitation to hold that the provisions of Section 163A of the Act have retrospective operation and covers the cases even pending on the date of commencement of the said provisions. For aforestated reasons with all respect to the Hon''ble Full Bench of Karnataka High Court, we could not persuade ourself to agree with the view taken by Full Bench in Gुरुanna Wadi's case (supra).

45. In view of aforesaid discussions, we are of the firm opinion that the claimants claim petition could succeed u/s 166 and u/s 163A as well but we should not be

understood to say that claimants claim petition could be tried under both the provisions of Motor Vehicle Act simultaneously as the remedy provided u/s 163A of Motor Vehicle Act is final and independent remedy to that of Section 166 of Motor Vehicle Act. The claimants have option to prosecute their remedy under either of the provisions of Act but not under both the provisions simultaneously and once the claimants have prosecuted their remedy under either of the provision of the Act on becoming unsuccessful under one provision, it is not open for the claimants to prosecute their remedy under another provision. Besides, we would like to make it further clear that in view of decision rendered by Hon''ble Apex Court in Trilok Chandra's case (supra) wherein Hon''ble Apex Court has held that the multiplier and structural formula provided under Second Schedule of the Act can be used as guide for determination of compensation to be awarded to the claimants but in Deepal Girish Bhai Soni's case (supra) Hon''ble Apex Court has categorically held that the claim petition u/s 163A can be maintainable only in respect of the victims of motor accident having annual income maximum upto Rs. 40,000/-. Therefore, in our opinion, in cases where the allegations are made that the income of the victim is more than Rs. 40,000/- per annum it is not open for the tribunal to entertain the claim petition u/s 163A of the Act, such claim petition can be maintainable u/s 166 of the Motor Vehicle Act, thus, it is not open for the Motor Accident Claims Tribunal to take advantage of Second Schedule of the Motor Vehicle Act and multiplier used therein where the income of victims of motor accident is more than Rs. 40,000/- per annum. The multiplier in respect of age of victims of motor accident has co-relation with the income of the victims in the second schedule. Therefore it is not open for the claim tribunals to determine the annual income of the victim of motor accident over and above Rs. 40,000/- and then apply the multiplier on the basis of age alone as provided in the second schedule of the Act. Such approach would be complete distortion of scheme underlying the second schedule of the Act. In such cases only course, which is open for the Claims Tribunal to examine the loss of income independently without any aid of multiplier given under Second Schedule on the basis of traditional method of computation of compensation in vogue.

46. However, in the instant case, although we have examined the claim of appellants u/s 166 of the Motor Vehicle Act and have held that claimants entitles to receive compensation under the aforesaid provisions of the Act, but since the income of victim was found below Rs. 40,000/- per annum, therefore, there can be no illegality in taking aid of Second Schedule of the Motor Vehicle Act while computing the compensation to be awarded to the claimants as in our opinion, the determination of compensation on the basis of Second Schedule of the Motor Vehicle Act insures objectivity and fairness and eliminates certain degree of subjectivity in the decision making process, therefore, we have no hesitation to invoke the aid of Second Schedule of Motor Vehicle Act while computing the compensation to be awarded to the claimants. While doing so we should not be understood that we have decided the claim of appellants under both the provisions of Act or any way mixed up their claim under both the provisions of

Act.

47. Now applying the structural formula for computation of quantum of compensation as provided under second schedule of the Act, it is pointed out that on the basis of material evidence on record, tribunal has found that income of the deceased Awadhesh Kumar Mishra was Rs. 3000/- per month, thus it would come to Rs. 36,000/- per annum. One third of the said income shall be deducted in consideration of expenses which the victim would have incurred towards maintaining himself, had he been alive, thus the pecuniary loss to be suffered by heirs of the deceased would be worked out in the tune of Rs. 24000/- per annum, since the age of deceased at the time of accident and his death was 25 years, therefore, multiplier of 18 would apply. By applying said multiplier the amount of compensation would come to Rs. $24000 \times 18 = 4,32,000/-$. Since victim Awadhesh Kumar Misra died at once on the spot, therefore, no medical expense could be incurred. However a sum of Rs. 2000/- shall be payable as funeral expenses and Rs. 5000/- on account of loss of consortium to the widow of deceased and further sum of Rs. 2,500/- shall be paid for loss of estate. Thus a total sum of Rs. $4,32,000/- + 2000/- + 5000/- + 2,500/- = 4,41,500/-$ is payable as compensation to the heirs of deceased along with 7% per annum simple interest thereon from the date of application till the date of actual payment is made or till the date of deposits of the amount of compensation and interest thereon shall be made before the Motor Accident Claim Tribunal. However the amount of Rs. -60,000/- paid as interim compensation shall be deducted from total amount of compensation payable to the heirs of deceased, thereafter the, interest shall be computed by tribunal on Rs. $4,41,500/- - Rs\ 25,000/- = Rs.\ 4,16,500/-$. Out of the aforesaid amount of compensation, a sum of Rs. 25000/- alongwith interest thereon shall be paid to Smt. Kamla Devi, mother of deceased and a sum of Rs. 75000/- alongwith interest thereon shall be, paid to Ankur minor son of deceased and remaining amount of Rs. 2,91,500/- along with interest thereon shall be paid to Smt. Manjula Devi, widow of deceased. Out of the aforesaid compensation the mother of the deceased shall be entitled to withdraw her whole amount of compensation along with interest thereon without any security. However the widow of the deceased shall be permitted to withdraw only a sum of Rs. 2,00,000/- (Two lacs). The remaining amount of compensation and the amount of interest accrued on total compensation payable to her shall be deposited by tribunal in nationalized bank under some interest bearing scheme to be renewed at the interval of five years for a period of atleast 10 years and the amount so deposited can be released by tribunal on its own satisfaction according to pressing need of claimant Manjula Devi to the extent of such need on or after expiry of five years from the date of first deposit. The amount of compensation of Rs. 75000/- plus interest thereon payable to Ankur minor son of deceased shall be deposited in a nationalized Bank under interest bearing fixed deposit scheme which shall be renewed from time to time till he attains the age of majority. Since the Tribunal has further found that vehicle was covered by insurance policy and driver had valid licence at the time

of accident, therefore, insurer is liable to indemnify the liability of owner to pay the entire amount of compensation to the claimants within a period of two months from the date of order passed by this Court. Accordingly respondent No. 3, National Insurance Company Ltd., 133/2 O.P. Transport Nagar, Kanpur Nagar is directed to deposit the aforesaid amount of compensation along with interest thereon within a period of two months, which shall be released and deposited, as case may be, under interest bearing scheme in nationalized bank by tribunal within further period of one month according to directions given herein before.

48. In view of the aforesaid observations and directions, instant appeal succeeds and allowed. The impugned judgement and award dated 1.5.1997 passed by Motor Accident Claims Tribunal, Fatehpur in M.A.C. No. 84 of 1994 Smt. Manjula Devi and Ors. v. Commercial Motors and Ors. is set aside. The records of the case shall be remitted to the tribunal forthwith within a week.

49. There shall be no order as to costs.