

(2016) 04 KL CK 0053
In the High Court Of Kerala
Case No : M.A.C.A. No. 2021 of 2015

The Branch Manager, the New India Assurance Company Ltd.	APPELLANT
Vs	
Vinod	RESPONDENT

Date of Decision : 08-04-2016

Acts Referred:

Motor Vehicles Act, 1988 — Section 163A

Citation : (2017) AAC 62 : (2016) AIRCC 2787 : (2016) 2 KerLJ 818 : (2016) 3 KLT 817 : (2016) 4 TAC 449 : (2016) 2 TNMAC 232

Hon'ble Judges : Mr. P.R. Ramachandra Menon and Mr. Anil K. Narendran, JJ.

Bench : Division Bench

Advocate : Sri. Lal George, Advocate, for the Petitioner; Sri. Mohan Idiculla Abraham and Sri. T.A. George Joseph, Advocates, for the Respondent No. 2; Sri. T.K. Koshy and Sri. Sabu I. Koshy, Advocates, for the Respondent No. 1

Final Decision : Disposed Off

Judgement

Anil K. Narendran, J.—This appeal arises out of the Award passed by the Motor Accidents Claims Tribunal, Pathanamthitta in O.P.(MV) No.1346/2006, a claim petition filed by the 1st respondent herein, under Section 163A of the Motor Vehicles Act, 1988, claiming compensation for the injuries sustained by him in a motor accident occurred on 15.1.2006, involving a motorcycle bearing Registration No.KL-07/X-1217, owned by the 2nd respondent herein and insured by the appellant under the cover of an "Act policy". While the 1st respondent was riding the said motorcycle through Mandamarutham-Vechoochira Road, the motorcycle capsized as he lost control over the said vehicle. As a result of the accident the 1st respondent sustained injuries. Claim petition was filed before the Tribunal under Section 163A of the Act, claiming compensation under different heads.

2. Before the Tribunal, the appellant insurer filed written statement contending, inter alia, that the claim petition is not maintainable as the 1st respondent claimant himself is the tortfeasor. As per the Final Report filed by the Police in

Crime No.23/06 of Vechoochira Police Station, the accident occurred when the 1st respondent himself was riding the motorcycle in a rash and negligent manner. The 1st respondent alone was in the motorcycle. The Police registered FIR based on a private complaint filed by the 1st respondent's father before the Judicial First Class Magistrate Court, Ranni, on behalf of the 1st respondent, naming another person as the rider of the motorcycle. During investigation, the police recorded the statement of two witnesses cited in the private complaint. The investigation revealed that, the 1st respondent claimant himself was riding the motorcycle at the time of accident, and the private complaint was made with a false story regarding the accident, naming another person as the rider of the motorcycle, in order to claim compensation fraudulently from the insurer of the motorcycle. Accordingly, the police filed Final Report before the Magistrate Court as referred charge. Therefore, the appellant insurer contended that, the 1st respondent claimant is not entitled for compensation either under Section 166 or Section 163A of the Act. The appellant insurer contended further that, the averment in Para.10 of the claim petition that the 1st respondent claimant was travelling in the vehicle involved in the accident is false, as he was the rider of the motorcycle which capsized due to his rash and negligent riding.

3. On the side of the 1st respondent claimant, Exts.A1 to A8 series were marked. On the side of the appellant insurer, a copy of the insurance policy was marked as Ext.B1. Both sides have not chosen to adduce any oral evidence.

4. Based on the pleadings and materials on record, the Tribunal concluded that, the accident was the result of the negligence of the 1st respondent claimant himself is no more a controversial fact. After referring to the reference order of the Apex Court in *United India Insurance Co. v. Sunil Kumar* (2014 (1) SCC 680), the Tribunal held that, only because the 1st respondent claimant was a wrong doer and the accident was by his own default, he cannot be denied compensation and that, he has the right to claim compensation under the structured formula in the Second Schedule to the Act.

5. Awarding compensation under different heads, the total compensation payable was fixed at Rs. 99,147/-. Since the vehicle was covered by a valid insurance policy, the appellant insurer was directed to satisfy the award amount together with interest at the rate of 9% per annum from the date of petition, i.e., from 26.10.2006 till realisation, together with proportionate cost of Rs. 7,240/-.

6. Aggrieved by the Award passed by the Tribunal, the appellant insurer is before this Court in this appeal.

7. We heard the arguments of the learned counsel for the appellant insurer and also the learned counsel appearing for the 1st respondent claimant.

8. The learned counsel for the appellant insurer would contend that, the accident being a self-invited one occurred solely due to the negligence of the 1st respondent claimant, an application under Section 163A of the Act is not maintainable, in view of the law laid down by the Apex Court in *National*

Insurance Company Ltd. v. Sinitha (2012 (2) SCC 356). Per contra the learned counsel for the 1st respondent claimant would contend that Section 163A of the Act covers cases where even negligence is on the part of the victim and as such the award passed by the Tribunal is perfectly within the four walls of law.

9. The claim petition was filed with an averment that, the 1st respondent claimant was travelling in the vehicle involved in the accident. The appellant insurer filed written statement, contending that averment to that effect in Para.10 of the claim petition is false, as the 1st respondent claimant himself was the rider of the motorcycle, which capsized due to his rash and negligent riding. As per Ext.A3 Final Report in Crime No.23/06 of Vechoochira Police Station, the accident occurred while the 1st respondent himself was riding the motorcycle in a rash and negligent manner.

10. As stated in Ext.A3 Final Report, the accident occurred on 15.1.2006 at 2 am. The Police registered Ext.A1 FIR in Crime No.23/06 of Vechoochira Police Station, on 22.2.2006, based on a private complaint filed by the 1st respondent's father before the Judicial First Class Magistrate Court, Ranni. In the said complaint filed on behalf of the 1st respondent, another person was named as the rider of the motorcycle. During investigation, the police recorded the statement of two witnesses cited in the private complaint. The investigation revealed that, the 1st respondent claimant himself was riding the motorcycle at the time of accident and that, the private complaint was made with a false story regarding the accident, naming another person as the rider of the motorcycle, in order to claim compensation fraudulently from the insurer of the motorcycle. Accordingly, the police filed Ext.A3 Final Report before the Magistrate Court as referred charge. Based on the pleadings and materials on record, the Tribunal concluded that, the 1st respondent claimant was a wrong doer and the accident was by his own default. In the absence of any challenge by the 1st respondent claimant by way of an appeal or cross objection, the finding of the Tribunal in this regard has attained finality. Further, the pleadings and materials on record, which we have already referred to, indicate that the claim petition filed by the 1st respondent claimant is nothing but a calculated attempt to claim compensation from the appellant insurer in a fraudulent manner.

11. The claim petition filed by the 1st respondent claimant was one filed under Section 163A of the Act, which deals with special provisions as to compensation on structured formula basis. The said provision was inserted vide Section 51 of the Motor Vehicles (Amendment) Act, 1994, with effect from 14.11.1994. Sub-section (1) of Section 163A states that, notwithstanding anything contained in the Motor Vehicles Act or in any law for the time being in force, or instrument having the force of law, the owner of the motor vehicle or the authorised insurer shall be liable to pay in the case of death or permanent disablement due to accident arising out of the use of motor vehicle, compensation, as indicated in the Second Schedule, to the legal heirs of the victim, as the case may be. As per the Explanation to sub-section (1) of Section 163A, for the purposes of sub-

section (1), "permanent disability" shall have the same meaning and extent as in the Workmen's Compensation Act, 1923. Sub-section (2) of Section 163A 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 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. Subsection (3) of Section 163A provides further that, 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.

12. Chapter X of the Act deals with liability to pay compensation in certain cases on the principle of "no fault". As per sub-section (1) of Section 140, where death or permanent disablement of any person has resulted from an accident arising out of the use of a motor vehicle or motor vehicles, the owner of the vehicle shall, or, as the case may be, the owners of the vehicles shall, jointly and severally, be liable to pay compensation in respect of such death or disablement in accordance with the provisions of this Section. Going by sub-section (2), the amount of compensation which shall be payable under sub-section (1) in respect of the death of any person shall be a fixed sum of fifty thousand rupees and the amount of compensation payable under that sub-section in respect of the permanent disablement of any person shall be a fixed sum of twenty-five thousand rupees.

13. Sub-section (3) of Section 140 of the Act provides that, in any claim for compensation under sub-section (1), the claimant shall not be required to plead and establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act, neglect or default of the owner or owners of the vehicle or vehicles concerned or of any other person. Sub-section (4) of Section 140 provides further that, a claim for compensation under sub-section (1) shall not be defeated by reason of any wrongful act, neglect or default of the person in respect of whose death or permanent disablement the claim has been made nor shall the quantum of compensation recoverable in respect of such death or permanent disablement be reduced on the basis of the share of such person in the responsibility for such death or permanent disablement.

14. Going by sub-section (5) of Section 140 of the Act, notwithstanding anything contained in sub-section (2) regarding death or bodily injury to any person, for which the owner of the vehicle is liable to give compensation for relief, he is also liable to pay compensation under any other law for the time being in force. The proviso to sub-section (5) provides that, the amount of such compensation to be given under any other law shall be reduced from the amount of compensation payable under Section 140 or under Section 163A.

15. As we have already noticed, Section 140 occurs in Chapter X of the Act which deals with liability without fault in certain cases. On the other hand, Section 163A

occurs in Chapter XI of the Act which deals with insurance of motor vehicles against certain risks. Though, sub-section (3) of Section 140 and subsection (2) of Section 163A, employ the very same wording, i.e., "in any claim for compensation under sub-section (1), the claimant shall not be required to plead and establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act or neglect or default of the owner of the vehicle or vehicles concerned or of any other person", a provision similar to sub-section (4) of Section 140, which provides that, "a claim for compensation under sub-section (1) of Section 140 shall not be defeated by reason of any wrongful act, neglect or default of the person in respect of whose death or permanent disablement the claim has been made nor shall the quantum of compensation recoverable in respect of such death or permanent disablement be reduced on the basis of the share of such person in the responsibility for such death or permanent disablement", is conspicuously absent in Section 163A of the Act.

16. From a close reading of Section 140 and Section 163A of the Act it is discernible that, while sub-section (4) of Section 140 takes away the defence of any wrongful act, neglect or default of the person in respect of whose death or permanent disablement the claim has been made, there is no similar provision under Section 163A of the Act, which takes away such a defence in a claim filed under Section 163A, claiming compensation on structured formula as indicated in the Second Schedule to the Act. In other words, though in a claim filed under Section 163A of the Act, the claimant is not required to plead and establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act or neglect or default of the owner of the vehicle or vehicles concerned or of any other person, it would be open to the respondents therein to raise a defence that, the death or permanent disablement in respect of which the claim has been made was by reason of any wrongful act, neglect or default of the person in respect of whose death or permanent disablement the claim has been made, or that such death or permanent disablement is due to contributory negligence of such person.

17. In *Minu B. Mehta v. Balkrishna Ramchandra Nayan* (1977 (2) SCC 441) a Three-Judge Bench of the Apex Court considered the question whether in a claim for compensation under Section 110A of the Motor Vehicles Act, 1939, proof of negligence was essential to support a claim for compensation. On the facts in that case, the Apex Court found that the appeal was liable to be dismissed subject to certain directions issued therein. However, in the light of the fact that the High Court had discussed the law on the question, the Apex Court observed that the liability of the owner of the car to compensate the victim in a motor accident due to negligent driving of his servant is based on the law of tort. Regarding the view of the High Court that it was not necessary to prove negligence, the Apex court held that, proof of negligence is necessary before the owner or the Insurance Company could be held to be liable for payment of compensation in a motor accident claim case.

18. In *Oriental Insurance Company Ltd. v. Meena Variyal*, (2007 (5) SCC 428), the Apex Court observed that, the law laid down in *Minu B. Mehta's* case (*supra*) was accepted by the legislature while enacting the Motor Vehicles Act, 1988 by introducing Section 163A of the Act providing for payment of compensation notwithstanding anything contained in the Act or in any other law for the time being in force that the owner of a motor vehicle or the authorised insurer shall be liable to pay in the case of death or permanent disablement due to accident arising out of the use of the motor vehicle, compensation, as indicated in the Second Schedule, to the legal heirs or the victim, as the case may be, and in a claim made under Sub-section (1) of Section 163A of the Act, 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 concerned. Therefore, the victim of an accident or his dependents have an option either to proceed under Section 166 of the Act or under Section 163A of the Act. Once they approach the Tribunal under Section 166 of the Act, they have necessarily to take upon themselves the burden of establishing the negligence of the driver or owner of the vehicle concerned. But if they proceed under Section 163A of the Act, the compensation will be awarded in terms of the Schedule without calling upon the victim or his dependents to establish any negligence or default on the part of the owner of the vehicle or the driver of the vehicle.

19. As discernible from the objects and reasons of the Motor Vehicle (Amendment) Act, 1994, Section 163A of the Act was introduced as a social security scheme. After the enactment of the Motor Vehicles Act, 1988 several representations and suggestions were made by the State Governments, transport operators and members of public in relation to certain provisions thereof and after taking note of the suggestions made by various Courts and the difficulties experienced in implementing various provisions of the 1988 Act, the Government of India appointed a Review Committee, which in its report made the following recommendations;

"The 1988 Act provides for enhanced compensation for hit and run cases as well as for no fault liability cases. It also provides for payment of compensation on proof of fault basis to the extent of actual liability incurred which ultimately means an unlimited liability in accident cases. It is found that the determination of compensation takes a long time. According to information available, in Delhi alone there are 11214 claims pending before the Motor Vehicle Accidents Tribunals, as on 31.3.1990. Proposals have been made from time to time that the finalisation of compensation claims would be greatly facilitated to the advantage of the claimant, the vehicle owner as well as the insurance company if a system of structured compensation can be introduced. Under such a system of structured compensation that is payable for different clauses of cases depending upon the age of the deceased, the monthly income at the time of death, the earning potential in the case of the minor, loss of income on account of loss of limb etc., can be notified. The affected party can then have the option of either

accepting the lump sum compensation as is notified in that scheme of structured compensation or of pursuing his claim through the normal channels.

The General Insurance Company with whom the matter was taken up, is agreeable in principle to a scheme of structured compensation for settlement of claims on "fault liability" in respect of third party liability under Chapter XI of Motor Vehicles Act, 1988. They have suggested that the claimants should first file their claims with Motor Accident Claims Tribunals and then the insurers may be allowed six months" time to confirm their prima facie liability subject to the defences available under the Motor Vehicles Act, 1988. After such confirmations of prima facie liability by the insurers the claimants should be required to exercise their option for conciliation under structured compensation formula within a stipulated time."

20. The above recommendations of the Review Committee and the representations received from the public were placed before the Transport Development Council for seeking their views, pursuant whereunto several Sections of the Motor Vehicles Act, 1988 were amended. Accordingly, Section 163A was inserted to provide for payment of compensation in motor accident cases in accordance with the Second Schedule, providing for a structured formula, which may be amended by the Central Government from time to time. Section 163A was brought on the statute in order to grant immediate relief to that section of people whose annual income is not more than Rs. 40,000/-, having regard to the fact that compensation in such cases would be paid on the basis of the structured formula, after taking into account the age of the victim and his income and all other factors as laid down in the Second Schedule of the 1988 Act.

21. The Motor Vehicles (Amendment) Bill, 1994 which was passed by the Rajya Sabha at its sitting held on 11.8.1994 was passed by the Lok Sabha at its sitting held on 23.8.1994, without any amendment. As borne out from the official reports of the proceedings of the Rajya Sabha containing the debates, the proposed amendments in the Motor Vehicles Act were intended to guard the interests of the road users, to regulate the operation of motor vehicles and the issuance of driving licences, permits, etc., and also for the general good of the motor vehicle users. The House was more concerned about the road safety standards and in giving adequate compensation to the victims of road accidents without going through the long procedures which were there before. Some of the Members expressed serious concern over issuance of fake driving licences, issuance of licence to persons who are medically unfit, misuse of licences, etc. and the then Minister of State of the Ministry of Surface and Transport informed the House that, the Central Government have already asked the State Governments to create flying squads and to take strict action on this account, otherwise the whole policy would become ineffective. The House was also informed that, wearing of helmets (headgear) was being made compulsory for two wheeler riders.

22. Regarding clause 51 of Motor Vehicles (Amendment) Bill, which seeks to

insert Section 163A to provide for payment of compensation in motor accident cases on a predetermined formula to be given in the Second Schedule, the then Minister of State of the Ministry of Surface and Transport informed the House as under;

"The Bill seeks to provide for a new pre-determined formula for payment of compensation to road accident victims on the basis of age/income. In case of the predetermined formula introduced in the new Bill, the claimant shall not be required to plead or establish that the death or permanent disablement was due to any wrongful act or neglect or default of the owner of the vehicle. The Central Government has also been given powers to amend the schedule indicating the rate of compensation from time to time. It is expected that with this provision not only the road accident victims would be appropriately and expeditiously compensated but there would be a substantial reduction in the pendency of cases with the Motor Accidents Claims Tribunals."

23. Therefore, by inserting Section 163A, vide the Motor Vehicles (Amendment) Act, 1994, a new device was evolved in order to grant quick and efficacious relief to the victims falling within the specified category. The legal heirs of the deceased or the victim in a motor accident, in terms of the provisions contained in Section 163A of the Act are assured a speedy and effective remedy which was not available to the claimants filing claim petitions under Section 166 of the Act. The intention of the legislature while inserting Section 163A was only to ensure that a claimant who opts for the special provisions as to payment of compensation on structured formula basis need not be required to plead and establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act or neglect or default of the owner of the vehicle or vehicles concerned or any other person. Section 163A of the Act was never intended to provide relief to those who suffered in a road accident only on account of their own rash and negligent act, not because of any rash and negligent act of another person in using a motor vehicle.

24. There is nothing in the recommendations of the Review Committee to suggest that Section 163A was intended to be made available even in a case where the motor accident in question had caused death or injury to none except the person who was rash and negligent in using the motor vehicle. Therefore, conclusion is irresistible that, the Legislature never intended to provide for compensation under Section 163A of the Act to a person who is solely responsible for the motor accident. In that view of the matter, one who is the victim of his own action of rash and negligent driving of a motor vehicle cannot invoke Section 163A of the Act for making a claim for compensation.

25. In *Oriental Insurance Co. Ltd. v. Hansrajbhai V. Kodala* (2001 (5) SCC 175), the Apex Court, after referring to the recommendations of the Review Committee referred to hereinbefore, held that the purpose of Section 163A of the Act and the Second Schedule is to avoid long drawn litigation and delay in payment of compensation to the victims or his heirs who are in dire need of relief. If such

affected claimant opts for accepting the lump-sum compensation based on structured formula, he would get relief at the earliest. It also gives vital advantage of not pleading or establishing any wrongful act or neglect or default of the owner of the offending vehicle or vehicles. Para.15 of the judgment reads thus;

"15. The purpose of this Section and the Second Schedule is to avoid long drawn litigation and delay in payment of compensation to the victims or his heirs who are in dire need of relief. If such affected claimant opts for accepting the lump-sum compensation based on structured formula, he would get relief at the earliest. It also gives vital advantage of not pleading or establishing any wrongful act or neglect or default of the owner of the offending vehicle or vehicles. This no fault liability appears to have been introduced on the basis of the suggestion of the Law Commission to the effect that the expanding notions of social security and social justice envisage that liability to pay compensation must be "no fault liability" and as observed by this Court in *Gujarat SRTC v. Ramanbhai Prabhatbhai* (1987 (3) SCC 234), "in order to meet to some extent the responsibility of the society to the deaths and injuries caused in road accidents." However, this benefit can be availed of by the claimant only by restricting his claim on the basis of income at a slab of Rs. 40,000/- which is the highest slab in the Second Schedule which indicates that the Legislature wanted to give benefit of no fault liability to a certain limit. This would clearly indicate that the scheme is in alternative to the determination of compensation on fault basis under the Act. The object underlining the said amendment is to pay compensation without there being any long drawn litigation on the predetermined formula, which is known as structured formula basis which itself is based on relevant criteria for determining compensation and the procedure of paying compensation after determining the fault is done away. Compensation amount is paid without pleading or proof of fault, on the principle of social justice as a social security measure because of ever increasing motor vehicles accidents in the fast moving society. Further, the law before insertion of Section 163A was giving limited benefit to the extent provided under Section 140 for no fault liability and determination of compensation amount on fault liability was taking long time. That mischief is sought to be remedied by introducing Section 163A and the disease of delay is sought to be cured to a large extent by affording benefit to the victims on structured formula basis. Further, if the question of determining compensation on fault liability is kept alive it would result in additional litigation and complications in case claimants fail to establish liability of the owner of the defaulting vehicles."

26. The learned counsel for the 1st respondent claimant mainly relied on the decision of a Three Judge-Bench of the Apex Court in *Deepal Girishbhai Soni v. United India Insurance Company Ltd.* (2004 (5) SCC 385), to contend that Section 163A of the Act covers cases where even negligence is on the part of the victim. Para.66 of the judgment reads thus;

"66. In Section 163-A, the expression "notwithstanding anything contained in this Act or in any other law for the time being in force" has been used, which goes to show that the Parliament intended to insert a non obstante clause of wide nature which would mean that the provisions of Section 163-A would apply despite the contrary provisions existing in the said Act or any other law for the time being in force. Section 163-A of the Act covers cases where even negligence is on the part of the victim. It is by way of an exception to Section 166 and the concept of social justice has been duly taken care of."

27. The judgment of the Apex Court in Deepal Girishbhai Soni's case (supra) arises out of a motor accident which occurred on 4.9.1998 involving a truck owned by Akbarbhai Bhikhabhai Ajmera, which was insured with National Insurance Company Ltd., and a Tempo Trax owned by Purankumar Popandas Bhatia, which was insured with United India Insurance Company Ltd. In the accident, both the parents of the claimants died. The claimants filed M.A.C. Petition No.2133 of 1998 before the Motor Accidents Claims Tribunal, Kheda, claiming compensation for the death of their mother, i.e., Prabhaben and M.A.C. Petition No.2134 of 1998 was filed claiming compensation for the death of their father, i.e., Girishbhai Soni. In both the petitions, orders were passed by the Tribunal granting interim compensation under Section 163A of the Act, by separate orders dated 24.3.2000. In M.A.C. Petition No.2133 of 1998, the Tribunal awarded a compensation of Rs. 4,20,500/- together with interest at the rate of 12% per annum from the date of petition till realisation. Similarly, in M.A.C. Petition No.2134 of 1998, Tribunal awarded a compensation of Rs. 11,74,500/- together with interest at the rate of 12% per annum. The said orders were under challenge in First Appeal Nos.2272 of 2000 and 2273 of 2000 filed by United India Insurance Company Ltd., before the Gujarat High Court. Both the appeals were partly allowed by a Division Bench of the Gujarat High Court, vide judgment dated 9.11.2000.

28. A reading of the judgment of the Gujarat High Court in First Appeal Nos.2272 of 2000 and 2273 of 2000 would show that, the Tribunal passed the impugned orders dated 24.3.2000, while the main matter under Section 166 of the Act was pending consideration before the Tribunal. Therefore, the challenge in the First Appeals filed before the High Court was only against the compensation awarded by the Tribunal under Section 163A of the Act. The appellant insurer contended that, the Tribunal committed a serious error in awarding interim compensation beyond the scope of Section 163A of the Act in as much as the compensation amount awarded exceeded the limit indicated in the Second Schedule to the Act. According to the appellant, the Tribunal could have granted interim compensation under Section 163A of the Act only upto the annual income of Rs. 40,000/-. The total annual income above Rs. 40,000/- could be taken into consideration only at the time of passing the final order under Section 166 of the Act and therefore, the impugned orders dated 24.3.2000 of the Tribunal awarding interim compensation cannot be sustained in the eye of law. As borne out from the judgment, during the course of arguments, the learned counsel representing the

claimants submitted that, the impugned orders of the Tribunal granting interim compensation may be modified to the extent that the claimants shall get the amount only to the extent permissible under the Second Schedule and that the claimants be paid only that part of the amount awarded which becomes due to them on the basis of the annual income limited upto Rs. 40,000/-, without prejudice to their right to agitate their full claim at the time when the main claim petitions are considered on merits by the Tribunal. Accordingly, on the basis of the agreed position, the Division Bench partly allowed the appeals, by judgment dated 9.11.2000, modifying the impugned orders of the Tribunal dated 24.3.2000, to the extent of limiting the interim compensation at Rs. 3,78,500/- in First Appeal No.2272 of 2000 and at Rs. 3,24,500/- in First Appeal No.2273 of 2000. The Division Bench has also made it clear that, in view of the agreed position between the parties, it has not embarked upon the question of interpreting Section 163A and the Second Schedule of the Act.

29. The above judgment of the Gujarat High Court in First Appeal Nos.2272 of 2000 and 2273 of 2000 was under challenge in Civil Appeal Nos.3126 of 2002 and 3127 of 2002 filed by the claimants. A Two-Judge Bench of the Apex Court, by an order dated 19.4.2002, doubting the correctness of the Two-Judge Bench decision in Hansrajbhai Kodala's case (supra), by which the proceedings under Section 163A of the Act have been held to be a final proceeding as a result whereof the claimants have been debarred from proceeding with their further claims made on the basis of fault liability in terms of Section 165 thereof, referred the matter to a Three-Judge Bench. Therefore, the issue before the Three-Judge Bench of the Apex Court in Deepal Girishbhai Soni's case (supra) was as to whether the proceedings under Section 163A of the Act is in the nature of interim relief or final relief. The Apex Court after analysing the provisions of Sections 140, 163A and 166 of the Act, approved the Two-Judge Bench decision in Hansrajbhai Kodala's case (supra) and held that, the determination of the compensation under Section 163A of the Act is in the nature of a final determination of the compensation and the claimant is not entitled to simultaneously move an application under Section 163A and Section 166 of the Act. The conclusion of the Three-Judge Bench, as contained in Para.67 of the judgment, reads thus;

"Conclusion:

67. We, therefore, are of the opinion that Kodala (supra) has correctly been decided. However, we do not agree with the findings in Kodala (supra) that if a person invokes provisions of Section 163-A, the annual income of Rs. 40,000/- per annual shall be treated as a cap. In our opinion, the proceeding under Section 163-A being a social security provision, providing for a distinct scheme, only those whose annual income is upto Rs. 40,000/- can take the benefit thereof. All other claims are required to be determined in terms of Chapter XII of the Act."

30. In Para.41 of the judgment in Deepal Girishbhai Soni's case (supra) the Apex

Court observed that, by inserting Section 163A, the Parliament intended to provide for making of an award consisting of a predetermined sum without insisting on a longdrawn trial or without proof of negligence in causing the accident. The amendment was, thus, a deviation from the common law liability under the Law of Torts and was also in derogation of the provisions of the Fatal Accidents Act. The heirs of the deceased or the victim in terms of the said provisions were assured of a speedy and effective remedy which was not available to the claimants under Section 166 of the Act. In Para.42 of the judgment, the Apex Court observed further that, by inserting Section 163A of the Act, the Parliament intended to lay a comprehensive scheme for the purpose of grant of adequate compensation to a section of victims who would require the amount of compensation without fighting any protracted litigation for proving that the accident occurred owing to negligence on the part of the driver of the motor vehicle or any other fault arising out of use of a motor vehicle. Para.42 of the judgment reads thus;

"42. Section 163A was, thus, enacted for grant of immediate relief to a section of the people whose annual income is not more than Rs. 40,000 having regard to the fact that in terms of Section 163A of the Act read with the Second Schedule appended thereto, compensation is to be paid on a structured formula not only having regard to the age of the victim and his income but also the other factors relevant therefor. An award made thereunder, therefore, shall be in full and final settlement of the claim as would appear from the different columns contained in the Second Schedule appended to the Act. The same is not interim in nature. The note appended to column 1 which deals with fatal accidents makes the position furthermore clear stating that from the total amount of compensation one third thereof is to be reduced in consideration of the expenses which the victim would have incurred towards maintaining himself had he been alive. This together with the other heads of compensation as contained in columns 2 to 6 thereof leaves no manner of doubt that Parliament intended to lay a comprehensive scheme for the purpose of grant of adequate compensation to a section of victims who would require the amount of compensation without fighting any protracted litigation for proving that the accident occurred owing to negligence on the part of the driver of the motor vehicle or any other fault arising out of use of a motor vehicle."

31. As we have already noticed, in Deepal Girishbhai Soni's case (supra), the Apex Court was dealing with a case in which two vehicles were involved in the accident, namely, a truck owned by Akbarbhai Bhikhabhai Ajmera, which was insured with National Insurance Company Ltd., and a Tempo Trax owned by Purankumar Popandas Bhatia, which was insured with United India Insurance Company Ltd. In the accident, both the parents of the claimants, namely, Girishbhai Soni and Prabhaben died. A reading of the judgment of the Gujarat High Court in First Appeal Nos.2272 of 2000 and 2273 of 2000 would not indicate that the accident occurred on account of any negligence on the part of the victims. Further, in the said judgment, the Division Bench has not embarked upon the question of interpreting Section 163A and the Second Schedule of the

Act, in view of the agreed position between the parties. The Division Bench partly allowed the appeals, by limiting the interim compensation at Rs. 3,78,500/- in First Appeal No.2272 of 2000 and at Rs. 3,24,500/- in First Appeal No.2273 of 2000. The said judgment was under challenge before the Apex Court, in the Civil Appeals filed by the claimants. The Civil Appeals were referred to a Three-Judge Bench, doubting the correctness of the Two-Judge Bench decision in *Hansrajbhai Kodala*" case (supra) in which the proceedings under Section 163A of the Act have been held to be a final proceeding as a result whereof the claimants have been debarred from proceeding with their further claims made on the basis of fault liability in terms of Section 166 thereof. The Three-Judge Bench after analysing the provisions of Sections 140, 163A and 166 of the Act, approved the Two-Judge Bench decision in *Hansrajbhai Kodala*'s case (supra). As observed by the Apex Court in *Oriental Insurance Co. Ltd. v. Dhanbai Kanji Gadhvi* (2011 (11) SCC 513), the question which was considered by the Three-Judge Bench in *Deepal Girishbhai Soni*'s case (supra) was whether a proceedings under Section 163A of the Act is a final proceedings, by reason whereof, the claimant who has been granted compensation under Section 163A of the Act is debarred from proceeding with any further claims on the basis of fault liability in terms of Section 166 of the Act.

32. In *Ningamma v. United India Insurance Co. Ltd.* (2009 (13) SCC 710) the question that came up for consideration before a Two-Judge Bench (in which the Learned Judge who authored the Three-Judge Bench decision in *Deepal Girishbhai Soni*'s case is a member), was as to whether the legal representatives of a member, who was driving a motor vehicle, after borrowing it from the real owner meets with an accident without involving any other vehicle, would be entitled to compensation under Section 163A of Act or under any other provisions of law and also whether the insurer who issued the insurance policy would be bound to indemnify the deceased or his legal representatives. In that case, the deceased was riding a motorcycle which he had borrowed from its real owner, in order to go to Ilkal. Near Ilkal?Kustagi National Highway, the motorcycle ridden by the deceased dashed against a bullock cart which was going ahead, as the bullock cart abruptly stopped. Consequent to the accident, he sustained fatal injuries. On his death, the claim petition was filed before the Tribunal by his wife and son, under Section 163A of the Act. The Tribunal allowed the claim petition awarding compensation and the Insurance Company was mulcted with the liability. Aggrieved by the award, the insurer filed appeal before the Karnataka High Court, mainly contending that, the claim petition filed before the Tribunal was not maintainable under Section 163A of the Act unless there was another vehicle involved in the accident. The High Court allowed the said appeal and held that, the claim petition was not maintainable before the Tribunal under Section 163A of the Act and accordingly set aside the award. The review petition filed by the claimants against the said decision ended in dismissal. Aggrieved by the decision, the claimants approached the Apex Court. After referring to Para.42 of the Three-Judge Bench decision in *Deepal Girishbhai*

Soni's case (supra), the Apex Court held that, the Parliament by introducing Section 163A in the Act provided for payment of compensation on structured formula basis by mandating that the owner of a motor vehicle or the authorised insurer would be liable to pay compensation, as indicated in the Second Schedule in the case of death or permanent disablement due to accident arising out of the use of the motor vehicle, to the legal heirs or the victim, as the case may be in a claim made under sub-section (1) of Section 163A of the Act. Paras.14 and 15 of the judgment read thus;

"14. Section 163A of the Motor Vehicles Act was inserted by Act 54 of 1994 by way of a social security scheme. It is needless to say that the said provision is a code by itself. The said provision has been inserted to provide for a new predetermined structured formula for payment of compensation to road accident victims on the basis of age/income of the deceased or the person suffering permanent disablement. In view of the language used in said Section there could be no manner of doubt that the said provision has an overriding effect as it contains a non obstante clause in terms whereof the owner of the motor vehicle or the authorised insurer is liable to pay compensation in the case of death or permanent disablement due to accident arising out of the use of motor vehicle, as indicated in the Second Schedule, to the legal heirs or the victim, as the case may be.

15. A number of decisions have been rendered by this Court in respect of the Section 163A of the Motor Vehicles Act. In Deepal Girishbhai Soni v. United India Insurance Co. Ltd., 2004 (5) SCC 385, at page 402, one of us (Hon"ble Justice S.B. Sinha) has observed as follows: "42. xxx xxx (already quoted hereinbefore at Para.30)"

33. In Ningamma's case (supra), after referring to various decisions of the Apex Court, it was held that, in order to prove a claim under Section 163A of the Act, the claimant would 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 concerned. Para.17 of the judgment reads thus;

"17. The aforesaid decisions make it quite clear that the Parliament by introducing Section 163A in the MVA provided for payment of compensation on structured formula basis by mandating that the owner of a motor vehicle or the authorised insurer would be liable to pay compensation, as indicated in the Second Schedule in the case of death or permanent disablement due to accident arising out of the use of the motor vehicle, to the legal heirs or the victim, as the case may be in a claim made under sub-section (1) of Section 163A of the MVA. In order to prove a claim of this nature the claimant would 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 concerned."

34. In Ningamma's case (supra), after referring to the judgment of a Two-Judge Bench in Oriental Insurance Company Ltd. v. Rajni Devi (2008 (5) SCC 736) (in which the Learned Judge who authored the Three-Judge Bench decision in Deepal Girishbhai Soni's case is a member) the Apex Court held that, Section 163A of the Act cannot be said to have any application in respect of an accident wherein the owner of the motor vehicle himself is involved. The liability under Section 163A of the Act is on the owner of the vehicle. So a person cannot be both, a claimant as also a recipient, with respect to the claim. A person who borrowed motor vehicle from its real owner, who was authorised to drive the said vehicle by its owner, would step into the shoes of the owner of that vehicle. Accordingly, the legal representatives of the deceased who have stepped into the shoes of the owner of the motor vehicle could not have claimed compensation under Section 163A of the Act. Coming to the facts of the case, the Apex Court found that, the deceased was not the owner of the motorbike in question. He borrowed the said motorbike from its real owner. The deceased cannot be held to be employee of the owner of the motorbike although he was authorised to drive the said vehicle by its owner, and therefore, he would step into the shoes of the owner of the motorbike. Accordingly, the Apex Court held that, the legal representatives of the deceased who have stepped into the shoes of the owner of the motor vehicle could not have claimed compensation under Section 163A of the Act. Paras.19 to 22 of the judgment read thus;

"19. In Oriental Insurance Company Ltd. v. Rajni Devi and Others, 2008 (5) SCC 736, wherein one of us, namely, Hon"ble Justice S.B. Sinha is a party, it has been categorically held that in a case where third party is involved, the liability of the insurance company would be unlimited. It was also held in the said decision that where, however, compensation is claimed for the death of the owner or another passenger of the vehicle, the contract of insurance being governed by the contract qua contract, the claim of the claimant against the insurance company would depend upon the terms thereof.

20. It was held in Oriental Insurance Company Ltd.case that Section 163A of the Motor Vehicles Act cannot be said to have any application in respect of an accident wherein the owner of the motor vehicle himself is involved. The decision further held that the question is no longer res integra. The liability under Section 163A of the Motor Vehicles Act is on the owner of the vehicle. So a person cannot be both, a claimant as also a recipient, with respect to claim. Therefore, the heirs of the deceased could not have maintained a claim in terms of Section 163A of the Motor Vehicles Act.

21. In our considered opinion, the ratio of the aforesaid decision is clearly applicable to the facts of the present case. In the present case, the deceased was not the owner of the motorbike in question. He borrowed the said motorbike from its real owner. The deceased cannot be held to be employee of the owner of the motorbike although he was authorised to drive the said vehicle by its owner, and therefore, he would step into the shoes of the owner of the motorbike. We

have already extracted Section 163A of the Motor Vehicles Act hereinbefore. A bare perusal of the said provision would make it explicitly clear that persons like the deceased in the present case would step into the shoes of the owner of the vehicle.

22. In a case wherein the victim died or where he was permanently disabled due to an accident arising out of the aforesaid motor vehicle in that event the liability to make payment of the compensation is on the insurance company or the owner, as the case may be as provided under Section 163A. But if it is proved that the driver is the owner of the motor vehicle, in that case the owner could not himself be a recipient of compensation as the liability to pay the same is on him. This proposition is absolutely clear on a reading of Section 163A of the Motor Vehicles Act. Accordingly, the legal representatives of the deceased who have stepped into the shoes of the owner of the motor vehicle could not have claimed compensation under Section 163A of the Motor Vehicles Act."

35. In *National Insurance Company Ltd. v. Sinitha* (2012 (2) SCC 356), the Apex Court was dealing with a case wherein one Shijo was riding a motorcycle bearing No.KL-08/J- 6528 with a pillion-rider. While giving way to a bus coming from the opposite side at Kumaranelly, the motorcycle hit a big laterite stone lying on the tar road. On impact, the motorcycle overturned. Resultantly, the rider as also the pillion-rider suffered injuries. The rider succumbed to injuries on the following day. At the time of accident, the motorcycle was covered by an "Act only" policy issued by National Insurance Co. Ltd. The wife, children and parents of the deceased rider filed claim petition before the Tribunal under Section 166 of the Act, which was subsequently amended, inasmuch as, the claim was sought under Section 163A of the Act. The Tribunal allowed the claim petition awarding a total compensation of Rs. 4,26,650/-. The said award was under challenge before this Court in an appeal filed by the Insurance Company. This Court upheld one of the contentions of the appellant insurer that Rs. 5000/- awarded by the Tribunal for pain and suffering was impermissible under Section 163A of the Act. The compensation awarded by the Tribunal under all other heads were upheld. While assailing the order of this Court before the Apex court, the first contention advanced by the insurer was that, the claimants are not entitled to raise any claim for compensation because the accident in question had occurred solely and exclusively on account of the negligence of the deceased rider of the motorcycle. The main question that came up for consideration before the Apex Court was whether a claim for compensation made under Section 163A of the Act, can be defeated either by the owner or by the Insurance Company, by pleading and establishing, that the accident in question was based on the "negligence" of the offending vehicle.

36. In *Sinitha's* case (*supra*), after analysing the provisions under Sections 140 and 163A of the Act, the Apex Court held that, sub-section (2) of Section 163A is in *pari materia* with sub-section (3) of Section 140 and it is not essential for a claimant seeking compensation, to "plead or establish" that the accident out of

which the claim arises suffers from "wrongful act" or "neglect" or "default" of the offending vehicle. Under sub-section (4) of Section 140, there is a specific bar, whereby the concerned party (owner or Insurance Company) is precluded from defeating a claim raised under Section 140 of the Act, by "pleading and establishing" "wrongful act", "neglect" or "default", there is no such or similar prohibiting clause in Section 163A of the Act. The additional negative bar, precluding the defence from defeating a claim for reasons of a "fault" ("wrongful act", "neglect" or "default"), as has been expressly incorporated in Section 140 of the Act (through sub-section (4) thereof), having not been embodied in Section 163A of the Act, has to have a bearing on the interpretation of Section 163A of the Act. The legislature designedly included the negative clause through sub-section (4) in Section 140 of the Act, yet consciously did not include the same in the scheme of Section 163A of the Act. The presence of sub-section (4) in Section 140 of the Act and the absence of a similar provision in Section 163A, leaves no room for any doubt that the only object of the Legislature in doing so was that the legislature desired to afford liberty to the defence to defeat a claim for compensation raised under Section 163A of the Act, by pleading and establishing "wrongful act", "neglect" or "default". A claim which can be defeated on the basis of any of the aforesaid considerations is regulated under the "fault" liability principle. Therefore, the Apex Court concluded, that Section 163A of the Act is founded on the "fault" liability principle. Paras.25 to 27 of the judgment read thus;

"25. A perusal of Section 163A reveals that sub-section (2) thereof is in pari materia with sub-section (3) of Section 140. In other words, just as in Section 140 of the Act, so also under Section 163A of the Act, it is not essential for a claimant seeking compensation, to "plead or establish", that the accident out of which the claim arises suffers from "wrongful act" or "neglect" or "default" of the offending vehicle. But then, there is no equivalent of subsection (4) of Section 140 in Section 163A of the Act. Whereas, under sub-section (4) of Section 140, there is a specific bar, whereby the concerned party (owner or insurance company) is precluded from defeating a claim raised under Section 140 of the Act, by "pleading and establishing", "wrongful act", "neglect" or "default", there is no such or similar prohibiting clause in Section 163A of the Act. The additional negative bar, precluding the defence from defeating a claim for reasons of a "fault" ("wrongful act", "neglect" or "default"), as has been expressly incorporated in Section 140 of the Act (through subsection (4) thereof), having not been embodied in Section 163A of the Act, has to have a bearing on the interpretation of Section 163A of the Act.

26. In our considered view the legislature designedly included the negative clause through sub-section (4) in Section 140, yet consciously did not include the same in the scheme of Section 163A of the Act. The legislature must have refrained from providing such a negative clause in Section 163A intentionally and purposefully. In fact, the presence of sub-section (4) in Section 140, and the absence of a similar provision in Section 163A, in our view, leaves no room for

any doubt, that the only object of the Legislature in doing so was, that the legislature desired to afford liberty to the defence to defeat a claim for compensation raised under Section 163A of the Act, by pleading and establishing "wrongful act", "neglect" or "default".

27. Thus, in our view, it is open to a concerned party (owner or insurer) to defeat a claim raised under Section 163A of the Act, by pleading and establishing anyone of the three "faults", namely, "wrongful act", "neglect" or "default". But for the above reason, we find no plausible logic in the wisdom of the legislature, for providing an additional negative bar precluding the defence from defeating a claim for compensation in Section 140 of the Act, and in avoiding to include a similar negative bar in Section 163A of the Act. The object for incorporating subsection (2) in Section 163A of the Act is, that the burden of pleading and establishing proof of "wrongful act", "neglect" or "default" would not rest on the shoulders of the claimant. The absence of a provision similar to sub-section (4) of Section 140 of the Act from Section 163A of the Act, is for shifting the onus of proof on the grounds of "wrongful act", "neglect" or "default" onto the shoulders of the defence (owner or the insurance company). A claim which can be defeated on the basis of any of the aforesaid considerations is regulated under the "fault" liability principle. We have no hesitation therefore to conclude, that Section 163A of the Act is founded on the "fault" liability principle."

37. In *Sinitha's case* (supra) the Apex Court noticed that, Section 140 of the Act falls in Chapter X of the Act titled as "Liability Without Fault in Certain Cases". The title of the Chapter in which Section 140 falls, leaves no room for any doubt, that the provisions under the Chapter have a reference to liability "...without fault...", i.e., are founded under the "no-fault" liability principle. On the other hand, Section 163A of the Act, does not find place in Chapter X of the Act. Section 163A falls in Chapter XI which has the title "Insurance of Motor Vehicles Against Third Party Risks". Therefore, the Apex Court observed that, only because it was not meant to fall within the ambit of the title of Chapter X of the Act "Liability Without Fault in Certain Cases", it was purposefully and designedly not included thereunder. Para.28 of the judgment reads thus;

"28. There is also another reason, which supports the aforesaid conclusion. Section 140 of the Act falls in Chapter X of the Motor Vehicles Act, 1988. Chapter X of the Motor Vehicles Act, 1988 is titled as "Liability Without Fault in Certain Cases". The title of the chapter in which Section 140 falls, leaves no room for any doubt, that the provisions under the chapter have a reference to liability "...without fault ...", i.e., are founded under the "no-fault" liability principle. It would, however, be pertinent to mention, that Section 163A of the Act, does not find place in Chapter X of the Act. Section 163A falls in Chapter XI which has the title "Insurance of Motor Vehicles Against Third Party Risks". The Motor Vehicles Act, 1988 came into force with effect from 1.7.1989 (i.e., the date on which it was published in the Gazette of India Extraordinary Part II). Section 140 of the Act was included in the original enactment under Chapter X. As against the

aforesaid, Section 163A of the Act was inserted therein with effect from 14.11.1994 by way of an amendment. Had it been the intention of the legislature to provide for another provision (besides Section 140 of the Act), under the "no fault" liability principle, it would have rationally added the same under Chapter X of the Act. Only because it was not meant to fall within the ambit of the title of Chapter X of the Act "Liability Without Fault in Certain Cases", it was purposefully and designedly not included thereunder."

38. In Sinitha's case (supra) the Apex Court the Apex Court noticed further that, Section 163A, introduced a different scheme for expeditious determination of accident claims. Since the provisions under Chapter XII are structured under the "fault" liability principle, its alternative would also inferentially be founded under the same principle. Section 163A of the Act, catered to shortening the length of litigation, by introducing a scheme regulated by a pre-structured formula to evaluate compensation. One cannot lose sight of the fact, that claims made under Section 163A can result in substantial compensation. When compensation is high, it is legitimate that the Insurance Company is not fastened with liability when the offending vehicle suffered a "fault" ("wrongful act", "neglect", or "defect") under a valid Act only policy, which reasoning leads to the inference that Section 163A of the Act is founded under the "fault" liability principle. Para.15 of the judgment reads thus;

"15. The heading of Section 163A also needs a special mention. It reads, "Special Provisions as to Payment of Compensation on Structured Formula Basis". It is abundantly clear that Section 163A, introduced a different scheme for expeditious determination of accident claims. Expeditious determination would have reference to a provision wherein litigation was hitherto before (before the insertion of Section 163A of the Act) being long drawn. The only such situation (before the insertion of Section 163A of the Act) wherein the litigation was long drawn was under Chapter XII of the Act. Since the provisions under Chapter XII are structured under the "fault" liability principle, its alternative would also inferentially be founded under the same principle. Section 163A of the Act, catered to shortening the length of litigation, by introducing a scheme regulated by a pre-structured formula to evaluate compensation. It provided for some short-cuts, as for instance, only proof of age and income, need to be established by the claimant to determine the compensation in case of death. There is also not much discretion in the determination of other damages, the limits whereof are also provided for. All in all, one cannot lose sight of the fact, that claims made under Section 163A can result in substantial compensation. When taken together the liability may be huge. It is difficult to accept, that the legislature would fasten such a prodigious liability under the "no-fault" liability principle, without reference to the "fault" grounds. When compensation is high, it is legitimate that the insurance company is not fastened with liability when the offending vehicle suffered a "fault" ("wrongful act", "neglect", or "defect") under a valid Act only policy. Even the instant process of reasoning, leads to the inference, that Section 163A of the Act is founded under the "fault" liability

principle."

39. The principle laid down by the Apex Court in *Sinitha's case* (supra) was followed by a Full Bench of this Court in *Oriental Insurance Co. Ltd. v. Joseph V.V. @ Johny* (2012 (2) KLT 132) to which, one among us [PRRM(J)] is also a member. It was a case in which the deceased was the rider of the motorcycle at the time of accident, as permitted by the owner of that motorcycle which was covered by an "Act only" policy, and the Tribunal found the cause for the accident as the negligence of the rider himself. After referring to various judgments of the Apex Court and also the judgment of another Full Bench of this Court in *National Insurance Company Ltd. v. V. Malathi C. Salian* (2003 (3) KLT 460) the Full Bench held that in a case where, though a claim is raised under Section 163A of the Act, once the insurer or the insured comes up with the defence of absolving the liability to pay compensation, on the ground, that the deceased was responsible for the death or injury on account of either wrongful act, negligent act or default, then, the liability of the insurer can be absolved, if such plea or defence is established. After referring to the judgment of the Apex Court in *Rajni Devi's case* (supra) the Full Bench observed that, if the owner of the vehicle insures the vehicle by paying additional premium, as personal accident coverage, then by virtue of the terms of contract of insurance, the insurer would be liable to pay compensation depending upon the limits of liability. Paras.8 and 9 of the judgment read thus;

"8. In the present case the appellant/insurer is pleading negligent act on the part of the rider of the motor vehicle, who is none other than the deceased himself. Therefore, in a case, where though a claim is raised under Section 163A, once the insurer or the insured comes up with the defence of absolving the liability to pay compensation, on the ground, that the deceased was responsible for the death or injury on account of either wrongful act, negligent act or default, then, the liability of the insurer can be absolved, if such plea or defence is established. In the present case, the Tribunal has already concluded the cause for the accident as the negligence of the rider himself, i.e., deceased Shine. There is no contra material brought on record indicating that he was not responsible for the accident. Though, a feeble attempt came to be made on the part of the claimants/respondents counsel suggesting that another vehicle was involved in the accident, which was responsible for the accident, unfortunately neither the owner nor the insurer of that vehicle are before us. If the insured and the insurer of other vehicle were to be party to the proceedings, then automatically the deceased and his legal representatives, who are the claimants could be termed as third parties so far as the other vehicle is concerned.

9. On an earlier occasion also, in *Oriental Insurance Company Limited v. Rajni Devi and Others* (2008 (5) SCC 736) the Apex Court had an occasion to deal with a case arising under Section 163A. In this case, the owner of the vehicle himself was involved in the accident and the question that arose for consideration was whether claim on behalf of the owner can be put forth against the insurer, when

the owner himself was involved in the accident. Their lordships had categorically stated that the owner of the vehicle, being both claimant and also a recipient of compensation, Section 163A cannot be taken recourse to. In the said case also, it was the legal representatives of the deceased owner who came up with the claim under Section 163A. Their lordships held that, the heirs of the deceased could not have maintained a claim in terms of Section 163A of the Act and only by virtue of the terms of the contract of insurance they can take recourse to. In other words, what their lordships would mean is, unless the terms of the policy cover a case of present nature, the claim by the heirs of the owner, wherein the owner himself was the victim of the accident cannot be considered under Section 163A. For example, if the owner of the vehicle insures the vehicle by paying additional premium, as personal accident coverage, then by virtue of the terms of contract of insurance, the insurer would be liable to pay compensation depending upon the limits of liability."

40. In *New India Assurance Co. Ltd. v. Rajiv* (2016 (1) KHC 327), following the judgment of the Apex Court in *Sinitha's* case (supra) and that of the Full Bench of this Court in *Joseph's* case (supra) we have held that, in view of conspicuous absence of the provisions like sub-section (4) of Section 140 in Section 163A of the Act, it is possible for the Insurance Company to plead or establish that negligence was on the part of the victim. That was a case in which the deceased was driving a car owned by her wife. When the car reached the place of occurrence, the deceased lost control over the vehicle and it dashed against a culvert on the side of the road, resulting in serious injuries leading to his death. The police has also registered a case against the deceased attributing negligence. The grown-up children of the deceased filed a claim petition under Section 163A of the Act claiming compensation, arraying their mother/the owner of the car as one of the respondents. Since the factual sequence itself is enough to hold that, no other party/circumstance is involved with regard to the cause of accident, this Court held that the award passed by the Tribunal fixing liability upon the appellant insurer is not correct or sustainable.

41. It is pertinent to note that, the scope of Section 163A of the Act and the object behind the said provision introduced by Act 54 of 1994 came up for consideration before a Division Bench of the Karnataka High Court in *Appaji v. M. Krishna* (2004 ACJ 1289). His Lordship Justice T.S. Thakur (as he then was) rendered the said judgment on 17.12.2003 (prior to the Three-Judge Bench decision in *Deepal Girishbhai Soni's* case (supra) dated 18.3.2004) after examining in detail the provisions of Section 163A of the Act as well as the objects and reasons which led to the introduction of such a provision in the Act, by Act 54 of 1994. In the said case, the Division Bench was dealing with a case where the deceased Arun Kumar was riding a motorcycle and the accident occurred while the deceased was trying to avoid a cyclist who suddenly emerged on the road. Following the injuries sustained in the accident he died and his parents filed a claim petition under Section 163A of the Act and sought for compensation. The Tribunal allowed the claim petition under Section 140 of the

Act, i.e., 'no fault liability?', but the claim made under Section 163A was negated by the Tribunal and the said finding was called in question before the Division Bench. Confirming the said finding of the Tribunal, the Division Bench held that, Section 163A of the Act was never intended to provide relief to those who suffered in a road accident not because of the negligence of another person making use of a motor vehicle, but only on account of their own rash, negligent or imprudent act resulting in death or personal injury to them. The recommendations of the Law Commission were made from the point of view of victims of accidents on the roads more than those who were responsible for the same. The Review Committee too had viewed the situation from the point of view of such victims and expressed concern about the time it took for disposal of ordinary cases before the Tribunals. The objects and reasons underlying the introduction of the provision also envisaged adequate compensation to victims of road accidents without going into what was described as long drawn procedure. There is nothing in any one of the above to suggest that Section 163A was intended to be available even in a situation where the accident in question had caused death or physical injury to none except the person who was rash and negligent in using the motor vehicle. The universal concern was for the safety and the social security of an innocent user of the road and not for a person who had because of his own imprudence, rashness or negligence met with an accident and suffered as injury or death. Para.16 of the judgment reads thus;

"16. It is evident from the above that Section 163A was never intended to provide relief to those who suffered in a road accident not because of the negligence of another person making use of a motor vehicle, but only on account of their own rash, negligent or imprudent act resulting in death or personal injury to them. The recommendations of the Law Commission were concerned more with the victims of hit and run accident cases where the particulars of offenders could not be ascertained. It also expressed concern about the security to victims of road accidents and recommended dispensing with proof of fault on the part of the owner or driver of the vehicle. The recommendations it is clear were made from the point of view of victims of accidents on the roads more than those who were responsible for the same. The Review Committee too had viewed the situation from the point of view of such victims and expressed concern about the time it took for disposal of ordinary cases before the Tribunals. The objects and reasons underlying the introduction of the provision also envisaged adequate compensation to victims of road accidents without going into what was described as long drawn procedure. The decision of the Supreme Court in Kodala's case supra elucidated the purpose underlying the introduction of Section 163A in the light of the recommendations of the Law Commission and the Committee. There is nothing in any one of the above to suggest that section 163A was intended to be available even in a situation where the accident in question had caused death or physical injury to none except the person who was rash and negligent in using the motor vehicle. The universal concern was for the safety and the social security of an innocent user of the road and not for a person who had because of

his own imprudence, rashness or negligence met with an accident and suffered an injury or death."

42. In Appaji's case (supra) the Division Bench of the Karnataka High Court held further that, the right to receive compensation under Section 163A of the Act presupposes that the person who makes a claim is a victim or the legal heirs of a victim. One who is the victim of his own actions of rash or negligent driving cannot invoke Section 163A for making a claim. The concern of the Legislature and the jurists is understandably for the victim in contradistinction to the victimiser or one who falls a victim to his own action. The Parliament did not intend to provide for compensation to the person responsible for the accident on structured formula basis in such cases. Para.19 of the judgment reads thus;

"19. The right to receive compensation under Section 163A presupposes that the person who makes a claim is a victim or the legal heirs of a victim. The provision on the plain language employed in the same does not entitle a person who is neither a victim nor his/her legal heirs to claim any compensation. In other words, one who is the victim of his own actions of rash or negligent driving cannot invoke Section 163A for making a claim. The concern of the legislature and the jurists is understandably for the victim in contradistinction to the victimizer or one who falls a victim to his own action. While road accidents generally affect innocent third parties or those making use of public transport, cases where the owner or driver of the vehicle alone suffers on account of his rash and negligent driving are not uncommon. Drunken driving, speeding in what are high performance new generation of automobiles including two wheelers are accounting for a large number of accidents every day. Quite often these accidents kill or wound even the person who is driving the vehicle. The Parliament did not in our opinion intend to provide for compensation to the person responsible for the accident on structured formula basis in such cases. Neither the provisions of Section 163A nor the background in which the same were introduced disclose any such intention. The argument that Section 163A is a penacea for all ills concerning the accidents regardless of whether the person who is killed or injured is or is not a victim must therefore be rejected."

43. In Appaji's case (supra) the Division Bench of the Karnataka High Court held further that, Section 163A of the Act no doubt brings about a significant change in the legal position as regards the obligation to prove fault is concerned, but the change is not so drastic so as to make even a tortfeasor entitled to claim compensation for his own act of rashness, negligence or imprudence. Para.22 of the judgment reads thus;

"22. Two decisions relied upon by the appellants may at this stage be noticed. In *Kokla Devi v. Chet Ram*, 2002 ACJ 650 (HP), a Division Bench of the High Court of Himachal Pradesh held that Section 163A had brought about a drastic change in the concept of tortious liability prevailing prior to it. The court was of the view that the 'non obstante' clause in Section 163A permitted even the tortfeasor to claim compensation on the principle of no fault liability. With respect to the Hon?

ble Judges who delivered the said decision we find it difficult to subscribe to that view. Section 163A of the Act no doubt brings about a significant change in the legal position as regards the obligation to prove fault is concerned, but the change is not so drastic so as to make even a tortfeasor entitled to claim compensation for his own act of rashness, negligence or imprudence. The 'non obstante' clause in Section 163A simply dispenses with proof of fault by the claimants against the driver or the owner of the vehicle involved in the accident. The claimant under Section 163A therefore need not prove that the driver or the owner of the vehicle was at fault in the sense that the accident had occurred on account of any negligence or rashness on his part. That does not, however, mean that claimant can maintain a claim on the basis of his own fault or negligence and argue that even when he himself may have caused the accident on account of his own rash and negligent driving, he can nevertheless made the insurance company pay for the same. Inasmuch as Section 163A dispenses with proof of fault, it does so only where the claimant is not solely responsible for the accident. The correct approach appears to us to be to find out whether in the absence of Section 163A, a claim could on the facts pleaded be maintained by claimant, if the answer is "no" because the claimant was himself the tortfeasor, the provisions of section 163-A would not come to his rescue and made such a claim maintainable. If the answer is 'yes' the beneficial provisions under Section 163A would absolve the claimant of the obligation to prove that the accident had taken place on account of the fault of the driver or owner of the vehicle provided he is willing to accept the amount of compensation offered according to the structured formula prescribed in the Schedule. That is the only way in which the anomaly arising out of a contrary interpretation can possible be avoided."

44. In Appaji's case (supra) the Division Bench held in categorical terms that, the 'non obstante' clause in Section 163A simply dispenses with proof of fault by the claimants against the driver or the owner of the vehicle involved in the accident. The claimant under Section 163A, therefore, need not prove that the driver or the owner of the vehicle was at fault in the sense that the accident had occurred on account of any negligence or rashness on his part. That does not, however, mean that claimant can maintain a claim on the basis of his own fault or negligence and argue that even when he himself may have caused the accident on account of his own rash and negligent driving, he can nevertheless made the insurance company pay for the same. Inasmuch as Section 163A of the Act dispenses with proof of fault, it does so only where the claimant is not solely responsible for the accident. The above view expressed by the Division Bench of the Karnataka High Court is also in consonance with the view expressed by the Apex Court in Ningamma's case (supra).

45. In the instant case, the accident occurred while the 1st respondent claimant was riding the motorcycle owned by the 2nd respondent herein and insured by the appellant under the cover of an "Act policy". The motorcycle capsized as the 1st respondent claimant lost control over the said vehicle and he sustained injuries, which was sought to be compensated by filing a claim petition under

Section 163A of the Act. Based on the materials on record, the Tribunal arrived at a conclusion that, the accident was the result of the negligence of the 1st respondent claimant himself, i.e., a self-invited accident. However, placing reliance on the reference order of a Two-Judge Bench of the Apex Court in *United India Insurance Co. v. Sunil Kumar* (2014 (1) SCC 680) the Tribunal held that, only because the 1st respondent claimant is a wrong doer and the accident was by his own default, he cannot be denied compensation and that, he has the right to claim compensation under the structured formula in the Second Schedule to the Act.

46. In *Sunil Kumar's* case (supra) a Two-Judge Bench of the Apex Court expressed its difficulty to accept the reasoning by the Two-Judge Bench in *Sinitha's* case (supra), stating that the principle laid down in *Hansrajbhai Kodala's* case (supra), which was accepted by the Three-Judge Bench in *Deepal Girishbhai Soni's* case (supra) has not been properly appreciated or applied in *Sinitha's* case (supra). Consequently, the matter was ordered to be placed before the learned Chief Justice of India for referring the matter to a larger Bench for a correct interpretation of the scope of Section 163A of the Act. Paras.12 to 14 of the reference order read thus;

"12. We find, in *Sinitha's* case (supra), one of the factors which weighed with the learned Judges was the absence of a similar provision like sub-section (4) of Section 140 in Section 163A which, according to the learned Judges, has been intentionally and purposefully done by the legislature. We find it difficult to accept that view. We are of the view that if such an interpretation is given, the very purpose and object of Section 163A would be defeated and render the provision otiose and a claimant would prefer to make a claim under Section 140, rather than under Section 163A of the Act by exercising option under Section 163B of the Act. Because, if a claim under Section 140 is raised, because of Section 140(4), such a claim would not be defeated by the owner of the vehicle or the insurance company, as the case may be, and the claimant may get a fixed sum prescribed under sub-section (2) of Section 140. Sub-section (4) of Section 140 has been introduced by the legislature since claim under Section 140 would be followed by Section 166. So far as Section 163A is concerned, claim is restricted on the basis of predetermined formula, unlike in the case of application under Section 166.

13. We are, therefore, of the view that liability to make compensation under Section 163A is on the principle of no fault and, therefore, the question as to who is at fault is immaterial and foreign to an enquiry under Section 163A. Section 163A does not make any provision for apportionment of the liability. If the owner of the vehicle or the insurance company is permitted to prove contributory negligence or default or wrongful act on the part of the victim or claimant, naturally it would defeat the very object and purpose of Section 163A of the Act. Legislature never wanted the claimant to plead or establish negligence on the part of the owner or the driver. Once it is established that death or

permanent disablement occurred during the course of the user of the vehicle and the vehicle is insured, the insurance company or the owner, as the case may be, shall be liable to pay the compensation, which is a statutory obligation.

14. We, therefore, find ourselves unable to agree with the reasoning of the Two-Judge Bench in *Sinitha's* case (*supra*). Consequently, the matter is placed before the learned Chief Justice of India for referring the matter to a larger Bench for a correct interpretation of the scope of Section 163A of the Motor Vehicles Act, 1988, as well as the points no.(iii) to (v) referred to in *Shila Datta's* case (*supra*)."

47. Merely for the reason that the decision rendered by the earlier Bench came to be doubted by the subsequent Co-ordinate Bench, by passing an order of reference to place it before a Larger Bench, it cannot be said that the same will amount to stay of the earlier verdict, nor does it mean that the earlier verdict will be inoperative. The law declared by the Apex Court is the law of the land by virtue of Article 141 of the Constitution of India. Unless and until it is varied, the earlier decision remains intact and the reference made by the subsequent Co-ordinate Bench cannot have any adverse consequence in so far as the declaration of the law is concerned. In that view of the matter, the Tribunal went wrong in allowing the claim made by the 1st respondent claimant under Section 163A of the Act, relying on the reference order of the Apex Court in *Sunil Kumar's* case (*supra*).

48. As such, if the accident involved is a self made one, there cannot be any statutory coverage of liability on the shoulders of the Insurance Company to pay compensation to the 1st respondent claimant, who stepped into the shoes of the owner of the motorcycle, in view of the law laid down by the Apex Court in *Sinitha's* case, *Ningamma's* case and *Rajni Devi's* case referred to *supra*. As we have already held, the intention of the legislature while inserting Section 163A was only to ensure that a claimant who opts for the special provisions as to payment of compensation on structured formula basis need 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 any other person. Section 163A of the Act was never intended to provide relief to those who suffered in a road accident only on account of their own rash and negligent act, not because of any rash and negligent act of another person in using a motor vehicle. There is nothing in the recommendations of the Review Committee to suggest that Section 163A was intended to be made available even in a case where the motor accident in question had caused death or injury to none except the person who was rash and negligent in using the motor vehicle. This being the position, the verdict passed by the Tribunal allowing the claim petition filed by the 1st respondent under Section 163A of the Act, who was found to be at fault in Ext.A3 Final Report filed before the Magistrate Court as referred charge, for rash and negligent riding of the motorcycle, is liable to be intercepted.

49. In the result, the appeal is allowed by setting aside the award passed by the Motor Accidents Claims Tribunal, Pathanamthitta in O.P.(MV)No.1346 of 2006, thereby dismissing the said claim petition.

50. However, since the decision rendered by the Apex Court in Sinitha's case (supra) was doubted by a Co-ordinate Bench and the matter is referred to the Larger Bench for a correct interpretation of the scope of Section 163A of the Act, as per the decision in Sunil Kumar's case (supra), the disposal of this appeal is without prejudice to the rights and liberties of the 1st respondent claimant to approach this Court seeking review of this judgment, if the reference came to be answered in his favour.