
(2010) 01 AHC CK 0267
In the Allahabad High Court

Union of India (UOI)

APPELLANT

Vs

Ashok Kumar and Others

RESPONDENT

Date of Decision : 28-01-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 79, 80
Motor Vehicles Act, 1988 — Section 140, 163A, 163B, 166
Civil Procedure Code, 1908 (CPC) — Section 79, 80
Motor Vehicles Act, 1988 — Section 140, 163A, 163B, 166
Civil Procedure Code, 1908 (CPC) — Section 79, 80
Motor Vehicles Act, 1988 — Section 140, 163A, 163B, 166

Citation : (2011) ACJ 2708 : (2010) 3 AWC 2424

Hon'ble Judges : Ram Autar Singh, J;Prakash Chandra Verma, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Ram Autar Singh, J.—These first appeals have arisen out of judgments and awards dated 29.3.2008 passed by Shri V.K. Mishra, learned Motor Accident Claims Tribunal/Additional District Judge, Court No. 3, Muzaffarnagar, (hereinafter "Tribunal") in M.A.C.P. No. 265 of 1998, M.A.C.P. Nos. 116 and 117 of 1999, M.A.C.P. No. 287 of 1998, M.A.C.P. No. 421 of 1998, M.A.C.P. No. 422 of 1998, M.A.C.P. No. 423 of 1998, M.A.C.P. No. 475 of 1999 and M.A.C.P. No. 476 of 1999 (hereinafter "claim petition" respectively.

2. In F.A.F.O. No. 166 of 2009 claimants Ashok Kumar and Master Ashu claiming themselves to be husband and son of deceased Smt. Sunita instituted M.A.C.P. No. 265 of 1998 with prayer to pass an award for a sum of Rs. 10,32,000 as compensation alongwith interest u/s 163A of Motor Vehicles Act, 1988 (hereinafter "Act"). The learned Tribunal assessed Rs. 15,000 per month as notional income of Smt. Sunita aged about 38 years applying multiplier according to Second Schedule to Section 163A and deducted one third amount as expenses to be incurred on her during her life time and calculated compensation at Rs. 1,50,000 and awarded Rs. 1,55,000 inclusive funeral expenses and loss of

property.

3. In F.A.F.O. No. 167 of 2009 claimants Sunil Kumar, Sudhir Kumar and Km. Sudha claiming themselves to be sons and daughter of late Smt. Ramroshni and Om Pal instituted M.A.C.P. Nos. 116 of 1999 and 117 of 1999 u/s 163A of Motor Vehicles Act for compensation on account of death of Smt. Ramroshni and Om Pal. The learned Tribunal dismissed M.A.C.P. No. 117 of 1999 on the ground that the income of the deceased Om Pal was alleged to be Rs. 48,000 per year while the claim petition could have been moved u/s 163A of Motor Vehicles Act only in case the income of the deceased was up to Rs. 40,000. The learned Tribunal allowed M.A.C.P. No. 116 of 1999 and awarded Rs. 1,55,000 as compensation holding the notional income of deceased Smt. Ramroshni at Rs. 15,000 per month and looking to 48 years of age of deceased applied multiplier as provided under Second Schedule to Section 163A of Motor Vehicles Act and awarded the said amount inclusive funeral expenses and loss of property.

4. In F.A.F.O. No. 168 of 2009 claimant Ashok Kumar claiming himself to be father of deceased Km. Neelam aged 18 years instituted M.A.C.P. No. 287 of 1998 for Rs. 13,58,000 as compensation u/s 163A of Motor Vehicles Act. The learned Tribunal awarded Rs. 1,85,000 as compensation holding the notional income of deceased to be Rs. 15,000 per month and deducting one third amount to be incurred on herself during her life time and applied multiplier as provided in Second Schedule to above section.

5. In F.A.F.O. No. 169 of 2009 claimants Chandra Pal Singh and Smt. Jagbiri instituted M.A.C.P. Nos. 421 of 1998, 422 of 1998, 423 of 1998 and claimant Rishi Pal instituted M.A.C.P. Nos. 475 of 1999 and 476 of 1999 for compensation u/s 163A of the Act on account of death of Vipin, Satyavan alias Yogendra and Smt. Rajesh in accident. M.A.C.P. Nos. 421 of 1998, 422 of 1998 and 423 of 1998 were dismissed by the learned Tribunal but M.A.C.P. Nos. 475 of 1999 and 476 of 1999 were allowed and Rs. 1,70,000 and Rs. 1,05,000 were awarded as compensation respectively in favour of claimant Rishipal on account of death of Smt. Rajesh aged 35 years and Vipin aged 10 years. The claimant Rishipal claimed himself to be husband of deceased Smt. Rajesh and father of deceased Vipin.

6. All these claim petitions being related to one and same accident and the pleadings of parties being common were decided by same Tribunal simultaneously but all these first appeals were instituted by different claimants. Thus, all these appeals are being disposed by this common judgment.

7. The brief facts giving rise to these claim petitions are that on 6.4.1998 Smt. Sunita alongwith her daughter and son, Smt. Ram Roshni and her husband Om Pal, Km. Neelam aged 18 years, Smt. Rajesh and Vipin aged 10 years alongwith several persons were going by Trax Jeep No. U.P.07D/1358 from Muzaffarnagar to Shakumbhari Devi and at about 9.45 a.m. when the said Jeep reached near village Badkala on Roorki Chhutamalpur Road, Truck No. 88D-80765 of Air Force

Station Sarsawa being driven rashly and negligently came from opposite direction and collided with the above Trax Jeep No. U.P.07D/1358 being driven by its driver and owner Arvind Kumar son of Har Pal Singh, in which all the passengers including above deceased persons except one child aged two and half years travelling in the said jeep succumbed to their injuries sustained in this accident. Arvind Kumar driver and owner of the above jeep also died due to injuries sustained therein. The Air Force personnels, namely, Srg. N.K. Sharma, Subhash and Nanku sitting in above air force truck also sustained injuries in this accident who were got admitted in Military Hospital, Roorki for treatment. The accident took place due to rash and negligent driving of the driver of the truck of appellant-opposite party. The name of insurance company, with which the Jeep involved in the accident was insured, could not be known due to death of driver and owner Arvind Kumar and due to this reason, insurance company could not be impleaded as party in the claim petition.

8. The opposite party Union of India filed its written statement alleging that Arvind Kumar was admittedly registered owner of Trax Jeep U.P.07D/1358 and his legal heirs also filed M.A.C.P. No. 199 of 1998 Smt. Rakesh etc v. Union of India, but they had not been impleaded in this petition and thus the petition is liable to be dismissed under Order VII, Rule 11, C.P.C. No cause of action against the opposite party Union of India has arisen to the petitioners and thus opposite party has been wrongly impleaded, while Union of India through Secretary, defence should have been impleaded under Sections 79 and 80 of C.P.C.

9. It has further been alleged by appellant that the truck of Air Force involved in the accident was going to Roorki for bringing ration for air force personnels and it was being driven by skilled driver of Air Force with moderate speed and with full care and caution, in which the officers and soldiers were sitting, while the jeep was loaded with passengers more than prescribed number of persons and Arvind Kumar was driving the Trax jeep in rash and negligent manner, who was not skilled driver. The driver of the jeep without giving any signal and caution tried to overtake another vehicle, drove the same on wrong side and collided with the truck of Air Force. The driver of the truck applied the brakes but could not save the accident and thus the accident took place due to rash and negligent driving of jeep. Sri N.P. Sharma. driver tried to take his truck to his extreme left side on kuchcha road, but driver of the jeep lost his control over the same due to its being overloaded and rash and negligent driving caused head-on-collision, in which the passengers travelling in the jeep sustained grievous injuries and the Air Force personnels sitting in the said truck also sustained injuries. The military truck in question was being used by Union of India in exercise of sovereign power at the time of accident hence appellant-opposite party is not liable to pay compensation.

10. The learned Tribunal in M.A.C.P. No. 265 of 1998 framed the following issues on the basis of the pleadings of parties:

(i) Whether the driver of truck No. 88D-80765 driving the same rashly and

negligently collided his said truck with Trax Jeep U.P.07D/1358 on 6.4.1998 at 9.45 a.m. near village Badkala on Roorki Chhutamalpur Road within circle of P.S. Fatehpur in which Smt. Sunita Devi succumbed to her injuries sustained in the accident?

(ii) Whether the petition is bad for non-joinder of legal owners of Trax jeep involved in the accident and liable to be dismissed?

(iii) Whether the accident took place due to rash and negligent driving of the driver of Trax Jeep U.P.07D/1358?

(iv) Whether the petitioners are legal representatives of deceased?

(v) Whether the opposite party has not been properly impleaded? If so, its effect?

(vi) Whether the petitioners are entitled to, get any amount of compensation? If so, to what amount and from whom?

(vii) Relief?

(viii) Whether the military truck in question was being used by Union of India in exercise of Sovereign Power at the time of accident? If so, its effect?

11. In all claim petitions common issues were framed and the learned Tribunal decided all issues by recording common findings. The appellant preferred these first appeals with common contentions.

12. The petitioners filed certified copy of F.I.R., copy of postmortem reports of deceased, copy of site plan, copy of charge-sheet and copy of the statement of Brahm Pal in M.A.C.P. No. 116 of 1999 as well as examined P.W. 1 Ashok Kumar in all. The opposite party also filed copy of F.I.R., site plan, photographs of the site of accident, registration certificate of truck and copy of proceedings of District Court Martial as well as examined D.W. 1 Suman Kumar Budakoti, D.W. 2 N.P. Sharma and D.W. 3 Subhash Chandra in defence. The learned Tribunal also reframed issue No. 1 as below:

(I) Whether Smt. Sunita Devi died in the accident which took place between Military truck No. 88D-80765 and Trax No. U.P.07D/1358 on 6.4.1998 near village Badkala on Roorki Road within circle of P.S. Behat, district Saharanpur?

13. The learned Tribunal decided issue No. 1 in M.A.C.P. No. 265 of 1998 as well as this issue as framed in other claim petitions in favour of the petitioners. Earlier all claim petitions were filed u/s 166 of Motor Vehicles Act but during trial applications for amendment were moved, which was allowed by the learned Tribunal, in view of which these findings were recorded by the learned Tribunal that all these petitions would be deemed to have been filed u/s 163A of the Act.

14. The learned Tribunal decided issues No. 2 and 5 against the appellant-opposite party and deleted issue No. 3 during the judgment. Issue No. 4 was decided in favour of the petitioners holding that in case petitioner No. 1 remarried with one Mamtesh on 16.6.1999 after filing of all these petitions, it

would not deprive him of his rights to get compensation. The learned Tribunal further decided issue No. 8 against the appellant-opposite party holding that in the above petitions the truck in question belonging to Air Force was being used for transportation of ration for Air Force personnels, but on this ground the right of public in the accident could not be denied and thus this act of opposite party in causing accident did not fall within the purview of sovereign function of State.

15. We have considered submissions made by learned Counsel for parties and perused the entire record. The appellant filed these appeals against the judgments and awards dated 29.3.2008 on the ground of legality and validity.

16. The learned Counsel for the appellant has vehemently contended before us that Section 140 of Act provides the provision a case of no fault liability whereas the Tribunal has illegally held Section 163A to be of no fault liability provision. The defence to plead and prove the negligence of the driver of the deceased vehicle is available to the appellant. The learned Counsel for the appellant has further contended that the judgment and award passed by the Tribunal suffers from patent illegality and is also against the evidence on record inasmuch as the fault has been found on the part of the deceased, Trax driver as is evident from the testimony of the Army driver and perusal of the photographs of the accident site, technical inspection and the enquiry report and thus the award of compensation against the appellant is wholly misconceived and not at all based on any concrete reason nor any material evidence produced by the appellant.

17. The learned Counsel for the appellant has further contended that the learned Tribunal has vehemently committed error in law in holding that the fault has been found on the part of the Army driver inasmuch as it is clear from his statement that the Trax Jeep of the deceased was beyond the control of driver.

18. The learned Counsel for the appellant has also contended that the learned Tribunal has illegally held that the accident was caused due to rash and negligent driving of the driver of the Army and has totally ignored the testimony of the witnesses without any basis.

19. Controverting the above contentions, learned Counsel for the respondents has contended that in view of added provision of Section 163A of Motor Vehicles Act, 1988, the claimants are not bound to prove negligence of driver of offending truck and thus the entire arguments advanced on behalf of the appellant in this regard is baseless and of no consequence. Section 163A has been added by Act 54 of 1994 with effect from 14.11.1994. Sub-section (2) of Section 163A provides the provision which is reproduced below:

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.

20. In *R.K. Malik v. Kiran Pal* 2009 (3) TAC 1 : 2009 (3) ACCD 1432 : 2009 (4) AWC 3347 (SC), wherein it has been held that Second Schedule to Act was introduced with effect from 14.11.1994. Notional income mentioned and multiplier specified therein can form basis for pecuniary compensation for loss of dependency. In *Ningamma and Anr. v. United India Insurance Company Limited* 2009 (3) TAC 13 : 2009 (3) ACCD 1213 : 2009 (3) AWC 3045 (SC). the Hon''ble Apex Court observed that in case legal representative of a person, who was driving a motor vehicle, after borrowing from real owner meets with an accident without involving any other vehicle, would not be entitled to compensation u/s 163A of the Act. The Hon''ble Apex Court has observed in paragraphs No. 15, 16 and 19 which is reproduced as below:

15. A number of decisions have been rendered by this Court in respect of the Section 163A of the M.V.A. In *Deepal Girishbhai Soni and Others Vs. United India Insurance Co. Ltd., Baroda*, one of us (Hon''ble Justice S. B. Sinha) has observed as follows:

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

16. The aforesaid decisions make it quite clear that the Parliament by introducing Section 163A in the M.V. Act provided for payment of compensation on structured formula basis by mandating that the owner of a motor vehicle or the authorised insurer would be liable to pay compensation, as indicated in the Second Schedule in the case of death or permanent disablement due to accident arising out of the use of the motor vehicle, to the legal heirs or the victim, as the case may be in a claim made under Sub-section (1) of Section 163A of the M.V. Act. In order to prove a claim of this nature the claimant would not be required to plead or establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act or neglect or default

of the owner of the vehicle concerned.

19. We have already extracted Section 163A of the M.V. Act hereinbefore. A bare perusal of the said provision would make it explicitly clear that persons like the deceased in the present case would step into the shoes of the owner of the vehicle. In a case wherein the victim died or where he was permanently disabled due to an accident arising out of the aforesaid motor vehicle in that , event the liability to make payment of the compensation is on the insurance company or the owner, as the case may be as provided u/s 163A. But, if it is proved that the driver is the owner of the motor vehicle, in that case the owner could not himself be a recipient of compensation as the liability to pay the same is on him. This proposition is absolutely clear on a reading of Section 163A of the M.V. Act. Accordingly, the legal representatives of the deceased who have stepped into the shoes of the owner of the motor vehicle could not have claimed compensation u/s 163A of the M.V. Act.

21. Thus, in these petitions the petitioners were not required to prove negligence of the driver of offending truck belonging to Air Force. This was also proved that the accident as alleged in the petitions took place, in which all persons except one child succumbed to their injuries and after proving this fact the petitioners were entitled to get compensation from the appellant in view of Section 163A. This sub-section provides that owner of the motor vehicle or authorised insurer shall be liable to pay, in case of death or permanent disablement due to accident which took place between two motor vehicles, compensation as indicated in Second Schedule, to the legal heirs or the victim as case may be. The similar findings have been recorded by the learned Tribunal in the above claim petitions which do not suffer from any illegality or factual inaccuracy. It is also of no consequence that the driver of Trax jeep committed negligence in driving the said jeep at the time of the accident.

22. The learned Tribunal has categorically recorded his findings that initially these petitions were filed u/s 166 of the Motor Vehicles Act but later on by way of amendment these petitions were altered u/s 163A of Act. In New India Assurance Company Limited, Arundalpet, Guntur v. Ravela Yohanu and Ors. 2009 (4) TAC 895 (AP), the Andhra Pradesh High Court referred Section 163B which reads as follows:

Option to file claim in certain cases.- Where a petitioner is entitled to claim compensation under Sections 140 and 163A, he shall file the claim under either of the said sections and not under both.

23. In Dr. Gauri Shankar Prasad Verma and Anr. v. Presiding Officer, Motor Vehicles Accidents Claims Tribunal, Ranchi and Ors. 2009 (4) TAC 951 (Jhar), the Jharkhand High Court observed that the claim petition filed by claimant u/s 163A can be converted into Section 166 of Act, meaning thereby claimants can be allowed to convert their petitions because provisions of Sections 163A and 166 operate entirely in different, distinct and independent fields. The prayer for

conversion made at a very belated stage should not be made a ground to reject prayer of conversion. The claimant has to opt either of the two provisions. It follows that even if, the claim petition u/s 163A of the Act is dismissed on the ground of non-maintainability, the claimants can resort to the provisions of Section 166 of the Act. If this is acceptable in the law, then there is no reason as to why the Tribunal cannot exercise its power to allow conversion of claim petition u/s 163A into a claim petition u/s 166 of the Act. Such power is vested with the Tribunal by way of a discretionary power which may be exercised judiciously. In paragraphs 15 and 16 of the said judgment the High Court has further clarified this situation which is reproduced as below:

15. The Tribunal has certainly the discretionary power to allow conversion of the claim petition u/s 163A of the Act into a claim petition u/s 166 of the Act. After all, the above provisions of the Act are by way of beneficial legislation which provides compensation to the legal representatives of the victims of the motor vehicle accident. To use the oft repeated phrase, the procedure is always a hand maid of justice. The Tribunal does have the discretionary power which albeit has to be exercised judiciously.

16. No doubt, as the facts would indicate, the prayer for conversion has been made at a very belated stage, but this in itself, should not be taken as a ground to reject the prayer for conversion. When the circumstances indicate that the claimants have all along acted bona fide, the mere conversion would certainly not affect the merit of the claim petition u/s 166 of the Act. The same line of defence which would have been available to the respondents/defendants, had the claim petition been filed separately u/s 166 of the Act, would certainly be available to them even after allowing the conversion.

24. In view of the above proposition of law, the learned Tribunal has not committed any error or illegality in allowing application for amendment under which the petitions moved u/s 166 of Act was sought to be treated petition u/s 163A of Act, because Jharkhand High Court has observed that petition moved u/s 163A can be converted into Section 166 of the Act and vice versa.

25. The appellant in their written statements categorically admitted that the accident in question which took place between above vehicles in which all persons except one travelling in Trax Jeep at the time of the accident succumbed to their injuries, as a result of which the petitioners shall be entitled to get compensation as provided under law. In the petition u/s 163A of the M.V. Act, the negligence of Army driver and driver of Trax Jeep No. U.P.07-D/1358 was not to be seen and the petitioners were not liable to prove any negligence of driver of offending truck belonging to appellant which was being driven by Srg. N. P. Sharma at the time of the accident. Thus, the learned Tribunal has rightly decided issues No. 1 and 3 in accordance with evidence on record and issues No. 2 and 5 have also been rightly decided against the appellant.

26. The learned Counsel for the appellant has vehemently contended that the

function of supplying ration to Armed forces is a sovereign function of the State which cannot be entrusted to any private agency and thus the negligence on the part of the claimant's vehicle and sovereign function of the State are among the seven defences described in the Rule of RayInd's v. Fletcher, but the learned Tribunal has committed manifest error in law in holding that sovereign function of the State and supplying ration to the forces can be entrusted to a private agency and thus the learned Tribunal has arbitrarily shifted the burden on the appellant by disbelieving its case and awarding the compensation against the appellant.

27. Repelling the above contentions the learned Counsel for respondents have submitted that carrying on transport operation is in nature of commercial venture and cannot be a sovereign function or act. Where the State advances the plea of sovereign immunity it has to be found out that the impugned act was committed in the course of undertaking in employment which is referable to the exercise of delegated sovereign powers. The nature of act, transaction in course of which it is committed, nature of employment of persons committing, has to be considered. Sovereign power means the power which cannot be lawfully exercised except by a sovereign, or a private individual delegated by a sovereign to exercise the same. Thus, the State is liable to be held for an accident caused by offending truck driven by its driver.

28. The distinction between sovereign and non-sovereign functions was considered at some length in N. Nagendra Rao and Co. Vs. State of Andhra Pradesh, in which earlier decisions on the subject were referred to. The Hon''ble Apex Court enunciated the following legal principles, in its judgment:

In the modern sense, the distinction between sovereign or non- sovereign power thus does not exist. It all depends on the nature of the power and manner of its exercise. Legislative supremacy under the Constitution arises out of constitutional provisions. The Legislature is free to legislate on topics and subjects carved out for it. Similarly, the executive is free to implement and administer the law. A law made by a Legislature may be bad or may be ultra vires, but, since it is an exercise of legislative power, a person affected by it may challenge its validity but he cannot approach a Court of law for negligence in making the law. Nor can the Government, in exercise of its executive action, be used for its decision on political or policy matters. It is in (the) public interest that for acts performed by the State, either in its legislative or executive capacity, it should not be answerable in torts. That would be illogical and impracticable. It would be in conflict with even modern notions of sovereignty.

29. The Hon''ble Apex Court in the above case has suggested the following tests for distinction between sovereign and non-sovereign function:

One of the tests to determine if the legislative or executive function is sovereign in nature is, whether the State is answerable for such actions in Courts of law. For instance, acts such as defence of the country, raising (the) armed forces and maintaining it, making peace or war, foreign affairs, power to acquire and retain

territory, are functions which are indicative of external sovereignty and are political in nature. Therefore, they are not amenable to jurisdiction of ordinary civil court. No suit under CPC would be lie in respect of it. The State is immune from being sued, as the jurisdiction of the Courts in such matters is impliedly barred.

But there the immunity ends. No civilized system can permit an executive to play with the people of its country and claim that it is entitled to act in any manner, as it is sovereign. The concept of public interest has changed with structural change in the society. No legal or political system today can place the State above (the law) as it is unjust and unfair for a citizen to be deprived of his property illegally by negligent act of officers of the State without any remedy. From sincerity, efficiency and dignity of (the) State as a juristic person, propounded in nineteenth century as sound sociological basis for State immunity, the circle has gone round and the emphasis now is more on liberty, equality and the rule of law. The modern social thinking of progressive societies and the judicial approach is to do away with archaic State protection and place the State or the Government on a par with any other juristic legal entity. Any watertight compartmentalization of the functions of the State as "sovereign and non-sovereign" or "governmental and nongovernmental" is not sound. It is contrary to modern jurisprudents thinking. The need of the State to have extraordinary powers cannot be doubted. But with the conceptual change of statutory power being statutory duty for (the) sake of society and the people, the claim of a common man or ordinary citizen cannot be thrown out, merely because it was done by an officer of the State : duty of its officials and right of the citizens are required to be reconciled, so that the rule of law in a Welfare State is not shaken.

30. No civilised system can permit an executive to play with the people of its country and claim that it is entitled to act in any manner as it is sovereign. The concept of public interest has changed with structural change in the society. No legal or political system today can place the State above law as it is unjust and unfair for a citizen to be deprived of his property illegally by negligent act of officers of the State without any remedy.

31. Sovereign immunity is never available where the State is involved in commercial or private undertaking nor it is available where its officers are guilty of interfering with life and liberty of a citizen not warranted by law. In both such infringements the State is vicariously liable and bound, constitutionally, legally and morally, to compensate and indemnify the wronged person. The doctrine of sovereign immunity has no relevance in the present-day context when the concept of sovereignty itself has undergone drastic change.

32. Sovereign is defence of the country, raising armed forces, making peace or war, foreign affairs, power to acquire and retain territory. These are not amenable to the jurisdiction of ordinary civil courts. The other functions of the State including welfare activity of the State cannot be construed as "sovereign" exercise of power. Hence, every governmental function need not be "sovereign".

State activities are multifarious, from the primal sovereign power, which exclusively inalienably can be exercised by the sovereign alone, which is not subject to challenge in any civil court, to all the welfare activities, which would be undertaken by any private person. So the mere fact that one is an employee of statutory bodies would not take it outside the Central Act. Even if a statute confers on any statutory body, any function which could be construed to be "sovereign" in nature that would not mean every other functions under the same statute to be also sovereign. The Court should examine the statute to sever one from the other by comprehensively examining various provisions of that statute.

33. Sovereign function in the new sense may have very wide ramification but essentially sovereign functions are primary inalienable functions which only the State can exercise. Thus, various functions of the State, may be ramifications of sovereignty but they all cannot be construed as primary inalienable functions. Broadly it is taxation, eminent domain and police power which covers its field. It may cover its legislative functions, administration of law, eminent domain, maintenance of law and order, internal and external security, grant of pardon. So the dichotomy between sovereign and non-sovereign function can be found by finding which of the functions of the State can be undertaken by any private person or body; the one which could be undertaken cannot be sovereign function.

34. The Crown in England does not now enjoy absolute immunity and may be held vicariously liable for the tortious acts of its officers and servants. The maxim that "the king can do no wrong or that the Crown is not answerable" in tort has no place in Indian jurisprudence where the power vests, not in the Crown, but in the people who elect their representatives to run the Government, which has to act in accordance with the provisions of the Constitution and would be answerable to the people for any violation thereof.

35. The act of distinction is amenable, meaning thereby the said function can be done by a private person or contractor on the basis of an agreement and thus the said function cannot be said to be a sovereign function. Moreover, the Legislature in enacting Motor Vehicles Act, 1988. has not taken this aspect that act done in exercise of sovereign function would not fall within the purview of provisions of this Act. There is no provision in this Act which may exempt any person from liability to pay compensation.

36. Consequently in the absence of any provisions in this Act the appellant cannot be said to be absolved from its responsibility to make payment of compensation under the provisions of the Act. The act of transportation of ration for armed forces cannot be said to be sovereign function as discussed above because this act is amenable to the jurisdiction of civil courts and such type of function of the State cannot constitute as sovereign exercise of power. Under these circumstances, the act of driver of offending vehicle in this accident cannot be said to be sovereign function because the said act of transportation of ration is alienable and it can be exercised by any person to whom such responsibility is assigned by State or its officials.

37. In view of the above analogy and proposition of law laid down by the Hon''ble Apex Court in several cases, we are convinced that the act of driver of offending truck belonging to the appellant cannot be said to be a sovereign function and same cannot be exempted from purview of civil courts or Tribunal. Under these circumstances, no benefit in this regard can be given to the appellant with regard to accident in question and these first appeals cannot be allowed in the light of submissions made on behalf of the appellant, as a result of which submissions made by learned Counsel for the appellant is liable to be rejected.

38. The learned Counsel for the appellant has further submitted that the deceased persons were either house wife dependent on her husband or children and prior to their death they were doing no work or business and had no income and thus multiplier applied by the learned Tribunal was wrong in the absence of proof of income and thus the award is arbitrary, illegal, unsustainable in the eye of law.

39. The learned Counsel for the respondents, repelling the above submissions, has contended that the learned Tribunal rightly applied multiplier in the light of Second Schedule of Section 163A of Act and did not commit any error in calculating amount of compensation in any one of above petitions. The learned Counsel for the respondents has relied on the decision in the case of Nagarapu Balaiah and Ors. v. K. Venugopal and Anr. 2006 (3) TAC 224 (AP), in which the High Court in para 12 of its judgment has observed that coming to the fixation of multiplier, it is to be seen that the accident occurred on 13.7.1998, i.e., after the Amendment Act 54 of 1994 by which Section 163A with Second Schedule was inserted within the Motor Vehicles Act, 1988. The Second Schedule given to Section 163A can be taken as guideline for determination of compensation u/s 166 of the Act. In K. Matura Bai and Others Vs. A. Shiva Nageswar Rao and Others, various judgments of above High Court as well as the Hon''ble Apex Court were discussed and it was held that multiplier in Structured Formula as given in Second Schedule of Section 163A has to be followed even for the applications u/s 166 of the Act, as the multiplier table given in Bhagwandas case (supra) not having been updated. Therefore, multiplier can be fixed at 11 as per the Second Schedule to Section 163A of the Act.

40. The learned Counsel for the respondents has further relied on the decision in the case of Chandra Singh and Anr. v. Gayatri Devi and Anr. 2006 (3) TAC 290 (Gau), wherein it has been observed that in petitions u/s 163A of Motor Vehicles Act, 1988, compensation can be obtained on Structural Formula without claimants being required to plead and establish factum of accident. Section 163A is an exception to Section 166 and takes within its sweep even those cases, wherein victims'' own negligence leads to accident. Compensation cannot be refused on ground that victim himself is responsible for accident. Application moved u/s 163A of the Act cannot be rejected merely on ground that it is claimant, whose negligence, as a driver has caused accident. A person whose annual income is more than Rs. 40,000 is not eligible to make an application u/s

163A for compensation by restricting his income to the slab of Rs. 40,000. The learned Counsel for the respondents has further relied on the decision in the case of Union of India and Anr. v. Jaishree and Ors. 2006 (3) TAC 1031 (Raj), wherein it has been observed that it can very safely be said now it is legal position, settled by Hon"ble Supreme Court that while applying the multiplier, seeking guidance from the Second Schedule, the income of the deceased as he was earning at the time of death alone has to be taken into account. Obviously, therefore, it cannot be enhanced on consideration of future prospects of increase.

41. In these petitions the learned Tribunal has applied multiplier according of Second Schedule of Section 163A and deducting one third amount as expenses to be incurred on deceased during life time if he would be alive and then the Tribunal calculated compensation accepting notional income of deceased persons, as claimants could not prove income of deceased persons by concrete and reliable evidence.

42. Under these circumstances, we are of considered view that the learned Tribunal has not committed any error or illegality in applying multiplier according to Second Schedule of Section 163A and deducting one third amount to be incurred on deceased and then calculating amount of compensation considering the age of deceased. The findings recorded by the learned Tribunal in above claim petitions do not suffer from any illegality, error or factual inaccuracy.

43. Consequently, these first appeals lack merits and are dismissed. There shall be no order as to cost.