

(2014) 12 AP CK 0125

In the Andhra Pradesh High Court

Case No : M.A.C.M.A. No. 2699 of 2012

The New India Assurance Co. Ltd.

APPELLANT

Vs

Pulliachari and Others

RESPONDENT

Date of Decision : 30-12-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 41

Criminal Procedure Code, 1973 (CrPC) — Section 162

Evidence Act, 1872 — Section 145, 155 (3), 157, 3

Motor Vehicles Act, 1988 — Section 140, 140(1), 140(2), 140(3), 140(3)

Citation : (2015) 1 AnWR 709

Hon'ble Judges : B. Siva Sankara Rao, J

Bench : Single Bench

Advocate : A. Rama Krishna Reddy, Advocates for the Appellant; Manda Adam, Advocates for the Respondent

Judgement

Dr. B. Siva Sankara Rao, J.—The appellant-insurer filed this appeal aggrieved by the order/award dated 30.07.2011 in M.V.O.P. No. 586 of 2010 on the file of Motor Accidents Claims Tribunal-cum-VI Additional District Judge, Anantapur (for short, "Tribunal") awarding compensation of Rs. 4,00,000/- with interest at 7.5% p.a. against the claim of Rs. 4,00,000/- in the claim petition under Section 166 of the Motor Vehicle Act, 1988 (for short, "the Act").

2. Heard Sri A. Rama Krishna Reddy the learned standing counsel for the appellant and Sri Manda Adam learned counsel for the claimants. Perused the material on record. The parties hereinafter are referred to as arrayed before the Tribunal for the sake of convenience in the appeal.

3. Pending appeal the Respondent Nos. 1 and 2/claimants died and the appeal was abated. Subsequently the daughter of the claimants filed a petition in M.A.C.M.A.M.P. No. 5303 of 2014 to set aside the abatement caused on account of death of claimants and M.A.C.M.A.M.P. No. 5304 of 2014 to bring her on record as Respondent No. 4 on behalf of Respondent Nos. 1 and 2 as legal heir in

the above appeal. Both the petitions are allowed.

4. The contentions in the grounds of appeal as well as oral submissions by the appellant-insurer in nutshell are that the Judgment and decree of the Tribunal is contrary to law, weight of evidence and probabilities of the case, that the Tribunal gravely erred in considering the scope of Section 163-A of the Act and should have considered that the accident was the sheer and absolute negligence of the deceased rider of the bike including from the manner of accident of bike intruded into the stationed lorry on the left side with blinking lights and so far as the lorry bearing No. AAQ 6678 of the 1st respondent insured with the 2nd respondent, but for the vehicle in use that was riding by the deceased, if at all to fasten liability against the rider since died owner and insurer, if any of the bike and the Tribunal totally exonerating the same, despite showing from Ex. B-2 scene observation report to read Ex. A-2 sketch if at all with it, that the Tribunal wrongly came to the conclusion as if the sketch shows the vehicle in the middle of the road and as if there were no signal lights or precautions and as if there is total negligence of the driver of the lorry apart from considering the riding of the bike with two pillion riders, hence to exonerate the insurer by allowing the appeal setting aside the award of the Tribunal. Learned counsel for the insurer reiterated the same.

5. Whereas, it is the contention of the learned counsel for the claimants/respondent Nos. 1 and 2 of the appeal that the award of the Tribunal holds good and for this Court while sitting in appeal, there is nothing to interfere with the trial Court's findings fresh in mind of the facts having recorded evidence, hence to dismiss the appeal.

6. Now the points that arise for consideration in the appeal are:

"1. Whether the award of the Tribunal fixing joint liability holding that there is negligence on the part of the driver of the crime lorry of 1st respondent insured with 2nd respondent under Ex. B-1 policy, is unsustainable and requires interference, if so with what conclusions and with what observations?

2. To what result?"

POINT No. 1:

7. Ex. A-1 is the F.I.R given by the V.A.O. in saying he came to know and rushed to the scene of offence and found dead body of deceased herein and the bike and the stationed lorry at the road near kasepalli Choultry. The report was dated 16.11.1997 at about 10.00 A.M., the accident shown occurred in the intervening night prior to the report. There is no charge sheet filed by the police and it appears police closed the crime as if there is negligence of the deceased bike rider alone. Ex. A-3 is the post mortem report showing multiple injuries and none of crush injuries but outcome of fall and basically the frontal skull injuries and fractures. The M.V. I report not filed in this case by either side. Ex. B-3 statement under Section 162 Cr.P.C of the driver of the lorry no way admissible

in evidence for said lorry driver was not came to witness box either to corroborate his version with reference to the same or to contradict either under Section 157 or 145 or 155 (3) of Evidence Act. Now, the material documents before the Court to appreciate are particularly P.W-1 and P.W-2 eye witness to the occurrence as to the manner of accident, Ex. A-2 rough sketch to be read with Ex. B-2 scene observation as the sketch prepared with reference to the scene observation and Ex. A-4 inquest. The scene observation report filed by the insurer and rough sketch and inquest filed by the claimants in exhibiting among Ex. A-1 to A-5 and Exs. B-1 to B-3 supra. A combined reading of the rough sketch with the scene observation, clearly indicates from the scene observation that it is near the Kasepalli choultry and near bus stop the road is 22 feet width Tar Road and it is at the road left margin, the lorry was lying stationed 3 feet below the Tar Road in saying for want of engine oil with parking lights. Ex. A-2 scene observation report and sketch if perused with reference to the same, it cannot be said as if the lorry was stationed on the middle of the road. In fact, in the sketch Ex. A-2, on road the lorry was shown beyond middle towards left side of the road facing Southwards. The Tribunal thereby went wrong by allegedly referring Ex. A-2 in saying as if the lorry was lying stationed on the middle of the road and as if there is no blinking lights or signal lights. Apart from the scene observation report speaking supra of signal lights, the inquest report on the scene of offence on the dead body of the deceased conducted the person there with near relatives vide Ex. A-4 para-8 speak that the lorry was on left side road margin stationed and the motor cycle front wheel totally intruded into the rear portion inside the lorry with damage of the handle of the motor bike and para No. 9 speaks that the occurrence probably at about 2.30 A.M. after mid night of 15.11.1997 i.e., on 16.11.1997 and that due to the bike rider's negligence had dashed the stationed lorry.

8. The lorry driver or cleaner is a material witness for no eye witness can be examined at that time regarding the manner of accident. The Court cannot ignore the basic principle in appreciation of evidence in motor accident claims that the accidents are accidents and will not occur by notice for anybody to witness thereby bound to appreciate like any other matter with reference to the proof by preponderance of probability, however in appreciation only from the material on record with attending facts and circumstances and inferences with experience of men and matters. From this the Court has to keep in mind that no fool, apart from a man with any little prudence will never, dashed a stationed vehicle, had he be conscious of the lorry on the road side in his proceeding. It is clearly to say there is inadvertence or any negligence on the part of the deceased, in the manner of accident that too showing with the bike was intruding into the rear portion of the stationed lorry. The only thing is to be considered is whether there were any blinking lights. If at all there was any blinking and signal lights, the rider of the bike could have been noticed the stationed lorry. The M.V. I. report though not before the Court there is nothing even from the scene observation report and rough sketch but for showing there are fields and choultry

and near to bus stop; of any street lights or any other lighting. From these facts, it can be arrived that, there is negligence on the part of the lorry driver also. It is not the case of the diesel was exhausted and vehicle could not be moved, but for saying engine oil exhausted. The accident is on the national highway. The national highway is not meant for vehicles to park as they are bay lines and parking places on the highways and the parking of the vehicle on the road side even is against the rules. Thereby even taken for arguments sake there were any signal lights with little visibility that too for the accident happened in the darkness subject to any lights. No doubt, the bike rider of the two wheeler must have the front head light had he be conscious in his driving he could have averted the accident.

9. Having regard to the above, it is just to fix the contributory negligence on the part of the lorry driver in parking the lorry on the road side of 30%. Had there been nothing of the signal lights including from Ex. B-2 scene observation report, the Court could arrive 50% contributory negligence. Further, the facts show from what is discussed supra, particularly from Ex. B-2 that is deposed by R.W-1 with reference to it, it is just to arrive 30% negligence on the part of the lorry driver to fasten liability on the owner and insurer of the lorry i.e., respondent Nos. 1 and 2 of the claim petition to that extent.

10. Now, coming to the quantum of compensation, the inquest report also speaks with reference to the evidence of P.Ws 1 and 2 that the deceased was a carpenter by avocation. A carpenter is a skilled person, an artisan, with self-employment and not a mere labourer. Then, the prospective earnings can be taken into consideration as held by the Apex Court in Rajesh and Others Vs. Rajbir Singh and Others, . So far as the earnings concerned, there is no basis at all for the Tribunal to take at Rs. 4,500/- per month much less at Rs. 150/- per day by taking all 30 working days. As laid down by the Apex Court in Lata Wadhwa and Others Vs. State of Bihar and Others, in the absence of proof of earnings Rs. 3,000/- per month to be taken into consideration.

11. As the expression though two years after the occurrence, if the same sum of Rs. 3,000/- is taken as earnings at the time of accident i.e., on 16.11.1997 with 50% prospective earnings increase from the deceased was a skilled worker as referred supra, it comes to Rs. 4,500/- per month and even for the claim under Section 163-A of the Act as laid down in Kishan Gopal and Another Vs. Lala and Others, of Rs. 15,000/- per annum referred in Section 163-A of the Act to be read as Rs. 30,000/- per annum with 50% increase, it comes to Rs. 45,000/- per annum and after deducting 1/2 towards personal expenses since unmarried, and not 1/3rd as taken by the Tribunal, it comes to Rs. 22,500/- per annum. So far as the multiplier concerned, considering the 50 as the age of mother of the deceased concerned, it is 13 as per Schedule III, it comes to Rs. 2,92,500/- apart from Rs. 7,000/- towards loss of estate and funereal expenses, it comes to Rs. 2,99,500/- rounded to Rs. 3,00,000/- and 30% negligence of the lorry driver therein comes to Rs. 89,850/- rounded to Rs. 90,000/- is the compensation the

claimant/4th respondent entitled.

12. No doubt, it is the contention of the learned counsel for the claimants that once, there is a contributory negligence of the lorry driver also, it comes as vehicle in use even stationed on the road side and this Court cannot decide for the claimants need not prove any negligence and even there the deceased bike rider in negligence that contributed, it is not open to raise by lorry owner and insurer against whom the claim filed for the entitlement of the compensation under structured formula.

13. It is not a hit and run case. It is the bike rider deceased dashed while riding the bike the stationed lorry with blinking lights from which major part of negligence is of deceased as discussed supra. Still, the claimants say they are entitled to total compensation against stationed lorry owner and insurer and the Court cannot go to decide contribution by deceased to apportion the liability.

14. Before discussing the further facts, it is necessary to state the scope of the provisions of the Motor Vehicles Act, 59 of 1988, amended by Act, 54 of 1994 and further amended by Act, 39 of 2001. The Act contains 14 chapters and 2 schedules with rules and notifications, Central Rules and State Rules including of the A.P.M.V. Rules, 1989; of which the chapters 10 to 12 are mainly relevant for purpose of adjudicating the lis. It is needless to say, the chapters 10 to 12 are not only inter-related but also interlinked.

14(a). For example-In Chapter XII- Section 165, speaks-constitution of claims Tribunal, Sections 167 with non-obstante clause r/w 143 of Chapter X of the Act speak on the option to proceed under the Workmen Compensation Act, 1923 or under the Motor Vehicles Act, 1988, irrespective of what is contained in the WC Act, for workman injured or died in the course of employment and where negligence of driver if deceased or injured need not even be gone into but for to show the accident occurred while in use of the vehicle and in the course of employment for the statutory liability of Act policy as per Sections 147&149 of the Act, in so far as the driver and for public carriage-conductor or ticket collector (Section 147(1) proviso(i) a, b (c-leave about representative of goods in a goods carriage)) unless shown for claim of more to Act liability, if policy is comprehensive (Section 147(1) proviso(ii) - vide National Insurance Co. Ltd. Vs. Prembai Patel and Others, Sanjeev Kumar Samrat Vs. National Insurance Company Ltd. and Others, & National Insurance Co. Ltd. Vs. Mastan and Another, .

14.(b). The claim before the Tribunal needless to say is either final claim under Section 166 (of Chapter XII) with interim measure under section 140 or final claim under Section 163-A (chapter XI) or interim measure under Section 161(chapter XI) as the case maybe.

14.(c). Once a claim is made under Section 140 (chapter X) for interim compensation, final claim under Section 163-A (chapter XI) won't lie, but for under Section 166 (of chapter XII). Further in a claim under Section 166, claim

under Section 140 can also be made; but in a claim under Section 163A, claim under Section 140 cannot be made. The claims either under Chapter XI or under Chapter XII shall be by third parties and not owner of vehicle or person permitted by owner. Whether claim under Chapter X- under Section 140 can be made by owner of vehicle or person permitted by owner for injuries and by his legal representatives in case of his death is a matter in dispute to decide, more particularly from the overriding effect given to the chapter X with non- obstante clause in Section 144 of notwithstanding anything contained in any other provisions of the Act or of any other law for the time being in force.

14.(d). The claim for hit and run cases (of Chapter XI) covered by Section 161 also says provisions of section 166 shall apply to make such applications. It speaks from Section 165 that there is no bar to make application for hit and run cases before the Tribunal, but for to say from reading of Section 163 of formulation of the special scheme by the Central Government with the authority who has to adjudicate such claims for recommending and granting reasonable compensation, which need not confine to the sums fixed in Section 161. There are certain an expression on either side in saying (i) it gives concurrent jurisdiction on one side also from reading of Section 168 with speaks subject to Section 162 and not of Section 163 or Section 161 & (ii) it gives no jurisdiction on other side from the Section 163 as a special provision to prevail (known as solatium scheme, 1989) even not provided with non-obstante clause of specific exclusion. However, a close perusal of the Sections 161 with 162 and also Section 163 by keeping together shows that Sections 161 and 163 each deals with different type; to say Section 161 deals with fixed sum of Rs. 25,000/- for death and Rs. 12,500/- for grievous hurt injuries, whereas Section 163 deals with the solatium scheme, 1989 under which there is no rider to recommend only of Rs. 25,000/- for death and Rs. 12,500/- for grievous hurt injuries; for the enquiry officer (Revenue Sub-divisional Officer or Tahsildar as the case may be) can recommend more than that in Form III read with Clause 21 of the scheme. When Section 161(3) is intended to immediate relief (like in Section 140 in a claim under Section 166(1)) before the Tribunal and such grant by claim petition is not a bar for recommending and awarding final compensation on application made as per the solatium scheme of 1989 by the authorities after given deduction of any amount awarded and paid under Section 161 of the Act- vide observations of this Court in MACMA No. 148 of 2009 & MACMA No. 2072 of 2011.

14.(e). As it also speaks like in Section 140, for claim under Section 161 or application under section 163 as per section 162, amount recovered to be adjusted/refunded in the event of final claim for compensation filed and allowed under Section 163-A or 166 of the Act.

14.(f). Further Sections 146-159 of Chapter XI speak compulsory insurance coverage and statutory and contractual liability of insurer to indemnify the insured for third party risk, once policy covers the risk irrespective of breach of policy terms and conditions, save those are not fundamental a breach, insolvency

of insured (section 154) and its consequences, death of insured is not a bar to survival of cause of action (section 155). Likewise sections 165-175 are also the general provisions with some of which applicable respectively to Chapter X and XI.

15. Chapter XII of the Act:

"15.(a). Section 168 of the Act reads as under:

"1. On receipt of an application for compensation made under section 166, the Claims Tribunal shall, after giving notice of the application to the insurer and after giving the parties (including the insurer) an opportunity of being heard, hold an inquiry into the claim or, as the case may be, each of the claims and, subject to the provisions of section 162 may make an award determining the amount of compensation which appears to it to be just and specifying the person or persons to whom compensation shall be paid and in making the award the Claims Tribunal shall specify the amount which shall be paid by the insurer or owner or driver of the vehicle involved in the accident or by all or any of them, as the case may be:

Provided that where such applicant makes a claim for compensation under section 140 in respect of the death or permanent disablement of any person, such claim and any other claim (whether made in such application or otherwise) for compensation in respect of such death or permanent disablement shall be disposed of in accordance with the provisions of Chapter X.

2. The Claims Tribunal shall arrange to deliver copies of the award to the parties concerned expeditiously and in any case within a period of fifteen days from the date of the award.

3. When an award is made under this section, the person who is required to pay any amount in terms of such award shall, within thirty days of the date of announcing the award by the Claims Tribunal, deposit the entire amount awarded in such manner as the Claims Tribunal may direct."

15.(b). Sections 169 and 176 speak of the summary procedure and as per C.P.C. (subject to rules See APMV Rules made under Section 176 or 164 of the Act) and powers of the Claims Tribunal in inquiry under Section 168 (supra) and Section 170 speaks of the power of the Tribunal in directing for impleading of insurer with right to contest, where in the course of enquiry the claims tribunal has satisfied that there is a collision between the person making the claim and the person against whom the claim is made or the person against whom the claim is made has failed to contest the claim, in directing.

15.(c). Sections 165 and 175 speak for constitution of claims tribunals by State Government and bar of civil Court jurisdiction therefrom, for 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 including under Sections 140 and 163-A or damages to any property of a third party so arising,

or both.

15.(d). Section 166(1) speaks application for compensation arising out of the accident in the nature specified in Section 165(1) that-an application for compensation may be made- (a) by a person who sustained injuries or (b) by the owner of the property; or (c) where death has resulted from the accident, by all or any of the them on behalf of all or for the benefit of all legal representatives of the deceased; or (d) by any agent duly authorised by the person injured or all or any of the legal representatives of the deceased, as the case may be. Sub-section (2) of Section 166 speaks of jurisdiction of the tribunal where accident occurred or where the claimant/s reside/s or carries on business or where the defendant resides and in such form with such particulars prescribed. It speaks in the application under Section 166, the interim compensation claim can even included as a separate para before verification of contents and signature of claimant/s. Section 166(4) speaks that the claims tribunal shall treat any report of accidents forwarded to it under Section 158(6) as an application for compensation under this Act.

15.(e). Sections 171 & 172 speak powers of Tribunal to award interest on compensation and compensation costs. Section 173 speaks right of appeal (to read with Section 170 for Insurer and with Order 41 CPC as per the settled expressions). Section 174 speaks for recovery of the compensation awarded (needless to say it can be executed as a civil court decree and drawing of a decree from the award is a must). The provisions supra are incorporated in chapter XII of the Act."

16. Chapter XI of the Act under the title insurance of motor vehicles against third parties:

"16.(a). Section 163-A incorporated by the Amended Act, 54 of 1994 speaks as a special provision as to payment of compensation on structured formula basis speaks that:

1. 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 authorized 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 legal heirs or the victim, as the case may be.

The explanation speaks permanent disability shall have the same meaning and extend as in Workmen's Compensation Act, 8/1923;

2. In any claim for compensation under 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 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- Kishan Gopal and Another Vs. Lala and Others, .

16.(b). Section 163(b) speaks that where a person is entitled to claim compensation under Section 140 and under Section 163-A, he shall file the claim under either of sub-sections and not under both.

16.(c). Sections 161 to 163, provisions relating to hit and run motor accident cases as referred supra, no way require repetition."

17. Now, coming back to the relevant provision-Section 140 of the Act under the heading liability without fault in certain cases out of Sections 142 to 144 of the chapter-X.

"Section 140(1): Where death or permanent disablement of any person has resulted from an accident arising out of the use of a motor vehicle or motor vehicles, the owner of the vehicle shall, or, as the case may be, the owners of the vehicles shall, jointly and severally, be liable to pay compensation in respect of such death or disablement in accordance with the provisions of this section.

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

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

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

(5) Notwithstanding anything contained in Sub-section (2), regarding the death or bodily injury to any person for which the owner of the vehicle is liable to give compensation for the relief he is liable to pay compensation and any other law for the time being in force.

Provided that, the amount of such compensation shall be given under any other law shall be reduced from the amount of compensation payable under this Section or under Section 163-A."

18. In this Section 140(5) given with overriding affect to Section 140(2) and the expression used is negative of the fact that the owner of the vehicle would be

additionally liable to pay compensation under any other law for the time being in force subject, however, to the condition has been laid in the proviso appended thereto, that the amount of such compensation to be given under any other law should be reduced from the amount of compensation payable there under or under Section 163A. Having regard to the fact that no procedure for refund or adjustment of compensation (like in) Section 140 and 161 from the amount of compensation payable under the award on the basis of fault liability under Section 166 of the Act (as expressly been provided for) has been provided for in relation to the proceedings under Section 163A of the Act, it must be held that the scheme of the provisions under Section 163A and 166 are distinct and separate.

19. Where in Chapter XI, Section 158(6) is also by the Amended Act, 54/1994 incorporated of the information regarding accident involving the death or bodily injury recorded or report contemplated by a police officer in charge of a police station. Subsection (1) is also incorporated, which speaks report received by the tribunal to take as a claim petition. It is also to say in this context that the report to receive as the claim for compensation by the tribunal is under what provision as to under Section 140 or 163A or 166 concerned, it is by virtue of incorporation of Section 166(4) by the Amended Act that, the tribunal shall treat the report as an application for compensation under this Act and not specifically under Section 166 it is only to take as is appropriate, to say even it is hit and run case even under Sections 161 and otherwise either under Section 163A or under 166 if any also under Section 140 as it appears there from, though there is no direct authoritative expression in this regard-including from- Jai Prakash Vs. National Insurance Co. Ltd. and Others, & Rajesh and Others Vs. Rajbir Singh and Others, .

20. From the above provisions of the Act, Section 140 is incorporated in Chapter X, Section 163A is incorporated in Chapter XI and Section 166 is incorporated in Chapter XII. It is further necessary to mention that among these chapters X to XII of the provisions supra, the wording of Section 140(3) is with self same wording of Section 163-A(2), however, there is no similar wording of Section 140(4) in Section 163-A to take away right of defence specifically like in Section 140(4). It is to say, in a claim filed under Section 140 or 163A, the claimant shall not be required to plead and establish the death or permanent disablement relating to the claim were due to wrongful act, neglect or default of owner or owners of the vehicle or vehicles concerned or any other person. A close reading of this provision speaks the claimants are not required to plead or prove negligence of the deceased or injured as well as negligence of the person owned the vehicle against whom the claim is made or in case of more than one vehicle involved of negligence of any one of them or composite or contributory negligence as the case may be of the vehicles drivers or other person.

21. So far as the claim under Sections 140 and 163A is concerned, it is as stated supra clearly provided by Sections 163-B & 141 that claim can be filed under

these sections by any person to mean under either of the sections and not under both. It clearly provides that, though a person who filed application under Section 140 is entitled to file an independent application under Section 166 with claim therein or simultaneously or later subject to these provisions as the case may be; once application filed under Section 140, another application under Section 163-A is not maintainable. To say, in so arranging the sections within the respective chapters are to achieve the respective purposes and there from so far as claim under Section 163A concerned, there is no requirement and proof of fault even not an interim measure.

22. Similarly, from reading of Section 168 r/w 166 of the Act, Section 168(1) speaks the claim under Section 166 in determining subject to provisions of Section 162 in the award, the amount of compensation appears it to be just and specifying the person or persons to whom compensation shall be paid and the amount which shall be paid by the insurer or owner or driver of the vehicle involved in the accident or by all or any of them as the case may be. It indicates the determination specifically including to the extent of liability in claim under Section 166 on fault liability from pleading and proof. Whereas such rider is not there for Section 140 and 163A from what is stated supra in Section 163A(2) and 140(3). A close reading of these provisions in the three chapters (leave about sections 167 r/w 163A or 166) the compensation that can be claimed under Workmen's Compensation Act for death or bodily injury under that Act, anything contained in that Act the claimants are entitled to compensation may claim such compensation under either of these two Acts but not under both indicate that even the claim under Section 140 is an interim measure with a right to entertain an efficacious claim under fault liability later under Section 166 as a final measure; whereas the claim under Section 140 even an interim measure as supra again the claim under Section 163A won't lie but for if at all under Section 166. Whereas, a claim under Section 163-A as a final measure with no proof of fault once made no claim again can be made under Section 166. It appears from said arrangement also of Section 140 is incorporated in Chapter X-of totally no fault liability-on proof of accident while vehicle in use, where as Section 163A is incorporated in Chapter XI-of semi fault liability-on proof of accident while vehicle in use claimant is entitled to compensation, however it does not prohibit the respondent to raise plea of negligence or fault of injured/deceased or his or his vehicle driver contributory or composite negligence for no similar prohibitory clause in Section 163A similar to Section 140(4) and needless to say Section 166 is incorporated in Chapter XII-of totally fault liability from said combined reading of the three provisions of the three chapters in Juxtaposition, more in particular noticing the difference between Section 140(3&4) with Section 163A(2) detailed supra.

23. In this regard, if two applications are filed under both the provisions, one under Section 163A and other under Section 166, both cannot be, being final measure proceedings one under proof of fault and the other without proof of fault respectively cannot be proceeded with simultaneously but for the claimant

to opt before commencement of enquiry as per the expression of the Apex Court in *The Oriental Insurance Co. Ltd. etc. Vs. Hansrajbhai V.Kodala and Others etc. etc.*, . It is to say both being final remedies cannot be simultaneously proceeded but to opt by claimants only one of the two to proceed. It was also confirmed by the three judges' bench expression of the Apex Court in *Deepal Girishbhai Soni and Others Vs. United India Insurance Co. Ltd., Baroda*, at page 405 para 57. Subsequent to the above, it was held by the Division Bench of this Court in *Bhupathi Prameela and Others Vs. The Superintendent of Police and Others*, that since the M.V. Act provisions to claim compensation by victims of accidents from the object of the Act meant to benefit the claimants being the social legislation and even both Section 163A and Section 166 quoted in the claim application, for technicalities won't come in the way to render substantial justice between the parties, the Court can take the application as filed under Section 166 which is beneficial to the claimants.

24. In fact, but for to say from the above as to sections 163-A and 166 are both independent and meant for getting relief by invoking anyone of these. As the claim is undisputedly filed under section 163A and accordingly proceeded by the tribunal and also the appeal against which filed under section 173 of the Act r/w Order 41 C.P.C. from the provisions of C.P.C. are applicable even to the appeals under M.V. Act as per the settled law of the Apex Court including from the latest expression in this regard in *Ranjana Prakash and Others Vs. Divisional Manager and Another*, .

25. Now it is to be seen whether section 163A is on fault liability or not from section 166 is undisputedly on fault liability specifically to plead and prove. Even Section 163A speaks the claimants need not plead and prove the fault or wrongful act, the general principles under the law of torts giving a right to the other party that is the driver, owner and insurer against whom the claim is made to plead and prove any wrongful act or negligent act of the deceased/injured or the vehicle in which deceased/injured was travelling or the opposite vehicle driver concerned, in establishing self negligence of deceased/injured or composite negligence or contributory negligence of the drivers of both vehicles respectively. It is because to say or to decide section 163-A is with any element of fault liability need not be decided solely based Section 163-A enables the claimant to maintain a claim without pleading or proving negligent act or wrongful act. It is also to be taken into consideration to say on fault liability or tort from the opposite parties right under the general law of torts from the general principles to attract the claim on the grounds of self negligence of the deceased/injured or composite negligence of both the vehicles if involved or the claimants/injured and the other persons or contributory negligence of drivers of both vehicles if involved. A combined reading of these provisions in these three chapters supra communicate that such defence not being made available so far as section 140 of the Act under chapter X concerned as it is only an interim measure and such right to oppose the claim on merits is available in a efficacious claim to be made under Section 166. So the opposite parties right so to plead

and prove apart from the claimant's duty to plead and prove the wrongful act or negligent act required by law and remedy available there. In so far as Section 163-A of the Act concerned, if that right is to be taken away, there will be no remedy to the opposite party contestants to the claim even there is negligence or wrongful act on the part of the injured/deceased in respect of the claim or the vehicle in which he was travelling or the opposite vehicle concerned. It is thus to say though under Section 140 that right is impliedly taken away, so far as section 163A concerned that right is impliedly provided. It is also for the reason that all these provisions are incorporated in three different chapters and section 140 is a first ladder from which there is a right to step up to the second ladder whereas section 163-A is only a single step ladder and as such under Section 166 the duty to plead and prove wrongful or negligent act on the claimants and to defend in this regard by the owner/insurer respondents to the claim automatically there, not there under Section 163-A for the claimants for no duty to plead or prove, like in section 140 for an interim measure that is not taken away in Section 163A so far as the defence concerned for the reasons that section 140 and section 163-A respectively used the same wording in sub-sections (3) and (2) of the sections respectively one is an interim measure and the other is a final measure and as such so far as section 163-A is concerned it is though not on absolute fault liability, not on absolute no fault liability. As the opposite parties right is impliedly inherent from the general law of torts to defend and prove the wrongful act or negligent act in seeking non-liability or contributory negligence or composite negligence as the case may be, for not taken away statutorily by the wording of Section 163-A of the Act, like in Section 140 of the Act where by its wording it is taken away statutorily. This conclusion no doubt lends support from the recent two judge bench expression of the Apex Court in National Insurance Company Ltd. Vs. Sinitha and Others, -wherein it was held by referring to the earlier two judge bench expression of the Apex Court in Hansrajbhai V. Kodala (supra) and in answering in affirmative on the aspect of claim for compensation under Section 163A of the Motor Vehicles 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 contributory negligence of the offending vehicle. It was observed that Section 140(3) and Section 163A(2) both are *pari-materia* provisions and there is no provision corresponding to Section 140(4) in Section 163A and thereby the claim for compensation under Section 163A held is fault based liability from the contributory negligence or fault negligence of deceased/claimant or disabled victim in causing the accident compensation may be reduced on such proof. However, the onus to prove contributory negligence remain on the defence in opposing the claim under Section 163A i.e. the owner and insurer can defend the claim and the Hansrajbhai V. Kodala (supra) did not decide that determination of compensation under Section 163A is based on no fault liability principle. The claim for compensation raised in Section 163-A need not be based on pleadings or proof of claimants showing absence of contributory negligence, but for onus to proof of contributory or composite or total negligence of injured/deceased or of his traveling vehicle driver; lies on the shoulders of the owner or

insurer, opposing and defending the claim to so establish in discharge of the burden lies on them. It was observed for the conclusion that where claim cannot be defeated on account of contributory negligence then such provision would fall under no fault liability principle. It is thereby as per Section 140(4), both claim and defence are precluded from raising any ground of fault and whereas Section 163-A is an independent provision with non-obstinate clause having overriding effect over all other provisions of the Act. It is also a rationale behind it, in saying as fault liability principle from where large compensation amount involved or compensation amount is likely to be high, it is legitimate that insurance company is not fastened with liability when offending vehicle suffered fault (wrongful act, neglect or doubtful) under alleged act. In *Minu B. Mehta and Another Vs. Balkrishna Ramchandra Nayan and Another*, it was held that the right to receive compensation can be only against a person who is found to compensate due to the failure to perform a legal obligation. The general law applicable is the common law and law of torts. After the expression, the MV Act, 1939 was amended by Act, 47 of 1982 incorporating Section 92-A with the concept of payment of compensation without proof of fault or negligence of owner or driver of the vehicle by the claimant/s. Therefrom, in *Gujarat State Road Transport Corporation, Ahmedabad Vs. Ramanbhai Prabhatbhai and Another*, it was held that Section 92-A is incorporated as a clear departure from the usual common law principle of claimant/s to prove negligence of owner or driver of the vehicle to claim compensation against them. In fact in same line to Section 92-A of the Act, 1939, in the new Act, 1988, Section 163-A was incorporated by the amended by Act, 54 of 1994, besides no fault liability interim measure provided by Section 140 and equally by Section 161 in the Act, 1988. In *K. Nandakumar Vs. Managing Director, Thanthal Periyar Transport Corpn.*, it was held that payment of compensation on no fault basis cannot be rejected even if the person making the claim was responsible for such permanent disablement. It is to say, *K. Nandakumar supra* is under no fault liability interim measure provided by Section 140 of the Act, 1988. It is later in *Hansrajbhai V. Kodala (supra)* it was held referring to Section 163-A of the Act on its scope that, the non-obstante clause in Section 163-A in computation of compensation under structured formula, simply excluded determination of compensation on the principle of fault liability under Sections 166 & 168. The said provision does not permit a person to place a premium upon his own fault and make the insurer pay for the same. The expression was in point of view of the victim. It no way speaks in direct terms that, negligence of the victim cannot be decided by allowing the insurer and owner - being the opposite parties to the claim to defend and to fix any contributory negligence on the deceased. However, it is important to notice that after *Hansrajbhai* and before *Sinitha*, where correctness of the law laid down in *Hansrajbhai* under Section 163A came for consideration on reference made, was answered by the three judge bench expression in *Deepal Girishbhai Soni (supra)* in the affirmative. While so answering, it was held that though both Sections 166 and 163A are final proceedings, under Section 166 on fault liability, the duty is on the claimants to plead and prove wrongful or negligent act of

opposite party to get higher compensation, whereas under Section 163A on no fault liability, there is no duty on the claimants to plead and prove wrongful or negligent act of opposite party to get compensation under the structured formula. It did not specifically even say the opposite parties right to defend in this regard by the owner/insurer respondents to the claim of negligence or fault or contribution on the injured/deceased or their vehicle driver, available under Section 166 is not there and taken away under Section 163-A. Even for so holding it was not specifically considered referring to the Section 140(3) and Section 163A(2) of both are *pari-materia* provisions and there is no provision corresponding to Section 140(4) in Section 163-A and thereby the claim for compensation under Section 163-A held is fault based liability from the contributory negligence or fault negligence of deceased/claimant or disabled victim in causing the accident compensation may be reduced on such proof, that was in fact referred and answered in *Sinitha supra*. But for that, both the expression in *Sinitha* and in *Deepal Girishbhai Soni (supra)* confirmed law laid down in *Hansrajbhai (supra)*. In fact on this aspect that *Deepal Girishbhai Soni* was not referred in *Sinitha* while holding Section 163A is founded on fault liability principle, correctness of the law in *Sinitha* was referred to a larger bench in *United India Insurance Company Ltd. Vs. Sunil Kumar and Another*, and it is pending.

26. In fact in *Deepal Girishbhai Soni*, it was observed in paras 39 to 42 that-

"Section 163A was introduced in the Act by way of a social security scheme. It is a code by itself. Section 140 of the Act dealt with interim compensation but by inserting Section 163-A, the Parliament intended to provide for making of an award consisting of a pre- determined sum without insisting on a long-drawn 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 Act and the Rules framed by the State in no uncertain terms suggest that a new device was sought to be evolved so as to grant a quick and efficacious relief to the victims falling within the specified category. 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".

27. Thus, from a combined reading of the provisions (*supra*) with reference to the law as laid down in *Sinitha*, confirming *Hansrajbhai V. Kodala* including with reference to *Deepal Girishbhai Soni (supra)* that for the efficacious and as final relief under Section 163-A that can be maintained even negligence is on the part of the victim/claimant for there is no need of proof required much less plea, but for proof of accident while the vehicle in use, as a deviation from general and common law principle of burden on the claimant to plead and prove negligence of the other side and with no fault of victim/claimant; however, it no way speaks from said combined reading in juxtaposition of these provisions that opposite parties are prohibited from taking defence plea and prove any negligence of

victim/complainant or their vehicle driver for non-liability or proportionate liability, as maintainability of claim is one thing proved or not proved or disproved as contemplated by the general principles and as defined in Section 3 of the Indian Evidence Act is other thing. Leave apart, even in case of negligence of the victim once claim is maintainable under Section 163-A to plead and prove, there is no duty on the claimant/s and they can ignore their negligence and maintain a claim, but for the controversy as to does it take away the opposite party's right to plead and prove under the common law but for such deviation is only to the extent of exempting the complainant from duty to plead and prove to avail quick relief-there is in this regard a reference made in- United India Insurance Company Ltd. Vs. Sunil Kumar and Another, and the same is pending before the larger bench of the Apex Court. The reference pending is also on correctness of United India Insurance Company Ltd. Vs. Shila Datta and Others, under Section 170 of the MV Act, on rights of Insurer as appellant in view of conflict with National Insurance Co. Ltd., Chandigarh Vs. Nicolletha Rohtagi and Others, .

28. Thus, from the above, though the claimants need not plead and prove negligence of the deceased or anybody, that will not take away the right of the opposite party i.e., respondents to the claim petition to plead and prove contributory negligence of the deceased. In fact as the facts show there was a triple riding. Instead of the bike meant for double riding and the manner of accident shows the main negligence on the deceased. When such is the case and also from the latest three Judge bench expression of the Apex Court in Pawan Kumar and Another etc. Vs. Harkishan Dass Mohan Lal and Others, the Court is bound to decide the contributory negligence in apportioning the liability though so far as composite negligence concerned in the claims where the deceased or injured is not responsible, the liability can be fixed even there is composite negligence of two vehicles drivers and one of the vehicle driver even not impleaded being they joint tortfeasors, for liability can be fastened against any one of the joint tortfeasors with remedy open for the said tortfeasor for the apportionment of liability and to seek contribution from the other joint tortfeasor thereof. Here as referred supra, there is a main contributory negligence on the part of the deceased and it is not a case of composite negligence. Thus, the Court has to decide and apportion the liability.

29. It is needless to say the remedy of the claimants is left open to proceed against the bike owner and insurer if there is bike owner, personal accident risk coverage by the bike policy if any. Otherwise, even the deceased was not owner of the bike, he steps into the shoes of the owner of the bike and cannot be considered as a third party to claim compensation against the bike owner and insurer unless personal accident coverage is there as expressed by the Apex Court in Ningamma V. United India Insurance Co. Ltd., Dhanraj Vs. New India Assurance Co. Ltd. and Another, and Oriental Insurance Co. Ltd. V. Rajani Devi (2004) 5 SCC 384. This aspect is covered by earlier expression of this Court in The New India Assurance Co. Ltd. V. Vuyyuru Veera Venkateswaramma (MACMA No. 1548 of 2007) and M.A.C.M.A. No. 2072 of 2011. Accordingly, point No. 1 is

answered.

POINT No. 2:

30. In the result, the appeal is partly allowed by fixing contributory negligence of deceased bike rider at 70% and of respondents 1 and 2 (owner and insurer) of the stationed lorry with blinking lights at road side which is not meant for parking at 30% and consequently reducing the compensation from Rs. 4,00,000/- awarded by the Tribunal against the lorry owner and insurer to Rs. 90,000/- with interest at 7.5% p.a. The 2nd respondent/insurer, shall pay or deposit the same within one month from the date of receipt of a copy of this order and needless to observe that if anything already permitted to withdraw by the claimants, the same is to be deducted out of the compensation, since awarded to claim the rest by filing cheque petition without need of permission petition before the Tribunal and if any excess amount of the insurer lying, the same is to be refunded to the insurer on their filing cheque petition without need of permission petition with accrued interest respectively. The award of the Tribunal in all other respects holds good. No order as to costs.

31. Miscellaneous petitions, if any pending in this appeal, shall stand closed.