

(2007) 05 GAU CK 0014

In the Gauhati High Court

Case No : MAC Appeal No's. 15 and 16 of 2002

United India Insurance Co. Ltd.

APPELLANT

Vs

Kalitara Sarkar and Others

RESPONDENT

Date of Decision : 08-05-2007

Acts Referred:

Motor Vehicles Act, 1939 — Section 92A

Motor Vehicles Act, 1988 — Section 140, 140(1), 140(2), 140(4), 141

Citation : (2008) GLT 76 Supp

Hon'ble Judges : I.A. Ansari, J

Bench : Single Bench

Advocate : A. Phukan, for the Appellant; C. Choudhury and B.C. Das, for the Respondent

Judgement

I.A. Ansari, J.—The fate of these two appeals largely depend on the question as to whether an order directing payment of compensation, u/s 140 of the Motor Vehicles Act, 1988 (in short "the MV Act"), which is popularly known as "No Fault Liability" amount, is appellate u/s 173 of the Act of 1988. As both these appeals have arisen out of the same accident and raised essentially identical questions of law, both these appeals have been heard together and are being disposed of by this common judgment and order. The material facts and various stages, which have led to the present appeals, may, in brief, be set out as follows:

(i) While MAC Case No. 27/1998 arose out of an application seeking compensation of a sum of Rs. 7,48,000/- the application having been made u/s 166 of the Act of 1988, by the mother, brother and sisters of Nabiruddin, who, according to the claimants, had died in the motor vehicular accident, which took place due to rash and negligent driving, on 28.01.1998, at Lachitnagar, Changsari, of a Mini Bus, bearing Registration number AMZ 6850. The MAC Case No. 28/1998 arose out of an application, seeking a sum of Rs. 8,00,000/-, the application having been made, u/s 166 of the Act of 1988, by the mother of deceased Naba Kumar Sarkar, who had died in the same accident as did

Nabiruddin.

(ii) The claimants, in both the claim cases, also filed separate applications u/s 140 of the MV Act seeking compensation of a sum of Rs. 50,000/- as "No Fault Liability" amount for the death of the said two deceased.

(iii) In both the said claim cases, the owner of the offending vehicle, namely, Director of Tourism, Government of Assam and the insurer thereof, namely, M/s United India Insurance Company Limited, appeared in the said proceedings. As no objection was raised by the owner and the insurer of the said vehicle with regard to the claim for compensation of "No Fault Liability" amounts, learned Member, Motor Accident Claims Tribunal, Darrang, Mangaldoi, passed orders, on 18.08.1998, in each of the said two cases, directing, inter alia, payment of the said sum of Rs. 50,000/- by the insurer to the claimants in each of the said cases. The direction for payment of the "No Fault Liability" having been made before the written statements could be filed.

(iv) After the said orders were passed, petitions were filed by the insurer, in both the said claim cases, stating, inter alia, that the vehicle No. AMZ 6850, which was allegedly involved in the said accident, was not duly covered by the insurance policy and, hence, the liability of payment of Rs. 50,000/- be shifted to the owner of the said vehicle.

(v) Pending disposal of the said two petitions, the written statements were filed by the insurer and, thereafter, upon hearing the learned Counsel for the parties, the learned Tribunal directed the insurer, on 09.10.2001, to make payment of the "No Fault Liability" amount of Rs. 50,000/- as had been directed by the order, dated 18.08.1998, aforementioned. The orders, dated 9.10.2001, aforementioned are, now, under challenge in the present appeal.

2. I have heard Mr. A. Phukan, learned Counsel for the insurer-Appellant, and Mr. C. Choudhury, learned Counsel, appearing on behalf of the claimant-Respondent. None has appeared on behalf of the owner Respondent. I have also heard Mr. B.C. Das, learned Senior counsel, as Amicus Curiae.

3. Appearing on behalf of the Appellant, Mr. Phukan has submitted that in the present case, the Appellant, as insurer, had insured, on the request of the Director of Tourism, Govt. of Assam, their Vehicle No. AMY 3860 (Swaraj Majda), and this policy commenced, on 31.03.1997, for a period of one year. However, after about 10 months from the date, when the Vehicle No. AMY 3860 stood insured, a letter, dated 12.02.1998, was received by the insurer from the Director of Tourism, Govt. of Assam, informing the insurer that the vehicle No. AMY 3860, which had been given the insurance coverage, was a condemned Vehicle and that the insurance coverage should not have been in respect of the Vehicle No. AMY 3860, but in respect of vehicle No. AMZ 6850, which is in a running condition. In good faith, submits Mr. Phukan, the insurer issued a letter to the effect that the insurance coverage, which was earlier in respect of the Vehicle No. AMY 3860, should be treated as insurance coverage for Vehicle No.

AMZ 6850 and not AMY 3860. Subsequent inquiry has, however, revealed, points out Mr. Phukan, that it had been falsely stated by the Director, Tourism, in its letter, dated 12.02.1998, aforementioned, that their Vehicle No. AMY 3860 was a condemned vehicle, for, the District Transport Officer has already given a certificate to the effect that the vehicle No. AMY 3860 had not been condemned. It is, thus, clear, contends Mr. Phukan, that after the Vehicle No. AMZ 6850 committed the said accident, on 28.01.1998, the owner of the said vehicle got the insurance coverage transferred by falsely stating that the vehicle No. AMY 3860 was a condemned vehicle and that the insurance coverage should have been in respect of vehicle No. AMZ 6850 and not AMY 3860. It is, thus, transparent, further contends Mr. Phukan, that it was by playing fraud that the Director of Tourism, Govt. of Assam, got the insurance coverage in respect of the offending vehicle, namely, AMZ 6850, transferred. When these facts were pointed out to the learned Tribunal, the learned Tribunal did not, submits Mr. Phukan, modify its earlier orders, whereby the insurer was directed to pay "No Fault Liability" amount of Rs. 50,000/- in each of the said two claim cases to the claimants concerned.

4. As none has appeared on behalf of the owner of the alleged offending vehicle, the submissions made on behalf of the insurer has remained unchallenged. However, Mr. Choudhury, learned Counsel for the claimants-Respondents, submit that the claimants, in both the said cases, are poor people and in the facts and circumstances of the case, the interim directions for payment, given to the insurer, maybe maintained and the insurer may be given the liberty to recover the amount, when the Tribunal finally decides the question as to whether the offending vehicle was validity covered by the insurance coverage, in question, or not. It is further contended by Mr. Choudhury that the application for modification of the orders, dated 18.08.1998, which the insurer made, were, in effect, applications for review and when this application was rejected by the impugned order, dated 09.10.2001, no further appeal could have been preferred under the law against the order, dated 09.10.2001, for, a person, who applies for review, contends Mr. Choudhury, cannot file an appeal, if the application for review is rejected.

5. Before dealing with the question as to whether the insurer, on the rejection of their application, seeking modification of the order, dated 18.08.1998, whereby the insurer had been directed to make payment of Rs. 50,000/-, in each of the said two cases as the "No Fault Liability" amount, can challenge the orders, dated 09.10.2001, aforementioned, by way of appeal u/s 173 of the Act of 1988, imperative it is that this Court, first, determines as to whether an appeal lies at all, u/s 173, against an order made u/s 140. In order to enable one to correctly reach the answer, it is necessary to look into the scheme, as a whole, of the Act of 1988 and the legislative intent behind making the provisions for compensation without proof of fault as embodied in Section 140.

6. For the reason that it is the order, passed u/s 140, whose appealability, u/s

173, is required to be determined, apposite it is that one takes note of the provisions of Section 140, which falls under Chapter "X". This Section (Section 140) states thus:

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 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) reporting 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 163A.

7. As Section 141 forms an integral part of the provisions of Section 140, the provisions of Section 141 also need to be taken note of. Section 141 states:

141. Provisions as to other right to claim compensation for death or permanent disablement--(1) The right to claim compensation u/s 140 in respect of death or permanent disablement of any person shall be in addition to "any other right, except the right to claim under the scheme referred to in Section 163A (such other right hereafter in this section referred to as the right on the principle of fault) to claim compensation in respect thereof under any other provision of this Act or of any other law for the time being in force.

(2) A claim for compensation u/s 140 in respect of death or permanent disablement of any person shall be disposed of as expeditiously as possible and where compensation is claimed in respect of such death or permanent disablement u/s 140 and also in pursuance of any right on the principle of fault, the claim for compensation u/s 140 shall be disposed of as aforesaid in the first place.

(3) Notwithstanding anything contained in Sub-section (1), where in respect of the death or permanent disablement of any person, the person liable to pay compensation u/s 140 is also liable to pay compensation in accordance with the right on the principle of fault, the person so liable pay the first-mentioned compensation and

(a) If the amount of the first-mentioned compensation is less than the amount of the second-mentioned compensation, he shall be liable to pay (in addition to the first-mentioned compensation) only so much of the second-mentioned compensation as is equal to the amount by which it exceeds the first mentioned compensation;

(b) If the amount of the first-mentioned compensation is equal to or more than the amount of the second-mentioned compensation, he shall not be liable to pay the second-mentioned compensation.

8. As a precursor to the present Motor Vehicles Act, 1988, the Motor Vehicles Act, 1939, provided a statutory mechanism for enforcing the rights and obligations flowing under the common law. Notwithstanding such statutory support provided to a person claiming compensation, what is, however, crucial to note is that if a person was not, under the common law, liable to pay any compensation, the statutory mechanism, conceived under, and provided by, the Motor Vehicles Act, 1939, did not make the person proceed against liable to pay compensation except in situations and to the extent to which the statute made a specific departure, in this regard, from the principles governing tortious liability under the common law.

9. The question as to whether proof of fault was a condition precedent for sustaining a claim for compensation under the Motor Vehicles Act, 1939, came to be considered by the Apex Court in *Minu B. Mehta and Another Vs. Balkrishna Ramchandra Nayan and Another*, In *Minu B. Mehta (supra)*, the Bombay High Court had taken the view that the fact of an injury resulting from the accident involving the use of a car, on the public road, is the basis of liability under the Motor Vehicles Act, 1939 and that it is not necessary to prove any negligence on the part of the driver. Even the Andhra Pradesh High Court had held in *Zakaria and Others Vs. Naoshir Cama and Others*, , that the insured and, consequently, the insurer is liable to compensate a third party dying or getting injured on account of the use of the insured vehicle at a public place irrespective of the fact whether the death or injury and disablement had been caused by rash and negligent driving or not.

10. Disagreeing with the above views expressed by the Bombay High Court as well as the Andhra Pradesh High Court, the Apex Court pointed out, in *Minu B. Mehta (supra)*, that the liability of the owner of the car to compensate the victim in a car accident due to the negligent driving of his servant is based on the law of tort and that the concept of owner's liability without any negligence is opposed to the basic principles of law. Held the Apex Court, in *Minu B. Mehta (supra)*, that no legal right arose, under the Motor Vehicles Act, 1939, to claim compensation against the insured or the insurer unless the person, who sought the award of compensation, proved that the accident, leading to the injury or death, was caused due to wrongful act, default or neglect on the part of the insured or his servant.

11. Before a person can be made liable to pay compensation for any injuries and damage, which have been caused by his action, it is necessary, noted the Supreme Court in *Minu B. Mehta (supra)*, that the person suffering damage or injury should be able to establish that he has some cause of action against the party responsible. Explaining as to when a cause of action may arise out of actions for wrongs under the common law or for breaches of duties laid down by statutes, the Apex Court, in *Minu B. Mehta (supra)*, made it clear that in order to succeed in an action for negligence, the Plaintiff must prove (1) that the Defendant had, in the circumstances, a duty to take care and that duty was owed by him to the Plaintiff and that (2) there was a breach of that duty and that as a result of the breach, damage was suffered by the Plaintiff.

12. Clarified further the Supreme Court in *Minu B. Mehta (supra)*, that the owner's liability arises out of his failure to discharge a duty cast on him by law and that the right to receive compensation can only be against a person, who is bound to compensate due to the failure to perform a legal obligation and that when a person is not under a legal obligation to perform an act, he is under no legal duty to compensate anyone. Pointed out the Apex Court, in *Minu B. Mehta (supra)*, that the Claims Tribunal is a tribunal constituted by the State Government for expeditious disposal of the motor vehicular claims, but the general law applicable was still the common law and the law of torts and if, under the law, a person becomes legally liable, then only the person, who suffers injuries, is entitled to be compensated and the Tribunal is authorized to determine the amount of compensation, which appears to be just. The pleas, concluded the Supreme Court, in *Minu B. Mehta (supra)*, that a Claims Tribunal is entitled to award compensation, which appears to it to be just, when it is satisfied, on proof of injury to a third party arising out of the use of a vehicle in a public place without proof of negligence, if accepted, would lead to strange results.

13. Made it clear the Apex Court in *Minu B. Mehta (supra)*, in no uncertain words, thus:

The concept of owner's liability without any negligence is opposed to the basic principles of law. The mere fact that a party received an injury arising out of the

use of a vehicle in a public place cannot justify fastening liability on the owner. It may be that a person bent upon committing suicide may jump before a car in motion and thus get himself killed. We cannot perceive by what reasoning the owner of the car could be made liable. The proof of negligence remains the linch-pin to recover compensation.

14. From a careful reading of what were observed and laid down in *Minu B. Mehta (supra)*, it becomes abundantly clear that the Apex Court, in *Minu B. Mehta (supra)*, rejected the view that for sustaining a claim for compensation under the Motor Vehicles Act, 1939, it was enough to prove that the person concerned had received injury or died in an accident arising out of use of the vehicle in a public place and that proof of negligence was not necessary. In no uncertain words, the law laid down, in *Minu B. Mehta (supra)*, was that notwithstanding the fact that the provisions for insurance of vehicles had been made in the Motor Vehicles Act, 1939, the owner can be made liable to pay compensation only if there was proof of fault on his part either on account of the fact that he had driven the vehicle rashly or negligently or that he had allowed the vehicle to be driven by a person, who had driven the same rashly or negligently.

15. The above prominently pronounced position of law continued to govern the field till the Motor Vehicle Act, 1939, came to be amended by the Amendment Act 47 of 1982 incorporating therein Section 92-A, which read as follows:

92. A. Liability to pay compensation in certain cases on the principle of no fault--
(1) Where the 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 vehicles 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 death of any person shall be a fixed sum of fifteen 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 seven thousand five hundred 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 owners of the vehicles 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.

16. It may, now, be carefully noted that it was Section 92A, which introduced, for the first time, the concept of payment of compensation without proof of fault or negligence on the part of the owner or driver of the vehicle, for, Sub-section (3) of Section 92A laid down, in clear terms, that 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. The object and reasons for such noticeable shift in the settled legal position were summarized by the amended Act 47 of 1982 as follows:

10. Having regard to the nature of circumstances in which road accidents take place, in a number of cases it is difficult to secure adequate evidence to prove negligence. Further, in what are known as "hit-and-run" accidents, by reason of the identity of the vehicle involved in the accident not being known, the persons affected cannot prefer any claims for compensation. It is, therefore, considered necessary to amend the Act suitably to secure strict enforcement of road safety measures and also to make as a measure of social justice, suitable provisions, first, for compensation without proof of fault or negligence on the part of the owner or driver of the vehicle, and secondly, for compensation by way of solatium in cases in which the identity of the vehicle causing an accident is unknown.

17. It was, in fact, in Gujarat Gujarat State Road Transport Corporation, Ahmedabad Vs. Ramanbhai Prabhatbhai and Another, , that the Apex Court, taking note of the fact that under Sub-section (3) of Section 92A, the claimant shall not be required to plead and establish that the death or permanent disablement in respect of which the claim had 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, recognized, for the first time, in unequivocal terms, that the provisions of Section 92A of the Motor Vehicles Act, 1939, introduced a clear departure from the common law that a claimant must establish negligence on the part of the owner or driver of the vehicle in order to enable him to receive compensation for the death or permanent disablement caused on account of use of the vehicle.

18. In Gujarat State Road Transport Corporation (supra), the Court held a pedestrian entitled to recover damages regardless of the fact as to whether he could prove negligence on the part of the owner or driver of the vehicle involved in the accident or not. Observed the Court, in Gujarat State Road Transport Corporation (supra), in this regard:

Where a pedestrian without negligence on his part is injured or killed by a motorist, whether negligently or not, he or his legal representatives, as the case may be, should be entitled to recover damages if the principle of social justice should have any meaning at all.

19. Taking note of the language of Sub-section (3) of Section 92A, held the Supreme Court, as indicated hereinabove, thus:

This part of the Act is clearly a departure from the usual common law principle that a claimant should establish negligence on the part of the owner or driver of the motor vehicle before claiming any compensation for the death or permanent disablement caused on account of a motor vehicle accident. To that extent the substantive law of country stands modified.

20. We may pause here to point out that the Indian Motor Vehicles Act, 1914, which was the first enactment relating to motor vehicles, in India, was replaced by the Motor Vehicles Act, 1939, which consolidated and amended the law relating to the Motor Vehicles Act in India. We may also point out that the Motor Vehicles Act, 1939, which was based on the Fatal Accident Act, 1855, still recognized award of compensation solely based on the law of torts. The year 1956 saw, for the first time, establishment of the Motor Accident Claims Tribunals in India, which were established to expedite the process of determination of cases for compensation arising out of motor vehicular accidents. However, proof of negligence remained embodied as a condition precedent for grant of compensation under the Motor Vehicles Act, 1939. It was Section 92A of the Motor Vehicles Act, 1939, which introduced the first departure from the usual common law principle that a claimant should establish negligence on the part of the owner or the driver of the motor vehicle before claiming any compensation for the death or permanent disability caused on account of a motor vehicular accident.

21. Notwithstanding the departure from the usual common law principle as indicated hereinabove, doubts still persisted if a person, whose own fault had led to an accident, could maintain a claim for compensation on the principle of "no-fault" u/s 92A. In order to determine if a claim for compensation could have been made on the principle of "no-fault", u/s 92A, by a person, whose own wrongful act, neglect or default had been the cause of accident, one may take note of Sub-section (4) of Section 92A, which read thus:

(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.

22. A bare reading of Sub-section (4) of Section 92 A clearly shows that a claim for compensation on the basis of no-fault, envisaged by Section 92A, could 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. In short, thus, even the person, who himself was the cause of the accident or of the injury suffered by him, became entitled to receive compensation on the principle

of "no-fault" u/s 92A.

23. Be that as it may, a Division Bench of the Madras High Court, in *K. Nandakumar v. Managing Director, Thantai Periyar Transport Corporation*, reported in 1992 (2) TAC 515 (Mad), held that even for the purpose of invoking Section 92 A, it was for the claimant to prove that he was not in any manner responsible for the accident. In other words, the Court held that in the cases, where the injured or dead was himself responsible for the accident, question of paying compensation on no-fault basis, even u/s 92A, did not arise at all. Rejecting this view, the Apex Court, in *K. Nandakumar v. Managing Director, Thantai Periyar Transport Corporation*, reported in *K. Nandakumar Vs. Managing Director, Thanthal Periyar Transport Corpn.,* , observed and held as follows:

4. By reason of Sub-section (1) of Section 92-A, an absolute liability is cast upon the owner of a vehicle to pay compensation in respect of death or permanent disablement resulting from an accident arising out of its use. By reason of Sub-section (3), the claimant is not required to plead or establish that the death or disablement was due to a wrongful act or neglect or default of the owner or any other person. Sub-section (4) is in two parts. The first part states that a claim for compensation under the section is not defeated by reason of any wrongful act, neglect or default of the person, who had died or suffered permanent disablement. The second part states that the quantum of compensation is not to be diminished even if the person who had died or suffered permanent disablement bore some responsibility for his death or disablement.

5. There was, therefore, on a plain reading of Section 92-A, particularly, the first part of Sub-section (4) thereof, no basis for holding that a claim thereunder could be made only if the person who had died or suffered permanent disablement had not been negligent. The provision being clear, no external aid to its construction, such as the Statement of Objects and Reasons, was called for."

24. From what has been discussed above, the observations made, in *Nandakumar (supra)*, by the Apex Court and the law laid down therein, it becomes abundantly clear that the decision of the Apex Court, in *Minu B. Mehta (supra)*, wherein the Apex Court had held that in the absence of proof of fault on the part of the owner or the driver of the vehicle, no claim for compensation under the Motor Vehicles Act, 1939, could be entertained, was rendered before Section 92 A was introduced into the statute and that after the introduction of Section 92A, particularly, in view of what Sub-section (4) of Section 92A stated, a claim u/s 92A, on the principle of no-fault, could be made even by a person, whose own wrongful act, neglect or default, had formed the cause of the accident. In short, a claim for compensation u/s 92A was maintainable as long as the victim is shown to have suffered death or permanent disablement and it was immaterial, in such a case, whether it was the victim's own wrongful act, neglect or default, which had caused the said accident. To put it differently, a claim for compensation, on the basis of no-fault u/s 92 A, was maintainable even if the victim had suffered death or permanent disablement on account of his own

wrongful act, neglect or default.

25. It is worth noticing that Section 92A of the Motor Vehicles Act, 1939, stood replaced by Section 140 of the Motor Vehicles Act, 1988, when the latter statute came into force. Since Section 92A is replaced by Section 140 and Sub-section (4) of Section 140 embodies the same provisions as were contained in the Sub-section (4) of Section 92A, it logically follows that even after coming into force of the Motor Vehicles Act, 1988, the Apex Court's decision, in K. Nandakumar (supra), still holds the field and the effect is that regardless of the fact as to whether the person, injured or killed in a motor vehicular accident, was himself, partially or wholly, responsible for the accident, compensation, under Sub-section (4) of Section 140, is payable to the victim or his legal representatives, as the case may be.

26. Turning to Section 163A, it may be pointed out that no provision, such as, the one that we have, now, in the form of Section 163A, existed in the Motor Vehicles Act, 1939. No such provision existed even in the Motor Vehicles Act, 1988, when this Act initially came into force. As a matter of fact, Section 163A has been introduced by amendment Act No. 54 of 1994 with effect from 14.11.94 as against the fixed minimum interim compensation awardable, on the principle of no-fault, u/s 140, which merges, in terms of Section 141, in the final award to be made on the basis of "fault liability" u/s 166.

27. Section 163A allows a victim of a motor vehicular accident to obtain a final award of compensation based on the structured formula contained in the 2nd schedule to the Act and such compensation may be obtained without the claimant being required to plead or establish that the injuries sustained or death caused was due to any wrongful act or neglect or default of the owner of the vehicle or vehicles concerned or of any other persons. The compensation finally payable u/s 163 A is, however, materially different from the minimum prescribed compensation payable u/s 140, though both these provisions dispense with the proof of negligence on the part of the owner of the vehicle or vehicles concerned or of any other persons.

28. In fact, the present Motor Vehicles Act, 1988, provides an option to the claimant to obtain interim compensation u/s 140 being the minimum prescribed compensation until final adjudication of his claim, u/s 166, on the basis of "fault-liability". In the final award, which may be so reached, would get merged the interim compensation, if any, already received by the claimant u/s 140. The other course, which the claimant can opt for, is to obtain a final award of compensation on the basis of structured formula as depicted in the 2nd Schedule u/s 163A.

29. A careful reading of Section 140 shows that this section provides for liability to pay compensation on the principle of no fault, for, Section 140(3) makes it clear that a claimant shall not be required, for the purpose of sustaining an application made u/s 140, 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, negligence or default of the owner (s) of the vehicle (s) concerned or of any other person. Thus, u/s 140, owner of a vehicle would be liable to pay compensation in the case of death and/or permanent disablement of any person, resulting from an accident arising out of use of a motor vehicle (s), in a public place, irrespective of the fact as to whether there was any fault on the part of the driver or owner of the vehicle or not. What is a permanent disablement is defined u/s 142. In terms of Section 140(2), a fixed sum of Rs. 50,000/- is payable as compensation in the case of death and Rs. 25,000/- in the case of permanent disablement.

30. When read, as a whole, Section 141 makes it clear that the right to claim compensation u/s 140 is in addition to any other right except the right to claim compensation under the scheme referred to in Section 163(A). This, in turn, further clarifies that the right to make an application, u/s 140, for compensation is in addition to the right to make application for compensation u/s 166. Section 141(3) points out that if the compensation, payable or already paid u/s 140, is less than the amount, which is, ultimately, found payable to the claimant, then, the amount, if already paid u/s 140, shall be deducted from the total amount payable as compensation u/s 166. Section 141(3) also points out that if the amount already paid or payable u/s 141 is equal to, or more than, the amount, which is, eventually, found payable u/s 166, the claimant shall not be liable to refund the excess amount, if any, which he may have received by virtue of the provisions of Section 140. The provisions, so embodied u/s 141(3), clearly reflect that in the case of death or permanent disablement, the amount payable u/s 140 is the minimum amount irrespective of the fact whether the accident took place, because of the fault, negligence or default of the owner (s) of the vehicle (s) concerned or of any other person. Section 141(2) warrants that a claim for compensation, made u/s 140, on the principle of no fault, shall be disposed of as expeditiously as possible and where such a claim is made in addition to a claim on the principle of fault (i.e., u/s 166), it is the claim for compensation u/s 140, which shall be disposed of first and as expeditiously as possible. These provisions clearly indicate that a claim, u/s 140, which is based on the principle of no fault, can be made separately and independent of a claim u/s 166, though the amount of compensation, found payable u/s 166, shall be paid after deducting therefrom the amount, which might have already been paid to the claimant u/s 140.

31. Chapter XII of the M.V. Act, which provides for constitution of Claims Tribunals and other matters connected therewith, now, need to be taken note of. As Section 165, 166, 167, 168, 173 and 174, which fall under Chapter "XII", are of material consequence, these Sections are reproduced below:

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

compensation in respect of accidents involving the death of, or bodily injury to, persons arising out of the use of motor vehicles, or damages to any property of a third party so arising, or both.

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

(2) A Claims Tribunal shall consist of such number of members as the State Government may think fit to appoint and where it consists of two or more members, one of them shall be appointed as the Chairman thereof.

(3) A person shall not be qualified for appointment as a member of a Claims Tribunal unless he-

(a) Is, or has been; a Judge of a High Court, or

(b) Is, or has been a District Judge, or

(c) Is qualified for appointment as a High Court Judge 1 or as a District Judge.

(4) Where two or more Claims Tribunals are constituted for any area, the State Government, may by general or special order, regulate the distribution of business among them.

166. Application for compensation--(1)An application for compensation arising out of an accident of the nature specified in Sub-section (1) of Section 165 maybe made-

(a) By the person who has sustained the injury; or

(b) By the owner of the property; or

(c) Where death has resulted from the accident, by all or any of the legal representatives of the deceased; or

(d) By any agent duly authorized by the person injured or all or any of the legal representatives of the deceased, as the case may be:

Provided that where all the legal representatives of the deceased have not joined in any such application for compensation, the application shall be made on behalf of or for the benefit of all the legal representatives of the deceased and the legal representatives who have not so joined, shall be impleaded as Respondents to the application.

(2) Every application under Sub-section (1) shall be made, at the option of the I claimant, either to the Claims Tribunal having jurisdiction over the area in which the accident occurred or to the Claims Tribunal within the local limits of whose jurisdiction the claimant resides or carries on business or within the local limits of whose jurisdiction the Defendant resides, and shall be in such form and contain

such particulars as may be prescribed:

Provided that where no claim for compensation u/s 140 is made in such application, the application shall contain a separate statement to that effect immediately before the signature of the Applicant.

(****)

(4) The Claims Tribunal shall treat any report of accidents forwarded to it under Sub-section (6) of Section 158 as an application for compensation under this Act.

167. Option regarding claims for compensation in certain cases--Notwithstanding any-, thing contained in the Workmen's Compensation Act, 1923 (8 of 1923) where the death of, or bodily injury to, any person gives rise to a claim for compensation under this Act and also under the Workmen's Compensation Act, 1923, the person entitled to compensation may without prejudice to the provision of chapter X claim such compensation under either of those Acts but not under both.

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

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

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

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

173. Appeals--(I) Subject to the provisions of Sub-section (2), any person aggrieved by an award of a Claims Tribunal may, within ninety days from the date of the award, prefer an appeal to the High Court:

Provided that no appeal by the person who is required to pay any amount in

terms of such award shall be entertained by the High Court unless he has deposited with it twenty-five thousand rupees or fifty percent, of the amount so awarded, whichever is less, in the manner directed by the High Court:

Provided further that the High Court may entertain the appeal after the expiry of the said period of ninety days, if it is satisfied that the Appellant was prevented by sufficient cause from preferring the appeal in time.

(2) No appeal shall lie against any award of a Claims Tribunal if the amount in dispute in the appeal is less than ten thousand rupees.

174. Recovery of money from insurer as arrear of land revenue--Where any amount is due from any person under an award, the Claims Tribunal may, on an application made to it by the person entitled to the amount, issue a certificate for the amount to the Collector and the Collector shall proceed to recover the same in the same manner as an arrear of land revenue.

32. A cautious reading of the proviso to Section 166(2) makes it transparent that while making an application for compensation on the principle of fault u/s 166, if no claim for compensation u/s 140 (which is based on the principle of no fault) is made, the application, made u/s 160, shall contain a separate statement, before the signature of the Applicant on the claim application, that no application u/s 140 has been made. The proviso to Section 162(2), thus, shows that the legislature presumed that, ordinarily, a claimant, while making an application for compensation u/s 166, would also make an application for compensation u/s 140 and, if it is so made, it is the application u/s 140, which shall be disposed of first and as expeditiously as possible by the Claims Tribunal and if a claimant chooses not to apply for compensation u/s 140, he shall make a specific statement, to this effect, in his application made u/s 166, immediately before putting his signature on the application for compensation made u/s 166.

33. Under the scheme of the M.V. Act, an insurer's liability to indemnify an insured arises out of a judgment or an award. While the determination of compensation has been referred to as an "award" under the M.V. Act, the determination of compensation, made in a reciprocating country, has been referred to as a "judgment" (See Sub-section (3) of Section 149). What is, however, of paramount importance to note is that although the word "award" has not been specifically defined under the M.V. Act, the fact remains that an award, ordinarily, contemplates adjudication of a lis. An insurer's liability to satisfy a judgment or an award against persons insured in respect of a third party risk arises under the provisions of Sub-section (1) of Section 149, which falls under Chapter XL The Explanation to Section 149(7), however, makes it clear that an "award", which is referred to u/s 149, means an "award" made by a Tribunal u/s 168. It, therefore, becomes clear that while Section 140 creates a right in favour of a claimant or gives the power to a claims Tribunal to award compensation on the basis of no-fault, the procedure, to be followed for the purpose of making of an award, has to be as embodied in Section 168. To put it a little differently,

Section 140 and/or Section 163(A) and/or Section 166 merely empowers the Tribunal to give an award, but the question as to whether a person is or is not liable to pay compensation is determined u/s 168. Necessarily, therefore, the determination of the question, as to whether a person is liable to pay compensation on the basis of no-fault u/s 140, has to be done by taking recourse to Section 168. What is also pertinent to note is that though in an application, made u/s 140, one is neither required to establish any wrongful act, negligence or default on the part of the owner (s) of the vehicle (s) concerned or of any other person (s), the fact remains that a Claims Tribunal must satisfy, before passing an order Section 140, that the accident, as alleged, did, in fact, take place and the person, who is projected to have died or sustained injury in the accident, has died or sustained injury as claimed. Since no exercise of judicial power can be mechanical, it clearly follows that though summary in nature, an application u/s 140 does require the Tribunal to be satisfied, before it allows an application u/s 140, that the accident, as alleged, did take place and the person, who is claimed to have died or sustained injury, did, in fact, die or sustain injury in the accident as alleged. Though this inquiry may be of limited nature, there would, nevertheless, have to be an inquiry in this regard. Though Section 140 imposes statutory liability upon the owner to pay compensation on the principle of no fault and does not refer to the liability of the insurer, the fact remains that the insurer, if required to indemnify the owner, may deny that the vehicle stood insured on the date of the accident. If the insurance coverage is denied, it would become a duty of the Claims Tribunal to determine if the vehicle, involved in the accident, really stood insured. However limited may be the nature of this inquiry u/s 140, the Claims Tribunal cannot shelve the responsibility of holding an inquiry into such a question of fact. Where, however, the defence taken by the insurer is one u/s 149(2), such a question may not be determined in a proceeding u/s 140, particularly, if there is already an application u/s 166 and the Tribunal, in such a case, may choose to determine the correctness or justification of the defence taken by the insurer u/s 140, when the application u/s 166 is taken up for determination, for, the object of Section 140 is to make available compensation to a victim of accident at the earliest possible moment. If the amount already paid to a claimant u/s 140 is eventually found not liable to be paid by the insurer, Section 149(3) permits the insurer to recover such an amount from the owner of the vehicle, in question. If, however, the application for compensation is only u/s 140 and not u/s 166, the claims Tribunal may have to make a full fledged inquiry as to whether the defence taken, u/s 149(2), by the insurer is sustainable or not.

34. What is, now, of immense importance to note is that the provisions contained in Chapter "X" do not provide the procedure for determination of a claim u/s 140 and give no indication whether such a determination should be by way of an order, a judgment or an award. It is, therefore, clear that Chapter "X" is not a self-contained code for determination of compensation payable on the principle of no fault. It is Section 165, which falls in Chapter "XII", whereunder a claims Tribunal is constituted and it is this claims Tribunal, which has to determine a

claim for compensation u/s 140. The applicability of the provisions of Chapter "XII" to the disposal of an application made u/s 140 cannot, therefore, be doubted. Section 165 makes it clear that the claims Tribunal is constituted for the purpose of adjudicating upon claims for compensation in respect of accidents involving the death of, or bodily injury to, persons arising out of the use of motor vehicle (s) or damage to property of a third party or both. In order to, therefore, make the provisions of Chapter "X" effective, the Tribunals, constituted under Chapter "XIT, must necessarily follow the relevant provisions, available in Chapter XII, for determining the amount payable as compensation on the principle of no fault u/s 140.

35. Coupled with the above, the proviso to Section 168, if I may reiterate, makes it clear that if an Applicant, while applying for compensation u/s 166, also makes a claim for compensation u/s 140, then, the claim made u/s 140 shall be disposed of in accordance with the provisions of Chapter "X". As already indicated above, Chapter "X" is not a self-contained code for determination of compensation payable on the principle of no fault and that a claims Tribunal, even for the purpose of determination of compensation on the principle of no fault, must necessarily follow the relevant provisions embodied in Chapter "XII".

36. What logically follows from the above discussion is that a claim for compensation u/s 140, even if made in an application u/s 166, is nevertheless a determination of compensation u/s 168(1) What the proviso to Section 168(1) merely indicates is that since the liability u/s 140 is a no-fault liability determination of fault, on the part of the person, whom makes the claim for compensation or against whom the claim for compensation is made, is irrelevant and since the quantum of compensation is pre-determined by the statute itself, quantification of the amount of compensation, as required in an application u/s 166, is not necessary. In other words, while Section 168 requires determination of the question as to whether the accident took place due to fault, negligence or default on the part of the owner or driver of the vehicle involved in the accident and/or on the part of the victim of the accident, Section 140 dispenses with such determination, for, the compensation payable, u/s 140, is on the principle of no fault. Similarly, while Section 168 requires the Tribunal to make an award determining the amount payable as compensation, Section 140 makes the quantum of compensation pre-determined by the statute, but the determination of the liability to pay compensation, even on the principle of no fault u/s 140, nevertheless amounts to an award.

37. What follows from the above discussion is that since the liability, u/s 140, is on the basis of no fault and the quantum of compensation is pre-determined by the statute itself, a quantification of the amount of compensation is not necessary, but the Tribunal has the duty to determine if the death was caused by the accident or the injury has resulted into permanent disablement. Such determination is possible by the Tribunal by invoking the provisions of Section 168. The provisions for compensation, payable u/s 140, are beneficial provisions

for the victims of motor vehicular accidents. The legislature could not have, therefore, while making such beneficial provisions, exclude other relevant provisions of the M.V. Act, whose applicability is unavoidable for effective realization of the directions for payment of compensation passed u/s 140. If the determination of compensation payable u/s 140 is not regarded as an award, many of the beneficial provisions of Chapter "XII" would be denied to the person, who is directed to be paid compensation u/s 140. For instance, Section 168(2) requires a Tribunal to deliver copies of the award to the parties expeditiously. Section 168(3) requires a person, who is liable to pay compensation, to deposit within a period of thirty days, the amount awarded in terms of the directions given by the Tribunal. Above all, if the provisions of Chapter "XII" are held not applicable to an application u/s 140, which falls under Chapter "X", the effect would be devastating, for, there is no mechanism for recovery of compensation under the MV Act other than Section 174, which appears in Chapter "XII" and provides for recovery of compensation directed to be paid by a claims Tribunal as an arrear of land revenue.

38. The distinction between a claim u/s 140 and a claim u/s 166, as already indicated above, is that while a claim is determinable u/s 140 on the principle of no fault, a claim u/s 166 has to be determined on the principle of fault. The M.V. Act requires the claims Tribunal to dispose of both the kinds of claims independently and one after the other. This, in turn, clearly shows that a claims Tribunal would be required to make awards in favour of the claimant by taking resort to Section 168. The proviso to Section 168 clarifies that u/s 166, the Tribunal shall determine the amount of compensation, which appears to it to be just. It is only when the order, passed u/s 140, is treated as an award that there would be an obligation, on the claims Tribunal, to arrange to deliver the copy of the order to the parties concerned and it will become obligatory on the part of the person, who is directed to make the payment, to deposit, in terms of the directions given by the Tribunal, the amount directed to be paid, within a period of thirty days from the date of the making of the order.

39. What emerges from the above discussion is that while Section 168 lays down the procedure for disposal of an application u/s 166, the proviso to Section 168(1) deals with the disposal of an application made u/s 140. Section 168(2) makes it mandatory for the claims Tribunal to deliver copies of the award to the parties. Section 168(3) makes it clear that where an award is made, the person, who is required to pay any amount in terms of the award, shall, within thirty days from the date of announcement of the award, deposit the entire amount awarded in such a manner as the claims Tribunal may direct. Though an order, passed u/s 140, directing payment of compensation may not be final order, it, undoubtedly partakes the character of an award and has, in other words, all the trappings of an award. The scheme of compensation, as embodied u/s 140 and Section 166, clearly contemplates two types of orders, one u/s 140 and the other u/s 166. There is no reason as to why an order, made u/s 140, be not treated as an award, for, not treating an order, passed, u/s 140, as an award would amount

to denying to the claimant the procedure for recovery of the compensation as arrear of land revenue inasmuch as the M.V. Act makes provisions for recovery of the amount of compensation by way of arrear of land revenue and by no other mode of recovery. I am fortified in coming to this conclusion from the decisions in Oriental Insurance Company Limited, New Delhi Vs. Chitaman and Others, Oriental Insurance Co. Ltd. Vs. Mohiuddin Kureshi alias Md. Moya and Others and United India Insurance Co. Ltd. Vs. Padmavathy and Others,

40. What crystallizes from the above discussion is that the scheme of the M.V. Act recognizes, amongst others, two types of claims, one u/s 166 and the other u/s 140. An order for compensation, made u/s 140 or u/s 166 is an award and such an award is appealable u/s 173.

41. Having held that an order u/s 140 is also an appealable order, what, now, needs to be determined is as to what reliefs, if any, are the parties, in the present appeals, entitled to? In this regard, what needs to be noted is the fact that the present Appellant had, admittedly, issued insurance coverage in respect of vehicle No. AMZ 6850, which stood involved in the accident, in question. In such circumstances, until the time the insurer's plea that the said insurance coverage was obtained by the owner of the vehicle by playing fraud on the insurer is determined, the payment of compensation, payable on the principle of no fault, cannot be avoided. Viewed thus, it is clear that the present Appellants, as insurer, remain liable to pay compensation on the principle of no fault u/s 140. However, the insurer would remain entitled to recover the amount, which may be paid in terms of the order (s) passed u/s 140, by taking resort to Section 149(5) if and when the Tribunal holds that the insurance coverage, as obtained by the owner of the offending vehicle, suffers from fraud.

42. In the result, and for the foregoing reasons, while these appeals fail and the same are dismissed, it is made clear that the Appellants, as insurer, would remain entitled to the determination of the question as to whether the insurance coverage, in question, was obtained, as indicated hereinabove, by playing fraud on the insurer and, depending upon the finding, which may be reached on this aspect of the case by the claims Tribunal, further direction for payment of compensation to the claimants shall be made by the Tribunal.

43. With the above observations and directions, these appeals shall stand disposed of with no order as to cost.

44. Send back the LCR.