
(2013) 01 MAD CK 0209

In the Madras High Court

Case No : C.M.A. No. 3290 of 2012 and M.P. No. 1 of 2012

Thomas

APPELLANT

Vs

P. Sivasubramaniam and Others

RESPONDENT

Date of Decision : 03-01-2013

Acts Referred:

Motor Vehicles Act, 1988 — Section 123, 140, 147, 163A, 166
Penal Code, 1860 (IPC) — Section 279, 304A, 337

Citation : (2013) 3 MLJ 863

Hon'ble Judges : S. Manikumar, J

Bench : Single Bench

Advocate : Ma. P. Thangavel for M. Guruprasad, for the Appellant;

Final Decision : Dismissed

Judgement

S. Manikumar, J.—Though the appellant has sustained injuries and assessed by P.W.2, Doctor, to have suffered 30% permanent disability,

by fixing negligence on the appellant/claimant, for causing the accident, the claims Tribunal held that the appellant is entitled to a sum of only Rs.

25,000/-, under "No Fault Liability" for permanent disablement and denied the quantum of compensation claimed under various heads. Being

aggrieved over the decision fixing negligence on him and the quantum of compensation, the injured/claimant has filed this appeal. Short facts leading

to the appeal are as follows:

According to the appellant, that on 25.11.2003, when he was driving a Maruthi Van bearing Regn. No. TN04C 4223 on NH47, Erode to Kovai

Main Road, near Tekkanur bridge, Avinashi, a State Transport Corporation bus was proceeding, ahead of the Maruthi van. After giving due

notice to the driver of the bus, the appellant attempted to overtake the bus.

During the course of overtaking the bus, a lorry bearing Regn. No.

TN31 409, was coming from the opposite direction. On seeing the lorry, the appellant cautioned the driver of the lorry by giving signal, so as to

enable him to cross the transport Corporation bus. Without considering the same, the driver of the lorry drove his vehicle in a rash and negligent

manner and dashed against the Maruthi Van, resulting in the accident. According to the appellant, it was the lorry driver, who has caused the

accident.

2. Before, the claims Tribunal, the appellant has further submitted that he sustained grievous injuries and became unconscious. A criminal case was

registered against him and that he was compelled by the police not to defend the matter and therefore, he was constrained to admit the guilt and

paid the fine amount. Before the claims Tribunal, it was further contended that he was treated in KMC Hospital, Coimbatore and Kumaran

Hospital, Coimbatore, and Operations were performed. For the injuries, disablement and the expenses incurred under various pecuniary and non-

pecuniary losses, a sum of Rs. 10,00,000/- has been claimed as compensation.

3. United India Insurance Company Limited, Mettupalayam, the insurer of the lorry bearing Regn. No. TN31 409, in its counter affidavit has

denied the contention of the appellant that on seeing the lorry, the appellant cautioned the driver of the lorry to stop the vehicle, so as to enable him

to cross the Corporation bus and without considering the same, the lorry driver dashed against the Maruthi Van. The Insurance Company has

further contended that the lorry was driven from West to East keeping on the left side of the road, at a moderate speed, by observing the traffic

rules. When the lorry came near the spot of accident, a State Transport Corporation bus was coming from the opposite direction at a high speed.

The appellant who was driving the Maruthi Van behind the bus, suddenly overtook the bus, at a high speed and came to the right side of the road.

On seeing the Maruthi Van, overtaking the bus, at a high speed, the driver of the lorry went to the extreme left. However, the appellant lost control

of the Maruthi Van and dashed against the lorry. Hence, the Insurance company submitted that it was the appellant, who caused the accident.

4. The contention of the appellant that a signal was given while overtaking has also been denied. According to the insurer, first of all, the appellant

ought to have verified as to whether any vehicle was coming in the opposite direction and only thereafter, he should have overtaken the van and

that too, after getting the signal, from the driver of the vehicle ahead of him. Hence, they submitted that since the appellant himself is the tortfeasor,

he is not entitled to claim compensation.

5. The insurance company has also denied the contention that on the instigation of the driver of the lorry insured with them, the police has

registered a case against the appellant. They also denied the contention that the police threatened the appellant not to defend the criminal case, but

to admit the same. Without prejudice to the above, the Insurance company has disputed the nature of injuries, treatment and the expenses incurred.

To extricate the liability, the defence of the insurer of the Maruthi Van is also on the same lines.

6. Before the claims Tribunal, the appellant has examined himself as P.W. 1 and reiterated the manner of accident. P.W.2, is the Doctor, who

assessed the disability. P.W.3, is another witness examined on behalf of the appellant. Exhibit P-1, FIR, Exhibit P-2, Observation Mahazar,

Exhibit P-3, Insurance policy of the lorry, Exhibit P-4, Insurance Policy of the Maruthi Van, Exhibit P-5, Driving licence of the lorry driver, Exhibit

P-6, copy of the complaint, Exhibit P-7, Wound certificate, Exhibit P-8, Medical Bills, Exhibits P-9 to P-11, Discharge summary, Exhibit P-12,

Advance receipts, Exhibits P-13, P-14, P-17 and P-18, Medical bills, Exhibit P-15, Prescription, Exhibit P-16, Driving licence, Exhibit P-19,

Disability certificate, Exhibit P-20, X-ray and Exhibit P-21, X-ray Bill, have been marked on the side of the appellant.

7. R.W.1, is the witness examined on behalf of the Insurance company. Exhibit R-1, Rough Sketch, Exhibit R-2, charge sheet, Exhibit R-3,

Insurance policy of the lorry bearing Regn. No. TN31 409 and Exhibit R-4, Insurance policy of the Maruthi Van bearing Regn. No. TN 04 C

4223, have been marked on the side of the Insurance Companies.

8. The claims Tribunal, after considering the oral and documentary evidence found that the appellant was negligent in causing the accident.

Accordingly, the claims Tribunal held that the appellant is entitled to compensation only u/s 140 of the Motor Vehicles Act, 1988, under "No fault

liability" clause for the permanent disablement and awarded Rs. 25,000/-. In

respect of the other claims made under various head, the claims

Tribunal rejected the case of the appellant.

9. Assailing the correctness of the finding fixing negligence on the appellant/driver of the Maruthi Van, Mr. Ma. P. Thangavel, learned counsel for

the appellant submitted that the claims Tribunal, has failed to consider that no rebuttal evidence has been let in by the insurance company, disputing

the manner of accident and that therefore, the claims Tribunal ought to have held that the appellant has taken due care and caution, while

overtaking the transport corporation bus by giving proper signal. According to him, the lorry driver, on noticing the appellant ought to have

stopped the vehicle, giving way to the Maruthi Van, to cross the transport corporation bus and since there was a failure on his part, the claims

Tribunal ought to have fixed, atleast contributory negligence against him. Placing reliance in T.O. Antony v. Karvanan and Others, 2008 (6) CTC

23, learned counsel for the appellant submitted that even assuming that there was negligence on the part of the appellant, his claim for

compensation, cannot be defeated on the ground of negligence. Learned counsel for the appellant further submitted that the accident is a case of

composite negligence and that therefore, the appellant is entitled to be compensated for pecuniary and non-pecuniary losses.

10. Heard the learned counsel for the parties and perused the materials available on record.

11. Before advertng to the facts of the case, it is relevant to extract few provisions from the Motor Vehicles Act, 1988. Chapter X deals with

liability to pay compensation in certain cases on the principle of no fault liability, where there is no need to prove negligence. Sections 140, 147 and

163-A of the Motor Vehicles Act, 1988 are extracted hereunder.

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 fifty

thousand rupees and the amount of compensation payable under that sub-section in respect of the permanent disablement of any person shall be a fixed sum of twenty-five thousand rupees.

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

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

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

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

Section 147: Requirements of policies and limits of liability.--(1) In order to comply with the requirements of this Chapter, a policy of insurance must be a policy which--

(a) is issued by a person who is an authorised insurer; and

(b) insures the person or classes of persons specified in the policy to the extent specified in sub-section (2)--

(i) against any liability which may be incurred by him in respect of the death of or bodily injury to any person, including owner of the goods or his

authorised representative carried in the vehicle or damage to any property of a third party caused by or arising out of the use of the vehicle in a public place;

(ii) against the death of or bodily injury to any passenger of a public service vehicle caused by or arising out of the use of the vehicle in a public

place:

Provided that a policy shall not be required-

(i) to cover liability in respect of the death, arising out of and in the course of his employment, of the employee of a person insured by the policy or

in respect of bodily injury sustained by such an employee arising out of and in the course of his employment other than a liability arising under the

Workmen's Compensation Act, 1923 (8 of 1923), in respect of the death of, or bodily injury to, any such employee-

(a) engaged in driving the vehicle, or

(b) if it is a public service vehicle, engaged as a conductor of the vehicle or in examining tickets on the vehicle, or

(c) if it is a goods carriage, being carried in the vehicle, or

(ii) to cover any contractual liability.

Explanation.--For the removal of doubts, it is hereby declared that the death of or bodily injury to any person or damage to any property of a third

party shall be deemed to have been caused by or to have arisen out of, the use of a vehicle in a public place notwithstanding that the person who is

dead or injured or the property which is damaged was not in a public place at the time of the accident, if the act or omission which led to the

accident occurred in a public place.

(2) Subject to the proviso to sub-section (1), a policy of insurance referred to in sub-section (1), shall cover any liability incurred in respect of any

accident, up to the following limits, namely:--

(a) save as provided in clause (b), the amount of liability incurred;

(b) in respect of damage to any property of a third party, a limit of rupees six thousand:

Provided that any policy of insurance issued with any limited liability and in force, immediately before the commencement of this Act, shall continue

to be effective for a period of four months after such commencement or till the date of expiry of such policy whichever is earlier.

(3) A policy shall be of no effect for the purposes of this Chapter unless and until there is issued by the insurer in favour of the person by whom the

policy is effected a certificate of insurance in the prescribed form and containing the prescribed particulars of any condition subject to which the

policy is issued and of any other prescribed matters; and different forms, particulars and matters may be prescribed in different cases.

(4) Where a cover note issued by the insurer under the provisions of this Chapter or the rules made thereunder is not followed by a policy of

insurance within the prescribed time, the insurer shall, within seven days of the expiry of the period of the validity of the cover note, notify the fact

to the registering authority in whose records the vehicle to which the cover note relates has been registered or to such other authority as the State

Government may prescribe.

(5) Notwithstanding anything contained in any law for the time being in force, an insurer issuing a policy of insurance under this Section shall be

liable to indemnify the person or classes of persons specified in the policy in respect of any liability which the policy purports to cover in the case of

that person or those classes of persons.

Section 163-A : Scheme for payment of compensation in case of hit and run motor accidents.--(1) The Central Government may, by notification in

the Official Gazette, make a scheme specifying, the manner in which the scheme shall be administered by the General Insurance Corporation, the

form, manner and the time within which applications for compensation may be made, the officers or authorities to whom such applications may be

made, the procedure to be followed by such officers or authorities for considering and passing orders on such applications, and all other matters

connected with, or incidental to, the administration of the scheme and the payment of compensation.

(2) A scheme made under sub-section (1) may provide that--

(a) a contravention of any provision thereof shall be punishable with imprisonment for such term as may be specified but in no case exceeding three months, or with fine which may extend to such amount as may be specified but in no case exceeding five hundred rupees or with both;

(b) the powers, functions or duties conferred or imposed on any officer or authority by such scheme may be delegated with the prior approval in writing of the Central Government, by such officer or authority to any other officer or authority;

(c) any provision of such scheme may operate with retrospective effect from a date not earlier than the date of establishment of the Solatium Fund

under the Motor Vehicles Act, 1939 (4 of 1939) as it stood immediately before the commencement of this Act:

Provided that no such retrospective effect shall be given so as to prejudicially affect the interests of any person who may be governed by such provision.

12. In a recent decision of the Supreme Court in National Insurance Company Ltd. Vs. Sinitha and Others, one X was riding a motor cycle. Y

was the pillion. While giving way to a bus coming from the opposite direction, the motor cycle hit a big laterite stone lying on the tar road and due

to the impact, the motor cycle overturned, resulting injuries to both the rider and the pillion. The motor cyclist died. Wife, children and parents of

the motor cyclist filed a claim petition before the Tribunal u/s 166 of the Motor Vehicles Act. The claim petition was subsequently amended u/s

163-A of the Motor Vehicles Act. The Tribunal allowed the claim petition and quantified the compensation. The National Insurance Company,

insurer of the motor cycle, preferred an appeal. One of the contentions raised before the High Court was that the Tribunal erred in awarding Rs.

5,000/- towards pain and suffering which was impermissible u/s 163-A of the Act. Even without notice to the claimants, the aforesaid amount was

ordered to be deducted. The compensation awarded under the other heads was confirmed. Not satisfied with the decision, National Insurance Co.

Ltd., preferred a further appeal to the Supreme Court. The first contention advanced before the Supreme Court was that a legal representative is

not entitled to raise any claim for compensation, because the accident in question occurred solely, due to the negligence of the deceased. Reliance

was also placed on FIR, Postmortem Certificate, Observation Mahazar. Earlier, the Tribunal, held that X was responsible for the accident. On the

contra, placing reliance on a decision of this Court in The Oriental Insurance Co. Ltd. etc. Vs. Hansrajbhai V.Kodala and Others etc. etc., learned

counsel for the claimants submitted that compensation determined u/s 163-A of the Act was under no fault liability. It was therefore submitted that

the issue as to whether there was any "wrongful act" "neglect" or "fault" at the hands of the deceased X was irrelevant for determining a claim u/s

166 of the Act. While considering as to whether the claim u/s 163-A of the Act fall under no fault liability principle, where there is no need to

prove "wrongful act", "neglect" or "fault" as the case may be, and whether a claim u/s 163-A of the Act is maintainable, notwithstanding Section

140 of the Act deals with No Fault Liability. The Supreme Court, after considering the statutory provisions, Sections 140, 163-A, 166, at

paragraphs 11, to 13, 15, 16 to 19, held as follows:

11. Having arrived at the conclusion that the issue in hand has to be decided independently, we will now venture to determine whether a claim

made u/s 163-A of the Act is a claim under the "fault" liability principle, or under the "no-fault" liability principle. We are satisfied, that if a claim for

compensation under a provision, is not sustainable for reason of a "fault" on account of any one or more of the following i.e., "wrongful act",

"neglect" or "default", the provision in question would be governed by the "fault" liability principle. Stated differently, where the claimant in order to

establish his right to claim compensation (under a particular provision) has to establish, that the same does not arise out of "wrongful act" or

"neglect" or "default", the said provision will be deemed to fall under the "fault" liability principle. So also, where a claim for compensation can be

defeated on account of any of the aforesaid considerations on the basis of a "fault" ground, the same would also fall under the "fault" liability

principle. On the contrary, if under a provision, a claimant does not have to establish, that his claim does not arise out of "wrongful act" or

"neglect" or "default"; and conversely, the claim cannot be defeated on account of any of the aforesaid considerations; then most certainly, the

provision in question will fall under the "no-fault" liability principle.

12. For determination of the issue under consideration, namely, whether Section 163-A of the Act is governed by the "fault" or the "no-fault

liability principle, it is first relevant for us to examine Section 140 of the Act, so as to determine whether it has any bearing on the interpretation of

Section 163-A of the Act. Section 140 aforesaid is being extracted hereunder:

140. Liability to pay compensation in certain cases on the principle of no fault.--
(1) Where death or permanent disablement of any person has

resulted from an accident arising out of the use of a motor vehicle or motor vehicles, the owner of the vehicle shall, or, as the case may be, the

owners of the vehicles shall jointly and severally, be liable to pay compensation in respect of such death or disablement in accordance with the

provisions of this Section.

(2) The amount of compensation which shall be payable under sub-section (1) in respect of the death of any person shall be 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.

(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

whose death or permanent disablement the claim has been made nor shall the quantum of compensation recoverable in respect of such death or

permanent disablement be reduced on the basis of the share of such person in the responsibility for such death or permanent disablement.

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

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

Provided that the amount of such compensation to be given under any other law shall be reduced from the amount of compensation payable under

this Section or u/s 163-A.

For the instant determination, only sub-sections (3) and (4) are relevant. A perusal of sub-section (3) reveals, that the burden of "pleading and

establishing", whether or not "wrongful act", "neglect" or "default" was committed by the person (for or on whose behalf) compensation is claimed

u/s 140, would not rest on the shoulders of the claimant. In other words the onus of proof of "wrongful act", "neglect" or "default" is not on the

claimant. The matter however does not end with this. A perusal of sub-section (4) of Section 140 of the Act further reveals, that the claim of

compensation u/s 140 of the Act cannot be defeated because of any of the "fault" grounds ("wrongful act", "neglect" or "default"). This additional

negative bar, precluding the defence from defeating a claim for reasons of a

""fault"", is of extreme significance, for the consideration of the issue in hand. It is apparent, that both sides are precluded in a claim raised u/s 140 of the Act from entering into the arena of ""fault"" (""wrongful act"" or neglect"" or ""default""). There can be no doubt, therefore, that the compensation claimed u/s 140 is governed by the ""no-fault"" liability principle.

13. In the second limb of the present consideration, it is necessary to carry out a comparison between Sections 140 and 163-A of the Act. For

this, Section 163-A of the Act is being extracted hereunder:

Section 163-A, Special provisions as to payment of compensation on structured formula basis--

(1) Notwithstanding anything contained in this Act or in any other law for the time being in force or instrument having the force of law, the owner of

the motor vehicle 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 the legal heirs or the victim, as the case may be.

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

Compensation Act, 1923 (8 of 1923),

(2) In any claim for compensation under sub- Section (1), the claimant shall not be required to plead or establish that the death or permanent

disablement in respect of which the claim has been made was due to any wrongful act or neglect or default of the owner of the vehicle or vehicles

concerned or of any other person.

(3) The Central Government may, keeping in view the cost of living by notification in the Official Gazette, from time to time amend the Second

Schedule.

A perusal of Section 163(A) 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 u/s 163-A 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

sub-section (4) of Section 140 in Section 163-A 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 u/s 140 of the Act, by ""pleading and establishing"",

wrongful act"", ""neglect"" or ""default"", there is no such or similar prohibiting clause in Section 163-A 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 163-A of the Act, has to have a bearing on the

interpretation of Section 163-A of the Act. 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 163-A of the Act. The legislature must have refrained from

providing such a negative clause in Section 163-A intentionally and purposefully. In fact, the presence of sub-section (4) in Section 140, and the

absence of a similar provision in Section 163-A, 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 u/s 163-A of the Act, by pleading and

establishing ""wrongful act"", ""neglect"" or ""default"". Thus, in our view, it is open to a concerned party (owner or insurer) to defeat a claim raised u/s

163-A 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 163-A of the Act. The object for incorporating

sub-section (2) in Section 163-A 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 163-A 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, regulated under the ""fault"" liability

principle. We have no hesitation therefore to conclude, that Section 163-A of the

Act is founded on the ""fault"" liability principle.

15. The heading of Section 163-A also needs a special mention. It reads, ""Special Provisions as to Payment of Compensation on Structured

Formula Basis"". It is abundantly clear that Section 163-A, 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 163-A of the

Act) being long drawn. The only such situation (before the insertion of Section 163-A 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 163-A 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 u/s 163-A 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 163-A of the Act is founded under the ""fault"" liability principle.

16. At the instant juncture, it is also necessary to reiterate a conclusion already drawn above, namely, that Section 163-A of the Act has an

overriding effect on all other provisions of the Motor Vehicles Act, 1988. Stated in other words, none of the provisions of the Motor Vehicles Act

which is in conflict with Section 163-A of the Act will negate the mandate contained therein (in Section 163-A of the Act). Therefore, no matter

what, Section 163-A of the Act shall stand on its own, without being diluted by any provision. Furthermore, in the course of our determination

including the inferences and conclusions drawn by us from the judgment of this Court in *Oriental Insurance Company Ltd., v. Hansrajbhai V.*

Kodalac (*supra*), as also, the statutory provisions dealt with by this Court in its aforesaid determination, we are of the view, that there is no basis

for inferring that Section 163-A of the Act is founded under the "no-fault" liability principle. Additionally, we have concluded herein above, that on

the conjoint reading of Sections 140 and 163-A, the legislative intent is clear, namely, that a claim for compensation raised u/s 163-A of the Act,

need not be based on pleadings or proof at the hands of the claimants showing absence of "wrongful act", being "neglect" or "default". But that, is

not sufficient to determine that the provision falls under the "fault" liability principle. To decide whether a provision is governed by the "fault" liability

principle the converse has also to be established, i.e., whether a claim raised thereunder can be defeated by the concerned party (owner or

insurance company) by pleading and proving "wrongful act", "neglect" or "default". From the preceding paragraphs (commencing from paragraph

12), we have no hesitation in concluding, that it is open to the owner or insurance company, as the case may be, to defeat a claim u/s 163-A of the

Act by pleading and establishing through cogent evidence a "fault" ground ("wrongful act" or "neglect" or "default"). It is, therefore, doubtless, that

Section 163-A of the Act is founded under the "fault" liability principle. To this effect, we accept the contention advanced at the hands of the

learned counsel for the petitioner.

17. Having recorded our conclusions herein above, it is essential for us to determine whether or not the compensation awarded to the

claimants/respondents in the present controversy, by the Tribunal, as also, by the High Court, is liable to be set aside on the plea of "negligence

raised at the hands of the petitioner. The award rendered by the Tribunal, as also, the decision of the High Court in favour of the

claimants/respondents is, therefore, liable to be reappraised keeping in mind the conclusions recorded by us. In case, the petitioner can establish

having pleaded and proved negligence at the hands of the rider Shijo, the petitioner would succeed. The pleadings filed before the Tribunal at the

hands of the petitioner, are not before us. What is before us, is the award of the Tribunal dated 19.4.2005. We shall endeavour to determine the

plea of negligence advanced at the hands of the learned counsel for the petitioner from the award. The Tribunal framed the following issues for consideration:

- (1) Who are responsible for the accident?
- (2) What, if any is the compensation due and who are liable?
- (3) What is the annual income of the deceased?
- (4) Whether the OP (2280/00) is maintainable u/s 168-A of the N.V. Act?

It is difficult to understand the true purport of the first issue framed by the Tribunal. A person may be ""responsible"" for an act, yet he may not be negligent"". Illustratively, a child who suddenly runs onto a road may be ""responsible"" for an accident. But was the child negligent? The answer to

this question would emerge by unraveling the factual position. A child incapable of offending for himself would certainly not be negligent, even if he

suddenly runs onto a road. The person in whose care the child was, at the relevant juncture, would be negligent, in such an eventuality. The driver

at the wheels at the time of the accident is responsible for the accident, just because he was driving the vehicle, which was involved in the accident.

But considering the limited facts disclosed in the illustration can it be said that he was negligent? Applying the limited facts depicted in the

illustration, it would emerge that he may not have been negligent. Negligence is a factual issue and can only be established through cogent evidence.

Now the case in hand. In the present case also, the negligence of Shijo shall have to be determined from the factual position emerging from the

evidence on record. Issue No. (1) framed by the Tribunal therefore, may not provide an appropriate answer to the issue in hand. Besides there

being no issue framed by the Tribunal for adjudicating ""negligence"" in the accident under reference, it is also clear that the petitioner-Insurance

Company did not seek the Courts intervention on such a plea. It is also relevant to mention, that no witness was produced by the petitioner-

Insurance Company before the Tribunal. During the course of hearing, learned counsel for the petitioner only relied upon the conclusions drawn by

the Tribunal on issue No. (1). For this, our attention was drawn to paragraph 8 of the award rendered by the Tribunal which is being extracted

hereunder:

8. Issue No. 1 : This issue arises now only in O.P. 2281 of 2000. P.W.1 admitted that she has seen the accident. Exhibits A-1 to A-5 and Exhibit

A-10 are records from the connected criminal case charge sheeted under Sections 279, 337 and 304-A, IPC as against the deceased Shijo. They

are the copies of the FIR, post mortem certificate, scene mahazor, report of inspection of the vehicle, final report and the inquest report,

respectively. In the absence of contra evidence I find that the deceased Shijo was responsible for the accident.

The Tribunal in holding, that the rider Shijo was responsible for the accident, had placed reliance on copies of the first information report, post

mortem certificate, scene mahazor, report of inspection of vehicle, inquest report and final report. Neither of these in our considered view, can

constitute proof of "negligence" at the hands of Shijo. Even if he was responsible for the accident, because the motorcycle being ridden by Shijo

had admittedly struck against a large laterite stone lying on the tar road. But then, it cannot be overlooked that the solitary witness who had

appeared before the Tribunal had deposed, that this has happened because the rider of the motorcycle had given way to a bus coming from the

opposite side. Had he not done so there may have been a head-on collision. Or it may well be, that the bus coming from the opposite side was

being driven on the wrong side. This or such other similar considerations would fall in the realm of conjectural determination. In the absence of

concrete evidence this factual jumble will remain an unresolved tangle. It has already been concluded hereinabove, that in a claim raised u/s 163-A

of the Act, the claimants have neither to plead nor to establish negligence. We have also held, that negligence (as also, "wrongful act" and "default")

can be established by the owner or the insurance company (as the case may be) to defeat a claim u/s 163-A of the Act. It was therefore

imperative for the petitioner-Insurance Company to have pleaded negligence, and to have established the same through cogent evidence. This

procedure would have afforded an opportunity to the claimants to repudiate the same. Has the petitioner discharged this onus? In the present case,

only one witness was produced before the Tribunal. The aforesaid witness appeared for the claimants. The witness asserted, that while giving way

to a bus coming from opposite side, the motorcycle being ridden by Shijo, hit a large laterite stone lying on the tar road, whereupon, the

motorcycle overturned, and the rider and the pillion-rider suffered injuries. The petitioner insurance- company herein did not produce any witness

before the Tribunal. In the absence of evidence to contradict the aforesaid factual position, it is not possible for us to conclude, that Shijo was

negligent"" at the time when the accident occurred. Since no pleading or evidence has been brought to our notice (at the hands of the learned

counsel for the petitioner), it is not possible for us to conclude, that the inverse onus which has been placed on the shoulders of the petitioner u/s

163-A of the Act to establish negligence, has been discharged by it. We, therefore, find no merit in the first contention advanced at the hands of

the learned counsel for the appellant.

18. The second contention advanced at the hands of the learned counsel for the petitioner was, that Shijo being the rider of the motorcycle, cannot

be treated as a third party. It was pointed out, that the claim u/s 163-A can only be raised at the behest of a third party. It seems, that the instant

determination raised at the hands of the learned counsel for the petitioner, is based on the determination rendered by this Court in Oriental

Insurance Co. Ltd. Vs. Smt. Jhuma Saha and Others, wherein, this Court held as under:

10. The deceased was the owner of the vehicle. For the reasons stated in the claim petition or otherwise, he himself was to be blamed for the

accident. The accident did not involve motor vehicle other than the one which he was driving. The question which arises for consideration is that

the deceased himself being negligent, the claim petition u/s 166 of the Motor Vehicles Act, 1988 would be maintainable.

According to the learned counsel for the petitioner, since the rider of the vehicle involved in the accident was Shijo himself, he would stand in the

shoes of the owner, and as such, no claim for compensation can be raised in an accident caused by him, u/s 163-A of the Act.

19. To substantiate his second contention, it would be essential for the petitioner to establish, that Shijo having occupied the shoes of the owner,

cannot be treated as the third party. Only factual details brought on record through reliable evidence, can discharge the aforesaid onus. During the

course of hearing, despite our queries, learned counsel for the petitioner could not point out the relationship between Shijo and the owner of the

motorcycle involved in the accident. Shijo is not shown to be the employee of the owner. He was not even shown as the representative of the owner. In order to establish the relationship between the Shijo and the owner, the petitioner-Insurance Company could have easily produced either the owner himself as a witness, or even the claimants themselves as witnesses. These, or other witnesses, who could have brought out the relationship between the owner and Shijo, were not produced by the petitioner herein, before the Tribunal. The petitioner has, therefore, not discharged the onus which rested on its shoulders. Since the relationship between the Shijo and the owner has not been established, nor the capacity in which he was riding the vehicle has been brought out, it is not possible for us to conclude, that Shijo while riding the motorcycle on the fateful day, was an agent, employee or representative of the owner. It was open to the petitioner to defeat the claim for compensation raised by the respondents by establishing, that the rider Shijo represented the owner, and as such, was not a third party, in terms of the judgment rendered by this Court in *Oriental Insurance Company Ltd. v. Hansrajbhai V. Kodala* (supra). The petitioner failed to discharge the said onus. In view of the above, it is not possible for us to accede to the second contention advanced at the hands of the learned counsel for the petitioner.

13. As per *National Insurance Co. Ltd. v. Sinita and Others* (supra), if a claim is made u/s 163-A, it is always open to the insurance company to plead and prove the wrongful act, neglect or default on the part of the person, who had committed the tort and seek for exoneration of its liability to pay compensation to the injured or the legal representatives of the deceased, as the case may be, if it is proved that the accident occurred solely due to the fault of the injured and in the case of death, the legal representatives, cannot be awarded any compensation u/s 163-A of the Act. As per the above decision of the Supreme Court, Section 163-A of the Act falls under the "Fault" Liability clause, if the Insurance Company pleads and proves negligence on the driver, who caused the accident, even though u/s 163-A, the injured or the legal representatives of the deceased, need not prove negligence. As per Section 166 of the Motor Vehicles Act, the injured or the legal representatives of the deceased, as the case may be, may seek for compensation against the owner of the offending vehicle and its insurer, if there is a fault committed by the driver of the other

vehicle involved in the accident. Claim u/s 166 again falls as "Fault Liability".

14. Courts have consistently held that a tortfeasor, is not entitled to claim for compensation against the insurer of the vehicle, when he had driven

the vehicle, without due care and when there is wrongful act or neglect or default, on his part, in causing the accident. Reverting back to the case

on hand, it could be seen that the accident has occurred when the Maruthi Van bearing Regn. No. TN 04 C 4223 insured with the 3rd respondent

United India Insurance Company, Coimbatore, attempted to overtake a bus, went to the right side of the road and dashed against a lorry coming

from the opposite direction. The contention that the lorry driver ought to have reduced the speed or stopped the vehicle, so as to allow the

appellant to cross the transport corporation bus, proceeding ahead of the van and that therefore, the lorry driver alone was negligent in causing the

accident, cannot be accepted, for the reason that when a driver of the vehicle, decides to overtake a vehicle, proceeding ahead of him, it is for him,

to ascertain as to whether any other vehicle is coming in the opposite direction, the distance between the vehicle coming from the opposite

direction, and whether there is sufficient time and space to overtake the vehicle ahead of him. Merely because, there is a head on collision, it

cannot be contended that it is a case of contributory negligence, on the part of both the drivers of the vehicles involved in the accident. No doubt,

last opportunity"" theory of avoiding an accident can be applied to a case of head on collision. In the case of head on collision, negligence to be

fixed on the drivers of the vehicles, involved in the accident, depends upon the evidence adduced by the parties. The appellant has not alleged any

negligence on the driver of the Transport Corporation bus and from the manner of accident, averred by the appellant, the plea of composite

negligence cannot be countenanced.

15. On the facts of this case, this Court deems it fit to consider a decision of the Supreme Court in The Municipal Corporation of Greater Bombay

Vs. Shri Laxman Iyer and Another, , wherein, the Supreme Court has explained the terms, ""Negligence"" ""Composite Negligence"" and

Contributory Negligence"". In the reported case, as per the version of the claim, the deceased was on his bicycle and due to rash and negligent

driving of a bus, dashing against him, the cyclist sustained grievous injuries and

died. As regards manner of accident, the Corporation took a stand that the deceased had suddenly come from the left side of the bus at a very high speed and instead of taking the left turn, took the right turn in contravention of the traffic regulations. When the driver saw the cyclist coming from the wrong side, he immediately applied the brakes and halted the bus. But the cyclist dashed against the front side of the bus and sustained injuries. The claimants examined a witness on their behalf. The driver has been examined on behalf of the Transport Corporation and according to him, he was driving the vehicle at a very slow speed and that the deceased came from the side of Chembur Station in the opposite direction and when he saw him, at a distance of 30 ft., he immediately applied the brakes and halted the bus. But the cyclist dashed against the front side of the bus. The Tribunal rejected the case of the Corporation and quantified the compensation. The High Court sustained the award. While examining the correctness of the award, at Paragraph 6, the Supreme Court explained, as to what act amounts to negligence and that the same is extracted hereunder:

Negligence is omission of duty caused either by an omission to do something which a reasonable man guided upon those considerations who ordinarily by reason of conduct of human affairs would do or obligated to, or by doing something which a prudent or reasonable man would not do. Negligence does not always mean absolute carelessness, but want of such a degree of care as is required in particular circumstances.

Negligence is failure to observe, for the protection of the interests of another person, the degree of care, precaution and vigilance which the circumstances justly demand, whereby such other person suffers injury. The idea of negligence and the duty are strictly correlative. Negligence means either subjectively a careless state of mind or objectively careless conduct. Negligence is not an absolute term, but is a relative one; it is rather a comparative term. No absolute standard can be fixed and no mathematically exact formula can be said just and down by which negligence or lack of it can be infallibly measured in a given case. What constitutes negligence varies under different conditions and in determining whether negligence exists in a particular case, or whether a mere act or course of conduct amounts to negligence, all the attending and surrounding facts and

circumstances have to be taken into account. It is absence of care according to circumstances. To determine whether an action would be or would

not be negligent, it is relevant to determine if any reasonable man would foresee that the act would cause damage or not. The omission to do what

the law obligates or even the failure to do anything in a manner, mode or method envisaged by law would equally and per se constitute negligence

on the part of such person.

16. In North East Karnataka Road Transport Corporation Vs. Vijayalaxmi and Others, the Full Bench of Karnataka High Court has set out a

difference between the negligence and contributory negligence, as follows:

11. Negligence is conduct, not a state of mind - conduct which involves an unreasonably great risk of causing damage. Negligence is the omission

to do something which a reasonable man, guided upon those considerations which ordinarily regulate the conduct of human affairs, would do, or

doing something which a prudent and reasonable man would not do. In strict legal analysis, negligence means more than heedless or careless

conduct, whether in omission or commission. It properly connotes the complex concept of duty, breach and damage thereby suffered by the

person to whom the duty was owing. It is a question of law whether in any particular circumstances a duty of care exists. The question is was the

Defendant under any duty of care at all, and, if so, did he observe the standard required in the circumstances of the case? Foresight is the test for

duty and remoteness. It is a characteristic of the definition of the tort of negligence that it does not refer to the scope of the protection it affords to

the Plaintiff but rather to the qualities of blameworthiness or fault to be attributed to the conduct of the Defendant. There is no liability for

negligence unless there is in the particular case a legal duty to take care, and this duty must be one which is owed to the Plaintiff himself and not

merely to others. This duty of carefulness is not universal; it does not extend to all occasions and all persons and all modes of activity. The harm to

the Plaintiff's interest which has in fact occurred must be of a kind against which it was the duty of the Defendant to take precautions. In the

absence of some existing duty the general principle is that there is no liability for a mere omission to act. The fundamental notion appears to be that

the imposition of an obligation to take positive steps for the benefit of another

requires that other should furnish something by way of consideration.

The standard of conduct required by the common law is that of the reasonable man. The reasonable man is presumed to be free both from over-

apprehension and from over-confidence. A reasonable man does not mean a paragon of circumspection. But he is also cool and collected and

remembers to take precautions for his own safety even in emergency. So, while on the one hand an error of judgment may not amount to

negligence, on the other hand the fact that it might happen to him is not necessarily a defence - even the most careful are sometimes careless.

12. The doctrine that, if the Plaintiff's act was the proximate cause of the damage the Plaintiff could not recover damage was a well-established

Principle of Medieval law. In the sixteenth and seventeenth centuries the conception of negligence as a ground of liability worked its way into the

common law. With the recognition of negligence as a ground of liability a practice grew up of alleging that a Plaintiff could not recover because he

was debarred by his own negligence. The Rule of law is that if there is blame causing the accident on both sides, however small that blame may be

on one side, the loss lies where it falls. When any person suffers damage as the result partly of his own fault and partly on the fault of any other

person or persons, the claim in respect of that damage shall not be defeated by reason of the fault of the person suffered damage, but the damages

recoverable in respect thereof shall be reduced to such extent as the Court thinks just and equitable having regard to the Claimant's share in the

responsibility for the damage.

13. The question of contributory negligence does not depend upon any breach of duty as between the Plaintiff and the Defendant. All that the

Defendant is obliged to prove is that the Plaintiff failed to take reasonable precautions for his own safety in respect of the particular danger which in

fact occurred, so that he thereby contributed to his own injury. This however is not to say that in all cases the Plaintiff who is guilty of contributory

negligence owes to the Defendant no duty to act carefully. The governing principle is that the Defendant must show that the Plaintiff has failed to

take reasonable care for his own safety in respect to the particular danger which has in fact occurred. The question whether the principle applies in

any particular case is, as always, one of fact. Firstly, the law does not, in general,

require any man to be careful of his own safety. What it does say is that a man who has negligently created a danger whereby another person is injured may plead as a way of avoiding liability that the injured person by his negligence contributed to create the danger. Secondly, no question of operative contributory negligence arises in a case where the Defendant proves that the Plaintiff has failed to take precautions against a foreseeable danger which has not occurred and that those precautions, if taken, would have been effective to protect him against the unforeseeable danger which in fact occurred. The statement that the Plaintiff must be shown to have failed to take proper precautions for his own safety against the particular danger which in fact occurred does not mean that the particular form in which the danger manifested itself should actually have occurred to his mind. It is sufficient if it is a danger of a particular class whose occurrence he should anticipate and take reasonable precautions to guard against him. It is necessary to consider not only the causative potency of a particular act, but also its blameworthiness, though culpability here, as elsewhere in the law of torts, means not so much moral blameworthiness as a departure from the standard of care of the reasonable man.

13-A. The Court must also consider a third factor - namely, what is just and equitable. Hence the precise percentage by which the award is reduced is a question of fact in each case. The Court should find and record the total damages which would have been awarded if the Claimant had not been at fault. It is inappropriate to apply this principle when the responsibility of one of the parties is properly to be assessed at 100 percent. The Court cannot deal with minute percentage. It is a question of fact in each case whether the conduct of the plaintiff amounts to contributory negligence. The burden of proving the negligence of the plaintiff that contributed to the damage in such a way as to exonerate the defendant wholly or partially lies upon the defendant. The defendant must always establish such contributory negligence as well amount to a defence. When the Court has to decide, that the case is one in which it is proper to apportion the loss between the parties, the result is that the plaintiffs damages are reduced to such extent as the Court thinks just and equitable having regard to the plaintiffs share in the responsibility for the damage.

14. The contributory negligence has two facets. One in which two or more vehicles and drivers are involved in the accident. In such a case the question is who drove the vehicle in a rash and negligent manner. If all of them drove the vehicle in a negligent manner, who contributed to what extent in causing the accident. It is on the basis of such factual finding apportioning the blameworthiness on the drivers, the contributory negligence has to be assessed. To the extent of the percentage of negligence attributed to each driver, the owner of the vehicle and consequently if the vehicle is insured, the Insurer would be liable to pay the compensation. If the driver himself is claiming compensation as third party, if his negligent act is also the cause of the accident, then the compensation payable to him would get reduced to the extent of the percentage of negligence attributed to him.

15. The second fact where the Claimant is not involved in the accident in any manner, i.e., in driving the vehicle but arises out of breach of duty, resulting in injury on account of the accident. Failure to take reasonable care or precaution for his own safety while traveling in a motor vehicle, in respect of the particular danger, which in fact occurred, so that he thereby contributed to his own injury. It is this second aspect which is dealt with u/s 123 of the Act.

16. Section 123 of the Acts casts a duty on the driver and conductor of a motor vehicle to prevent any person from traveling on the running board or on the top of the vehicle. There is an obligation cast on them under the statute to see that all persons are within the body of the vehicle. In spite of this statutory provision, if they permit any person to travel on the running board or on the top of the vehicle, it is breach of duty. It is an omission to do some thing which a reasonable man, guided upon those considerations which ordinarily regulate the conduct of human affairs would do. The driver and conductor of a motor vehicle owe a duty to the passengers of a motor vehicle to see that they do not travel on the running board or on top of the vehicle. Similarly no person shall travel on the running board or on the top or on the bonnet of the motor vehicle. If he travels, it is a careless conduct, the commission of which amounts to negligence. A duty of care exists as it is embodied in a statute with foresight for the benefit of such persons traveling in a motor vehicle. Mere breach of law or duty would

not create a liability to pay damages. Such a breach should result in injury which is the foundation of a claim for damages. Therefore, the question of contributory negligence does not depend upon any breach of duty as between the Plaintiff and Defendant. Such a breach of duty should result in injury and consequent losses. In other words there should be a nexus between the breach of duty and the injury. If there is a blame causing the accident on both sides, the losses lie where it falls. This omission constitutes a careless conduct. Foresight is the test for duty and remoteness.

17. In this context, this Court also deems it fit to consider certain portions from Halsbury's, wherein, the duties and responsibilities of the drivers, driving the vehicles on highways, have been explained.

18. Reciprocal Rights and Duties on Highway

(i) The rights and duties of motorists and Others using the highways are mutual and reciprocal; and a motorist owes a duty to such others to use the highway in a proper manner and with due respect to their rights and safety.

(ii) In conformity with the rule discussed in Highways § 240 to the effect that the rights of persons using a highway for travel are mutual and co-ordinate, it is frequently held that the rights and duties of motorists on public streets and highways in relation to other persons using the same are mutual and reciprocal except where otherwise fixed by positive law.

(iii) The drivers of motor vehicles have no monopoly of the use of the streets and highways and no superior rights by reason of the size, power, weight, capacity for speed, or other characteristics of the vehicle which they operate, but are under the same duty which rests on any other user of the highway to use it in a proper manner and with due respect to the rights and safety of others

19. Care Required in Operation in General:

In the absence of a statute providing otherwise, the operator of a motor vehicle must exercise no more than reasonable or ordinary care, that is, the degree of care and caution which an ordinarily prudent person would exercise under similar circumstances and the measure of diligence and attention required in a particular case to constitute reasonable care depends on all the relevant circumstances.

20. Position on Highway:

(i) As a rule, each of two vehicle approaching in opposite directions has, for the purpose of free passage, the right to one half the roadway, but the

space thus to be shared is not necessarily the entire width of the high-way, and the right to a full half of the road may not be Insisted on regardless

of the consequences.

(ii) As a rule, each of two vehicles approaching in opposite directions has, for the purpose of free passage, the right to one half of the roadway,

and, accordingly, each driver should give the other atleast one half of the main traveled the road as nearly as possible; but the space thus to be

shared is not necessarily the entire width of the highway It frequently happens that a highway is not used or suitable for travel over the entire width

between the property or fence lines, and in such case the duty of a driver is merely to keep to the right of the center of the traveled portion or that

part of the highway which is contiguous and open and in a reasonably safe and fit condition for travel by the ordinary mode, regardless of the

center of the entire highway as laid out; references to ""half the roadways"" or ""half of the highways"", in regulations embodying the rule, mean half of

the roadway or highway as it exists at the time it is being traveled, and not half of the road as it may have been laid out originally.

(iii) However, the existence of an obstruction on one side of a highway has been held not automatically to move the center line thereof

correspondingly toward the opposite side of the road for the purpose of the care required by motorists approaching from opposite directions, and

the words ""center of the highway"" have been held to refer to the center of the permanently paved or surface portion of the road regardless of

whether or not a portion of the highway is occupied by parked vehicles.

(iv) A driver is not entitled to insist on his right to a full half of the traveled portion of the road regardless of consequences, since there is no

unqualified right to drive to the center line of a highway when travelers meet; and the fact that defendant's vehicle was at all times on his side of the

road does not necessarily demonstrate that he did not violate some duty in meeting and passing a vehicle traveling in the opposite direction.

(v) A motorist has the duty to allow reasonable clearance space between his vehicle and an oncoming vehicle. Accordingly, even though another

vehicle encroaches on a motorist's side of the road, he should avoid the danger

by turning further to the right if it is practicable to do so, provided

such-a course would be dictated by reasonable care and prudence, but he may, on being forced close 1 to a ditch, turn back to the left to

reoccupy the part of the roadway to which he is ordinarily entitled.

(vi) A motorist may be required to turn to the left if it reasonably appears to be necessary in order to avoid danger of an accident with an

approaching vehicle, but a motorist proceeding lawfully on the right side of the road has been held to owe no duty to the driver of an approaching

zigzagging vehicle to leave his side of the road and drive to the left in order to avoid an accident.

(vii) Usually it is the duty of a motorist to have every portion of his vehicle on his side of the road except where he was a permit to transport an

article occupying over half the road, but it has been held that the failure to drive completely on the right of the center line of a highway must be

either a negligent act or an intentional one to constitute violation of a statute.

21. Vehicle Outside Traveled Portion of Highway:

(i) A statute requiring that vehicles meeting and passing each other while traveling in opposite directions shall keep to the right of the middle of the

traveled part of the highway has been held applicable to one driving outside the travelled part of the road; but there is authority for the view that the

requirement of turning to the right applies only to those who are using the traveled part of the highway.

(ii) A statutory requirement that vehicles meeting and passing each other while traveling in opposite directions shall keep to the right of the middle

of the traveled part of the highway has been held applicable to one who is driving outside of the traveled part of the road, and, accordingly, one

who is driving on the left-hand side of a highway, although outside the traveled portion thereof, should cross to the right-hand side on the approach

of a vehicle traveling in the opposite direction if it is reasonably prudent and safe for him to do so.

(iii) On the other hand, there is authority for the view that the requirement of turning to the right applies only to those who are using the traveled

portion of the highway, and that, therefore, one who is driving entirely outside the traveled portion of the highway, although on his own left-hand

side, is not under any duty to cross to the right-hand side of the highway on the

approach of another vehicle and the driver of the approaching vehicle has no right to assume that he will cross. It necessarily follows from this view that a driver who is on the traveled portion of the road is not required to turn out to the right in order to pass a vehicle which is proceeding in the opposite direction on its own left-hand side of the road but entirely off the traveled portion thereof.

(iv) On right side of road. A driver who is approaching a vehicle which is on its own right-hand side of the road but entirely outside the traveled portion is not required to turn out to the right of the traveled portion but may use any part thereof provided there is room to pass safely.

22. Passing in General

(i) As a general rule, "a vehicle" proceeding along the highway has the right to pass another vehicle traveling in the same direction. If this can be accomplished in safety, and the driver of each vehicle owes the duty not to injure the other by reason of negligence or wantonness.

(ii) Although there is no rule of law giving one vehicle the unqualified right to overtake and pass another traveling in the same direction, as a general rule, a vehicle proceeding along the highway has the right to pass another vehicle traveling in the same direction, and this is not forbidden. The driver of the overtaken vehicle is entitled to assume that the overtaking vehicle will observe the law of the road in passing by giving a timely signal by passing to the left of him, and by exercising due care; and he is not bound to anticipate that such vehicle will suddenly cut in or stop in his immediate path, that it may attempt to pass him on the wrong side, or that the operator thereof, after passing him, will fall asleep and lose control of the car.

(iii) Furthermore, he is not bound to anticipate that such vehicle will attempt to pass him at an intersection, where passing at such a place is prohibited by regulation, but he has no right to assume that no one will pass him at an intersection where passing is not unlawful; and, if he should see that the following vehicle is engaged in a passing maneuver in close proximity to his own vehicle and at an intersection, he can no longer rely on the presumption that the following vehicle is going to obey the law.

(iv) Duty to reduce speed. A driver who is proceeding at a reasonable rate of speed on the proper side of the road is not under a duty to reduce

his speed so that a car approaching from the rear may pass him even though a third car is approaching from the opposite direction; but it has been

held that an increase of speed by the vehicle being overtaken, after the following vehicle has signaled his intention to pass and is in the act of

passing, may in some circumstances constitute negligence, and under some regulations the overtaken vehicle is required to refrain from increasing

its speed while being passed.

(v) Duty to stop. Under ordinary circumstances driver is not obliged to stop in order to permit the passage of an overtaking vehicle, but the

circumstances may be such as to impose on the slower moving vehicle a duty to stop for a sufficient time to permit a faster moving vehicle to pass.

23. Duties of Overtaking Vehicle

(i) The operator of a motor vehicle who wishes to over take and pass a vehicle preceding him must exercise vigilance commensurate with the

surrounding conditions and he must so manage his automobile as not to cause injury to others; he must see to it that the condition are such that an

attempt to pass is reasonably safe and prudent, and in passing must exercise reasonable care.

(ii) As a general rule, the operator of a motor vehicle who wishes to overtake and pass a vehicle proceeding in front of him must exercise vigilance

commensurate with the surrounding conditions, and he must so manage his own automobile as not to cause injury to others under the penalty of

being chargeable with negligence. The driver of the overtaking car must see to it that the conditions are such that an attempt to pass is reasonably

safe and prudent, and a signal from the preceding vehicle that it is safe to pass does not relieve the driver of the following vehicle from the duty of

making his own independent observation as to when it is safe for him to pass.

(iii) In passing he must exercise reasonable care and comply with all traffic regulations, including those generally applicable to vehicles traveling in

the same direction and the duty of care does not shift to the overtaken vehicle until the passing has been safely made.

(iv) Under some regulations an overtaking vehicle is required to have a clear view ahead for a specified distance before passing an overtaken

vehicle, and the violation of such a regulation constitutes negligence where there is no emergency or loss of control, justifying such violation. The

driver of the following automobile may not lawfully turn to the left and increase speed in order to overtake and pass another vehicle unless the road

is clear of obstacles which might obstruct such passage and violation of a statute so providing may constitute negligence per se.

(v) Furthermore, it may constitute negligence to attempt to pass when the vehicle ahead is approaching an intersecting road or passageway where a

possibility of its making a left-hand turn should be anticipated, when the operator of the preceding vehicle has evidenced his intention to make a left

turn, or where the vehicle ahead is in the act of going around another vehicle also proceeding in the same direction; but it has been stated that an

overtaking driver is free of negligence when the forward driver makes a sudden unsignaled left turn across his path.

(vi) If there is not sufficient room for a safe passage the driver of the overtaking vehicle should not attempt to pass but should wait until a place is

reached where a safe passage may be had, and failure of the overtaken car to turn to the right as soon as a signal of desire to pass is given does

not warrant the operator of the overtaking car in attempting to pass before this can safely be done or in running into the vehicle ahead.

(vii) If, after turning out to pass, the driver of the overtaking car finds conditions such that he cannot make the passage in safety, he should either

stop or drop back to his former position in the rear of the other car, and he must so regulate his speed as to be able to stop in time to avoid a

collision with the vehicle ahead in his effort to return to the lane of travel.

(viii) Where the traveled track is too narrow to permit the passage of two vehicles, but a turnout is reasonably practicable, the overtaking car is

entitled only to one half of the traveled track, but if the overtaken vehicle gives way so as to allow the overtaking vehicle the entire traveled track

the latter vehicle may occupy it and its driver is under no obligation to turn out to the left.

(ix) The driver of the overtaking vehicle may assume that the driver of the overtaken vehicle will comply with regulations or ordinances, or with the

law of the road, as by giving way to the right on audible signal, and that such vehicle will remain on the right side of the road after warnings, and

that its driver will signal before making any intended turn.

(x) So the driver of the overtaking vehicle sounding his horn is justified in

assuming that the forward driver turned to the right edge of the road in response to the signal to permit a passing until such time as the motorist, exercising ordinary prudence, can see that such assumption is unwarranted, and he does not assume the risk of a sudden unexpected left turn by the leading vehicle. The driver of the passing vehicle may also assume that no greater caution or skill will be required of him than would be necessary if such driver were on his own right side of the road.

(xi) As shown infra subdivision (b) of this Section, a driver on a heavily traveled highway turning into the left lane to pass some vehicles is bound to anticipate that other vehicles would likely be approaching in the opposite direction in that lane; but where the highway is clear of traffic, as far as the overtaking motorist can discern, he is justified in negotiating the passing movement, and is not required to anticipate the presence of an obstruction.

24. Where Vehicles Approaching in Opposite Direction

(i) The operator of the overtaking car must regard not only the overtaken car, but also vehicle approaching In the opposite direction, and he is chargeable with a high degree of care where he attempts to pass the preceding vehicle in the face of vehicles approaching from the opposite direction.

(ii) The operator of the overtaking car must keep a lookout for, and regard not only the overtaken car, but also vehicles approaching in the opposite direction, and he is chargeable with a high degree of care where he attempts to pass the preceding vehicle in the face of vehicles approaching from the opposite direction.

(iii) Except where it is provided otherwise by governmental regulation, a driver ordinarily has the right to pass between vehicles which are proceeding in opposite directions, but it is incumbent on him, before attempting to do so, to see to it that he may accomplish such passage with reasonable safety. He should not attempt to pass where he is unable to get back to his own side of the road in time to avoid danger to other vehicles, either by reason of the speed at which he is proceeding or by reason of the proximity of such vehicles, which have the right to proceed on their way without being compelled to slow up or stop.

(iv) In passing between vehicles which are proceeding in opposite directions, a driver must have his car under such control and so operate it as to avoid a collision with the vehicle which he has overtaken, or with the vehicle which is proceeding in the opposite direction and if his failure to exercise reasonable care is responsible for an accident he may be liable for injuries proximately resulting therefrom, or be precluded from recovering for his own injuries.

25. Though the above passages refer to the vehicles, driving on the right side of the road, as followed in European Countries, the principles stated

supra, can be applied to the road users in India also, where the practice is to drive the vehicles, on the left side of the road. Reverting back to the

case on hand, no sooner the accident occurred, Exhibit P-1, FIR, has been registered against the appellant. Upon investigation, the police has laid

Exhibit R-2, charge sheet. The appellant has also admitted his guilt and paid the fine. The contention that the police had threatened him to admit the

guilt and that therefore, he was constrained to do so, has been also considered by the Tribunal and by observing that if there was any such

compulsion, the appellant could have always preferred a complaint, the claims Tribunal has rejected the case of threat and compulsion by police.

Going through the material on record and considering the principles to be taken note of, in adjudicating a case of composite or contributory

negligence, this Court is of the view that the appellant has not substantiated his case, under the abovesaid heads. On the other hand, the Insurance

Company has adduced evidence and proved that the appellant alone was negligent in causing the accident. The finding of the Tribunal, fixing

negligence on the appellant, cannot be said to be perverse, or of a case of no evidence, warranting interference. Hence, it is confirmed.

26. Judgment in T.O. Antony v. Karvanan and Others (supra) case, relied on by the learned counsel for the appellant, is not applicable to the facts

of this case. Admittedly, the case on hand does not fall under the principles of composite negligence. After National Insurance Co. Ltd. v. Sinitha

and Others (supra), negligence is now held to be an aspect which has to be adjudicated in a claim u/s 163-A of the Motor Vehicles Act, if the

insurance company comes forward to plead and prove that there was fault on the part of the claimant and as per the decision in National Insurance

Co. Ltd. v. Sinitha and Others (supra) case, this Court is not inclined to assess the compensation to the victim, under other heads.

27. In the case on hand, the Insurance company has pleaded that there was negligence on the part of the appellant in causing the accident, by

adducing cogent oral and documentary evidence and on appreciation of same, the claims Tribunal has found that it was the appellant, who was

negligent in causing the accident and accordingly, held that he is entitled to be compensated only u/s 140 of the Motor Vehicles Act under "No

fault liability" of Rs. 25,000/- for permanent disablement. There is no manifest illegality in the award. In the result, the Civil Miscellaneous Appeal

fails and dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed. Consequent to the dismissal of the Civil

Miscellaneous Appeal, the 3rd respondent -United India Insurance Company Ltd., Coimbatore, is directed to deposit the award amount with

proportionate accrued interest and costs, to the credit of MCOP No. 575 of 2008, on the file of Motor Accidents Claims Tribunal at (Additional

District Judge), Fast Track Court No. 1, Erode, within a period of four weeks from the date of receipt of a copy of this order. On such deposit,

the respondent/claimant is permitted to withdraw the award amount with proportionate accrued interest and costs, by making necessary

applications.